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1 [The R.M.C. 803 session was called to order at 1004,
2 14 February 2018.]

3 MJ [Col SPATH]: The commission is called to order. The
4 same parties who were present yesterday are again present.
5 Mr. al Nashiri is not here.

6 Trial Counsel, let me ask a couple of questions. Are
7 you broadcasting -- or transmitting, more accurately?

8 TC [MR. MILLER]: We are, Your Honor.

9 MJ [Col SPATH]: And then do you have somebody to talk
10 about Mr. al Nashiri's absence today?

11 TC [MR. MILLER]: Yes, Your Honor. Colonel Wells will
12 handle that matter.

13 MJ [Col SPATH]: Thanks. We're going to mark it as 375I.

14 MATC [COL WELLS]: Good morning, sir. May I approach the
15 court reporter?

16 MJ [Col SPATH]: You may.

17 MATC [COL WELLS]: And also the witness?

18 MAJOR, U.S. ARMY, was called as a witness for the prosecution,
19 was reminded of his oath, and testified as follows:

20 **DIRECT EXAMINATION**

21 Questions by the Managing Assistant Trial Counsel [COL WELLS]:

22 Q. Major, you've previously appeared here; you're still
23 under oath. Did you have an opportunity to meet with the

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1 accused?

2 A. Yes, I met with Mr. al Nashiri this morning to advise
3 him that he had a commission this morning and asked him if he
4 would come to the commission.

5 Q. And did he respond?

6 A. He indicated that he did not want to come to the
7 commission. He asked me if tomorrow is going to be the last
8 day, and I said, "It may be the last day." And he said,
9 "Okay." He goes, "The first day and the last day is enough
10 for me."

11 Q. Okay.

12 A. I said, "Okay." I go, "Then I have to read the
13 paperwork to you."

14 Q. All right. And you presented what is marked for --
15 as Appellate Exhibit 375I. That's three pages in front of
16 you; is that correct?

17 A. That is correct. I had the linguist with me, and I
18 handed Mr. Nashiri the Arabic version, and he asked me to read
19 the English version as he followed along with the Arabic
20 version.

21 Q. And then did he indicate that he acknowledged receipt
22 and his understanding in writing?

23 A. Yes. So once I finished both pages in English, I

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1 asked him if he had any questions. He said, "No." He said,
2 "Thank you." And then again he asked me which form he should
3 sign, and I handed him the English version. He signed above
4 the word "ACCUSED," and then he asked the linguist what the
5 date was.

6 Q. Did you form an opinion whether or not he was
7 exercising his right not to appear voluntarily?

8 A. Yeah. Based on the conversation I had and him
9 signing without any questions at all, I believe he voluntarily
10 waived his right to attend the commission this morning.

11 MATC [COL WELLS]: All right. Sir, may I approach the
12 witness to retrieve the appellate exhibit?

13 MJ [Col SPATH]: You may. There you go.

14 MATC [COL WELLS]: Sir, no further questions. Thank you,
15 Major.

16 WIT: You're welcome.

17 MATC [COL WELLS]: Sir, anything else?

18 MJ [Col SPATH]: No, not from you. Thanks.

19 MATC [COL WELLS]: Yes, sir.

20 MJ [Col SPATH]: Defense Counsel, any questions?

21 DDC [LT PIETTE]: No, Your Honor. Nothing from defense.

22 MJ [Col SPATH]: All right. Thank you again.

23 WIT: Thanks, Judge.

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1 MJ [Col SPATH]: You're excused.

2 [The witness was excused.]

3 MJ [Col SPATH]: I again find the accused has voluntarily
4 and knowingly waived his right to be present at all the
5 pretrial hearings -- at another one of the pretrial hearings,
6 more accurately. Sorry.

7 A couple administrative matters. Over the evening I
8 did receive the draft writs. Thank you. I'm still trying to
9 figure out what to do there.

10 Also during the evening I was approached by the CISO
11 and, I think, Mr. Potter; I don't remember. But the question
12 was the defense had requested Dr. Crosby be allowed in the
13 courtroom. I don't have a problem with it. I don't see her,
14 but she's more than welcome. Since she's cleared, she's
15 really more than welcome. Apparently she's on island, along
16 with another expert in the courtroom with the defense. So
17 hopefully you've communicated to her she's more than welcome
18 to be here.

19 MATC [COL WELLS]: Your Honor, the prosecution can address
20 that and raise a matter that we've also been in consultation
21 with the defense, which would be of interest to the
22 commission.

23 MJ [Col SPATH]: Give me just a second to finalize a

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1 couple things.

2 And then yesterday or the day before, one of the
3 days, we marked appellate exhibits, which were prosecution
4 exhibits, with marks on them from the witness. The court
5 reporters came to me and said there's some interest in
6 possibly getting those admitted as we work through these
7 preadmission sessions as part of these prosecution exhibits.
8 I don't have a preference. I've stayed out of the
9 preadmission piece, frankly. You all can put on your case the
10 way you want to. And so I told the court reporter, happy to
11 do it.

12 So Appellate Exhibit 395 is going to be released back
13 to be able to be used, and we're going to mark that as
14 Prosecution Exhibit 344B. And then Prosecution -- or
15 Appellate Exhibit 395A is going to be released back to the
16 court reporters to use, and it's going to be Prosecution
17 Exhibit 352B. And those are those screen shots that we --
18 that we saw with the circles on them.

19 For the preadmission piece -- and you don't have to
20 explain it, Mr. Miller; you indicated you're not used to doing
21 it this way. The rules look pretty similar to me.
22 Authentication and admissibility and marking exhibits and all,
23 it looks pretty similar. You all are doing it the way you

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1 choose to. I'm staying out of it. I'm staying out of it. My
2 opinions on how to mark stuff and all don't really matter.
3 It's your case. You all do what you want. We'll figure out
4 if they're admissible as we go forward, so -- all right.

5 Colonel Wells.

6 MATC [COL WELLS]: Sir, good morning.

7 MJ [Col SPATH]: Good morning.

8 MATC [COL WELLS]: Just a few points. We certainly
9 appreciate the Office of Court Administration and the court
10 reporters and the great work that they're doing, and we will
11 endeavor and strive to meet all of their needs and to run this
12 efficiently, and we greatly appreciate their understanding.
13 It's human error often on our part on putting this case
14 together and making sure that all the reviews are done across
15 the board and then submitting them timely. So also with the
16 court information security officer, we will continue to
17 endeavor to comply with all rules and standards, and we
18 greatly appreciate their understanding and patience.

19 Sir, about Dr. Crosby and a matter with the
20 court-ordered MRI process, I believe that she is here on
21 island to facilitate and attend that examination. And, of
22 course, the Joint Task Force is attempting to accommodate
23 that, also in conjunction with the convening authority's

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1 office, among other requests from other detainees to use the
2 MRI, which also requires a special staff to be flown in to
3 operate it that have the proper training.

4 So all of that is scheduled. The defense requested
5 ranges of dates are available. So they've arranged for
6 Dr. Crosby to be here. At the last minute I understand that
7 JTF also was imposed with visits from ICRC and other movement
8 requirements with the Hadi trial, which may be winding down
9 now, which might free open some space.

10 So we've been in consultation with the defense to
11 attempt to facilitate that MRI either tonight or tomorrow. I
12 understand Dr. Crosby may have travel arrangements on Friday.
13 So that's what we're working towards, sir. I don't think
14 there's any need for action by the commission, but we're just
15 informing that we're working towards that.

16 MJ [Col SPATH]: All right. Thanks.

17 MATC [COL WELLS]: All right, sir.

18 MJ [Col SPATH]: The other issue is, just for interest to
19 everybody, apparently there's some concern about the weather
20 in D.C. on Saturday. The nice thing about Andrews Airfield --
21 or Joint Base Andrews Airfield, their claim to fame is they're
22 always open, for obvious reasons. They have to be able to
23 land and take off there no matter what the weather. I've seen

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1 that come to fruition during Hurricane Sandy, that they were
2 still claiming to be open. Whether they were or not, I don't
3 know. I didn't fly out of there.

4 So with that said, they're always open, and then
5 there's wisdom in how we proceed. So I have directed the
6 director for the trial judiciary to at least have discussions
7 about what are our options. Because, from what I can tell --
8 I went and looked after that -- I was curious -- the weather
9 reports aren't that bad, but -- they're not that bad where
10 we're landing, but they are that bad as you spread out from
11 there. And, of course, we have people who are going to travel
12 as soon as they land on Saturday, and the impacts on their
13 travel can be more severe and significant than the impacts on
14 those of us who are just going to Metro, drive, or get home a
15 few miles from there.

16 And so I just say we need to be cognizant of that and
17 think this through so we don't, as some of us did, land in
18 some pretty ugly weather in D.C. and then release everybody
19 off into the wilderness to try to get home. I don't know
20 what's going to happen yet. I'm going to wait to hear back,
21 if there are any options. If there are some options, we'll
22 kind of talk through them. If we're going to finish on
23 Thursday, seems a good option is to leave on Friday at some

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1 point. Sunday the weather looks better. But that affects
2 everybody who has travel plans on Saturday, and I know that.
3 So no decisions. Just -- it came to me as I was working
4 through it.

5 This next part, I want to talk through. I pulled up
6 my notes. It's some frustration over -- it's not frustration.
7 It's just -- it's a lack of clarity from people who talk about
8 this process, and I think it's important to be clear as we
9 work through these difficult decisions that are affecting this
10 commission.

11 Not that anyone cares about my reading habits, but I
12 do professional reading typically in the evening a couple days
13 a week. Makes sense to me.

14 And yes, I use CAAFlog. I don't read the comments
15 and I tend not to read the analysis; I don't need their help,
16 because some people suggest it has a bias. But what I
17 appreciate about them is they tell me what cases have been
18 decided, what cases are of interest. And then I can click on
19 those links and go right to the case and I can read the case
20 law, right, from CAAF or from AFCCA, or from the Supreme
21 Court, and I can keep track of even cases that are affecting
22 us. Seems like a reasonable one-stop shopping mechanism.

23 So I was a little surprised last night when I opened

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1 it to find this case making their -- the top of the banner,
2 and noticed very quickly that it said that I had ordered, or
3 was going to order today, writs be issued against civilians to
4 be dragged to GTMO. Imagine my surprise. Fortunately, there
5 was a link to figure out where in the wide, wide world of
6 sports is that coming from.

7 And it's coming from a reporter who we brought down
8 here and we bring down here willingly, and you know, put up,
9 who got it wrong. I said very clearly yesterday I want draft
10 writs so I have options as I figure out what to do, and I
11 hadn't made a decision yet. I don't know if I could have been
12 more clear.

13 So I'll say it again, I said yesterday I haven't
14 decided yet to issue any writs. If they're issued, they're
15 not being brought to GTMO. Anybody paying attention to this
16 process knows that, right?

17 In the case of the two civilians, they're going to be
18 brought -- get this -- from where they work in D.C. or in the
19 D.C. area to another building in the D.C. area for a VTC. To
20 figure that out you just have to read the rules, that's it,
21 and report correctly.

22 Again, you don't have to; I have no control. But
23 it's just always remarkable to me that words matter and

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1 accuracy matters when we are dealing with significant issues
2 that affect people. And so my goal yesterday was not to cause
3 disturbance amongst the civilians and their attorney any more
4 than necessary. It was to give them a heads-up that we're
5 still working through the issue, not to cause them to wonder
6 all night when the marshals are coming.

7 Again, that seemed clear yesterday. I speak
8 reasonably clearly, I think. I try to speak slowly enough so
9 people can interpret when we have the accused here. It's
10 just -- it's remarkable to me the noise that surrounds a
11 process. So it is what it is.

12 In that same article, again, talks about the secret
13 court. I look out at all the people we bring. We haven't had
14 a classified session in months. In federal court when they're
15 dealing with FISA, pretty confident they have secret processes
16 all the time. And then if they're dealing with a classified
17 case, pretty confident they have classified sessions all the
18 time. Those aren't unique. I'm not suggesting we're not
19 unique in some ways, right? We come to GTMO; I get that. We
20 don't have service of process to bring people to GTMO; I get
21 that. I'm not blind to the differences. But accuracy is
22 important, right, for what it's worth. Again, when you're not
23 accurate it causes, I think, some uproar amongst people who

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1 are going to be affected by this process ultimately, because
2 they weren't here yesterday and they didn't hear the words.

3 So kind of for what it's worth, right, I haven't made
4 a decision yet. Because, as I said yesterday, if we issue the
5 writ and we bring the civilians, the second- and third-order
6 effect of that is that they are likely going to have a
7 significant conflict with their client, in which case I would
8 then be asked, I would imagine, to find good cause to sever
9 the relationship and be hard-pressed not to, when they're in
10 an adversarial relationship because of the negative impacts of
11 having a writ issued, and the impacts it might have on your
12 security clearance, your ability to appear before commissions,
13 and all those things. So I'm weighing all of that as I try to
14 figure out the way ahead.

15 But the other piece of this is, again, last night --
16 I don't do much down here except read, apparently -- I was
17 looking again through the regulations and again looking
18 through the Manual for the Commission, the Manual for Trial by
19 Military Commission. And the chief defense counsel's
20 responsibilities are listed out pretty clearly. And one of
21 them is that he or she will ensure that counsel before the
22 commissions follow the commission's order.

23 They list it off, right: They've got to follow the

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1 statute. They've got to follow the rules. They've got to
2 follow the manual. And they have to follow orders. Repeat
3 that. The chief defense counsel's responsibility is to ensure
4 that the attorneys follow the commission's orders. Not just
5 disagree with them and ignore them; not decide that they're
6 going to do whatever they wish to do; but follow the orders.

7 And, if you don't like the order, there's an
8 appellate review process, CMCR. Go to it and get them to,
9 right, weigh in on this. Go to the federal courts. We've all
10 shown some willingness to go there. Go to the federal courts,
11 get them to weigh in on this.

12 But that's the chief defense counsel's role. And
13 clearly not happening, which is what led to the discussion
14 that, well, Mr. Koffsky, or somebody in the defense community,
15 has to have read the regulations and the manual. That's how
16 the process works. And that works the same anywhere.

17 A trial judge or in a court, in a courts-martial
18 where I practice most of my time, you make a ruling, people
19 disagree with it, they use whatever avenue they can to appeal
20 the ruling. But again, rarely do I see what I see here, which
21 is lawlessness, frankly, by one of the communities. But it's
22 finding how do we fix that lawlessness.

23 The only one, frankly, who seems to be pushing and

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1 pushing and pushing to get Mr. al Nashiri defense counsel is
2 me. And I am not the only one who should be doing this.

3 I keep talking about fairness in the process. The
4 fairness is for both sides but, frankly, the accused, of
5 course, has a significant right to a fair proceeding. A
6 significant right. And why is the trial judiciary and the
7 trial judiciary staff the ones trying to figure out how do we
8 get him counsel? And I say that to both sides. It should be
9 you all. And it should be the convening authority's office.
10 And frankly, it should be somebody in DoD who owns this
11 process. So that's -- frankly, I am trying to figure out what
12 other remedies exist to drive this point home.

13 So I'll say it again. If I were the civilian counsel
14 concerned about a writ, I would think about your federal court
15 process. If I were the civilian counsel DoD employees
16 concerned about following what you signed up for, I would
17 think about coming to explain good cause. That's it. I've
18 said it over and over again.

19 And most importantly, follow the commission's orders
20 or go get appellate relief. But I have not decided about
21 whether or not I'm issuing a writ. I'm saying that multiple
22 times in the hopes that accurate information gets transmitted
23 like I said yesterday.

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1 So I appreciate the drafts of the writs. I do. I'm
2 working through it. I'm going to work through it I hope today
3 as we move through. I really do want to give some idea of the
4 road ahead, because everybody deserves it. And the -- kind of
5 the uproar over the stuff that is exciting isn't particularly
6 helpful. What's helpful is to be accurate.

7 Okay. Colonel Wells, any update on Mr. Koffsky?

8 MATC [COL WELLS]: Yes, sir. Thank you. Last night we
9 did contact Mr. Koffsky and his office. And the indication is
10 that his staff will meet with him and advise him. We took the
11 opportunity to capture your language right from the transcript
12 and provide that to his staff. We've also contacted our
13 advisers in the General Counsel's office to ask them to
14 consult. So I think that is on track again to see if he's
15 available.

16 About availability, next week is still available from
17 the prosecution's point of view, and we're not -- we are
18 available next week. And I would suggest to the commission,
19 since that was previously scheduled, that that's a time that
20 we can also use to address this matter with Ms. Eliades and
21 Ms. Spears and with Mr. Koffsky as needed, and also again
22 revisit with Colonel Aaron from that standpoint.

23 Also, I would give the Commission ----

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1 MJ [Col SPATH]: Fixes the weather issue.

2 MATC [COL WELLS]: I'm sorry, sir?

3 MJ [Col SPATH]: Fixes the weather issue.

4 MATC [COL WELLS]: Yes, sir, it does. And so I would
5 suggest that we not artificially limit ourselves with that.
6 We're here; we're ready to go; let's do business.

7 Also, with Ms. Eliades and Ms. Spears, we took the
8 opportunity to send the transcript to their counsel, because
9 we recognize that although they made an appearance here for
10 their filings, they're not here personally. Although we can
11 believe that perhaps they heard through channels some way, we
12 wanted to make sure that they got exactly the words from the
13 commission, so we sent the transcript as soon as we had it.
14 So I think they do have that information.

15 So I do want to give you assurances that the
16 prosecution continues to push and ask the appropriate
17 questions with both the supervisory chain, with the convening
18 authority's office, with the Office of General Counsel. And
19 we're on pace, patiently exercising the appropriate,
20 reasonable, prudent authorities that the commission has and
21 that we also have.

22 So we still have another session in March. We have
23 next week. Then we have open time after March, too, that we

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1 can address this matter. And we're interested in making sure
2 that the MCD0 is properly resourced, that the accused has
3 proper, qualified counsel, and that they actually do appear
4 and comply with the commission's orders. And there seems to
5 be a fissure and a failing there that needs fixing.

6 So thank you, sir.

7 MJ [Col SPATH]: All right. Thank you.

8 Defense Counsel, anything?

9 DDC [LT PIETTE]: Yes. Just briefly, Your Honor. In the
10 interest of accuracy, we have somebody here who I didn't
11 mention on Monday because he wasn't in the courtroom, but
12 Mr. Scott Hoffman is another one of our analysts who's present
13 here today. He's part of the actual defense team, not an
14 expert. He's one of the many resources given to us by the
15 MCD0.

16 MJ [Col SPATH]: No, and I was talking about the expert
17 you already had. You identified him in the first session at
18 the middle table there. I didn't -- thank you. I had not
19 paid much mind; I should have, probably.

20 DDC [LT PIETTE]: That's all, Your Honor.

21 MJ [Col SPATH]: Thank you. All right.

22 We have VTC witnesses?

23 TC [MR. MILLER]: Good morning, Your Honor.

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1 MJ [Col SPATH]: Good morning.

2 TC [MR. MILLER]: Just briefly before we call him, if I
3 could, just to address the court on the matter of the issue of
4 the marking of the evidence. I apologize for any problems
5 with that. Although the law, I think, is clear. It's the
6 mechanics. It's just like when you start out; you know how to
7 write a complaint. It's getting it to the judge and getting
8 it to the clerk's office that they don't teach you in law
9 school. So your staff has been very patient, as my colleague
10 said. So hopefully I'll become a little bit more familiar
11 with just how to get these things done as we go through,
12 so ----

13 MJ [Col SPATH]: It's a lot of documents. It's a lot of
14 photographs. It's a lot of evidence. There's no doubt about
15 that. And so thank you.

16 TC [MR. MILLER]: Thank you. The government is going
17 to -- first VTC witness will be Special Agent Kissane of the
18 FBI.

19 Can you hear me, sir?

20 WIT: Yes, sir, I can.

21 TC [MR. MILLER]: All right. Would you stand, please, and
22 raise your right hand.

23 PHILLIP KISSANE, civilian, was called as a witness for the

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1 prosecution, was sworn, and testified as follows:

2 DIRECT EXAMINATION

3 Questions by the Trial Counsel [MR. MILLER]:

4 Q. Please be seated. And if you would, state your name
5 for the record.

6 A. My name is Phillip Kissane.

7 Q. And your occupation, sir?

8 A. I am a retired special agent of the FBI. I currently
9 work as a full-time contractor for the FBI.

10 Q. I want to talk a little bit about your background.
11 You attended university; is that correct?

12 A. Yes, I did.

13 Q. And where did you go, sir?

14 A. The University of San Diego.

15 Q. All right. And in what year did you graduate?

16 A. 1986.

17 Q. Degree?

18 A. Political Science, Bachelor of Arts in Political
19 Science.

20 Q. After your time at the University of San Diego, did
21 you enroll or did you join the military?

22 A. Yes, I did.

23 Q. And could you indicate the branch and what your

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1 general duties and responsibilities were?

2 A. The U.S. Marine Corps. I was a tank officer.

3 Q. And how long were you in the Marine Corps?

4 A. Just under six years.

5 Q. So that would have been from 1986 through what year?

6 A. 1992.

7 Q. What was your final rank?

8 A. A captain.

9 Q. After your time in the Marine Corps, where did you
10 next go employment-wise?

11 A. I began working for the FBI.

12 Q. And did you attend -- I imagine you attended the
13 basic New Agent School at Quantico?

14 A. Yes, I did.

15 Q. And did you receive some training in the collection
16 of evidence and the processing of crime scenes?

17 A. I did.

18 Q. After your time at Quantico, what was your first
19 office?

20 A. My first office was the Butte, Montana, Resident
21 Agency.

22 Q. How long were you in Butte?

23 A. Just under three years.

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1 Q. And what was your general duties and responsibilities
2 there in Butte, Montana?

3 A. I was an investigator of general -- general crimes.

4 Q. Bank robberies, fugitives, things of that nature?

5 A. Yes.

6 Q. I take it you had occasion to search various crime
7 scenes, dope houses, things of that -- that nature?

8 A. Yes, I did.

9 Q. After Butte, where did you go?

10 A. The Boise, Idaho, Resident Agency.

11 Q. And when -- how long were you in Boise?

12 A. Again, just under three years.

13 Q. And during what years would those be, sir?

14 A. From approximately ninety -- 1994 to 1996.

15 Q. And after your ----

16 A. '97.

17 Q. '97. After your time in Boise, where did you next
18 go?

19 A. I was assigned to the FBI's Hostage Rescue Team at
20 Quantico, Virginia.

21 Q. And how long were you there?

22 A. Just under 18 years before I retired.

23 Q. In what year?

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1 A. The end of 2014.

2 Q. And at HRT, I take it -- were you chosen or did you
3 have to try out, so to speak, for that position?

4 A. I attended the HRT selection. It was essentially a
5 trial.

6 Q. All right. And were you ever a supervisor or team
7 leader?

8 A. Yes.

9 Q. And in what capacity, sir?

10 A. I served as an assault team leader as well as a
11 sniper team leader. Both of those are supervisory special
12 agent positions.

13 Q. Were you ever a special agent bomb tech?

14 A. Yes.

15 Q. And when did you achieve that status?

16 A. I believe that was 1999-2000.

17 Q. And could you briefly relate to the court what that
18 involved, how you became a special agent bomb tech?

19 A. Attend a six-week course in Huntsville, Alabama,
20 Hazardous Devices School.

21 Q. You indicated that you retired in 2014?

22 A. Yes.

23 Q. And subsequent to your time at the FBI, how were you

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1 employed?

2 A. I am employed as a full-time contractor working at
3 HRT for the FBI.

4 Q. And what do you do for them, just generally?

5 A. Work in the Weapons of Mass Destruction Tactical
6 Program training FBI tactical teams how to operate in chemical
7 protective clothing and equipment.

8 Q. You're an instructor?

9 A. Yes.

10 Q. I want to take you back to October of 2000. Did you
11 have occasion to go to Yemen?

12 A. Yes.

13 Q. And what was your purpose in going to Yemen?

14 A. We were -- we, being HRT, were providing force
15 protection for the agents and Evidence Response Teams
16 responding to the bombing of the USS COLE.

17 Q. The term "force protection" is kind of a term of art.
18 Could you relate what you mean by that?

19 A. We were ensuring the safety of the agents and
20 evidence response personnel. We would transport them from the
21 hotel to the location at the pier where the COLE was in -- in
22 a harbor there. So our -- our mission is to ensure their
23 safety, make sure no harm comes to them.

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1 Q. You're their bodyguards, so to speak?

2 A. Yes.

3 Q. Do you remember the other agents that were there with
4 you? And I'm talking about the HRT members.

5 A. Yes.

6 Q. Who were they?

7 A. Cruz Tovar, Mike Thomas, Dave Hackmeyer. There were
8 a number of them.

9 Q. Do you remember landing in Aden?

10 A. Yes, I do.

11 Q. All right. And is that when your responsibilities
12 begin?

13 A. Yes.

14 Q. Do you remember any unusual situation upon landing?

15 A. I know that we had to stay on board the Air Force jet
16 for a period of time while -- before we were allowed to leave
17 the plane.

18 Q. And after you left the plane, did you take any kind
19 of action regarding the FBI team that was there? I guess, did
20 you help move them somewhere?

21 A. Yes.

22 Q. Where was that, sir?

23 A. To a hotel.

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1 Q. And did you continue to guard them or provide
2 protection for them in your time in Yemen?

3 A. Yes.

4 Q. And do you remember how long you were there?

5 A. If I recall, I want to say about two weeks.

6 Q. Did you ever have occasion to go to any search sites
7 with them?

8 A. Yes.

9 Q. And what would you do? What would your
10 responsibilities generally be in going to the search sites,
11 starting from the time you left the hotel to the time that you
12 got there?

13 A. From the time we left the hotel, we would ensure the
14 safety of the agents and ERT folks while we were en route.
15 Once we arrived at the search scene, before the investigators
16 went to begin their search, we, the HRT personnel, would clear
17 the building or structure to ensure that there was no human
18 threat posed to the investigators before they would make
19 entry.

20 Q. Once you had determined that there was no human
21 threat, would you also look for booby traps, bombs, things of
22 that nature?

23 A. Yes. During the course of our clearing operations

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1 again looking for human threat, we're also trained to observe
2 anything out of the ordinary, whether it be tripwires, bombs,
3 or anything that we note that may be of evidentiary value that
4 we can point out to the evidence response personnel.

5 Q. And that's my question. Is your -- do you actually
6 collect the evidence? Or how -- when you see something that
7 you think is of evidentiary value, what action does an HRT
8 member do? What do you take?

9 A. No, we don't collect it. Make a mental note of what
10 we saw, where we saw it. After we come outside of the
11 structure, we'll provide a debrief to the evidence response
12 personnel indicating what we saw that may be of importance,
13 where we observed that.

14 Q. All right.

15 A. And essentially debrief them in that manner.

16 TC [MR. MILLER]: Your Honor, permission to use the ELM0?

17 MJ [Col SPATH]: You may.

18 Q. I've placed on the ELM0 a photograph, Prosecution
19 Exhibit 337 for Identification. Do you recognize that site,
20 sir?

21 A. I don't see any site on my screen.

22 MJ [Col SPATH]: They're working on it.

23 Q. They're working on it.

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1 A. Okay. Yes, I do.

2 Q. All right. Do you recognize that site?

3 A. Yes, I do.

4 Q. And what do you recognize that site to be?

5 A. One of the -- the search sites in Yemen that we
6 cleared before evidence response personnel went in.

7 Q. Do you recall whether or not you found everything or
8 identified something that you thought was of evidentiary
9 value?

10 A. Yes.

11 Q. Do you remember where about you may have found it?

12 A. Inside the -- the structure behind the walls. Behind
13 the walls that I can see here. I can't see it.

14 TC [MR. MILLER]: Do you have 294? Exhibit.

15 Q. I'm going to place first on the ELMO an evidence bag
16 with evidence in it, marked Prosecution Exhibit 294 for
17 Identification. Do you recognize that, sir?

18 A. Yes.

19 Q. And, in fact, you had occasion to view this sometime
20 last week; it was shown to you?

21 A. Yes, sir.

22 Q. You had occasion to inspect it with another agent and
23 prosecution team, correct?

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1 A. That's correct.

2 Q. What do you recognize this to be?

3 A. A -- what we call a 1A envelope. We in the FBI call
4 it a 1A envelope; that's used to collect evidence.

5 Q. And if I could, I'm going to put it up here as a
6 little shiny -- that's a little bit better.

7 A. Yes.

8 Q. Indicates the date, location, and recovered by. Do
9 you recognize that?

10 A. I do.

11 Q. All right. And does it indicate that you, in fact,
12 collected this evidence?

13 A. It notes "recovered by Phil Kissane."

14 Q. All right. And did you, in fact, collect the
15 evidence in Prosecution Exhibit 294?

16 A. I observed that evidence ----

17 Q. All right.

18 A. ---- at that search site.

19 Q. And what did you do after you observed that evidence?

20 A. I debriefed the evidence response personnel or -- I
21 pointed out to the evidence response personnel once I came out
22 of that site that there may be items of interest to them
23 located in there.

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1 TC [MR. MILLER]: If you would open it, please.

2 [Pause.]

3 Q. I'm placing on the ELM0 the bag itself, Prosecution
4 Exhibit 294. Do you recognize the two items on the ELM0? I'm
5 pointing to them.

6 A. Yes.

7 Q. All right. And were those the items that you
8 identified for the evidence response persons?

9 A. Yes.

10 Q. I'm now placing on the ELM0 Prosecution Exhibit 294A
11 for Identification. Do you recognize the items in that
12 photograph?

13 A. Yes.

14 Q. Are those the same items contained in the Exhibit
15 294?

16 A. Yes.

17 Q. And there's also a K number on the photograph, is
18 there not, Prosecution Exhibit 294A?

19 A. Yes.

20 Q. And what is that number, sir?

21 A. K76, 00 ----

22 Q. I just want the K number.

23 A. Okay. Very good.

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1 Q. I'm now placing on the bag -- on the ELM0 again that
2 bag.

3 A. Yes.

4 Q. Is there a K number on the bag itself?

5 A. Yes, there is.

6 Q. And what is that number?

7 A. K76.

8 Q. And does that match the number in the four -- the
9 previous exhibit, Prosecution Exhibit 294A?

10 A. Yes, sir, it does.

11 Q. I'm again placing the evidence bag, 294, on the ELM0.
12 Is there a 1B number on that?

13 A. Yes, there is.

14 Q. All right. And what is that 1B number?

15 A. 1B77.

16 TC [MR. MILLER]: Do we have the green sheet? Oh, thank
17 you.

18 Q. I'm placing the green sheet that was attached to that
19 exhibit on the ELM0. Do you see that, sir?

20 A. Yes, I do.

21 Q. And do you recognize that form?

22 A. Yes, I do.

23 Q. All right. And does -- is there a 1B number on it?

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1 A. 1B77.

2 Q. All right. And is that the same number that appears
3 on the exhibit itself, Prosecution Exhibit 294?

4 A. Yes.

5 Q. Now, it indicates the name of the person collecting
6 it is Joseph McNamara. Are you familiar with Mr. McNamara?

7 A. Yes.

8 Q. And who is he?

9 A. The Evidence Response Team leader.

10 Q. Was he the Evidence Response Team leader at that site
11 that you have identified?

12 A. Yes.

13 Q. I'm going to place on the ELMO Prosecution
14 Exhibit 94 -- 294C for Identification. Is that an exact
15 duplicate of the chain of custody form you've just identified?

16 A. Yes.

17 Q. And lastly, I'm placing on the ELMO Prosecution
18 Exhibit 294B for Identification. Is that -- do you recognize
19 that photograph?

20 A. Yes.

21 Q. All right. And is it an accurate depiction of the
22 actual exhibit, Prosecution Exhibit 294?

23 A. Yes, it is.

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1 TC [MR. MILLER]: Your Honor, the government would move
2 for the introduction -- the prosecution would move for the
3 introduction of Prosecution Exhibits 294A, 294B, and 294C.

4 MJ [Col SPATH]: Noted. Thank you.

5 TC [MR. MILLER]: No further questions of this witness,
6 sir.

7 MJ [Col SPATH]: Thank you.

8 TC [MR. MILLER]: Thank you.

9 MJ [Col SPATH]: Defense Counsel, do you have any
10 questions?

11 DDC [LT PIETTE]: The defense takes no position.

12 MJ [Col SPATH]: All right. Mr. -- Special Agent
13 Kissanto? Am I saying your name correctly?

14 WIT: Kissane. Yes, sir.

15 MJ [Col SPATH]: Kissane. Okay. Thank you. Let me make
16 a note.

17 Let me give you a standard order. I don't want you
18 to discuss your testimony with anyone until we resolve this
19 issue. As I say to everybody, it may be a while before this
20 issue is resolved, as you can probably imagine. So do you
21 understand the order?

22 WIT: I understand, Your Honor.

23 MJ [Col SPATH]: Okay. And thank you very much for your

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1 testimony. They will help you get out of there and disconnect
2 for you. Thanks very much.

3 WIT: Thank you, sir.

4 [The witness was warned, excused, and the VTC terminated.]

5 MJ [Col SPATH]: Thanks. I know we have another witness
6 coming from the Mark Center, a shorter one. Let's take a
7 short break, and we'll come back. See you in ten. We're in
8 recess.

9 [The R.M.C. 803 session recessed at 1048, 14 February 2018.]

10 [The R.M.C. 803 session was called to order at 1103,
11 14 February 2018.]

12 MJ [Col SPATH]: The commissions are called back to order.
13 All the parties are present who were present before the
14 recess.

15 Trial Counsel, call your next witness.

16 TC [MR. MILLER]: By VTC, Your Honor, the government calls
17 Special Agent Kelly VanArsdale.

18 MJ [Col SPATH]: Okay. She's not there?

19 TC [MR. MILLER]: She's not there. Let's -- may we have
20 one second, Your Honor?

21 MJ [Col SPATH]: Yeah, we can. If we have a live witness,
22 good. If not, we'll take a really early lunch break.

23 MATC [COL WELLS]: [Microphone button not pushed; no

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1 audio.]

2 MJ [Col SPATH]: You've got to push the mic. Nobody can
3 hear you.

4 TC [MR. MILLER]: There we go. Another day at the
5 commissions, Your Honor.

6 MJ [Col SPATH]: Never dull.

7 TC [MR. MILLER]: Thank you for your patience.

8 MJ [Col SPATH]: There she is. Okay.

9 TC [MR. MILLER]: Would you stand, please? Raise your
10 right hand.

11 KELLY VanARSDALE, civilian, was called as a witness for the
12 prosecution, was sworn, and testified as follows:

13 DIRECT EXAMINATION

14 Questions by the Trial Counsel [MR. MILLER]:

15 Q. Will you please take a seat and state your name for
16 the record, please.

17 A. My name is Kelly, last name is VanArsdale, and it's
18 spelled ----

19 Q. How do you spell it?

20 A. Spelled V, as in Victor, A-N, capital A-R-S-D-A-L-E.

21 Q. And while a member of the FBI, have you had any other
22 names? Maiden names, I guess, your maiden name?

23 A. My maiden name was Baribeau, B, as in boy, A-R, as in

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1 Robert, I-B, as in boy, E-A-U.

2 Q. And was that your name during the time of the
3 investigation of the bombing of the USS COLE?

4 A. Yes, it was.

5 Q. And you are the same Special Agent VanArsdale that's
6 previously testified in this matter before the commission,
7 correct?

8 A. Yes, I am.

9 Q. All right. I want to direct your attention back to
10 the time of the COLE. Just, again, generally to reacquaint
11 the court, what was your position? What were your duties?
12 What were your responsibilities?

13 A. So I was a physical science technician with the
14 FBI Laboratory Explosives Unit. In that position I assisted
15 qualified examiners in the Explosives Unit, processed evidence
16 from bombing scenes, attempted bombing scenes, hoax devices,
17 that sort of -- that sort of thing.

18 Q. And who was your supervisor?

19 A. My direct supervisor was Greg Carl. However, when we
20 had major cases and that sort of thing, we worked for other
21 examiners. At the time of the COLE, I worked with Mark
22 Whitworth.

23 Q. In addition to accepting evidence into the

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1 laboratory, which you've testified about previously, did you
2 ever have occasion to go to any crime scene to conduct any
3 searches or collection of evidence?

4 A. Yes, I did.

5 Q. And could you relate to the court where you went and
6 why you went there?

7 A. I went to Pascagoula, Mississippi, when the USS COLE
8 came back from overseas, to help process additional evidence
9 from that particular scene and participate in the collection
10 of that to get it back to the FBI Laboratory for examination.

11 Q. And who had sent you there?

12 A. It was under the approval of the unit chief at the
13 time and under the direction of Mark Whitworth.

14 Q. When you went there, were you the only individual --
15 or the only technician who went there, or were there other
16 personnel who accompanied you to the USS COLE in Pascagoula?

17 A. There were other personnel as well.

18 Q. Was the ship in dry dock?

19 A. It was on board the USS MARLIN. I don't know if it
20 was called the USS or -- it was the MARLIN.

21 Q. It was on an oceangoing barge, so to speak?

22 A. Correct. Yes.

23 Q. Did you have occasion to collect some evidence at

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1 that scene?

2 A. Yes, I did.

3 TC [MR. MILLER]: Can you provide me with Prosecution
4 Exhibit 84?

5 Q. I'm going to place on the ----

6 TC [MR. MILLER]: Stay here.

7 Q. ---- place on the ELMO Prosecution Exhibit 84 for
8 Identification, and ask you if you recognize this, ma'am.

9 A. I recognize the laboratory number and the item number
10 but those are not my initials.

11 Q. All right. I'm just asking you whether or not you
12 recognize the bag.

13 A. I recognize it as being evidence from the case, yes.

14 Q. I'm going to turn over to the other side and ask you
15 if you recognize that.

16 A. Again, I recognize it as being evidence that was
17 related to the case, yes.

18 Q. All right. Is this the bag of evidence that you
19 collected?

20 A. My initials are not on that bag.

21 Q. My question is: Did you collect this evidence?

22 A. I don't know.

23 TC [MR. MILLER]: Open it up, please.

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1 Q. Now, we've now opened the outer bag and I'm placing
2 the inner bag of Prosecution Exhibit 2 -- excuse me,
3 Prosecution 84 on the ELM0. Do you recognize that, ma'am?

4 A. I recognize it as being items associated with the
5 case, yes.

6 Q. All right. And does it have an MSD number on it?

7 A. Yes, it does.

8 Q. And what is that number?

9 A. MSDK4-107.

10 Q. All right. And is there a Q number on it, also?

11 A. Yes, there is.

12 Q. All right. And what is that Q number?

13 A. It's Q627.

14 Q. Taking the chain of custody form that is attached to
15 the exhibit, I'm going to lay that on the ELM0. Do you
16 recognize that?

17 A. Yes, I do.

18 Q. All right. And what does that chain of custody form
19 indicate?

20 A. It indicates that the evidence was received by me,
21 and the reason for collection was for laboratory examinations.

22 Q. And does it have an MSDK number on it?

23 A. Yes, it's MSDK4-107.

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1 Q. And is that the same number that's contained on the
2 evidence bag itself, Prosecution Exhibit 84?

3 A. Yes, sir, it is.

4 Q. All right. Going back to the chain of custody form,
5 by signing that you indicated that you collected this
6 evidence; is that correct?

7 A. I did collect the evidence. As far as how that
8 collection occurred, when I was down there I was collecting
9 the evidence for laboratory examination purposes. So somebody
10 else may have physically collected it from the scene, and then
11 I took it from them. But I ended up with the collection of
12 the actual evidence, yes.

13 Q. All right. Do you have any reason to believe that
14 this was not taken off the COLE on the 14th of December 2000
15 at approximately 11:30 a.m.?

16 A. No. No.

17 Q. Have you previously, within the last couple of weeks,
18 had occasion to look at the evidence bag and what was inside
19 this particular bag, Prosecution Exhibit 84?

20 A. I most likely did, yes. I don't recall specifically.

21 Q. All right.

22 TC [MR. MILLER]: Go ahead and open it.

23 Q. I've placed the evidence on the evidence bag [sic].

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1 Do you recognize that, ma'am?

2 A. I recognize it as being evidence that I've seen
3 associated with the COLE, yes.

4 Q. All right. I'm going to place on the ELM0
5 Prosecution Exhibit 84A, and ask you if you recognize that
6 photograph, ma'am?

7 A. I've seen that photograph, yes.

8 Q. All right. Does that photograph contain the same
9 objects I've just laid on the ELM0, the objects that were
10 contained in the bag, Prosecution Exhibit 84?

11 A. Yes, it has the same identifier number on it.

12 Q. My question, again, is: Is it the same objects that
13 I just laid on the ELM0?

14 A. It appears to be, yes.

15 Q. All right. And is there a Q number on there?

16 A. Yes. In the upper left-hand corner there is a Q
17 number. It's Q627.

18 Q. And is that the same Q number that's contained on the
19 bag, Prosecution 627, that's contained on the bag itself? Do
20 they match?

21 A. Yes, sir.

22 Q. And going back to the chain of custody form. I've
23 placed on the ELM0 a chain of custody form. Again, you

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1 recognize your signature as the person who received the item?

2 Correct?

3 A. Yes, sir.

4 Q. I'm now placing on the ELMO Prosecution Exhibit 84C
5 for Identification. Is that an exact duplicate of the form
6 that you've just identified?

7 A. Yes, sir, it is.

8 Q. And I think we indicated that the bag,
9 Prosecution 84, and the form, Prosecution 84C, have the same
10 MSDK number; is that correct?

11 A. Yes, sir, it does.

12 Q. Lastly, I'm placing on the ELMO Prosecution
13 Exhibit 84B for Identification, ma'am. And do you recognize
14 that photograph?

15 A. I do.

16 Q. All right. Is that a fair and accurate depiction of
17 the actual evidence bag in Prosecution Exhibit 84?

18 A. Yes, sir, it is.

19 Q. All right.

20 TC [MR. MILLER]: Your Honor, the government would move
21 for the admission of Prosecution Exhibits 84A, 84B, and 84C.

22 MJ [Col SPATH]: Noted. Thank you.

23 TC [MR. MILLER]: We have no further questions of this

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1 witness, Your Honor.

2 MJ [Col SPATH]: Defense Counsel, any questions?

3 DDC [LT PIETTE]: The defense takes no position.

4 MJ [Col SPATH]: All right. Special Agent Baribeau,
5 thanks again for your testimony. This is Judge Spath. Can
6 you hear me?

7 WIT: I can, sir. Thank you.

8 MJ [Col SPATH]: I know you were here in person last time.
9 I do appreciate you again taking the time to testify. If you
10 remember the earlier order, don't discuss your testimony with
11 anyone until this matter is resolved, which likely will take
12 some time, okay?

13 WIT: Absolutely, sir. Thank you very much.

14 MJ [Col SPATH]: Thanks again. You are excused.

15 WIT: Good to see you. Thanks.

16 MJ [Col SPATH]: All right. We can disconnect. Trial
17 Counsel?

18 **[The witness was warned, excused, and the VTC terminated.]**

19 TC [MR. MILLER]: The next witness is live, Your Honor.

20 MJ [Col SPATH]: All right. Are they here?

21 TC [MR. MILLER]: Yes, thankfully. And it will be Special
22 Agent Kneisler.

23 Step forward, please, to the witness stand. Would

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1 you raise your right hand, please?

2 TRACY KNEISLER, civilian, was called as a witness for the
3 prosecution, was sworn, and testified as follows:

4 DIRECT EXAMINATION

5 Questions by the Trial Counsel [MR. MILLER]:

6 Q. Have a seat, please. If you would, please, state
7 your name for the record.

8 A. Tracy Kneisler.

9 Q. And you are the same Tracy Kneisler who testified
10 here previously before the commission, correct?

11 A. Yes.

12 Q. I think at the time that you testified you were
13 stationed or you were assigned to the Santa Fe office; is that
14 correct?

15 A. I was in the Santa Fe Resident Agency of the
16 Albuquerque Field Office, yes, sir.

17 Q. Since that time, have you been transferred?

18 A. I have. I'm now assigned to our headquarters. I'm
19 in the Counterintelligence Division.

20 Q. All right. I think you previously testified that you
21 were involved with the search or some of the searches in and
22 around Aden in Yemen, correct?

23 A. Yes, sir.

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1 Q. Were you assigned any of the searches of the -- what
2 I'll call the -- well, involved in any of what we call the
3 land searches?

4 A. Yes, sir.

5 Q. And do you recall which ones you did?

6 A. Yes, sir. I searched two residences, also a vehicle
7 and a trailer, a beach location; and accepted evidence from a
8 police station.

9 Q. All right. I want to talk about the first search
10 that you did. I'll take you back to October 17th of 2000. Do
11 you recall being involved in a search on that date?

12 A. Yes, sir.

13 Q. And do you recall how you got to the site?

14 A. We traveled by passenger van to the site from the
15 hotel.

16 Q. And when you say "we," if you could, indicate,
17 please, by whom you mean by "we."

18 A. I deployed as part of our Evidence Response Team from
19 the Washington Field Office. Also, as I recall, some members
20 of the Hostage Rescue Team were with us. I'm not -- I don't
21 remember who was in our van. I think there were more than
22 one -- there was more than one van. Also, some leadership
23 from my field office and from the New York Field Office with

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1 some bomb technicians and maybe an investigator or two.

2 Q. When you arrived there, were there any Yemeni law
3 enforcement personnel present?

4 A. There were. There were lots of people in different
5 uniforms, yes, sir.

6 Q. Did you have occasion to speak with any of them prior
7 to conducting your search?

8 A. Not specifically. If anything, it was just sort of,
9 you know, kind of "hello" kinds of conversations.

10 Q. Do you know whether or not any members of your
11 leadership at the scene spoke with them?

12 A. Yes, sir. My understanding was that they had a
13 conversation with the Yemeni personnel who were in charge
14 there, and they got information from them. And eventually we
15 were allowed to start our search.

16 Q. You were not privy or part of those conversations?

17 A. No, sir, I was not.

18 Q. If you were shown a photograph of the site, do you
19 think you would recall it?

20 A. Yes, sir.

21 TC [MR. MILLER]: Your Honor, permission to use the
22 monitor to show some photographs -- a couple photographs to
23 the witness?

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1 MJ [Col SPATH]: You may.

2 TC [MR. MILLER]: If you would, please, Prosecution
3 Exhibit 344 for Identification.

4 Q. I've placed on the monitor for your review, Agent,
5 Prosecution Exhibit 344 for Identification. Do you recognize
6 that photograph, Agent?

7 A. Yes, sir. That's the location of the search.

8 TC [MR. MILLER]: And if you could show Prosecution
9 Exhibit 721, please.

10 Q. Do you recognize -- I'm sorry.

11 A. Yes, sir.

12 Q. I've now placed on the ELMO Prosecution -- or, excuse
13 me, on the monitor, Prosecution Exhibit 721 for
14 Identification. Do you recognize that photograph?

15 A. Yes, sir. That's a different view of the same
16 location.

17 Q. You recognize there are two individuals in it,
18 correct?

19 A. There are three.

20 Q. Three? All right. Okay. Do you recognize any of
21 them?

22 A. Yes. The two people on the back wall holding the
23 tape measure, that's me and Garrett McKenzie.

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1 Q. Oh, all right.

2 A. Don't recognize the guy sitting in front of the blue
3 doors.

4 Q. Now I caught it. I was looking for the third person.
5 Where's Waldo? Thank you. Okay.

6 So you'd be one of the persons on the wall?

7 A. Yes, sir.

8 Q. What were you all doing?

9 A. We were measuring the back wall.

10 Q. All right. Did you have occasion to enter into the
11 compound itself?

12 A. Yes, sir.

13 Q. And had a -- had there been a search protocol or
14 procedure established prior to going in?

15 A. Yes, sir. My -- my recollection is the search was
16 actually underway while we were doing the measurements on the
17 back wall. Like most searches that we do in this case, we did
18 a basic walkthrough of the location. Entrance photos were
19 taken. The search commenced. I was assigned to do
20 measurements of the building. The search started. When we
21 were done taking our measurements, I searched a couple of the
22 rooms that were located in the residence.

23 Q. And when you went to search those rooms, had those

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1 rooms been marked or identified in any way?

2 A. Yes, sir. The search team leader typically, and in
3 this case, also assigns different letters to the rooms so that
4 we can distinguish them from one another.

5 Q. And do you then use those to mark your evidence bags?

6 A. Yes, sir.

7 TC [MR. MILLER]: If we could put up the chart of -- the
8 right one.

9 Q. I've placed before you and marked as Prosecution
10 Exhibit -- or a blowup of Prosecution Exhibit 1030. Do you
11 recognize generally that schematic?

12 A. Yes, sir. That's the interior dimensions, more or
13 less, of the building that you showed me pictures of.

14 Q. And when you entered and conducted your search -- do
15 you remember the areas where you searched?

16 A. My recollection is I mostly searched in the space
17 that's labeled Room A, Room B and C, and Room G.

18 Q. And you had occasion to seize various items; is that
19 correct?

20 A. Yes, sir.

21 TC [MR. MILLER]: If you could provide the witness,
22 please, with Prosecution Exhibit 268.

23 Q. Have you had a chance to look at that, Agent?

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1 A. Yes, sir.

2 Q. And do you recognize it?

3 A. Yes, sir.

4 Q. And what do you recognize it to be?

5 A. Resin with part of a paintbrush.

6 Q. Is that something that you seized?

7 A. Yes, sir.

8 Q. And how do you know that it's something that you
9 seized?

10 A. It's my handwriting on the bag, on the evidence bag.

11 Q. Can you see the item?

12 A. Yes, sir.

13 Q. I am placing on the ELM0 ----

14 TC [MR. MILLER]: Permission to use the ELM0, Your Honor?

15 MJ [Col SPATH]: You may.

16 Q. Placing on the ELM0 Prosecution Exhibit 268A for
17 Identification. Do you recognize what's contained in that
18 photograph?

19 A. Yes, sir.

20 Q. And what is contained in that photograph?

21 A. It's the items that are in this bag. It's some sort
22 of resin with a paintbrush stuck in it.

23 Q. And is there a K number on that photograph?

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1 A. Yes, sir. K17.

2 Q. All right. I'll show you the other side, I guess, of
3 the exhibit, Prosecution Exhibit 268B for Identification. Do
4 you recognize that?

5 A. Yes, sir.

6 Q. Is that the same brush and resin?

7 A. That's in this bag, yes, sir.

8 Q. And does it have a K number?

9 A. K17.

10 Q. Looking at the bag itself, is there some handwriting
11 on the evidence bag, 268?

12 A. Yes, sir.

13 Q. Does it contain, Agent, any of your handwriting?

14 A. Yes, sir.

15 Q. And could you read into the record what you recorded
16 that day?

17 A. The case number is at the top underneath the tape.
18 The date and time of recovery is 10/17/2000. It's my first
19 initial and my last name on the "recovered by" line. And the
20 description and location is listed as "resin with partial
21 paintbrush, center east and courtyard west of building."

22 Q. Would that be Room A or Room G?

23 A. Room A.

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1 Q. What did you do with this particular exhibit once you
2 were finished with it?

3 A. I put it in this bag and sealed it.

4 Q. All right. And was it then provided to someone else?

5 A. Yes, the team leader. The Evidence Response Team
6 leader that day was Joe McNamara, and all the evidence that we
7 collected we gave to him to centralize and record.

8 Q. Did you do that with every piece of evidence that you
9 had?

10 A. Yes, sir.

11 Q. Now, if you could look at the bag, does the bag have
12 a K number on it?

13 A. K17, yes, sir.

14 Q. And is that the same K number that's contained on
15 Prosecution Exhibits 268A and 268B?

16 A. Yes.

17 Q. Is there a chain of custody or FD-192 attached to
18 that?

19 A. Yes, sir.

20 Q. All right. Could you take a look at that, please.

21 A. [Did as directed.]

22 Q. It has a YM number; is that correct?

23 A. YM1, yes, sir.

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1 Q. And what is the YM number?

2 A. The YM number was the designation we gave for the
3 Yemen search Site 1.

4 Q. I'm sorry. I was unclear. What is the -- what's the
5 number on top of that?

6 A. Oh, YM1-151.

7 Q. All right. If you could look on the exhibit itself,
8 Prosecution 268. Is there a YM number on that?

9 We can open it if we need to.

10 A. Oh, yes, sir, YM1-151.

11 Q. All right. So the YM number on the chain of custody
12 form matches the YM number on the Exhibit 268; is that
13 correct?

14 A. Yes, sir.

15 Q. I'm placing on the ELM0 Prosecution Exhibit 268D. Is
16 that an exact duplicate of the chain of custody form you've
17 just identified?

18 A. Yes, sir.

19 Q. All right. Placing on the ELM0 Prosecution
20 Exhibit 268C, ask you if you'd look at that. C as in Charlie.
21 Do you recognize that photograph?

22 A. Yes, sir.

23 Q. What's in that photograph?

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1 A. It's a photograph of the bag that contains the item.

2 Q. Fair and accurate depiction of it?

3 A. Yes, sir.

4 TC [MR. MILLER]: Your Honor, we'd move for the admission
5 of Prosecution Exhibit 268A, B, C, and D.

6 MJ [Col SPATH]: Noted. Thank you.

7 TC [MR. MILLER]: Provide the witness, please, with
8 Prosecution Exhibit 284.

9 Q. Ma'am -- Agent, have you had an opportunity to look
10 at Prosecution Exhibit 284?

11 A. Yes, sir.

12 Q. Do you recognize it?

13 A. Yes, sir.

14 Q. Is it something that you seized?

15 A. Yes, sir.

16 Q. And how do you know that you seized it?

17 A. The handwriting on the bag is mine.

18 Q. And could you read into the record what you noted?

19 A. The item is described as "plastic bottle,
20 transmission fluid, with white paper." Date and time of
21 recovery was 10/17/2000, from Room G.

22 Q. And recovered by?

23 A. T. Kneisler.

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1 Q. And that is your handwriting?

2 A. Yes, sir.

3 Q. I'm placing on the ELM0, a photograph, Prosecution
4 Exhibit 284A. Do you recognize that?

5 A. Yes, sir. That's the item that's in this bag.

6 Q. And when we say "bag," the bag is 284, correct?

7 A. 284, yes, sir.

8 Q. On the Exhibit 284, is there a YM number on that?

9 A. Might have to open it.

10 Q. All right. Let me ask you this: Is there a 1B
11 number that you can see?

12 A. Yes. I found the YM number. YM1-122.

13 Q. All right. And the 1B number, do you see that?

14 A. 1B81.

15 Q. Is there a chain of custody form attached to that?

16 A. Yes, sir.

17 Q. Would you take a look at it? Does it contain a YM
18 number?

19 A. YM1-122.

20 Q. And a 1B number?

21 A. 1B81.

22 Q. Do those match the numbers on the exhibit,
23 Prosecution Exhibit 284?

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1 A. Yes, sir.

2 Q. I'm going to place on the ELMO Prosecution

3 Exhibit 284C. Do you recognize that photograph, or copy?

4 A. Yes, sir. It's the chain of custody for this item.

5 Q. And is it the exact duplicate?

6 A. Yes, sir.

7 Q. Thank you. I'm going to place on the ELMO

8 Prosecution Exhibit 284B for Identification. Do you recognize

9 what's in that photograph?

10 A. Yes, sir. It's a copy of the -- of the bag that
11 contains this item.

12 Q. Fair and accurate depiction of it?

13 A. Yes, sir.

14 TC [MR. MILLER]: Your Honor, the prosecution would move
15 for the admission of Prosecution's 284A, B, and C.

16 MJ [Col SPATH]: Noted. Thank you.

17 TC [MR. MILLER]: Let me have a moment.

18 [Pause.]

19 TC [MR. MILLER]: Provide the witness with Prosecution
20 Exhibit two eighty -- 287.

21 Q. Do you recognize that?

22 A. Yes, sir.

23 Q. What do you recognize that to be?

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1 A. Evidence that I collected from this location. It's
2 listed as "three small paint cans collected on 10/17/2000,
3 from Room G by T. Kneisler." That's all my handwriting.

4 Q. That's all in your handwriting?

5 A. Yes, sir.

6 Q. I'm placing on the ELM0 Prosecution Exhibit 287A. Do
7 you recognize what's contained in that photograph?

8 A. Yes, sir. Those are the cans that are inside this
9 evidence bag.

10 Q. All right. And it indicates it's "super gloss enamel
11 paint for metal and wood"; is that correct?

12 A. Yes, sir.

13 Q. And is there a K number associated with that
14 photograph?

15 A. K49.

16 Q. I'm placing on the ELM0 Prosecution Exhibit 287B for
17 Identification, ask you if you recognize that?

18 A. It's a different view of those paint cans, yes, sir.

19 Q. A view sort of looking down at them?

20 A. Yes, sir.

21 Q. Does it also have a K number on it?

22 A. K49 -- K49.

23 Q. If you would, looking at -- looking at the bag, does

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1 the bag contain a -- I'm talking about the actual exhibit,
2 287 -- have a YM number on it?

3 A. That's YM1-126.

4 Q. And does it have a 1B number?

5 A. 1B85.

6 Q. If you could, please, look at the -- is there a chain
7 of custody form attached to the exhibit?

8 A. Yes, sir.

9 Q. Would you take a look at that? Does it have a YM
10 number and a 1B number?

11 A. 1B85 and YM1-126.

12 Q. Do those numbers match the numbers contained on the
13 Exhibit 287?

14 A. Yes, sir.

15 Q. Placing on the ELM0 Prosecution 84C for
16 Identification -- do you recognize that -- excuse me, 287.
17 Let me renumber it. 287C. Do you recognize that?

18 A. Yes, sir. It's the chain of custody.

19 Q. And is 287C an exact duplicate of that chain of
20 custody?

21 A. Yes.

22 TC [MR. MILLER]: Your Honor, the government would move
23 for the admission of Prosecution Exhibits 87A [sic], B, and C.

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1 MJ [Col SPATH]: Noted. Thank you.

2 TC [MR. MILLER]: Provide the witness with
3 Prosecution 290, please.

4 Q. Agent, we've placed before you Prosecution
5 Exhibit 290. Have you had an opportunity to look at it?

6 A. Yes, sir.

7 Q. Do you recognize it?

8 A. Yes, sir.

9 Q. Is it an item that you seized?

10 A. Yes, sir.

11 Q. And is your writing contained on the evidence bag?

12 A. Yes, sir.

13 Q. And what does it indicate? What did you write or
14 note on the evidence bag?

15 A. It's my initials, so "T. Kneisler, 10/17/2000," the
16 case number, "floor sweeping from Room E."

17 Q. Placing on the ELM0 Prosecution Exhibit 290A for
18 Identification. Do you recognize what's contained in that?

19 A. Yes, sir. It's the items that's in this evidence
20 bag.

21 Q. All right. And by evidence bag, we mean
22 Prosecution 290, correct?

23 A. Yes. Yes, sir.

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1 Q. Does the photograph, 290A for Identification, have a
2 K number?

3 A. K57.

4 Q. In looking at the bag itself, does it have a K number
5 on it?

6 A. Yes, sir. It's K57.

7 Q. So it matches the K number in Prosecution
8 Exhibit 290A?

9 A. Yes, sir.

10 Q. Is that -- I'm sorry?

11 A. Yes, sir.

12 Q. Thank you. Does the evidence bag, 290, have a
13 YM number?

14 A. YM1-164.

15 Q. Does it have a YM -- excuse me. Could you repeat
16 that?

17 A. YM1-164.

18 Q. I'm placing on -- and that would match the one on the
19 bag, Prosecution Exhibit 290; is that correct?

20 A. That's the number on the bag, yes, sir.

21 Q. All right. Placing on the ELM0 Prosecution
22 Exhibit 290D for Identification. Do you recognize that?

23 A. Yes, sir. That's the chain of custody for YM1-164.

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1 Q. And again, the YM numbers match?

2 A. Yes, sir.

3 Q. Placing on the ELM0 a photograph, Prosecution
4 Exhibit 290B for Identification. Do you recognize that?

5 A. Yes, sir. That's the evidence I have in my hand.

6 Q. All right. Fair and accurate depiction of the
7 evidence bag, 290?

8 A. Yes, sir.

9 Q. I'll place on the ELM0 Prosecution Exhibit 290C for
10 Identification, ask you if you recognize that.

11 A. Yes, sir. It's the opposite side of the bag.

12 Q. Fair and accurate depiction of it?

13 A. Yes, sir.

14 TC [MR. MILLER]: Your Honor, the government moves the
15 admission of Prosecution 290A, B, C, and D.

16 MJ [Co1 SPATH]: Noted. Thank you.

17 TC [MR. MILLER]: Please hand the witness Prosecution
18 Exhibit 291.

19 Q. Agent, have you had an opportunity to look at that?

20 A. Yes, sir.

21 Q. Do you recognize it?

22 A. Yes, sir.

23 Q. Is it something you seized?

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1 A. It is.

2 Q. All right. And did you note that on the evidence bag
3 itself, Prosecution Exhibit 291?

4 A. Yes, sir.

5 Q. And what did you -- what did you note?

6 A. I wrote "ATB" -- which was "appears to be" --
7 "cutting disc, Room G, T. Kneisler."

8 Q. Placing on the ELM0 Prosecution Exhibit 291 -- 291A
9 and ask if you recognize that.

10 A. Yes, sir. That's the item contained in this evidence
11 bag.

12 Q. Is there a K number associated with it?

13 A. K62.

14 Q. Looking at the bag itself, does it have a K number?

15 A. Yes, sir. K62.

16 Q. So it matches the K number in the photograph,
17 Prosecution 291A for Identification?

18 A. Yes, sir.

19 Q. Is there a YM number on the evidence bag, 291?

20 A. YM1-189.

21 Q. Is there a 1B number?

22 A. 1B119.

23 Q. Is there a chain of custody form attached to it?

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1 A. Yes, sir.

2 Q. Could you take a look at that, please. Does it have
3 a YM number?

4 A. Yes, sir. YM1-189.

5 Q. Does it have a 1B number?

6 A. Yes, sir. 1B119.

7 Q. Do those numbers match the numbers contained on
8 Prosecution Exhibit 291?

9 A. Yes, sir.

10 Q. I'm placing on the ELMO Prosecution Exhibit 291C. Do
11 you recognize that?

12 A. Yes, sir. It's a copy of the chain of custody
13 associated with this item.

14 Q. Is it an exact duplicate?

15 A. Yes, sir.

16 Q. Thank you. I'm placing on the ELMO Prosecution
17 Exhibit 90 -- 291B for Identification. Do you recognize that?

18 A. Yes, sir. It's a photograph of this evidence item.

19 Q. Fair and accurate depiction of it?

20 A. Yes, sir.

21 TC [MR. MILLER]: All right, move for the admission, Your
22 Honor, of Prosecution 291A, B, and C.

23 MJ [Col SPATH]: Noted. Thank you.

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1 Q. After you had participated in the site of -- excuse
2 me, the search of Site 1 shown in the diagram, 1030, did you
3 then conduct any other land searches?

4 A. Yes, sir. We searched a different residence the
5 following day.

6 Q. And that would be the 18th?

7 A. Yes, sir.

8 Q. And if you saw a photograph of that, would you
9 recognize it?

10 A. Yes, sir.

11 TC [MR. MILLER]: If we could pull up on the monitor
12 Prosecution Exhibit 526.

13 Q. Agent, do you see the photograph, Prosecution
14 Exhibit 526 for Identification?

15 A. Yes, sir, I can see it.

16 Q. Do you recognize what's contained in that photograph?

17 A. Yes, sir. That's the residence that were searched.

18 TC [MR. MILLER]: If we could pull up Prosecution
19 Exhibit 250 -- excuse me, 523.

20 Q. I've placed on the -- or what's been placed on the
21 monitor is Prosecution Exhibit 523. Do you recognize that?

22 A. Yes, sir. That's the back of the location that we
23 searched.

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1 Q. Fair -- are they fair and accurate depictions?

2 A. Yes, sir.

3 Q. When you traveled to the site, did you travel alone,
4 or did you travel with a team?

5 A. I traveled with the team.

6 Q. And could you describe, just briefly, what happened
7 upon arrival?

8 A. Upon arrival, as the previous day, the -- our
9 leadership discussed -- had some discussions with the -- with
10 the Yemeni officials who were there. And then the -- I was
11 once again with the Evidence Response Team. So the Evidence
12 Response Team leader had more discussions about the search,
13 did a preliminary walkthrough, and then we were assigned
14 different locations of the residence to search.

15 Q. Would there have been a sketch drawn of it, also?

16 A. Yes, sir. It was typical to take photographs, make a
17 sketch, label the rooms, and then do detailed searches of each
18 of the house -- of each of the locations inside the house and
19 outside the house.

20 Q. And again, would you be made aware of what would --
21 what room or a number or letter each room was given?

22 A. Yes, sir. And typically the labels for the rooms are
23 left in the rooms after the photos are taken so they can be

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1 referred back to by the people collecting the evidence.

2 Q. I take it you had occasion to seize various pieces of
3 evidence?

4 A. Yes, sir.

5 TC [MR. MILLER]: If you could provide the witness first
6 with Prosecution Exhibit 462.

7 Permission to, again, use the ELM0, Your Honor?

8 MJ [Col SPATH]: Of course.

9 Q. Have you had occasion -- have you had the opportunity
10 to look at Prosecution Exhibit 462?

11 A. Yes, sir.

12 Q. And do you recognize it?

13 A. Yes, sir.

14 Q. What do you recognize it to be?

15 A. This was an item of evidence that I collected at that
16 location on -- and on the bag I noted in my handwriting that
17 it was collected on 10/18/2000 by T. Kneisler from the
18 backyard of the house, one cement bag.

19 Q. I'm placing on the ELM0 Prosecution Exhibit 462B --
20 excuse me.

21 I'm placing on the ELM0 Prosecution Exhibit 462A.

22 Sorry. Do you recognize that photograph, ma'am?

23 A. Yes, sir. It's a photograph of the bag that's

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1 located as part of -- that's evidence inside this evidence
2 bag.

3 Q. And is there a K number attached to that photograph?

4 A. K113.

5 Q. Looking at the bag, is there a K number on it?

6 A. Yes, sir. K113.

7 Q. So the number matches -- the number on the bag
8 matches the number on the Exhibit 462A, correct?

9 A. Yes, sir.

10 Q. Looking at the bag itself, does it have a YM number
11 on it?

12 A. Yes, sir. YM2-104.

13 Q. Does it have a 1B number?

14 A. 1B138.

15 Q. Is there a chain of custody form attached to the
16 exhibit?

17 A. Yes, sir.

18 Q. Take a look at that, please. Does it have a
19 YM number on it?

20 A. YM2-104.

21 Q. And does it have a 1B number?

22 A. 1B138.

23 Q. And do those numbers match the numbers contained on

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1 the actual exhibit, 462?

2 A. Yes, sir.

3 Q. Placing on the ELM0 Prosecution Exhibit 462C. Do you
4 recognize that?

5 A. Yes, sir. It's a photograph of the chain of custody.

6 Q. The form that you just described, correct?

7 A. Yes, sir.

8 Q. And is it an exact duplicate of it?

9 A. Yes, sir.

10 Q. Lastly, I'm placing on the view -- at least for this
11 exhibit -- I'm placing on the ELM0 Prosecution Exhibit 462B.
12 Do you recognize that?

13 A. Yes, sir. It's a photograph of this evidence item.

14 Q. Fair and accurate depiction of it?

15 A. Yes, sir.

16 TC [MR. MILLER]: Move for the admission, Your Honor, of
17 462 -- Government's 462A, B, and C.

18 MJ [Col SPATH]: Noted. Thanks.

19 TC [MR. MILLER]: Provide the witness, please, with
20 Prosecution Exhibit 463.

21 Q. Have you had the opportunity to review that?

22 A. Yes, sir.

23 Q. And did you seize that item?

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1 A. Yes, sir.

2 Q. And what is the item?

3 A. It's described as "tubes of unknown substance,
4 10/18/2000, backyard of the house, by T. Kneisler."

5 Q. I think it's called "Power Glue," is what it says, if
6 you can see?

7 A. It's written on the item itself, but that's not what
8 I wrote on the -- on the line.

9 Q. I'm placing on the ELMO Prosecution Exhibit 463A. Do
10 you recognize that?

11 A. Yes, sir. Those are the items that are contained
12 inside this evidence bag.

13 Q. Is there a K number associated with it? Oops, hold
14 on. I'm sorry, Agent.

15 A. K118.

16 Q. Looking at the bag, is there a K number on the bag?

17 A. K118.

18 Q. All right. So the K number on the bag, 463, matches
19 the one in the photograph, 463A, correct?

20 A. Yes, sir.

21 Q. Looking at that bag, the actual exhibit,
22 Prosecution 463, does it have a YM number?

23 A. Yes, sir.

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1 Q. What is that number?

2 A. It's hard to read because it's in the tape, but it
3 appears to be YM2-113.

4 Q. Is there a 1B number?

5 A. 1B146.

6 Q. Is there a chain of custody form attached to it?

7 A. Yes, sir.

8 Q. If you would, please, take a look at it. Does it
9 have a YM number?

10 A. YM2-113.

11 Q. And a 1B?

12 A. 1B146.

13 Q. So those numbers on the form match the numbers on the
14 actual Exhibit 463, correct?

15 A. Yes, sir.

16 Q. Placing on the ELMO Prosecution Exhibit 463C for
17 Identification. Do you recognize that?

18 A. Yes, sir. It's a photo of the chain of custody.

19 Q. An exact duplicate of it?

20 A. Yes, sir.

21 Q. Placing on the ELMO Prosecution Exhibit 463B. Do you
22 recognize that?

23 A. Yes, sir. It's a photograph of this evidence bag.

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1 Q. Fair and accurate depiction of it?

2 A. Yes, sir.

3 TC [MR. MILLER]: Move for the admission, Your Honor, of
4 Prosecution Exhibit 463A, B, and C.

5 MJ [Col SPATH]: Noted. Again, thank you.

6 TC [MR. MILLER]: If you could, please, provide the
7 witness with Prosecution Exhibit 464 for Identification. If
8 we could, put up the interior diagram.

9 MJ [Col SPATH]: Let me just ask, Mr. Miller. How many
10 more exhibits does this witness have?

11 TC [MR. MILLER]: We have a fair number, Your Honor. If
12 you would like to take a lunch break, this would be a good
13 time.

14 MJ [Col SPATH]: Okay. That's -- I was either going to
15 come back after a short break and kind of keep going, but if
16 we have a number of exhibits left, let's take a lunch break.
17 If that's all right with you, Special Agent Kneisler? That
18 works? Okay.

19 And then this afternoon after Special Agent Kneisler
20 we have one other witness or ----

21 TC [MR. MILLER]: We have one, and we have one that just
22 has to clear up one little point. So, yeah, essentially
23 it will -- we have two. We have Sepeck ----

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1 MJ [Col SPATH]: A very short one to clean up a point?

2 TC [MR. MILLER]: Point, right. We have -- Agent Sepeck,
3 will be about a half an hour, and then we will have LoCascio
4 who will take the rest of the afternoon.

5 MJ [Col SPATH]: All right. Well, then that works. Then
6 let's come back at 1315.

7 TC [MR. MILLER]: That would be great. Thank you.

8 MJ [Col SPATH]: See you in a little bit. We're in
9 recess.

10 [The R.M.C. 803 session recessed at 1155, 14 February 2018.]

11 [The R.M.C. 803 session was called to order at 1318,
12 14 February 2018.]

13 MJ [Col SPATH]: All right. These commissions are called
14 back to order. All of the parties except for General Martins
15 are present.

16 TC [MR. MILLER]: Your Honor, we ask permission of the
17 court to excuse him from this afternoon's session as he has
18 duties related to the case.

19 MJ [Col SPATH]: No worries at all. Of course.

20 Over the break there was some e-mail traffic with my
21 staff indicating that Mr. Koffsky would be available 1300
22 Thursday or Friday. I indicated back tomorrow at 1300 would
23 be amenable, and so I assume that's getting communicated and

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1 we're working to make that happen.

2 MATC [COL WELLS]: Yes, sir.

3 MJ [Col SPATH]: Okay. Good. Which should work in the
4 timeline, Mr. Miller, that you gave us as well for the
5 evidence that you have this week.

6 TC [MR. MILLER]: Yes, we'll be finished before he ----

7 MJ [Col SPATH]: So -- and we have tomorrow all day. And
8 I did communicate that departure on Friday is fine if it
9 works. I don't know any more than that, but we will see. I
10 have people in charge of that, are working those issues, and
11 trying to figure out the weather and all of that. So more to
12 come. I know you'll keep everybody informed as we kind of
13 move through that.

14 I'm trying to think if there was anything else
15 important. I don't think so. Let's get the witness back in
16 here and keep moving.

17 Just take a seat. I know you know you're still under
18 oath. Thanks.

19 [The witness resumed the witness stand.]

20 MJ [Col SPATH]: Mr. Miller, you may proceed.

21 TC [MR. MILLER]: Thank you, Your Honor. I appreciate it.

22 **DIRECT EXAMINATION CONTINUED**

23 Questions by the Trial Counsel [MR. MILLER]:

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1 Q. Again, for the record, you're Special Agent Kneisler,
2 correct?

3 A. Yes, sir.

4 Q. I think when we stopped, we were showing you exhibits
5 from the second site; is that correct?

6 A. Yes, sir.

7 TC [MR. MILLER]: If you would, please, provide the
8 witness with Prosecution Exhibit 464.

9 Q. If you would, please, Agent, take a look at that. Do
10 you recognize that?

11 A. Yes, sir.

12 Q. And what do you recognize it to be?

13 A. Items I collected at the second search site. I
14 described it as "sweeping from Room A floor, T. Kneisler,
15 10/18/2000."

16 Q. And you say "from Room A." Do you see that on the
17 chart in front of you on the easel there, which is a blowup of
18 Prosecution Exhibit 697?

19 A. Yes, sir.

20 TC [MR. MILLER]: Permission to use the ELM0, Your Honor.

21 MJ [Col SPATH]: You may, of course.

22 Q. And what is Room A, if you could just generally
23 describe what it was in general?

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1 A. Room A is more or less a screened-in porch on the
2 front of the house.

3 Q. And you know you seized those items because of what?

4 A. This is my handwriting on the bag.

5 Q. And you just read that into the record; is that
6 correct?

7 A. Yes, sir.

8 Q. I'm going to place on the ELMO Prosecution
9 Exhibit 2 -- excuse me, 464A, and ask you if you recognize
10 what's contained in that photograph?

11 A. Yes, sir. It's a photograph of the items in the bag.

12 Q. And when you say "the bag," we're talking about
13 Prosecution 464; correct?

14 A. Yes, sir.

15 Q. And in Prosecution Exhibit 464A, does the photograph
16 also have a K number?

17 A. The photograph is K120.

18 Q. All right. Looking at the bag, is there a K number
19 on the bag?

20 A. Yes, sir. It's K120.

21 Q. So the number on the bag matches the number in the
22 photograph; is that correct?

23 A. Yes, sir.

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1 Q. And the photograph being 464A, correct? Is that
2 correct?

3 Oh, there we go.

4 A. Yes, sir.

5 Q. All right. I'm sorry. I'm sorry.

6 All right. Looking at the bag, Prosecution
7 Exhibit 464, does that have a 1B number on it?

8 A. It's 1B155.

9 Q. And does it have a YM number on it?

10 A. It's YM2-122.

11 Q. Is there a chain of custody or an FD-192 attached to
12 the exhibit?

13 A. Yes, sir.

14 Q. And could you look at that, please? Is there a YM
15 number on it?

16 A. YM2-122.

17 Q. And a 1B number?

18 A. 1B155.

19 Q. Does that match the numbers contained on the Exhibit
20 464?

21 A. Yes, sir.

22 Q. Placing on the ELM0 Prosecution Exhibit 464D. Do you
23 recognize that?

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1 A. Yes, sir. It's the chain of custody for this item of
2 evidence.

3 Q. Is it an exact duplicate of it?

4 A. Yes, sir.

5 Q. Placing on the ELM0 Prosecution Exhibit 464B. Do you
6 recognize that photograph?

7 A. Yes, sir. It's a photograph of this item of
8 evidence.

9 Q. Is it a photograph of 464?

10 A. Yes, sir.

11 Q. Is it a fair and accurate depiction of it?

12 A. Yes, sir.

13 Q. Placing on the ELM0 Prosecution Exhibit 464C. Do you
14 recognize what's in that photograph?

15 A. Yes, sir. It's the other side of the same item of
16 evidence.

17 Q. And that's 464, correct?

18 A. Yes, sir.

19 Q. Fair and accurate depiction?

20 A. Yes, sir.

21 TC [MR. MILLER]: Move for the admission, Your Honor, of
22 Prosecution Exhibits 464A, B, C, and D.

23 MJ [Col SPATH]: Noted. Thanks.

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1 TC [MR. MILLER]: If you could provide the witness,
2 please, with Prosecution Exhibit 473 for Identification.

3 Q. Agent, have you had the opportunity to look at that?

4 A. Yes, sir.

5 Q. Do you recognize it?

6 A. Yes, sir.

7 Q. And did you seize that item?

8 A. Yes, sir.

9 Q. And what is the item?

10 A. Can we open this?

11 Q. We may.

12 TC [MR. MILLER]: Sergeant? Thank you.

13 A. It's a rope used as a clothesline from Room A.

14 Q. Did you seize that item?

15 A. Yes, sir.

16 Q. And how do you know that you seized it?

17 A. It's my handwriting.

18 Q. On the bag -- on the evidence bag itself?

19 A. On the evidence bag, yes, sir.

20 Q. Placing on the ELM0 Prosecution Exhibit 473A for
21 Identification. Do you recognize that item?

22 A. Yes, sir. That's the item inside this evidence bag.

23 Q. The evidence bag being Prosecution Exhibit 473,

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1 correct?

2 A. 473, yes, sir.

3 Q. Agent, I am going to ask you: Is there a K number?

4 Can you make that out, attached to the photograph, Prosecution
5 Exhibit 473A?

6 A. K140.

7 Q. If you would look at the bag itself, is there a K
8 number on it?

9 A. Yes, sir. K140.

10 Q. So it matches the number -- the number on the bag
11 matches the K number on the photograph 473 -- 473A, correct?

12 A. Yes, sir, it does.

13 Q. Looking on the evidence bag itself containing the
14 rope, does it have a YM number on it?

15 A. Yes. It's YM2-157.

16 Q. Does it have a 1B number?

17 A. 1B190.

18 Q. Is there a Form FD-120 [sic] attached to the exhibit?

19 A. Yes, sir.

20 Q. Would you take a look at that, please. Does it have
21 a YM2 number on it?

22 A. YM2-157.

23 Q. And does it have a 1B number?

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1 A. 1B190.

2 Q. And does that match the numbers -- does the numbers
3 on the green sheet match the numbers on the Exhibit 473?

4 A. Yes, sir.

5 Q. Placing on the ELM0 Prosecution Exhibit 473C. Do you
6 recognize that?

7 A. Yes, sir. It's a copy of the chain of custody for
8 this item, 473.

9 Q. Is it an exact duplicate?

10 A. Yes, sir.

11 Q. Thank you. Now placing on the ELM0 Prosecution
12 Exhibit 473B for Identification. Do you recognize that?

13 A. Yes, sir. It's a photo of this item of evidence with
14 the bag.

15 Q. The item of evidence being 473?

16 A. Yes, sir.

17 Q. Is it a fair and accurate depiction of it?

18 A. Yes, sir.

19 TC [MR. MILLER]: Move for the admission, Your Honor, of
20 Prosecution Exhibit 473A, B, and C.

21 MJ [Col SPATH]: Noted. Thank you.

22 TC [MR. MILLER]: Provide the witness, please, with
23 Prosecution Exhibit 476.

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1 Q. Have you had a chance to look at that?

2 A. Yes, sir.

3 Q. Does it need to be opened, or you ----

4 A. No, sir.

5 Q. All right. Do you recognize Prosecution Exhibit 476
6 for Identification?

7 A. Yes, sir. This is the sheet from the twin bed in
8 Room H.

9 Q. Did you seize that item?

10 A. Yes, sir.

11 Q. And how do you know that you seized the item?

12 A. It's my handwriting on the evidence bag.

13 Q. Placing on the ELM0 Prosecution Exhibit 476A and ask
14 you if you recognize that.

15 A. Yes, sir. That's the sheet inside this evidence bag.

16 Q. All right. I think the K number is a little blurry.
17 I won't ask you about that.

18 Let me ask you to take a look at the bag itself,
19 however. Does the bag itself have a YM number on it?

20 A. YM2-171.

21 Q. And does it also have a 1B number on it?

22 A. It's 1B203.

23 Q. Is there a chain of custody receipt, an FD-120 --

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1 excuse me, 192 on the exhibit?

2 A. Yes, sir.

3 Q. And could you take a look at it? Does the chain of
4 custody form have a 1B number on it?

5 A. Yes, sir. 1B203.

6 Q. Does it have a YM number?

7 A. YM2-171.

8 Q. Do those numbers match the numbers contained on the
9 actual exhibit, Prosecution Exhibit 476?

10 A. Yes, sir, they match.

11 Q. Placing on the ELM0 Prosecution Exhibit 478C [sic].
12 Do you recognize that?

13 A. Yes, sir. It's a photo of the chain of custody
14 associated with this item.

15 Q. And is it an exact duplicate of it?

16 A. It is.

17 Q. And I'm placing on the ELM0 Prosecution Exhibit 476B.
18 Do you recognize that?

19 A. Yes, sir. It's a photo of the evidence bag
20 associated with this item.

21 Q. And that item being 476, correct?

22 A. 476, yes, sir.

23 Q. Fair and accurate depiction of it?

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1 A. Yes, sir, it is.

2 Q. And for the court, the handwriting and the dark
3 numbers, date and time recovered and description, is that --
4 that is in your handwriting?

5 A. Yes, sir. The case number, the date and time,
6 recovered by, and the description and location are all my
7 handwriting.

8 TC [MR. MILLER]: Prosecution would move for the
9 admission, Your Honor, of Prosecution Exhibits 476A, B, and C.

10 MJ [Col SPATH]: Noted. Thank you.

11 TC [MR. MILLER]: Provide the witness, please, with
12 Prosecution Exhibit 480.

13 Q. Can you see that item, or would you like to have it
14 opened?

15 A. I think I can see it.

16 Q. All right. And what is it?

17 A. It's one glass bottle with lid.

18 Q. Did you seize that item?

19 A. Yes, sir.

20 Q. And how do you know you seized it?

21 A. The handwriting on the evidence bag is mine.

22 Q. And where does it indicate that you seized it and
23 when that you seized it?

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1 A. It's a glass bottle with the lid. I seized it on
2 10/18/2000 from Room C, Closet 2.

3 Q. And that is in your handwriting; is that correct?

4 A. Yes, sir.

5 Q. Placing on the ELMO Prosecution Exhibit 480. Do
6 you -- 480A, excuse me. Do you recognize the item in
7 Prosecution Exhibit 480A for Identification?

8 A. Yes, sir. That's the item that's associated with
9 this evidence bag.

10 Q. Is there a K number in the photograph?

11 A. K -- K152 on the photograph, yes, sir.

12 Q. I'm placing on the ELMO Prosecution Exhibit 480B for
13 Identification. Do you recognize what's contained in that
14 photograph?

15 A. Yes, sir. That's a photograph of the cap that's on
16 this bottle.

17 Q. And does that photograph, Prosecution 480B, have a K
18 number?

19 A. K152.

20 Q. Does -- the evidence itself, Prosecution 480 for
21 Identification, does it have a K number on it?

22 A. K152.

23 Q. So does it -- does it match, therefore, the K number

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1 in Prosecution 480A and 480B?

2 A. Yes, sir, they match.

3 Q. Looking at the exhibit itself, Prosecution 480, does
4 it have a YM number on it?

5 A. YM2-186.

6 Q. And does it have a 1B number?

7 A. 1B218.

8 Q. If you would, does it have a chain of custody form
9 attached to it?

10 A. Yes, sir.

11 Q. If you would, please, look at the numbers on it.
12 Does it have a YM number?

13 A. YM2-186.

14 Q. Does it have a 1B number?

15 A. 1B218.

16 Q. Do those numbers match the numbers contained on the
17 exhibit, Prosecution Exhibit 480?

18 A. Yes, sir.

19 Q. Placing on the ELM0 Prosecution Exhibit 480D. Do you
20 recognize the form or the item on the ELM0?

21 A. Yes, sir. It's the chain of custody for this item
22 480.

23 Q. And is 480D an exact duplicate of that form?

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1 A. Yes, sir.

2 Q. I'm placing on the ELMO Prosecution -- a photograph,
3 Prosecution 480C. Do you recognize that?

4 A. Yes, sir. That's the -- that's a photograph of the
5 evidence bag associated with this item.

6 Q. Fair and accurate depiction?

7 A. Yes, sir.

8 TC [MR. MILLER]: Your Honor, the prosecution would move
9 for the admission of Prosecution Exhibits 480A, B, C, and D.

10 MJ [Col SPATH]: Noted. Thank you.

11 TC [MR. MILLER]: Provide the witness, please, with
12 Prosecution Exhibit 486.

13 Q. Do you recognize that?

14 A. Yes, sir. But we may need to open this one.

15 Q. All right.

16 A. Going to have to be opened again. Oh, I see.

17 Q. Agent, have you had the opportunity now to look at
18 486?

19 A. Yes, sir.

20 Q. Do you recognize it?

21 A. Yes, sir.

22 Q. Did you seize those items?

23 A. Yes, sir, I did.

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1 Q. And how do you know that?

2 A. It's my handwriting on the evidence bag.

3 Q. And what did you write on the evidence bag?

4 A. "One auto parts bag -- box. One paper with writing."

5 The evidence tape is over some of this, so it's hard to see.

6 Can we open it further?

7 It's -- once again, the evidence tape is over it, but
8 it looks like one brown swatch.

9 Q. All right. Is it various pieces of paper, what I
10 would call trash from the bag?

11 A. Yes, sir. They're all pieces of paper.

12 Q. And from where did you seize it?

13 A. The backyard of the house.

14 Q. I'm placing on the ELMO Prosecution Exhibit 486A and
15 ask you if you recognize that?

16 A. Yes, sir. Those are the items in the evidence bag.

17 Q. A little bit of a -- is there a K number or a K tag
18 on that piece of evidence?

19 A. K184 on the evidence.

20 Q. All right. And is there a K number on the picture
21 itself, Prosecution Exhibit 4 -- 486A?

22 A. It looks like 1 -- I mean, K184.

23 Q. So those two numbers would match; is that correct?

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1 A. Yes, sir, they match.

2 Q. Looking at the exhibit itself, Prosecution 486, does
3 it have a one -- have a YM number on it?

4 A. It's hard to make out, but it might be 102.

5 Q. All right. Does it have a 1B number?

6 A. 1B136.

7 Q. If you would, is there an evidence chain of custody
8 form, FD-192, attached to it?

9 A. Yes, sir.

10 Q. Does it have a 1B number on it?

11 A. 1B136.

12 Q. Does it have a YM2 number?

13 A. YM2-102.

14 Q. So that would match the numbers on the Exhibit 486,
15 correct?

16 A. Yes, sir.

17 Q. Placing on the ELM0 Prosecution Exhibit 486E, and ask
18 you, do you recognize that?

19 A. Yes, sir. That's the chain of custody for 486.

20 Q. All right. And that -- is that an exact duplicate of
21 it?

22 A. Yes, sir.

23 Q. Placing on the ELM0 Prosecution Exhibit 486C, ask you

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1 if you recognize what's in the photograph, Agent?

2 A. Yes, sir. That's the front of the evidence bag that
3 I completed when I collected this item.

4 Q. That's item 486, correct?

5 A. Yes, sir.

6 Q. Fair and accurate depiction of it?

7 A. It is.

8 Q. Placing on the ELMO Prosecution Exhibit 486D. Do you
9 recognize what's in that photograph?

10 A. Yes, sir. It's the items that were contained in
11 the -- in the evidence bag.

12 Q. All right. And is it the back of the evidence bag?

13 A. Yes, sir.

14 Q. Fair and accurate depiction of it?

15 A. Yes, sir.

16 Q. Lastly, placing on the ELMO Prosecution Exhibit 486B,
17 as in boy, ask you if you recognize that.

18 A. Yes, sir. That's the front of the bag from 486,
19 evidence bag.

20 Q. And is it a fair and accurate depiction?

21 A. Yes, sir, it is.

22 TC [MR. MILLER]: Your Honor, the government would move
23 for the admission of Prosecution Exhibits 486A, B, C, D, and

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1 E.

2 MJ [Col SPATH]: Noted. Thank you.

3 TC [MR. MILLER]: Provide the witness, please, with
4 Prosecution Exhibit 487.

5 Q. Agent, have you had the opportunity to look at
6 Prosecution Exhibit 487? Would you like it opened?

7 A. Yes, sir, it's going to need to be opened.

8 Q. Have you had a chance to look at 487?

9 A. Yes, sir.

10 Q. Do you recognize it?

11 A. Yes, sir.

12 Q. Is it something that you seized?

13 A. It is.

14 Q. And you know that how?

15 A. My handwriting is on the bag.

16 Q. And what does it indicate?

17 A. It's a plastic piece with what appears to be glue on
18 it, and it was collected from the backyard of the house on
19 10/18/2000.

20 Q. And that's all in your handwriting?

21 A. Yes, sir.

22 Q. Placing on the ELM0 Prosecution Exhibit 487A for
23 Identification. Do you recognize what's in that photograph?

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1 A. Yes, sir. That's the item of evidence in this
2 evidence bag.

3 Q. The evidence bag being Prosecution Exhibit 487,
4 correct?

5 A. 487, yes, sir.

6 Q. Is there -- on the photograph, 487A for
7 Identification, is there a K number?

8 A. K188.

9 Q. Placing on the ELMO Prosecution Exhibit 487B for
10 Identification. Do you recognize that, Agent?

11 A. Yes, sir. That's the same evidence -- item of
12 evidence that's in this bag.

13 Q. Is that the other side of it?

14 A. Yes, sir.

15 Q. And is there a K number attached to it, the
16 photograph 487B?

17 A. K185 -- it's K188.

18 Q. All right. Would you look at the evidence itself,
19 Prosecution Exhibit 8 -- 487. Does it have a K number on it?

20 A. K188.

21 Q. So it matches the K number in Prosecution
22 Exhibit 487A and 487B, correct?

23 A. Yes, sir.

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1 Q. As to the evidence bag itself, does it have a YM
2 number on it?

3 A. YM2-115.

4 Q. And does it have a 1B number?

5 A. It's 1B148.

6 Q. Is there a chain of custody FD-192 form attached to
7 the exhibit?

8 A. Yes, sir.

9 Q. Could you read those numbers, the 1B number and the
10 YM2 number on the sheet?

11 A. It's YM2-115 and 1B148.

12 Q. So those numbers match the numbers contained on the
13 Exhibit 487, correct?

14 A. Yes, sir.

15 Q. Placing on the ELM0 Prosecution Exhibit 487D. Do you
16 recognize that form?

17 A. Yes, sir. It's the chain of custody for 487.

18 Q. And is it an exact duplicate of it?

19 A. Yes, sir.

20 Q. Placing on the -- placing on the ELM0 Prosecution
21 Exhibit 487C. Do you recognize that?

22 A. Yes, sir. That's the front of the evidence bag for
23 487.

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1 Q. Fair and accurate depiction of it?

2 A. Yes, sir.

3 TC [MR. MILLER]: Your Honor, the prosecution would move
4 for the introduction of Prosecution Exhibits 487A, B, C, and
5 D.

6 MJ [Col SPATH]: Noted. Thank you.

7 TC [MR. MILLER]: Provide the witness, please, with
8 Prosecution Exhibit 488.

9 Q. Do you recognize Prosecution Exhibit 488?

10 A. Yes, sir.

11 Q. Did you seize that item?

12 A. I did. It's two plastic bottles from Room A, south
13 wall.

14 Q. And by Room A, you mean?

15 A. The porch area.

16 Q. Does that contain your handwriting on the bag?

17 A. Yes, sir.

18 Q. Placing on the ELM0 Prosecution Exhibit 488A. Do you
19 recognize what's contained in that photograph?

20 A. Yes, sir. Those are the two items in this evidence
21 bag.

22 Q. And the evidence bag being Prosecution Exhibit 488,
23 correct?

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1 A. It is 488, yes, sir.

2 Q. If you can make it out, is there a -- is there a K
3 number in -- on the exhibit, Prosecution Exhibit 488A?

4 A. K189.

5 Q. Could you look on the exhibit itself,
6 Prosecution 488?

7 A. It's K189.

8 Q. So those numbers match?

9 A. Yes, sir.

10 Q. And when I say "match," the number on the bag matches
11 the number on the exhibit, Prosecution 488A, correct?

12 A. Yes, sir, they're the same.

13 Q. Looking on the evidence bag, 488, does it have a YM
14 number on it?

15 A. YM2-120.

16 Q. And does it have a 1B number?

17 A. 1B153.

18 Q. Is there a chain of custody form, a 192, attached to
19 the exhibit?

20 A. Yes, sir.

21 Q. Would you take a look at that, please.

22 A. **[Did as directed.]**

23 Q. Does the FD-192 have a YM number?

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1 A. It's YM2-120.

2 Q. And does it have a 1B number?

3 A. 1B153.

4 Q. Do those numbers match the numbers contained on the
5 Exhibit 488?

6 A. Yes, sir. They're the same numbers.

7 Q. Placing on the ELMO Prosecution Exhibit 488C. Do you
8 recognize that?

9 A. Yes, sir. That's the chain of custody for 488.

10 Q. Is it -- is it an exact duplicate of it?

11 A. Yes, sir.

12 Q. Placing on the ELMO Prosecution Exhibit 488B. Do you
13 recognize that?

14 A. Yes, sir. It's a copy of the front of the evidence
15 bag for 488.

16 Q. Is it a fair and accurate depiction?

17 A. Yes, sir.

18 TC [MR. MILLER]: Prosecution would move for the admission
19 of 488A, B, and C, Your Honor.

20 MJ [Col SPATH]: Noted. Thank you.

21 TC [MR. MILLER]: Prosecution -- if you could provide the
22 witness with Prosecution Exhibit 490.

23 Q. Have you had an opportunity to look at that exhibit?

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1 A. Yes, sir.

2 Q. And do you recognize it?

3 A. Yes, sir. It's rope that was seized from Room A,
4 south wall.

5 Q. And did you seize it?

6 A. Yes, sir, I did.

7 Q. And how do you know you seized it?

8 A. It's my handwriting.

9 Q. I'm placing -- and when you say your handwriting,
10 handwriting on the bag?

11 A. Handwriting on the evidence bag, yes, sir.

12 Q. Placing on the ELM0 Prosecution Exhibit 490A for
13 Identification. Do you recognize what's in that photograph?

14 A. Yes, sir. It's the rope that's contained in this
15 evidence bag for 490.

16 Q. Is there a K number attached to the -- or contained
17 in the photograph?

18 A. The K number on the photograph is K191.

19 Q. Looking at the exhibit itself, Prosecution
20 Exhibit 490 for Identification, is there a K number on it?

21 A. K191.

22 Q. So it matches the number on the photograph,
23 Prosecution Exhibit 49 -- 490A, correct?

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1 A. It does, yes, sir.

2 Q. If you would, look at the Prosecution Exhibit 490.

3 Does it have a YM number on it?

4 A. YM2-125.

5 Q. And does it have a 1B number?

6 A. 1B158.

7 Q. Is there a 192 green sheet attached to the exhibit?

8 A. Yes, sir.

9 Q. Does it have a YM number on it?

10 A. YM2-125.

11 Q. And does it have a 1B number?

12 A. 1B158.

13 Q. Do those numbers match the numbers contained on the
14 exhibit, Prosecution 490?

15 A. Yes, sir, they do.

16 Q. Placing on the ELM0 Prosecution Exhibit 490C for
17 Identification. Do you recognize that form?

18 A. Yes, sir. It's a copy of the chain of custody for
19 this item, 490.

20 Q. And is it an exact duplicate?

21 A. Yes, sir, it is.

22 Q. Placing on the ELM0 Prosecution Exhibit 490B, as in
23 boy, for Identification. Do you recognize that?

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1 A. Yes, sir. It's the evidence item for 490. It's the
2 outside of the bag.

3 Q. Is it a fair and accurate depiction of it?

4 A. Yes, sir.

5 TC [MR. MILLER]: Prosecution would move for the admission
6 of Prosecution Exhibits 490A -- 490A, B, and C, Your Honor.

7 MJ [Col SPATH]: Noted. Thank you.

8 TC [MR. MILLER]: Provide the witness, please, with
9 Prosecution Exhibit 491.

10 Q. Have you had an opportunity to look at that, ma'am?

11 A. Yes, sir.

12 Q. All right, Agent. Did you seize those -- seize that,
13 the items contained in that evidence bag, 491?

14 A. I did.

15 Q. Excuse me? I'm sorry.

16 A. I did, yes, sir.

17 Q. And how do you know that you seized them?

18 A. The handwriting on the evidence bag is mine.

19 Q. And what are they? What's contained in the bag?

20 A. Clothespins from Room A, hanging on the clothesline
21 that was stretched east to west.

22 Q. Placing on the ELM0 a photograph, Prosecution
23 Exhibit 49 -- 491A. Do you recognize what's contained in that

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1 photograph?

2 A. Yes, sir. Those are the items contained in the
3 evidence bag for 491.

4 Q. Is there a K number contained within the photograph?

5 A. Looks like K192.

6 Q. If you look at the evidence bag itself, Prosecution
7 Exhibit 491, is there a K number contained on it?

8 A. K192.

9 Q. Therefore, does it match the number on Prosecution
10 Exhibit 491A?

11 A. Yes, sir.

12 Q. Looking, again, on the exhibit itself, 491, does it
13 contain a YM number?

14 A. YM2-126.

15 Q. And does it contain a 1B number?

16 A. 1B159.

17 Q. Is there a green sheet, a form -- an FD one -- a
18 form FD-192 attached to the exhibit?

19 A. Yes, sir.

20 Q. Does it have a YM number on it?

21 A. YM2-146.

22 Q. Does it have a 1B number?

23 A. 1B178.

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1 Q. If you could, please -- hold on. The chain of
2 custody form has a 1B number, and what's the 1B number on it?

3 A. 1B178.

4 TC [MR. MILLER]: May I approach?

5 MJ [Col SPATH]: You may.

6 TC [MR. MILLER]: If I may just have a second here, Your
7 Honor?

8 MJ [Col SPATH]: Sure.

9 TC [MR. MILLER]: Go ahead and we'll move on to the next
10 one.

11 Provide the witness with Prosecution Exhibit 493.

12 Q. Do you recognize 493?

13 A. Yes, sir.

14 Q. And did you seize that?

15 A. Yes, sir, I did.

16 Q. And what is it?

17 A. They're auto parts that were seized from Room C,
18 Closet 2, on 10/18/2000.

19 Q. That would be C2 as identified on the exhibit,
20 Prosecution 697; is that correct?

21 A. Yes, sir, Room C, Closet 2.

22 Q. And how do you know that you seized it?

23 A. It's my handwriting on the evidence bag.

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1 Q. I'd like to place on the ELMO Prosecution
2 Exhibit 493B. Do you recognize that? It would be helpful if
3 we opened it for you, for the record.

4 A. Yes, sir. It's a photograph of the evidence items
5 contained in the evidence bag.

6 Q. Looking at the bag itself, Prosecution Exhibit 493B,
7 all right, is there a YM number on it?

8 A. YM2-179.

9 Q. Is there also on it a -- a 1B number?

10 A. 1B211.

11 Q. All right. Is there an FD-192 attached to it?

12 A. Yes, sir.

13 Q. Could you take a look at that, please? Does it have
14 a 1B number on?

15 A. 1B211.

16 Q. And does it have a YM number?

17 A. YM2-179.

18 Q. Does the numbers on the 192, the green sheet, match
19 the numbers contained on the actual Exhibit 293 [sic]?

20 A. They do, yes, sir.

21 Q. Placing on the ELMO Prosecution Exhibit 493D, as in
22 David. Do you recognize that, Agent?

23 A. Yes, sir. It's a copy of the chain of custody for

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1 493.

2 Q. Is it an exact duplicate of it?

3 A. Yes, sir.

4 Q. Placing on the ELMO Prosecution Exhibit 493B and ask
5 you if you recognize that. Let me make it a little smaller.

6 Do you recognize that?

7 A. Yes, sir. That's a copy of the evidence bag for this
8 item 493.

9 Q. Is it a fair and accurate depiction of it?

10 A. Yes, sir.

11 Q. Placing on the ELMO Prosecution Exhibit 493C, as in
12 Charlie. Do you recognize that?

13 A. Yes, sir.

14 Q. And what is it?

15 A. It's one of the -- the top of one of the bags in the
16 evidence packaging.

17 Q. Fair and accurate depiction of it?

18 A. Yes, sir.

19 Q. All right.

20 TC [MR. MILLER]: Prosecution would move for the
21 admission, Your Honor, of 493A, B, C, and D.

22 MJ [Col SPATH]: Noted. Thank you.

23 TC [MR. MILLER]: Provide the witness, please, with

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1 Prosecution Exhibit 501.

2 Q. Have you had an opportunity to look at it?

3 A. Yes, sir.

4 Q. Do you recognize it?

5 A. Yes, sir. It's mats that were found on the floor in
6 Room A on the east side.

7 Q. And that would match Room A on the chart, correct,
8 Prosecution ----

9 A. Yes, sir. It's the porch area.

10 Q. And that's in Prosecution Exhibit 697, correct? The
11 chart on the ----

12 A. It's the chart that's displayed, yes, sir.

13 Q. And how do you know that you seized it?

14 A. It's my handwriting is on the evidence bag.

15 Q. Placing on the ELM0 Prosecution Exhibit 501 -- 501A
16 for Identification. Do you recognize what's in that
17 photograph?

18 A. Yes, sir. It's the mat that's contained inside this
19 evidence bag.

20 Q. Is there a K number attached to it?

21 A. Yes, sir. It looks like K229.

22 Q. If you would look at the evidence bag itself, the
23 actual Exhibit 501. Is there a K number on it?

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1 A. K229.

2 Q. Does the number on the bag match the number in the
3 photograph 501A?

4 A. Yes, sir, it does.

5 Q. Looking on the evidence bag itself, 501, is there a
6 1B and a YM number?

7 A. It's YM2-121 and 1B154.

8 Q. Is there a chain of custody form attached to the
9 exhibit?

10 A. Yes, sir.

11 Q. Could you take a look at it, please? Does it have a
12 YM number?

13 A. YM2-121.

14 Q. And does it have a 1B number?

15 A. 1B154.

16 Q. And do those numbers match the number contained --
17 numbers contained on Prosecution Exhibit 501?

18 A. They do.

19 Q. Placing on the ELM0 Prosecution Exhibit 501F. Do you
20 recognize that?

21 A. Yes, sir. It's the chain of custody associated with
22 this 501.

23 Q. Is it an exact duplicate of it?

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1 A. Yes, sir.

2 Q. Placing on the ELM0 Prosecution Exhibit 501C for
3 Identification and ask you if you recognize that?

4 A. Yes, sir. It's a photograph of the evidence bag for
5 this item of evidence.

6 Q. Is it a fair and accurate depiction of it?

7 A. Yes, sir.

8 TC [MR. MILLER]: Your Honor, the prosecution would move
9 for the admission of Prosecution 501A, 501F, and 501C.

10 MJ [Col SPATH]: Noted. Thank you.

11 TC [MR. MILLER]: And could we provide the witness,
12 please, with Prosecution Exhibit 505.

13 Q. Have you had a chance to look at it?

14 A. Yes, sir.

15 Q. Do you recognize it?

16 A. Yes, sir. It's a black jug with a green screw top
17 that I found in Room C, Closet 2.

18 Q. And how do you know that you found it and seized it,
19 collected it?

20 A. My handwriting on the evidence tag.

21 Q. And what is actually indicated on your sheet, your
22 evidence tag?

23 A. It says "Room C, Closet 2, black jug with green screw

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1 top," the case number, "T. Kneisler, 10/18/00."

2 Q. Placing on the ELM0 a photograph, Prosecution Exhibit
3 K -- excuse me, Prosecution Exhibit 505A for Identification,
4 ask you if you recognize that.

5 A. Yes, sir. That's the item that's contained as this
6 evidence item, 505.

7 Q. Is there a K number attached to the photograph?

8 A. K236.

9 Q. Placing on the ELM0 a photograph, Prosecution
10 Exhibit 505B. Do you recognize that?

11 A. Yes, sir. It's the side view of the evidence item in
12 505.

13 Q. And is there a K number on Prosecution Exhibit 505B
14 for Identification?

15 A. K236.

16 Q. Last, I'm placing on the ELM0 Prosecution
17 Exhibit 506C [**sic**] for Identification, do you recognize that?

18 A. Yes, sir. That's another side of the same side of
19 evidence from 505.

20 Q. And does it have a K number on it?

21 A. K236.

22 Q. Looking at the actual exhibit itself, Prosecution
23 Exhibit 505, does it have a K number on it?

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1 A. K236.

2 Q. And does that match the number on Prosecution
3 Exhibits 505A, B, and C for Identification?

4 A. Yes, sir. It's the same number as in the photos.

5 Q. Does the exhibit itself, Prosecution Exhibit 505,
6 have a one -- a YM number on it?

7 A. YM2-191.

8 Q. Does it have a 1B number?

9 A. 1B223.

10 Q. Is there a chain of custody FD-192 green sheet
11 attached to it?

12 A. Yes, sir, there is.

13 Q. And does it have a YM number on it?

14 A. YM2-191.

15 Q. And a 1B number?

16 A. 1B223.

17 Q. And do those numbers on the chain of custody form
18 match those contained on the actual Exhibit 505?

19 A. Yes, sir.

20 Q. Placing on the ELM0 Prosecution Exhibit 505E, Edward.
21 Do you recognize that form?

22 A. Yes, sir. It's a copy of the chain of custody for
23 this item, 505.

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1 Q. Is it an exact duplicate of it?

2 A. Yes, sir, it is.

3 Q. Placing on the ELM0 Prosecution Exhibit 505D. Do you
4 recognize -- do you recognize 505D for Identification?

5 A. Yes, sir. That's a photograph of the evidence tag
6 that was associated with this item.

7 Q. Fair and accurate depiction of it?

8 A. Yes, sir.

9 TC [MR. MILLER]: Your Honor, the government would move
10 for the introduction of Prosecution Exhibits 505A, B, C, D,
11 and E.

12 MJ [Col SPATH]: Noted. Thank you.

13 Q. Did you have occasion to become involved in a search
14 involving a trailer and a -- what I call a small Jeep or an
15 SUV?

16 A. Yes, sir, I did.

17 Q. And could you tell the court -- could you explain how
18 you came to be involved in that particular search?

19 A. I was a member of the Evidence Response Team that was
20 deployed to this location following the bombing of the ship.
21 And it was identified that this was a vehicle that appeared to
22 have some association with the -- with the attack itself, and
23 so I deployed as part of the team to a police station where

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1 the vehicle and the trailer were parked in the front of the
2 building.

3 Q. If you saw a picture of the vehicle, do you think you
4 would recall it?

5 A. Yes, sir.

6 TC [MR. MILLER]: All right. If you would, please -- if
7 we could use the monitor, Your Honor?

8 MJ [Col SPATH]: You may.

9 TC [MR. MILLER]: Thank you. Prosecution Exhibit 447.

10 Q. Do you recognize the vehicle in Prosecution
11 Exhibit 447?

12 A. Yes, sir. That's the vehicle that we searched.

13 Q. And is that how it appeared that day, the day of the
14 search?

15 A. Yes, sir. When we arrived on scene, that was how it
16 appeared.

17 Q. All right. Fair and accurate depiction, then,
18 correct?

19 A. Yes, sir.

20 TC [MR. MILLER]: We would move for the admission of 447,
21 Your Honor.

22 MJ [Col SPATH]: Understand. Noted. Thank you.

23 Q. And was there anything attached to the -- I'll call

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1 it a small Jeep?

2 A. Yes, sir. There was a trailer, what appeared to be a
3 boat trailer, attached to the vehicle.

4 TC [MR. MILLER]: Please show the witness Prosecution
5 Exhibit 438.

6 Q. Do you recognize what's in Prosecution Exhibit 438?

7 A. Yes, sir. That's the trailer that was attached to
8 the vehicle that you showed in the previous photo that we
9 searched at the police station location.

10 Q. Fair and accurate depiction of it?

11 A. Yes, sir.

12 Q. All right. That's how it appeared the day of the
13 search?

14 A. Yes, sir.

15 Q. All right. In fact, these photos were taken the day
16 of the search, correct, as best as you know?

17 A. As best as I know.

18 TC [MR. MILLER]: Move for the admission, Your Honor, of
19 Prosecution 438.

20 MJ [Col SPATH]: Noted. Thank you.

21 Q. And were you able to conduct the search? Was the
22 team able to conduct a search?

23 A. Yes, sir. We searched the vehicle and the trailer.

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1 There was some urgency to finish quickly, though the details
2 of that -- I was a search team member -- were mostly kept with
3 the leadership.

4 Q. And actually, you anticipated my question. Not
5 necessarily that you knew why, but did you feel that you were
6 under some time constraints?

7 A. Yes. We were urged to move with -- move with due
8 haste.

9 Q. Was there any Yemeni law enforcement officials
10 present during the search?

11 A. Yes, sir. They were in the general vicinity.

12 Q. And do you know whether or not anybody drew a
13 schematic of the -- of the site and what occurred?

14 A. My recollection is that the sketch was done by Lisa
15 LoCascio.

16 Q. She was a member of the team?

17 A. Yes, sir.

18 Q. Did you -- were you involved in any other searches at
19 the police station?

20 A. Not at this specific location, no, sir.

21 Q. Another police station?

22 A. I was involved in evidence collection at a different
23 police station. But in that instance, it wasn't a search so

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1 much as they handed over evidence that they had collected in
2 the course of their own searches to us.

3 Q. We'll talk about that at another time.

4 TC [MR. MILLER]: Thank you, Your Honor. I have no
5 further questions of this witness.

6 MJ [Col SPATH]: Okay. Thanks.

7 Defense Counsel?

8 DDC [LT PIETTE]: Defense takes no position.

9 MJ [Col SPATH]: Okay. Special Agent Kneisler, thank you
10 again. I know last time I gave you the standard order: Don't
11 discuss your testimony until this issue is resolved. You
12 remember that one?

13 WIT: Yes, sir.

14 MJ [Col SPATH]: Any questions about that?

15 WIT: No, sir.

16 MJ [Col SPATH]: Please keep it in mind. Again, I'm not
17 saying don't talk to other agents who are here or anything
18 like that. Just don't talk about your testimony. I know you
19 understand that. Pretty standard.

20 The other is, last time I said thank you for
21 traveling down here. I appreciate it. I know what it takes
22 to come down and do that, but I know the people involved in
23 the process sure appreciate it. I do, too. Thanks again for

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1 your testimony. You're excused.

2 WIT: Thank you, sir.

3 MJ [Col SPATH]: Thanks.

4 [The witness was warned, excused, and withdrew from the
5 courtroom.]

6 MJ [Col SPATH]: All right. Mr. Miller, three minutes shy
7 of an hour. It's perfect. I think you've probably realized
8 my battle rhythm. About every hour I take a break. We're
9 going to take ten. We're in recess.

10 [The R.M.C. 803 session recessed at 1417, 14 February 2018.]

11 [The R.M.C. 803 session was called to order at 1429,
12 14 February 2018.]

13 MJ [Col SPATH]: The commissions are called to order. All
14 the parties are again present who were present before.
15 General Martins is not here, but we've already discussed that.

16 Mr. Miller, call your next witness.

17 TC [MR. MILLER]: Government calls Special Agent Dayna
18 Sepeck. Ma'am, if you would remain standing, please, and
19 raise your right hand.

20 [END OF PAGE]

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1 DAYNA SEPECK, civilian, was called as a witness for the
2 prosecution, was sworn, and testified as follows:

3 **DIRECT EXAMINATION**

4 Questions by the Trial Counsel [MR. MILLER]:

5 Q. Please be seated. State your name for the record.

6 A. Dayna Better Sepeck.

7 Q. And Better was your maiden name, correct?

8 A. Yes, correct.

9 Q. And you previously testified before this commission?

10 A. Yes.

11 Q. Are you still employed by the FBI?

12 A. Yes.

13 Q. In the same capacity?

14 A. Yes.

15 Q. I want to direct your attention back to October of
16 2000. Did you have occasion to be involved in the, I'll call
17 it the investigation of the bombing of the USS COLE?

18 A. Yes.

19 Q. And initially what were your duties and what were
20 your responsibilities, Agent?

21 A. I was the evidence custodian for the evidence
22 collection.

23 Q. And that was the evidence collection that was

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1 occurring where?

2 A. On the USS COLE.

3 Q. Did you have occasion at some point to become
4 involved in any of the land searches?

5 A. I did.

6 Q. And how did you come to be a member of the team
7 involving the land searches?

8 A. I was asked to participate in the search.

9 Q. Do you recall the -- how many places, how many land
10 searches in which you were involved?

11 A. One.

12 Q. And do you recall where it was? Just generally.
13 What sort of -- let me ask it this way: Do you recall what
14 kind of a structure that it was?

15 A. It was a house.

16 Q. If you saw a photograph of it, would you be able to
17 remember?

18 A. I would think so, depending on the photograph.

19 TC [MR. MILLER]: Permission, Your Honor, to use the
20 monitor to show the witness a photograph.

21 MJ [Col SPATH]: You may.

22 Q. If you would show the witness Prosecution
23 Exhibit 532. Come up on the screen.

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1 A. Yes, it's up.

2 Q. It's up on the screen?

3 A. Uh-huh.

4 Q. Looking at Prosecution Exhibit 532, do you recognize
5 that photograph?

6 A. I do.

7 Q. And what do you recognize that to be a photograph of?

8 A. That is the residence that we searched.

9 Q. Fair and accurate depiction of it as it appeared the
10 day that you conducted the search?

11 A. It is.

12 TC [MR. MILLER]: I think we have previously moved for
13 532, but we would again, Your Honor.

14 MJ [Col SPATH]: I understand. Noted. Thank you.

15 Q. Were you the only person conducting the search?

16 A. No, I was not. There was a few of us on scene.

17 Q. And do you recall entering into the house?

18 A. Yes.

19 Q. Do you recall what the parameters of the search were,
20 what you ended up looking for when you returned on this time?

21 A. We searched inside and outside and we -- the search
22 seemed to be focused mostly on drains and pipes and inside the
23 drains and the pipes themselves.

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1 Q. Was there -- when you say the drains and pipes, could
2 you expound? What were you looking for?

3 A. I don't recall specifically, but we wanted to take --
4 we wanted to look inside of the drains and inside of the pipes
5 for residue, I believe.

6 Q. Were you the evidence custodian or collector at that
7 site that day?

8 A. I was packaging the evidence, yes.

9 Q. And do you recall where the -- inside in the
10 residence, where inside the search was taking place?

11 A. It was throughout the residence, but I know we took
12 some pipes from the bathrooms and I know there was some
13 outside of the house as well.

14 Q. All right. If you saw a picture of the bathroom, do
15 you think you would recall it?

16 A. I may, yes.

17 TC [MR. MILLER]: Please, if you would, show the witness
18 Prosecution Exhibit 568.

19 Q. Do you recognize the photograph, Prosecution
20 Exhibit 568 for Identification?

21 A. I do.

22 Q. And what do you recognize it to be, ma'am?

23 A. That's the bathroom area where we took one of the

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1 pipes.

2 Q. Fair and accurate depiction of it?

3 A. It is.

4 Q. All right.

5 TC [MR. MILLER]: Again, we've already moved for the
6 admission of it, Your Honor, just the additional foundation.

7 Q. Did you -- were you the one actually cutting the
8 pipes or taking the pipes?

9 A. No, I was not.

10 Q. All right, was that another individual?

11 A. Yes.

12 Q. Would the -- what would happen to the pipes once the
13 individual had cut them or taken them?

14 A. I would package them.

15 TC [MR. MILLER]: Would you provide the witness, please,
16 with Prosecution Exhibit 506.

17 Q. Agent, if you would, please, could you take a look at
18 that item. Would it be helpful to open it?

19 A. I can see my -- my writing on the packaging.

20 Q. Do you recognize your handwriting?

21 A. I do, yes.

22 Q. Do you recognize the item?

23 A. I cannot see the item in the packaging but I can see

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1 all of my indications and markings on the packaging that I
2 marked on it at the time of collection.

3 Q. If you would, please, open it.

4 TC [MR. MILLER]: And I'm going to ask permission to use
5 the ELM0, too, Your Honor.

6 MJ [Col SPATH]: You can.

7 Q. Have you had a chance to examine Prosecution
8 Exhibit 506, Agent?

9 A. Yes. That looks similar to item -- an item we
10 collected at the scene.

11 Q. And the evidence bag, do you recognize the evidence
12 bag in which it's contained?

13 A. I do.

14 Q. All right. Does it contain your handwriting?

15 A. It does.

16 Q. And what does it indicate?

17 A. It indicates the case number, the file number, where
18 we located the item, description of the item, the date and
19 time the item was collected, and my name.

20 Q. If you could, please, read into the record the
21 description of the evidence.

22 A. "Elbow pipe sink trap."

23 Q. The date and time of the recovery?

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1 A. "10/22/2000, 1645."

2 Q. That would be 4:45 in the afternoon?

3 A. Uh-huh, yes.

4 Q. The location of the recovery?

5 A. "Bathroom, Room G."

6 Q. And by Room G, what does that mean?

7 A. That is when we -- we indicate the different rooms,
8 and so we give them a letter designation, as well as -- it was
9 the bathroom, but we also give it a designation letter.

10 Q. Do you see in front of you Prosecution Exhibit 697, a
11 chart or a schematic of the house?

12 A. Yes.

13 Q. Is Room G located on that particular chart?

14 A. It is, yes.

15 Q. All right. And it indicates the -- it was recovered
16 by "D. Better." And is that yourself?

17 A. Yes.

18 Q. What did you then do with the evidence?

19 A. The evidence was then brought into storage and then
20 it was turned over to another person for transport.

21 Q. I'm placing on the ELMO Prosecution Exhibit 506A for
22 Identification and ask you if you recognize that.

23 A. Yes.

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1 Q. And what do you recognize that to be?

2 A. That is the pipe that was collected.

3 TC [MR. MILLER]: I don't know if we can do this.

4 Q. Is there a K number attached to the photograph?

5 A. There is.

6 Q. Can you read that?

7 A. Not great. 377, maybe.

8 Q. All right. If you would look at the evidence bag
9 itself, is there a K number anywhere on it?

10 A. Oh, yes. Yes, K377.

11 Q. So it matches the -- the K number on the bag matches
12 the K number on the photograph, Prosecution 506A, correct?

13 A. Yes, it does.

14 Q. In looking at the bag, does it have a YM2 number?

15 A. Yes, it does. YM2-244.

16 Q. And does it have a 1B number, Agent?

17 A. Yes, 1B269.

18 Q. If you would, please, is there a chain of custody
19 FD-192, what we call a green sheet form, attached to your --
20 to that exhibit?

21 A. Yes, there is.

22 Q. Looking at it, does it have a YM2 number?

23 A. It does. YM2-244.

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1 Q. Does it have a 1B number?

2 A. 1B269.

3 Q. Does those numbers match the numbers contained on the
4 bag, Prosecution Exhibit 506?

5 A. Yes.

6 Q. I'm placing on the ELM0 Prosecution Exhibit 506C for
7 Identification. Do you recognize that form?

8 A. Yes.

9 Q. And is it an exact duplicate of the chain of custody
10 form you've just described?

11 A. It is.

12 Q. Does it contain your signature?

13 A. It does, on the second line.

14 Q. All right.

15 A. I'm sorry, on the first line.

16 Q. And it indicates what? The reason that your name is
17 there, because?

18 A. Because it was collected by me.

19 Q. Then it looks like you stored it, also?

20 A. Right. Correct.

21 Q. And there's a name underneath it.

22 A. Yes.

23 Q. I think Greenberg?

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1 A. Eric Greenberg.

2 Q. Would that be the person who then took custody of it?

3 A. Yes.

4 Q. And I think I've already asked it, but is this an
5 exact duplicate of the chain of custody form attached to the
6 exhibit?

7 A. It is.

8 Q. I'm placing on the ELM0 Prosecution Exhibit 506B for
9 Identification. Do you recognize that, what's in that
10 photograph?

11 A. Yes.

12 Q. Is that your handwriting?

13 A. Yes.

14 Q. All right. And what is that a -- what is contained
15 in that photograph? What is that?

16 A. That is the -- the evidence bag that I have here.

17 Q. Is it a fair and accurate depiction of the evidence
18 bag, 506?

19 A. Yes, it is.

20 TC [MR. MILLER]: Your Honor, the prosecution would move
21 for the admission of Prosecution Exhibits 506A, B, and C.

22 MJ [Col SPATH]: Noted. Thank you.

23 TC [MR. MILLER]: Provide the witness, please, with

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1 Prosecution Exhibit 507.

2 Q. I think I may have already asked you this. You were
3 not the person cutting the pipe, were you?

4 A. No, I was not.

5 Q. Would it be helpful to open that or ----

6 TC [MR. MILLER]: If you would open that for the witness,
7 please.

8 Q. Are you able to see the item?

9 A. Yes.

10 Q. Is that an item that you collected?

11 A. Yes.

12 Q. And how do you know that that was an item that you
13 collected?

14 A. My indications on the bag or the packaging of the
15 item indicate that it's my writing and my markings on the
16 packaging as well.

17 Q. If you could, please, read into the record what you
18 noted on that date, the day that you seized it -- collected
19 it, excuse me.

20 A. The case number is on here, 262-NY-277013. The item
21 number, YMZ-245. The item description, "pipe under kitchen
22 sink." "Location, under kitchen sink in Room D." And my
23 name, and the date and time, which was 10/22/2000, and 1645.

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1 Q. All right. If you look up at the YM number, is that
2 YM2 or YMZ?

3 A. YMZ.

4 Q. It's a Z?

5 A. I believe so. Maybe it was a 2, actually.

6 Q. All right.

7 A. It's hard to read now.

8 Q. Placing on the ELM0 Prosecution Exhibit 507A, ask you
9 if you recognize it.

10 A. Yes.

11 Q. What is it?

12 A. That is the pipe that is -- was collected here in
13 this packaging.

14 Q. So the item in Prosecution Exhibit 507A is the item
15 contained in Prosecution 507, correct?

16 A. Yes. Correct.

17 Q. Looking at the exhibit itself, 507, does it have --
18 you've indicated it has a YM number. Does it have a 1B
19 number?

20 A. Yes. It's 1B270.

21 Q. If you would, please, take a look and see if it has a
22 green sheet, an FD-192 attached to it.

23 A. Yes.

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1 Q. And does it have a 1B number?

2 A. Yes, it does. 1B270.

3 Q. So that matches the 1B number contained on the
4 exhibit itself, 507, correct?

5 A. Yes.

6 Q. And does the chain of custody form, the green sheet,
7 192, have a YM number on it?

8 A. Yes. This one it's clear; YM2, it looks like. Looks
9 like a 2. No, it's hard to tell. YMZ or 2, 245.

10 Q. All right. Does it appear to match the one on the
11 bag, 207B?

12 A. Yes.

13 Q. The one thing we are sure of: They are both 245,
14 correct?

15 A. Yes.

16 Q. All right. You're unsure whether it's a 2 or a Z?

17 A. Yeah. It's hard to tell.

18 Q. All right. And is your signature contained on that
19 bag?

20 A. Yes.

21 Q. All right. And -- excuse me, on the form?

22 A. Yes.

23 Q. I'm placing on the ELM0 Prosecution Exhibit 207C for

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1 Identification. Do you recognize that form?

2 A. I do.

3 Q. Excuse me, if I said 207, I meant 507C for

4 Identification. Do you recognize that form?

5 A. Yes.

6 Q. And what do you recognize that form to be?

7 A. Green sheet, and my signature is there on the first
8 line.

9 Q. Is it an exact duplicate of the green sheet attached
10 to Prosecution Exhibit 507?

11 A. It is.

12 Q. You indicated it has your signature on it?

13 A. It does.

14 Q. And where is your signature?

15 A. On the first line.

16 Q. All right. It indicates that you collected it and
17 stored it?

18 A. Yes.

19 Q. What date and time?

20 A. 10/22/2000, 1645.

21 Q. And to whom did you surrender it?

22 A. Eric Greenberg.

23 Q. And what was the purpose in surrendering it to him?

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1 A. For transport.

2 Q. Placing on the ELM0 Prosecution Exhibit 507B. Do you
3 recognize that photograph?

4 A. Yes.

5 Q. And what's contained in it?

6 A. That is a photograph of the packaging, the evidence
7 bag.

8 Q. Fair and accurate depiction of it?

9 A. Yes.

10 Q. And when you say "of the evidence bag," are you
11 talking about the evidence bag in Prosecution Exhibit 507?

12 A. Yes.

13 TC [MR. MILLER]: Your Honor, the prosecution would move
14 for the admission of 507A, B, and C.

15 MJ [Col SPATH]: Noted. Thank you.

16 TC [MR. MILLER]: Provide the witness, please, with
17 Prosecution Exhibit 508.

18 Q. Have you had an opportunity to observe that exhibit?

19 A. Yes, yes.

20 Q. Do you recognize it?

21 A. It's -- appears to be like -- similar to the pipes
22 that we collected on the scene.

23 Q. Is it something that you collected?

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1 A. Yes.

2 Q. And how do you know that?

3 A. Because the packaging, again, indicates my writing
4 and the information that I wrote down that day on the
5 packaging.

6 Q. And what's the information that you wrote?

7 A. Case number, "262-NY-277013"; YMZ, or 2, 246, an
8 elbow pipe, sink outside the kitchen. Date and time,
9 10/22/2000, 1645. Location of recovery is "outside the
10 kitchen (Room D) in backyard and my name."

11 Q. And then it has "chain of custody"?

12 A. Yes.

13 Q. And it says "received from Al Ghadir"?

14 A. Residence.

15 Q. Is that the name of the house, is that the name that
16 you ----

17 A. Yes, residence, R-E-S, yes.

18 Q. All right. And is that your signature ----

19 A. Yes.

20 Q. ---- on the bag?

21 A. Yes.

22 Q. Placing on the ELM0 Prosecution Exhibit 508A, and ask
23 you if you recognize that?

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1 A. Yes.

2 Q. And what do you recognize it to be?

3 A. That is a depiction of this pipe that is -- that was
4 collected and here in this packaging.

5 Q. All right. It is the same pipe?

6 A. Yes. It appears to be the same pipe, yes.

7 Q. Looking at the bag, the evidence bag itself, you
8 indicated it has a YM2 -- or what you call YMZ -- 246?

9 A. Yes, uh-huh.

10 Q. Does it have a 1B number?

11 A. Yes, it does, 1B271.

12 Q. If you would, please, see if there is a chain of
13 custody form attached to it.

14 A. There is.

15 Q. And does it have a 1B number on it?

16 A. Yes, 1B271.

17 Q. And does that match the number contained on the
18 actual Exhibit 508?

19 A. Yes.

20 Q. And does it have a YM number on the chain of custody
21 form?

22 A. It does. And this one I can tell is YM2-246.

23 Q. And does that appear to match the one on the bag ----

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1 A. Yes.

2 Q. ---- Prosecution 508?

3 Placing on the ELM0 Prosecution 508E. Do you
4 recognize that form?

5 A. I do.

6 Q. What do you recognize it to be?

7 A. It is a copy of the green sheet that is with the --
8 on the evidence bag.

9 Q. On the evidence, meaning Prosecution Exhibit 508?

10 A. Yes.

11 Q. Is it an exact duplicate?

12 A. It is.

13 Q. Your signature contained on it?

14 A. Yes, on the first line.

15 Q. Above the word "collected"?

16 A. Yes.

17 Q. Does it indicate when you collected the evidence?

18 A. 10/22/2000, 1645.

19 Q. And what did you do to -- when did you surrender the
20 evidence?

21 A. It was turned over to Eric Greenberg, 10/26 at
22 10:00 a.m. I can't tell if it's 10:00 a.m. or 10:00 p.m.

23 Q. I'm placing on the ELM0 Prosecution Exhibit 508B. Do

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1 you recognize that?

2 A. Yes, I do. That is a photographic depiction of the
3 packaging of this item of evidence.

4 Q. Fair and accurate depiction of it?

5 A. Yes.

6 Q. And when you say it's a picture of the evidence,
7 you're talking about Prosecution Exhibit 508?

8 A. Yes.

9 Q. Placing on the ELM0 Prosecution Exhibit 508C for
10 Identification. Do you recognize that?

11 A. Yes.

12 Q. What do you recognize it to be?

13 A. That is a photographic depiction of the item of
14 evidence in the packaging.

15 Q. In the bag?

16 A. Yes.

17 Q. Fair and accurate depiction of it?

18 A. Yes.

19 Q. And when we're talking about the evidence, we're
20 talking about Prosecution 508?

21 A. Yes.

22 Q. Lastly, I'm placing on the ELM0 Prosecution
23 Exhibit 508D, as in David. Do you recognize that photograph?

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1 A. That appears to be the backside of the item of
2 evidence, a photographic depiction.

3 Q. The evidence being 508?

4 A. Yes.

5 Q. Fair and accurate photograph of it?

6 A. Yes.

7 TC [MR. MILLER]: Your Honor, the government would move
8 for the introduction of Prosecution Exhibit 508A, B, C, D, and
9 E.

10 MJ [Col SPATH]: Noted. Thank you.

11 TC [MR. MILLER]: Provide the witness, please, with
12 Prosecution Exhibit 509. Would you open it for the witness,
13 please.

14 Q. Agent, have you had the opportunity to look at
15 Prosecution Exhibit 509?

16 A. Yes.

17 Q. Do you recognize it?

18 A. Yes.

19 Q. Is that evidence that you collected?

20 A. Yes.

21 Q. Is it in an evidence bag?

22 A. It is, yes, with my -- with my writing of the
23 information on it.

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1 Q. Is it more piping or what I call plumbing?

2 A. Yes, it is.

3 Q. Could you describe what you wrote on the evidence
4 bag, please?

5 A. Yes. The case number, 262-NY-277013. The item
6 number YM2-248. Description of the item, elbow, sink -- elbow
7 pipe, sink trap. Date and time of the recovery, 10/22/2000,
8 1645. Location, bedroom sink, Room F.

9 Q. Then there's a chain of custody form on it?

10 A. Yes, uh-huh. Yes.

11 Q. Did you complete that?

12 A. Yes.

13 Q. What did you write?

14 A. It says, "received from Al Ghadir residence," my
15 signature, and the date and time again.

16 Q. All right. Placing on the ELMO Prosecution
17 Exhibit 56 -- excuse me, 509A. Do you recognize that?

18 A. Yes.

19 Q. What do you recognize that to be?

20 A. That is a photographic depiction of this item of
21 evidence.

22 Q. And that evidence item being 509, correct?

23 A. Yes.

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1 Q. I don't know if you can make it out. Can you make
2 out the K number on it?

3 A. Maybe 380 or 38 -- maybe 380.

4 Q. 380?

5 A. Possibly, yeah.

6 Q. Could you check the bag itself? Is there a K number
7 on it?

8 A. 380, yes.

9 Q. Does the number on the bag itself, 509, match the
10 number on the photograph 509A?

11 A. Yes.

12 Q. Looking at the bag, the evidence, the actual Exhibit
13 509, is there a 1B number on it?

14 A. Yes, 1B273.

15 Q. Is there an FD-192 green sheet chain of custody form
16 attached to that exhibit?

17 A. Yes.

18 Q. Would you take a look at that, please. Does that
19 form have a 1B number?

20 A. Yes, 1B273.

21 Q. And does it have a YM number?

22 A. Yes, YM2-248.

23 Q. Do those numbers match the numbers on the bag for --

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1 containing Prosecution Exhibit 509?

2 A. Yes.

3 Q. Placing on the ELM0 Prosecution Exhibit 509C. Do you
4 recognize that photograph?

5 A. Yes.

6 Q. What is it?

7 A. It is a photograph or copy of the green sheet from
8 this item.

9 Q. That item being 509?

10 A. 509, yes.

11 Q. It is an exact duplicate, is it not?

12 A. It is.

13 Q. Does it contain your signature?

14 A. It does, on the first line.

15 Q. All right. Give the date and time of the -- of the
16 collection?

17 A. Yes, it does.

18 Q. What is that?

19 A. 10/22/2000, 1645.

20 Q. And when and to whom did you -- did you surrender the
21 evidence?

22 A. Eric Greenberg, 10/26, 10:00 p.m.

23 Q. Placing on the ELM0 Prosecution Exhibit 509B. There

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1 we go. Do you recognize what's contained in the photograph,
2 509B?

3 A. Yes.

4 Q. What's contained in that photograph, Agent?

5 A. It's a photograph of the item of evidence in the
6 packaging.

7 Q. And you're talking about Prosecution Exhibit 509?

8 A. Yes, 509.

9 Q. Fair and accurate depiction of it?

10 A. Yes.

11 TC [MR. MILLER]: Move for the admission, Your Honor, of
12 Prosecution Exhibit 509A, B, and C.

13 MJ [Col SPATH]: Noted. Thank you.

14 TC [MR. MILLER]: Provide the witness Prosecution
15 Exhibit 510 for Identification.

16 WIT: Thank you.

17 Q. Do you recognize that item?

18 TC [MR. MILLER]: Can you open it for the witness, please?

19 A. I see it.

20 Q. You see it?

21 A. Yes.

22 Q. Okay.

23 A. Yes, I see it, uh-huh. Yes.

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1 Q. And is there an evidence bag with it?

2 A. Yes.

3 Q. Did you complete that bag?

4 A. Yes.

5 Q. Does it indicate that you seized the item,

6 Exhibit 510?

7 A. Yes.

8 Q. And is it in your handwriting?

9 A. It is.

10 Q. Could you please relate to the court what you wrote?

11 A. "Case number 262-NY-277013, YM2-250. Liquid sample
12 from bathroom, Room G, elbow trap, item number YM2-244."

13 Q. Date and time of the recovery?

14 A. 10/22/2000, 1645. And then "location of recovery,
15 from inside elbow pipe, sink trap under bathroom sink,
16 Room G." And then received from S. Krueger to me, because he
17 actually did the collection and then handed it to me.

18 Q. All right. So he was the special agent who actually
19 took the sample?

20 A. Yes.

21 Q. And did he hand it to you?

22 A. Yes.

23 Q. And what did you do then?

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1 A. Packaged it.

2 Q. I'm placing on the ELM0 Prosecution Exhibit 510A for
3 Identification. Do you recall, Agent, if this is the type of
4 vial he provided to you?

5 A. Yes, and then it went inside a can.

6 Q. All right. And is there a K number attached to this
7 particular item?

8 A. Yes. K382.

9 Q. And what is the purpose of putting it into the can?

10 A. Protection.

11 Q. Keep it from breaking?

12 A. Yes.

13 Q. Placing on the ELM0 Prosecution Exhibit 510D, as in
14 David. Do you recognize that photograph?

15 A. Yes. That's the can.

16 Q. And the can -- when you say "in the can," that's the
17 can in Prosecution Exhibit 510, correct?

18 A. Yes, that's right.

19 Q. Placing on the ELM0 Prosecution Exhibit 510E. Do you
20 recognize that?

21 A. Another photo of the can that's in this 510 exhibit.

22 Q. Placing on the ELM0 Prosecution Exhibit 5F [sic]. Do
23 you recognize that?

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1 A. Yes. That's another photo.

2 Q. Just another side view of it?

3 A. Side view, yes.

4 Q. Of Prosecution Exhibit 510? You have to say it out
5 loud. Sorry.

6 A. Yes, that's correct. 510, yes.

7 Q. I'm sorry. Looking at the exhibit itself, you
8 indicated it had a YM number. Does it have a 1B number?

9 A. Yes, 1B275.

10 Q. Is there a green sheet attached to the exhibit?

11 A. There is.

12 Q. Could you take a look at it?

13 A. **[Did as directed.]**

14 Q. Does it have a 1B number?

15 A. It does, 1B275.

16 Q. Does that match the 1B number contained on the
17 Exhibit 510?

18 A. Yes, it does.

19 Q. And is there a YM number on it?

20 A. Yes, YM2-250.

21 Q. And does that match the number on the exhibit, the YM
22 number on the Exhibit 510?

23 A. Yes, it does.

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1 Q. Placing on the ELM0 Prosecution Exhibit 510G. Do you
2 recognize that?

3 A. Yes.

4 Q. What do you recognize that to be?

5 A. It is a copy of the green sheet that is with the item
6 of evidence.

7 Q. And is your signature contained on it?

8 A. It is. It's on the second line.

9 Q. And that indicates that you received the item from
10 someone; is that correct?

11 A. That is correct.

12 Q. And from whom did you receive the item?

13 A. By Agent Krueger.

14 Q. Is that his signature above yours?

15 A. Yes.

16 Q. And did you surrender the item at some point?

17 A. I did, to Eric Greenberg.

18 Q. All right. On the date and time indicated on the
19 form?

20 A. 10/26, yes, 10:00 p.m.

21 Q. The form itself that is on the ELM0, is that an exact
22 duplicate of the FD-192?

23 A. It is, yes.

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1 Q. Placing on the ELM0 Prosecution Exhibit 510B, ask you
2 if you recognize that.

3 A. I do. That is a photograph of the packaging of this
4 item of evidence.

5 Q. Fair and accurate depiction of it?

6 A. It is, yes.

7 TC [MR. MILLER]: Your Honor, the prosecution would move
8 for the introduction of Prosecution Exhibit 510A, B, C, D, E,
9 F, and G.

10 MJ [Col SPATH]: Noted. Thank you.

11 TC [MR. MILLER]: Just a second here, Your Honor.

12 Q. I'm not sure I asked this but I want to make sure I
13 do. If you look at Prosecution Exhibit 510C, do you recognize
14 that?

15 A. Yes.

16 Q. And what is that?

17 A. That is a photograph depiction of the backside of the
18 evidence item.

19 Q. Of 510?

20 A. Yes.

21 Q. Fair and accurate depiction of it?

22 A. Yes.

23 Q. Thank you.

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1 TC [MR. MILLER]: Provide the witness, please, with
2 Prosecution Exhibit 511.

3 Q. Do you recognize that, ma'am?

4 A. Yes.

5 Q. Or Agent.

6 What do you recognize it to be?

7 A. An item of evidence that was collected on the scene.

8 Q. And when you say "the scene"?

9 A. The residence.

10 Q. And by whom was it collected?

11 A. Agent Krueger.

12 Q. Did he hand the item to you?

13 A. Yes.

14 Q. And how do you know that you collected it?

15 A. Because I filled out the packaging on the bag.

16 Q. Is the packaging information your handwriting?

17 A. It is, yes.

18 Q. What did you -- what did you record?

19 A. The case number, "262-NY-277013." The item,
20 "YM2-251." The description, "liquid sample." "Date and time,
21 10/22, 1645. Location of recovery, inside elbow pipe sink
22 trap, item 2" -- whoops, sorry -- "241," perhaps? "In
23 bedroom, Room F." And then his signature and item number and

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1 then my signature as well.

2 Q. Was this similar to the previous exhibit?

3 A. Same thing, yes.

4 Q. Placing on the ELM0 Prosecution Exhibit 511A, ask you
5 if you recognize that.

6 A. Yes. That would be the collection jar, yes.

7 Q. And that would have been the one that he gave to you?

8 A. Right.

9 Q. And when he gave them to you, I take it, were they
10 already sealed?

11 A. Yes.

12 Q. Is there a K number associated with that photograph?

13 A. 383.

14 Q. All right. If you would, take a look at the evidence
15 bag. Does it have a K number?

16 A. K383.

17 Q. Does that number match the number in the photograph,
18 Prosecution Exhibit 511A?

19 A. It does, yes.

20 Q. Does the evidence, the Exhibit 511, have a 1B number?

21 A. Yes, 1B276.

22 Q. Is there a chain of custody form attached to the
23 Exhibit 511?

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1 A. Yes.

2 Q. Is there?

3 A. Yes.

4 Q. Oh, I'm sorry. I didn't hear your answer. I
5 apologize.

6 And does it have a 1B and a YM2 number?

7 A. Yes, 1B276, YM2-251.

8 Q. Do those numbers match the numbers on the Exhibit
9 511?

10 A. Yes.

11 Q. Is your signature contained on that form?

12 A. It is, on the second line.

13 Q. Placing on the ELM0 Prosecution Exhibit 511F, as in
14 Frank, for Identification. Do you recognize that form?

15 A. I do. It's a copy of the green sheet with the item
16 of evidence.

17 Q. For Prosecution Exhibit 511?

18 A. Yes.

19 Q. Is it an exact duplicate of it?

20 A. It is, yes.

21 Q. Does it indicate from whom you received the evidence?

22 A. Yes. Agent Krueger.

23 Q. And does it indicate to whom you surrendered the

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1 evidence?

2 A. Yes. Eric Greenberg.

3 Q. In fact, all the evidence was sent to Greenberg; is
4 that correct?

5 A. Yes.

6 Q. I think I already asked this, but this is an exact
7 duplicate, correct?

8 A. It is.

9 Q. Placing on the ELMO Prosecution Exhibit 511B for
10 Identification, and ask you if you recognize that?

11 A. Yes. That is a photograph of the front of the
12 packaging of this item of evidence.

13 Q. 511?

14 A. 511, yes.

15 Q. Is it a fair and accurate depiction?

16 A. It is, yes.

17 Q. Placing on the ELMO Prosecution Exhibit 511C, ask you
18 if you recognize this photograph.

19 If not, just say so.

20 A. No, I don't ----

21 Q. All right, okay.

22 A. ---- see it here.

23 Q. I'm going to show you Prosecution Exhibit 511D, as in

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1 David. Do you recognize this?

2 A. Yes, that's the can.

3 Q. Fair and accurate depiction of it?

4 A. Yes.

5 Q. Talking about the can in 511, correct?

6 A. Yes, that's right.

7 Q. Showing you photograph Prosecution Exhibit 511E. Do
8 you recognize that?

9 A. Yes. That's also the can in 511.

10 Q. Fair and accurate depiction of it?

11 A. Yes.

12 Q. All right.

13 TC [MR. MILLER]: Your Honor, the government is going to
14 move at this time for the admission of Prosecution
15 Exhibit 511A, B, D, E, and -- E.

16 MJ [Col SPATH]: Can you say that again? I just want to
17 make sure I have it right.

18 TC [MR. MILLER]: Judge, I hope I can. All right. 511A,
19 511B, 511D, E, and F.

20 MJ [Col SPATH]: Okay. Thank you. Noted.

21 Q. Lastly, show you Prosecution Exhibit 512. Do you
22 recall taking possession of this piece of evidence?

23 A. Yes.

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1 Q. That's a yes?

2 A. Yes.

3 Q. And how do you know you took possession of it?

4 A. Can we open this? Yeah. I see my -- let me see.

5 Well, I can tell from the green sheet that I collected it,

6 because it's indicated on the green sheet, and I recall an

7 item similar to this that I collected.

8 Q. All right.

9 A. There's no other packaging with it?

10 Q. That's all right. You indicated you collected it

11 because you saw it on the green sheet. Do you remember

12 somebody handing you a section of pipe this long without

13 taking it out of the package?

14 A. Right, right, exactly. And my signature on the green

15 sheet as well.

16 Q. Do you know if you signed the -- is there any

17 signature on the outside of it?

18 A. Huh-uh. Not mine, no.

19 Q. Let's go with just the green sheet.

20 A. Right, just the green sheet.

21 Q. Take a look at it, please.

22 A. Uh-huh, yes.

23 Q. And does it indicate a 1B number and a YM2 number?

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1 A. It does, 1B272, and YM2-247.

2 Q. And did the persons who are collecting the pipes also
3 hand you this particular exhibit, also?

4 A. Right, yes.

5 Q. Does it contain your signature on the chain of
6 custody form?

7 A. It does, yes.

8 Q. And when does it indicate that you received the
9 evidence?

10 A. 10/22/2000, 1645.

11 Q. And that would have been the same time you received
12 all the other evidence, correct?

13 A. Correct.

14 Q. And to whom did you surrender the evidence?

15 A. Eric Greenberg, 10/26 10:00 p.m.

16 Q. The same person to whom you surrendered all the other
17 items that have been taken from the bathrooms on this visit?

18 A. That's correct.

19 Q. You can take the -- and the YM form that I've shown
20 you ----

21 TC [MR. MILLER]: Your Honor, for the record, is
22 Prosecution 512I for Identification.

23 MJ [Col SPATH]: Yes, thank you.

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1 Q. And that is the green sheet associated with that
2 item, correct?

3 A. Yes, with a few additions on it, yes.

4 Q. All right. There are a couple of ones underneath it,
5 look like -- do you understand -- those signatures happened
6 when?

7 A. In February in '14. February of '14, so much later.

8 Q. All right. This is an exact duplicate of the chain
9 of custody form, correct?

10 A. With those additions, yes.

11 Q. All right. Other than ----

12 TC [MR. MILLER]: We would move for the admission of 512I,
13 the chain of custody form, Your Honor.

14 MJ [Col SPATH]: Noted. Thank you.

15 Q. You indicated that you also processed -- you were in
16 charge of processing or taking certain evidence as a
17 custodian, correct?

18 A. Yes.

19 Q. All right. And this is something we've done before;
20 we'll go ahead and do it again. I'm going to ask you if you
21 recognize your signature and where you recognize your
22 signature on these various pieces of paper.

23 Starting with Prosecution 40C, do you recognize your

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1 signature?

2 A. Yes, on the second line.

3 Q. All right. Now, I assume for all of these,
4 unless you tell us differently, this indicates that you took
5 the evidence from whom?

6 A. The person who collected the item.

7 Q. All right. The name above you?

8 A. Yes.

9 Q. And then what did you do with the evidence?

10 A. Stored it.

11 Q. All right. And did you give it to the person whose
12 name appears, or signature appears underneath you?

13 A. Yes.

14 Q. Your signature appears on the second line?

15 A. Yes, the second line.

16 Q. 123C?

17 A. My signature is there on the second line.

18 Q. Prosecution 156C?

19 A. Yes, my signature is on the second line.

20 Q. Prosecution 272D?

21 A. There it is on the third line.

22 Q. All right. Prosecution Exhibit 273D?

23 A. Again, third line, yes.

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- 1 Q. Prosecution Exhibit 274D?
2 A. Third line.
3 Q. Prosecution Exhibit 275C?
4 A. Yes, third line.
5 Q. Prosecution Exhibit 276D?
6 A. Third line.
7 Q. Prosecution Exhibit 277C?
8 A. Third line.
9 Q. Prosecution Exhibit 278H?
10 A. Third line.
11 Q. Prosecution Exhibit 279C?
12 A. Third line.
13 Q. Prosecution Exhibit 280C?
14 A. Third line.
15 Q. Prosecution Exhibit 281C?
16 A. Third line.
17 Q. Prosecution 282C?
18 A. Third line.
19 Q. Prosecution Exhibit 283D?
20 A. Third line.
21 Q. Prosecution Exhibit 284C?
22 A. Third line.
23 Q. Prosecution 285C?

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- 1 A. Third line.
- 2 Q. Prosecution 286C?
- 3 A. Third line.
- 4 Q. Prosecution Exhibit 287C?
- 5 A. Third line.
- 6 Q. Prosecution Exhibit 288D?
- 7 A. Third line.
- 8 Q. Prosecution Exhibit 289C?
- 9 A. Third line.
- 10 Q. Prosecution 290D?
- 11 A. Third line.
- 12 Q. Prosecution Exhibit 291C?
- 13 A. Third line.
- 14 Q. Prosecution 292C?
- 15 A. Third line.
- 16 Q. Prosecution 293G?
- 17 A. Third line.
- 18 Q. Prosecution 294C?
- 19 A. Third line.
- 20 Q. Prosecution 295J?
- 21 A. Third line.
- 22 Q. Prosecution 296C?
- 23 A. Third line.

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- 1 Q. Prosecution 297D?
2 A. Third line.
3 Q. Prosecution 298C?
4 A. Third line.
5 Q. Prosecution 299D?
6 A. Third line.
7 Q. Prosecution 300C?
8 A. Second line.
9 Q. Prosecution 301E, as in Edward?
10 A. Second line.
11 Q. Prosecution 302E?
12 A. Second line.
13 Q. Prosecution 303E?
14 A. Second line.
15 Q. Prosecution 304E?
16 A. Second line.
17 Q. Prosecution 305C?
18 A. Second line.
19 Q. Prosecution 306C?
20 A. Second line.
21 Q. Prosecution 307C?
22 A. Second line.
23 Q. Prosecution 308C?

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- 1 A. Second line.
- 2 Q. Prosecution 309C?
- 3 A. Second line.
- 4 Q. Prosecution 310C?
- 5 A. Second line.
- 6 Q. Prosecution 311C?
- 7 A. Second line.
- 8 Q. Prosecution 312C?
- 9 A. Second line.
- 10 Q. Prosecution 313C?
- 11 A. Second line.
- 12 Q. Prosecution 314C?
- 13 A. Second line.
- 14 Q. Prosecution 315C?
- 15 A. Second line.
- 16 Q. Prosecution 316C?
- 17 A. Second line.
- 18 Q. Prosecution 317C?
- 19 A. Second line.
- 20 Q. Prosecution 318C?
- 21 A. Second line.
- 22 Q. Prosecution 319C?
- 23 A. Second line.

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- 1 Q. Prosecution 320C?
2 A. Second line.
3 Q. Prosecution 321C?
4 A. Second line.
5 Q. Prosecution 322C?
6 A. Second line.
7 Q. Prosecution 323C?
8 A. Second line.
9 Q. Prosecution 324C?
10 A. Second line.
11 Q. Prosecution 325C?
12 A. Second line.
13 Q. Prosecution 326C?
14 A. Second line.
15 Q. Prosecution 327C?
16 A. Second line.
17 Q. Prosecution 328C?
18 A. Second line.
19 Q. Prosecution 329C?
20 A. Second line.
21 Q. Prosecution 330C?
22 A. Second line.
23 Q. Prosecution 331C?

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- 1 A. Second line.
- 2 Q. Prosecution 332C?
- 3 A. Second line.
- 4 Q. Prosecution 506C?
- 5 A. First line.
- 6 Q. Prosecution 507C?
- 7 A. First line.
- 8 Q. Prosecution 508E?
- 9 A. First line.
- 10 Q. Prosecution 509C?
- 11 A. First line.
- 12 Q. Prosecution 510G?
- 13 A. Second line.
- 14 Q. Prosecution 511F?
- 15 A. Second line.
- 16 Q. And 512I?
- 17 A. First line.
- 18 Q. In all of those cases, would you have received the
- 19 evidence already -- except for the ones that you've testified
- 20 about here today, in all the other cases did you receive those
- 21 evidence -- that evidence in an already-sealed condition?
- 22 A. In general, yes.
- 23 Q. All right. If you didn't -- if somebody brought it

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1 to you in a nonsealed condition, what would you do with it?

2 A. It would be sealed.

3 Q. And as to all those items, when you handed them over,
4 would they have been in sealed condition?

5 A. Yes.

6 Q. And did you tamper with or alter in any way any of
7 the evidence in any those chains of custody that we've
8 identified?

9 A. Absolutely not.

10 Q. All right. And in each instance you would have
11 relinquished possession of the item to the person whose name
12 appears underneath yours?

13 A. Correct.

14 TC [MR. MILLER]: I have nothing further. Thank you, Your
15 Honor.

16 MJ [Col SPATH]: Thank you.

17 Defense Counsel?

18 DDC [LT PIETTE]: The defense takes no position.

19 MJ [Col SPATH]: Okay. Special Agent Better Sepeck, I've
20 seen you before; I gave you the same order. Don't discuss
21 your testimony regarding all these matters until the issue is
22 resolved. As I warned you then, it's likely going to take a
23 while. That hasn't changed. It is likely going to continue

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1 to take a while. Do you understand the order?

2 WIT: Yes, I do.

3 MJ [Col SPATH]: I've told the other agents this. I know
4 there's many on island. I'm certainly not saying don't talk
5 with the other agents, of course. Just don't talk about your
6 testimony here. I know you understand that.

7 And as I said last time, thank you for coming down in
8 person to testify. I know it means a lot to the people who
9 are involved in the process and watching it. I appreciate it.
10 Thank you again. You're excused.

11 WIT: Thank you.

12 [The witness was warned, excused, and withdrew from the
13 courtroom.]

14 MJ [Col SPATH]: We'll take a break in a minute. Before
15 we do, who is next?

16 TC [MR. MILLER]: We're going to have a short witness, and
17 then we'll have Lisa LoCascio. She may go into tomorrow. And
18 after that we have maybe two short witnesses after that.
19 We'll finish sometime tomorrow morning, Your Honor.

20 MJ [Col SPATH]: Okay. So we'll come back for another
21 hour or so.

22 TC [MR. MILLER]: That would be great.

23 MJ [Col SPATH]: I've got a couple things to talk about

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1 before we get out of here today, but I'll do that at the end.

2 Let's take ten minutes. We're in recess.

3 [The R.M.C. 803 session recessed at 1525, 14 February 2018.]

4 [The R.M.C. 803 session was called to order at 1538,

5 14 February 2018.]

6 MJ [Col SPATH]: Commissions are called back to order.

7 Same parties who were present at our last session are again

8 present.

9 Trial Counsel, call your next witness.

10 TC [MR. MILLER]: Thank You. We're going to recall

11 Special Agent Edmond Cronin, please.

12 MJ [Col SPATH]: Okay. Agent Cronin, just grab your seat

13 there.

14 [The witness resumed the witness stand.]

15 MJ [Col SPATH]: I know you just testified yesterday, I

16 think. Just remember you're still under oath, okay.

17 WIT: Thank you, Your Honor.

18 MJ [Col SPATH]: Thanks. Please, Mr. Miller.

19 TC [MR. MILLER]: Thank you. Briefly -- permission to use

20 the ELMO, Your Honor?

21 MJ [Col SPATH]: Yes.

22 [END OF PAGE]

23

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1 EDMOND G. CRONIN, civilian, was recalled as a witness for the
2 prosecution, was reminded of his previous oath, and testified
3 as follows:

4 DIRECT EXAMINATION CONTINUED

5 Questions by the Trial Counsel [MR. MILLER]:

6 Q. Yesterday during your testimony -- I just want to
7 clarify something; I was unclear -- you indicated that these
8 three items in Prosecution -- the exhibit, Prosecution
9 Exhibit 498A, were in one bag; is that correct?

10 A. Yes, sir.

11 Q. All right. And I'm placing on the ELMO Prosecution
12 Exhibit 596 -- excuse me, 598B. That is that bag, correct?

13 A. Yes, sir, it is.

14 Q. And I think you indicated during your testimony that
15 the exhibits were 498, 499, and 500, correct?

16 A. Yes, sir.

17 Q. For the record, is Prosecution Exhibit 498 the top
18 toothbrush in the picture, 498A?

19 A. Yes, sir, it is.

20 Q. And is 499 the comb?

21 A. Yes, sir, it is.

22 Q. And is 500 the second wrapped toothbrush?

23 A. Yes, sir, it is.

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1 TC [MR. MILLER]: I have no further questions, Your Honor.
2 I just wanted to clarify that for the court.

3 MJ [Col SPATH]: Lieutenant Piette, anything?

4 DDC [LT PIETTE]: Defense takes no position.

5 MJ [Col SPATH]: All right. Agent Cronin, I assume you
6 remember the order I've given you a couple of times now. Any
7 questions?

8 WIT: Yes, Your Honor. No, Your Honor.

9 MJ [Col SPATH]: All right. Thanks as always. You're
10 excused.

11 WIT: Thank you, Your Honor.

12 [The witness was warned, excused, and withdrew from the
13 courtroom.]

14 TC [MR. MILLER]: Thank you, Your Honor.

15 Prosecution calls Special Agent Lisa LoCascio. While
16 we're awaiting the witness, Your Honor, I'm going to ask
17 permission to use the monitors to show some photographs, and
18 the ELMO to show some evidence.

19 MJ [Col SPATH]: Absolutely.

20 TC [MR. MILLER]: Thank you.

21 Take the witness stand, please. Stand next to the
22 witness chair, please. Raise your right hand, please.

23

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1 LISA LoCASCIO, civilian, was called as a witness for the
2 prosecution, was sworn, and testified as follows:

3 DIRECT EXAMINATION

4 Questions by the Trial Counsel [MR. MILLER]:

5 Q. Have a seat, please. State your name for the record,
6 please.

7 A. Lisa LoCascio.

8 Q. And I believe you have testified previously before
9 this commission; is that correct?

10 A. Yes, sir.

11 Q. And you are still employed by the FBI?

12 A. Yes, sir.

13 Q. I think you previously indicated that you had
14 assisted with the search of the USS COLE?

15 A. Yes.

16 Q. When you first arrived in Aden, was that your initial
17 assignment?

18 A. Yes.

19 Q. At some point did you discontinue those activities
20 and conduct other searches and become involved in other
21 searches or evidence collection activities?

22 A. Yes.

23 Q. And how did that come to be?

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1 A. In the evening hours we had a team meeting and, to
2 the best of my recollection, we were diverted to some sites.

3 Q. Were all of the agents diverted to other sites, or
4 were just -- just some of you?

5 A. Some.

6 Q. Was there a -- sort of a standard protocol as to how
7 these searches would be continued -- be conducted?

8 A. In Yemen?

9 Q. Yes.

10 A. We -- yes.

11 Q. And could you describe that, please.

12 A. We tried to assemble a search team as best as we
13 could with the personnel we had. And at that time we had a
14 certain policy for different positions on search teams, so we
15 tried to make sure we had the people we needed for -- for the
16 certain team duties.

17 Q. Did everybody collect evidence?

18 A. No.

19 Q. All right. Explain, if you would, please.

20 A. So back then in the FBI, the team concept, we would
21 try to have a sketch artist, a team leader, a photographer,
22 evidence collectors, so on and so forth. But in this instance
23 we didn't have enough personnel, and we had a mixture of

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1 personnel, so it was very difficult to adhere to the -- the
2 concept that we would use in the United States on a regular
3 crime scene search.

4 Q. Did you have one central person or one agent
5 designated as the person who would take custody of the
6 evidence?

7 A. We tried -- we tried to do so, sir.

8 Q. All right. Do you remember the first, what I will
9 call, land search that you did?

10 A. I'm not certain if it was a beach or the lookout.

11 Q. All right. Let me ask you this. Let me do it in
12 site numbers. Do you recall going to a police station or
13 impound lot?

14 A. Yes.

15 Q. And what was your purpose in going to this police
16 station or, what I will call, impound lot?

17 A. Well, I remember calling it the police station, and
18 we were advised that there was a vehicle and trailer there
19 that were used in the bombing.

20 Q. And did you go to that site?

21 A. Yes.

22 Q. And how did you get there?

23 A. We used transportation, local transportation,

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1 different kind of buses and multi-passenger vehicles.

2 Q. Was the HRT personnel with you?

3 A. Yes.

4 Q. When you arrived there, did you see a vehicle?

5 A. Yes.

6 Q. Were you allowed to conduct a search of it?

7 A. Yes.

8 Q. Were there any negotiations as to how that search was
9 going to be conducted? And by saying "negotiations,"
10 negotiations with the Yemenis.

11 A. Yes.

12 Q. It was their police station, correct?

13 A. Well, that's what was told to us, but it was -- it
14 didn't look like a police station here.

15 Q. All right. Were there police officers or law
16 enforcement personnel at that location?

17 A. Yes.

18 Q. And did they provide any sort of guidelines as to how
19 they wanted the search conducted?

20 A. I don't recall that, sir.

21 Q. Were they going to allow you to take the car or
22 the ----

23 A. No, they specifically would not let us remove the

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1 entire vehicle or the trailer behind it.

2 Q. All right. Were you able to conduct a search of it?

3 A. Generally.

4 Q. I'm going to show you -- when you say "generally,"
5 what do you mean by "generally"?

6 A. Well, we were under extreme time constraints. They
7 were very pushy on not letting us spend the time that we
8 needed. And they were very specific on what they didn't want
9 us to do, like taking the entire vehicle or trailer with us.

10 Q. I am going to show you a series of photographs and
11 see if you recognize them.

12 TC [MR. MILLER]: Prosecution Exhibit 447, please. Yes,
13 this is -- yes, monitor, please. I'm sorry. Thank you.

14 Q. Do you recognize Prosecution Exhibit 447?

15 A. Yes.

16 Q. And what do you recognize it to be?

17 A. That's the truck that we searched at the police
18 station.

19 Q. And when you saw it, was that the condition in which
20 you found it?

21 A. Yes.

22 Q. All right. There seems to be some black powdery
23 substance on the sides of it; is that correct?

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1 A. Yes.

2 Q. And what is that, if you know?

3 A. In the photo it appears to be latent fingerprint
4 powder.

5 Q. All right. Did you all attempt to take fingerprints
6 off it?

7 A. I don't recall if we did that on the scene, sir.

8 Q. 448, please. Do you recognize that photograph?

9 A. Yes.

10 Q. All right. And what's depicted in 448?

11 A. That's another shot of the SUV, truck.

12 Q. Be a side view of it?

13 A. Yes.

14 Q. And there's other -- looks like there's persons in
15 and around the vehicle, at least on the side of the vehicle.
16 Who is that personnel?

17 A. Those are all the Yemeni officials that were there.

18 Q. All right.

19 TC [MR. MILLER]: Prosecution Exhibit 449, please.

20 Q. Again, can you relate what's in that photograph?

21 A. The same truck with the license plate visual on the
22 rear.

23 Q. 446. If you could, please, describe what's in that

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1 photograph.

2 A. Same vehicle, front view.

3 Q. Prosecution Exhibit 451. This would be the opposite
4 side again, some more of that black powder; is that correct?

5 A. Yes.

6 Q. And is that the same vehicle?

7 A. Yes, sir.

8 Q. There seems to be something attached to it. Could
9 you describe for the record what's at the back of the truck?

10 A. So the back where the tire is, or the structure
11 that's attached to the vehicle.

12 Q. All right. So there's a spare tire.

13 A. Okay. So there's spare tire and then there's a
14 trailer attached to the back.

15 Q. 453, please. Again, do you recognize that?

16 A. Yes.

17 Q. What's in that?

18 A. That's a view from the front. You can see the
19 trailer attached to the back of it.

20 Q. Prosecution 452. Again, describe what's in it,
21 please.

22 A. Same vehicle.

23 Q. 450. All right. Do you recognize that?

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1 A. Yes.

2 Q. And is that the license plate that was attached to
3 the vehicle?

4 A. Yes.

5 Q. All right. Fair and accurate depiction of it?

6 A. Yes, sir.

7 Q. 440. Do you recognize what's contained in picture
8 440?

9 A. Yes.

10 Q. And what's in this photograph?

11 A. Oh, I called it a boat trailer.

12 Q. All right. Was there some issue as to whether or not
13 it was?

14 A. No, I -- my experience growing up in Miami, I've seen
15 plenty of boat trailers. So that's what I assumed it was.

16 Q. All right. Did it appear to be a manufactured boat
17 trailer?

18 A. No. It looked homemade.

19 Q. All right. Is that how it appeared that day?

20 A. Yes.

21 TC [MR. MILLER]: Please, Prosecution 438.

22 Prosecution 438, please.

23 Q. Do you recognize what's contained in Prosecution 438?

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1 A. Yes.

2 Q. And what's contained in 438?

3 A. It's a better view of the boat trailer.

4 Q. Prosecution 802 for Identification. Do you recognize
5 that?

6 A. Yes.

7 Q. All right. What do you recognize that to be?

8 A. That's me on the left side, and then the boat trailer
9 with the -- the wood pieces on the side where the boat would
10 rest when they'd pull it up with the winch.

11 Q. Those appear to be 2x4s of some sort?

12 A. Yes, wood. Wood pieces they cut to -- with shims so
13 the boat would sit on it without flopping around.

14 Q. What kind of shims? Were they wood shims?

15 A. Wood shims, yes.

16 TC [MR. MILLER]: Prosecution 403 -- excuse me, 803.

17 If we could go back. Excuse me, let's go back to
18 that last photo.

19 Q. What are you doing in that photograph?

20 A. Probably taking notes or sketching.

21 Q. All right. Were you the person in charge of the
22 schematic that day, or the chart?

23 A. Yes.

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1 TC [MR. MILLER]: All right. Please go to 803, please.

2 Q. Do you recognize what's in that photograph?

3 A. Yes.

4 Q. All right. And what's in that photograph?

5 A. So these would be the rails that the boat would rest
6 on, and the red portion is like -- I would describe it as
7 outdoor carpet you would buy at Home Depot type thing, that
8 they put around so the boat wouldn't be damaged when it sat on
9 the actual trailer.

10 Q. Prosecution 5 -- excuse me, 439. Do you recognize
11 that photograph?

12 A. Yes.

13 Q. And what's in that photograph?

14 A. The trailer and some of the FBI personnel, in the top
15 left.

16 Q. All right. 443. Do you recognize what's in
17 Prosecution 443?

18 A. Yes.

19 Q. Could you describe what's in it, please?

20 A. Yes. That would be the red carpet fabric-type with
21 the shims on top of metal, looks like two pieces of cut metal.
22 That would be where the boat would rest on the trailer.

23 Q. You sort of anticipated my question. The metal upon

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1 which the fabric is wrapped appears to be cut at the end?

2 A. Yes.

3 Q. All right. It was not a smooth edge at the end?

4 A. No.

5 Q. All right.

6 TC [MR. MILLER]: If we could, please, Prosecution
7 Exhibit 444.

8 Q. Again, if you could describe what's in 444?

9 A. It's just another view of the red material on top of
10 the two metal pieces.

11 Q. It appears in 444 the two metal pieces, one appears
12 to be scratched?

13 A. Yes.

14 TC [MR. MILLER]: If we could move to 442, please.

15 Q. Is those that scratches?

16 A. Yes, sir.

17 Q. Prosecution -- is it a closeup of the scratches?

18 A. Yes.

19 Q. Prosecution 441 for Identification. Do you recognize
20 that?

21 A. Yes.

22 Q. And what is contained in the photograph, Prosecution
23 Exhibit 441?

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1 A. It's a hook.

2 Q. All right. And what was the hook used for? What was
3 the purpose of the hook?

4 A. I believe that hook was used to pull the boat up onto
5 the trailer from the -- with the winch.

6 Q. All right. Prosecution Exhibit 445, please. Do you
7 recognize what's contained in Prosecution 445?

8 A. A license plate.

9 Q. Prosecution Exhibit 5 -- excuse me, 454. Again, if
10 you would, just describe what's in that photograph.

11 A. License plate on the truck.

12 Q. All right. Prosecution Exhibit 455. What's
13 contained in that photograph?

14 A. That's the driver's interior -- interior picture of
15 the driver's side door.

16 Q. Did you attempt to -- the team attempt to conduct a
17 search of the interior of the car?

18 A. Yes.

19 Q. Were you able to conduct a thorough search of it?

20 A. Thorough search? No.

21 Q. All right. And the reason for that was?

22 A. We were being pushed by the Yemenis to hurry up, and
23 there were security concerns.

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1 Q. Prosecution Exhibit 5 -- 456, please. Do you
2 recognize that photograph?

3 A. Yes.

4 Q. And what's contained in Prosecution 456?

5 A. Driver's side interior of the truck.

6 Q. It appears to be a well-used truck. Would that be a
7 fair statement?

8 A. That would be a very fair statement, yes.

9 Q. Prosecution Exhibit 800. Do you recognize that?

10 A. Yes.

11 Q. What do you recognize that to be?

12 A. Another picture of the inside of the vehicle.

13 Q. Prosecution 457. Do you recognize that?

14 A. Yes.

15 Q. And what's that?

16 A. Driver's side -- correction, that's the passenger's
17 side interior door.

18 Q. Prosecution 458. Do you recognize that?

19 A. Yes. That's a photo of the passenger side of the
20 vehicle.

21 Q. 459, please. Do you recognize what's in 459 for
22 Identification?

23 A. Yes.

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1 Q. What is that?

2 A. The interior dash area.

3 Q. And lastly, Prosecution 460. And what is that?

4 A. That's a -- a plate with serial numbers for different
5 portions of the vehicle.

6 Q. Are all those photographs fair and accurate
7 depictions of what is seen in the photograph?

8 A. Yes, sir.

9 Q. Are any of them distorting in any way?

10 A. No, sir.

11 Q. And is that how the car and trailer, inside/outside,
12 appeared to be on the date that you guys conducted -- the FBI
13 conducted the search?

14 A. Yes, sir.

15 Q. Now, you indicated that you were not allowed to take
16 the truck with you?

17 A. That's correct.

18 Q. That would have been, I guess, optimum?

19 A. Yes, sir. We would have taken the truck and the
20 trailer.

21 Q. All right. Were you able to take various pieces of
22 it?

23 A. Yes, we did.

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1 Q. All right. If you could, please, Prosecution
2 Exhibit 805. All right. 805, please. Is that sort of how
3 you all left the truck?

4 A. Yes, for lack of better words, we stripped what we
5 could and took the pieces with us.

6 Q. All right. And if you could, please, look at
7 Prosecution 804. Is that the trailer, what was left of it?

8 A. Yes.

9 Q. All right. Fair and accurate depictions of the work
10 of the Bureau on that day?

11 A. Yes. I was very proud of that work, sir.

12 TC [MR. MILLER]: All right. And if you could, please,
13 place Prosecution Exhibit 707A on the monitor.

14 Q. Do you recognize Prosecution Exhibit 707A?

15 A. Yes.

16 Q. And what is that?

17 A. That is the sketch I made of the boat trailer.

18 Q. Did you take those measurements?

19 A. I did.

20 TC [MR. MILLER]: Your Honor, the prosecution would move
21 for the admission of Exhibits 805, 804, and 707A.

22 MJ [Col SPATH]: Thank you. Noted. You may proceed.

23 TC [MR. MILLER]: If you would provide the witness,

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1 please, with Prosecution Exhibit 333 -- excuse me, 334. 334.

2 Q. Agent, have you had -- have you had the opportunity
3 to look at Prosecution Exhibit 334?

4 A. Yes.

5 Q. And do you recognize that?

6 A. Yes.

7 Q. What do you recognize it to be?

8 A. This is one of the -- or a piece of the frame with
9 the red material on it from the trailer.

10 Q. And did you yourself take that off?

11 A. It was a team effort.

12 Q. I'm placing on the ELM0 Prosecution Exhibit 343A ----

13 TC [MR. MILLER]: If we could, I'm sorry, switch the ELM0.

14 Q. ---- and ask you if you recognize what's contained in
15 that photograph.

16 A. Those are the tops of the boat trailer with the red
17 fabric on it.

18 Q. All right. Are there two contained in 334 or just
19 one of them? If you could look at that, please.

20 A. Just one.

21 Q. All right. If you would, is there a -- if you can
22 make it out, the -- K number attached to the exhibit?

23 A. On the screen or this one?

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1 Q. On the screen, if you can make it out.

2 A. I think it's 273 and 274.

3 Q. All right. Let's take a look again. Let me see if
4 we can blow it up.

5 A. It's kind of blurry on my screen.

6 Q. All right. If you can. Does that make it any
7 better?

8 A. No.

9 Q. All right. If you would, look at the exhibit itself,
10 please.

11 A. Yes.

12 Q. And does the exhibit have a YM number on it?

13 A. Yes, sir.

14 Q. What is the YM number?

15 A. It's YM3-103.

16 Q. And does the exhibit have on it a 1B number?

17 A. 1B491.

18 Q. If you would look on the -- is there a chain of
19 custody form attached to it?

20 A. Yes.

21 Q. All right. If you could, please, look at the chain
22 of custody form.

23 A. Yes, sir.

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1 Q. Does it have a 1B number?

2 A. Yes.

3 Q. What is the 1B number?

4 A. 1B491.

5 Q. And does it have a YM number?

6 A. Yes.

7 Q. What is that number?

8 A. YM3-103.

9 Q. I'm placing on the ELM0 a form, a chain of custody
10 form. Do you recognize that chain of custody form?

11 A. Yes.

12 Q. It is Prosecution Exhibit 334C. Do you recognize it?

13 A. Yes, sir.

14 Q. All right. What do you recognize it to be?

15 A. The chain of custody from this item.

16 Q. Is it an exact duplicate of it?

17 A. Yes.

18 Q. I'm placing on the ELM0 an exhibit, a photograph,
19 Prosecution Exhibit 4 -- 334B. Do you recognize that?

20 A. Yes.

21 Q. What do you recognize that to be?

22 A. That's a tag, an evidence tag that I completed for
23 this item.

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1 Q. All right. Fair and accurate depiction of the
2 evidence tag?

3 A. Yes.

4 Q. All right. And does it have a K number on it?

5 A. A K number?

6 Q. Yes.

7 A. Yes.

8 Q. And what is that K number?

9 A. K275.

10 Q. And does it have a YM number?

11 A. Yes.

12 Q. What is that number?

13 A. YM3-103.

14 Q. And does that match the YM number on the
15 Exhibit 334C?

16 A. Yes.

17 Q. Now, you indicated that there were two rails with the
18 carpet that you seized, correct?

19 A. Yes, sir.

20 Q. All right. And I believe you just testified as to
21 one of those rails; is that correct? This 334; is that
22 correct?

23 A. Yes.

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1 TC [MR. MILLER]: All right. If you could show the
2 witness 333, please.

3 Q. Is that -- just for identification purposes, is that
4 the other rail?

5 A. Yes, sir.

6 Q. All right. Showing you again the photograph,
7 Prosecution Exhibit 334A. Does that contain both the rails,
8 now 333 and 334?

9 A. Yes, sir.

10 TC [MR. MILLER]: Your Honor, the prosecution would move
11 for the admission of Prosecution Exhibit 334A, 334B, and 334C.

12 MJ [Col SPATH]: Noted. Thank you.

13 TC [MR. MILLER]: If you would, show the witness, please,
14 Prosecution Exhibit 335. Would you help the witness -- thank
15 you.

16 Q. Have you had occasion to review Prosecution
17 Exhibit 335?

18 A. Yes.

19 Q. Do you recognize it?

20 A. I do, yes.

21 Q. What do you recognize it to be?

22 A. So this is the piece of the truck that -- on the back
23 where the spare tire was that would -- you would have to open,

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1 and the license plate's on it.

2 Q. Was that another group effort, I guess, to take that
3 off the truck ----

4 A. Yes.

5 Q. ---- the old truck?

6 And did you collect it?

7 A. Yes.

8 Q. And how do you know that you collected it?

9 A. I remember collecting it.

10 Q. All right. Did you also put a -- some sort of
11 evidence tag on it?

12 A. Yes.

13 Q. All right. Is it sort of a homemade piece?

14 A. Yes.

15 Q. I'm going to place on the ELMO Prosecution
16 Exhibit 335B, ask you if you recognize that?

17 A. Yes.

18 Q. And what do you recognize that to be?

19 A. That's a homemade evidence tag for this item.

20 Q. All right. And why were you forced to use -- make up
21 your own evidence tag?

22 A. We didn't have any more supplies, sir.

23 Q. All right. It indicates that -- and that's your

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1 handwriting?

2 A. Yes.

3 Q. All right. It indicates a YM number; is that
4 correct?

5 A. Yes.

6 Q. What is that number?

7 A. YM3-125.

8 Q. All right. And it has a K number on it, also; is
9 that correct?

10 A. Yes.

11 Q. What's that K number?

12 A. K286.

13 Q. I'm placing on the ELM0 a photograph, Prosecution
14 Exhibit 335A. Do you recognize that?

15 A. Yes, sir.

16 Q. What do you recognize that to be?

17 A. That's the item that's in this bag.

18 Q. All right. And showing you -- is there a chain of
19 custody form attached to the exhibit, Prosecution Exhibit 335?

20 A. Yes.

21 Q. If you could look at it, please. Do you recognize
22 it?

23 A. Yes.

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1 Q. And does it have a YM number?

2 A. Yes.

3 Q. And what is that YM number?

4 A. YM3-125.

5 Q. And does that YM number match the YM number on the
6 makeshift or the homemade evidence tag that you -- that you
7 created?

8 A. Yes, sir.

9 Q. I'm placing on the ELM0 Prosecution Exhibit 335C. Do
10 you recognize that?

11 A. Yes.

12 Q. And what do you recognize that to be?

13 A. It's the chain of custody for this item.

14 Q. Is it an exact duplicate of it?

15 A. Yes.

16 Q. It indicates it is accepted by Joseph McNamara; is
17 that correct?

18 A. Yes, sir.

19 Q. And why would Joseph McNamara be listed on the chain
20 of custody as the person whom -- who collected it?

21 A. He was on our team. And after we got back to the
22 hotel we completed the paperwork, so I might not have been
23 available at that time.

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1 Q. I'm now placing on the ELM0, again, Prosecution
2 Exhibit 335B. You recognize that as what?

3 A. That's the evidence tag for this item.

4 Q. A fair and accurate depiction of it?

5 A. Yes.

6 TC [MR. MILLER]: Your Honor, the government would move
7 for the introduction of Prosecution Exhibits 335A, B, and C.

8 MJ [Col SPATH]: Noted. Thank you.

9 Q. Approximately how long did you remain on the site?

10 A. To the best of my recollection, maybe an hour, maybe
11 less.

12 Q. Do you recall doing other land sites?

13 A. Yes.

14 Q. All right. And specifically a location that was
15 referred to as the "lookout area"?

16 A. Yes, sir.

17 Q. All right. And if you could, please, describe that
18 area for His Honor.

19 A. So the lookout was -- I'll call it an apartment. It
20 was a building that was in a residential area in Aden, and it
21 was on a hill. And the -- it was a very steep hill, and the
22 neighborhood was very poor.

23 Q. And who had directed you to this particular location?

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1 A. I don't recall right now, sir, who -- who did that.

2 Q. Were you the team leader of this particular search?

3 A. I was.

4 Q. And how many of you went to conduct the search?

5 A. I believe there are about 10 to 12 of us.

6 Q. And did you take security -- was it FBI security or
7 HRT members with you?

8 A. Well, we had Marines with us and HRT.

9 Q. And why was that?

10 A. There were significant credible threats of violence
11 and future -- further attack against the responding personnel.

12 Q. As a result, did you shorten the time in which you
13 were going to conduct the search?

14 A. Yes.

15 Q. Did -- was the search done on one day?

16 A. No.

17 Q. How many days was the -- how many days did you all go
18 to the site and conduct the search?

19 A. We were there on two days.

20 Q. Now, you indicated that you were the team leader?

21 A. Yes.

22 Q. What did that mean? What did that -- what duties and
23 responsibilities did you have as the team leader of this

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1 particular search?

2 A. In this -- in this instance my -- my duties were to
3 document the search and assemble the team to make sure people
4 knew what their job was on the search site, and to make sure
5 that we obtained what we could with the time that we had.

6 Q. Did you all have to draw a sketch of the site?

7 A. Yes.

8 Q. And who drew the sketch of the site?

9 A. I did.

10 Q. And were you assisted by anybody?

11 A. Yes.

12 Q. And by whom?

13 A. You mean all the people there or with the sketch?

14 Q. Just with the sketch.

15 A. Howard Metts.

16 Q. First off, I want to show you Prosecution
17 Exhibit 714A, and ask you if you recognize 714A.

18 A. Yes.

19 Q. All right. And what is contained in the exhibit,
20 Prosecution 714A?

21 A. That's my draft, rough draft of the apartment.

22 Q. And that's a copy of your draft; is that correct?

23 A. A copy, yes, sir.

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1 Q. But is it a duplicate, exact duplicate of what you
2 did?

3 A. Yes.

4 Q. Did you then provide that to Agent Metts?

5 A. Yes.

6 Q. I take it he was a draftsman of some sort?

7 A. He drew better than I did.

8 Q. All right.

9 A. Yes.

10 Q. I'm placing on the ELMO Prosecution Exhibit 712A. Do
11 you recognize 712A?

12 A. Yes.

13 Q. And what is 712A?

14 A. So this is the sketch that Special Agent Metts did
15 from my sketch.

16 Q. All right. And does the sketch that he -- the
17 finished sort of product that he put together, does it
18 accurately reflect the relationship between the various rooms
19 in the residence?

20 A. Yes.

21 Q. No distorting of the relationships?

22 A. No. This would be a bird's-eye view of the
23 apartment.

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1 Q. Basically a two- or three-room affair?

2 A. Yes.

3 Q. All right. Placing on the easel a blowup of the
4 Exhibit 712; is that correct?

5 A. Yes.

6 Q. All right. And you were familiar with the residence
7 because you went there, correct?

8 A. Yes, sir.

9 Q. All right.

10 TC [MR. MILLER]: Your Honor, the government -- the
11 prosecution would move for the admission of 7 -- 712A, which
12 is Agent Metts' completed drawing, and 714A, which was the
13 rough sketch put together by Special Agent LoCascio.

14 MJ [Col SPATH]: Noted. Thank you.

15 Q. All right. Photographs taken of the site; is that
16 correct?

17 A. Yes, sir.

18 TC [MR. MILLER]: Your Honor, permission to use the
19 monitor to show a series of photographs to the witness?

20 MJ [Col SPATH]: You may.

21 TC [MR. MILLER]: If we could, take that off.

22 Q. I want to first show you what has been referred to as
23 Prosecution Exhibit 388 for Identification. Do you recognize

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1 that?

2 A. Yes.

3 Q. What do you recognize that to be?

4 A. The exterior of the apartment area.

5 Q. Prosecution Exhibit 390, please. Do you recognize
6 Prosecution 390 for Identification?

7 A. Yes.

8 Q. And what is 390?

9 A. Those are the steps going up to the apartment.

10 Q. There appears to be some items on the steps, too; is
11 that correct?

12 A. Yes.

13 Q. And what are those?

14 A. Those are our search supplies.

15 Q. All right. If we could, Prosecution Exhibit 389. Do
16 you recognize the photograph, Prosecution Exhibit 389?

17 A. Yes.

18 Q. And what do you recognize to be -- that photograph to
19 depict?

20 A. Those are the stairs looking down from the top, where
21 the apartment is.

22 Q. All right. Prosecution Exhibit 394. All right.

23 At this point I'm going to ask you, please, to walk

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1 down to the chart, which is the blowup of 312.

2 TC [MR. MILLER]: Do we have a pen there for the witness?

3 MJ [Col SPATH]: Do we have a microphone for the witness?

4 TC [MR. MILLER]: Oh, we have to have a microphone, too.

5 I keep forgetting, Your Honor. Keep thinking about a court

6 reporter.

7 MJ [Col SPATH]: Well, you've got court reporters.

8 TC [MR. MILLER]: Stenographer, I guess.

9 MJ [Col SPATH]: Promise we've got them, too. They're up
10 on the hill. They just have to be able to hear it.

11 Q. Agent, as I provide you with the number, if you could
12 just mark it where the photograph -- if you could look at the
13 photograph, please, on the monitor, Prosecution 394. Could
14 you describe what's contained in that photograph?

15 A. So this is the -- when you walked up the very steep
16 stairs from the street level, the apartment that we searched
17 is on the left where the red doors are.

18 Q. All right. There's a red door and a blue door?

19 A. Sorry?

20 Q. There's a red door and a blue door, correct?

21 A. Yes. There is a red door on the left and a blue door
22 straight ahead, yes.

23 Q. Which was the door to the apartment that you

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1 searched?

2 A. On the left.

3 Q. All right. Could you mark it on the chart ----

4 MJ [Col SPATH]: Hang on a second. We're having trouble
5 hearing with the microphone. I don't know if you need to move
6 it or -- it's not coming through. Okay. It's not coming
7 through at all. I don't think moving it is going to matter.

8 TC [MR. MILLER]: All right.

9 MJ [Col SPATH]: So we're going to be in a good place to
10 stop for the night with this witness.

11 TC [MR. MILLER]: All right.

12 MJ [Col SPATH]: Special Agent LoCascio, they're going to
13 work -- here, grab a seat. They're going to work tonight to
14 make sure that microphone is working tomorrow when you come
15 back.

16 WIT: I'm sorry, I can't -- [away from microphone; no
17 audio.]

18 MJ [Col SPATH]: No, you're fine. You're good. Just grab
19 a seat for a minute. No, you're good. They're going to work
20 this evening to make sure the microphone is -- it's not even
21 picking up. It's not you. You're good.

22 I'm going to give you the standard order for the
23 evening recess; I know you remember it. Don't talk to anyone

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1 about your testimony. I'm certainly not suggesting that you
2 can't talk to the other agents who are here. Just don't talk
3 about your testimony.

4 WIT: Yes, sir.

5 MJ [Col SPATH]: And then we'll talk some more tomorrow,
6 okay?

7 WIT: Yes, sir.

8 MJ [Col SPATH]: All right. Thanks. You're excused.
9 [The witness was warned, excused, and withdrew from the
10 courtroom.]

11 MJ [Col SPATH]: My plan is to start at 9:00 tomorrow,
12 move forward. If we're not finished, that's fine.
13 Mr. Koffsky is not going to take the rest of the afternoon.
14 We'll have some time to do that tomorrow.

15 Today is the day the filing is due to the government
16 regarding additional learned counsel and Commander Mizer.
17 Rather than a filing, can we just get an update? Do we know
18 where we're at?

19 MATC [COL WELLS]: Sir, not much change from the last
20 response. I believe the convening authority continues on
21 Commander Mizer to coordinate with the Office of General
22 Counsel. And then on the MCDO nominee, they are requesting
23 information from MCDO and from the nominee whether or not

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1 they've started the security clearance process, and there may
2 be other government requirements that are imposed. So they're
3 continuing to coordinate with the MCD0 office.

4 Sir, do you have any questions about that in
5 particular or general? I'm willing to research them, or if I
6 can answer them now, I will do that.

7 MJ [Col SPATH]: No, I'm working through -- I'm going to
8 be frank with everybody. I mean, this is part of that
9 frustration. I ordered this some number of months ago. We
10 lost counsel September, October, depending on kind of when you
11 believe that occurred, but it was after that session in
12 September, I believe. And what we're -- we're trying to
13 communicate is -- of course, the prosecution is out saying we
14 want to move this commission forward. Defense counsel used to
15 say that; they have different motivations, I recognize.

16 I believe the country must want to move these forward
17 at this point. And yet with all the resources of big G --
18 this isn't you all; I know you know this. With all the
19 resources of big G, big Government, and all the effort they
20 could make, months go by without action. And that's what I'm
21 going to talk about at the end of this.

22 At the end of this, there are a few things I can do
23 that will drive somebody to do something. Or not, right? I

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1 mean, maybe they won't. But nobody has taken a 62 appeal.
2 Nobody's filed a writ. Nobody's filed a writ of mandamus.
3 Nobody has gone to federal court to attempt to determine if
4 General Baker has the authority to release counsel, except for
5 General Baker. What are we doing?

6 And another year is going to go by -- and the
7 families aren't here right now, fortunately. Another year is
8 going to go by, and they're going to be traveling down here to
9 watch this again. So we'll talk more. I am working through
10 kind of what my options are. I've come up with seven or eight
11 kind of roads ahead. Depending on which one I pick, somebody
12 will be unhappy. Or both sides. I don't know. But I'm doing
13 the best I can.

14 For anyone listening, again, as I speak here on the
15 record, I'd like to remind everybody it's an unofficial
16 transcript that comes out. Court reporters do great work, but
17 they're trying to keep up with me; sometimes we miss things.
18 And you're more inclined to say something not quite precise
19 when you speak off the cuff, of course.

20 But anyway, not a lot more you can do right now,
21 Colonel Wells.

22 MATC [COL WELLS]: Sir, the prosecution continues to take
23 that message and push ----

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1 MJ [Col SPATH]: I know.

2 MATC [COL WELLS]: ---- to inquire. And I will just say
3 on both actions there are government requirements that must be
4 met in the ----

5 MJ [Col SPATH]: But there are people -- and this isn't
6 saying doing anything inappropriate. There are people who can
7 move those faster in some cases than others. If this is a
8 priority, they should do it. If it is not a priority, stop
9 saying it is. And again, this isn't directed at you all.
10 This is other people who go out and say this is a priority of
11 the American people. Okay. Well, then make it a priority.

12 I know if I go to a federal court that involves
13 classified information, interim clearances occur, read-ins to
14 special programs occur. There's approval authorities not to
15 even have to do it. And then we come here and we act like we
16 can't trust DoD, but we can trust a jury we bring in off the
17 street in federal court. At some point you have to be
18 kidding.

19 So again, I know you're carrying the message. I know
20 you recognize it's, again, the fair administration of
21 efficient justice. And I keep trying to demonstrate the
22 commissions can do that, and I run into, frankly, blocks of
23 some sort each way -- each step of the way.

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1 MATC [COL WELLS]: You're moving in the right direction at
2 the right pace, sir.

3 MJ [Col SPATH]: Thanks.

4 MATC [COL WELLS]: And we will continue to work all
5 options.

6 MJ [Col SPATH]: All right. I'm going to give you -- I'm
7 going to do this again tomorrow. I've got a couple findings
8 that are important. I encourage -- you can grab a seat,
9 Colonel Wells. No worries.

10 This incident regarding alleged intrusions, this is
11 critical. I've asked the government, to the extent you can,
12 declassify it. Frankly, that would help, because of the
13 misinformation that continues to be stated about the issue.
14 It was stated to Ms. Yaroshefsky. It's been stated to
15 multiple people. It continues to kind of be heard out there.

16 So I encourage you all still, you need to work with
17 the appropriate OCAs and declassify -- declassification is
18 important sometimes just for the social good, and we know
19 that. And you declassify to the extent possible because
20 you're looking for national harm, right? Not hiding things.

21 So I've gone through all of the rulings, the
22 classified and unclassified. And then I had my CISO go work
23 with the OCAs about what can I say. And so this has been

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1 reviewed by the OCAs. And so here is what I can say, for what
2 it's worth. And again, I more than recognize there's always
3 going to be a community that, whatever finding of fact I make,
4 they're going to ignore because they have a different agenda.
5 Can't help it. Not my business. Don't care.

6 But -- and again, I'll read this again tomorrow.
7 Detainees held at U.S. Naval Station Guantanamo Bay are
8 entitled to meet with their legal counsel to adequately and
9 meaningfully prepare for and participate in legal proceedings.
10 The Commander, Joint Task Force Guantanamo allows qualified
11 legal counsel access to detainees in appropriate locations
12 designated for confidential attorney-client meetings. These
13 locations are configured to carefully safeguard
14 confidentiality of attorney-client meeting areas as well as to
15 protect the safety of defense team members, detainees, and the
16 guard force. Attorney-client meetings in these locations are
17 strictly privileged and U.S. Government personnel do not
18 listen to them.

19 In April of 2017, the Joint Task Force Commander
20 learned that attorney-client communication occurred outside --
21 outside -- these designated locations that may have been
22 overheard. After the commander immediately stopped that
23 activity and self-reported, U.S. Southern Command conducted an

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1 investigation into the facts and circumstances of the
2 incident. That formally commenced on 10 May 2017.

3 This investigation concluded a small number of
4 detainees, none of whom were involved in contested or -- none
5 of whom were in contested military commission proceedings,
6 were allowed to meet with their attorneys outside of
7 designated meeting locations, at their request.

8 This exception to policy to accommodate the detainee
9 legal teams resulted in attorney-client meetings being
10 unintentionally overheard. The investigation further
11 concluded no one involved in legal proceedings or the JTF
12 chain of command heard these communications, and that this
13 incident did not result from the culpable negligence or
14 misconduct of any U.S. Government personnel. JTF-GTMO has
15 implemented safeguards to ensure this situation can't occur in
16 the future.

17 Mr. al Nashiri, the accused in this case, has never
18 met with his attorneys at the location where the self-reported
19 unintentional overhearing occurred. Mr. al Nashiri has never
20 met outside designated attorney-client meeting locations. No
21 intrusions occurred in any meeting between Mr. al Nashiri and
22 his attorneys. All of that is in declassified filings. And
23 again, I had our CISOs, I have a couple of them, work -- to

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1 work through what statement can be made.

2 So again, to the government, I just urge you to work
3 with the OCAs to declassify what little is left. And keeping
4 in mind what classification is truly for, the protection of
5 our national interests. And sometimes disclosure -- this
6 isn't classified, it's all marked as UNCLASSIFIED.

7 Those are the findings of fact, if you go read what I
8 said before -- not sure what's funny over here, because none
9 of this is funny to me. Not a bit. All of this is in those
10 filings.

11 And I will continue to work, but it, again, is not my
12 job to do this. My job is to move these commissions along
13 efficiently and fairly. Period, end of discussion.

14 And I truly believe there's this -- this belief that
15 I want to be here, I detailed myself, and I set the
16 commissions up. No comment on whether I want to be here or
17 not. I did not detail myself, both from the Air Force and
18 then to the commission; not my choice. Somebody else's. And
19 I have nothing to do with how these commissions were set up.
20 That is Congress and the President. And the current version
21 was set up by President Obama. So enough.

22 That's the most I can say on it right now. So
23 please, again, I'll go through that again tomorrow. It's

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