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1 [The R.M.C. 803 session was called to order at 0900,
2 19 January 2018.]

3 MJ [Col SPATH]: This commission is called to order. Good
4 morning, everybody. Do a couple of administrative things, and
5 we'll get moving.

6 Mr. al Nashiri, first I'm going to go through the
7 normal rights I go through with you. I'm going to talk about
8 your right to be present and your right to waive your presence
9 at any time during this hearing.

10 You have the right to be present during all sessions
11 of the commission. This includes any contempt proceedings
12 against anyone. If you request to absent yourself from any
13 session, such absence must be voluntary and of your own free
14 will. Your voluntary absence from any session of the
15 commission is an unequivocal waiver of your right to be
16 present during the session. Your absence from any session may
17 negatively affect the presentation of the defense in your
18 case. Your failure to meet with and cooperate with your
19 defense counsel may also negatively affect the presentation of
20 your case.

21 Under certain circumstances, your attendance at a
22 session can be compelled regardless of your personal desire
23 not to be present. The proceedings today constitute one of

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1 those occasions, as we're going to be discussing the
2 circumstances that have led again to you being in court
3 without your learned counsel and the defense team.

4 Do you understand what I've explained to you thus
5 far?

6 ACC [MR. AL NASHIRI]: Yes. Yes.

7 MJ [Col SPATH]: And that's a yes. Thank you.

8 For everybody in the audience, we had an 802 session
9 back at Andrews Air Force Base, or Joint Base Andrews, at the
10 terminal, where we discussed some of the issues we're going to
11 deal with as we move forward. I asked the government at that
12 802 session to subpoena Ms. Eliades and Ms. Spears since they
13 are not here despite multiple orders to be here.

14 I asked the defense counsel about any detailed
15 counsel to the case. And defense counsel let me know that
16 he's the only detailed counsel to this particular case.

17 I discussed also securing Mr. Koffsky to come
18 testify -- I'll add some more to that based on some e-mail
19 traffic -- but at the 802, I just asked for him to be
20 contacted to provide some testimony. I asked if Mr. al Darbi
21 was available, and I -- the government indicated he was, and I
22 covered how many witnesses we were going to call each day.

23 Trial Counsel, do you want to add anything to my

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1 summary of the 802?

2 TC [MR. MILLER]: Nothing from the government. Thank you,
3 Your Honor.

4 MJ [Col SPATH]: Defense Counsel?

5 DDC [LT PIETTE]: Defense concurs. Nothing to add.

6 MJ [Col SPATH]: All right. Let's deal with the parties.
7 Trial Counsel, if you would cover the parties -- I
8 believe they're the same parties who were present last time --
9 and then whether or not you are transmitting.

10 TC [MR. MILLER]: Good morning, Your Honor. These
11 proceedings are being transmitted via CCTV to locations in the
12 United States pursuant to the commission's order.

13 Present for the United States are Brigadier General
14 Mark Martins; myself, Mark Miller; Colonel John Wells; and
15 Major Michael Pierson. Also present is Mr. Forrest Parker
16 Smith, Master Sergeant Vanessa Pichon, and Staff Sergeant
17 Kevin Creel. Present in the back of the courtroom are
18 supervisory -- excuse me, are OGC lawyer Patrick O'Malley;
19 Joseph Castellano of the FBI. No other further persons are
20 here. Thank you.

21 MJ [Col SPATH]: Thank you.

22 Defense Counsel, do you want to cover who's here for
23 you?

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1 DDC [LT PIETTE]: Yes, Your Honor. Good morning. Present
2 for the defense on behalf of Mr. al Nashiri is myself,
3 Lieutenant Alaric Piette, and Ms. Brandi Janes, civilian.
4 Also present with the MCD0, but not directly representing
5 Mr. al Nashiri, is Colonel Aaron.

6 MJ [Col SPATH]: All right, thanks. All right. So since
7 we had the 802, a couple of things have transpired. One is we
8 received a brief related to the DoD civilians, and it was a
9 motion to quash the subpoena. I had a chance to look at it
10 today. And so while I recognize it did not receive an AE
11 exhibit ahead of time, I've already indicated we're going to
12 accept it so that we can kind of move forward and figure out
13 the road ahead. And I communicated that to the staff.

14 Once we accepted it, I read it. And in general, my
15 plan is to establish a briefing cycle and then work to have
16 their attendance secured at either the February or March
17 sessions. I more than recognize that I asked the government
18 on Wednesday to secure their attendance for Friday, and it was
19 short notice. And so understanding that sometimes people
20 don't like to be notified that they're going to have to show
21 up and testify in a day or two and the issues at hand, I don't
22 have any concerns with securing their attendance later in
23 time.

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1 So from us, you're going to get a briefing schedule,
2 and the briefing schedule is going to include the third-party
3 filer, the government, and the defense. So you'll all have
4 the opportunity to discuss, brief, and then we'll move forward
5 from there.

6 For the record to be clear, I'm securing their
7 attendance so they can explain to me why they do not believe
8 they should be representing their client and, frankly, so they
9 can explain to me why, even if they disagree with my rulings,
10 why they can just simply ignore them, since I'm not aware of
11 many courts that work that way. So that really is the purpose
12 of their testimony. And then to work through whether or not
13 they have good cause not to represent their client, who they
14 frankly have abandoned to be here absent multiple defense
15 counsel. So we had that issue.

16 Separate, through e-mail that, again, the defense and
17 the government were both copied in -- it was from the
18 government -- there was some discussion about Mr. Koffsky.
19 Mr. Koffsky requested to answer questions by interrogatory. I
20 communicated again to Mr. Potter, the lead attorney, that
21 we'll discuss it on the record. Bottom line, we're not going
22 to do it by interrogatory. It's not a civil proceeding.
23 We're going to have testimony about it. But again, we're not

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1 going to make it happen in short order without giving him
2 notice.

3 So if he is available next week on Monday or Tuesday,
4 let's try to do it Monday or Tuesday. If his calendar is such
5 that he can't do it Monday or Tuesday reasonably, then let's
6 look to the February session. I know we travel down on the
7 11th, so we've got a lot of time between 11 and 24 February,
8 and we can have his testimony then. So again, I'm not trying
9 to cause him disruption of his schedule or discomfort by
10 having to show up on short notice. What I'm trying to do is
11 secure his testimony so that I can understand what we're doing
12 to resource the defense team.

13 And then next step we had -- I ordered, obviously,
14 Ms. Spears and Ms. Eliades to be here. They're not. Clearly
15 they're not coming. And they're going to continue not to
16 represent their client, despite multiple commission orders. I
17 also ordered all detailed defense counsel to show up, and it
18 appears that they have because there's only one. And then I
19 ordered Colonel Aaron to be here to discuss with me again what
20 we're doing to resource the defense team. I see Colonel Aaron
21 is in the room. So, Colonel Aaron, come on up.

22 DCDC [COL AARON]: Excuse me, Judge. I'm here simply and
23 solely in my supervisory capacity for the defense team. I'm

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1 not a party -- a counsel of record for this case ----

2 MJ [Col SPATH]: You are the chief ----

3 DCDC [COL AARON]: I do not consider it appropriate
4 to ----

5 MJ [Col SPATH]: You are the chief defense counsel for
6 this case, correct?

7 DCDC [COL AARON]: I am, Your Honor.

8 MJ [Col SPATH]: So I'm going to ask nicely, because it's
9 important to be courteous, and this doesn't have to be
10 contentious because I'm not your adversary. Come up here to
11 the podium like an adult so I can talk to you, not from your
12 table.

13 We are not adversaries in this, so I don't know --
14 last time you were, frankly, disrespectful. I let it go.
15 There's no reason to be. I'm not the party against you. They
16 are. What I'm trying to do is get Mr. al Nashiri defense
17 counsel, and, frankly, it appears I'm more interested in that
18 than you.

19 So let me check. You are the chief defense counsel
20 for this case, correct?

21 DCDC [COL AARON]: I am, Your Honor. Yes, Judge.

22 MJ [Col SPATH]: All right. And how long have you been
23 the acting chief defense counsel for this case, approximately?

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1 DCDC [COL AARON]: Approximately three months. Two and a
2 half.

3 MJ [Col SPATH]: All right. And it was from our last
4 session, obviously, when we had the issues with General Baker,
5 correct?

6 DCDC [COL AARON]: Yes.

7 MJ [Col SPATH]: All right. Initially the order was for
8 you to be here yesterday at 11:00. Weather delayed us
9 significantly. There was no filing from you. Were you here
10 at 11:00 yesterday?

11 DCDC [COL AARON]: Yes, Judge, I was.

12 MJ [Col SPATH]: Okay. And so had we been in session, you
13 would have been here?

14 DCDC [COL AARON]: Yes, Judge.

15 MJ [Col SPATH]: Okay. Good. I know you're doing filings
16 for how we're doing at hiring another learned counsel, and I'm
17 certainly tracking those. We didn't get an update today on
18 purpose. Since we're going to be here in session, we can get
19 updates on kind of both the Commander Mizer issue, or the
20 Captain Mizer issue or Captain-Select Mizer, and how we're
21 doing with the defense community's hiring of another learned
22 defense counsel. Can you just talk with us about where you
23 are at in that process?

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1 DCDC [COL AARON]: Judge, I am aware that Lieutenant
2 Piette has filed updates up until this point and has advised
3 the court that I have submitted a name and requested funding
4 from the convening authority. With that, I have no control or
5 ability to influence the process.

6 MJ [Col SPATH]: Agreed. Do you know approximately when
7 you submitted the name?

8 DCDC [COL AARON]: I believe it was about a week ago.

9 MJ [Col SPATH]: Okay. Part of that will help me with
10 whether or not, right, we have continued updates from you or I
11 shift the responsibility to the prosecution to work through
12 the convening authority to give us updates.

13 Do you know if the person that you submitted happens
14 to have a security clearance?

15 DCDC [COL AARON]: Judge, I'm not comfortable getting into
16 any further details with regard to the qualifications and/or
17 identity of the person I submitted.

18 MJ [Col SPATH]: I don't want to know the name. The
19 convening authority has got it. But whether or not they have
20 a security clearance, I -- everybody can go look at who has
21 security clearances if they want to take the time. I'm just
22 trying to figure out if they have any security clearance.

23 DCDC [COL AARON]: The person does not have a security

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1 clearance.

2 MJ [Col SPATH]: Okay. The last time I was here, we had
3 two defense counsel detailed to the case, two Air Force
4 Majors, I believe, Major Robinson and Major Fewell. That was
5 what was represented by the currently detailed military
6 counsel. At the 802, Lieutenant Piette told me they were no
7 longer detailed to the case. Are there any other defense
8 counsel detailed to this case?

9 DCDC [COL AARON]: No, Judge.

10 MJ [Col SPATH]: At our last session, were they detailed?

11 DCDC [COL AARON]: Yes.

12 MJ [Col SPATH]: Did you undetail them?

13 DCDC [COL AARON]: I did.

14 MJ [Col SPATH]: There were also apparently a couple of
15 civilians detailed to the case at our last session that had
16 yet to enter an appearance. Is that true?

17 DCDC [COL AARON]: Are you speaking of Ms. Spears and
18 Ms. Eliades?

19 MJ [Col SPATH]: No. Other civilians. There were none?

20 DCDC [COL AARON]: No, Judge.

21 MJ [Col SPATH]: Were there any other military detailed at
22 that point at our last hearing?

23 DCDC [COL AARON]: No.

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1 MJ [Col SPATH]: And so between that hearing and this
2 hearing, you have limited -- or, I'm sorry, probably a
3 nonjudicious term. You have determined that Lieutenant Piette
4 will be the only detailed counsel, correct?

5 DCDC [COL AARON]: Yes.

6 MJ [Col SPATH]: How many defense counsel are employed in
7 your organization?

8 DCDC [COL AARON]: I do not know the answer to that off
9 the top of my head, Judge.

10 MJ [Col SPATH]: I understand. More than ten?

11 DCDC [COL AARON]: Yes.

12 MJ [Col SPATH]: How many civilians?

13 DCDC [COL AARON]: I couldn't give you a number on that
14 either.

15 MJ [Col SPATH]: More than five?

16 DCDC [COL AARON]: Yes.

17 MJ [Col SPATH]: More than ten?

18 DCDC [COL AARON]: Yes.

19 MJ [Col SPATH]: And in your role as the chief defense
20 counsel for this case, you've determined you're not going to
21 detail anybody other than Lieutenant Piette, correct?

22 DCDC [COL AARON]: Judge, it is the position of the
23 defense that this case cannot proceed and additional counsel

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1 could not be accepted or meet with the client unless and until
2 learned counsel is present.

3 MJ [Col SPATH]: I understand. You know learned counsel
4 aren't required in every jurisdiction in our country, correct?

5 DCDC [COL AARON]: I can't speak to other jurisdictions.
6 I know that ----

7 MJ [Col SPATH]: You do know that, right?

8 DCDC [COL AARON]: ---- the rules require learned counsel
9 in this proceeding.

10 MJ [Col SPATH]: To the extent practicable is what I have
11 determined in a ruling. My question was pretty
12 straightforward. You do know that other jurisdictions don't
13 require learned counsel, right?

14 DCDC [COL AARON]: It's my understanding that may be the
15 case.

16 MJ [Col SPATH]: So in those jurisdictions, hypothetically
17 if they exist, counsel meet with clients all the time in
18 capital cases without learned counsel, right? Hypothetically,
19 if they exist, right?

20 DCDC [COL AARON]: I can't speak to that.

21 MJ [Col SPATH]: Well, you can answer a hypothetical.
22 Hypothetically, if a jurisdiction doesn't have learned counsel
23 required, nonlearned counsel, by definition, would meet with

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1 the accused, right?

2 DCDC [COL AARON]: I can imagine so.

3 MJ [Col SPATH]: Are you aware of any jurisdictions where
4 there is an order from a court and one side can simply ignore
5 it? Are you aware of any? A pretty straightforward question.

6 DCDC [COL AARON]: That's a pretty loaded question, Your
7 Honor.

8 MJ [Col SPATH]: It is. So I'm curious about it. Here
9 I've determined that you get learned counsel, to the extent
10 practicable. Whether you like it or not, that has been my
11 ruling. What I'm trying to figure out is why you believe it's
12 okay to ignore that ruling and require Mr. al Nashiri, who is
13 still sitting there with Lieutenant Piette alone, to sit there
14 with Lieutenant Piette alone. That's all I'm trying to figure
15 out.

16 DCDC [COL AARON]: Because, Your Honor, that ruling we
17 believe to be erroneous. The rules ----

18 MJ [Col SPATH]: That happens every trial ----

19 DCDC [COL AARON]: ---- in the Manual for Trial by
20 Military Commission do not have any qualification as to
21 whether or not it's practicable.

22 MJ [Col SPATH]: Does the statute ----

23 DCDC [COL AARON]: The statute directly ----

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1 MJ [Col SPATH]: Does the statute say "to the extent
2 practicable"?

3 DCDC [COL AARON]: It does. But then more specific ----

4 MJ [Col SPATH]: That was my question. I know you
5 disagree with my ruling. In this case, I think I've issued
6 320 of them. Across my career, I think I've issued thousands.
7 Somebody disagrees every time. Somebody is unhappy. What
8 rarely happens is one side simply ignores them and acts in the
9 opposite, or contrary to the ruling I've issued. That doesn't
10 happen very often.

11 Frankly, in the last seven and a half years, I can
12 think of one place and one team and one group that has done
13 it, and that's yours.

14 So I'm just, again, trying to figure out what we're
15 doing here for your client. I know he's not yours, but as the
16 defense representative and the chief defense counsel, what
17 you're doing to resource this case for Mr. al Nashiri, whose
18 case is going to continue to move forward. And that's why I'm
19 asking about these counsel.

20 So after I ordered -- you did get my order for
21 detailed counsel to make an appearance at our initial session,
22 correct?

23 DCDC [COL AARON]: Yes.

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1 MJ [Col SPATH]: And you saw that?

2 DCDC [COL AARON]: Yes.

3 MJ [Col SPATH]: And after you got that order, you
4 undetailed them, correct?

5 DCDC [COL AARON]: Yes. Pursuant to R.M.C. 505, it is
6 within my authority to excuse counsel when they have not
7 entered into an attorney-client relationship.

8 MJ [Col SPATH]: I understand that's your reading, and on
9 that one, you may well be right, since they had yet to meet
10 with Mr. al Nashiri. But I'm just trying to get the timing
11 down, because I want everyone who pays attention to this to
12 understand that you chose to take two counsel off of the case
13 after I ordered them to be here to make an appearance,
14 correct?

15 DCDC [COL AARON]: Yes.

16 MJ [Col SPATH]: Do you know what experience Major
17 Robinson and Major Fewell have in defense work?

18 DCDC [COL AARON]: Not in great detail, no.

19 MJ [Col SPATH]: Well, they have bios. Did you read them?

20 DCDC [COL AARON]: At some point I did, yes.

21 MJ [Col SPATH]: Do you know that they both have more
22 experience than Lieutenant Piette?

23 DCDC [COL AARON]: Your Honor, again, I would like to

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1 reiterate my concern that I am not counsel of record in this
2 case ----

3 MJ [Col SPATH]: I agree.

4 DCDC [COL AARON]: ---- I do not why -- understand why I
5 am being -- why I'm here and why you're asking these
6 questions. In the order in which I was ordered to be here,
7 although you specifically ordered me to be here, I took note
8 that you do not request and require individual counsel for the
9 prosecution; you take representations from counsel of record.
10 And I believe the appropriate methodology here for inquiry
11 you're making is through counsel of record, which is
12 Lieutenant Piette.

13 MJ [Col SPATH]: I understand that. The prosecution team
14 is here.

15 DCDC [COL AARON]: And the defense team is here, Your
16 Honor.

17 MJ [Col SPATH]: It is. The one you've chosen. Do you
18 know your responsibilities as the chief defense counsel over
19 this particular proceeding?

20 DCDC [COL AARON]: I believe I do.

21 MJ [Col SPATH]: Do you understand that part of your
22 responsibility is to resource the team? I mean, it says that
23 in the rule, this -- I don't know why you're pausing on that

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1 answer.

2 DCDC [COL AARON]: Because resourcing is not complete
3 within -- within my control. Resourcing depends upon funding
4 from the commission ----

5 MJ [Col SPATH]: It does for your ----

6 DCDC [COL AARON]: ---- or from the convening authority.

7 MJ [Col SPATH]: For your learned counsel, it absolutely
8 does. But you do have resources within the defense community
9 available currently, correct, military counsel that other
10 services have given you as defense counsel, correct?

11 DCDC [COL AARON]: Yes.

12 MJ [Col SPATH]: And DoD civilians who have been hired at
13 taxpayer expense to work on the commission cases, right?

14 DCDC [COL AARON]: Yes.

15 MJ [Col SPATH]: And in your role as chief defense
16 counsel, you have opted to remove every detailed counsel from
17 the case except Lieutenant Piette. That was your choice.

18 DCDC [COL AARON]: Based upon the rules which provide me
19 the authority to do so, yes.

20 MJ [Col SPATH]: Didn't ask. Just asked if it was your
21 choice. Did you make the decision?

22 DCDC [COL AARON]: I did.

23 MJ [Col SPATH]: And then, as you made that decision, the

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1 question I had asked you had to do with their experience. Are
2 you cognizant of the fact that Major Robinson and Major Fewell
3 have more experience in defense work than Lieutenant Piette?
4 Given that you're the chief defense counsel, do you know that?

5 DCDC [COL AARON]: I haven't sat down and tried to make
6 comparisons between them.

7 MJ [Col SPATH]: Well, as the chief defense counsel
8 detailing people to Mr. al Nashiri, I'm just assuming you read
9 their bios as a kind of a minimum baseline. Forget
10 interviewing them, just do you read their bio?

11 DCDC [COL AARON]: There's a lot more to determining their
12 experience than simply reading their bio.

13 MJ [Col SPATH]: Agreed. How did you determine Major
14 Robinson's experience?

15 DCDC [COL AARON]: Judge, I believe you're now getting
16 into matters which are not appropriate for this forum and I'm
17 not prepared to answer.

18 MJ [Col SPATH]: Okay. Curious about your understanding
19 in your role as chief defense counsel. You do understand that
20 Mr. al Nashiri is facing a capital charge -- or charges,
21 correct?

22 DCDC [COL AARON]: I'm well aware of that, Your Honor, and
23 well aware of the requirement as set forth in the rules and

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1 the Manual that require that he be provided with learned
2 counsel.

3 MJ [Col SPATH]: I understand your opinion that you have
4 to have learned counsel here at every moment. But you do
5 understand I've issued a ruling that suggests I disagree with
6 you. You do know that, right?

7 DCDC [COL AARON]: I understand that, yes.

8 MJ [Col SPATH]: And do you understand that your client,
9 again, not yours personally, but Lieutenant Piette's actual
10 client who he's sitting next to, in my view we're going to
11 continue to move to trial and we are close to on the eve of
12 trial, regardless of what you do? Do you understand that?

13 DCDC [COL AARON]: I understand that. I understand your
14 position.

15 MJ [Col SPATH]: And do you understand that now on the
16 record what we have is, after I ordered appearances of
17 already-detailed counsel, you as the chief defense counsel
18 responsible for resourcing this team, determined that you're
19 not going to have them here, that you're going to undetail
20 them?

21 DCDC [COL AARON]: Your Honor, I complied with your order.
22 All detailed counsel are here.

23 MJ [Col SPATH]: I concur. You made a choice that only

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1 Lieutenant Piette would be detailed to this particular
2 commission proceeding, right?

3 DCDC [COL AARON]: I did.

4 MJ [Col SPATH]: Okay. And that was after my order -- I
5 just want to make sure the timing is good. That was after my
6 order that all detailed counsel would make an appearance on
7 the record yesterday at 11:00?

8 DCDC [COL AARON]: Yes.

9 MJ [Col SPATH]: And I know you know this. I try to be
10 open about where I'm at and what I'm thinking. To me, it
11 appears as a tactical decision. My belief is whatever
12 appellate court reviews this will see it as a tactical
13 decision from the defense community. And I've told Lieutenant
14 Piette this. I think you all are risking a great deal simply
15 because you don't agree with a judge. I do.

16 DCDC [COL AARON]: Your Honor, we would be risking a great
17 deal to allow this proceeding to continue without our client
18 having the clear right to learned counsel ----

19 MJ [Col SPATH]: And I'm not going to debate that.

20 DCDC [COL AARON]: ---- in the proceeding.

21 MJ [Col SPATH]: Those are great talking points. You know
22 what learned counsel are; they're people who go to training.
23 From our last session to this one, did you send Lieutenant

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1 Piette to any capital training?

2 DCDC [COL AARON]: Again, Your Honor, I think we're going
3 way afield ----

4 MJ [Col SPATH]: Well, I can ask him ----

5 DCDC [COL AARON]: ---- of why I was asked to be here,
6 which was simply to provide an update on where we were in the
7 search for learned counsel.

8 MJ [Col SPATH]: Agreed. But you keep going back to this
9 learned counsel piece, that they're always required. And I've
10 already told you, I don't read the law that way. I know of
11 many jurisdictions where they're not, including the military.
12 And it's not -- this is not a personal opinion about it,
13 right? I don't care. Congress will -- Congress will fix that
14 or they won't. They'll do whatever they want. My job is to
15 follow the law I'm given, period.

16 And so I'm sitting here watching a defense community
17 who has now decided to resource their team with a single
18 defense counsel because it looks good. That's fine. I
19 believe it's tactical, which may not play well on any appeal
20 in this case. That's also fine. That's your-all's call. You
21 do what you want.

22 But I certainly want the record pretty clear on it,
23 the timing, that's why I'm doing this, and for people to

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1 understand what's going on here, and that's why I'm doing it.

2 Separate from that, I have a real concern for the
3 defense community's client in a capital case, as I keep
4 communicating. And so what you're doing is you're betting
5 that I'm wrong, which happens frequently, frankly. But if I'm
6 right, you've caused your client a great disservice.

7 And I don't know how to be more clear. We're going
8 forward. You can resource it; you cannot. You can add
9 counsel; you don't have to. You can have them sit in the back
10 and act like they're not part of it and talk to Lieutenant
11 Piette on breaks. It's all fine. But my belief remains that
12 this has gone on long enough. This commission has gone on
13 long enough. The process has been a struggle; I think we all
14 agree on that. And we're on the eve of trial, and the defense
15 community is making strategic and tactical decisions to delay.
16 That's the overview.

17 I also want to say thank you for being here, coming
18 up and talking, and being respectful. We are not at odds at
19 this, I assure you. I don't have a dog in the fight. I don't
20 have a promotion riding on it. My future is pretty set. I'm
21 going to retire. I'm going to retire probably as a colonel.
22 I'm not going to get promoted. I've got no dog in the fight.

23 I'm detailed to this, and I'm just trying to move it

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1 forward in the right way. That's it. And so I appreciate
2 that you showed up and you talked to me and you helped me
3 understand where we're at. I'm going to talk to the
4 government about where we are with Commander Mizer.

5 Thank you.

6 DCDC [COL AARON]: Thank you, Judge.

7 MJ [Col SPATH]: Trial Counsel, let's talk about Commander
8 Mizer. Do we have any -- and again, only because the update
9 is due today, I think your-all's is due on Friday. That's
10 today. And so where are we at?

11 MATC [COL WELLS]: Good morning, Your Honor. Colonel
12 Wells here. The convening authority is working with the
13 Office of General Counsel and the Department of Navy to make
14 sure that they have an authorization, that they have funding
15 behind that authorization, that they operate through the
16 proper procedures through the reserve channels to notify the
17 officer, bring him on on an involuntary activation for duty.
18 This will take some time, perhaps four to six months at best.

19 It's also been requested from the prosecution, the
20 chief prosecutor, that a interim decision be staffed through
21 the General Counsel to the Secretary of Defense. That was
22 also taken up by the convening authority in consultation with
23 the Office of General Counsel. I believe that will be process

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1 two because I think the officer's dwell time, a statutory
2 requirement, also force caps on active duty personnel called
3 from the reserves, do require the Secretary of Defense
4 personal decision, possible exception. So that is all many
5 factors in a complex approach.

6 So the timing, you may have a concern about that.
7 And I stand ready to answer any other questions, sir.

8 MJ [Col SPATH]: Do you have any impression of the timing?

9 MATC [COL WELLS]: Sir, I do not. I think it's been
10 discussed four to six months is an approach to have the
11 officer available in duty. Personally, I observe also that
12 once he's assigned to the military defense organization,
13 commission defense organization, it's up to them to detail and
14 then utilize him appropriately as learned counsel. I have no
15 idea if they will ever do that.

16 I would also like to have this opportunity to talk
17 about learned counsel submission to the convening authority
18 and what I've learned there and heard, and I would ask that
19 you inquire with Colonel Aaron again about the security
20 clearance. What has he done with this individual to start
21 that process? Let's fill that out now concurrently.

22 Let's also determine, if it's possible, to bring the
23 individual on to start building a knowledge of the case

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1 without the security clearance. It's uncertain to me whether
2 or not this new learned counsel can form an attorney-client
3 relationship without having a security clearance. What is the
4 plan there?

5 And then what is his estimate on a timeline to get
6 his new learned counsel? Because currently, the convening
7 authority is faced with two options that the commission has
8 given. One is a normal under the regulation that MCDO
9 organization finds and nominates to the convening authority,
10 and the other is to restore Commander Mizer, which he has not
11 been released by his client. And you've made it clear that
12 you would like that course of action pursued.

13 So the prosecution is doing everything we can to
14 request that the convening authority pursue both options
15 vigorously and aggressively. But there are other factors too
16 that the chief defense counsel's office can also implement to
17 bring this person on rapidly.

18 Sir, any further questions?

19 MJ [Col SPATH]: I'm looking at my notes. My belief is --
20 some of those are very good points. And so what you'll
21 probably see is an order from the commission giving some
22 details to where we go with the one they're trying to hire and
23 Commander Mizer or Captain-Select Mizer.

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1 As a preview, I do not want to circumvent the efforts
2 to get Captain-Select Mizer back on active duty since he has
3 not been released by his client; in fact, one of the few
4 counsel, as we know, who Mr. al Nashiri chose not to let go
5 when asked. And so that's why we went in that particular
6 direction and that's why I want the convening authority to
7 continue to work in that particular direction.

8 I don't think I have any other questions right now.
9 Thank you.

10 MATC [COL WELLS]: Thank you, sir.

11 MJ [Col SPATH]: All right. I don't think this is going
12 to be a surprise for anyone. The plan is to move forward with
13 preadmission of evidence through this session and then to move
14 forward with more preadmission when we come back in February.

15 We have already filed, right, all the law motions in
16 this case. There was a timeline for that almost three years
17 or four years ago. And so even with new learned counsel -- I
18 want both sides to be pretty clear on this: Discovery is
19 almost complete after a long effort, frankly, including an
20 effort by the trial judiciary to go through the classified
21 discovery and the summaries and substitutions. Hundreds of
22 motions have been filed regarding the law. And none of us are
23 blind to the fact that this has been going on for way too

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1 long. Can't be. And so you're going to see more and more
2 movement towards trial.

3 And for anyone who's wondering, it's not because I
4 feel pressured to go to trial. Again, I don't have a dog in
5 the fight. But I know that alleged victims, victims, victims'
6 families, and Mr. al Nashiri have a pressure to go to trial,
7 because it's been hanging over everybody's head for so long.
8 That's just common sense.

9 And so we are going to continue down this path, and
10 you're likely going to see more orders working towards seating
11 a panel, because we could do preadmission while we have a
12 panel getting seated, because those two processes are both
13 going to take a long time.

14 So for the defense community, if you want to have
15 Lieutenant Piette do that, that's fine. That's fine. But I
16 would suggest you all take a good look at what you're doing
17 and the obvious tactical, strategic decision to under-resource
18 a team so you have talking points. It's fine.

19 All right. Got some witnesses here. We're just
20 going to do 207 preadmission. We're going to take a recess
21 before we do it. That way, you can get set up, get all the
22 evidence ready, get the witnesses here. Our first two are
23 live. Is that correct?

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1 TC [MR. MILLER]: That is correct, Your Honor.

2 MJ [Col SPATH]: All right. Then let's plan to get them
3 in here. We'll take ten minutes. See you in ten. We are in
4 recess.

5 [The R.M.C. 803 session recessed at 0935, 19 January 2018.]

6 [END OF PAGE]

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1 [The R.M.C. 803 session was called to order at 1003,
2 19 January 2018.]

3 MJ [Col SPATH]: These commissions are called to order.
4 All the parties are present who were present at our last
5 session.

6 Trial Counsel, call your first witness.

7 DDC [LT PIETTE]: Your Honor, at this time, the defense
8 would like an opportunity to renew our objection and address
9 some points that were made earlier in this hearing.

10 MJ [Col SPATH]: We will do that. Your objection, of
11 course, is to moving forward, correct?

12 DDC [LT PIETTE]: Yes, Your Honor.

13 MJ [Col SPATH]: All right. I know that's a continuing
14 objection. I will give you time. We've got the witness here,
15 so I want to move through that. But before our next break, or
16 when we come back without a witness, I will let you also
17 discuss some of the points you want to talk about, okay?

18 DDC [LT PIETTE]: Yes, Your Honor.

19 MJ [Col SPATH]: Thanks. Mr. Miller?

20 TC [MR. MILLER]: Your Honor, before we begin, the
21 government does have one request. First, thank you for the
22 additional time indulging us ----

23 MJ [Col SPATH]: No, that's fine.

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1 TC [MR. MILLER]: ---- getting this all together.

2 Appreciate that.

3 The next witness, Mr. Greenberg, is going to testify
4 regarding various items which he seized during the course of
5 his search of the -- being part of the search team on the
6 COLE. However, later he -- on his way home, he brought six or
7 seven items back to the lab. He's a lab -- a member of the
8 lab personnel. But those items are actually subject to motion
9 in AE 336.

10 In order to sort of minimize expense and
11 inconvenience, all's he would testify to is that he was given
12 these items, he brought them back, and then he took them to
13 the laboratory. He will be available come trial time. But in
14 order to, I think, move these forward -- again, inconvenience,
15 expense -- we would ask that he be able to testify today to
16 those seven items that he signed the green sheets, he brought
17 them back, and ----

18 MJ [Col SPATH]: And that's the extent of it for the ----

19 TC [MR. MILLER]: That's the extent of it. He's not going
20 to talk about the search of it. We will have other witnesses
21 who will talk about the actual search of the items, the
22 seizure of the items, and the various things that were done to
23 it.

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1 MJ [Col SPATH]: All right. So for everybody observing,
2 Appellate Exhibit 336 is another preadmission motion regarding
3 evidence seized during various searches. My belief remains
4 the same. It is a pretty standard trial practice to preadmit
5 evidence, and it is something every trial lawyer should
6 understand. And so we're going to continue down that road, as
7 I've said frequently, and we can go through it again at
8 trial ----

9 TC [MR. MILLER]: Correct.

10 MJ [Col SPATH]: ---- as we've said so often. So we're
11 where we're at -- let me do one other thing. Mr. al Nashiri,
12 what I did not ask you is, do you want to break for prayer
13 time or not?

14 ACC [MR. AL NASHIRI]: I believe that we should continue
15 on.

16 MJ [Col SPATH]: Okay. Thank you again. Thanks. All
17 right.

18 Call your first witness.

19 TC [MR. MILLER]: Thank you, Your Honor. Eric Greenberg.

20 [END OF PAGE]

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1 ERIC GREENBERG, 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. State your name for the record.

6 A. Eric Greenberg.

7 Q. Mr. Greenberg, I'd like to first explore some of your
8 background prior to your testimony about your search of the
9 COLE.

10 Did you attend university, sir?

11 A. Yes.

12 Q. And where did you attend university?

13 A. Undergraduate at the University of Arizona and
14 graduate at George Washington University.

15 Q. And at Arizona, what was your major and what year did
16 you graduate?

17 A. Bachelor's of psychology in 1996.

18 Q. And you indicated you went to George Washington also?

19 A. Yes.

20 Q. And did you receive a master's from them?

21 A. Master's of forensic science in 1998.

22 Q. All right. Were you employed in any way during the
23 time that you were obtaining your master's degree?

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1 A. Yes. I was employed at the FBI.

2 Q. And what did you do at the FBI?

3 A. While I was in grad school, I was a tour guide.

4 Q. What did a tour guide do?

5 A. Leads the public tours of the FBI Headquarters.

6 Q. Did you eventually join the FBI in another capacity?

7 A. Yes. After finishing graduate school, I got a -- I
8 joined the Explosives Unit in the Laboratory Division.

9 Q. And when did you join them?

10 A. 1998.

11 Q. And you indicated you had joined the Explosives Unit?

12 A. Yes.

13 Q. In what capacity, sir?

14 A. As a physical science technician.

15 Q. If you could, please, what is a physical science
16 technician?

17 A. We would accept evidence when it came into the lab,
18 open it up, process it for assigning laboratory numbers and
19 then determining the order of examinations throughout the
20 laboratory.

21 Q. Did you do this in conjunction with any other
22 persons?

23 A. Yes.

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1 Q. With whom?

2 A. Another physical science technician and a special
3 agent examiner.

4 Q. So as it would work its way through the various
5 sections, what would you be doing?

6 A. I would take it to the different sections. Once
7 their exams were complete, retrieve it from them and then take
8 it to the next one. And once that was finished, it came back
9 to the Explosives Unit, and we would do the final coordinating
10 exams, combining everything that had already been done.

11 Q. Did you receive any specialized training in this
12 area?

13 A. Yes.

14 Q. And what was that, sir?

15 A. I would -- attended several Post-Blast Investigation
16 Schools, the explosive handling portion of Hazardous Devices
17 School and Post-Blast Instructor School.

18 Q. Now, back in October of 2000, you were working at the
19 Explosives Unit, correct?

20 A. Yes.

21 Q. And did you at some point learn that there had been a
22 bombing in Aden, Yemen?

23 A. Yes.

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1 Q. Were you asked to do anything regarding that
2 particular incident?

3 A. I was asked to prepare to travel to Yemen to collect
4 evidence and process the ship.

5 Q. Was this your first overseas deployment?

6 A. Yes.

7 Q. And did you make any preparations prior to leaving
8 for Yemen?

9 A. Yes.

10 Q. What did you do?

11 A. Packed -- packed some clothes and assorted evidence
12 collection tools and hand tools.

13 Q. I take it there was no prepaid Gorilla Box or items
14 that you would just simply pick up and take, correct?

15 A. No.

16 Q. How did you make a decision as to what to take to
17 Yemen?

18 A. Based on my experience from processing scenes from
19 the schools, I knew which tools and collection materials would
20 be needed.

21 Q. And how did you travel to Yemen?

22 A. On a military plane.

23 Q. And did you travel alone or were there other members

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1 of the FBI team with you?

2 A. There were others.

3 Q. Do you remember any of the other persons who were on
4 the plane with you?

5 A. Ignacio Mendizabal was on the same plane.

6 Q. Was he working in the unit with you at the time?

7 A. Yes.

8 Q. Did you fly directly to Yemen?

9 A. No. We changed planes in Ramstein in Germany.

10 Q. And from Ramstein to Yemen?

11 A. Ramstein directly to Yemen.

12 Q. Anything unusual occur when you landed?

13 A. Yes. After we -- after we got off the plane, we were
14 surrounded on the tarmac by Yemeni security forces.

15 Q. And how long did you remain in the plane?

16 A. Well, this was on the tarmac.

17 Q. On the tarmac.

18 A. Maybe 20, 30 minutes.

19 Q. And from there, where did you go?

20 A. To the hotel.

21 Q. Now, when you arrived at the hotel, did you receive
22 any sort of briefing?

23 A. Yes.

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1 Q. Were you informed of what your duties and
2 responsibilities might be?

3 A. Yes.

4 Q. And what were you told?

5 A. I was told I would be assisting with the collection
6 of evidence from the ship.

7 Q. And how long before you actually traveled to the ship
8 after you had arrived?

9 A. The following morning.

10 Q. And how did you get to the ship?

11 A. Vans, vehicles.

12 Q. And once you arrived at the, I guess, landing site,
13 port, how did you get to the ship itself?

14 A. Small boat.

15 Q. Now, once you arrived at the boat, were there any
16 other FBI or law enforcement personnel on the ship?

17 A. Yes.

18 Q. Did you immediately begin the search?

19 A. No. We received a briefing of what we were going to
20 see and then a very short tour of the ship.

21 Q. And from whom did you receive the briefing, if you
22 can recall?

23 A. From FBI personnel.

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1 Q. And generally what did they tell you?

2 A. Where the explosion had taken place and the different
3 levels of the ship where evidence would -- evidence searches
4 would be conducted.

5 Q. Do you know a Special Agent Krueger?

6 A. Yes.

7 Q. Was he there?

8 A. Yes.

9 Q. After you had received the briefing, what did you do?

10 A. I went on a tour of the ship where I was shown the
11 area where most of the damage occurred.

12 Q. Were you assigned a certain area to search?

13 A. I was assigned to search the main deck.

14 Q. Did you take any precautions prior to beginning your
15 search?

16 A. Wore personal protective equipment.

17 Q. Okay. When you say personal protective equipment,
18 could you explain to the court, please, what you mean by that.

19 A. A mask, a filtered mask for my face, a hard hat, and
20 several layers of gloves.

21 Q. Were you assisted by any persons in conducting your
22 search?

23 A. I was assisted by FBI Evidence Response Teams.

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1 Q. Were you assisted in any way by the sailors, members
2 of the crew?

3 A. Yes.

4 Q. And how did they assist you?

5 A. When we collected different pieces of evidence, they
6 would assist in telling us what parts were indigenous to the
7 ship and what was not.

8 Q. And what were you specifically -- what types of
9 things were you looking for?

10 A. I was looking for pieces of anything that looked like
11 it had explosive damage.

12 Q. Are you familiar with the technique of sifting for
13 evidence?

14 A. Yes.

15 Q. Was that being conducted on the ship?

16 A. Yes.

17 Q. Were you involved in that in any way?

18 A. Yes.

19 Q. And if you could, explain for His Honor, please, what
20 it is that you did.

21 A. Sifting is met -- wooden boxes with wires in
22 crisscross directions where large amounts of unknown items
23 would be poured on top and then smaller pieces would fall

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1 through.

2 Q. Did you actually stand over the box and do it or did
3 you bag the evidence that was considered important?

4 A. I did both.

5 Q. And what would you do with the evidence -- and we're
6 talking about just generally -- if you found a piece of
7 evidence, walk us through what you would do once you got that
8 evidence to the time you gave up possession of it,
9 surrendered ----

10 A. If it looked important and relevant, I would put it
11 in a plastic bag and seal it with evidence tape, fill out the
12 label on the bag and initial on the tape so that it would be
13 known if it was opened.

14 Q. And then what would you do with that bag?

15 A. Give it to an evidence custodian.

16 Q. And where was the evidence custodian on the ship,
17 sir?

18 A. On one of the lower levels.

19 Q. Do you know who the person was who was taking the
20 evidence?

21 A. Ignacio Mendizabal was one, and there was another FBI
22 officer named -- I can't remember her last name, but her first
23 name was Dayna.

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1 Q. How long were you in Yemen?

2 A. Somewhere between 12 and 14 days.

3 TC [MR. MILLER]: If you could, please, hand him Exhibit
4 Number 1. If I could have the ELM0, Your Honor? Permission
5 to use the ELM0, please?

6 MJ [Col SPATH]: Yes. Yes.

7 Q. What we've placed before you is Prosecution Exhibit 1
8 for Identification. Do you recognize that, sir?

9 A. Yes.

10 Q. Before I do that, first I'd like to show you a
11 photograph I'm placing on the ELM0. I'm not going to ask you
12 if you recognize the specific evidence, but do you recognize
13 this type of evidence?

14 A. Yes.

15 Q. And what do you recognize this type of evidence to
16 be? How was it significant in your search of the COLE?

17 A. It looks like pieces that we collected from the COLE
18 that have blast damage, fiberglass pieces.

19 Q. And why were you seizing these particular pieces of
20 evidence?

21 A. We suspected that they were parts of the boat that
22 carried the explosives.

23 Q. Now, you are a member of the Explosives Unit,

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1 correct?

2 A. Currently?

3 Q. No. You were at the time?

4 A. Yes, I was.

5 Q. All right. As a member, you're familiar with the Q
6 number?

7 A. Yes.

8 Q. All right. And what is the Q number on this
9 particular item?

10 A. Q157.

11 Q. If you'd take a look at the bag. Do you see the
12 items inside the bag?

13 A. Yes.

14 Q. They appear to be the same items that are contained
15 in the photograph -- I should have identified that --
16 Prosecution Exhibit 1A?

17 A. Yes, they appear to be the same.

18 Q. And Prosecution Exhibit 1A for Identification is also
19 the item that you identified as having Q number 157, correct?

20 A. Yes.

21 Q. Now, there is a -- again, looking at Prosecution
22 Exhibit 1 for Identification, do you recognize the evidence
23 tag on that particular item?

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1 A. Yes.

2 Q. All right. And does it indicate it was recovered by
3 you?

4 A. Yes.

5 Q. And if you could for the court, please, indicate when
6 you seized it, with whom you seized it, if you seized it with
7 another person, the date and time.

8 A. October 7th, 2006 [sic], 10:50 a.m., with Special
9 Agent Marks.

10 Q. And do you know -- do you remember Special Agent
11 Marks?

12 A. Yes.

13 Q. Were you working with him?

14 A. Yes.

15 Q. Was he an FBI agent?

16 A. No, he was NCIS.

17 Q. Out of Bahrain?

18 A. Out of Bahrain.

19 Q. Now, is there a green sheet or evidence receipt with
20 that particular item?

21 A. Yes.

22 Q. If you could look at that, please. Does that contain
23 your signature?

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1 A. No. No.

2 Q. All right. Does it contain the signature of Special
3 Agent Marks?

4 A. Yes.

5 Q. Now, can you associate that particular green sheet
6 with Prosecution Exhibit 1 for Identification?

7 A. Yes.

8 Q. All right. First off, if you could, read the -- is
9 there a DK number on Prosecution Exhibit 1 for Identification?

10 A. Yes. DK02-113.

11 Q. Is there a 1B number on it?

12 A. 1B130.

13 Q. All right. Are those the same 1B number and DK
14 number that is contained on Prosecution Exhibit 1C?

15 A. Yes.

16 Q. Or, excuse me, not on 1C. On the green sheet.

17 A. Yes.

18 Q. I'm going to place on the ELMO Prosecution Exhibit 1C
19 for Identification. Is that, at least the first four entries,
20 identical to the entries on the green sheet in front of you?

21 A. Yes.

22 Q. So it is an exact duplicate?

23 A. Yes.

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1 Q. I'm going to show you photograph Prosecution
2 Exhibit 1B for Identification. Do you recognize that, sir?

3 A. Yes.

4 Q. Is that a fair and accurate depiction of the actual
5 exhibit, Prosecution Exhibit 1 for Identification?

6 A. Yes.

7 Q. And for the record, does the bag, Prosecution
8 Exhibit 1, have a Q number on it?

9 A. Yes.

10 Q. And does that match the Q number on -- and what is
11 that Q number?

12 A. Q157.

13 Q. Does that match the Q number on Prosecution
14 Exhibit -- the photograph, Prosecution Exhibit 1A for
15 Identification?

16 A. Yes.

17 TC [MR. MILLER]: Your Honor, at this time, we would move
18 for the admission of Prosecution Exhibits 1A, 1B, and 1C,
19 understanding that the main exhibit will be offered at a
20 later ----

21 MJ [Col SPATH]: And understand, as I have done in the
22 past, I'm going to defer on all of those. Thank you.

23 TC [MR. MILLER]: If you would provide the witness,

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1 please, with Prosecution Exhibit Number 7.

2 Q. We have placed before you for identification -- or
3 Prosecution Exhibit Number 7 for Identification. Do you see
4 that, sir?

5 A. Yes.

6 Q. Would you take a look at it, please.

7 Before we talk about that, I'm placing on the ELMO
8 Prosecution Exhibit 7A for Identification. And again, is this
9 the type of evidence that you were seizing on the COLE?

10 A. Yes.

11 Q. And are you able to read the Q number on that?

12 A. No.

13 Q. All right. If you would look at the items contained
14 in Prosecution Exhibit Number 7. Does it appear to be the
15 same item contained in the photograph ----

16 A. Yes.

17 Q. ---- Prosecution Exhibit Number 7A for
18 Identification?

19 A. Yes.

20 Q. Again, looking at the exhibit, Prosecution Exhibit
21 Number 7, do you recognize the evidence tag on the front of
22 it, the evidence sheet? Not the evidence sheet, but the
23 evidence information?

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1 A. Yes.

2 Q. And do you recognize the handwriting?

3 A. Yes.

4 Q. And did you recover this particular item?

5 A. Yes.

6 Q. And if you could, please, read into the record the
7 description of the evidence, the time and date of recovery.

8 A. "Suspect boat fragment, 18 October 2000, 3:45 p.m."

9 Q. And it was recovered by you; is that correct?

10 A. Yes.

11 Q. And you also signed the chain of custody?

12 A. Yes.

13 Q. And what does that indicate?

14 A. That indicates that I took possession of it.

15 Q. Is there a DK number on that?

16 A. Yes.

17 Q. And what is that number?

18 A. DK01-106.

19 Q. Is there a 1B number on it?

20 A. Yes.

21 Q. And what is that?

22 A. 1B601.

23 Q. Is there a Q number on it?

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1 A. Yes.

2 Q. What is that?

3 A. Q318.

4 Q. If you would, please, there -- is there an evidence
5 green sheet with it?

6 A. Yes.

7 Q. If you'd take a look at that, please. Does it
8 contain your signature?

9 A. Yes.

10 Q. And where does it contain your signature?

11 A. On the first line.

12 Q. Where it states "Collected"?

13 A. Yes.

14 Q. And is it dated and timed?

15 A. Yes.

16 Q. What ----

17 A. 18 October 2000, 3:45 p.m.

18 Q. And are you able to associate this particular chain
19 of custody receipt with the exhibit, Prosecution Exhibit
20 Number 7?

21 A. Yes.

22 Q. And how are you able to do that, sir?

23 A. The DK number is the same.

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1 Q. And the 1B number is also the same?

2 A. 1B number is the same.

3 Q. I'm going to place on the ELM0 Prosecution Exhibit 7C
4 for Identification. Is Prosecution 7C for Identification an
5 exact duplicate of the green sheet that you've just testified
6 regarding?

7 A. Yes.

8 Q. All right. And for the record, on the first line,
9 that is your signature, correct?

10 A. Yes.

11 Q. I'm placing on the ELM0 Prosecution Exhibit
12 numbered -- Prosecution Exhibit 7B for Identification. Do you
13 recognize that photograph?

14 A. Yes.

15 Q. Is it a fair and accurate depiction of Prosecution
16 Exhibit 7 for Identification?

17 A. Yes.

18 TC [MR. MILLER]: Move for the admission of 7A for
19 Identification, 7B, and 7C, Your Honor.

20 MJ [Col SPATH]: Thank you, Mr. Miller. And it will be
21 the same for all of them. I'm going to defer until later, as
22 you know.

23 TC [MR. MILLER]: If you'll provide the witness, please,

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1 with Prosecution Exhibit Number 9.

2 Q. I've placed before you Prosecution Exhibit 9 for
3 Identification. Would you take a look at that, sir, please.

4 A. Okay.

5 Q. Do you recognize that item, generally?

6 A. Yes.

7 Q. First, I'm going to place on the ELMO Prosecution
8 Exhibit 9A for Identification. Ask you if this is the type of
9 the evidence that you were seizing on the COLE.

10 A. Yes.

11 Q. I'm going to ask you if you can -- can you read
12 the -- excuse me -- Q number on that?

13 A. It looks like Q352.

14 Q. All right. And if you could, sir, look at the
15 evidence contained in the bag itself, Prosecution Exhibit
16 Number -- Prosecution Exhibit 9 for Identification. Does it
17 appear to be the same items?

18 A. Yes.

19 Q. If you would look at the exhibit, Prosecution Exhibit
20 Number 9 -- Prosecution 9 for Identification. Does it contain
21 certain information, chain of custody, seizure, things of that
22 nature?

23 A. Yes.

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1 Q. Does it indicate who seized that item?

2 A. Yes.

3 Q. And who seized that item?

4 A. I did.

5 Q. All right. And if you could read into the record,
6 please, the date and time, location that you seized it.

7 A. "18 October 2000, 3:30 p.m., from the 01 Deck of the
8 USS COLE."

9 Q. And is there a chain of custody on it?

10 A. Yes.

11 Q. What does that indicate?

12 A. That I received it.

13 Q. Is there a DK number on it?

14 A. Yes.

15 Q. What is that DK number?

16 A. DK01-143.

17 Q. And is there a 1B number on it?

18 A. Yes.

19 Q. What is that?

20 A. 1B638.

21 Q. And is there a Q?

22 A. Q352.

23 Q. All right. And that's Q352, is that the same number

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1 that's on Prosecution Exhibit 9A for Identification?

2 A. Yes.

3 Q. Is there a green sheet attached to Prosecution --
4 Prosecution Exhibit 9 for Identification?

5 A. Yes.

6 Q. Take a look at that, please, sir. Does it indicate
7 that you signed that green sheet?

8 A. Yes.

9 Q. And on what line did you sign?

10 A. The first line.

11 Q. Are you able to associate that green sheet with the
12 Exhibit 9?

13 A. Yes.

14 Q. And how are you able to do that?

15 A. The DK number is the same.

16 Q. Is the 1B also the same?

17 A. The 1B number is the same.

18 Q. Placing on the ELM0 Prosecution Exhibit 9C for
19 Identification. Is that an exact duplicate of the green
20 sheet?

21 A. Yes.

22 Q. And does it contain your signature on the top line
23 above the word "Collected"?

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1 A. Yes.

2 Q. Placing on the ELM0 Prosecution Exhibit 9B for
3 Identification. Do you recognize that photograph?

4 A. Yes.

5 Q. Is it a fair and accurate depiction of the exhibit
6 Prosecution 9 for Identification?

7 A. Yes.

8 TC [MR. MILLER]: Move for the admission, Your Honor, of
9 Prosecution Exhibit 9A for Identification, 9C, and 9B.

10 MJ [Col SPATH]: Thank you.

11 TC [MR. MILLER]: Please provide the witness with
12 Prosecution Exhibit 16 for Identification.

13 Q. First off, can you read that Q number?

14 A. No, I can't.

15 Q. All right. Do you see the items in the -- on the
16 photograph, Prosecution Exhibit 16A for Identification?

17 A. Yes.

18 Q. If you would, please, look at the item in front of
19 you, Prosecution Exhibit 16 for Identification. The items in
20 the bag appear to be the same as contained in the photograph,
21 Prosecution 16A for Identification?

22 A. Yes.

23 Q. Did you seize those items?

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1 A. Yes.

2 Q. On the bag itself, did you fill out the chain of
3 custody and other information?

4 A. Yes.

5 Q. It's in your handwriting?

6 A. Yes.

7 Q. If you could, please, read into the record the date
8 and time of the recovery, location, and by whom it was
9 recovered.

10 A. "19 October 2000, 10:00 a.m., 05 Starboard," by
11 myself.

12 Q. Did you sign the chain of custody information?

13 A. Yes.

14 Q. What does that indicate, sir?

15 A. It indicates that I collected it.

16 Q. That is your signature?

17 A. Yes.

18 Q. Is there a DK number on the bag?

19 A. Yes.

20 Q. What is that number?

21 A. DK05-136.

22 Q. And is there a 1B number?

23 A. 1B561.

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1 Q. If you could, please, could you -- is there a green
2 sheet or a chain of custody receipt ----

3 A. Yes.

4 Q. ---- attached to that exhibit?

5 A. Yes.

6 Q. Do you recognize your signature on that sheet?

7 A. Yes.

8 Q. And where is your signature?

9 A. On the first line.

10 Q. Above the word "Collected"?

11 A. Yes.

12 Q. Are you able to associate that particular green sheet
13 with the exhibit, Prosecution Exhibit 16?

14 A. Yes.

15 Q. How are you able to do that, sir?

16 A. The 1B and DK numbers are the same.

17 Q. Placing on the ELM0 Prosecution Exhibit 16C for
18 Identification. Do you recognize that chain of custody or
19 what we call a green sheet?

20 A. Yes.

21 Q. Is it an exact duplicate of the green sheet about
22 which you just testified?

23 A. Yes.

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1 Q. And does it contain your signature above the
2 word "Collected"?

3 A. Yes.

4 Q. Lastly, I'm placing on the exhibit -- or on the ELM0
5 Prosecution Exhibit 16B for Identification. Make it a little
6 smaller for you. Do you recognize that photograph?

7 A. Yes.

8 Q. Is it a fair -- and again, for the record it's
9 Prosecution Exhibit 16B for Identification. It is a -- is it
10 a fair and accurate depiction of Prosecution Exhibit 16?

11 A. Yes.

12 TC [MR. MILLER]: Move for the admission, Your Honor, of
13 Prosecution Exhibits 16A, 16B, and 16C.

14 MJ [Col SPATH]: Thank you.

15 TC [MR. MILLER]: If we could provide the witness, please,
16 with Prosecution Exhibit 26A for Identification.

17 Q. If you would, sir, take a look at that. Do you
18 recognize it?

19 A. Yes.

20 Q. Placing on the ELM0 Prosecution Exhibit 26A for
21 Identification. Do you generally recognize that type of
22 evidence?

23 A. Yes.

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1 Q. All right. Is that the type of evidence you were
2 seizing on the COLE?

3 A. Yes.

4 Q. Can you read the Q number on it?

5 A. Q275.

6 Q. Okay. Could you look at the evidence contained in
7 Prosecution Exhibit 26, please, for Identification.

8 A. Yep.

9 Q. All right. Again, I think I may have asked this, but
10 I'll ask it again: Does it appear to be the same items that
11 are contained in the photograph?

12 A. Yes.

13 Q. If you would look at the exhibit itself, Prosecution
14 Exhibit 26. Do you recognize the bag in which the evidence is
15 contained?

16 A. Yes.

17 Q. And did you seize that evidence?

18 A. Yes.

19 Q. And did you fill out that form on the evidence bag?

20 A. Yes.

21 Q. If you could, please, read into the record the date
22 and time of recovery, the location of the recovery.

23 A. "19 October 2000, 10:00 a.m., from the Port Half Deck

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1 of the USS COLE."

2 Q. And it indicates you yourself recovered it, correct?

3 A. Yes.

4 Q. Did you sign the chain of custody?

5 A. Yes.

6 Q. Does that bag, Prosecution Exhibit 26, have a DK
7 number on it or an MDK number on it?

8 A. Yes, MDK.

9 Q. What is the MDK number?

10 A. MDK-115.

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

12 A. 1B802.

13 Q. Is there a chain of custody receipt attached to it?

14 A. Yes.

15 Q. Is your signature contained on that chain of custody?

16 A. Yes.

17 Q. And where?

18 A. On the first line.

19 Q. Above the word "Collected"?

20 A. Yes.

21 Q. Are you able to associate that green sheet or chain
22 of custody receipt with Prosecution Exhibit 26?

23 A. Yes.

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1 Q. How are you able to do that, sir?

2 A. The 1B and MDK numbers are the same.

3 Q. Placing on the ELM0 Prosecution Exhibit 26C for
4 Identification. Is that an exact duplicate of the green sheet
5 you've just described?

6 A. Yes.

7 Q. And does that contain your signature above the
8 word "Collected"?

9 A. Yes.

10 Q. Lastly, I'm placing on the ELM0 Prosecution
11 Exhibit 26B for Identification. Do you recognize that
12 photograph, sir?

13 A. Yes.

14 Q. Is it a fair and accurate depiction of the
15 Exhibit 26?

16 A. Yes.

17 TC [MR. MILLER]: Move for the admission of 26A, 26B, and
18 26C, Your Honor.

19 MJ [Col SPATH]: Thank you.

20 TC [MR. MILLER]: Provide the witness, please, with
21 Prosecution Exhibit 27 for Identification.

22 Q. Take a look at that, sir, please. I'm going to place
23 on the ELM0 Prosecution Exhibit 27A for Identification. See

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1 that, sir?

2 A. Yes.

3 Q. And you have before you Prosecution Exhibit 27,
4 correct?

5 A. Yes.

6 Q. Does the item contained in Prosecution 27 appear to
7 be the same item ----

8 A. Yes.

9 Q. ---- contained in Prosecution 27A for Identification?

10 A. Yes.

11 Q. I'm not sure you'll be able to read the DK number on
12 this -- the Q number on this. Let me see what I can do. Can
13 you read that Q number?

14 A. Yes.

15 Q. What is that Q number?

16 A. Q295.

17 Q. If you would, please, take a look at Prosecution
18 Exhibit 27. Does it have an evidence -- what we'll call an
19 evidence tag and a chain of custody information on it?

20 A. Yes.

21 Q. Did you fill out that form?

22 A. Yes.

23 Q. If you could, please, read into the record the date

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1 and time you recovered the item, where you recovered it.

2 A. "18 October 2000, 4:00 p.m., from the Flight Deck on
3 the Aft Port Side of the USS COLE."

4 Q. Did you fill out the chain of custody receipt?

5 A. Yes.

6 Q. Is that your signature on it?

7 A. Yes.

8 Q. Is there an MDK number on that particular item?

9 A. MDK-138.

10 Q. Is there a 1B number?

11 A. 1B824.

12 Q. Is there a Q number on it?

13 A. Q295.

14 Q. Is the Q number on the bag the same Q number that's
15 contained on Prosecution Exhibit 27A for Identification?

16 A. Yes.

17 Q. Is there a chain of custody receipt attached to that
18 item ----

19 A. Yes.

20 Q. ---- Prosecution Exhibit 27?

21 A. Yes.

22 Q. Do you recognize your signature on that chain of
23 custody receipt?

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1 A. Yes. Above the word "Collected" on the first line.

2 Q. Are you able to associate this particular green sheet
3 with the exhibit, Prosecution Exhibit 27?

4 A. Yes.

5 Q. How are you able to do that, sir?

6 A. The 1B and MDK numbers are the same.

7 Q. I'm placing on the ELM0 Prosecution Exhibit 27C for
8 Identification. Is 27C for Identification an exact duplicate
9 of the green sheet to which you just referred?

10 A. Yes.

11 Q. And your signature is contained on the first line?

12 A. Yes.

13 Q. Above the word "Collected"?

14 A. Yes.

15 Q. Lastly, I'm placing on the ELM0 Prosecution
16 Exhibit 27B for Identification. Do you recognize that
17 photograph, sir?

18 A. Yes.

19 Q. Is it a fair and accurate depiction of Prosecution
20 Exhibit 27?

21 A. Yes.

22 TC [MR. MILLER]: Move for the admission of 27A, 27B, and
23 27C, Your Honor.

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1 MJ [Col SPATH]: Thank you.

2 TC [MR. MILLER]: If we could provide the witness with
3 Prosecution Exhibit 31, please.

4 Q. Has that been placed before you?

5 A. Yes.

6 Q. Take a look at that, if you would, please. First
7 off, I'm going to place on the ELM0 Prosecution Exhibit 31A
8 for Identification. Do you recognize that photograph, sir?

9 A. Yes.

10 Q. You have before you Prosecution Exhibit 31 for
11 Identification. Does it appear to contain the same items ----

12 A. Yes.

13 Q. ---- as contained in the photograph, Prosecution
14 Exhibit 31A?

15 A. Yes.

16 Q. Yes. I don't know if you'll be able to read it. See
17 if we can. Can you read that DK number?

18 A. The Q number?

19 Q. The Q number, excuse me.

20 A. No, I can't.

21 Q. All right. If you would, looking at the bag itself,
22 did you recover this evidence?

23 A. Yes.

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1 Q. And did you fill out the evidence receipt on the
2 evidence bag itself?

3 A. Yes.

4 Q. If you could, please, first off read into the record
5 the description of the item seized, the date and time of
6 recovery, the location of the recovery.

7 A. "17 October" -- I'm sorry, "19 October 2000,
8 10:00 a.m., sifted suspect boat parts, Port Side across from
9 the Quarterdeck of the USS COLE."

10 Q. What does that mean?

11 A. What does what mean?

12 Q. The sifted suspect boat parts. Does that mean that
13 you seized them or was it part of the sifting operation?

14 A. Both.

15 Q. Okay. All right. Explain.

16 A. These would have been materials that we collected
17 that were left on the sifting screen, and then I would have
18 collected that and bagged it.

19 Q. All right. And it was recovered, you filled out --
20 it was recovered by you, correct?

21 A. Yes.

22 Q. And when you say recovered by you, it was items you
23 took from the sifting area?

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1 A. Yes.

2 Q. And did you fill out the chain of custody?

3 A. Yes.

4 Q. If you could, please, read into the record the date,
5 time.

6 A. "19 October 2000, 10:00 a.m."

7 Q. All right. And it contains your signature, correct?

8 A. Yes.

9 Q. Is there an MDK number on that sheet?

10 A. Yes.

11 Q. And what is that?

12 A. MDK-132.

13 Q. And could you read into the record -- is there a 1B
14 number?

15 A. 1B812.

16 Q. Now, if you could, please, check to see if there is a
17 green sheet attached.

18 A. Yes.

19 Q. And do you recognize your signature on that green
20 sheet?

21 A. Yes.

22 Q. And where is your signature?

23 A. On the first line above the word "Collected."

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1 Q. Are you able to associate that green sheet with the
2 exhibit, Prosecution Exhibit 31?

3 A. Yes.

4 Q. And how are you able to do that, sir?

5 A. The 1B and MDK numbers are the same.

6 Q. Placing on the ELM0 Prosecution Exhibit 31C for
7 Identification. Is that an exact -- is 31C an exact duplicate
8 of the green sheet which you have just described?

9 A. Yes.

10 Q. And does it have your signature above the
11 word "Collected"?

12 A. Yes.

13 Q. Placing on the ELM0 Prosecution Exhibit 31B for
14 Identification. Do you recognize that, sir?

15 A. Yes.

16 Q. And is that a fair and accurate depiction of
17 Prosecution Exhibit 31 for Identification?

18 A. Yes.

19 TC [MR. MILLER]: Move for the admission, Your Honor, of
20 Prosecution Exhibits 31A, B, and C.

21 MJ [Col SPATH]: Thank you.

22 TC [MR. MILLER]: Provide the witness, please, with
23 Prosecution Exhibit 33 for Identification.

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1 Q. Do you recognize that, sir?

2 A. Yes.

3 Q. Placing on the ELMO Prosecution Exhibit 33A for
4 Identification. Same question, is this the sort of evidence
5 that you were seizing on the COLE?

6 A. Yes.

7 Q. And again, why were you seizing this sort of
8 evidence?

9 A. It appeared to be pieces of the suspect boat.

10 Q. And that's true for all of the items that you've been
11 seizing so far, these were items that were associated with --
12 with you thought -- with the bomb it -- the boat itself or
13 parts of the bomb, correct?

14 A. Correct.

15 Q. If you would look, please, at Prosecution Exhibit 33.
16 Can you see the items that are contained therein?

17 A. Yes.

18 Q. Do they appear to be the same items contained in
19 Prosecution Exhibit 33A for Identification?

20 A. Yes.

21 Q. Let's see if we can get the Q number up. Can you
22 read the Q number on that?

23 A. No.

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1 Q. Looking at the bag itself, did you seize that
2 evidence?

3 A. Yes.

4 Q. And did you -- that -- we're talking again about
5 Prosecution Exhibit 33. If you could, looking at 33, is there
6 an evidence receipt in there?

7 A. Yes.

8 Q. And did you fill that out personally?

9 A. Yes.

10 Q. Could you indicate, please, the date and time of the
11 recovery, the location, by whom it was recovered?

12 A. 18 October 2000, 3:45 p.m., on the 01 Deck Forward of
13 the USS COLE.

14 Q. All right. And it indicates -- it is described as
15 miscellaneous debris; is that correct?

16 A. Yes.

17 Q. Now, does that bag have a DK number on it?

18 A. DK01-142.

19 Q. Does it have a 1B number?

20 A. 1B637.

21 Q. Is there a evidence receipt -- or a green sheet with
22 it?

23 A. Yes.

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1 Q. If you would please, take a look at it. Is your
2 signature contained on it?

3 A. Yes. Above the word "Collected" on the first line.

4 Q. And does it give a date and time of the collection?

5 A. 18 October 2000, 3:45 p.m.

6 Q. Are you able to associate this chain of custody
7 receipt with the -- with the item, Prosecution Exhibit 33 for
8 Identification?

9 A. Yes.

10 Q. And how are you able to do that, sir?

11 A. The DK number and 1B number are the same.

12 Q. Placing on the ELM0 Prosecution Exhibit 33C for
13 Identification and ask you, is that an exact duplicate of the
14 chain of custody receipt that you have just described?

15 A. Yes.

16 Q. Again, for the record, above the word "Collected,"
17 that is your signature?

18 A. Yes.

19 Q. Placing on the ELM0 Prosecution Exhibit 33B for
20 Identification, do you recognize that photograph, sir?

21 A. Yes.

22 Q. Is it a fair and accurate depiction of Prosecution
23 Exhibit 33 for Identification?

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1 A. Yes.

2 TC [MR. MILLER]: Move for the admission, Your Honor --
3 thank you -- of Prosecution Exhibit 33A, B, and C.

4 MJ [Col SPATH]: Thank you.

5 TC [MR. MILLER]: Please provide the witness with
6 Prosecution Exhibit 35.

7 Q. Do you recognize that item, sir, Prosecution
8 Exhibit 35?

9 A. Yes.

10 Q. Again, is that the type of evidence that you were
11 seizing?

12 A. Yes.

13 Q. The reason for seizing it?

14 A. Appeared to be parts associated with the bomb.

15 Q. Placing on the ELM0 Prosecution Exhibit 35A for
16 Identification. Do you recognize that photograph, sir?

17 A. Yes.

18 Q. Does the items depicted in 35A for Identification
19 appear to be the same items contained in Prosecution
20 Exhibit 35 for Identification?

21 A. Yes.

22 Q. All right. If we can get the Q number up. Can you
23 read the Q number?

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1 A. Q -- Q385.

2 Q. All right. If you would look at the exhibit, please,
3 Prosecution Exhibit 35. Did you seize that item?

4 A. Yes.

5 Q. All right. Did you fill out the evidence bag?

6 A. Yes.

7 Q. If you could, please, read into the record your
8 description of it, the date and time of the recovery, and the
9 location of the recovery?

10 A. "Miscellaneous debris, 18 October 2000, 3:40 p.m.,
11 from the 0 Deck Forward Port Side of the USS COLE."

12 Q. And is there a chain of custody section?

13 A. Yes.

14 Q. All right. And then did you fill that out?

15 A. Yes.

16 Q. What does that indicate?

17 A. I collected it.

18 Q. All right. It contains your signature; is that
19 correct?

20 A. Yes.

21 Q. Does the bag have a DK number on it?

22 A. DK02-130.

23 Q. Does it also have a 1B number on it?

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1 A. 1B666.

2 Q. Does it have a Q number on it?

3 A. Q385.

4 Q. And is that Q number the same Q number that's
5 contained on Prosecution Exhibit 35A? Bring it up again.

6 A. Yes.

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

8 A. Yes.

9 Q. If you would, please, look at it. Does it contain
10 your signature?

11 A. Yes.

12 Q. And where is your signature contained on that green
13 sheet?

14 A. On the first line above the word "Collected."

15 Q. And it gives the date and time?

16 A. Yes.

17 Q. What is that?

18 A. 16 October at 4:00 p.m.

19 Q. Are you able to associate that particular green
20 sheet, sir, with Prosecution Exhibit 35 for Identification?

21 A. Yes.

22 Q. And how are you able to do that?

23 A. The 1B and DK numbers are the same.

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1 Q. I'm now placing on the ELMO Prosecution Exhibit 35C
2 for Identification, and I would ask you, is Prosecution
3 Exhibit 35C for Identification an exact duplicate of the green
4 sheet you just described?

5 A. Yes.

6 Q. And again, for the record, it contains your signature
7 above the word "Collected"?

8 A. Yes.

9 Q. Lastly, I'm placing on the ELMO Prosecution Exhibit
10 Number -- Prosecution Exhibit 35B for Identification. Do you
11 recognize that photograph, sir?

12 A. Yes.

13 Q. Is it a fair -- is 35B for Identification a fair and
14 accurate depiction of Prosecution Exhibit 35 for
15 Identification?

16 A. Zoom in on the photo. Yes.

17 TC [MR. MILLER]: Move for the admission of Prosecution
18 Exhibit 35A, 35B, and 35C, Your Honor.

19 MJ [Col SPATH]: Thank you.

20 TC [MR. MILLER]: Please provide the witness with
21 Prosecution Exhibit 40.

22 Q. If you would, please, take a look at Prosecution 40.
23 Placing on the ELMO Prosecution Exhibit -- Prosecution

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1 Exhibit 40A for Identification. Do you recognize those items,
2 sir?

3 A. Yes.

4 Q. If you would, look at Prosecution Exhibit 40. Do
5 they appear to be the same items?

6 A. Yes.

7 Q. Can you read the Q number on Prosecution Exhibit 40A
8 for Identification?

9 A. Q472.

10 Q. All right. And again, the reason for seizing this
11 particular -- these particular items?

12 A. They appeared to be parts of the suspect boat.

13 Q. If you would, please take a look at Prosecution
14 Exhibit 40 for Identification. Do you recognize the evidence
15 tag?

16 A. Yes.

17 Q. Did you seize that item?

18 A. Yes.

19 Q. Did you fill out that tag?

20 A. Yes.

21 Q. If you would, please -- first off, it appears that on
22 the bag itself has the word sifted; is that correct?

23 A. Yes.

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1 Q. And what does that indicate?

2 A. These materials would have been collected from one of
3 the sifting stations.

4 Q. They would have been collected by you, correct?

5 A. Yes.

6 Q. Could you give the date and time of the recovery,
7 please.

8 A. 19 October 2000, 10:00 a.m.

9 Q. Did you fill out the chain of custody form?

10 A. Yes.

11 Q. And does it indicate that you received it on the
12 USS COLE?

13 A. Yes.

14 Q. Again, contains your signature?

15 A. Yes.

16 Q. Does it have a DK number?

17 A. DK04-135.

18 Q. Does it have a Q number?

19 A. Q472.

20 Q. Is that the same Q number contained on Prosecution
21 Exhibit 40A for Identification?

22 A. Yes.

23 Q. Does it also contain a 1B number?

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1 A. 1B767.

2 Q. Is there a chain of custody form attached ----

3 A. Yes.

4 Q. ---- to that exhibit?

5 A. Yes.

6 Q. And if you could, please, look at it. Does it
7 contain your signature?

8 A. Yes.

9 Q. Where does it contain your signature?

10 A. On the first line above "Collected."

11 Q. Does it give a date and time?

12 A. 19 October 2000, 10:00 a.m.

13 Q. Are you able to associate that green sheet or that
14 chain of custody receipt with the exhibit, Prosecution
15 Exhibit 40?

16 A. Yes.

17 Q. And how are you able to do that, sir?

18 A. The 1B and DK numbers are the same.

19 Q. Placing on the ELM0 Prosecution Exhibit 40C for
20 Identification. Is that an exact duplicate of the green sheet
21 you've just described?

22 A. Yes.

23 Q. Placing on the ELM0 Prosecution Exhibit 40B for

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1 Identification. Do you recognize that, sir?

2 A. Yes.

3 Q. And is that a fair and accurate depiction -- what I
4 just -- I mean, this photograph is Prosecution Exhibit 40B.
5 You recognize that, correct?

6 A. Yes.

7 Q. And is it a fair and accurate depiction of
8 Prosecution Exhibit 40?

9 A. Yes.

10 TC [MR. MILLER]: Move for the admission of 40A, B, and C,
11 Your Honor.

12 MJ [Col SPATH]: Thank you.

13 TC [MR. MILLER]: Provide the witness, please, with
14 Prosecution Exhibit 78.

15 Q. Do you recognize that, sir?

16 A. Yes.

17 Q. Placing on the ELM0 Prosecution Exhibit 78A for
18 Identification. Ask you if you recognize those items, sir.

19 A. Yes.

20 Q. And if you would, look at Prosecution Exhibit 78.
21 Are the items in Prosecution 78 the same items depicted in the
22 photograph, Prosecution Exhibit 78A for Identification?

23 A. They appear to be.

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1 Q. And why would you seize these particular items?

2 A. Metal and wire fragments could be -- excuse me, could
3 be parts of the device.

4 Q. All right. And can you read the Q number in the
5 photograph, Prosecution Exhibit 78A for Identification?

6 A. Q320.

7 Q. If you would, please, take a look at the exhibit,
8 Prosecution 78. It has an evidence tag on it; is that
9 correct?

10 A. Yes.

11 Q. First off, it has a Q number on it also, correct?

12 A. Yes.

13 Q. What is that Q number?

14 A. Q320.

15 Q. And that's the same Q number contained in Prosecution
16 Exhibit 78A; is that correct?

17 A. Yes.

18 Q. If you would, please, looking at the bag itself, did
19 you seize this item, Prosecution Exhibit 78?

20 A. Yes.

21 Q. Did you fill out the evidence tag?

22 A. Yes.

23 Q. If you would, please, read into the record the

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1 description of the evidence, the date and time of the
2 recovery, and the location of the recovery.

3 A. "Wire and metal fragments from sifted debris, 18
4 October 2000, 3:45 p.m., from the 01 Deck Forward of the
5 USS COLE."

6 Q. And did you fill out the chain of custody
7 portion ----

8 A. Yes.

9 Q. ---- of the form?

10 A. Yes.

11 Q. And that contains your signature, correct?

12 A. Yes.

13 Q. Does that particular item have a 1B number on it?

14 A. 1B612.

15 Q. Does it have a DK number on it?

16 A. DK01-115.

17 Q. Please, if you would, see if there is a evidence or
18 chain of custody receipt with it.

19 A. Yes.

20 Q. Do you see your signature on it?

21 A. Yes.

22 Q. And where is your signature, sir?

23 A. On the first line above the word "Collected."

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1 Q. And it indicates a collection of October 19th at
2 3:45, correct?

3 A. October 18th.

4 Q. 18th ----

5 A. Yes, sir.

6 Q. ---- thank you. Are you able to associate the green
7 sheet with the exhibit, Prosecution Exhibit 78?

8 A. Yes.

9 Q. And how are you able to do that, sir?

10 A. The 1B and DK numbers are the same.

11 Q. Placing on the ELM0 Prosecution Exhibit 78C for
12 Identification. Is that an exact duplicate of the green sheet
13 or chain of custody receipt that you have just described?

14 A. Yes.

15 Q. And again, it contains your signature right above the
16 word "Collected"?

17 A. Yes.

18 Q. Placing on the ELM0 Prosecution Exhibit 78B for
19 Identification. Do you recognize that photograph, sir?

20 A. Yes.

21 Q. Is that a -- and that is Prosecution Exhibit 78B. Is
22 that 78B for Identification a fair and accurate depiction of
23 Prosecution Exhibit 78 for Identification?

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1 A. Yes.

2 TC [MR. MILLER]: Your Honor, we'd move for the admission
3 of Prosecution Exhibits A, B, and C, 78A, B, and C.

4 MJ [Col SPATH]: Thank you. Mr. Miller, it's probably a
5 good chance to give the witness a break. We're going to stay
6 for a minute so I can hear from the defense counsel about the
7 other issues.

8 For you, the break will probably be 15 to 20 minutes
9 so I can give them a break after we talk, and then we'll keep
10 moving, okay? Thanks. You're excused.

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

12 TC [MR. MILLER]: Thank you, Your Honor.

13 MJ [Col SPATH]: All right. Thank you, Mr. Miller.

14 Defense Counsel, as I indicated, I'll give you a
15 chance to make your points.

16 DDC [LT PIETTE]: Yes. Thank you, Your Honor. First,
17 there is one thing, and this is just in interest of candor to
18 the court. When you were asking Colonel Aaron some questions,
19 I think there was a second of confusion and he answered
20 something incorrectly.

21 MJ [Col SPATH]: Okay.

22 DDC [LT PIETTE]: By the time I had my sticky note
23 written, you guys had moved on, so I'll just clear it up.

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1 You had asked if there were -- previously had been
2 two other detailed military defense counsel, he answered yes.
3 There were, in fact, three.

4 MJ [Col SPATH]: There were three? Okay. And your
5 understanding is all three have been undetailed?

6 DDC [LT PIETTE]: Yes. All three have been undetailed.

7 MJ [Col SPATH]: Who was the third -- do you know the name
8 of the third one?

9 DDC [LT PIETTE]: Yes. It was Major McCormick ----

10 MJ [Col SPATH]: Okay.

11 DDC [LT PIETTE]: ---- U.S. Marine Corps.

12 MJ [Col SPATH]: Thank you.

13 DDC [LT PIETTE]: And none of them have any capital
14 experience so, in fact, none of them are more experienced or
15 qualified than I am in the relevant -- with the relevant
16 experience.

17 MJ [Col SPATH]: Well, do you know if Major Robinson has
18 been to a capital course?

19 DDC [LT PIETTE]: No. In fact, I believe none of them
20 have, which might actually make me more qualified, in the
21 sense that I've been to some capital training.

22 MJ [Col SPATH]: Your belief is that Major Fewell and
23 Major Robinson have not attended any capital training?

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1 DDC [LT PIETTE]: That's my understanding.

2 MJ [Col SPATH]: Okay.

3 DDC [LT PIETTE]: And as far as the Captain Mizer
4 situation, or Captain-Select Mizer situation, from the
5 al Nashiri defense team point of view -- and I'm not speaking
6 for MCD0, but just for Mr. Nashiri -- Captain Mizer is not a
7 learned counsel, and so having him come on essentially would
8 just make one more unqualified counsel here, although he would
9 be a great asset to the team. At the same time, though, it's
10 likely that ----

11 MJ [Col SPATH]: You know there's no, like, talismic
12 requirement to be a learned counsel, right?

13 DDC [LT PIETTE]: Yes.

14 MJ [Col SPATH]: You understand, if you read the ABA
15 guidelines, I mean, it's ----

16 DDC [LT PIETTE]: Yes.

17 MJ [Col SPATH]: ---- training and ----

18 DDC [LT PIETTE]: Right.

19 MJ [Col SPATH]: But regardless, I appreciate your
20 position. We do have in the record Commander, now
21 Captain-Select, Mizer's testimony about his experience,
22 background, and knowledge in capital litigation.

23 DDC [LT PIETTE]: Yes.

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1 MJ [Col SPATH]: Okay.

2 DDC [LT PIETTE]: Yes. And I'm just basing that, again,
3 on the ABA guidelines, that he hasn't risen to the
4 qualification under the ABA guidelines of learned counsel.
5 It's likely that, you know, he can't say anything at this
6 point, but it's likely that he will -- Mr. al Nashiri will
7 refuse his representation for ----

8 MJ [Col SPATH]: Then Mr. al Nashiri should release him.
9 What we have right now from your client is a nonrelease, in
10 fact, a refusal to release, and then my release of him, which
11 I have now reconsidered. And so if your client wants to
12 release him, I suggest he file it in writing.

13 DDC [LT PIETTE]: Yes, Your Honor. And I -- the court can
14 stand by for that.

15 The other thing is, as I indicated before, just
16 renewing our objection to this, to the 207 proceedings moving
17 forward, and really any of the proceedings that involve
18 witnesses and that really involve this case moving forward
19 until learned counsel is here. So renewing that objection and
20 the motion to continue based on the fact -- on the fact that
21 learned counsel is not here.

22 Now, whether that's for a valid reason in the court's
23 view or because he has abandoned his client, the fact remains

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1 that he is not here. And if he has abandoned the client,
2 certainly that's something that should be dealt with; if
3 anybody should be punished for that, it's the person who did
4 the abandoning ----

5 MJ [Col SPATH]: I agree.

6 DDC [LT PIETTE]: ---- not the person who was abandoned.

7 MJ [Col SPATH]: I keep trying.

8 DDC [LT PIETTE]: Yes. But by moving forward, we are, in
9 fact, punishing Mr. al Nashiri because -- and I know this
10 court, the government, and everybody I think who has an
11 interest in this case moving forward continues to say what I
12 am doing, what the defense team is doing is a strategy. It's
13 not a strategy when we have no choice. A strategy has to have
14 an end goal, and the end goal ----

15 MJ [Col SPATH]: It does, Lieutenant Piette. And you know
16 it. The end goal is that this case on appeal is overturned.
17 That is the end state. And we all know it if we're using
18 common sense.

19 DDC [LT PIETTE]: Well, Your Honor ----

20 MJ [Col SPATH]: You had two military defense counsel
21 detailed to your team with more experience than you, frankly,
22 because I know their bio and I know their experience. I
23 appreciate that you believe you need capital-qualified

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1 counsel. What saddens me is that military officers don't
2 recognize, with your experience, you're every bit as qualified
3 and competent, frankly, as many capital counsel that I've
4 watched appear in courts.

5 It's embarrassing that we will sacrifice the
6 performance and competence of military counsel for this belief
7 that some civilian is so much better than you. If they were,
8 they wouldn't abandon their client. If they were, they would
9 have done all aspects of this case from the beginning.
10 Commander Mizer, frankly, did more than the capitally
11 qualified counsel when he was assigned here. Again, that is
12 all up to you all as the defense team.

13 But this lack of acknowledgment that you don't
14 understand evidence admission for real evidence that is the
15 same in every single case no matter how complex -- frankly,
16 the government is making the evidence admission more
17 complicated than it needs to be for real evidence. Just open
18 the Blue Book. But again, I'm not involved in trial strategy.

19 You are choosing not to engage in cross-examination
20 of these witnesses. But as I've said before, they can all
21 come back and you can do it later. And the defense
22 organization is choosing now to undetail eminently qualified
23 counsel from helping you, leaving you out on your own.

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1 And anybody, again, who has an objective view of this
2 process knows exactly what's going on, and there's not a lot I
3 can do about it. Believe me, I've done and I continue to do
4 what I can to force people here to represent somebody. But I
5 can't -- I still can't find another jurisdiction where this is
6 okay anywhere.

7 DDC [LT PIETTE]: Your Honor, I can't speak to anybody
8 else's strategy and what has been done in the past. But right
9 now, my strategy as his -- Mr. al Nashiri's only defense
10 counsel on this case and the only person who has his interest
11 at heart right now, the end goal, whatever strategy I'm
12 effecting now, is to get him competent representation. And
13 once he has that competent representation ----

14 MJ [Col SPATH]: Well, he has competent
15 representation ----

16 DDC [LT PIETTE]: Well ----

17 MJ [Col SPATH]: ---- unless you're telling me you're not
18 competent.

19 DDC [LT PIETTE]: ---- not competent ----

20 MJ [Col SPATH]: You're not capitally qualified.

21 DDC [LT PIETTE]: Right.

22 MJ [Col SPATH]: You are competent. You're both
23 certified, sworn, and competent. So stop that now.

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1 DDC [LT PIETTE]: Because I'm not capitally qualified, I
2 am not competent to represent him in a capital case.

3 MJ [Col SPATH]: That is your opinion, and I appreciate
4 it.

5 DDC [LT PIETTE]: And that's what everything is based on
6 here. And so if there were competent, capital-qualified
7 counsel, obviously the end goal is an acquittal or the best
8 sentence, assuming we can't get an acquittal. But the
9 ultimate goal is an acquittal. And if that's the end goal,
10 it's an absolutely terrible strategy to refuse to
11 cross-examine foundational witnesses and, frankly, the only
12 fact witness the government has. That would be a terrible
13 strategy.

14 MJ [Col SPATH]: Again, I don't know if they're the only
15 fact witness or not, and I don't know the evidence. What I
16 know is you know these witnesses are all coming back, so
17 passing on cross-examining them might be viewed as a brilliant
18 strategy right now. I don't know.

19 Your risk remains the same. Your risk that I talked
20 to you about before remains the same. You are a competent
21 attorney, and we are dealing with real evidence admission.
22 That's it. If you want to wait to ask him questions, that's
23 fine. If you want to ask him questions now, that's fine, too.

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1 What I think you should do doesn't matter.

2 My worry is a process that is fair, which I believe
3 you have. My other goal remains that your team is properly
4 resourced. I have motion after motion after motion from the
5 defense organization, Mr. Kammen in the past, saying that
6 we're not resourcing; we, big Government, not me, are not
7 resourcing you correctly. And now what I have is a defense
8 community who, when they're offered help, refuses it.

9 Has Major Fewell been detailed to any commissions
10 case? Do you know?

11 DDC [LT PIETTE]: I don't know that, Your Honor.

12 MJ [Col SPATH]: Major Robinson?

13 DDC [LT PIETTE]: I don't know that either.

14 MJ [Col SPATH]: Major McCormick?

15 DDC [LT PIETTE]: I don't know.

16 MJ [Col SPATH]: How about the two DoD civilians who we're
17 paying for?

18 DDC [LT PIETTE]: I do not know any of that.

19 MJ [Col SPATH]: And I understand. So our interests align
20 in some respect. I'm trying to get you help. You know that.

21 DDC [LT PIETTE]: Yes.

22 MJ [Col SPATH]: I can't order them to come to the island.
23 We've established that. Some of them violate orders. We know

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1 that. Some refuse to show up when subpoenaed. We know that.
2 So I continue to make an effort to get you help. Sooner or
3 later, hopefully the D.C. Courts will let me know what my
4 authority is or isn't, and I will act within it to continue to
5 resource your team if MCD0 will not do it.

6 And so my order remains the same on Captain-Select
7 Mizer until I see a release from your client, and then we can
8 discuss whether or not even then I'll release him.

9 DDC [LT PIETTE]: I understand, Your Honor. Although now
10 I'm confused on something different.

11 MJ [Col SPATH]: Please.

12 DDC [LT PIETTE]: I didn't -- it was not my understanding
13 that these witnesses were coming back. My understanding was
14 based -- as you know, before learned counsel left, we filed
15 those motions to clarify. You denied those motions to
16 clarify, so I'm still not clear on what's happening, so ----

17 MJ [Col SPATH]: How can you not be? This is a
18 preadmission session for real evidence. What is happening is
19 the government is attempting to lay the foundation. What we
20 have is a C.A.A.F. case that makes clear that I need to let
21 you attack the foundation of that evidence in front of the
22 fact-finder because that judge got overturned because the
23 judge wouldn't let the defense counsel attack the foundation

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1 in front of the fact-finder.

2 What that case made clear is the judge could
3 certainly admit the evidence; the judge is the guardian of
4 what comes in and doesn't. But what you can't do is prevent
5 the defense from showing the members problems in chains of --
6 chain of custody, problems with what it is. So that is what
7 is happening.

8 We continue to preadmit evidence that goes on in
9 courtrooms across the world, frankly, every day. That's it.
10 So they'll come back if you want them back.

11 DDC [LT PIETTE]: What's not clear is when they would come
12 back, if they come back in the defense's case or the
13 government's case. And none -- I guess this is something that
14 can be dealt with later, but ----

15 MJ [Col SPATH]: It can be.

16 DDC [LT PIETTE]: All right. I guess ----

17 MJ [Col SPATH]: I think it's reasonably clear what is
18 occurring; it is the government's effort to preadmit evidence.
19 What also is in my order is I'm going to give you the
20 opportunity, before the court members show up, to attack the
21 foundation for that evidence. If you go back and look at the
22 orders that led us here, as I told Mr. Kammen -- and, in fact,
23 there's an order out there -- a request from him, a motion

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1 from him for me to have witnesses come testify about the
2 foundation of this evidence, one of whom happens to be in
3 federal custody, as you know. I haven't ruled on that yet
4 because it's the government's turn.

5 When the government's done with 207, I'm going to
6 turn to you and say, do you want to do anything? If your
7 answer is no, I assume the government is going to offer all of
8 those things for admission again, and I'm going to go through
9 a discussion with them under, right, Rules of Evidence 401,
10 402, 403, the ones you deal with every day -- they're the same
11 here as they are in the military -- and we're going to talk
12 about them. Or you're going to call witnesses to attack the
13 foundation.

14 DDC [LT PIETTE]: Just to be clear, all of that is
15 happening outside the presence of members?

16 MJ [Col SPATH]: Yes. And in the presence if you want it
17 to. If you want to call witnesses in front of the members to
18 show that they seized evidence in a way that didn't track with
19 their standard operating procedure or they did something
20 wrong, you're going to have that opportunity. You're going to
21 have that opportunity.

22 DDC [LT PIETTE]: In the defense case that we would then
23 be forced to put on?

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1 MJ [Col SPATH]: None of this is unique. None of this.
2 And you know that. None of this is new, and none of this
3 looks different.

4 DDC [LT PIETTE]: It's unprecedented and unheard of.

5 MJ [Col SPATH]: That's ----

6 DDC [LT PIETTE]: It does not happen in federal courts.

7 MJ [Col SPATH]: It does, too.

8 DDC [LT PIETTE]: It doesn't happen in courts ----

9 MJ [Col SPATH]: Lieutenant Piette, we're not going to
10 debate it. It most certainly does. If the government doesn't
11 want to explain to the court members where all of this stuff
12 comes from and is going to leave them confused, I guess that
13 is up to them as they attempt to prove their case beyond a
14 reasonable doubt. I don't know. I wouldn't suggest handing
15 them 5,000 pieces of evidence and saying, do with it what you
16 will. I think that would be a poor trial strategy. But this
17 is not unprecedented. This is normal.

18 What is unprecedented is your defense community's
19 lack of resourcing of you and leaving you here to take all
20 of -- all of the responsibility and me imploring you, frankly,
21 to demonstrate your competence. If you attempt to demonstrate
22 it and you're not competent, that's one thing.

23 But when you sit there and allow this to occur in a

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1 preadmission session where you will have the opportunity still
2 to attack the foundation of real evidence, I think any
3 appellate court is going to view that as a strategy,
4 especially when you tie it with what you heard from Colonel
5 Aaron today: As soon as your order came out, Judge, I
6 undetailed them and left Lieutenant Piette all by himself.
7 Because it looks better for everybody watching if you're here
8 by yourself. Looks better.

9 But I really -- I understand learned counsel. I do.
10 And I'm not minimizing them. But you're minimizing your
11 competence, and that is a frustration to me that military
12 officers who understand their experience level, truly their
13 experience level, and the amount of trial experience they have
14 compared to almost everybody else, which is significant,
15 undermine themselves happily here at these commissions.

16 You've seen it. I keep reading this as ad hoc. I'm
17 shocked by that because Congress passed it, and
18 President Obama signed it. So ad hoc. I thought that's how
19 things worked, right? Congress passes, President signs. Go
20 out in the blogosphere, I hear this is all a creation of some
21 other administration before President Obama. Not true.

22 It's not ad hoc. The process looks very similar to a
23 courts-martial, and frankly, the Rules of Evidence look very

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1 similar to the Federal Rules of Evidence, and people who
2 really look at this and understand it know that.

3 So again, what we're doing happens all the time.
4 It's a standard process. You will have the opportunity to
5 attack this evidence before I admit it, outside the presence
6 of the members, and you will have the opportunity to attack
7 this evidence in front of the members if you choose. All
8 right.

9 DDC [LT PIETTE]: Thank you, Your Honor.

10 MJ [Col SPATH]: Why don't we come back at 11:30, and we
11 will continue marching through Mr. Greenberg's testimony.
12 Thank you. We're in recess.

13 [The R.M.C. 803 session recessed at 1116, 19 January 2018.]

14 [END OF PAGE]

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1 [The R.M.C. 803 session was called to order at 1305,
2 19 January 2018.]

3 MJ [Col SPATH]: All right. These commissions are called
4 to order. All the parties who were present before the recess
5 are again present.

6 Let me summarize our 802 session. We did have one,
7 it was pretty quick. It was just to discuss timing of
8 witnesses. The government asked if we could move to a VTC
9 witness before we finished with Greenberg just for timing
10 issues, since Mr. Greenberg is obviously on island and the
11 VTCs have been scheduled. And I indicated that that would
12 work.

13 And then there -- we had some discussion about
14 Mr. al Nashiri tomorrow, if we had session. He had a conflict
15 with it, but he also indicated he was probably going to waive
16 his presence anyway. Ultimately, what I asked is: Well,
17 let's figure out the witnesses so that we can do them on
18 Monday and Tuesday rather than Saturday and Monday. It just
19 makes more sense, and it makes more sense with what appears to
20 be a government shutdown.

21 While I more than recognize everyone down here is
22 exempted, if there's a shutdown, there's going to be a lot
23 of -- a lot of drama in other places that we're going to have

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1 to work through and figure out.

2 And so my plan is we'll go today as long as we can.
3 We'll be off tomorrow, we'll be back on Monday with live
4 witnesses as we move forward. So that was the extent of the
5 802 and kind of where we're at right now.

6 Let me first check. Mr. Miller, do you want to add
7 anything to my summary of the 802?

8 TC [MR. MILLER]: No, Your Honor. Thank you.

9 MJ [Col SPATH]: Defense Counsel?

10 DDC [LT PIETTE]: Defense concurs, nothing to add.

11 MJ [Col SPATH]: Okay, thank you. Mr. Miller.

12 TC [MR. MILLER]: That being said, we're going to finish
13 with Greenberg and then take the three in a row. That way
14 we're not breaking up the VTC.

15 MJ [Col SPATH]: All right. So we are going to have
16 Mr. Greenberg come back?

17 TC [MR. MILLER]: Mr. Greenberg first.

18 MJ [Col SPATH]: And then my staff indicated we wanted to
19 have some discussion about the subpoenas for the two
20 civilians. Is that ----

21 TC [MR. MILLER]: Correct. Colonel Wells is ready to
22 address the court, Your Honor.

23 MJ [Col SPATH]: All right. Colonel Wells.

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1 MATC [COL WELLS]: Your Honor, thank you. The commission
2 indicated earlier that they would accept the filings from
3 Eliades and Spears through their counsel there and then set a
4 briefing schedule. The filings themselves, just to outline
5 briefly the government's position, they seem to indicate if
6 you perfect service of the subpoenas, then our timing, we
7 would be available. That seems to be the thrust and tenor. I
8 don't know if that still holds true for these two counsel and
9 government employees.

10 But we were not able to perfect service, personal
11 service. We asked their attorneys to make them available.
12 They communicated that they did not have authority to make
13 them available. There is authority within the Regulation for
14 Trial by Military Commission that says for government
15 employees, in paragraph 13-4, I believe, that you do not have
16 to have a subpoena -- that you can contact the chain of
17 command or supervision of a government employee.

18 The chief prosecutor reached out to Colonel Aaron
19 trying to invoke that authority and received no response to
20 his e-mail. We would like to have a further discussion with
21 him to see if they would, as part of their official duties,
22 make them available at a time and place to receive personal
23 service. So those are yet to be explored, which may resolve

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1 the motion to quash that particular subpoena.

2 In the interim, we've discussed issuing additional
3 subpoenas for Monday or Tuesday at a time which we would
4 perfect service. If the commission would like to have the
5 witnesses here Monday or Tuesday, we will try to fulfill that
6 through their chain of supervision and/or through their
7 attorneys and/or an alternate way, the normal way through
8 U.S. Marshals or personal service. Anybody of 18 years old
9 or -- can serve. So that is where we are on that piece.

10 For Mr. Koffsky, we're trying to reach out to him to
11 have a further discussion about his availability for Monday
12 and Tuesday. I would also advise that the commission can
13 invoke that Regulation for Trial by Military Commission,
14 paragraph 13-4, and ask that they come here. We don't have to
15 resort to a subpoena, but a subpoena is still an option even
16 for Mr. Koffsky. So that's where we stand, sir.

17 MJ [Col SPATH]: Understand. All right. So more than
18 recognizing, right, it was short notice to have the two DoD
19 civilians show up. I -- recognizing that if they're in D.C.,
20 it shouldn't be that difficult to be here next week. I
21 recognize it was short notice. It isn't short notice for when
22 this was scheduled. I know that. That's been ongoing for a
23 while.

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1 I am more than amenable when we come back in
2 February, the 8th or whatever we're back here, for taking
3 those three witnesses then if we can work through how we're
4 going to get them here. Because, again, I'm not trying to be
5 disruptive to their schedules or the issues. What I'm trying
6 to do, as I've been doing all along, is figure out for the two
7 DoD civilians why they believe their chosen course is
8 appropriate and discuss those issues with them; and for
9 Mr. Koffsky, because he has general oversight over the defense
10 organization, to figure out, since Colonel Aaron undetailed
11 counsel for the defense and is leaving the team, in my view,
12 under-resourced, I want to find out if Mr. Koffsky is engaged
13 and what his plan is to help get this team resourced.

14 So what I'm saying -- probably a long way of saying
15 it -- I'm going to let you all work on it. If they're
16 available next week, great. If they're not, that first week
17 in February is certainly amenable to me while we're down here
18 again.

19 MATC [COL WELLS]: All right, sir. We'll pursue, for
20 Ms. Eliades and Spears, both of those options ----

21 MJ [Col SPATH]: And yes, just keep me updated during the
22 week.

23 MATC [COL WELLS]: ---- during these sessions and also if

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1 have to in February.

2 I would just say from the prosecution standpoint, I
3 don't know if the commission received any word from them that
4 they would not follow your docketing order to be here, other
5 than the submission the day before or the day of their
6 reported appearance to be ordered. It seems they are
7 government employees.

8 We understand Ms. Eliades is not working in D.C.,
9 that she is at home perhaps or some other place. Perhaps
10 she's working on other aspects of the case or for some other
11 mission for MCD0. We do understand Ms. Spears does live in
12 D.C., and we've been receiving automatic updates from her
13 e-mail, so apparently she does have office hours. But there's
14 an aspect here of a communication with MCD0 for government
15 employees to make them available.

16 I understand their explanation may be, well, they've
17 hired civilian attorneys and our position is that they are no
18 longer detailed to the case, but you have said they are not
19 released. You have countermanded the decision of the chief
20 defense counsel and found good cause lacking in this case.

21 It really comes down to they refuse to recognize the
22 power and authority of this commission as it relates to their
23 appearance here, stall, delay, and my personal

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1 characterization is I think they're being evasive.

2 Number two, they failed to adhere to the judgments of
3 this commission about the underlying factual matter that gives
4 them purported or perceived belief that they have good cause
5 not to represent their client. So I can think that we will
6 have continual problems with them unless Mr. Koffsky steps in
7 or Colonel Aaron steps in and gives them the proper order to
8 make them available.

9 Sir, that's all I have.

10 MJ [Col SPATH]: Thank you.

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

12 MJ [Col SPATH]: All right. And I know it feels like we
13 are moving slowly through 207 but, even from last session, I
14 think both sides recognize part of that is because the defense
15 community refuses to provide more counsel and assistance;
16 trying to give Lieutenant Piette ample time, and the record
17 shows, ample time to cross-examine these witnesses over and
18 over.

19 And so that's why the scheduling made sense as we
20 talked through it. And I know it doesn't feel like we are
21 racing through these witnesses. We're not. We're going to
22 continue at that pace for a little while. But the defense
23 community, again, they've got to provide resourcing or,

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1 frankly, it looks more and more tactical and more and more of
2 a strategic decision. That's their choice. Okay.

3 Let's get Mr. Greenberg back in here, if you would,
4 and we'll continue.

5 Mr. Greenberg, just come on in and have a seat,
6 please. I know you're the same witness who was testifying
7 before the lunch recess. Just remember you're still under
8 oath, okay?

9 THE WITNESS: Okay.

10 [Eric Greenberg resumed his seat on the witness stand.]

11 MJ [Col SPATH]: Mr. Miller.

12 TC [MR. MILLER]: Thank you, Your Honor.

13 **DIRECT EXAMINATION CONTINUED**

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

15 Q. Mr. Greenberg, I think when we ended, the next
16 exhibit I wanted to -- you to examine is Prosecution
17 Exhibit 85 for Identification. Has that been placed on the
18 witness box before you ----

19 A. Yes.

20 Q. ---- entered it? All right. You have it before you?

21 A. Yes.

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

23 MJ [Col SPATH]: You may.

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1 Q. Do you recognize that item, sir?

2 A. Yes.

3 Q. Placing on the ELMO Prosecution Exhibit --

4 Exhibit 85A for Identification. Do you recognize -- you
5 recognize those items?

6 A. Yes.

7 Q. Are those the same items contained in Prosecution
8 Exhibit 85?

9 A. Yes.

10 Q. And you seized those items for what reason?

11 A. They appeared to be relevant to an IED.

12 Q. Can you read the Q number in Prosecution Exhibit 85A?

13 A. Q360.

14 Q. Now, if you would, please, look at the Exhibit 3 --
15 excuse me, Prosecution Exhibit 85. And you indicated that you
16 recognized that, sir; is that correct?

17 A. Yes.

18 Q. Did you fill out the evidence tag on it?

19 A. Yes.

20 Q. If you could, please, read into the record the
21 description of the evidence, date and time of recovery, and
22 the location of that recovery.

23 A. "17 October 2000, 10:20 a.m., wire fragments

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1 recovered from the USS COLE." 02-177-2 is the location.

2 Q. All right. And there's a chain of custody on that;
3 is that correct?

4 A. Yes.

5 Q. Chain of custody information. And does that indicate
6 that you, in fact, received that from the COLE on the 17th at
7 10:20?

8 A. Yes.

9 Q. Is there a DK number on that ----

10 A. Yes.

11 Q. ---- Prosecution Exhibit Number 85? And what is that
12 number?

13 A. DK02-109.

14 Q. Is there a 1B number?

15 A. 1B648.

16 Q. All right. And is there a Q number?

17 A. Q360.

18 Q. Is the Q number on the bag the same Q number of
19 Prosecution Exhibit 85A?

20 A. Yes.

21 Q. Is there a evidence receipt with that particular
22 exhibit, Prosecution Exhibit 85 for Identification?

23 A. Yes.

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1 Q. And is your signature contained on that particular
2 chain of custody receipt?

3 A. Yes.

4 Q. And where is it, sir?

5 A. On the top line above the word "Collected."

6 Q. All right. Does it give a date and time?

7 A. 17 October, 10:20 a.m.

8 Q. All right. And that matches what's contained on the
9 exhibit itself, correct, 85?

10 A. Yes.

11 Q. And are you able to associate that chain of custody
12 receipt with the bag -- excuse me -- Prosecution Exhibit 85?

13 A. Yes.

14 Q. And how are you able to do so, sir?

15 A. The DK and 1B numbers are the same.

16 Q. All right. Placing on the ELMO Prosecution
17 Exhibit 85C for Identification, is that an exact duplicate of
18 the chain of custody form to which you've just referred?

19 A. Yes.

20 Q. And again, for the record, your signature is
21 contained above the word "Collected." So that would be the
22 first entry on the form?

23 A. Yes.

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1 Q. Lastly, I'm placing on the ELMO Prosecution
2 Exhibit 85B for Identification. Do you recognize that
3 photograph, sir?

4 A. Yes.

5 Q. Is that a fair and accurate depiction of
6 Prosecution 85 for Identification?

7 A. Yes.

8 TC [MR. MILLER]: Move for the admission, Your Honor, at
9 this time of 85A, B, and C.

10 MJ [Col SPATH]: Thank you.

11 TC [MR. MILLER]: If you can provide the witness, please,
12 with Prosecution Exhibit 86.

13 Q. Do you recognize that, sir?

14 A. Yes.

15 Q. Placing on the ELMO Prosecution Exhibit 86A for
16 Identification. Do you see the items contained in the
17 photograph?

18 A. Yes.

19 Q. If you would look at the bag, 86, please, Exhibit 86
20 for Identification, are those appear to be the same items?

21 A. Appears to be.

22 Q. The reason for seizing these items, sir?

23 A. They appeared to be relevant to an IED.

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1 Q. Can you read the Q number on that particular -- in
2 the photograph, Prosecution Exhibit 86A?

3 A. Q362.

4 Q. Looking at the bag of the evidence itself, do you
5 recognize the evidence tag on it?

6 A. Yes.

7 Q. And does it indicate who seized this particular item?

8 A. Special Agent Marks of NCIS and myself.

9 Q. And does it indicate the date and time and the
10 location of the recovery?

11 A. 17 October, 11:00 a.m.

12 Q. And the chain of custody on that same form?

13 A. Yes. Same date and time.

14 Q. All right. By Special Agent Marks?

15 A. Yes, Special Agent Marks.

16 Q. And again, for the record, you and he were working
17 together seizing items?

18 A. Yes.

19 Q. Does it have a DK number?

20 A. DK02-111.

21 Q. Does 86, Prosecution Exhibit 86 for Identification,
22 have a 1B number?

23 A. 1B650.

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1 Q. And does it have a Q number?

2 A. Q362.

3 Q. Is that number, Q362, the same number contained on
4 Prosecution Exhibit 86A for Identification?

5 A. Yes.

6 Q. Is there a evidence receipt with that particular
7 exhibit?

8 A. Yes.

9 Q. Look at it, if you would, sir. Does it contain your
10 signature?

11 A. No.

12 Q. Does it contain the signature of Special Agent Marks?

13 A. It appears to.

14 Q. And where is that located, sir?

15 A. On the first line above the word "Collected."

16 Q. All right. And are you able to associate this
17 particular chain of custody receipt with the exhibit,
18 Prosecution Exhibit 86?

19 A. Yes.

20 Q. And how are you able to do so?

21 A. The DK and 1B numbers are the same.

22 Q. Placing on the ELM0 Prosecution Exhibit 86C for
23 Identification. Sir, is the Exhibit 86C for Identification an

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1 exact duplicate of the chain of custody receipt you've just
2 described?

3 A. Yes.

4 Q. Again, Special Agent Marks' signature is contained
5 above the word "Collected"?

6 A. It appears to be his signature.

7 Q. Lastly, I'm placing on the ELMO Prosecution
8 Exhibit 86B for Identification. Do you recognize that
9 photograph, sir?

10 A. Yes.

11 Q. Is that -- is 86B for Identification a fair and
12 accurate depiction of Prosecution Exhibit 86?

13 A. Yes.

14 TC [MR. MILLER]: Move for the admission at this time,
15 Your Honor, of 86A, B, and C.

16 MJ [Col SPATH]: Thank you.

17 TC [MR. MILLER]: Please provide the witness with
18 Exhibit 99, please.

19 Q. I'd ask you to take a look at that, if you would,
20 sir. Do you recognize that?

21 A. Yes.

22 Q. That's something that you seized?

23 A. Yes.

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1 Q. Recovered, I guess, is a better word.

2 Placing on the ELM0 Prosecution Exhibit 99A. Do you
3 recognize that item, sir?

4 A. Yes.

5 Q. Is that item the -- appear to be the same item that's
6 contained in Exhibit 99 for Identification?

7 A. Yes.

8 Q. Is there a Q number on Prosecution Exhibit 99A?

9 A. Q286.

10 Q. Looking at the Exhibit 99, Prosecution Exhibit 99 for
11 Identification, do you recognize the evidence tag?

12 A. Yes.

13 Q. Did you complete that?

14 A. Yes.

15 Q. And did it indicate that you seized the item?

16 A. Yes.

17 Q. If you would, please, read into the record the
18 description of the evidence, the date and time of recovery,
19 and the location of that recovery.

20 A. "Red and black fibers from sifted debris recovered on
21 18 October 2000, 4:00 p.m., from the Flight Deck on the Aft
22 Port Side of the USS COLE."

23 Q. And it indicated it was recovered by yourself,

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1 correct?

2 A. Yes.

3 Q. And did you complete the chain of custody form?

4 A. Yes.

5 Q. Does it have an MDK number?

6 A. MDK-116.

7 Q. Does it have a 1B number?

8 A. 1B803.

9 Q. And does it have a Q number?

10 A. Q286.

11 Q. And would that Q number be the same number -- Q
12 number contained in Prosecution Exhibit 99A?

13 A. Yes.

14 Q. Is there a chain of custody form ----

15 A. Yes.

16 Q. ---- with that exhibit?

17 If you would, please, take a look at it. Do you see
18 your signature on that form?

19 A. Yes.

20 Q. And where?

21 A. On the first line above the word "Collected."

22 Q. All right. And are you able to associate that chain
23 of custody form with the exhibit, Prosecution Exhibit 99?

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1 A. Yes.

2 Q. And how are you able to do so, sir?

3 A. The 1B and MDK numbers are the same.

4 Q. Now placing on the ELMO Prosecution Exhibit 99C. Ask
5 you, sir, is that 99C for Identification a exact duplicate of
6 the green sheet that you've just described?

7 A. Yes.

8 Q. And then lastly, placing on the ELMO Prosecution
9 Exhibit 99B. Do you recognize that photo, sir?

10 A. Yes.

11 Q. Is that a -- is 99B a fair and accurate depiction of
12 Prosecution Exhibit 99?

13 A. Yes.

14 TC [MR. MILLER]: Your Honor, I'd move for the admission
15 at this time of Prosecution 99A, B, and C.

16 MJ [Col SPATH]: Thank you.

17 TC [MR. MILLER]: Provide the witness, please, with
18 Prosecution Exhibit 101.

19 Q. Do you recognize that, sir?

20 A. Yes.

21 Q. Is that an item you seized?

22 A. Yes.

23 Q. Placing on the ELMO Prosecution Exhibit 101A, I ask

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1 you to take a look at that, sir, the photograph. The items in
2 the photograph, Prosecution Exhibit 101A, are those the same
3 items contained in the exhibit Prosecution 101 for
4 Identification?

5 A. Yes.

6 Q. Does Prosecution Exhibit 101A have a Q number?

7 A. Q306.

8 Q. If you would, please, look at the exhibit itself,
9 Prosecution Exhibit 101. Did you fill out the evidence tag,
10 sir?

11 A. Yes.

12 Q. All right. And if you could, please, indicate a --
13 the description of the evidence, time and date of recovery,
14 and where it was recovered.

15 A. "Red and black fibers from sifted debris, recovered
16 19 October 10:00 -- 19 October 2000, 10:00 a.m. from the
17 Barbette Deck of the USS COLE."

18 Q. And then there's a chain of custody form. Did you
19 complete that yourself?

20 A. Yes.

21 Q. All right. And it contains your signature?

22 A. Yes.

23 Q. And the reason you took the black and red fibers?

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1 A. They appeared to be relevant to the boat.

2 Q. Is there an MDK number on that exhibit, Prosecution
3 Exhibit 101?

4 A. MDK-137.

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

6 A. 1B823.

7 Q. And is ---- I think this -- does it have a Q number?

8 A. Q306.

9 Q. Is that Q number the same Q number as in Prosecution
10 Exhibit 101A?

11 A. Yes.

12 Q. Is there an evidence tag associated or attached to
13 the exhibit?

14 A. Yes.

15 Q. Do you see your signature on it?

16 A. Yes.

17 Q. And where is your signature?

18 A. On the first line above the word "Collected."

19 Q. And it indicates it was collected on the 19th of
20 October at 10:00 a.m.?

21 A. Yes.

22 Q. Are you able to associate this particular form with
23 the Exhibit 101, Prosecution 101A?

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1 A. Yes.

2 Q. And how are you able to do so?

3 A. The MDK and 1B numbers are the same.

4 Q. Placing on the ELMO Prosecution Exhibit 101C. Sir,
5 is that an exact duplicate of the green sheet or chain of
6 custody form that you've just described?

7 A. Yes.

8 Q. And again, for the record, your name is on the top
9 line above the word "Collected," correct?

10 A. Yes.

11 Q. Placing on the ELMO Prosecution Exhibit 101B. Do you
12 recognize that photograph, sir?

13 A. Yes.

14 Q. And for the record, is that photograph, Prosecution
15 Exhibit 101B for Identification, an accurate -- fair and
16 accurate depiction of Prosecution Exhibit 101?

17 A. Yes.

18 TC [MR. MILLER]: Move for the admission, Your Honor, of
19 Prosecution Exhibits 101A, B, and C.

20 MJ [Col SPATH]: Thank you.

21 TC [MR. MILLER]: Please provide the witness with
22 Prosecution Exhibit 119 for Identification.

23 Q. Do you recognize that, sir?

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1 A. Yes.

2 Q. Is that an item that you seized?

3 A. Yes.

4 Q. Placing on the ELM0 Prosecution Exhibit 119A for
5 Identification, sir. If you would, looking at that item and,
6 if you would, look at Prosecution Exhibit 119, does the item
7 in 119A appear to be the same ----

8 A. Yes.

9 Q. ---- item in Prosecution Exhibit 119?

10 A. Yes.

11 Q. Does the photograph, Prosecution Exhibit 119A, have a
12 Q number?

13 A. Yes.

14 Q. Are you able to read that?

15 A. Q294.

16 Q. If you would please take a look at the exhibit
17 itself, Prosecution Exhibit 119 for Identification. There is
18 an evidence form or tag in there. Did you complete that?

19 A. Yes.

20 Q. It's in your handwriting?

21 A. Yes.

22 Q. And does it indicate a date and time of recovery and
23 the location of the recovery?

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1 A. Yes.

2 Q. If you could, please, read those into the record.

3 A. "18 October 2000, 3:15 p.m., recovered from the
4 Flight Deck of the USS COLE."

5 Q. And it says "recovered by Greenberg"; is that
6 correct?

7 A. Yes.

8 Q. And then there is a chain of custody portion?

9 A. Yes.

10 Q. And you completed that?

11 A. Yes.

12 Q. Is there an MDK number on that exhibit?

13 A. MDK-119.

14 Q. A 1B number?

15 A. 1B806.

16 Q. And is there a Q number on it?

17 A. Q294.

18 Q. And is the Q number, Q294, that's contained on the
19 exhibit, Prosecution Exhibit 119 for Identification, the same
20 number contained on Prosecution Exhibit 119A?

21 A. Yes.

22 Q. If you would, is there an evidence sheet, a green
23 sheet, attached to that exhibit?

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1 A. Yes.

2 Q. If you would, please, take a look at it. Is your
3 signature contained on that sheet?

4 A. Yes.

5 Q. And where is it contained? Where is it found?

6 A. On the first line above the word "Collected."

7 Q. It indicates a date of 10/18 at 3:15, correct?

8 A. Yes.

9 Q. Are you able to associate this particular -- or that
10 particular chain of custody form with the exhibit, Prosecution
11 Exhibit 119?

12 A. Yes.

13 Q. How are you able to do that, sir?

14 A. 1B and MDK numbers are the same.

15 Q. Placing on the ELM0 Prosecution Exhibit 119C for
16 Identification. Is 119C for Identification an exact duplicate
17 of the chain of custody form which you've just described?

18 A. Yes.

19 Q. Lastly, I'm placing Prosecution Exhibit 119B on the
20 ELM0. Take a look at that photograph, sir. Do you recognize
21 that?

22 A. Yes.

23 Q. Is that Prosecution Exhibit 119B for Identification a

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1 fair and accurate depiction of Prosecution Exhibit 119?

2 A. Yes.

3 TC [MR. MILLER]: Move for the admission, Your Honor, of
4 Prosecution Exhibits A -- 119A, B, and C.

5 MJ [Col SPATH]: Thank you.

6 TC [MR. MILLER]: Please provide the witness with
7 Prosecution Exhibit 120.

8 Q. Do you recognize that, sir?

9 A. Yes.

10 Q. Is that something -- is that an item that you seized?

11 A. Yes.

12 Q. If you would, please, take a look at the ELMO -- or
13 the monitor in front of you. Prosecution Exhibit 120A for
14 Identification is on the monitor. Do you recognize the item
15 in there?

16 A. Yes.

17 Q. All right. Does it appear to be the same item that's
18 contained in the exhibit, Prosecution 120?

19 A. Yes.

20 Q. Does the exhibit, Prosecution Exhibit 120A for
21 Identification, have a Q number?

22 A. Q296.

23 Q. If you would look, please, at the exhibit,

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1 Prosecution Exhibit 120 for Identification. There is an
2 evidence tag. Did you complete that evidence tag?

3 A. Yes.

4 Q. And I take it for all these evidence tags, you did
5 this at or near the time that you seized the items, correct?

6 A. Yes.

7 Q. The evidence tag itself indicates a description of
8 the item, the date and time of recovery, and the place of
9 recovery. Could you read that into the record, please.

10 A. "Miscellaneous debris recovered on 18 October 2000,
11 4:10 p.m. from the Starboard Half Deck of the USS COLE."

12 Q. There is a chain of custody form, correct?

13 A. Yes.

14 Q. And you completed that also?

15 A. Yes.

16 Q. If you would, please, does it have an MDK number?

17 A. MDK-133.

18 Q. Does Prosecution Exhibit for Identification 120 have
19 a Q number?

20 A. Q296.

21 Q. And would that Q number be the same Q number that's
22 on Prosecution Exhibit Number 120A for Identification?

23 A. Yes.

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

2 A. 1B813.

3 Q. Is there a chain of custody form attached to the
4 exhibit?

5 A. Yes.

6 Q. If you could, take a look at it, please. Do you see
7 your signature on that form?

8 A. Yes.

9 Q. And where is your signature?

10 A. On the first line above the word "Collected."

11 Q. Indicating that it was collected on the 19th of
12 October 2000 at 10:00 a.m., correct?

13 A. Yes.

14 Q. Are you able to associate this particular green sheet
15 or chain of custody form with Prosecution Exhibit 120?

16 A. Yes.

17 Q. How are you able to do that?

18 A. The 1B and MDK numbers are the same.

19 Q. Placing on the ELM0 Prosecution Exhibit 120C for
20 Identification. Sir, is that an exact duplicate of the green
21 sheet, chain of custody form you have just described?

22 A. Yes.

23 Q. Again, for the record, your signature is on the very

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1 top line above the word "Collected"?

2 A. Yes.

3 Q. Placing on the ELM0 Prosecution Exhibit 120B for
4 Identification. Do you recognize that photograph, sir?

5 A. Yes.

6 Q. Got a little bit -- is the photograph in Prosecution
7 Exhibit 120B, is that a fair and accurate depiction of
8 Prosecution Exhibit 120?

9 A. Yes.

10 TC [MR. MILLER]: Your Honor, I'd move for the admission
11 of Prosecution Exhibits A, B, and -- Prosecution Exhibit 120A,
12 B, and C.

13 MJ [Col SPATH]: Thank you.

14 TC [MR. MILLER]: If we could please provide the witness
15 with Prosecution Exhibit 123.

16 Q. And I'm going to ask you to speak up because of
17 the ----

18 A. All right.

19 Q. ---- the rain.

20 Do you recognize Prosecution Exhibit 123?

21 A. Yes.

22 Q. Is that an item that you seized?

23 A. Yes.

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1 Q. Placing on the ELM0 photograph Prosecution
2 Exhibit 123A for Identification, do you recognize the item or
3 the evidence contained in that photograph?

4 A. Yes.

5 Q. If you would, please, take a look at the exhibit,
6 Prosecution Exhibit 123. Does the items in the photograph,
7 Prosecution 123A for Identification, does it appear to be the
8 same items contained in the actual Exhibit 123?

9 A. Yes.

10 Q. All right. See if you can read that. Can you read
11 the Q number on that?

12 A. Q384.

13 Q. All right. And that's the Q number on Prosecution
14 Exhibit 123A, correct?

15 A. Yes.

16 Q. If you'd look at the exhibit itself, Prosecution
17 Exhibit 123, did you complete the evidence form on that?

18 A. Most of it.

19 Q. All right. There's some big writing that says
20 "Starboard-02" and a date and time. That is not your
21 handwriting, correct?

22 A. Correct, that is not my handwriting.

23 Q. The smaller handwriting on the form, is that your

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1 handwriting?

2 A. Yes.

3 Q. If you could, does it indicate by whom it was
4 recovered?

5 A. Yes.

6 Q. And is that your name?

7 A. That is my name.

8 Q. And did you fill that in?

9 A. Yes.

10 Q. Did you fill the chain of custody form?

11 A. Yes.

12 Q. All right. And what does it indicate?

13 A. "Recovered 19 October 2000 at 10:00 a.m."

14 Q. And is the description contained in the description
15 section, did you fill that out?

16 A. Yes.

17 Q. And what does it indicate?

18 A. "Miscellaneous debris."

19 Q. Does the Exhibit 123 for Identification have a DK
20 number?

21 A. DK02-131.

22 Q. Does it have a Q number?

23 A. Q384.

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1 Q. And is that the same Q number contained on
2 Prosecution Exhibit 123A?

3 A. Yes.

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

5 A. 1B664.

6 Q. Now, if you would, please, is there an evidence
7 receipt or a green sheet chain of custody form with it?

8 A. Yes.

9 Q. If you'd take a look at that, sir, please. Is your
10 signature contained anywhere on that form?

11 A. Yes.

12 Q. And where is that, sir?

13 A. The first line above the word "Collected."

14 Q. Indicating it was collected on the 16th of October at
15 4:00 p.m., correct?

16 A. Yes.

17 Q. Are you able to associate this particular evidence
18 receipt with the -- with -- that particular evidence receipt
19 with the exhibit, Prosecution Exhibit 123?

20 A. Yes.

21 Q. And how are you able to do that, sir?

22 A. The 1B and MDK numbers are the same.

23 Q. I'm now placing on the ELMO Prosecution Exhibit 123C.

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1 Sir, is 123C for Identification an exact duplicate of the
2 green sheet which you have just described?

3 A. Yes.

4 Q. And again, for the record, on the very first line
5 under the word "Reason Collected," your signature appears to
6 be above that, correct?

7 A. Yes.

8 Q. Placing on the ELM0 Prosecution Exhibit 123B, do you
9 recognize that photograph, sir?

10 A. Yes.

11 Q. And is Prosecution Exhibit 123B for Identification a
12 fair and accurate depiction of Prosecution Exhibit 123?

13 A. Yes.

14 TC [MR. MILLER]: 125, please. Provide the witness with
15 125.

16 And I would move, Your Honor, for admission of
17 Prosecution Exhibit 123A, B, and C.

18 MJ [Col SPATH]: Thank you.

19 Q. Has Prosecution Exhibit 125 for Identification been
20 placed before you?

21 A. Yes.

22 Q. And, Mr. Greenberg, do you recognize that, sir?

23 A. Yes.

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1 Q. Is that something that you seized?

2 A. Yes.

3 Q. Placing on the ELM0 a photograph, Prosecution

4 Exhibit 125A. Do you recognize the items in that photograph?

5 A. Yes.

6 Q. If you would, sir, are those the same items that are
7 contained in the exhibit itself, Prosecution 125?

8 A. Yes.

9 Q. Do they appear to be the same items?

10 A. Appear to be the same.

11 Q. And is there a Q number in the photograph,
12 Prosecution Exhibit 125A?

13 A. Yes.

14 Q. And what is that?

15 A. Zoom in a little closer. Q484.

16 Q. All right. If you look at the exhibit itself,
17 Prosecution Exhibit 125A for Identification, there's an
18 evidence tag on it. Did you complete that, sir?

19 A. Yes.

20 Q. And did you complete the section "Description, Date
21 of Recovery, and Location of Recovery"?

22 A. Yes.

23 Q. Would you please read into the record what the -- the

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1 description, the date and time, and the location.

2 A. "Debris with red and black fibers recovered 18
3 October 2000, 2:30 p.m., from 05-Port of the USS COLE."

4 Q. And the chain of custody portion, did you complete
5 that?

6 A. Yes.

7 Q. It also indicates in the description that it was
8 sifted debris, correct?

9 A. Yes.

10 Q. So you would have collected that at the sifting
11 station?

12 A. Yes.

13 Q. Is there a Q number on that exhibit, Prosecution
14 Exhibit 125?

15 A. Q484.

16 Q. Is that the same number -- Q number contained on --
17 is the same -- is it the same Q number that's contained on
18 Prosecution Exhibit 125A?

19 A. Yes.

20 Q. 125, Prosecution Exhibit 125, does it have a 1B
21 number?

22 A. 1B558.

23 Q. And does it have a DK number?

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1 A. DK05-133.

2 Q. Now, sir, is there a chain of custody or green
3 sheet ----

4 A. Yes.

5 Q. ---- attached to that exhibit?

6 If you would, sir, take a look at it. Does it
7 contain your signature, sir?

8 A. Yes.

9 Q. And where does it contain your signature?

10 A. On the first line above the word "Collected."

11 Q. And it gives the date and time of the collection,
12 correct?

13 A. Yes.

14 Q. Are you able to associate that item -- this -- that
15 form, that particular form, with Prosecution Exhibit 125?

16 A. Yes.

17 Q. How are you able to do that, sir?

18 A. The 1B and DK numbers are the same.

19 Q. Placing on the ELM0 Prosecution Exhibit 125C. Sir,
20 is that exhibit, Prosecution Exhibit 125C for Identification,
21 an exact duplicate of the chain of custody form that you have
22 just described?

23 A. Yes.

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1 Q. Placing on the ELM0 Prosecution Exhibit 125B. Do you
2 recognize that, sir?

3 A. Yes.

4 Q. And is that exhibit, Prosecution Exhibit 125B for
5 Identification, a fair and accurate depiction of Prosecution
6 Exhibit 125?

7 A. Yes.

8 TC [MR. MILLER]: Move for the admission, Your Honor, of
9 Prosecution Exhibits 125A, B, and C.

10 MJ [Col SPATH]: Thank you.

11 TC [MR. MILLER]: 126, please.

12 Q. Do you recognize that, sir?

13 A. Yes.

14 Q. Is that an item you seized?

15 A. Yes.

16 Q. If you would, please, take a look on the -- at the
17 monitor in front of you. I've placed on the ELM0 Prosecution
18 Exhibit 126A. Do you recognize the items contained in the
19 photograph?

20 A. Yes.

21 Q. Looking at the exhibit itself, Prosecution
22 Exhibit 126 for Identification, does it appear that it's the
23 same items contained in the -- the items in the photograph are

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1 the same items in Prosecution Exhibit 126?

2 A. Yes.

3 Q. There's a Q number on that photograph, Prosecution
4 Exhibit 126A; is that correct?

5 A. Yes.

6 Q. Could you read that, please, into the record?

7 A. Q512.

8 Q. Now, looking at Prosecution Exhibit 126, there is an
9 evidence form with it, correct?

10 A. Yes.

11 Q. Did you complete that, sir?

12 A. Yes.

13 Q. Does it give a description and location of the
14 recovery and the time and date of the recovery?

15 A. Yes.

16 Q. Would you read that into the record, please.

17 A. "Miscellaneous debris, recovered 19 October 2000,
18 10:00 a.m., from the 06-Starboard of the USS COLE."

19 Q. Now, does that particular exhibit, 126, have a DK
20 number?

21 A. DK06-106.

22 Q. Does it have a 1B number?

23 A. 1B730.

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1 Q. And does it have a Q number?

2 A. Q -- Q512.

3 Q. All right. And the Q number on the exhibit itself,
4 Prosecution 126 is, in fact, the same number contained on --
5 Q number contained on Prosecution Exhibit 126A, correct?

6 A. Yes.

7 Q. Is there a chain of custody form attached to that
8 exhibit?

9 A. Yes.

10 Q. If you would, please, take a look at it. Does your
11 name or your signature -- does your signature, excuse me,
12 appear anywhere on that form?

13 A. On the first line above the word "Collected."

14 Q. Are you able to associate that form with the exhibit,
15 Prosecution Exhibit 126?

16 A. Yes.

17 Q. And how are you able to do that?

18 A. The 1B and DK numbers are the same.

19 Q. Placing on the ELM0 Prosecution Exhibit 126C. Is
20 Prosecution Exhibit 126C for Identification an exact duplicate
21 of the chain of custody form that you have just described?

22 A. Yes.

23 Q. Placing on the ELM0 Prosecution Exhibit 126B. Do you

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1 recognize that photograph?

2 A. Yes.

3 Q. And is 126B for Identification a fair and accurate
4 depiction of Prosecution Exhibit 126?

5 A. Yes.

6 TC [MR. MILLER]: Move for the admission, Your Honor, of
7 126A, B, and C.

8 MJ [Col SPATH]: Thank you.

9 TC [MR. MILLER]: Provide him with -- please provide the
10 witness with Prosecution Exhibit 130 for Identification.

11 Q. If you would, sir, take a look at that. Do you
12 recognize it?

13 A. Yes.

14 Q. Is it something you seized?

15 A. Yes.

16 Q. Placing on the ELMO Prosecution Exhibit 130A. Do you
17 recognize those items, sir?

18 A. Yes.

19 Q. And if you would, look at the exhibit itself,
20 Prosecution 130. Are the items contained in the photograph,
21 Prosecution Exhibit 130A -- do they appear to be the same
22 items contained in the actual exhibit?

23 A. Yes.

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1 Q. Does the exhibit, Prosecution Exhibit 130A, have a
2 Q number?

3 A. Yes.

4 Q. Can you read that?

5 A. Zoom in a little more.

6 Q. You bet you.

7 A. Q297.

8 Q. Now, if you would, please, look at the exhibit
9 itself, Prosecution 130. I think you indicated you recognize
10 it, correct?

11 A. Yes.

12 Q. And that you seized it?

13 A. Yes.

14 Q. There is an evidence form contained with it?

15 A. Yes.

16 Q. And did you fill out that evidence form?

17 A. Yes.

18 Q. And if you could, please, read into the record the
19 date and time of the recovery, the location, and the
20 description that you gave.

21 A. "Miscellaneous debris, recovered 19 October 2000,
22 10:00 a.m. from the Barbette Deck of the USS COLE.

23 Q. When they say Barbette Deck, what is a Barbette Deck?

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1 A. I don't remember.

2 Q. Okay. And as to the chain of custody, the date and
3 time, did you fill that out?

4 A. Yes.

5 Q. All right. And did you -- does it contain your
6 signature?

7 A. Yes.

8 Q. Is there a chain of custody form associated with
9 it ----

10 A. Yes.

11 Q. ---- or attached to it?

12 Would you take a look at that, sir. And does that
13 chain of custody form contain your signature?

14 A. Yes.

15 Q. And where does it contain your signature?

16 A. On the first line above the word "Collected."

17 Q. I think I may have skipped a step here. Going back
18 to Prosecution Exhibit 130 itself, does it have a 1B number?

19 A. 1B809.

20 Q. And an MDK number?

21 A. MDK-122.

22 Q. And a Q number?

23 A. Q297.

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1 Q. All right. And that Q number would be the same
2 Q number contained on Prosecution Exhibit 130A for
3 Identification, correct?

4 A. Yes.

5 Q. All right. Now, again, going back to the form, you
6 communicated that your signature was contained on the first
7 line above the word "Collected," correct?

8 A. Yes.

9 Q. Now, are you able to associate that form with the
10 exhibit, Prosecution Exhibit 130?

11 A. Yes.

12 Q. And how are you able to do that, sir?

13 A. The MDK and 1B numbers are the same.

14 Q. Placing on the ELMO Prosecution Exhibit 130C. Sir,
15 is 130C an exact duplicate of the chain of custody or green
16 sheet that you've just described?

17 A. Yes.

18 Q. Again, for the record, it indicates that your
19 signature is above the word "Collected"?

20 A. Yes.

21 Q. Placing on the ELMO Prosecution Exhibit 130B for
22 Identification. Do you recognize that, sir?

23 A. Yes.

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1 Q. Is Prosecution 130B for Identification a fair and
2 accurate depiction of Prosecution Exhibit 130?

3 A. Yes.

4 TC [MR. MILLER]: Move for the admission, Your Honor, of
5 Prosecution Exhibits 130A, 130B, and 130C.

6 MJ [Col SPATH]: Thank you.

7 TC [MR. MILLER]: Provide the witness, please, with 137.

8 Q. Do you recognize that item, sir?

9 A. Yes.

10 Q. I'm going to place on the ELMO at this time
11 Prosecution Exhibit 137A and ask you to take a look at the
12 monitor. Do you recognize that item?

13 A. Yes.

14 Q. If you could, please, look at the exhibit itself,
15 Prosecution Exhibit 137. Does the item depicted in
16 Prosecution Exhibit 137A for Identification appear to be the
17 same item contained in Prosecution Exhibit 137?

18 A. Yes.

19 Q. Now, the Prosecution Exhibit 137A has a Q number; is
20 that correct?

21 A. Yes.

22 Q. Could you read that, please.

23 A. Q359.

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1 Q. If you would, please, look at Prosecution
2 Exhibit 137. Do you recognize the evidence tag on the
3 evidence bag?

4 A. Yes.

5 Q. Did you complete that, sir?

6 A. Yes.

7 Q. And does it indicate that there's a description of
8 the evidence, a date and time of recovery and location; is
9 that correct?

10 A. Yes.

11 Q. Read that into the record, please.

12 A. "Fiberglass fragment with oil, recovered 17 October
13 2000 at 10:20 a.m. from 02-177-2 of the USS COLE."

14 Q. And it indicates that you -- you filled out the chain
15 of custody form?

16 A. Yes.

17 Q. And you signed your name indicating that you seized
18 it, correct?

19 A. Yes.

20 Q. All right. Is there a Q number on that exhibit,
21 Prosecution Exhibit 137?

22 A. Q359.

23 Q. And is that the same Q number contained on

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1 Prosecution Exhibit 137A for Identification?

2 A. Yes.

3 Q. As to the exhibit, again, at 137, does it have a 1B
4 number?

5 A. 1B647.

6 Q. And does it have a DK number?

7 A. DK02-108.

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

9 A. Yes.

10 Q. Would you take a look at that, sir, please. Does
11 that contain your signature ----

12 A. Yes.

13 Q. ---- that form?

14 And where is your signature located?

15 A. On the first line above the word "Collected."

16 Q. Are you able to associate that form with the exhibit,
17 Prosecution Exhibit 137?

18 A. Yes.

19 Q. And how are you able to do that, sir?

20 A. The DK and 1B numbers are the same.

21 Q. I'm placing on the ELM0 Prosecution Exhibit 137C.

22 Sir, is Prosecution Exhibit 137C for Identification an exact
23 duplicate of the form that you've just described?

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1 A. Yes.

2 Q. And for the record, again, in Prosecution
3 Exhibit 137C for Identification, your signature is on the top
4 line above the word "Collected," correct?

5 A. Yes.

6 Q. Placing on the ELM0 Prosecution Exhibit 137B for
7 Identification. Do you recognize that, sir?

8 A. Yes.

9 Q. And is 137B for Identification a fair and accurate
10 depiction of Prosecution Exhibit 137?

11 A. Yes.

12 TC [MR. MILLER]: Move for the admission at this time,
13 Your Honor, of Prosecution Exhibits 137A, B, and C.

14 MJ [Col SPATH]: Thank you.

15 TC [MR. MILLER]: Provide the witness, please, with
16 Prosecution Exhibit 138.

17 Q. I ask you to take a look at that, sir. Do you
18 recognize it?

19 A. Yes.

20 Q. Is this something that you seized?

21 A. Yes.

22 Q. Placing on the ELM0 Prosecution Exhibit 138A for
23 Identification. Do you recognize the item, sir?

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1 A. Yes.

2 Q. If you would, please, look at the Exhibit 138 for
3 Identification. Does the item in the photograph, Prosecution
4 Exhibit 138A for Identification, appear to be the same item
5 contained in the exhibit itself ----

6 A. Yes.

7 Q. ---- Prosecution Exhibit 138?

8 A. Yes.

9 Q. There is a Q number in the exhibit, Prosecution 138A
10 for Identification. Can you read that?

11 A. Q364.

12 Q. Looking at the exhibit itself, sir, Prosecution
13 Exhibit 138, there's an evidence tag on it. Did you complete
14 that, sir?

15 A. Yes.

16 Q. It indicates -- there's a description of the
17 evidence, the date and time of recovery, and the location?

18 A. Yes.

19 Q. Can you please read that into the record.

20 A. "Items recovered from a drain on 17 October 2000,
21 10:20 a.m., from 02-117-2 forward of the USS COLE."

22 Q. And it indicates that you recovered it, correct?

23 A. Yes.

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1 Q. And there's a chain of custody form on there?

2 A. Yes.

3 Q. You completed that?

4 A. Yes.

5 Q. Is there is a DK number on the exhibit?

6 A. DK02-114.

7 Q. All right. And on Prosecution Exhibit 138, is there
8 also a Q number?

9 A. Q364.

10 Q. All right. And the Q number is the same -- that
11 Q number on the Exhibit 138, is that the same Q number that's
12 on Prosecution Exhibit 138A for Identification?

13 A. Yes.

14 Q. Is there is 1B number?

15 A. 1B652.

16 Q. Is there a chain of custody form, green sheet,
17 attached to that ----

18 A. Yes.

19 Q. ---- exhibit? Take a look at that, sir, please. Is
20 your signature contained on that form?

21 A. Yes.

22 Q. And where is it contained on that form?

23 A. On the first line above the word "Collected."

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1 Q. Are you able to associate that particular green sheet
2 or chain of custody form with the exhibit, Prosecution
3 Exhibit 138 for Identification?

4 A. Yes.

5 Q. And how are you able to do so, sir?

6 A. The 1B and DK numbers are the same.

7 Q. Placing on the ELMO Prosecution Exhibit 138C and ask
8 you, is that Exhibit 138C for Identification an exact
9 duplicate of the chain of custody form you have just
10 described?

11 A. Yes.

12 Q. I'm placing on the ELMO Prosecution Exhibit 138B for
13 Identification. And do you recognize that photograph?

14 A. Yes.

15 Q. Is 138B, Prosecution Exhibit 138B for Identification,
16 a fair and accurate depiction of Prosecution Exhibit 138?

17 A. Yes.

18 TC [MR. MILLER]: Move for the admission, Your Honor, of
19 Prosecution Exhibit 138A, B, and C.

20 MJ [Col SPATH]: Thank you.

21 TC [MR. MILLER]: Provide the witness, please, with 139,
22 Prosecution Exhibit 139 for Identification.

23 Q. Sir, do you recognize that exhibit?

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1 A. Yes.

2 Q. Did you seize or collect that exhibit?

3 A. Yes.

4 Q. If you would, please, look at the photograph,

5 Prosecution Exhibit -- Prosecution Exhibit 139A for

6 Identification. Do you recognize that, sir?

7 A. Yes.

8 Q. Is the -- if you would look now at the Prosecution

9 Exhibit 139 for Identification, does the item depicted in the

10 picture, Prosecution Exhibit 139A, appear to be the same item

11 contained in Prosecution Exhibit 139?

12 A. Yes.

13 Q. All right. If you would look at the bag itself,

14 Prosecution Exhibit 139, there's a chain of custody -- or,

15 excuse me, there's an evidence recovery form on that. Did you

16 complete that, sir?

17 A. Yes.

18 Q. And there's a description, a date and time of

19 recovery, location. Could you please read that into the

20 record.

21 A. "Miscellaneous fragments recovered 17 October 2000,

22 10:20 a.m., from 02-117-2 of the USS COLE."

23 Q. And does that exhibit, Prosecution Exhibit 139, have

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1 a DK number?

2 A. DK02-104.

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

4 A. 1B643.

5 Q. Is there a chain of custody form attached to that
6 exhibit?

7 A. Yes.

8 Q. Would you look at it, please. Does your signature
9 appear on that form?

10 A. Yes.

11 Q. Where, sir?

12 A. On the first line above the word "Collected."

13 Q. Are you able to associate that particular chain of
14 custody form with the exhibit, Prosecution Exhibit 139?

15 A. Yes.

16 Q. And how are you able to do so?

17 A. The DK and 1B numbers are the same.

18 Q. Placing on the ELM0 Prosecution Exhibit 139C and ask
19 you if Prosecution Exhibit 139C for Identification is an exact
20 duplicate of the chain of custody form you have just
21 described.

22 A. Yes.

23 Q. I'm also placing on the ELM0 Prosecution

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1 Exhibit 139B, ask you if you recognize that photograph.

2 A. Yes.

3 Q. And is that photograph, Prosecution Exhibit 139B for
4 Identification, a fair and accurate depiction of Prosecution
5 Exhibit 139 for Identification?

6 A. Yes.

7 TC [MR. MILLER]: 153.

8 Before we do that, Your Honor, I'd like to move for
9 the admission of Prosecution Exhibits 139A, B, and C.

10 MJ [Col SPATH]: Thank you.

11 TC [MR. MILLER]: Provide the witness with Prosecution
12 Exhibit 153.

13 Q. Is 153 before you, sir?

14 A. Yes, yes, yes.

15 Q. Okay. All right. Did you seize that item ----

16 A. Yes.

17 Q. ---- collect it? Sorry. Your answer?

18 A. Yes.

19 Q. All right. Placing on the ELM0 Prosecution
20 Exhibit 153A. Do you recognize that item contained in that
21 photograph?

22 A. Yes.

23 Q. If you would, please, look at Prosecution

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1 Exhibit 153. Do they appear to be -- does the item contained
2 in 153 for Identification appear to be the same item contained
3 in the photograph, Prosecution Exhibit 153A for
4 Identification?

5 A. Yes.

6 Q. Does 153A for Identification have a Q number?

7 A. Q285.

8 Q. If you would, please, look at the exhibit itself,
9 Prosecution Exhibit 153. There's an evidence form on there.
10 Did you complete that form?

11 A. Yes.

12 Q. And does it provide a description, a date and time of
13 recovery, and location of recovery?

14 A. Yes.

15 Q. All right. Could you please read that into the
16 record, sir.

17 A. "Unknown fragments from" -- "unknown fragment from
18 sifted debris, recovered 18 October 2000, at 4:10 p.m., from
19 the Starboard Half Deck of the USS COLE."

20 Q. And it indicates recovered by yourself, correct?

21 A. Yes.

22 Q. There's a chain of custody portion ----

23 A. Yes.

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1 Q. ---- is that correct?

2 And did you complete that portion?

3 A. Yes.

4 Q. All right. Is there a Q number on the exhibit,
5 Prosecution Exhibit 153?

6 A. Q285.

7 Q. And does that match the number, the Q number on
8 Prosecution Exhibit 153A for Identification?

9 A. Yes.

10 Q. Is there a MDK number on it?

11 A. MDK-117.

12 Q. And is there a 1B number?

13 A. 1B804.

14 Q. If you would, please, is there a evidence receipt
15 attached to that exhibit?

16 A. Yes.

17 Q. Take a look at that. Sir, is your signature
18 contained anywhere on that form?

19 A. On the first line above the word "Collected."

20 Q. And it gives a date and time of the collection,
21 correct?

22 A. Yes.

23 Q. Are you able to associate that form with the exhibit,

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1 Prosecution Exhibit 153?

2 A. Yes.

3 Q. And how are you able to do so, sir?

4 A. The 1B and MDK numbers are the same.

5 Q. Placing on the ELMO Prosecution Exhibit 153C for
6 Identification. Sir, is 153C for Identification an exact
7 duplicate of the form you have just described?

8 A. Yes.

9 Q. Placing on the ELMO Prosecution Exhibit 153B for
10 Identification. Do you recognize that photograph, sir?

11 A. Yes.

12 Q. All right. And is that photograph, 153B for
13 Identification, a fair and accurate depiction of Prosecution
14 Exhibit 153 for Identification?

15 A. Yes.

16 TC [MR. MILLER]: Your Honor, the government would move at
17 this time for the admission of Prosecution Exhibits 153A, B,
18 and C for Identification.

19 MJ [Col SPATH]: Thank you.

20 TC [MR. MILLER]: Your Honor, at this time, I'm going to
21 move on to the items in the 330 -- I think 336, is it?

22 MJ [Col SPATH]: The -- that we discussed earlier? 336.

23 Q. Before I do that, just a couple of questions. As to

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1 any of those exhibits, do you have any reason to believe that
2 they were altered or changed in any way?

3 A. No.

4 Q. Now, how long did you remain, sir, in Yemen?

5 A. 12 to 14 days.

6 Q. And at some point, were you then asked to transport
7 some evidence back to the United States?

8 A. Yes.

9 Q. And were you provided with forms to complete?

10 A. I don't remember.

11 Q. By forms, I mean would you have signed these green
12 sheets which we have talked about all morning?

13 A. Yes.

14 Q. You didn't examine these in any way, correct?

15 A. No.

16 Q. You didn't open them, correct?

17 A. No.

18 Q. When you received them, were they fully packaged?

19 A. Yes.

20 Q. And I'm going to provide you -- I'm going to show you
21 Prosecution Exhibit 506C for Identification. Sir, do you
22 recognize your signature on that form?

23 A. Yes.

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1 Q. All right. And where is your signature on that form?

2 A. On the second line.

3 Q. All right. In fact, it looks like after your signed
4 name, it has the name Eric Greenberg; is that correct?

5 A. Correct.

6 Q. And, sir, would you have taken possession of those
7 items from the person above you on the signature line?

8 A. Yes.

9 Q. And what would you have done with that item,
10 Prosecution Exhibit 506?

11 A. I would have taken possession of it for
12 transportation to the United States.

13 Q. And as a member of the lab, there would be no further
14 signatures after you; is that correct?

15 A. No.

16 Q. All right. No, there would be no further signatures?

17 A. I'm sorry. Ask the question again.

18 Q. My question is: Because you were a member of the
19 lab, would there be need for you to transfer it to anybody
20 before it went to the lab?

21 A. No.

22 Q. I'm going to show you Prosecution Exhibit 507C. Do
23 you recognize your signature on 507C, sir?

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1 A. Yes.

2 Q. All right. And if you could, please, indicate for
3 the record where on 507C your name is written.

4 A. On the second line.

5 Q. Again, it looks like you received it from the same
6 person, correct?

7 A. Yes.

8 Q. And it was for transportation to the lab?

9 A. Yes.

10 Q. And no need for any additional signatures after you?

11 A. Correct.

12 Q. Showing you Prosecution Exhibit 508E. Again, chain
13 of custody form, correct?

14 A. Correct.

15 Q. And is your signature contained on that form?

16 A. Yes.

17 Q. Where is it contained?

18 A. On the second line.

19 Q. Again, it appears you got it from the same person
20 about the same time?

21 A. Yes.

22 Q. For transportation to the lab?

23 A. Correct.

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1 Q. Again, no need for any signatures subsequent to
2 yours?

3 A. Correct.

4 Q. Prosecution 509C for Identification, if you would
5 take a look at that, sir. Again, a chain of custody form,
6 correct?

7 A. Correct.

8 Q. Is your signature contained on the exhibit,
9 Prosecution Exhibit 509C for Identification?

10 A. Yes.

11 Q. And where is that, sir?

12 A. On the second line.

13 Q. Again, it appears you got it from the same person at
14 the same time ----

15 A. Yes.

16 Q. ---- as the other forms that we've spoken about?

17 And your purpose in receiving the item?

18 A. For transportation to the lab.

19 Q. And in 905C [**sic**], again, there would be no need for
20 signatures after yours?

21 A. Correct.

22 Q. Showing you Prosecution Exhibit 510G for
23 Identification, again, a chain of custody form. Do you

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1 recognize your signature on this form?

2 A. Yes.

3 Q. And is it the last entry?

4 A. It is the last entry.

5 Q. And it shows a signature and then the name Eric
6 Greenberg, correct?

7 A. Correct.

8 Q. Again, it appears you got it from the same person at
9 the same -- around the same time ----

10 A. Yes.

11 Q. ---- or at least on the same date, correct?

12 A. Yes.

13 Q. And then you transported the item to the lab?

14 A. Yes.

15 Q. And there was no need for any signatures after yours?

16 A. Correct.

17 Q. Showing you Prosecution Exhibit form -- 511F. Do you
18 recognize that form, sir?

19 A. Yes.

20 Q. Again, a chain of custody form?

21 A. Yes.

22 Q. It indicates you signed it and you accepted evidence,
23 again appears the same individual on about the same date,

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1 correct ----

2 A. Correct.

3 Q. ---- and time? For transportation to the lab?

4 A. Yes.

5 Q. Yours is the last signature?

6 A. Yes.

7 Q. And no need for any signatures subsequent to yours?

8 A. Correct.

9 Q. Lastly, I'm showing you Prosecution Exhibit 512 -- I
10 believe that's L for Identification. Do you recognize that
11 form?

12 A. Yes.

13 Q. Excuse me, it's 512I for Identification. Do you
14 recognize that form, sir?

15 A. Yes.

16 Q. Again, a chain of custody form?

17 A. Yes.

18 Q. And indicating apparently you received evidence from
19 the same person, same date, same time?

20 A. Yes.

21 Q. These are all on the 26th of October at
22 10:00 p.m. ----

23 A. Yes.

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1 Q. ---- correct?

2 A. Yes.

3 Q. For transportation to the lab?

4 A. Yes.

5 Q. Now, in this one, there are two signatures that
6 follow you -- follow yours, but it looks like they're for
7 putting it in storage; is that correct?

8 A. 13, 14 years later.

9 Q. Okay. All right. But again, as far as transferring
10 it back to the lab, there would have been no need for any
11 additional lab signatures?

12 A. Correct.

13 Q. Now, when you received all these items in the
14 exhibits we've just spoken about, did you -- were they in a
15 sealed condition?

16 A. Yes.

17 Q. Did you change, alter them in any way?

18 A. No.

19 TC [MR. MILLER]: Nothing further, Your Honor.

20 MJ [Col SPATH]: Thank you. Defense Counsel.

21 DDC [LT PIETTE]: Your Honor, the defense takes no
22 position other than to object to these proceedings taking
23 place without learned counsel.

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1 MJ [Col SPATH]: Understand. Again, I believe it's a
2 tactical decision both by you and MCD0 and a strategic
3 decision not to ask questions. They will be available later
4 if you change your mind.

5 So this order usually is easy to follow, a standard
6 order not to discuss your testimony about this issue until the
7 issue is resolved. It's going to be a while before this issue
8 is resolved, as you can probably guess based on how long it's
9 taken us to get here. And so the order is going to be in
10 place for quite some time, but it relates just to your
11 testimony about these items. Do you understand?

12 WIT: Yes.

13 MJ [Col SPATH]: Okay. Thank you very much for your
14 testimony and thank you for travelling down here to testify in
15 person. It is truly appreciated. Thanks.

16 [The witness was warned, excused, and withdrew from the
17 courtroom.]

18 Trial Counsel, my understanding is your next witness
19 is going to be by VTC; is that correct?

20 TC [MR. MILLER]: That is correct, Your Honor.

21 MJ [Col SPATH]: All right. We'll take 15 minutes.

22 [The R.M.C. 803 session recessed at 1417, 19 January 2018.]

23 [END OF PAGE]

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1 [The R.M.C. 803 session was called to order at 1433,
2 19 January 2018.]

3 MJ [Col SPATH]: Commission is called to order. All the
4 parties are present who were present before our recess. On
5 the break -- I'm trying to remember. One of the guards, one
6 of the -- the bailiff told me that Mr. al Nashiri wants to
7 depart, so let me ask.

8 Mr. al Nashiri, is that correct? You want to leave
9 for the remainder of the day?

10 ACC [MR. AL NASHIRI]: [Nodded head indicating a positive
11 response.]

12 MJ [Col SPATH]: That's a positive? Okay. First, do you
13 understand that you have a right -- sorry. Do you understand
14 that you have a right to be here today if you want to be?

15 ACC [MR. AL NASHIRI]: [Nodded head indicating a positive
16 response.]

17 MJ [Col SPATH]: Okay. And are you voluntarily deciding
18 that you don't want to be here for the rest of today? Do you
19 understand that you have a right to come back tomorrow for any
20 of the session if you want to?

21 ACC [MR. AL NASHIRI]: [Nodded head indicating a positive
22 response.]

23 MJ [Col SPATH]: And that was a positive? I'll just cover

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1 it. Those have been yeses to all of those so far. And you
2 also have a right, of course, not to come. You can absent
3 yourself from additional proceedings as well if you want to.
4 You just need to talk with the guards tomorrow.

5 ACC [MR. AL NASHIRI]: [Nodded head indicating a positive
6 response.]

7 MJ [Col SPATH]: That's a yes. You understand that?

8 ACC [MR. AL NASHIRI]: [Nodded head indicating a positive
9 response.]

10 MJ [Col SPATH]: Yes. All right. I'm going to let the
11 guard force take you, and then we'll get going. I find that
12 you have knowingly and voluntarily decided to leave the
13 proceedings by your own choice, and I know you understand that
14 you can be back, since I advised you this morning of those
15 rights when we started.

16 ACC [MR. AL NASHIRI]: [Nodded head indicating a positive
17 response.]

18 MJ [Col SPATH]: Thank you. Okay. Guards.

19 [Mr. Nashiri was removed from the courtroom.]

20 MJ [Col SPATH]: Mr. Nashiri has departed. Mr. Miller,
21 call your next witness.

22 TC [MR. MILLER]: The government calls Detective Joseph
23 Cordaro. Sir, can you hear me?

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1 WIT: Yes.

2 JOSEPH CORDARO, 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. All right. Sir, I want to start with a little bit
7 about your background. First, my name is Miller. I am the
8 representative of the prosecution, all right?

9 A. Uh-huh.

10 Q. Were you a member of the New York City Police
11 Department?

12 A. Yes, sir.

13 Q. And when did you join the NYPD?

14 A. February 4th, 1974.

15 Q. All right. And how long did you remain with the
16 police department?

17 A. I retired in November of 2001.

18 Q. Was your service continuous from '74 until 2001?

19 A. No, I was laid off in '75 and rehired in '79.

20 Q. Was that part of a general furlough?

21 A. It was a general layoff for New York City.

22 Q. In 1979, you returned to the PD?

23 A. Yes, sir.

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1 Q. And what was your assignment? What were your
2 responsibilities and duties?

3 A. Originally, I was a patrolman. In 1983, I was
4 transferred to the Joint Terrorist Task Force. I was promoted
5 to detective, and I remained with the terrorist task force
6 until 2001.

7 Q. And is that the FBI/JTTF?

8 A. Yes, sir.

9 Q. And what, generally, sir, were your duties and
10 responsibilities on the JTTF?

11 A. Among them was surveillance, investigations, and
12 handling of evidence for some cases.

13 Q. All right. Now, I'm interested specifically in the
14 handling of evidence. Did you have specific duties and
15 responsibilities in the case of the United States -- of the
16 USS COLE?

17 A. Yes, sir.

18 Q. What were those duties and responsibilities, sir?

19 A. I handled evidence. I was down in Pascagoula doing
20 the crime scene when the ship returned.

21 Q. Did you also handle some of the evidence that was
22 brought back from Yemen?

23 A. Yes.

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1 Q. And we're jumping ahead a little bit, but what did
2 you do in Pascagoula, Mississippi?

3 A. I did the crime scene on the decks, gathered
4 evidence, what was ever left from what they didn't pick up
5 when it was overseas.

6 Q. I want to talk specifically about the evidence that
7 was brought back from Yemen today, okay?

8 A. Okay.

9 Q. Do you know an agent, a special agent by the name of
10 Pat White?

11 A. Yes, sir.

12 Q. And how do you know Agent White?

13 A. I worked with him in the New York Office.

14 Q. Did you and he have any responsibilities in
15 transferring evidence to the laboratory that had been obtained
16 in Yemen?

17 A. Yes, sir.

18 Q. And what generally were your duties? What was it
19 that was asked of you and Agent White?

20 A. We would pick up the evidence, sign for it, and drive
21 it down to the lab, or reverse, and come up to New York with
22 it.

23 Q. When you would receive the evidence, was the evidence

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1 sealed?

2 A. Yes, sir.

3 Q. And when you handed it over to lab personnel, was it
4 sealed?

5 A. Yes, sir.

6 Q. Did you or Agent White in any way alter the evidence
7 or break any of those seals?

8 A. No, sir.

9 Q. In conjunction with the transfer of that evidence,
10 sir, did you -- are you familiar with the FBI -- we call green
11 sheets or chain of custody form FD-192?

12 A. Yes, sir.

13 Q. And would you complete those?

14 A. Yes, sir.

15 Q. When you would receive a piece of evidence, what
16 would you do with that form? Would you -- would you sign it?

17 A. Yes, sir.

18 Q. And when you gave up possession of the item, what
19 would occur?

20 A. I'd sign it over to the lab.

21 Q. All right. Would they then sign for it?

22 A. Yes, sir.

23 Q. All right. Detective, I want to show you a series of

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1 copies of chain of custody forms and ask you if you recognize
2 your signature. Before I do that, I assume that it would be a
3 bit of a stretch to ask you if you remember any specific
4 pieces of evidence?

5 A. No, I'm sorry, I don't.

6 Q. All right.

7 A. Not at this ----

8 Q. First, I'm placing on the ELMO -- can you see that?

9 A. Yes, sir.

10 Q. ---- Prosecution Exhibit 142C for Identification. Do
11 you see your signature on that form, sir?

12 A. Yes, sir.

13 Q. All right. And could you identify it, please.

14 A. Identify it by location on the sheet?

15 Q. Right. There's -- the first one says "Marks." Then
16 there's another one that says "Storage." There's a third
17 line. Is that your signature?

18 A. Yes.

19 Q. All right.

20 A. "Transport to lab."

21 Q. On the date of 11/3/2000 at 1:00 p.m.?

22 A. 2000 at 1:00 p.m., yes, sir.

23 Q. And you would have turned it over to Ms. -- the

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1 person at the lab, which is lab exams, correct?

2 A. Yes.

3 Q. I'm showing you Prosecution Exhibit 144C for
4 Identification and ask you, sir, is your signature contained
5 on that form?

6 A. Yes, sir.

7 Q. All right. And is your signature contained on the
8 second line where it says "Transport to Lab"?

9 A. Yes, sir.

10 Q. Would you have received that evidence on the 7th of
11 November 2000?

12 A. Yes. And transported it to the lab.

13 Q. All right. And they would have received it on the
14 9th, correct?

15 A. Yes, sir.

16 Q. Showing you Prosecution Exhibit 160B for
17 Identification. Is your signature contained on Prosecution
18 Exhibit 160B for Identification?

19 A. Yes, sir.

20 Q. Is it the third signature where it says "Transport to
21 Lab"?

22 A. Yes, sir.

23 Q. Again, it indicates that you received it on the 18th

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1 of October and then turned it over to the lab about an hour
2 later, correct?

3 A. Yes, sir. Yes, sir.

4 Q. Showing you Prosecution Exhibit 161B for
5 Identification. Sir, do you recognize your signature on that
6 form?

7 A. Yes, sir.

8 Q. And would it be the third signature?

9 A. Yes, sir.

10 Q. Again, it indicates -- it says "Transport to Lab,"
11 that you received it on the 18th of October at 7:30 and
12 transferred it to the lab about an hour later.

13 A. Correct.

14 Q. Showing you Prosecution 162B for Identification. Do
15 you recognize your signature on that form?

16 A. Yes, sir.

17 Q. And is it, again, the third one?

18 A. Yes, sir.

19 Q. And it says "Reason, Transport to Lab." That is
20 yours, correct?

21 A. Yes, sir.

22 Q. It indicates that you received it 10/18 of 2000 at
23 7:30 and then transferred it to the lab approximately one hour

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1 later.

2 A. Yes, sir.

3 Q. Showing you Prosecution Exhibit 163B for
4 Identification. Do you recognize your signature on that form,
5 sir?

6 A. Yes, sir.

7 Q. All right. Is it the third signature?

8 A. Yes, sir.

9 Q. Where it says "Transport to Lab"?

10 A. Correct.

11 Q. Indicates that you received it on October the 18th,
12 2000, at 7:30, transferred to the lab about an hour later,
13 correct?

14 A. Correct. Correct.

15 Q. Showing you Prosecution Exhibit 164C for
16 Identification. Do you recognize your signature on that form,
17 Detective?

18 A. Yes. Yes, sir.

19 Q. And would it be the third signature?

20 A. Correct.

21 Q. Again it says "Transport to Lab," 10/18 of 2000 at
22 7:30 and that you transferred it to the lab approximately one
23 hour later.

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1 A. Yes, sir.

2 Q. Showing you Prosecution Exhibit 165C for
3 Identification. Do you recognize your signature, sir?

4 A. Yes, sir.

5 Q. And would it again be the third signature, the third
6 line?

7 A. Yes, sir.

8 Q. Where it says "Transport to Lab"?

9 A. Correct.

10 Q. All right. Again indicating that you received it
11 October 18th of 2000 at 7:30 and that you transferred it to
12 the lab at 8:30, about an hour later, correct?

13 A. Correct.

14 Q. Placing before you Prosecution Exhibit Number 166C
15 for Identification. Do you recognize your signature, sir?

16 A. Yes, sir.

17 Q. It is the third signature; is that correct?

18 A. Correct.

19 Q. Where it says "Transport to Lab"?

20 A. Correct.

21 Q. And it indicates that you received it on the 18th of
22 October 2000 at approximately 7:30, correct?

23 A. Correct.

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1 Q. And then I guess it was transferred to the lab
2 approximately an hour later, correct?

3 A. Correct.

4 Q. Lastly, I'm showing you Prosecution Exhibit 167C for
5 Identification. Do you recognize your signature, sir?

6 A. Yes, sir.

7 Q. And is it on the third line?

8 A. Yes, sir.

9 Q. Again, it reflects that you received the item on the
10 18th of October at 7:30 and transferred it about an hour later
11 to the laboratory the same day, correct?

12 A. Yes, sir.

13 Q. Now, were you responsible for taking -- for receiving
14 evidence from agents as they brought it back from Yemen?

15 A. Yes, sir.

16 Q. All right. And were you responsible to ensure that
17 it at least passed through the New York Office's hands before
18 it went to the lab?

19 A. On some occasions.

20 Q. All right. I guess my question is, this was a New
21 York case, correct?

22 A. I'm sorry?

23 Q. My question is, is this was a New York Office case,

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1 correct?

2 A. Yes, sir.

3 Q. All right. And so it needed to be -- the evidence
4 needed to go through your office, at least at some point,
5 before it went to the laboratory to be identified; is that
6 correct?

7 A. Yes, sir.

8 Q. All right. Again, neither yourself nor Agent White
9 opened this evidence or tampered with it in any way?

10 A. No, sir.

11 TC [MR. MILLER]: All right. Thank you, sir. That's all
12 I have.

13 WIT: Thank you.

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

15 Sorry about that. Defense Counsel, any questions?

16 DDC [LT PIETTE]: Your Honor, defense takes no position
17 other than to object to this proceeding taking place without
18 learned counsel.

19 MJ [Col SPATH]: All right. Thank you. I think the
20 record is more than clear in my response to it. I'm not going
21 to keep repeating myself.

22 Mr. Cordaro, thank you for your testimony. I'm going
23 to give you a standard order. Don't discuss your testimony

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1 about the issue that we're dealing with, the introduction of
2 these exhibits, until we resolve this, which could take some
3 time, obviously, given what's going on.

4 Do you understand the order?

5 WIT: Yes, sir.

6 MJ [Col SPATH]: Thank you for traveling there to testify.
7 I appreciate it. And they will turn off the VTC. Thanks.

8 WIT: Thank you.

9 [The witness was warned and excused.]

10 MJ [Col SPATH]: Trial Counsel, your next witness is also
11 by VTC?

12 TC [MR. MILLER]: Yes.

13 MJ [Col SPATH]: Are they available, do we know?

14 TC [MR. MILLER]: They are.

15 MJ [Col SPATH]: Then let's work to get them here and have
16 them testify. Is that all the witnesses you were calling
17 today, or are we going to try to do some more?

18 TC [MR. MILLER]: We have one more VTC witness after this.

19 MJ [Col SPATH]: Okay.

20 TC [MR. MILLER]: Actually, Colonel Wells is going to
21 handle that one, sir.

22 MJ [Col SPATH]: I understand.

23 TC [MR. MILLER]: I don't know how I call the next -- how

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1 do I call the next ----

2 MJ [Col SPATH]: Who is your next witness? What is the
3 name?

4 TC [MR. MILLER]: Special Agent Pat White.

5 MJ [Col SPATH]: Then they'll work to get Special Agent
6 White up on the VTC screen.

7 [Pause.]

8 TC [MR. MILLER]: Agent, can you hear us?

9 WIT: Yes. Yes.

10 TC [MR. MILLER]: All right. I'm going to ask you to
11 speak into the microphone so we can hear you.

12 WIT: Okay.

13 TC [MR. MILLER]: All right. Ready to begin?

14 WIT: Yes.

15 PATRICK WHITE, civilian, was called as a witness for the
16 prosecution, was sworn, and testified as follows:

17 **DIRECT EXAMINATION**

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

19 Q. Please be seated. State your name.

20 A. Patrick White.

21 Q. And you are a former Special Agent of the Federal
22 Bureau of Investigation; is that correct?

23 A. Yes.

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1 Q. I want to first talk a little bit about your
2 background, Agent White. You attended university; is that
3 correct?

4 A. Yes, that's correct.

5 Q. All right. Where did you go, what degree did you
6 obtain, and when did you obtain it?

7 A. I got a Bachelor of Science in Education from
8 Duquesne University in Pittsburgh, Pennsylvania, 1983.

9 Q. And what was your first law enforcement position?

10 A. The Uniform Division in the United States Secret
11 Service.

12 Q. And that was in when?

13 A. I studied with them in 1984 through 1987.

14 Q. And after that, did you have any further police
15 employment?

16 A. Yes. In 1987, I was employed by the Anne Arundel
17 County, Maryland Police Department.

18 Q. And what did you do for them?

19 A. I was a patrol officer and undercover narcotics
20 detective.

21 Q. I take it ----

22 MJ [Col SPATH]: One second, Mr. Miller. Mr. White, if
23 you would, you can back up from the microphone just a little

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1 bit.

2 WIT: Certainly.

3 MJ [Col SPATH]: Perfect.

4 TC [MR. MILLER]: That's better. Thank you.

5 Q. In your duties and responsibilities with the
6 sheriff's office, I take it you had occasion to search various
7 crime scenes and to handle evidence; is that correct?

8 A. That's correct.

9 Q. And did you receive training at a police academy in
10 that regard?

11 A. Yes, at the Anne Arundel County Police Academy.

12 Q. How long did you remain with the sheriff's office?

13 A. Three -- three years and three months.

14 Q. All right. And after that, is that when you joined
15 the FBI?

16 A. That's correct, yes.

17 Q. And I take it you went through the normal New Agent
18 School at Quantico?

19 A. Yes, I did ----

20 Q. Did you ----

21 A. ---- New Agent Training Class.

22 Q. And did you receive any training in the collection
23 and processing of evidence?

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1 A. Yes, I did.

2 Q. Where was your first office, your first assignment
3 out of the academy?

4 A. My first assignment was the Sioux City Resident
5 Agency out of the Omaha Division.

6 Q. And how long -- well, first off, what were your
7 duties and responsibilities there?

8 A. My duties primarily were anything that the resident
9 agency would be assigned with investigating, but primarily,
10 there were two Indian reservations in Northeastern Nebraska
11 that it was my -- my duty to investigate serious crimes,
12 federal crimes.

13 Q. And how long did you remain in Sioux City?

14 A. Sioux City was approximately three years and three
15 months.

16 Q. And where did you go from Sioux City?

17 A. I volunteered to go to the New York Office of the
18 FBI.

19 Q. And that would have been around 1997?

20 A. 1994.

21 Q. Oh, 1994. Excuse me. And what were your -- what was
22 your first assignment in New York? What were you assigned?
23 What squad?

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1 A. In New York, I went directly to the Joint Terrorism
2 Task Force, the old squad, I-44, which had been the squad that
3 investigated the first World Trade Center bombing in 1993.

4 Q. And did you remain in the New York Office until your
5 retirement?

6 A. No. I took an office of preference transfer in 2004
7 to Philadelphia, was closer to my residence. And in 2007 I
8 returned to the New York Office to finish my career.

9 Q. And what year did you retire?

10 A. I retired in June of 2011.

11 Q. Are you presently employed?

12 A. Yes.

13 Q. And what do you do, sir?

14 A. I work contractually for the FBI Academy giving
15 training to new agents, veteran agents, and task force
16 detectives in Fredericksburg, Virginia, under the auspices of
17 Quantico.

18 Q. I want to direct your attention back to October of
19 2000. You were working in the New York Office, correct?

20 A. Correct.

21 Q. And were you assigned to the JTTF?

22 A. Yes.

23 Q. Do you know an individual by the name of Joe Cordaro?

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1 A. Yes, I do.

2 Q. In fact, that was the individual who just testified,
3 correct?

4 A. Correct.

5 Q. Now, did you and he have any responsibilities or
6 duties regarding evidence, the processing of evidence at the
7 office?

8 A. Yes, we did.

9 Q. And what were those -- in a general sense, if you
10 could give us an idea, what were those duties? What were
11 those responsibilities, sir?

12 A. I was recently assigned to the squad that was tasked
13 with investigating the present matter from another squad on
14 the JTTF. When I came in to report for that assignment, our
15 supervisor, Joe and I -- our supervisor, John Liguori, had
16 advised Joe and myself that we would be traveling down to
17 FBI Headquarters to facilitate the transfer of evidence that
18 had been collected to get it to the laboratory at Quantico for
19 further analysis.

20 Q. And when you mean facilitated, what do you mean by
21 that, sir?

22 A. It was our task to go down and basically collect the
23 evidence, sign it over to the lab technicians to be

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1 transported down to Quantico.

2 Q. Was this evidence that had been brought back by the
3 agents in Yemen and placed in storage?

4 A. That's correct.

5 Q. So your job was to take it from storage and get it to
6 the lab?

7 A. That is correct, yes.

8 Q. Now, the evidence that you were tasked with
9 transferring to the lab, was that evidence sealed?

10 A. Yes. Yes, it was.

11 Q. And did you and Agent Cordaro retrieve that evidence?

12 A. Yes, we did retrieve it and signed it forward to the
13 lab technician, the agent, the bomb tech agent to be taken,
14 transported physically down to Quantico. But that all
15 occurred in FBI Headquarters.

16 Q. But it was -- I guess my question was: You received
17 it in a sealed condition. Did you give it to them in a sealed
18 condition?

19 A. Yes.

20 Q. And would it be a fair statement that neither you or
21 Agent Cordaro ever opened that evidence?

22 A. That is correct. We never opened the evidence.

23 Q. Now, you're familiar, I take it then, with the chain

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1 of custody form, the FD-192, sir?

2 A. That is correct, yes.

3 Q. And would you have signed those sheets when you were
4 transferring this -- retrieving this evidence and then signing
5 it over?

6 A. That's correct. That's normal procedure, yes.

7 Q. I'm going to show you a series of copies of those
8 forms, and I'm going to ask you if you recognize your
9 signature on them.

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

11 MJ [Col SPATH]: You may.

12 Q. First I'm placing on the ELM0 Prosecution Exhibit 15C
13 for Identification. Agent, do you see your signature on that
14 particular form?

15 A. Yes, I do.

16 Q. All right. And where is your signature?

17 A. My signature is the third signature down, just above
18 the Kelly O. Baribeau signature.

19 Q. That indicates that you would have retrieved the
20 evidence on the 3rd of November 2000 and then transferred it
21 to her approximately one-half hour later, correct?

22 A. That is correct.

23 Q. Placing on the ELM0 Prosecution Exhibit 16C for

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1 Identification. I would ask you again: Do you see your
2 signature on that, sir?

3 A. Yes. My signature is in the same position as the
4 first document that you showed me.

5 Q. All right. And again, it would have been for
6 transfer to Kelly Baribeau, lab exams, about a half hour
7 later, correct?

8 A. That is correct.

9 Q. Showing you Prosecution Exhibit 23C for
10 Identification, ask you if you recognize your signature on
11 that, sir.

12 A. Yes, I do.

13 Q. All right. And where is it?

14 A. Same position, just above Kelly Baribeau's signature.

15 Q. Again, for transfer to her about a half hour later?

16 A. That is correct.

17 Q. Placing on the ELM0 Prosecution Exhibit 70C. Ask you
18 if you recognize your signature, sir.

19 A. Yes, I do.

20 Q. And again, same position, number three?

21 A. That is correct.

22 Q. 11/3 of 2000 at 1:00 p.m.?

23 A. Yes.

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1 Q. Transferred to the lab about a half hour later?

2 A. Correct.

3 Q. Placing on the ELM0 Prosecution Exhibit 71C. Ask you
4 if you recognize your signature, sir.

5 A. Yes, I do.

6 Q. All right. Again, third position?

7 A. Third position, signed off at 1:00.

8 Q. All right. On the 3rd of November?

9 A. 3rd of November, that's correct.

10 Q. Prosecution -- the lab got it about a half hour
11 later?

12 A. That is correct.

13 Q. Placing on the ELM0 Prosecution Exhibit 72C. Again,
14 sir, I'd ask you: Do you recognize your signature?

15 A. Yes, I do. 11/3, 1:00, passed off to the laboratory
16 at approximately 1:30.

17 Q. Prosecution 73C, do you recognize that, sir?

18 A. Yes, I do.

19 Q. All right. Your ----

20 A. The ----

21 Q. Go ahead, I'm sorry.

22 A. The same position, 11/3/2000, 1:00 p.m., to the
23 laboratory at approximately 1:30 p.m., same date.

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1 Q. Placing on the ELM0 Prosecution Exhibit 125C for
2 Identification. Do you recognize your signature, sir?

3 A. Yes, I do. 11/3/00, 1:00 p.m., transferred to the
4 lab approximately 1:30 p.m. same date.

5 Q. Placing on the ELM0 149C for Identification. Again?

6 A. Same position, 11/3/00, 1:00 p.m., transferred to the
7 lab at 1:30 p.m. that date.

8 Q. Placing on the ELM0 Prosecution Exhibit 150C for
9 Identification. Do you recognize your signature on that, sir?

10 A. Yes, I do. 11/3/00, 1:00 p.m. for transfer to the
11 lab at approximately 1:30 p.m., same date.

12 Q. Placing on the ELM0 Prosecution Exhibit 158C. Ask
13 you if you recognize your signature on that, sir.

14 A. Yes, I do. Date of 11/3/00, 1:00 p.m. for transfer
15 to the laboratory approximately 1:30 p.m., same date.

16 Q. And lastly, I'm placing on the ELM0 Prosecution
17 Exhibit 159C for Identification. Ask you if you recognize
18 your signature on that, sir.

19 A. Yes, I do, sir. 11/3 /00, 1:00 p.m. for transfer to
20 laboratory approximately 1:30 p.m., same date.

21 Q. All right. Now, the laboratory at this time was
22 located at headquarters, correct ----

23 A. That's correct, yes.

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1 Q. ---- the Old Hoover Building? Okay.

2 TC [MR. MILLER]: I have nothing further, Your Honor. Oh,
3 one other question, just for later on.

4 Q. Did you later have occasion to help conduct the
5 search of the USS COLE in Pascagoula, Mississippi?

6 A. Yes, I did.

7 Q. And was there certain evidence gathered at that time
8 from a subsequent -- or from the search of the ship at that
9 time?

10 A. Yes, there was.

11 TC [MR. MILLER]: All right. Thank you, Your Honor.

12 MJ [Col SPATH]: Defense Counsel?

13 DDC [LT PIETTE]: Defense takes no position other than to
14 object to this proceeding taking place without learned
15 counsel.

16 MJ [Col SPATH]: All right. Mr. White, let me first give
17 you an order. I'm just going to give you a standard order.
18 Don't discuss your testimony related to this issue that's
19 still before the commission until we resolve it. That might
20 take a little bit of time, given the posture and where we're
21 at, so just bear that in mind. Do you understand the order?

22 WIT: Yes, I do.

23 MJ [Col SPATH]: And then separate from that, I just want

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1 to thank you for traveling there to testify. I know it can be
2 difficult to get to the Mark Center, and I appreciate it.

3 Thank you.

4 WIT: Thank you.

5 [The witness was warned and excused.]

6 MJ [Col SPATH]: All right. Colonel Wells. Can we move
7 to the next witness, or do we need a recess?

8 MATC [COL WELLS]: Judge, we'd request a brief recess,
9 sir.

10 MJ [Col SPATH]: That works. Once the witness is ready,
11 tell the bailiff, and he'll come get me.

12 MATC [COL WELLS]: Yes, sir.

13 MJ [Col SPATH]: We're in recess.

14 [The R.M.C. 803 session recessed at 1506, 19 January 2018.]

15 [The R.M.C. 803 session was called to order at 1516,
16 19 January 2018.]

17 [NO AUDIO WHEN SESSION BEGAN.]

18 JOSEPH MCNAMARA, civilian, was called as a witness for the
19 prosecution, was sworn, and testified as follows:

20 DIRECT EXAMINATION

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

22 Q. Sir, please have a seat. And that microphone picks
23 up your voice very well, so ----

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1 A. Okay.

2 Q. ---- no need to lean over and speak into it. There's
3 a monitor to your right. Do you see that, sir?

4 A. Yes, I do.

5 Q. The spelling of your last name is M-C-N-A-M-A-R-A,
6 Joseph McNamara ----

7 A. Correct.

8 Q. ---- correct?

9 A. Correct.

10 Q. All right, sir. Sir, thank you for being here, even
11 by video teleconference. I understand you've had a death in
12 the family, plus you're a primary care provider for your
13 spouse.

14 You are a former FBI agent; is that correct?

15 A. That is correct.

16 Q. And you retired in 2005?

17 A. That is correct.

18 Q. Can you give us a little bit of your background and
19 your education.

20 A. I have a B.S. in history.

21 Q. And from the University of Niagara; is that correct?

22 A. That is correct.

23 Q. All right. And what year did you obtain your

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1 Bachelor of Science degree in history?

2 A. 1971.

3 Q. 1971. And then when did you start working for the
4 Federal Bureau of Investigation?

5 A. April 1972.

6 Q. In what capacity or role, duties did you have first
7 starting out with the FBI?

8 A. When I first started with the FBI, I was a
9 fingerprint -- I was a clerical capacity as a fingerprint
10 technician.

11 Q. And then at some point, did you go to the agent
12 school or the New Agent School to become a special agent?

13 A. Yes, I did. November of 1975, I went to Quantico for
14 New Agents Training.

15 Q. Yes, sir. And during that course, did you receive
16 instruction on how to collect evidence?

17 A. During New Agents Training?

18 Q. Yes.

19 A. No, I did not.

20 Q. Okay.

21 A. It was -- no, I did not at New Agents Training, no.

22 Q. Okay, sir. And your first assignment after New
23 Agents Training, where did you go?

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1 A. Washington Field Office.

2 Q. And during your career, did you have any other
3 stations or posts other than the Washington Field Office?

4 A. No. My entire career was at Washington Field.

5 Q. And so you arrived at the Washington Field Office in
6 1976?

7 A. Correct, February.

8 Q. And you stayed there until 2005?

9 A. Correct.

10 Q. All right. And then what was your duties and your
11 progression in your career with the Washington Field Office
12 for the FBI?

13 A. When I originally started, I worked on a Russian
14 foreign counterintelligence squad for approximately two years,
15 then transferred to do applicant background checks for about
16 six or seven years, then was transferred to a Czechoslovakian
17 foreign counterintelligence squad. I worked white collar for
18 about a year, and then went back and worked background
19 applicants. But the primary -- probably 80 percent of the
20 time I was in Washington Field.

21 Q. All right, sir. At some point you also had special
22 training as an Evidence Recovery Team member; is that correct?

23 A. That is correct.

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1 Q. Could you please describe for the commission all that
2 was involved in designation for that duty and your training?

3 A. My training I needed at that time -- I'm not sure of
4 the exact date, but the Evidence Response Team members were
5 being trained in field offices. I went to the Indianapolis
6 Field Office for two weeks. It consisted of photography,
7 fingerprints, evidence collection, the complete spectrum for
8 evidence collection.

9 Q. And then throughout your career, did you receive
10 refresher training in ERT procedures and techniques?

11 A. Yes, I did.

12 Q. And then at some point ----

13 A. Um ----

14 Q. Continue, sir.

15 A. I don't recall any dates or any specifics, but yes,
16 there would be refresher courses of maybe a half a day, or
17 something of that nature.

18 Q. And, sir, as you progressed in your career, did you
19 also provide instruction to other ERT members?

20 A. I -- yes, I did. I would give fingerprint
21 instructions.

22 Q. And through your career, fingerprint, was that a
23 specialty, subspecialty of your expertise?

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1 A. Yes. Early in my career as an agent, there was
2 approximately 25 people who were fingerprint technicians in a
3 clerical capacity; once they became agents, were sent to
4 Quantico for approximately two- to three-week course to be
5 fingerprint experts and being able to instruct other agents in
6 the Bureau regarding fingerprints.

7 Q. Sir, during your career as an Evidence Response Team
8 member, did you deploy to any -- overseas to any blast sites?

9 A. Yes. I responded to the embassy blasting in Nairobi,
10 Kenya, was -- responded to a blast in Saudi Arabia, and then
11 also responded to the blast at the USS COLE.

12 Q. Sir, I want to take you back to that blast in
13 USS COLE. That occurred on 12 October 2000. Do you recall
14 what you were doing when you received notification about that
15 incident?

16 A. I would have been working my normal cases out of the
17 Washington Field Office.

18 Q. And were you notified that they would need an
19 Evidence Response Team be put together and go over to Yemen?

20 A. Yes, I was.

21 Q. Can you tell us about that notification and how that
22 occurred.

23 A. Well, the way it would work is the Evidence Response

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1 Team members that would go to any overseas blast or any
2 overseas incident, you would be notified. You would collect
3 whatever personal items you needed from home. You would
4 report to the V Street warehouse where all the Evidence
5 Response Team equipment was kept. You would assemble whatever
6 material was going to be necessary, and then that along -- you
7 and whatever material was necessary usually -- well, all the
8 times that I went would -- you then go to Andrews Air Force
9 Base and be deployed wherever the incident was.

10 Q. On this instance, were you designated as the senior
11 ERT member?

12 A. No.

13 Q. Okay. Were you, in fact, the senior member of the
14 team?

15 A. Probably in time in the Bureau, yes.

16 Q. All right. And was the Washington Field Office the
17 only Evidence Response Team group that responded in this
18 manner?

19 A. To the best of my recollection, yes.

20 Q. How many ER team members were allowed to respond or
21 requested to respond?

22 A. Eight.

23 Q. Eight. What's the normal package or component of

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1 personnel for an ERT?

2 A. One -- it would depend on the incident you were
3 responding to, but it would almost always be more than eight.

4 Q. All right. Why was ----

5 A. I would say -- I could say possibly 15 or 20.

6 Q. All right. In this instance, do you recall why only
7 eight ERT members were designated for response?

8 A. I was told that only eight ERT people would be
9 allowed in country.

10 Q. All right, sir. Can you tell us about your trip to
11 Yemen. You went to Andrews Air Force Base, correct?

12 A. Correct.

13 Q. And then you flew by military transport?

14 A. Correct.

15 Q. And then -- through Germany and arrived in Yemen?

16 A. Correct.

17 Q. What was the first thing that you did upon arriving
18 in Yemen with your team?

19 A. To the best of my recollection, we simply went to the
20 hotel and would have just got rid of whatever personal items
21 we had. The team -- I don't recall exactly, but I suspect
22 that the team probably assembled, went to the USS COLE to
23 survey what the crime scene was going to be.

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1 Q. The blast occurred on the 12 October. Do you
2 remember how many days you arrived on scene after the 12th?

3 A. I do not recall.

4 Q. All right. Sir, I'm going to show you some
5 photographs that hopefully will jog your memory.

6 A. Okay.

7 Q. If you'll look at your monitor. The first one is
8 Prosecution Exhibit 180 for Identification. Can you see this,
9 sir?

10 A. Yes, I can.

11 Q. This picture, does it look like the scene that you
12 observed in October --

13 A. Yes, it does.

14 Q. ---- of 2000?

15 And let me show you another picture. This is
16 Prosecution Exhibit 187 for Identification. Do you recognize
17 that picture, sir?

18 A. No, I don't.

19 Q. Okay. Do you recognize the USS COLE?

20 A. Yes, I do.

21 Q. All right. And how did you get out to the USS COLE?

22 A. A small boat.

23 Q. Does this picture look like it was taken from a small

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1 boat?

2 A. Yes, it does.

3 Q. Do you recall whether or not this picture is
4 substantially similar to what you observed in October of 2000?

5 A. Yes, it would be.

6 Q. All right. And, Mr. McNamara, before you arrived at
7 the ship, did you take a tour by boat around the ship?

8 A. I do not recall.

9 Q. Okay. Take a look at this picture, sir. This is
10 Prosecution Exhibit 192, which has been admitted. Do you
11 recognize that picture, sir?

12 A. Yes, I do.

13 Q. And how do you recognize that?

14 A. By the coloring on the side of the ship, and, yes,
15 it's -- just looks like the -- you know, the ship that I first
16 saw.

17 Q. Do you remember seeing the ship from the water in a
18 small boat area?

19 A. Yes.

20 Q. Okay. Does this picture look like something that you
21 saw in October of 2000 from that small boat?

22 A. Yes, it does.

23 Q. All right. Now I'm going to show you Prosecution

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1 Exhibit 193 which has been admitted. Do you recognize this,
2 sir?

3 A. Yes, I do.

4 Q. What is it, sir?

5 A. It's a hole in the hull of the boat.

6 Q. And in October of 2000, did you actually see this
7 scene from the water while you were in a boat?

8 A. Yes, I did.

9 Q. Okay. And what was your purpose for observing ----

10 A. Approaching -- approaching the boat in order to take
11 swabbings for any type of explosive residue.

12 Q. And you would take swabbings from where?

13 A. All around what we considered to be the blast site.

14 Q. Yes, sir.

15 A. The hole in the boat.

16 Q. So you got up close to the hull of the ship; is that
17 correct?

18 A. Oh, yes. I touched it ----

19 Q. And did you get a chance to ----

20 A. ---- with the swabs.

21 Q. All right. Did you have a chance to look into the
22 ship?

23 A. Yes, I could look in and see ----

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1 Q. Let me show you ----

2 A. ---- inside.

3 Q. ---- a few photographs ----

4 A. Okay.

5 Q. ---- to see if you recognize these. This is
6 Prosecution Exhibit 196, which has been admitted. Do you
7 recommend -- or do you recognize what is depicted there?

8 A. Yeah. That is the interior of the -- the ship.

9 Q. All right. As you viewed it in October of 2000; is
10 that right?

11 A. Correct.

12 Q. All right. Sir, you've testified that you did some
13 evidence collection on the hull of the ship. Did you actually
14 go onto the ship also?

15 A. Yes, I did.

16 Q. All right. Let me show you a picture, Prosecution
17 Exhibit 205 for Identification.

18 A. Oh, yeah.

19 Q. Do you recognize this scene, sir?

20 A. Yes, I do.

21 Q. What does it depict?

22 A. It depicts the gangplank going up onto the ship, and
23 then you would -- the smaller boat would take you out to where

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1 the ship was anchored, and then you would go up on -- on the
2 gangplank.

3 Q. And do you recall going onto the ship by this
4 gangplank?

5 A. Yes, I do.

6 Q. And this is a picture from Aden Harbor and USS COLE
7 in October of 2000?

8 A. Correct.

9 Q. All right. Sir, I'm going to ask if these pictures
10 depict something that you observed while you were on the ship.
11 This is Prosecution Exhibit 222 for Identification. Do you
12 recognize this as something that you might have seen ----

13 A. Yes.

14 Q. ---- in October 2000?

15 A. Yes, it does look familiar. Yes.

16 Q. All right, sir. This is Prosecution Exhibit 223,
17 which has been admitted. How about this item, sir?

18 A. Yes, it does look familiar.

19 Q. All right. This is Prosecution Exhibit 224 for
20 Identification. Do you recognize this, sir?

21 A. Yes, that also looks familiar.

22 Q. And, sir, this depicts some type of black debris to
23 the left of the screen there. Could you describe the scene on

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1 the COLE as you recall in October of 2000?

2 A. On -- the COLE had excessive -- I will describe it as
3 litter. It was -- and there was also a very strong smell of
4 diesel fuel. But it was just littered with debris.

5 Q. Yes, sir. Let me show you this picture. This is
6 Prosecution Exhibit 228, which has been admitted. Sir, do you
7 see the picture on the monitor?

8 A. Yes, I do.

9 Q. Does it look like the scene that you observed in
10 October of 2000 on USS COLE?

11 A. Yes, it does look familiar.

12 Q. And do you see any debris in this picture?

13 A. Well, there's a white article on the lower left-hand
14 corner which could be paper, cloth. I don't know. I'd have
15 to actually hold it to see.

16 Q. Yes, sir. Could you describe the activities of ERT
17 members and perhaps lab personnel with photography, what their
18 duties were and their process for documenting a scene first?

19 A. What ERT would do is you would survey the scene and
20 you would take photographs of anything that was believed to be
21 possible evidence in place, so at a later date it could be
22 documented where this particular piece of suspected evidence
23 was located. So we ----

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1 Q. Keep going, sir.

2 A. So we would have taken photos of the ship, of the
3 deck of the ship.

4 Q. Sir, I'm going to show you what is Prosecution
5 Exhibit 229 for Identification. Sir, do you recognize what
6 this depicts? It's okay if you say no, that you do not have a
7 memory.

8 A. I don't know for sure.

9 Q. All right, sir. I'm going to put back on the screen
10 Prosecution Exhibit 228. Sir, do you see the material in the
11 lower left-hand corner?

12 A. Yes.

13 Q. All right. I'm going to toggle back to this
14 Prosecution Exhibit 228 for -- or 229 for Identification. Do
15 you see that material there?

16 A. Yeah. It's the same piece of material, but what
17 exactly it is, I do not know.

18 Q. Correct, sir. This one, though, has a scale next to
19 it. Why would we have a scale next to it?

20 A. So when somebody is viewing the photo -- once you
21 take a photograph, you would put the scale there so at a later
22 date when you're viewing the photo, you'll know how large this
23 item is.

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1 Q. Yes, sir. Sir, what were your objectives upon
2 getting on the scene on the COLE? Could you please describe
3 for the commission what were you going to do about the
4 evidence recovery plan?

5 A. The way -- what would happen is you would arrive on
6 the scene. You would determine what areas -- well, number
7 one, you would want to secure any areas that you felt there
8 was potential evidence. You would want to collect the
9 evidence and wrap it, procedure -- it would also be necessary,
10 based upon the limited number of personnel we had, to divide
11 the team and to prioritize what needs to be collected, where
12 it needs -- so basically you're drawing up a game plan of the
13 most efficient and effective way of conducting a crime scene.

14 Q. At this scene on the USS COLE, what was the first
15 objective type of evidence to be collected?

16 A. The first, it -- well, one of the things on the COLE,
17 there were still bodies that had been victims of the blast
18 that needed to be recovered. So what we had to do is split
19 the team; four would go to the ship and attempt to recover the
20 bodies, and four more went to off-sites. But the main thing
21 was -- the first thing that we wanted to do was to get the
22 bodies off of the ship, so -- and then secured the area --
23 well, we would have secured the area of the evidence that we

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1 thought important originally. But the main -- not the main
2 thing, one of the priorities was to get the bodies out of the
3 blast area.

4 Q. Yes, sir. And before you could do recovery of the
5 remains and any evidentiary value that the bodies would have,
6 you mentioned that there was another objective, and I want to
7 draw your attention to residue.

8 A. Okay.

9 Q. Was that the first evidence that was collected at the
10 COLE?

11 A. What you -- there would be things on the COLE that
12 possibly -- yes, the -- you know, the oil, et cetera, you
13 know, if there was any of that residue, it would be collected.
14 If there was anything unusual that should -- that you felt was
15 not there, such as we noticed an excessive amount of what --
16 it looked like red carpeting, and so you would collect some of
17 that. There was also quite a bit of foam, you would collect
18 some of that. And the reason would be is to possibly match
19 that up to those same type of red carpeting or foam at a
20 possible off-ship site.

21 Q. Yes, sir. And would that type of evidence be
22 collected before residue swabbings were taken or after?

23 A. More -- probably after.

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1 Q. Yes, sir. So the first type of evidence that you
2 were interested in collecting related to swabbings; is that
3 right?

4 A. That's correct.

5 Q. And let me put back on the monitor for you
6 Prosecution Exhibit 193, which has been admitted. Sir, you
7 testified earlier that this was a picture from the water of
8 the blast seat or scene, and I think you indicated that
9 swabbings were taken from this area; is that right?

10 A. That is correct.

11 Q. Would you please describe how the swabbings were
12 taken on this approach and who actually did the collection of
13 the swabbings.

14 A. The swabbings, the way they were done is you would
15 get to the hull, that you could actually reach it, and you
16 would simply have a swab, and you simply swab -- wiped down on
17 the hull whatever's there. And it was done by me. I did it.

18 Q. And also was there a person from the lab, a
19 technician? Do you remember ----

20 A. Yes, there was.

21 Q. And what was his name? Steven Krueger?

22 A. Yes.

23 Q. Okay. Was he with you in the boat when the

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1 swabbings ----

2 A. Yes, he was.

3 Q. ---- were taken? Okay.

4 And did he also take the swabs?

5 A. Yes, he would have. And as a person from the lab, he
6 would have been much more experience in exactly what areas
7 would have the best results. And he was directing me where to
8 swab and then applying his expertise.

9 Q. Yes, sir. Did you participate in taking any swabs on
10 the deck of USS COLE?

11 A. I do not recall.

12 Q. Let me present this picture to you. This is
13 Prosecution Exhibit 225 for Identification. Do you see that
14 picture, sir?

15 A. Yes, I do.

16 Q. Does this picture remind you of a scene that you
17 observed in October of 2000?

18 A. Yes, it does.

19 Q. From the deck of USS COLE?

20 A. Correct.

21 Q. Is this an area where swabbings might have been
22 taken?

23 A. Yes.

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1 Q. All right. Do you recall participating in taking
2 swabbings from this area?

3 A. I do not recall one way or the other. But I suspect
4 that I probably did, in view of the fact that I assisted in
5 the swabbing of the hull at sea level.

6 Q. All right, sir. All right. Sir, I'm now going to
7 show you what has been marked as Prosecution Exhibit 146 for
8 Identification, also marked as Prosecution Exhibit 147 for
9 Identification, and Prosecution Exhibit 148 for
10 Identification. I just read off these tabs. Do you see those
11 markings?

12 A. Yes, I do.

13 Q. And what do they say, sir?

14 A. Prosecution Exhibit 146, Prosecution Exhibit 147,
15 Prosecution Exhibit 148.

16 Q. All right, sir.

17 A. And then it's all page 1 of 1.

18 Q. Yes, sir. I'm now flipping this bag over, and I want
19 to show you -- sir, do you recognize the item that is on your
20 monitor there in a general sense?

21 A. Yes. It's an evidence bag.

22 Q. Evidence bag. Are these the type of evidence bags
23 that you would have used in October of 2000?

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1 A. Yes.

2 Q. And this evidence bag has writing in the upper
3 portion, correct?

4 A. That is correct.

5 Q. And let me move the exhibit to show the bottom
6 portion. This one, can you see it without glare?

7 A. Yes.

8 Q. All right, sir. It has a label there. It says
9 "Explosive, Explosive Chemistry" ----

10 A. Uh-huh.

11 Q. ---- and then "Photographed." Who puts that label on
12 the bag?

13 A. That label probably was put on by Steve.

14 Q. Steve Krueger?

15 A. Correct.

16 Q. And he was from the lab; is that right?

17 A. Correct.

18 Q. All right, sir. Let me go back up to the top of the
19 bag. Sir, do you recognize a case number?

20 A. Yes. The New York Case Number right on the top,
21 262-NY- ----

22 Q. All right.

23 A. ---- 277013.

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1 Q. And how about a description of the evidence?

2 A. Description says "Swabbings." Then it has Q1-Q18.

3 Q. And it says the date and time of recovery, also a
4 location of the recovery, and it says "Recovered by." Do you
5 see that?

6 A. Yes. It has the time as 1800 on 10/15/2000, location
7 was the USS COLE, recovered by S. Krueger, or Steve.

8 Q. Do you know who has the handwriting that wrote on
9 this bag?

10 A. No, I do not know whose handwriting that is.

11 Q. All right, sir. Sir, I've moved the bag up on the
12 screen here.

13 A. Uh-huh.

14 Q. Can you see some bottles in that bag?

15 A. Yes.

16 Q. All right, sir. Could you please describe for the
17 commission, when you do the swabbings, why they're packaged in
18 a bottle.

19 A. Because it's air tight.

20 Q. And then each swabbing would be one per bottle; is
21 that right?

22 A. Usually, yes.

23 Q. All right. This bottles have labels on them. Who

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1 puts the labels on the bottle?

2 A. Probably whoever -- it should have been put on by the
3 individuals collecting the evidence.

4 Q. Would that be you or Mr. Krueger?

5 A. It should have been, yes.

6 Q. All right. Sir, I'm going to show you a -- what is
7 called a Redwell. Do you recognize this? Don't try to
8 identify the paper, but do you recognize the container?

9 A. Yes.

10 Q. All right, sir. This container is associated with
11 the Prosecution Exhibits for Identification 146, 147, and 148,
12 and on the outside it contains a pouch there. Do you see
13 that?

14 A. Yes, I do.

15 Q. All right. What is the technique of -- or what is
16 the document inside that pouch?

17 A. It's your chain of custody form.

18 Q. And that's called a FD-192 form?

19 A. I believe so. I've never really been that familiar
20 with FD numbers.

21 Q. All right. And it's also known as a green sheet.

22 A. Correct.

23 Q. All right. And this one, do you recognize your

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1 signature or your handwriting on it?

2 A. Yes, that's my signature on the very top, "received
3 by," and then I did write the time -- the date and the time.

4 Q. And then what is the date and the time?

5 A. The date is October 15th, 2000. The time is
6 5:00 p.m.

7 Q. And then what role are you signing that document as?
8 What's the reason?

9 A. The reason is, is because I am the one that collected
10 the evidence.

11 Q. And then the next line, it says "Received by" and the
12 reason. Who is that?

13 A. I do not recall. I cannot read her first name. I
14 would have turned the evidence over to -- I think -- what is
15 her -- I forget. I do not recall her name, but it would have
16 been for transport back to the lab or ----

17 Q. Okay. Does that look like Babyak?

18 A. It looks like it.

19 Q. All right. And so let me hold -- hold on just a
20 minute. Mr. McNamara, this pouch contains three forms which
21 have been marked 147, 146, and 148. Can you see that?

22 A. Yes, I can.

23 Q. All right. And on 147, do you recognize your

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1 signature?

2 A. Yes, I do. It's my signature, my date, and the time.
3 I wrote those.

4 Q. And then 148, do you see that and your signature?

5 A. It is my signature. I wrote the date. I also wrote
6 the time.

7 Q. Do these forms all look the same to you?

8 A. Yes, they do.

9 Q. All right. Mr. McNamara, I'm going to show you what
10 is Prosecution Exhibit 147C for Identification.

11 A. Okay.

12 Q. Do you recognize that document as the one that I just
13 showed you that was on the evidence bag in the pouch?

14 A. Yes. It's, you know, similar. I do not see the 147
15 or 148 on it.

16 Q. Correct, sir. Let me scan down here. This one is
17 Prosecution Exhibit 147C for Identification. Can you see that
18 in the lower right-hand corner?

19 A. Yes, I can.

20 Q. All right. Let me show you Prosecution Exhibit 146C
21 for Identification. Can you see that designation on the
22 right ----

23 A. Yes, I can.

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1 Q. And then can you see up here, recognize your
2 signature?

3 A. That's my signature.

4 Q. All right. All right. Sir, I'm showing you
5 Prosecution Exhibit 148C for Identification. Can you see that
6 tab or that notation on the bottom right-hand corner?

7 A. Yes, I do.

8 Q. And can you see your signature again?

9 A. Yes. That's my signature. I wrote the date, and I
10 wrote the time.

11 Q. All right, sir. On this document, how can you
12 associate this document with the evidence package of 146, 147,
13 and 148? And what I'm asking you: Does it have a case
14 number?

15 A. No, not written on this.

16 Q. All right, sir. Does it have an evidence
17 identification description or number?

18 A. Not on this. No, it is not written out.

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

20 A. Not that I can see.

21 Q. All right. And none of those documents which I've
22 showed you have any of those identifying marks; is that right?

23 A. That is correct.

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1 Q. But it does have a date, correct?

2 A. Correct.

3 Q. All right. And what date is that?

4 A. October 15th, 2000.

5 Q. All right, sir. Let me show you the evidence bag
6 again here. Can you see a date and time of recovery on this
7 evidence bag? This is Prosecution Exhibit 146, 147, and 148.

8 A. Yes. It's October 15th, 2000, 6:00, 6:00 p.m.

9 Q. And, sir, it's the same date as the documents, the
10 FD-192, the green sheets, Prosecution Exhibits 146C for
11 Identification, 147C for Identification, 148C for
12 Identification; is that right?

13 A. Correct.

14 Q. Sir, now this bag shows time of recovery as 1800,
15 6:00. Let me show you again though Prosecution Exhibit 146C
16 for Identification just for example. You see the date or the
17 time of recovery?

18 A. Yes.

19 Q. Can you explain why the bag says 1800, but the form
20 says 1700 or 5:00 p.m.?

21 A. Okay. What's -- you will not -- if you're in a boat
22 collecting swabs, you're not going to be filling out the
23 paperwork at the exact time that it was taken. You would fill

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1 the paperwork out once you're in a more stable location. In
2 view of the fact that I filled out -- I signed the chain of
3 custody and Krueger filled out the bags, both of us are just
4 giving an approximate time of when it was collected.

5 Q. All right, sir.

6 A. And we must have had a different recollection of
7 exact time, but the date is the same on both.

8 Q. All right, sir. This form, in your opinion and in
9 your recollection, is there any issue or problem with
10 connecting it to the bag?

11 A. No, none whatsoever.

12 Q. All right, sir. Sir, I'm going to show you what is
13 Prosecution Exhibit 146B for Identification. Do you see that
14 mark there, Prosecution Exhibit 146B for Identification?

15 A. Yes, I do.

16 Q. And, sir, this is a picture of an evidence bag,
17 correct?

18 A. That is correct.

19 Q. And does it look like Prosecution Exhibit 146, the
20 actual evidence bag?

21 A. Yes.

22 MATC [COL WELLS]: Let me have another one.

23 Q. Sir, I'm going to show you Prosecution Exhibit 147B

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1 for Identification. Do you see that designation on the
2 right-hand corner?

3 A. Yes, I do.

4 Q. All right. This is, in fact, the same picture as
5 146C for Identification, correct?

6 A. Correct.

7 Q. And, sir, we'll do the same here for 148B for
8 Identification. Do you see the identification number?

9 A. Yes, I do.

10 Q. And the picture?

11 A. Yes.

12 Q. Do all -- do all three of these look the same or
13 similar and are they a fair and accurate picture of the
14 exhibit that I've showed you in the bag today?

15 A. Yes. They all look familiar and they all -- be fair
16 and accurate. The evidence bags are all the same.

17 Q. Sir, you've testified that the swabs would be put
18 into bottles and then included in the evidence bag. I'm
19 showing you what is Prosecution Exhibit 146A for
20 Identification. Do you see that tag number there, or that
21 identification number?

22 A. Yes, I do.

23 Q. All right. And do you see these bottles that are

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1 depicted in this picture?

2 A. Yes, I do.

3 Q. Do these bottles look like the type of evidence
4 that -- containers that you would have used in October of
5 2000?

6 A. Yes, they do.

7 Q. And then the bottle in the middle with the number 14,
8 do you recognize that?

9 A. Yes, I do.

10 Q. All right, sir. Sir, I'm going to show you two
11 pictures here. This is Prosecution Exhibit 147A for
12 Identification and also Prosecution Exhibit 148A for
13 Identification. Do you see the 147 designation?

14 A. Yes, I do.

15 Q. And do you see the 148 designation?

16 A. Yes, I do.

17 Q. For the 147, you see the two bottles there?

18 A. Yes, I do.

19 Q. All right. And do you see the two bottles here in
20 148?

21 A. Yes, I do.

22 Q. Are these, indeed, the same picture?

23 A. Yes, it is.

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1 Q. All right, sir. And on these bottles, do you
2 recognize the Q numbers that are written on the label?

3 A. I do not -- no, I don't recognize them. I'm sure
4 it's a way of keeping track of what's what. But I don't --
5 oh, there's Qs on all the evidence.

6 Q. Correct, sir. You did not place these Q numbers on
7 these bottles, right?

8 A. No, I did not.

9 Q. Who would put the Q number on the bottle?

10 A. I would -- I cannot say for sure who did, but I would
11 suspect Beth did, Babyak, as far as transportation, or
12 possibly somebody from the New York Office who was keeping the
13 evidence in chronolog- -- or proper order.

14 Q. Well, let me ask you: Are the Q numbers used by the
15 FBI Lab?

16 A. I'm not familiar with the lab's ----

17 Q. All right, sir.

18 A. ---- numbering procedure is.

19 Q. And in this picture, what are the Q numbers that you
20 see?

21 A. I can see Q15, and it appears to be Q17. The one on
22 the left is turned a little bit that I cannot -- I can see.
23 That's why I'm questioning the Q17, but I'm quite sure that's

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1 what it is.

2 Q. All right, sir. Pardon me for just a second, sir.

3 A. Uh-huh.

4 Q. Mr. McNamara ----

5 A. Yes.

6 Q. ---- while you were on the COLE, was that the only
7 evidence that you recall collecting?

8 A. It's the only evidence I recall, yes.

9 Q. Yes. And then did you participate in other evidence
10 collection off of the ship in and around Aden Harbor?

11 A. Yes, I did.

12 MATC [COL WELLS]: All right, sir. We will save that
13 portion of your testimony for another day. Thank you for now.
14 The judge may have questions and also the defense. Thank you,
15 sir.

16 WIT: Thank you.

17 MJ [Col SPATH]: Defense Counsel?

18 DDC [LT PIETTE]: Your Honor, the defense takes no
19 position other than to object to this proceeding taking place
20 without learned counsel.

21 MJ [Col SPATH]: I understand. Mr. McNamara, this is
22 Judge Spath. I'm just going to give you a standard order.
23 Don't discuss your testimony about this matter until it's

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1 resolved; the difference here being it may take some time
2 before it's resolved, as you probably can imagine. But do you
3 understand the order?

4 WIT: Could you repeat what you said? You said do not
5 what my testimony?

6 MJ [Col SPATH]: Discuss your testimony ----

7 WIT: Discuss, okay. I thought you said stretch, and I
8 was going to say, what are you talking about?

9 MJ [Col SPATH]: That is all right. Yeah, don't discuss
10 your testimony until this matter is resolved, which, again, is
11 probably going to take quite some time.

12 WIT: Yes, sir.

13 MJ [Col SPATH]: Okay. Separate from that, thank you very
14 much for traveling to the Mark Center to testify, I appreciate
15 it. And I think we'll be seeing you in the future. Thank
16 you.

17 WIT: Thank you.

18 MJ [Col SPATH]: All right. And they'll turn off the VTC
19 for us.

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

21 MJ [Col SPATH]: Trial Counsel, any other witnesses today?

22 TC [MR. MILLER]: We have a witness available, but it
23 would -- the witness's testimony would be similar to

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1 Mr. Greenberg's, so it will take significant time. If you
2 would like to start it, we can; if not, the witness is
3 available to start on Monday.

4 MJ [Col SPATH]: How many witnesses are you going to have
5 total Monday and Tuesday?

6 TC [MR. MILLER]: I'd say -- we're pulling it up right
7 now -- half a dozen. But most of them, other than this
8 witness, will be shorter witnesses; they will be much shorter,
9 similar to the two VTC witnesses. They'll just be testifying
10 to chains of custody as opposed to gathering of significant
11 amounts of evidence.

12 MJ [Col SPATH]: Then that works. We will begin on
13 Monday. I know you have, please continue to communicate to
14 the defense the witnesses and the order of witnesses so they
15 can prepare as we move forward, okay?

16 TC [MR. MILLER]: Thank you, Your Honor.

17 MJ [Col SPATH]: Thanks. My plan is -- I'm working to get
18 a couple orders to you. One relates to the 2018 schedule and
19 just how we're going to move forward. Most of it is going to
20 be taken up with preadmission, as you would expect. In fact,
21 there was a filing, I know, from the government where they
22 kind of gave a road ahead with that preadmission for the most
23 part. My plan is, I'm not adopting all of it, but a good part

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1 of it, since that's where we're at in this particular process.
2 We'll keep moving through the series of preadmission motions.
3 I think it's 207, 283, 325, 324, and 336.

4 I'm also working on an order in relation to the
5 learned counsel that has been requested from the convening
6 authority separate from Captain-Select Mizer -- who I still
7 expect efforts to be made to re-call him to active duty -- to
8 handle some of the issues brought up, Colonel Wells, when you
9 talked earlier today and to work through -- rather than having
10 the defense file notifications about the hiring process, since
11 we seem to have at least gotten a name submitted, getting
12 better notifications now as how we work that through the
13 convening authority's office and get him here to participate.

14 I recognize the clearance might take time, but as
15 I've been looking at and starting to work on that order, I
16 also recognize -- I still believe I am correct that learned
17 counsel are required, to the extent practicable, and a two- or
18 three-year delay is not practicable in a case that has been
19 ongoing for so many years. So the defense community can
20 certainly hire another one, I can't stop that -- I mean, if
21 the convening authority concurs, I can't stop it. But they're
22 going to have to find a way to assist this team a good deal
23 faster than maybe they plan to, if they continue and the

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1 convening authority approves. So those two orders, hopefully
2 while we're down here, if things go well, we'll get them to
3 you.

4 As we look towards the next session as well, we --
5 picking my words carefully, of course -- I'm still stunned
6 that we have three counsel who violate orders so blatantly,
7 between Mr. Kammen, Ms. Eliades, and Ms. Spears. So we're
8 working through that, clearly. We're waiting for Indiana and
9 the filings there to finish their briefing process and waiting
10 for that judge so that we can continue to figure out what to
11 do with Mr. Kammen. We've been discussing the two DoD
12 civilians as well.

13 I know in their filing, they discuss that they could
14 be released at any time. That's part of why they dispute my
15 authority over them. And I concur that with Mr. Kammen here
16 as learned counsel, he clearly can choose his team. And he
17 could have likely released them, with notice to me. But
18 that's not what happened. Mr. Kammen didn't release them,
19 General Baker did, as we know. And despite my order to the
20 contrary, that issue hasn't been appealed yet.

21 And so that's really -- it's a frustration because,
22 as you look out from here, I don't think it's in my lane to
23 file things with the state bar, but it is certainly in

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1 somebody's lane to be making complaints to the state bar. It
2 is certainly in somebody's lane to be figuring out what
3 disciplinary action is appropriate for behavior like this. I
4 mean, it's -- it's just stunning to watch. Again, never seen
5 anything like it.

6 And so I hope that those things are being worked in
7 people's lanes who control them. Again, mine is to maintain
8 this process as fairly and as judiciously as I can and to make
9 sure that Mr. al Nashiri has a resourced defense team, to the
10 extent they'll resource it, and that's what I'm trying to do.

11 So just -- I don't want anyone to think I'm ignoring
12 them or I don't think it's serious. It's just, I also
13 recognize the limitations where -- I have limitations on my
14 authority. There's not much I can do except, again, continue
15 to move this case in a way that makes sense as we move
16 forward. And so, hopefully, we'll get some idea from the
17 defense community what their plan is. But my orders have been
18 clear.

19 I've read the bar rules for Pennsylvania and Indiana,
20 which would be where the attorneys are from. They all discuss
21 issues like this in pretty affirmative language, "they shall
22 continue representation if a tribunal orders otherwise."
23 Couldn't be more clear really.

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1 But again, there's no -- C.M.C.R. hasn't been
2 involved. Really, the appellate process to deal with the
3 release from General Baker hasn't occurred, and so we continue
4 to kind of move forward as we can. But I certainly hope that
5 people outside of here who have authority over things like
6 this are doing something.

7 People remind me all the time I'm not an Article III
8 judge. I get that. But I know if I was an Article III judge,
9 I would have the authority to ask DoJ to look into misconduct
10 like Mr. Kammen's, frankly. I can't do that. But to the
11 extent that anyone out there cares, they sure should be
12 looking at somebody who collected that kind of money and then
13 walked out the door and left their client sitting there, and
14 continues to. It's shocking.

15 So there we are. Monday, 9:00 we'll pick up with
16 more witnesses. Anything else, Mr. Miller?

17 TC [MR. MILLER]: [Counsel away from podium; no audio.]

18 MJ [Col SPATH]: Lieutenant Piette?

19 DDC [LT PIETTE]: Nothing from the defense, Your Honor.

20 MJ [Col SPATH]: See you Monday. We're in recess.

21 [The R.M.C. 803 session recessed at 1609, 19 January 2018.]

22 [END OF PAGE]

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