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1 [The R.M.C. 803 session was called to order at 0902,
2 22 January 2018.]

3 MJ [Col SPATH]: Good morning, everyone. All the parties
4 who were present before our last recess are again present, and
5 Mr. al Nashiri has returned as well.

6 When I summarized the 802 -- or, Trial Counsel, are
7 we transmitting the proceedings?

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

9 MJ [Col SPATH]: Okay. Thank you.

10 When we summarized the 802, I mentioned Mr. al Darbi
11 and his availability. What I wanted to do was just make sure
12 from you all, is Mr. al Darbi here and available this week if
13 the defense chooses to cross-examine?

14 TC [MR. MILLER]: He is, Your Honor.

15 MJ [Col SPATH]: All right. And, Defense Counsel, you
16 know he's here. If you're just going to tell me you're not
17 going to ask him any questions, I don't want to make the
18 guards bring him over here. So again, you have the
19 opportunity; if you want to cross-examine him, we can do that
20 at any point this week. Are you going to ask him questions if
21 we bring him over?

22 DDC [LT PIETTE]: No, Your Honor.

23 MJ [Col SPATH]: I assume that the two DoD civilians

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1 didn't travel down over the weekend, as far as you know?

2 DDC [LT PIETTE]: As far as I know, they are not here.

3 MJ [Col SPATH]: And Mr. Kammen, I assume, hasn't traveled
4 down here either?

5 DDC [LT PIETTE]: As far as I know, Your Honor, he's not
6 here.

7 MJ [Col SPATH]: Has the defense community detailed any
8 other counsel back to this case?

9 DDC [LT PIETTE]: Not that I know of, Your Honor.

10 MJ [Col SPATH]: Well, I hope they -- I hope they'll let
11 you know. I know last week I referred to it as
12 under-resourcing. Visibly what the people in the back see is
13 they're de-resourcing it, and it looks very much like a
14 tactical decision, but that's where we're at.

15 Trial Counsel, call your next witness.

16 DDC [LT PIETTE]: Your Honor, if I could, before we start,
17 I just have an administrative issue to bring up.

18 MJ [Col SPATH]: Sure.

19 DDC [LT PIETTE]: Your Honor, it was brought to my
20 attention this morning, there is just some issue that I want
21 to make the court and the government aware of, and probably
22 the JTF SJA, just so it doesn't happen in the future.

23 I think it's been addressed on the record before I

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1 got onto this case that Mr. al Nashiri has issues with like
2 car sickness, motion sickness, that kind of thing, that
3 sometimes could prevent him from coming to court or fully
4 participating. And I understand that this morning and over
5 the weekend, there was an issue with -- they brought the -- a
6 smaller vehicle, a small car, which makes him far more motion
7 sick than the large bus.

8 And so just for the government's awareness, if from
9 now on they could bring the large bus that they typically
10 bring him on, that would ensure that he could come to court
11 and could fully participate in his defense from here on out.
12 I don't know if there's been an order on that from the court
13 in the future or if this has all been dealt with, you know,
14 directly with JTF, but I just wanted to make the court aware
15 and make sure that the parties who can fix this situation make
16 sure it's taken care of.

17 MJ [Col SPATH]: All right. Then I'll stand by for the
18 government to see if -- there's no formal motion and the --
19 the orders I've issued -- and I'm not ruling on this issue
20 yet. The orders I've issued in large part have kept me
21 staying out of how the detainee facility handles detainees
22 because jails have to be able to run their jail. And so I've
23 tried to do that. There have been a couple instances where I

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1 have gotten involved in an issue, and so I'm not saying I
2 won't. And again, it's not a ruling. And a lot of times, you
3 all can work it out between yourselves if somebody brings it
4 to JTF.

5 So I don't know if you have anything to add, Colonel
6 Wells, or if you'll just talk about it on a recess.

7 MATC [COL WELLS]: Thank you, sir. I'll advise the
8 commission that we were apprized of the vehicle that is
9 allotted and allocated for Mr. Nashiri has normal wear and
10 tear and maintenance issues. We did discuss with JTF that
11 Mr. al Nashiri does have a medical diagnosis of vertigo and
12 some symptoms associated with motion sickness for which he
13 receives medical care and treatment prior to even using the
14 allocated van that he is accustomed to.

15 We understand that JTF is trying to life cycle
16 replace lots of vehicles and -- for all detainees, so this is
17 part of that process. And I think they will need time for
18 Mr. Nashiri to acclimate to this new vehicle and socialize to
19 it. And so we have impressed upon JTF that if there's a way
20 to do it with their medical providers and also the staff with
21 Mr. Nashiri, and in between now and perhaps the next session,
22 if he can take a few test rides and see if it's to his liking
23 and then they can go from there and make that assessment on

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1 what's appropriate for Mr. Nashiri's needs.

2 MJ [Col SPATH]: All right.

3 MATC [COL WELLS]: And also balance, obviously, with the
4 primary need for safety and security of personnel and for the
5 detainees. That's all, sir.

6 MJ [Col SPATH]: Thanks. Defense Counsel, anything else?

7 DDC [LT PIETTE]: No, Your Honor. I just -- I think I had
8 forgotten to mention that they did end up getting the correct
9 vehicle for this morning, which is why Mr. al Nashiri is here.
10 But I think that what Colonel Wells has suggested, I think we
11 can all work through this.

12 MJ [Col SPATH]: All right.

13 DDC [LT PIETTE]: Nothing else.

14 MJ [Col SPATH]: Let me know. Thank you.

15 Trial Counsel, call your next witness.

16 TC [MR. MILLER]: Good morning, Your Honor. We're going
17 to begin with all our VTC witnesses. We have three short
18 ones. We're going to start with Mark Stucky.

19 MJ [Col SPATH]: What was the last name?

20 TC [MR. MILLER]: Stucky.

21 MJ [Col SPATH]: Thank you. Please proceed.

22 TC [MR. MILLER]: Thank you.

23 [END OF PAGE]

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1 MARK STUCKY, civilian, was called as a witness for the
2 prosecution, was sworn, and testified as follows:

3 DIRECT EXAMINATION

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

5 Q. Please be seated and state your name.

6 A. Mark Stucky.

7 TC [MR. MILLER]: And before we begin, Your Honor, I'm
8 going to ask permission to be able to use the ELMO during the
9 course of the testimony of the VTC witnesses?

10 MJ [Col SPATH]: You may.

11 Q. Mr. Stucky, were you formerly employed by the Federal
12 Bureau of Investigation?

13 A. Yes.

14 Q. I want to talk a little bit about your background and
15 then what you're doing today. First off, did you attend
16 university?

17 A. Yes.

18 Q. And where did you go, what was your degree, and what
19 year did you graduate?

20 A. I graduated in 1987 from Auburn University with a
21 degree in finance.

22 Q. And after that, did you obtain employment in the law
23 enforcement field?

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1 A. Yes. I began work with the Georgia Bureau of
2 Investigation in 1988.

3 Q. And did you go through some sort of academy or
4 training before you could become a GBI agent?

5 A. I did.

6 Q. All right. And briefly, how long did it last?

7 A. Fourteen weeks.

8 Q. And did you receive evidence collection training?

9 A. I did.

10 Q. What sort of cases did you work?

11 A. A little bit of everything: white collar, drugs,
12 violent crime, homicides.

13 Q. Did you at some point become a bomb tech?

14 A. Yes.

15 Q. For GBI?

16 A. Yes, in May of 1995.

17 Q. And did you receive any formalized training in that
18 regard?

19 A. I did. It was a four-week school at the -- four-week
20 class at the Hazardous Devices School in Huntsville, Alabama.

21 Q. Do you remember who headed that training?

22 A. It was the Army.

23 Q. Did you receive any training from an Agent Mark

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1 Whitworth of the FBI?

2 A. Yes.

3 Q. All right.

4 A. After that class, yes.

5 Q. Did you work any what I would call major bomb scenes
6 during your time at GBI?

7 A. I was part of the bomb squad for the Atlanta Olympics
8 in 1996.

9 Q. How long did you remain with the Georgia Bureau of
10 Investigation?

11 A. I left in October of 1996.

12 Q. And why did you leave?

13 A. To attend the FBI Academy in Quantico.

14 Q. I take it you went through New Agent School?

15 A. I did.

16 Q. Again, received more evidence collection training?

17 A. Yes.

18 Q. And what was your first office assignment?

19 A. Jackson, Mississippi.

20 Q. Did you remain in Jackson for your entire career?

21 A. I did.

22 Q. And again, what sort of cases did you work?

23 A. White collar, violent crime, drug trafficking, public

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1 corruption.

2 Q. I take it during that time, you had occasion to
3 conduct the search of various crime scenes?

4 A. I did.

5 Q. Did you become a certified bomb tech for the FBI?

6 A. I did, yes.

7 Q. And when did that occur?

8 A. Early 1980 -- 1998.

9 Q. And did you recertify?

10 A. I did, in '01 and '04.

11 Q. And did you receive any ERT training?

12 A. Yes. I went through the two-week school in either
13 '98 or '99.

14 Q. I take it now you have retired from the FBI?

15 A. Yes, sir, I retired September 30th, 2017.

16 Q. And what is your present employment?

17 A. I work for Trustmark National Bank in Jackson as a
18 fraud investigator.

19 Q. All right. I want to take you back to December of
20 2000. You were working at the Jackson office; is that
21 correct?

22 A. Yes.

23 Q. Did you receive notification that your services were

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1 going to be required in regard to the USS COLE investigation?

2 A. Yes, I did.

3 Q. And what was it that you were told, sir?

4 A. I had to report down to Pascagoula and meet with the
5 FBI team down there to do some evidence collection and
6 recovery on the USS COLE.

7 Q. And do you remember the -- any of the person -- I
8 take it you traveled to Pascagoula?

9 A. Yes.

10 Q. Do you remember the team members?

11 A. Mark Whitworth, Pat White, Joe Cordaro, Don
12 Sachtleben, Morgan Bodie, and Lisa McEvoy. May have been one
13 or two others, that's who I remember.

14 Q. And what was your purpose, or what was the team's
15 purpose in being in Pascagoula?

16 A. We were to go through the blast site on the USS COLE
17 to find any evidence that we could find.

18 TC [MR. MILLER]: Could I have just a minute, Your Honor?
19 They're retrieving a piece of ----

20 Q. Let me ask you this so we can not lose any time. Did
21 you have occasion to -- did you have occasion to process some
22 evidence?

23 A. Yes.

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1 Q. And by "process" I mean did you have occasion to --
2 for chain of custody purposes, to transfer evidence from the
3 site in Pascagoula to the lab in Washington, D.C.?

4 A. Yes.

5 Q. All right. And how did you do that, sir?

6 A. Best of my memory, I would have taken it to the
7 Jackson Field Office and put it in a FedEx package and shipped
8 it to the lab.

9 Q. It appears actually I have an extra copy of the
10 sheet. I'll use it. I'm showing you a copy ----

11 If I could have the ELM0, please. I'm sorry.

12 A. Yeah, that's it.

13 Q. Do you see it?

14 A. Yes, sir.

15 Q. Okay. We can't see it, though. My monitor. Oh,
16 there we go. All right.

17 And do you see -- it is -- I'm going to -- it has
18 been marked as Prosecution Exhibit 84C for Identification. Do
19 you recognize this form, sir?

20 A. Yes.

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

22 A. It's an evidence chain of custody form used by the
23 FBI.

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1 Q. And do you see your name on that form?

2 A. I do.

3 Q. And where is it, sir?

4 A. It's the third line down. It's my printed name and
5 my signature on December the 16th of 2000.

6 Q. All right. It indicates that you received evidence
7 from -- would you have received it -- excuse me. Let me ask
8 it a different way.

9 Did you receive the evidence from the person whose
10 name is listed above you?

11 A. I would have, yes.

12 Q. And who is that person?

13 A. Pat White.

14 Q. All right. Once you received the evidence from Agent
15 White, what did you do with it?

16 A. I would have -- it would have been in a box, and I
17 would have driven it back to Jackson. And the best of my
18 memory, that was a weekend; that's why I got it on the 16th
19 and shipped it on the 18th.

20 Q. All right. Is it standard operating procedure for
21 the FBI to send evidence from crime scenes to the lab in
22 FedEx -- using the FedEx process?

23 A. Yes, it is.

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1 Q. When you received it, was it in a sealed condition?

2 A. Yes.

3 Q. And did you ship it in a sealed condition?

4 A. Yes.

5 Q. At any time did you open or otherwise -- did you
6 otherwise open the container in which the evidence was?

7 A. No, I would not have.

8 Q. And I take it the FedEx numbers are the shipping
9 numbers?

10 A. Yes.

11 Q. And to whom did you ship it, do you remember?

12 A. I'm going to -- I don't recall, but judging by the
13 way the Bureau does its evidence, that I would have shipped it
14 to Mark Whitworth, since his is the name just below.

15 TC [MR. MILLER]: All right. Thank you. I have no
16 further questions, Your Honor.

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

18 DDC [LT PIETTE]: Defense takes no position other than to
19 object to these proceedings continuing without learned
20 counsel.

21 MJ [Col SPATH]: All right. Mr. Stucky, is that how I
22 pronounce it?

23 WIT: Yes, sir.

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1 MJ [Col SPATH]: Okay. I'm just going to give you a
2 standard order. Don't discuss your testimony regarding the
3 information you just provided to us until this issue is
4 resolved. That order is going to be in place for a while,
5 because it's going to take us a while to work through these
6 issues, as you probably know. So don't discuss anything you
7 testified about here with anyone. Do you understand?

8 WIT: Yes, sir.

9 MJ [Col SPATH]: Thank you very much for your testimony.
10 Thank you for traveling in to the Mark Center. And you can
11 depart. Thanks.

12 WIT: All right. Thank you.

13 [The witness was warned, excused, and withdrew from the VTC
14 room.]

15 TC [MR. MILLER]: The government calls John Schmidt. Sir,
16 I saw that -- Mr. Schmidt, I saw that you walked in with a
17 cane. Are you able to stand?

18 WIT: Yes.

19 TC [MR. MILLER]: Could you stand, please.

20 WIT: I can stand without it.

21 TC [MR. MILLER]: Okay. Stand and raise your right hand,
22 please.

23 [END OF PAGE]

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1 JOHN D. SCHMIDT, 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. All right. Thank you, sir. Please be seated. State
6 your name for the record, please.

7 A. John D., as in dog, Schmidt, S-C-H-M-I-D as in dog, T
8 as in tree.

9 Q. And, sir, were you formerly the case agent of the
10 USS COLE case?

11 A. Yes, sir.

12 Q. And it's my understanding that you are retired from
13 the FBI.

14 A. Correct.

15 Q. I want to talk a little bit about your background
16 briefly, sir. You attended university, correct?

17 A. Correct.

18 Q. And from where did you graduate, what year did you
19 graduate, and what was your degree?

20 A. I graduated -- excuse me -- University of Texas, May
21 1994, Bachelor of Science, Mechanical Engineering.

22 Q. After you had graduated from the University of Texas,
23 did you enter the military?

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1 A. Correct.

2 Q. All right. And could you describe briefly your years
3 of service and what it was that -- your assignment in the
4 military.

5 A. I was commissioned as a lieutenant in the U.S. Army,
6 field artillery, in June 1994 and served until March 1st,
7 2002, to the final rank of captain.

8 Q. Thank you. That was my question. When you
9 separated, your rank was captain?

10 A. Correct, sir.

11 Q. Did you shortly thereafter join the FBI?

12 A. Yes, sir, in January 2003.

13 Q. I take it, like all agents, you went through the New
14 Agent School at Quantico?

15 A. Correct, sir.

16 Q. And you received evidence collection training?

17 A. Correct, sir.

18 Q. What was your first assignment out of Quantico?

19 A. In the New Orleans Division, the Lake Charles
20 Resident Agency, Lake Charles, Louisiana.

21 Q. And how long were you in the Lake Charles Office?

22 A. 2003 until spring of 2006.

23 Q. What sort of cases did you work at Lake Charles?

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1 A. Predominantly, I worked child pornography cases,
2 white collar investigations, and occasionally counterterrorism
3 and counterintelligence.

4 Q. In 2006, you were assigned to what office?

5 A. The New York Office.

6 Q. And what was your squad? To what squad were you
7 assigned?

8 A. I believe it was CT-2. It was a counterterrorism
9 squad responsible for al Qaeda in the Arabian Peninsula.

10 Q. How long did you remain in New York?

11 A. Until 2008, when I traveled to Israel from August
12 2008 until September 2009. Then I returned to the New York
13 Office.

14 Q. And did you remain in the New York Office?

15 A. Yes, until 2013, when I transferred to the Miami
16 Office.

17 Q. And what did you do at the Miami Office?

18 A. I was the undercover coordinator.

19 Q. How long did you remain in Miami?

20 A. Approximately one year.

21 Q. And in 2014, did you retire?

22 A. Correct.

23 Q. And my understanding is that was a medical

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1 retirement, sir?

2 A. Correct.

3 Q. Is there anything about that medical retirement or
4 that medical condition that makes you unable to recall or
5 recite events that -- recall or recite events?

6 A. No, sir.

7 Q. Do you take any kind of medications that would affect
8 your ability to understand or recall?

9 A. No, sir. I take medication for blood pressure, blood
10 clots, and to control my heart rate.

11 Q. Okay.

12 A. No -- no painkillers or similar medications.

13 Q. All right. Thank you.

14 Now, going back to your time in the New York Office,
15 at some point the COLE case was transferred to you, is that
16 correct?

17 A. Correct.

18 Q. And you would have been called what's called a case
19 agent, correct?

20 A. Correct, sir.

21 Q. If you could briefly for His Honor, for the court,
22 please, describe what a case agent does and for what the case
23 agent is responsible.

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1 A. In this matter, I was predominantly responsible for
2 doing any annual updates to the case. The majority of the
3 investigation and evidence collection had been completed, but
4 as progress was made on various fronts, that would have to be
5 documented. That was my responsibility.

6 Q. And were you required to confirm or to learn location
7 of the various pieces of evidence in those updates?

8 A. I did to the best of my ability.

9 Q. All right. And did you go about doing that, locating
10 and documenting where evidence was located?

11 A. I never physically handled or saw any evidence, but I
12 did locate much of it through records in the case files and
13 sometimes talking to agents who had worked on the case at the
14 beginning.

15 Q. All right. You therefore did not sign at least the
16 typical green sheet forms; is that correct?

17 A. Correct.

18 Q. You did, however, make entries on the electronic --
19 there is an electronic chain of custody also; is that correct?

20 A. I guess. I wrote ECs, or electronic communications,
21 documenting what I could find out about various items of
22 evidence. To my best recollection, I did not have access to
23 the electronic version of the chain of custody.

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1 Q. All right.

2 A. I believe that would be the evidence room themselves.

3 Q. All right. And would they have made those entries
4 based on your electronic communications?

5 A. It is possible, but I do not know ----

6 Q. All right.

7 A. ---- for sure.

8 Q. All right. How long did the case remain in your --
9 how long was the case assigned to you?

10 A. Until 2008 when I traveled to Israel.

11 Q. All right. And again, so we are clear, you never
12 physically touched the evidence, opened it, or processed it,
13 correct?

14 A. That is correct, sir.

15 TC [MR. MILLER]: I have no further questions, Your Honor.
16 Thank you.

17 MJ [Col SPATH]: Defense Counsel?

18 DDC [LT PIETTE]: Defense takes no position other than to
19 object to these proceedings going forward without the presence
20 of learned counsel.

21 MJ [Col SPATH]: Mr. Schmidt, can you hear me?

22 WIT: Just barely, sir.

23 MJ [Col SPATH]: Okay. I will do my best to keep my voice

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1 up. If you would, I'm going to give you a standard order. I
2 don't want you to discuss your testimony, the information you
3 provided us today, until we resolve this issue. The only
4 unique part of this is it may be a while before we resolve
5 this issue, so the order will be in place for quite a while.
6 Do you understand the order?

7 WIT: Correct, sir.

8 MJ [Col SPATH]: Okay. Thank you for taking the time to
9 come to the Mark Center and testifying. They will help you
10 get out of there. Thank you again.

11 WIT: You're welcome, sir.

12 [The witness was warned, excused and withdrew from the VTC
13 room.]

14 MJ [Col SPATH]: And you've got another VTC witness, Trial
15 Counsel?

16 TC [MR. MILLER]: Yeah, one more, Your Honor.

17 MJ [Col SPATH]: All right. Let's call your next witness.

18 TC [MR. MILLER]: The government calls Thomas Almon.
19 A-L-M-O-N, sir.

20 Good morning, sir. Can you hear me?

21 WIT: Yes, I can.

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

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1 EUGENE THOMAS ALMON, 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. Be seated, please. State your name for the record,
6 please.

7 A. Eugene Thomas Almon.

8 Q. And you were formerly a Special Agent with the
9 Federal Bureau of Investigation; is that correct?

10 A. Yes, sir.

11 Q. All right. Sir, I want to talk to you a little bit
12 about your background before we start on your testimony. You
13 attended university; is that correct?

14 A. Yes, sir.

15 Q. If you could indicate what your area of study was,
16 what the university was, and in what year you graduated.

17 A. I graduated from Towson State University. That would
18 have been, like, in 1974. Then I returned to Towson State
19 University. My degree was in psychology; I graduated. And
20 then I was working as a clerk for the FBI at the time. And to
21 become an agent, I went back to Towson State and accumulated
22 enough credits in accounting between like '76 and '81 to
23 qualify as an accounting -- accounting program for a new agent

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1 slot.

2 Q. When did you first join the FBI, sir?

3 A. 1976 as a support employee.

4 Q. And where was that, and what were your duties, what
5 were your responsibilities?

6 A. Okay. I was in Baltimore, Maryland. I started out
7 pushing a mail cart in '76, and then by the time -- when I got
8 nominated for agents class, I was working as accounting
9 technician.

10 Q. And when did you go to the New Agents Class? When
11 did you start at Quantico?

12 A. I started in March of '81.

13 Q. I take it you received training in the processing and
14 collection of evidence?

15 A. I did.

16 Q. Where was your first office out of Quantico?

17 A. Casper, Wyoming, from about June of 1981 to January
18 of '84.

19 Q. And what did you do out there in Casper?

20 A. I worked primarily all criminal violations. I
21 covered a lot of territory, did a lot of travel. During that
22 time there was a lot of oil fraud cases, and so that was sort
23 of our concentration at that time.

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1 Q. How long did you remain in Casper?

2 A. About three years.

3 Q. And where did you go next?

4 A. I went to our Washington Field Office in
5 Washington, D.C.

6 Q. That would have been 1984, sir?

7 A. Yes. Yes, sir.

8 Q. And to -- what was your assignments? What squad --
9 what was the squad to which you were assigned?

10 A. Well, I had several assignments. That's where I
11 spent the majority of my career, was at WFO. Actually, I
12 started out as applicants, like all new people do at WFO,
13 which is the Washington Field Office. I went to a Russian
14 squad for about my first four years; then I transferred to an
15 undercover squad, where we did some undercover work against
16 counterintelligence targets like Russia and China and other
17 places like that. From there, I went to Director Sessions'
18 protection detail.

19 Q. Let me stop you there.

20 A. Okay.

21 Q. You say Director Sessions' protection detail. What
22 was that?

23 A. That was -- Director Sessions was, of course, the

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1 Director of the FBI at that time. He had a security detail of
2 about eight people at that time, and I was a member of that
3 security detail. And we were in charge of his protection, his
4 security, and his logistics when he traveled.

5 Q. How long did you do that for, sir?

6 A. I did that for about two years ----

7 Q. And did you come back ----

8 A. ---- if my memory ----

9 Q. I was going to say, did you return to the WFO?

10 A. Well, no. At that time, I did -- I was with Director
11 Sessions when he retired from that position. And the next
12 director was Louis Freeh. I was there during that transition.
13 He was looking for people to volunteer to work drugs in
14 certain offices. I volunteered to work drug investigations in
15 Baltimore, did that for about a year, and then I returned to
16 WFO.

17 Q. And how long -- what sort of assignment did you have
18 just generally there?

19 A. At Baltimore ----

20 Q. No, no. After Baltimore.

21 A. ---- or WFO? In Baltimore, I primarily worked drug
22 investigations. Solely worked drug -- okay.

23 Q. But after Baltimore, you returned to WFO?

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1 A. After Baltimore, I mean -- primarily, I spent most of
2 my career at WFO afterwards working espionage cases.

3 Q. Did you at some point become an assistant to Director
4 Freeh?

5 A. Yes, I did. That would have been like in 1998. I
6 received a telephone call to -- once Director -- what happened
7 when Director Freeh became director, he essentially did away
8 with his detail. But he kept one person on board that would
9 coordinate his travel and his logistics and sort of a -- in
10 charge of his security. I mean, several years lapsed between
11 the time I handled the transition until I became a special
12 assistant. But I went over there for like a 30-, 60-day TDY
13 that turned out to be about a two-year assignment.

14 Q. So what were the years of the assignment?

15 A. That was from about 1998 to 2000, sometime mid-2000,
16 something like that.

17 Q. And after that?

18 A. After that I was detailed to the CIA, to their
19 intelligence -- one of their intelligence programs.

20 Q. And you retired in 2002; is that correct?

21 A. Yes, sir.

22 Q. All right. And post-government, what have you done?

23 A. Post-government I've worked as a contractor for DoD,

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1 Department of Defense; Department of Energy; and the FBI. The
2 vast majority of that time has -- was as a personal service
3 contractor for the FBI.

4 Q. I want to direct your attention back to October of
5 2000. You were working for Director Freeh at that time; is
6 that correct?

7 A. That's correct.

8 Q. Did you receive notice or did the director receive
9 notice -- notice, excuse me, that there had been an attack in
10 Yemen?

11 A. Yes, sir.

12 Q. Did he travel?

13 A. Yes, sir.

14 Q. Did he travel to Yemen?

15 A. Yes, sir.

16 Q. Did you travel with him?

17 A. I did.

18 Q. And what was -- well, first off, how did you travel
19 from Washington to Yemen?

20 A. We traveled on a government G5 jet.

21 Q. All right. And I take it you traveled in that jet
22 with him?

23 A. I did.

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1 Q. When you landed in Yemen, what was your duties, what
2 were your responsibilities, sir?

3 A. My responsibility whenever I was with the Director
4 was, number one, his security; and number two was handling his
5 logistics, to make sure he got where he was supposed to be
6 safely and on time.

7 Q. All right. And I take it he met with various people
8 while he was on the ground?

9 A. He did. He -- he went to the embassy grounds and met
10 with the ambassador at that time and other people. Now, we
11 also had a contingent of FBI people over there that he spent a
12 lot of time with; we had HRT over there and investigators out
13 of New York, CT investigators.

14 Q. And while you were there, was anything asked of you
15 other than -- I'm talking about in addition to your duties
16 with the director, Director Freeh?

17 A. Well, I know now, after being shown some green
18 sheets, that I accepted custody of evidence over there that I
19 transported back to D.C., which would have been my
20 responsibility. I -- as Director -- as special assistant to
21 the director, anything like that that came up that was unusual
22 or would need special handling, I was his man to take care of
23 those things.

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1 Q. All right. And you are familiar with what we call
2 the green sheet or the chain of custody form, FD-192, correct?

3 A. I am.

4 Q. I'm going to show you a series of those and ask you
5 if you recognize your signature on them.

6 A. Yes, sir.

7 Q. Placed on the ELMO Prosecution Exhibit 1C for
8 Identification. Do you recognize your signature on that piece
9 of paper, sir?

10 A. I do. It's mine.

11 Q. All right.

12 A. Third one down.

13 Q. Which one?

14 A. Third one down.

15 Q. All right.

16 A. E. Thomas Almon.

17 Q. So we don't have any -- we don't have to do this with
18 each sheet, would you have received the evidence from the
19 person whose name appears above you?

20 A. Yes, sir.

21 Q. All right. It indicates that you received it from
22 that person. And then what did you do with it? You would
23 have given it to whom?

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1 A. I would have given it to the next person underneath
2 my name.

3 Q. All right. And that appears to be the name Mark
4 Whitworth; is that correct?

5 A. Yes, sir.

6 Q. Again, you recognize your signature on 1C?

7 A. Yes, sir.

8 Q. Placing on the ELM0 Prosecution Exhibit 24C for
9 Identification. Do you recognize your signature on that, sir?

10 A. I do.

11 Q. And again, where is it located?

12 A. It's the third signature down.

13 Q. And underneath it, it says the words
14 "Evidence/Transport"; is that correct?

15 A. Yes, sir.

16 Q. And that would have been the date and time -- so we
17 are clear, too, on all of these, the date and time is the date
18 and time on which you would have received them, correct?

19 A. That's correct.

20 Q. Placing on the ELM0 Prosecution Exhibit 96D for
21 Identification. Do you recognize your signature on that, sir?

22 A. I do.

23 Q. And where is it?

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1 A. It's the third name down.

2 Q. All right. Again, "Evidence/Transport" and the date
3 and time on which you received it, correct?

4 A. Yes, sir.

5 Q. 97D, Prosecution Exhibit 97D for Identification. Do
6 you recognize your signature on that, sir?

7 A. I do.

8 Q. Again ----

9 A. Third one down, "Evidence/Transport."

10 Q. All right. Date and time you received it and the
11 person to whom you sent it to, correct?

12 A. Yes, sir.

13 Q. 98C, sir ----

14 A. The third one ----

15 Q. Exhibit 98C for Identification, do you recognize your
16 signature on that?

17 A. Yes, sir, I do. It's the third one down,
18 "Evidence/Transport," and released to the person below me.

19 Q. All right. And in all of them, it appears to be Mark
20 Whitworth, correct?

21 A. Right. Right.

22 Q. Prosecution Exhibit 104C for Identification, 104C for
23 Identification. Do you recognize your signature, sir?

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1 A. I do.

2 Q. And again, "Evidence/Transport"?

3 A. Yes, sir.

4 Q. And the date and time, correct?

5 A. Yes, sir.

6 Q. And it's the third one down?

7 A. Yes, sir.

8 Q. Showing you Prosecution Exhibit 127C for

9 Identification. Do you recognize that, sir?

10 A. I do. Third signature down, "Evidence/Transport."

11 Q. And the date and time on which you received it,
12 correct?

13 A. Yes, sir.

14 Q. Prosecution Exhibit 128C for Identification. Do you
15 recognize your signature on that, sir?

16 A. I do.

17 Q. And again, if you could, please.

18 A. It's the third name down, "Evidence/Transport."

19 That's the time and date I would have received it, and it
20 was -- I released it to the person below me.

21 Q. Lastly, Prosecution Exhibit 151D for Identification.
22 Do you recognize your signature?

23 A. I do. Third one down, "Evidence/Transport." That's

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1 the date and time I received it, and it's the person I
2 released it to below me.

3 Q. Now, sir, would you have received the evidence in a
4 sealed condition?

5 A. I can't recall, other than the fact I think it said
6 sealed, if I saw it in one place there.

7 Q. Okay.

8 A. But I don't recall actually taking possession of that
9 bag.

10 Q. All right. Where did the FBI jet fly out -- in and
11 out of?

12 A. Andrews ----

13 Q. All right.

14 A. ---- Air Force Base.

15 TC [MR. MILLER]: I have nothing further. Thank you, Your
16 Honor.

17 MJ [Col SPATH]: Defense Counsel?

18 DDC [LT PIETTE]: Defense takes no position other than to
19 object to these proceedings continuing without the presence of
20 learned counsel.

21 MJ [Col SPATH]: All right. Mr. Almon, I'm going to give
22 you a standard order.

23 WIT: Yes, sir.

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1 MJ [Col SPATH]: Don't discuss your testimony related to
2 the issues you've talked with -- talked to us about today
3 until we resolve this issue. The unique part here is it's
4 going to be a while before this gets resolved. So do you
5 understand that order?

6 WIT: I do, Your Honor.

7 MJ [Col SPATH]: All right. I appreciate you taking the
8 time to come and testify. I'm sure we'll see you at some
9 point in the future. Thank you very much.

10 WIT: Thank you.

11 MJ [Col SPATH]: Thanks.

12 [The witness was warned, excused, and withdrew from the VTC.]

13 TC [MR. MILLER]: Your Honor, our next witness will be
14 Agent LoCascio. If we could have ten minutes to set
15 everything up, I think things will go much more smoothly. I
16 know we've only been here for about 40 minutes ----

17 MJ [Col SPATH]: No, that works. All the rest of the
18 witnesses are live, correct?

19 TC [MR. MILLER]: Yes, they are, sir.

20 MJ [Col SPATH]: Okay. Then see you in ten. We're in
21 recess.

22 [The R.M.C. 803 session recessed at 0942, 22 January 2018.]

23 [END OF PAGE]

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1 [The R.M.C. 803 session was called to order at 0958,
2 22 January 2018.]

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

6 On the break, somebody let me know that Mr. Nashiri
7 apparently wants to depart the courtroom, so let me check and
8 see if that's accurate.

9 Mr. al Nashiri, do you want to leave the proceedings
10 today?

11 ACC [MR. AL NASHIRI]: [Nodded head indicating a positive
12 response.]

13 MJ [Col SPATH]: Okay. And again, I know we talked about
14 it at the very beginning. Do you understand your right to be
15 here?

16 ACC [MR. AL NASHIRI]: [Nodded head indicating a positive
17 response.]

18 MJ [Col SPATH]: All right. And thank you. These are
19 yeses so far for both. And are you voluntarily choosing to
20 depart these proceedings?

21 ACC [MR. AL NASHIRI]: [Nodded head indicating a positive
22 response.]

23 MJ [Col SPATH]: So again, if you change your mind, just

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1 let the guard force know for this afternoon or for tomorrow,
2 and we'll certainly make every effort to get you back over
3 here. Understand?

4 ACC [MR. AL NASHIRI]: [Nodded head indicating a positive
5 response.]

6 MJ [Col SPATH]: Thank you. Okay. Guards, you can take
7 him and then we'll get moving.

8 [Mr. al Nashiri was withdrew from the courtroom.]

9 MJ [Col SPATH]: Mr. al Nashiri has departed. Again, I
10 find he's knowingly and voluntarily waived his presence at
11 this particular proceeding. Defense Counsel, just let us know
12 if there's going to be a change for tomorrow, and that way the
13 government can work to get whatever they need for the -- from
14 the SJA tomorrow.

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

16 MJ [Col SPATH]: All right. Thank you. Trial Counsel,
17 call your next witness.

18 TC [MR. MILLER]: Thank you. And, Your Honor, thank you
19 for the extra time. We had a computer glitch, and so --
20 modern technology. The government calls Special Agent Lisa
21 LoCascio.

22 [END OF PAGE]

23

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1 LISA LOCASCIO, civilian, was called as a witness for the
2 prosecution, was sworn, and testified as follows:

3 DIRECT EXAMINATION

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

5 Q. Be seated and state your name.

6 A. Lisa LoCascio.

7 Q. And your occupation, ma'am?

8 A. I'm an FBI agent.

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

10 A. Nineteen years and eight months.

11 Q. I'd like to go a little bit into your background
12 before we talk about the COLE investigation. You attended
13 university; is that correct?

14 A. Yes, sir.

15 Q. Could you indicate for the court, please, the
16 university you attended, your degree, and what year you
17 graduated.

18 A. I attended Barry University in Miami Shores, Florida;
19 my degree is in liberal studies; and I graduated, I believe,
20 in 1994.

21 Q. Do you have any military service?

22 A. Yes, sir, I do.

23 Q. Could you -- which branch?

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1 A. United States Marine Corps.

2 Q. And in what years did you serve?

3 A. 1982 through 1987.

4 Q. Was that as a reservist?

5 A. Yes, sir.

6 Q. And what was your last rank?

7 A. E4, corporal.

8 Q. Have you had, other than the FBI, any prior law
9 enforcement employment?

10 A. Yes, sir.

11 Q. And with what agency?

12 A. I was a police officer with Miami-Dade Police
13 Department in Miami, Florida.

14 Q. And when did you join the Miami-Dade Police
15 Department?

16 A. 1982.

17 Q. And how long did you remain there?

18 A. Sixteen years.

19 Q. I figure you had to go through the police academy?

20 A. Yes, sir.

21 Q. And then you would enter as a police officer?

22 A. Yes.

23 Q. Did you receive training in the collection and

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1 processing of evidence at crime scenes?

2 A. Yes, sir.

3 Q. And if you could, just briefly give the court an idea
4 or notion of your career at the Miami-Dade PD.

5 A. I was a uniformed police officer, detective in our
6 general investigations unit in a district station. I was
7 promoted to sergeant, served in a uniformed capacity
8 supervising police officers.

9 I was a detective in the Homicide Bureau for a few
10 years. And then I was promoted to lieutenant; and on the
11 shift I was on, I was a commander of a district station of
12 about 60 police officers.

13 Q. And during your time as a Miami-Dade Police Officer,
14 I take it then, and especially as a homicide investigator, you
15 had occasion to process and search various crime scenes; is
16 that correct?

17 A. Yes, sir.

18 Q. Did you receive any education or continuing job
19 education in that regard?

20 A. Yes.

21 Q. All right. You remained there, I think you said,
22 until 19 ----

23 A. 1998.

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1 Q. And what caused you to leave?

2 A. I joined the FBI.

3 Q. Went through New Agent School like all agents?

4 A. Yes.

5 Q. Received more education or more training in the
6 collection of evidence?

7 A. Yes, sir.

8 Q. What was your first office out of New Agent School?

9 A. Washington Field Office.

10 Q. And how long did you remain there?

11 A. Approximately five years.

12 Q. And what was your assignment?

13 A. I was assigned to a counterintelligence squad.

14 Q. Did you have any what we call collateral duties?

15 A. Yes.

16 Q. And what were your collateral duties?

17 A. I joined the Evidence Response Team.

18 Q. And like any other member, did you receive training
19 to do that?

20 A. Yes. I went to ERT Basic.

21 Q. After WFO, where did you go?

22 A. I went down the street to FBI Headquarters.

23 Q. And just generally, what was your assignment there?

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1 A. Program manager for counterintelligence cases.

2 Q. How long did you remain there?

3 A. About two or three years.

4 Q. And where did you next go?

5 A. Inspection Division.

6 Q. All right. And what did you do in inspections?

7 A. I conducted investigations of allegations of employee
8 misconduct against FBI employees, and I also participated in
9 field office inspections.

10 Q. How long did you remain in that position, ma'am?

11 A. Two years.

12 Q. Where did you next go?

13 A. Chicago Division.

14 Q. And what did you do there?

15 A. I worked organized crime cases.

16 Q. All right. And I take it on the OC squad, you would
17 still -- the organized crime squad, you would again be
18 involved in the search of crime scenes and other sites; is
19 that correct?

20 A. Yes, sir.

21 Q. How long did you remain in Chicago?

22 A. Two years.

23 Q. And where did you go next?

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1 A. I went to the Anchorage Division in Anchorage,
2 Alaska.

3 Q. And what did you do there?

4 A. I was the squad supervisor of the Joint Terrorism
5 Task Force.

6 Q. And my understanding is now you are a supervisor at
7 Headquarters; is that correct?

8 A. Yes, sir.

9 Q. I want to direct your attention back to October of
10 2000. You were working at WFO at that time?

11 A. Yes.

12 Q. Did you come to learn that there had been an incident
13 in -- or bombing incident in Yemen -- in Aden, Yemen?

14 A. Yes.

15 Q. And was anything asked of you in regard to that
16 incident?

17 A. Yes. I was told we were -- our -- part of our team
18 would be deploying, and if I could go.

19 Q. All right. When you say part of your team, what team
20 are we talking about?

21 A. Evidence Response Team.

22 Q. Once you received notification that you were going to
23 be one of those persons, what, if anything, did you do?

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1 A. We had to pack all our supplies and our -- also go
2 get our personal items and ----

3 Q. Let's talk first about your supplies.

4 A. Yes.

5 Q. I take it there was no prepackaged items to take?

6 A. No.

7 Q. All right. So what did you do?

8 A. We went to a warehouse where we stored our ERT
9 equipment. And we got these big metal Pelican boxes and
10 started putting supplies in them, things that we thought we
11 would need for this type of an event.

12 Q. All right. And I take it you were not the only
13 person doing this?

14 A. No.

15 Q. Then you said you packed your own personal things?

16 A. Yes.

17 Q. Did the FBI provide you with those sort of things to
18 wear, or did you have to use your own personal items?

19 A. Well, we had our standard pants that we wear from
20 Quantico, but you have to buy them yourself. And we had ERT
21 shirts and boots and just general clothing.

22 Q. Now, were there any weight limits to what you could
23 take on the plane going there?

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1 A. I think we were allowed to take, to the best of my
2 recollection, one bag, so I used my trusty Marine sea bag.

3 Q. All right. So how did you get to Aden?

4 A. We flew out of Andrews Air Force Base on a military
5 flight.

6 Q. Did you go directly to Yemen?

7 A. No.

8 Q. All right. Where did you first go?

9 A. We landed in Germany.

10 Q. All right. And from Germany to Aden?

11 A. Yes.

12 Q. I'll ask you the same question I've asked the other
13 witnesses. Anything unusual upon landing?

14 A. In Yemen?

15 Q. Yes.

16 A. Yes. When we landed, our plane was surrounded by
17 trucks that had big guns on them. I guess it was the -- their
18 military, and we sat there for three hours with them pointing
19 their guns at us.

20 Q. You were eventually able to get off the plane,
21 obviously?

22 A. Yes.

23 Q. Where did you go?

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1 A. We went to a small -- it was -- they told us it was
2 our hotel, it was a small building, and we went to some rooms
3 there. And then we weren't there for more than a few hours
4 and they hurriedly told us we had to leave.

5 Q. And where did you go?

6 A. We went to a bigger hotel.

7 Q. Okay. When you got settled at that hotel -- excuse,
8 me. When you got settled at that hotel, did you receive any
9 briefings or any notification as to what was going to be
10 required of you or what your assignment was going to be?

11 A. I believe we had a general meeting and -- but there
12 wasn't a lot of information known at that time, so we were
13 just waiting for instructions from the person in charge.

14 Q. All right. And who was the person in charge?

15 A. Mr. Caruso.

16 Q. And who is Mr. Caruso?

17 A. He was an SAC from WFO.

18 Q. And for the record, that would be the special agent
19 in charge, correct?

20 A. Yes, sir.

21 Q. Was there also an individual there by the name of
22 John O'Neill?

23 A. Yes, sir.

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1 Q. All right. And I take it he would have been one of
2 the -- part of the leadership of the New York Field Office?

3 A. Yes, sir.

4 Q. Did you eventually go to the ship?

5 A. Yes.

6 Q. Leaving the hotel, how did you get to the point where
7 you would be ferried over?

8 A. There were some cars they rented, driven by locals.

9 Q. All right. And you went to -- where did you go to?

10 A. It was the dock area.

11 Q. All right. And was that in any way guarded?

12 A. Yes.

13 Q. By whom?

14 A. U.S. Marines.

15 Q. I'll show you a series of photographs and ask you if
16 you recognize that, recognize the area. I'll show you first
17 Prosecution Exhibit ----

18 TC [MR. MILLER]: Oh, I'm sorry, Your Honor. Permission
19 to use the ELMO with this witness.

20 MJ [Col SPATH]: Yes.

21 Q. I'll show you what has been marked Prosecution
22 Exhibit 177 for Identification. Do you recognize that, ma'am?

23 A. Yes.

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1 Q. What do you recognize that to be?

2 A. The general area where we were waiting.

3 Q. All right. A fair and accurate depiction -- fair and
4 accurate depiction as it appeared the day that you observed
5 it?

6 A. Yes.

7 Q. I'm going to show you Prosecution Exhibit 179 for
8 Identification, ask you if you recognize that, ma'am.

9 A. Yes.

10 Q. Again, was that the area where the Marines had made a
11 base, so to speak?

12 A. Yes, sir.

13 Q. Fair and accurate depiction as it appeared when you
14 observed it?

15 A. Yes.

16 Q. 179 -- Prosecution Exhibit 170 -- excuse me, 178 for
17 Identification. Do you recognize that, ma'am?

18 A. I do, yes.

19 Q. Again, is that the Marine base?

20 A. Yes.

21 Q. All right. Or encampment, I guess, is a better word.

22 A. Yes.

23 Q. All right. Fair and accurate depiction as it

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1 appeared that day?

2 A. Yes, sir.

3 Q. Prosecution Exhibit 184 for Identification. That
4 also part of that Marine encampment that day?

5 A. Yes.

6 Q. Fair and accurate depiction as it appeared?

7 A. Yes.

8 Q. And lastly, Prosecution Exhibit Number 185 for
9 Identification. Prosecution Exhibit 185 for Identification,
10 do you recognize that photograph?

11 A. I do, yes.

12 Q. And again, is that a fair and accurate depiction of
13 that Marine encampment?

14 A. Yes, sir.

15 TC [MR. MILLER]: Your Honor, the government would move
16 for the introduction of Prosecution Exhibit 184, 178, 179,
17 177, and 185.

18 MJ [Col SPATH]: Defense Counsel?

19 DDC [LT PIETTE]: Your Honor, defense takes no position.

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

21 TC [MR. MILLER]: I believe, Your Honor, that 177 actually
22 has already been admitted.

23 MJ [Col SPATH]: It was admitted prior. Thank you.

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1 Q. When you left the encampment area, how did you travel
2 from land to the ship?

3 A. Smaller -- small boat.

4 Q. And did you land at the fueling dock, fueling
5 dolphin, what they call?

6 A. Yes.

7 Q. Upon landing, what did you do?

8 A. Well, when we first got to the ship, we got a
9 familiarization of what had happened and were taken around to
10 where the explosion had occurred. And also on the decks, we
11 tried to assess what kind of evidence would be -- we would be
12 collecting. And we also had to start moving all of our
13 supplies on the ship.

14 Q. Let me show you -- I'm going to show you what has
15 been marked as Prosecution Exhibit -- actually it's been
16 admitted -- Prosecution Exhibit 199. Do you recognize that
17 photograph, ma'am?

18 A. Yes.

19 Q. All right. And is that the -- what we call a fueling
20 dock or fueling dolphin where you landed?

21 A. Yes.

22 Q. Would that have been the gangway that you used?

23 A. Yes. That gangway was very steep. We had to carry

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1 those Pelican boxes up, up that gangway. It was very
2 difficult.

3 Q. Now, once you received -- once you received your
4 familiarization and you had been around the ship, were you
5 informed of what your duties, what your responsibilities were
6 going to be?

7 A. Yes.

8 Q. And what was that?

9 A. I went below decks with a few other agents to locate
10 the sailors that had been killed.

11 Q. All right. And could you describe, just generally,
12 the condition of the ship underneath?

13 A. So the area that I went down into where the bulk of
14 the explosion had occurred was, it was dark. It was heavily,
15 heavily damaged. It was very difficult to work in. And we
16 proceeded carefully because we did not know at that time the
17 full scope and who was missing. We were trying to get
18 information on what sailors we would be trying to locate at
19 that time.

20 Q. Who was leading that effort, the recovery, the
21 recovery?

22 A. Tom O'Connor.

23 Q. For the record, Prosecution Exhibit 251, which has

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1 been previously admitted, is that Mr. O'Connor -- or
2 Agent O'Connor?

3 A. Yes.

4 Q. Placing on the ELMO Prosecution Exhibit 197 for
5 Identification. Do you recognize this scene, ma'am?

6 A. I do.

7 Q. All right. And what do you recognize it to be?

8 A. The interior of the USS COLE, I believe, in the chow
9 area.

10 Q. All right. Fair and accurate depiction as it
11 appeared when you first walked into it?

12 A. Yes.

13 Q. Placing in front of you Prosecution Exhibit
14 Numbered 198 for Identification and ask you if you recognize
15 that.

16 A. Yes, sir.

17 Q. And what do you recognize that to be?

18 A. The interior of the USS COLE.

19 Q. Fair and accurate depiction as it appeared?

20 A. Yes.

21 Q. Lastly, Prosecution Exhibit Number 194 for
22 Identification. Again, do you -- let me make this smaller.
23 Do you recognize that, ma'am?

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1 A. Yes, sir, I do.

2 Q. And again, is that the COLE as you saw it that day?

3 A. Yes, sir.

4 Q. I take it -- had you ever searched anything like this
5 before?

6 A. No, sir.

7 Q. Was it a difficult search?

8 A. It was very difficult.

9 TC [MR. MILLER]: Your Honor, we would move for the
10 admission of Prosecution Exhibit 194, 198, and 197.

11 MJ [Col SPATH]: Defense Counsel?

12 DDC [LT PIETTE]: Defense takes no position.

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

14 Q. Could you describe the other conditions, the heat,
15 the smell, things of that nature?

16 A. It was about -- it was about 110 degrees outside, and
17 below decks was even hotter than that. There was no fresh
18 air. The odor was overwhelming, but I had a lot of experience
19 dealing with that kind of thing from my experience in
20 homicide. There was jagged metal everywhere, so we had to
21 wear our helmets inside everywhere. You'd hit your head on
22 pieces of jagged metal. We -- we ran out of supplies quite
23 quickly, so we were working without gloves at times, and our

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1 clothes were soiled. My clothes were so soiled, I left them
2 in the trash when I left because I couldn't clean them
3 anymore.

4 It was very difficult. There was a lot of emotions
5 with the crew. The power to the ship was off and the ship was
6 tilting at certain points. The power would go off, and the
7 ship would -- you could feel the ship tilting, and I was -- we
8 were below decks and it was pitch dark, and we were afraid the
9 ship was going to sink. So it was -- it was very difficult.

10 Q. When you first walked into the galley, do you
11 remember what you saw?

12 A. Yes.

13 Q. What was that, ma'am?

14 A. It was just hard to perceive that it was a Navy ship.
15 It was utter destruction. And we were mostly concerned about
16 locating the sailors.

17 Q. Did you see anything in the roof of the ship there in
18 the galley area?

19 A. Yes.

20 Q. What was that, ma'am?

21 A. There were remains there.

22 Q. What did you do to assist Special Agent O'Connor and
23 his crew?

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1 A. So I believe it was a two-day period. We had -- we
2 set up a system where we had the list of the sailors that were
3 missing and basically where they might have been in the galley
4 at the time of the explosion. And so we set up decon
5 stations. We set up stations so when we recovered the
6 remains, we could photograph them and do our collection
7 process, what we do to document. And also liaison with the
8 captain, assist in replenishing supplies, if we could find
9 any. And then also, you know, we were looking for -- it was
10 very difficult to locate some of the remains of the sailors.

11 Q. How long did you assist Agent O'Connor in the search
12 for the remains of servicepersons?

13 A. I believe I was there for two to three days.

14 Q. At the end of those two to three days, Agent, what
15 did you next do?

16 A. I started a search on the different decks of the ship
17 for evidence.

18 Q. And how were you -- how did you know where to search?
19 Were you assigned a certain area or did you just sort of go
20 where the evidence took you?

21 A. I concentrated on the rear of the ship, but we were
22 very short-staffed, and so it wasn't done in the best way that
23 I would have liked to have done it.

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1 Q. Okay. And how did you go about seizing or collecting
2 evidence?

3 A. So we would locate evidence, we'd photograph it, and
4 place -- place it in an evidence bag and get it to the
5 evidence center where they had set up below decks in the front
6 of the ship.

7 Q. Do you remember the person who was the head of the
8 collection of evidence below deck?

9 A. There were two people. I cannot recall who was in
10 charge, but it was Jane Wolfe-Rhodes [sic] and Dayna Sepeck.

11 Q. Did you work with any other individuals when you were
12 doing this on deck, actually collecting the evidence?

13 A. Yes.

14 Q. With whom did you work, ma'am?

15 A. There were some additional FBI personnel from -- I
16 believe from the lab, and I can't remember his name right now.

17 Q. All right. Did you -- did the sailors assist you in
18 any manner?

19 A. The sailors tried to help us get supplies if we
20 needed them or tell us the name of the different decks we were
21 on. But no, we didn't want them to assist us. If they saw
22 something, they were to come and tell us where they saw it.

23 Q. All right. They would identify things for you?

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1 A. Yes.

2 Q. And what were you looking for?

3 A. Anything that didn't belong on a Navy ship.

4 Q. I want to show you what has been marked as
5 Prosecution Exhibit 225 for Identification and ask you, Agent,
6 do you recognize this?

7 A. I do.

8 Q. What do you recognize that to be?

9 A. That's the radar -- SPY Array radar for the USS COLE.

10 Q. And were you involved in any way in searching this
11 particular area?

12 A. Yes.

13 Q. Could you describe what you did, please?

14 A. So in this area, I got to get a ladder to climb up
15 this -- this radar system is like a honeycomb system with a
16 cover on it. And the blast had damaged a lot of the covering,
17 so I had to go and look through every little honeycomb to see
18 if I could find some evidence in there.

19 Q. And the side of the -- other than the honeycomb,
20 which appears to be darkened, there appears to be streaks
21 of -- streaks on the metal itself, the wall. Could you
22 describe what that was?

23 A. Some of it was oil from the ship or from wherever it

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1 came from, and some of it was explosive residue, I guess, from
2 the initial explosion.

3 Q. All right. I'm going to show you a series of items
4 and ask you to identify them. If you could, please, provide
5 the witness with Prosecution Exhibit 10 for Identification.

6 TC [MR. MILLER]: We would also move at this time, Your
7 Honor, for the admission of Prosecution Exhibit 225 into
8 evidence.

9 MJ [Col SPATH]: Defense Counsel?

10 DDC [LT PIETTE]: Defense takes no position.

11 MJ [Col SPATH]: Thank you.

12 Q. Ma'am, I've placed before you Prosecution Exhibit
13 Number 10 for Identification. Do you recognize that, ma'am --
14 Agent?

15 A. Yes.

16 Q. First, I want to ask you to take a look on the ELMO,
17 at the monitor ----

18 TC [MR. MILLER]: Thank you, sir.

19 Q. ---- and ask you generally, is that the sort of
20 evidence -- what's contained in picture Prosecution
21 Exhibit 10A for Identification, are you familiar with that
22 type of evidence?

23 A. Yes.

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

3 A. Yes.

4 Q. And why were you seizing this type of evidence?

5 A. It was -- had blast damage, fire damage on it, and it
6 did not appear to be from the USS COLE.

7 Q. All right. And you have the package in front of you.
8 Can you see the evidence inside the bag?

9 A. Not real well, but ----

10 Q. If we have to open it, open it. Before we do that,
11 let me ask you this: Prosecution Exhibit 10A, can you read
12 the Q number on there?

13 A. Q400.

14 Q. All right. Before we open it, I think we'll be all
15 right, it's not -- can you see generally what kind of evidence
16 is in the bag?

17 A. Appears to be a fiberglass-type material that has
18 burn damage on it.

19 Q. Similar to what's in the picture ----

20 A. Yes.

21 Q. ---- Prosecution Exhibit 10A? All right.

22 If you would look at the exhibit itself, Prosecution
23 Exhibit 10 for Identification. There is an evidence sheet on

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1 the front of it. Do you recognize that sheet?

2 A. This here?

3 Q. Yes.

4 A. Yes.

5 Q. All right. And is that in your handwriting?

6 A. Portions of it are, yes.

7 Q. What portions of it are in your handwriting?

8 A. The case number. On the top portion on the chain of
9 custody section, "Received From," that's my handwriting.

10 Q. All right.

11 A. And then "Received From," that's my signature.

12 Q. And that chain of custody would indicate what, Agent?

13 A. This would indicate that I actually collected the
14 material, put it in the bag, and then turned it over to the
15 central evidence collection point at some time.

16 Q. If you could, please, the handwriting that you've put
17 in, could you put that into the record, when you -- when you
18 seized it and the date that you turned over custody of it?

19 A. Seized on 10/17 at 0900, and I turned it over the
20 next day at 12:14 p.m.

21 Q. Does that particular bag have a Q number on it, a Q
22 tag number?

23 A. Yes.

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1 Q. What is that number?

2 A. Q400.

3 Q. Is that the same number contained in the photograph,
4 Prosecution Exhibit 10A?

5 A. Yes.

6 Q. Does it have a -- what I call a DK number underneath
7 the case number?

8 A. Yes.

9 Q. What is that number, please?

10 A. DK03-714.

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

12 A. 1B680.

13 Q. Is there a green sheet or chain of custody form
14 attached with -- to it?

15 A. The chain of custody form is on the envelope.

16 Q. All right. Could you look at that, please?

17 A. Yes.

18 Q. Do you see your signature on it?

19 A. I do.

20 Q. And where is your signature contained?

21 A. The first line as "Collected."

22 Q. All right. Are you able to associate that chain of
23 custody receipt with the exhibit, Prosecution Exhibit

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1 Number 10?

2 A. Yes.

3 Q. And how are you able to do that, ma'am?

4 A. The 1B number is on it.

5 Q. All right. And there's also the same DK number,
6 correct?

7 A. Yes, 1B680.

8 Q. Placing on the ELM0 Prosecution Exhibit 10C for
9 Identification. Is that an exact duplicate of the first four
10 entries on that chain of custody receipt?

11 A. Yes. There's two additional signatures on here,
12 though.

13 Q. I'm asking, though, are the first four entries ----

14 A. Yes ----

15 Q. ---- exact duplicates?

16 A. First four, yes. Sorry.

17 Q. And again, for the record, your signature appears
18 above the word "Collected," correct?

19 A. Yes.

20 Q. Lastly, I'm showing you a photograph, Prosecution
21 Exhibit 10B for Identification. Do you recognize that
22 photograph, ma'am?

23 A. Yes.

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1 Q. Agent, is that a fair and accurate depiction of the
2 evidence bag that you have in front of you, Prosecution
3 Exhibit 10?

4 A. Yes, sir.

5 TC [MR. MILLER]: The government would move at this time,
6 Your Honor, for the introduction of Prosecution Exhibit 10A,
7 B, and C.

8 MJ [Col SPATH]: Defense Counsel?

9 DDC [LT PIETTE]: Defense takes no position, other than to
10 object to the -- these proceedings going forward without
11 learned counsel present.

12 MJ [Col SPATH]: Understand. Thank you. Trial Counsel.

13 Q. If you would, please, provide the witness with
14 Prosecution Exhibit 14 for Identification. Oh, excuse me.
15 Excuse me. Should be -- do you recognize that, ma'am?

16 A. Yes.

17 Q. And did you collect that evidence?

18 A. Yes, sir, I did.

19 Q. I'm going to show you a series, again, as I did last
20 time. I'll show you Prosecution Exhibit 14A for
21 Identification. Is that the type of evidence that you were
22 seizing?

23 A. Yes, sir.

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1 Q. And the reason for seizing it?

2 A. Indications of explosion, fire, and did not belong on
3 a U.S. naval ship.

4 Q. Let's see if you can read the Q number on this.

5 There is a Q number on that. Can you read that?

6 A. Q367.

7 Q. All right. Can you look in the bag and look at the
8 evidence that's in the bag itself?

9 A. Yes.

10 Q. Same type of evidence contained in the picture,
11 Prosecution Exhibit 14A for Identification?

12 A. Yes.

13 Q. If you look, again, at the bag itself, Prosecution
14 Exhibit 14, is your handwriting contained on that evidence
15 tag?

16 A. Yes.

17 Q. And if you could read into the record what your
18 handwriting reflects.

19 A. My handwriting reflects I recovered this
20 miscellaneous fiberglass parts on October 19th at 1100 hours.

21 Q. Does that bag have a Q tab on it, or Q number?

22 A. Yes.

23 Q. What's that Q number?

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1 A. Q367.

2 Q. And that is the same number contained on Prosecution
3 Exhibit 14A? I'll blow it up again.

4 A. Yes.

5 Q. Okay. It is. Does it have a 1B number?

6 A. Yes.

7 Q. What's that 1B number?

8 A. 1B656.

9 Q. And does it have a DK number?

10 A. DK02-120.

11 Q. Is there a chain of custody form attached to that
12 exhibit or to the ----

13 A. Yes.

14 Q. All right. Take a look at that, please. Do you see
15 your signature on it?

16 A. Yes.

17 Q. And where is your signature?

18 A. The first line is "Collected."

19 Q. Are you able to associate that chain of custody form
20 with Prosecution Exhibit 14 for Identification?

21 A. Yes.

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

23 A. The 1B number and the item number.

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1 Q. The DK number, they're the same?

2 A. Yes.

3 Q. Placing on the ELM0 Prosecution Exhibit 14C for
4 Identification. Are the first four entries on Prosecution
5 Exhibit 14C for Identification an exact duplicate of the chain
6 of custody receipt that you've just described?

7 A. Yes, sir.

8 Q. All right. And again, your signature is on the first
9 line above the word "Collected," correct?

10 A. Yes.

11 Q. Lastly, I'm going to place on the ELM0 Prosecution
12 Exhibit 14B for Identification. Do you recognize that
13 photograph?

14 A. Yes.

15 Q. Is that a fair and accurate depiction of Prosecution
16 Exhibit 14?

17 A. Yes.

18 TC [MR. MILLER]: Please provide the witness with
19 Prosecution Exhibit 19 for Identification.

20 Q. Do you recognize that item, ma'am?

21 A. Yes.

22 Q. And, Agent, did you seize that item?

23 A. It states I recovered it.

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1 Q. All right.

2 A. Yes.

3 Q. And was there another individual listed on that
4 particular exhibit?

5 A. Yes.

6 Q. And who is that?

7 A. There's -- it's a Paul. I can't read the last name.

8 Q. Are you familiar with an agent named Paul Fennewald?

9 A. Yes.

10 Q. Were you working with him on the ship?

11 A. Yes.

12 Q. I take it you were collecting things together?

13 A. Yes. Sometimes we'd be together, so we'd switch off
14 signing the evidence forms.

15 Q. Placing on the ELM0 Prosecution Exhibit 19A for
16 Identification. Do you recognize that type of evidence?

17 A. Yes, sir.

18 Q. And is it similar to the evidence contained in
19 Prosecution Exhibit 19?

20 A. Yes.

21 Q. Can you read the Q number?

22 A. Q406.

23 Q. Looking at the bag, does the bag have a Q number on

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1 it?

2 A. Yes.

3 Q. And what is that Q number?

4 A. 406.

5 Q. Which matches the number on Prosecution Exhibit 19A;
6 is that correct?

7 A. Yes, sir.

8 Q. The chain of custody form is filled out by yourself
9 or Agent Fennewald?

10 A. It's filled out by myself.

11 Q. All right. The chain of custody shows your name
12 where?

13 A. The chain of custody, FD-192, has my name as
14 "Collected."

15 Q. All right. And are you able to associate that
16 particular form with the bag, Prosecution Exhibit 19?

17 A. Yes.

18 Q. I'm going to show you Prosecution Exhibit 19C for
19 Identification and ask you if the first four entries are
20 identical to the ones on the evidence receipt or the evidence
21 form that you've just described.

22 A. Yes.

23 Q. Now, the bag itself actually, however, contains a --

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1 the chain of custody items are filled out by Agent Fennewald,
2 correct?

3 A. Yes. The -- correct. The bottom portion is not my
4 handwriting, and that is his signature there.

5 Q. But there is a notation by whom it was recovered,
6 correct?

7 A. Yes.

8 Q. And who is listed as the recovery personnel?

9 A. Myself and Agent Fennewald.

10 Q. Would it be the responsibility of one or the other to
11 sign the green sheet?

12 A. Yes.

13 Q. And, for the record, placing in front of you
14 Prosecution Exhibit 19B for Identification. Do you recognize
15 that?

16 A. Yes.

17 Q. Fair and accurate depiction of it?

18 A. Yes, sir.

19 Q. And I take it -- I may not have asked this because I
20 kind of went out of order here, but you are able to associate
21 the chain of custody form with the Exhibit 19B, correct?

22 A. Yes.

23 Q. All right. Or, excuse me, the chain of custody form

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1 with the evidence bag, correct?

2 A. Yes.

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

4 A. The 1B number.

5 Q. All right.

6 A. And the DK number.

7 TC [MR. MILLER]: I believe we have previously moved for
8 the admission of this through Fennewald, Your Honor.

9 Provide the witness, please, with Prosecution
10 Exhibit 25 for Identification.

11 Q. Do you recognize that exhibit?

12 A. I have to open the box.

13 Q. All right.

14 TC [MR. MILLER]: The record should reflect, Your Honor,
15 that the evidence bag is being opened for the witness.

16 A. Yes, I recognize this.

17 Q. Is that something that you seized, Agent?

18 A. Yes.

19 Q. The type of evidence -- excuse me. Again, evidence
20 that was not -- items that were not consistent with the Naval
21 ship itself?

22 A. Right. This -- these items indicate they're from the
23 pier.

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1 Q. All right. Let me ask you that. You searched -- in
2 addition to the ship, you searched the fueling dolphin or what
3 you call the pier, correct?

4 A. It's called a dolphin.

5 Q. Dolphin. All right.

6 A. Yep.

7 Q. And these items are from the ----

8 A. The dolphin. The dolphin, yeah.

9 Q. I'm going to place on the ELMO Prosecution Exhibit 25
10 for Identification -- 25A for Identification, excuse me. Do
11 you recognize those items?

12 A. I do.

13 Q. Are those the same items contained in Prosecution
14 Exhibit 25?

15 A. Yes.

16 Q. I don't know if you can make out the DK number, but
17 we'll do it anyway. Would it be a fair statement that that's
18 not readable?

19 A. The Q number?

20 Q. Yeah. Can you make out the ----

21 A. No, I can't.

22 Q. All right.

23 A. Q something 72.

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1 Q. All right. In any event, these are the same items
2 contained in the exhibit itself, 25, correct?

3 A. Yes.

4 Q. All right. If you would look at 25. There's a
5 notation on there for the chain of custody. Did you fill out
6 portions of that evidence tag?

7 A. Just a minute.

8 So this evidence bag, yes, is my handwriting.

9 Q. What does it indicate?

10 A. It indicates I collected these items from the pier
11 and signed for them 10/17 at 0930.

12 Q. And is there a chain of custody receipt with that
13 exhibit?

14 A. Yes.

15 Q. Take a look at that, please. Does it contain your
16 name?

17 A. Yes.

18 Q. Now, the Exhibit 25, does it have a RP number on it?

19 A. Yes.

20 Q. What's that RP number?

21 A. RP-105.

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

23 A. 1B731.

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1 Q. Now, are you able to associate the chain of custody
2 form with Exhibit 25?

3 A. Yes.

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

5 A. There is -- the RP number is written on my label, and
6 that's about it, I think, on here.

7 Q. All right. Placing on --

8 A. Oh, I'm sorry. The Q number is -- there's a Q number
9 that's been taped on the box.

10 Q. All right. And is there a 1B number, do you know,
11 that you can see somewhere?

12 A. I do not see one on here, sir.

13 Q. All right. But the RP numbers match; is that
14 correct? RP-105?

15 A. Yes.

16 Q. I'm placing on the ELMO Prosecution Exhibit 25D for
17 Identification. And I'd ask you if the first four entries are
18 identical to the first four entries on the chain of custody
19 form that you've just recited.

20 A. Yes, sir. And the 1B number is on this large bag
21 here.

22 Q. What is that number?

23 A. 1B731.

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1 Q. Which is the same number on the chain of custody
2 form, correct?

3 A. Yes.

4 Q. Placing on the ELM0 photograph Prosecution
5 Exhibit 25B. Do you recognize that?

6 A. Yes.

7 Q. Fair and accurate depiction of the portion of the
8 exhibit, Prosecution 25?

9 A. Yes, sir.

10 Q. And I'm placing on the ELM0 Prosecution Exhibit 25C
11 for Identification. Again, a fair and accurate -- do you
12 recognize that?

13 A. I do.

14 Q. Is it a fair and accurate depiction of a portion of
15 the exhibit, Prosecution Exhibit 25?

16 A. Yes, sir.

17 Q. In fact, Prosecution Exhibit 25C actually contains
18 your name, your signature on the chain of custody area,
19 correct?

20 A. That is my handwriting, yes.

21 TC [MR. MILLER]: The government would move for the
22 admission, Your Honor, of 25A, B, C, and D at this time.

23 MJ [Col SPATH]: Defense Counsel?

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1 DDC [LT PIETTE]: Defense takes no position.

2 MJ [Col SPATH]: Thank you.

3 TC [MR. MILLER]: Provide the witness, please, with
4 Prosecution Exhibit 36.

5 Q. Do you recognize Prosecution Exhibit 36?

6 A. Yes.

7 Q. Is it an item you seized?

8 A. Yes.

9 Q. Placing on the ELMO Prosecution Exhibit 36A for
10 Identification. Do you recognize that photograph?

11 A. Yes.

12 Q. Appear to be the same items that are contained in
13 Prosecution Exhibit 36 for Identification?

14 A. Yes, sir.

15 Q. Does Prosecution Exhibit 36A have a Q number?

16 A. Q387.

17 Q. If you would look at the exhibit itself, Prosecution
18 Exhibit 36. Do you recognize the evidence form on the front
19 of it?

20 A. Yes.

21 Q. And did you fill that out?

22 A. I did, sir.

23 Q. All right. And what does it indicate the evidence

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1 that was -- the description of the evidence, the date and time
2 of recovery, and the location?

3 A. 10/18/2000, recovered at 10:00 a.m., and I have it
4 02-Port.

5 Q. All right. Do you know what you mean by "02"?

6 A. I can't recall, sir.

7 Q. All right.

8 A. But Port Side, so ----

9 Q. Port Side?

10 A. Yeah.

11 Q. And then it has chain of custody. Did you fill out
12 that, the chain of custody on the bag itself, Prosecution
13 Exhibit ----

14 A. Yes.

15 Q. ---- 36? All right.

16 Does it have a Q number, the bag?

17 A. Yes.

18 Q. What is that number?

19 A. Q387.

20 Q. And is that the same one that's contained on
21 Prosecution Exhibit 36A?

22 A. Yes.

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

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1 A. DK on the bag? Let's see. DK02-122.

2 Q. And is there a 1B number?

3 A. 1B658.

4 Q. If you would, please, is there a chain of custody
5 form attached to that exhibit?

6 A. Yes.

7 Q. All right. And if you would take a look at it,
8 please. Do you recognize your signature on that form?

9 A. Yes.

10 Q. And where is your signature?

11 A. Under "Collected."

12 Q. And if you would, can you associate that particular
13 form, Prosecution Exhibit 36C, with -- excuse me -- that chain
14 of custody form with the exhibit, Prosecution Exhibit 36?

15 A. Yes.

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

17 A. The 1B number and the DK number.

18 Q. Are the same?

19 A. Yes.

20 Q. Placing on the ELM0 Prosecution Exhibit 36C. Ask you
21 if the first four entries on that form are identical to the
22 chain of custody form you've just described?

23 A. Yes, sir.

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1 Q. Again, your signature appears under -- above the
2 word "Collected"?

3 A. Yes.

4 Q. Lastly, placing on the ELMO Prosecution Exhibit 36B.
5 Recognize that?

6 A. Yes.

7 Q. Is that a fair and accurate depiction of Prosecution
8 Exhibit 36?

9 A. Yes.

10 TC [MR. MILLER]: Move for the admission, Your Honor, of
11 Prosecution's 36A, B, and C.

12 MJ [Col SPATH]: Defense Counsel?

13 DDC [LT PIETTE]: Defense takes no position other than to
14 object to these proceedings continuing without the presence of
15 learned counsel.

16 MJ [Col SPATH]: Thank you.

17 TC [MR. MILLER]: Provide the witness with Prosecution
18 Exhibit 37.

19 Q. Placed before you Prosecution Exhibit 37. Do you
20 recognize that, ma'am?

21 A. Yes.

22 Q. Is that something that you seized in conjunction with
23 another agent?

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1 A. Yes.

2 Q. Is that an item that you seized with Special Agent
3 Fennewald?

4 A. Yes.

5 Q. I'm going to place on the ELMO Prosecution
6 Exhibit 37A, ask you if you recognize this type of evidence.

7 A. Yes.

8 Q. Again, is it the type of evidence that you were
9 seizing on the COLE?

10 A. Yes.

11 Q. If you can read the DK -- the Q number on it. Hold
12 on. I'll get it out of the glare.

13 A. Q407.

14 Q. 407? All right. If you would, please, look at the
15 bag itself -- or the exhibit itself, Prosecution Exhibit 37.
16 Does it have a Q number on it?

17 A. Yes.

18 Q. What is that Q number?

19 A. 407.

20 Q. And on the bag itself, is there a notation as to who
21 recovered this evidence?

22 A. Yes.

23 Q. And who does it indicate recovered the evidence?

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1 A. Myself and Paul Fennewald.

2 Q. All right. Is there a DK number on it?

3 A. DK03-138.

4 Q. And a 1B number?

5 A. 1B699.

6 Q. If you would, please, look at the chain of custody
7 form that's attached to it.

8 A. Yes.

9 Q. And who completed that form?

10 A. Paul Fennewald.

11 Q. And again, it would have been his responsibility --
12 one of the two of you, to do that, correct?

13 A. Yes.

14 TC [MR. MILLER]: Would you provide the -- we would move
15 for the -- I think we moved for the admission of these through
16 Fennewald already, Your Honor.

17 MJ [Col SPATH]: That's Prosecution Exhibit 37, 37A, B,
18 and C?

19 TC [MR. MILLER]: Right.

20 MJ [Col SPATH]: Yes.

21 TC [MR. MILLER]: If we could provide the witness, please,
22 with Prosecution Exhibit 42, please.

23 Q. Do you recognize that exhibit, Prosecution

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1 Exhibit 42, Agent?

2 A. Just a second, please.

3 Q. Sure.

4 A. Yes.

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

6 Exhibit 42A for Identification. Is that a photograph of some

7 of the items contained in the exhibit, Prosecution 42 for

8 Identification?

9 A. Yes.

10 Q. Let's see if we can read a Q number on this. Can you

11 read the Q number on that? Let me make it a little bit

12 bigger.

13 A. Q246.

14 Q. All right. I'll show you Prosecution Exhibit 42B for

15 Identification and ask you if you recognize the items in that

16 photograph. Let me make it a little smaller.

17 A. Yes.

18 Q. All right. Are those some of the items contained in

19 the evidence bag, Prosecution 42?

20 A. Yes.

21 Q. And the Q number of this is?

22 A. Q246.

23 Q. All right. And I'm showing you Prosecution

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1 Exhibit -- a photograph, Prosecution Exhibit 42C. Do you
2 recognize those items?

3 A. Yes.

4 Q. Are those items also contained in the exhibit,
5 Prosecution 40 ----

6 A. Yes.

7 Q. ---- 42? Yes?

8 A. Yes, sir.

9 Q. Q number on that photograph?

10 A. Q246.

11 Q. And if you look at the exhibit itself, please,
12 Prosecution Exhibit 42, there is some writing on the bag
13 itself. Do you recognize that writing?

14 A. On this bag that's attached?

15 Q. Correct.

16 A. The evidence bag? Yes.

17 Q. Yes. First off, does it have a Q number?

18 A. Q246.

19 Q. Which would be the same Q number as the ones
20 contained in Prosecution Exhibits 42A, B, and C, correct?

21 A. Yes.

22 Q. And is that your handwriting on the bag?

23 A. Some of it is.

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1 Q. All right. What is your handwriting?

2 A. My handwriting is the part in parentheses that says,
3 "Possible pieces of suspect boat." And then next to it I have
4 "TOB: MA1." Underneath that, "J. Crowe(E-6)." And then on
5 the chain of custody, that's my signature underneath where --
6 "Received From," that's not my handwriting; but it is my
7 handwriting, "Received From."

8 Q. So it indicates you did, in fact, seize this or take
9 possession of these items, correct?

10 A. Yes.

11 Q. What is the "TOB: MA1," "J. Crowe (E-6)" mean?

12 A. Sir, I cannot recall what "TOB: MA1," but I believe
13 the "J. Crowe" was a crewmember, because I wrote "E-6," his
14 rank. And I believe these items were given to us by this
15 crewmember and they were located on the fo'c'sle of the ship.

16 Q. Was there a sifting operation occurring also at this
17 time?

18 A. I do not know if it was occurring on this date.

19 Q. All right. But you are familiar with the sifting
20 operation, correct?

21 A. Yes.

22 Q. Did you assist in the sifting operation?

23 A. I did.

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1 Q. All right. Now, does the evidence bag itself have a
2 1B number and a TOB number?

3 A. The TOB number is on here. I don't see a 1B number
4 except on the exterior bag.

5 Q. And what is that number?

6 A. 1B837.

7 Q. All right. And the TOB number is what?

8 A. TOB-130.

9 Q. All right. If you would, please, is there a chain of
10 custody form attached to that particular exhibit?

11 A. Yes.

12 Q. If you would, please, take a look at it. Do you see
13 your signature on it?

14 A. Yes.

15 Q. It shows you accepted the evidence, correct?

16 A. Yes.

17 Q. All right. And where on the form is your name?

18 A. Above "Collected."

19 Q. All right. Are you able to associate that chain of
20 custody form with the exhibit, Prosecution Exhibit 42?

21 A. Yes.

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

23 A. The TOB and the 1B number on the exterior of this

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1 bag.

2 Q. Showing you what has been -- what is Prosecution
3 Exhibit 42E for Identification. Are you able -- or, excuse
4 me. Is this particular form, the first four entries,
5 identical to the -- an exact duplicate of the first four
6 entries on the chain of custody form you've just described?

7 A. Yes.

8 Q. Placing on the ELM0 Prosecution Exhibit 42D for
9 Identification. Do you recognize that?

10 A. I do, yes.

11 Q. And is that a fair and accurate depiction, 42D, of
12 the evidence bag contained in Prosecution Exhibit 42?

13 A. Yes.

14 TC [MR. MILLER]: Your Honor, the government would move
15 for the introduction of Prosecution Exhibit 42A, B, C, D, and
16 E.

17 DDC [LT PIETTE]: Defense takes no position other than to
18 object to these proceedings continuing without the presence of
19 learned counsel.

20 MJ [Col SPATH]: All right. Thank you. Mr. Miller, I
21 think this is a good spot for a break.

22 TC [MR. MILLER]: Yes, Your Honor.

23 MJ [Col SPATH]: We'll come back at 1115 and keep moving.

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1 We are in recess.

2 [The R.M.C. 803 session recessed at 1102, 22 January 2018.]

3 [The R.M.C. 803 session was called to order at 1119,
4 22 January 2018.]

5 MJ [Col SPATH]: Commission is called back to order. All
6 the same parties who were present before the recess are again
7 present. The witness remains on the witness stand. Just
8 remember you're still under oath, okay?

9 WIT: Yes, sir.

10 MJ [Col SPATH]: Grab a seat.

11 TC [MR. MILLER]: Thank you, Your Honor. Provide the
12 witness, please, with Prosecution Exhibit 42 -- excuse me, 43
13 for Identification.

14 **DIRECT EXAMINATION CONTINUED**

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

16 Q. If you would, Agent, please take a look at that. Do
17 you recognize that item ----

18 A. Yes.

19 Q. ---- 43? Is that something that you seized?

20 A. Yes.

21 Q. Placing on the ELMO Prosecution Exhibit 43A for
22 Identification. Do you recognize those items?

23 A. Yes, sir.

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1 Q. Are those the items contained in Prosecution
2 Exhibit 43?

3 A. Yes.

4 Q. There's a Q number on the photograph, Prosecution
5 43A, and ask you, can you read that?

6 A. Q396.

7 Q. If you would look at the exhibit itself, Prosecution
8 Exhibit 43. Does it have a Q number on it?

9 A. Yes.

10 Q. What is that Q number?

11 A. Q396.

12 Q. Is that the same number contained on Prosecution
13 Exhibit 43A for Identification?

14 A. Yes.

15 Q. Did you fill out the chain of custody form on this?

16 A. I did.

17 Q. Do you recognize your handwriting on it?

18 A. Yes.

19 Q. Could you please read your handwriting, or what you
20 indicated on the bag, into the record, please.

21 A. It was entered on 10/17/2000, and I indicated between
22 9:00 and 12:45 p.m.

23 Q. Is there a 1B number on this particular exhibit --

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1 excuse me, on Prosecution Exhibit 43?

2 A. 1B677.

3 Q. And is there a DK number?

4 A. DK03-109.

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

6 A. Yes.

7 Q. Would you look at that, please. Is your signature
8 contained on it?

9 A. Yes, sir.

10 Q. Where?

11 A. My signature is in the "Collected" portion.

12 Q. All right. And are you able to associate that chain
13 of custody form with the exhibit, Prosecution Exhibit 43?

14 A. Yes.

15 Q. How are you able to do that?

16 A. The DK number, the 1B number.

17 Q. Placing on the ELM0 Prosecution Exhibit 43C. Ask
18 you, Agent, is that an exact duplicate of the first four
19 entries on that chain of custody form you've just described?

20 A. Yes.

21 Q. And I'm placing on the ELM0 Prosecution Exhibit 43B
22 for Identification. Is -- do you recognize that photograph?

23 A. Yes.

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1 Q. Is it a fair and accurate depiction of the evidence
2 bag, Prosecution 43?

3 A. Yes.

4 TC [MR. MILLER]: Move for the admission, Your Honor, of
5 Prosecution Exhibit 43A, B, and C at this time.

6 MJ [Col SPATH]: Defense Counsel?

7 DDC [LT PIETTE]: Defense takes no position.

8 MJ [Col SPATH]: Thanks.

9 TC [MR. MILLER]: Provide the witness, please, with
10 Prosecution Exhibit 66.

11 Q. Do you recognize that item, ma'am?

12 A. Yes.

13 Q. And did you seize that item?

14 A. According to this bag, I seized it with Paul
15 Fennewald.

16 Q. And is that the agent that you previously testified
17 you were collecting items with?

18 A. Yes.

19 Q. And does it indicate a time and date of the recovery?

20 A. This says 10/16 at about 1:30 p.m.

21 TC [MR. MILLER]: Your Honor, I believe we have previously
22 moved for the admission of these from Agent Fennewald. We'll
23 move on to the next one.

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1 Prosecution Exhibit Number 89, if you can provide the
2 witness with 89.

3 WIT: Thank you.

4 Q. And do you recognize Prosecution Exhibit 89?

5 A. Yes.

6 Q. And is this an item, again, that you seized in
7 conjunction with Special Agent Paul Fennewald?

8 A. Yes.

9 TC [MR. MILLER]: Provide the witness, please, with
10 Prosecution Exhibit 91.

11 Q. Do you recognize that, ma'am ----

12 A. Yes.

13 Q. ---- or Agent?

14 Is that something that you seized?

15 A. Yes.

16 Q. Placing on the ELMO Prosecution Exhibit 91A. Take a
17 look at that. Do you recognize that photograph, ma'am?

18 A. Yes.

19 Q. And is the item contained in the photograph,
20 Prosecution Exhibit 91A, the same that's contained in the
21 exhibit, Prosecution 91?

22 A. Yes, sir.

23 Q. And does the photograph, Prosecution Exhibit 91A for

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1 Identification, have a Q number?

2 A. Q424.

3 Q. Looking at the exhibit itself, Prosecution 91, do you
4 recognize the evidence tag on the front?

5 A. Yes.

6 Q. Did you complete part of it?

7 A. I did.

8 Q. Does it indicate that you recovered this item?

9 A. Yes.

10 Q. And does it indicate a date and time when you
11 recovered it?

12 A. 18 October at 11:14 a.m.

13 Q. Does the exhibit itself, 91, have a Q number?

14 A. Yes.

15 Q. What is that Q number?

16 A. Q424.

17 Q. Is that the same Q number that's contained in
18 Prosecution Exhibit 91A for Identification?

19 A. Yes.

20 Q. Does the bag itself have a 1B number and a DK number,
21 Agent?

22 A. Yes.

23 Q. And what is the DK number, Agent?

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1 A. DK03-155.

2 Q. And the 1B number, please?

3 A. 1B715.

4 Q. If you would, please, is there an evidence tag -- or
5 an evidence chain of custody form attached to the exhibit?

6 A. Yes.

7 Q. Take a look at it, please. Do you recognize your
8 signature?

9 A. I do, yes.

10 Q. Where is your signature?

11 A. Under the collection -- "Collected" box.

12 Q. That would be on the first line?

13 A. Yes.

14 Q. Are you able to associate this particular -- or that
15 particular chain of custody form with the exhibit, Exhibit --
16 Prosecution Exhibit 91 for Identification?

17 A. Yes.

18 Q. How are you able to do that, Agent?

19 A. The 1B number and the Q number and the DK number.

20 Q. They all match?

21 A. Yes, they do.

22 Q. Placing on the ELM0 Prosecution 91C for
23 Identification. Are the first four entries on 91C for

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1 Identification identical or duplicate of the first four on the
2 chain of custody form you've just described?

3 A. Yes.

4 Q. Again, for the record, your signature appears on the
5 very first line above the word "Collected"?

6 A. Yes.

7 Q. Placing on the ELMO Prosecution Exhibit 91B. Do you
8 recognize that photograph?

9 A. Yes, sir.

10 Q. Is that photograph a fair and accurate depiction of
11 the evidence bag in Prosecution Exhibit Number 91 --
12 Prosecution Exhibit 91 for Identification?

13 A. Yes.

14 TC [MR. MILLER]: Move for the admission, Your Honor, of
15 91A, B, and C.

16 MJ [Col SPATH]: Defense Counsel?

17 DDC [LT PIETTE]: Defense takes no position.

18 MJ [Col SPATH]: Thank you.

19 TC [MR. MILLER]: If you'll provide the witness, please,
20 with Prosecution Exhibit 100.

21 Q. Have you had a chance to look at that, Agent? Do you
22 need to open it?

23 A. Oh, just a minute. Yes, sir.

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

2 WIT: It's like stuck.

3 A. Yes, sir, I remember this.

4 Q. All right. You recognize it?

5 A. Yes.

6 Q. And is Prosecution Exhibit 100 an item that you
7 seized?

8 A. Yes.

9 Q. Placing on the ELMO Prosecution Exhibit 100A for
10 Identification. Do you recognize that?

11 A. Yes.

12 Q. And is that the same item contained in Prosecution
13 Exhibit 100?

14 A. Yes.

15 Q. Does it have a Q number? Prosecution Exhibit 100A,
16 does it have a Q number attached to it?

17 A. Yes.

18 Q. What is that number?

19 A. Q287.

20 Q. If you'd look at the exhibit itself, Prosecution
21 Exhibit 100, is your handwriting contained on that bag?

22 A. Yes.

23 Q. And it indicates that you recovered it, correct?

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1 A. Yes, sir.

2 Q. If you could, please, read into the record the date
3 and time which you seized it or collected it.

4 A. 18 October 2000, 10:00 a.m.

5 Q. Is there a Q number on that bag?

6 A. Yes.

7 Q. Prosecution 100 has a Q number? What is that
8 Q number?

9 A. Q287.

10 Q. Is that the same Q number contained on Prosecution
11 Exhibit 100A?

12 A. Yes.

13 Q. Does it have an MDK number on it?

14 A. Yes.

15 Q. What is that number?

16 A. MDK-118.

17 Q. Is there a 1B number?

18 A. 1B805.

19 Q. Is there a chain of custody form attached to that
20 exhibit?

21 A. Yes.

22 Q. Would you look at it, please. Does it contain your
23 signature?

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1 A. Yes.

2 Q. And where on the form?

3 A. Under the "Collected" line.

4 Q. So that would be the very first entry, correct?

5 A. First entry, yes.

6 Q. Are you able to associate that chain of custody form
7 with the exhibit, Prosecution Exhibit 100?

8 A. Yes.

9 Q. How are you able to do that?

10 A. 1B number and the MDK number.

11 Q. They're identical?

12 A. Yes.

13 Q. Placing on the ELM0 Prosecution Exhibit 100C for
14 Identification. I'd ask you to take a look at that. Are the
15 first four entries exact duplicates of the entries contained
16 on the chain of custody form you have just described?

17 A. Yes, sir.

18 Q. Placing on the ELM0 Prosecution Exhibit 100B for
19 Identification. Do you recognize that?

20 A. Yes.

21 Q. Is that a -- is 100B a fair and accurate depiction of
22 the evidence bag, 100, Prosecution Exhibit 100?

23 A. Yes.

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1 TC [MR. MILLER]: Move for the admission, Your Honor, of
2 Prosecution Exhibit 100A, B, and C.

3 MJ [Col SPATH]: Defense Counsel?

4 DDC [LT PIETTE]: Defense takes no position.

5 MJ [Col SPATH]: Thank you.

6 TC [MR. MILLER]: If you would hand the witness, please,
7 Prosecution Exhibit 111.

8 Q. Do you have that before you?

9 A. Yes.

10 Q. And did you seize this item?

11 A. Yes.

12 Q. Placing on the ELMO Prosecution Exhibit --
13 Prosecution 111A for Identification. Do you recognize the
14 item contained in it?

15 A. Yes.

16 Q. And does it appear to be similar to that that's
17 contained in the exhibit, Prosecution Exhibit 111 for
18 Identification?

19 A. Yes.

20 Q. Does Prosecution Exhibit 11A [sic] for Identification
21 have a Q number on it?

22 A. Yes.

23 Q. What is that Q number, Agent?

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1 A. Q393.

2 Q. If you would look at the exhibit itself, Prosecution
3 Exhibit 111. Does it indicate that you seized this item?

4 A. Yes.

5 Q. And the date and time that you seized it?

6 A. 17 October 2000 between 9:00 and 12:45 p.m.

7 Q. Is there a Q number on this evidence, Exhibit --
8 Prosecution Exhibit 111?

9 A. Yes.

10 Q. And what is the Q number?

11 A. Q393.

12 Q. Is that the same Q number that's contained on the
13 Prosecution Exhibit 11A [sic] for Identification?

14 A. Yes.

15 Q. Is there a 1B number also on that exhibit,
16 Prosecution Exhibit 111?

17 A. Yes.

18 Q. And what is that number?

19 A. 1B686.

20 Q. Is there a chain of custody form attached to the
21 exhibit?

22 A. Yes.

23 Q. Would you take a look at that, please. Is your

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1 signature contained on that form?

2 A. Yes.

3 Q. Where?

4 A. First signature in "Collected" line.

5 Q. And it gives the date and time of seizure, correct?

6 A. Yes.

7 Q. Are you able to associate that chain of custody form
8 with the exhibit, Prosecution Exhibit 111 for Identification?

9 A. Yes.

10 Q. How are you able to do that?

11 A. The 1B number.

12 Q. They match?

13 A. They do. 1B686.

14 Q. Placing on the ELM0 Prosecution Exhibit 111C for
15 Identification, and I would ask you, are the first four
16 entries duplicate -- or are they identical to the four entries
17 on the chain of custody form you have just described?

18 A. Yes.

19 Q. Placing on the ELM0 Prosecution Exhibit 111B for
20 Identification. Do you recognize that?

21 A. Yes.

22 Q. And is that a fair and accurate depiction of the
23 evidence tag, Prosecution Exhibit 111?

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1 A. Yes.

2 TC [MR. MILLER]: Move for the admission, Your Honor, of
3 Prosecution Exhibits 111A, 111B, and 111C.

4 MJ [Col SPATH]: Defense Counsel?

5 DDC [LT PIETTE]: Defense takes no position.

6 MJ [Col SPATH]: Thank you.

7 TC [MR. MILLER]: If you would hand the witness
8 Prosecution Exhibit 112.

9 Q. Have you been handed 112?

10 A. Yes, sir.

11 Q. Do you recognize it?

12 A. Yes.

13 Q. Is that an item that you seized?

14 A. Yes.

15 Q. Placing on the ELMO Prosecution Exhibit 112A for
16 Identification. Do you recognize those items?

17 A. Yes.

18 Q. Are those the items contained in Prosecution
19 Exhibit 112?

20 A. Yes.

21 Q. Does Prosecution Exhibit 112A for Identification have
22 a Q number?

23 A. Yes.

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1 Q. What is that Q number?

2 A. Q402.

3 Q. If you would look at the exhibit itself, Agent, 112.
4 Do you recognize the handwriting on it?

5 A. Yes.

6 Q. Is that your handwriting?

7 A. Most of it, yes.

8 Q. As to the item -- the handwriting that is yours,
9 could you give a description of what you seized, the location
10 of the recovery, and the time of the recovery?

11 A. So the description of evidence is not my -- not my
12 handwriting.

13 Q. All right.

14 A. And ----

15 Q. As to -- what is your handwriting, please?

16 A. The case number, date and time of recovery, recovered
17 by, and then the chain of custody.

18 Q. Does it indicate when you seized this item?

19 A. Yes.

20 Q. When?

21 A. 10/18/2000, 10:25 a.m.

22 Q. Does the Exhibit 112 have a Q number?

23 A. Yes.

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1 Q. And is the Q number the same Q number that's
2 contained on Prosecution Exhibit 112A?

3 A. Yes. Q402.

4 Q. Does the exhibit, Prosecution Exhibit 112 for
5 Identification, have a 1B number on it?

6 A. Yes.

7 Q. What is that?

8 A. 1B685.

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

10 A. Yes.

11 Q. What is that?

12 A. DK03-120.

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

14 A. Yes.

15 Q. And could you look at it, please. Is your signature
16 contained on it?

17 A. Yes.

18 Q. Where?

19 A. "Collected," first line.

20 Q. If you would, please, are you able to associate this
21 particular chain of custody form with the exhibit, Prosecution
22 Exhibit 112?

23 A. Yes.

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

2 A. The 1B number and the Q number and also the DK
3 number.

4 Q. Are the same?

5 A. Yes, sir.

6 Q. Placing on the ELM0 Prosecution Exhibit 112C for
7 Identification. Ask you, are the first three -- four entries
8 on that identical? In fact, is it a duplicate -- a duplicate
9 of the chain of custody form that you've just described?

10 A. Yes, sir.

11 Q. Again, for the record, your name is -- your signature
12 appears above the word "Collected," correct?

13 A. That's correct.

14 Q. Last, Prosecution Exhibit 112B for Identification.
15 Do you recognize that photograph, ma'am?

16 A. Yes.

17 Q. And is it a fair and accurate depiction of the
18 Exhibit 112 for Identification?

19 A. Yes.

20 TC [MR. MILLER]: Move for the admission, Your Honor, of
21 Prosecution Exhibit 112A, B, and C.

22 MJ [Col SPATH]: Defense Counsel?

23 DDC [LT PIETTE]: Defense takes no position.

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1 MJ [Col SPATH]: Thank you.

2 TC [MR. MILLER]: If you would provide the witness,
3 please, with Prosecution Exhibit 113.

4 Q. Do you recognize that, Agent?

5 A. Yes.

6 Q. And is that an item you seized in conjunction with
7 Special Agent Paul Fennewald?

8 A. Yes.

9 Q. And is your name contained on the evidence receipt?

10 A. Yes.

11 Q. And does it indicate that you were part of the
12 recovery team, so to speak?

13 A. Yes.

14 Q. The chain of custody form, however, is not filled out
15 by yourself, is it?

16 A. No.

17 Q. Who completed that?

18 A. Agent Fennewald signed for it.

19 TC [MR. MILLER]: Your Honor, I believe we have already
20 moved for the admission through Agent Fennewald.

21 If you would provide the witness, please, with
22 Prosecution Exhibit 115.

23 Q. Do you recognize that, Agent?

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1 A. Yes.

2 Q. Is that something that you seized?

3 A. Yes.

4 Q. Placing on the ELM0 Prosecution Exhibit 115A for
5 Identification. Do you recognize the item contained in the
6 photograph, Prosecution Exhibit 115A?

7 A. Yes.

8 Q. And is that the item that's contained in the exhibit,
9 Prosecution Exhibit 115 for Identification, as best you can
10 tell?

11 A. Yes.

12 Q. Does Prosecution Exhibit 115A have a Q number?

13 A. Yes.

14 Q. And what is the Q number?

15 A. Q453.

16 Q. All right. If you would look at the exhibit itself,
17 Prosecution Exhibit 115, does it have a Q number?

18 A. Yes.

19 Q. What is that?

20 A. Q453.

21 Q. Is that identical to the prosecution -- the Q number
22 in Prosecution Exhibit 115A for Identification?

23 A. Yes.

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1 Q. If you would look at the exhibit itself, 115A,
2 Prosecution Exhibit 115A -- excuse me, Prosecution Exhibit 115
3 for Identification. Again, does it have a 1B number?

4 A. Yes.

5 Q. And what is that?

6 A. 1B762.

7 Q. Does it have a DK number?

8 A. DK04-130.

9 Q. Now, you indicated you did seize this. Did you
10 complete the chain of custody form?

11 A. I did, yes.

12 Q. And when does it indicate that you collected this
13 evidence?

14 A. 10/18/2000 at 1521, 3:21 p.m.

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

17 A. Yes.

18 Q. If you would look at that, please. Does it contain
19 your signature?

20 A. Yes.

21 Q. And where does it contain your signature?

22 A. The "Collected," first line.

23 Q. Now, are you able to associate this chain of custody

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1 form with the exhibit, Prosecution Exhibit 115 ----

2 A. Yes.

3 Q. ---- for Identification?

4 How are you able to do that?

5 A. The DK number, the 1B number.

6 Q. Are they identical?

7 A. Yes.

8 Q. Placing on the ELM0 Prosecution Exhibit 115C for
9 Identification. Ask you if that form is a duplicate, an exact
10 duplicate of the chain of custody form you've just described.

11 A. Yes.

12 Q. Placing on the ELM0 photograph Prosecution
13 Exhibit 115B for Identification, and I would ask you, do you
14 recognize that photograph?

15 A. Yes.

16 Q. Is it a fair and accurate depiction of the exhibit,
17 Prosecution Exhibit 115?

18 A. Yes, sir.

19 Q. And lastly, I'm providing you with -- I would ask
20 that you be provided with Prosecution Exhibit 121.

21 TC [MR. MILLER]: If I haven't, Your Honor, I would move
22 for the admission of Prosecution Exhibits 115A, B, and C.

23 MJ [Col SPATH]: Defense Counsel?

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1 DDC [LT PIETTE]: Defense takes no position.

2 MJ [Col SPATH]: Thank you.

3 Q. Have you had occasion to look at Prosecution
4 Exhibit 121?

5 A. Yes.

6 Q. Did you seize that item, collect that item?

7 A. Yes.

8 Q. Placing on the ELM0 Prosecution Exhibit 121A for
9 Identification. Do you recognize the item contained in that
10 photograph?

11 A. Yes.

12 Q. Is that the same item that's contained in the
13 exhibit, Prosecution Exhibit 121 for Identification?

14 A. Yes.

15 Q. Does Prosecution Exhibit 121A have a Q number?

16 A. Yes, Q303.

17 Q. If you would look at the exhibit itself,
18 Prosecution 121, is that in your handwriting? Did you fill
19 that out?

20 A. The actual evidence bag?

21 Q. Yes.

22 A. Yes, sir.

23 Q. Does it indicate what the item was?

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1 A. Just indicates "sifted material."

2 Q. That would have been taken from the sifting station?

3 A. Yes, sir.

4 Q. The date and time of the recovery?

5 A. 10/19/2000, 10:00 a.m.

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

7 A. Yes.

8 Q. All right. And when -- and that's your signature on
9 the "Received From" byline, correct?

10 A. Yes.

11 Q. Now, does the bag itself have a Q number?

12 A. Q303.

13 Q. Is that the same number that's contained on the
14 exhibit, Prosecution Exhibit 121A for Identification?

15 A. Yes.

16 Q. Is there a 1B number on that exhibit, Prosecution
17 Exhibit 121?

18 A. 1B811.

19 Q. Does it also contain an MDK number?

20 A. MDK-125.

21 Q. Is there a chain of custody form attached to the
22 exhibit?

23 A. Yes.

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1 Q. Would you take a look at that, please. Do you
2 recognize your signature anywhere?

3 A. Yes.

4 Q. And where is your signature?

5 A. The "Collected," first line.

6 Q. Are you able to associate this particular chain of
7 custody form with the exhibit, Prosecution Exhibit 121?

8 A. Yes.

9 Q. How, ma'am?

10 A. 1B number, the MDK number.

11 Q. Placing on the ELM0 Prosecution Exhibit 121C and ask
12 you if the exhibit, Prosecution Exhibit 121C, is an exact
13 duplicate of the chain of custody form that you've just
14 described?

15 A. Yes.

16 Q. And then placing on the ELM0 Prosecution
17 Exhibit 121B. Do you recognize that photograph?

18 A. Yes.

19 Q. Is that photograph a fair and accurate
20 depiction that's -- the Prosecution Exhibit 121B, you
21 recognize that, correct?

22 A. Yes.

23 Q. Is that a fair and accurate depiction of the

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1 Exhibit 121?

2 A. Yes, sir.

3 TC [MR. MILLER]: Move for the admission, Your Honor, of
4 Prosecution Exhibits 121A, 121B, and 121C.

5 MJ [Col SPATH]: Defense Counsel?

6 DDC [LT PIETTE]: Defense takes no position.

7 MJ [Col SPATH]: Thank you.

8 Q. At some point, were you split away from the search of
9 the ship?

10 A. Yes.

11 Q. Were there other persons who were also split away
12 from the search of the COLE?

13 A. Yes.

14 Q. And to what were you assigned at that point?

15 A. I believe we had collected the bulk of the material
16 from the ship, and we split off to start doing searches on
17 land.

18 Q. All right. In and around Aden Harbor?

19 A. Correct.

20 TC [MR. MILLER]: I have nothing further at this time,
21 Your Honor, of this witness.

22 MJ [Col SPATH]: Thank you. Defense Counsel, you may
23 cross-examine.

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1 DDC [LT PIETTE]: Your Honor, again, defense takes no
2 position and objects to the further continuation of these
3 proceedings without learned counsel present.

4 MJ [Col SPATH]: All right. Thank you. How do I
5 pronounce your last name?

6 WIT: LoCascio, sir.

7 MJ [Col SPATH]: LoCascio. Okay. Ms. LoCascio, I just
8 want to give you a standard order. Don't discuss your
9 testimony with anybody until we resolve this matter. You
10 certainly can talk to the attorneys if you want to, but I
11 don't want you to talk to anyone about -- anyone else about
12 your testimony. Do you understand?

13 WIT: Yes, sir, I do.

14 MJ [Col SPATH]: Okay. Thank you. It could be a while
15 before this matter is resolved, so keep that in mind. Thanks
16 for traveling down here in person to testify. We all
17 appreciate it.

18 WIT: Yes, sir.

19 MJ [Col SPATH]: All right. Thanks. You're excused.
20 [The witness was warned, excused, and withdrew from the
21 courtroom.]

22 MJ [Col SPATH]: Post-lunch, how many witnesses do we
23 have?

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1 TC [MR. MILLER]: We have, post-lunch -- we have five
2 scheduled, but I think we could probably get through -- we
3 have eight left. I wouldn't be -- some of them are very
4 short, so I wouldn't be surprised if we could get through all
5 of them. But we have five lined up. I'm going to have the
6 other three on call.

7 MJ [Col SPATH]: Good. Certainly if we can -- if we can
8 get everything done today, that will give you all time to do
9 other things tomorrow. We can do that as we work forward.
10 I'll work on a couple of orders over the lunch break. So
11 let's return at 1315.

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

13 MJ [Col SPATH]: See you then. We're in recess.

14 [The R.M.C. 803 session recessed at 1151, 22 January 2018.]

15 [The R.M.C. 803 session was called to order at 1318,
16 22 January 2018.]

17 MJ [Col SPATH]: These commissions are called to order.
18 All the parties who were present before the recess are again
19 present. Mr. Miller.

20 TC [MR. MILLER]: Thank you, Your Honor. The government
21 calls Special Agent Dayna Sepeck.

22 [END OF PAGE]

23

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1 DAYNA SEPECK, civilian, was called as a witness for the
2 prosecution, was sworn, and testified as follows:

3 DIRECT EXAMINATION

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

5 Q. Please be seated, please, and state your name.

6 A. Dayna Better Sepeck.

7 Q. And you are the same Special Agent Sepeck who has
8 previously testified in this matter, correct?

9 A. Yes, I am.

10 Q. And I think by way of summary, during that prior
11 testimony, you testified as to what your role was in the
12 collection of evidence for the items that were taken on the
13 ship, correct?

14 A. Yes.

15 Q. And by ship, I mean the USS COLE.

16 A. Yes.

17 Q. I don't plan on going through that again. What I do
18 want to, however, do is go through a series of 1A -- excuse
19 me, go through a series of green sheets, or chain of custody
20 forms, and ask you to identify your signature on those.

21 A. Okay.

22 Q. You've had a chance to review these before, correct?

23 A. Yes.

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1 Q. And so we don't have to ask you each time, the --
2 your signature indicates what?

3 A. That evidence was brought to me, turned over to me.

4 Q. And that you signed for it?

5 A. Yes.

6 Q. And there would -- so there would be a name, a
7 collection before you, correct?

8 A. Correct.

9 Q. And there will be a name after you, correct?

10 A. Yes.

11 Q. And what does that indicate?

12 A. That indicates that evidence was then turned over to
13 the next person, who signed.

14 Q. So we'll just go through those one by one, if we can,
15 quickly.

16 A. Okay.

17 Q. Showing you Prosecution Exhibit 1C, do you
18 recognize -- oh.

19 TC [MR. MILLER]: Permission to use the ELM0, Your Honor?
20 I'm sorry.

21 MJ [Col SPATH]: No, no worries. Yes.

22 Q. Prosecution Exhibit 1C, do you recognize your
23 signature?

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1 A. Yes, on the second line.

2 Q. All right. And it indicates the date and time you
3 received the evidence, correct?

4 A. Yes.

5 Q. Placing before you Prosecution Exhibit Number 2C. Do
6 you recognize your signature?

7 A. Yes, on the second line.

8 Q. All right. And the word "Storage" underneath it,
9 correct?

10 A. Yes.

11 Q. Date and time that you received the evidence,
12 correct?

13 A. Yes.

14 Q. In fact, on all of these green sheets, they all
15 indicate the date and time that you received it?

16 A. Correct.

17 Q. Prosecution Exhibit 3C for Identification. Do you
18 recognize your signature?

19 A. Yes, second line.

20 Q. Placing on the ELM0 Prosecution Exhibit 4C for
21 Identification. Do you recognize your signature?

22 A. Yes, second line.

23 Q. Placing on the ELM0 Prosecution Exhibit 5C. Do you

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1 recognize your signature?

2 A. Yes, second line.

3 Q. Placing on the ELM0 Prosecution Exhibit 6C. Do you
4 recognize your signature, ma'am?

5 A. Yes, second line.

6 Q. Placing on the ELM0 Prosecution Exhibit 7C for
7 Identification. Do you recognize your signature?

8 A. Yes, on the second line.

9 Q. Placing on the ELM0, ma'am, Prosecution Exhibit 8C
10 for Identification. Do you recognize your signature?

11 A. Yes, I do. Second line.

12 Q. Placing on the ELM0 Prosecution Exhibit 9C. Do you
13 recognize your signature?

14 A. Yes, second line.

15 Q. Placing on the ELM0 Prosecution 10C. Do you
16 recognize your signature?

17 A. Yes, second line.

18 Q. Placing on the ELM0 Prosecution 11C for
19 Identification. You recognize your signature?

20 A. Yes, second line.

21 Q. Placing on the ELM0 Prosecution Exhibit 12D. You
22 recognize your signature?

23 A. Yes, second line.

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1 Q. Prosecution Exhibit 13C for Identification is now on
2 the ELM0. Do you recognize your signature?

3 A. Yes, second line.

4 Q. Placing on the ELM0 Prosecution Exhibit 14C. Do you
5 recognize your signature?

6 A. Yes, second line.

7 Q. Placing on the ELM0 Prosecution Exhibit 16C for
8 Identification. Do you recognize your signature?

9 A. Yes, second line.

10 Q. Placing on the ELM0 Prosecution Exhibit 17 [sic] for
11 Identification. Do you recognize your signature?

12 A. Yes, second line.

13 Q. Placing on the ELM0 Prosecution Exhibit 18C. Do you
14 recognize your signature?

15 A. Yes, second line.

16 Q. Placing on the ELM0 Prosecution Exhibit 19C. Do you
17 recognize your signature?

18 A. Yes, second line.

19 Q. Placing on the ELM0 Prosecution Exhibit 20C for
20 Identification. A little tougher.

21 A. Yes, second line.

22 Q. All right. Placing on the ELM0 Prosecution
23 Exhibit 21C. Do you recognize your signature?

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1 A. Yes, second line.

2 Q. Placing on the ELM0 Prosecution Exhibit 23C. Do you
3 recognize your signature?

4 A. Yes, second line.

5 Q. Placing on the ELM0 Prosecution Exhibit 24C for
6 Identification. Do you recognize your signature?

7 A. Yes, second line.

8 Q. Placing on the ELM0 Prosecution Exhibit 25D, as in
9 David. Do you recognize your signature?

10 A. Yes, second line.

11 Q. Placing on the ELM0 Prosecution Exhibit 26C. Do you
12 recognize your signature?

13 A. Yes, second line.

14 Q. Prosecution Exhibit 20C -- 27C for Identification is
15 on the ELM0. Do you recognize your signature?

16 A. Yes, second line.

17 Q. Placing on the ELM0 Prosecution Exhibit 28C for
18 Identification. Do you recognize your signature?

19 A. Yes, second line.

20 Q. Placing on the ELM0, again, Prosecution Exhibit 29C
21 for Identification. Do you recognize your signature?

22 A. Yes, second line.

23 Q. Placing on the ELM0 Prosecution Exhibit 30D for

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1 Identification. Do you recognize your signature?

2 A. Yes, second line.

3 Q. Placing on the ELM0 Prosecution Exhibit 31C. Do you
4 recognize your signature, ma'am?

5 A. Yes, second line.

6 Q. Placing on the ELM0 Prosecution Exhibit 32C. Do you
7 recognize your signature?

8 A. Yes, second line.

9 Q. Placing on the ELM0 Prosecution Exhibit 33C. Do you
10 recognize your signature?

11 A. Yes, second line.

12 Q. Placing on the ELM0 Prosecution Exhibit 34C. Do you
13 recognize your signature?

14 A. Yes, second line.

15 Q. Placing on the ELM0 Prosecution Exhibit 35C.
16 Recognize your signature?

17 A. Yes, second line.

18 Q. Putting on the ELM0 Prosecution Exhibit 36C. Do you
19 recognize your signature?

20 A. Yes, second line.

21 Q. Prosecution Exhibit 37C is on the ELM0. Do you
22 recognize your signature?

23 A. Yes, second line.

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1 Q. Prosecution Exhibit 38C is on the ELM0. Do you
2 recognize your signature?

3 A. Yes, second line.

4 Q. Placing Prosecution Exhibit 39C on the ELM0. Do you
5 recognize your signature?

6 A. Yes, second line.

7 Q. Placing on the ELM0 Prosecution Exhibit 42C for
8 Identification. Do you recognize your signature?

9 A. Yes, second line.

10 Q. Placing on the ELM0 Prosecution Exhibit 42E for
11 Identification. Do you recognize your signature?

12 A. Yes, second line.

13 Q. Placing on the ELM0 Prosecution Exhibit 43C for
14 Identification. Do you recognize your signature?

15 A. Yes, second line.

16 Q. Placing on the ELM0 Prosecution 47D for
17 Identification. Do you recognize your signature?

18 A. Yes, second line.

19 Q. Placing on the ELM0 Prosecution 62C. Do you
20 recognize your signature?

21 A. Yes, second line.

22 Q. Placing on the ELM0 Prosecution Exhibit 63C. Do you
23 recognize your signature?

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1 A. Yes, second line.

2 Q. Placing on the ELM0 Prosecution Exhibit 64C. Do you
3 recognize your signature?

4 A. Yes, second line.

5 Q. Placing on the ELM0 Prosecution 65C, ask you if you
6 recognize your signature, ma'am.

7 A. Yes, second line.

8 Q. Placing on the ELM0 Prosecution Exhibit 66C. Ask
9 you, do you recognize your signature?

10 A. Yes, second line.

11 Q. Placing on the ELM0 Prosecution Exhibit 67C for
12 Identification. Do you recognize that?

13 A. Yes, second line.

14 Q. Placing on the ELM0 Prosecution Exhibit 68C. Do you
15 recognize that ----

16 A. Yes ----

17 Q. ---- Agent?

18 A. Yes, second line.

19 Q. Putting on the ELM0 Prosecution Exhibit 69C. Do you
20 recognize your signature?

21 A. Yes, second line.

22 Q. Placing on the exhibit -- on the ELM0 Prosecution
23 Exhibit 70C. Do you recognize your signature?

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1 A. Yes, second line.

2 Q. Placing on the ELM0 Prosecution Exhibit 71C. Do you
3 recognize your signature?

4 A. Yes, second line.

5 Q. Placing on the ELM0 Prosecution Exhibit 72C. Do you
6 recognize your signature?

7 A. Yes, second line.

8 Q. Laying on the ELM0 Prosecution Exhibit 73C. Do you
9 recognize your signature?

10 A. Yes, second line.

11 Q. Placing on the ELM0 Prosecution Exhibit 74C for
12 Identification. Do you recognize that?

13 A. Yes, second line.

14 Q. Putting on the ELM0 Prosecution Exhibit 78C for
15 Identification. Do you recognize it, ma'am?

16 A. Yes, second line.

17 Q. Placing on the ELM0 Prosecution Exhibit 79C for
18 Identification. Do you recognize that?

19 A. Yes, second line.

20 Q. Placing on the ELM0 Prosecution Exhibit 80C. Do you
21 recognize your signature?

22 A. Yes, second line.

23 Q. Laying on the ELM0 Prosecution Exhibit 81C. Do you

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1 recognize your signature?

2 A. Yes, second line.

3 Q. Laying on the ELM0 Prosecution Exhibit 85C for
4 Identification. Do you recognize that?

5 A. Yes, second line.

6 Q. Do you recognize your signature on 86C, which I've
7 placed on the ELM0?

8 A. Yes, second line.

9 Q. Placing Prosecution Exhibit 87C on the ELM0. Do you
10 recognize your signature?

11 A. Yes, second line.

12 Q. Laying on the ELM0 Prosecution Exhibit 88C. Do you
13 recognize your signature?

14 A. Yes, second line.

15 Q. Laying on the ELM0 Prosecution Exhibit 89C for
16 Identification. Do you recognize your signature?

17 A. Yes, second line.

18 Q. Placing on the ELM0 Prosecution Exhibit 90C. Do you
19 recognize your signature?

20 A. Yes, second line.

21 Q. Laying Prosecution 91 -- Exhibit 91C for
22 Identification on the ELM0. Recognize your signature?

23 A. Yes, second line.

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1 Q. Placing Prosecution Exhibit 92C on the ELM0. Do you
2 recognize your signature?

3 A. Yes, second line.

4 Q. Placing Prosecution 93C on the -- 93 on the ELM0. Do
5 you recognize your signature?

6 A. Yes, second line.

7 Q. Placing Prosecution Exhibit 96D, as in David, on the
8 ELM0. Do you recognize your signature?

9 A. Yes, second line.

10 Q. Placing Prosecution Exhibit 97D on the ELM0. Do you
11 recognize your signature?

12 A. Yes, second line.

13 Q. Placing Prosecution Number 99 on the ELM0 -- 99C for
14 Identification. Do you recognize your signature?

15 A. Yes, second line.

16 Q. Placing Prosecution Exhibit 100C on the ELM0. Do you
17 recognize your signature?

18 A. Yes, second line.

19 Q. Placing Prosecution Exhibit 101 on the ELM0 -- 101C
20 for Identification. Do you recognize your signature?

21 A. Yes, second line.

22 Q. Placing Prosecution Exhibit numbered 102C on the
23 ELM0. Do you recognize your signature?

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1 A. Yes, second line.

2 Q. Placing Prosecution Exhibit 103C on the ELM0. Do you
3 recognize your signature?

4 A. Yes, second line.

5 Q. Placing Prosecution Exhibit 105 [sic] on the ELM0.
6 Do you recognize your signature?

7 A. Yes, second line.

8 Q. Placing Prosecution Exhibit 106C on the ELM0. Do you
9 recognize your signature?

10 A. Yes, second line.

11 Q. Placing Prosecution Exhibit 107C on the ELM0. Do you
12 recognize your signature?

13 A. Yes, second line.

14 Q. Placing Prosecution Exhibit 108C on the ELM0. Do you
15 recognize your signature?

16 A. Yes, second line.

17 Q. Placing Prosecution Exhibit 109 [sic] on the ELM0.
18 Do you recognize your signature?

19 A. Yes, second line.

20 Q. Placing Prosecution Exhibit 110C on the ELM0. Do you
21 recognize your signature?

22 A. Yes, second line.

23 Q. Placing Prosecution Exhibit 111C on the ELM0. Do you

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1 recognize your signature?

2 A. Yes, second line.

3 Q. Placing Prosecution Exhibit 112C on the ELM0.

4 Recognize your signature?

5 A. Yes, second line.

6 Q. Placing Prosecution Exhibit numbered 113C on the
7 ELM0. Do you recognize your signature?

8 A. Yes, second line.

9 Q. Placing Prosecution Exhibit 114C for Identification
10 on the ELM0. Do you recognize your signature?

11 A. Yes, second line.

12 Q. Placing Prosecution Exhibit 115C for Identification
13 on the ELM0. Do you recognize your signature?

14 A. Yes, second line.

15 Q. Placing Prosecution Exhibit 116C for Identification
16 on the ELM0. Do you recognize your signature?

17 A. Yes, second line.

18 Q. Placing on the ELM0 Prosecution Exhibit 118C for
19 Identification. Do you recognize your signature?

20 A. Yes, second line.

21 Q. Placing Prosecution Exhibit 119C on the ELM0 for
22 Identification. Do you recognize your signature?

23 A. Yes, second line.

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1 Q. Placing Prosecution Exhibit 120C for Identification
2 on the ELM0. Do you recognize your signature?

3 A. Yes, second line.

4 Q. Placing Prosecution Exhibit 121C for Identification.
5 Do you recognize your signature?

6 A. Yes, second line.

7 Q. Placing Prosecution Exhibit 122C for Identification
8 in front of you. Do you recognize your signature?

9 A. Yes, second line.

10 Q. Placing Prosecution Exhibit 128C [sic] for
11 Identification. Do you recognize your signature?

12 A. Yes, second line.

13 Q. Prosecution Exhibit 124C for Identification is on the
14 ELM0. Do you recognize your signature?

15 A. Yes, second line.

16 Q. 120 -- I'm placing Prosecution Exhibit 125C for
17 Identification on the ELM0. Do you recognize your signature?

18 A. Yes, second line.

19 Q. Placing Prosecution Exhibit 126C for Identification
20 on the ELM0. Do you recognize your signature?

21 A. Yes, second line.

22 Q. Placing Prosecution Exhibit 127C for Identification
23 on the ELM0. Do you recognize your signature?

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1 A. Yes, second line.

2 Q. Placing Prosecution Exhibit 128C on the ELM0. Do you
3 recognize your signature?

4 A. Yes, second line.

5 Q. Placing Prosecution Exhibit 129C on the ELM0 for you
6 to look at. Do you recognize your signature?

7 A. Yes, second line.

8 Q. Showing you Prosecution Exhibit 130C for
9 Identification. Do you recognize that?

10 A. Yes, second line.

11 Q. Recognize your signature? Second line?

12 A. Yes.

13 Q. Okay. Placing Prosecution Exhibit 131C on the ELM0.
14 Do you recognize your signature?

15 A. Yes, second line.

16 Q. Placing Prosecution Exhibit 132C on the ELM0. Do you
17 recognize your signature?

18 A. Yes, second line.

19 Q. Placing Prosecution Exhibit 133C on the ELM0. Do you
20 recognize your signature?

21 A. Yes, second line.

22 Q. Placing on the ELM0 -- I'm placing on the ELM0
23 Prosecution Exhibit 134C for Identification. Recognize your

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1 signature?

2 A. Yes, second line.

3 Q. I'm placing on the ELM0 Prosecution Exhibit 135C. Do
4 you recognize that?

5 A. Yes, second line.

6 Q. That's your signature on the second line?

7 A. Yes.

8 Q. Placing before you Prosecution Exhibit 136.

9 Recognize your signature on that?

10 A. Yes, second line.

11 Q. That's -- excuse me -- Prosecution Exhibit 136C.

12 Now I'm placing Prosecution Exhibit 137C for
13 Identification. Do you recognize your signature on that?

14 A. Yes, second line.

15 Q. I'm placing on the ELM0 Prosecution Exhibit 138C for
16 Identification. Do you recognize your signature?

17 A. Yes, second line.

18 Q. I'm placing on the ELM0 Prosecution Exhibit 139C for
19 Identification. Do you recognize your signature?

20 A. Yes, second line.

21 Q. Placing on the ELM0 Prosecution Exhibit 140. Do you
22 recognize that? 140C. Do you recognize your signature?

23 A. Yes, second line.

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1 Q. Placing on the ELM0 Prosecution Exhibit 141C for
2 Identification. Do you recognize your signature?

3 A. Yes, second line.

4 Q. I'm placing on the ELM0 Prosecution Exhibit 143C for
5 Identification. Do you see your signature?

6 A. Yes, second line.

7 Q. Placing on the ELM0 Prosecution Exhibit 149C for
8 Identification. Do you recognize your signature?

9 A. Yes. Yes, second line.

10 Q. Placing on the ELM0 Prosecution Exhibit 150 [sic] for
11 Identification. Do you recognize that?

12 A. Yes, second line.

13 Q. I'm placing on the ELM0 Prosecution Exhibit 151D, as
14 in David, for Identification. Do you recognize your
15 signature?

16 A. Yes, second line.

17 Q. Placing Prosecution Exhibit 152C for Identification.
18 Do you recognize that?

19 A. Yes, second line.

20 Q. Placing on the ELM0 Prosecution Exhibit 153C. Do you
21 recognize your signature?

22 A. Yes, second line.

23 Q. Placing on the ELM0 Prosecution Exhibit 154C for

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1 Identification. You recognize that, your signature?

2 A. Yes, second line.

3 Q. Placing on the ELM0 Prosecution Exhibit 155C. Do you
4 recognize your signature?

5 A. Yes, second line.

6 Q. I'm placing on the ELM0 Prosecution Exhibit
7 Number 1 -- Prosecution Exhibit 156C for Identification. Do
8 you recognize that?

9 A. Yes, second line.

10 Q. Placing Prosecution Exhibit 156 -- 157D, as in David,
11 on the ELM0. Do you recognize your signature?

12 A. Yes, second line.

13 Q. Placing on the ELM0 Prosecution Exhibit 158C for
14 Identification. Do you recognize your signature?

15 A. Yes, second line.

16 Q. Lastly, Prosecution Exhibit 159C for Identification.
17 Do you recognize your signature?

18 A. Yes, second line.

19 Q. Thank you.

20 TC [MR. MILLER]: Okay. Just a second, Your Honor.

21 [Mr. Miller conferred with paralegal.]

22 Q. Lastly, I'm placing on the ELM0 Prosecution
23 Exhibit 104C for Identification. Do you recognize your

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1 signature?

2 A. Yes, second line.

3 Q. Thank you, ma'am. Now, this would indicate that you
4 received -- again, for the record, you received these from the
5 person above you and they were surrendered to the person below
6 you?

7 A. Correct.

8 Q. And is this -- the chain of custody is the official
9 record of the receipt of the evidence by the various agents
10 involved?

11 A. Yes, that's correct.

12 TC [MR. MILLER]: I have nothing further, Your Honor.
13 Thank you.

14 MJ [Col SPATH]: Defense Counsel?

15 DDC [LT PIETTE]: Defense takes no position.

16 MJ [Col SPATH]: Thank you. All right. Do you remember
17 last time I gave you the order not to discuss your testimony
18 until the issue is resolved. The issue is obviously still
19 ongoing and probably will be for quite some time. Please keep
20 that order in mind. And again, thank you for coming down to
21 testify in person. It really is appreciated. Thanks.

22 WIT: Thank you.

23 [END OF PAGE]

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1 [The witness was warned, excused, and withdrew from the
2 courtroom.]

3 TC [MR. MILLER]: Government calls John McSwain, Your
4 Honor.

5 Before the witness comes in, I'd ask permission to
6 use the ELMO with this witness also, Your Honor.

7 MJ [Col SPATH]: Sure.

8 TC [MR. MILLER]: Thank you.

9 JOHN W. MCSWAIN, civilian, was called as a witness for the
10 prosecution, was sworn, and testified as follows:

11 **DIRECT EXAMINATION**

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

13 Q. Be seated, please, and state your name for the
14 record.

15 A. My name is John W. McSwain.

16 Q. And how are you presently employed, sir?

17 A. I'm a managing director with Crowe Horwath.

18 Q. And where is that located?

19 A. In Dallas, Texas.

20 Q. And what do you do for them?

21 A. I do forensic investigations for our corporate
22 clients.

23 Q. And when did you start your employment with them?

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1 A. I started with them when -- in 2000 -- let's see,
2 2018 -- 2016.

3 Q. Prior to your private sector employment, were you a
4 special agent with the Federal Bureau of Investigation?

5 A. Yes, sir, I was.

6 Q. I want to first ask a little bit about your
7 background. You attended university, I assume. Could you
8 tell the court, please, where you went to college, your
9 degree, and what year you graduated.

10 A. Yes, sir. I graduated from Northern Illinois
11 University, which is right outside Chicago. I had a Bachelor
12 of Science degree in accounting.

13 Q. Did you ----

14 A. And I graduated in 1979.

15 Q. Did you become a CPA?

16 A. Yes, sir, I did.

17 Q. After college, did you join the FBI?

18 A. Yes, sir, I did.

19 Q. All right. Did you immediately join the FBI?

20 A. No, sir, I did not.

21 Q. All right. What did you do in between ----

22 A. I worked at ----

23 Q. ---- graduation ----

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1 A. I worked at a CPA firm from January of 1980 until I
2 entered on duty with the FBI on December 2nd, 1985.

3 Q. I take it you went to New Agent Class at Quantico?

4 A. Yes, sir, I did.

5 Q. Did you receive training in the collection of
6 evidence?

7 A. Yes, sir, I did.

8 Q. After you completed your new agent training, what was
9 your first assignment?

10 A. I was assigned to the Dallas, Texas Division.

11 Q. And what did you do in the Dallas Office?

12 A. I worked on white collar crime squad.

13 Q. Did you become a bomb tech?

14 A. Yes, sir, I became a special agent bomb tech in 1993.

15 Q. All right. And could you explain what kind of
16 training you received in that regard.

17 A. As a special agent bomb technician, we went to the
18 Army's Redstone Military Arsenal where we received training in
19 improvised explosive devices and on post-blast crime scenes.

20 Q. How long did you remain in the Dallas Office?

21 A. Until 1998, sir.

22 Q. And what was your next assignment?

23 A. I was assigned to FBI Headquarters, the Laboratory

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1 Division, in the Explosives Unit.

2 Q. Were you a supervisor?

3 A. Yes, sir, I was.

4 Q. And did you teach post-blast classes including the
5 collection of evidence?

6 A. Yes, sir. We taught a number of post-blast classes,
7 both to FBI, local law enforcement, and to law enforcement
8 agencies around the world.

9 Q. How long did you remain at the Explosives Unit?

10 A. Approximately two years.

11 Q. And where did you next go?

12 A. I went back to Dallas, Texas.

13 Q. And how long did you remain at the Dallas Office?

14 A. Until I retired on June 30th of 2007.

15 Q. And you were a supervisor in Dallas, correct?

16 A. Yes, sir, I was.

17 Q. Of the Joint Terrorism Task Force?

18 A. Yes, sir, I was.

19 Q. Did you continue your special agent bomb tech
20 training?

21 A. I supervised the special agent bomb techs for the
22 Dallas Division at that time.

23 Q. When did you retire?

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1 A. June 30th of 2007.

2 Q. And what did you do then?

3 A. I went to work for Deloitte.

4 Q. And was your next one then the ----

5 A. The current job at Crowe Horwath ----

6 Q. ---- you just described?

7 A. ---- yes, sir.

8 Q. In addition to the USS COLE investigation, were there
9 any other, what I will call, significant bomb scenes in which
10 you were involved?

11 A. Yes, sir. I was the -- worked on the Oklahoma City
12 bombing. I believe that was in April 1995. I worked at both
13 embassy bombings in Africa at Dar es Salaam and in Nairobi.
14 That was in August of 1998. I worked at the Olympics
15 Centennial Park bombing and the bombing of the abortion clinic
16 at Sandy Springs in Atlanta, the Eric Rudolph case.

17 And I'm trying to remember -- oh, and the World Trade
18 Center. I worked on 9/11 at the World Trade Center. It
19 wasn't a bombing, but it was a major crime scene.

20 Q. Let me ask you this: The technique of using sifters
21 to get through evidence, is that one with which you are
22 familiar?

23 A. Yes, sir.

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1 Q. Were those used at these other bomb sites you were
2 talking about, OKBOMB, World Trade Center, Embassy?

3 A. Yes, sir, they were.

4 Q. Okay. Are you familiar with the process of swabbing
5 for evidence?

6 A. Yes, sir, I am.

7 Q. At what we would call blast scenes or bomb scenes?

8 A. Correct, yes, sir.

9 Q. Is that generally done before the sifting occurs?

10 A. Oh, yes, sir.

11 Q. And the reason for that, sir?

12 A. The contamination issues. It's usually one of the
13 first things you do.

14 Q. Did you actually go to Yemen?

15 A. No, sir, I did not.

16 Q. All right. Were you contacted, however, to perform
17 some task regarding the investigation of the USS COLE bombing?

18 A. Yes, sir, I was.

19 Q. And would you describe for His Honor, please, what it
20 was you were asked to do and by whom you were contacted?

21 A. I was contacted by the FBI Headquarters, the
22 Explosives Unit. Normally speaking what we do in training is
23 the crater underneath where the bomb detonated usually holds

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1 some of the best evidence.

2 Since the USS COLE detonation was in water, the
3 crater itself was underneath the -- the harbor, so the FBI had
4 dredged the harbor underneath the USS COLE and put all of that
5 silt and dredging on a barge. The barge was then towed to
6 Dubai where it was sifted using the standard sifting
7 techniques. And I was asked to be part of the team that did
8 the sifting of the debris that was underneath the USS COLE in
9 the harbor that was dredged.

10 Q. And why were you asked?

11 A. I had just left the Explosives Unit to go back to
12 FBI -- to the FBI Dallas Office. Supervisory Special Agent
13 Whitworth had called me since I was familiar with the way we
14 collect evidence and the type of evidence to look for. You
15 know, being in the Explosives Unit, I understood what their
16 job was going to be. And Special Agent Whitworth asked me to
17 go there with that team to make sure we collected the
18 necessary evidence that he needed to do his exams.

19 Q. I take it you flew to Dubai, correct?

20 A. That's correct, yes, sir.

21 Q. And did you meet with the team?

22 A. Yes, sir.

23 Q. And did these meetings occur prior -- did you have

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1 meetings prior to the actual search of the barge and the muck,
2 I guess?

3 A. Yes, sir, we did.

4 Q. Did you come up with a protocol as to how you were
5 going to conduct the search?

6 A. Yes, sir, we did.

7 Q. Could you, again, describe that for His Honor?

8 A. Yes. Since the barge had about two feet of muck in
9 it, if you could think about the barge, it was probably about
10 as long as this room and maybe about two-thirds as wide. So
11 just think of a flat barge, and it was just full of muck for
12 about two feet all the way across.

13 So what we decided to do was that we were going to
14 cut a hole in the side of the barge and put a grate or a
15 fencing material up there. We were then -- we had a boat that
16 would transport us out to the barge. It was out in the -- in
17 the sea. I think it was about a mile, mile and a half off the
18 coast. And we had firehoses from that boat that we were going
19 to push the water, the muck, into the screen. The muck would
20 flow outside the barge, and it would -- and the -- and the
21 screen would catch whatever debris, pieces of debris that were
22 left and we would sift that using the sifting method,
23 Mr. Miller, I think that you referred to earlier.

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1 TC [MR. MILLER]: Please show the witness Prosecution
2 Exhibit 260 for Identification. Oh, I'm sorry. We're going
3 to go on the computer now, if we could, Your Honor, use the
4 screen itself, I guess, the computer to the screen.

5 Q. Do you recognize -- what's been placed on the monitor
6 is Prosecution Exhibit 260 for Identification. Do you
7 recognize that, sir?

8 A. Yes, sir. That's the -- that was the barge that I
9 was referring to earlier in my testimony.

10 Q. And you indicated the muck or the -- I'm going to
11 call it muck or mud. How deep was it?

12 A. You know, different parts of the barges it was
13 different levels, but I would say overall it was around a foot
14 and a half to two feet deep.

15 Q. Fair and accurate depiction of how it appeared when
16 you started the search?

17 A. That's a little bit into the search, not quite when
18 we started; but it's an accurate depiction of -- during the
19 process of the search.

20 Q. If we could show, please, Prosecution Exhibit 677 for
21 Identification. And if you would, describe what's in this
22 particular photograph.

23 A. That's a -- that photograph is a picture of the

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1 barge, and that would have been -- it appears to me to be the
2 picture before we started the sifting and the hose operation.

3 Q. Fair and accurate depiction?

4 A. Yes, sir, that's correct.

5 Q. Prosecution Exhibit 678, recognize that photograph?

6 A. Yes, sir, I do.

7 Q. And what is that, sir?

8 A. Again, that's the barge that we were sifting. I
9 think to the right of it you can see the boat that would
10 transport us out to the barge each day we went out there that
11 contained the firehoses.

12 Q. I take it the barge was not in some sort of port in
13 Dubai, correct?

14 A. It was in the port in Dubai.

15 Q. And lastly, Prosecution Exhibit 681. Do you
16 recognize 681?

17 A. Yes, sir, that's the barge.

18 Q. Fair and accurate depiction as it appeared with the
19 muck?

20 A. That's correct, sir.

21 TC [MR. MILLER]: I think we've previously moved for them,
22 but we would again move, Your Honor, for the admissions of
23 Prosecution Exhibit 260, 677, 678, and 681.

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1 MJ [Col SPATH]: Defense Counsel?

2 DDC [LT PIETTE]: Defense takes no position.

3 MJ [Col SPATH]: Understand.

4 Q. I think you also indicated that there were some
5 screens that were used to get the excess mud off the barge
6 itself?

7 A. That's correct, Mr. Miller.

8 Q. If you would, please, Prosecution Exhibit 694. This
9 the screens that you were using?

10 A. Yes, sir, that's correct.

11 Q. All right. Fair and accurate depiction as they
12 appeared?

13 A. Yes, sir, they are.

14 Q. 686, again, part of that system that you all had
15 devised?

16 A. Yes, sir, it is.

17 Q. I -- is it my understanding those were not on the
18 barge originally?

19 A. I do not believe so, no, sir.

20 Q. Fair and accurate depiction of the screening system?

21 A. Yes, sir, it is.

22 Q. Prosecution Exhibit 691. What's occurring in
23 Prosecution 691?

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1 A. That was the procedure that I mentioned earlier in my
2 testimony, sir. It's -- it's the firehoses that we were using
3 to push down the mud to the screens.

4 Q. All right. Prosecution Exhibit -- fair and accurate
5 depiction of how it appeared or how you were working?

6 A. Yes, sir, it is.

7 TC [MR. MILLER]: And 6 -- if we could show him
8 Prosecution 685.

9 Q. Is that the outside of the barge?

10 A. That's correct, sir.

11 Q. Now, what specifically -- what types of items were
12 you looking for?

13 A. We were looking for pieces of the boat that
14 transported the explosives to the USS COLE. So we were
15 looking for anything that could help identify the boat or
16 identify, you know, parts of the boat. We were also -- we
17 had -- we also were looking for possible human remains that
18 might have been -- that might have been picked up in the
19 sifting. So we had -- we had -- we were looking for basically
20 those two items and personal effects of the -- of any of the
21 sailors that were aboard the -- the USS COLE. We would have
22 taken those -- we would have taken those, too, if we found
23 them.

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1 Q. Do you remember the other members of your team?

2 A. I remember Gary Reinecke was a -- was with -- the ERT
3 team leader that was assigned with us; and then there was ERT
4 agents from Denver, but I can't remember; there was an NCIS
5 agent that was part of our team; and then there was an
6 anthropologist that was part of our team.

7 TC [MR. MILLER]: Prosecution -- if we could, please, show
8 the witness Prosecution Exhibit 682.

9 Q. Do you recognize that photograph, sir?

10 A. Yes, sir, I do.

11 Q. And what is shown in that photograph?

12 A. That's a photograph of us conducting our sifting
13 operations inside the barge.

14 Q. All right. If we could go to 692 for Identification.
15 Prosecution Exhibit 692 for Identification has been placed
16 in -- on the ELM0 -- excuse me, on the monitor. Do you
17 recognize that photograph?

18 A. Yes, sir, I do.

19 Q. Are you in that photograph?

20 A. Yes, sir, I am.

21 Q. And what are you wearing?

22 A. I have the blue shirt on. I'm to the right.

23 Q. All right. And again, this is the same sort of

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1 sifting that you've used in the other bomb scenes or crime
2 scenes that you've investigated?

3 A. Yeah. This is what we would use at a crime scene.
4 This is what we taught at our schools.

5 TC [MR. MILLER]: All right. And lastly, if we could show
6 the witness Prosecution 261 for Identification.

7 Q. Do you recognize that photograph, sir?

8 A. Yes, sir, I do.

9 Q. Fair and accurate depiction?

10 A. Yes, sir.

11 Q. And is this as the search was concluding?

12 A. Yes, sir, it is. It's at the end of the project once
13 we finished cleaning the barge.

14 TC [MR. MILLER]: And I believe, Your Honor, we have moved
15 previously, but I would move again for the introduction of
16 Prosecution's 694, 686, 691, 685, 682, 692, and 261.

17 MJ [Col SPATH]: Defense Counsel?

18 DDC [LT PIETTE]: Defense takes no position.

19 MJ [Col SPATH]: Thank you.

20 Q. Now, did you have any duties, responsibilities as far
21 as transporting the evidence back to the United States?

22 A. Yes, sir, I did.

23 Q. And could you tell us how you accomplished that.

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1 A. Yes, sir. Once all the items were collected and we
2 identified which ones that we were going to keep, Gary
3 Reinecke signed those evidentiary items over to myself. I
4 then brought those items back to a hangar in Dubai where we
5 locked them in a container that was being -- that was used to
6 transport them back to the FBI Headquarters.

7 Q. Did you physically bring them back to
8 FBI Headquarters, or did you ----

9 A. I don't recall exactly escorting them physically. I
10 don't know whether or not we had a military plane transport
11 them or if I transported them physically. I just -- sorry.
12 It's just been a long time, sir.

13 Q. I'm placing on the ELM0 ----

14 TC [MR. MILLER]: If I could, Your Honor, permission to
15 use the ELM0?

16 MJ [Col SPATH]: You may.

17 Q. I'm placing on the ELM0 Prosecution Exhibit 46C for
18 Identification. Do you recognize your signature on that?

19 A. Yes, sir.

20 Q. All right. And it indicates that you were
21 responsible for transporting it where?

22 A. Back to FBI Headquarters.

23 Q. And where on the form of Prosecution Exhibit 46C is

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1 your signature?

2 A. It's the second line down that's dated November 29th
3 of 2000 at 3:30 p.m.

4 Q. Showing you Prosecution Exhibit 52C for
5 Identification. Do you see your signature on that, sir?

6 A. Yes, sir, I do.

7 Q. Again, that indicates you signed for the evidence
8 from Agent Reinecke?

9 A. That's correct, sir.

10 Q. And you were responsible for transport back to the
11 FBI?

12 A. Yes, sir, I am.

13 Q. Placing on the ELM0 Prosecution Exhibit 53C for
14 Identification. Do you recognize that, sir?

15 A. Yes, sir, I do.

16 Q. Again, your signature is contained on it?

17 A. Yes, sir, that's correct.

18 Q. Second line?

19 A. Yes, sir.

20 Q. And what does it indicate?

21 A. That I accepted the evidence from Mr. Reinecke on
22 November 29th of 2000 for transportation back to
23 FBI Headquarters.

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1 Q. Placing on the ELM0 Prosecution Exhibit 54C. Do you
2 recognize that, sir?

3 A. Yes, sir, I do.

4 Q. Do you recognize your signature?

5 A. Yes, sir, I do.

6 Q. Where is it?

7 A. It's on the second line down.

8 Q. And what does it indicate?

9 A. It indicates that I accepted the evidence from
10 Special Agent Reinecke for transportation back to the
11 FBI Headquarters on November 29th of 2000.

12 Q. Placing on the ELM0 Prosecution Exhibit 55C. Ask you
13 if you recognize that, sir.

14 A. Yes, sir, I do.

15 Q. Does it contain your signature?

16 A. Yes, sir, it does.

17 Q. Where?

18 A. On the second line down.

19 Q. And what does that indicate?

20 A. I accepted the evidence from Special Agent Reinecke
21 for transportation back to the FBI Headquarters on
22 November 29th of 2000.

23 Q. Placing before you Prosecution Exhibit 56C. Ask you

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1 if you recognize that, sir.

2 A. Yes, sir, I do.

3 Q. Is your signature contained on it?

4 A. Yes, sir, it's the second line down.

5 Q. And what does it indicate?

6 A. I accepted the evidence from Gary Reinecke on -- on
7 November 29th at -- November 29th, 2000, for transportation
8 back to the FBI Headquarters.

9 Q. Placing on the ELMO Prosecution Exhibit 57C. Do you
10 recognize that?

11 A. Yes, sir, I do.

12 Q. Is your signature contained on it?

13 A. Yes, sir, it's the second line down.

14 Q. And what does it indicate?

15 A. That I accepted the evidence from Special Agent
16 Reinecke for transportation to FBI Headquarters on
17 November 29th of 2000.

18 Q. Placing on the ELMO Prosecution Exhibit 58C. Ask you
19 if you recognize that, sir.

20 A. Yes, sir, I do.

21 Q. And what do you recognize it to -- is your signature
22 contained on it?

23 A. Yes, sir, it is.

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1 Q. Where?

2 A. It's on the second line down.

3 Q. And what does that indicate?

4 A. I accepted the evidence from Special Agent Reinecke
5 on November 29th, 2000, for transportation back to
6 FBI Headquarters.

7 Q. Placing on the ELMO Prosecution Exhibit 59C for
8 Identification. Do you recognize your signature on that, sir?

9 A. Yes, sir, I do.

10 Q. And is it the second line?

11 A. Yes, sir, it is.

12 Q. And what does that indicate?

13 A. I accepted the evidence from Special Agent Reinecke
14 for transportation back to the FBI Headquarters on
15 November 29th of 2000.

16 Q. Placing on the ELMO Prosecution Exhibit 60C. Do you
17 recognize your signature on that?

18 A. Yes, sir, I do.

19 Q. Is it on the second line?

20 A. Yes, sir, it is.

21 Q. And what does that indicate?

22 A. I accepted the evidence from Gary Reinecke on
23 November 29th of 2000 for transportation back to

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1 FBI Headquarters.

2 Q. Placing on the ELM0 Prosecution Exhibit 61D. Do you
3 recognize your signature, sir?

4 A. Yes, sir, I do.

5 Q. Is it on the second line?

6 A. Yes, sir, that's correct.

7 Q. And what does that indicate?

8 A. That I accepted the piece of evidence from Gary --
9 Special Agent Reinecke on November 29th of 2000 for
10 transportation back to FBI Headquarters.

11 Q. I think this one instead of 61C, is actually -- that
12 was Prosecution Exhibit 61D. And again, that's your signature
13 on the second line, correct?

14 A. That's correct, sir.

15 Q. Placing on the ELM0 Prosecution Exhibit 83C. Do you
16 recognize your signature on that?

17 A. Yes, sir, I do.

18 Q. Is that the second line?

19 A. That's correct, sir.

20 Q. And again, what does that indicate?

21 A. That I accepted the evidence from Special Agent
22 Reinecke on November 29th of 2000 for transportation back to
23 FBI Headquarters.

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1 Q. Lastly I'm going to show you Prosecution Exhibit 145C
2 for Identification. Do you recognize that, your signature on
3 that, sir?

4 A. Yes, sir, I do.

5 Q. And is it the second line?

6 A. Yes, sir, it is.

7 Q. And what does that indicate?

8 A. That I accepted a piece of evidence from Special
9 Agent Reinecke on November 29th of 2000 for transportation
10 back to FBI Headquarters.

11 Q. I take it when it was transferred or you took custody
12 of it, it was sealed; is that correct?

13 A. Yes, sir, it was.

14 Q. And it was sent back to Headquarters in a sealed
15 condition?

16 A. Yes, sir, it was.

17 TC [MR. MILLER]: Your Honor, I think we have moved
18 previously for the admission of those through Special Agent
19 Reinecke.

20 No further questions. Thank you, sir.

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

22 Defense Counsel, any cross-examination?

23 DDC [LT PIETTE]: Your Honor, defense takes no position

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1 other than to object to these proceedings moving forward
2 without the presence of learned counsel.

3 MJ [Col SPATH]: I understand. Thank you, Mr. McSwain.
4 I'm going to give you a standard order. Don't discuss your
5 testimony or the substance of your testimony with anyone until
6 we resolve these issues. The only unique thing is here it's
7 probably going to be a little while before we resolve these
8 issues, as you probably can guess. Do you understand the
9 order?

10 WIT: Yes, sir, I do.

11 MJ [Col SPATH]: Thank you for your testimony. Thank you
12 for traveling down here to testify in person as well. We do
13 appreciate it.

14 WIT: Thank you, Your Honor. Yes, sir.

15 **[The witness was warned, excused, and withdrew from the**
16 **courtroom.]**

17 MJ [Col SPATH]: We're going to take a break in just a
18 minute, Mr. Miller, before you do your next series of
19 witnesses. Have there been any updates in relation to the two
20 DoD civilians? Because I was holding off on issuing a
21 scheduling order or anything like that. I just want to know
22 where we're at, if we've gotten any resolution.

23 MATC [COL WELLS]: Your Honor, at this time, no. We have

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1 reformed the subpoenas, though, in consultation with their
2 counsel for February. We are attempting to perfect service,
3 but we are having difficulty.

4 The chief prosecutor has sent an e-mail prior to our
5 sessions, on the day of our first session, to Colonel Aaron
6 requesting him and invoking the authority under the regulation
7 that these DoD employees be made available to comply with your
8 docketing order and appear. He got no response and no
9 acknowledgment. We're attempting to contact him again to
10 renew that effort, and also his supervisor, Mr. Koffsky, on
11 that effort. We'll continue to pursue the DoD employees at a
12 place and time to perfect service of process and then keep you
13 informed.

14 MJ [Col SPATH]: And the way I read the rules is we
15 shouldn't have to give them subpoenas. They're -- at least
16 according to the rules, their supervisory chain should be
17 making them available to testify in the commission proceeding
18 as part of their employment.

19 MATC [COL WELLS]: Yes, sir. And I understand Colonel
20 Aaron is still on island, and, if needed, he can answer
21 himself before the commission.

22 MJ [Col SPATH]: It may be -- we may do that tomorrow.

23 Mr. Miller, you have more witnesses, correct?

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1 TC [MR. MILLER]: I do, Your Honor.

2 MJ [Col SPATH]: All right. We're going to take ten
3 minutes. We'll come back, and then we'll keep moving through.

4 TC [MR. MILLER]: Thank you, sir.

5 MJ [Col SPATH]: We're in recess.

6 [The R.M.C. 803 session recessed at 1406, 22 January 2018.]

7 [The R.M.C. 803 session was called to order at 1418,
8 22 January 2018.]

9 MJ [Col SPATH]: These commissions are called back to
10 order. All the parties who were present before the break are
11 again present. Mr. Miller, call your next witness.

12 TC [MR. MILLER]: Thank you. Government calls Special
13 Agent Jeff Miller.

14 JEFFREY R. MILLER, civilian, was called as a witness for the
15 prosecution, was sworn, and testified as follows:

16 **DIRECT EXAMINATION**

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

18 Q. Have a seat, please, and state your name.

19 A. Jeffrey R. Miller.

20 Q. And you are the same Special Agent Miller that
21 testified previously in this commission ----

22 A. I am.

23 Q. ---- before the commission? All right.

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1 You were involved in the evidence collection on the
2 USS COLE; is that correct?

3 A. Yes, sir.

4 Q. Now, were you working in conjunction with any
5 particular agents?

6 A. Yes.

7 Q. And with whom were you working?

8 A. Bob Holley, Bill Davitch, Tom O'Connor, Kevin
9 Finnerty, John Adams, Lisa LoCascio, Joe McNamara, and several
10 others.

11 Q. I want to specifically talk about Special Agent
12 Holley. Was that the first time that you met Special Agent
13 Holley, during that -- your time on the COLE?

14 A. Yes, sir.

15 Q. And was there any particular advantage to working
16 with him?

17 A. Yes. He was a bomb tech, trained bomb tech, and
18 certified.

19 Q. And was he an agent that was senior to you?

20 A. He was.

21 Q. Were you assigned to work with him?

22 A. Yes.

23 Q. Now, I understand that you and he in conjunction with

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1 each other collected various pieces of evidence, correct?

2 A. That's correct.

3 Q. And then it came time to sign certain green sheets;
4 is that correct?

5 A. Yes.

6 Q. Did you have occasion to sign his name to certain
7 green sheets?

8 A. I did.

9 Q. And why was that done, sir?

10 A. He had collected the evidence. He was the recoverer.
11 And he was not present at the time, and so I signed his name.

12 Q. And did you let him know that you had, in fact, done
13 that?

14 A. I did.

15 Q. All right. Did he have any objection to it?

16 A. No.

17 Q. All right. That would not be the normal course,
18 correct?

19 A. It would not.

20 Q. All right.

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

22 MJ [Col SPATH]: You may.

23 Q. Placing on the ELM0 Prosecution Exhibit 23C. On the

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1 top line, it indicates that the collector -- or the
2 collector -- "Collected" line, it has the signature of Robert
3 Holley, correct?

4 A. Correct.

5 Q. Did you sign his name on this particular form, 23C
6 for Identification?

7 A. I did.

8 Q. I'm placing on the ELM0 Prosecution Exhibit 70C for
9 Identification. Again, it shows Robert Holley on the first
10 line as the collector. Did you sign and date that for him?

11 A. I did.

12 Q. All right. I'm placing on the ELM0 Prosecution
13 Exhibit 71C for Identification. And again, it contains the
14 name Robert Holley, date and time. Did you sign that for him?

15 A. I did.

16 Q. I'm placing on the ELM0 Prosecution Exhibit 72C for
17 Identification, and I would ask you: On the first line,
18 again, it shows the name Robert Holley, dated and time. Did
19 you sign that and fill that in for him?

20 A. I did.

21 Q. Placing on the ELM0 Prosecution Exhibit 73C for
22 Identification and ask you if you recognize -- excuse me, if
23 you recognize Robert Holley's signature on the top line?

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1 A. I do.

2 Q. And did you sign that for him?

3 A. I did.

4 Q. And as to the date and time?

5 A. Yes.

6 Q. And I'm placing on the ELMO Prosecution Exhibit 74C
7 for Identification. On the first line, again, it contains the
8 name of Robert Holley, the date and time. I'm going to ask
9 you again, did you sign that for him?

10 A. I did.

11 Q. And dated and time, correct?

12 A. Yes.

13 Q. And would you have surrendered these items to the
14 evidence collection people on -- below deck?

15 A. Yes.

16 Q. There's one other. Prosecution Exhibit 24C has
17 Holley's signature on it. Did you sign that one?

18 A. I did not.

19 Q. All right. Did you later search some of the sites on
20 land?

21 A. I did.

22 TC [MR. MILLER]: All right. Nothing further, Your Honor.

23 Thank you.

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1 MJ [Col SPATH]: Defense Counsel, you may cross-examine.

2 DDC [LT PIETTE]: Your Honor, defense takes no position
3 other than to continue to object to these proceedings moving
4 forward without the presence of learned counsel.

5 MJ [Col SPATH]: All right. Mr. Miller, thank you again
6 for your testimony. I know last time I thanked you for
7 testifying in person. We do appreciate it when people travel
8 down here. Same order, don't discuss the substance of your
9 testimony until this matter is resolved, which, as you can
10 tell, might be a while.

11 WIT: Thank you, Your Honor.

12 MJ [Col SPATH]: Do you understand?

13 WIT: Yes, sir.

14 MJ [Col SPATH]: Thanks.

15 WIT: Thank you.

16 MJ [Col SPATH]:

17 [The witness was warned, excused, and withdrew from the
18 courtroom.]

19 MJ [Col SPATH]: Mr. Miller?

20 TC [MR. MILLER]: The government calls -- excuse me, Your
21 Honor -- Jane Rhodes-Wolfe.

22 [END OF PAGE]

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1 JANE RHODES-WOLFE, 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. Be seated, please, and state your name for the
6 record.

7 A. Jane Rhodes-Wolfe, R-H-O-D-E-S-W-O-L-F-E.

8 Q. And you are the same Jane Rhodes-Wolfe who testified
9 earlier in these proceedings, correct?

10 A. Yes, I am.

11 Q. By way of summary, you were involved -- heavily
12 involved in the search and storage of the evidence that was
13 taken on the USS COLE; is that correct?

14 A. Yes, I was.

15 Q. Now, in addition to your custodial duties, storing
16 the evidence, transporting the evidence, you had occasion also
17 to be involved in the seizure of some evidence, too; is that
18 correct?

19 A. Yes, that is correct.

20 TC [MR. MILLER]: If you could please provide the witness
21 with Prosecution Exhibit 15.

22 Q. Ma'am, I'd ask you if you would, please, take a look
23 at that.

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1 A. Okay.

2 Q. Do you recognize it?

3 A. Yes, I do. I see my, my handwriting, my name, and my
4 signature on it in multiple places on the evidence bag.

5 Q. Is that something that you seized?

6 A. Yes, it is.

7 Q. Collected, I guess, is a better word.

8 A. Yes.

9 Q. And I'm placing on the ELMO at this time ----

10 TC [MR. MILLER]: Permission to use the ELMO, Your Honor,
11 with this witness?

12 MJ [Col SPATH]: Sure.

13 TC [MR. MILLER]: Thank you.

14 Q. Placing on the ELMO Prosecution Exhibit 15A for
15 Identification. Do you recognize generally the type of
16 evidence contained in that photograph?

17 A. Yes. That appears to be some of the charred debris
18 that we collected that was believed to be from the fiberglass,
19 the fiberglass boat.

20 Q. If you could, please, take a look at the exhibit
21 itself, Prosecution Exhibit 15.

22 A. Uh-huh.

23 Q. And do the items in the photograph, Prosecution

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1 Exhibit 15A, and the items contained in the evidence bag,
2 Prosecution Exhibit 15, do they appear to be the same items?

3 A. Yes, they do.

4 Q. Now, does the photograph, the photograph, Prosecution
5 Exhibit 15A for Identification, have a Q tab number on it?

6 A. It does. It looks -- it's a little blurry, but I
7 believe it's Q476. If maybe you could zoom ----

8 Q. I'll try.

9 A. ---- out just a -- oh, there we go. Yes, it appears
10 to be 476.

11 Q. All right. If you would look at the exhibit itself,
12 Prosecution Exhibit 15 for Identification. First off, does
13 that bag have a Q tab attached to it?

14 A. It's marked Q476 and ----

15 Q. That would ----

16 A. ---- there's also ----

17 Q. ---- would be identical to the one in Prosecution
18 Exhibit 15A; is that correct?

19 A. Yes, it is.

20 Q. Looking at the exhibit itself, Prosecution
21 Exhibit 15, does it contain your handwriting?

22 A. Yes. On the front page I see my handwriting in two
23 or three different places.

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1 Q. Let's start first with the chain of custody. Did you
2 complete that?

3 A. Yes. I see my signature on 10 -- it's hard to read
4 the date. It looks like 10/20 at a time of either 3:00 or
5 3:05 p.m.

6 Q. Now, up above it, there is some handwriting
7 indicating recovery by somebody other than -- it says Eric
8 Jacobsen and crossed out and it has your name on it, correct?

9 A. That is correct.

10 Q. All right. It might be easier for the judge if we do
11 it this way. I'm going to place on the ELM0 Prosecution
12 Exhibit 15B. Do you recognize 15B?

13 A. Yes.

14 Q. Is that a fair and accurate depiction of the
15 Prosecution Exhibit 15 for Identification?

16 A. Yes, it is.

17 Q. Now, on the "Recovered" line, it has Eric Jacobsen
18 and a line through it. Could you explain what that indicates
19 to you?

20 A. Without remembering this particular item, generally
21 speaking, there would be times the members of the USS COLE
22 crew would recover items and they would provide them to us.
23 So in this circumstance, I would assume that it meant that

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1 Eric Jacobsen was one of the crew -- sole sailors, I should
2 say, and provided it to me.

3 Q. And so then you would have bagged it and tagged it,
4 so to speak?

5 A. Correct, and completed the other documentation.

6 Q. Is there a DK number on this particular exhibit,
7 Prosecution Exhibit 15?

8 A. Yes. DK05-135.

9 Q. And is there also a 1B number?

10 A. Yes. 1B560.

11 Q. Is there a chain of custody form attached to that
12 exhibit, Prosecution Exhibit 15?

13 A. Yes, there is.

14 Q. Could you take a look at that, please.

15 A. Okay.

16 Q. And do you see your signature on it?

17 A. Yes. I see it on 10/20/2000 at the time it was
18 collected.

19 Q. All right. Is your signature on -- assuming there's
20 four signatures, is yours the first, second, third, or fourth?

21 A. First.

22 Q. Do you recognize the signature underneath it?

23 A. It may be Dayna's, but I can't say for sure. Or

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1 Dayna Sepeck now, I should say.

2 Q. Dayna Sepeck. All right.

3 Now, can you associate this particular chain of
4 custody form with the exhibit, Prosecution Exhibit 15?

5 A. Yes. Again, the numbers match up, DK05-135 and the
6 1B number.

7 Q. I'm placing on, at this time, the ELM0 Prosecution
8 Exhibit 15C. You've had a chance to see that; is that
9 correct?

10 A. Yes.

11 Q. Is that an exact duplicate of the chain of custody
12 form you have just described to the court?

13 A. Up through the fourth line, yes.

14 Q. The first four are exact duplicates of the ones
15 contained on the form that you've been referring to, correct?

16 A. Yes, that is correct.

17 TC [MR. MILLER]: Your Honor, at this time, the government
18 would move for the admission of Prosecution Exhibits 15A, 15B,
19 and 15C.

20 MJ [Co1 SPATH]: Defense Counsel?

21 DDC [LT PIETTE]: Defense takes no position.

22 MJ [Co1 SPATH]: Thank you.

23 TC [MR. MILLER]: If you could provide the witness -- I'm

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1 sorry, Sergeant -- with Prosecution Exhibit 98.

2 Q. Could you take a look at that. Have you had a chance
3 to look at it?

4 A. Yes, I have.

5 Q. Do you recognize it?

6 A. Yes. Again, it is a piece of evidence that was
7 seized from the USS COLE, and I recovered it, and I see my
8 handwriting on it, multiple different areas.

9 Q. All right. I'm placing on the ELMO Prosecution
10 Exhibit 98A, a photograph, and ask you if you recognize the
11 items contained in the photograph, Prosecution Exhibit 98A?

12 A. Yes. Again, it appears to be the type of debris that
13 we recovered from the deck of the USS COLE.

14 Q. Does it appear to be the same items contained in the
15 exhibit, Prosecution Exhibit 98 for Identification?

16 A. Yes, it is.

17 Q. And does it contain a Q tab number, the photograph,
18 Prosecution Exhibit 98A?

19 A. Yes. Q162.

20 Q. If you would, please, look at the evidence in the
21 evidence bag itself, Prosecution Exhibit 98.

22 A. Uh-huh.

23 Q. First, does the -- Prosecution Exhibit 98 for

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1 Identification, does it contain a Q tab?

2 A. Yes, it does.

3 Q. And what is that Q tab number, please?

4 A. Q162.

5 Q. And does that match the Q tab number on Prosecution
6 Exhibit Number -- Prosecution Exhibit 98A for Identification?

7 A. Yes, it does.

8 Q. Also looking at the bag, does the bag contain a -- or
9 have a 1B number on it?

10 A. Yes. 1B15.

11 Q. And does it have a DK number on it somewhere?

12 A. Yes. DK03-124.

13 Q. I'd ask you if you would, please, to take a look and
14 see if there is a chain of custody form attached to that
15 exhibit.

16 A. Yes, there is.

17 Q. Take a look at it, please.

18 A. Okay.

19 Q. Do you recognize your signature on it?

20 A. Yes, I do. My signature -- my signature is on the
21 first line as the person who collected the item on 10/18.

22 Q. Are you able to associate this particular -- or that
23 particular chain of custody form with the exhibit, Prosecution

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1 Exhibit 98 for Identification?

2 A. Yes. It has the item number, the DK03-124 markings
3 on it.

4 Q. Placing on the ELM0 Prosecution Exhibit 98C. Take a
5 look at that if you would, sir, please?

6 A. Yes.

7 Q. Ma'am. I'm sorry, ma'am.

8 A. I knew what you meant.

9 Q. All right. Your signature is on the top, correct?

10 A. Yes, it is.

11 Q. And is that an exact duplicate of the chain of
12 custody form which you have just referred, the first four
13 entries, anyway?

14 A. Yes, it is.

15 Q. Ma'am, I'm placing before you Prosecution Exhibit 98B
16 for Identification. Do you recognize that? Let me blow it up
17 a little bit.

18 A. I -- is there another -- I certainly recognize the --
19 the item on the ELM0, yes.

20 Q. All right. That's what I'm asking.

21 A. Oh, okay. Yes.

22 Q. And is that a fair and accurate depiction of -- that
23 is -- on ELM0 is 98B. Is that 98B a fair and accurate

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1 depiction of the actual exhibit, Prosecution Exhibit 98 for
2 Identification?

3 A. I -- forgive me. I don't know that this is -- this
4 is marked as "carpet-like debris." Oh, I -- my apologies.
5 Okay. I'm sorry. I forgot this other evidence sticker was
6 there. Not to worry. Yes, it is. It's the same. My
7 apologies.

8 Q. Okay. Thank you.

9 A. Sorry.

10 TC [MR. MILLER]: Government would move, Your Honor, for
11 the -- would move to introduce into evidence Prosecution
12 Exhibit 98A, 98B, and 98C.

13 MJ [Col SPATH]: Defense Counsel?

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

15 MJ [Col SPATH]: Thank you.

16 TC [MR. MILLER]: Provide the witness, please, with
17 Prosecution Exhibit 104.

18 Q. Do you recognize that exhibit?

19 A. Yes, I do.

20 Q. And Prosecution Exhibit 104, did you seize that item
21 or collect that item?

22 A. Yes, I did, on October 18th at 11, looks like,
23 15 a.m.

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1 Q. Placing on the ELM0 Prosecution Exhibit 104A for
2 Identification. I'd ask you if you recognize what's in that
3 photograph, Prosecution Exhibit 104A for Identification.

4 A. It appears to be, again, the same type of debris that
5 we recovered from the ship -- or the deck, I should say, of
6 the USS COLE.

7 Q. Does it appear to be the same evidence as contained
8 in the Prosecution Exhibit 104 for Identification?

9 A. This has a larger metal can at the moment in the bag,
10 and in the photograph that appears to be a smaller glass vial.
11 So I can't necessarily see the contents of the metal can.

12 Q. All right. Does the photograph, Prosecution
13 Exhibit 104A, have a Q tab number on it?

14 A. Yes, it does.

15 Q. Could you read that into the record, please. Oh, let
16 me see if we can get it a little bit better.

17 A. I believe that's Q160.

18 Q. Does the exhibit, Prosecution Exhibit 104, have a Q
19 number on it?

20 A. Yes, it does. Again, Q160.

21 Q. And would that be identical to the number contained
22 in Prosecution Exhibit 106A [sic] for Identification?

23 A. Yes, it is.

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1 Q. Looking at the exhibit itself, Prosecution
2 Exhibit 104, do you recognize the handwriting on the bag on
3 the evidence area, so to speak, the evidence information?

4 A. Yes, I do.

5 Q. And did you fill that out?

6 A. I filled out -- looks like my handwriting on all of
7 it except maybe the DK number, but generally it's my
8 handwriting.

9 Q. All right. Could you please read into the record the
10 description of the evidence, the date and time of the
11 recovery, and the location of the recovery.

12 A. The description is "tape with fibers and possible
13 chemical debris." Date and time of recovery, 10/18/2000 at
14 11:15 a.m. Location of the recovery was the 03-Deck Debris
15 Sifter. And then my name, Jane Rhodes.

16 Q. And the chain of custody form you filled out yourself
17 also; is that correct?

18 A. Correct.

19 Q. All right.

20 A. For the received by -- received by, and then when I
21 released it later -- or received from.

22 Q. Does the bag have a DK number?

23 A. Yes, it does. DK03-102.

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1 Q. Does it have a 1B number?

2 A. 1B14.

3 Q. If you would, please, take a look at the chain of
4 custody form that's attached to the exhibit.

5 A. Yes.

6 Q. Do you see your signature?

7 A. Yes. My signature is on line 1 where it shows I
8 collected it on 10/18.

9 Q. At 11:15 a.m.?

10 A. Correct.

11 Q. Which matches the bag, is that correct, Prosecution
12 Exhibit 104?

13 A. Yes, it does.

14 Q. Are you able to associate that chain of custody form
15 with the exhibit, Prosecution Exhibit 104?

16 A. Yes. It has the DK03-0 -- or 102 marking.

17 Q. Placing on the ELM0 at this time the chain of
18 custody -- a chain of custody form, Prosecution Exhibit 104C.

19 Are the first four entries exact duplicates of the chain of
20 custody form that you've just described?

21 A. Yes, they are.

22 Q. Placing also before you Prosecution Exhibit 104B for
23 Identification. Get away with that a little bit. Do you

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1 recognize that photograph?

2 A. Yes, I do. It's a photograph of the evidence bag.

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

4 A. Yes, it is.

5 TC [MR. MILLER]: If you could, please, provide the
6 witness with Prosecution Exhibit 144. All right.

7 If I didn't, Your Honor, I would also move for the
8 admission of Prosecution Exhibit 104A, B, and C.

9 MJ [Col SPATH]: Defense Counsel?

10 DDC [LT PIETTE]: Defense takes no position.

11 MJ [Col SPATH]: Thank you.

12 Q. Now, have you had a chance to look at Prosecution
13 Exhibit 144?

14 A. Yes, I have.

15 Q. And did you seize this particular item or collect it?

16 A. Yes, I did, on October 24th.

17 Q. Placing on the ELM0 Prosecution Exhibit 144A. Do you
18 recognize that -- generally that type of material?

19 A. Yes. Again, some of the charred debris that we
20 recovered from the deck of the COLE.

21 Q. And does the photograph, Prosecution Exhibit 144A,
22 have a Q number on it?

23 A. It does. I believe it's Q573.

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1 Q. All right.

2 A. A little hard to tell.

3 Q. If you would look, please, at the exhibit,
4 Prosecution Exhibit 144.

5 A. Okay.

6 Q. Does it have a Q tab number or a Q tab on it, or a
7 Q tab number?

8 A. Yes, it does. Q573.

9 Q. All right. And would that be identical to the
10 photograph in Prosecution Exhibit 144A?

11 A. Yes, it is.

12 Q. Are you able to see what the items are contained in
13 Prosecution Exhibit 144?

14 A. Yes, I can.

15 Q. And do they appear to be the same items that are
16 contained in the photograph, Prosecution 144A?

17 A. Yes.

18 Q. Looking at the exhibit itself, Prosecution 144, did
19 you sign the chain of custody?

20 A. Yes, I did, on October 24th.

21 Q. And there's a description up on top of the -- what
22 I'll call the evidence tag. Did you fill that out or did
23 somebody else do that?

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1 A. Yeah, it looks like somebody else's handwriting at
2 the upper part describing what it was.

3 Q. Does that particular exhibit have an MDK number?

4 A. Let me see here. Oh, yes. MDK-139.

5 Q. Does it also have a 1B number?

6 A. One moment. My apologies. I'm sure I'm looking
7 right at it. Oh. 1B785.

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

9 A. Yes, there is.

10 Q. Could you look at that, please.

11 A. Yes.

12 Q. Is your signature contained on it?

13 A. Yes, it is. The item that I -- I collected the item,
14 appears to be on 10/24.

15 Q. At 4:00 p.m.?

16 A. Correct.

17 Q. And it has -- your signature is on the top line,
18 correct?

19 A. Correct. The first signature line.

20 Q. Are you able to associate this particular chain of
21 custody -- that particular chain of custody form with the
22 exhibit, Prosecution Exhibit 144?

23 A. Yes, I can, by the MDK number, and again, the time

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1 and the date are aligned, and the 1B number.

2 Q. Placing on the ELM0 Prosecution Exhibit 144C. Do you
3 recognize that?

4 A. Yes, I do. It is the chain of custody form, and that
5 is my signature on the first signature line.

6 Q. Are the first three lines identical, exact duplicates
7 of those -- of the chain of custody form that you've just been
8 describing?

9 A. Yes, they are.

10 Q. Lastly, I'm placing on the ELM0 Prosecution Exhibit
11 144B. Do you recognize that?

12 A. Yes, I do. It is a copy of the paper bag that was
13 used to capture this item.

14 Q. Fair and accurate depiction of the bag used to store
15 the evidence?

16 A. Yes, it is.

17 Q. And that is Prosecution Exhibit 144B, the photograph,
18 correct?

19 A. Correct.

20 TC [MR. MILLER]: The government would move for the
21 admission of Prosecution Exhibits 144A, 144B, and 144C, Your
22 Honor.

23 MJ [Col SPATH]: Defense Counsel?

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1 DDC [LT PIETTE]: Defense takes no position.

2 MJ [Col SPATH]: Thank you.

3 Q. Now, I think we -- you indicated in your previous
4 testimony that you were responsible for transporting some of
5 the evidence back to the United States?

6 A. Yes, that is correct.

7 Q. And I believe it was initially taken from the CONEX
8 area, I think you testified?

9 A. Yes.

10 Q. To a naval vessel, the TARAWA?

11 A. Yes. We removed it from the CONEX trailer and from
12 the port of Aden, put it onto a smaller Navy boat, and
13 transported it out to the USS TARAWA, where we stowed it for a
14 few days.

15 Q. And from the TARAWA you took it to?

16 A. Then we transported it from -- via helicopter into
17 Oman, to an airfield there. From there it was placed onto a
18 charter aircraft, where we flew home with the USS COLE crew as
19 well, too. En route to the United States we stopped in
20 Germany for one night, at which time we secured the evidence
21 in Germany in another secure location. And then the next day
22 we flew home with the USS COLE on the charter aircraft to
23 Norfolk.

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1 Q. All right. I'm going to show you now a series of
2 green sheets that can -- I'm going to ask you if you can
3 identify them ----

4 A. Okay.

5 Q. ---- identify your signature. I'm not going to ask
6 you to indicate the date and time on each one. But generally,
7 you transported the evidence, correct?

8 A. Yes, that's correct.

9 Q. And did you indicate on each green sheet that it was
10 for transport?

11 A. I believe so, yes.

12 Q. I think you indicated in your previous testimony the
13 date and time; is that correct?

14 A. Yes.

15 Q. I take it if there is a person's signature above you,
16 that would have been the person from whom you got it?

17 A. Generally speaking, or the person who may have put it
18 into storage.

19 Q. All right. And as far as the name underneath you?

20 A. Then that would have been who it was provided to from
21 the laboratory.

22 Q. And you provided these items to the lab; is that
23 correct?

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1 A. Yes. Someone met us at the Norfolk air base.

2 Q. We're going to go through a big list of them, so I'm
3 going to go ----

4 A. Okay.

5 Q. ---- go through it as quickly as possible.

6 A. Okay.

7 Q. Thank you. I appreciate it. All right. Just, if
8 you just would tell me where you recognize your name, what
9 line, all right?

10 A. Okay. I'm ----

11 Q. I've placed on the ELM0 Prosecution Exhibit 2C. Do
12 you recognize your name?

13 A. Yes, I do, on lines 1 and 3.

14 Q. Prosecution Exhibit Number 3C -- Prosecution
15 Exhibit 3C for Identification.

16 A. Yes. My signature is on line 3.

17 Q. Prosecution Exhibit 4C?

18 A. Yes. My signature is on line 1 and line 3.

19 Q. Prosecution 5C?

20 A. Yes. My signature is on line 3.

21 Q. Prosecution 6C?

22 A. My signature is on line 1 and line 3.

23 Q. Prosecution 7C?

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- 1 A. Yes. My signature is on line 3.
- 2 Q. Prosecution 8C?
- 3 A. My signature appears on line 1 and line 3.
- 4 Q. Prosecution 9C?
- 5 A. My signature is on line 3.
- 6 Q. Prosecution 10C?
- 7 A. My signature is on line 3.
- 8 Q. Prosecution 11C?
- 9 A. My signature is on line 3.
- 10 Q. Prosecution 12D, as in David?
- 11 A. My signature is on line 1 and line 3.
- 12 Q. Prosecution 13C?
- 13 A. My signature is on line 3.
- 14 Q. Prosecution 14C?
- 15 A. My signature is on line 3.
- 16 Q. Prosecution 17C?
- 17 A. My signature is on line 3.
- 18 Q. Prosecution 18C?
- 19 A. My signature is on line 3.
- 20 Q. Prosecution 19C?
- 21 A. My signature is on line 3.
- 22 Q. Prosecution 20C?
- 23 A. My signature -- it appears to be line 3, or at least

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1 the second from the bottom.

2 Q. All right. Your name is actually written above your
3 signature, correct?

4 A. That is correct.

5 Q. Prosecution Exhibit 21C?

6 A. My signature appears on line 3.

7 Q. Prosecution 22 -- 22C?

8 A. My signature is on lines 2 and line 3.

9 Q. Prosecution Exhibit 25D, as in David?

10 A. My signature is on line 3.

11 Q. Prosecution Exhibit 26C?

12 A. My signature is on line 3.

13 Q. Prosecution 27C?

14 A. My signature is on line 3.

15 Q. Prosecution 28C?

16 A. My signature is on line 3.

17 Q. Prosecution 29C?

18 A. My signature is on line 3.

19 Q. Prosecution 30D, as in David?

20 A. My signature is on line 3.

21 Q. Prosecution 31C?

22 A. My signature is on line 3.

23 Q. Prosecution Exhibit 32C?

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- 1 A. My signature is on line 1 and line 3.
- 2 Q. Prosecution 33C?
- 3 A. My signature is on line 3.
- 4 Q. Prosecution 34C?
- 5 A. My signature is on line 3.
- 6 Q. Prosecution 35C?
- 7 A. My signature is on line 3.
- 8 Q. Prosecution 36C?
- 9 A. My signature is on line 3.
- 10 Q. Prosecution Exhibit 37C?
- 11 A. My signature is on line 3.
- 12 Q. Prosecution 38C?
- 13 A. My signature is on line 1 and line 3.
- 14 Q. Prosecution 39C? Hold on. I've almost got it here.
- 15 A. My signature is on line 3.
- 16 Q. Prosecution 40C?
- 17 A. My signature is on line 3.
- 18 Q. Prosecution 41C?
- 19 A. My signature is on line 2 and line 3.
- 20 Q. Prosecution 42E?
- 21 A. My signature is on line 3.
- 22 Q. Prosecution 43C?
- 23 A. My signature is on line 3.

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- 1 Q. Prosecution 44C?
- 2 A. My signature is on line 2 and line 3.
- 3 Q. Prosecution Exhibit 45C?
- 4 A. My signature is on line 2 and line 3.
- 5 Q. Prosecution Exhibit Number 47D?
- 6 A. My signature is on line 3.
- 7 Q. Prosecution 48D?
- 8 A. My signature is on line 2 and line 3.
- 9 Q. Prosecution 49C?
- 10 A. My signature is on line 2 and line 3.
- 11 Q. Prosecution 50C?
- 12 A. My signature is on line 2 and line 3.
- 13 Q. Prosecution 51C?
- 14 A. My signature is on line 2 and line 3.
- 15 Q. 52 -- excuse me. 62C?
- 16 A. My signature is on line 3.
- 17 Q. 63C?
- 18 A. My signature is on line 3.
- 19 Q. 64C?
- 20 A. My signature is on line 1 and line 3.
- 21 Q. Prosecution 65C?
- 22 A. My signature is on line 1 and line 3.
- 23 Q. Prosecution 68C?

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1 A. My signature is on line 3.

2 Q. All right. Excuse me. That was 66C again? You're
3 on -- your signature is on line? This is 66C. I'm sorry. I
4 misspoke.

5 A. Okay.

6 Q. Your signature is on what line?

7 A. I don't necessary see the item number here, but it's
8 on line -- line 3, the item in front of me.

9 Q. Prosecution 67C, do you see your signature?

10 A. Yes. It's on line 3.

11 Q. Prosecution 68C?

12 A. My signature is on line 3.

13 Q. Prosecution 69C?

14 A. My signature is on line 3.

15 Q. Prosecution 74C?

16 A. My signature is on line 3.

17 Q. Prosecution 75C?

18 A. My signature is on lines 2 and line 3.

19 Q. Prosecution 76C?

20 A. My signature is on lines 2 and 3.

21 Q. Prosecution 77C?

22 A. My signature is on lines 1, 2, and 3.

23 Q. Prosecution 78C?

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- 1 A. My signature is on line 3.
- 2 Q. Prosecution 79C?
- 3 A. My signature is on lines 1, and 2, and 3.
- 4 Q. Prosecution 80C?
- 5 A. My signature is on line 1 and on line 3.
- 6 Q. Prosecution 81C?
- 7 A. My signature is on line 1 and line 3.
- 8 Q. Prosecution 82C?
- 9 A. My signature is on line 1 and -- I'm not -- I'm
10 sorry. Signature on lines 2 and 3.
- 11 Q. Prosecution Exhibit 85C?
- 12 A. My signature is on line 3.
- 13 Q. Prosecution 86C?
- 14 A. My signature is on line 3.
- 15 Q. Prosecution 87C?
- 16 A. My signature is on line 3.
- 17 Q. Prosecution 88C?
- 18 A. My signature is on lines 1 and 3.
- 19 Q. Prosecution 89C?
- 20 A. My signature is on line 3.
- 21 Q. Prosecution 90C?
- 22 A. My signature is on lines 1 and 3.
- 23 Q. Prosecution 91C?

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- 1 A. My signature is on 3.
- 2 Q. Prosecution 92C?
- 3 A. My signature is on lines 1 and 3.
- 4 Q. Prosecution Exhibit 93C?
- 5 A. My signature is on line 3.
- 6 Q. Prosecution 94C?
- 7 A. My signature is on lines 1 -- I beg your pardon --
- 8 lines 2 and 3.
- 9 Q. Prosecution 95C?
- 10 A. My signature is on lines 2 and 3.
- 11 Q. Prosecution 99C?
- 12 A. My signature is on line 3.
- 13 Q. Prosecution 100C?
- 14 A. My signature is on line 3.
- 15 Q. Prosecution 101C?
- 16 A. My signature is on line 3.
- 17 Q. Prosecution Number 102C?
- 18 A. My signature is on line 1 and 3.
- 19 Q. Prosecution Exhibit Number 103C?
- 20 A. My signature is on line 3.
- 21 Q. Prosecution Exhibit 106C?
- 22 A. My signature is on line 3.
- 23 Q. Prosecution 107C? Sorry.

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- 1 A. That's okay. My signature is on line 3.
- 2 Q. Prosecution 108C?
- 3 A. My signature is on line 3.
- 4 Q. Prosecution 109 [sic]?
- 5 A. My signature is on line 3.
- 6 Q. Prosecution 110C?
- 7 A. My signature is on line 3.
- 8 Q. Prosecution Exhibit 111C?
- 9 A. My signature is on line 3.
- 10 Q. Prosecution 112C?
- 11 A. My signature is on line 3.
- 12 Q. Prosecution 113C?
- 13 A. My signature is on line 3.
- 14 Q. Prosecution 114C?
- 15 A. My signature is on line 3.
- 16 Q. Prosecution 115C?
- 17 A. My signature is on line 3.
- 18 Q. Prosecution 116C?
- 19 A. My signature is on line 3.
- 20 Q. Prosecution 117C?
- 21 A. My signature is on line 2.
- 22 Q. Prosecution 118C?
- 23 A. My signature is on line 3.

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- 1 Q. Prosecution Exhibit 119C?
- 2 A. My signature is on line 3.
- 3 Q. Prosecution 120C?
- 4 A. My signature is on line 3.
- 5 Q. Prosecution 121C?
- 6 A. My signature is on line 3.
- 7 Q. Prosecution 122C?
- 8 A. My signature is on line 4.
- 9 Q. Prosecution 123C?
- 10 A. My signature is on line 3.
- 11 Q. Prosecution 124C?
- 12 A. My signature is on line 1 and line 3.
- 13 Q. Prosecution 126C?
- 14 A. My signature is on line 3.
- 15 Q. Prosecution 129C?
- 16 A. My signature is on line 3.
- 17 Q. Prosecution 130C?
- 18 A. My signature is on line 3.
- 19 Q. Prosecution 131C?
- 20 A. My signature is on line 3.
- 21 Q. Prosecution 132C?
- 22 A. My signature is on line 3.
- 23 Q. Prosecution 133C?

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- 1 A. My signature is on line 1 and line 3.
- 2 Q. Prosecution Exhibit 134C?
- 3 A. My signature is on line 3.
- 4 Q. Prosecution 135C?
- 5 A. My signature is on line 3.
- 6 Q. Prosecution 136C?
- 7 A. My signature is on line 3.
- 8 Q. Prosecution 137C?
- 9 A. My signature is on line 3.
- 10 Q. Prosecution 138C?
- 11 A. My signature is on line 3.
- 12 Q. Prosecution 139C?
- 13 A. My signature is on line 3.
- 14 Q. Prosecution 140C?
- 15 A. My signature is on line 3.
- 16 Q. Prosecution Exhibit 141C?
- 17 A. My signature is on line 1 and line 3.
- 18 Q. Prosecution Exhibit 142C?
- 19 A. I don't believe I see my -- it's hard to tell. Line
- 20 2 might be mine. It's hard to see from this -- this copy I
- 21 have.
- 22 Q. All right.
- 23 A. It kind of looks like ----

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1 Q. Does it look like your signature?

2 A. Kind of on line 2. I know that's not much of an
3 answer, but -- yes, I'm sorry. I can see now. I can see Jane
4 Rhodes, line 2. My apologies.

5 Q. That's Prosecution Exhibit 142C. I'm now showing you
6 Prosecution 143C.

7 A. Okay. I can see my signatures -- my signature on
8 line 1 and line 3.

9 Q. Prosecution Exhibit 152C?

10 A. My signature is on line 3.

11 Q. Prosecution Exhibit 153C?

12 A. My signature is on line 3.

13 Q. Prosecution 154C?

14 A. My signature is on line 3.

15 Q. Prosecution 155C?

16 A. My signature is on line 3.

17 Q. Prosecution 156C?

18 A. My signature is on line 3.

19 Q. Lastly, Prosecution Exhibit 157D, as in David?

20 A. My signature is on line 3.

21 Q. And again, the one -- the items that you brought back
22 from the TARAWA went to the laboratory; is that correct?

23 A. Yes.

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1 TC [MR. MILLER]: I have nothing further of the witness,
2 Your Honor. Thank you.

3 MJ [Col SPATH]: Defense counsel may cross-examine.

4 DDC [LT PIETTE]: Your Honor, defense takes no position.

5 MJ [Col SPATH]: All right. Ma'am, hopefully you'll
6 remember the order I gave you last time. Don't discuss your
7 testimony until this issue is resolved. As I said last time,
8 it might be a while before this issue is resolved. Do you
9 understand the order?

10 WIT: Yes, I do.

11 MJ [Col SPATH]: All right. And again, I appreciate that
12 you traveled down here in person to offer the testimony. I
13 know it's appreciated by everybody involved. Thank you very
14 much.

15 WIT: Thank you kindly.

16 [The witness was warned, excused, and withdrew from the
17 courtroom.]

18 MJ [Col SPATH]: Colonel Wells, do you have something?
19 Okay. I thought I saw you moving. Mr. Miller, my plan is
20 we'll take a break, we'll come back. How many more witnesses
21 do you ----

22 TC [MR. MILLER]: I've got -- oh, I'll walk up to
23 the thing. We have four witnesses, but they should be about

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1 ten minutes apiece; so I think we can conclude with all our
2 witnesses today, Your Honor.

3 MJ [Col SPATH]: We'll keep going, and then we'll --
4 again, we'll take up the issue with the two civilians and the
5 attempts to get Colonel Aaron to assist in that before we get
6 out of here today. Okay.

7 See you in ten. We're in recess.

8 [The R.M.C. 803 session recessed at 1507, 22 January 2018.]

9 [The R.M.C. 803 session was called to order at 1519,
10 22 January 2018.]

11 MJ [Col SPATH]: Commission is called to order. All the
12 parties are again present who were present before our last
13 break.

14 Mr. Miller, call your next witness.

15 TC [MR. MILLER]: Your Honor, before I do that, I would
16 move -- I think I may not have, I think I overlooked it, but
17 move for the admission of Government's -- or Prosecution
18 Exhibit 14A, 14B, and 14C.

19 MJ [Col SPATH]: Defense Counsel?

20 DDC [LT PIETTE]: Defense takes no position.

21 TC [MR. MILLER]: Your Honor, I have not been -- just for
22 clarification, I think, we have not been offering the exhibit
23 itself. I thought we sort of had an agreement from when

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1 Mr. Kammen was here that we were going to all do that at the
2 end. I was going to move it when we brought in some evidence
3 of relevance. So we're going to do that at the -- a different
4 time.

5 MJ [Col SPATH]: Okay. I understand. Thank you. You may
6 proceed.

7 TC [MR. MILLER]: Thank you, Your Honor. Call Ignacio
8 Mendizabal.

9 **IGNACIO MENDIZABAL, civilian, was called as a witness for the**
10 **prosecution, was sworn, and testified as follows:**

11 **DIRECT EXAMINATION**

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

13 Q. Would you please be seated and would you state your
14 name for the record, please.

15 A. My name is Ignacio Mendizabal.

16 Q. All right. And you work for the FBI; is that
17 correct?

18 A. Yes.

19 Q. A little bit about your background, if I could,
20 before we testify -- ask you to testify about your
21 relationship to the USS COLE investigation. Did you attend --
22 you attended university, correct?

23 A. Yes.

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1 Q. And if you could indicate to the court where, what
2 your major was -- what your degree was, rather, and the year
3 in which you graduated.

4 A. Yeah. I graduated from University of Maryland,
5 University College in College Park, Maryland, in 1999. My
6 major -- or bachelor was criminal justice.

7 Q. And when did you join the FBI? What was your first
8 employment with the Federal Bureau of Investigation?

9 A. My entering duty for the FBI was May 7, 1989.

10 Q. And what was the capacity in which you were employed?

11 A. When I began?

12 Q. Yes.

13 A. I was a security warden.

14 Q. If you could briefly describe what that entailed?

15 A. Basically my job was to secure and save the -- safe
16 and secure the FBI Headquarters building, work nightshift.

17 Q. And how long did you remain in that position?

18 A. I did that until August of 1990.

19 Q. And what changed in 1990?

20 A. In 1990, I was hired by the Explosive Unit as a
21 physical science technician.

22 Q. And what does a physical science technician do?

23 A. I had to go to Eglin Air Force Base to specialize in

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1 explosives. Also went to Indian Head, Maryland, for IED;
2 that's improvised explosive device. Also has a certification
3 in Post-Blast Investigator School instructor and HAZMAT
4 certified.

5 Q. I take it you would regularly handle evidence in that
6 position?

7 A. Yes.

8 Q. Were you responsible for the evidence in the lab?

9 A. Yes.

10 Q. How so?

11 A. When evidence come in, it doesn't matter if it's --
12 if it is a hoax device or a pipe bomb or perhaps a major case,
13 we do get involved.

14 Q. Okay. Did you routinely or have you routinely while
15 you were in the Explosive Unit, did you go to crime scenes?

16 A. Yes. My first crime scene was the World Trade Center
17 bombing in New York on February 26th, 1993. Then after that,
18 I went to the Oklahoma City bombing, 1995; the Centennial Park
19 bombing in Atlanta, Georgia, in '96; in '98, the Africa
20 bombing in Tanzania; 2000, October 12, 2000, the USS COLE; and
21 many other bombings.

22 Q. Have you ever acted as an instructor in the area of
23 post-blast training?

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1 A. Yes. And went to -- for the being an instructor was
2 in Bogota, Colombia, and Mexico City for the Mexican police to
3 teach them how the explosives worked and basic demo, pretty
4 much.

5 Q. And how long did you remain in the Explosives Unit?

6 A. I was there from August of 1990 until September of
7 2006.

8 Q. And what did you do in 2006?

9 A. 2006, then I was hired by the ERT; that's Evidence
10 Response Team Unit. And -- which I am now a forensic
11 operational specialist.

12 Q. What does a forensic operation -- operational
13 specialist do?

14 A. My main duty -- we have about 1,200 ERT members all
15 over the United States of the 55 field offices, and my job is
16 to make sure they have the equipment and the services they
17 need to do a complete and thorough crime scene.

18 Q. I want to direct your attention back to October of
19 2000. You were working at Headquarters in the Explosives
20 Unit; is that correct?

21 A. That is correct.

22 Q. And were you informed that there had been an attack
23 on a U.S. -- the USS COLE in Aden, Yemen?

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1 A. Yes. Our unit chief told us that there was an attack
2 in Yemen, yes, sir.

3 Q. Were you informed that you were going to have any
4 duties and responsibilities in regard to this incident?

5 A. Yes.

6 Q. And what were you told?

7 A. I was told that, "Pack your bags. You're going to
8 the COLE." And while at the COLE, I was instructed by one of
9 the -- our supervisors to help Dayna Better to -- we have
10 several teams in the COLE and every team has a team leader.
11 So their job was -- the team leader's job was to bring the
12 evidence to me and to Dayna. We'd check it in, make sure the
13 paperwork and the bags were identical. And then I'll pass it
14 over to Dayna, and Dayna will log it in, and it will remain in
15 there in that cabin inside the USS COLE.

16 Q. All right. You sort of anticipated where I'm going,
17 but I want to back up just a little bit.

18 A. Okay.

19 Q. You traveled to Yemen. How did you get there?

20 A. Oh. By Air Force.

21 Q. All right. Did you take any items with you?

22 A. No.

23 Q. Did you pack any clothes, any equipment ----

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1 A. Oh, yeah.

2 Q. ---- or anything of that nature?

3 A. Our clothes, yes.

4 Q. When you arrived, you indicated that you were told
5 you were going to be doing certain things?

6 A. Yes.

7 Q. Do you remember who provided you with that
8 instruction or those orders?

9 A. Yes.

10 Q. And who was that?

11 A. It was, as I say, Donald Sachtleben.

12 Q. Okay. Was he your immediate supervisor?

13 A. Yes. At that time, yes, sir.

14 Q. Was he your immediate supervisor back home?

15 A. No, sir.

16 Q. You said you were teamed with Dayna Better?

17 A. Yes.

18 Q. Does she have a different name now?

19 A. Yes.

20 Q. What is it now?

21 A. Her name is Dayna Sepeck.

22 Q. You and Dayna were in charge of what function on the
23 COLE?

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1 A. So there's several teams working together, and the
2 team leader would come over and bring us the evidence. So
3 we'll look at it, she'll log it in, and that's -- that was our
4 job, to make sure that what they're bringing us, she'll log it
5 in, and we'll store in that cabin, secure cabin.

6 Q. Had you ever been sort of involved in this kind of an
7 operation before, the intake of evidence at a major blast
8 scene?

9 A. Not that I recall, no.

10 Q. Now, did you ever sign for evidence?

11 A. Yes.

12 Q. All right. But generally, did you do it or did Agent
13 Sepeck or Agent Better do it?

14 A. Most likely, if she was the one -- if it was at the
15 COLE, most likely she was the one signing it and logging them
16 in, yes.

17 Q. All right. Now, when a piece of evidence came into
18 the evidence area, this -- what I will call the -- your
19 evidence team, all right, the evidence storage team, and it
20 was brought to you, if you could, walk us through and walk the
21 judge through what it is you would do in regard to that
22 evidence and the agent that was bringing it to you.

23 A. Okay. So basically, the -- there was a bag and a

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1 report. And whatever you write on the report, okay, it has to
2 be the same thing as on the outside of the bag, like the file
3 number; the person that recover it, the initials; make sure
4 it's taped correctly. So that was one of my job, making sure
5 that's all taken care of. And then the same thing, what was
6 on the report and on the bag, that's what, you know, Dayna
7 will write on this log.

8 Q. How long did you perform this particular task?

9 A. Oh, probably -- I believe I was there for two weeks,
10 so I'm not going to say the two weeks, the whole two -- two
11 weeks, but probably more -- more than a week or so.

12 Q. All right. You also ended up taking into your
13 possession certain evidence from the searches on land,
14 correct?

15 A. Yes.

16 Q. We'll talk about that at a later time.

17 The evidence that was in the COLE, you and Dayna
18 would watch it during the day, correct?

19 A. Yes.

20 Q. What would happen -- what happened to it at night, or
21 eventually as it began to fill up the area in which you
22 worked?

23 A. I don't -- I don't remember. Because when we left,

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1 we had the key, we'll lock it. And I go back to my hotel, and
2 I don't know. Don't know.

3 Q. Were you familiar with the Marine base or the Marine
4 enclave at the port, the CONEX area?

5 A. I knew they were out there, yeah, with us; protecting
6 us, actually, yes.

7 Q. All right. And was the evidence stored there?

8 A. I don't recall that, no. Don't remember.

9 Q. Did you help bring some of the evidence to the
10 TARAWA?

11 A. I don't remember.

12 Q. All right. I'm going to show you ----

13 TC [MR. MILLER]: If I could have permission to use the
14 ELMO with this witness, Your Honor.

15 MJ [Col SPATH]: You may.

16 Q. I'll show you what has been marked as Prosecution
17 Exhibit Number 144C and ask you if you see your signature on
18 that page, please.

19 A. Yes. The signature, that is mine.

20 Q. All right. Well, the signature which is yours, which
21 one is it?

22 A. Counting from the one -- one, two, three, number
23 four. The last one.

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1 Q. All right. If there's three signatures, could you
2 circle it, just -- you said four. I'm not -- maybe I'm
3 not ----

4 A. This ----

5 Q. Is that it right there, the ----

6 A. I was counting the top one.

7 Q. The last one?

8 A. Yes.

9 Q. And what would that indicate?

10 A. That I had accepted the evidence.

11 Q. And that you accepted it when?

12 A. It says November 9, 2000, but I don't know what
13 evidence it were.

14 Q. Okay. Again, I'm not asking you that right now. I'm
15 just asking you, does it indicate that, at least as to this
16 chain of custody, you would have received this evidence,
17 whatever it ----

18 A. Yes.

19 Q. ---- reflected?

20 A. Yes.

21 Q. All right. And you would have received it on the 9th
22 from Joe Cordaro at 11:30 a.m.; is that correct?

23 A. Yes.

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1 Q. I take it you would have been back from the COLE at
2 this time, correct?

3 A. 10/12, yes, correct.

4 Q. All right. Again, for the record, you've identified
5 your signature on Prosecution Exhibit 144C, correct?

6 A. Yes.

7 TC [MR. MILLER]: I have nothing further, Your Honor.
8 Thank you.

9 MJ [Col SPATH]: Defense Counsel, cross-examination?

10 DDC [LT PIETTE]: Defense takes no position.

11 MJ [Col SPATH]: All right. Thank you. I'm going to give
12 you a standard order. Until we resolve this issue, don't
13 discuss your testimony with anybody. It's going to be a while
14 before we do resolve this issue, so just keep that in mind.
15 Do you understand my order?

16 WIT: Yes. Yes.

17 MJ [Col SPATH]: Okay. Thank you very much for traveling
18 down here and testifying in person. I know everybody involved
19 appreciates that, and I know how much time it takes,
20 certainly.

21 WIT: Thank you, Your Honor.

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

23 [END OF PAGE]

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1 [The witness was warned, excused, and withdrew from the
2 courtroom.]

3 TC [MR. MILLER]: The government calls Andrew English,
4 Your Honor.

5 ANDREW JOSEPH ENGLISH, civilian, was called as a witness for
6 the prosecution, was sworn, and testified as follows:

7 **DIRECT EXAMINATION**

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

9 Q. Be seated, please, and state your name for the
10 record.

11 A. My name is Andrew Joseph English.

12 Q. And you are employed by the Federal Bureau of
13 Investigation; is that correct?

14 A. That is correct.

15 Q. Before I ask you some questions about the USS COLE
16 investigation, I'd like to talk a little bit about your
17 background, if I could, sir. You graduated from college. If
18 you could indicate to the court, please, where you went to
19 college, what your degree was in, and when you graduated.

20 A. I went to college at Juniata College, Huntingdon,
21 Pennsylvania. I graduated in 1988 -- I graduated in 1988 with
22 a Bachelor of Science in social science and secondary
23 education.

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1 MJ [Col SPATH]: Hang on one second. I think we're
2 having ----

3 WIT: Yes, Your Honor.

4 MJ [Col SPATH]: ---- some technical problems. Start
5 again.

6 Mr. Miller, if you would, if you would go back to
7 your first question ----

8 TC [MR. MILLER]: Sure.

9 MJ [Col SPATH]: ---- because we just started. The
10 recording wasn't picking up, and we'll start there. I think
11 it's working now.

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

13 Q. Sir, I want to first talk about your educational
14 background. If you could, please, indicate to the court where
15 you went to college, what degree you obtained, and in what
16 year you obtained it.

17 A. I graduated from Juniata College in Huntingdon,
18 Pennsylvania, in 1988 with a Bachelor of Science in social
19 science and secondary education.

20 Q. Did you do any graduate work?

21 A. I did some graduate work at George Washington
22 University in the Master's of Forensic Science program.

23 Q. When did you first become employed by the FBI?

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1 A. I was first employed by the FBI on May 7th of 1989.

2 Q. And in what capacity?

3 A. I was initially employed as a clerk in the Special
4 Agent Applicant Unit.

5 Q. And what were your -- just generally, what were your
6 duties, and what were your responsibilities?

7 A. My duties and responsibilities centered around
8 processing special agent applications.

9 Q. How long did you remain in that position?

10 A. I remained in that position until March 19th of 1990.

11 Q. And what position did you -- what was your new
12 position?

13 A. My new position in March -- on March 19th of 1990 was
14 as a physical science technician in the Explosives Unit in the
15 FBI Laboratory.

16 Q. I think we've had some other physical science
17 technicians testify, but in just a few words, what generally
18 were your duties -- what were your duties and responsibilities
19 as a physical science technician?

20 A. As a physical science technician in the Explosives
21 Unit, you would process bombing and explosive-related evidence
22 in the FBI Laboratory and prepare it for additional
23 examinations.

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1 Q. Would you also be responsible for taking evidence in
2 from the case agents who had collected it?

3 A. Yes, sir.

4 Q. And how long did you remain in that position?

5 A. Remained in that position until 2001.

6 Q. And what did you do in 2001?

7 A. In 2001 I became an intelligence analyst in the Bomb
8 Data Center of the FBI Laboratory.

9 Q. What did you do at the Bomb Data Center?

10 A. As an intelligence analyst in the Bomb Data Center,
11 we processed information on bombing and explosive-related
12 matters.

13 Q. And how long did you remain in that position?

14 A. I remained as an intelligence analyst in the Bomb
15 Data Center until 2004, when I became an intelligence analyst
16 in the Terrorist Explosive Device Analytical Center, or TEDAC.

17 Q. And did you -- is that very similar work that you had
18 done in the Bomb Data Center?

19 A. That's correct.

20 Q. And how long did you remain there?

21 A. I remained as an intel analyst until 2011, at which
22 time I became a physical scientist in the Terrorist Explosive
23 Device Analytical Center.

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1 Q. And is that what you're presently -- and is that your
2 present assignment?

3 A. Yes, sir, that's correct.

4 Q. In addition to the COLE, have you ever worked in what
5 I would call any other significant bombing cases?

6 A. Yes, sir, I have.

7 Q. And what are those?

8 A. The Oklahoma City bombing, the Unabomber, the
9 explosion of TWA Flight 800, and the first World Trade Center
10 in 1993.

11 Q. I want to direct your attention back to October of
12 2000. You were working at the explosives lab at that time; is
13 that correct?

14 A. Yes, I was in the Explosives Unit.

15 Q. And I think you indicated that part of your job was
16 evidence intake?

17 A. That's correct.

18 Q. Just do you know -- did you know a detective by the
19 name of Joe Cordaro?

20 A. Yes, I do.

21 Q. All right. Did you have occasion -- if you can
22 recall specifically, did you receive some evidence from him,
23 take it into the lab?

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1 A. Yes. We received evidence in the lab on numerous
2 occasions; but evidence in connection with this case in 2000,
3 yes.

4 Q. By the way, this case, we mean the USS COLE
5 investigation?

6 A. Yes, sir.

7 Q. Are you familiar -- I -- obviously are you familiar
8 with chain of custody FD-192s, what are commonly referred to
9 as green sheets?

10 A. Yes, sir.

11 Q. I'm going to show you a series of them and ask you to
12 identify your signature and what your signature signifies.

13 A. Yes, sir.

14 Q. First, I've placed ----

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

16 MJ [Col SPATH]: That's fine.

17 TC [MR. MILLER]: Thank you.

18 Q. I've placed on the ELM0 Prosecution Exhibit 160B for
19 Identification. Do you recognize your signature on that, sir?

20 There we go. Do you recognize your signature?

21 A. Yes, sir, I do.

22 Q. And where is your signature?

23 A. Signature is on the fourth line of the FD-192.

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1 Q. All right. And it indicates a date and time on which
2 you received the evidence?

3 A. Yes, it does.

4 Q. That's October the 18th at 8:30 p.m.?

5 A. That's correct.

6 Q. And I take it, given where your signature is located,
7 that means you received it from the person above you,
8 correct ----

9 A. Yes, sir, that's correct.

10 Q. ---- on the signature line? All right.

11 I'll show you what has been marked as Prosecution
12 Exhibit 161B for Identification. Do you recognize your
13 signature on that, sir?

14 A. Yes, sir, I do.

15 Q. All right. And where does it appear?

16 A. It appears on the last line, on the fourth line, of
17 the FD-192.

18 Q. It indicates you received the evidence when?

19 A. On October 18th of 2000 at 8:30 p.m.

20 Q. And again, you would have received it from the person
21 above you who happened to be Detective Cordaro, correct?

22 A. That's correct, yes, sir.

23 Q. Placing on the ELM0 Prosecution Exhibit 162B for

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1 Identification. Ask you if you recognize your signature on
2 that, sir.

3 A. Yes, sir, I do.

4 Q. And where do you -- where is your signature?

5 A. On the fourth and final line of the FD-192.

6 Q. Again, reflecting that you received it on October
7 18th at 8:30 p.m.?

8 A. In the year 2000, yes, sir.

9 Q. Right, in 2000. I'm sorry. From the person above
10 you, which happens again to be Cordaro, correct?

11 A. That's correct, sir.

12 Q. Placing on the ELM0 Prosecution Exhibit 163B for
13 Identification. Do you recognize your signature on that, sir?

14 A. Yes, sir, I do.

15 Q. Again, fourth position?

16 A. That's correct, the last line.

17 Q. All right. Indicates you received it on October
18 18th, 2000, at 8:30, and you would have received it from the
19 individual above, correct?

20 A. Yes, sir.

21 Q. Placing on the ELM0 Prosecution Exhibit 164C. Again,
22 you recognize your signature on that form?

23 A. Yes, sir, I do.

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1 Q. And where does it appear?

2 A. It appears on the fourth and final line.

3 Q. All right. Again, you received it on the 18th of
4 October, 2000, 8:30 p.m.?

5 A. Yes, sir.

6 Q. And you would have received it from the person above
7 you, again Detective Cordaro?

8 A. Yes, sir.

9 Q. Placing on the ELMO Prosecution Exhibit 165C -- 165C.
10 Ask you if you recognize your signature on that, sir.

11 A. Yes, sir, I do.

12 Q. And where is it?

13 A. It's on the fourth and final line of the FD-192.

14 Q. Again, indicating -- in fact, all of these, you
15 received the evidence on the 18th of October, 2000, at
16 8:30 p.m., correct?

17 A. Yes, sir, that's correct.

18 Q. Placing on the ELMO Prosecution Exhibit 166C for
19 Identification. Do you recognize your signature on that, sir?

20 A. Yes, sir, I do.

21 Q. And where is it?

22 A. It's on the fourth and final line of the FD-192.

23 Q. Showing you received the evidence on October 18th of

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1 2000 at 8:30?

2 A. Yes, sir.

3 Q. Lastly, I'm placing on the ELMO Prosecution
4 Exhibit 167C for Identification. Do you recognize that, sir?

5 A. Yes, sir, I do.

6 Q. And what do you recognize -- where do you recognize
7 your signature?

8 A. I recognize my signature on the fourth and final
9 line.

10 Q. Showing that you received that evidence on the 18th
11 of October 2000 at 8:30, correct?

12 A. That's correct, sir.

13 Q. Now, when you would receive evidence into the lab,
14 what would you next do with it?

15 A. Once we receive evidence into the lab, we look at any
16 incoming communication that came in with that evidence. We
17 check the evidence for hazards. We begin to process the
18 paperwork that will carry that evidence through the other
19 examinations, and in -- while doing that, we also determine
20 what examinations are appropriate for the type of evidence and
21 based on the contributor or the requester or, you know, based
22 on the nature of the evidence, what kind of forensic
23 examinations are required.

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1 Q. Do you assign Q numbers to them?

2 A. Yes, we do.

3 Q. All right. Do you photograph them?

4 A. Yes, we do.

5 Q. And you indicated that you would then put it through
6 to see what other testing that might be appropriate, correct?

7 A. Yes, sir.

8 Q. Do you make that decision or do you do that in
9 conjunction with another individual?

10 A. We generally do that in conjunction with a special
11 agent examiner in the Explosives Unit.

12 TC [MR. MILLER]: All right. I have nothing further.
13 Thank you, Your Honor.

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

15 Defense Counsel, you may cross-examine.

16 DDC [LT PIETTE]: Defense takes no position.

17 MJ [Col SPATH]: Thank you. Mr. English, I'm going to
18 give you a standard order. Don't discuss the substance of
19 your testimony or your testimony with anybody until we resolve
20 these issues. The unique thing here is it's going to be --
21 it's going to be a while before we finish resolving these
22 issues. Do you understand the order?

23 WIT: Yes, Your Honor, I do.

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1 MJ [Col SPATH]: All right. I have said to everybody
2 else, I appreciate people who travel down here in person to
3 testify. I know it takes a lot of time, but I know people
4 attached to this appreciate it, so thank you very much.

5 WIT: Thank you very much.

6 MJ [Col SPATH]: Thanks.

7 [The witness was warned, excused, and withdrew from the
8 courtroom.]

9 MJ [Col SPATH]: Mr. Miller?

10 TC [MR. MILLER]: Thank you, Your Honor. The government
11 calls Special Agent David Paun -- or former Special Agent
12 David Paun.

13 DAVID W. PAUN, civilian, was called as a witness for the
14 prosecution, was sworn, and testified as follows:

15 **DIRECT EXAMINATION**

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

17 Q. Take a seat and state your name for the record,
18 please.

19 A. David W. Paun.

20 Q. And your present occupation, sir?

21 A. I work for Discover Financial Services.

22 Q. And what do you do for Discover?

23 A. I'm a senior manager of their incident and crisis

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1 management team.

2 Q. Prior to that, were you a special agent with the
3 Federal Bureau of Investigation?

4 A. Yes, I was.

5 Q. First, I want to talk a little bit about your
6 background. Were you ever a member of the United States
7 Military?

8 A. Yes, I was.

9 Q. What service and when did you join?

10 A. I joined in 1985. I was a member of the United
11 States Army Military Police Corps.

12 Q. And how long did you remain with the Army?

13 A. I served until approximately 1988.

14 Q. And after you separated from the service -- at what
15 rank did you -- when you separated, what was your rank?

16 A. I was a sergeant, E5.

17 Q. When you separated, did you attend university?

18 A. Yes, I did.

19 Q. And if you could relate to the court, please, where
20 you went to school ----

21 A. I went ----

22 Q. ---- what your degree was, and what year you
23 graduated.

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1 A. I'm sorry.

2 Q. I'm sorry.

3 A. I went to Illinois State University. I graduated in
4 1992 with a criminal justice degree, a bachelor's of science.

5 Q. After college, did you obtain law enforcement
6 employment?

7 A. Yes, I did.

8 Q. And where?

9 A. The Village of Downers Grove, which is a western
10 suburb of Chicago.

11 Q. I take it you had to go through a police academy?

12 A. Yes, sir, I did.

13 Q. And did you receive training in the collection of
14 evidence?

15 A. Yes, I did.

16 Q. What did you do for Downers Grove?

17 A. I was a patrolman.

18 Q. How long did you remain with the PD, the Downers
19 Grove PD?

20 A. I served with Downers Grove approximately 1992 to
21 1996.

22 Q. And what did you do in 1996?

23 A. I joined the FBI.

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1 Q. Went to New Agent School like everyone else?

2 A. Correct.

3 Q. Obtained further training in the collection of
4 evidence?

5 A. Yes, sir, that's correct.

6 Q. What was your first office out of New Agent School?

7 A. I was assigned to the Washington Field Office in
8 Washington, D.C.

9 Q. And that would have been in what year?

10 A. That was 1996 also.

11 Q. And how long did you remain at WFO?

12 A. I was at WFO until approximately late 2003.

13 Q. If you could, please, relate just in a general sense,
14 what was your duties and responsibilities, your squad
15 assignment at WFO?

16 A. The first squad I was on, I was a special agent
17 investigating counterintelligence and counterterrorism cases,
18 and then I was subsequently transferred to what was called the
19 Extraterritorial Squad.

20 Q. What did the Extraterritorial Squad do?

21 A. They ended up working primarily terrorism cases that
22 took place overseas.

23 Q. Did you have any what we call collateral duties while

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1 at WFO?

2 A. I did. I was a member of the Rapid Deployment Team.

3 Q. And what was the Rapid Deployment Team?

4 A. It was a team that was stood up to primarily respond
5 to terrorist incidents impacting the United States, you know,
6 that happened overseas.

7 Q. Did you become a member of the Rapid Deployment Team
8 prior to the COLE?

9 A. Yes, I did.

10 Q. And I think you indicated you were at WFO until 2003?

11 A. Correct.

12 Q. Where did you next go?

13 A. I went to the Chicago Field Office.

14 Q. And what did you do in Chicago?

15 A. Initially, I went to Chicago as a special agent
16 investigating terrorism matters on a squad.

17 Q. You were a supervisor there; is that correct?

18 A. Correct. In 2008 I was promoted to supervisory
19 special agent.

20 Q. How long did you remain in Chicago?

21 A. I remained in Chicago until 2016, when I retired.

22 Q. And you were the assistant special agent in charge at
23 that time of your retirement, correct?

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1 A. That's correct, of the counterterrorism branch.

2 Q. And in what year did you retire?

3 A. It was approximately October of 2016.

4 Q. Now, you indicated that in 2000 you were working at
5 WFO.

6 A. Correct.

7 Q. Did you learn that there had been an incident, a
8 bombing incident, in Yemen; Aden, Yemen?

9 A. Yes, sir.

10 Q. What, if anything, were you asked to do in response
11 to that incident?

12 A. I was asked to respond with a group of individuals to
13 help investigate the crime.

14 Q. Was that as part of the Rapid Deployment Team?

15 A. Yes, it was.

16 Q. And I -- how did you travel to Yemen?

17 A. I believe we took a military aircraft from Andrews
18 Air Force Base.

19 Q. And did you go directly to Yemen?

20 A. I believe we stopped at Ramstein Air Force Base and
21 then proceeded on to Yemen.

22 Q. And when you landed -- I'm going to ask you the same
23 question I asked every witness -- anything unusual happen upon

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1 landing?

2 A. Yes. The aircraft was surrounded by what we presumed
3 were Yemeni security forces with their weapons trained on
4 the -- on the airplane itself instead of a perimeter security
5 element. And then we were -- we were kind of kept on the
6 plane for quite a few hours.

7 Q. Eventually, you were allowed to go to a hotel,
8 correct, a hotel?

9 A. Correct.

10 Q. And how long did you remain in Yemen?

11 A. I was actually only in Yemen for approximately 24
12 hours.

13 Q. And why was that, sir?

14 A. I was asked to courier some bomb swab samples back to
15 the United States.

16 Q. And what were those samples you called?

17 A. Bomb swab.

18 Q. And so you received these items. Do you remember
19 from whom you received them?

20 A. I do not recall at the time, no.

21 Q. When you received them, were they in a sealed
22 condition?

23 A. Yes, they were.

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1 Q. And did you sign what is commonly called a green
2 sheet or a chain of custody form?

3 A. Yes, I did.

4 Q. Once you took them into your custody, what did you
5 do, if you can recall?

6 A. I would have kept them on my person until I got them
7 back to the United States and transferred them.

8 Q. And to whom would you have transferred them?

9 A. I was met by individuals from the lab.

10 Q. Where was that?

11 A. I believe it was at Dulles Airport.

12 Q. I'm going to show you some copies of some chain of
13 custody or green sheets and if you if you recognize your
14 signature on these items, sir.

15 A. Okay, sir.

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

17 MJ [Col SPATH]: That's fine.

18 Q. I've placed on the ELM0 Prosecution Exhibit 146C for
19 Identification. Do you recognize your signature on that, sir?

20 A. Yes, sir, I do.

21 Q. And could you indicate to the court where your
22 signature falls?

23 A. Mine would be the third one down.

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1 Q. All right. So it indicates that you would have
2 gotten those items from the person above you, correct?

3 A. Correct.

4 Q. At the date and time indicated?

5 A. That is correct.

6 Q. And that you gave them to the person listed below
7 you?

8 A. Yes, sir.

9 Q. All right. And that indicates a person -- looks like
10 it says lab analysis, correct?

11 A. Correct.

12 Q. Now, you indicated that you received these items in a
13 sealed condition. Did you give them to the next person, the
14 person at the lab, in a sealed condition?

15 A. Yes, I did.

16 Q. Did you ever open them or tamper with them in any
17 way?

18 A. No, I did not.

19 Q. Placing on the ELMO Prosecution Exhibit 147C and ask
20 you, sir, the same question. Do you recognize your signature
21 on this piece of paper?

22 A. Yes, sir, I do.

23 Q. And where does it appear, sir?

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1 A. Third line down.

2 Q. Again, you would have received it from the person
3 above you?

4 A. That is correct.

5 Q. And delivered it to the person below you?

6 A. Yes, sir.

7 Q. Again, you would have received it on the 16th of
8 October at -- looks like it says 11:28 a.m.?

9 A. That's correct.

10 Q. Lastly, I'm placing on the ELM0 Prosecution Exhibit
11 numbered 148C for Identification. And do you recognize your
12 signature on that, sir?

13 A. I do, yes, sir.

14 Q. And where does it appear?

15 A. Third line.

16 Q. Shows that you received the evidence at what date and
17 time?

18 A. October 16th, 2000, 11:28 a.m.

19 Q. So it appears that you received all three of these
20 exhibits at the same time?

21 A. Correct.

22 Q. Received them from the person above you on this form?

23 A. Yes, sir.

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1 Q. And gave them to the person below you on the form?

2 A. That's correct, sir.

3 Q. Again, as to each of these exhibits which would have
4 been reflected in those three chain of custody forms, as to
5 any of those exhibits -- excuse me. First, as to all of those
6 exhibits, were they sealed when you received them?

7 A. Yes, that's my recollection.

8 Q. And were they sealed when you turned them over?

9 A. Yes.

10 Q. And did you open or tamper with them in any way?

11 A. I did not.

12 TC [MR. MILLER]: All right. Thank you. I have nothing
13 further, Your Honor.

14 MJ [Col SPATH]: Defense Counsel, you may cross-examine.

15 DDC [LT PIETTE]: Defense takes no position.

16 MJ [Col SPATH]: All right. I'm going to give you an
17 order; it's standard. Don't discuss your testimony or the
18 substance of your testimony with anybody until these issues
19 are resolved, Mr. Paun. The only issue is it's going to be a
20 while before these issues are resolved, as you probably know.
21 So do you understand the order?

22 WIT: I do, Your Honor.

23 MJ [Col SPATH]: Okay. Now, separate from that, I have

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1 said to the other witnesses, thank you for traveling down here
2 to testify in person. I know it's a pretty sizable -- size
3 commitment, but I also know it's appreciated by all of the
4 participants. Thanks very much.

5 WIT: Thank you, Your Honor.

6 MJ [Col SPATH]: Thanks.

7 TC [MR. MILLER]: Thank you, sir.

8 WIT: Thank you.

9 [The witness was warned, excused, and withdrew from the
10 courtroom.]

11 TC [MR. MILLER]: We have one more witness, Your Honor.

12 MJ [Col SPATH]: All right. Call your last witness.

13 TC [MR. MILLER]: We call former Special Agent Beth
14 McConn.

15 BETH D. McCONN, 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. Would you please take a seat and state your name for
20 the record, please.

21 A. Beth D. McConn.

22 Q. And I think you're presently employed in the area of
23 corporate security; is that correct?

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1 A. Yes, sir.

2 Q. Prior to that time, were you employed by the Federal
3 Bureau of Investigation as a special agent?

4 A. Yes.

5 Q. I want to ask you a few questions, a little bit about
6 your background. You attended university, obtained a degree.
7 Could you please relate to the court where you went to school,
8 when you obtained your degree, and in what area of study.

9 A. I attended Old Dominion University, I graduated in
10 1984. My degree was in management information systems,
11 decision sciences, and then I did post-graduate work at
12 University of Maryland, University College, in the same
13 degree, with an emphasis in reverse engineering.

14 Q. And when did you join the FBI?

15 A. I joined the FBI in 1985.

16 Q. In what capacity?

17 A. As a computer programmer.

18 Q. And how long did you remain in that position?

19 A. Six to seven years.

20 Q. And did you take a new position or a different
21 position with them?

22 A. Yes.

23 Q. And what was that?

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1 A. Special agent.

2 Q. And that would have been in what year, as best you
3 can recall?

4 A. 1992.

5 Q. You attended New Agent School like everyone else?

6 A. Yes.

7 Q. You received training in the collection of evidence?

8 A. Yes, sir.

9 Q. What was your first assignment out of New Agent
10 School?

11 A. Computer fraud out of the Washington Field Office.

12 Q. And how long did you remain at WFO?

13 A. Until approximately 2005.

14 Q. At WFO, you indicated your assignment was what?

15 A. My initial assignment was computer fraud, computer
16 intrusions.

17 Q. Did that change over time?

18 A. Yes, sir.

19 Q. And what other assignments, other squads, were you
20 assigned?

21 A. I was assigned to organized crime and drugs,
22 extraterritorial matters, and then I was the informant
23 coordinator for Washington Field Office.

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1 Q. I'm interested a little bit in the extraterritorial
2 matters. What is that, again?

3 A. That is a squad that specializes in investigating
4 crimes against Americans and American interests abroad.

5 Q. After your time at WFO -- and when did you leave WFO?

6 A. Approximately 2005.

7 Q. And where did you go?

8 A. FBI Headquarters in Washington, D.C.

9 Q. And what did you do at Headquarters?

10 A. I was assigned to the International Operations
11 Division.

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

13 A. I ran as a unit chief the Eurasia legat offices and
14 then the legat offices in the Americas.

15 Q. How long did you remain in that position?

16 A. Approximately three years.

17 Q. And what was your next assignment?

18 A. I was a legal attache in Buenos Aires, Argentina.

19 Q. And what did you do there?

20 A. I served as a liaison between the FBI, U.S.
21 Department of State, other U.S. agencies at the embassy, as
22 well as host governments.

23 Q. How long did you remain in that position?

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1 A. Approximately three years.

2 Q. Where did you go next?

3 A. Daytona Beach, Florida.

4 Q. And what did you do there?

5 A. I was -- I ran our office in Daytona Beach as the
6 SSRA, the Senior Supervisory Resident Agent.

7 Q. And how long did you remain in Daytona Beach?

8 A. I stayed in Daytona Beach until May 2016.

9 Q. And did you retire at that time?

10 A. Yes, sir.

11 Q. I want to direct your attention back to October of
12 2000. You were at WFO at that time, correct?

13 A. Yes.

14 Q. And was your name McConn at that time?

15 A. No, sir.

16 Q. What was your name at that time, ma'am?

17 A. Beth D. Babyak.

18 Q. Did you become aware or were you told that there had
19 been an incident, a bombing incident, in Aden, Yemen?

20 A. Yes.

21 Q. Were you asked to do anything in response to that
22 incident?

23 A. Yes.

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1 Q. What was that, ma'am?

2 A. I was asked to deploy to Yemen as part of the
3 Investigative Team.

4 Q. Now, we've heard a lot about an Evidence Response
5 Team. You were a member of an Investigative Team. What are
6 the two different -- what is the difference between those two
7 operations?

8 A. The Evidence Team was primarily responsible for
9 evidence -- evidence collection at the scene, where the
10 Investigative Team was part of the team that would liaison
11 with the U.S. representatives in country as well as the host
12 government to actually investigate the matter.

13 Q. I take it you went to Yemen shortly after the
14 incident?

15 A. Yes, sir.

16 Q. Did you travel with other members of the
17 Investigative and Evidence Response Team?

18 A. Yes.

19 Q. And how did you get there?

20 A. By U.S. military flight.

21 Q. I ask you the same question: When you landed in
22 Yemen, anything unusual happen?

23 A. Yes. When they opened up the back of the plane, the

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1 Yemeni were there pointing weapons at us.

2 Q. Now, you eventually deplaned, correct?

3 A. Yes, sir.

4 Q. Where did you go?

5 A. To the hotel.

6 Q. And were you informed of what your duties and what
7 your responsibilities were going to be, what was going to be
8 expected of you?

9 A. In general, yes.

10 Q. And how long did you remain in Yemen?

11 A. Two to three days.

12 Q. All right. And why were you there only two to three
13 days?

14 A. My understanding was that at that time, the Yemeni
15 government was concerned about the size of the footprint of
16 the U.S. response and had worked with the Department of State.
17 And a decision was made to make the footprint of the U.S.
18 response smaller, and I was part of those identified to leave
19 early.

20 Q. Were you asked to transport any evidence on your way
21 back?

22 A. Yes.

23 Q. All right. And do you remember -- do you recall

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1 where you obtained -- excuse me. First, did you obtain the
2 evidence in Yemen?

3 A. Yes.

4 Q. All right. Do you remember the circumstances under
5 which it was given to you?

6 A. Yes.

7 Q. All right. Could you relate those to the court,
8 please?

9 A. I received the evidence at the airport just prior to
10 my departure, and the evidence was already boxed up,
11 sealed ----

12 Q. All right.

13 A. ---- and then processed.

14 Q. So you wouldn't necessarily have seen it; is that
15 correct?

16 A. That is correct.

17 Q. And what did you do with that evidence?

18 A. I transported it to Germany.

19 Q. And did you turn it over to somebody in Germany?

20 A. Yes, sir.

21 Q. I'm going to show you what has been marked as
22 Prosecution Exhibit Number 146C and ask you if you recognize
23 that.

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1 TC [MR. MILLER]: Oh, I'm sorry. Permission to use the
2 ELMO, Your Honor?

3 MJ [Col SPATH]: You may.

4 A. Where -- oh, there we go.

5 Q. Chain of custody form, Prosecution Exhibit 146C. Do
6 you see your signature on that?

7 A. Yes, I do.

8 Q. And there's four signatures. Which one is yours?

9 A. The second signature, second line.

10 Q. So you would have received it from the person above
11 you, and you would have given it to the person below you?

12 A. That is correct.

13 Q. All right. It shows that you received it on the
14 15th of October at 6:35 and then handed it over to somebody
15 at -- on 10/16 at 11:28 a.m.?

16 A. Yes, sir.

17 Q. Placing on the ELMO Prosecution Exhibit 147C, and ask
18 you if you recognize your signature on that.

19 A. Yes.

20 Q. Again, it would have -- where -- on what -- there's
21 four signatures, one, two, three, four. Which one is yours?

22 A. Two.

23 Q. And does it reflect that you received it on the

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1 15th of October at 6:35?

2 A. Yes.

3 Q. And that you then surrendered it on the 16th, the
4 next day, at 11:28?

5 A. Yes.

6 Q. Placing on the ELM0 Prosecution Exhibit Number 148C
7 for Identification. Do you recognize your signature on that,
8 ma'am?

9 A. Yes.

10 Q. And again, where?

11 A. Line 2.

12 Q. It shows that you received -- it looks like you
13 received all of the evidence at the same time on the 15th at
14 6:35, correct?

15 A. Correct.

16 Q. And that you then surrendered it on the 16th at
17 11:28?

18 A. Yes.

19 Q. Again, you received it in a sealed condition?

20 A. Yes, sir.

21 Q. All right. And at no point did you open it or tamper
22 with it in any way?

23 A. That is correct. I did not.

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1 Q. Now, you indicated that you went to Germany?

2 A. Yes.

3 Q. When you got to Germany, first off, was there other
4 evidence -- was it a larger -- this is just part of it. Was
5 there other evidence?

6 A. It was a large pallet of evidence.

7 Q. And when you got to Germany, what did you do with the
8 pallet of evidence?

9 A. The pallet was on the plane, so I remained with the
10 plane.

11 Q. And when you say you remained, did you physically
12 remain with the plane?

13 A. I was -- I sat underneath in a folding chair with the
14 plane.

15 Q. All right. Did they bring you food and refreshment,
16 I hope?

17 A. Yes, they did.

18 Q. All right. At some point, were you provided with --
19 or asked to bring evidence back from Germany?

20 A. Yes.

21 Q. And when you received that, was it in a sealed
22 condition?

23 A. Yes, sir.

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1 Q. All right. And did you surrender it in a sealed
2 condition?

3 A. Yes, I did.

4 Q. And at any point did you open or otherwise tamper
5 with the evidence?

6 A. No, I did not.

7 Q. Did you fill out chain of custody -- did you sign
8 chain of custody forms regarding that evidence?

9 A. Yes, sir.

10 Q. I'm placing on the ELMO Prosecution Exhibit 160B for
11 Identification. Do you recognize that?

12 A. Yes, sir.

13 Q. Do you recognize your signature, ma'am?

14 A. Yes.

15 Q. And where is it?

16 A. Line 2.

17 Q. All right. It indicates that you received it on the
18 18th at 11:30.

19 A. Yes.

20 Q. All right. And when you say you transported it, you
21 transported it back to the United States?

22 A. That is correct.

23 Q. All right. And you would have surrendered it to the

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1 person whose name appears underneath?

2 A. Yes.

3 Q. Placing on the ELM0 Prosecution Exhibit 161B for
4 Identification. Do you recognize your signature on that,
5 ma'am?

6 A. Yes.

7 Q. And where is it?

8 A. Line 2.

9 Q. Again, received it from the person above and
10 surrendered it to the person below?

11 A. Correct.

12 Q. Placing on the ELM0 Prosecution Exhibit 162B for
13 Identification. Excuse me. Do you recognize your signature
14 on that?

15 A. Yes.

16 Q. And where is it?

17 A. Line 2.

18 Q. Again, showing that you received the evidence on the
19 18th and surrendered it, I guess with the change in time, on
20 the same day at 7:30 p.m., correct?

21 A. Correct.

22 Q. Placing on the ELM0 Prosecution Exhibit 163B.

23 Reflect when you received the evidence?

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1 A. Yes.

2 Q. All right. Your signature -- excuse me. Your
3 signature appears where?

4 A. Line 2.

5 Q. And you received the evidence at?

6 A. Location at or time?

7 Q. Well, all of this is in Germany, correct?

8 A. Correct.

9 Q. All right.

10 A. 10/18, 11:30 a.m.

11 Q. Again, showing your -- showing you Prosecution
12 Exhibit 164C. Does your signature appear on that?

13 A. Yes.

14 Q. Where?

15 A. Line 2.

16 Q. Does it show the time that you received the evidence?

17 A. Yes, it does.

18 Q. And when was that?

19 A. 11:30 a.m.

20 Q. And again, received it in Germany?

21 A. Yes.

22 Q. Placing on the ELM0 Prosecution Exhibit 165C. Do you
23 see your signature on that?

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1 A. Yes, sir.

2 Q. All right. And again, is that the -- in the second
3 position?

4 A. Yes.

5 Q. Shows that you received it on the 18th at 11:30?

6 A. Yes.

7 Q. And in Germany?

8 A. Yes.

9 Q. Placing on the ELMO Prosecution 166C for
10 Identification. Ask you if you recognize your signature on
11 that, ma'am?

12 A. Yes, line 2.

13 Q. And again, you received it on the 18th at 11:30?

14 A. Yes.

15 Q. And again, that would be in Germany?

16 A. Yes, sir.

17 Q. Lastly, I'm placing on the ELMO Prosecution
18 Exhibit 167C for Identification. Do you recognize your
19 signature on that?

20 A. Yes, line 2.

21 Q. And the date and time which you received it?

22 A. 10/18, 11:30 a.m.

23 Q. In Germany?

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1 A. Yes.

2 Q. Again, received it from the person above you and
3 surrendered it to the person below?

4 A. That is correct.

5 TC [MR. MILLER]: I have no further questions, Your Honor.

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

7 Defense Counsel, you may cross-examine.

8 DDC [LT PIETTE]: Defense takes no position.

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

10 Ms. McConn?

11 WIT: Yes, sir.

12 MJ [Col SPATH]: I was saying it correctly?

13 WIT: Yes.

14 MJ [Col SPATH]: Okay. I'm just going to give you a
15 standard order first. Don't discuss your testimony or the
16 substance of your testimony with anyone from now until we
17 resolve these issues. What's unique here, I'm sure you
18 guessed, it's going to be a while before we resolve these
19 issues. So just keep that in mind as we move forward. Do you
20 understand the order?

21 WIT: Yes.

22 MJ [Col SPATH]: And then the other thing I've done, I
23 have told all the witnesses, thank you for traveling down to

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1 testify in person. I know it's a significant time effort on
2 your behalf, but I know that the people involved in this
3 process appreciate you taking the time to do that, so thank
4 you very much.

5 WIT: You're welcome.

6 MJ [Col SPATH]: Okay. You're excused.

7 WIT: Thank you.

8 [The witness was warned, excused, and withdrew from the
9 courtroom.]

10 MJ [Col SPATH]: So those are all of the witnesses, at
11 least currently, for this session, correct?

12 TC [MR. MILLER]: They are, Your Honor.

13 MJ [Col SPATH]: All right.

14 TC [MR. MILLER]: There is one matter that Major Pierson
15 would like to address the court. It's a little -- I don't
16 know if you have things you want to do first, but ----

17 MJ [Col SPATH]: No. Please.

18 ATC [Maj PIERSON]: Thank you, Your Honor. We wanted to,
19 before we recessed for the evening, address what we have noted
20 as the reoccurring objection of the military defense counsel
21 to these proceedings going forward due to the absence of
22 learned counsel.

23 The government hasn't responded up until this point

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1 due to its belief that the record is replete with examples of
2 who this objection is properly lodged towards, the detailed
3 military defense counsel and the Military Commissions Defense
4 Organization. The prosecution does request that the
5 commission overrule the defense objection.

6 Your Honor, the record is clear that this commission
7 has issued numerous orders making two things abundantly clear:
8 One, a learned counsel remains counsel of record on this case;
9 and two, that that counsel has been directed to appear to
10 represent his client or provide a good-faith basis for his
11 relief from that representation. The record is also clear of
12 the actions of the detailed military defense counsel and the
13 Military Commissions Defense Organization to refuse this
14 commission's authority in a concerted strategy to undermine
15 the function and legitimacy of these proceedings.

16 As to the detailed military defense counsel, the
17 detailed military defense counsel has proffered no actions to
18 adhere to or fulfill this commission's orders as to the
19 appearance of counsel. The detailed military defense counsel
20 has proffered no attempt to get his co-counsel to these
21 proceedings; no attempt to confer with them, specifically to
22 seek any necessary guidance from a learned counsel on how to
23 cross-examine foundation witnesses; no attempt to seek such

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1 training such that he himself may become learned; and no
2 attempt to seek sufficient resourcing or further knowledge
3 about the resourcing of Mr. al Nashiri's defense team.

4 In addition to learned counsel, he has similarly
5 shown an unexplained disability from contacting the two DoD
6 civilians assigned to this case and exhibit any attempt to
7 seek their compliance with this commission's orders. These
8 actions, and mostly inactions, exhibit at the very least a
9 complacency with the status quo, one presumably endorsed by
10 his client. Indeed, the accused has said he supports the
11 effort. At worst, it indicates a complicity to undermine this
12 commission's authority and shows that this objection should be
13 lodged no further than himself.

14 If the detailed military defense counsel insists on
15 looking elsewhere for his objection, then he should turn his
16 ire to his parent organization, the Military Commissions
17 Defense Organization, who has joined in his concerted strategy
18 to disregard the direction of this commission and
19 under-resource Mr. al Nashiri's defense team.

20 The first concerted battle in this regard occurred
21 when the Chief Defense Counsel, the then Chief Defense
22 Counsel, Brigadier General John Baker, refused in a
23 contemptuous manner before this commission to take steps to

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1 direct employees or contractors under his supervision -- to
2 refuse to take steps to direct employees or contractors under
3 his supervision to attend these proceedings. The attacks have
4 continued even after General Baker's recusal and the testimony
5 and actions of Colonel Aaron.

6 Colonel Aaron has taken concerted and deliberate
7 actions to remove detailed defense counsel to this case. He
8 has proffered no actions to get the learned counsel or DoD
9 civilians to comply with this commission's orders. They have
10 shown no urgency in acquisition of stand-by counsel. Finally,
11 his defense counsel have taken no actions to appeal or
12 otherwise work within the rule of law to obtain relief from
13 these orders.

14 Therefore, while the government recognizes the
15 defense is likely to continue to object to these proceedings,
16 the record is clear that the objection is part of the strategy
17 to unlawfully oppose these proceedings. And the government
18 requests that this commission overrule the objection.

19 Of course, the shameless, disingenuous, and conceited
20 course of conduct will not be succeeded in ultimately
21 frustrating justice, and still -- but we must call it to the
22 commission's attention.

23 Thank you, Your Honor.

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1 MJ [Col SPATH]: Thank you. Lieutenant Piette?

2 DDC [LT PIETTE]: I actually don't know if I have much to
3 say about that. I mean, our objection is our objection. If
4 anything, obviously, I take issue with the government's
5 continued characterization and, frankly, this court's
6 continued characterization of al Nashiri's defense team as --
7 as our course of action as being a strategy.

8 Again, like I've said many times, a strategy would
9 involve a choice. We have no choice. The fact is I am not
10 learned counsel. The fact is learned counsel is not present.
11 We, I think, all disagree as to why learned counsel is not
12 present or whether learned counsel is still on the case; but
13 as I've proffered and as is clear, learned counsel is not here
14 and is not providing any advice or guidance.

15 Additionally, I am not learned counsel; therefore --
16 and this is the defense of Mr. al Nashiri's position -- we are
17 not competent to provide representation in a capital case. I
18 believe that, you know, part of the objection is because
19 continuing without learned counsel is what is going to
20 continue to undermine the legitimacy of this commission. It's
21 not any strategy of the defense.

22 And to the extent that any court that was created to
23 cover up torture and to pursue impunity for torture can be

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1 called legitimate or just, well, I don't think that's the case
2 anyway. But that's the defense's position.

3 MJ [Col SPATH]: Thank you. It's remarkable, and it
4 remains remarkable. I have been a trial judge for seven
5 years, eight years. I'm not even sure. I've been the chief
6 judge coming up on four now. And never have I seen such open
7 and notorious rejection of orders from a court.

8 What I hear are the continued talking points of an ad
9 hoc process, which it isn't; a delegitimate court, which it
10 isn't. You might not like it, but I would vote for somebody
11 else. I would talk to your elected officials.

12 As I say so often, I follow the law, regardless of
13 how I feel about it. And frequently, I do have personal
14 feelings somewhere about it, of course. I'm never sharing
15 them. But what I don't do is just disobey it, ignore it, and
16 disregard it, because the process would never work if that's
17 how we behave ourselves.

18 What we're doing right now is standard preliminary
19 handling of evidence. It was referenced as unprecedented by
20 some comments yesterday. It isn't. It is normal in courts
21 across certainly America, and in courts-martial, and in
22 federal courts, and in state courts, that trial judges rule on
23 the admissibility of evidence before the members show up or

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1 the jury. Motions in limine are filed in almost every case,
2 capital or noncapital, and they look the same because I've
3 seen them in both.

4 What is unprecedented here is the months of time the
5 defense is being given to cross-examine Mr. al Darbi, the
6 months of time the defense is going to be given to
7 cross-examine government witnesses. That's unprecedented.
8 It's a remarkable amount of time and a strategic advantage.

9 For the public, if you're wondering about it, I'd go
10 read Federal Rule of Evidence 901; I'd go read Military Rule
11 of Evidence 901; I'd read the Military Commission Rule of
12 Evidence 901. The Federal Rule of Evidence and the Model Rule
13 of Evidence that we all learned in law school and our Military
14 Rule of Evidence are almost verbatim.

15 M.C.R.E. 901 is a little different, but it does talk
16 about evidence and what you have to do to get evidence before
17 a court. And, of course, it's the standard that we learned
18 early on in law school: Is it what it purports to be? Then
19 we have to deal with relevance, of course, and the rest. But,
20 I mean, that is the basic starting point and anyone who has
21 been to law school knows it. Is the evidence what it purports
22 to be?

23 When we come back in a few weeks, we're going to keep

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1 going with preadmission. We have many preadmission motions
2 lined up, 207 being the first of them. But 283, 324, 336, I
3 think 325. There's a number of preadmission motions out
4 there. We're going to work on them. That is a ruling. I
5 have determined you're not getting learned counsel if the
6 defense community won't give it to you. I can't help that.
7 That's a ruling.

8 So what we do normally in a process like this is you
9 should probably try to get a superior court to me -- to order
10 me to stop. Go get a stay. There's lots of options out
11 there. That -- that's what lawyers do. What they don't do is
12 just decide I don't like your ruling, so I'm not really going
13 to play.

14 So while I noted the objections, they were all
15 overruled multiple times because of the rulings I've put in
16 place. We're going forward. You get learned counsel to the
17 extent practicable. Learned counsel's behavior has made it
18 not practicable. In spite of that, I've made some efforts to
19 get learned counsel to you -- we're going to talk through an
20 order I'm hoping to get out before we leave -- efforts if the
21 convening authority is going to hire the second one. But I
22 want to be clear. I'm not ordering the convening authority to
23 do that. That's up to the convening authority. And then

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1 we'll see what motion practice we get from there.

2 Counsel continues to assert no position and an
3 objection to this process going on. The defense community as
4 a whole removed three additional detailed defense counsel
5 after I put an order in place for them to come here and make
6 an appearance. Any objective observer watching this can see
7 what is occurring, the de-resourcing that is going on at
8 Mr. al Nashiri's expense. And apparently, he supports that
9 strategy based on what we've just heard and we've seen.

10 Lieutenant Piette, I strongly encourage you -- I told
11 you last time, I have empathy for what I believe is people in
12 MCD0 who are leaving you in a difficult position. But I --
13 your bar rules are like mine. You've been detailed to provide
14 competent representation to a client zealously. You know full
15 well there's jurisdictions out there where you don't get
16 learned counsel and lawyers like you have to defend somebody
17 whether they want to or not.

18 I have told you you're remaining on the case. I have
19 told you you're not going to be excused. So you can engage in
20 self-help, and you can start getting the training when we're
21 not here, you can start getting up to speed in a manner that
22 will make you more comfortable handling capital matters. But
23 you are by definition competent and your bar rules require you

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1 to demonstrate it.

2 You have a duty to prepare. You have a duty to be
3 competent. You have a duty to be zealous. And so if the
4 choice is you're going to be quiet and that is your decision,
5 that's fine. I believe it's going to be looked at as a trial
6 strategy encouraged and assisted by MCD0. So self-help would
7 be a good idea the next few weeks. Start attending the
8 training. Start finding the training. Talk with defense
9 counsel, talk with learned counsel, and start preparing to
10 take part in the case, because my rulings remain in effect.
11 We're moving forward. And if I'm right -- if I'm right, it's
12 a risky trial strategy, and your allegiance to it will cause
13 you difficulties down the road.

14 As I've indicated to all the counsel involved here, I
15 have made rulings, clearly, learned counsel to the extent
16 practicable. I believe that's what the statute says. I
17 believe that's the law that applies. I have also indicated
18 we're moving forward with preadmission because it is one of
19 the most basic acts that lawyers handle every day in their
20 jobs.

21 So when faced with adverse rulings, what the law does
22 not encourage is ignoring them, acting like they're not --
23 they don't apply, or pretending that we get to just keep

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1 telling me, I don't agree with your rulings. It's not helpful
2 to anybody.

3 I suggest you head for C.M.C.R., see if you can get
4 relief, or you head to federal court and see if someone will
5 issue a stay. Because I know this: If there is a stay that
6 is issued by C.M.C.R. or a federal judge, you know what I'm
7 not going to do? Fly down here and have a hearing and tell
8 that federal judge I disagree with their reading of the law.
9 Never going to happen. Because then the government will
10 appeal that ruling, I assume. That's how the -- that's how a
11 process works. That's why we have appellate courts.

12 So that's where we're at, and it hasn't changed. And
13 I will say this: You have filed motions. You have filed
14 motions after Mr. Kammen abandoned his client, and they are
15 competent, well-written motions. I don't know if you had
16 help. I don't know if you did it by yourself. But I know
17 that they were well-written, I know that they were researched,
18 and I know that they demonstrate competence at a trial level.
19 I also notice all of them relate to protecting MCDO and
20 defense counsel, and none of them relate to Mr. al Nashiri.

21 So I think I'm telling you you might want to start
22 working down that road. And I -- again, I have empathy, but I
23 worry because of your requirement to provide competent,

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1 zealous representation, because you've been ordered to do so
2 by a tribunal, and your bar rules have the same rule. Again,
3 maybe I'm wrong, but that's for an appellate court to sort
4 out.

5 What we're doing now, we're at the trial level, and
6 we are going to keep moving forward on preadmission matters.

7 Soon you will have a scheduling order for the
8 remainder of 2018. I'm going to alter a couple of the
9 sessions a little bit, which will give you a little more time
10 to continue to seek out training and get help, but only a
11 couple of them. And I have a schedule for '19, the first six
12 months, in the order; and it is basically three and a half or
13 four weeks on, two weeks off. And my vision is we'll be
14 seating a panel. That gives your community almost a year to
15 fix what they have done. And regardless of how much you fight
16 this, you understand authentication rules and you understand
17 foundational rules for real evidence and the type of evidence
18 that is being offered right now.

19 Have we gotten any updates on the two civilian
20 DoD-employed counsel?

21 MATC [COL WELLS]: Sir, I have no meaningful update other
22 than Colonel Aaron did respond to the chief prosecutor
23 acknowledging receipt of his e-mails requesting that he take

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1 action ----

2 MJ [Col SPATH]: Good.

3 MATC [COL WELLS]: ---- to compel and make it part of the
4 duties of Ms. Eliades and Ms. Spears to adhere to your orders.
5 That's all, sir.

6 MJ [Col SPATH]: We have a response. That helps. So I
7 don't need to see Colonel Aaron tomorrow. What we will do --
8 I was on the cusp of putting an order out with a regular
9 briefing schedule, abbreviated but a briefing schedule for the
10 third-party filing and the response to it, and we will deal
11 with the motion to quash that was filed and move from there.
12 So you'll see that order. You'll see a trial conduct order
13 and a couple others that I've been working on as I've had
14 time.

15 What that tells me is we don't have any matters
16 currently tomorrow that we can take up.

17 MATC [COL WELLS]: Sir, on the docketing order, you also
18 had additional matters, an update on any discovery that may
19 relate to Mr. Darbi's cross-examination. Major Pierson may be
20 able to handle that, but I think we're in a good spot.

21 You also had a matter of Appellate Exhibit 371, which
22 dealt with medical records. I did confer with the defense,
23 Lieutenant Piette, and he indicated that it seems like we have

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1 caught up with the medical records. Although his paralegal
2 did report that a four-month processing from the date of
3 creation until actually receipt in their hands, they would
4 like to have that sped up, and so we're working towards that.
5 But I think we could file a notice with the defense.

6 MJ [Col SPATH]: That's -- we'll do that. What we'll do
7 is -- I did have some outstanding questions. As I'm -- as I
8 have tried to do, I am trying to give Lieutenant Piette ample
9 time to prepare for these issues and keep the hearings, as
10 much as I can, focused on preadmission of real evidence.

11 MATC [COL WELLS]: Yes, sir.

12 MJ [Col SPATH]: Until it becomes untenable, because we
13 have to move forward.

14 MATC [COL WELLS]: Yes, sir.

15 MJ [Col SPATH]: And so that's why you're going to see the
16 orders I put in place to move us through the rest of 2018 and
17 into 2019. So we will do that. We'll put something out where
18 we want updates, and then you can just provide them with a
19 notice.

20 MATC [COL WELLS]: Yes, sir. Sir, if I may, you did
21 mention, in reference to the deputy chief defense counsel, no
22 need to see him tomorrow. However, although we have
23 requested, we do not know if he has a plan to assist and

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1 comply with the commission's orders and directives. So I
2 believe it would be appropriate for the commission to inquire
3 with him what his position is on fulfilling and communicating
4 to the employees, and perhaps his supervisor's position, too,
5 Mr. Koffsky, that these employees will or will not comply with
6 any past orders or future orders that you may issue.

7 MJ [Col SPATH]: I think, as we move towards the February
8 session -- because we're only gone for a few weeks and we're
9 back -- as we move towards the February session, my belief is
10 you're going to have to perfect the -- rather than getting
11 into the -- I'm trying to avoid additional issues with
12 contempt or things like that until we get some rulings from
13 D.C.

14 MATC [COL WELLS]: Understood, sir.

15 MJ [Col SPATH]: Trying to stay in my lane and make sure I
16 know what my lane is before we have some of those issues that
17 we still need to resolve with attorneys who are violating
18 orders rather blatantly.

19 MATC [COL WELLS]: Sir, with that, then the prosecution
20 will continue to pursue all channels, subpoena, and also
21 working with the supervisors to have the attorneys and counsel
22 comply. That's all, sir.

23 MJ [Col SPATH]: And we owe you some. So my plan -- if

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1 something comes up, I'll be around. I've got my e-mail,
2 certainly, and we can work to get in session. It would take a
3 lot of notice, though. So right now the plan is we're not
4 going to have anything tomorrow. We'll travel out of here,
5 we'll be back in a few weeks, and we'll do evidence admission
6 in 207, and maybe get some testimony from the defense counsel
7 that I've asked for.

8 MATC [COL WELLS]: Thank you, Your Honor.

9 MJ [Col SPATH]: Thank you.

10 Mr. Miller, anything -- we've already covered the
11 other issues. Anything?

12 TC [MR. MILLER]: Nothing further from the government.
13 Thank you, Your Honor.

14 MJ [Col SPATH]: Thanks. Lieutenant Piette?

15 DDC [LT PIETTE]: Yes, just briefly, Your Honor. You
16 addressed, and Major Pierson addressed something that I
17 hadn't -- had forgotten to, about getting self-help, becoming
18 competent. Obviously as an attorney, especially one
19 representing a client in such a -- this type of case ----

20 MJ [Col SPATH]: Lieutenant Piette, this has been talked
21 about.

22 DDC [LT PIETTE]: Okay. Well, Your Honor, I just wanted
23 to give the court ----

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1 MJ [Col SPATH]: This is going to be easy. You can file,
2 if you want to, a notice or a motion. I have told you my
3 ruling is simple. We are moving forward. And I have told you
4 that learned counsel to the extent practicable. I've ruled on
5 it; I've ruled on it; I've ruled on it. I'm not talking about
6 it anymore. You are welcome to file and request an AE number.

7 DDC [LT PIETTE]: All right.

8 MJ [Col SPATH]: All right. Those issues are done. We
9 have talked about them multiple times. I will see you in
10 three weeks. We are in recess.

11 [The R.M.C. 803 session recessed at 1632, 22 January 2018.]

12 [END OF PAGE]

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