

Pages 23030-23031 were intentionally left blank.

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, 11 April 2023.]**

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

3 Trial Counsel, good morning. Please identify who is here on
4 behalf of the United States, indicate where they are appearing from.
5 And if there's any counsel making their first appearance, let me know
6 so I can get their information and qualifications.

7 TC [MR. O'SULLIVAN]: Yes, Your Honor, and good morning.

8 These proceedings are being transmitted via CCTV to public
9 viewing locations in the United States pursuant to the commission's
10 order in Appellate Exhibit 028M dated 22 November 2019.

11 All of the following personnel have the requisite clearances
12 for being in the courtroom and the Remote Hearing Room:

13 Present for the United States in Guantanamo Bay are myself,
14 Michael O'Sullivan; Mr. John Wells; Staff Sergeant Maria Young;
15 Mr. Forrest Parker Smith; Mr. Louis Marmo; and our linguist.

16 Present in the Remote Hearing Room in northern Virginia are
17 Lieutenant Colonel James Garrett, Lieutenant Commander Keven
18 Schreiber, Major Michael Ross, Major Stephen Romeo, Lieutenant Tess
19 Schwartz, Captain Jonathan Danielczyk, Mr. Pascual Tavaréz-Patin,
20 Ms. Paige McLachlan.

21 Also present for the FBI in the back of the Remote Hearing
22 Room are Supervisory Special Agent Mary Sonnen and Office of
23 General Counsel attorney Ms. Katherine Eisenreich.

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

2 TC [MR. O'SULLIVAN]: Thank you, Your Honor.

3 MJ [COL ACOSTA]: Good morning, Mr. Natale. Can you please do
4 the same for the defense.

5 LDC [MR. NATALE]: I will try. Good morning, Your Honor.
6 Anthony Natale, who is present here obviously, on behalf of
7 Mr. Nashiri, who is present, along with our interpreter. Also here
8 in the ELC is Ms. Carmon, Lieutenant Commander Piette, LN1 Wood, and
9 Staff Sergeant McGuire.

10 In the RHR there will be Lieutenant Colonel Nettinga,
11 Mr. Joaquin Padilla, Mr. Roy, Mr. Dolphin, Mr. Bendoragel. There's
12 a possibility that Ms. Pinate will be coming in and out.
13 Mr. Hoffmann, Mr. Lange, Tech Sergeant Gause -- Gause, I believe it
14 is, and Ms. Manice Brown. And at some point during the testimony of
15 Dr. Jessen, Dr. Crosby is anticipated will be present.

16 All of these people have the necessary qualifications and
17 clearance to attend these proceedings.

18 And Ms. Morgan will not be here today. She is in the office
19 working to prepare for her testimony -- well, her cross-examination
20 is tomorrow. She's not testifying. I slipped.

21 MJ [COL ACOSTA]: Okay. I thought you were throwing me a
22 curve ball there. Oh, she's -- she's cross-examining Dr. Jessen
23 tomorrow?

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

2 MJ [COL ACOSTA]: Okay. And Mr. Nashiri consents to her not
3 being here today?

4 LDC [MR. NATALE]: Absolutely, yes. Yes, we've talked to him
5 in advance about this.

6 MJ [COL ACOSTA]: Okay.

7 LDC [MR. NATALE]: I was here last week, so we were able to
8 clear up a lot of things in advance to let him know what was going on
9 and to discuss it fully with him.

10 MJ [COL ACOSTA]: Okay. All right. Thank you, Mr. Natale.

11 LDC [MR. NATALE]: Thank you, sir.

12 MJ [COL ACOSTA]: Counsel, as a reminder, my expectations
13 regarding the Remote Hearing Room is that the RHR is an extension of
14 the courtroom. Only authorized personnel -- the only authorized
15 personnel to be in the RHR during hearings of this commission are
16 those individuals that would be permitted to sit in the well of this
17 courtroom and that includes members of each respective team, their
18 consultants, as well as the chiefs of your respective organizations.

19 As defense counsel stated, the accused is present today.

20 Mr. Nashiri, good morning. I will now advise you of your
21 right to be present and to waive said presence. You have the right
22 to be present during all sessions of the commission. If you request
23 to absent yourself from any session, such absence must be voluntary

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1 and of your own free will. Your voluntary absence from any session
2 of the commission is an unequivocal waiver of the right to be present
3 during that session.

4 Your absence from any session may negatively affect the
5 presentation of the defense in your case. Your failure to meet with
6 and cooperate with your defense counsel may also negatively affect
7 the presentation of your case. Under certain circumstances, your
8 attendance at a session may be required regardless of your personal
9 desire not to be present.

10 Regardless of your voluntary waiver to attend a particular
11 session of the commission, you have the right at any time to decide
12 to attend any subsequent session. If you decide not to attend the
13 morning session but wish to attend the afternoon session, you must
14 notify the guard force of your desires. Assuming there is enough
15 time to arrange transportation, you will then be permitted to attend
16 the afternoon session.

17 You will be informed of the time and date of each commission
18 session prior to the session to afford you the opportunity to decide
19 whether you wish to attend that session.

20 Do you understand what I just explained to you?

21 ACC [MR. AL NASHIRI]: Yes, I understood it well.

22 MJ [COL ACOSTA]: All right. All right. We were able -- we
23 were unable to begin yesterday as scheduled due to technical issues

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1 that prevented some of the parties from accessing their data for this
2 case. I granted a request to delay the proceedings until today.

3 This session, this April session, will consist of taking the
4 testimony of witnesses related to the admissibility of various
5 hearsay statements that the government intends to offer into evidence
6 and evidence on defense motions to suppress the statements of the
7 accused and other individuals.

8 I also expect to take up the motion -- the defense motion in
9 535 related to the alleged Brady violations by the prosecution.

10 The commission has not held any R.M.C. 802 conferences;
11 however, the commission has received administrative information from
12 the parties through e-mails exchanged with the trial judiciary staff.

13 On 14 March 2023, Lieutenant Colonel Nettinga sent an e-mail
14 stating that the defense intended to call Mr. Clive Smith, Counsel
15 for Mr. Rabbani, to testify on AE 535 but had not yet confirmed his
16 availability for the April session of the commission. Lieutenant
17 Colonel Nettinga indicated that the defense had no other witnesses on
18 the motion.

19 On 28 March 2023, Lieutenant Colonel Nettinga again
20 sent -- sent another e-mail stating that Mr. Smith was unavailable to
21 testify during the April session and suggesting that the litigation
22 of AE 535 must be postponed until the June 2023 session.

23 On 29 March 2023, Mr. Natale sent an e-mail indicating he

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1 had -- there was a potential issue with the extension of his contract
2 as learned counsel.

3 On 31 March, I asked staff members to relay information to
4 the parties involving my expectations for the marking and premarking
5 of exhibits and seeking an update on the discovery related to 535.

6 On 31 March, the government provided an update on the
7 discovery for AE 535, and on that same day, Mr. Natale provided
8 notice that his contract issue was expected to be resolved.

9 In other e-mail traffic, the government provided information
10 related to the changes of the expected order of witnesses due to
11 availability for witnesses during this session. The defense gave
12 notice of changes regarding which counsel will participate from which
13 location.

14 Additionally, the parties provided e-mail updates on
15 negotiation between the parties related to AE 027X.

16 Do counsel have anything they'd like to add to my summary or
17 any objections they'd like to make? I'm going to get into some other
18 communications in just a minute that are not from the parties.

19 Government?

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

21 MJ [COL ACOSTA]: Defense?

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

23 MJ [COL ACOSTA]: All right. As I stated, I also need to put

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1 on the record some additional communications I received that were not
2 sent by the parties in this case; that were sent from an outside
3 source.

4 On 16 March, I received electronic correspondence from
5 Mr. Clive Stafford Smith, the lead counsel for Mr. Rabbani, making
6 complaints regarding the accuracy of the prosecution's assertions
7 related to AE 535. He also attached to that e-mail a 17-page
8 document making allegations against the prosecution -- prosecutors in
9 this case. The defense has since offered that document as
10 Attachment B to AE 535H.

11 I did not respond to Mr. Smith's e-mail, although I believe
12 I did acknowledge receipt or I had -- there was a request for
13 acknowledgment of receipt and that was communicated to him that the
14 trial judiciary had received it.

15 On 1 April, the commission was copied on a second
16 communication from Mr. Smith to the chief prosecutor regarding
17 Mr. Wells of the prosecution. The commission's staff then informed
18 Mr. Smith that as a potential witness before the commission he should
19 not communicate with the commission and to direct any future
20 communications in accordance with the Rules for Military Commissions.
21 Mr. Smith replied that he had not been told that he's a witness or
22 when that might be.

23 I'm going to make that e-mail traffic from Mr. Smith the

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1 next appellate exhibit in the AE 535 series, and that is 535L.

2 Okay. Counsel, I want to address the issue of the
3 possibility of closure of the proceedings that will be necessary
4 during the testimony of certain witnesses, during argument, and on
5 certain motions in this session.

6 On 23 March 2023, the defense filed AE 539C, a notice of an
7 agreement reached by the parties related to the need to conduct
8 closed hearings in order to prevent the disclosure of classified
9 information. The defense represented that the parties agree that in
10 order to prevent the disclosure of classified information, closure of
11 the proceedings to the accused and to the public in accordance with
12 R.M.C. 806(b)(2) will be necessary during certain portions of the
13 proceedings.

14 Ordinarily, the commission would conduct a hearing pursuant
15 to M.C.R.E. 505(h) in order to determine the use, relevance, or
16 admissibility of the classified information. However, I'm -- if I'm
17 correct, the parties both agree that a closed hearing pursuant to
18 M.C.R.E. 505(h) is unnecessary because the parties agree regarding
19 the matters that need to be heard in a closed session.

20 Is that correct, Government?

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

22 MJ [COL ACOSTA]: Defense?

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

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1 MJ [COL ACOSTA]: Both sides agree with the representations
2 made in AE 539C?

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

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

5 MJ [COL ACOSTA]: All right. Closed sessions will be held
6 regarding AEs 467 and 480, including at least a portion of
7 Dr. Jessen's testimony scheduled -- and that closed session is
8 scheduled for Friday of this week.

9 And during a portion of Dr. Welner's -- well, it had
10 previously been listed that Dr. Welner was going to be a
11 closed -- had a closed portion, although I -- we will also take up AE
12 480 in a closed session on Friday to the extent that the time is
13 there.

14 TC [MR. O'SULLIVAN]: Your Honor, which Friday?

15 MJ [COL ACOSTA]: This Friday.

16 TC [MR. O'SULLIVAN]: Thank you.

17 MJ [COL ACOSTA]: I believe Dr. Welner's testimony was
18 previously listed as having some closed portion. Is that not
19 correct, Government?

20 ATC [LT SCHWARTZ]: It's correct, Your Honor. On the version
21 11, we have a portion reserved on Thursday, the 20th, for a closed
22 session, if necessary.

23 MJ [COL ACOSTA]: Okay. It's not listed on the -- I'm just

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1 looking at the schedule. The schedule is for convenience and is not
2 official, I understand that, but that's what I -- if we need to have
3 a closed session with Dr. Welner, that will be on Thursday, the 20th
4 of April.

5 LDC [MR. NATALE]: Your Honor, just for a heads-up, the
6 information that he considered spans the whole range of
7 classifications, so from the highest to the lowest. So just so
8 you're aware that there are certain things where -- may have to be in
9 the closed session because of what type of questions are asked when.

10 MJ [COL ACOSTA]: Okay. If we can -- again, I'm trying to
11 minimize the closed portion, so if there's any chance that -- and I
12 know -- I'm aware that you filed a challenge to his testimony,
13 correct ----

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

15 MJ [COL ACOSTA]: ---- today -- well, I think I got it today.
16 So the -- I've not had a chance to delve into -- into it, but we'll
17 get into that. So if we have to have a closed session, if it needs
18 to go longer than one day, we'll make accommodations to do that.

19 All right. Let's take up -- I -- when we were last leaving
20 the last time, my concern was to take up 535 as the first thing
21 during this session. The commission granted the government motion to
22 file a surreply based upon what it -- what were -- so the government,
23 were new allegations against the government made by the defense in

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1 the defense's 21 March reply.

2 Government, you asked for time until 7 April to file a
3 surreply on AE 535. The commission did receive that 665-page filing
4 yesterday, on the 10th.

5 Government, have you completed your disclosures on this
6 issue to the defense? Is there anything left -- and what I'm saying
7 is: Is there anything else that they can expect to receive on this
8 matter?

9 MATC [MR. WELLS]: Your Honor, John Wells here. I do not
10 think anything on the proffer sessions will be forthcoming. There
11 are other matters that they've requested in their discovery responses
12 that we're still working on. This ----

13 MJ [COL ACOSTA]: What are those things?

14 MATC [MR. WELLS]: These are matters from the habeas cases
15 which are either under seal or asked to be confidential. We're
16 processing that and pursuing that.

17 There may be also materials from the Periodic Review Boards
18 about detainees that we are reviewing. This is in the nature of any
19 statements from the accused or from counsel that could be interpreted
20 as inconsistent statements or recantations. We're looking at that.
21 Also, allegations of torture.

22 Also, we're reviewing all of the discovery reported by
23 Department of Defense and other government agencies that relate to

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1 both detainees so that we can give a comprehensive affirmation that
2 we have completed discovery.

3 As we proceed forward on a few things that we're already
4 doing this week, we'd like to give the commission updates throughout
5 the two weeks on those matters.

6 MJ [COL ACOSTA]: Yes. As you have updates, then provide
7 them.

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

9 MJ [COL ACOSTA]: You have a timeline for turning over these
10 materials to the defense?

11 MATC [MR. WELLS]: Sir, our goal is before June when we would
12 like to present these statements at the earliest ----

13 MJ [COL ACOSTA]: Let me help you with that.

14 MATC [MR. WELLS]: Sir?

15 MJ [COL ACOSTA]: Let me help you with that goal.

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

17 MJ [COL ACOSTA]: That needs to be -- that must be turned over
18 before June. That should be turned over by the end of this month.

19 MATC [MR. WELLS]: Yes, sir. Yes, sir. Anything that
20 requires 505, obviously we'll submit that to the commission prior to
21 June. We want all discovery -- additional discovery, because there
22 is already extensive discovery that's been provided to the defense
23 about Mr. Rabbani and Kazimi. But anything additional, yes, sir, we

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1 will proceed ----

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

3 MATC [MR. WELLS]: ---- in the month of May and get this done.

4 MJ [COL ACOSTA]: To be clear, I have no 505s -- well, I have
5 one 505 pending but it's not related to this on -- I think -- I think
6 I completed that review yesterday. So I don't think I have any 505s
7 waiting, so the sooner you get it to me, the sooner it will get
8 reviewed and get out.

9 Yeah, I'm going to want updates at the end of this week and
10 at the -- and as we get into next week because before June is
11 too -- is too loose of a definition of when this is going to be due.
12 And if you need my assistance in providing a stricter guideline for
13 that, then you'll get it.

14 MATC [MR. WELLS]: All right, sir. Thank you.

15 MJ [COL ACOSTA]: Thank you.

16 Lieutenant Colonel Nettinga, I think you're taking this for
17 the government -- for the defense; is that correct?

18 DC [Lt Col NETTINGA]: That's correct, Your Honor.

19 MJ [COL ACOSTA]: Okay. You seek to present the testimony of
20 Mr. Smith in AE 535; is that correct?

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

22 MJ [COL ACOSTA]: Before 28 March, had you interviewed
23 Mr. Smith?

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

2 MJ [COL ACOSTA]: You had interviewed him?

3 DC [Lt Col NETTINGA]: We have interviewed him. There
4 is -- if I can clarify and hope to explain some of the way that this
5 has played out and why it's played out this way.

6 MJ [COL ACOSTA]: Well, but you had interviewed him, is ----

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

8 MJ [COL ACOSTA]: Okay. You told the commission on 21 March
9 and then on 28 March that he was unavailable to testify during this
10 session; however, Mr. Smith on the 3rd of April informed the
11 commission that he had not been told that he was a defense witness.
12 And he had -- didn't know when that -- when he was going to be a
13 witness. He hadn't been told he was a witness and didn't know when
14 that was going to happen.

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

16 MJ [COL ACOSTA]: Can you explain that?

17 DC [Lt Col NETTINGA]: The only explanation I can offer is
18 that something was lost in translation with the e-mails. He and I
19 had conversations about him testifying during the April session. We
20 had been focusing in on the first week because I know that's when the
21 commission wanted to hear from him. And unfortunately, he's been in
22 the -- he's been in the UK dealing with the failing health of his
23 mother. His mother just passed away within the past week or so.

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1 That's the primary reason why he was unable to come here for the
2 hearings.

3 So we're trying to work on June. He and I have already
4 spoken about the potential of June. He has a number of -- and you
5 can cut me off anytime if you don't want me to go this far, Your
6 Honor.

7 MJ [COL ACOSTA]: Yeah, you can stop now. All right. If
8 there's just a lost in translation from American English to standard
9 British English, I don't know how that translation could have gone so
10 badly.

11 In the document that Mr. Smith sent and that you attached to
12 your pleading at 535H, where he's making -- where he makes the
13 statements that you believe support your motion, that's what you're
14 using -- that's the basis of your motion, correct, is him and his
15 statements?

16 DC [Lt Col NETTINGA]: The basis -- yes, Your Honor. This
17 is ----

18 MJ [COL ACOSTA]: Okay.

19 DC [Lt Col NETTINGA]: ---- the basis for our argument.

20 MJ [COL ACOSTA]: Let me ask you this. Was he present at any
21 of the interviews with Mr. Rabbani?

22 DC [Lt Col NETTINGA]: He was present at the first interview
23 with Mr. Rabbani and he's the lead counsel on the case, yes, sir.

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1 MJ [COL ACOSTA]: Right. Is he relevant and necessary to
2 this? Or is there -- I'm trying to figure out, if he wasn't there
3 when the -- when the statements were made, is he the relevant and
4 necessary witness?

5 DC [Lt Col NETTINGA]: Well, Your Honor, he's certainly in
6 that category. Certainly Ms. Davis is also a relevant and necessary
7 witness, and we have been working to, at the very least, get a
8 declaration from her. Understanding -- and I know the court's
9 aware -- the commission is aware based on the pleadings filed by the
10 parties that her notes from that -- from those sessions are at GTMO
11 with the FBI, so she doesn't have access to those.

12 I understand that she is dealing with some personal issues
13 that I do not have any further information on, but she's going
14 through things that are causing this to not be a top priority for
15 her.

16 However, we are working to secure a declaration by the end
17 of this session. That is our hope. And then we can make the
18 determination as to whether or not we need to call both of them, just
19 Ms. Davis, just Mr. Smith. But that's the universe that we're
20 operating in here, sir.

21 MJ [COL ACOSTA]: When you filed this motion, I -- you know,
22 one of my questions was, hey, I really -- I need to know where
23 you're -- what's your basis for this information and you said, well,

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1 I'll tell you in April, Your Honor. Don't want to tell you now.

2 We're in April. The information that -- that you have or
3 that you received, the information provided by the government
4 supports -- arguably there's a portion of the -- of the information
5 provided by the government where Mr. Rabbani during one of his
6 interview sessions says I did not do -- you know, I did not -- it's a
7 long list of I didn't do this, I didn't do this, I didn't do -- you
8 know, I didn't do the following things.

9 One of the things that you state that Mr. Rabbani
10 claimed -- or said during these proffer sessions was that his
11 prior -- in your motion, that the -- that his prior statements were
12 made as a result of cruel and inhumane treatment or torture. I still
13 don't have anything that supports that in the -- and again, some of
14 this is from the, you know, the government's location of the FBI
15 agents' files.

16 What's the source of the information? Who am I going to
17 hear from that he made the statement that the previous statements
18 were made under ----

19 DC [Lt Col NETTINGA]: The source of our information for that
20 is Mr. Smith, Your Honor.

21 MJ [COL ACOSTA]: Okay. And that -- that Mr. Rabbani made
22 those statements during the proffer sessions?

23 DC [Lt Col NETTINGA]: That is -- that is -- yes. Yes, Your

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1 Honor.

2 MJ [COL ACOSTA]: Okay. All right. Keep me updated as to
3 whether or not you've got this -- the declaration from Ms. Kristin
4 Davis, co-counsel for Mr. Rabbani, by, you know, at the end of the
5 week. You know, as we go, okay?

6 DC [Lt Col NETTINGA]: Yes, Your Honor. As soon as we know
7 something, you'll know something.

8 MJ [COL ACOSTA]: Thank you. All right. Thanks.

9 Government, I think from your position, from your filing,
10 what is your position on Mr. Smith as a relevant and necessary
11 witness for the litigation of AE 535?

12 MATC [MR. WELLS]: Sir, I don't think he's relevant and
13 necessary at this point if he's just going to come in and verify,
14 authenticate his letter that he submitted. It seems that Ms. Kristin
15 Davis was the person who was present.

16 We've also provided you Ms. -- FBI Agent Boese's notes ----

17 MJ [COL ACOSTA]: Oh, no, no. I have the notes, right.

18 MATC [MR. WELLS]: So ----

19 MJ [COL ACOSTA]: But she wasn't the only one that was in the
20 room for the government either, right?

21 MATC [MR. WELLS]: That's correct, sir.

22 MJ [COL ACOSTA]: Two other individuals that were on the
23 government's prosecution team were in there as well.

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1 MATC [MR. WELLS]: Well, we ----

2 MJ [COL ACOSTA]: Including Mr. Forrest Parker Smith who's
3 sitting in front of me this morning, right?

4 MATC [MR. WELLS]: So it would be Agent Boese, the FBI agent,
5 and I think Mr. Smith, and then we had an interpreter but not really
6 part of the team independent, and I'm not sure that Mr. ----

7 MJ [COL ACOSTA]: And Mr. Miller?

8 MATC [MR. WELLS]: No, Mr. Miller did not attend ----

9 MJ [COL ACOSTA]: He didn't attend any?

10 MATC [MR. WELLS]: ---- any of the proffer sessions.

11 MJ [COL ACOSTA]: None of them?

12 MATC [MR. WELLS]: I want to correct -- the counsel for the
13 defense said that Mr. Clive Stafford Smith attended the one
14 proffer ----

15 MJ [COL ACOSTA]: At the initial -- it was the initial session
16 where they were discussing ----

17 MATC [MR. WELLS]: That would not be a session; that would be
18 an introduction, and it was a one-way talk. It was not a proffer
19 session eliciting information from Mr. Rabbani at that time, although
20 he may have made statements.

21 But if I have my facts incorrect and Mr. Clive Stafford
22 Smith did attend the very first proffer session but not the
23 subsequent proffer sessions, I stand corrected. But I think that's a

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1 clarifying matter because you're asking do we need Mr. Clive Stafford
2 Smith.

3 The other aspect is the allegation as it relates to
4 recantations and what statements are the product of torture. It
5 seems from his submission, he's talking about statements prior to DoD
6 custody and while in foreign custody and perhaps other government
7 agencies, so ----

8 MJ [COL ACOSTA]: Well, I don't know what particular
9 statements he's talking about were the result of. That's what I need
10 evidence on, and that's what I'm asking the defense to produce, which
11 they have not yet, and I need it if they want to go forward on this.
12 I need specifics.

13 MATC [MR. WELLS]: Correct, Your Honor.

14 MJ [COL ACOSTA]: And I'm not saying that the defense has
15 given me that. Defense I don't think would say that they've given me
16 this statement -- you know, the -- that Mr. Rabbani said that the
17 statements made to the government in two -- because at issue, I
18 think -- right? -- are some 2004 statements and then later -- I want
19 to say maybe a 2007 statement, but that -- 2007 could be -- is a year
20 that's sticking in my head for various reasons related to this case
21 for other people's statements. So I don't know if there was a 2007
22 statement.

23 Was there a 2007 statement at issue for Mr. Rabbani,

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1 Lieutenant Colonel Nettinga?

2 DC [Lt Col NETTINGA]: No, Your Honor. 2004.

3 MJ [COL ACOSTA]: Okay. Just the '4, then. Sorry.

4 So the 2004 statements that were made that originally made
5 to the government -- to the United States that he claims were as a
6 result of torture, perhaps. That's the allegation by the -- by the
7 defense or the -- that there's some form of evidence that he said
8 that some 2004 statements made to the United States were as a result
9 of -- or used by the United States were -- were made as a result of
10 torture.

11 MATC [MR. WELLS]: No, sir.

12 MJ [COL ACOSTA]: No?

13 MATC [MR. WELLS]: I think it's very vague on exactly what
14 statements of Mr. Clive Stafford Smith is identifying are the result
15 of torture or the product of torture.

16 MJ [COL ACOSTA]: Well, I think Mr. Clive Stafford Smith might
17 be ambiguous whether -- but I think the defense is stating that
18 that -- that's the defense's assertion.

19 MATC [MR. WELLS]: Well ----

20 MJ [COL ACOSTA]: Whether or not if Mr. Smith can support that
21 allegation, that's what we're waiting to learn.

22 MATC [MR. WELLS]: Correct, sir. And that would be the only
23 area I think the government would say Mr. Clive Stafford Smith would

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1 be relevant and material at this point.

2 MJ [COL ACOSTA]: Well -- okay.

3 MATC [MR. WELLS]: With the -- and then what particular
4 statements are we talking about. So I know that the -- the motion is
5 keyed on the government's notice in 166E for the statements made by
6 Mr. Rabbani Kazimi -- or, excuse me, Mr. Rabbani in 2004 to DoD
7 investigators.

8 MJ [COL ACOSTA]: Uh-huh.

9 MATC [MR. WELLS]: But it seems Clive Stafford Smith's thrust
10 of his letter is related to foreign treatment and treatment by other
11 government agencies in other custody which we think are sufficiently
12 attenuated from those 2004 statements.

13 MJ [COL ACOSTA]: Well, that's -- that's a fact to be
14 determined about which ones he's talking about.

15 MATC [MR. WELLS]: Yes.

16 MJ [COL ACOSTA]: I understand that that's there, but
17 we'll ----

18 MATC [MR. WELLS]: So as it relates to the proffer sessions,
19 though, in 2018 to 2019, I think the best witness is Ms. Kristin
20 Davis because it's her notes. Her notes have been identified here at
21 Guantanamo Bay. We haven't looked at them; they're sealed.

22 MJ [COL ACOSTA]: Right. I expect ----

23 MATC [MR. WELLS]: And I'm not certain ----

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1 MJ [COL ACOSTA]: ---- that you haven't looked at them.

2 MATC [MR. WELLS]: Yes, sir. And I'm not certain that the
3 envelopes contain all of the notes, because obviously Mr. Clive
4 Stafford Smith has some notes or some communications or re-creations
5 or perhaps exact copies.

6 And then in the sequence of events between 2018-2019, it
7 seems that the idea that we need to maintain the notes here because
8 they may be classified, you can't transport them back, that she
9 wasn't capable. If there were going to be future proffer sessions,
10 we'd need those notes available here for her and the parties. We
11 were going to maintain them here.

12 So I think there might have been a portion where she had
13 some of her notes and were transporting them back, but ultimately it
14 was decided on March, and maybe January time frame, that -- in 2019,
15 that we would keep those notes here. So we have those notes ----

16 MJ [COL ACOSTA]: So the defense counsel's notes, right?

17 MATC [MR. WELLS]: Correct, sir.

18 MJ [COL ACOSTA]: Defense counsel's notes were maintained by
19 the FBI because they could be classified, right?

20 MATC [MR. WELLS]: Could be, sir.

21 MJ [COL ACOSTA]: And she can't get to them now, and you're
22 going to turn those over to the counsel for Mr. Rabbani at some
23 point?

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1 MATC [MR. WELLS]: Yes, sir. What we'd like to do is work
2 with those defense counsel and -- for a review, and if they think
3 there's anything privileged in there, identify it, excise it.

4 MJ [COL ACOSTA]: Well, you're not looking at any of this,
5 right?

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

7 MJ [COL ACOSTA]: Whatever -- whoever the Privilege Review
8 Team and classification review people are need to be separate from
9 this government prosecution team. That needs to get done. They need
10 to communicate with the counsel for Mr. Rabbani,
11 Mr. -- for Ms. Davis ----

12 MATC [MR. WELLS]: Correct.

13 MJ [COL ACOSTA]: ---- and with Mr. Smith to get those records
14 to them in whatever form they need to as soon as possible, please.

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

16 MJ [COL ACOSTA]: It's -- it's interesting to me -- it raises
17 a question -- doesn't it? -- about the defense attorneys' notes could
18 have been classified, so they had to be kept here by the FBI. But
19 the FBI agent's notes, she kept them with her and was traveling
20 around the world with them to the point where she -- remember, that
21 was part of your -- your filing was that ----

22 MATC [MR. WELLS]: Well ----

23 MJ [COL ACOSTA]: ---- she was traveling and she didn't have

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1 access to her notes in some kind of way. And it made it seem like
2 they were kept in -- they were, quote/unquote, kept in her
3 professional files in a -- in, you know, quote/unquote professional
4 files. Was that kept on her person?

5 MATC [MR. WELLS]: Two aspects about that, sir. I'm not
6 certain exactly where her notes were, but I know that we've looked on
7 our systems and all classification ----

8 MJ [COL ACOSTA]: Well, I know you didn't have them. I know
9 she had them, so ----

10 MATC [MR. WELLS]: That was part of the problem of
11 getting -- having her access to these wherever she kept them on a
12 classified system or protected them.

13 Now, I know that we're talking about possibly these notes
14 were classified. The circumstances, I think, during the proffer
15 sessions, defense counsel for Rabbani, Ms. Davis, had independent
16 conversations with the detainee separate from us, either preparatory,
17 so she made -- might have made work product ----

18 MJ [COL ACOSTA]: I understand.

19 MATC [MR. WELLS]: ---- or communications in there,
20 privileged. And we're not asserting that they are classified because
21 I don't think they've ever been reviewed.

22 But there is a process. We had to have Ms. -- Special Agent
23 Boese's notes reviewed for classification, and I believe there were

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1 some redactions early on, but they were not based in 505 or
2 classification at all ----

3 MJ [COL ACOSTA]: Okay.

4 MATC [MR. WELLS]: ---- in privacy interest. So we would do
5 the same thing with these notes.

6 I think the requirement, if you read the e-mails, was more
7 just to have the notes available and ready here at Guantanamo without
8 having to go through the PRT process each time ----

9 MJ [COL ACOSTA]: Understood.

10 MATC [MR. WELLS]: ---- that we did the proffer sessions.

11 MJ [COL ACOSTA]: Right. But what we need is -- the proffer
12 sessions are over.

13 MATC [MR. WELLS]: Over.

14 MJ [COL ACOSTA]: We need them to be provided to these parties
15 so they can determine what they can provide to ----

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

17 MJ [COL ACOSTA]: ---- the defense and the government in this
18 case so that we can -- and to the commission as to what was said
19 during these sessions.

20 Again, there are other people for the United States as well
21 that were present that can potentially testify about -- you know, on
22 the very limited basis on what was said during these sessions.

23 MATC [MR. WELLS]: On that point, sir, I think the government

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1 would stand that it's the defense's burden ----

2 MJ [COL ACOSTA]: Oh, I understand.

3 MATC [MR. WELLS]: ---- that it is ----

4 MJ [COL ACOSTA]: I understand.

5 MATC [MR. WELLS]: So ----

6 MJ [COL ACOSTA]: But what -- you know, the government's
7 position -- position, to my understanding, has been none of
8 these -- you know, this -- this didn't happen or, if it did happen,
9 we were going to turn it over, right?

10 MATC [MR. WELLS]: Sir ----

11 MJ [COL ACOSTA]: Or we were going to turn over what we
12 knew ----

13 MATC [MR. WELLS]: Correct.

14 MJ [COL ACOSTA]: ---- at some point.

15 MATC [MR. WELLS]: Would be Agent Boese's notes ----

16 MJ [COL ACOSTA]: Right.

17 MATC [MR. WELLS]: ---- from that.

18 And if -- a reading of the e-mails ----

19 MJ [COL ACOSTA]: Agent Boese's notes that the government did
20 not have in its possession or knew existed.

21 MATC [MR. WELLS]: Well, the prosecution team, yes, sir.

22 MJ [COL ACOSTA]: And the prosecution team.

23 MATC [MR. WELLS]: The greater government. We

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1 acknowledge ----

2 MJ [COL ACOSTA]: Did the government know about them?

3 MATC [MR. WELLS]: Sir, I mean, notes were taken and in all
4 proffer sessions if there is availability, the agent is the one
5 taking the notes. We certainly knew about them. And there
6 was -- you'll see in the e-mail traffic that there's an initiation
7 that they should be recorded or maintained, and so that was always
8 the -- the intent.

9 I think if you look at the e-mails, though, the proffer
10 sessions just kind of tailed off and the ball was back in the court
11 of Mr. Rabbani, if he wanted to reinitiate or he thought, then, we
12 would be willing to discuss further.

13 The end result of the prosecution's position and the
14 government's read of all of this is whatever was communicated in the
15 proffer sessions confirmed the legitimacy and accuracy of the 2004
16 interviews conducted by Ms. -- Agent Andra Folescu.

17 And it seems that Agent Boese just wanted the truth and a
18 fresh statement from Mr. Rabbani. And as she put in her declaration,
19 an interpretation would be her probing of Mr. Rabbani to see if he
20 had any further involvement, turned out that he could not support
21 that and he would not state anything further.

22 So that's where we stand as it relates to the facts of the
23 case and whether or not there's an inconsistent or a recantation.

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1 MJ [COL ACOSTA]: Uh-huh.

2 MATC [MR. WELLS]: We didn't find any evidence of that. We're
3 looking closely and comparing the Boese notes to the notes that have
4 been provided by Mr. Clive Stafford Smith to see if ----

5 MJ [COL ACOSTA]: He provided you his notes?

6 MATC [MR. WELLS]: Well, in that ----

7 MJ [COL ACOSTA]: In that other -- in that ----

8 MATC [MR. WELLS]: ---- 16-page statement.

9 MJ [COL ACOSTA]: In his -- in his letter?

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

11 So we have requested from both Ms. Kristin Davis and from
12 Mr. Clive Stafford Smith that they would be willing to provide those
13 notes. I think if -- you've indicated they've invoked privilege over
14 those except for those which have been disclosed to the commission.

15 So at this point, all the information we have is in
16 Mr. Clive Stafford Smith's letter and ----

17 MJ [COL ACOSTA]: Well, the defense will present
18 whatever -- has got to present whatever else is there.

19 And, Defense -- I mean, you cannot just keep doing this
20 piecemeal. You've got to get the information. You've had a
21 significant amount of time on this since apparently you learned of
22 this, again, sometime in May of 2022 before, and then the -- the
23 discovery motions were made in October related to these two

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1 witnesses.

2 So we're -- this is an issue that's -- that's come up. You
3 know, we've got to have all of the information that you have to
4 present it to the commission to consider and not -- the trickling in
5 over multiple sessions of information on this is not helpful ----

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

7 MJ [COL ACOSTA]: ---- from both parties. From both parties.

8 And yeah, I'm not calling -- Lieutenant Colonel Nettinga,
9 what I need is just, you know, the rest of this information that you
10 have or if there's other, you know, the distinction between these
11 two. You know, your -- the claim in the 535 base motion is: X was
12 said in 2004. Y was said in 2018. We were never told of Y. After
13 the government gave us notice of the -- of the statements -- there's
14 a problem with that. And so that -- I need evidence of that if
15 that's what you're going to do. I -- and there's got to be a time
16 limit on when you're going to give me this information, Counsel,
17 okay?

18 DC [Lt Col NETTINGA]: I understand that, sir. And I'm happy
19 to respond more fulsomely if -- if I could get the court's indulgence
20 on that whenever you're ready.

21 MJ [COL ACOSTA]: Yeah, you will in just a second.

22 Anything else, Government? I understand you're
23 working -- you're working the issue ----

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1 MATC [MR. WELLS]: Yes.

2 MJ [COL ACOSTA]: ---- the issue that you need to focus on
3 from the commission's perspective is giving -- providing those notes
4 to counsel for Mr. Rabbani as soon as possible, making sure that that
5 occurs.

6 MATC [MR. WELLS]: All right, sir.

7 MJ [COL ACOSTA]: Okay. Yeah. Thank you.

8 All right. Lieutenant Colonel Nettinga, briefly.

9 DC [Lt Col NETTINGA]: Thank you, Your Honor. And I just
10 think it would be helpful for the court's awareness as to what -- to
11 that way that this has transpired. This is not the defense holding
12 back information, playing games.

13 What happened is we were approached by Mr. Stafford Smith in
14 the May-June time frame of 2022. And essentially, what he said is:
15 There's something you may want to ask about, something you may want
16 to look into with Rabbani. I think it happened to Kazimi as well.
17 We know that he was approached as well and so this might be something
18 you want to look into. There were some inducements made. There were
19 some recantations in there. There were discussions of torture. Do
20 you guys have any of this stuff?

21 And so we went and we looked and we figured out, no, we
22 don't have this stuff. The government has not given us this
23 information.

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1 So we're trying to get in touch with Ms. Davis, we're trying
2 to get in touch with Mr. Stafford Smith. Both are reluctant to
3 engage in this situation because their client is still at Guantanamo.

4 MJ [COL ACOSTA]: Right.

5 DC [Lt Col NETTINGA]: He has been cleared for release, but
6 they don't want to get involved other than just to make that initial
7 alert. But we know that the commission has a time clock for that,
8 right? So we learn about something, we need to file that discovery
9 response as soon as we can. So within 60 days, per the court's
10 order, we're doing it as soon as we can.

11 So we're looking into this information. Then the government
12 says, hey, we're -- we're going to put on these hearsay statements of
13 these two individuals on October 3rd or October 4th and then we
14 file ----

15 MJ [COL ACOSTA]: October 5th, I want to say ----

16 DC [Lt Col NETTINGA]: Yes, Your Honor. And then we
17 filed the ----

18 MJ [COL ACOSTA]: Slow down.

19 DC [Lt Col NETTINGA]: ---- the discovery request.

20 MJ [COL ACOSTA]: Slow down. Slow down.

21 DC [Lt Col NETTINGA]: And so the response to that discovery
22 request is -- is not: Hey, we've got this. We know what you're
23 talking about. We'll get it to you as soon as we can. It's -- your

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1 request is improper because it doesn't ----

2 MJ [COL ACOSTA]: Oh, no.

3 DC [Lt Col NETTINGA]: ---- conform with the court's order.

4 MJ [COL ACOSTA]: I'm aware of that. I went through -- if you
5 looked through the transcript of last -- the -- of the -- our -- our
6 session, last hearing, there -- I'm not -- I do not believe that
7 it -- that there was a proper request-and-response time frame going
8 on for your request in October.

9 Remember, my question for you was: You learned about it in
10 May, why didn't -- you know, why didn't you ask for it sooner?

11 DC [Lt Col NETTINGA]: Sure.

12 MJ [COL ACOSTA]: And I'm aware that the October notice gave
13 you, you know, a date -- a spot to hang your hook for, hey, now
14 they're asking for -- now they're giving us another notice of these
15 individuals. I understand that.

16 And I understand that the responses came and they've been
17 coming in a little bit late. And I know that you just got -- you
18 just got the same -- they say that you got discovery of many things
19 on the 6th and 7th of April, correct?

20 DC [Lt Col NETTINGA]: Yes, Your Honor, for notes that were
21 found on the 20th of February.

22 MJ [COL ACOSTA]: And did you get more -- I only got the 667
23 pages that they filed on -- that I received yesterday. I assume you

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1 got that. That is a portion of what you received on the 6th and 7th,
2 something like that?

3 DC [Lt Col NETTINGA]: Some of the attachments to that ----

4 MJ [COL ACOSTA]: Some was provided before ----

5 DC [Lt Col NETTINGA]: Some -- some reply that we got
6 yesterday, yes, sir. Some of those we had gotten on the 6th and
7 7th of ----

8 MJ [COL ACOSTA]: Okay.

9 DC [Lt Col NETTINGA]: ---- right. And so like anything else,
10 obviously we understand that we need to present evidence in support
11 of a motion and that's what we're attempting to do with the best
12 evidence that we have.

13 At this point in time, once Mr. Clive Stafford Smith's
14 client was released, he was more willing to engage and that's when he
15 wrote what he wrote to the commission. Certainly, you know,
16 that's -- he's not a part of this defense team, right? But that was
17 when we learned further information and further details about what
18 had occurred during these proffer sessions.

19 Again, we're looking to the government. You had folks
20 there. Tell us what happened. And they say, well, you haven't
21 provided enough evidence.

22 And so we're working to get this. We're working to present
23 what we can to the commission. Obviously, we prefer to have that in

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1 live witness testimony so we're not trying to parse a letter. But we
2 at least are giving you something. I said by April. Certainly I
3 expected Mr. Smith to be here and if available to testify. That was
4 the hope. I'm overly optimistic sometimes.

5 But we at least showed the commission this is where we're
6 getting this information, here is the source of it, and more is
7 forthcoming. Even in the response that Mr. Smith writes,
8 it's -- there is more here -- and I'm not going to, you know, either
9 divulge because of work product or other certain things at that
10 time ----

11 MJ [COL ACOSTA]: Right.

12 DC [Lt Col NETTINGA]: ---- but we know that there is more
13 there.

14 So we're working to get that information, but we're working
15 with the best available evidence that we can, much like the
16 government's case, where they're calling somebody to testify about
17 what somebody else said about what happened when they weren't there.
18 That's what these hearsay witnesses are about.

19 And so for them to say, well, Mr. Smith is unreliable, then
20 your whole case is unreliable, and that may well be true. But that
21 is -- you know, we're doing the best we can with the best evidence
22 that we can put forward before the commission, and we intend to have
23 that to you as soon as we possibly can.

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1 Obviously, we want to get these issues resolved as the
2 government continues to say we don't ----

3 MJ [COL ACOSTA]: Slow down.

4 DC [Lt Col NETTINGA]: ---- know if we want to call these
5 people ----

6 MJ [COL ACOSTA]: Slow down.

7 DC [Lt Col NETTINGA]: ---- or not, but continues to inch
8 forward on attempting to introduce these hearsay statements, which
9 they say were confirmed by the proffer sessions but then they also
10 say that he was lying and not being forthcoming or truthful during
11 the proffer sessions, and that's why the proffer sessions ended.

12 So you can't have it both ways. We're just trying to get
13 some ground truth here ----

14 MJ [COL ACOSTA]: Well, yeah ----

15 DC [Lt Col NETTINGA]: ---- and ----

16 MJ [COL ACOSTA]: ---- I'm aware that the defense doesn't care
17 if the government believes it or not. It's whether or not it was
18 said, correct?

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

20 MJ [COL ACOSTA]: That's what your -- your issue is if
21 somebody says it, whether or not the government believes it -- and I
22 know that there's been, I want to say there's a recent case
23 about that -- that touched a little bit on Brady with the -- from the

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1 Supreme Court recently about belief of a -- of statements.

2 But nonetheless, the -- your position is if he said
3 something that conflicted or retracted what he'd said in previous
4 statements that were offered by the government, that -- that they
5 intend to offer via -- you know, noticed in 166 and -- and et cetera,
6 that they've got to turn over -- that there's conflicting statements,
7 correct?

8 DC [Lt Col NETTINGA]: Yes, Your Honor ----

9 MJ [COL ACOSTA]: Got you.

10 DC [Lt Col NETTINGA]: ---- that's our reading of the law.

11 MJ [COL ACOSTA]: And that's what it comes down to. That's
12 what you're asking for, right?

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

14 MJ [COL ACOSTA]: Okay. All right. That's all I need from
15 you, Defense. Thank you.

16 DC [Lt Col NETTINGA]: Thank you, sir.

17 MJ [COL ACOSTA]: And if there's any need to -- Defense, if
18 you need -- if your witnesses that you need, including these defense
19 counsel -- these other defense counsel, right, you know, consult with
20 the government, if it helps them, right?

21 I understand that counsel for -- for other -- if there needs
22 to be some type of process for getting their appearance here, I'm
23 sure the government would be more than happy to assist you with

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1 helping them be produced through whatever process that is to get them
2 into northern Virginia and to make them available.

3 All right. Defense, one other thing -- and this is somewhat
4 related. You filed AE 480T, a defense motion to compel
5 witness -- witnesses, four witnesses. This is the second motion to
6 compel witnesses.

7 AE 480 was filed in June of 2022. The first motion to
8 compel witnesses was filed in October. And, Defense, the commission
9 included 480 on the docket back on 13 March. What's the reason for
10 the delay in the request for witnesses in 480? I got that -- was it
11 4 April? I can't remember the date, but I know that I got it pretty
12 close in time.

13 DC [MS. CARMON]: Yes, sir, it was ----

14 MJ [COL ACOSTA]: What's the reason for delay on that when
15 we've had this motion sitting out there for a while and already a
16 motion to compel witnesses resolved?

17 DC [MS. CARMON]: Yes, sir. The motion to compel witnesses
18 that was filed 4 April 2023, which was based on our request of the
19 government to provide those witnesses on 13 February '23 is based on
20 our review of the massive amount of information that we got appended
21 to AE 631, which was the Bin'Attash motion to suppress that ----

22 MJ [COL ACOSTA]: Is that when you got it, in June or July of
23 2022?

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1 DC [MS. CARMON]: July. We got it the week before our
2 three-week session that began.

3 MJ [COL ACOSTA]: Uh-huh.

4 DC [MS. CARMON]: And then we received more information. If
5 Your Honor remembers, you've given us leave to file our reply in the
6 AE 480 series late.

7 MJ [COL ACOSTA]: Uh-huh.

8 DC [MS. CARMON]: It was just filed 17 February -- or
9 actually, excuse me -- that's right -- 17 February 2023 due to
10 outstanding discovery that was in the AE 529 series. That includes
11 the AE 726 litigation with Mr. Bin'Attash.

12 MJ [COL ACOSTA]: So you didn't get the discovery that led to
13 these witnesses until when?

14 DC [MS. CARMON]: Part of it, Your Honor, was the
15 July -- 14,000 pages that were given to us in July.

16 MJ [COL ACOSTA]: Uh-huh.

17 DC [MS. CARMON]: And then there was more. Your Honor has
18 obviously seen 505 that was based on AE 474, which is the
19 FBI/CIA ----

20 MJ [COL ACOSTA]: Uh-huh.

21 DC [MS. CARMON]: ---- relationship.

22 AE 529, that was -- there were four buckets of information
23 that we were waiting on that it's now moot that we have received.

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1 But, yes, sir, those -- those witnesses were based on -- and
2 I think Your Honor can see in our reply in the AE 480 series that
3 it's a much more detailed reply based on the large amount of
4 discovery that we have. And so in order to support the facts in that
5 reply, these witnesses are necessary.

6 And, Your Honor, if you'll look at the request for witnesses
7 that is appended to that, all the citations are to the AE 631 series.

8 MJ [COL ACOSTA]: And that's what -- and that's what you
9 received in --

10 DC [MS. CARMON]: In July of 2022.

11 MJ [COL ACOSTA]: Right.

12 DC [MS. CARMON]: Yes.

13 MJ [COL ACOSTA]: In July, right?

14 DC [MS. CARMON]: Yes. And it was 14,000 pages. And Your
15 Honor has put off Dr. Jessen testifying until now based on that
16 information.

17 MJ [COL ACOSTA]: Well, right, based upon -- no, no, I put it
18 off based on your request ----

19 DC [MS. CARMON]: Yes.

20 MJ [COL ACOSTA]: ---- to do it, and so --

21 DC [MS. CARMON]: And as much as I'd love to say I can read
22 faster than Ms. Morgan, I can't. And so, yes, that is based on my
23 review of that very large information dump. It is based on my review

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1 of discovery pursuant to AE 474, 726, and the completion of the AE
2 529 discovery that we had requested.

3 MJ [COL ACOSTA]: Okay.

4 DC [MS. CARMON]: And again, sir, I wish I could have gotten
5 it in sooner, but I would have been remiss and ineffective had I
6 not -- going through, seeing that these witnesses were necessary to
7 support our reply.

8 MJ [COL ACOSTA]: Government, I know you haven't filed your
9 reply to that. You can -- you can -- I think I don't have any
10 questions for you, Defense.

11 DC [MS. CARMON]: Thank you, sir.

12 MJ [COL ACOSTA]: Government, you have not filed a reply to
13 that motion to compel witnesses. I want to take that up at some
14 point. So you can either file your reply by Thursday of this week or
15 you can present argument on it. Or, you know, you can -- if you're
16 not -- just give me a response on it by Thursday, if you can, please.

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

18 MJ [COL ACOSTA]: I shouldn't have said -- strike the "if you
19 can." Get me a reply by Thursday.

20 TC [MR. O'SULLIVAN]: Understood, Your Honor.

21 MJ [COL ACOSTA]: Thank you.

22 All right. The commission wants to take up a brief 802
23 session with the parties at the end of today. We're going to do it

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1 in here so that the folks in the RHR can participate.

2 So what we'll do at the end of today's session, we'll
3 recess -- we'll recess for the day. Everybody will maintain their
4 seats, and then we'll roll into an 802 session once the gallery has
5 been cleared and the feeds are turned -- and the feeds to the remote
6 sites are turned off. Okay.

7 All right. Do the parties have anything else that we need
8 to take up prior to starting the testimony of Mr. McFadden on AE 319?

9 LDC [MR. NATALE]: Your ----

10 TC [MR. O'SULLIVAN]: I don't.

11 LDC [MR. NATALE]: Excuse me, Your Honor. Mr. Nashiri would
12 like to go back to the room ----

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

14 LDC [MR. NATALE]: Oh, okay.

15 MJ [COL ACOSTA]: ---- right now and then you can deal with
16 that issue. I'm going to recess before we start him, but I want to
17 say: Is there anything else, based upon the -- everything that I
18 just brought up with you all that we need to take up prior to taking
19 Agent McFadden's testimony?

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

21 MJ [COL ACOSTA]: Defense?

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

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

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1 until 10 after the -- until 1010.

2 **[The R.M.C. 803 session recessed at 0954, 11 April 2023.]**

3 **[The R.M.C. 803 session was called to order at 1011, 11 April 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, Your Honor, with the exception of
9 Mr. Nashiri who has voluntarily asked to absent himself, but he will
10 be listening in to the proceedings.

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

12 All right. Government?

13 ATC [LCDR SCHREIBER]: Yes, Your Honor. Government calls
14 Mr. Bob McFadden.

15 All right. Mr. McFadden, will you raise your right hand,
16 please.

17 **ROBERT McFADDEN, civilian, was called as a witness for the**
18 **prosecution, was sworn, and testified as follows:**

19 **DIRECT EXAMINATION**

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

21 Q. Well, good morning, Mr. McFadden, and welcome back.

22 A. Thank you. Good morning.

23 Q. Today we are going to be talking about interviews in which

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1 you participated with Fahd Mohammed al Quso and Mr. Al Bahri, also
2 known as Abu Jandal. Okay?

3 A. Yes, sir.

4 Q. And, as you know, I'll be handling the first one, and then
5 Lieutenant Schwartz will be taking the second.

6 A. Roger.

7 Q. A couple of ground rules. As we've done before, right
8 there in that classified folder there is AE 337D Attachment C. That
9 is the crosswalk document for Yemeni protected identities.

10 A. Yes, sir.

11 Q. So at any point if we're going to refer to anybody other
12 than General Hammoud Fadl, who is an open name, please check that
13 document first to determine if the name is on there, and if it is,
14 use the identifier as an alternative, okay?

15 A. Will do. Yes, sir.

16 Q. And of course, if at any point I or anybody asks you
17 something that you think might elicit classified information, let us
18 know and we'll deal with it.

19 A. Certainly, sir.

20 Q. Lastly, Mr. Nashiri is listening and so the translation is
21 still ongoing, and so we have to speak slowly and take pauses.

22 A. Understood.

23 Q. I will probably fail at that before you do, but we'll work

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1 on it.

2 We've covered your background in many sessions. We're not
3 going to do that here today. So let's dive right in and start
4 talking about Fahd Mohammed Ahmad al Quso.

5 ATC [LCDR SCHREIBER]: And for the court's tracking, this is
6 Tabs 55 and 56 in AE 319MM.

7 Q. So I want to begin at the end, so to speak. Do you know
8 if Mr. Fahd al Quso is alive or dead?

9 A. He's deceased.

10 Q. Do you know when he died?

11 A. Yes.

12 Q. When?

13 A. In 2012.

14 Q. Do you know where?

15 A. In Yemen.

16 Q. So, generally speaking, who was Fahd al Quso?

17 A. Fahd al Quso was important to the investigation into the
18 attack of the USS COLE early on because we learned that he was in the
19 custody of Yemen authorities and details were coming in in the
20 earliest few weeks of the investigation that he was tasked to be,
21 among other things, the would-be videographer of the attack on the
22 American warship which, as we know in this case, was the USS COLE.

23 Q. Okay. And did he have other connections? As your

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1 investigation progressed, did you find that he had other connections
2 with al Qaeda and terrorist organizations?

3 A. Yes, sir.

4 Q. Now, you interviewed Mr. Al Quso several times, right?

5 A. That's correct.

6 Q. When was that first set of interviews that you conducted
7 with him?

8 A. 27th of January 2001.

9 Q. Okay. And I guess the date range of that first set of
10 interviews that covered one, two, three, four -- five days, I think?
11 What was -- do you recall what that was?

12 A. 27th through the 30th and then picked up the interviews
13 again on the 3rd of February of 2001.

14 Q. Okay. And was that reduced to two different FD-302s,
15 those ----

16 A. Yes, sir.

17 Q. Okay. So the first set, the 27 to 30 or 31 January 2001
18 and then separately the 3 January -- or, sorry, the 3 February 2001?

19 A. Yes, sir.

20 Q. Did you interview him again after 9/11?

21 A. Yes, sir, I did.

22 Q. And how many times after 9/11 did you interview him?

23 A. I don't recall the exact number of days or sessions, but

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1 there were at least a handful that began on the very late night of
2 the 12th of September of 2001.

3 Q. All right. Well, we're going to be focusing on the
4 interviews you conducted with Mr. Al Quso in this January and
5 February 2001 time frame.

6 You kind of touched on this, but when did you as an
7 investigator become aware of Fahd al Quso?

8 A. I arrived on the morning of October 17, 2000, in Aden,
9 Yemen, and I would estimate it within one week of arriving that he
10 was one of our primary requests for subject interview, within a week.

11 Q. And why did you request him? How did you become aware of
12 him?

13 A. I can't recall exactly how he surfaced, but we -- in the
14 earlier part of the investigation, we were receiving a significant
15 amount of information through the U.S. embassy in Sana'a, largely
16 from the Ministry of the Interior, but then there was also various
17 source U.S. intelligence reporting that corroborated or validated
18 that -- that information.

19 Q. And I guess more specifically, was he pulled in by the
20 Yemenis?

21 A. Yes, sir, by Yemen authorities.

22 Q. Okay. So was he in Yemeni custody at the time sort of
23 early on when you got -- or right after you got there?

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1 A. Yeah, that's correct. He was in custody of the -- as it
2 turned out, the Political Security Organization.

3 Q. And we're going to talk about this in a little more detail
4 later on when we talk about what he told you exactly, but can you
5 just briefly sum up, how did he end up in Yemeni custody?

6 A. Well ----

7 Q. What was the process that got him there?

8 A. As far as the timeline -- and as always, if it's too much
9 information, just give me the high signal. But he -- after his
10 attempt -- and I suppose we'll talk more detail about that -- to film
11 the attack at the tasking of Jamal al Badawi who was in Sana'a.
12 After the attack on the 12th of October 2000 USS COLE, after
13 communication with Jamal al Badawi, he and a companion made his way
14 to Sana'a to meet up with al Badawi.

15 Q. And then from there ----

16 A. From there.

17 Q. ---- how did he end up in ----

18 A. Yep.

19 Q. ---- Yemeni custody?

20 A. Excuse me.

21 Q. Okay.

22 A. He -- first, within around five days or so of the attack,
23 according to his interview, Jamal al Badawi found out that family

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1 members in Aden were in custody and he was wanted by the Yemen
2 authorities. So after talking about it with Fahd al Quso and their
3 imam from Al-Burayqah, Yemen, there at the Ibn Al-Amir Institute in
4 Sana'a, Jamal al Badawi decided to travel to Aden.

5 Q. Sorry, I think we're getting mixed up. Fahd al Quso, I'm
6 talking about how he had got into custody, not Jamal al Badawi.

7 A. Right.

8 Q. Sorry.

9 A. It's probably in the category of too much information.

10 Q. That's okay.

11 A. But then communication with Jamal to Fahd, who remained in
12 Sana'a for, by his estimate, upwards of four days to seven days, he
13 contacted his family. And he learned that male members of the
14 family, including his father, were in custody and the Yemen
15 authorities wanted him to turn himself in. He decided to go to Aden
16 to do that.

17 Q. Got it. Okay. All right. So now, why did the Yemeni
18 authorities want Fahd al Quso in custody? Why did they want to talk
19 to him?

20 A. I don't remember the exact details why they were onto both
21 him and his friend, Jamal al Badawi, but they -- in Yemen,
22 particularly in the south in the Aden and Abyan area, the authorities
23 were well aware of the young guys or the Shabab who traveled to

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1 places like Afghanistan, Chechnya and Bosnia and kept tabs on that.
2 So Jamal al Badawi and Fahd al Quso were prominent among that group
3 of Shabab, so it's more than likely they went knocking on their
4 family doors right after the COLE attack.

5 Q. I guess to put a finer point on it, I mean, did the
6 Yemenis -- and this is from your understanding in working with
7 them -- did they consider Fahd al Quso to be a suspect in the bombing
8 of the COLE?

9 A. They did.

10 Q. Once you were aware that Fahd al Quso was in custody of
11 the Yemenis, did the law enforcement team, the U.S. law enforcement
12 team, make requests to interview him?

13 A. Indeed, immediately.

14 Q. Okay. And were those requests granted immediately?

15 A. They were not.

16 Q. Were you aware of, like, what was the process to
17 ultimately get those approved?

18 A. Ultimately, it was an agreement between the State
19 Department, Ambassador Bodine, and a rough counterpart in the
20 Ministry of Interior in Yemen.

21 Q. So basically, it took the creation of this Bodine
22 Memorandum and agreement that we're familiar with to get these
23 meetings to happen?

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1 A. That's correct -- correct. Took months, though, for that
2 to be worked out.

3 Q. Separately from interviewing him, were you aware of
4 efforts to take DNA from Fahd al Quso?

5 A. Yes.

6 Q. Were those successful before the interview?

7 A. They were.

8 Q. Were you actually able to be present for the taking of
9 those DNA samples?

10 A. I was there at the start of the process but then summarily
11 dismissed by the head of the intelligence service in the south. And
12 then two FBI colleagues then were able to obtain -- actually observe
13 the obtaining of the DNA from a Yemen doctor -- via the Yemen doctor.

14 Q. We talked that, you know, you were trying to have an
15 interview with Fahd al Quso for many months. When that was finally
16 granted, were you given advanced notice of the day you'd be able to
17 go and speak with him?

18 A. Yes, sir.

19 Q. Okay. So a little bit different than, say, with the lay
20 Yemeni witnesses, where you just sort of showed up and interviewed
21 people?

22 A. That's correct.

23 Q. So were you able to prepare your interview of Fahd

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1 al Quso?

2 A. Yes.

3 Q. And to put in context, we've talked about how
4 this -- already there's this connection between Jamal al Badawi and
5 Fahd al Quso.

6 A. Uh-huh.

7 Q. Did you interview -- or was there an interview of
8 Jamal al Badawi as well?

9 A. Yes.

10 Q. And did that take place before or after the interview with
11 Fahd al Quso?

12 A. It started before, but then continued in parallel once I
13 had access to al Quso.

14 Q. And were you aware of the information -- the results of
15 the information coming out of the interview with Jamal al Badawi?

16 A. Yes.

17 Q. Able to use that information to prepare your interview
18 with Fahd al Quso?

19 A. Yes, I was.

20 Q. So for the January-February 2001 interviews of Fahd
21 al Quso, can you tell us where they occurred?

22 A. It occurred in a ----

23 Q. And I guess -- sorry, just real quick. Like the city and

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1 location generally first, and we'll drill down to the room.

2 A. That would make sense, yes.

3 This was in Aden, Yemen, in the Political Security
4 Organization Headquarters for Aden and Abyan.

5 Q. Okay. So the same building that we've talked about before
6 with the lay witnesses, right?

7 A. That's correct. The same building on that facility.

8 Q. Now, we've talked about the setting and the room in which
9 you'd conducted interviews with just regular Yemeni citizens.

10 A. Uh-huh.

11 Q. But was this a different room for Fahd al Quso?

12 A. It was a different room.

13 Q. Okay. Can you describe the physical setting of this room
14 where you did the interview with Fahd al Quso?

15 A. Right. Yeah, I had not been in that room prior, during
16 the lay witness interviews. This room was a larger room, and it
17 wasn't as much of an office setting, but it was bright. I remember
18 vividly the air conditioners -- two air conditioners were working
19 because it was still quite hot in Yemen at that time.

20 And what was distinctive about the room, there was a
21 wood -- describe it as a -- kind of a ledge that was about waist
22 high, and that was in align with the agreement between the State
23 Department and Yemen about having a physical -- and in this case,

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1 physical and symbolic separation between Yemen -- a Yemen citizen
2 like Quso, who was a suspect in an investigation, and U.S. or foreign
3 investigators.

4 So as I said, it was -- it came to about waist high once he
5 sat down and us and my partner on the other side of that barrier,
6 also about waist high for us.

7 Q. I think you kind of -- I mean, you said it was bright and
8 the air conditioner -- excuse me, the air conditioning was operating.
9 But was this room intimidating at all or scary?

10 A. Not in my observation, not -- not at all.

11 Q. Was it a prison or a cell of any kind?

12 A. No, it was not.

13 Q. Was it even relatable to, like, an interrogation room as
14 we might think of it in the United States?

15 A. In the United States, no. We spent a lot of time in Yemen
16 even before I was -- before the attack on the USS COLE, so I was
17 aware that the PSO facility was from the time the British were in
18 Yemen, south of Yemen, up until 1967, and we received some word from
19 our counterparts in the Political Security Organization that it was
20 part of a converted cafeteria.

21 Q. So we've talked about the fact that Fahd al Quso was in
22 custody of the Yemeni authorities at that time; is that right?

23 A. Yes, sir.

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1 Q. And was in custody because he was, at least in part, a
2 suspect in the bombing of the COLE, correct?

3 A. Correct.

4 Q. So, again, comparing to the lay witnesses who were not
5 suspects, right, they were just witnesses, was the handling of
6 Jamal al Badawi different in your observation or what was -- any
7 contrast since you had -- now he's a suspect you're talking to ----

8 A. Uh-huh.

9 Q. ---- versus people who weren't?

10 A. And you mean Fahd al Quso?

11 Q. Sorry, Fahd al Quso.

12 A. Sure.

13 Q. We have to both work on that.

14 A. Really not much difference. He was escorted into the room
15 by an officer or two from either the PSO or Ministry of the Interior,
16 but no restraints, handcuffs, nothing like that at all, and was just
17 walked over to the chair where he was to sit.

18 Q. In your observation, were his clothes clean every time you
19 talked to him?

20 A. They were.

21 Q. Did he appear rested every time you talked to him?

22 A. He did. No problems, no issues.

23 Q. Appeared alert, oriented to the interview and your

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1 questions?

2 A. He -- yes, sir.

3 Q. Appeared rested?

4 A. Yeah. Yes.

5 Q. I'm sorry. I said "rested."

6 Did he appear, like, fed? He was appropriately fed and
7 healthy?

8 A. He did. And no complaints because I -- we spent an ample
9 amount of time checking on the welfare of whomever we're going to
10 interview.

11 Q. Who was typically in the room? And let me actually start
12 with: From the U.S. team, who was there to interview Fahd al Quso?
13 Who all was there?

14 A. From the U.S. team, my partner in the investigation, Ali
15 Soufan from the FBI, and FBI Special Agent Ammar Barghouty.

16 Q. Okay. And now, how about from the Yemeni side? Who was
17 typically in the room during the interviews of al Quso?

18 A. Well, I'll start with the easier part. There were two
19 officers from the Political Security Organization that I conducted
20 just about every interview with from that time on until after 9/11.

21 But at the start of the interview for Fahd al Quso,
22 naturally there was much anticipation. At least for the initial part
23 of the -- the first day of the interview, there were more MOI and PSO

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1 officers, I think, than I could count. And their officers would
2 usually come into and out of the -- the interview.

3 Q. So did the personnel present kind of fluctuate over the
4 course of the days in the sessions?

5 A. That's a more precise way to put it, yes, sir.

6 Q. Particularly higher-ranking individuals -- first of all,
7 we've talked about General Hammoud Fadl. Was he present for some of
8 the interviews?

9 A. He was. The General would come in and out of interviews
10 at the time of his choosing, but he was in there periodically, yes,
11 sir.

12 Q. And later on we'll talk about a specific instance with him
13 that's relevant towards some of the end of your questioning.

14 A. Yes, sir.

15 Q. How about did Fahd al Quso appear to have a special
16 relationship with any of these officers in particular? And if you
17 need to use the crosswalk, please do.

18 A. Yes, he did.

19 Q. Okay. Can you describe what you observed that made you
20 think that?

21 A. After months of build-up to where we finally had access to
22 Quso in January 27, 2001, as we were waiting to begin the interview,
23 the office -- some of the officers present said that they were

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1 waiting for the commander or the director of PSO for the south.

2 He entered the room after we were there for some period of
3 time. All the officers present on the Yemen side stood to attention,
4 and the colonel, this officer who was, again, the director for the
5 southern service of the PSO, walked over to Quso, had Fahd al Quso
6 stand up. He stood behind a column that partially obstructed our
7 view, pulled -- pulled Fahd al Quso in for a hug and a kiss on the
8 right cheek, left cheek, right cheek, as is customary, and then
9 whispered into Fahd al Quso's ear whatever Quso and the
10 colonel -- only they know what was said.

11 And it was a notable change in demeanor in Fahd al Quso when
12 the -- that colonel left the room and he sat down in the chair, big
13 smile on his face.

14 Q. All right. If you wouldn't mind, take a look at the
15 crosswalk and see if you see the individual that you're talking
16 about, the name there, and tell us what his identifier is.

17 A. Yes, sir.

18 Q. Did you find it?

19 A. I did.

20 Q. Which identifier is it?

21 A. Number 5.

22 Q. Okay. I think there should be three letters ahead of that
23 number there. Or is it just a number?

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1 A. What I'm looking at is just a ----

2 Q. Okay.

3 A. ---- a number.

4 Q. Number 5. That's good. Thank you.

5 A. Uh-huh.

6 Q. Okay. And I have neglected to ask this. We've -- just
7 because I think we should identify, General Hammoud Fadl, what was
8 his position? Who was he?

9 A. Yeah, Hammoud Naji Fadhl, he was the -- we characterized
10 him as the special envoy for the Yemen president, Saleh, himself.
11 General Fadhl headed up the presidential security guard unit up in
12 Sana'a, and so he was the senior representative for the President
13 himself.

14 Q. At any point in the interviews you did with Fahd al Quso,
15 did he seem frightened or nervous to be there with you?

16 A. No, sir.

17 Q. Did he ever appear scared of the PSO or MOI
18 representatives present?

19 A. Not in my observation.

20 Q. So we've covered this -- this setting of the interview,
21 but of course this happened over several days. Were there any
22 significant changes day to day that we haven't already touched on at
23 all or was this pretty much the setting for all of the interviews

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1 that we're going to talk about?

2 A. That -- generally speaking, yes.

3 Q. That's the setting?

4 A. That's the setting. Although, there was one episode that
5 was significant as far as General Hammoud.

6 Q. And we'll come to that later. Okay?

7 A. Yes, sir.

8 Q. All right. Now, this is all taking place in this room
9 you've described, these interviews.

10 Did you have any knowledge of exactly how or where your
11 Yemeni counterparts were holding Fahd al Quso in custody?

12 A. Only that it was at the detention facility of the PSO at
13 that base or the PSO Headquarters.

14 Q. So you never took an opportunity to go see him or check on
15 those facilities?

16 A. No. We were -- we were not permitted to really go
17 anywhere in that facility without escort and certainly not their
18 detention area.

19 Q. With that said, did you in your interviews with Fahd
20 al Quso at any point ever see an indication that he had been beaten
21 or abused in any way?

22 A. None.

23 Q. Was there any indication that you could observe that he

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1 was being forced to speak with you by his -- by the Yemeni folks
2 there?

3 A. No.

4 Q. All right. We talked about how the interviews were
5 conducted by you, Ali Soufan, and Ammar Barghouty. How did you guys
6 approach doing these interviews? You know, as a team, how does that
7 work or how did it work with Fahd al Quso?

8 A. Well, during our preparation prior to the start of the
9 interviews, we would go over available material, intelligence,
10 background information, what Jamal al Badawi was saying in his
11 interviews. And then both Ali and Ammar, being native fluent Arabic
12 speakers, you know, would -- would alternate between providing
13 interpretation where something needed clarification for me in
14 particular. Then I believe it was a shared taking notes during the
15 interview.

16 And typically for the way we do things in my working with
17 Ali, one of us would be the lead questioner, and Ali was for a good
18 portion of it, but then we alternated depending on what the topic
19 was ----

20 Q. Okay.

21 A. ---- if that's what -- portraying how we approached the
22 interview.

23 Q. And you mentioned Ali and Ammar were both native speakers,

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1 but at the time was your Arabic proficiency such that you were able
2 to fully participate in the interview and understand what was going
3 on?

4 A. Yes, sir.

5 Q. Okay. Were there ever times where they needed to help
6 with very complex things or dialect or stuff like that?

7 A. Yes. For some more complex parts of question and answer
8 and dialogue, I would, you know, say, hey, I just want to make sure
9 I'm tracking what was just said.

10 Q. So you've described before the interview protocols that
11 were established by the Bodine Memorandum and agreement. Were
12 those -- were those in effect for this interview?

13 A. Yes.

14 Q. All right. So I want to -- I want to talk about that
15 because in the interviews with lay witnesses I think you described
16 that y'all would start with that interview process but then sort of
17 fall away from it as you got comfortable with the witness. Am I
18 characterizing that correctly?

19 A. That's correct, as long as our counterparts from the Yemen
20 service didn't insist that we stick with the protocol.

21 Q. So how was the interview protocol applied during your
22 interviews with Fahd al Quso?

23 A. In the early stages for, I would say, most of that first

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1 day, the first session of the first day -- because we had multiple
2 sessions over the course of that time, day and evening. It was
3 painful and arduous to start out because I believe, as we discussed
4 before, we would have the question and answer -- or ask the question
5 in Arabic. We were required to ask that question in Arabic to our
6 Yemen counterpart, who was ever, you know, scribing the question.

7 Then the Yemen officer would write the question down word
8 for word in Arabic on a piece of paper, and then ask the exact
9 question back to Fahd al Quso who would then answer in Arabic to that
10 officer, who would then again scribe verbatim what Fahd al Quso said
11 and then repeat that back to us in Arabic.

12 So if you can imagine, introducing ourselves and just
13 providing greetings, how much time that would take with that process
14 as I described according to the agreement.

15 Q. So that was the first day you're describing where it
16 sounds like that protocol was enforced quite strictly; is that right?

17 A. Yes, sir.

18 Q. Did that change over the course of the many days that you
19 conducted these interviews?

20 A. It did.

21 Q. How did it change?

22 A. It developed more to a straight to Fahd al Quso a question
23 and answer and discussion.

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1 Q. Did Fahd al Quso himself seem to understand these
2 protocols?

3 A. Yes, very much so.

4 Q. How so?

5 A. When it became a little bit more relaxed, let's say, on
6 the insistence of our Yemeni counterpart, if there was something that
7 Fahd al Quso either was reserved about or reluctant to speak about,
8 he would insist then that we abide by the protocol, slow things down,
9 use it to his advantage.

10 Q. So we'll get to sort of rapport building in just a second,
11 but when you began your interview with Fahd al Quso, did you tell him
12 about why U.S. law enforcement wanted to speak with him?

13 A. Yes, sir.

14 Q. Did you tell him that it was because you were
15 investigating the USS COLE?

16 A. That's right, following rights advisement.

17 Q. I was going to say. So I just want to make really clear:
18 What was your purpose -- what was the U.S. law enforcement's team's
19 purpose in speaking with Fahd al Quso? Why were you there to talk to
20 him?

21 A. To determine facts, his involvement in the plot and the
22 conspiracy, who the other conspirators were, any intelligence or
23 threat information that might disrupt a future attack. Is that

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1 what ----

2 Q. Uh-huh.

3 A. Yeah, the whole spectrum of information because here is
4 somebody who was directly involved in the attack. It's a very
5 important witness.

6 Q. You touched on it, but was he read some form of rights
7 about the interview?

8 A. Yes, sir, he was.

9 Q. Can you recall what kinds of things he was told he had the
10 right to do or not do?

11 A. Right. He was advised of his right to remain silent, to
12 not answer questions; told that what he says may be used in a court
13 of law; also offered an attorney if he so choose, although I don't
14 know how that would have worked, if -- if that had been so invoked;
15 and that he could finish or terminate or stop the interview at any
16 time for any reason. Almost like a full Miranda warning in our
17 system.

18 Q. And was he warned just at the start of the interview or
19 multiple times?

20 A. No, sir. At the start of every interview and then after
21 every significant break.

22 Q. Okay. So multiple times throughout the course of several
23 days?

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1 A. Correct.

2 Q. And what was his -- I guess how do I -- did he -- did he
3 agree to waive his rights?

4 A. He waived his rights on every occasion. And like with
5 other interviews in a country like Yemen where there's a rights
6 advisement, there's a mixed emotion of amazement, bewilderment, and
7 something that's a very foreign concept, to have your rights read to
8 you by an authority.

9 Q. So he was surprised that he didn't have to speak with you
10 if he didn't want to?

11 A. I think surprised is a good way to characterize it, yes,
12 sir.

13 Q. His waivers, were those written or verbal?

14 A. They were verbal. He declined to sign the form, the
15 rights form that we used.

16 Q. All right. Any indication as far as your observation that
17 he didn't understand what you were telling him or the rights that he
18 had?

19 A. No, sir, because it was read in English and then in Arabic
20 and then reiterated, if you will, in Arabic by either Ammar or Ali.

21 Q. So we've talked about building rapport with witnesses,
22 particularly the lay witnesses. Did you attempt to build rapport
23 with Fahd al Quso?

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1 A. Absolutely. Yes, sir.

2 Q. Obviously -- I'm going to guess this is a rapport building
3 that occurs over many days. It's not just one instance, right?

4 A. Indeed.

5 Q. Can you talk a little bit about what that looked like?
6 How did you develop rapport or attempt to with Fahd al Quso?

7 A. Well, if you can imagine that someone like Fahd al Quso,
8 this was no doubt the first exposure he had ever had to Americans and
9 particularly federal law enforcement officers. So knowing a bit
10 about the culture and the way things typically work in a more
11 authoritarian regime like Yemen, he may have anticipated that there
12 would be some, let's say, disrespect for him, his culture, his
13 family, his religion.

14 And early on, Fahd al Quso would realize that he's not going
15 to be disrespected by me, my partners; that we were there to listen,
16 to hear his story, and professional, polite. And at times
17 complementing the questions and answers relevant to the
18 investigation, we'd talk about things like his hobbies. What sports
19 does he like? How was he introduced to such a -- you know, a deeply
20 religious life. And those kind of human being-type things all tend
21 to develop that rapport.

22 And rapport doesn't necessarily in this context mean that
23 it's a warm and engaging, loving relationship. Typically means in a

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1 context like this that there's an understanding; why he's there, why
2 we're there, what can be done for him.

3 Q. You mentioned just briefly there that there had been at
4 points conversations about his hobbies and life and things like that.
5 Are those sorts of conversations included in your 302s later on?

6 A. The 302s, the results of the interview, no. Generally,
7 those types of things would not be included because it's not really
8 pertinent to the case or the investigation.

9 Q. So pertinent to rapport building but not necessarily the
10 facts that you're trying to seek?

11 A. That's right. More likely captured in notes or possibly
12 the FBI electronic communication, EC, but not in the result of the
13 interview, in the 302.

14 Q. Was he also just sort of more traditionally -- when we
15 talk about things you offer witnesses, was he offered breaks, food,
16 things like that?

17 A. Yes, sir. Prayer breaks, refreshments, bathroom breaks,
18 anytime he wanted to end the interview or take a break and come back
19 to resume the interview, yes, sir.

20 Q. And did he take advantage of those opportunities?

21 A. He did.

22 Q. Over the course of the several days in which you conducted
23 these interviews, did he appear to be speaking with you voluntarily?

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1 A. Yes, sir.

2 Q. Did he ever refuse to answer certain questions you posed
3 to him?

4 A. There were some questions, some topics, where he would
5 express reluctance to talk about it and asked to change the subject.

6 Q. And you mentioned that you informed him he didn't have to
7 talk with you and could stop at any time and even -- and perhaps that
8 he was surprised by that fact.

9 Did he ever take advantage of the opportunity to actually
10 stop an interview?

11 A. Yes. In one of our sessions, he said he was experiencing
12 some stomach discomfort, so we ended the interview immediately.

13 Q. So fair to say you had an opportunity to review his -- or
14 sorry, to observe his demeanor over the course of these several days?

15 A. Yes.

16 Q. Did it change and develop from day one to, you know, day
17 five or however many there were here?

18 A. Yes. Initially, he was notably guarded, reserved. But
19 over the course of just within a day or even two days of sessions, he
20 became more relaxed, more engaging, more -- just ready to talk about
21 the matters at hand.

22 Q. So this is an interview that took place over numerous
23 days, again, different from before. So how did you document the

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1 interview that ultimately became these 302s?

2 A. Well, from the notes in our debriefing with our leadership
3 and usually at the end of the day, a secure VTC with FBI,
4 NCIS Headquarters, we, the investigative team, would then immediately
5 start to -- no, change that.

6 In the early part of a multiple-day, multiple-session
7 interview, we're not at the point where we would start drafting a 302
8 or results of the interview, but we would debrief amongst ourselves
9 and then talk about preparation for the next -- next session.

10 Q. So why wouldn't you start drafting a 302 immediately after
11 that first session?

12 A. We're -- we would have a liberal amount of information at
13 our disposal that indicated that it really wasn't accurate, wasn't
14 precise what Fahd al Quso was saying in the early parts of
15 interviews. And that could happen in any place, in any context,
16 whether in a place like Yemen or even the United States in a complex,
17 multiple-phased investigation.

18 Q. So ultimately, pulling together that interview -- or
19 pulling together the 302, how did that come together at the end?

20 A. In a few of the sessions -- and I don't know precisely in
21 this case, but before we completed at the -- the end of the interview
22 sessions with al Quso, we would start the draft of the 302 which
23 would be, you know, several dozen pages for interviews conducted over

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1 this amount of time.

2 Q. And for Fahd al Quso's interview, was it a team effort,
3 the three of you putting together your notes to generate the 302?

4 A. Yes, sir.

5 Q. Did you all have a chance to review the 302 that was
6 generated?

7 A. Yes, sir.

8 Q. Did anybody from outside your team ever tell you things to
9 include or not include in the 302?

10 A. Negative.

11 Q. And did you -- I asked -- you had a chance to personally
12 review it before you finalized the 302s in this case?

13 A. That's correct.

14 Q. Have you reviewed those 302s yourself to prepare for your
15 testimony today?

16 A. I did.

17 ATC [LCDR SCHREIBER]: Your Honor, permission to approach the
18 witness. I've got AE 319MM, the content -- the first part of Tab 55,
19 this is page 955 through 990.

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

21 ATC [LCDR SCHREIBER]: Thank you, Your Honor. Providing it to
22 the witness.

23 Q. Apologize that's not stapled together, and it is front and

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1 back, but if you could take a quick flip through there, that
2 document, please.

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

4 A. Sir.

5 Q. Okay. Do you recognize that?

6 A. Yes, I do.

7 Q. What is that you're looking at?

8 A. This is the FBI Form 302 that captured the results of the
9 interview for the interviews conducted between the 27th of January
10 and 31st of January 2001.

11 Q. Okay. Is your name on that document?

12 A. Yes, sir.

13 Q. So reviewing that, taking a look at it -- and again,
14 you've reviewed that document for preparation of your testimony
15 today?

16 A. I read through it yesterday.

17 Q. Okay. To the best of your recollection, is that a
18 complete and accurate record of the information you learned during
19 that January 2001 interview?

20 A. Yes, sir.

21 ATC [LCDR SCHREIBER]: Your Honor, I'm going to retrieve that
22 from the witness.

23 And, Your Honor, I'd like to show the witness Tab -- this is

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1 now Tab 56 of AE 319MM. This is pages 1131 to 1145.

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

3 ATC [LCDR SCHREIBER]: Providing it to the witness.

4 WIT: Thank you.

5 Q. Same thing, if you'd take a look through that, please.

6 And again, it's front and back.

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

8 A. Sir.

9 Q. Do you recognize that?

10 A. Yes.

11 Q. What is that you have in your hands there?

12 A. The 302, the results of the interview from the session
13 that was conducted on the 3rd of February 2001.

14 Q. Okay. And again, for Fahd al Quso?

15 A. Yeah, yes, sir, for Fahd al Quso.

16 Q. All right. Is your name on it?

17 A. Yes.

18 Q. In fact, are your initials on this one?

19 A. That's correct.

20 Q. And you reviewed this in advance of today?

21 A. Yes, read over this morning.

22 Q. To the best of your recollection, is that a complete and
23 accurate record of the information you learned during that

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1 February 2001 interview with Fahd al Quso?

2 A. Yes, it is.

3 ATC [LCDR SCHREIBER]: Retrieving the document, Your Honor.

4 Q. With regard to both of those in your review, both before
5 and today, did those documents appear to be altered in any way from
6 the time that y'all generated them?

7 A. No.

8 ATC [LCDR SCHREIBER]: One second, Your Honor, please.

9 MJ [COL ACOSTA]: You may.

10 ATC [LCDR SCHREIBER]: Sorry. One moment, Your Honor.

11 MJ [COL ACOSTA]: Okay.

12 **[Counsel conferred.]**

13 Q. Sorry. One piece on that last question I just asked you
14 about whether these documents had been altered at all.

15 I didn't ask you: They do include some overlays and
16 redactions -- is that right? -- the documents I showed you?

17 A. For the -- in the case of the PSO and MOI officers, yes,
18 they're redacted, so ----

19 Q. Okay. So in that sense, they're slightly altered from
20 when you originally generated them?

21 A. I sit corrected. Absolutely. That happened after our
22 interviews.

23 Q. I guess the -- the more accurate question would then be:

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1 Substantively from the facts contained herein, any alterations that
2 you noticed? Any changes?

3 A. No, sir.

4 Q. Okay. To prep for your testimony today, you reviewed
5 these two. Did you review any other documents to prepare for your
6 testimony today?

7 A. I briefly looked at the accompanying electronic
8 communications, the ECs, and -- as well as the notes.

9 Q. So we're going to talk about what you learned during these
10 two interviews, largely topically. And if at any point, just as
11 before, if you can't remember something, need to refresh your memory,
12 they're available to you along with any other document that you may
13 wish to review.

14 A. Yes, sir.

15 Q. So let's dive right in to some of the things you learned
16 during these interviews.

17 I want to talk first about Fahd al Quso's connections to
18 locations associated with al Qaeda and other members of al Qaeda that
19 you were aware of and some persons he identified, okay?

20 A. Yes, sir.

21 Q. So when did -- did Fahd al Quso tell you about when he
22 went to Afghanistan for the first time?

23 A. Yes.

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1 Q. And when did he tell you he'd gone to Afghanistan?

2 A. In 1998.

3 Q. And approximately how long did he stay there, did he tell
4 you?

5 A. According to Fahd, about ten months.

6 Q. Did he tell you who he went with?

7 A. Yes. He traveled with a companion, Taha, and the third
8 companion, I can't recall if that was Mohammed Durrama.

9 Q. Would it help to review to see who he told you he went
10 with?

11 A. Yes, please.

12 **[The security classification button was pushed in the courtroom which**
13 **caused the video feed to terminate at 1057, 11 April 2023.]**

14 **[END OF PAGE]**

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1 **[The Military Commission resumed at 1105, 11 April 2023.]**

2 MJ [COL ACOSTA]: All right. There's no issue, Government?

3 ATC [LCDR SCHREIBER]: Thank you, Your Honor. May I proceed?

4 MJ [COL ACOSTA]: Yes. There's no issue, correct? Nothing he
5 said was incorrect or couldn't have been said, from my understanding?

6 ATC [LCDR SCHREIBER]: No, sir. I don't believe there's
7 anything that's -- anything that's even approaching 505 at this
8 point.

9 MJ [COL ACOSTA]: I don't think so either.

10 ATC [LCDR SCHREIBER]: Great. So may I proceed, Your Honor?

11 MJ [COL ACOSTA]: You may.

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

13 **DIRECT EXAMINATION CONTINUED**

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

15 Q. I think I had asked you if you could recall who he -- who
16 Fahd al Quso went to ----

17 A. Traveled with, uh-huh.

18 Q. ---- Afghanistan in 1998 with?

19 A. Uh-huh.

20 Q. And you said you didn't quite remember and I asked if it
21 would help you to review the 302 ----

22 A. Yes, sir, uh-huh.

23 Q. ---- related to that.

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1 ATC [LCDR SCHREIBER]: All right. Your Honor, I'd like to
2 show the witness -- this is 319MM page 962.

3 Q. And I'd just direct your attention to the very top of that
4 page.

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

6 ATC [LCDR SCHREIBER]: Provided the document to and retrieved
7 it from the witness.

8 Q. And did that refresh your memory of who he said he went
9 with?

10 A. Yes, sir. Yes, sir.

11 Q. Who did he go with?

12 A. In addition to his companion, Taha, no further
13 identification, Ma'Moun Musouwah.

14 Q. So how did they -- how'd they get to Afghanistan? What
15 was the path they took?

16 A. After they received their funding, tickets, visas, other
17 travel documents, via Pakistan, guesthouse in Pakistan. And then
18 through the border area of Spin Boldak, first to Kandahar, more
19 guesthouses, and then training outside of Kabul.

20 Q. So let's talk just real quick about those first
21 guesthouses in Pakistan. So -- let me ask a baseline question.

22 Would it be accurate to describe Fahd al Quso as an Arab?

23 A. Yes, sir.

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1 Q. Did he consider himself an Arab, to you?

2 A. 100 percent, uh-huh.

3 Q. Did he tell you about whether at those initial
4 guesthouses, whether those -- there were other Arabs present?

5 A. Yes.

6 Q. What did he say about that?

7 A. There -- initially, there were some Arabs present, then
8 Pakistanis and some other nationalities when he was in Pakistan.

9 Q. Did he later move to a more exclusively Arab guesthouse?

10 A. He did.

11 Q. What's the significance of that, like, an Arab guesthouse
12 versus maybe a mixed guesthouse?

13 A. Well, the guesthouse, though, is significant with al Qaeda
14 and the other non-al Qaeda training camps in -- in Afghanistan and in
15 Pakistan is that that's the transit point, throughput and output, for
16 those who are going over for training participation with the violent
17 extremist groups. That's where their identification is checked.
18 That's where often, before they go to the training camps, the
19 passports are held, secured for them there.

20 So then moving to an exclusively or nearly exclusively
21 Arab-speaking guesthouse is important, one, for the language; and
22 that we know from and I know from interviews and other source
23 reporting that the elements, like in this case, fighting on the

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1 northern front against the forces of Ahmad Shah Massoud, they would
2 fight alongside each other, Taliban and Arab-speaking units,
3 al Qaeda, but they're segregated.

4 So getting to the Arab guesthouse is important before one
5 goes to a training camp like Fahd al Quso did.

6 Q. So in this particular -- I think you mentioned it, but
7 this particular Arab guesthouse, was that in Kandahar?

8 A. Yes, it was.

9 Q. Okay. Did he know who ran that guesthouse, like who was
10 the person behind it?

11 A. The emir, the leader, the head of the guesthouse, yes.

12 Q. I'm talking more specifically, who was in charge of
13 the -- that Arab guesthouse sort of even more broadly.

14 A. Yes.

15 Q. Who was that?

16 A. Nasir al Bahri, also known as Abu Jandal.

17 Q. Okay. And who was above that person?

18 A. I believe there was a ----

19 Q. I'm going to stop you. I'm really asking, like -- we're
20 talking about this is an al Qaeda guesthouse?

21 A. Yes.

22 Q. And who was the leader of al Qaeda at the time?

23 A. Usama bin Laden.

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1 Q. Was he aware of that? Excuse me. Was Fahd al Quso aware
2 at the time of who the leader of al Qaeda was when you spoke with
3 him?

4 A. Yes, sir.

5 Q. So in this guesthouse, this Arab guesthouse in Kandahar,
6 how long did he tell you he stayed there?

7 A. I can't recall the exact amount of time. Somewhere -- I
8 believe, from refreshing earlier yesterday, somewhere around a week
9 to two weeks.

10 Q. Are you confident in that or is your memory clear on that?

11 A. Quasi.

12 Q. Would it help you to review your ----

13 A. Yes.

14 Q. -- 302 to ----

15 A. Yes.

16 Q. -- refresh your memory on that?

17 ATC [LCDR SCHREIBER]: Your Honor, showing the witness
18 Appellate Exhibit 319MM, page 962.

19 Q. I direct your attention to the bottom of that first
20 paragraph.

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

22 A. That first paragraph you said, sir?

23 Q. Yes, sir.

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1 A. Yes, sir.

2 ATC [LCDR SCHREIBER]: Retrieving the document.

3 Q. Does that refresh your memory about how long he stayed in
4 that Arab guesthouse in Kandahar?

5 A. Yes. Approximately 43 days.

6 Q. You mentioned the person who was in charge of this
7 guesthouse was Abu Jandal?

8 A. Yes, sir.

9 Q. So al Bahri?

10 A. Nasir al Bahri.

11 Q. And that's the person we're going to be talking about
12 next, right, the next interview you did?

13 A. That's my understanding.

14 Q. Right.

15 Did Fahd al Quso recall Usama bin Laden ever visiting this
16 guesthouse while he was there?

17 A. Yes.

18 Q. And did he get to meet with Usama bin Laden while he was
19 there?

20 A. He did.

21 Q. Did he tell you exactly how he secured that meeting
22 with bin Laden?

23 A. He made the request through one of bin Laden's protective

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1 elements, a security guard.

2 Q. So what did he tell you that he and bin Laden spoke about,
3 just sort of generally, when they spoke?

4 A. About the need for aggression as a holy act against
5 Americans because Americans -- America's aggression against Muslims
6 in Muslim lands; that the infidels, it was important to cast them
7 out, fight them.

8 Q. Based on his observations, was Fahd al Quso able to
9 describe close associates of Usama bin Laden at that time?

10 A. Yes.

11 Q. And who were some of the individuals he described as close
12 associates of bin Laden that he knew?

13 A. Ayman al Zawahiri, of course. And then his deputy, his
14 number two, Mohammed Atef is his given name, Egyptian. Abu Hafs
15 al Masri, as he's known for -- and -- and Quso affirmed that he was
16 the Sheikh, as he called bin Laden's deputy, and we also know that
17 from other sources. He also talked about another Egyptian named Saif
18 al Adl and Abu Mohammed al Masri, Abu Abdul Rahman al Masri, and
19 other notable top-tier al Qaeda figures.

20 Q. At any point when he was in Afghanistan, did al Quso swear
21 official allegiance to Usama bin Laden?

22 A. He claims not. He claimed not. Uh-huh.

23 Q. And what's the term for that? It's like a swearing of

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1 allegiance, what's that called?

2 A. Bay'at.

3 Q. Did he tell you why he nerve swore allegiance to
4 Usama bin Laden?

5 A. Well, he said he was already convinced of the cause, the
6 Sheikh's cause as being the right thing and righteous under his
7 belief in the religion and that he didn't want to be in a situation
8 where he might not be able to be held to that religious oath or
9 pledge. So he said ultimately, for him, it just wasn't necessary
10 because he already believed in the cause.

11 Q. Did he tell you about attending military training camps
12 while in Afghanistan?

13 A. Yes.

14 Q. Can you recall which camp he said that he attended?

15 A. He attended the camp he referred to as Shasiab.

16 Q. And did he know who was the funding behind the camps?

17 A. He presumed, yes.

18 Q. What did he tell you he presumed the funding was?

19 A. That it was Sheikh bin Laden's funding.

20 Q. Okay. Did he talk to you about what kind of training he
21 received at these camps?

22 A. Yes, he did.

23 Q. What kind of training did he tell you he got?

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1 A. His first training session in light to medium and heavy
2 arms, machine guns, hand grenades, RPG, and similar type armaments.

3 Q. So that was -- I think you said there was, like, an
4 initial training. Was there a secondary training he attended?

5 A. There was.

6 Q. And what did he learn there?

7 A. Later the training included artillery in the second
8 session.

9 Q. Specific to this -- I'm going to pronounce it poorly,
10 Shasiab training camp, was he aware of who the person -- was he aware
11 of who was in charge of that training camp?

12 A. Yes. He learned once he was there.

13 Q. Okay. And what was that person's name?

14 A. It -- if I recall, it alternated but initially I believe
15 it was an Egyptian named Sa'idi.

16 Q. What do you mean it alternated?

17 A. During his time, two different sessions in camps, there
18 was some switching-out of personnel and leadership, which is quite
19 common, actually, in the training camps of Afghanistan at the time.

20 Q. So he was doing these -- this training. Did he tell you
21 how long his first stint of training at the camps was approximately?

22 A. Approximately 30 days.

23 Q. Did he ultimately head out to -- let me -- what was he

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1 training for? Where did he go?

2 A. Yeah, he -- according to Fahd, he was going to then fight
3 along the front with the Northern -- against the Northern Alliance.

4 Q. And did he tell you a little bit about his time doing
5 that, fighting against the Northern Alliance?

6 A. Yes, he did.

7 Q. Approximately -- as I understand, there was, like, two
8 stints that he went and fought?

9 A. Exactly, according to al Quso.

10 Q. Can you recall approximately how long he said he was out
11 there fighting for?

12 A. Well, his -- his time in Afghanistan was ten months. So
13 he had that period in the guesthouse, then the training approximately
14 a month, then a few months fighting against the Northern Alliance
15 next to the Taliban with al Qaeda units, then back for more training,
16 approximately 30 days, without seeing the 302. And then again back
17 to the -- the front before he had some -- a revelation and some
18 religious guidance that allowed him to make a decision since one of
19 the recognized scholars said fighting in Afghanistan against the
20 forces of Ahmad Shah Massoud was optional, it wasn't obligatory.

21 So he said what is obligatory -- and, again, this is Fahd
22 describing, you know, his evolution and back to Yemen. It is
23 obligatory in Islam to obey parents, so the presumption was that one

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1 or both of his parents wanted him to return to Yemen, which he did.

2 Q. On his way back to Yemen, did he have an opportunity to
3 talk to Usama bin Laden again?

4 A. He did.

5 Q. When he spoke with bin Laden again, did -- did bin Laden
6 give him any particular guidance about what to do back in Yemen?

7 A. Yes, sir.

8 Q. Can you recall what that guidance was?

9 A. Yeah. And this was significant with, you know,
10 understanding al Qaeda's leadership thought process at the time.
11 According to Quso, he and his companions were told by bin Laden
12 don't -- don't be disruptive. Don't pick fights back in your country
13 of Yemen. Don't be disruptive. Do the right thing, but travel to
14 other jihad fronts according to your capability to do that.

15 Q. All right. So is it accurate that during the course of
16 the numerous interviews you had with Fahd that he -- he's obviously
17 talking about talking with Usama bin Laden, right?

18 A. Yes, sir.

19 Q. And talking about attending training camps that were run
20 by or funded by Usama bin Laden, right?

21 A. Right.

22 Q. Did he ever specifically in your interviews claim, like,
23 membership in al Qaeda?

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1 A. No, he didn't.

2 Q. Did he believe that Usama bin Laden was his emir or his
3 leader personally?

4 A. Ultimately, yes. Because, as he said, he believes in what
5 al Qaeda and the Sheikh are about, so, therefore, by extension, that
6 would make him a leader that he loves and believes in. But to
7 expressly state that he was his emir, he kind of danced around
8 that -- that topic and the answer.

9 Q. Did you ask him about that several times, in fact?

10 A. Several times, yes.

11 Q. And yet I think you said it, I wanted to ask you, did he
12 actually ever express specifically love for Usama bin Laden?

13 A. He did say that specifically.

14 Q. Did you talk with him about how he felt about the concept
15 of jihad against westerners or non-Muslims as a general matter?

16 A. Yes.

17 Q. And what were his feelings about that that he expressed to
18 you?

19 A. In the most precise form, it was a religious obligation
20 for Muslims to combat those who did not believe like them or were,
21 for example, conducting war against the Iraqi Muslim people. He had
22 no reservations about that. A true believer, you would say.

23 Q. Did you ask him whether these beliefs about jihad were as

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1 a result of speaking with bin Laden? Did you ask him specifically
2 if, hey, did you learn this by being around bin Laden or did you come
3 to this on your own?

4 A. Yes. And that was ----

5 Q. And what did he say about that?

6 A. He said no, he didn't have to hear it from
7 Sheikh bin Laden because he already believed in those things. Like,
8 for example, he was aware of the 1998 declaration of war on American
9 infidels in the Arabian Peninsula, but he said he didn't have to read
10 the whole decree from bin Laden because he already believed in all of
11 those things.

12 Q. Did you ever ask him how he felt specifically about the
13 attacks on the embassies in Tanzania and Nairobi?

14 A. Yes.

15 Q. What did he tell you that he felt about those?

16 A. That -- generally supportive.

17 Q. Was he -- did you ever ask you -- did you ever talk with
18 him about what it meant to share his opinions on these things with
19 American law enforcement? Like, I mean, he's offering you these
20 opinions about these prior events. Did you talk about the actual
21 sharing of opinions?

22 A. Yeah, I'm sure we did talk about that because that lends
23 towards rapport, those types of topics.

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1 Q. Uh-huh. Was he curious about the ability to share
2 opinions with American law enforcement?

3 A. He expressed some concern that it could be implicating,
4 you know, statements by him or utterances.

5 Q. Specifically, was he concerned that expressing opinions
6 could be a crime?

7 A. Yes. But he also retorted, threw back at us, at our team,
8 you know, is it a crime in America to express one's opinions?

9 Q. What did you tell him?

10 A. I said no. We probably talked about the -- the wonder of
11 the First Amendment and those kind of things that make us great.

12 Q. All right. I want to talk about -- still kind of on the
13 topic of folks that he knew and people he was exposed to, but more
14 specifically with photos that he identified as people that he knew.

15 A. Yes, sir.

16 Q. We've talked before a bit about the process that you used
17 to conduct photographic identifications with lay Yemeni witnesses.

18 A. Uh-huh.

19 Q. Do you recall that?

20 A. Yes, sir.

21 Q. And, of course, those folks were like eyewitnesses to
22 events, right?

23 A. Some were, yes, indeed.

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1 Q. That said, when you presented Fahd al Quso with
2 photographs -- sorry, let me back up.

3 Did you use photo books with him, as we've talked about?

4 A. Yes.

5 Q. Do you recall which two sets of photos you used?

6 A. There was the photo book from Dar es Salaam and Nairobi,
7 the FBI uses the term TANBOM/KENBOM. And then also the -- I'm not
8 sure if we were calling it the ADENBOM book, but then there was
9 a -- the next-in-developing set of photographs that pertained to the
10 attack on the USS COLE.

11 Q. Can you recall if you guys identified it as the ADENBOM
12 book at the time you did the interview?

13 A. I can't recall if we used that term at the time.

14 Q. Would it help you to review your 302 to recall that fact?

15 A. Yes, sir.

16 ATC [LCDR SCHREIBER]: Showing the witness Appellate Exhibit
17 319MM, page 978.

18 Q. I direct your attention to the -- kind of the second
19 paragraph on the page.

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

21 ATC [LCDR SCHREIBER]: I've retrieved that page.

22 Q. Mr. McFadden, did that refresh your memory?

23 A. Yes.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. And were you all referring to the ADENBOM book at that
2 time?

3 A. That's correct. According to the 302, it was labeled
4 ADENBOM as of January 10th, 2001.

5 Q. Now, when you were presenting photos to -- these photo
6 books to Fahd al Quso, did -- how did you present it to him? You
7 know, just, again, I kind of want to cover this similarly like you
8 did with the lay witnesses. What was the process of showing him
9 these photos?

10 A. It would advise him or let him know that we would like to
11 look over some photographs with him, photographic arrays, and then
12 ask him if he would agree to do that. And upon his agreement, then
13 we'd go over the photographs and the different pages, ask him if he
14 recognized the photograph, and if he did recognize the photograph,
15 what did he know about that individual.

16 Q. Did you ever ask him to go through and identify a
17 particular person in those photo books? Like, hey, flip through
18 these and tell me where you see the photo of so-and-so?

19 A. No. That wasn't the process, no, sir, not for my
20 interviews.

21 Q. It may seem -- it may go without saying, but why did you
22 ask Fahd al Quso to go through these photo books and tell you who he
23 might know?

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1 A. Fahd al Quso, at least since 1998, had been traveling in
2 al Qaeda circles and in other groups, similar violent extremist
3 groups to al Qaeda. So he would be someone we'd say would have
4 placement and access and a good likelihood of identifying some of
5 those individuals. And included in both books there were some
6 photographs that were unidentified, and that can be helpful from a
7 witness like an al Quso.

8 Q. We're going to talk just briefly about some of the photos
9 you showed him from this KENBOM/TANBOM book. And we're going to do
10 this without a net, without the book in front of you.

11 But did you -- in that -- in that book, did you show
12 him -- was he able to identify a photo of Usama bin Laden?

13 A. Yes, sir.

14 Q. And did he tell you that -- about who was in that photo in
15 addition to bin Laden?

16 A. One of the first photographs I believe is a rather famous
17 photograph of Usama bin Laden and Abu Hafs al Masri, as I said
18 before, his deputy at the time.

19 Q. Okay. And so in that photo he identified, did you know
20 that those were the two individuals in that photo?

21 A. Absolutely, uh-huh.

22 Q. Did he identify a photo of a gentleman by the name of
23 Abdul Wakil?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 A. Yes.

2 Q. And who did he tell you that that person was?

3 A. I believe he said the Abdul Wakil he recognized was
4 African but spoke Arabic and was one of the emirs or leaders of the
5 training that he went through.

6 Q. How about Ayman al Zawahiri?

7 A. Yes, he ----

8 Q. Did he recognize photos of that individual?

9 A. He did. Yes, sir, he did.

10 Q. And were those photos where you -- you already knew that
11 those were photos of Ayman al Zawahiri?

12 A. Yes, sir.

13 Q. And who is that individual that he recognized?

14 A. Well, at the time, he, right around that time, had united
15 with al Qaeda, a merger with -- he is the head of the Egyptian
16 Islamic jihad, and so Fahd al Quso was aware of that and pointed that
17 out to us, something we already knew he was correct.

18 Q. And had he had a personal, like, interaction with Ayman
19 al Zawahiri that he told you about?

20 A. The only time that I recall that he was in the presence of
21 Ayman al Zawahiri was at the wedding of one of the Shabab over in
22 Afghanistan where all the top-tier Shura Council for al Qaeda was
23 there, along with many other -- other trainees and fighters. And he

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 said Ayman al Zawahiri was there at that wedding in Afghanistan.

2 Q. How about, was he able to identify photos of Abu Mohammed
3 al Masri?

4 A. Yes.

5 Q. And who is that person? Who did he tell you that person
6 was?

7 A. Yeah, one of the leaders of al Qaeda, and particularly the
8 East Africa Bombings operation.

9 Q. The photos that he identified, were those photos that you
10 already knew to be Abu Mohammed al Masri?

11 A. Yes, sir.

12 Q. All right. I want to shift to talking about the photos
13 from the ADENBOM book, which I think we're a little more familiar
14 with at this point.

15 A. Uh-huh.

16 ATC [LCDR SCHREIBER]: I'd like to show the witness -- this is
17 AE 319A Attachment H2. It's the January 10, 2001 ADENBOM Photo Book.

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

19 ATC [LCDR SCHREIBER]: Providing it to the witness. I've
20 provided defense counsel with a copy earlier so they have one.

21 Q. If you would take a look through that, please.

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

23 A. Sir.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. Do you recognize that?

2 A. Yes, I do.

3 Q. And we kind of said it, but what are you looking -- what
4 are you looking at there?

5 A. The still-under-development ADENBOM Photo Book.

6 Q. Throughout the course of your investigation as co-case
7 agent and then later involved with the 9/11 investigation, did you
8 become familiar with a lot of the faces and names in that book?

9 A. Yes, sir.

10 Q. All right. So if you would hang onto that as we go
11 through some of the people that he said he knew, I'll have you refer
12 to that a little bit. Okay?

13 When reviewing the photos in the ADENBOM Photo Book, was
14 Fahd al Quso able to recognize photos of a person that he called
15 Tawfiq Mohammad Saleh Bin'Attash?

16 A. Yes, sir.

17 Q. And just who is that person, to your knowledge?

18 A. Yeah, that's Walid Bin'Attash, a/k/a Khallad. And at the
19 time, we in the investigative team thought that that was his given
20 him, Tawfiq, but it actually turned out to be an alias. But al Quso
21 knew him as -- called him variously Tawfiq Khallad, Tawfiq Abu
22 Khallad.

23 Q. And just to be clear, can you -- and I'm not asking you to

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1 refer to which photos are labeled in there. I'm asking you, do you
2 recall which photos Fahd al Quso recalled identifying as photos of
3 Khallad?

4 And again, I'm not asking you to refer to the photos there,
5 so if you'd set that aside. I'm going to ask you if those are photos
6 that you knew to be Khallad. But did you remember what he said were
7 the photos of Khallad?

8 A. I don't recall precisely what he said other than he
9 recognized it.

10 Q. Would it help you to review the 302 to remember what
11 photos he identified as Khallad?

12 A. Yes.

13 ATC [LCDR SCHREIBER]: Your Honor, I'm showing the witness
14 Appellate Exhibit 319MM, page 978.

15 Q. Direct your attention to the top paragraphs -- paragraphs
16 on the top half of the page there.

17 A. The top?

18 Q. The top half of the page.

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

20 A. Yes, sir. I think I just misunderstood the question.

21 Q. Understood.

22 ATC [LCDR SCHREIBER]: Retrieving the document.

23 Q. So which photos did -- did that refresh your memory as to

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 what Fahd al Quso ----

2 A. Yes.

3 Q. ---- said?

4 A. Again, I apologize.

5 Q. That's okay.

6 A. I misunderstood the question, uh-huh.

7 Q. What did -- what photos did Fahd al Quso identify as
8 photos of Khallad?

9 A. Shall I refer to it by the number?

10 Q. Yes, please.

11 A. Okay. Yes. Number 1, that's the only photograph of
12 Khallad in that array.

13 Q. Okay. And if you take a look at the photo book there,
14 photo number 1, was that a photo you were familiar with as Khallad?

15 A. Yes, sir.

16 Q. Did he actually identify another photo as potentially
17 resembling Khallad? And, again, if you don't recall, I can show you
18 the same page.

19 A. Yes, I apologize, I don't recall the other -- any other
20 photo.

21 ATC [LCDR SCHREIBER]: Your Honor, showing the witness the
22 same -- the same page.

23 Q. I'd refer you to the single-line paragraph in the middle.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

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

2 Q. Does that refresh your memory as to somebody that he said
3 might resemble Khallad?

4 A. Yes. Yes.

5 Q. And which photo number did he say might resemble Khallad?

6 A. Number 3.

7 Q. Okay. And is that a photo -- in the photo book, is that a
8 photo of Khallad?

9 A. No, it's not.

10 Q. Who is it a photo of?

11 A. It's a photo of his brother, Abdul Aziz Bin'Attash.

12 Q. Okay.

13 A. And the physical features are quite, quite similar. Yeah.

14 Q. I want to focus for a second on just what he knew about
15 Khallad. Did he tell you about where they met, he and Khallad?

16 A. Yes, sir.

17 Q. Where did they meet?

18 A. They met in Afghanistan at the -- the training camp.

19 Q. Were they close, to his description?

20 A. He said they became close, quite close.

21 Q. In fact, did they talk about joining their families?

22 A. Yes, they did. They talked with each other about marrying
23 each other's sister.

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1 Q. Did that ever come to fruition?

2 A. Not -- not that I'm aware of, no.

3 Q. In fact, did he tell you about why it didn't?

4 A. Well, at one point later with his -- his staying in
5 contact with Khallad, during conversation, he said he had to inform
6 Khallad that he didn't have a sister available at that time for
7 marriage.

8 Q. We're going to talk about some of these travels later, but
9 did he talk with you -- you met him in Afghanistan -- sorry.

10 Fahd met Khallad in Afghanistan. Did he tell you about
11 another location that he had some interactions with Khallad, another
12 country?

13 A. I don't recall that fact.

14 Q. A trip abroad with other persons to meet Khallad?

15 A. Ah. Excuse me.

16 Q. We've been going a while.

17 A. It's not age. I swear it's not age.

18 Yes, a very significant trip where he met with Khallad
19 subsequently in -- in Southeast Asia.

20 Q. And we'll talk about that a little bit later.

21 Was he able to provide a physical description of Khallad?

22 A. Yes.

23 Q. And can you recall what the physical description Fahd

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 al Quso provided of Khallad was?

2 A. Yeah, generally his height compared to al Quso's height,
3 the color of his hair, the texture of his hair. He quite
4 significantly, of course, described that he was missing a limb from
5 his right knee down. He also described Khallad as saying he was 25
6 at the time, but Quso remarked that he thought he was a bit older and
7 he also added that he had pretty eyes.

8 Q. Was Fahd al Quso able to tell you anything about his
9 knowledge of Khallad's family and ----

10 A. Yes.

11 Q. What did he know about that?

12 A. Yeah, his -- his father, Mohammad, famous for fighting
13 against un-Islamic regimes and involved in Afghanistan fighting
14 against the Soviet Union and that he was just very well connected in
15 Sunni extremist circles, including al Qaeda.

16 Q. All right. I want to move on to another individual. Was
17 he able to identify a photo of Abu Jandal?

18 A. Yes.

19 Q. And can you recall which photo in the ADENBOM Photo
20 Book -- without looking at the photo book, I'm asking you, can you
21 recall which number he told you was the photo of Abu Jandal?

22 A. I do.

23 Q. Okay. Which photo?

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1 A. Number 2.

2 Q. And were you aware at the time that that was indeed a
3 photo of Abu Jandal?

4 A. Yes, sir.

5 Q. Okay. If you'd go ahead and take a look at the photo book
6 there. Is that the photo you recall?

7 A. Yes.

8 Q. Okay. Photo number 2 in that book?

9 A. Photo number 2 in the ADENBOM Photo Book, yes, sir.

10 Q. Great.

11 Is Abu Jandal an alias for a known individual?

12 A. Yes, sir.

13 Q. Who?

14 A. Naser Ahmad Naser al Bahri.

15 Q. We talked about him a little bit. He was the emir of
16 training camps, right?

17 A. Among other important roles for AQ, yes, sir. Emir of the
18 guesthouses, I should say.

19 Q. Sorry, guesthouses.

20 A. Yes.

21 Q. Apologies.

22 A. Yes, sir.

23 Q. Was he able to identify an individual in that book by the

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 name of Ma'Moun Ahmad Mohammed al Musouwah?

2 A. Yes.

3 Q. Do you recall which photograph he identified as that
4 person?

5 A. Without looking at the book, no.

6 Q. Okay. Would it help you to review the 302?

7 A. Yes.

8 ATC [LCDR SCHREIBER]: Your Honor, showing the witness
9 Appellate Exhibit 319MM. I think it's the same page, page 978.

10 Q. I direct your attention to the bottom large paragraph on
11 the page.

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

13 ATC [LCDR SCHREIBER]: I've retrieved the document.

14 Q. Did that refresh your memory?

15 A. Yes.

16 Q. And which photo did he identify as the photo?

17 A. Number 5.

18 Q. Okay. So who was Ma'Moun al Musouwah to him?

19 A. His good friend, Ma'Moun Musouwah, was his, among other
20 things, travel companion to Afghanistan through the guesthouses and
21 the training camps, but they had been good friends from Al-Burayqah
22 in Aden, Yemen.

23 Q. And if you wouldn't mind taking a look there at the photo

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 book, photo number 5, was that a known photo to you at the time of
2 Ma'Moun al Musouwah?

3 A. Yes, sir.

4 Q. Okay. Moving on to another individual, was he able to
5 identify a photo of Jamal al Badawi?

6 A. Yes.

7 Q. Can you recall which photo he identified as a photo of
8 Jamal al Badawi?

9 A. Number 7.

10 Q. And was that a -- again, was that a known -- actually, go
11 ahead and take a look at photo number 7. Was that a known photo of
12 Jamal al Badawi?

13 A. Yes, sir.

14 Q. Okay. We're going to talk more about him a little bit
15 later and the background because, obviously, he's quite important to
16 the attack on the COLE.

17 How about Hassan al Khamri? Did he have -- did he identify
18 somebody who -- by that name?

19 A. Not by that name.

20 Q. Did he identify him by a different name?

21 A. That's correct.

22 Q. Okay. And I want to just I think start with: Did he
23 provide a physical description of a person that he saw at a -- we're

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 going to talk about this terrorist luncheon, or this luncheon of
2 jihadists.

3 But did he provide a physical description of a person he saw
4 at this luncheon and then identify a photo in the book of that
5 person?

6 A. Yes.

7 Q. Okay. Can you recall the general physical description he
8 provided?

9 A. Yes. He gave his estimate of the height, that he had a
10 light beard, and most distinctive from my time in the investigation
11 at that point is that he wore prescription glasses.

12 Q. What was the name he gave for this individual that he
13 described that way?

14 A. Abu Ali.

15 Q. Okay. And can you recall which photos in the ADENBOM
16 Photo Book he identified as this person he knew as Abu Ali?

17 A. It would be a guess because there were multiple
18 photographs.

19 Q. Sure. Would it help you to review your 302 to ----

20 A. Yes, sir.

21 Q. ---- remember that?

22 A. Uh-huh.

23 ATC [LCDR SCHREIBER]: Showing the witness Appellate Exhibit

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 319MM, page 980.

2 Q. I would direct your attention to the first three
3 paragraphs on the page there -- really the second and third.

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

5 A. Sir.

6 ATC [LCDR SCHREIBER]: Retrieving the document.

7 Q. Did that refresh your memory?

8 A. Yes, sir.

9 Q. Which photos did he indicate resembled this person he knew
10 as Abu Ali?

11 A. Number 14 looked like Abu Ali. Number 15 resembled Abu
12 Ali.

13 Q. If you'd go ahead and take a look at the photo book there
14 for photos 14 and 15. At the time did you know who photos 14 and 15
15 were of?

16 A. Yes, sir.

17 Q. And who were they photos of?

18 A. Hassan al Khamri.

19 Q. Okay. Thank you.

20 And just real quick, who was Hassan al Khamri?

21 A. In the investigation with deep forensic and other
22 information, evidence, and intelligence, he was identified as one of
23 the two suicide bombers in the attack on the USS COLE.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. Moving on, was he able to identify any photos of Abdallah
2 al Rimi?

3 A. Yes, sir, he was.

4 Q. Can you recall which photo he identified as being of
5 Abdallah al Rimi?

6 A. I apologize, but not without the 302.

7 Q. Would it refresh your memory to take a look?

8 A. Yes.

9 ATC [LCDR SCHREIBER]: Your Honor, showing the witness 319MM,
10 page 980.

11 Q. Last paragraph on the page.

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

13 ATC [LCDR SCHREIBER]: I've retrieved the document.

14 Q. Does that refresh your memory?

15 A. Yes.

16 Q. Which photo did he identify as Abdallah al Rimi?

17 A. Number 29.

18 Q. Okay. Was that a known photo at the time of Abdallah
19 al Rimi?

20 A. Yes.

21 Q. If you wouldn't mind taking a look at photo 29 in the
22 photo book there.

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

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. And to your recollection, is that a photograph of Abdallah
2 al Rimi?

3 A. Yes.

4 Q. Abdallah al Rimi.

5 How did he know Abdallah al Rimi?

6 A. Abdallah al Rimi was well known to the Shabab, the young
7 guys in Yemen that associated with al Qaeda in similar causes, let's
8 say.

9 I would characterize Abdallah al Rimi as very important to
10 the investigation -- we never had access to him -- as the master
11 travel agent for traveling in and out of Yemen to Afghanistan,
12 Pakistan, Chechnya, Bosnia, jihad fronts; would arrange passports,
13 visas, airline tickets, other travel documents, and funding.

14 Q. And how long did Fahd al Quso tell you that he had known
15 and been associated with Abdallah al Rimi?

16 A. I believe he said going back to at least to his time in
17 Afghanistan.

18 Q. And did he indicate to you how recently he had seen
19 Abdallah al Rimi?

20 A. Yes.

21 Q. And how recently had he seen him?

22 A. At that time, it was the 11th of October of 2000, a day
23 before the attack on the USS COLE.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. Did he see him after the attack on the COLE, according to
2 his recollection?

3 A. According to his ----

4 Q. Yeah. Did he tell you about seeing him after the attack
5 on the COLE?

6 A. Yes.

7 Q. When did he see him after the attack on the COLE, if you
8 can recall?

9 A. I -- corrected. He actually saw him -- after the 11th of
10 October 2000, he saw Abdallah al Rimi up in Sana'a when al Quso
11 went -- travelled from Aden to Sana'a after the attack.

12 Q. So this 11th, the day before the attack, and then a couple
13 of days later in Sana'a?

14 A. That's correct.

15 Q. Was he able to identify any photos of an individual named
16 Yasser Ahmed Qasim?

17 A. Yes.

18 Q. Can you recall which photo ----

19 A. No, no.

20 Q. ---- he indicated?

21 A. No. Regrets, but no.

22 Q. Would it help you to review the 302?

23 A. Yes, sir.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 ATC [LCDR SCHREIBER]: I'm showing the witness Appellate
2 Exhibit 319MM, page 981.

3 Q. It's the top paragraph there.

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

5 ATC [LCDR SCHREIBER]: Retrieving it.

6 Q. Did that refresh your memory?

7 A. Yes.

8 Q. Which photo did he identify as the photo of Yasser Ahmed
9 Qasim?

10 A. Number 30.

11 Q. And was that -- if you wouldn't mind taking a look at
12 photo 30 there in the photo book in front of you.

13 A. Yes, sir.

14 Q. Was that a known photo to you at the time of Yasser Qasim?

15 A. Yes, sir.

16 Q. And how did -- what did Fahd al Quso tell you about Yasser
17 Ahmed Qasim?

18 A. He was one of the -- the Shabab young guys in Burayqah
19 that he was familiar with, lived in the area, and was also one of the
20 members at the -- the so-called luncheon on the 11th of October 2000.

21 Q. Did you have additional information about who this person
22 was and their involvement in activities in Yemen?

23 A. Yes, sir.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. Just very briefly, what was that?

2 A. Also a facilitator of travel and other logistics for the
3 network.

4 Q. And lastly, of the ones he positively identified, did he
5 identify a photo of another Yasir, Yasir al Azani?

6 A. Yasir al Azani, yes, sir.

7 Q. Can you recall which photo he recognized of Yasir al
8 Azani?

9 A. Just by a pretty good guess.

10 Q. Well, would it -- I'd rather you not guess. Would it
11 help -- if you can't remember, would it help you to review your 302?

12 A. Yes, sir.

13 ATC [LCDR SCHREIBER]: Your Honor, same page. 319MM,
14 page 981.

15 Q. It's the bottom two paragraphs there on the page.

16 MJ [COL ACOSTA]: All right.

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

18 Q. Does that refresh your memory ----

19 A. Yes.

20 Q. ---- about which photo he identified?

21 A. Yes. Uh-huh.

22 Q. And which photo did he identify as Yasir al Azani?

23 A. 31.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. Would you mind taking a look at the photo book in front of
2 you, photo 31?

3 A. Yes, sir. That is Yasir al Azani.

4 Q. Was that a photo known to you at the time?

5 A. It was.

6 Q. And what did he tell you about his knowledge of Yasir
7 al Azani?

8 A. Al Azani was also one of the -- the brothers who attended
9 the luncheon on the 11th of October and actually hosted at his
10 residence part two of the luncheon.

11 Q. All right. Was he, in your interviews with him -- excuse
12 me, Fahd al Quso -- was he ever able to identify a photo of the
13 accused in this case, al Nashiri?

14 A. No, sir.

15 Q. Now, of course, I've reviewed the 302s as well, and it
16 appears that he mentions an individual named Abdul Rahman, someone
17 named Abu Bilal al Hadrami as someone he knew from Afghanistan ----

18 A. Uh-huh.

19 Q. ---- said that guy's dead. Another one, Abu Bilal
20 al Makki, a brother from Hadhramaut he believed to have been killed.

21 Am I right to say those are all kind of aliases of Nashiri
22 or very close to them, right?

23 A. One in particular, yes, sir.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. Which one in particular?

2 A. Abu Bilal al Makki.

3 Q. Were you ever able to confirm from your -- either from
4 your interview or subsequent investigation, whether those individuals
5 to whom he referred by those names, whether that was associated with
6 the accused in this case?

7 A. Wasn't able to corroborate that. I mean, with other
8 witnesses using that kunya?

9 Q. I want to be clear. Sorry. Maybe I asked the question
10 poorly.

11 He mentions these names that are associated or close to
12 aliases with the accused in this case.

13 A. Right.

14 Q. Did you ever have a way to -- or did you ever positively
15 tie the things that he said about those people to the accused in this
16 case? Did you make it clear that that was who he was talking about?

17 A. Yes, we -- there wasn't a connection because I believe in
18 all of the instances of using those kunyas associated with the Abd
19 al Rahim Nashiri, he said that person he learned was dead.

20 Q. Okay. So no indication -- no positive indication that he
21 was talking about the accused when he mentioned those names?

22 A. Correct.

23 ATC [LCDR SCHREIBER]: Your Honor, conscious of the hour here,

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 I'm at the end of a section, and so if Your Honor would like to take
2 a lunch recess, this would be a great time.

3 MJ [COL ACOSTA]: Okay. I don't think there's going to be any
4 objection to that.

5 So what we'll do is we'll come back and we will start at
6 1320 -- 1315 we'll come back. Be prepared to testify then.

7 I'll give you the same warning I always give you,
8 Mr. McFadden: Don't discuss your testimony or knowledge of this case
9 with anyone other than counsel for either side. You can step down.

10 WIT: Thank you.

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

13 MJ [COL ACOSTA]: There's nothing else before recess,
14 Government?

15 ATC [LCDR SCHREIBER]: Nothing, Your Honor.

16 MJ [COL ACOSTA]: Defense?

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

18 MJ [COL ACOSTA]: The commission is in recess.

19 **[The R.M.C. 803 session recessed at 1152, 11 April 2023.]**

20 **[The R.M.C. 803 session was called to order at 1317, 11 April 2023.]**

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

22 Government, all parties present as before?

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

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1 MJ [COL ACOSTA]: Defense?

2 LDC [MR. NATALE]: Yes, Your Honor. And Mr. Nashiri has again
3 voluntarily absented himself; however, he has been watching the
4 proceedings from where he is.

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

6 All right. The witness has retaken the stand. You can have
7 a seat.

8 **[The witness, Robert McFadden, resumed the witness stand.]**

9 MJ [COL ACOSTA]: I'd just remind you, Mr. McFadden, you
10 remain under oath.

11 Government, you may proceed.

12 ATC [LCDR SCHREIBER]: Thank you, Your Honor. One second,
13 Your Honor.

14 MJ [COL ACOSTA]: Yep.

15 ATC [LCDR SCHREIBER]: Your Honor, I'm just having one of our
16 staff return the crosswalk document to the witness stand.

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

18 **DIRECT EXAMINATION CONTINUED**

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

20 Q. Mr. McFadden, still on the stand there in front of you was
21 what we talked about before -- what we talked about before, the
22 January 2010 version of the ADENBOM Photo Book. I had asked you
23 earlier to take a look at it.

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1 In that document there, are there names already listed
2 associated with some of the photos there in that book?

3 A. In this document, yes.

4 Q. In that document. When you showed the photo book to
5 really anybody, but in particular Fahd al Quso, were there names with
6 the photos?

7 A. No, there weren't. Just the number.

8 Q. Okay.

9 A. A number associated with the photograph.

10 Q. All right.

11 ATC [LCDR SCHREIBER]: I'm going to go ahead and retrieve that
12 document from the witness stand, Your Honor. I don't think I need it
13 again.

14 MJ [COL ACOSTA]: Okay.

15 Q. All right. Let's move on and talk about some other
16 international travel that Fahd al Quso and you talked about. We
17 already talked about his trip to Afghanistan.

18 I think you mentioned earlier that he made another trip to
19 Thailand; is that right?

20 A. That's correct.

21 Q. So let's talk about that for a little bit. Was -- before
22 we get into the why he went, was Thailand the destination originally?

23 A. Not the intended destination.

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1 Q. What was the intended destination of this trip?

2 A. Singapore.

3 Q. Okay.

4 A. Thank you.

5 Q. Okay. So how did this trip start? Why did he
6 decide -- Fahd al Quso tell you that he decided he needed to travel
7 to Singapore?

8 A. Well, Fahd said he was contacted by Ibrahim al Thawr Abu
9 Nibras, one of the suicide -- eventual suicide bombers of the
10 USS COLE, with a mission to travel to bring funds to Khallad in
11 Singapore, and that that's how it transpired that the travel was then
12 arranged to go to Thailand.

13 Q. Did he have contact with Khallad additionally about this
14 trip before he, like, embarked upon it?

15 A. I believe all the communication was through Nibras, but I
16 can't quite recall if there was direct contact with Khallad.

17 Q. Would it help you to remember about any direct contact
18 with Khallad ----

19 A. Yes.

20 Q. ---- if you reviewed your 302?

21 A. Uh-huh.

22 ATC [LCDR SCHREIBER]: Your Honor, showing the witness
23 Appellate Exhibit 319MM, page 970.

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1 Q. I direct your attention to the first couple paragraphs on
2 this page.

3 A. Thank you.

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

5 A. Yes, sir.

6 ATC [LCDR SCHREIBER]: Okay. Retrieving.

7 A. That refreshed my memory.

8 Q. I think you said that refreshed your memory?

9 A. It did. Thank you.

10 Q. Yep. So did he have any direct contact with Khallad or
11 telephone contact with Khallad about this trip?

12 A. Yes, he did.

13 Q. And what did he tell you about that?

14 A. So I'll correct about what I said previously about first
15 contact with Nibras, but he said in -- sometime in December of 1999,
16 from Karachi, Pakistan, Khallad contacted Fahd, called Fahd. And the
17 original topic of discussion was a follow-up about marrying each
18 other's sisters, but then subsequently discussion with Khallad and
19 then with Nibras about money that would be transferred to Abu Nibras
20 from Khallad's father to transport to, originally intended,
21 Singapore.

22 Q. Okay. Did he tell you how much money was the
23 intent -- that was intended to go to Khallad in Singapore?

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1 A. Yes, sir.

2 Q. How much?

3 A. He said 36,000 U.S.

4 Q. Okay. And just to be clear, who did he embark on this
5 trip with? Who did he go with?

6 A. With Abu Nibras.

7 Q. And again, how did he know Abu Nibras?

8 A. Knew him from times in Afghanistan and then back in Yemen.

9 Q. All right. So I think we've kind of made this clear, but
10 where were they starting their travels from?

11 A. Starting from -- for Fahd al Quso's part, from Aden. Then
12 he traveled up to Sana'a to meet Abu Nibras, and from there, they
13 left ----

14 Q. Okay.

15 A. ---- traveling through United Arab Emirates.

16 Q. So I was going to ask: Did he talk to you -- Fahd
17 al Quso, did he talk to you about the process of getting from Yemen
18 at least to Thailand?

19 A. He did. He provided details about arrangements made
20 largely through Abu Nibras about tickets, a visa, other necessary
21 travel documents, and money.

22 Q. Okay. Did they just buy airplane tickets like normal
23 people, according to him?

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1 A. Pretty much so. Purchased, I believe he said, by Nibras.

2 Q. Okay. Did he indicate whether this travel was facilitated
3 through real documents or forged documents?

4 A. No, genuine passports, travel documents.

5 Q. Okay. Were they in his -- Fahd al Quso, were they in his
6 own name or some sort of alias?

7 A. No, they were in his name. And he -- from what I recall
8 from reviewing the 302, he wasn't sure if his larger travel name, al
9 Awlaqi, was on the passport. But later I saw the passport, and it
10 was -- in fact, did contain Awlaqi.

11 Q. Did you discuss -- so, I'm sorry.

12 Did he talk to you about a discussion he had with Nibras
13 about what to wear and what their appearance should be when they
14 travel?

15 A. Yes. Nibras' suggestion that they had more, say, western
16 or European attire rather than traditional Yemen attire.

17 Q. How about their beards when they travel?

18 A. Trim.

19 Q. Now, they didn't make it all the way to Singapore I think
20 we've established, right?

21 A. That's correct, according to Fahd.

22 Q. Okay. What did Fahd tell you happened?

23 A. He said that when they purchased the tickets to go to

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1 Singapore and this -- by this time, it was the early January of
2 2000 -- 2nd, 3rd, around that time -- and keeping in mind that the
3 millennium had just occurred.

4 So unbeknownst to them and apparently the travel agent, some
5 rules were changed as far as visas and entry to Singapore. So they
6 made it as far as the airport in Bangkok for layover, but then the
7 travel officials in Thailand would not permit them onward passage to
8 Singapore.

9 Q. And I'm sorry, I don't think I established this at the
10 beginning, but you just said this was January 2000?

11 A. That's correct, early January 2000.

12 Q. Okay. Okay. So they're at the -- they're in the airport
13 in Thailand, in Bangkok. What did -- you know, obviously trying to
14 get to Singapore.

15 What did Fahd tell you that he and his partner, Abu Nibras,
16 what did they do?

17 A. He said Nibras had enough English to where he tried to
18 convince the immigration or travel officials to let them travel on
19 because they were told they had the right documents, didn't need a
20 visa. But they were not permitted to go, so they received a 30-day
21 visitor visa for Thailand.

22 Q. Now, were they supposed to meet Khallad in Singapore?

23 A. Yes, sir.

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1 Q. Okay. So if they couldn't get to Singapore, did they ever
2 meet up with Khallad?

3 A. They did.

4 Q. And where did that happen?

5 A. That happened in Bangkok, Thailand.

6 Q. What did he tell you about that?

7 A. He said that they made contact through his family, through
8 Khallad's family. And then Khallad was notified, and within the day,
9 he then traveled to Bangkok to meet Nibras and Fahd al Quso.

10 Q. And did they transfer the money to Khallad as planned
11 there in Bangkok?

12 A. They did.

13 Q. After that, did they stick around, or what did they do
14 next?

15 A. No. They stayed for a few days to a week or so and then
16 headed -- returned to Yemen.

17 Q. So this is returning to Yemen, Abu Nibras and Fahd
18 al Quso?

19 A. That's correct.

20 Q. Did Fahd tell you who paid for this entire trip
21 to -- well, ultimately to Bangkok?

22 A. Yeah, the funds apparently came from the Bin'Attash
23 family, from Khallad's father.

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1 Q. All right. So we've talked about this trip, this money
2 transfer among some seemingly fairly connected individuals that Fahd
3 was telling you about.

4 Did you and your investigative team do further investigation
5 into this trip, try and figure out with significance?

6 A. Absolutely.

7 Q. At the time that you talked to Khallad -- or excuse me.

8 At the time you talked to Fahd al Quso and you heard this
9 story, what was your -- at the time, what was your thinking about its
10 importance?

11 A. Well, I and my partners spent a significant amount of time
12 on the timeline and the -- his talking about transporting money,
13 funds, outside of Yemen.

14 Our investigative theory at the time was it didn't make
15 sense. It was counterintuitive. Keeping in mind this is ten months
16 or so before the attack on the USS COLE, the operation was in
17 place -- surveillance, casing, that sort of thing, logistics -- so it
18 didn't make sense to us initially that the money would be going out.

19 But later we learned in subsequent months, if not years,
20 that that was corroborated by Khallad himself and that it appears
21 there was no connection or linkage to those funds leaving Yemen and
22 to the attack on the USS COLE.

23 Q. So if it wasn't linked to the attack on the COLE

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1 specifically, was it attached to -- excuse me -- did you discover
2 that that money was attached to al Qaeda operations more broadly?
3 And very generally?

4 A. More investigative theory than actuality, but the story
5 was that the money was primarily for Khallad to purchase a new
6 prosthetic device for his right leg. But the investigative theory is
7 that it -- you know, first-class tickets were purchased around that
8 time for two of the suicide hijackers of 9/11 to fly to the West
9 Coast of the U.S.

10 Q. Okay. I want to move on to another topic that you
11 discussed with Fahd al Quso, this brothers of -- brothers of jihad
12 luncheon, this lunch event that has come up a few times already.

13 A. Yes, sir.

14 Q. I think you said this was on the 11th of October of 2000,
15 right?

16 A. According to Fahd, yes.

17 Q. Okay. Okay. So Fahd tells you about this luncheon.

18 Where did -- where did this luncheon get started? I mean,
19 is it sort of impromptu? Planned? What did he tell you about it?

20 A. Impromptu would be the more accurate characterization.
21 Started in a -- kind of a residence, but, according to Fahd, without
22 a kitchen, but he called it the 'Bait al-Shabab, the house of the
23 young guys, and he said he rented that in Al-Burayqah in Aden for a

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1 meeting place of the brothers from with Aden -- living inside Aden,
2 other brothers visiting and for what is referred to as dawa or
3 preaching of Islam and discussion of religious topics.

4 Q. So they have this -- or they start to get together. How
5 did they get together? Did he tell you -- how did this luncheon come
6 together in the day?

7 A. Well, the way it started, Abdallah al Rimi arrived and
8 some other visitors not from the local area -- some of the other
9 local brothers came over. But beyond tea, they wouldn't have been
10 able to prepare a lunch, so -- so the luncheon, using that term,
11 shifted to al Azani's house, his residence that had a kitchen in
12 Al-Burayqah.

13 Q. This is the gentleman we talked about earlier, Yasir
14 al Azani?

15 A. That's correct.

16 Q. Did he tell you, in addition to the fact that there would
17 be a kitchen and some food available, why -- was there another reason
18 why they moved to Yasir al Azani's house?

19 A. Larger.

20 Q. Did Fahd tell you or give you sort of a list of people he
21 recalled were -- was present at this luncheon?

22 A. Yes, sir.

23 Q. Can you recall some of the names of folks he told you who

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1 were there?

2 A. Yes. Yasir Ahmad Qasim, Yasir al Azani, an individual
3 named Abu Safwan that he wasn't really associated with, and for our
4 purposes in the investigation, Abu Ali who was identified as Hassan
5 al-Khamri. His friend, younger close companion, Mohammed Durrama was
6 also there. Another individual going by the name of Khodor, not
7 further identified.

8 Q. So you get this list of names ----

9 A. I'm sorry. I mentioned before Abdallah al Rimi, who would
10 have been, if you will, the ranking AQ associate that was present at
11 that time.

12 Q. Well, and so that -- that kind of gets to the question I
13 wanted to ask, which was: Given what you knew at the time during
14 your conversation with Fahd al Quso, he's giving you this list of
15 individuals who were at this event, just the day before the
16 bombing -- or the attack on the COLE. Who among the list of people
17 that he gave you really stood out to you as somebody of interest to
18 you in the investigation at that time?

19 A. I would list the top three of Yasir Ahmad Qasim, Yasir al
20 Azani, and Abdallah al Rimi.

21 Q. And why were those folks of note to you at the time?

22 A. Well, Yasir al Qasim and Yasir al Azani, they were in
23 custody. We had an awareness that they were in custody. Abdallah al

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1 Rimi was at large.

2 So at that point, January or early February of 2001, we're
3 putting together the pieces of the mosaic as to who was involved in
4 the conspiracy, who would have been in the know that it was going to
5 happen and, just as important, what might have been in the planning
6 phases.

7 Q. And I think you talked about it earlier when we did some
8 of the photo identifications, but were these folks that you kind of
9 knew were associated through various -- this house of the boys you
10 described and other mosques, things like that, were they already
11 connected, to your knowledge?

12 A. The three I mentioned were ----

13 Q. Uh-huh.

14 A. ---- because their names had surfaced by that part of the
15 investigation. More bits and pieces and of acute interest for us,
16 photographs in the -- in our command room with linkage to various
17 aspects of the conspiracy.

18 Q. Did Fahd al Quso tell you about what the -- like the
19 substance of any discussion that happened during this luncheon was?

20 A. Didn't seem to be really anything of significance.
21 Religious matters as is custom for Fahd, according to him, but
22 nothing really of great significance to the investigation.

23 Q. All right. So, again, you have this lunch with all of

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1 these folks and several people of interest at the time that Fahd told
2 you about literally the day before the attack on the USS COLE.

3 Did you follow this investigative lead and look in more into
4 what the significance of this luncheon might have been?

5 A. Yes, to a significant degree.

6 Q. Okay. And what did your investigation reveal at least,
7 you know, when you got as far as you could about the importance or
8 significance to the attack on the COLE of this lunch?

9 A. Yeah. After spending quite a bit of time because of who
10 was at the lunch, the conclusion eventually was it wasn't what our
11 investigative theory was at the time, and there really wasn't a great
12 significance to the attack on the next day with the exception that
13 Abu Ali was in attendance.

14 And Abdallah al Rimi and Abu Ali in attendance fit some of
15 the modus operandi of the East Africa bombings because with our
16 investigative contingents, some of the case agents from Tanzania and
17 Nairobi were with us, and there were events like that on the day
18 preceding the East Africa bombings.

19 Q. I'm sorry. I actually didn't ask you the predicate
20 question, which was: What was the theory when you started looking
21 into it after hearing about this lunch? It was related to what the
22 folks from Tanzania and Kenya were telling you?

23 A. Right, because it appeared to have great potential for,

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1 you know, further unwrapping their -- their tactics, techniques,
2 procedures, modus operandi, who was connected to whom, the network,
3 and then further threat intelligence that would help disrupt future
4 plots.

5 Q. Okay. But ultimately, didn't appear that this lunch had
6 any real connection to the attack on the USS COLE?

7 A. Correct.

8 Q. Okay. I want to talk next about Fahd al Quso's specific
9 role in the -- in the plot to attack the USS COLE and its -- and its
10 aftermath.

11 A. Yes, sir.

12 Q. Okay? So kind of from when he hears about it up until
13 when he leaves Aden the day after the attack, or the late evening
14 after the attack.

15 A. Right.

16 Q. So did Fahd tell you when he found out that there was
17 going to be an attack on a U.S. warship in Yemen?

18 A. Yes.

19 Q. When did he say that he first learned about that in
20 comparison to the attack?

21 A. His estimate was approximately one and a half months prior
22 to the actual attack.

23 Q. So who told him about it?

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1 A. Jamal al Badawi.

2 Q. And what did Jamal al Badawi tell him at that time about
3 the attack? What was the plan?

4 A. That there was a plan by the brothers to attack an
5 American warship. He believed at that time, according to Fahd
6 al Quso, that the attack would be on the high seas but then later
7 learned that it was going to be in the port of Tawahi in Aden Harbor,
8 Tawahi Harbor.

9 Q. So that specific change I wanted to ask you about as we
10 get into this. Did you talk with Fahd al Quso about his specific
11 feelings about, like, the acceptability of an attack that might occur
12 on the high seas versus maybe in the Port of Aden?

13 A. Yes ----

14 Q. What ----

15 A. ---- in detail.

16 Q. What did he tell you about his feelings about that?

17 A. On the high seas, he would have been quite supportive
18 because his recurring theme that this is an American warship coming
19 to make war on Iraqi Muslim people, supporting the illegitimate
20 regimes, et cetera, that type of sentiment, propaganda.

21 But there's a religious concept, though, in their -- their
22 form of Islam about whether it would be religiously sanctioned to
23 conduct an attack within Yemen or Yemen proper itself.

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1 Q. What did he tell you about that, that theory and what he
2 felt about it?

3 A. Yeah, it's -- the term in Arabic is Ahed Al-Aman, which is
4 a conveying of security by the recognized leadership or government
5 within a country that that protection would extend to, in this case,
6 visitors, or anything that might be negative against the interests of
7 Yemen.

8 Q. Okay. And so did he have an opinion on whether a visiting
9 U.S. warship would be subject to this kind of protection?

10 A. Initially, but then that was, if you will, overridden by
11 the righteous and the important thing to do, for Muslims to, you
12 know, do everything they can to protect Muslims who in their
13 view -- I'm just parroting what he and others said -- where American
14 military is oppressing or creating harm to other Muslims.

15 Q. Okay. So just I want to make sure I have it clear. Fahd
16 al Quso, he, like, recognized this concept of protection but felt
17 that because this American warship was involved in attacking Muslims,
18 that that protection was invalid?

19 A. That's right.

20 Q. Okay. Now, Jamal al Badawi comes and tells Fahd al Quso
21 about this plan to attack a warship. What did he ask him to do as
22 part of that plan?

23 A. Yeah. For the previous question, I should add,

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1 though ----

2 Q. Yes.

3 A. ---- according to Fahd, Jamal was a big influence in
4 overcoming any, let's say, reluctance on the plot to attack an
5 American warship, citing Sheikh Usama bin Laden and what he had to
6 say about those sorts of things.

7 Q. So you had conversations with Jamal al Badawi about this
8 issue?

9 A. It sounded, according to Fahd, extensive.

10 Q. All right.

11 A. Extensive.

12 Q. All right.

13 A. As to what Jamal requested or tasked Fahd to do, Jamal
14 said if on the day of the attack -- which at this point could come at
15 any time -- he said if he is not in Aden during the attack, he would
16 need Fahd to obtain -- or the already-in-possession video camera to
17 film the attack.

18 Q. All right. So I want to walk through that a little bit,
19 and before we get into a little bit of those details, y'all talked
20 about the sort of timeline of the day of the attack and where people
21 were multiple times, right, with Fahd al Quso?

22 You talked about it multiple times during the several days;
23 is that right?

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1 A. Yes, sir.

2 Q. Was Fahd al Quso's story of how this all came together one
3 that came out immediately the first time you asked him or did it
4 develop and add or change over the course of several days?

5 A. Yeah, more -- more the latter. Developed over the course
6 of our series of interviews.

7 Q. Okay. So additional details and things as you went along?

8 A. That's right.

9 Q. Okay. Did -- in advance -- so -- okay.

10 So Jamal al Badawi asked Fahd al Quso potentially to
11 videotape an attack on the ship, right?

12 A. That's correct.

13 Q. Did Fahd tell you that he knew -- that he was shown where
14 this videotaping would take place?

15 A. Yes.

16 Q. What did he tell you about that?

17 A. He said that Jamal brought him to an apartment that
18 overlooked Tawahi Harbor and that would be the location where, once
19 he obtained where the video camera was, to go there and then wait
20 until the signal came and then tape the attack.

21 Q. And this video camera, did -- was that provided to Fahd?

22 A. Yes.

23 Q. Did he tell you what kind of camera it was?

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1 A. He said it was a Sony handheld camera.

2 Q. And did Badawi -- did Jamal al Badawi specifically point
3 to where in the harbor the attack might occur?

4 A. Yes, he did, according to Fahd.

5 Q. According to Fahd, where did he indicate the attack would
6 occur in the harbor?

7 A. He -- he pointed to what we refer to as the refueling
8 dolphins, so he accurately pointed out where the attack did take
9 place, and was what Jamal pointed to. The camera should be pointed
10 in that direction.

11 Q. Now, this was not -- this apartment where this filming was
12 supposed to take place where Badawi is showing him, this wasn't an
13 apartment that Fahd al Quso was going to stay in, was it?

14 A. Correct. He was not to stay there.

15 Q. Okay. Did he have the key to the place?

16 A. I can't recall if he said he had a key.

17 Correction. There was a location where the key would be
18 stowed ----

19 Q. Okay.

20 A. ---- for his -- if and when it came up to spring into
21 action to film, he would get the key.

22 Q. Okay. And was he aware, Fahd al Quso, whether others
23 would be using that -- using that apartment or in or out of that

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1 apartment?

2 A. Yes.

3 Q. Okay. What did he know about that?

4 A. As he put it, there were at least a couple of brothers
5 that were staying at the apartment, but he claimed he never saw
6 anyone else while he was there with Jamal.

7 Q. Okay. So kind of moving ahead to the morning of the
8 attack on the USS COLE, 12 October 2000, did Fahd al Quso tell you
9 exactly how he was supposed to be contacted?

10 A. Yes, sir.

11 Q. What did he say about that?

12 A. Jamal provided Fahd a pager, and he said at the time he
13 was to move to obtain the camera and get into place at the lookout in
14 Tawahi Harbor. He would receive a page, "0101," on that pager, and
15 that was the trigger to move into action.

16 Q. Did Fahd know in advance what day the attack would occur?

17 A. He did not, according to what he claimed.

18 Q. And so just to be real clear, when he -- what was Fahd's
19 understanding of -- when he received that code on his pager, what was
20 he supposed to go do?

21 A. He would go to retrieve the camera where it was
22 stored ----

23 Q. Uh-huh.

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1 A. ---- along with the key, and then, more than likely,
2 obtain a taxi transportation to the Tawahi Harbor lookout, go into
3 the apartment, get into place, and film the attack.

4 Q. Okay. So that was the plan.

5 Did he tell you what he -- what actually happened for him on
6 the morning of the 12th of October?

7 A. He did -- had a story, a narrative, about what happened
8 that morning.

9 Q. Fair to say that that -- again, that is a narrative also
10 that sort of developed and changed over the course of your interview?

11 A. Yes, sir.

12 Q. Okay. From that discussion you had with him, what did you
13 learn about what happened -- what he told you -- well, excuse me.

14 What did he tell you happened on the morning of the 12th of
15 October?

16 A. He said that after the morning prayer, he went back to
17 bed, at least for a short period of time, then up again to return to
18 his local masjid, or mosque, for study, more religious studies.

19 And then he said the pager was on vibrate, so he likely
20 missed the page when it -- at the time it actually arrived, so he
21 wasn't sure what time it arrived, what -- what time in the day the
22 sequence it was according to the more developed and consistent
23 narrative of what happened.

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1 So he said when he saw the page, he immediately jumped into
2 a taxi, then headed over to get the camera and the key. But while he
3 was on the way to the Tawahi lookout in a roundabout nearby, he heard
4 the sound of an explosion. And according to Fahd, he told the taxi
5 driver to stop and he left.

6 Q. I'll pause you right there. Did he indicate to you where
7 the camera was stored that he had to go get?

8 A. Yes.

9 Q. And can you recall where he told you that was?

10 A. I might be confusing this with -- I believe
11 his -- Jamal al Badawi's sister or -- or in-laws -- in-laws' house.

12 Q. And how about the key for the apartment on Tawahi?

13 A. I believe at Fahd's father's house.

14 Q. So he has to go to these two locations to get these two
15 items before then taking the taxi to the lookout spot?

16 A. According to him, yes.

17 Q. Okay. So he says -- you said he was -- told you that he
18 was in the taxi, heard the explosion. And then what did he tell you
19 happened after that?

20 A. He said he told the driver to stop, left the taxi, and
21 then headed to his residence.

22 Q. Did he say what he initially did with the camera? So this
23 is after -- after the explosion. He's got the camera. Did he tell

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1 you where he put it?

2 A. Yes, he did.

3 Q. Can you recall where he said that was?

4 A. I can't recall exactly whether it was the in-laws', his
5 sister, or ----

6 Q. Would it help ----

7 A. I shouldn't say Jamal's sister. Yes.

8 Q. Would it help you to review your 302 ----

9 A. Yes, sir.

10 Q. ---- just to remember what he told you?

11 A. Uh-huh.

12 ATC [LCDR SCHREIBER]: Showing the witness Appellate Exhibit
13 319MM, page 960.

14 Q. I'd refer you to the last paragraph on the page.

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

16 ATC [LCDR SCHREIBER]: Retrieving the document.

17 Q. Did that refresh your memory?

18 A. Yes.

19 Q. Okay. So what did Fahd tell you -- Fahd tell you that he
20 did with the camera after the explosion?

21 A. He stowed it at his sister's house after he went to mosque
22 for the noon prayer.

23 Q. Okay. Did he speak with Jamal al Badawi after the attack

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1 on the USS COLE?

2 A. According to Fahd, yes, he did.

3 Q. Did he tell you how many phone calls during that day
4 following the attack that he had with Badawi?

5 A. At least four.

6 Q. Okay. I want to kind of go through each one, just if we
7 can talk about each one individually and kind of what he said
8 happened on each call, okay?

9 So the first phone call, can you recall what he told you
10 about his first contact with Badawi?

11 A. Yes. He said he called him at the number at the
12 Ibn Al-Amir Institute up in Sana'a, and told him, you know, the event
13 happened.

14 Q. And did he tell you what Badawi's response to hearing that
15 the event had happened was?

16 A. He wanted to know what news there was at that time.

17 Q. Okay. Did he inform Jamal at that time whether there was
18 a video that was, you know, done as he was supposed to do?

19 A. I can't recall if it was the first call, but he did during
20 the series of calls say no video was obtained.

21 Q. Did he tell you what Jamal al Badawi's reaction to that
22 was?

23 A. He claims that in one of the -- the conversations that

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1 al Badawi's reaction was, "Good."

2 Q. After that first call -- between the first call and the
3 second call, what did Fahd tell you that he did for the -- that
4 middle part of the day, if you can recall?

5 A. I believe he returned to mosque, talked with Jamal about
6 coming up to -- up to Sana'a to meet with him and ----

7 Q. Well, so let's get to that second ----

8 A. Okay.

9 Q. ---- let's get to that second phone call.

10 A. Uh-huh.

11 Q. So there's a second phone call, and can you recall what
12 they talked about in that second call?

13 A. If -- the second call, I believe, where Jamal said that he
14 had three bags he needed Quso to obtain for him.

15 Q. And I think that you mentioned something about coming to
16 Sana'a?

17 A. Uh-huh. Yes, sir.

18 Q. Is that something that Fahd told you that they talked
19 about?

20 A. Yes.

21 Q. And that was, what, Badawi wanting him to leave?

22 A. Yes.

23 Q. What did Quso tell you that Jamal al Badawi wanted him to

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1 do with the suitcases or bags?

2 A. To take them to his in-laws' house.

3 Q. "His" being?

4 A. Jamal al Badawi's in-laws.

5 Q. And did Fahd al Quso actually go get these bags?

6 A. He did.

7 Q. Was he helped by anybody doing that?

8 A. I'm not -- uncertain if he had linked up with his friend,
9 Mohammed Durrama, at that point.

10 Q. Would it help to review your ----

11 A. Yes.

12 Q. ---- 302 ----

13 A. Yes, sir.

14 Q. ---- to remember what he told you about help?

15 A. Yes.

16 ATC [LCDR SCHREIBER]: I'm showing the witness Appellate
17 Exhibit 319MM, page 986.

18 Q. And I'd just invite you to kind of review the whole page.

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

20 A. Sir.

21 ATC [LCDR SCHREIBER]: Okay, retrieving the document.

22 Q. Did that refresh your memory?

23 A. Yes.

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1 Q. Went to get these bags, who was Fahd al Quso accompanied
2 by?

3 A. Yeah, he said in the sequence of events that day that he
4 had lunch at his father's house. Then in a taxi or a small bus, he
5 was joined by one of his friends from the local area named Ahmad
6 al Shini and he and Shini -- Ahmad al Shini went to the location to
7 pick up the bags. And then Ahmed al Shini then departed, went his
8 own way while Fahd was on his way to drop off the three bags at Jamal
9 al Badawi's mother-in-law's house.

10 Q. Now, there's a third phone call between Jamal al Badawi
11 and Fahd al Quso?

12 A. Uh-huh.

13 Q. Can you recall what he told you the substance of that
14 third phone call was?

15 A. Yeah, he said he couldn't remember if he contacted Jamal
16 or Jamal paged him or contacted him. Would have been a page. And
17 then discussed, you know, the plan for -- at that time to head to
18 Sana'a.

19 Q. Did they at any point discuss retrieving the truck and
20 trailer from the beach?

21 A. Yes, sir.

22 Q. What did Fahd tell you that he discussed with Jamal
23 al Badawi about that?

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1 A. Yeah, in one of those -- the conversations around that
2 time, he said Jamal said there was a white Nissan pickup or small SUV
3 that was near the bridge in Al-Burayqah and he needed Fahd to
4 retrieve that vehicle.

5 Q. What did Fahd say to that?

6 A. He said he wouldn't be able to do it because it would
7 raise too much suspicion. All his friends know that he doesn't have
8 a car, and that after all the, let's say, commotion, great commotion
9 that was going on in that part of Aden at the time, that it would
10 draw too much suspicion. So Fahd just ultimately said I can't do it.

11 Q. That day, though, did Fahd actually see the truck?

12 A. He did.

13 Q. What did he tell you about that?

14 A. He said he saw it parked on his way out of Aden exactly
15 where Jamal said it was.

16 Q. All right. And there's one last phone call between Fahd
17 al Quso and Jamal al Badawi on that day. Can you recall that -- what
18 he told you about that phone call?

19 A. I don't remember the substance of that call.

20 Q. Would it help to review the 302?

21 A. Yes.

22 ATC [LCDR SCHREIBER]: Showing the witness Appellate Exhibit
23 319MM, page 974.

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1 Q. Invite your attention to the last paragraph on the page.

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

3 ATC [LCDR SCHREIBER]: Retrieving the document.

4 Q. Did that refresh your memory about that fourth phone call?

5 A. Yes, sir.

6 Q. What did Fahd al Quso tell you about that fourth phone
7 call?

8 A. He -- in using his key for what time of the day it was, he
9 just finished the prayer for that time of the day, the Maghrib
10 prayer. And he said in this conversation, he told Jamal he wanted to
11 stow the bags in a place other than his mother-in-law's residence but
12 Jamal was insistent that he -- that the bags should be placed there.
13 Fahd, for example, suggested that the taxi driver, you know, might be
14 a location where he could stow the bags, but again, Jamal said no,
15 you need to go to my in-laws.

16 Q. Did you talk to Fahd about -- about what his understanding
17 of what Jamal al Badawi's knowledge of the Ships Operation was?

18 A. Yes.

19 Q. What did Fahd al Quso tell you that Badawi either -- that
20 Badawi told him he knew?

21 A. Uh-huh.

22 Q. What was Badawi's understanding that he relayed to Quso?

23 A. Yeah. According to Fahd, he said Jamal was very

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1 tight-lipped -- I believe he used the word "conservative" -- about
2 these details. So other than that the ship attack was coming, he
3 revealed nothing else about the details.

4 Q. At any point, did he indicate whether -- the method of the
5 attack on the ship, that Jamal knew the method of the attack?

6 A. Other than it would be, you know, first the high seas, but
7 then in the port, that a small boat or a boat of some kind would
8 actually ram the ship with explosives.

9 Q. Okay.

10 A. But no other details beyond that.

11 Q. Yeah, and that's kind of what I was getting at is that he
12 understood it's not just there was going to be an attack on a ship,
13 but how.

14 A. Right.

15 Q. He knew that? Badawi told him that?

16 A. That -- that method, yes, is how the attack would take
17 place.

18 Q. Did Fahd ever ask Jamal al Badawi exactly who was behind
19 the attack on the USS COLE?

20 A. I can't recall if he asked that direct question, but he
21 indicated that it was not revealed to him, to Fahd.

22 Q. Well, would it refresh your recollection as to whether
23 that question was asked if you reviewed your 302?

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1 A. It was asked.

2 Q. I'm sorry?

3 A. It was asked.

4 Q. Okay. So I want to make sure -- let me ask the question
5 again. I just want to make sure what answer I'm getting.

6 Did -- in your conversations with Fahd al Quso, did he
7 indicate if he ever asked Jamal al Badawi exactly who was behind the
8 attack on the COLE?

9 A. Can't recall if he said to us during the interview if he
10 asked that directly.

11 Q. Okay. Would it refresh ----

12 A. Yes.

13 Q. ---- your recollection ----

14 A. Yes.

15 Q. ---- to review the 302?

16 A. Uh-huh.

17 ATC [LCDR SCHREIBER]: Showing the witness Appellate Exhibit
18 319MM, page 979.

19 Q. And invite your attention to the large third paragraph on
20 the page there.

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

22 ATC [LCDR SCHREIBER]: Retrieving the document.

23 Q. Did that refresh your memory?

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1 A. Yes.

2 Q. Okay. So in your conversations, did Fahd tell you if he
3 ever asked Jamal al Badawi who -- specifically who was behind the
4 attack on the COLE?

5 A. Yeah. He mentioned first that he surmised that Jamal knew
6 the details. I mean, it's really quite obvious with his role and
7 what he was instructing, but he -- what he was tasking Fahd to do.

8 But he said he never directly asked Jamal for details as to
9 how the operation came about, who was involved, because Fahd claimed
10 he was worried about his culpability if he knew those details.

11 Q. And using that word "culpability," that was actually a
12 quotation, right?

13 A. That was in quotes in the 302, yes.

14 Q. Did Fahd al Quso ever indicate to you that he and Jamal
15 al Badawi intended to, like, abandon all this and report this plot to
16 attack ships to some sort of local authorities?

17 A. He claimed that.

18 Q. And what did he tell you about that?

19 A. He said that they essentially had a story that if
20 circumstances dictated, that they would -- they would report it to
21 the local authorities, being able to extract themselves from any kind
22 of legal and criminal justice peril.

23 Q. Was there any evidence that you uncovered that they ever

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1 actually, you know, reported this attack to the authorities before it
2 happened?

3 A. None whatsoever.

4 Q. I want to focus a little bit on -- a little bit back to
5 the camera and the taping aspect of this.

6 A. Uh-huh.

7 Q. Did Fahd al Quso describe, like, training he received from
8 Jamal al Badawi ----

9 A. Yes.

10 Q. ---- specifically about how to do this?

11 A. Yes.

12 Q. What did he tell you about that?

13 A. He said at the Tawahi lookout -- which had an excellent
14 vantage point for the entire harbor, spent a lot of time in that
15 location. He said that there was a tape that was already in the Sony
16 handheld camera and Jamal said it had been used for training
17 purposes, but then he claimed Jamal erased that tape from the
18 training, that Jamal appeared to be involved in filming prior to the
19 attack on the COLE, and then he had a fresh tape for Fahd to use with
20 the camera, demonstrated how to operate the camera.

21 Q. Did he indicate to you why that first tape was erased?
22 Did he tell you why they would have done that?

23 A. Because it, you know, could be something to implicate

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1 others and those involved in the greater plot.

2 Q. Now, at one point did he also indicate that -- did he
3 indicate about what he had done with the camera before he turned
4 himself -- or when he turned himself in to Yemeni authorities?

5 A. Uh-huh.

6 Q. What did he tell you about that?

7 A. At his sister and brother-in-law's house.

8 Q. Right.

9 A. He stowed it there.

10 Q. Right. But did he ever indicate that he tried to turn in
11 the camera to authorities?

12 A. Not that I recall. No.

13 Q. Did Fahd al Quso talk with you at all about any attempts
14 that Jamal al Badawi might have made to try and wave him off the
15 attack or wave him off filming the attack or say, hey, don't -- don't
16 do this or things like that?

17 A. Yes. According to what Fahd claimed, that -- I believe
18 the way he phrased it was along the lines of you can take your time,
19 and if you don't get there in time -- I'm paraphrasing -- then that's
20 okay.

21 Q. So this is Jamal al Badawi telling him it's okay to not
22 rush to get there?

23 A. According to Fahd al Quso.

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1 Q. Now, in fact, in the week prior to the attack, Fahd
2 al Quso was actually -- told you he was actually in Aden, right?

3 A. Aden, but then had gone up to Sana'a.

4 Q. Right. I'm sorry. I meant to say he was in -- he was in
5 Sana'a.

6 A. Sana'a with Jamal. That's correct ----

7 Q. Okay.

8 A. ---- according to him.

9 Q. Why -- did he tell you why he had left Aden and gone to
10 Sana'a?

11 A. There had been an ongoing dispute in the local masjid, or
12 mosque, and he was going up to -- you know, because he was a member
13 of one of the committees on the opposite side of that dispute, so he
14 was going up to Sana'a related to that dispute.

15 Q. Had he had any -- or did he indicate to you he had any
16 run-ins with the -- or legal issues with -- as regard to this
17 dispute?

18 A. Yes. The local authorities to some extent had been aware
19 of it, that there was a dispute at that masjid.

20 Q. So he goes up to Sana'a, you know, some just week or so
21 before the attack on the COLE.

22 A. Uh-huh.

23 Q. Did he tell you that -- did he talk about seeing Jamal

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1 al Badawi in Sana'a?

2 A. Indeed, he did.

3 Q. What did he say about what their interaction was in
4 Sana'a?

5 A. Well, in most significant part, he just said Jamal told
6 him he needed to return to Aden because the attack on the ship could
7 come at any time.

8 Q. And why was Jamal -- did he indicate why Jamal al Badawi
9 was up in Sana'a instead of being in Aden?

10 A. The way he portrayed it, it was related as well to the
11 dispute with the local imams.

12 Q. And I think -- I just want to get to -- there were some
13 discussions about who should have been responsible for filming,
14 Badawi or Quso.

15 A. Uh-huh.

16 Q. What did -- do you remember talking with him about that?

17 A. Yes.

18 Q. What did Fahd al Quso tell you about who was originally
19 supposed to have responsibility for filming the attack?

20 A. Yeah, it would be Jamal, but when Jamal reached out to him
21 approximately a month and a half before, he said that in the event
22 I'm not available in Aden, I'll need you to do it.

23 Q. Okay. And so then turns out Jamal al Badawi went to

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1 Sana'a?

2 A. Yes, that's correct.

3 Q. Did you discuss with Fahd al Quso or did he tell you his
4 personal feelings about the potential risks to, say, the greater
5 jihad that filming the attack might incur?

6 A. Yeah, he went back and forth on that, but I think by the
7 time the series of the interviews ended, said that it could cause
8 some complications and some harm to the -- to the cause.

9 Q. Did he indicate specifically whom it might cause trouble
10 for or risk for?

11 A. For -- for the Sheikh and what was going on with
12 the bin Laden organization as well as the local Shabab, the youths,
13 young guys.

14 Q. All right. I want to focus -- I want to focus on the last
15 session you had in the January interview, so January 31st.

16 A. Yes, sir.

17 Q. Up to this point, had -- up to this point, is it accurate
18 to say Fahd al Quso had denied filming the attack? Of course, he
19 didn't make it, right?

20 A. He did. That's what he claimed.

21 Q. And did he tell you whether he even had any intent to film
22 the attack?

23 A. He wavered in that regard.

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1 Q. So did you press him, then, on if he didn't do it, who was
2 supposed to do it?

3 A. Yes, sir.

4 Just going back, on your previous question ----

5 Q. Uh-huh.

6 A. ---- he said he discussed with Jamal, Jamal with him,
7 about the importance of, at the very least, going through the motions
8 that you would film it and in the event bin Laden was -- I'm sorry,
9 Jamal al Badawi was questioned about, hey, what happened, he would be
10 able to swear in good faith that they tried, but it -- but it
11 didn't -- but it didn't happen.

12 Now, to your present question ----

13 Q. Uh-huh.

14 A. ---- I won't speak for my partner, but I was convinced,
15 near 100 percent, that it had to have been filmed, okay? We knew the
16 other details of the operation and the mastermind, Abd al Rahim
17 Nashiri, was not leaving details to be left untaken care of,
18 particularly after the failed attempt against the USS THE SULLIVANS.

19 So what I'm painting there is the picture that I and my
20 partner spent a lot of time on the idea of the filming. And if he
21 didn't film it, who did film it? Because for al Qaeda purposes,
22 that's in the category of priceless propaganda.

23 So in that last session on the 30th/31st of January 2001, we

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1 had Fahd in a really good place. Rapport was solid. He was engaged
2 in questions and answers, and we had him right at the precipice that,
3 okay, if you didn't film it, then who did? And his reaction, from an
4 investigator's standpoint, was telling in that he had a big smile.
5 And he quipped, well, maybe the djinn did it, which is a figure
6 that's in between men and angels in Islam culture and history.

7 So at that point, if you're asking what happened, sir?

8 Q. Yes, what happened? He says that maybe the djinn did it,
9 then what happened in the room?

10 A. Quite surprisingly and shockingly, General -- Major
11 General Hammoud Naji Fadl sprung up on his feet and called a timeout
12 in the interview, and so we were greatly taken aback, to put it
13 lightly, as to what happened there.

14 And so they escorted Fahd al Quso out of the room. And when
15 we had a conversation with the general after that, he said that they
16 needed to allow Fahd some time to recap what he said and that the
17 government may need to make him a proffer, the government of Yemen.

18 So what we -- how we interpreted that was, was all new
19 information to the Yemen authorities and they were concerned that he
20 was about to disclose who actually filmed the attack.

21 Q. So that's the very end of January. You picked up and did
22 another -- or another couple of sessions on 3 February ----

23 A. That's correct.

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1 Q. ---- so just a few days later, right?

2 A. That's correct.

3 Q. He's read his rights again, right?

4 A. Exactly.

5 Q. Agreed to talk to you.

6 Looks like the first question out of the gate, did you ask
7 him who filmed the attack?

8 A. After a significant amount of rapport, as usual, right
9 back to the -- where we were.

10 Q. And can you recall what he told you that day?

11 A. Quite unfortunately, we never -- never got back to that
12 point with him in that or subsequent session, and there was no
13 further information about if anyone filmed the attack.

14 Q. Just a couple other little pieces from the second
15 interview that were maybe additions to some of the first or
16 different.

17 There's -- to be fair, is it accurate to say that in that
18 second interview, the February interview session, that you covered a
19 lot of the same ground as you did in the first set just a few days
20 earlier?

21 A. That's fair.

22 Q. In fact, some of the things we've talked about have kind
23 of crossed over both of them, right?

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1 A. Right.

2 Q. Did he indicate to you anything else during that second
3 interview, like another -- other items or things that stood out in
4 the Al-Tawahi apartment when he visited in that second -- in the
5 February interview?

6 A. Beyond that it was apparent that at least two other
7 brothers were in or using that apartment, I can't recall anything of
8 significance beyond that.

9 Q. I guess the question is: Did he indicate -- do you
10 remember him indicating to you about other items of interest he saw
11 in that apartment?

12 A. I can't recall.

13 Q. Would it help to review your 302 to recall ----

14 A. Yes.

15 Q. ---- what he told you?

16 MJ [COL ACOSTA]: Agent McFadden, did you say yes, it would?

17 WIT: Yes, sir ----

18 MJ [COL ACOSTA]: Okay.

19 WIT: ---- Your Honor, uh-huh.

20 ATC [LCDR SCHREIBER]: Showing the witness 319MM, page 1136.

21 Q. I direct your attention to the top paragraph.

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

23 Q. Did that refresh your memory?

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1 A. Yes, sir.

2 Q. What else did Fahd al Quso note that he saw in the Tawahi
3 apartment?

4 A. He said there were a set of binoculars in there.

5 Q. In that -- we talked a little bit about his feelings about
6 the attack and other, you know, situations.

7 Did he indicate more specifically his feelings about the
8 attack on the USS COLE in the -- that interview?

9 A. Yes. He said that, you know, it -- in his estimation, it
10 was probably a mistake and that, you know ----

11 Q. And actually, I want to save that for second because I'm
12 going to ask you about that specific statement. But I'm talking
13 about -- and I should have asked this more clearly.

14 Did he express to you feelings about his own participation
15 in the -- in the attack? His own participation in the plot, did he
16 tell you specifically how he felt about that?

17 A. He minimized it, and he said his only participation was to
18 potentially film the attack.

19 Q. All right. Right. But his -- his feeling about that.
20 His, like, personal attitude about his own participation, whether he
21 was happy about it, sad about it. Did he indicate to you how he
22 felt?

23 A. On that session, I think he was in a place where he was

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1 worried about his own -- his future and his culpability.

2 Q. Let me ask you, then, about that part. Actually, we're
3 going to come back to that in just a second, okay?

4 So we've -- we're briefly going to move on to the last
5 little section of -- and if you need to take a break or anything, let
6 me know, but we're on the last section of this. And this is his
7 actions following the day of the attack on the COLE. So we've gone
8 through the phone calls that happened into the early evening, so
9 we're going to move on past that.

10 What did Fahd al Quso tell you that he did on the night sort
11 of after the phone calls, after everything? What did he do that
12 evening?

13 A. He traveled up to Sana'a.

14 Q. Did he tell you who he went with?

15 A. Yes.

16 Q. Who was that?

17 A. Mohammed Durrana.

18 Q. And where did they go specifically in Sana'a?

19 A. To meet with Jamal at the Ibn Al-Amir Institute.

20 Q. And just for those of us who may not know, what is the
21 Ibn Al-Amir Institute?

22 A. It's a facility, a college, if you will, a training school
23 for religious studies.

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1 Q. Did he tell you when they got there to Sana'a?

2 A. That evening, later that evening.

3 Q. And they get there late in the evening. How did they get
4 into the facility, this institute?

5 A. Made contact with Jamal who told the guard at the fence to
6 let them in.

7 Q. Okay. So was Jamal al Badawi present at the ----

8 A. He was.

9 Q. ---- facility?

10 A. According to Fahd, yes, he was.

11 Q. Were there others there as well?

12 A. I can't recall who else was there at the time. But the
13 next day, there were others.

14 Q. Did they have any -- did he tell you about a topic of
15 discussion before they all turned in for the night?

16 A. About any news on the attack, but that's about all I can
17 recall.

18 Q. And then over the next day or two, do you recall what he
19 told you were his sort of basic activities?

20 A. Yes. Looking for news, watching Al-Jazeera, for example,
21 news out of Doha for what happened with the attack. Abdul al Rimi
22 joined them.

23 Q. I was going to ask you, so Abdul al Rimi joins them.

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1 Did he tell you about any discussion he had with Abdul
2 al Rimi?

3 A. I can't recall that detail.

4 Q. Would it help you to review your 302?

5 A. Yes.

6 ATC [LCDR SCHREIBER]: Showing the witness AE 319MM, page 988.

7 Q. And I invite your attention to the middle paragraphs on
8 the page.

9 MJ [COL ACOSTA]: Counsel, to be clear, that's not from this
10 last session that you were talking about. This is just from the
11 first session again, correct?

12 ATC [LCDR SCHREIBER]: That's correct. This document is from
13 the first 302, correct.

14 MJ [COL ACOSTA]: Okay.

15 ATC [LCDR SCHREIBER]: From the January 302.

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

17 A. Okay, sir.

18 ATC [LCDR SCHREIBER]: Retrieving the document.

19 Q. Did that refresh your memory?

20 A. Yes.

21 Q. So what did Fahd tell you that he discussed with Abdul
22 al Rimi when he arrived?

23 A. Yeah. In the conversation they had, Fahd said he brought

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1 up if there might be concerns about the impact it would have on the
2 Shabab, the young guys that they all associate with.

3 And Abdul al Rimi, according to Fahd, said yes, it would
4 definitely have an impact on things like travel, travel to
5 Afghanistan for example.

6 Q. And "it" being the attack on the COLE?

7 A. The attack on the COLE. And he provided an atmosphere of
8 the concern on al Rimi's part as well as his, Fahd's, that it was
9 going to be tough on the Shabab in the coming days.

10 Q. Was Fahd al Quso aware of when Jamal al Badawi was
11 arrested?

12 A. Yes.

13 Q. And I think we touched on it all the way in the beginning,
14 but where was Fahd -- so Fahd al Quso was in Sana'a. Did he ----

15 A. Correct.

16 Q. So he heard about Jamal's arrest when he was in Sana'a?

17 A. According to him, yes.

18 Q. And when did Fahd al Quso tell you that he found out he
19 was wanted in comparison to Jamal's arrest?

20 A. Around that time. He said Jamal was taken into custody
21 about five days later from that point.

22 Q. Okay.

23 A. And so then he became aware that he was wanted.

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1 Q. Okay. So he became aware sometime around the same time
2 that Jamal al Badawi was arrested?

3 A. Yes.

4 Q. And you touched on this, but Fahd al Quso turned himself
5 in to Yemeni authorities?

6 A. Yes, sir.

7 Q. In Aden?

8 A. In Aden.

9 Q. You were about to talk about this earlier. Focusing on
10 that last interview you had with him in February of 2001, did Fahd
11 al Quso apologize for his role in the attacks on the USS COLE -- on
12 the attack on the USS COLE?

13 A. In his way, his own way.

14 Q. Can you recall what he said?

15 A. I can't recall exactly, but it appeared to be some
16 sincerity with equivocation because he was concerned about ----

17 Q. Would it to help you recall what he said exactly if
18 you ----

19 A. Yeah.

20 Q. ---- reviewed your 302?

21 A. Yes, sir.

22 ATC [LCDR SCHREIBER]: This is back to the February 302, Your
23 Honor. This is Appellate Exhibit 319MM, page 1143.

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1 MJ [COL ACOSTA]: Uh-huh.

2 Q. And I'd direct your attention to the kind of second
3 paragraph, the big one at the top of the page.

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

5 A. Yes, sir.

6 ATC [LCDR SCHREIBER]: Retrieving the document.

7 Q. Did that refresh your memory about the apology?

8 A. Yes, sir.

9 Q. What did you -- Fahd al Quso tell you?

10 A. He said -- at that point he claimed that he was truly
11 sorry for what happened and that he did not know if the UBL group was
12 sorry for carrying out the attack.

13 ATC [LCDR SCHREIBER]: If I may have just a moment, Your
14 Honor?

15 MJ [COL ACOSTA]: You may.

16 **[Counsel conferred.]**

17 ATC [LCDR SCHREIBER]: Your Honor, that is all I have on
18 direct. I imagine you'll want to take a recess right now.

19 MJ [COL ACOSTA]: All right. Are we going to go to cross on
20 this statement and then we're going to go, and then we'll pick up
21 with the redirect on the next statement, correct?

22 ATC [LCDR SCHREIBER]: That was our intention, sir, yeah.

23 MJ [COL ACOSTA]: That is mine as well, just to keep

1 continuity.

2 Okay. We'll take a recess until 1445.

3 Mr. McFadden, same warning as always: Don't discuss your
4 testimony or your knowledge of this case with anyone other than
5 counsel for either side.

6 WIT: Yes, sir.

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

9 MJ [COL ACOSTA]: The commission is in recess until 1445.

10 **[The R.M.C. 803 session recessed at 1429, 11 April 2023.]**

11 **[The R.M.C. 803 session was called to order at 1447, 11 April 2023.]**

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

13 Government, all parties present as before?

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

15 MJ [COL ACOSTA]: Defense?

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

17 MJ [COL ACOSTA]: Let's see. You can have a seat.

18 **[The witness, Robert McFadden, resumed the witness stand.]**

19 MJ [COL ACOSTA]: Just remind you that you remain under oath.

20 Defense, you may proceed.

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

22 **[END OF PAGE]**

23

CROSS-EXAMINATION

Questions by the Defense Counsel [MR. PADILLA]:

Q. Mr. McFadden, I want to take you back a few hours ago now, and I want to start with that Quso kiss, okay? I know that you provided the details surrounding that kiss, but I have -- but I have a couple more questions related to that, okay?

A. Yes, sir.

Q. So, again, just setting the scene, you and your team had been waiting for months to interview some of the first sort of real suspects in this case, correct?

A. That's correct.

Q. You finally get the opportunity. You go to Aden PSO Headquarters to conduct the interview, correct?

A. Correct.

Q. And as you're waiting there, the first day -- is that right?

A. Yes.

Q. Okay. Quso is in the room already; is that right?

A. Correct.

Q. And this person that you've identified on the crosswalk as number 5 walks into the interview room, right?

A. That's correct.

Q. Makes his way to Quso?

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1 A. Directly.

2 Q. They exchange maybe some words, correct?

3 A. Yes.

4 Q. And, again, the person identified as number 5 on the
5 crosswalk then kisses Quso's cheeks, right?

6 A. Right.

7 Q. He then whispers something into Quso's ear, correct?

8 A. Yes.

9 Q. Now, you can't hear what is being said; is that right?

10 A. That's right.

11 Q. But you're watching this play out, right?

12 A. Yes.

13 Q. All right.

14 A. Yeah.

15 Q. And is it fair to say that based on what you're perceiving
16 is happening in front of you on the first day, that this person,
17 again, identified as number 5 on the crosswalk, a person you
18 described as a high-level PSO official from Aden, correct?

19 A. Correct.

20 Q. Again, is it your presumption that this person, number 5,
21 is offering words of encouragement or reassurance to Quso? Is that
22 how it appears to you?

23 A. From my observation, I could not come away with any other

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1 conclusion.

2 Q. And it's clear that they either knew each other or were
3 certainly very comfortable with one another; is that fair to say?

4 A. Fair to say.

5 Q. And is it also fair to say that Quso, again, based on your
6 perception of how this is playing out, appeared to be, again,
7 reassured or comfortable about what was maybe going to happen through
8 the interview process?

9 A. Apparently.

10 Q. Would it be fair to say that Quso appeared to feel safe or
11 protected after this person had come in and addressed him in
12 such -- in such a way?

13 A. Yeah. Any more interpretation of that by me would be
14 just, you know, getting into deep speculation territory.

15 Q. But certainly, there -- Quso and the guards are laughing
16 and joking with one another at that point?

17 A. No, I didn't observe any laughing or joking by others in
18 the room. Because of the rank of this official, everyone snapped to
19 attention, and they were almost sitting at attention after he came
20 into the room, from what I recall.

21 Q. Okay. Now, what the government didn't ask, and I'd like
22 to ask you, is: Again, based on what you saw day one, Quso coming
23 in, what was your initial reaction or feeling watching this play out?

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1 A. Shock, anger, frustration, and what the heck just
2 happened.

3 Q. Right. And, you know, we've -- we've been talking about
4 interviews that you and your team and other teams were conducting in
5 Aden at the time, hundreds maybe by then, I'm not sure, but a lot,
6 right?

7 A. Especially in the early phase, but then there was that
8 lull until the agreement was worked out, the Bodine agreement.

9 Q. Okay.

10 A. Yes.

11 Q. But ----

12 A. But many interviews, yes, sir.

13 Q. Many interviews, right.

14 A. Right.

15 Q. At the end of the day, there were many interviews.

16 A. Yes.

17 Q. Okay. And again, we've talked about this at length, but
18 in order to get those interviews done and to be able to coordinate
19 all the things that needed to be coordinated to get people in, you
20 had to deal with the PSO?

21 A. Oh, yes.

22 Q. And you had to deal with this person that we've been
23 talking about here, number 5; is that right?

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1 A. On just about a daily basis.

2 Q. Okay. And this is now late January 2001. Again, I know
3 that we've talked about this person before and his reputation before
4 and his, at a minimum let's say, sympathetic views to al Qaeda, and
5 at worst -- I think one former FBI agent who had testified, not in
6 these sessions, but in a prior session, described that person,
7 number 5, as full-bore al Qaeda.

8 I would think that even more sort of emotions, again, based
9 on the direct contact that you have with this person as relates to
10 getting witnesses in to be interviewed, right?

11 A. Yes. Right.

12 Q. You mentioned at the very end of your direct examination
13 an instance where the interview was stopped with Quso, correct?

14 A. Yeah, at the end of the session on or about the 30, 31st.

15 Q. Right. I think it was General ----

16 A. Hammoud Najji Fadl.

17 Q. Fadl. Stopped the interview having to do with the taping,
18 correct?

19 A. Yes.

20 Q. Okay. Beyond that incident, were there other incidents
21 where either that same person, General Fadl, or PSO number 5 ever
22 stopped the interview process with Mr. Quso based on the questions
23 that you were asking him?

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1 A. Did not appear to stop the interview based on the
2 questions, but there was disruption at least one other time from PSO
3 Officer Number 5.

4 Q. And tell me about that.

5 A. Almost identical to what happened at the beginning of the
6 first interview session. A few sessions later -- I believe it was
7 later in the afternoon or early evening -- he came in during the
8 interview. All the officers from Yemen snapped to attention. The
9 interview stopped. He went over and again greeted warmly Fahd
10 al Quso. They exchanged whatever they exchanged quietly whispering.
11 And then he stayed for a little bit as the interview continued and
12 then left the room.

13 But I -- for my part at that point, as we were making more
14 progress with the interview, I loudly banged by hand on the table and
15 asked our counterparts, what's going on here?

16 Q. And did they have a response for you?

17 A. No, because they were -- you know, this is their senior
18 ranking officer there, so I don't recall if they had any response
19 other than an embarrassed look.

20 Q. Did you ever ask about why Fadl stopped the questioning at
21 that point? Was there any sort of follow-up by you or the rest of
22 the team about, hey, we were, you know, getting to sort of a good
23 part there. Why -- why did you stop?

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1 A. Okay. Going back to the previous where we talked
2 about ----

3 Q. Correct, yes.

4 A. ---- General Fadl?

5 Q. Right.

6 A. Yes, we had -- it's been a long time, of course, but I
7 would say that evening, after the session ended, when he ended it, we
8 had quite extensive conversation briefly with Hammoud, because he
9 left to go somewhere. But with our two counterparts that Ali and I
10 were with for much of the investigation, we had a lot of
11 conversation.

12 Q. Were they able to give you sort of an explanation that
13 made any sense as to why they would have stopped at that very moment?

14 A. Yes. They weren't exactly sure, but they believed it was
15 because, as General Fadl said as he left the room with Fahd, that we
16 need to give him time to think about this and that there may be a
17 situation where the government of Yemen, the judicial system, makes
18 some kind of a proffer to him.

19 And so in -- in a sidebar, in confidence, our two main
20 counterparts -- which we already had established a really solid
21 relationship with them -- they -- there was some speculation that we,
22 the U.S. investigators, were covering new territory that Fahd had not
23 provided in his previous interviews with the PSO and MOI.

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1 Q. Okay. Is it fair to say, then, that they wanted the first
2 crack at him as it related to that specific issue about the
3 videotaping?

4 A. That was one of the theories, yes.

5 Q. Did you ever follow up with that and ask anybody there
6 from the PSO team, PSO investigators -- since you didn't get back to
7 it, right, did you ever ask them, hey, did you ask him about this,
8 and if you did, what did he say? Did ----

9 A. Yeah, I don't remember if it was phrased that way, but
10 something similar to that undoubtedly. We had -- around that time,
11 that was one of the key pieces of evidence and information we were
12 looking for.

13 Q. That tape, right?

14 A. That tape and how it worked, if it was taped, who taped
15 it, where it is.

16 And so, yes, to your question, the short answer is we had
17 copious conversations with our counterparts as to is there anything
18 new, any new developments, any new leads, any indication that there
19 is a tape that exists.

20 Q. And that was negative, I'm assuming?

21 A. That was a negative.

22 Q. Okay. And just to sort of finish that off with the tape,
23 you mentioned the potential benefit a tape like that would have been

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1 to al Qaeda, right?

2 A. Yes.

3 Q. Huge for them in that moment?

4 A. Major, major propaganda piece.

5 Q. Were you ever able to locate in any subsequent years any
6 evidence that there was an actual tape that showed the actual bombing
7 of the COLE?

8 A. No, sir. And I'm convinced at this point and many years
9 ago was convinced that if it existed, it would have appeared.
10 Priceless.

11 Q. Right. And is it also fair to say that, aside from
12 anybody from al Qaeda who may have videotaped the bombing of the
13 COLE, you never discovered any videotape from anywhere, whether it
14 was from the port or, you know, someone in the neighborhood, nothing
15 whatsoever about an actual tape that showed the actual bombing of the
16 COLE, right?

17 A. That's correct, including the video -- port security
18 surveillance camera that initially, strong belief that there was
19 coverage, but after extensive looking into it, nothing ever surfaced.

20 Q. Nothing came up. Okay.

21 Getting back to the PSO and number 5 and anybody else who
22 would have been in the room with you during Quso's interview, did you
23 ever notice any facial gestures or hand gestures made by any of the

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1 PSO people to try to get Quso to either answer in a certain way or to
2 not answer a certain question?

3 A. No, sir.

4 Q. Didn't notice anything like that?

5 A. No, I didn't.

6 Q. If someone were to say that they believed that that's what
7 may have happened during the interview process, would you think that
8 that's not true?

9 A. I'm sorry ----

10 ATC [LCDR SCHREIBER]: Objection. Calls for speculation and
11 assumption of somebody else's point of view.

12 MJ [COL ACOSTA]: Defense? He can --

13 DC [MR. PADILLA]: I ----

14 MJ [COL ACOSTA]: Asking him whether or not it's true or not
15 what somebody else said, that's kind of the -- an area that we don't
16 get witnesses into, correct?

17 DC [MR. PADILLA]: Fair enough, Judge.

18 MJ [COL ACOSTA]: All right. Sustained. Go ahead.

19 There are questions that you can ask about are you aware or
20 did you know if somebody else did say such a thing, but the way you
21 asked it is not the way to go.

22 DC [MR. PADILLA]: Right. And I was going to initially
23 rephrase there, Judge. I know that that was maybe a convoluted sort

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1 of question.

2 Q. Did you hear anything like that ever happening during the
3 interview process? Hear about something like that?

4 A. I can't recall hearing that, but for how many hours that I
5 and a few others spent in the interviews from October of 2000 to deep
6 into 2002 and even 2003, I would have been skeptical.

7 Q. Okay. And I want to finish this part off about the
8 interview process on that first set of interviews in late January and
9 then that second portion at the beginning of February.

10 You mentioned on direct that the interviews happened again
11 at the PSO Headquarters, correct?

12 A. Correct, for the south of Yemen, yes, sir.

13 Q. Okay. Yes, in Aden.

14 For both of those sessions, were -- was that same room that
15 you described used for both of those sessions?

16 A. For every interview with Fahd al Quso, yes ----

17 Q. Thank you.

18 A. ---- except for the interviews later in Sana'a after 9/11.

19 Q. Right. Okay.

20 I want to ask you a couple questions about the actual
21 procedures that you used in Badawi's statement, I believe, and
22 certainly Quso's statement as well, okay?

23 And the government asked you some questions about Miranda

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1 warnings. Remember that?

2 A. Yes.

3 Q. And I think that your response to that was every time he
4 came in for an interview or you stopped for the day for an interview
5 and then restarted, you would read Miranda warnings to Quso; is that
6 right?

7 A. That's right.

8 Q. All right. And you used the full Miranda warnings when
9 you did that, right?

10 A. Right.

11 Q. And to that point, is it fair to say that that's maybe one
12 of the first or the second times that you used full Miranda warnings
13 when talking to people that you interviewed?

14 A. For myself, for Fahd al Quso, that was the first time
15 because he was the first actual suspect that I had access to.

16 Q. You didn't -- you didn't -- you weren't -- you didn't sit
17 in on the Badawi interview?

18 A. That's correct, yeah. I was ----

19 Q. That would have happened just a little bit before the Quso
20 interview, correct?

21 A. Say again, sir.

22 Q. The Badawi interview would have happened just -- just
23 before the Quso interview, right?

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1 A. It -- that's correct. A few days before but then
2 continued while we were -- in parallel.

3 Q. And again, at that point -- and maybe I should let you
4 answer this, but at that point, here you have a suspect, criminal
5 investigation, you want to read full Miranda thinking, of course,
6 maybe down the road that this is going to be a prosecution, correct?

7 A. Yeah, that was our guidance instructions from our
8 headquarters -- DoJ, I should say.

9 Q. And you want -- you wanted to give those warnings so that
10 if it did come to a prosecution later on down the road, you would be
11 able to introduce this statement if there was a confession or ----

12 A. That -- exactly, that it was informed and voluntary.

13 Q. Right. And again, that was the point of the interview,
14 right? Talk to Quso, get him to confess about what he had done,
15 right?

16 A. To talk about the elements of the crime, yes, sir.

17 Q. Right.

18 A. As well as any other actionable intelligence, threat
19 information.

20 Q. Right. And my follow-up was going to be that, right?

21 So you wanted him to confess to his involvement in the COLE
22 and then secondarily perhaps information about other people, other
23 things, intelligence-related sort of stuff, right?

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1 A. That's accurate, yes, sir.

2 Q. And, in fact, Quso is indicted ultimately in 2003 in the
3 Southern District of New York, right?

4 A. Correct.

5 Q. Now, Quso's never extradited, never brought to the
6 United States for prosecution, correct?

7 A. That's correct. No extradition treaty existed between us
8 and Yemen.

9 Q. Did you ever have any conversations with the Yemenis about
10 extraditing Quso at all? Was there any talk about, you know, this is
11 where we'd like to be, this is what we'd like to do, anything like
12 that?

13 A. Conversations about it, yes, indeed.

14 Q. And what was the Yemeni government's response to your
15 inquiries about bringing Quso to the United States for prosecution?

16 A. I would have been aware of what was discussed at the seat
17 of government level but -- but not the finer details, other than it
18 was consistently Yemen of government -- or Yemen government says no
19 and won't budge on that because there's not an agreement in place
20 about extradition.

21 Now, at my level with counterparts from the PSO, there was
22 ongoing discussion about, you know, if there could be something to be
23 worked out, wouldn't it be great if we could have Jamal and Fahd in

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1 our criminal justice system.

2 Q. But what you were hearing from the government was, "Never
3 going to happen," right?

4 A. Exactly.

5 Q. I want to ask you some questions about when -- about when
6 Quso is -- self-surrenders, I guess, in Aden, okay?

7 A. Yes, sir.

8 Q. All right. So you mentioned on direct that either the day
9 of the COLE or the next day, Quso goes to Sana'a, correct?

10 A. Correct.

11 Q. Jamal al Badawi's up there?

12 A. Yes.

13 Q. And at some point within four or five days, let's say,
14 Badawi learns that some of his family members have been taken into
15 custody by the PSO, correct?

16 A. Yes, and that he was wanted.

17 Q. He decides to turn himself in, correct?

18 A. Correct.

19 Q. And I think you mentioned within a day or two of that,
20 Quso finally has access to his family and learns that his father's
21 been taken into custody, correct?

22 A. At least his father and maybe some other male family
23 members, correct.

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1 Q. Okay. Do you have any idea who the other male family
2 members may have been?

3 A. I don't. If I had that detail, I don't recall.

4 Q. Okay. And again, I think that we've talked about this at
5 least a few times, about the PSO's sort of protocol or how they
6 operated in rounding up people on investigations, right? I think
7 we've talked about that some ----

8 A. That's right. Yes, sir.

9 Q. All right. And I think that you would agree with me that
10 that's not how we do things here, but that happens in Yemen, correct?

11 A. Yeah. A very foreign concept to us, but that's right.
12 That's how they -- their system works in that country.

13 Q. All right. So based on Quso learning that his father's in
14 custody, I think he tells you maybe that he's an older gentleman and
15 it's not a good place for his father to be, he decides to turn
16 himself in as well, correct?

17 A. That's correct.

18 Q. All right. In terms of the father -- I already asked you
19 that for other family members. You don't know anybody else off the
20 top of your head, any other family members who may have been
21 taken ----

22 A. Yes, sir.

23 Q. Okay. And I think that when we did some of the other

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1 witness interviews, I may have asked you some questions about if you
2 knew that family members of people who had agreed to sit down for
3 interviews with the FBI and NCIS, if you knew whether or not family
4 members had been taken into custody in order to get them -- in order
5 for them to agree to interviews. Remember maybe me asking you some
6 questions like that?

7 A. I remember the questions like that. But for the
8 witnesses, the lay witnesses, weren't aware of any custody situation
9 as a quid pro quo to talk with the investigative team.

10 Q. All right. So is this the first time that maybe you're
11 understanding that family members have been taken into custody, and
12 based on that Quso has agreed to self-surrender himself to the police
13 department?

14 A. Yes, that's correct.

15 Q. Beyond learning that fact that his father and maybe some
16 male family members were taken into custody, do you have any idea if
17 those people were promised anything or if Quso was promised anything
18 in order to get his father or those people released in order for him
19 to turn himself in and ultimately sit down for an interview with you
20 folks?

21 A. Okay. For Fahd, no awareness of anything like that. But
22 you referred to "those people" ----

23 Q. Family members.

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1 A. Family members.

2 Q. His father ----

3 A. Yeah, no, sir.

4 Q. ---- nothing like that?

5 A. Had not heard anything.

6 Q. No details?

7 A. No details, no indications of if that occurred and, if so,
8 how it might have worked.

9 Q. And I think that you mentioned that you arrived in Yemen
10 in around 17 October. Does that sound about right?

11 A. Great memory. Yes, sir. Early morning 17 October.

12 Q. And within a week of that, I think that you mentioned that
13 you knew that Quso was in custody; is that accurate?

14 A. Some -- somewhere around that time, yes.

15 Q. Okay. I think that you also mentioned that, upon learning
16 that Quso was in custody, you began to make inquiries about having
17 access to him; is that right?

18 A. To him and the others in custody, yes, indeed.

19 Q. Other suspects, right?

20 A. Yes, sir.

21 Q. And I think that you mentioned that it took several months
22 to get that worked out so that you would have access to those -- not
23 you personally with Badawi, but U.S. investigators having access to

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1 Badawi and then you and your team having access to Quso; is that ----

2 A. Correct. From October 12th until late January of 2001.

3 Q. I think that you mentioned that one of the things that
4 caused you some problems was getting the Bodine Memo worked out; is
5 that fair to say?

6 A. Yeah, making it through -- exactly, through the Yemen
7 government and its process ----

8 Q. Okay.

9 A. ---- for an agreement.

10 Q. So that Bodine Memo -- I don't know if you remember this,
11 but the Bodine Memo was signed by both countries in late November of
12 2000. Does that seem about right?

13 A. I don't remember when it was actually signed, but yes,
14 somewhere around that time.

15 Q. Okay. So from late November until late January -- that's
16 a full two months.

17 A. Yes.

18 Q. What was happening?

19 A. Largely related to the logistics and the mechanics of how
20 the interviews would be worked out. You had ----

21 Q. What do you mean by that? Because the Bodine Memo lays
22 out how it's going to happen, right?

23 A. Yes, sir.

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1 Q. People are going to come in and how questions are going to
2 be asked ----

3 A. Right.

4 Q. ---- and perhaps maybe something about topics.

5 So when you're talking about logistics and things, what do
6 you mean?

7 A. I -- not so much the logistics. I misspoke. The
8 mechanics of it. Because we had officer -- PSO Officer Number 5
9 still in charge where things were going on, and it was -- continued
10 to be a near daily negotiation with him about getting started with
11 the interviews, about what time, where, who would be involved. And
12 it also speaks to the speed or lack thereof or the bureaucracy in
13 Yemen at the time. And I'm trying to think if Ramadan may have been
14 a factor as well.

15 So what I'm trying to paint is a number of different factors
16 came together that slowed things down until we couldn't get the other
17 side to agree to start the interviews until late January.

18 Q. You mentioned the presence of the PSO and specifically
19 number 5. Did you get the sense that they were dragging their feet
20 because that's how it worked there, or did you get the sense they
21 were dragging their feet as a roadblock, as an impediment to you
22 having access to those suspects?

23 A. I won't speak any more broadly than what I observed and

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1 witnessed with PSO Officer Number 5. And he was the boss, the big
2 boss; what he said happened.

3 But I would say to characterize him as a roadblock and
4 wanting to slow roll us and being an impediment, that continued right
5 up until we finally were able to get into the interviews with Jamal
6 and Fahd.

7 And in between, too, from what I recall, through NCIS and
8 FBI leadership, up through the embassy, the ambassador, the deputy
9 chief of mission, seat of government U.S. to Sana'a, there was also
10 much discussion and pushing, pleading, we would like to get the
11 interviews started as soon as possible.

12 Q. Understood.

13 I know we've described the PSO Headquarters in Aden a lot
14 over the last eight, nine, ten months. I think that you mentioned on
15 direct that you didn't have access to where Quso was being held in
16 the building; is that right?

17 A. That's correct.

18 Q. You never saw his actual cell or room or wherever he was
19 he was being held?

20 A. No.

21 Q. Had no idea about the conditions of his confinement while
22 he was there?

23 A. No, sir.

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1 Q. I think that you mentioned when he walked in, he wasn't
2 shackled, he wasn't handcuffed, nothing like that, right?

3 A. No -- no restraints, handcuffs, shackles, anything.

4 Q. When he walked in, was he wearing -- you know,
5 United States, you're in custody, you may be wearing a jumpsuit. You
6 know, you may be wearing jail clothing.

7 A. Right.

8 Q. Did you notice anything like that when Quso walked in?
9 Was he in a -- you know, like a jail sort of outfit or was he wearing
10 normal clothes?

11 A. He was wearing normal civilian male attire, and nothing
12 even remotely resembled jail clothes.

13 Q. I think that you mentioned he looked healthy and well
14 rested, right?

15 A. Yes.

16 Q. Didn't look like he was being mistreated or anything like
17 that, right?

18 A. No indications of that, yes, sir.

19 Q. Did you learn at some point that the PSO had questioned
20 Quso about his involvement in the COLE case?

21 A. Yes.

22 Q. I know that for Jamal al Badawi, there was an actual
23 report, document, that you received that the PSO had conducted with

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1 him, correct?

2 A. That's true. That's correct.

3 Q. Did you receive anything similar as it related to Quso?

4 A. Excuse me. No, sir, because of what occurred with Jamal
5 al Badawi prior to his interview, we were -- leadership said no
6 reading of the results of the interview from Yemen.

7 Q. And when you talked about al Badawi, what are you talking
8 about there?

9 A. We ----

10 Q. What ----

11 A. ---- myself and ----

12 Q. You said something happened to him, so that's what I'm
13 asking about.

14 A. Right. Prior to the -- the start, the scheduled start of
15 the interview with Jamal al Badawi -- al Badawi, a day or two,
16 possibly three before, I and a few colleagues from the investigative
17 team were reading over the results of the Yemen interview. And going
18 on at that time was the East Africa trial for the suspects in
19 Nairobi, Kenya, of August of 1998.

20 There was a motion in the Southern District of New York in
21 the court by defense to suppress the statement made by Muhammad
22 Rashid al Owhali. Because of what was occurring there and that was
23 being reviewed by the court, the Southern District of New York and

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1 DoJ contacted us in an abundance of caution and said, do not read the
2 results of the interview because we don't want to enter into that
3 type of situation where if there was taint, let's say, for the
4 results of the interview of Jamal al Badawi, it could have negative
5 impact on our results of the interview.

6 So that's -- sorry, that's the long explanation as to why we
7 were restricted for our guidance from our leadership not to read any
8 of the results of the interview for ----

9 Q. Okay.

10 A. ---- Fahd al Quso.

11 Q. So getting back to sort of my question, you knew that Quso
12 had been interviewed by the PSO, right?

13 A. Yes, sir.

14 Q. Never received a report of what the results were of that
15 interview with the PSO?

16 A. Likely offered to us, but we declined.

17 Q. Okay. And is it fair to say that you don't have any
18 details about how that interview happened, who conducted it, where it
19 was, how long it lasted, the questions that were asked?

20 A. No, not -- not in detail. Just general that it was PSO
21 and MOI, Ministry of the Interior.

22 Q. Prior to your interview, then, if you didn't have -- like,
23 Badawi, you didn't have a report, did you -- before your interview of

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1 Quso in late January of 2001, did you have any idea who he was, how
2 he was connected to al Qaeda, how he was connected to the COLE, any
3 of those fine details?

4 A. Had details of how he was connected to the conspiracy to
5 attack the ship.

6 Q. And where did that come from?

7 A. As I mentioned previously, in the early part of the
8 investigation through that time -- let's say through November,
9 December, even into January -- there was dialogue ongoing between the
10 embassy, U.S. embassy, and the Ministry of the Interior. And
11 information was coming through that channel, but then there was also
12 various source intelligence reporting that were giving us other
13 indications as to what the roles were of al Quso, al Badawi, and
14 others.

15 Q. All right. Do I -- I have in my note here maybe you -- I
16 think that you mentioned you reviewed some intelligence reports.
17 Does that sound right?

18 A. Yes.

19 Q. You're talking about U.S. intelligence reports?

20 A. Yes, sir.

21 Q. Would that have included other FBI -- FBI teams or we're
22 talking straight U.S. intelligence resources?

23 A. I'm not sure I'm tracking.

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1 Q. The intelligence reports that you saw that were being
2 generated ----

3 A. Uh-huh.

4 Q. ---- right?

5 My question is: Was that -- those reports -- were they
6 generated by the FBI and some other group by some other people or
7 were they being generated by U.S. intelligence agencies?

8 A. Well, with ----

9 Q. For both ----

10 A. ---- FBI and DoJ being part of the U.S. intelligence
11 community. Could have been from any -- any agency or organization
12 that's part of the U.S. intelligence community.

13 Q. Do you recall if you saw any foreign intelligence reports,
14 without going into detail about from where? Would those intelligence
15 reports have included foreign intelligence agencies?

16 A. Intelligence reports that come through and from the U.S.
17 intelligence at times include foreign intelligence and is usually
18 cited as such.

19 Q. And so that's how you were able to have a clear picture,
20 let's say, of who Quso was and how he was connected to al Qaeda and
21 Yemen and then perhaps sort of, generally speaking, his involvement?

22 A. Generally speaking, to answer the question about how I
23 would have had details about his involvement and his role and what we

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1 knew from the investigation at that time, would have come. But as to
2 exactly what and from what agency at this time, almost impossible to
3 tell.

4 Q. Were you aware or did you learn during that time that Quso
5 was also being shown photographs of other people potentially involved
6 in the COLE case?

7 A. By whom?

8 Q. I'm sorry. During the point when Quso was in custody in
9 Aden, do you know if the PSO showed him any photographs to identify
10 anybody who may have also been involved in the COLE?

11 A. I don't remember that detail, but I would be quite
12 surprised if they weren't showing photographs.

13 Q. It makes sense based on how they were operating, right?
14 They were also investigating this case, correct?

15 A. That's correct.

16 Q. And I think that we've also talked previously about PSO
17 showing photographs to people, right?

18 A. Yes.

19 Q. And that would have made sense with Quso as well, right?

20 A. As you said, it would make sense.

21 Q. But you just don't know what photographs he may have been
22 shown as we sit here today?

23 A. Correct.

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1 Q. Whether he made any identifications or didn't make any
2 identifications ----

3 A. Yes.

4 Q. ---- right?

5 A. Yes, sir. Correct.

6 Q. So I want to ask you some questions about Quso's -- I
7 think you called it his narrative and his story about his involvement
8 with the COLE, okay?

9 A. Yes, sir.

10 Q. And I mean his -- the videotaping part of this, okay?

11 A. Uh-huh.

12 Q. Is it fair to say that when you first began to question
13 Quso, he's less than forthcoming about his involvement in this case?

14 A. That's accurate.

15 Q. Would it be fair to say that he flat-out denied knowing
16 anything about anything when first asked about the COLE?

17 A. I don't -- I don't think it happened that way. No, I
18 don't remember that, I should say. No.

19 Q. Is it more accurate to say that he may have admitted to
20 knowing about it but may be saying I didn't really do anything? Is
21 that more accurate?

22 A. At -- actually, yes. Later on in -- as the interviews
23 when we were about wrapping up, that was more of the attitude.

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1 Q. I think you mentioned during the government's questioning
2 of you that he was minimizing his involvement in the case. Is
3 that ----

4 A. Yes.

5 Q. ---- an even more accurate statement about what was
6 happening?

7 A. In the earlier phases as we -- as we developed our rapport
8 with him, that's correct.

9 Q. And do you recall instances where Quso would get angry at
10 you and the rest of your team, accusing you of being Israeli agents
11 and not really from the United States government and things like
12 that?

13 A. Accused of being Israeli agents?

14 Q. Yeah.

15 A. That's plausible, but I don't remember any specifics about
16 that.

17 Q. Now, the benefit that you had with Quso is that you had
18 Badawi's statement by that point, right?

19 A. For the most part, that's right. The results of the
20 interview, not -- technically not a statement, but the results of the
21 interview.

22 Q. Right. Maybe not a fully drafted maybe 302 or something
23 like that, but maybe you had some idea -- certainly an idea about

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1 what Badawi said and about -- and about what Badawi said about Quso,
2 right?

3 A. Yes, correct.

4 Q. And I'm assuming that became a very useful tool during
5 your questioning of Quso?

6 A. As with any investigation, yes.

7 Q. And is it fair to say that in the moments that Quso was
8 being less than forthcoming or minimizing, it was nice to have that
9 document and say that's not what Badawi said, that's not what Jamal
10 said?

11 A. Yes is the short answer to that. But we noticed, though,
12 that in this series of interviews for both of those individuals as
13 well as others, there is a noticeable tendency to be protective of
14 the other -- of your colleague, of your brother in arms. So it -- it
15 wasn't as useful as it might sound because there tends to be
16 minimizing from both of them about each other.

17 Q. All right. But there was certainly minimizing, right?
18 There's no doubt about that?

19 A. Naturally, yes.

20 Q. All right. And I think one of the sort of examples that's
21 out there that I think you may have mentioned was that although he
22 may have supported the attack, again, not really involved, didn't
23 really do anything. Is that sort of one of the examples of him

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1 minimizing ----

2 A. Yes.

3 Q. ---- his role?

4 A. Uh-huh.

5 Q. One of the other things that you mentioned was his and
6 Badawi's attempt to notify the Yemeni authorities about the upcoming
7 attack. Remember that?

8 A. Yeah, according to what Fahd said.

9 Q. Right. And again, that wasn't true?

10 A. No. There was no indication that there were any attempt
11 made.

12 Q. You never found any of evidence of that at all, correct?

13 A. That's correct.

14 Q. And I'm assuming based on your investigation, based on
15 your experience, based on the interviews that you may have done by
16 that point, you didn't believe him then and don't believe him now
17 about that, right?

18 A. Speaking for me personally and professionally, that's
19 correct.

20 Q. At one point, he also is asked about the al Qaeda
21 organization, and he claimed to not really know a whole lot about the
22 organization; is that right?

23 A. That's correct.

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1 Q. Denied membership in al Qaeda. Remember that?

2 A. Yes.

3 Q. And yet this is a person who during the course of the
4 interviews basically gives you a who's who of al Qaeda at the time;
5 is that right?

6 A. Absolutely.

7 Q. And not only does he give you a who's who of al Qaeda, but
8 he gives you a who's who from 1998 all the way through what ends up
9 being 9/11, right?

10 A. Right. But if I could add now at this point in the
11 hearings, there continues to be quite a bit of misunderstanding about
12 al Qaeda and otherwise very well-informed people and the importance
13 they place with being a member, so-called, of al Qaeda.

14 Let me give you an example: Al Qaeda members, those such as
15 an Abu Jandal or Abu Hafs al Masri, the deputy, would never use the
16 term al Qaeda. It's kind of akin to somebody from the mafia saying
17 I'm in the mafia.

18 Q. Right.

19 A. It's a term of convenience. So someone like Fahd al Quso,
20 he would not have to be a putative member of al Qaeda in order to get
21 transportation funded by the organization to go to the training
22 camps, to fight on the front lines, and to bump up against
23 card-carrying al Qaeda members. It just really wasn't important

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1 within their -- the culture and the way things worked.

2 Q. And I think that you mentioned at one point -- I have a
3 note here saying that this is a person, Quso, who was a true
4 believer, right, deep down?

5 A. Right, to use a term of expression, yes.

6 Q. Right. And so for him to say I'm a card-carrying member
7 of al Qaeda may be not maybe as meaningful as maybe somebody else
8 based on his involvement, right, with al Qaeda? You know, he
9 was -- he was in it, right? And so maybe it didn't make a big
10 difference for him to say whether I pledge or not, right? He
11 believed in the cause?

12 A. That part, absolutely. That's true. True believer in
13 that sense.

14 Q. And again, the fact that he said he wasn't a member
15 really, again, is sort of at odds with what you learned about him,
16 right? That he knew all the people, been to Afghanistan in 1998,
17 went to the camps, fought, you know, on the front lines.

18 Again, you know, for him to say I'm not a member is really
19 inconsistent based on, again, his involvement. Just didn't make
20 sense, right?

21 A. Well, I'd put it another way. For me, it's not really
22 significant. He had all the characteristics of someone who would be
23 taken into the network and the organization to be trusted, to be

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1 trusted with important information, to be around some of the biggest
2 figures and personalities of the leadership of what we call al Qaeda.

3 So as he said, paraphrasing it: I really didn't need to be
4 a member. I didn't need to pledge the oath to Sheikh bin Laden, as
5 he called him, Abu Abdullah, he said, because in principle I agreed
6 with everything he, the Sheikh, and the organization was about.

7 Q. And would you agree that this narrative -- that this
8 narrative, to use your words, narrative or story about his
9 involvement in the COLE -- in other words, I'm just a guy with the
10 pager and the camera, and they told me to go somewhere and
11 film -- again, sort of inconsistent with his actual involvement in
12 al Qaeda, right?

13 A. If I could phrase it, make sure I'm not ----

14 Q. Please.

15 A. ---- off base, that consistent -- inconsistent with the
16 amount of enthusiasm he would have to be tapped on the shoulder to
17 film the attack on American warship, definitely inconsistent in that
18 way.

19 Q. But again, his -- his story is -- and again, this is part
20 of the minimizing. His story is someone gave me a pager, told me to
21 get a camera and go, and that's all that I know, right?

22 A. That's right. That was all my involvement ----

23 Q. Right.

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1 A. ---- from his story.

2 Q. Yeah, right. Not -- but again, based on -- on his actual
3 involvement, inconsistent, right?

4 A. Right.

5 Q. I think he also mentioned at some point that he may not
6 have been entirely sure what was going to be videotaped but
7 ultimately says I knew about a month and a half out about the COLE,
8 right?

9 A. That there was a planned attack on an American warship,
10 yes, sir.

11 Q. And not just that, but he actually knew that it was going
12 to be a boat, right? It was going to be -- involve a small boat
13 attacking a U.S. warship, correct?

14 A. For the method of delivering the explosion, yes.

15 Q. Right, and that small boat would be filled with
16 explosives, right?

17 A. Correct.

18 Q. He knew all those fine details, correct?

19 A. Correct.

20 Q. And again, sort of another example of perhaps
21 inconsistency of his statement that he's a cameraman is his
22 relationship with Khallad and the two suicide bombers, right? Is
23 that fair to say?

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1 A. Sorry. Didn't quite understand that.

2 Q. Again, just sort of painting the picture of Quso's story
3 or a narrative that he's pushing during the -- your interview with
4 him, there's also this contact that he has, especially as it relates
5 to the COLE, with people who are very much involved with the COLE,
6 right? Beginning with Khallad, right?

7 A. Such as Khallad, yes.

8 Q. Right?

9 And again, Quso -- again, despite that he's saying I'm just
10 a cameraman, he has direct contact with the two people who turn out
11 to be the suicide bombers in the COLE case, correct?

12 A. He has contact with them, a relationship with one of them
13 for quite some time.

14 Q. Right. And that's Nibras, right?

15 A. That's right, Abu Nibras.

16 Q. And with Khamri, he identifies him when he's shown the
17 ADENBOM Book, right?

18 A. Correct, on the 11th of October at the luncheon.

19 Q. And then he -- right. And then he mentions that, oh, yes,
20 there was this luncheon that just happened to be the day before the
21 COLE, correct?

22 A. That's correct.

23 Q. And the government mentioned this on direct, but again,

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1 there was -- as it relates to Khallad, there was not just passing
2 knowledge of who this person was -- and he would have been a big
3 figure even at that point, correct?

4 A. Correct.

5 Q. So there wasn't just the knowledge of who Khallad was, but
6 there was also that closeness that he had with Khallad as well,
7 right?

8 A. That developed during their time in Afghanistan together.

9 Q. Afghanistan, right?

10 So, again, he's got -- he knows the people, right? He can
11 identify the people, the who's who sort of thing, again, going back
12 to the East African bombings in '98. And then he's got this
13 friendship, I think is an accurate word, with Khallad, right?

14 A. Yes, sir.

15 Q. And, you know, the government mentioned and talked about
16 this meeting in Thailand. I want to ask you a couple of questions
17 about that.

18 I think you mentioned on direct that it seemed odd to you
19 and the rest of the team that \$36,000 is moving out of Yemen, right,
20 at the time that it's being moved out. And that would have been
21 early January of 2000, correct?

22 A. That's correct.

23 Q. And I think that that -- if you didn't say this -- I don't

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1 think you said this, and if it's wrong, please let me know, but I
2 think that that's a fact that maybe bothered you and the team -- is
3 that fair to say? -- during the course of the investigation? Why is
4 the money moving out and what is it for? It doesn't make sense.

5 A. Yeah, it's just -- for me and my partner, I didn't make
6 sense. As I mentioned, it was counterintuitive that money would have
7 been leaving instead of coming in.

8 Q. And is it also fair to say that the explanation for the
9 money didn't make sense either? The story -- again, the story, the
10 narrative is that the 36,000 is for a prosthetic leg? That's what he
11 told you?

12 A. Yeah. At the time, I thought if that is a cover story or
13 an attempt to obfuscate, it sure makes sense. It's a good story.

14 Q. Right. But you didn't believe it?

15 A. Not at the time.

16 Q. You don't believe it now?

17 A. Oh, no, I do now.

18 Q. You believe the money was for ----

19 A. Maybe partly for Khallad's medical attention and for other
20 things that -- expenses for what Khallad was doing on behalf of
21 Khalid Shaikh Mohammad in Southeast Asia. But largely, fast forward
22 from my interviews with Walid Bin'Attash -- Khallad -- in Guantanamo,
23 and he corroborated that part of the puzzle for me.

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1 Q. Is it also accurate to say that in addition to maybe that,
2 that certainly there was a connection with the money and two of the
3 hijackers who, within days of that, of Khallad getting the
4 money -- two hijackers in the 9/11 case fly first class to the
5 United States? Would that be accurate, there's also that connection
6 as well?

7 A. Yes. If we're shifting to that -- that part of the
8 timeline of the -- those events, the COLE, 9/11, right. At the time
9 when we were interviewing Fahd al Quso, of course we didn't know
10 about, you know ----

11 Q. And you wouldn't know.

12 A. I'm jumping to ----

13 Q. Yeah, right.

14 A. ---- the early morning hours of the 12th of October when
15 we said the money -- an awareness in a few days later that
16 they -- first class tickets from Southeast Asia to L.A., then it
17 seemed like, okay, now a lot of that makes more sense.

18 Q. Right. And that became a very important sort of piece of
19 the puzzle, that sort of connection between Khallad, the money, and
20 9/11, right? That became a very important piece there to connect
21 al Qaeda to 9/11; is that fair to say as well?

22 A. Post the tragedy of 9/11, absolutely.

23 Q. Yeah. And again, I'm not suggesting that at all -- I'm

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1 not suggesting at all that anybody -- well, maybe someone knew, but
2 you certainly -- you certainly didn't know that at the time. You
3 didn't learn that until after 9/11, much, much sort of further down
4 the road.

5 A. I'd characterize that is if I can think of the biggest
6 shock in my professional life was -- was on the morning of October
7 of -- of September 12th, 2001, when we first became aware of what
8 transpired ----

9 Q. Right.

10 A. ---- on that travel ----

11 Q. Right.

12 A. ---- involving two of the suicide hijackers.

13 Q. Right. The sort of connection between the money, Khallad,
14 and the suicide bombers. I think that's Mihdhar and Hazmi on ----

15 A. Right.

16 Q. ---- American Flight 77 ----

17 A. Nawaf al Hazmi, uh-huh.

18 Q. ---- that flew into the Pentagon, correct?

19 A. Yes, sir.

20 Q. I just want to maybe put sort of a final point on Quso's
21 narrative and his story about his involvement here. And I think
22 maybe the takeaway from that is the way in which Quso dies, right?

23 You mentioned at the very beginning of the direct with the

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1 government that Fahd al Quso is now deceased, correct?

2 A. Yes, correct.

3 Q. And it's not just that he died in Yemen, right? The
4 United States Government made the decision to drone Quso, correct?

5 A. From what the reports are, it was a targeted strike.

6 Q. So, again, getting from sort of Quso's narrative about
7 being just a cameraman, again, sort of at odds with how his life
8 ended in Yemen, correct?

9 A. Much transpired in between the time of the attack on the
10 COLE and to where he was hit in a targeted strike.

11 Q. Like what?

12 A. He escaped from prison, then was captured, recaptured,
13 trial. His sentence commuted a number of times. He was let go. And
14 as we sometimes say, he just could not give up the jihad life. And
15 when I use "jihad" in that context, I don't want to insult Muslims,
16 but jihad in that context is violent extremism.

17 So he was living/working with and among elements of what
18 became known as al Qaeda in the Arabian Peninsula and continued that
19 type of life of promoting and being involved in violent extremism.
20 So somewhere in the decider level of the U.S. Government apparently,
21 he was a threat, continued to be a threat to United States security.

22 Q. As that is unfolding with Quso, you know, being arrested
23 and his -- I'm going to use the word "escape" from jail, rearrested.

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1 I think you mentioned his trial. I think he got life initially.

2 Does that sound about right?

3 A. Initially, it was life.

4 Q. And then it gets reduced, and ten years, and ultimately he
5 gets released, and again, like you said, back to sort of his -- his
6 old ways.

7 As that's happening, are you still involved with the COLE
8 investigation and some of the suspects who are still out?

9 A. As it's happening?

10 Q. Yes.

11 A. If we could pinpoint that a little bit.

12 Q. You know, like as relates to Quso, he gets -- you
13 mentioned he's released and becomes involved in al Qaeda in the
14 Arabian Peninsula. Are you still involved with the case at that
15 point?

16 A. I've been involved with the USS COLE investigation and the
17 case and issues related to 9/11, yeah, ever since that time.
18 Actively investigating it? No.

19 Q. Would you have received even then -- let's say from 2007
20 to 2012, when Quso is killed, were you still receiving intelligence
21 reports about Quso?

22 A. Well, up through 2007, I was still, for example,
23 conducting interviews of Jamal al Badawi when he was recaptured the

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1 second time, interviews of him in Yemen, in Sana'a at the
2 PSO Headquarters there.

3 And I continued because I had in -- in my role in the
4 government with counterintelligence and counterterrorism, I did my
5 best to continue to follow events as closely as I could.

6 Q. Is that something that you sought out or are those reports
7 that are being forwarded to you because of your role in the COLE
8 investigation?

9 A. Yeah, over the course of -- around that timeline from 2007
10 until my retirement in August of 2011, I -- a close collaboration
11 with intelligence analysts and others with the FBI and NCIS in
12 various places. And usually as a courtesy, the analysts I knew or
13 other colleagues, if something important related to USS COLE, 9/11,
14 would send the report to me.

15 Q. You may be interested in seeing this. You know, this is
16 what ----

17 A. Absolutely.

18 Q. Something like that.

19 A. To include open-source reporting ----

20 Q. Okay.

21 A. ---- press reporting.

22 Q. I mentioned that Quso was droned by the United States, and
23 you -- and your response was something like that's what's been

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1 reported.

2 Were you involved in any of those discussions about whether
3 to exercise that discretion against Mr. Quso?

4 A. No, sir.

5 Q. I think I'm done with the questions that I have for you in
6 terms of my notes, but I do want to ask you a couple questions based
7 on some of your answers that you gave to the government.

8 One of the things that the government was asking you about
9 was -- and this was during the time that Quso was in PSO custody,
10 okay? And I think there was a question about how he appeared when he
11 came in for the interview and things like that ----

12 A. Yes, sir.

13 Q. ---- sort of a welfare sort of question like.

14 And I think your answer was that was something that was
15 important to you to check on the welfare of the people that you were
16 interviewing. And I want to -- my follow-up to that is: What did
17 you mean? I mean, besides seeing the person and maybe asking are you
18 okay, did you do anything beyond that to check on the welfare
19 of -- of, again, specifically perhaps to Quso and how he was doing?

20 A. I believe we had talked about -- **[microphone turned off;**
21 **no audio.]**

22 MJ [COL ACOSTA]: You turned off your microphone.

23 WIT: Sorry about that, Judge.

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1 MJ [COL ACOSTA]: There you go.

2 A. To paint the picture and start with the interview with
3 Fahd al Quso, for someone who had not been in a country like Yemen
4 for very long or had partaken or witnessed an interview, might pull
5 me aside and say you just spent 15 minutes on different ways in
6 asking him how he is and how everything is going.

7 So I'm just trying to portray how important that is for
8 establishing, let's say that, hey, you've been there, you know the
9 culture, you respect the culture. But then asking him is he okay
10 with the interview, understands that it's voluntary, he can terminate
11 the interview, end the interview at any time.

12 Does he have -- do you, Fahd, have any problems, any
13 ailments, any illnesses? Are you okay? Good. And again, trying to
14 portray the kind of discussion that goes even before the first
15 substantive question like -- such as what is your name is asked.

16 Now, if I understand the question, though, was there other
17 research, say, behind the scenes, that sort of thing? Discussion
18 with our -- our two most -- our closest counterparts for the Yemen
19 security service, anything we should be aware of, any issues,
20 conversation along those lines. But beyond that, nothing ----

21 Q. Okay. So there wasn't ----

22 A. ---- that I can recall.

23 Q. Right. So there wasn't any discussion maybe -- maybe with

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1 the guards at the PSO or maybe medical staff that would have maybe
2 seen Quso, nothing like that?

3 A. That's correct. We really weren't -- we didn't have
4 access to the guard force and the medical staff. But, yes, sir,
5 that's correct.

6 Q. And the government went over the identifications that Quso
7 made from the ADENBOM book dated ----

8 A. January 10th.

9 Q. ---- 10 January ----

10 A. 2001.

11 Q. ---- 2001. Thank you.

12 A. Yes, sir.

13 Q. And I've -- I've asked this question a lot of you and some
14 of the other people that have come in, and again, I want to be clear
15 for Quso.

16 Again, the book was shown to him. Look through it, see if
17 you know anybody in the book, right?

18 A. Correct.

19 Q. There weren't any cautionary instructions about what he
20 may see, maybe people not in the book, nothing like that. Just
21 here's the book, take a look. Is that fair to say?

22 A. If you can repeat the -- what you said about cautionary
23 instructions, what you would see, what you would not see?

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1 Q. Right. You know, look, we're going to show you the book.
2 There -- you know, there may be people that you identify. There may
3 be no one that, you know, looks familiar to you. Their appearance
4 may have changed. Maybe the lighting is different. Anything like
5 that ----

6 A. Sure.

7 Q. ---- sort of ahead of time before he was shown the book?

8 A. I understand. No, not at all. In fact, just the minimal
9 amount of, hey, Fahd, if you would like -- if you're okay with that,
10 we would like to show you some photographs and if you can identify
11 the photographs.

12 Q. And again, I think that that's consistent with what you
13 have said all the way through this in terms of how you approach
14 witnesses with the book, right?

15 A. Correct.

16 Q. And again, when Quso identified somebody from the book, he
17 wasn't asked to sign his name on the page of the photograph, nothing
18 like that, right?

19 A. That's correct.

20 Q. He wasn't asked to give a sort of -- any certainty about
21 his identification of the person, for example, how certain are you
22 that it's Khallad, Badawi, 100 percent, 75, 50, 10? Nothing like
23 that?

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1 A. That's correct with Fahd al Quso. It was either
2 identified or didn't.

3 Q. I have a note here, and forgive me if this was asked and
4 answered.

5 During your questioning of Quso, either during that first
6 session in late January or the second session in early February, did
7 he ever admit that bin Laden was behind the COLE attack?

8 A. Well, when asked about that, he said he wouldn't know. He
9 didn't know. But it did fit the principles behind what the Sheikh,
10 bin Laden, stood for.

11 Q. And you're talking about attacking United States, either
12 civilians or military personnel, right?

13 A. Yes.

14 Q. The fatwas that were issued about killing Americans,
15 right?

16 A. Yes, correct. Although he said he believed in those
17 principles himself.

18 Q. And I'm almost done here.

19 You also mentioned on direct about some of the contact that
20 Badawi had with Quso right after the bombing of the COLE, those four
21 contacts where there -- I think they were phone calls, all of them;
22 is that right?

23 A. Correct. Yeah, at least four contacts that day.

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1 Q. And I think you mentioned in one of them that Badawi
2 instructs Quso to go to the Al-Burayqah bridge to get the truck and
3 the trailer. You remember that?

4 A. Yeah, at least the small SUV, the Nissan.

5 Q. Okay. Now, again, it's clear that at -- according to both
6 Badawi, I think, and Quso, Badawi is in Sana'a at that very moment,
7 right?

8 A. Yes, sir.

9 Q. He's not in Aden, right?

10 A. From the way Quso portrayed it, that's correct.

11 Q. He wouldn't have -- in other words, he wouldn't have been
12 in a position to see for himself that the Nissan and the trailer are
13 still there at the Al-Burayqah launch site; is that right?

14 A. Yes, sir, that's correct.

15 Q. Was there any follow-up about how Jamal al Badawi knew
16 that the Nissan and the trailer were still there?

17 A. That's a very important question. I haven't looked at the
18 302, the results of the interview for Jamal al Badawi, and I don't
19 recall what was said in that regard. But I know from my colleagues
20 it would have been a matter for intensive follow-up.

21 Q. Certainly.

22 A. How would he know ----

23 Q. Right.

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1 A. ---- that the vehicle was still there? There had to be
2 somebody who provided that information to him.

3 Q. All right. And you can't remember right now maybe what he
4 said about that?

5 A. That's correct.

6 Q. Okay.

7 DC [MR. PADILLA]: Judge, if you can just give me one second.

8 MJ [COL ACOSTA]: Yes, take your time.

9 DC [MR. PADILLA]: Thank you.

10 **[Counsel conferred.]**

11 Q. Okay. I think I have one last question.

12 During the course of your investigation of the COLE, we
13 talked about some of the players here today -- Badawi, Quso,
14 Khallad, bin Laden, Nibras, Khamri -- you know, all these people sort
15 of involved either directly or sort of indirectly with the COLE.

16 During the course -- so my question is this: During the
17 course of your investigation, did you ever discover any electronic
18 communications, whether it's e-mails or phone conversations, linking
19 those people and conversations as it relates to the attack on the
20 COLE?

21 A. There is an audit trail, or an electronic trail record,
22 of -- from the call centers of numbers that were called that
23 corresponded to information that we obtained during the

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1 investigation.

2 Q. Al Hada, is that the name of the person who operated that
3 call center?

4 A. Yes. The al Hada -- actually, the so-called call center
5 was the home telephone number of Ahmad al Hada's family.

6 Q. Okay. So you had -- you were able to obtain those phone
7 records and maybe link up some phone numbers through there; is that
8 accurate?

9 A. I'm uncertain if I can talk about that particular ----

10 Q. Okay. It's enough to say that you were able to obtain
11 those phone records. Is that ----

12 A. Potentially, uh-huh.

13 Q. Okay. And those would have maybe not -- I'm not limiting
14 you to the names I just mentioned, but those would have been perhaps
15 phone calls with people related to the COLE investigation; is that
16 fair to say?

17 A. As a possibility, yes.

18 Q. Okay.

19 DC [MR. PADILLA]: One more second, Judge.

20 MJ [COL ACOSTA]: Take your time.

21 DC [MR. PADILLA]: Thank you.

22 **[Counsel conferred.]**

23 DC [MR. PADILLA]: That's all I have, Judge. Thank you.

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1 MJ [COL ACOSTA]: All right. Thank you, Defense.

2 Government, any redirect?

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

4 **[The military judge conferred with courtroom personnel.]**

5 MJ [COL ACOSTA]: Go ahead, Government.

6 ATC [LCDR SCHREIBER]: Thank you, Your Honor.

7 **REDIRECT EXAMINATION**

8 **Questions the Assistant Trial Counsel [LCDR SCHREIBER]:**

9 Q. Mr. McFadden, I'm going to obviously jump around a little
10 bit, so I apologize for that.

11 But defense counsel asked you toward the end there a
12 question about whether the attack on the COLE may have been in line
13 with Usama bin Laden's values and his directives.

14 A. Yes.

15 Q. I just want to be clear. Did Fahd al Quso tell you that
16 he believed that the attack on the COLE was in line with those
17 values?

18 A. Yes.

19 Q. Okay. So that's something he actually told you he
20 believed?

21 A. That's right.

22 Q. Looking at the photo book and your use of the two photo
23 books with Fahd al Quso, it may go without saying, but was Fahd

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1 al Quso being asked to identify, like, particular people he saw at a
2 particular event or were you curious as to whether he knew people?

3 A. For the first -- first part, can you identify the
4 individual, and if yes, then what do you know about that individual.

5 Q. Okay. But just to contrast these with the Yemeni lay
6 witness interviews who -- these were people who were involved in
7 things and saw individuals who they may not have known very well, was
8 the -- when you asked them do you recognize anybody in the book
9 versus talking to Fahd al Quso and asking him do you recognize
10 anybody in this book, what was the fundamental difference between
11 sort of the two things you were seeking there?

12 A. Well, the major immediate difference is that with our
13 awareness and his admitting that all the time he spent in Afghanistan
14 and in Yemen with those who were either, let's say, members of or
15 associated with violent extremism, al Qaeda and other groups, big
16 contrast there with the lay witnesses because it would be reasonable
17 for Fahd al Quso bumping into all these violent extremists, his
18 brothers in arms, that he would have information about them.

19 Whereas with a lay witness, essentially, okay, you -- do you
20 recognize this individual? Yes. Well, how do you recognize him?
21 Well, he was a policeman at the roundabout that -- as an example.

22 Q. And again, for these individuals that Fahd al Quso
23 recognized in the photo book -- I think it's for pretty much all of

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1 them. Did he have something significant to say about his
2 interactions with those individuals?

3 A. I believe for the most part.

4 Q. Indeed, did he -- the defense counsel asked you if you
5 gave him any cautionary instructions to include maybe suggesting that
6 someone might be older or younger or look different in the photos.
7 Do you recall Fahd actually remarking about somebody he knew looking
8 younger in the photo than he knew him to be?

9 A. Yes. I believe he made that remark at least for one of
10 the photos.

11 Q. I think at one point defense counsel characterized Fahd
12 al Quso's statements to you about Jamal al Badawi as -- that Jamal
13 al Badawi was just someone who gave him a pager. Do you recall that
14 a few moments ago?

15 A. That his portrayal of it that was that benign, yes ----

16 Q. That benign.

17 A. ---- just someone who gave me a pager and asked me to film
18 if he's not available.

19 Q. Based on the interview that you did with Fahd al Quso, was
20 Jamal al Badawi just some guy who gave him a pager?

21 A. No. No, sir.

22 Q. What did -- we're going to recap a little bit, but what
23 did Fahd al Quso tell you that he knew about Badawi and his

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1 involvement in the attack on the COLE?

2 A. That he would have known the details, including what
3 brothers -- using the figurative term "brothers" -- were involved, if
4 it reached back to Afghanistan and al Qaeda core.

5 Q. And did al Badawi tell him the mechanism of the attack
6 that was planned; that is, using a small boat to attack an American
7 warship?

8 A. Beyond that, I don't remember any other details of that.

9 Q. But that is something that he told him?

10 A. He did.

11 Q. And did Fahd al Quso -- Fahd al Quso was told my Jamal
12 al Badawi that he was going to go and film this, right?

13 A. That's what Fahd said initially that Jamal said he was
14 going to do.

15 Q. I'm sorry. Let me ask the question more directly.

16 Did Jamal -- was Jamal al Badawi the person who asked Fahd
17 al Quso to film the attack?

18 A. According to Fahd, yes.

19 Q. Was he also the individual who showed him how to operate
20 the camera?

21 A. Yes, sir.

22 Q. Was he the individual -- was Badawi the individual who
23 showed Fahd al Quso where to film the attack?

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1 A. Yes.

2 Q. Did he even point out to him where the attack might occur
3 in the harbor?

4 A. Exactly, according to al Quso.

5 Q. And to be clear, and we won't recap it too much, but was
6 Jamal al Badawi a stranger to Fahd al Quso?

7 A. No.

8 Q. In fact, what was their relationship as he described it?

9 A. Knew them -- knew each other from the local area, and the
10 description of Jamal was one of the older recognized and respected
11 brothers, also traveling through the camps and training in
12 Afghanistan.

13 Q. Okay. You talked a bit about what it means to be a member
14 of al Qaeda. I want to try and have you just expand on that a little
15 bit.

16 A. Uh-huh.

17 Q. I think you mentioned that membership from our, like,
18 point of view, it really wasn't -- it wasn't maybe quite as we
19 conceptualize membership in a fraternity or a social organization; is
20 that right?

21 A. That's correct.

22 Q. So from your knowledge of al Qaeda, many years, you know,
23 investigating and knowing about it ----

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1 A. Uh-huh.

2 Q. ---- was it really significant to you in these interviews
3 that Fahd al Quso never fully embraced a, quote/unquote, membership
4 in al Qaeda?

5 A. Was it significant to me, sir?

6 Q. Uh-huh.

7 A. Not really, no.

8 Q. Why not?

9 A. Well, one, for me, it was to be expected because, quite
10 naturally for someone in his seat, that could be implicating him.

11 But the important principle to realize, as I mentioned
12 before, somebody like a Fahd al Quso who demonstrated that
13 willingness -- who came from, as he described, a deeply
14 religious -- of that form of Sunni Islam background who believed in
15 the principles of fighting the enemies of Islam as they saw it and
16 portrayed it, was trusted by other brothers, Al-Shabab, from his area
17 and then going over to Afghanistan saying that -- professing that he
18 believed in all that the Sheikh bin Laden believed in in fighting the
19 enemies of Islam, of throwing the Americans and the infidels out of
20 the Arabian Peninsula. He's demonstrating right there that whether
21 one is called a member or described as a member or not, he went all
22 in.

23 And there were many others like that over the course of what

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1 we knew about al Qaeda from mid to early 1990s up and through -- at
2 least through 9/11.

3 In fact, there -- there is, let's say, at least two of the
4 original 14 high-value detainees that there was much
5 misunderstanding, even within people who were really experts in the
6 U.S. intelligence community initially insisting they were al Qaeda
7 members, and they weren't.

8 Now, did they work with Usama bin Laden and Abu Hafs
9 al Masri? Absolutely. Because they all agreed in those kind of
10 violent activities and working with each other.

11 And even the concept of pledging bay'at or not is not really
12 so important other than from an intelligence and investigative aspect
13 knowing who might be closer to someone like a bin Laden, who has gone
14 in without any reservation whatsoever and would never disobey the
15 orders of a bin Laden. Those kind of details are important in
16 understanding the network and then working to prevent future violent
17 acts.

18 Q. So is it true, though, to say that al Qaeda certainly
19 had -- at the time, certainly had a hierarchical structure with
20 people in certain jobs and roles that were well defined; is that
21 accurate?

22 A. Absolutely, yes, sir. It's called the Shura Council or
23 the advisory council.

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1 Q. But again, just to close this up, while those people might
2 be called our, quote/unquote, card-carrying members of
3 al Qaeda -- would that be accurate?

4 A. For our characterization in the West ----

5 Q. Sure.

6 A. ---- yes.

7 Q. Membership ----

8 A. Uh-huh.

9 Q. Again, that's not the entirety of the folks who are
10 involved with al Qaeda such as someone like Fahd al Quso, right?

11 A. Associated with and at times working with, absolutely.

12 Q. So given that his affiliation with al Qaeda from the
13 things that he told you was clear, did you view his -- at the time,
14 did you view his denial of al Qaeda membership exclusively as a
15 minimization of his involvement?

16 A. At the time, no, I didn't -- I didn't think along those
17 lines.

18 ATC [LCDR SCHREIBER]: May I have just a moment, Your Honor?

19 MJ [COL ACOSTA]: You may.

20 **[Counsel conferred.]**

21 ATC [LCDR SCHREIBER]: Mr. McFadden, that's all I have on
22 redirect. Thank you. The judge may have some questions for you.

23 MJ [COL ACOSTA]: I don't have any questions for you, Agent

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1 McFadden, but what I'm going to have you do is I'm going to have you
2 step down. I'm going to excuse you for today, but what I'm going to
3 have you do is step down and step outside into the hallway. I know
4 that there's particular rules about where you are, but I need you to
5 stay close by.

6 So whoever is escorting Mr. McFadden, please stay with him
7 in the hallway until I finish a discussion that I need to have with
8 the parties for both sides.

9 It's just to discuss scheduling, Agent McFadden, so that you
10 can get the information immediately as opposed to a greater chance of
11 time passing between when we decide what we're going to do and the
12 instructions are passed to you, okay?

13 WIT: Understand. Thank you.

14 MJ [COL ACOSTA]: All right. Go ahead and step down.
15 Don't -- and wait in the hallway, please.

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

17 MJ [COL ACOSTA]: All right. Government, we've got a whole
18 'nother statement that we're going to go over, and I anticipate it's
19 the -- your direct and the defense's cross is about the same for that
20 witness -- for that witness' statement; is that correct?

21 ATC [LT SCHWARTZ]: It's not quite as long, Your Honor. I
22 spoke with defense counsel immediately prior to this. We assume it
23 will be about two hours between the two of us total for Abu Jandal.

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1 MJ [COL ACOSTA]: Okay. I see that we have Agent -- I know
2 that we have Agent McFadden scheduled for later in the week -- not
3 later in this week, but for Tuesday of next week; is that correct?

4 ATC [LT SCHWARTZ]: That is, and he's also standing by in case
5 he needs to flex to a different day as well.

6 MJ [COL ACOSTA]: Right. So we can bring him -- so what I'm
7 saying is we're not starting tomorrow with Agent McFadden. I'm not
8 losing any of my three days that I have on the calendar for
9 Dr. Jessen.

10 ATC [LT SCHWARTZ]: Correct. We're in agreement, sir.

11 MJ [COL ACOSTA]: Okay. I'm just trying to make sure that
12 we're all good there.

13 If we can pick up Agent McFadden's testimony on these topics
14 either next Tuesday -- discuss amongst yourselves where you think
15 we're going to be able to fit him in, whether that's on Tuesday, the
16 18th, or at another time during this session, but we've got to get it
17 done this session as well.

18 So that's what we're going to do. I'm just letting you know
19 we're going to -- I'm not going to start pushing for -- we're not
20 going to start on the -- on Jandal's statement tonight or this
21 afternoon, pardon me, because it's just going to push up too long and
22 I'm going to have to interrupt to break.

23 So discuss amongst yourselves, come back to me with a plan

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1 for where we can fit Agent McFadden in. And I wanted you to
2 let -- when we're done with the -- we're going to have a short recess
3 here before we come back and do an 802 session. But other than that,
4 we're going to start tomorrow morning at 0900 with Dr. Jessen.

5 Any objections or any other suggestions to make that more
6 efficient, Government?

7 ATC [LT SCHWARTZ]: No, Your Honor.

8 MJ [COL ACOSTA]: Defense?

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

10 MJ [COL ACOSTA]: All right. So if you can let Agent McFadden
11 know, talk amongst yourselves about the best time to fit him back in.

12 We're going to take a 15-minute recess for the -- and what I
13 would need to have happen is I need to have the communications with
14 the RHR to remain up, I need the broadcast to the remote viewing
15 rooms to stop, and I need the gallery cleared and only the parties
16 left in the courtroom in 15 minutes.

17 So we're in recess until tomorrow. The commission is in
18 recess.

19 **[The R.M.C. 803 session recessed at 1620, 11 April 2023.]**

20 **[END OF PAGE]**

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