

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	: 12-CR-134(BMC)
	: .
-against-	: United States Courthouse
	: Brooklyn, New York
	: .
IBRAHIM SULEIMAN ADNAN	: Monday, March 6, 2017
ADAM HARUN HAUSA,	: 9:30 a.m.
	: .
Defendant.	: .
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TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE BRIAN M. COGAN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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A P P E A R A N C E S: (Continued.)

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1 (In open court.)

2 (Defendant not present in open court.)

3 COURTROOM DEPUTY: All rise. The United States
4 District Court for the Eastern District of New York is now in
5 session. The Honorable Brian M. Cogan is now presiding.

6 (Honorable Brian M. Cogan takes the bench.)

7 COURTROOM DEPUTY: Calling criminal cause for jury
8 trial in Docket No. 12-CR-134, *United States of America*
9 *against Ibrahim Suleiman Adnan Adam Harun Hausa*.

10 Counsel, please note your appearances for the
11 record.

12 MR. ARIAIL: For the United States of America,
13 Assistant United States Attorney Shreve Ariail, Melody Wells,
14 and Matt Jacobs. With us at counsel table are Special Agents
15 Joe Kaster and Greg Paciorek.

16 Good morning, your Honor.

17 MS. KELLMAN: Susan Kellman, David Stern, and Joshua
18 Dratel for Mr. Hausa.

19 Good morning.

20 COURTROOM DEPUTY: All rise.

21 THE COURT: Good morning. Have a seat, please.

22 COURTROOM DEPUTY: United States versus Hausa.
23 Docket No. 12-CR-134. Counsel state your appearances starting
24 with the Government.

25 MR. ARIAIL: Good morning, your Honor. Shreve

1 Ariail for the United States with Matt Jacobs Melody Wells and
2 Joe Kaster with Special Agent Greg Paciorek. We have some
3 folks coming in and out of the courtroom, Ivan Rosado who is
4 the TFT with the Joint Terrorism Task Force, Magdalena
5 St. Surin and Alexander Cinque.

6 THE COURT: Good morning.

7 MS. KELLMAN: Susan Kellman for Mr. Hausa Harun.
8 And I am assisted at counsel table by David Stern and Joshua
9 Dratel good morning.

10 THE COURT: Good morning.

11 MS. KELLMAN: And Mayerlin Ulerio who runs the
12 place.

13 THE COURT: All right. A couple of preliminary
14 things.

15 First, I'll note for the record that the defendant
16 is, again, not present and I'll ask the Government: Was he
17 again invited to come?

18 MR. ARIAIL: Yes, your Honor. I spoke with marshals
19 this morning. He was asked to come to court this morning, and
20 based on what the marshals told me and, and I saw an e-mail
21 from the marshals, he refused to come to the proceedings.

22 THE COURT: Okay.

23 Next, I'm finding -- I'm not going to find this each
24 day because it would be redundant -- but I am finding that the
25 defendant has voluntarily absented himself from the trial.

1 Next, we have two jurors who are not here and
2 they're not going to be here unless I do something about it
3 which I'm not inclined to.

4 First, we have a doctor's note as to Juror No. 40.
5 And the doctor says that he is suffering from hip pain, he may
6 have a possible hip fracture, and he will be undergoing
7 further testing. And the doctor asks me to please excuse him
8 from jury duty. That's No. 40.

9 Then, Juror No. 100 called the clerk's office this
10 morning and says she has the flu and cannot come in today and
11 left her phone number which, of course, we had anyway.

12 So unless anyone has an objection, I think we have
13 enough alternates. I'm going to excuse those two jurors.

14 MR. ARIAIL: No objection from the Government, your
15 Honor.

16 MS. KELLMAN: No objection.

17 THE COURT: Okay. That's that.

18 Anything the parties have for me before we bring in
19 the other jurors.

20 MR. ARIAIL: I think then we need to determine who
21 is replacing 40 just to be clear.

22 THE COURT: Oh.

23 MR. ARIAIL: I think 40 was in the 98th spot or
24 99th.

25 THE COURT: 98 is going to replace 40 moving in the

1 first alternate. And then we still have five alternates left.

2 I'll also note the courtroom was obviously full.

3 There is an overflow courtroom that we've set up next door in
4 8-A.

5 Okay. In this case from the parties?

6 MR. ARIAIL: Your Honor, we have a couple of things.

7 Obviously, in terms of the instruction that your
8 Honor was intending to read, we'd like to get a sense of what
9 that is. That's the one.

10 Then we have a couple of other issues, so I don't
11 know whether we want to start with that one.

12 THE COURT: Here's what I'm saying about the
13 defendant's absence.

14 You may have noticed that the defendant is not
15 present in court today. The defendant may or may not be
16 present at various times throughout the trial. You are not to
17 speculate about the reason for his absence or draw any
18 inferences therefrom. You are not to consider the defendant's
19 absence in making your evaluation of the evidence, or in
20 deliberating on a verdict.

21 I think it's fair to say while we don't think it's
22 likely he's going to have a continuing invitation to come to
23 these proceedings, so I'm not going to tell them he won't be
24 here. And I think this covers the Government 's concern that
25 it expressed to me last week.

1 Any problem with that?

2 Okay. What's next?

3 MR. ARIAIL: That's fine with the Government, your
4 Honor. Obviously, though, as we articulated in our letter, we
5 just want to be sure that the defense is not intending to make
6 any arguments or make any inferences to suggest that he is not
7 here by any other reason other than his intentional
8 nonappearance and I just want to make sure that that's clear.

9 THE COURT: I don't think they're going to address
10 it at all.

11 MR. STERN: Judge, if we're going to ask for every
12 single thing we think the other side shouldn't do, we would be
13 here forever.

14 THE COURT: I agree with you completely. I agree
15 with you completely. What do you think I'm going to do if
16 they say, and it's the Government's fault that he's not here.

17 MR. ARIAIL: I'm not saying that they are, I just
18 want to make sure that it's out there.

19 THE COURT: It's out there. Anything less
20 hypothetical?

21 MR. ARIAIL: We do, your Honor, with respect to
22 openings. We have a couple of issues we want to address.

23 MR. JACOBS: Two things to flag, Judge.

24 We intend to show a photograph of the defendant.
25 And secondly, as you know, during his confession in Italy when

1 the defendant was telling his story, he expressly referred
2 going do Afghanistan two weeks before 9/11, being in an
3 al-Qaeda guest house on September 11th and starting to train
4 in al-Qaeda training camps right after.

5 That's evidence in this case, and in order for us to
6 preview that evidence and relay the defendant's story to the
7 jury, we have to refer to 9/11 in passing and acknowledge that
8 the event happened. And I bring this especially only because
9 9/11 is sometimes a trigger, it's a reflexing objection, and I
10 just want to put the Court and defense at ease that we're not
11 getting into the details of 9/11 much less in any graphic
12 sense.

13 THE COURT: Okay. A passing reference I don't have
14 any problem with.

15 Defense have any problem with it?

16 MR. STERN: No.

17 THE COURT: Anything else?

18 MR. ARIAIL: One issue we should address at sidebar,
19 your Honor. I apologize, it's all about openings. It's not
20 about anything other than that.

21 THE COURT: Okay. Fine.

22 (Continued on the next page.)
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1 (In open court.)

2 THE COURT: Okay. Anything else before we bring in
3 the jurors?

4 MR. JACOBS: Nothing, your Honor.

5 MR. STERN: No.

6 THE COURT: We will rise when the jurors come in and
7 when they leave, but don't stand up yet because it's going to
8 take a few minutes to assemble them.

9 (A brief pause in the proceedings was held.)

10 COURTROOM DEPUTY: Jury entering.

11 (Jury enters courtroom at 10:19 a.m.)

12 THE COURT: I think those of you who came in first
13 among the jurors. It's going to take a minute to fill in the
14 box, but I'm going to have you pop right back up again.

15 All right. Everyone else may be seated. All right.
16 Now, let's have the jury rise and we'll have you sworn.

17 COURTROOM DEPUTY: Please raise your right hand.

18 (Jury panel sworn by the courtroom deputy.)

19 THE JURY: (Collectively) I do.

20 COURTROOM DEPUTY: You may be seated.

21 THE COURT: All right. Good morning, ladies and
22 gentlemen. You'll recall that I'm Judge Cogan. We're getting
23 off to a late start today but generally we won't. Generally,
24 we'll start promptly at 9:30. We just had some things we want
25 to work out first.

1 Now, that you have been sworn in as members of the
2 jury, I am going to briefly tell you something about your
3 duties as jurors and give you some instructions. At the end
4 of the trial, I'll give you more detailed instructions and
5 those instructions will govern your deliberations.

6 At the end of the presentation of the evidence and
7 my final charge to you, it will be your duty to decide the
8 facts from the evidence in this case and reach a decision as
9 to whether the Government has proven beyond a reasonable doubt
10 that the defendant committed the crimes charged against him.

11 Now, you and you alone are going to be the judges of
12 the facts. You're going to hear the evidence, decide the
13 facts, and then apply those facts to the law which I will give
14 to you. That's how you reach a verdict. In doing so, you
15 have to follow the law whether or not you agree with it.

16 The evidence in this case is going to consist of
17 several things: The testimony of witnesses, documents and
18 other things received into evidence as exhibits, any facts
19 upon which the lawyers agree, and the inferences that you may
20 reasonably draw from other evidence.

21 Now, evidence can be direct or circumstantial.
22 Direct evidence is testimony by a witness about what that
23 witness personally saw, heard, or did, or evidence in a
24 document about something that happened.

25 Circumstantial evidence is evidence that you can

1 reasonably infer from the direct evidence.

2 Now, you can consider both direct and circumstantial
3 evidence in deciding this case. It's going to be up to you to
4 decide how much weight to give to any particular piece of
5 evidence. You're going to have to determine which of the
6 witnesses to believe, what portion of their testimony you will
7 accept, and what may reasonably be inferred from what they
8 saw, heard, or did and what weight you attach to each piece of
9 the evidence and to the evidence as a whole.

10 Now, also please understand what is not evidence.
11 The questions and objections of the attorneys are not
12 evidence, and neither is any testimony that I instruct you to
13 disregard. The statements and arguments of the attorneys are
14 also not evidence. The only competent evidence for you to
15 consider is that which is admitted into evidence here in court
16 in the presence of the parties and all of you the jurors.

17 Now, times during the trial, I may sustain
18 objections to questions the attorneys ask. When that happens,
19 I will not permit the witness to answer, or if the witness is
20 too fast for me and gets the answer out anyway, I'll instruct
21 that the answer be stricken from the record. If a witness
22 doesn't answer a question because of an objection, or if the
23 witness answers and I instruct that the answer be stricken,
24 you are to disregard the answer and dismiss it from your
25 minds.

1 The law requires that your decision be made solely
2 upon the evidence before you. You have to let common sense be
3 your guide subject to and aided by the instructions that I'm
4 going to give you at the end of the case. There is,
5 unfortunately, no magical formula by which you should evaluate
6 testimony or exhibits.

7 You bring to this courtroom all the experiences and
8 background of your lives, your common sense. Use the
9 reasoning and tests that you use in every day dealings with
10 people to determine who's telling the truth and to what
11 degree; who to believe and who not to believe; and how to
12 reason, understand, and weigh the documents and exhibits.
13 Please watch very carefully and listen to everything that is
14 said during the trial.

15 Now, you may have noticed that the defendant not
16 present in court today. He may or may not be present at
17 various times throughout the trial. You are not to speculate
18 about the reason for his absence or draw any inferences from
19 his absence. You are not to consider his absence in making
20 your evaluation of the evidence or in deliberating on a
21 verdict.

22 Now, let me caution you about certain other
23 principles that govern your conduct as jurors.

24 First, as hard as this may be, do not talk to each
25 other about this case or about anyone who has anything to do

1 with it until the end of the case when you go to the jury room
2 to decide your verdict.

3 Second, do not talk with anyone about this case or
4 about anyone who has anything to do with it until the trial
5 has ended and you've been discharged as jurors. That includes
6 members of your family and your friends. You can tell them
7 that you're a juror in a federal case and that's all you can
8 tell them while you're still a juror. Once you've delivered
9 your verdict, and the case has ended, and you've been
10 discharged from your service, you can talk to anyone you want
11 to it and say anything you want about this case.

12 Third, don't let anyone talk to you about the case
13 or about anyone who has anything to do with it. I'm not
14 saying that's going to happen, but I just want you to be
15 cautious in case it does. If someone should try to talk to
16 you about the case, please report it to me immediately through
17 my courtroom deputy, Ms. Clarke. Don't tell anyone about such
18 an incident if it happens not even your fellow jurors. The
19 only person you should tell about it is Ms. Clarke.

20 Fourth, don't speak to any of the lawyers, the
21 defendant, or the witnesses whether inside or outside the
22 courtroom. Don't even pass the time of day with them or say
23 hello or goodbye. I'm instructing the lawyers and the
24 witnesses not to speak to you and not to acknowledge or greet
25 you. That applies even outside the courtroom. So don't hold

1 it against them if they walk right by you and give you a
2 thousand-mile stare, or if they ignore you, or they see you
3 standing someplace and they move away.

4 The reason for these instructions is simple. You
5 have a very important job to do, and we don't want anyone to
6 influence you or to try to influence you, or even to try to
7 curry favor with you. Everyone has to make the point of even
8 avoiding even the appearance of impropriety so that no one
9 gets any misimpression. For this reason, please don't hang
10 around in a crowd around the courthouse or in the lobby
11 downstairs. Before taking your seats here in court each day,
12 you'll assemble yourselves in the jury room, and when I say,
13 "the jury room," I now mean the room right behind me where you
14 came from this morning. Don't go downstairs, go directly in
15 the morning to this room behind me. Once you're all there,
16 you'll be ushered into the courtroom. At the end of the day,
17 and at recesses, you will return to that jury room and you
18 will leave from that jury room.

19 Fifth, do not read any stories or articles or listen
20 to any radio or television reports about the case or about
21 anyone who has anything to do with it. If you open a
22 newspaper and you see a headline that looks like it's this
23 case, please turn the page. If you're watching the news on
24 TV, and you see something that looks like this case, please, I
25 used to say turn the channel, hit the remote control button,

1 change the channel.

2 Sixth, don't do any research or any investigation
3 about the case on your own. Don't conduct any Internet
4 research about the case. No Googling, no Yahooing, no Binging
5 nothing. Everything you get has to be stuff that we give you
6 here in this courtroom. That's the only place you can get
7 information about this case.

8 For the same reason, I suspect if I were to ask most
9 of you would have a Facebook or other social media account.
10 You can post nothing about this case on social media. You
11 cannot Twitter, you cannot Tweet about this case, you can't
12 exchange anything with friends who might be interested in it.
13 All those restrictions will be removed once the case is over
14 and you've been discharged, but until then, please, do not do
15 any Internet research, do not engage in social media
16 communications about it, don't say a word. Again, it's got to
17 be confined to here. If you weren't to do that it could
18 jeopardize the continuation of the case.

19 Now, let me tell you about the stages of trial.

20 First, the Government is going to make an opening
21 statement. An opening statement is not evidence. It's just
22 an outline of what the party intends to prove or show that's
23 offered to help you follow the evidence. Then the defendant
24 may, but doesn't have to, make an opening statement. Because
25 the defendant is not required to give an opening statement, if

1 the lawyers choose to give one that choice should not be
2 considered as indicating anything. If they choose not to give
3 one, that choice should not be taken as indicating anything.

4 After the opening statements, the Government is
5 going to present witnesses and then the defense counsel may
6 cross-examine those witnesses. Then if the defense desires,
7 he may present witnesses and the Government may cross-examine
8 those witnesses.

9 Finally, there may be rebuttal witnesses from the
10 Government. I remind you that the defendant does not have to
11 prove his innocence and is not required to present any
12 evidence at all. He is presumed not guilty and the burden of
13 proof remains on the Government throughout the trial to prove
14 otherwise beyond a reasonable doubt.

15 Now, at the close of the evidence, the attorneys are
16 going to make their closing arguments to summarize and give
17 you their interpretation of the evidence. Like opening
18 statements, the closing arguments are not evidence. They are,
19 again, offered as guides to help your understanding of the
20 issues by letting you hear each sides' perspective on what
21 that side believes has been proven or not proven.

22 After the closing arguments, I'm then going to give
23 you instructions on the law and you will retire to deliberate
24 your verdict. Please do not make up your mind about what the
25 verdict should be until after you've heard all of the

1 evidence, after I've instructed you on the law at the end of
2 the case, and after you have deliberated with your fellow
3 jurors. Please keep an open mind until then. All parties
4 deserve, and the law requires, that you give them an
5 opportunity to be fully heard and that you not make up your
6 mind until you and your fellow jurors have heard all the
7 evidence and instructions and you've completed your
8 deliberations.

9 Finally let me give you the schedule and some
10 details for the trial. On a normal day, we will sit from
11 9:30 in the morning until around noon, some time between noon
12 or 1:00. And we'll take a 15-minute, at 10- or 15-minute
13 break during the morning. We'll then have lunch whenever we
14 break, noon to 1:00, and then we'll resume about an hour later
15 and continue until 4:30 in the afternoon. We'll also take a
16 brief break during that afternoon session.

17 Now, those times are really approximate and I need
18 you to be flexible. If I hear the evidence coming in a
19 certain way, and I don't want to break it there, those times
20 may change a bit. Normally, we sit Monday through Thursday,
21 now, I do want to mention there was one day we're not sitting.
22 The 14th? That's going to be on the 14th, that's next
23 Wednesday. I just got something I can't get out of, sorry,
24 next Tuesday. I have something I can't get out of in court,
25 and so we're not going to be able to convene on that day.

1 Otherwise, Monday through Thursday until we finish.

2 Please be here on time and take account of any
3 problems or delays in transportation that you might face in
4 order to arrive on time. The reason for that is we can't
5 start until every one of you is here. So if someone's late
6 we're all sitting here waiting for that person to get here.
7 Please don't be that person. I assume Ms. Clarke has already
8 given you her telephone number. If she hasn't, she will so
9 that if there is some emergency that you just can't get here,
10 you will call her. Again, you'll go into that room and when
11 you're all there we'll bring you into the courtroom.

12 You'll notice that when you enter the jury room, the
13 courtroom and when you leave the courtroom everyone here rises
14 and the reason we do that is in deference to the solemn duty
15 that you have undertaken to judge this case fairly and
16 honestly under the law.

17 Now, the last thing I want to tell you about is note
18 taking. As you see, we have a court reporter present. His
19 job is to write down everything that is said in court word for
20 word. It's what we call a "verbatim transcript." That
21 transcript will become the official record of this case along
22 with any documents that are received into evidence.

23 Now, you'll also see that I follow along with the
24 court reporter on my computer screen, and occasionally, you'll
25 see me typing a note or something as that's happening. If I

1 make a note that's for my guidance only and no one else's. I
2 might be noting something in the testimony that I need to
3 think about later. I may be making a note for something I see
4 here that pertains to another case. So no one should think
5 oh, the judge is writing a note on his computer this must be
6 important. That does not follow at all. My note-taking
7 habits should not enter into your consideration of the case in
8 any way.

9 If you want, you can also take notes if they help
10 you pay attention to the testimony and remember the testimony.
11 I see Ms. Clarke has given you all notepads. If you do take
12 notes, please do not take home the notepads. They have to
13 stay on your chair overnight in the jury room when you leave.

14 Now, you know, many jurors feel that note taking can
15 get in the way of listening and paying attention. I know when
16 I get new law clerks right out law school and I give them an
17 assignment they start writing down everything that I say. And
18 I will often say to them, stop writing and just listen. And
19 my concern, the reason I do that, is I'm afraid that if
20 they're trying to write down everything I say, I'm going to
21 say something else that will go right over their heads. Don't
22 let that happen to you. You're going to take notes, it's
23 absolutely fine, but the most important thing is to listen to
24 the testimony.

25 Keep in mind, especially since this is a somewhat

1 long trial. If you have any doubt during your deliberations
2 about what some witness said in their testimony, we can read
3 back particular portions of the transcript for you to answer
4 any questions that you might have. So don't feel you have to
5 write down every word because if you don't it's gone for all
6 time, it's not. That's why we have a court reporter here.

7 All right. At this point, we will begin with the
8 Government's opening statement.

9 Government may proceed.

10 MR. JACOBS: Thank you, Judge.

11 The defendant is an al-Qaeda terrorist whose mission
12 was to kill Americans. He went to Afghanistan just before
13 9/11 where he swore allegiance to Usama bin Laden and trained
14 in al-Qaeda's terror camps. Then, he put his terrorist
15 training to use.

16 On a spring morning in 2003, he and other al-Qaeda
17 terrorists attacked U.S. soldiers in Afghanistan leaving two
18 of them dead. But that didn't satisfy the defendant, he had
19 bigger ambitions. So, after the attack, he went to his
20 al-Qaeda leaders with a plan to kill even more Americans. He
21 told them that he wanted to blow up a United States embassy.
22 The al-Qaeda leaders approved this plan and they sent the
23 defendant to Nigeria to bomb the U.S. embassy there. Luckily,
24 the plan failed. The defendant was captured, and then, under
25 arrest, he proudly proclaimed his enduring loyalty to al-Qaeda

1 and described in detail the crimes he had committed in
2 al-Qaeda's name.

3 The defendant committed these crimes overseas, but
4 his targets and his victims were American. That's why he's
5 being brought to justice here in the United States today.

6 My name is Matthew Jacobs, and I'm an Assistant
7 United States Attorney here in the Eastern District of New
8 York. With me are my colleagues Shreve Ariail, Melody Wells,
9 and Joseph Kaster and Special Agent Gregory Paciorek of the
10 FBI's Joint Terrorism Task Force. Together, we represent the
11 United States.

12 Now, the evidence in this case is going to show that
13 the defendant embraced terrorism at a young age and made it
14 his life's work. He grew up in Saudi Arabia, a country in the
15 Middle East. In 2001, just weeks before 9/11, he traveled
16 from Saudi Arabia to Afghanistan which was the home base of
17 al-Qaeda. His plan was to join a terrorist group. And as
18 soon as he got to Afghanistan he moved to an al-Qaeda guest
19 house, a registration center for new al-Qaeda recruits. Then
20 on September 11, 2001, other al-Qaeda terrorists attacked the
21 United States killing thousands of people. Back at the
22 al-Qaeda guest house where the defendant was living, they
23 celebrated the attacks on America.

24 Now, right after 9/11, the defendant began intensive
25 weapons and explosives training with al-Qaeda. He went to

1 different al-Qaeda training camps where he learned how to use
2 machine guns and rocket propelled grenades, missiles, mortars,
3 land mines where he learned how to carry out terror attacks.

4 At these terrorist training camps, he also met top
5 al-Qaeda leaders and he got his Kunya, his al-Qaeda battle
6 name, "Spin Gul."

7 Now, the months after 9/11, after al-Qaeda's attack
8 on America, the United States and other countries sent troops
9 to Afghanistan to defeat al-Qaeda and its allies. Now, this
10 group of countries, this coalition, included soldiers from
11 Afghanistan itself who fought shoulder to shoulder with
12 American troops against al-Qaeda.

13 Now, when U.S. troops got to Afghanistan, the
14 defendant and other al-Qaeda terrorists moved their base of
15 operations. They left the main cities and towns of
16 Afghanistan and they set up a new home base in the mountains
17 near the border of Afghanistan and Pakistan, and from this new
18 home base, this mountainous, lawless, border area, the
19 defendant and other al-Qaeda terrorists attacked
20 U.S. soldiers. U.S. soldiers, who are serving on the
21 frontlines in the fight against the very terrorist group that
22 attacked America. Young men and women who bravely put their
23 own lives at risk half a world away so we can be safer here.
24 The defendant attacked these U.S. troops. He was part of an
25 al-Qaeda group that would fire missiles at a small frontline

1 U.S. outpost near the border.

2 Now, early one morning, in April 2003, U.S. soldiers
3 at that frontline outpost got word of suspicious activity in
4 the area. Near the hilltop where al-Qaeda fighters had been
5 firing missiles from in recent weeks.

6 So a group of U.S. soldiers left that frontline
7 outpost to investigate. They went to the hilltop, they went
8 to the al-Qaeda missile launch spot, and they got out of their
9 vehicles. That's when the attack began. From their hiding
10 places in the rocks, and on the hills, the defendant and other
11 al-Qaeda fighters attacked the U.S. troops. The defendant had
12 a machine gun and grenades. He fired his machine gun at the
13 U.S. troops while screaming "Alahu Akhbar," God is Great. He
14 threw his grenades at the U.S. troops and watched as they
15 exploded right next to them.

16 And while the defendant attacked the U.S. soldiers
17 from close up, other al-Qaeda fighters from the next hill over
18 kept them pinned down with heavy machine gun fire. Five
19 American soldiers were seriously wounded in that attack. They
20 were airlifted for medical help, but for two of them it was
21 too late. 24-year-old Raymond Losano from Del Rio, Texas died
22 from an al-Qaeda bullet that hit him in the face practically
23 ripping off his jaw. And 19-year-old Jerod Dennis from
24 Antlers, Oklahoma shot in the leg and slowly bled to death.

25 The defendant, on the other hand, he lived and he

1 remained just as committed to terrorism as ever, but he didn't
2 go back to firing missiles or attacking U.S. troops in that
3 border area. You see, like I said at the beginning, he had
4 other plans, bigger plans ambitions to kill even more
5 Americans on an even larger scale.

6 So, after the attack, he went to al-Qaeda leadership
7 to members of Usama bin Laden's inner circle and he told them
8 that he wanted to carry out mass murder terror attacks against
9 Americans in other parts of the world. He specifically said
10 that he wanted to carry out terror attacks like the 1998
11 al-Qaeda bombings of two embassies, U.S. embassies in East
12 Africa. Terrorist bombings that left more than 200 people
13 dead. The al-Qaeda leaders gave the defendant their blessing
14 and they sent him for more training, specialized training in
15 explosives and chemicals and even poisons and then they sent
16 the defendant to Nigeria, a country in West Africa, to blow up
17 the United States embassy and everybody inside it.

18 Now, Nigeria made sense as a target because even
19 though the defendant grew up in Saudi Arabia, his family was
20 from West Africa and he spoke, or he still speaks, the local
21 language fluently. So, in the summer of 2003, just months
22 after the spring-time attack that took the lives of Ray Losano
23 and Jerod Dennis, the defendant flew from Pakistan to Nigeria.
24 And when he got to Nigeria, he set to work on his plan to bomb
25 the embassy. He recruited accomplices; he went to the capital

1 city to scout the embassy and other Western targets. And he
2 sent an accomplice to find explosives to do the job. All the
3 while, he kept in contact with his al-Qaeda bosses back in
4 Pakistan, and he met with local terrorist leaders in West
5 Africa to build up al-Qaeda's network there.

6 Fortunately, thankfully, the defendant's plan to
7 bomb the embassy failed. You see, while the defendant was in
8 Nigeria plotting the attack, he sent a messenger, one of his
9 accomplices to bring materials and information from Nigeria
10 back to his al-Qaeda bosses in Pakistan. Well, that messenger
11 got arrested in Pakistan, and when the defendant found out
12 that his messenger got caught, the defendant went on the run.
13 He left Nigeria, but he was soon arrested in Libya, another
14 country in Africa, where he was detained until 2011 when the
15 Libyans released him and put him on a boat headed to Italy.
16 But on that boat to Italy, the defendant was arrested again,
17 this time by Italian police. And after the Italians learned
18 about the defendant's past, they notified U.S. authorities and
19 eventually handed over the defendant to stand trial here in
20 America.

21 For his actions, the defendant is charged here with
22 six crimes or what we call "counts."

23 Count One charges him with conspiring, which
24 basically means agreeing with others to murder Americans in
25 Afghanistan and Nigeria.

1 Count Two charges him with conspiring to bomb a
2 U.S. Government building in Nigeria.

3 Counts Three and Four charge him with providing and
4 agreeing to provide support to al-Qaeda key support, or what
5 we call "material support."

6 And the last counts charge him with using guns and
7 explosives to commit some of his crimes.

8 Now, how are we going to prove these crimes? Well,
9 first, you're going to hear the defendant in his own words
10 confess to each and every one of the crimes he's charged with.
11 You see, in 2011, after the Italians arrested the defendant on
12 that boat, U.S. officials flew to Italy to talk to the
13 defendant.

14 Now, the defendant didn't have to talk to
15 U.S. officials. In fact, he was given two defense lawyers and
16 told that he had the right to remain silent. But he chose to
17 talk because he was proud of his work for al-Qaeda. In fact,
18 when the defendant started talking to U.S. officials, he said,
19 I'm going to quote here, "I want to give you a history of how
20 I entered into terrorism." And that is exactly what he did.

21 For three days, in an Italian courtroom, in front of
22 a judge, with defense lawyers and translators, the defendant
23 explained in extraordinary detail his terrorist life story.
24 He explained how he decided to become a terrorist at a young
25 age. How he traveled to Afghanistan just before 9/11, joined

1 al-Qaeda, and swore allegiance to Usama bin Laden. He talked
2 about firing missiles at U.S. troops in Afghanistan and
3 explained exactly what he did during the April 2003 attacks.
4 And he described his desire and his plan to bomb the
5 U.S. embassy in Nigeria. What he did, he carried out and why
6 ultimately to failed.

7 Everything the defendant said in that Italian
8 courtroom was tape recorded. And during this trial, you're
9 going to hear that audio recording. Listen carefully to what
10 he says, all the details he gives, and remember his words.
11 Remember those details when you see and hear all the other
12 evidence in this case. Evidence like live testimony from some
13 of the U.S. soldiers who were attacked by the defendant and
14 other al-Qaeda fighters in Afghanistan. They'll tell you
15 about seeing grenades flying at them in the air, about got
16 getting shot and lying in the dirt and hearing bullets fly
17 over their heads, and seeing Ray and seeing Jerod clinging
18 helplessly to the last moments of their lives. And you'll see
19 that they're talking about the same attack the defendant
20 describes just from the other side.

21 You're also going to hear live testimony from the
22 Italian police who arrested the defendant on that boat.
23 They'll tell you he admitted being an al-Qaeda to them, too.

24 Now, in addition to live testimony, you're going to
25 see physical evidence, hard proof, that the defendant did

1 everything he said he did. You're going to see, for example,
2 a Koran, an Islamic holy book, that was recovered from the
3 attack site in Afghanistan just after the April 2003 attack.
4 And you'll learn that a U.S. soldier took that Koran home with
5 him to the United States when he left Afghanistan. Well, in
6 2012, when the FBI was investigating the defendant's role in
7 the April 2003 attack, they went and got that Koran and then
8 they sent it to Quantico to the forensic laboratory at FBI
9 headquarters where an FBI fingerprint expert tested it and,
10 sure enough, nearly ten years after that al-Qaeda attack, the
11 defendant's fingerprints were still on the Koran he left
12 behind.

13 But that's not the only evidence you're going to see
14 from the attack site. You'll see a journal that was recovered
15 from one of the al-Qaeda fighters who was killed attacking
16 U.S. soldiers. A journal with notes describing what that
17 al-Qaeda fighter was doing and who he was with in the weeks
18 before the attack. And in those notes, you'll see references
19 to missiles, and you'll see the defendant's name.

20 You're also going to hear about an FBI raid in
21 Pakistan in early 2002 to capture a high-level terrorist. A
22 high-level terrorist that the defendant admitted meeting in
23 Afghanistan. And you'll learn that that high-level terrorist
24 was captured in the raid, and that an address book was also
25 recovered. We'll show that you address book, and in it you'll

1 see the defendant's name and his telephone number.

2 You're also going to see documents showing that the
3 defendant's messenger traveled from Nigeria to Pakistan in
4 late 2004 just like he said. And you'll see a letter, a long
5 letter, from the defendant's al-Qaeda boss that the messenger
6 was supposed to bring back to the defendant. And in that
7 letter, the defendant's al-Qaeda boss gives him detailed
8 instructions about how to attack Americans in Nigeria. He
9 tells them where to target Americans at embassies, hotels and,
10 "places where they gather for fun." And he tells the
11 defendant exactly how much explosives he'll need for the
12 bombing. One ton of explosives, that's two thousand pounds of
13 explosives.

14 There's going to be other evidence. You'll hear
15 from a witness that's actually an al-Qaeda training camp and
16 you'll hear from a witness who is an expert on al-Qaeda.

17 And at the end of this trial, after you've seen and
18 you've heard all this evidence, we'll talk to you again and at
19 that time we'll ask you to bring this al-Qaeda terrorist to
20 justice by finding him guilty on all counts.

21 THE COURT: All right. Thank you. Does the defense
22 care to open.

23 MS. KELLMAN: Your Honor may we approach first.

24 THE COURT: Yes.

25 (Continued on the next page.)

1 (Sidebar conference held on the record in the
2 presence of the Court and counsel, out of the hearing of the
3 jury.)

4 THE COURT: Go ahead.

5 MR. STERN: Judge, we're moving for a mistrial
6 because the Government misled us on what they would say about
7 9/11. They told us they would refer to it as a time marker.
8 As he went there two weeks before, he stayed there two weeks
9 after. Instead, they said the World Trade Center was killing
10 thousands of Americans. That's precisely what we were trying
11 to avoid, and instead they said exactly the words they told us
12 they would not say.

13 THE COURT: Let me hear from the Government.

14 MR. JACOBS: Your Honor the defendant talks about
15 the attack in his statements which are evidence and he
16 specifically says that there were celebrations at the Nibras
17 guest house.

18 THE COURT: Killing thousands of Americans.

19 MR. JACOBS: That they were celebrating the attacks
20 from the towers that collapsed.

21 THE COURT: You have not addressed the defense's
22 point which you exceeded the proffer you gave me as to your
23 opening. The statement, "killing thousands of Americans," was
24 improper. On the other hand, it's nowhere near prejudicial
25 enough to grant a mistrial for because everybody noise that

1 thousands of Americans were killed on 9/11. I'm cautioning
2 the Government, do not make that kind of argument again. No
3 reason to emphasize it. Motion is denied. Thanks.

4 (Sidebar discussion concludes.)

5 (Continued on the next page.)
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1 (In open court.)

2 THE COURT: You may proceed.

3 MS. KELLMAN: Thank you, your Honor.

4 I began my day yesterday morning in the gym with
5 some friends who invited me to go to a movie later in the day.
6 I said that I couldn't go because I was working on my opening
7 statement for this trial. And then I told them an a little
8 bit about the case, and one of my friends asked me what
9 everybody else was thinking -- how do you sleep with yourself
10 at night? How do you live with yourself. I smiled politely
11 and I stepped up my routine on the treadmill.

12 Walking home from the gym, I remembered the question
13 and it chilled me. It is because of what we do, we in the
14 Defense Bar, what we do here in this courtroom every day that
15 all of us sleep better at night. Every criminal prosecution
16 of a fellow human being presents a unique challenge for
17 lawyers like us and jurors like you. And when you peel away
18 all the smoke and mirrors and the fear and the prejudice the
19 Government sought to spread just moments ago, you remember
20 that the criminal prosecution of a fellow human being who is
21 an admitted member of al-Qaeda presents the same challenge as
22 any other criminal case, no more and no less. And that's
23 because in a criminal trial in the United States we are all
24 equal under the law.

25 We have all just heard the Government's opening

1 statements laced with fear, terrorism images, and descriptions
2 of violence and the prejudice that attaches the minute any of
3 us hears the words "9/11," "al-Qaeda," or "Usama bin Laden."
4 It's not a pretty picture that the Government paints and make,
5 no mistake about it, the Government's opening is meant to set
6 a tone, a tone that pervades this courtroom. A tone that is
7 meant to inflame, and a tone that is aimed at misdirecting
8 your focus and overwhelming your good judgment and your
9 ability to apply the rule of law.

10 And consciously or unconsciously the Government's
11 words will challenge each of you individually and collectively
12 and the challenge is this: Can you be true to your oath? Can
13 you well and truly try this case and a fair verdict render as
14 you all sworn to do.

15 (Continued on the next page.)
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1 MS. KELLMAN: Each of you took this oath and
2 promised the judge, the lawyers and our client that you would
3 follow the law, that you would hold the Government to its
4 burden of proving guilt beyond a reasonable doubt, that you
5 would remember that every defendant under our laws, even a
6 member of al-Qaeda, is entitled to equal protection under our
7 law, because that's the way the founding fathers made our
8 democracy unique in the world. We are all equal under the
9 law.

10 Here in America, every defendant is presumed to be
11 innocent, not just at the beginning of the trial and not just
12 in the middle of the trial, but right through the presentation
13 of all of the evidence, the presumption of evidence must
14 always be foremost in your mind.

15 The presumption of -- the presumption -- excuse me.
16 The presumption of innocence is so strong that it follows a
17 defendant right through into the jury room and right into your
18 deliberations, and it is not until, if ever, you are able to
19 agree unanimously that the Government has met its very
20 difficult burden of proof beyond a reasonable doubt that this
21 presumption of innocence could shift. Until that time, every
22 person charged with a crime in the United States, no matter
23 the crime, continues to be shielded by the presumption of
24 innocence, no more for our client than for any of us.

25 Also, remember the instructions that you were given

1 by the Court at the time of jury selection and earlier this
2 morning before opening statements began. The Court instructed
3 you that a defendant in a criminal trial has a absolute
4 constitutional right not to say anything, the right to remain
5 silent, and you promised us that you would not hold it against
6 our client. The reason for his silence can have no negative
7 impact on your consideration of this case because, as the
8 judge explained, the burden of proving a defendant's guilt
9 rests solely and exclusively at that table.

10 That burden of proof never shifts. A defendant
11 facing criminal charges in an American court does not have to
12 prove his innocence. Our Constitution doesn't work that way.

13 That said, remember this, that our client has spoken
14 out in this case in this very courthouse because when he was
15 told what the charges against him were he said in a loud and
16 clear voice for everyone to hear "I'm not guilty."

17 And that's where you come in, because it is your
18 role as jurors to listen to the Government's presentation and
19 to sort through the events that led to the charges. In the
20 end, it is for you, the jury, who will judge the quality of
21 the Government's case, and it's the critical role that each of
22 you play, individually and collectively, that gives life and
23 breath to our Constitution.

24 Where else in the world could a person facing these
25 charges be assured that he will be afforded the same

1 protection under the law that every other person in our
2 country is entitled to?

3 But where are my manners. I didn't introduce myself
4 or my colleagues or my client. My name is Susan Kellman, and
5 together with David Stern and Josh Dratel and Mayerlin Ulerio,
6 who's really the brains of the outfit, together we represent
7 Ibrahim Suleiman Adnan Harun Hausa.

8 Over the years, I've heard defense lawyers liken
9 themselves to lifeguards whose job it is to stand on a beach
10 and make sure that their client doesn't drown in a sea of
11 prejudice. But it's my view that it is you, again
12 individually and collectively, who are the real lifeguards.
13 It is you the jury who must sift through the prejudice that
14 flows from words like "al-Qaeda" and "terrorism" and "Usama
15 bin Laden" and "9/11." In a search of evidence, these words
16 can inject a poison into a case that will obstruct your
17 ability to see the evidence clearly and to weigh it
18 appropriately, and that's why your job as jurors is so very
19 difficult. And did I mention also challenging?

20 But remember, each of you has sworn an oath and that
21 oath is that you will not be swayed by prejudice and you will
22 not allow prejudice to be a substitute for proof.

23 Now, I am a hundred percent certain of one thing,
24 that when each of you got your jury notices, you opened them
25 up and said, "Yes, finally I'm going to be a juror." Not all

1 of you maybe. I know that's what really happened. And on the
2 train this morning or the bus as you were coming in, you were
3 able to listen to the news or read the news and you were able
4 to accept it as true because you heard the words. Well, I can
5 promise you this, members of the jury, the real facts of any
6 case are the facts that come into courtroom and come out of
7 the witnesses' mouths as the case proceeds. In a court of law
8 in the United States, we don't rely on what the press says.
9 We don't rely on what's in the media. And we certainly don't
10 rely on alternative facts. Those are no substitutes for
11 proof.

12 I promise you something else, that sitting as a
13 juror will prove far more interesting and life-affirming than
14 you could have imagined the day you opened that jury notice.

15 You will be enriched by this experience, and so will
16 our democracy, because at the end of the trial, you will know
17 that you have contributed in a meaningful way to preserving
18 the legal system that makes this country great every day.

19 Perhaps you've noticed when you entered the
20 courtroom and when you leave that everybody stands. We stand
21 out of respect for the jury system. We also stand as a
22 reminder to each of you that you are the sole judges of the
23 facts in this case. Judge Cogan remains, of course, the sole
24 judge of the law, but when it comes to finding facts, that is
25 squarely in your court, and nobody can substitute their

1 judgment for yours.

2 So, how do you judge the facts? Well, you have to
3 determine whether or not you believe the witnesses, whether or
4 not the witnesses are credible. And as Judge Cogan said just
5 a few moments ago, how do you do that? The same way you do it
6 in everyday life. You use your common sense, you listen, you
7 watch, most importantly as jurors, you keep an open mind. As
8 jurors you must train yourself to put aside the preconceived
9 notions that you may have and sift through the prejudice that
10 you'll be asked to review and ask yourself: What does this
11 witness say? Does it make sense? Does it contribute at all
12 to the Government's case? Is there objective proof that
13 supports the promises that the Government made in its opening
14 statement?

15 You'll hear that there are a number of witnesses who
16 cooperate with the Government with the hope that they might
17 gain some benefit from it, and you'll see the evolution of
18 these kinds of witnesses' testimony. It starts with something
19 small, I was in an al-Qaeda training camp. I learned to fight
20 for al-Qaeda. And the Government doesn't appear to be
21 interested. So yeah, at the next meeting, Well, I heard Usama
22 bin Laden speak. And at the next meeting, I actually met with
23 Usama bin Laden. And at another meeting, I met with him more
24 than once and it was before September 11th and he said
25 something was going to happen in the United States. And every

1 time you met with the Government, the story got bigger and
2 bigger and bigger until finally the Government said, Okay,
3 we'll talk to you.

4 And you have to ask yourselves whether or not this
5 fellow lied when he first went in and didn't tell everything
6 he knew or continuously made things up until he got to a place
7 where the Government showed some interest. We don't know. We
8 know that the story told day one wasn't the story that he told
9 eventually way, way, way down the road.

10 And the reality is, members of the jury, that none
11 of us will know which story or which version of the story is
12 true. The question you have to ask yourself though is can you
13 and would you ever rely on testimony of this sort in a matter
14 of importance in your own life, because that is the standard.
15 And Judge Cogan will give you the law at the end of the case,
16 but keep in mind as witnesses testify that the important thing
17 is for you to think about whether or not this person who is
18 testifying presents the kind of evidence that would allow you
19 to rely on such a witness in an important matter of your own
20 life.

21 You will also hear that our client made certain
22 statements to the Italian police when he was on ship bound for
23 Italy from Libya, and after all the staging and all the
24 prejudice and every time the Government says "Usama
25 bin Laden," what will you have? Don't miss this -- I'm sorry.

1 Don't misunderstand what I'm saying. Our client pledged his
2 allegiance to al-Qaeda, and al-Qaeda is a designated foreign
3 terrorist organization and that is one of the charges in the
4 indictment. And if you convict him of materially supporting
5 al-Qaeda, well, so be it. But what we ask you not to do is to
6 close your eyes to the rest of the case.

7 Mr. Harun may not share your world view, but is that
8 enough to convict him?

9 I told you that I started my day yesterday in the
10 gym and I ended it pruning rose bushes in my garden. Though
11 it's hard to say why I thought it was a good idea to work in
12 the garden when it was 17 degrees outside. I can tell you
13 that the work was painful, and if you don't believe me, you
14 can look at all the scratches on my hands. The dogs were
15 eating my gloves. And I tell you this because I remembered as
16 I was working and as I was getting scratched that in the
17 spring, my garden would be all the more beautiful. And I ask
18 you to remember your job here similarly will not be easy and
19 there will be scrapes along the way, but the amazing part of
20 our criminal justice system is that for you, the jury, your
21 job is to trim away the prejudice and seek out the evidence
22 and remember that the framers of our Constitution viewed the
23 presumption of innocence as paramount to the success of this
24 young nation.

25 Presumption of innocence is so strong that it cannot

1 be viewed as just another legal concept. Rather, the
2 presumption of innocence rests on the generosity of spirit,
3 which assumes the best and not the worst of every stranger.

4 Thank you.

5 Thank you, your Honor.

6 THE COURT: All right. Thank you, Ms. Kellman.

7 Let's take a 10 or 15 minute break. Let's say
8 closer to 10 minutes, ladies and gentlemen. You can walk
9 around the courthouse, go wherever you want. Just make sure
10 you're back in that jury room at 11:25.

11 Remember, don't talk about the case. Don't say
12 anything to anyone about the case.

13 (Jury exits the courtroom.)

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15 (Continued on following page.)

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1 THE COURT: Have a seat for just a minute, please,
2 before we recess.

3 I just wanted to pass on to the attorneys that Juror
4 Number 130 has communicated to Ms. Clarke today that he firmed
5 up his vacation, he got the actual dates of his vacation
6 plans, which he alluded to in voir dire, and they are March
7 23rd to March 27th. I propose we take no action at this time,
8 but I just want to pass it along to you because I had it.

9 MR. ARIAIL: Agreed, your Honor.

10 THE COURT: Okay. Let's recess until 11:25.

11 (Recess taken.)

12 THE COURT: Let's bring in the jury.

13 MS. WELLS: Your Honor, very quickly, a couple of
14 items.

15 THE COURT: Very quickly.

16 MS. WELLS: Well, our first three witnesses will be
17 using the services of two Italian interpreters. I don't know
18 if you'd like to swear them before we bring the jury out.

19 THE COURT: No, we'll swear them when the jury is
20 here.

21 MS. WELLS: And then later during the testimony of
22 the next witnesses we'll be introducing a photograph of the
23 defendant. We intend to state on the record that it is a
24 photograph of the defendant and just wanted that to be clear
25 now.

1 THE COURT: Any objection?

2 MR. STERN: No. Assuming it's a photograph of the
3 defendant.

4 MS. WELLS: It is. And then finally --

5 THE COURT: Too late.

6 (Continued on the following page.)
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1 (Jury enters the courtroom.)

2 THE COURT: All right. Be seated, please.

3 The Government may call its first witness.

4 MS. WELLS: Your Honor, the Government calls
5 Francesco Morgese.

6 THE COURT: Do we have an interpreter for this
7 witness?

8 MS. WELLS: Yes, we have two interpreters. Their
9 names are Sandra Borri and Marco Praderio.

10 (Francesco Morgese enters the courtroom and takes
11 the witness stand.)

12 THE COURT: All right. The witness can be seated
13 for a moment.

14 Let's have the interpreters sworn first, please.

15 COURTROOM DEPUTY: Please raise your right hand.

16 (Interpreters sworn.)

17 COURTROOM DEPUTY: State your name.

18 INTERPRETER PRADERIO: Marco Praderio, M-A-R-C-O
19 P-R-A-D-E-R-I-O.

20 INTERPRETER BORRI: Sandra, S-A-N-D-R-A, Sandra, B-O
21 double R-I, Borri.

22 COURTROOM DEPUTY: For the witness, please stand and
23 raise your right hand.

24 THE COURT: Let's have the witness stand, please.
25

1 FRANCESCO MORGESE,

2 called by the Government, having been first duly
3 sworn, was examined and testified through the interpreter as
4 follows:

5 COURTROOM DEPUTY: Please state and spell your name
6 for the record.

7 THE WITNESS: Morgese Francesco, M-O-R-G-E-S-E,
8 Francesco, F-R-A-N-C-E-S-C-O.

9 COURTROOM DEPUTY: Okay. You may be seated.

10 MR. STERN: Excuse me, Judge. Is it possible, if
11 nobody's using it, to lie that middle monitor down because we
12 can't see the witness?

13 MS. WELLS: Your Honor, I will be using exhibits
14 that the witness will have to look at on the screen.

15 THE COURT: I'm just not sure.

16 Melonie, can you lower that monitor?

17 COURTROOM DEPUTY: No, I can adjust it somehow.

18 THE COURT: We'll do what we can.

19 MR. STERN: What about if I sit over here instead?

20 THE COURT: That's fine.

21 MS. WELLS: And, your Honor, if we may also get a
22 microphone for the interpreters, I think that will allow
23 everyone to hear a little better.

24 THE COURT: Yes, we can do that.

25 (Pause.)

1 THE COURT: All right. Let's give it a try.

2 MS. WELLS: Thank you, your Honor.

3 DIRECT EXAMINATION

4 BY MS. WELLS:

5 Q Good morning, Mr. Morgese.

6 A Good morning.

7 Q I'm here.

8 A Good morning.

9 Q First, could you tell us very briefly what happened on
10 June 24th, 2011?

11 A On June 24th, 2011, I was on board the Excelsior ship,
12 and I arrested a man of approximately 40 years of age whose
13 name was Ibrahim Harun Adnan.

14 Q And I'd like to discuss that arrest in more detail in
15 just a moment.

16 But first, can you tell us what city and country you
17 work in?

18 A I live in a small town near Bari, B-A-R-I, in Puglia,
19 Puglia region, P-U-G-L-I-A, in Italy.

20 Q Who do you work for?

21 A I work for Guardia di Finanza.

22 THE INTERPRETER: Guardia, G-U-A-R-D-I-A, di, D-I,
23 Finanza, F-I-N-A-N-Z-A.

24 Q What is the Guardia di Finanza?

25 A I work -- Guardia di Finanza is a special military corps

1 of the police, of the Italian police, with two divisions. One
2 it's about tax evasion and there is an antiterrorism unit and
3 the first response to acts of terrorism and I belong to that
4 unit.

5 Q To the counterterrorism unit?

6 A Yes.

7 Q What is your rank and title?

8 A I'm the chief of an antiterrorism unit, and my rank is
9 assistant warrant officer.

10 Q How long have you worked for the Guardia di Finanza?

11 A Approximately 24 years.

12 Q Can you tell us generally what your responsibilities are
13 in your current role and in the counterterrorism unit?

14 A I organize all the activities for my subordinates. I
15 organize the missions that we carry out all over Italy, and I
16 decide the number of people assigned to each mission.

17 Q Very briefly, what kinds of missions are you responsible
18 for?

19 A We have various missions. We make sure that there is the
20 law and order in society, antiterrorism activities at the
21 airports, and also we capture fugitives.

22 Q Were you working for the Guardia di Finanza on June 24th,
23 2011?

24 A Yes.

25 Q And at that time, were you part of the same

1 counterterrorism unit?

2 A Yes, also that year.

3 Q In what city were you posted on June 24th?

4 A I was part of a team on the island of Lampedusa.

5 THE INTERPRETER: L-A-M-P-A -- I'm sorry, I
6 apologize. L-A-M-P-E-D-U-S-A.

7 Q And what were your responsibilities on Lampedusa?

8 A I was in charge of a ten-man unit which was a support
9 unit on the island to deal with the flow of migrants from
10 Libya.

11 MS. WELLS: Your Honor, I'd like to show what's been
12 marked as Government Exhibit 205 to the witness.

13 THE COURT: All right.

14 MS. WELLS: I don't have a screen.

15 THE COURT: Patience.

16 MS. WELLS: Thank you.

17 (The above-referred to exhibit was published to the
18 witness.)

19 Q Sir, do you have that image up on your screen?

20 A Yes.

21 Q What is this?

22 A It's a part which shows Asia Minor, a part of Europe and
23 the Middle East and Northern Africa.

24 Q And are Italy and Lampedusa represented on the map?

25 A Yes.

1 Q And is this a fair and accurate representation of this
2 part of the world?

3 A Yes.

4 MS. WELLS: Your Honor, I'd move to admit Government
5 205.

6 THE COURT: Any objection?

7 MS. KELLMAN: No, your Honor.

8 THE COURT: Received.

9 (Government's Exhibit 205 was received in evidence.)

10 MS. WELLS: And permission to publish to the jury,
11 please.

12 THE COURT: Go ahead.

13 (The above-referred to exhibit was published.)

14 BY MS. WELLS:

15 Q Sir, could you please point out Italy's location on this
16 map for us, and you can do that by touching the screen in
17 front of you?

18 A This is Italy. Then we have two major islands, Sardinia
19 and Sicily, and then we have some minor islands.

20 Q Can you also show us where Lampedusa is located?

21 A Yes (indicating.)

22 Q So that's not on the mainland of Italy, correct?

23 A No.

24 Q You also mentioned a moment ago that there was a flow of
25 immigration from Libya.

1 Can you show us where Libya is located on the map?

2 A Yes (indicating.)

3 Q Now, tell us generally what was happening that was
4 causing this flow of immigration from Libya to Italy in 2011.

5 A Starting in February, March of 2011, there was a flow of
6 numerous, many migrants coming from Libya to Italy and to
7 Lampedusa Island.

8 May I?

9 They came not only from Libya. They also came from
10 the sub-Saharan area. They went to Libya, and then on board
11 of makeshift boats and fishermen's boats they reached
12 Lampedusa Island.

13 Q Now, tell us where specifically were you located on the
14 morning of June 24th?

15 A I was on board of the Excelsior ship.

16 Q What is the Excelsior?

17 A The Excelsior is a ship, former ferry, which belonged to
18 the Grimaldi Line Company.

19 THE INTERPRETER: G-R-I-M-A-L-D-I.

20 A And it was used to transfer migrants to several different
21 refugee centers in the Italian territory.

22 MS. WELLS: Your Honor, I'd like to show the witness
23 what's been marked for identification as
24 Government Exhibit 29.

25 THE COURT: All right.

1 (The above-referred to exhibit was published to the
2 witness.)

3 Q Sir, do you recognize this photograph?

4 A Yes.

5 Q What is this?

6 A It's the Grimaldi Line's ship, the name is Excelsior.

7 MS. WELLS: Your Honor, I'd move to admit
8 Government Exhibit 29 and request permission to publish.

9 MS. KELLMAN: No objection.

10 THE COURT: Received. You may publish.

11 (Government's Exhibit 29 was received in evidence.)

12 (The above-referred to exhibit was published.)

13 BY MS. WELLS:

14 Q All right. Sir, where did the ship, the Excelsior,
15 depart from?

16 A On June 24th, 2011, the Excelsior ship departed from
17 Lampedusa Island.

18 MS. WELLS: Your Honor, would it be possible to turn
19 up the volume on the interpreter's microphone? I think it's a
20 little low in the back.

21 THE COURT: I'm not sure, but try to talk right into
22 it.

23 THE INTERPRETER: "On June 24th, 2011, the Excelsior
24 ship departed from the island of Lampedusa."

25 Q Where was its first scheduled stop?

1 A The ship was scheduled to arrive for the first stop in
2 Taranto Harbor, T-A-R-A-N-T-O, on June 25th, so the day after
3 the departure.

4 Q All right. How many immigrants, approximately, were on
5 board the Excelsior?

6 A Approximately one thousand one hundred and eighty
7 migrants.

8 Q And about how many law enforcement officers were on
9 board?

10 A Approximately 40.

11 Q Now, you mentioned a moment ago that many of the
12 immigrants were coming from Libya.

13 What had happened that had caused the flow of
14 immigrants from that country?

15 A At that time in Libya, there was a very difficult
16 situation. There was almost a civil war between Gaddafi and
17 the opponents to the regime, and that was more or less the
18 time of the Arab Spring, which also involved the countries
19 such as Egypt and Tunisia.

20 Q What role did the law enforcement officers on the
21 Excelsior play?

22 A Our main task was to insure for all the migrants to
23 arrive to their destinations in Italy, and also we needed to
24 make sure that no riots would occur among the various ethnic
25 groups on board.

1 Q At approximately 11 a.m. on June 24th, where on the
2 Excelsior were you?

3 A Around 11 a.m. on June 24th, 2011, I was near two rooms
4 where all the single men were located, because we had divided
5 single men from women on board, and around 11 a.m., a man of
6 approximately 40 years of age approached me. He was of a
7 sub-Saharan origin and he asked me for some water.

8 Q When this individual approached you, did you know his
9 name?

10 A No.

11 Q Did you later learn his name?

12 A Yes.

13 Q What was it?

14 A Ibrahim Harun Adnan.

15 Q And I'll refer to him as Harun going forward.

16 When he approached you and asked for the bottle of
17 water, what language was he speaking?

18 A He asked me in English. He said exactly "water."

19 Q And do you speak any English?

20 A I speak some.

21 Q And so did you understand him?

22 A Yes.

23 MS. WELLS: Your Honor, I'd like to show the witness
24 what has been marked as Government Exhibit 26.

25 THE COURT: Okay.

1 (The above-referred to exhibit was published to the
2 witness.)

3 Q Sir, do you recognize this photograph?

4 A Yes.

5 Q Who is this?

6 A Ibrahim Harun Adnan.

7 Q And does this picture fairly and accurately represent his
8 appearance when you saw him in June of 2011?

9 A Yes.

10 MS. WELLS: Your Honor, I would move to admit
11 Government Exhibit 26.

12 MS. KELLMAN: No objection.

13 THE COURT: Received.

14 (Government's Exhibit 26 was received in evidence.)

15 MS. WELLS: Permission to publish to the jury.

16 THE COURT: Yes.

17 (The above-referred to exhibit was published.)

18 MS. WELLS: And finally, let the record reflect that
19 the witness has identified a photo of the defendant.

20 BY MS. WELLS:

21 Q Sir, when Harun approached you on the ship, what, if
22 anything, did you notice about him physically?

23 A After I gave him the water, I noticed a scar on his arm
24 which, in my experience, looked like it was consistent with a
25 firearm shot.

1 Q What about your experience made you believe that it was
2 consistent with a firearm shot?

3 A In my experience in my career, I saw many scars caused by
4 a firearm shot, and that particular scar had all the
5 characteristics of a firearm shot because it showed an entry
6 hole in the front and an exit hole in the back of the arm.

7 Q When you observed this, about how close to Harun were
8 you?

9 A He was next to me, so it was close to me, very close to
10 me.

11 Q When you noticed this about him, what did you do?

12 A I asked me -- I asked him in my elementary English, "What
13 happened?"

14 Q Why were you interested in what happened? Why did you
15 ask him this question?

16 MS. KELLMAN: Objection.

17 THE COURT: Sustained.

18 Q After you asked that question, how did the defendant
19 react?

20 A Initially he gave me no answer, and after a few moments,
21 I repeated the question, and then with his hand he motioned
22 for me to follow him across a door into another area.

23 Q Did he say anything to you in response to your question?

24 A Initially he lifted his shirt and he showed me some more
25 scars on his back.

1 Q When you had asked him the question of what happened,
2 referring to the first scar that you observed, was there any
3 point when he answered that question?

4 A Yes. Yes, he said "American soldier."

5 Q At some point, was an interpreter called in?

6 A Yes.

7 Q Why?

8 A Because I wanted to understand well why he had given me
9 that answer. Since I wanted to make sure that I would not
10 misunderstand his words, I asked an interpreter of Arabic
11 language to come over.

12 Q And so, what languages did the interpreter speak?

13 A Arabic.

14 Q Did he also speak Italian?

15 A Yes.

16 Q After the interpreter arrived, did he speak with Harun?

17 A Yes. I asked the interpreter to ask Harun a few
18 questions, such as who he was and where he was coming from and
19 how he had gotten those scars.

20 Q And did the interpreter interpret those questions for the
21 defendant?

22 A Yes.

23 Q Did Harun respond?

24 A Yes, he did answer. And at the point, I observed that
25 the interpreter's face was turning very worried as if he was

1 scared of what he was being told.

2 Q Did the interpreter translate any of Harun's responses?

3 A Yes. Yes, Harun declared that he was an al-Qaeda fighter
4 and that those scars, he had gotten those scars from fighting
5 against American soldiers. He wanted to speak to an
6 ambassador of Niger and he said he was not a refugee, but a
7 fighter.

8 Q After hearing this, what did you do next?

9 A In the meantime, I had also alerted Mr. Gugliemo Battisti
10 and ask him to come over, and together with him we asked
11 Ibrahim if he wanted to put down in writing all that he had
12 just said.

13 Q Who is Mr. Gugliemo Battisti?

14 A Gugliemo Battista was the police officer in charge of
15 order and public safety on board of that ship, on the ship.

16 THE COURT: I need to interrupt you for a second.
17 Let me see counsel at sidebar.

18 (Sidebar; continued on next page.)
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1 (Sidebar conference held on the record out of the
2 hearing of the jury.)

3 THE COURT: I've just been advised that we just lost
4 the video feed. The question is should we go on or should we
5 break and try to restart?

6 MR. STERN: We want there to be a video feed. We
7 want him to be able to watch.

8 MR. ARIAIL: Your Honor, from the Government's
9 perspective, this is something we anticipated to happen. The
10 defendant has been advised of his rights. If we wait for
11 every technical difficulty that comes up, this is going to be
12 a lot of delay and we think he's waived his rights. He's not
13 here.

14 THE COURT: Well --

15 MS. KELLMAN: This from the man who wants to force
16 order everyone.

17 THE COURT: I'm going to take a lunch break now
18 early and try to restore it.

19 I'm a little surprised you're telling me that we
20 anticipated this. I didn't anticipate this. It's not
21 impossible, but I didn't anticipate it and I don't think it
22 should happen. It's not rocket science. Let's just get the
23 video feed working.

24 So we'll break for lunch, and when we come back,
25 let's make sure if it happens again it's only once or twice.

1 If it keeps happening, then at that point I think I may have
2 to find that the defendant has waived his right to get it.
3 But he might have been content with the notion that he'd have
4 a video feed and so I'm going to do what I can to see that he
5 gets it if it's possible to do it that way.

6 MR. STERN: I think for you to make that ruling, he
7 should at least be asked if he -- maybe he would say, "I don't
8 even want to watch it." That's up to him, obviously.

9 THE COURT: Can you make a phone call to anyone at
10 the facility and have them ask him?

11 MR. STERN: We can --

12 MS. KELLMAN: We can try.

13 THE COURT: Let's try that during lunch hour.

14 MR. ARIAIL: Your Honor, just for purposes of the
15 record, we are aware of no indications from the defendant that
16 he is actually interested in viewing his proceedings at all.
17 So I just put that out there as well.

18 THE COURT: I agree. That has been every
19 indication. That doesn't mean he shouldn't be asked at least
20 one time. Hopefully it won't be necessary to ask him again.

21 MR. ARIAIL: Understood.

22 THE COURT: All right. We'll break for lunch.

23 (Sidebar end.)

24 (Continued on following page.)

25

1 (In open court.)

2 THE COURT: Ladies and gentlemen, a trial is not
3 like a Broadway play that's carefully choreographed and
4 everything happens when it's supposed to. Sometimes things
5 happen that are not supposed to happen.

6 To accommodate that, we're going to break early for
7 lunch. Please come back at 1:10. Ms. Clarke, if she hasn't
8 already done it, will give you area restaurants to go to.
9 There's also a cafeteria right downstairs which is quite good.

10 Please remember do not talk about the case with
11 anyone. Put it out of your mind until you are back in that
12 jury room at 1:10, and of course keep an open mind throughout.

13 Have a good lunch. We'll see you at 1:10.

14 (Jury exits the courtroom.)

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16 (Continued on following page.)

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1 THE COURT: All right. The defense has an
2 assignment to do.

3 I did want to tell the parties that if you need to
4 see me before we reconvene, make sure you've reached Ms.
5 Clarke in advance and told her so that we don't have the
6 jurors all lined up in the hall waiting to come in while you
7 all want to talk to me.

8 Is there anything we need to talk about before we
9 break?

10 MS. WELLS: Yes, just briefly, your Honor.

11 THE COURT: Maybe we should excuse the witness.

12 The interpreters are advising him that I've just
13 said he may be excused.

14 (Witness leaves the witness stand.)

15 THE COURT: Okay. What's up?

16 MS. WELLS: We received requests from the press to
17 provide copies of exhibits that have been admitted into
18 evidence as they come in. Unless there is a problem that the
19 Court has or defense has with that, we intend to do so, and I
20 just wanted to raise it at this stage.

21 THE COURT: Any objection from defense?

22 MR. STERN: I would say generally we'd have no
23 problem.

24 If we have a specific problem with a specific
25 exhibit we'll raise it.

1 THE COURT: Okay. That's fine.

2 Okay. See you at 1:10.

3 MS. WELLS: Thank you, your Honor.

4 (Luncheon recess taken.)

5 (Continued on following page with the Afternoon

6 Session.)

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A F T E R N O O N S E S S I O N

(In open court.)

(Francesco Morgese resumed the witness stand.)

(Through the interpreter.)

THE CLERK: All rise.

THE COURT: Be seated, please. Someone has something to say?

MR. STERN: We contacted Adam Johnson. I told him what we would like him to ask our client. He did and didn't get a response one way or the other.

THE COURT: Okay. It occurs to me that we have had an interpreter interpreting everything that goes on in court into Hausa. We are doing this even as I'm saying this.

So I am telling the defendant that we won't wait for too many video repairs; and, if he wants to reconsider his attendance, he should let Adam know and we will break for sufficient time to get him to court.

That's up to him. We did repaired the link. It is fully functional now. So we can go on. Okay. Let's have the jury.

(Continued on the next page.)

1 (Jury enters.)

2 THE COURT: All right. Everyone be seated, please.
3 Let's continue with examination.

4 MS. WELLS: Thank you, your Honor.

5 DIRECT EXAMINATION

6 BY MS. WELLS (continuing):

7 Q Welcome back, sir. Before we broke for lunch, you had
8 mentioned that you had contacted someone by the name of
9 Battisti.

10 A Yes. Guglielmo, G-U-G-L-I-E-L-M-O, Battisti,
11 B-A-T-T-I-S-T-I, was the officer in charge of order and
12 public safety on the EXCELSIOR ship.

13 Q Were you joined by Mr. Battisti?

14 A Yes.

15 Q After he arrived what happened next?

16 A When Mr. Battisti arrived, through the interpreter we
17 asked Mr. Harun whether he wanted to put in writing what he
18 had said before.

19 Q Did Harun write a statement?

20 A Yes. We moved to an area which had been set up as a
21 police office, and before us he wrote on a piece of paper
22 his story, what he had said about himself.

23 Q I would like to show the witness what has been marked
24 for identification as Government Exhibit 17.

25 THE COURT: All right.

1 Q I'm showing you page 1 of 2 and 2 of 2.

2 Do you recognize this document?

3 A Yes. This is a statement personally written by Ibrahim
4 Harun Adnan.

5 Q Can you tell us how you recognize the document.

6 A I don't speak Arabic, but I can see on this document
7 the date, the year, 2005, the word Espingol,
8 E-S-P-I-N-G-O-L, and then there is also the fax number and
9 the word EXCELSIOR. I faxed this document through the
10 transmission office to the public prosecutor's office of
11 Agrigento, A-G-R-I-G-E-N-T-O.

12 MS. WELLS: Your Honor, I would move to admit
13 Government Exhibit 17.

14 THE COURT: Any objection?

15 MS. KELLMAN: No, your Honor.

16 THE COURT: Received.

17 (Government Exhibit 17 so marked.)

18 MS. WELLS: Permission to publish to the jury.

19 THE COURT: Yes.

20 (Published.)

21 Q All right, sir. You mentioned a few different items on
22 this document you that recognized.

23 Beginning with the fax information, can you
24 just show us where on the document that appears.

25 A Yes, here, here.

1 Q If you press a little bit harder on the screen I think
2 it will show up. All right. I don't think we are getting
3 anything.

4 Can you describe for us where on the document
5 it is, and I can show -- I can identify it for us.

6 A It's at the bottom of the page, exactly under the
7 number 17 perfectly. If I may see the upper part of the
8 sheet. Okay. All are there, yes.

9 Q You also mentioned there was a date visible.

10 Can you tell us where that is located?

11 Can you tell us how far down on the page? I
12 will identify it.

13 A It's on the upper part of the sheet on the right side.
14 You can see the date 2005, yes.

15 Q Here. And, finally, you mentioned that there was
16 another word.

17 What was the word that you recognized?

18 A Yes, Espingol.

19 Q Can you show us where that word is located on the
20 document?

21 A It's in the second line, starting from the top.

22 Q Here?

23 A Yes.

24 Q At the point -- up until the point when the defendant
25 wrote this statement how would you describe his behavior?

1 A He sounded like a very self-assured person, he spoke in
2 earnest, and he was really convinced of what he had just
3 said and he made the strong statement.

4 Q Was there any point in time when his behavior changed?

5 A Yes, when he finished writing on this piece of paper,
6 when he finished his statement in writing. Suddenly he
7 stood up in the office where he was standing, where he was,
8 and he rushed to the door and he tried to go outside the
9 door.

10 Q What else did he do at that point?

11 A From that point on the behavior of Harun changed
12 dramatically. He became very nervous. He started to
13 scream. He tried to grab a painting on the wall, trying to
14 hit us with it, and then he grabbed the handrail.

15 Q At that point what happened?

16 A He started to elbow us, and then while he was holding
17 onto the handrail, he started kicking us, hitting us with
18 his elbows, and he started to yell Alahu Akhbar, Alahu
19 Akhbar, and then Usama Bin Laden Akhbar. So we started
20 thinking that, you know, we didn't want to have a riot with
21 the other migrants on the ship.

22 Q You mentioned that he was elbowing and kicking.

23 Did he elbow or kick you?

24 A Yes, yes. I was hit at least two or three times, but
25 this happened also to the other people surrounding me,

1 trying to help.

2 Q What happened next?

3 A When I saw that the situation was getting out of
4 control, I intervened with a special maneuver. I used my
5 arms to restrain him and I pin him down on the floor and
6 then I handcuffed him.

7 Q You mentioned using a special maneuver.

8 Under what circumstances do you use that
9 particular technique?

10 A This technique is used when we are dealing with violent
11 and dangerous people and when there is violence and when
12 someone resists arrest.

13 Q At this point was the defendant restrained?

14 A Yes.

15 Q How did he behave after he was restrained?

16 A Even though he was on the floor handcuffed with his
17 arms behind his back, he kept moving violently and he kept
18 screaming Hal Akhbar; and at that point, in agreement with
19 Mr. Battisti, we decided to call the doctor on board,
20 Pellegrini Valentino, V-A-L-E-N-T-I-N-O. Pellegrini,
21 P-E-L-L-E-G-R-I-N-I.

22 Q Did the doctor come?

23 A Yes. The doctor arrived, and I asked him to sedate
24 Ibrahim. We wanted to move to a safer place, and so he
25 sedated the man in -- by injecting some sedative in his leg.

1 Q Was Harun placed under arrest?

2 A Yes, he was placed under arrest.

3 Q For what charges?

4 A Assault and resisting arrest.

5 Q Which jurisdiction in Italy was Harun's case assigned
6 to?

7 A The jurisdiction was the public prosecutor's office of
8 the City of Agrigento, in Sicily.

9 Q How was it determined that the public prosecutor's
10 office in Agrigento, Sicily had jurisdiction over the case?

11 A When all this occurred, I asked the captain, the ship
12 captain, to check the coordinates of the ship; and, based on
13 that, I realized that the jurisdiction fell under the office
14 of public prosecutors of Agrigento.

15 Q Before June of 2011 had you ever seen or heard of
16 Harun?

17 A No, never.

18 Q And other than preparation for your testimony today,
19 have you had any involvement in the American case before
20 this court?

21 A No, absolutely not.

22 MS. WELLS: Nothing further, your Honor.

23 THE COURT: Any cross?

24 MS. KELLMAN: Just briefly, judge.

25

1 CROSS-EXAMINATION

2 BY MS. KELLMAN:

3 Q Good afternoon, Mr. Morgese.

4 A Good morning -- good afternoon.

5 Q Just a few follow-up questions, if I may.

6 You said that there came a time on this ship,
7 the EXCELSIOR, that you were approached by this fellow you
8 described as Harun, correct?

9 A Yes.

10 Q Would it be fair to say that when Mr. Harun --
11 withdrawn.

12 You said at that time Mr. Harun asked you for
13 bottled water, correct?

14 I'm sorry. I asked you: Yes or no, did he
15 ask you for a bottle of water?

16 A Yes.

17 Q And would it be fair to say in terms of his demeanor
18 when he asked you for that bottle of water that he was
19 extremely courteous, correct?

20 A He simply asked for a bottle of water. He used the
21 same way of asking for some water as other people had done
22 before.

23 Q But my question to you, sir, would it be: Fair to say
24 or describe his behavior as extremely courteous when he
25 asked you for that bottle of water? Would you agree with

1 that description?

2 A More than courteous, I would say normal.

3 Q Do you recall -- well, withdrawn.

4 Would it be fair to say that after this
5 encounter with Mr. Harun you ultimately wrote a report? Am
6 I right?

7 A Yes.

8 Q And do you recall, sir, whether or not in that report
9 you recorded that this individual Harun had been extremely
10 courteous, just if you recall?

11 A No. This I can't remember, whether or not I wrote it.

12 MS. KELLMAN: Your Honor, may I approach?

13 THE COURT: You may.

14 MS. KELLMAN: I'm showing the witness what has
15 previously been marked as Government Exhibit 3500-F-1 --
16 F-1-A, and apparently I need to get a second document. Can
17 I have a moment, please?

18 (Pause.)

19 MS. KELLMAN: May I approach, your Honor?

20 I'm going to ask the interpreter, if he
21 could, to read a particular sentence and see if it refreshes
22 the witness' recollection.

23 MS. WELLS: Your Honor, I want to make sure this
24 is the Italian version, not the English report?

25 MS. KELLMAN: It's the English report, judge, and

1 they have stipulated, as have we, to the accuracy of the
2 report.

3 MS. WELLS: May we approach?

4 THE COURT: Okay.

5 (Continued on the next page.)
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1 (Sidebar conference.)

2 MS. KELLMAN: If there is a concern about the
3 accuracy of the Government's report, the translated report,
4 then I think we would like our stipulation back.

5 MS. WELLS: Your Honor, there is an Italian report
6 written by the witness that can be placed in front of him,
7 and he can read a sentence from that report. I don't know
8 why --

9 THE COURT: But the translation is right, and
10 that's the only one Ms. Kellman can read, because I can't
11 read -- I mean she can't read Italian.

12 MR. STERN: We can't even point out to him the
13 line. We don't know where it is.

14 MS. KELLMAN: Of course I can't.

15 MR. ARIAIL: First of all, I don't think there is
16 any stipulation about the accuracy of the translation. We
17 had it translated. We believe it to be relatively accurate.
18 He may have a different interpretation of his report than
19 the English, and that the translator --

20 THE COURT: Is there a stipulation or not?

21 MR. ARIAIL: No, there is not.

22 MS. WELLS: No, there is not.

23 MR. ARIAIL: It's 3500 material, your Honor. This
24 is not an exhibit.

25 THE COURT: If there is not, then you have to have

1 the interpret look for the word and see if it's there in the
2 Italian and then have him, if it's there, then you have got
3 to ask him that.

4 MR. STERN: Judge, just so I'm sure I understand.
5 So all of the translations we have, you are not taking the
6 position they are accurate? We have to have them all
7 translated for ourselves to see? Is that right?

8 THE COURT: Is that right?

9 MR. ARIAIL: Your Honor, I think the issue is a
10 translator may translate an Italian word in a way that is
11 accurate. It may not accurately, though, reflect exactly
12 what he means.

13 THE COURT: Are you offering the English
14 translation of this into evidence?

15 MR. ARIAIL: No, absolutely not.

16 MS. KELLMAN: That's because they haven't offered
17 the Italian one either, judge.

18 THE COURT: That's right.

19 MR. ARIAIL: That's what witnesses are for.

20 THE COURT: Look, the English that you got was
21 essentially, as I understand it, a courtesy copy. That's
22 all it is, it's a courtesy translation. You are free to do
23 your own translation and disagree with it; and the jury is
24 not seeing the translation anyway.

25 So if you want to ask him what he said, since

1 he said it in Italian, you have to ask him about the
2 Italian.

3 MS. WELLS: All right.

4 MR. STERN: Judge, one second. We got 3500 this
5 morning. When were we free get some of it translated?

6 MS. WELLS: This was not provided this morning.

7 MR. STERN: As a general rule, we got this stuff
8 this morning.

9 THE COURT: I assumed when I said that that you
10 had gotten it.

11 MS. KELLMAN: We did, judge.

12 THE COURT: So that is not --

13 MR. STERN: Are we supposed to have them
14 translated before we use them?

15 THE COURT: No, you are not, with regard to 3500
16 material that you just got, but we will take them one at a
17 time. I understand this was not something new to you this
18 morning.

19 MR. STERN: I'm not making that claim about this.

20 THE COURT: So let's deal with this. We will deal
21 with the others when they come up.

22 MS. KELLMAN: So if the translation isn't accurate
23 and the Government isn't willing to commit themselves to the
24 accuracy, I think we are probably in a position to withdraw
25 all of our stipulations as to the accuracy of the

1 interpretations.

2 THE COURT: I disagree with you.

3 MS. KELLMAN: I'm talking about other stipulations
4 as to accuracy.

5 THE COURT: If there is any you want to withdraw,
6 you will let me know.

7 MS. KELLMAN: Will do.

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9 (End of sidebar conference.)

10 (Continued on the next page.)

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1 (In open court.)

2 MS. KELLMAN: Your Honor, may I approach the
3 witness with 3500-FM-1-I?

4 THE COURT: Okay.

5 BY MS. KELLMAN:

6 Q Mr. Morgese, do you recognize this document?

7 A Yes.

8 Q What do you recognize it to be?

9 A It's a service report.

10 Q Do you know whether or not that report was ever
11 translated into English?

12 A No.

13 Q Do you speak any English?

14 A Little.

15 Q You communicated with Mr. Harun in English, am I right,
16 back on June 24, 2011, correct?

17 A Yes, in few words, yes.

18 Q And -- withdrawn.

19 When he approached you and asked you for a
20 bottle of water, I asked if he was extremely courteous in
21 speaking in English.

22 Do you recall that question? Do you recall my
23 question is the question. Do you recall my question is my
24 question.

25 A Yes.

1 Q Does looking at your report, the one that's in Italian,
2 in front of you, refresh your recollection that you
3 described my client as extremely courteous?

4 A Yes. That's what it says here. Actually, yes, it says
5 that he was extremely courteous, but this was with respect
6 to what happened later on.

7 Q I am asking you simply, sir: When he asked for the
8 bottle of water was he extremely polite?

9 Does reading your report refresh your
10 recollection that that was your impression of his demeanor
11 when he asked for the bottle of water? That's all I'm
12 asking.

13 A Yes.

14 Q Would it be fair to say as well that until you had
15 asked him about the circumstances of the scar on his arm
16 that his demeanor had been quite calm? Correct?

17 A Yes, yes.

18 Q Would it also be fair to say that once you asked him to
19 explain the scar, that he became nervous and agitated,
20 correct?

21 A Yes. Subsequently at first he didn't answer. Then he
22 tried to answer the question, and then he became violent
23 subsequently.

24 Q Well, would it be fair to say that he didn't become
25 violent until other officers put their hands on him? Am I

1 correct?

2 A No one laid a hand on him until he actually started
3 resisting arrest and while becoming violent.

4 Q When you say that he was resisting arrest and that's
5 when he became violent, was he being arrested for asking for
6 a bottle of water?

7 A No, absolutely not.

8 Q Would it be fair to say that you didn't notice any
9 strange behavior until after you -- he showed you his arm
10 and you asked about the circumstances of the injury on his
11 arm? Isn't that the first time that you saw him act strange
12 and nervous?

13 A No. He became very serious when he started answering
14 about his scar.

15 Q I asked you, sir, whether or not it would be fair to
16 say that when you started asking about his scar that his
17 demeanor became strange and somewhat nervous.

18 A Yes. He became very serious, and yes.

19 Q Sir, I'm asking you -- you have told us that you
20 believe he became serious. I'm asking you if you recall
21 whether or not it would be appropriate to describe his
22 behavior at that moment as strange and somewhat nervous.

23 MS. WELLS: Objection, asked and answered.

24 THE COURT: Not quite. I will allow it one more
25 time.

1 Q Do you recall that, sir?

2 A Can you specify from what moment you are referring to?

3 Q Yes. Would it be fair to say, sir, that at the time
4 that you inquired about the injury on his arm that from that
5 time, from that question, it's your recollection, is it not,
6 sir, that his behavior became strange and somewhat nervous?

7 MS. KELLMAN: Your Honor, I don't know what the
8 answer is. I'm going to move to strike it.

9 MS. WELLS: Objection, your Honor.

10 MS. KELLMAN: My question is would he describe --

11 THE COURT: Stop, stop. Please tell the witness
12 that if it's possible to answer a question yes or no and
13 give a fair answer, he should do that. If he can't answer
14 it yes or no fairly, then he doesn't have to do that.

15 Let's try another question. Go ahead.

16 Q Would it be fair to say, sir, that at the time you
17 asked Mr. Harun about the wound on his arm that he
18 demonstrated a strange demeanor and became somewhat nervous?
19 Would that be a fair description of his behavior at the time
20 you asked him about the wound on his arm, yes or no?

21 A Yes.

22 Q Thank you. You also told us that in the ensuing
23 moments that Mr. Harun became more and more agitated; am I
24 right, yes or no?

25 A Yes.

1 Q Thank you. Now, up until the time that he wrote this
2 statement would it be fair to say that you were
3 communicating with him in English?

4 A Yes.

5 Q And it was only after you asked him about the scar that
6 he began to utter some phrases in Arabic; is that right,
7 correct?

8 A That's not correct.

9 Q Well, you said that the questions that you were asking
10 him before he became agitated were in English, correct?

11 A Yes.

12 Q And then after he became agitated he started to respond
13 in Arabic, correct?

14 A Yes, when the interpreter arrived.

15 Q So up until the time the interpreter arrived -- well,
16 withdrawn.

17 From the time you asked him about the scar on
18 his arm until he had written the statement -- withdrawn --
19 until the interpreter arrived, how much time had passed?

20 A A few minutes.

21 Q And during that time you had asked him if he would
22 write down a statement; am I correct?

23 A Yes.

24 Q And he was cooperative, correct?

25 A Yes. He said that he was willing to write down his

1 statement.

2 Q And he wrote down a statement, that you showed us,
3 correct?

4 A Yes.

5 Q And at this stage of the game he hadn't struck out to
6 anybody or showed any aggression at all, correct?

7 A No, he hadn't struck anybody up to that point.

8 Q After he wrote the statement would it be fair to say
9 that it was then that he became nervous, began perspiring,
10 and that his hands began to tremble and his speech began to
11 be hesitant? Would that be a fair statement?

12 A Yes.

13 Q Did there come a time when Mr. Harun -- well,
14 withdrawn.

15 Would it be fair to say from that point on
16 Mr. Harun became more and more agitated, correct?

17 A Yes.

18 Q And that it was as a result of his agitation that you
19 first put hands on him; am I right?

20 A No, absolutely not.

21 Q Prior to the time that you used this maneuver to subdue
22 Mr. Harun, had he told you that it was his intention to jump
23 off the ship and swim back to Libya? Had he told you that?

24 A He said that he was not a refugee but he was a fighter
25 and he wanted to go back to Libya to fight.

1 MS. KELLMAN: I'm going to move to strike that,
2 your Honor. It's not responsive.

3 THE COURT: The motion is granted. The jury will
4 disregard the answer.

5 Q My question is, sir: After writing the statement did
6 Mr. Harun say to you specifically that he wanted to go back
7 to Libya and he was willing to swim there by jumping off the
8 ship? Did he tell you that?

9 A Yes. I believe it was his way of saying that he wanted
10 to go back to Libya.

11 Q When you say you believe it was his way of saying it,
12 that's what he said, right, he wanted to jump off the ship
13 and swim back to Libya? That's what told you; am I right?

14 A Yes, yes.

15 Q At that point he began pushing and screaming; am I
16 right?

17 A Yes.

18 Q And that's when you used this maneuver to subdue him,
19 correct?

20 A No. We restrained him, rather, the time when he was
21 out of himself and he had started to kick and to use his
22 elbows, trying to hit us.

23 Q Do you recall, sir, whether or not in the report --
24 well, withdrawn.

25 Do you recall, sir, that there came a time

1 when you felt that you needed to neutralize Mr. Harun and
2 you eased him down to the floor? Do you recall, sir, that
3 happening on June 24, that you eased him down to the floor?

4 A Yes.

5 Q And even though he was on the floor, would it be fair
6 to say that he continued to struggle and then several times
7 struck the officers? Would that be a fair thing to say?

8 A Yes.

9 Q Would it be fair to say that the struggling began when
10 Mr. Harun attempted to leave the ship after he said that he
11 was going to jump off the ship and swim back to Libya,
12 correct?

13 A No. The struggle started when he tried to get out of
14 the office and hit us.

15 Q Would it be fair to say, sir, that you blocked him from
16 exiting that room after he made the statement? Is that
17 correct?

18 A Yes, yes.

19 Q So he threatens to jump off the ship and you block him,
20 correct?

21 A I block him when he was kicking. He was not jumping
22 off the ship at that time. He was striking us out.

23 MS. KELLMAN: Your Honor, with the court's
24 permission, your Honor, I would like to read a portion of
25 this document as a prior consistent statement -- prior

1 inconsistent statement.

2 MS. WELLS: Objection, your Honor.

3 THE COURT: Sustained.

4 Q Mr. Morgese, I would ask you to take a look at the
5 second full paragraph in the report that you have.

6 I ask you whether or not reviewing that
7 paragraph refreshes your recollection that Mr. Harun
8 suddenly jumped up and went towards the door, screaming that
9 he wanted to go back to the Libyan coast, even if he had to
10 swim by jumping off the ship.

11 Do you recall, sir, whether or not -- well,
12 withdrawn.

13 Does reading your report refresh your
14 recollection that that happened on that day, yes or no?

15 A Yes.

16 Q Does looking at your report, sir, refresh your
17 recollection that it was then that you immediately put
18 yourself --

19 MS. WELLS: Objection, your Honor.

20 THE COURT: Well, I haven't heard the question yet
21 so I can't say.

22 MS. WELLS: Your Honor, she is reading from the
23 report, which was just sustained.

24 THE COURT: I don't know that. Let's hear the
25 question.

1 Q Sir, does looking at your report refresh your
2 recollection as to whether or not it was then that you first
3 blocked Mr. Harun's exit from the ship, after he threatened
4 to jump off the ship?

5 A Yes. This is what he was saying, but we blocked him
6 because he had become violent and not because he was jumping
7 off the ship.

8 Q Would you point to the part of --

9 MS. KELLMAN: Your Honor, I'm going to offer this
10 report. This is his report. This is FM -- 3500-FM-1-I and
11 1-E.

12 THE COURT: Let's have a sidebar.
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14 (Continued on the next page.)
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1 (Sidebar conference.)

2 THE COURT: What are you offering it as?

3 MS. KELLMAN: A prior inconsistent statement.

4 THE COURT: A prior inconsistent statement? I
5 don't know. Someone is going to have to show me the
6 statement because I can't make a determination as to whether
7 it's inconsistent.

8 MS. WELLS: Your Honor --

9 MS. KELLMAN: I'm asking for the paragraph that
10 starts, "After such statements," and goes down further.
11 Essentially what his statement reports is that there was no
12 violence until --

13 THE COURT: Can I see it, please?

14 MS. KELLMAN: Yes. It starts, "After such
15 statements."

16 MS. WELLS: I don't think the witness' testimony
17 is inconsistent with the contents of that report.

18 THE COURT: Can I read it?

19 MS. WELLS: Of course, your Honor.

20 THE COURT: Ms. Kellman, I'm not seeing the
21 inconsistency.

22 MS. KELLMAN: Your Honor, he testified several
23 times, including on direct, that the violence started after
24 my client started hitting them; but here it's clear that
25 Mr. Harun doesn't start swinging until after they try to

1 subdue him. They push him against the wall; they block him.
2 That's what it says.

3 MS. WELLS: The witness has testified very clearly
4 that when Harun got up and attempted to leave the room that
5 they blocked him. That is not at all inconsistent with
6 anything in this report.

7 Ms. Kellman's questions have been lengthy and
8 confusing. So we may have something that's more muddled on
9 cross-examination, but he testified to this precisely.

10 THE COURT: I'm going to let you clarify it. Your
11 questions have been very long and sometimes compound; and,
12 especially with an interpreter, it's easy to lose a nuance
13 like you are going for.

14 I'm not sure you can get the nuance that you
15 are going for with an interpreted question. You are talking
16 about a time sequence.

17 MS. KELLMAN: That's why I tried to offer that
18 paragraph and let the jury decide whether or not it's
19 inconsistent.

20 MR. ARIAIL: It's clear that Ms. Kellman's
21 strategy here is to say --

22 THE COURT: No, no. I think I'm going to stop
23 this right now. I'm only going to get one attorney per
24 objection. You can whisper to each other.

25 MR. ARIAIL: Sorry.

1 THE COURT: What's the problem with giving them
2 this one paragraph?

3 MS. WELLS: Your Honor, there are a lot of
4 witnesses here --

5 THE COURT: What's the problem?

6 MS. WELLS: It's hearsay. It's not admissible
7 under ordinary circumstances.

8 MS. KELLMAN: It's a prior inconsistent statement.

9 THE COURT: I'm not sure it's been established,
10 the inconsistency.

11 MS. KELLMAN: Can I argue how it is, judge? He
12 says right here that the writer immediately put himself in
13 front of him. There is nothing prior to that time about any
14 contact.

15 THE COURT: You are drawing inferences that you
16 have not established from him. It's not inconsistent based
17 on your question. I will give you one more time to try to
18 show it's inconsistent.

19 MS. KELLMAN: I just wasn't there yet, judge.

20 THE COURT: Well, you are starting in big blocks
21 instead of little blocks, and that's why you are not getting
22 there. Try it one more time, but then I'm going to cut it
23 off because you have spent quite a bit of time on something
24 that, if it is inconsistent, it's not a huge inconsistency.
25 I'm not sure it's a material inconsistency.

1 MS. KELLMAN: I'm doing the best I can.

2 THE COURT: I understand. Try again.

3 MS. WELLS: I do think the record on his direct
4 testimony was clear that upon the defendant's attempt to
5 exit the room they got up and blocked him from the door. I
6 think we can get a readback of that.

7 THE COURT: That was clear.

8 MS. KELLMAN: That was clear. That's not what I'm
9 arguing about.

10 THE COURT: She is going for something more
11 nuanced. I'm going to give her one more shot at it.

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13 (End of sidebar conference.)

14 (Continued on the next page.)

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1 (In open court.)

2 BY MS. KELLMAN:

3 Q Mr. Morgese, I believe that you and I can agree that
4 there came a time when Mr. Harun attempted to leave the
5 room, where he had made this statement, and that you blocked
6 him, correct, yes or no?

7 A Yes. I was in front of him.

8 Q And you blocked his exit from that room, correct?

9 A I tried to block his exit, but he managed to get out
10 anyway.

11 Q And you asked for a backup; you had other people
12 assisting you, correct?

13 A Yes.

14 Q And at this point would it be fair to describe
15 Mr. Harun's demeanor as very agitated and very upset,
16 correct?

17 A Yes.

18 Q And he was so crazy -- his behavior was so crazy that
19 he had to be subdued, you said, for a doctor to subdue him
20 with a sedative, correct?

21 MS. WELLS: Objection, argumentative.

22 THE COURT: Overruled.

23 Q Correct, yes or no?

24 MS. WELLS: Objection.

25 THE COURT: I will ask the witness again. If he

1 can answer the question yes or no and that is a complete
2 answer, then he should do that. If he can't, he can just
3 say I can't do that.

4 A I cannot answer with yes or no. I would have to
5 explain that he was sedated after we arrested him.

6 Q Yes, I believe we agree with that.

7 My question, sir, is: Before he was arrested
8 would it be fair to say that during the struggle he became
9 very agitated, very angry; am I right?

10 A Very violent.

11 Q And that's when he began striking at the officers who
12 were trying to subdue him on the floor, correct?

13 A Yes, to block him.

14 Q And it was that state of profound agitation that caused
15 you to reach out to the ship's infirmary, because he was
16 acting crazy and you wanted to get him a sedative, correct?

17 MS. WELLS: Objection.

18 THE COURT: Sustained, sustained.

19 MS. KELLMAN: I will rephrase it, judge.

20 Q Would it be accurate to say that as a result of
21 Mr. Harun's profound agitation that you reached out to the
22 medical staff so he could be sedated, correct?

23 A Yes, to avoid further violence and agitation for both
24 things, yes.

25 Q But it would be fair to describe his behavior at that

1 point as extremely -- as profoundly agitated, correct?

2 A Yes, it was agitated, yes.

3 Q I'm asking you if you ever said that he was profoundly
4 agitated.

5 A If profoundly agitated means very agitated, yes, he was
6 very agitated.

7 Q Would it be fair to say he was acting crazy?

8 MS. WELLS: Objection.

9 THE COURT: I think it's enough.

10 MS. KELLMAN: I think he can --

11 THE COURT: He could, but he effectively has. So
12 we don't need to again.

13 MS. KELLMAN: Okay. I will take that. Thank you,
14 judge. Nothing further.

15 THE COURT: Any redirect?

16 MS. WELLS: Yes, your Honor.

17 REDIRECT EXAMINATION

18 BY MS. WELLS:

19 Q Mr. Morgese, you were asked a number of questions on
20 cross-examination about statements that defendant made.

21 At any point -- or, excuse me.

22 One of those statements was something to the
23 effect that the defendant told you he wanted to swim back to
24 Libya. Do you remember those questions?

25 A Yes. He did say that, and what you understood it to be

1 was a way of saying that he wanted to go back to Libya and
2 fight.

3 MS. KELLMAN: Objection, move to strike.

4 THE COURT: Yes. The answer is stricken after the
5 word "Yes." The jury will disregard it.

6 Q When the defendant said that he wanted to swim back to
7 Libya, did you believe him?

8 MS. KELLMAN: Objection.

9 THE COURT: No. I will allow it.

10 A Honestly, no, I didn't.

11 Q Why not?

12 MS. KELLMAN: Objection.

13 THE COURT: I will allow it.

14 A I thought it was just a way of saying like one would
15 say, I want to go to the moon. Certainly he could not swim
16 back to Libya.

17 Q What, if anything, did the defendant say about why he
18 wanted to go back to Libya?

19 MS. KELLMAN: Objection, beyond the scope.

20 THE COURT: Sustained.

21 MS. WELLS: Nothing further.

22 THE COURT: All right.

23 MS. KELLMAN: May I briefly, your Honor.

24 THE COURT: Very briefly.

25 MS. KELLMAN: Very.

1 RECROSS-EXAMINATION

2 BY MS. KELLMAN:

3 Q Mr. Morgese, you just told the jury that you didn't
4 believe Mr. Harun when he said that he was going to jump off
5 the ship and swim back to Libya, correct, yes or no?

6 A Yes. It was impossible.

7 MS. KELLMAN: Move to strike, your Honor.

8 THE COURT: Okay. It's stricken. The jury will
9 disregard.

10 Q My question, sir, please, is simply: Did there come a
11 time when my client explained that he intended to jump off
12 the ship and swim back to Libya? I'm not asking you if it
13 was possible. I'm asking you if he said that.

14 THE COURT: I'm going to have him not answer that
15 because he said it on cross before. Yes. The defendant
16 said that. That's the testimony.

17 Q At the time my client made the statement that he was
18 going to jump off the ship and swim to Libya would it be
19 fair to say that you immediately put yourself in front of
20 him, blocking his exit, would that be accurate, yes or no?

21 A Yes.

22 Q Would it be fair to say, sir, that up to the point
23 where you blocked his exit following that statement that he
24 had not shown any violence towards anybody until that time,
25 correct?

1 A Up until that time, no. He was nervous and he kept on
2 repeating those things, but, no.

3 Q No violence?

4 A Not until that point, no.

5 Q And he had already made the statement, written down the
6 statement, correct?

7 A Yes.

8 MS. KELLMAN: Nothing further.

9 THE COURT: All right. Nothing else?

10 MS. WELLS: No, your Honor.

11 THE COURT: All right. You may step down. Thank
12 you very much.

13 All right. The Government may call its next
14 witness.

15 MR. JACOBS: Thank you, judge. The Government
16 calls -- we will wait until the witness leaves.

17 THE COURT: Okay.

18 MS. WELLS: Your Honor, before the next witness,
19 we have a stipulation we would like to read into the record.

20 THE COURT: All right. Go ahead.

21 Ladies and gentlemen, a stipulation is a fact
22 that is agreed to by the parties. When they agree to that,
23 it means you have to accept it as true.

24 Is this a fact stipulation or a document
25 authentication stipulation?

1 MS. WELLS: It is a translation stipulation and --

2 MS. KELLMAN: May we approach?

3 THE COURT: Yes.

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5 (Continued on the next page.)

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1 (Sidebar conference.)

2 MS. KELLMAN: May we did, as we always do, take the
3 Government at its word that a stipulation -- that a
4 translation that their interpreters have done is accurate,
5 but now they have made it clear to us that they don't have
6 confidence in the accuracy of the translations; and so, it's
7 our intention to withdraw our stipulation.

8 THE COURT: I'm going to deny that. I don't think
9 there is grounds for withdrawing from the stipulation.

10 The fact of the matter is, ultimately, you
11 got the witness to agree with, I think, everything in the
12 translation. So there is nothing inaccurate about that
13 translation, which was not one of the ones subject to the
14 stipulation anyway. So I'm going to deny that request.

15 MS. KELLMAN: Very good.

16

17 (End of sidebar conference.)

18 (Continued on the next page.)

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1 (In open court.)

2 MS. WELLS: Your Honor, just to make things easier
3 to follow along, may I put this up on the screen for the jury
4 as I read it?

5 THE COURT: Okay. You are putting in the
6 stipulation, that's fine.

7 MS. WELLS: This is Government Exhibit 304.

8 It is hereby stipulated and agreed by and
9 between the United States of America and the Defendant
10 Ibrahim Suleiman Adnan Adam Harun Hausa, by their
11 undersigned attorneys, that, if called as a witness at
12 trial, an interpreter fluent in Arabic and English would
13 testify as follows: Government Exhibit 17 contains
14 handwritten text in Arabic; Government Exhibit 17T contains
15 a true and accurate English translation of the Arabic text
16 in Government Exhibit 17.

17 And, your Honor, we would then move to admit
18 Government Exhibit 17T, which is attached to this
19 stipulation here.

20 THE COURT: Okay. That's granted.

21 (Government Exhibit 17T so marked.)

22 MS. WELLS: Pardon me. The third line of the
23 stipulation, excuse me, This stipulation is admissible into
24 evidence as Government Exhibit 304.

25 THE COURT: And it's in evidence as 304.

1 (Government Exhibit 304 so marked.)

2 MS. WELLS: Here is Government Exhibit 17T, and
3 I'm just going to read the first three lines here. I, the
4 so-called, Adnan Ibrahim Harun Adam. Nom de guerre:
5 "Espingol." I am a member of Al Qaeda organization in West
6 Africa "ALAQWAS."

7 THE COURT: Okay. Now we are proceeding with this
8 witness.

9 MR. JACOBS: Your Honor, the Government calls
10 Guglielmo Battisti.

11 THE COURT: I take it this is more Italian.

12 MR. JACOBS: Yes, your Honor.

13 THE CLERK: Please raise your right hand.

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15 (Continued on the next page.)

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1 (In open court; 2:31 p.m.)

2 THE WITNESS: I do.

3 COURTROOM DEPUTY: Please state and spell your name
4 for the record.

5 THE WITNESS: Gugleimo, G-u-g-l-e-i-m-o. Battisti,
6 B-a-t-t-i-s-t-i.

7 COURTROOM DEPUTY: Thank you. You may be seated.

8 THE COURT: You may inquire.

9 MR. JACOBS:: Thank you, Judge.

10 DIRECT EXAMINATION

11 BY MR. JACOBS:

12 Q Good afternoon, sir.

13 A Good afternoon, everybody.

14 MR. JACOBS: I'd like to show the witness what's
15 already in evidence as Government Exhibit 26.

16 THE COURT: All right.

17 Q Sir, does this individual look familiar to you?

18 A Yes. I think this is the person I placed under arrest in
19 June 2011 when I was in Lampedusa.

20 Q We'll turn back to this later, but first I want to ask
21 you some background questions.

22 What country did you live in?

23 A Italy.

24 Q And who do you work for?

25 A I work for the Ministry of the Interior. I'm an officer

1 of the Italian State Police.

2 Q And what is your rank with the Italian State Police?

3 A I am a Deputy Commissioner of the Italian State Police.

4 Q Very generally, what are your responsibilities in that
5 role?

6 A I'm a chief of an investigative team which consists of 33
7 detectives. We investigate different types of
8 crimes -- organized crime, homicides, drug trafficking,
9 robberies, and so forth and so on.

10 Q How long have you worked for the Italian State Police?

11 A Since 2005.

12 Q I'd like to direct your attention now to June of 2011.

13 Were you assigned to a particular location at that
14 time?

15 A Yes, I was assigned to the Italian mission to the refugee
16 center in the Island of Lampedusa.

17 Q I would like to show the witness what's in evidence as
18 Government Exhibit 205?

19 THE COURT: All right.

20 Q Mr. Battisti, you mentioned Lampedusa.

21 Can you please point to Lampedusa on this map if you
22 see it?

23 A (Marking).

24 Q And can you please point to Italy as well. The mainland
25 of Italy.

1 A (Marking).

2 Q And also for reference Africa.

3 A (Marking).

4 Q And lastly, Libya?

5 A (Marking).

6 Q Okay. Can you describe Lampedusa's location?

7 A Lampedusa is a small island in the Mediterranean Sea.
8 It's closer to the African coast than to Italy. But it's part
9 of the Italian -- of the Republic of Italy. And this is the
10 first land people encounter when they depart from Libya or
11 Tunisia. So Lampedusa for Europe is sort of like Ellis Island
12 for the United States.

13 Q Now, earlier you testified that you were on Lampedusa for
14 a humanitarian mission.

15 Can you expand on that?

16 MS. KELLMAN: Objection. Relevance.

17 THE COURT: I'm going to allow it. Well, I don't
18 know.

19 MR. JACOBS:: Let me withdraw it.

20 Q Can you very briefly explain why you were on Lampedusa,
21 sir?

22 A At that time, in 2011, there was a political crisis in
23 Libya and, therefore, there was no control of the Libyan
24 coast. And on a daily basis, hundreds and hundreds of people
25 were leaving the Libyan coast. Women, children, the elderly

1 to go to Europe. And I was in the place where these
2 foreigners were taken.

3 Q Now, while you were on Lampedusa, did you actually
4 personally see any of those boats arrive?

5 A Yes. I saw the disembarkation of many of these people in
6 what we call the jaloopies of the sea. And we saw many of
7 these people saved by the Italian Navy who disembarked in
8 precarious health condition.

9 Q Did there come a time when you left the Island of
10 Lampedusa?

11 A Yes. Shortly after the June 20th, during one night,
12 several of the boats arrived simultaneously. Therefore, the
13 identification center on the Island of Lampedusa was
14 overcrowded. And, therefore, there was the need to transport
15 more than 1,000 foreigners while their identification centers
16 in the Italian territory. To do so, the Ministry of the
17 Interior had rented a large cruise ship and I was assigned to
18 that ship as the chief of safety.

19 Q You mentioned a ship. Do you remember the name of that
20 ship?

21 A I think the name was EXCELSIOR and it belonged to the
22 Grimaldi Cruise Line Company.

23 Q And you testified that you were the head of security, how
24 many officers were on the EXCELSIOR?

25 A I had 40 uniformed people. My assistant and one officer

1 from the Corps of the Carabinieri.

2 Q And approximately, how many migrant passengers were these
3 40-some officers responsible for?

4 A More than 1,100.

5 Q All right. I'd like to direct your attention now to the
6 morning of June 24, 2011.

7 Where was the EXCELSIOR at that time?

8 A It was in open sea with the migrants, the foreigners, on
9 board and all of us keeping an eye on their safety. We were
10 close to the Island of Lampedusa.

11 Q You said open sea, what sea is that?

12 A The Mediterranean Sea.

13 Q Were you alerted to any unusual activity that morning?

14 A Yes.

15 Q By whom?

16 A Maresciallo Morgese of the Guardia di Finanza.

17 Q After getting information from Marshal Morgese, what did
18 you do?

19 A Because of what I had been alerted about, I decided to
20 speak with a suspicious person in the office that the ship
21 personnel had given us as a police office in order to do
22 everything in a separate way.

23 Q First, did you come to learn the name of this individual?

24 A He had no documents on him, so I know the name that he
25 told me.

1 Q And what name did he tell you?

2 A Ibrahim Harun Adnan.

3 Q I'm going to refer to that individual as Harun going
4 forward.

5 Did you have any interactions with Harun?

6 A Yes. Once we were in the office, I started hearing from
7 him.

8 Q And how did that interaction begin?

9 A In the beginning, we started with our broken English
10 because I spoke a little bit of English and he could make
11 himself understood in English. And then through a person,
12 so-called cultural mediator, someone who spoke Arabic
13 fluently, who came almost immediately after.

14 Q And do you recall any of the English words that Mr. Harun
15 said to you?

16 A Yes, because when he spoke in English, he kept repeating
17 the concept that he didn't belong on that ship. That he was
18 not a migrant; that he was a fighter. And, as he said, that I
19 remembered that he constantly said something like "fight" or
20 "fighter."

21 Q You mentioned an interpreter came. With the
22 interpreter's help, what, if anything, did you ask Harun?

23 A Since he was telling me that he was a fighter, I asked
24 him what he was fighting against.

25 Q And when you asked him what or who he was fighting

1 against, how did he respond?

2 A He said that he was not afraid, of us, and he was not
3 afraid of ending up in Guantanamo.

4 Q What did you understand him to mean by Guantanamo?

5 THE COURT: Sustained.

6 Q After he said he wasn't afraid of you or going to
7 Guantanamo, who, if anything, did you ask him?

8 A When he said Guantanamo, I got alarmed and I asked him
9 what has Guantanamo to -- what does Guantanamo have to do with
10 anything?

11 Q And after you said, What does Guantanamo have to do with
12 anything, how did he respond?

13 A He almost -- it seemed that he was resentful and almost
14 offended.

15 MS. KELLMAN: Objection, your Honor. Move to
16 strike.

17 THE COURT: Overruled.

18 Q You can continue.

19 A And he said to me: You see, I'm an important person. I
20 was in a prison.

21 Q After he said he was an important prison, and was in
22 prison, what, if anything, did you ask him?

23 A I asked him where he had been in prison.

24 Q And how did he respond?

25 A In Libya.

1 Q And after he told you that he was in prison in Libya,
2 what, if anything, did you ask him?

3 A I asked him how he had gotten out.

4 Q And how did he respond?

5 A He answered that by saying one night his jailers had come
6 to his cell, had taken him out, and had -- and they had forced
7 him to get on a ship, on a large boat, and that's the boat on
8 which he had arrived in Lampedusa with the other migrants.
9 And that was the reason why he was not a migrant but rather a
10 fighter because he wanted to fight.

11 Q After he told you that he was forcibly removed from
12 Libya, what, if anything, did you ask him?

13 A I asked him why he had been arrested.

14 Q And what was his response to that?

15 A Because he was a member of al-Qaeda.

16 Q Did you notice anything about Harun's appearance?

17 A In the beginning, my focus was directed on his arm which
18 I looked at. I saw that he had an injury, a scar, something
19 on like that.

20 Q And after observing this, did you ask him anything?

21 A I asked him whether he had some more scars on his body.

22 Q And what happened then?

23 A He answered in the affirmative and he showed us his back.

24 Q When he showed you his back what, if anything, do you
25 remember?

1 A Very little because my focus was still on the words that
2 he had uttered: "Guantanamo," "al-Qaeda."

3 Q Did he say how he got the scars?

4 A He told me that the scars were the result of his fighting
5 in some training boot camps.

6 Q What, if anything, did you ask him around this time?

7 A At that point, I couldn't no longer handle him because
8 now I'm speaking in very calm terms, but he was very agitated.
9 And his agitation had gone through a crescendo for a time
10 because since he was not a migrant and he was a fighter, he
11 wanted to get off the ship. So I asked him if he wanted to
12 write what he had just told us.

13 Q And why did you ask him if he was willing to write what
14 he had just told you orally?

15 MS. KELLMAN: Objection.

16 THE COURT: Overruled.

17 A For two reasons. First, the main one because I wanted to
18 buy time. Because I couldn't handle him, he was too agitated,
19 and I thought that while writing, he might calm down. Second
20 reason is because those things had been translated to me by
21 someone who was not part of the police force. I wanted
22 something to be put in writing of what he said.

23 Q Why was it important to control the situation?

24 A I had with me more than 1,180 migrants. More than 800
25 single men on the deck where this individual was. These

1 people didn't speak Italian, and they come from nations where
2 generally people fear the police. I was extremely concerned
3 if they had perceived an opposition, some sort of fight. Even
4 if he were only a verbal altercation, but a strong one, I
5 might not be able to explain to them what was going on. They
6 might be misunderstanding.

7 MS. KELLMAN: I object to this line.

8 THE COURT: Yes, it's too long. Let's go on to
9 another topic, please.

10 MR. JACOBS:: Okay.

11 Q You mentioned he had made a written statement. How long
12 was this statement, approximately?

13 A Two pages.

14 Q What happened after Harun finished writing the statement?

15 A He put his pen down and he said, Now, I'm done and now
16 I'm getting off. He stood up, we stood up with him. He said
17 I'm getting off no matter what I'm jumping off the ship and I
18 will swim back to Libya. He grabbed a door handle. We
19 approached him in order to stop him. He started to become
20 violent. He managed to open the door. While doing that, he
21 hit us repeatedly and he kept screaming. Up to the point
22 where we were in the corridor outside, we were able to pin him
23 down, and we handcuffed him while he kept screaming.

24 Q And what was he screaming on the ground after you cuffed
25 him?

1 A I remember while he was screaming about while he was on
2 the floor because I was next to him. He repeated "Allahu
3 Akhbar," "Allahu Akhbar" very loud.

4 Q You mentioned he talked about leaving the boat, jumping
5 off; right?

6 A Yes, he said that.

7 Q Did you take that literally?

8 MS. KELLMAN: Objection.

9 THE COURT: Sustained.

10 Q How long was he screaming on the ground more?

11 A It seemed to me a very long time because I had another
12 1,100 people on the ship who may be listening.

13 Q After he was on the ground and screaming, who if anyone,
14 was called?

15 A Considering the condition he was in, I thought it was a
16 good idea to call the ship doctor to examine him.

17 Q And what did the doctor come?

18 A Fortunately, yes.

19 Q And what did the doctor do, if anything?

20 A He examined him and he deemed to necessary to administer
21 some sedation to him.

22 Q After the administration of the sedative, where was Harun
23 taken if anywhere?

24 A He was brought in the infirmary that I had thought of
25 setting up as a cell. Setting some watch shifts and he was

1 put on the infirmary cot, handcuffed to the bar.

2 Q And at any point later on the day of June 24th, did you
3 personally observe Harun?

4 A Yes, because I was very worried about him being on the
5 ship.

6 Q What, if anything, did you see him doing?

7 A He was sleeping, praying, and eating.

8 Q When, approximately, did the EXCELSIOR land in its first
9 port?

10 A Late in the morning on the following day.

11 Q And what port was that?

12 A Taranto, T-a-r-a-n-t-o, which is a town in Southern
13 Italy.

14 Q And that morning, June 25th, did you personally observe
15 Harun?

16 A Yes, I supervised his transfer into custody of the
17 D.I.G.O.S. agents.

18 Q What, if anything, was Harun charged with for his conduct
19 on the boat?

20 A Injury to public officers and resisting arrest.

21 Q And where was he ultimately prosecuted for this charge?

22 MS. KELLMAN: Objection. Relevance.

23 THE COURT: Sustained.

24 Q What city did --

25 MR. JACOBS: Withdrawn.

1 Q Before your encounter with Harun on the EXCELSIOR, had
2 you ever seen or heard of him?

3 A No.

4 Q Other than testimony, and preparation for testimony, had
5 you had any involvement in the American investigation of this
6 case?

7 A No.

8 MR. JACOBS: : One moment, your Honor.

9 (A brief pause in the proceedings was held.)

10 MR. JACOBS:: May we briefly approach.

11 THE COURT: Okay.

12 (Continued on the next page.)
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1 (Sidebar conference held on the record in the
2 presence of the Court and counsel, out of the hearing of the
3 jury.)

4 THE COURT: What does it matter where he was
5 prosecuted for the second time because you got it from the
6 last witness. Why do we need this?

7 MR. JACOBS:: Fair point.

8 MR. ARIAIL: Only for context, your Honor, that's
9 the only reason.

10 MR. JACOBS:: To be fair, I wasn't thinking about
11 that.

12 MR. ARIAIL: I wanted to raise something else, which
13 is during the last witness it appeared to us that Ms. Kellman
14 was reading sections of the prior report into --

15 THE COURT: You're anticipating again --

16 MR. ARIAIL: Yes.

17 THE COURT: -- that she's going to do something
18 wrong?

19 I'm not going to hear it until she does something
20 wrong.

21 MS. KELLMAN: Thank you, Judge.

22 (Sidebar discussion concludes.)

23 (Continued on the next page.)

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1 (In open court.)

2 THE COURT: All right. Before we do
3 cross-examination, ladies and gentlemen, let's take other
4 midafternoon break.

5 We will reconvene in here at 3:15 -- I'm sorry, had
6 the Government passed the witness?

7 MR. JACOBS:: Yes, your Honor.

8 THE COURT: We'll reconvene in here at 3:15.

9 Please don't talk about the case. Keep an open
10 mind. Go anywhere you like, just be back in that room at
11 3:15.

12 Thank you for your attention.

13 (Jury exits courtroom at 3:02 p.m.)

14 THE COURT: Okay. Recess. 3:15.

15 MR. STERN: Judge, can I raise one thing?

16 THE COURT: You wanted to say one thing?

17 I need to see counsel at sidebar. Everyone sit
18 down.

19 You want to say something first?

20 MR. STERN: Not necessarily first. You can go
21 first.

22 THE COURT: No, because I have to see you at
23 sidebar.

24 MR. STERN: We're going to seek from you funds to
25 have every single in this document translated. We have

1 translators on call. We foolishly assumed that the
2 translations were accurate. The Government takes the position
3 they may not be. So we have a Hausa translator, we have an
4 Italian translator, we have an Arabic translator, and we'll
5 start getting everything translated.

6 THE COURT: I'm not going to authorize that. If the
7 Government anticipates not allowing translations of documents
8 that have been provided to the defendants to be used, then as
9 to those, the Government has to tell the defense and I'll
10 authorize translations for those.

11 MR. ARIAIL: Your Honor, if may? I think we're
12 shooting past each other.

13 THE COURT: I think so, too, because there was no
14 inaccuracy in the last translation and it did not impede the
15 cross-examination at all.

16 MR. STERN: The Government specifically took the
17 position that the translation we have might be different than
18 that person's understanding -- I don't know if the witness
19 should be here for this.

20 MR. ARIAIL: I think we can excuse the witness, your
21 Honor.

22 THE COURT: Let the witness step down.

23 (Witness leaves the witness stand.)

24 THE COURT: They did. And I will certainly
25 entertain your motion and more if it becomes a material point

1 of dispute, but so far it's not and I have a feeling it's not
2 going to be.

3 MR. STERN: I don't want to get embarrassed
4 cross-examining and have the Government say, Well, that's not
5 what it means, ask him what he thinks it means or what someone
6 else thinks it means. We can't cross-examine that way.

7 MR. ARIAIL: I think point is, your Honor, if
8 they're going to confront the witness with this statement to
9 either refresh his recollection, or to confront him actually
10 with the statement that he previously wrote, he needs to have
11 the opportunity to see his own report in Italian, the language
12 that he speaks, to properly respond. That is simply all that
13 we're talking about here.

14 The other issue which I raised at sidebar is,
15 Ms. Kellman, he cannot speak sufficient English to actually
16 comprehend what's going on and the translation is making it
17 difficult for him to understand their questions. And
18 Ms. Kellman was reading verbatim from English reports into the
19 record, which is also improper. And if we just follow the
20 rules as they are, we present him the report, ask him if it
21 refreshes his recollection, give him the opportunity to
22 explain, and then we'll be moving on very quickly.

23 I don't think there are any material discrepancies
24 between the English and the Italian, it's just a matter of his
25 ability to speak it.

1 THE COURT: It is correct that a witness testifying
2 in an foreign language, when asked about his own statement,
3 has the right to he see the statement in the language he wrote
4 to. So the procedure should be, and I have no reason to think
5 this will result in a disagreement about translation, it
6 didn't on the last witness. The procedure should be, Did you
7 say this? And if the witness says, I don't know, I didn't, or
8 I don't remember then you show him a statement in the original
9 language and you say, Does that refresh your recollection as
10 to this? And if he still says, no, then you can get in the
11 document.

12 MR. ARIAIL: I think, specifically, in this
13 instance, your Honor, the question was whether or not he said
14 the words, "Extremely courteous." And if you look in the
15 Italian, the words, "Extremely courteous," were obviously
16 there in the Italian document.

17 THE COURT: He said it ultimately. He said so. So
18 you're arguing over a nonevent.

19 Look, I understand the concern, but I don't think
20 it's any more real than the Government's anticipation that
21 Ms. Kellman is about to do something incorrect in
22 cross-examination.

23 Let's wait and see if anything happens. So far
24 nothing's happened.

25 MR. STERN: Then I take if it does happen, we'll

1 cease cross at that point and get a translation because we
2 can't, for example, Judge, just let me give you an example.
3 We can't point to the Italian to where the words are. We can
4 just say, Here's your document take a look at it --

5 THE COURT: Well.

6 MR. STERN: -- or in Arabic.

7 THE COURT: If something like that happens, the
8 first thing I'll ask you to do is have the interpreter compare
9 the Italian with the English translation and ask the
10 interpreter if that's correct interpretation or not because
11 what he said will go.

12 MR. ARIAIL: They had those Italian reports for
13 nearly a year.

14 THE COURT: Really, this is not yet, if ever, an
15 issue. Let's not worry about it. I don't think it's going to
16 happen. If it does, we'll deal with it.

17 All right. Let me see down at sidebar.

18 (Continued on the next page.)

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1 (Sidebar conference held on the record in the
2 presence of the Court and counsel, out of the hearing of the
3 jury.)

4 THE COURT: I got a telephone call from Marshal
5 Dunne who advised me that on the last day of jury selection he
6 had run into a member of the venire who he knows. He didn't
7 tell me the name of this person and he doesn't know this
8 person's jury number, but I don't remember if he said it was a
9 man or woman. The person came up to him, no, he came up to
10 the person and said, What are you doing here? And the person
11 said, I've been called to jury duty. And Marshal Dunne said,
12 Well, good luck with that.

13 And then when Marshal Dunne happened to come into
14 the courtroom today, he saw that this juror was seated on the
15 jury. I don't know her name, or his name, because I told the
16 marshal not to tell me. And he doesn't know the number, so we
17 can't match up who this is. It sounds like an innocuous
18 conversation to me, but I didn't want to be the only one who
19 knew about it so you all know about it.

20 MR. ARIAIL: Okay.

21 MS. KELLMAN: Okay.

22 MR. STERN: Okay.

23 (Sidebar discussion concludes.)

24 (Continued on the next page.)

25 (Recess taken.)

1 (In open court.)

2 THE COURT: Let's have the jury, please.

3 (Jury enters the courtroom.)

4 THE COURT: You can sit down, ladies and gentlemen
5 of the jury, as soon as you come into the courtroom. Don't
6 wait for us.

7 All right. Be seated, please.

8 Cross-examination.

9 MS. KELLMAN: Thank you, your Honor.

10 CROSS-EXAMINATION

11 BY MS. KELLMAN:

12 Q Good morning. Is it Chief Battisti, is that an
13 appropriate title?

14 A Yes, more or less.

15 Q Good afternoon, Chief Battisti.

16 My name is Susan Kellman. I have just a few
17 follow-up questions, if I may.

18 A Good afternoon to you.

19 Q Would it be fair to say that when you first encountered
20 Mr. Harun, that he had been complaining about a lack of water
21 on the ship, correct?

22 A I don't think so that he did that when he spoke to me.
23 When he spoke to me, what he was talking about was that he did
24 not belong to that ship and that he was not a migrant.

25 Q And when he was explaining to you that he wasn't a

1 migrant, did he tell you that he had just come from Libya?

2 You knew that he had just come from Libya, correct?

3 A No, obviously I did not know. Many foreigners gather in
4 Libya, they come from all over Africa, and from there they
5 depart.

6 Q I'm not asking you, sir, where he was born. I'm asking
7 you where he came on to the ship for the first time.

8 Did you know that was Libya?

9 A I was getting there.

10 He had gotten off from a boat that was rescued from
11 the Italian maritime army, and I thought, assumed that he was
12 coming from Libya. I did not ask.

13 Q Well, didn't Mr. Harun tell you that he had come from
14 Libya?

15 A Yes, that he was in jail in Libya, that he had come out
16 of the jail and that his jailer had thrown him into -- on to a
17 boat.

18 Q And would it be fair to say then what he was telling you
19 was that he was different from the migrants because he wasn't
20 a migrant, he had just been released from prison in Libya and
21 had been forced to board that ship; am I right?

22 A Yes.

23 Q Now, would it be fair to say that he and your fellow
24 officers observed that Mr. Harun was acting very strangely,
25 correct?

1 MR. JACOBS: Objection, your Honor.

2 THE COURT: Sustained.

3 Q Did you observe Mr. Harun acting very strangely?

4 A Strange, is that the word?

5 Q That's the word.

6 A I would use the word "agitated," "violent," if I was to
7 describe Harun's demeanor.

8 Q Well, let me ask you this.

9 When you first --

10 MS. KELLMAN: Withdrawn.

11 Q At the time that he was writing the statement, would you
12 agree with me that he was not violent?

13 A He was very agitated. Eventually he became violent.

14 Q I am asking you, sir, before he became violent and when
15 he was writing the statement, was he violent when he was
16 writing the statement?

17 MR. JACOBS: Objection; compound.

18 THE COURT: Sustained.

19 MS. KELLMAN: I'll withdraw it and I'll rephrase it.

20 Q Was he violent when he was writing the statement?

21 A No, as he was writing, he was not hitting us.

22 Q And would it be fair to say that as he was writing, he
23 was nervous?

24 A Agitated, like I said.

25 Q Okay. Was he visibly perspiring?

1 A Yes, I think so.

2 Q And did he have difficulty speaking? Was his speech
3 hesitant?

4 A He was speaking loudly, very agitated.

5 Q Were his hands trembling, sir?

6 A I don't recall exactly about that.

7 Q Would you take a look, sir, I put a document in front of
8 you. I believe it's been previously marked
9 Government Exhibit 3500-GB-1-E.

10 Do you see that document in front of you?

11 A Yes.

12 Q Direct your attention, if I may, sir --

13 MR. JACOBS: Objection, your Honor.

14 Q -- to the second full paragraph.

15 THE COURT: No, overruled.

16 Q Would you read that paragraph to yourself, sir?

17 MR. JACOBS: For the record, your Honor, the witness
18 appears to be reading 3500-GB-1-I, the Italian version.

19 THE COURT: I assume so.

20 THE WITNESS: (Perusing document.)

21 Q Just look up when you're finished. No rush.

22 A (Perusing document.)

23 Q Have you finished?

24 Does looking at the report, sir, refresh your
25 recollection that at the time Mr. Harun was taken into the

1 office to write the statement, that his -- he's --

2 MS. KELLMAN: Withdrawn.

3 Q That his speech was hesitant, correct?

4 A Yes, agitated, hesitant.

5 Q Yes, I didn't ask you about agitated. You've told us
6 that several times.

7 My question, sir, is does reading this report
8 refresh your recollection that back in June of 2011, that it
9 was your observation that this individual's hands were
10 trembling and that his speech was hesitant?

11 A His speech, about his speech, yes. About the hands, I do
12 not recall it. Maybe I did not notice -- I did not notice
13 that.

14 Q Well, did you prepare this report or participate in
15 preparing this report, sir?

16 A Yes.

17 Q And you signed this report, correct?

18 A Yes.

19 Q And does reading the report refresh your recollection,
20 sir, as to whether or not you noted that Mr. Harun's hands
21 were trembling when he was in the office?

22 A The report was signed by five person, one of them was
23 myself.

24 Q I'm only asking you about you, sir.

25 Did you sign the report?

1 A May I go on with my previous answer?

2 Q I'm asking you, sir, did you sign the report?

3 A Yes.

4 Q And before signing it, did you check it -- did you read
5 it?

6 A Yes.

7 Q Was it accurate?

8 A I really think so.

9 Q Well, would you have signed it if it weren't accurate?

10 A No.

11 Q This is a police document, correct?

12 A Yes.

13 Q And I'm asking you, sir, if reading this document that
14 you signed refreshes your recollection that Mr. Harun's hands
15 were shaking, that he had hand tremors at the time he was
16 taken into the office to write this statement?

17 A If I may complete my answer.

18 MS. KELLMAN: Your Honor, I ask the Court to
19 instruct the witness to answer the question.

20 A Five of us signed it.

21 THE COURT: The interpreter needs to tell the
22 witness that if he can answer the question yes or no, he
23 should answer it yes or no. If he doesn't think he can fairly
24 answer it that way, then he should say "I can't answer it yes
25 or no."

1 THE INTERPRETER: (Complying.)

2 THE WITNESS: All right.

3 A Five of us --

4 MS. KELLMAN: Your Honor, I'm going to move to
5 strike. My question is simply does reading the report that he
6 signed refresh his recollection as to whether or not Mr.
7 Harun's hands were shaking, whether that he had hand tremors
8 at the time he came into the room.

9 THE COURT: Is that a question to the witness or a
10 motion to me?

11 MS. KELLMAN: A little of each.

12 THE COURT: Okay. The motion is granted.

13 The objection to the question is sustained.

14 Put another question, this time unambiguously, to
15 the witness.

16 MS. KELLMAN: Thank you, Judge.

17 Q You've had an opportunity to look at your police report,
18 correct?

19 A Yes.

20 Q My question simply, sir, yes or no, does reading that
21 paragraph that I pointed you to refresh your recollection that
22 you described Mr. Harun's hands as trembling and his speech as
23 hesitant, yes or no?

24 A About the speech, it does. But not about the hands.

25 Q Now, would you agree with me, sir, that Mr. Harun entered

1 the room, entered the office quietly? He didn't put up any
2 fuss?

3 A Without opposing any resistance, yes. Calmly, no.

4 Q The question was, sir, do you recall --

5 MS. KELLMAN: Well, withdrawn.

6 Q Would it be fair to say that he entered the room, into
7 the office, I'm calling it a room, but it was an office,
8 correct?

9 A We can call it so.

10 Q I'm sorry?

11 THE INTERPRETER: We can call it that way.

12 Q An office?

13 A Si.

14 Q Would it be accurate to say that Mr. Harun was quietly
15 brought into the office?

16 A He was brought into the office without problems.

17 Q And would it be fair to say that it was at that time that
18 you and other officers began to question him about his
19 injuries, correct?

20 A In the office right afterwards, yes.

21 Q When you say "right afterwards," are we talking about
22 right after he wrote the statement or right after he came into
23 the office?

24 A Before writing.

25 Q And would it be fair to say as well that the more

1 questions that were asked of him about his injuries, the more
2 agitated he became, correct?

3 A More questions -- the more questions were asked of him,
4 the more time was going by and the more he got agitated.

5 Q But it would be fair to say that notwithstanding his
6 agitation, he continued to -- he began to write a statement
7 and he wrote out a two-page statement, correct?

8 A Correct.

9 Q And during that entire time, he hadn't struck anybody; am
10 I right?

11 A Correct.

12 Q And once he finished writing the statement, would it be
13 fair to say that he then became extremely agitated, correct?

14 A Yes.

15 Q And was it then, sir, would I be correct that it was then
16 that he said that he wasn't going to stay on the ship anymore
17 and he was going to jump into the sea and swim back to Libya,
18 correct?

19 A I think it was like a moment afterwards. At the time
20 when he was holding on to the handrail and we went close to
21 him trying to hold him down, I think that's when he said that.

22 Q When you say that he was holding the handrail, would it
23 be fair to say that he tried to tear the handrail off the
24 wall; am I right?

25 A He was firmly holding on to him. What he meant to do

1 with that, I don't know.

2 Q Well, he did pull -- tear a picture off the wall; am I
3 right?

4 A Yes, because we are trying to block him and he
5 wouldn't -- would hold on to anything.

6 Q And would it be fair to say that the blocking by the
7 officers began after he said -- after he wrote the statement
8 and after he said that he was going to jump off the ship,
9 correct?

10 A We tried to block him when he tried to run away from the
11 office.

12 Q But he had committed no crime in that office, correct, up
13 to that point?

14 A No.

15 Q And once you tried to block him, a fight began, correct?

16 A Yes.

17 Q And when the fight began, Mr. Harun began screaming and
18 swinging, correct?

19 A Yes.

20 Q And he was doing that while six officers were attempting
21 to block his way; am I right?

22 A Yes.

23 Q Would you agree with me, sir, that his anger got more --
24 escalated?

25 A Agitation, yes. He was upset.

1 Q Would it be fair to say that at a point in time, he was
2 screaming uncontrollably?

3 A He was screaming.

4 Q And his agitation became so extreme that somebody sent
5 for the doctor and he was sedated, correct?

6 A The doctor was called because once on the ground, he
7 still wouldn't calm down in any way, and I didn't think that
8 was the way he should travel all the way 'til the next harbor.

9 Q So, if I understand what you're saying, after he wrote
10 the statement and after he was blocked by the other officers,
11 he was wrestled to the ground; am I right?

12 A Yes.

13 Q And it was during that struggle that officers were struck
14 by him, correct?

15 A Yes.

16 Q But before he was blocked by the officers, he hadn't hit
17 anybody, correct?

18 A No. He started when he tried to get out of the office.

19 Q And when he tried to get out of the office, he was
20 blocked by several officers, correct?

21 A He did manage to get out of the office. He was blocked
22 in the hallway.

23 Q He was blocked in the hallway outside the office?

24 A Yes.

25 Q And that's when he was wrestled to the ground? F

1 A Yes.

2 Q Would you agree with me, sir, that during the struggle,
3 that was when he was screaming uncontrollably, correct?

4 A Also during the struggle he was screaming, yes.

5 Q Would it be fair to say, sir, that he was acting pretty
6 crazy?

7 MR. JACOBS: Objection, your Honor.

8 THE COURT: I'm going to allow it.

9 Well, no, I'm not going to allow it. It's not
10 necessary. Sustained.

11 MS. KELLMAN: Just his observation, Judge.

12 THE COURT: I understand. He's given you a lot of
13 observation.

14 MS. KELLMAN: Just one more.

15 THE COURT: No.

16 MS. KELLMAN: Thank you.

17 THE COURT: Any redirect?

18 MR. JACOBS: Just briefly, Judge.

19 REDIRECT EXAMINATION

20 BY MR. JACOBS:

21 Q Mr. Battisti, do you remember being asked about Mr. Harun
22 being blocked as he ran from the office?

23 A Yes.

24 Q Why didn't you just let him run back on to the ship?

25 A For the same reason why I decided to speak to him not on

1 deck in front of eight hundred people, but in a separate area
2 in the room. I was afraid that other migrants might see or
3 hear something and misunderstand and have a riot or any kind
4 of problem erupt on board.

5 MR. JACOBS: No further questions.

6 THE COURT: All right. You may step down. Thank
7 you, very much.

8 (The witness leaves the witness stand.)

9 MS. KELLMAN: I have no further questions.

10 THE COURT: Recross. I'm going to assume that
11 unless you jump up and tell me otherwise.

12 You may step down.

13 MR. JACOBS: Judge, before the next witness, we have
14 a short stipulation to read.

15 THE COURT: All right. The way we're going to do
16 stipulations, now that the jury has heard the complete one, is
17 instead of reading the entire preamble about the parties, this
18 party and that party, just say "The parties stipulate as
19 follows" and then read the stipulation.

20 MR. JACOBS: All right. Do you mind if I put it on
21 the overhead?

22 THE COURT: You can do that.

23 (The above-referred to exhibit was published.)

24 MR. JACOBS: This is Government Exhibit 319. It's a
25 fact stipulation.

1 The parties stipulate as follows: "The defendant
2 has multiple scars on his body, including on his arm and
3 torso."

4 THE COURT: All right. That's received.

5 (Government's Exhibit 319 was received in evidence.)

6 THE COURT: Next witness.

7 MS. WELLS: Your Honor, the Government calls Captain
8 Riccardo Rosi.

9 MS. KELLMAN: Your Honor, could we approach while
10 the witness is coming in?

11 THE COURT: Okay.

12 (Sidebar; continued on next page.)

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1 (sidebar conference held on the record out of the
2 hearing of the jury.)

3 MR. JACOBS: I heard that English version, I just
4 wanted to make sure he had the Italian. That was why the
5 silly standard objection. I had heard the English.

6 THE COURT: I have no idea what you're referring to,
7 but I don't think I need to know.

8 MS. KELLMAN: Your Honor, we've had two Italian
9 witnesses who basically said the same thing. We have five, I
10 think, all together, and we're just asking for an offer of
11 proof.

12 THE COURT: It's a point.

13 That witness was pretty duplicative. Do we have
14 more duplicative witnesses?

15 MR. ARIAIL: Your Honor, I think we have a case that
16 we have to present, and we're trying to get all the witnesses
17 on quickly. These witnesses seem more repetitive than they
18 are because it's being repeated back and forth with the
19 Italian, but we have one more 15-minute witness who's going to
20 talk about some aspects of the same incident, but in terms of
21 the other two witnesses, those have nothing to do with this,
22 in terms of the Italians.

23 THE COURT: Okay. Well, let's try this witness, if
24 it's 15 minutes. Even though it may be somewhat cumulative,
25 I'll allow it. Let's do 15 minutes.

1 MR. ARIAIL: Certainly.

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

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11 [REDACTED]
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14 [REDACTED]

15 MR. ARIAIL: Thank you, your Honor.

16 (Sidebar end.)

17 (Continued on following page.)
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1 (In open court.)

2 (Riccardo Rosi enters the courtroom and takes the
3 witness stand.)

4 COURTROOM DEPUTY: Please raise your right hand.

5 RICCARDO ROSI,

6 called by the Government, having been first duly
7 sworn, was examined and testified through the interpreter as
8 follows:

9 COURTROOM DEPUTY: Please state and spell your name
10 for the record.

11 THE WITNESS: My name is Riccardo Rosi, R-I double
12 C-A-R-D-O, Rosi, R-O-S-I.

13 THE COURT: All right. You may inquire.

14 MS. WELLS: Thank you, your Honor.

15 DIRECT EXAMINATION

16 BY MS. WELLS:

17 Q Good afternoon, Captain Rosi.

18 A Good afternoon to you too.

19 Q Who do you work for?

20 A For the Carabinieri Corps.

21 Q What is the Carabinieri Corps?

22 A It's a military police corps which operates in Italy.

23 Q What is your current rank?

24 A I'm a captain.

25 Q Were you working for the Carabinieri on June 24th, 2011?

1 A Yes.

2 Q What was your rank at that time?

3 A I was a lieutenant.

4 Q And where were you posted at that time on June 24th,
5 2011?

6 A I was on board the Excelsior ship in Lampedusa.

7 Q Very briefly, what were your responsibilities aboard the
8 Excelsior?

9 A I was in charge of a group of carabinieri for public
10 safety.

11 Q All right. I'm showing you what's in evidence as
12 Government Exhibit 26.

13 (The above-referred to exhibit was published.)

14 Q Do you recognize this person?

15 A Yes.

16 Q Who is this?

17 A 95 percent that this should be Ibrahim Harun Adnan.

18 Q Where were you when you first encountered this
19 individual?

20 A I was on board the Excelsior in Lampedusa.

21 Q Under what circumstances did you first encounter Harun?

22 A When we placed him under arrest.

23 Q Where on the ship were you the first time you saw him?

24 A I was in an office, actually a room which we had set up
25 as an office on the ship.

1 Q And was Harun brought into that room at some point?

2 A Yes.

3 Q When you first observed Harun, did you notice anything
4 about him physically?

5 A Yes, he had some scars on his arm.

6 MS. KELLMAN: I'm going to object to this line.
7 It's asked and answered.

8 THE COURT: I made a ruling on that at sidebar.

9 MS. KELLMAN: Okay.

10 THE COURT: Go ahead.

11 Q How was Harun behaving when you first saw him?

12 A He was very agitated.

13 Q Was he asked to do anything when he was brought into the
14 room?

15 A He was asked to write something.

16 Q Did he do that? Did he write something?

17 A Yes, before me.

18 Q After he finished writing, what happened?

19 A He became very nervous.

20 Q What did he do next?

21 A He started saying that he was a member of al-Qaeda, that
22 he didn't want to be on the ship because he had nothing to do
23 with the people on the ship since he was a fighter. He stood
24 up and he went towards the exit while he kept talking and
25 becoming more agitated. And he also told me that he wanted to

1 speak with President Obama, with Ban Ki-moon, and with the
2 ambassador of Niger.

3 Q At some point in time, did Harun try to leave the room?

4 A Yes.

5 Q What happened at that point?

6 A When he was close to the exit, he assaulted us.

7 Q And can you describe what he did?

8 A We were near him trying to calm him down, and he pushed
9 us away by lunging at us and trying to get a hold of a
10 painting which was in the room.

11 Q After he tried to get a hold of the painting, what did he
12 do next?

13 A We tried to stop him, but he held on to a handrail which
14 was below the painting. He kicked us, he elbowed us, and he
15 kept repeating louder and louder "Alahu Ahkbar."

16 Q As this was happening, what, if anything, did you do?

17 A I was holding on to him on his chest, on his trunk,
18 trying to perform a procedure which we use to make a violent
19 person harmless.

20 Q Was Harun restrained?

21 A Yes. After being hit a lot of times, in the end we were
22 able to stop him and we put him on the ground.

23 Q So the record is clear, when you say "after being hit a
24 lot of times," who was hitting whom?

25 A As I was trying to defend myself, I got kicked many

1 times, together with other personnel of the Guardia di
2 Finanza, and I didn't pay exactly attention to who was getting
3 hit as I was trying to defend myself.

4 Q Was anyone called in?

5 A Yes, we sent for the ship doctor because the individual
6 didn't want to calm down, so we wanted to see if he could be
7 sedated.

8 Q And what, if anything, did the doctor do when he arrived?

9 A He agreed with us that it was necessary to sedate him,
10 and that's what he did.

11 Q Was Harun brought somewhere else on the ship after the
12 doctor came?

13 A Yes, he was first taken to the infirmary and then later
14 on to the room next door where he could rest.

15 Q Did you see Harun at any point later in the day after
16 June 24th or into June 25th?

17 A Yes.

18 Q Where did you see him?

19 A In a room next to the infirmary where he could rest.

20 Q Captain Rosi -- or, I'm sorry, one further question.

21 What, if anything, did you observe him doing in the
22 infirmary?

23 A We had the group, a team of people monitor him throughout
24 the night, and I remember when I went to him during the night,
25 he said very clearly in English that he didn't want to speak

1 with me. He stood up and he started praying.

2 Q Captain Rosi, before June 2011, had you ever seen or
3 heard of Harun?

4 A No.

5 Q And other than preparation for your testimony today and
6 your testimony, have you had any involvement in the American
7 investigation of Harun?

8 A No.

9 MS. WELLS: Nothing further, your Honor.

10 THE COURT: All right. Cross?

11 MS. KELLMAN: Very briefly, Judge.

12 CROSS-EXAMINATION

13 BY MS. KELLMAN:

14 Q Good afternoon, Captain Rosi. My name is Susan Kellman.
15 I have just a few questions for you.

16 A Good afternoon to you.

17 Q Captain, you said that while you were in Mr. Harun's
18 presence that you saw him, you described his demeanor as very
19 agitated, correct?

20 A Yes.

21 Q And very nervous; am I right?

22 A Yes.

23 Q Now, were you present at the time that Mr. Harun wrote a
24 statement out?

25 A Yes.

1 Q And would it be fair to say that he became nervous and --
2 more and more nervous and agitated after he wrote the
3 statement out; am I right?

4 A Yes.

5 Q And would it be fair to say that there came a time when
6 he was screaming?

7 A Yes.

8 (Continued on following page.)

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1 (In open court.)

2 CROSS-EXAMINATION

3 BY MS. KELLMAN (continuing):

4 Q One of the things he was screaming was that he wanted
5 to meet with President Obama; am I right?

6 A He didn't scream that out. He told me as I was very
7 close to him.

8 Q So that was just between you and him?

9 A He was saying it publicly, but he was looking at me as
10 he was saying it.

11 Q So he was talking to you and he said I would like to
12 speak with President Obama; is that right?

13 A Yes, he was looking at me.

14 Q And he wanted -- but I'm asking if that's what he told
15 you?

16 A Yes.

17 Q And he also told you that he wanted to speak with Ban
18 Ki-moon, correct?

19 A Yes.

20 Q And this was at the same time that he was agitated.

21 Which came first the agitation or the
22 questions?

23 A The agitation, he was always agitated. It was like a
24 crescendo, an escalation.

25 Q Would it be fair, would you agree with me that the

1 height of his agitation occurred when officers tried to
2 block his exit from the office, correct?

3 A Yes.

4 Q And that's when he began flailing and punching and
5 striking; is that correct?

6 A Yes.

7 Q Would it be fair to say, sir -- by the way, at the time
8 he asked you if he could speak with Ban Ki-moon, did you
9 know who that was?

10 A Yes.

11 Q Who was that?

12 A It was the United Nations president.

13 Q So he was -- the man -- withdrawn.

14 Would it be fair to say that he was demanding
15 to speak with President Obama or Ban Ki-moon?

16 MS. WELLS: Objection.

17 MS. KELLMAN: I will rephrase it.

18 THE COURT: I will allow it.

19 THE INTERPRETER: Could you kindly repeat the
20 question?

21 MS. KELLMAN: Yes.

22 Q Would it be fair to characterize his statements to you
23 about speaking to Barack Obama and Ban Ki-moon, were those
24 demands he was making or requests?

25 A They were demands.

1 Q Was screaming at that time?

2 A Well, at that time he wasn't screaming. He wasn't
3 screaming those questions. He just told me.

4 Q Was he screaming before and screaming after and then he
5 just got calm when he asked for these two things?

6 A No. I'm not saying he was calm. I'm just saying he
7 was not screaming; but, yes, he was nervous.

8 Q And when he was asking you to speak with President
9 Obama and Ban Ki-moon, did you respond to him?

10 A No.

11 Q Did you think he was crazy?

12 MS. WELLS: Objection.

13 THE COURT: Sustained.

14 Q How many other people in your life would you say -- in
15 your career would you say you have arrested?

16 A Approximately 30.

17 Q And did any of them -- over what period of time?

18 A Since 2004, up to the present date.

19 Q Did any of those people ever demand to speak with the
20 president of the United States or the secretary general of
21 the U.N.?

22 MS. WELLS: Objection.

23 THE COURT: Sustained.

24 MS. KELLMAN: Nothing further.

25 THE COURT: Any redirect?

1 MS. WELLS: No, your Honor.

2 THE COURT: Okay. You may step down. Thank you
3 very much.

4 (Witness leaves the witness stand.)

5 THE COURT: All right. With regard to the
6 Government's next witness, can the Government guarantee me
7 that we will get this person on and off the stand in 25
8 minutes?

9 MR. ARIAIL: No, your Honor.

10 THE COURT: All right. Then we are not going to
11 do that person today.

12 MR. ARIAIL: We can do introductions.

13 THE COURT: Why?

14 MR. ARIAIL: Okay. Fair enough.

15 THE COURT: We break between 4:00 and 4:30. If
16 it's a little bit close, we can try it; but if you can't
17 finish him today we might as well start him tomorrow.

18 MR. ARIAIL: I don't think I can finish him today,
19 your Honor.

20 THE COURT: Ladies and gentlemen, we are going to
21 adjourn for the evening.

22 A few things I have to remind you about. You
23 will get tired of hearing this, but, like hearing the safety
24 announcement on an airplane, please pay attention.

25 Please be back at 9:30 sharp. Please do not

1 think about this case and do not talk to anyone about this
2 case. Stay away from any media reports of the case that you
3 may happen to encounter. Like I said, change the page, hit
4 the button. Do not do anything about this case other than
5 what you get in court here.

6 Certainly no social media, no Internet
7 searches, no posting on Facebook or tweeting about the case.
8 Nothing at all. Don't talk to your loved ones about it.
9 Put it completely out of your mind until you are all back
10 here in court at 9:30 tomorrow morning.

11 Have a good evening. Thank you for your
12 attention.

13 (Jury exits.)

14 THE COURT: Be seated. Just a second, please.
15 The interpreters certainly can step down.

16 I'm going to ask the Government to please go
17 through your case in detail and eliminate any purely
18 cumulative witnesses. The three people we heard today all
19 said the same thing, which is okay if there is some hotly
20 disputed point on which the credibility is challenged, but I
21 don't think there is much dispute over what happened on that
22 boat. So I'm not sure we needed these three witnesses; and
23 I don't want to repeat that expenditure of time again.

24 MR. ARIAIL: I understand, your Honor, but, you
25 know, to be fair, defense counsel vigorously crossed three

1 witnesses about whether or not the defendant was crazy,
2 suggested that he had some sort of mental issues. That
3 seems to be directed towards their defense, and I think
4 having those witnesses there to actually explain what
5 happened and the circumstances around it is important from
6 our perspective.

7 THE COURT: But no one challenged what they said,
8 any of them. She just wanted to get a certain
9 characterization from them, and they all gave the same
10 characterization.

11 MR. ARIAIL: I understand, your Honor, but we only
12 called three of a possible ten witnesses.

13 THE COURT: Really, it doesn't matter.

14 MR. ARIAIL: I understand.

15 Your Honor, I'm going to pre-say this because
16 I think this is important with respect to the attack on
17 April 25, 2003. Over the course of government's
18 investigation, we have identified upwards of 50-plus
19 witnesses to that attack. It is an extraordinarily
20 important part of our case.

21 We have narrowed that and tailored that very,
22 very, very carefully; and we have reduced the number of
23 witnesses that we think are absolutely critical for purposes
24 of testimony to, I think, approximately seven soldiers plus
25 a custodial witness to tell that part of the story. Now,

1 there are going to be pieces of that story that overlap, and
2 that's unavoidable; but the nature of this case, which is a
3 case that is based substantially or significantly on the
4 defendant's confession in Italy, we need to be able to
5 corroborate very distinct pieces of that particular battle
6 site.

7 So I would ask the court for some leeway
8 there. That is a critical part of our case.

9 THE COURT: I'm going to give you leeway.
10 Cumulative is in the eye of the beholder. I'm telling you
11 what I heard today was cumulative.

12 There may be things you are putting on that
13 are much more important or central to the case or which
14 become disputed as to whether a witness is telling the truth
15 or not, and then you need to put on more people to
16 corroborate that, yes, we all saw the same thing, all seven
17 of us; but, if we get through three of your seven and it's
18 clear that all we are talking about is how to characterize
19 what they saw, then at number four I may limit you. Okay.
20 Just keep it in mind.

21 MR. ARIAIL: I think in terms of our case that
22 probably is most cumulative of the witnesses.

23 THE COURT: Well, that's seven witness. I would
24 hope it's the most, but, cumulative --

25 MR. ARIAIL: No, I'm sorry. Today's was the most

1 cumulative. I agree with you on that.

2 THE COURT: The fact that pieces overlap, I expect
3 pieces to overlap. That's fine. These guys were pretty
4 much in lockstep. Okay. Anything else?

5 MR. DRATEL: Yes, your Honor. Thank you.

6 Just on the cumulative issue, I think the
7 court has just stated properly. If we think we are getting
8 to that same range with the soldiers, we will alert the
9 court, but at this point it's not appropriate to do that.

10 Two things. One is with respect to the
11 soldiers' testimony, there are elements in the 3500 material
12 that we think are 403 material that should be precluded. We
13 will talk to government and see if they intend to elicit it.
14 If there is something we think we need to bring to the
15 court, we will to do that tomorrow morning.

16 The other is with respect to certain
17 government exhibits -- there are a bunch of them, and I'm
18 not sure how the Government intends to present it -- it has
19 to do with Mr. Harun's statement in Italy, which is
20 recorded; but the documents still reference AUSA SA, which
21 is clearly Mr. Ariail. They need to wipe that out. He
22 should not be a non-testifying witness in this case.

23 MR. ARIAIL: Your Honor, they have these
24 transcripts for years now. This is the first time hearing
25 that this is some sort of issue they are going to raise on

1 this. It's going to be clear on the tape that it's my
2 voice, and it's also going to be the voice of the witness,
3 the translation witness, who is going to be testifying
4 tomorrow morning. I have never heard this raised by defense
5 counsel.

6 I'm happy to redact the -- I'm sorry. I'm
7 sorry. I don't think we can redact. It just says AUSA SA,
8 your Honor.

9 MR. DRATEL: We got the exhibits last week. Draft
10 transcripts are one thing, but the exhibits are what they
11 are, and the interpreter is going to testify. So it's not
12 an issue. I mean, he is a witness. Mr. Ariail is not a
13 witness. That's the problem.

14 MR. ARIAIL: Your Honor, the exhibit that we are
15 talking about here, which is the actual slides of the
16 transcripts from Italy, they have had now for months. They
17 have known that we are going to offer this. We said
18 specifically that we were going to offer this in this form,
19 and they have not said anything to us.

20 It would take an extreme -- and I didn't
21 realize what Ms. Wells was bringing to my attention -- it
22 would take an extremely complex sort of process to get this
23 redacted out, that it says AUSA SA on the slide that's being
24 presented. I really don't think it's an issue. It's going
25 to be patently clear that I am the person who is doing the

1 questioning. I'm not sure what to do, and it doesn't
2 matter.

3 THE COURT: Okay. Wait just a second. When you
4 talk about a slide, are we talking about a PowerPoint slide
5 or an image of a transcript page?

6 MR. ARIAIL: I can show you right now, your Honor,
7 exactly.

8 THE COURT: Okay. Let's see it.

9 MR. KASTER: Your Honor, I'm not following quite
10 the objection.

11 THE COURT: I'm not either, but I want to know
12 what the physical item is before I ask more questions, so I
13 do understand it.

14 MR. KASTER: Fair enough, your Honor.

15 THE COURT: I see.

16 MR. ARIAIL: So as we play here, your Honor, if we
17 can turn the volume on.

18 THE CLERK: It's on.

19 THE COURT: You don't have to play it. I
20 understand what it is now.

21 MR. ARIAIL: Okay.

22 THE COURT: This is going to be your voice being
23 heard, and the jury is going to follow along with these
24 slides; is that right?

25 MR. ARIAIL: That's correct, yes, your Honor.

1 THE COURT: And the defendant's concern is that
2 the jury shouldn't know it was a U.S. Attorney asking these
3 questions?

4 MR. DRATEL: Well, it wasn't Mr. Ariail. It's an
5 advocate witness problem that's just patent.

6 THE COURT: He is not a witness. He is a
7 questioner.

8 MR. DRATEL: But he was -- he was party to a piece
9 of evidence that's coming in, and, you know --

10 THE COURT: He is the questioner. It's like a
11 prior transcript. If we were going to use -- there had been
12 a prior trial in this case and there was a transcript, you
13 would read in the transcript and it would be the U.S.
14 Attorney asking the questions.

15 MR. DRATEL: Even if it was that, I don't think it
16 would be proper to use it, that it was the same person who
17 was in the courtroom prosecuting the case. As we do with
18 grand jury testimony, all that, at least my experience, it's
19 never been identified as the same person who is trying the
20 case.

21 THE COURT: Is your problem that it says AUSA SA?

22 MR. DRATEL: Yes.

23 THE COURT: Or is it your problem, even if we were
24 to take that out, that the jury is going to hear
25 Mr. Ariail's voice and go, oh, that's the guy.

1 MR. DRATEL: The voice part is what it is because
2 it was recorded that way. But they may not know it's him.
3 They have never met him before. He hasn't even spoken yet.

4 MR. ARIAIL: Sorry, but I introduce myself on the
5 tape. That's clear.

6 THE COURT: Okay. Let me just ask the Government
7 this. Why can't we, as we do in many documents, do a global
8 search and replace and put in examiner, questioner, or just
9 Q?

10 MR. ARIAIL: Just to be clear, we have had this
11 with -- defense counsel has this for months.

12 THE COURT: I know.

13 MR. ARIAIL: We specifically advised them we were
14 going to do this during our testimony, and the problem is
15 that it requires substantial -- and I mean substantial --
16 dozens, hundreds of hours of work to produce this. The
17 actual person who produced this is actually going to be
18 traveling abroad in connection with another case with
19 respect to your Honor.

20 THE COURT: I'm just asking the question.

21 MR. ARIAIL: I know.

22 THE COURT: The question is simply if this were a
23 PowerPoint, which it's not, by the way. I see it's not. If
24 it were a PowerPoint or a Word document or even a
25 spreadsheet, we could do a global search and replace,

1 literally one word, hit the button once, and everything is
2 changed.

3 Are you saying you cannot do that with this?

4 MR. ARIAIL: No, your Honor.

5 THE COURT: Do you know why, or that's beyond your
6 expertise?

7 MR. ARIAIL: I do know it's an actual video file.
8 It's not as though it's a document file like a PowerPoint.

9 THE COURT: Okay. How long has the defendant had
10 this?

11 MR. ARIAIL: I don't have the exact date, but
12 it's --

13 THE COURT: Are we talking weeks, months, or
14 years?

15 MR. ARIAIL: I believe weeks, if not a month. I'm
16 sorry. We don't have the exact date, but it's definitely
17 been multiple weeks, if not four weeks.

18 THE COURT: Okay. Can I hear now just a little
19 bit of the voice.

20 MR. ARIAIL: Sure. Your Honor, we --

21 THE COURT: Just hit the button.

22 (Recording played.)

23 THE COURT: Okay. That's enough. Okay. It's
24 very obviously Mr. Ariail. In fact, when I started to
25 listen I looked up to see if he was talking or the tape was

1 talking.

2 So there is no prejudice for the defendant to
3 have this on. If it needed to be an issue, it should have
4 been raised previously, and I won't require any redaction.

5 Anything else before we adjourn for the day?

6 MR. DRATEL: No, your Honor. Thank you.

7 MR. ARIAIL: Your Honor -- sorry. Your Honor,
8 just a quick one.

9 In terms of the sidebars that we talked
10 about, I'm not going to address the first sidebar. I will
11 address the second sidebar, if that's okay. I feel like the
12 first sidebar speaks for itself.

13 THE COURT: I don't recall it. I'm going to have
14 to look. Now that you have raised it, the Government has
15 asked me at sidebar to seal two sidebars. I think it's the
16 first one and the last one that we have; and I have done
17 that on a temporary basis because of the nature of the
18 discussion, but the Government is going to give me a sealed
19 letter by tomorrow morning, which explains in more detail
20 what the basis is for blocking access, and then I will make
21 a final determination whether those portions should remain
22 sealed or not. Okay.

23 MR. ARIAIL: Thank you.

24 THE COURT: All right. Have a good night. See
25 you in the morning.

(Adjourned to March 7, 2017, at 9:30 a.m.)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X
UNITED STATES OF AMERICA, : 12-CR-134(BMC)
: :
-against- : United States Courthouse
: Brooklyn, New York
: :
IBRAHIM SULEIMAN ADNAN : Tuesday, March 7, 2017
ADAM HARUN HAUSA, : 9:30 a.m.
: :
Defendant. :
: :
- - - - -X

TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE BRIAN M. COGAN
UNITED STATES DISTRICT JUDGE

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(In open court; jury not present.)

THE COURT: Good morning, have a seat. My only agenda item is I didn't get the government's letter explaining why the two side bars should continue to be sealed.

MR. ARIAIL: I'm sorry, Your Honor, I hand-delivered it to your clerk this morning. I'll file it on the ECF. I just didn't have the opportunity to do at the end of the night.

THE COURT: Now I have to wait and look at it.

As to the second side bar, I find that the interest of national security requires that that side bar be sealed as it would compromise important governmental interests in making a disclosure of what was discussed. I think that the need to protect that national security interest outweighs the qualified right of access of the public under the First Amendment. So I'll seal that.

As to the first one it simply defers me to the previous classified information procedures hearings that we had and I'm going to have to go back and compare those but I'll maintain the temporary seal until I can do that even then I'll make a finding on that one way or the other whether on that I'll make a ruling on that today what else.

MS. WELLS: Very briefly. The second witness the government is calling we're planning to move to admit two

documents, Government's Exhibit 74 and 75 as business records pursuant to the business records certification that was produced along with them. I don't believe there's any objection from the defense on this. The plan is just to offer them during a Special Agent Paciorek's testimony.

MR. STERN: The numbers again.

THE COURT: 74 and 75.

MS. WELLS: 74 and 75, the Yahoo records and the APNIC records.

MR. ARIAIL: Your Honor, just for housekeeping we intended to hand out the transcripts during the testimony of the first witness.

THE COURT: You are going to hand them out?

MR. ARIAIL: Yes, we are, Your Honor.

THE COURT: We're assembling the jury, so you want to put those on the chairs to save a little time.

MR. ARIAIL: As long as defense counsel is fine with that I can go ahead.

THE COURT: He's going to put the transcripts that are going to be used on the chairs of the jurors. I will direct the jurors not to look at them until they're called to.

MR. STERN: That's fine, Your Honor.

MS. KELLMAN: That's fine.

THE COURT: Let's have the jury in.

(Jury enters.)

THE COURT: Ladies and gentlemen, as you're filing in this morning you'll see there's notebooks on your chairs, that's to help with some of the testimony that's coming. Please don't open them yet, we will tell you when to open them.

Everyone maybe seated. Good morning, ladies and gentlemen, hope you had a good evening. We will continue with government's case.

MR. ARIAIL: Your Honor, the government calls Mohammed Ag at this point.

THE COURTROOM DEPUTY: Please raise your right hand.

MOHAMMED AG, called as a witness, by the Government, having been first duly sworn/affirmed, was examined and testified as follows:

THE COURTROOM DEPUTY: Please state and spell your name for the record.

THE WITNESS: Mohammed, M-O-H-A-M-M-E-D, Ag, a-G.

THE COURTROOM DEPUTY: You may be seated.

THE COURT: You may inquiry.

MR. ARIAIL: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. ARIAIL:

Q Good morning.

A Good morning.

Q Good morning. Can you speak closely to the microphone.

A Yes.

Q Sometimes it's hard to hear.

A Okay.

Q Mr. Ag, do you work for the United States Government?

A Yes.

Q And in September 2011, were you employed as a contractor for the United States Government?

A Yes, I was.

Q And, generally, could you tell the jury just a little bit about what you do for a living?

A Yes, I translate Hausa and multiple other languages for the U.S. Government.

Q And how many languages do you speak, generally?

A Five.

Q And do you speak all of them fluently?

A No.

Q Do you speak Hausa and English fluently?

A Yes.

THE COURT: Hang on, one second. I want to make sure, ladies and gentlemen, you can hear okay?

THE JURORS: It could be better.

MR. ARIAIL: It's a little soft. Pull the mic a little closer to you.

A Okay.

Q Or increase the volume.

A Is that better?

THE COURT: The volume is up.

MR. ARIAIL: The volume is up.

THE WITNESS: All right.

Q Sorry. Do you also speak Arabic.

A A little bit, yes.

Q I want to talk about Hausa. First off, what is Hausa?

A Hausa is a language that's spoken in West Africa. And it's spoken --

Q When you say West Africa, what countries?

A Countries like Nigeria, Niger, Mali, parts of Burkina Faso and Ghana.

Q Are there other areas in Africa that it is spoken as well?

A Yes, it's also spoken in parts like Togo and it's also spoken in Sudan as a diaspora language also --

Q You said as a diaspora language, what is a diaspora language?

A So in this case is Hausa -- people of the Hausa ethnic group who are not indigenous to Sudan or Saudi Arabia who speak that language --

Q All right --

A -- and live in that region.

Q -- you referenced ports. What do you mean by that?

THE COURT: Mr. Ariail, you're stepping on the end of the witness' sentences.

MR. ARIAIL: I apologize, Your Honor.

Q You said ports, what do you mean by that?

A Ports are places where trade is conducted in West Africa.

MR. ARIAIL: May I request permission to publish an exhibit to the witness, Your Honor?

THE COURT: Okay.

Q Showing the witness what's on the screen identified as Government's Exhibit 206.

Do you recognize this?

A Yes.

Q What is this?

A It's a map of north Africa in the Arabian Peninsula and Europe, the Indian subcontinents.

Q Is it a fair and accurate depiction of these parts of the world?

A Yes.

MR. ARIAIL: Your Honor, I'd offer Government's Exhibit 206.

MR. STERN: No objection.

THE COURT: Received.

(Government's Exhibit 206 was received in evidence

as of this date.)

MR. ARIAIL: Request permission to publish to the jury, Your Honor.

THE COURT: You may.

(Exhibit published.)

Q Mr. Ag, could you point out on this map where and what countries on this map the language Hausa is spoken?

A Yes.

Q Noting for the record the witness is marking Nigeria, Niger, Mali, Ghana, Burkina Faso, Sudan and Saudi Arabia.

Now within Hausa are there dialects?

A Yes, there are.

Q What how many dialects?

A There are dialects within Nigeria, but there are also dialects within each of the countries where the language is spoken, yes.

Q And just, generally, though what's a dialect?

A A dialect is an accent or a vernacular.

Q What's the most common dialect of Hausa that's spoken?

A The most common dialect is that which is spoken in Kano.

Q Is that referred to as the Kano dialect?

A Yes.

Q What dialect do you speak?

A I speak the Kano dialect.

Q Is there a dialect specific to Niger?

A Yes.

Q And how, if at all, is it distinct from the Kano dialect of Hausa?

A So Hausa is a semi-tonal language and much of the tones are lost within the Nigerian dialect.

Q And what's a semi-tonal, when you say semi-tonal language, what do you mean?

A That means it's sort of like Japanese or Korean, even though it's not the same language family there are tones and the way a word, a particular word is pronounced changes the meaning.

Q And you mentioned a second ago Kano, where is Kano?

A Kano is in northern Niger.

Q All right. And the Nigerian dialect, have you been to Niger before?

A Yes.

Q And when you went to Niger, did you have any trouble speaking the Nigerian dialect or with people who were speaking the Nigerian dialect of Hausa?

A No, they had no trouble understanding me and I had no trouble --

Q What's the -- sorry.

A -- understanding them.

Q What's the difference between the Kano dialect -- or if

you could give a comparison between the Kano dialect and the Niger dialect of Hausa?

A Yes, the tones are lost and it's sort of like speaking the Queens English versus Mississippi Louisiana English.

Q Which one is the Queens English?

A The Hausa.

Q Sorry, the Hausa of which?

A The Hausa of Kano.

Q The Hausa of Kano?

A Yes.

Q Okay. Now I'm going to show you on screen if I may Government Exhibit 26, which is already in evidence.

And do you recognize this person?

A Yes.

Q What is his name?

A Harun Adnan Ibrahim Adam.

MR. ARIAIL: I just note for the record the witness has identified the defendant.

Q How did you first become familiar with this individual?

A Yes. I was requested by the FBI's counter-terrorism and the U.S. Attorney's Office to translate for him.

Q Where did you translate for him?

A In Italy.

Q Sorry, can you just pull that mic a little closer. I think it's hard to hear from folks in the back here.

Let me back up a second too. When did you first start speaking Hausa?

A I learned to speak Hausa as a child.

Q And were you born in the United States?

A No.

Q Without saying specifically where, where were you born?

A I was born in Africa.

Q And at a certain point you came to the United States, can you tell the jury a little bit about how you came to the United States?

A Yes. I was adopted.

Q And did you end up going to high school in the United States?

A Yes.

Q And I want you to talk a little bit about your higher education. Did you go to college?

A Yes.

Q What kind of degree did you receive?

A Bachelor of science.

Q What was the bachelor of science in?

A In history, economics, political theory of the globe, international affairs.

Q Can you tell the jury just a little bit about the courses that you took in connection with your degree.

A Yes. I took courses in government, economics,

international trade, international affairs. And also earned certificates in African studies.

Q The certificate in African studies, can you tell the jury a little bit about the course work you took for that?

A The same type of courses but focusing on Africa.

Q And in connection with your job as a Hausa interpreter or translator, have you undergone any training?

A Yes.

Q Can you tell the jury a little bit about that.

A Yes, I took many hours of training in intensive Hausa.

Q Was that through the United States Government?

A Yes.

Q And in your daily work, how often do you translate or interpreter Hausa?

A Daily. Eight hours a day, 40 hours a week.

Q And how long have you actually been employed as a Hausa translator for the United States Government?

A A year and a half.

Q Prior to that did you work as a contractor?

A Yes.

Q How long prior to that did you work as contractor for the U.S. Government?

A I worked for about five years.

Q Now prior to working formally as a Hausa translator, what did you do for a living?

A I worked in international adoptions.

Q Tell the jury a little bit about what you did in international adoption.

THE JURORS: I can't hear very well.

THE WITNESS: Yes, I --

THE COURT: I think if you talk a little more slowly it will help.

A Okay. I worked for an international adoption agency, and that job took me to various African countries. I worked as the director of external affairs for the agency and I had on occasion traveled to multiple African countries.

Q And is it fair to say that speaking Hausa was integral to your work at that agency?

A Yes.

Q Now I want to ask you also in your personal and professional life -- I think you mentioned some of this already -- have you had occasion to spend time in countries that speak Hausa?

A Yes.

Q How often and what are some of those countries?

A I, on occasion, visited Nigeria, Niger and Mali.

Q While you were there did you speak Hausa?

A Yes.

Q Now you mentioned a minute ago that the U.S. Attorney's Office and the FBI made a request to you for assistance. Do

you have an understanding as to why the FBI and the U.S. Attorney's Office asked for your assistance?

A Yes.

MR. STERN: Objection.

THE COURT: I'll allow it. Go ahead.

A Yes, I while the individual did not -- did speak some English and some Arabic, he preferred to speak in Hausa, and they engaged me to translate for him.

Q I'm sorry. Just to be clear, the individual you're referring to that's --

A Harun.

Q -- Harun?

A Yes.

Q When you received the request for assistance, were you overseas?

A Yes.

Q And as a result of that request, what did you do?

A I went to -- I flew to Paris.

Q You flew to Paris? I'm sorry.

A Yes. Paris.

Q From Paris where did you go?

A I went to Palermo.

Q When you got to Palermo, where did you go from there?

A From there I met up with the team and we got on a bus to Agrigento, Italy.

Q Where is Agrigento in Italy?

A It's south, south of Palermo on the island of Sicily.

Q When you got to Agrigento, what did you do?

A The following morning on the 14th, we got on the bus and headed to the prison where the interview was conducted.

Q When you say a prison, could you describe that for the jury.

A Yes, it's a large prison complex that contains a courthouse much like this one.

Q I'm sorry, can you repeat that.

A That contained a courthouse much like this one.

MR. ARIAIL: Your Honor, I think the microphone --

THE COURT: It's the tone. He said it was in a courthouse much like this, but somehow his voice doesn't match the timber in the microphone and that's the reason. I don't think there's anything we can do about that.

MR. ARIAIL: Understood, Your Honor.

Q Mr. Ag, if you just try to speak up --

A Okay.

Q -- I think it will be helpful.

I just want to publish to the witness, Your Honor, Government's Exhibit 28.

THE COURT: Witness only. Go ahead.

Q Mr. Ag, what are we look at here?

A We are looking at the courtroom within the prison.

Q And I'd offer -- is it a fair and accurate picture of the courtroom as it existed on September 14th, 2011?

A Yes.

MR. ARIAIL: I'd offer Government's Exhibit 28.

MR. STERN: No objection.

THE COURT: Received.

(Government's Exhibit 28 was received in evidence as of this date.)

Q Could you tell the jury what are we looking at here?

A We are looking at the courtroom and on either side are holding cells and the judge and his staff are sitting up here. The judge is sitting right here. And his assistants are sitting right here and his technician is sitting right here. And the defendant's attorney is sitting right here. And Burt LaCroix is standing here. The Italian translator is standing here. And David Bitkower is standing here. And you're sitting right here. And the Italian guard is sitting there. And I'm sitting right here.

Q Okay, let me just talk through that slowly. You mentioned a person named David Bitkower?

A David Bitkower is a U.S. Attorney -- Assistant U.S. Attorney.

Q And you mentioned somebody named Burt LaCroix, who is Burt LaCroix?

A Burt LaCroix is part of the Joint Terrorism Task Force,

a member of the Joint Terrorism Task Force.

Q You said there was an Italian interpreter present?

A Yes.

Q Where is the Italian interpreter?

A She's standing right here. (Indicating).

Q And where is the judge sitting again?

A The judge is sitting right. (Indicating).

Q Is the judge obscured in the picture?

A Yes, only his head.

Q Again, where are you sitting in the picture?

A I'm sitting right here. (Indicating).

Q And I just note for the record that the witness is marking up the photograph in various places.

What are the tables that we're looking at there in the front -- sorry, in the middle of the picture, what are those?

A The tables are where the individuals who were asking questions sat and there are microphones for recording purposes and amplification.

Q Who from the United States Government was present in that area where the tables were?

A You were present, Burt LaCroix was present. David Bitkower was present. William Nardini was present, and Gregory Paciorek was present.

Q Who is Gregory Paciorek?

A He's right there.

Q Just noting that the witness --

A The FBI.

Q -- is referring to the man sitting at the table, the government's table.

And Bill Nardini, who is Bill Nardini?

A William Nardini is a representative of the U.S. Attorney's or Justice Department in Italy.

Q And did the defendant have attorneys with him?

A Yes.

Q And you, I think, marked or identified one of them, was there more than one attorney?

A Yes, there were two.

Q Is the defendant in this picture?

A No.

Q Generally, if you know, what was the purpose of the court proceeding?

A The purpose was to interview the defendant about his activities.

Q Now at some point -- and just to be clear the defendant is not in the picture here, is he?

A No.

Q At some point did the defendant participate or join in the proceedings?

A Yes.

MR. ARIAIL: If I may, Your Honor, publish to the witness only Government's Exhibit 27?

THE COURT: Okay.

Q What are we looking at here?

A We are looking at the courtroom.

Q Sorry. What are we looking at here?

A Okay, that's better. We are looking at I and the defendant, this is me sitting here, the defendant is sitting here. And the Italian judge is sitting here. And his two assistants are sitting next to him right here.

Q Mr. Ag, is this a fair and accurate picture of the courtroom as it appeared on the day of September 14th --

A Yes.

Q -- 2011?

We'd offer this into evidence, Your Honor.

MR. STERN: No objection.

THE COURT: Received.

(Government's Exhibit 27 was received in evidence as of this date.)

MR. ARIAIL: And request permission to publish.

THE COURT: Go ahead.

(Exhibit published.)

Q I'm going to clear the screen here, I hope.

THE COURTROOM DEPUTY: I'll clear it.

Q What are we looking at here?

A The same photo.

Q If you could just go through it again so the jury can actually see it.

A Oh, I see, okay. Yes. This is a picture of me sitting right here and the defendant is sitting here. And the judge is sitting here and his two assistants are sitting right here.

Q Just to be clear, the judge is the gentleman with the open collar; is that right?

A Yes.

Q We're in Italy.

A Yes.

Q And the metal electronics there in the screen, what are those?

A Those are microphones connected to recording devices.

Q And is there a microphone for you?

A Yes.

Q Is there one for the defendant as well?

A Yes.

Q Over what period of time and days was the interview of the defendant conducted?

A Over three days.

Q And just talk us through those days, each day.

September 14th, was the first day?

A Yes. September 14th was the first day. The 15th

was -- the 14th was a full day. And the 15th we had a half a day and the 16th we had a half a day.

Q And during the interviews, did the defendant identify himself specifically by name?

A Yes.

Q And how did he identify himself?

A He identified himself as Adnan Harun Ibrahim Adam, he identified himself as Spin Ghul, he also identified himself as Abu Tamin and other names.

Q And during the course of the interviews, did you have occasion -- did you actually observe the defendant consult with his attorneys?

A Yes.

Q And what languages was the interview conducted in?

A It was conducted in English, Italian, translated to the defendant in Hausa.

Q Now, explain, if you could, how that worked?

A So when the U.S. team was doing the asking, I would translate that English for the defendant in Hausa, then the Italian translator would then translated into Italian for the judge.

Q And what would happen when the defendant responded?

A When the defendant responded I would translate his Hausa and the Italian translator would then subsequently translate that into Italian.

Q And how would it work if the judge asked a question?

A The Italian translator would translate it into Italian, I would translate it -- the Italian translator would translate the Italian into English, I would translate that to -- in the English to the defendant --

Q Okay --

A -- in Hausa.

Q -- this was a slow process.

A Yes.

Q Now during the interview, did you observe or translate -- and translate for the Italians the Italian advice of rights to the defendant?

A Yes, I did.

Q During the interview did the U.S. officials advise him of his rights under U.S. law?

A Yes.

Q Based on your understanding of what was said by the governments and the defendant, did the defendant waive his rights under U.S. and Italian law and agree to speak?

A Yes.

Q Without elaborating extensively, could you just tell the jury briefly about the topics that were discussed during the course of the interviews?

A Yes. The defendant discussed his travels from Saudi Arabia to Pakistan. And his travels from Pakistan to

Afghanistan to take part in terrorist training in Afghanistan. His subsequent engagement with U.S. forces in Afghanistan and his travels back to Africa to conduct terrorist acts against U.S. installations in Nigeria.

Q Generally speaking, what was the defendant's demeanor like during the course of the interviews?

A He was cooperative for the most part.

Q He was, I'm sorry?

A He was cooperative.

Q When you say cooperative, what do you mean?

A I mean he was more than -- he was willing to speak.

Q Now in terms of the language, Hausa, what dialect did the defendant use when he spoke?

A The Nigerian dialect.

Q During the interview did he speak in other languages?

A Yes. He spoke some Arabic and some English.

Q Did you understand all of the Arabic that he spoke?

A No.

Q What did you do when he spoke Arabic and you didn't understand what the word was?

A I would generally blurt the word out in case somebody else knew what the word meant.

MR. ARIAIL: If I may approach, Your Honor?

THE COURT: You may.

MR. ARIAIL: I'll show the witness what's been

marked as Government's Exhibit 30.

A Yes.

Q Do you recognize this?

A Yes.

Q What is this?

A This is the full 16-hour audio of the interviews.

Q And this CD -- I apologize, Your Honor, I request to permission to publish it on the screen just to the witness.

THE COURT: You may.

Q What languages are contain on the audio in this CD?

A Italian, English, and Hausa.

Q And have you listened to the entirety of the audio on the CD?

A Yes.

Q How long did that take you?

A It took a very long time.

Q And does that CD contain the entirety of the audio from September 14th, 15th and 16th from the interviews in Italy of the defendant?

A Yes.

MR. ARIAIL: Request permission to publish it to the jury, Your Honor, and offer it as well.

THE COURT: Any objection?

MR. STERN: No.

THE COURT: Received.

(Government's Exhibit 30 was received in evidence as of this date.)

(Exhibit published.)

Q And is that your signature here on the CD?

A Yes.

Q I'm showing just the witness, Your Honor, Government's Exhibit 31. Do you recognize this?

A Yes.

Q What is this?

A This is the condensed version of the audio.

Q And I request permission -- or sorry. I'd offer it and request permission to publish it, Your Honor.

THE COURT: Any objection.

MR. STERN: No.

THE COURT: Received. Go ahead.

(Government's Exhibit 31 was received in evidence as of this date.)

(Exhibit published.)

Q Sorry, what is this again?

A This is the condensed version of the 16-hour audio.

Q What's the condensed version of the 16-hour audio?

A That means the Italian and the Hausa are at a lower pitch and the English content is at a louder pitch for people who only understand English. So people who only understand English can understand it.

Q So to be clear, is the English -- sorry. Is the Hausa spoken by the defendant synced with the English spoken by you during translation?

A Yes.

Q And is the Italian spoken by the Italians synced with the English translation?

A Yes.

Q Why -- you reviewed this in connection with your preparation for testimony here today, right?

A Yes.

Q Why did we do this?

A To save everyone the time of listening to the 16-hour version.

Q How many hours is this version?

A This is four hours.

Q Does it contain, this CD, does it contain all of the English that was spoken and translated in Italy during September 14th, 15th, and 16th?

A Yes.

Q Underneath it does it contain all of the Italian and Hausa as well just at a reduced volume?

A Yes.

MR. ARIAIL: Your Honor, if I may show on screen to the witness only Government's Exhibit 31T. I actually -- I don't think there's any controversy to this, but I offer

it as well, 31T. Request permission to publish it.

THE COURT: You're offering into evidence --

MR. ARIAIL: Into evidence.

THE COURT: -- or as an aid in understanding.

MR. ARIAIL: I'm sorry?

THE COURT: You're offering into evidence or as an aid to understanding?

MR. ARIAIL: I'm going to offer it into evidence, Your Honor.

THE COURT: Any objection?

MR. STERN: I think it's native, I think if the jury hears something different they're entitled to credit what they hear.

THE COURT: I think you have to do some more authentication.

MR. ARIAIL: Fair enough, Your Honor, we'll withdraw it at this time. I do request permission to show it to the witness in the first instance.

THE COURT: Go ahead.

Q Mr. Ag, what are we looking at here?

A This is the transcript of the English audio.

Q And if I may, Your Honor, provide this as an aid to the witness?

THE COURT: Okay.

Q Mr. Ag, in connection with your preparation for trial

today, did you review the transcript contained in 31T while listening to the original audio from the proceedings in Italy on September 14th through September 16th, 2011?

A Yes.

Q And again how long did that take you?

A It took a long time.

Q And based on your review of the audio, did you make a determination whether or not the transcript is an accurate reflection of the Hausa to English translation and English to Hausa translation that you conducted during the interview in Italy?

A Yes, for the most part, yes.

Q When you say for the most part, what do you mean?

A Yes, there are some -- there were some points, for example, when Harun mentioned the names Usama bin Laden and Ayman al Zawahiri and I only mentioned Usama bin Laden.

Q Can you tell the jury a little bit -- how many times did you leave little things like that out?

A A few.

Q Sorry?

A A few times, a couple of times.

MR. ARIAIL: Your Honor, at this point, I'd ask to publish it as an aid 31T to the jury for their review in connection with the testimony here.

THE COURT: You're offering it as an aid?

MR. ARIAIL: An aid yes, Your Honor.

THE COURT: You're going to play the transcript -- you're going to play the audio and they are going to follow along with the transcript, right?

MR. ARIAIL: I'm actually going to have them refer directly to the transcript, Your Honor.

THE COURT: Then it's not an aid.

MR. ARIAIL: Fair enough. Then we offer it as an exhibit then.

THE COURT: Any objection?

MR. STERN: He's offering it as an aid or -- I'm not sure.

THE COURT: He's offering it as evidence in chief just as he did the audio on the CD.

MR. STERN: I do have an objection to that, yes.

THE COURT: The objection is overruled. I think it's been sufficiently authenticated. Any discrepancies can be explored on cross.

(Government's Exhibit 31-T was received in evidence as of this date.)

BY MR. ARIAIL:

Q Now I want to ask you just before we get to 31T, during the course of the defendant's testimony, were there particular words that you translated from Hausa that have more than one meaning in the language?

A Yes.

Q Can you give the jury an example of one of those incidents?

A Yes, like the word "dutse."

Q What does the word "dutse" mean in Hausa?

A Dutse can generally means rock but it also -- it can also mean mountain or ridge or hill depending on context.

Q And when you say depending on context, can you explain that a little bit more?

A Its depending on whether or not the individual says a big rock, a small rock or whether or not the two individuals discussing the topic know what they're talking about.

Q And so how would someone say in Hausa explain that they're talking about rock versus a mountain?

A You can say baban dutse, a bigger rock or --

Q Sorry. Were there other examples of that --

A Yes.

Q -- type of --

A Yes. Like also the word "kafa."

Q What is the word "kafa" in Hausa?

A The word "kafa" generally means foot, but based on context it can also mean leg.

Q And explain how that works? How do you tell the difference?

A Based again on context or gestures.

Q Sorry?

A Gestures or gesture.

Q And I'm going to direct your attention to page 28 of 31T.

THE COURT: Did you want the jury to follow along?

MR. ARIAIL: The jury can follow along as well.

THE COURT: Because they've been obeying instructions not to open their notebooks until they've been told.

MR. ARIAIL: I'm sorry, Your Honor.

THE COURT: What page are you on?

MR. ARIAIL: Page 28 at line 11. If I could read a portion into the record, Your Honor.

I'm not sure what his name was, but he walked with a limp. His foot was, uh, there was something wrong with his foot. Usaid al-Yemeni was there. The individual with the bad foot was a, uh, a member of Osama's officials.

In that section of the transcript what word did the defendant use for foot?

A Kafa.

Q Did he gesture down to his foot or point to his upper leg or anything?

A At that point, based on my recollection, he said, "kafa."

Q And so you had no other way to determine whether he was

talking about his leg or his foot?

A No.

Q I'm going to direct your attention to page 62 of the transcript and the jury and the Court as well, to line 30. I'll read aloud a section.

When I looked at the injury, I saw that his foot was, uh, broken. All the skin and, uh, muscle that, that's, uh, on his foot has all, has separated from the bone.

In that section, what word did the defendant use to describe foot?

A Kafa.

Q And did he in any way gesture to any part of his leg or foot?

A No.

Q So could he have been referring to his leg or his foot in that section?

A Absolutely.

Q And one more, Your Honor. Directing the witness to page 132 of the transcript, beginning at line 43. I'm going to read aloud.

He said since you don't have a great deal of training and your training was done in, in a rocky, in a rocky environment, uh, you will have to be, you'd have to get more training to be trained in a flat terrain because

flat terrain is different than rocky terrain.

In that section, what word did the defendant use for the word rock?

A Dutse.

Q And rock in that context, could that have meant mountainous or rock or something else?

A Yes, it could mean mountainous, it could mean a rocky area.

Q All right. Thank you.

Now, during the testimony, were there other issues that came up in terms of translation?

A Yes.

Q And I'm going to direct your attention to page 60 of the transcript -- sorry, page 59 beginning at line 44. I'll start a little earlier, there's a question at 36.

Could you just, uh, just clarify the date when this, uh, took place lays.

Answer it was a Friday, month or year? I'm not sure but at that point Ramses the Fifth was, uh, intending on, intent on visiting the American forces, but he decided not to come.

Do you know what season it was?

I'm not sure but I know that was his first attempted visit.

And again who is Ramses the Fifth?

A Here's he's referring to Rumsfeld.

Q Then I was going to read the last section.

Oh, Rums, Donald, he said Donald Rumsfeld.

Could you explain to the jury what happened in this section?

A Yes, in this exchange, Harun's pronunciation of the word "Rumsfeld" and also raising his hand at times and saying the word in Hausa "biar," which means five, led me to believe he was talking about -- he was saying Ramses, but based on the way he pronounced it, and then saying the word "five," that led me to believe he was saying Ramses the Fifth and then as the conversation continued it rang a bell, five oh five, Pentagon, Rumsfeld.

Q Was there any question whether he was referring to Donald Rumsfeld?

A No.

MR. ARIAIL: At this point, Your Honor, I'd request to publish just to the witness, a couple of documents.

THE COURT: All right. Go ahead.

Q During the translation did the defendant also write certain things down?

A Yes.

Q Did he write certain things down on each of the days that he was in court?

A Yes.

Q I'm going to show the witness on the screen -- may I approach, Your Honor, it's a little hard to put the whole thing on.

THE COURT: Okay.

BY MR. ARIAIL:

Q Government's Exhibit 32. Do you recognize this?

A Yes.

Q Is this a writing that the defendant made on September 14th, 2011?

A Yes.

Q And how do you recognize this document?

A I recognize the Arabic which says Abu Tamin and his attempt at writing Abu Tamin in English script.

Q Is there writing on the back as well?

A Yes.

Q Do you recognize any of that writing?

A I recognize him attempting to write Abu Ahmed or writing Abu Ahmed in Arabic clearly and Mahir Tashkandi.

Q I'm showing the witness what's been marked as Government's Exhibit 33. Do you recognize this?

A Yes.

Q Sorry.

A I recognize him writing his e-mail address, the USTS.

Q Is that there a second page to that document as well?

A Yes. The second page is his e-mail address.

Q And on what date did he write that document?

A And this document was on the 15th.

Q I'll show the witness what's been marked as Government's Exhibit 34. Do you recognize this?

A Yes.

Q What is this document? Is this a document he wrote on September 16th?

A Yes, this is the document that reflects his home telephone number in Saudi Arabia.

Q Is there a second page to that document?

A Yes.

Q Do you recognize any writing on that page?

A I can't make it out.

Q Okay. Thank you.

I'm going to show the witness on screen, only the witness, Your Honor, Government's Exhibit 31A.

Do you recognize this?

A Yes.

Q And what is this?

A This is the condensed version of the audio with captions.

Q When you say with captions, what do you mean?

A That means the -- his, Harun's voice and the Italian spoken are at a lower volume, and the English is overlaid on

top of that and simultaneously playing the transcript.

Q And the audio on 31A, is this the audio, the exact same audio that was on Government's Exhibit 31?

A Yes.

Q And is the transcript on 31A the exact same words that are on the transcript 31T.

A Yes.

MR. ARIAIL: I'd offer 31A into evidence, Your Honor, and request permission to publish.

MR. STERN: I have an objection to the transcription. I have no objection to the CD.

THE COURT: Well, so far it's just the CD. So the objection is overruled and it's admitted.

MR. ARIAIL: I'm sorry, Your Honor.

THE COURT: It's admitted.

MR. ARIAIL: Thank you. I'd request permission to publish just a brief portion just so he can explain what's going on in the transcript.

THE COURT: Okay.

(Government's Exhibit 31-A was received in evidence as of this date.)

MR. ARIAIL: If we could have the AV up, Ms. Clarke, I apologize.

(Exhibit published.)

Q Mr. Ag, I'm going to play just a brief clip and I'm

going to just ask you after I stop to explain to the jury a little bit about what's going on.

(Audio recording played.)

Q Who is speaking right there?

A Me.

Q And who is asking the first question in English?

A You were.

Q And who was speaking in a foreign language?

A Harun.

(Video clip played.)

Q And who was that speaking there at the end?

A That's the Italian interpreter.

MR. STERN: Judge, can we approach for a minute?

THE COURT: Yes.

(Continued on the next page.)

(Sidebar conference.)

MR. STERN: Judge, in that one tiny excerpt there's evidence that this is not a verbatim transcript. It said "outside this area." That's exactly why I objected to it because the jury is entitled to credit what they hear, not what's written there. They shouldn't be told what's written there is in fact evidence, that's evidence it is not.

THE COURT: I'm going to give that instruction.

MR. STERN: I'm sorry?

THE COURT: I'm going to give the instruction that the jury is to go by what they hear not what they see when it comes to transcripts and audio playing.

MR. ARIAIL: I think that's the Second Circuit guidance, Your Honor, I agree.

THE COURT: Well, you're not doing it the way it's usually done.

MR. ARIAIL: Sorry.

THE COURT: But you have sufficiently authenticated the transcript so I will let it in. I think the point is at least part of the slide you showed, I don't know if it's in the transcript or not, I assume it is, but it wasn't exactly what the witness said. I didn't think it was that materially different, but it was different.

MR. STERN: Yeah, I agree with you that it was not materially different, but I haven't scanned the whole thing

to see if it matches up.

MR. ARIAIL: I didn't see a difference.

THE COURT: There were a few words dropped that were in the slide and not on the audio.

MR. STERN: The quote and it was outside, the slide said outside this area, the word "outside this area" were not in the statement.

THE COURT: I'm going to give the instruction also.

Also while we're here I didn't note for the record this morning, I assume the defendant was again invited to come and declined; is that right?

MR. ARIAIL: He was, Your Honor, and the marshals confirmed that to me in writing.

THE COURT: All right. Thank you.

(End of sidebar conference.)

(Continued on the next page.)

(In open court.)

THE COURT: Ladies and gentlemen, to the extent there is any inconsistency between the transcript you're holding or what you see projected on your screens and what you hear, the primary evidence, the only evidence is what you hear. All right. So that's what you go by. The hearing is the evidence, the visible words are just to help you understand what you're hearing, but if there is a conflict you go with what you hear. Go ahead.

MR. ARIAIL: Thank you, Your Honor.

Q One last question. Mr. Ag, without elaborating, subsequent to your involvement in the interviews in Italy did you remain involved in the government's investigation?

A Yes.

MR. ARIAIL: Nothing further, Your Honor.

THE COURT: All right. Any cross?

MR. STERN: No.

THE COURT: All right. You may step down.

Thank you very much.

(Continued on the next page.)

THE COURT: Government's next witness.

MS. WELLS: Yes, your Honor, the Government calls
Special Agent Gregory Paciorek.

(Witness leaves the witness stand.)

COURTROOM DEPUTY: Raise your right hand.

S.A. GREGORY PACIOREK, called by the Government, having been
first duly sworn, was examined and
testified as follows:

THE WITNESS: I do.

COURTROOM DEPUTY: Okay. Please state and spell
your name for the record.

THE WITNESS: Gregory, G-r-e-g-o-r-y. Paciorek,
P-a-c-i-o-r-e-k.

COURTROOM DEPUTY: You may be seated.

THE COURT: All right you may inquire.

MS. WELLS: Thank you, your Honor.

DIRECT EXAMINATION

BY MS. WELLS:

Q Good morning, Special Agent Paciorek.

A Good morning.

Q Would you please tell us who you work for?

A The Federal Bureau of Investigation.

Q And how long have you been with the FBI?

A Approximately 11 years.

Q Is there any particular organization within the FBI that you're assigned to?

A The Joint Terrorism Task Force or JTTF.

Q Tell us just an a little bit about what the Joint Terrorism Task Force or the JTTF does?

A The JTTF is a partnership of federal, state, and local agencies, housed by the FBI that investigates terrorism and acts of terror around the world.

Q And within the JTTF, are you part of any other particular subgroup?

A Yes. I sit on Squad CT, or Counterterrorism 3.

Q And what, if anything, is the focus of the counter terrorism 3 group?

A CT3 has investigative responsibilities for terrorism that occurs within the African continent directed against U.S. interests, or it occurs in the New York area of responsibility but which emanates from Africa.

Q Now, Special Agent Paciorek, are you familiar with the defendant in this case?

A Yes.

Q How did you first become familiar with him?

MR. DRATEL: Objection.

THE COURT: Overruled.

A In the summer of 2011, a fellow agent on my squad opened a terrorism investigation on the defendant. At that time, I

was notified that the defendant had been arrested by Italian officials as he was transporting from Africa to Italy, and that he was being held by the Italians.

MR. DRATEL: Your Honor, I just renew the objection as a hearsay answer to what someone asked.

THE COURT: Ladies and gentlemen, the testimony you just heard is not being offered to prove that what the witness heard was true, it's just offered to you to explain as to how he got involved.

MS. WELLS: Thank you, your Honor.

Q Special Agent Paciorek, with that information in hand what, if anything, were you asked to do?

A I was asked to travel to Italy and participate in interviews of the defendant.

Q And after being requested to travel to Italy where, if anywhere, did you go?

A At the time I was in Nigeria on another investigation, so I returned from Nigeria and prepared to depart for Italy. We traveled to Rome, from Rome took a connection to Palermo, and from Palermo we drove to Agrigento.

MS. WELLS: Your Honor, I would like to show the witness what is in evidence as Government Exhibit 205.

THE COURT: All right.

Q Special Agent Paciorek, could you have that image up your screen?

A Yes.

Q You mentioned a number of different places in and around Italy. Can you show us where on the map you went?

A Rome in the center of the mainland. Then we flew to Palermo, located on the north side of the Sicilian coast, and from there we drove to Agrigento.

Q All right. And upon your arrival in Agrigento, what, if anything, did you do?

A We checked in our hotel and we met as a team to discuss the logistics for the following day's interviews.

Q And on what days did those interviews occur?

A September 14, 15, and 16 of 2011.

Q And so the record is clear, who is the interview with?

A Among other people, the defendant.

Q All right. On September 14, 2011, where did you go?

A We traveled to the Agrigento courthouse or courtroom which was a combined jail facility and courtroom.

Q All right.

MS. WELLS: I would like to show the witness what is in evidence as Government's 28. And could I please -- oh, there we go.

Thank you.

Q Special Agent Paciorek, do you recognize this photograph?

A Yes.

Q What is this?

A This is a photograph of the courtroom where the interviews took place.

Q And, generally speaking, or let me ask you a different question. Where, if anywhere, in this courtroom did you sit during the interviews?

A I sat in the front row or the front table located toward the front of the room.

Q All right.

A But I sat on the right side of that table so around here.

Q At some point on September 14th, did the defendant appear?

A Yes.

MS. WELLS: All right. I would like to show the witness what is in evidence as Government Exhibit 27.

Q Special Agent Paciorek, do you recognize this photograph?

A Yes.

Q What is this?

A It's a photograph of the front of the courtroom showing the defendant, Mr. Ag the interpreter, the Italian judge, and the judge's assistants.

MS. WELLS: Your Honor, may I approach the witness. I would like to show him the larger board exhibit next to the witness box.

THE COURT: Go ahead.

MS. WELLS: Thank you.

Q Special Agent Paciorek, do you recognize the photograph contained on this board?

A Yes.

Q What is this?

A It's the same photograph that's depicted on screen.

MS. WELLS: Move to admit, your Honor, and permission to publish.

THE COURT: Any objection?

MR. DRATEL: No, your Honor.

(The above-referred to exhibit was published in open court.)

Q During the interview that took place over September 14, 15, and 16, was the defendant represented by attorneys?

A Yes.

Q How many?

A Two.

Q At points during the interview, did the defendant consult with those attorneys?

A Yes.

Q How do you know?

A I saw them consulting.

Q Generally speaking, what was the purpose of the interview of the defendant?

A The purpose of the interview was to determine what, if any, involvement the defendant had with terrorism and acts of

terror around the world.

MR. DRATEL: Objection.

THE COURT: Hang on. Overruled.

Q At some point during the interview, did the defendant identify himself by name?

A Yes.

Q And how did he identify himself?

A Adnan Ibrahim Harun.

MS. WELLS: Your Honor, I would like to show the witness what's in evidence as Government Exhibit 26.

THE COURT: Go ahead.

Q Special Agent Paciorek, do you recognize this photograph?

A Yes.

Q Who is this?

A The defendant.

Q All right. During the course of the interviews, was the defendant advised of his rights under Italian law?

A Yes.

Q And then, separately, are you familiar with what's called Miranda rights under United States law?

A Yes.

Q Can you tell us generally what that is?

A Yes. Miranda rights, are when we advise an individual who is in custody that they have, for example, the right to remain silent; that if they had previously made statements,

they do not need to make statements again. If they decide to speak, that they can stop speaking at any time. And that they have the right to consult with an attorney.

Q Was the defendant provided with Miranda warnings in connection with his interview in Italy?

A Yes.

Q And after hearing those rights, what did the defendant do?

MR. DRATEL: Objection, your Honor.

THE COURT: Overruled.

A The defendant waived his rights and agreed to speak freely.

Q Special Agent Paciorek, have you reviewed all of the audio recordings of the interview that took place in Italy including the full unedited audio as well as the condensed audio?

A Yes.

Q Are those Miranda warnings reflected on that audio?

A Yes.

Q In addition to verbally waiving his rights as reflected in the audio recordings, did the defendant do anything else that indicated that he understood his rights?

A Yes.

Q And what was that?

A He took notes and wrote down what were, or what appeared

to be the rights that we advised him of.

MS. WELLS: Your Honor, at this point, I would like to read in a stipulation.

THE COURT: Okay.

MS. WELLS: And if I may put it up on the screen for the jury as I do that.

THE COURT: Okay.

MS. WELLS: As indicated in Government Exhibit 305, the parties have stipulated that Government Exhibit 32 contains handwritten text in Arabic. And Government Exhibit 32-T contains a true and accurate English translation of the Arabic text in Government Exhibit 32.

MR. DRATEL: No objection.

THE COURT: Received.

(Government's Exhibit 305 and was received in evidence as of this date.)

MS. WELLS: Thank you.

And this stipulation has been signed by the parties.

EXAMINATION BY

MS. WELLS:

(Continuing.)

Q Now, Special Agent Paciorek, you mentioned a moment ago that the defendant took notes during the day on September 14th.

I'm showing you first what has been marked for

identification only as Government Exhibit 32.

MS. WELLS: For the witness, please.

Q Do you recognize this document?

A Yes.

Q I'm showing you the second page. What do you recognize this to be?

A The notes that the defendant took on September 14, 2011.

Q And how do you recognize them?

A I recognize the Latin characters here Abu Tamin. And on the other page also the Latin characters Abu Ahmed and Mahir Tashkandi.

MS. WELLS: Your Honor, I move to admit Government Exhibit 32.

THE COURT: Received.

(Government's Exhibit 32 was received in evidence as of this date.)

MS. WELLS: Permission to publish. Page 2 and Page 1.

And, your Honor, I would also move to admit Government Exhibit 32-T pursuant to the stipulation.

THE COURT: That's admitted.

(Government's Exhibit 32-T was received in evidence as of this date.)

MS. WELLS: Thank you. Permission to publish.

THE COURT: Go ahead.

Q Special Agent Paciorek, I'm showing you what's in evidence as Government 32-T.

Directing your attention to the numbered items at the top of this page, can you identify for us what is written at numbers 1, 2, 3, and 5?

A One, silence. Two, what you told the Italian authorities doesn't need to be repeated. Three, all of what you say today will be taken seriously by the judiciary. Five, if you have any questions on what was said to you about your rights.

Q Just for the record Government 32-T is a translated version of what?

A The notes the defendant took that day.

Q All right. Generally speaking, during the course of the three-day interview, who conducted the questioning of the defendant?

A The Italian judge and Assistant United States Attorney Shreve Ariail.

Q Who did most of the questioning?

A AUSA Shreve Ariail.

Q About what time of day did the interview begin on September 14th?

A About 10:30 in the morning.

Q Who asked the initial questions about the defendant?

A The Italian judge.

Q What was the nature of those questions?

A Those questions were biographical in nature.

Q During those questions, what, if anything, did the defendant say about where he grew up?

A He said that he grew up in Saudi Arabia.

Q What, if anything, did he say about his national origin?

A He had said that his national origin was Niger.

Q Now, at the outset of the interview, what, if anything, did the defendant say about what he used aliases?

A He identified one of his aliases as Abu Tamin.

Q All right. In addition to say Abu Tamin out loud? Did he provide that name in any other form?

A Yes.

Q What was that?

A He wrote it down.

Q All right.

MS. WELLS: Showing the witness what is in evidence as Government 32.

Q Special Agent Paciorek, do you see those words written anywhere here?

A Yes.

Q Where?

A (Indicating).

Q So everything is clear, I'll turn this the other way.

What do those words say?

A "Abu Tamin."

Q And showing the witness what's in evidence as 32-T, the translation.

Does that name appear on this document as well?

A Yes, it does.

Q And where is that?

A (Indicating).

Q Was Abu Tamin the only alias the defendant mentioned?

A No.

Q And what was the next alias, if any, that he described?

A He described "Spin Ghul."

Q All right. During the interview on September 14th, was the defendant asked any questions about the time that he spent in Afghanistan?

A Yes.

MS. WELLS: Your Honor, at this point, I would like to play clips from Government Exhibit 31-A which is the condensed audio with captions.

THE COURT: Okay.

MS. WELLS: And what I'll do for everyone's clarity is provide at the outset an approximate length of the clip along with page and line numbers so that counsel and the Court can follow along.

THE COURT: Okay.

MS. WELLS: So the first clip will be starting out at Page 21, Line 1, and this one will run about five minutes.

(Audio file played in open court.)

MS. WELLS: Your Honor, I am hitting pause briefly.
Would it be possible to turn the volume up a little?

THE COURT: Is everyone having problem?

MS. WELLS: If everyone is good then we'll continue.

THE COURT: Let me ask again. Anyone having a
problem hearing? Good.

(Audio file resumes.)

(Audio file concludes.)

Q Special Agent Paciorek, during that clip there was a
reference to the name, "Mahir Tashkandi." Do you recall that?

A Yes.

Q And other than referring to that person by name during
the interview, did the defendant recording that elsewhere?

A Yes, he also wrote it down.

Q Showing the witness what is already in evidence as
Government 32.

(The above-referred to exhibit was published in
open court.)

Q Special Agent Paciorek, where does Mahir Tashkandi appear
anywhere?

A At the bottom of the page here.

Q Showing the witness what is in evidence as 32-T, does
that name appear on this document as well?

A Yes, it does.

Q Can you show us where please?

A At the bottom.

Q Did the defendant also write anything else in connection with the name Mahir Tashkandi?

A He lawsuit Abu Ahmed.

Q What was that name?

A It was Mahir Tashkandi's alias.

Q Where does that appear on 32-T?

A Below Mahir Tashkandi.

Q And where does it appear on 32?

A (Indicating).

Q Generally speaking, what topics did the defendant discuss during the next section of this interview?

A He discussed his travel.

MR. DRATEL: Your Honor.

THE COURT: Yes.

MR. DRATEL: It all came through the interpreter.

It it's kind of an odd competency issue in terms of this witness.

THE COURT: Overruled.

A Sorry, could you repeat the question.

Q Of course. Generally speaking, what topics did the defendant discuss during the next section of the interview?

A Generally speaking, he talked about his travel from Saudi Arabia to Pakistan and into Afghanistan; the locations that he

visited; and his staying at an al-Qaeda guest house.

Q All right.

I'm now going to play the next clip. This one will begin on Page 23, Line 4. Just for reference the clip is about 15 minutes long.

THE COURT: We're going to take a morning break after this clip.

MS. WELLS: Okay.

(Audio file played in open court.)

(Audio file concludes.)

Q We'll stop there. Special Agent Paciorek, was there actually a break for lunch at this time?

A Yes.

Q About how long?

A A little more than an hour.

Q During the last section of the interview, the defendant mentions several different locations?

THE COURT: Is this a good point to take a break, or do you want to finish up on this?

MS. WELLS: I have less than two minutes, I would like to finish up if possible.

I would like to show the witness what has been marked for identification as 206.

Q Special Agent Paciorek, do you have a copy of this in front of you?

A Yes.

Q Do you recognize it?

A Yes.

Q What is it?

A It's a political map of North Africa, the Middle East, and parts of Europe.

MS. WELLS: Your Honor, I actually believe 206 is in evidence, so I ask permission to publish.

THE COURT: Okay.

Q Special Agent Paciorek, one of the locations that was mentioned during the last section of the interview was the country of Afghanistan.

Can you show us where that is on the map?

A Afghanistan is here. (Indicating).

Q And where did the defendant say that he arrived into Afghanistan from?

A From Pakistan.

Q And where is that located?

A Here. (Indicating).

Q The defendant also mentioned the country in which he grew up. Can you remind us what that was?

A Saudi Arabia.

Q Which is located where?

A Here. (Indicating).

Q And finally, his country of national origin was which

country?

A Niger.

Q And that is located where?

A Here in West Africa.

MS. WELLS: Your Honor, this is a good time for a break if that's good for the Court.

THE COURT: Ladies and gentlemen, we'll take 15 minutes until 11:25.

Please remember not to talk about the case amongst yourselves or with anyone else. Keep an open mind. We'll see you in 15 minutes.

(Jury exits courtroom at 11:09 a.m.)

THE COURT: Okay. Recess until 11:25.

(Witness leaves the witness stand.)

(A recess in the proceedings was taken.)

(Continued on the following page.)

(In open court.)

THE CLERK: All rise.

THE COURT: All right. We were delayed for a moment because of a technical hookup problem. We have it restored. Defendant is the back on video.

Let's have the jury, please.

MS. WELLS: I have about 30 seconds of housekeeping, if it's not too late?

THE COURT: Go ahead. Everybody sit down.

MS. WELLS: The Government plans to admit what's been marked as Government Exhibit 14. These are the Nigerian travel documents.

The defense has not made this objection, but we just wanted to note for the record that one of the pages contained in those documents has a reference to Mohammed Ashafa being essentially an al Qaeda operative. We don't have a clear sense of exactly what that information -- what the basis is for it.

So we have gone ahead and redacted it. We will provide a redacted version to the court and the defense, but we just wanted to flag that ahead of time before it comes in.

THE COURT: Okay. Thank you.

(Special Agent Paciorek resumed the stand.)

(Continued on the next page.)

(Jury enters.)

THE COURT: All right. Everyone be seated. We need to wait just a few minutes.

(Pause.)

THE COURT: All right. You may continue.

MS. WELLS: Thank you, your Honor. Before I ask the next questions of Special Agent Paciorek, I would like to move to admit Government Exhibit 303, which is a stipulation, and read a portion into the record.

THE COURT: Go ahead.

MS. WELLS: May I publish it?

THE COURT: You may.

MS. WELLS: Thank you. All right.

This is Government 303, and in this stipulation, both parties have agreed that on October 8, 1999 the United States Department of State designated al Qaeda a foreign terrorist organization; and this is signed and dated by both parties.

THE COURT: All right. It's admitted. Go ahead.

(Government Exhibit 303 so marked.)

DIRECT EXAMINATION

BY MS. WELLS (continuing):

Q All right. Special Agent Paciorek, welcome back.

A Thank you.

Q All right. When we left off, the interview had stopped

for a lunch break.

After that lunch break did the interview continue on September 14?

A Yes.

Q Generally speaking, what topics were discussed in the next portion of the interview?

A The defendant spoke about the various training camps that he attended. They were al Qaeda training camps, in preparation for his attacks against American interests.

MS. WELLS: All right. Your Honor, I'm queuing up the next clip. This one is approximately 12 minutes long. It begins on page 30, line 22.

(Recording played.)

MS. WELLS: We will pause there.

Q Special Agent Paciorek, during this last clip defendant described a couple of different locations. One of those locations was a place called Kabul.

What country is Kabul located in?

A Afghanistan.

Q And he also mentioned a place called Kandahar.

Where is that located?

A Also Afghanistan.

MS. WELLS: I would like to show the witness what has been marked for identification as Government Exhibit 208.

Special Agent Paciorek, when you get that image on your screen tell me if you recognize it.

A Yes, I do.

Q What is this?

A This is a map of Afghanistan.

Q Is that a fair and accurate representation of the country?

A Yes.

MS. WELLS: Your Honor, I would move to admit Government Exhibit 208 and ask permission to publish.

THE COURT: Any objection?

MR. DRATEL: No, your Honor.

THE COURT: Received. Go ahead.

(Government Exhibit 208 so marked.)

Q Special Agent Paciorek, a couple of different locations that you just described. If you could please show us on this map. We will get the focus right.

First, can you show us where Kabul is located?

A Kabul is located here.

Q What significance, if any, does Kabul have in Afghanistan?

A It's the capital.

Q There was also a city called Kandahar.

Can you show us where that's located?

A Yes. Right here.

Q All right. Thank you very much.

Now, in the next section of the defendant's interview, was there -- was there any discussion about his participation in battles in Afghanistan?

A Yes.

MS. WELLS: All right. I would like to play the next slip. This will begin on page 35, line 37, which is just where we left off. This one lasts just about ten minutes.

(Recording played.)

MS. WELLS: Your Honor, I think we may have lost the sound in the back.

THE COURT: Is sounds the same to me.

MR. ARIAIL: We are not hearing it, your Honor.

THE COURT: Oh, okay. Let's play with it a little. See if it will restart.

THE CLERK: You can play it.

(Recording played.)

THE COURT: No?

MS. WELLS: No.

THE COURT: I have a speaker up here, so.

THE CLERK: I will turn it down. Can you try turning up the volume on your --

MS. WELLS: On the computer?

THE CLERK: Yeah.

MS. WELLS: Sure. I think we are all the way up.

THE COURT: The only other thing we can try is disconnecting and reconnecting. Why don't you switch inputs, Melonie, off that and come back to it.

THE CLERK: Okay.

THE COURT: Ms. Wells, check your connection. Make sure you are plugged in tight.

MS. WELLS: Sure.

THE COURT: That's what the cable company says when you call them because your picture isn't working and say the picture doesn't work. They say check your connection.

MS. WELLS: I can give it a shot. Okay.

(Recording played.)

MS. WELLS: Okay.

Q So we will pause there for a moment.

Special Agent Paciorek, in this last section the defendant once again mentioned a series of different locations. One of those was a place called Waziristan.

Where is that?

A Waziristan is located largely in Pakistan, along the Af-Pak border.

MS. WELLS: I would like to show the witness what has been marked for identification as Government Exhibit 201.

Special Agent Paciorek, if you have that image up, do you recognize this?

A Yes.

Q What is it?

A It's a map of the Afghanistan-Pakistan central border area.

Q Is this a fair and accurate representation of that part of the world?

A Yes.

MS. WELLS: Your Honor, I would move to admit Government Exhibit 201 and request permission to publish.

THE COURT: No objection, right?

MR. DRATEL: No objection.

THE COURT: Received.

(Government Exhibit 201 so marked.)

Q All right. Special Agent Paciorek, you mentioned the location of Waziristan.

Can you point that out for us on the map, please?

A Sure. It's in this region here.

Q All right. Thank you very much. Then there was also a reference to a place or a specific town called Angor Ada.

Do you recall that?

A Yes.

Q Is that located on this map?

A Yes.

Q I'm going to zoom in a bit. All right.

Can you show us where that is?

A Certainly. Angor Ada is along the border but located on the Pakistan side.

Q Okay. Then, finally, there was a reference to Birmil.

Is that located on the map?

A Yes.

Q Where is it?

A Birmil is here, on the Afghan side.

Q Now, Special Agent Paciorek, up until this point of the interview, how would you describe the defendant's general demeanor?

A The defendant was calm. He was verbose. He was methodical in his explanations.

Q Would you -- how would you describe the manner in which he answered questions?

A He answered --

MR. DRATEL: Objection, your Honor.

THE COURT: Overruled.

A He answered questions very willingly. In fact, at one point he mentioned that he wanted to give us a history of how he entered into terrorism.

Q Was there any point in which the defendant's reaction to questions was different than that?

A There were.

Q What circumstances?

A For example, when the Italian judge didn't allow him to answer in the manner that he wanted to, the Italian judge asked him to be more concise in his answers, and he responded that it was his right to speak as much as he wanted to.

Q Was there another example?

A There was another example. When AUSA Ariail had asked him a follow-up question before he was finished speaking, he mentioned something to the degree of I was going to give you a long explanation but since you want a short explanation.

MS. WELLS: I would like to play the next clip now. This will begin on page 40, line 20, just for reference. It's about five minutes long. We are picking up right where we left off.

(Recording played.)

MS. WELLS: We will pause there.

Q Special Agent Paciorek, at the beginning of that clip was that one of the incidents that you had referred to earlier?

A Yes, it is.

MS. WELLS: All right. We will turn quickly to the next clip here. This one will begin, just for everyone's reference, on page 44, line 33. It lasts about

four minutes.

(Recording played.)

MS. WELLS: So we will take a pause there.

Q At this point during the interview, had the defendant mentioned any weapons?

A Yes.

Q Now, as an FBI agent do you have any specialized training?

A Yes, I do.

Q What is an example of that specialized training?

A Among other certifications, I am a firearms instructor, and I'm a member of the FBI New York SWAT team.

Q So as a firearms instructor, are you familiar with various guns and other weapons?

A Yes.

Q What kinds of training or experience do you have such that you have that familiarity?

A I train law enforcement officers on the safe and effective use of firearms, I act as a range security officer, and I conduct quarterly firearms qualifications.

Q What do you do generally as a SWAT team member?

A We train and we execute high-risk warrants, search and arrest warrants.

Q All right. Now, was there any reference in the clips we have heard so far to something called small arms?

A Yes.

Q Can you tell us what that means?

A Generally speaking, small arms are weapons that could be carried on a person, such as pistols, revolvers, rifles, and shotguns.

Q Was there a reference to something called a Kalashnikov?

A Yes.

Q What is that?

A A Kalashnikov is commonly referred to as an AK-47. It's a Soviet selective-fire assault rifle. The chamber is 7.62 millimeters.

Q What is an assault rifle?

A A assault rifle is any of various rifles designed for military use that accepts a detachable or removable magazine and fires an intermediate cartridge.

Q Was there any reference by the defendant to something called an RPG?

A Yes.

Q What is an RPG?

A A rocket-propelled grenade.

Q Was there reference to something called a Dashaka?

A Yes, there was.

Q What is that?

A A Dashaka, DSHK, is a Soviet heavy machine gun. It

shoots a 12.7-millimeter round, which is comparable to our .50-caliber machine gun round that the U.S. military uses.

MS. WELLS: Now I would like to turn to the next clip.

Your Honor, just to flag this. This is the longest clip I have. It's about 25 minutes long. So if we begin now, I just wanted to mention it in terms of lunchtime. I'm happy to continue?

THE COURT: We will break for lunch after this clip.

MS. WELLS: All right.

Q Special Agent Paciorek, in this next section of the interview, generally speaking, what does the defendant discuss?

A The defendant discusses in very -- in a very detailed manner a specific attack against U.S. forces in Afghanistan.

MS. WELLS: All right. We will be beginning on page 46, line 41, which is right where we left off.

(Recording played.)

MS. WELLS: Your Honor, that's the end of the clip. This is a fine place to stop for me.

THE COURT: Okay. Ladies and gentlemen, we will take our lunch hour. Please be back here at five to 2:00.

Remember not to talk about the case with anyone. Please keep an open mind. Have a nice lunch.

(Jury exits.)

THE COURT: Okay. Recess, 1:55.

(Lunch recess.)

(Continued on the next page.)

A F T E R N O O N S E S S I O N

THE COURTROOM DEPUTY: All rise.

THE COURT: All right. Let's have the jury,
please.

(Jury enters.)

THE COURT: Everyone be seated.

Hope you had a good lunch, ladies and
gentlemen, continue with direct examination.

MS. WELLS: Thank you, Your Honor.

DIRECT EXAMINATION(Continued)

BY MS. WELLS:

Q Special Agent Paciorek, welcome back.

A Thank you.

Q Before we took our lunch break we played a clip and at
the end of that clip the defendant had been asked to clarify
the relevant date of attack, and he had answered it was a
Friday.

In the next section of the interview, what
generally does the defendant discuss?

A Generally speaking, the defendant discusses his retreat
or escape following that attack. His retreat into Pakistan
as well as the injury that he sustained during the attack.

MS. WELLS: And before we turn to that clip, Your

Honor, I'd like to read in a stipulation. This is Government 301 and I'll move to admit it as well.

THE COURT: All right. Received. Go ahead.

(Government's Exhibit 301 was received in evidence as of this date.)

MS. WELLS: Pursuant to Government Exhibit 301 the parties have stipulated that April 25th, 2003 was a Friday.

Signed and dated by the parties.

All right. So the next clip we're going to pick up where we left off, and this begins on page 59, just at about line 40. And this clip is fairly short, it's about two minutes long.

(Video clip played.)

MS. WELLS: Let me just briefly pause there. Your Honor, I'd now like to read a stipulation, it is Government Exhibit 316 and move this into evidence.

THE COURT: All right, that's received. Go ahead

(Government's Exhibit 317 was received in evidence as of this date.)

MS. WELLS: Pursuant to Government Exhibit 316, the parties stipulate one, in the year 2003, Ramadan was observed between October 26th and November 24th. Signed and dated by the parties.

Q At this point during the interview about how much longer did you continue on the first day?

A Maybe 20 minutes approximately.

MS. WELLS: And I'll play the next clip. This one will begin, for everyone's reference, on page 61, line 3 and we're picking up where we left off.

(Video clip played.)

MS. WELLS: All right. We'll take a pause there. First, Your Honor, may I approach the witness, please?

THE COURT: You may.

Q All right, Special Agent Paciorek, I've shown you what's been marked for identification as Government Exhibit 400.

Do you recognize this?

A Yes, I do.

Q What is it?

A It is a list, four pages long, of topics that the defendant discussed during the interviews in Italy.

Q And what information, if any, did you review -- let me ask you a different question. Have you confirmed that the information, the list of -- the various lists contained in Government Exhibit 400, have you verified that's correct?

A Yes, I have.

Q In doing so what, if anything, did you review?

A I reviewed both the transcript and the audio recording of the interviews.

Q And is it your understanding that all of the items

listed in Government Exhibit 400 do appear in the audio portions of the defendant's statements?

A Yes, they do.

Q Are the items contained in Government 400 all listed in the single place in the interview or are they identified in multiple places?

A Multiple places.

Q Are any of the items on this list identified more than once by the defendant?

A Many of the items are discussed more than once.

MS. WELLS: Your Honor, I'd move to admit Government Exhibit 400.

MR. DRATEL: Your Honor, I think it's a demonstrative only, I mean it's a summary, essentially. The transcript --

THE COURT: Stop, stop, stop. I got the point.

MR. DRATEL: Okay.

MS. WELLS: Your Honor, we're offering it pursuant to 1006.

THE COURT: Can I see it?

MS. WELLS: Of course.

THE COURT: The objection is overruled. It's admitted under Rule 1006.

MS. WELLS: Permission to publish, Your Honor?

THE COURT: You may.

(Exhibit published.)

(Government's Exhibit 400 was received in evidence as of this date.)

BY MS. WELLS:

Q First, Special Agent Paciorek, you mentioned that this is a multiple page exhibit. Could you please identify for us the different categories contained in the exhibit beginning with page 1.

A Individuals in Afghanistan and Pakistan. Names.

Q And on page 2?

A Sorry. Names for Harun.

Individuals in Angor Ada. Individuals in Nigeria, Niger or Libya.

Groups, camps or guesthouses.

Attacks.

Weapons and chemicals. And other terms.

Q All right. Now in the last section of the interview that we listened to, were there any of the individuals in Angor Ada mentioned by the defendant?

A Yes.

Q Who were they?

A Hamsa al Urduni. Abu Hamsa al Australi. Abu Walid, Abu Khalid. Abu Mohammed al Yemeni. Abu Abrar. Abu Adirahman al-Majdi. Djerrah ha-Tunisi. Okash al Yemeni, and Haj Omar.

Q Just so the record is clear, were all of those names mentioned in the last clip or were all of those names mentioned throughout recordings?

A They were all mentioned throughout the recordings.

Q Now as we were wrapping up the last clip, it sounded as if the interview was ending for the day on September 14th; is that correct?

A Yes.

Q Did you return to continue the interview on the next day?

A Yes, we did.

Q And was it a full day or was it a portion of a day on day two?

A On day two we spent a portion of the day interviewing the defendant.

Q And about what time of day did you begin?

A Around 3:00 o'clock in the afternoon.

Q All right. And at the outset of that interview on day two, was the defendant reminded of his rights?

A Yes, he was.

Q How did he choose to proceed?

A He decided to speak.

Q I'd like to play the first clip from day two. This begins, for everyone's reference, page 66, line 29 and it lasts a little under two minutes.

(Video clip played.)

Q I'm going to break there.

Where did the interview take place on the second day?

A In the same location as the first day, the Italian courthouse.

Q Generally speaking, who was present for the second day of interviews?

A Generally, the same individuals who were present on the first day, myself, Special Agent Fuque, AUSA Shreve Ariail, AUSA David Bitkower, the Italian Judge, the defendant's attorneys, and Italian officers.

Q I'd ask this a few minutes ago, but I think I might have gotten ahead of things, at the outset of the second day of interviews, what general topics did the defendant discuss?

A He discussed his retreat or escape from the previously mentioned attack and injuries that he sustained.

MS. WELLS: So I'm going to play the next clip. This one for everyone's reference begins on page 67, line 43 and it lasts about 13 and a half minutes.

(Video clip played.)

MS. WELLS: We'll pause there.

First, Your Honor, what I would like to do next is move Government Exhibit 302, which is another

stipulation and read a portion to the jury.

THE COURT: All right. It's admitted. Go ahead.

(Government's Exhibit 302 was received in evidence as of this date.)

MS. WELLS: The parties have stipulated that Pakistan independence day is a national holiday in Pakistan observed annually on August 14th. In 2003, Pakistan independence day was observed on Thursday, August 14th. And this is signed and dated by the parties.

Q Special Agent Paciorek, during the last clip the defendant once again mentioned a number of different locations and so I'd like to show you what's in evidence as Government Exhibit 201. We'll get the focus on there.

One of the locations that the defendant mentioned was a place called Shkai. Is that located somewhere on this map?

A Yes, it is.

Q And can you point that out for us?

A It's here. (Indicating).

Q And he also mentioned a place called Wana. Is that located on the map?

A Yes, it is here. (Indicating).

Q All right. There were a few additional cities. I'm showing you what I think at this point is marked for identification only as Government 207. When you have the

picture up just let me know if you recognize this.

A Here we go. Yes, I do.

Q What is this?

A It's a map of Pakistan with parts of India.

Q Is it fair and accurate -- I'm sorry.

A With parts India and Afghanistan shown.

Q Is that fair and accurate representation of that part of the world?

A Yes.

Q Now -- sorry, excuse me, Your Honor, I'd like to move to admit Government 207 and publish to the jury.

MR. DRATEL: No objection, Your Honor.

THE COURT: Received.

(Government's Exhibit 207 was received in evidence as of this date.)

(Exhibit published.)

Q Special Agent Paciorek, there were a couple of cities that were mentioned here. One of those was Lahore. Is that located on this map?

A Yes, it is.

Q Where is that?

A It's on the eastern side of Pakistan near the border with India.

Q He also mentioned a place call Islamabad. Is that located on the map?

A Yes, it is northwest of Lahore.

Q And we talked a moment ago about a city called Wana. Just to give us some context, is that also located on this map?

A Yes.

Q Where is it?

A It's located southwest of Islamabad near the border with Afghanistan.

Q And then I'm going to return quickly to Government 201, which is in evidence. Referring you back to the city of Wana -- I'll zoom in here so we can see a little more clearly. Referring you back to the city of Wana, where is that relative to Angor Ada?

A Wana is here. It's southeast of Angor Ada, which is here. (Indicating).

Q So I'll turn to the next clip, for everyone's reference, this one begins on page 76, line 10 which is where we left off. This one is about four minutes long.

(Video clip played.)

Q We'll pause there. Special Agent Paciorek, I'd like to refer you back to Government Exhibit 400. Were any of the names listed in the individuals in Afghanistan and Pakistan identified by the defendant in the last clip?

A Yes.

Q And what were some of those names?

A Osama bin Laden, Abu Hadi, Abu Faraj al-Libi, Hamsa Rabia, Abdul Wakil al-Masri and Abu Hafs al Mauritani.

(Continued on the next page.)

EXAMINATION BY

MS. WELLS:

(Continuing.)

Q Now, the defendant also mentioned a couple of new locations.

I would like to show you what's been marked for identification as Government Exhibit 203. Once this is up on your screen just let me know if you recognize it.

A Yes.

Q What is this?

A It's a political map of Africa.

Q And is this a fair and accurate representation of that part of the world?

A Yes.

MS. WELLS: Move to admit Government Exhibit 203 and permission to publish, your Honor.

MR. DRATEL: No objection, your Honor.

THE COURT: Received. Go ahead.

(Government's Exhibit 203 was received in evidence as of this date.)

Q All right. So one of the locations that the confident mentioned was Kenya.

Can you show us where Kenya is located on this map?

A Yes. Kenya is in East Africa here. (Indicating).

Q And what about Tanzania? Where is that located?

A South of Kenya.

MS. WELLS: So I would like to turn to the next clip. This one for everyone's reference begins on Page 78, Line 18. It lasts about eight minutes. We're picking up where we left off.

(Audio file played in open court.)

(Audio file concludes.)

Q All right. Let's pause there.

Special Agent Paciorek, in the last clip, and I'll refer you back to Government Exhibit 400.

Did the defendant identify any of the groups that are listed here and let's just wait until this comes up on the screen.

Did the defendant identify of the groups listed here?

A Yes.

Q And which is that?

A The Nigerian Taliban.

Q All right. I'd like to also show you again what's in evidence as Government Exhibit 203.

The defendant mentioned a place called Kano. Where is that located?

A In Northern Nigeria.

Q Can you point out that for us on map, please.

A It's here. (Indicating).

Q What about a city called Lagos. Is that located on the map?

A Lagos is located in southern Nigeria here. (Indicating).

Q You personally traveled in African countries?

A Yes.

Q Now the defendant mentioned something called ECOWAS. Are you familiar with that?

A Yes.

Q What is ECOWAS?

A ECOWAS is the Economic Community of West African States.

Q I would like to show the witness what's been marked for identification only as Government Exhibit 202.

Sir, when this comes up on your screen just let me know whether or not you recognize it?

A Yes.

Q And what is this?

A It's a map of the ECOWAS member states.

Q Is that a fair and accurate representation of the location of those member states?

A Yes, it is.

MS. WELLS: Your Honor, I move to admit government 202 and request permission to publish.

MR. DRATEL: No objection.

THE COURT: Received.

(Government's Exhibit 202 was received in evidence

as of this date.)

Q All right. Now, you mentioned a moment ago that this is a map of the ECOWAS states.

Generally speaking, which part of Africa is represented here?

A West Africa.

Q And is the country of Nigeria located on this map?

A Yes.

Q Where is that?

A Nigeria is here.

Q All right. Let's turn to the next clip. This one is, approximately, four minutes long. We'll begin on Page 83, Line 25, which is where we left off.

(Audio file played in open court.)

(Audio file concludes.)

Q All right. We'll pause there.

First, during the last clip, the defendant mentioned a word Bayat. Is that located somewhere on Government Exhibit 400?

A Yes, it is.

Q Under what section?

A Other terms.

Q Showing Government Exhibit 400 can you just point that out for us, please.

A (Indicating).

Q In addition, during the last clip, the defendant mentioned an e-mail address and a password.

Was information about that e-mail address and password recorded anywhere else other than in his oral statements?

A Yes, it was. The defendant wrote that down.

Q All right. I'd like to show the witness what has been marked for identification as Government Exhibit 33. When this is up on your screen let me know if you recognize it. This is Page 1?

A I recognize it.

Q Okay. What do you recognize this to be?

A It's the e-mail address and password that the defendant wrote down that day.

MS. WELLS: Your Honor, I would move to admit Government Exhibit 33.

MR. DRATEL: No objection.

THE COURT: Received.

(Government's Exhibit 33 was received in evidence as of this date.)

MR. ARIAIL: And permission to publish, please.

(The above-referred to exhibit was published in open court.)

Q So this is the exhibit sticker.

And, Special Agent Paciorek, can you show us where

on this document and tell us what is written here regarding the e-mail address and password?

A At the top of the document here, in Latin script is written NEMAMIL/USUSTS. And under that is written PASWORLD/ASAS123.

Q On Government 33, are there also words or letters in a foreign script?

A Yes.

MS. WELLS: Your Honor, at this time I would like to read in Government Exhibit 306 which is a stipulation and request that it be admitted.

THE COURT: All right. 306 is received.

(Government's Exhibit 306 was received in evidence as of this date.)

MS. WELLS: This stipulation between the parties states that Government Exhibit 33 contains handwritten text in Arabic. Government Exhibit 33-T contains a true and accurate English translation of the Arabic text in Government Exhibit 33. Signed and dated by the parties.

And, your Honor, I then would like to move in Government Exhibit 33-T and publish.

THE COURT: Okay. It's admitted and you may publish.

(Government's Exhibit 33-T was received in evidence as of this date.)

(The above-referred to exhibit was published in open court.)

Q There's the exhibit sticker.

And, Special Agent Paciorek, let's get this focused, here we go.

Is the information that was written in Arabic text translated on this document?

A Yes.

Q Where is that and what does it say?

A On the left-hand side, it says, "E-Mail address." And under that it says, "Password."

Q During his statements, did the defendant identify which, if any, e-mail provider was associated with the USUSTS e-mail account?

A Yes, he identified Yahoo.

MS. WELLS: All right. Your Honor, I would like to move to admit Government Exhibit 74 which are Yahoo records that have been provided to the defense.

THE COURT: Any objection?

MR. DRATEL: No, your Honor. If I could have one second.

THE COURT: Sure.

MR. DRATEL: No objection.

THE COURT: Received.

(Government's Exhibit 74 was received in evidence

as of this date.)

MS. WELLS: Thank you. And permission to publish, please.

THE COURT: Go ahead.

(The above-referred to exhibit was published in open court.)

Q All right. First of all, at some point during your investigation, did the FBI obtain these records from Yahoo?

A Yes.

Q What is the login name associated with this account record?

A USUSTS.

Q And what is the Yahoo mail named associated with this record?

A ususts@yahoo.co.uk.

Q When was the account created?

A Saturday, August 9, 10:42:17, 2003 GMT.

Q By the way what is GMT?

A Greenwich Mean Time.

Q Is there a registration IP address associated with this account?

A Yes. 210.56.9.254.

Q In addition to this record related to the USUSTS account, did the FBI receive any other Yahoo records?

A Yes.

Q All right. Showing you Page 2 of Government 74. All right.

First question. What registration IP address is associated with this account?

A 210.56.9.254.

Q And is that registration IP address the same or different than the registration IP address for the USUSTS account?

A They're both the same.

Q In addition, what is the account creation -- what account creation information is associated with this account?

A The date, account created, Saturday August 9, 11:11:21, 2003 GMT.

Q About how much time passed between the account creation dates and times for the USUSTS account and this account?

A Roughly 30 minutes.

Q Then finally, what is the Yahoo mail name associated with this account?

A SLSLGLGLSH@yahoo.co.uk.

Q In addition to the Yahoo account records that we just looked at, at any point in your investigation, did you receive records related to an IP address 210.56.9.254?

A Yes.

MS. WELLS: Your Honor, at this time, I would like to move to admit Government Exhibit 75. These are the APNIC records.

THE COURT: Any objection?

MR. DRATEL: No.

THE COURT: Received.

(Government's Exhibit 75 was received in evidence as of this date.)

MS. WELLS: Thank you. And permission to publish.

THE COURT: Yes.

(The above-referred to exhibit was published in open court.)

Q First, where -- what organization provided these records?

A APNIC.

Q And what, generally speaking, is APNIC?

A APNIC is a regional Internet registry which administers IP addresses in the Asia-Pacific.

Q Somewhere in Government's 75, is there information about the particular IP address associated with these records?

A Yes.

Q And is that information contained on this page?

A Yes. In the "Search For" field.

Q Can you point that out for us?

A (Indicating).

Q What is that IP address?

A 210.56.9.254.

Q Then turning to Page 2 of the records.

What information is contained in the DESCR field?

A Commission For Science and Technology For Sustainable Development in the South Internet Access Providers (Pakistan Chapter).

Q What information is contained in the country field?

A The letters PK.

Q All right. After providing that information about the USUSTS account and a second e-mail address, generally, what did the defendant discuss subsequently?

A He discussed the use of that e-mail address to communicate with his al-Qaeda handler.

MS. WELLS: Okay. I would like to cue the next clip for everyone's reference. This one will begin on Page 88, Line 9?

(Audio file played in open court.)

(Audio files concludes.)

MS. WELLS: I'm sorry, I think we're in the wrong place.

One moment. So we're beginning at 88, Line 9. This clip is approximately three mints long.

(Audio file played in open court.)

(Audio files concludes.)

Q Special Agent Paciorek, in the last clip that we listened to there was a reference made to someone named Hamza Rabia. Do you recall that?

A Yes.

Q Showing you Government Exhibit 400.

Was there any other name by which the defendant referred to Hamza Rabia, and is that identified on this list?

A Yes, Tom.

Q And which category is the name listed under?

A Individuals in Afghanistan and Pakistan.

THE COURT: Ms. Wells, at a convenient time.

MS. WELLS: This is a great time.

THE COURT: Ladies and gentlemen, we're taking our midafternoon break until 3:30. Please don't talk about the case. Keep an open mind. See you in about 15 minutes.

(Jury exits courtroom at 3:17 p.m.)

THE COURT: Okay. 3:30.

(A recess in the proceedings was taken.)

(Continued on the following page.)

(In open court.)

THE CLERK: All rise.

THE COURT: Okay. Let's have the jury, please.

MS. WELLS: Your Honor, just as the jury is coming out, I expect that the direct testimony will last through 4:30. I think we will either wrap up then or perhaps in a few minutes.

THE COURT: Okay.

(Jury enters.)

THE COURT: All right. Be seated, please. Let's continue.

MS. WELLS: Thank you, your Honor.

DIRECT EXAMINATION

BY MS. WELLS (continuing):

Q Special Agent Paciorek, before the break we had listened to a few clips in which defendant described his use of e-mail accounts and his communications with others on those e-mail accounts.

Was there any further discussion by the defendant about his time in Nigeria?

A Yes.

Q Generally speaking, what did he talk about?

A He spoke about his plans to blow up a U.S. installation, diplomatic installation.

MS. WELLS: All right. I would like to play the

next clip. For everybody's reference, we will begin on page 92, line 31. This clip is approximately eight minutes long.

(Recording played.)

MS. WELLS: Let's pause there.

Q Special Agent Paciorek, in the last clip did the defendant identify any of the groups that are identified on Government Exhibit 400?

A Yes. He identified, under the group -- groups category, group that preaches, gives religious advice, and kills.

Q All right. Let's give this one moment.

Can you show us which group you just mentioned?

A Right here.

Q In addition, in the last clip, the defendant mentioned the City of Abuja.

Do you recall that?

A Yes, I do.

Q I'm showing you what's in evidence as Government Exhibit 203.

Where is Abuja located?

A Abuja is in the center of Nigeria here.

Q What significance, if any, does Abuja have in Nigeria?

A It's the capital.

Q Can you also show us where that is relative to the City of Lagos?

A Lagos is in the south, on the coast, here.

Q Where it is relative to the City of Kano?

A Kano is up in the north, here.

Q All right. During the last clip there was also some discussion of the U.S. Embassy in Abuja.

At any point during your investigation did you travel overseas to collect any information?

A Yes, I did.

Q Where did you go?

A In addition to Italy, I went to Abuja, Nigeria.

Q What investigative steps, if any, did you take regarding the location of U.S. Embassy in the 2004 and 2005 time period?

A We received a map from an official at the U.S. Embassy. The map was a map of diplomatic facilities located around Abuja; and on that map was a location listing a temporary U.S. Embassy site, and we traveled to that location.

MS. WELLS: Your Honor, may I approach the witness?

THE COURT: You may.

Q All right. I have handed you what's been marked for identification as Government Exhibit 9.

Do you recognize that?

A Yes, I do.

Q What is it?

A This is the map that we received in Abuja, listing diplomatic facilities for a number of countries located in Abuja.

MS. WELLS: Your Honor, I move to admit Government Exhibit 9.

MR. DRATEL: No objection.

THE COURT: Received.

(Government Exhibit 9 so marked.)

Q You can just set that down for a moment.

What street -- I will let you finish. What street, if any, was that temporary U.S. Embassy location identified as being on, on the map?

A Mambila Street.

Q While you were in Abuja did you take any photographs?

A Yes.

Q What did you photograph?

A We notified structures at 29 Mambila Street.

Q Where is 29 Mambila Street relative to the location of the temporary U.S. Embassy depicted on the map?

A It is the location depicted on the map. It's in the elbow or corner, 90-degree corner of Mambila Street.

MS. WELLS: Your Honor, I would like to show the witness what's been marked for identification as Government

Exhibits 90, 92, and 92?

THE COURT: All right.

Q All right. Special Agent Paciorek, when you have the image up, let me know if you recognize what's contained in Government Exhibits 90, 91, and 92.

A Yes, I do.

Q What are these?

A These are the photographs I took at 29 Mambila Street.

MS. WELLS: Your Honor, I would like to move to admit Government 90, 91, and 92 and request permission to publish.

MR. DRATEL: No objection.

THE COURT: Received.

(Government Exhibits 90, 91, and 92 so marked.)

Q Special Agent Paciorek, can you describe for us generally what is depicted here in Government Exhibit 90?

A Sure. There is a white structure here with a red roof. There is concertina wire along the gated perimeter, black gates on either side of the structure, and there is a wedge barrier here for vehicular traffic.

Q All right. Then showing you Government Exhibit 91, just very briefly, what's depicted here?

A The same structures as the earlier photograph just from a different vantage point.

Q Then finally --

A Yes, another vantage point.

Q -- 92.

A Sorry.

Q Can you just repeat that so it's clear?

A I'm sorry. This is another photograph taken of those structures from a different vantage point.

MS. WELLS: Okay. At this point I would like to turn to the next clip. This one will begin on page 97, line 27. We are picking up just where we left off. It lasts a little -- just about five minutes.

(Recording played.)

MS. WELLS: Let's pause there. First, your Honor, I would like to read the second portion of Government 316, which is in evidence. This is a stipulation.

Here, in paragraph two, the parties have stipulated that in the year 2004 Ramadan was observed between October 15 and November 13.

All right. Next, your Honor, I would like to move to admit Government Exhibit 14. These are the travel documents.

THE COURT: Any objection?

MR. DRATEL: Just our prior objection.

THE COURT: Okay. Overruled. They are received.

(Government Exhibit 14 so marked.)

MS. WELLS: Thank you, your Honor, and permission

to publish to the jury.

THE COURT: Okay.

Q Special Agent Paciorek, in the last section of the interview that we listened to, there was a reference by the defendant to someone by the name of Mohammed Ashafa.

Do you recall that?

A Yes.

Q What generally did the defendant say happened to Mohammed Ashafa?

A Mohammed Ashafa was arrested in Pakistan.

MS. WELLS: All right. I'm beginning by showing the witness and the jury page 3 of 4 of Government 14. All right.

Q Special Agent Paciorek, what is depicted on this page?

A This is the photograph page of a passport for Mohammed Ashafa Suleiman.

Q Is that name identified on this page?

A Yes.

Q Can you show us where that is?

A Mohammed Ashafa, and Suleiman.

Q What country is this passport associated with?

A The Federal Republic of Nigeria.

Q Is there a passport number on this page?

A Yes.

Q Where is that and what is it?

A The top right corner, A1680017.

Q Is Mohammed Ashafa's date of birth identified here?

A Yes.

Q Where is it, and what is it?

A Here, 14 August 76.

Q Is there a date of issue associated with this passport?

A Yes.

Q Again, where is it and what is it?

A It's here, 26 August 02.

Q Is there also an expiration date associated with this passport?

A Yes, 25 August 07.

THE COURT: Did you say the date of birth as '76?

THE WITNESS: 14 August. It looks like a seven, six, possibly a seven, zero.

Q Special Agent Paciorek, is it clear what the second digit of that number is, based on the copy quality?

A Based on the copy quality, it's not entirely clear.

Q All right. Turning to page 4 of Government Exhibit 14, what is contained on this page?

A This is a visa for the Islamic Republic of Pakistan, inside a passport.

Q Is there a name associated with this visa?

A Yes, Mr. Mohammed Ashafa.

Q Can you show us where that is located on the page.

A (Indicating.)

Q Is there a date of birth identified here?

A Underneath the name, here.

Q What is the date of birth on this page?

A 14-8-1976.

Q Now, is that date of birth handwritten or typed?

A Handwritten.

Q Is it -- is the copy quality on this date of birth easier or harder to read than it was on the previous page?

A Easier.

Q All right. What country is this visa associated with?

A Pakistan.

Q Is there a passport number identified on this visa?

A Yes.

Q What is that passport number, and where is it located?

A It's located near the top, number A1680917.

Q Is that passport number the same or different than the passport number we saw on the previous page?

A The same.

Q Does the visa contain the dates on which the visa is valid?

A Yes.

Q And what are those dates, and where are they listed?

A Here it says date of issue, which is 22-4- it appears to be 2004. And underneath, Good for journey up to 21-7-

what appears to be 2004.

Q You mentioned earlier that you have traveled in African countries an elsewhere abroad?

A Yes.

Q What are the conventions for writing days, months, and years abroad, in certain countries?

A The day and the month is often inverted from the way we do it. So, for example, the day is often listed first, followed by the month.

Q And so, using the two dates that you just read, what would be the month, date, year order be?

A The top date would be April 22, 2004, good for journey up to July 21, 2004.

Q Does the visa identify the length of stay permitted under this document?

A Yes, 90 days.

Q Where is that?

A Here.

Q All right. Now I would like to turn to page 1 of Government Exhibit 14.

What is the title of this document?

A Emergency certificate.

Q Is this a country associated with this document?

A Yes, Federal Republic of Nigeria.

Q Where is that listed?

A At the top.

Q Special Agent Paciorek, just looking at the first three lines here, can you tell us what they say?

A This is to certify that Mr. Mohammed Ashafa Suleiman has stated to me that he, in parenthesis she, is a Nigerian national.

Q Is there information contained in this document relevant to the period of time for which this emergency certificate is valid?

A Yes.

Q Where is that, and what does it say?

A Here. It says for a single journey within the period of one week.

Q Does it say where the journey is to?

A Yes.

Q Where is that?

A Here.

Q What country?

A Nigeria.

Q Does the certificate contain any information about where this individual is leaving from?

A Yes. Here, leaving Pakistan.

Q And is there further context provided there?

A Deportation by Pakistani authorities.

Q Finally, is there a date associated with this document,

with this emergency certificate I should say?

A Yes.

Q What is the date, and where is it located?

A Toward the bottom, 9th December 2004.

Q Finally, at the bottom of the page is there a passport number identified in connection with this emergency certificate?

A Yes.

Q What is the passport number, and where is it located?

A It's located here. Passport number A1680917.

Q Is that passport number the same or different than the passport number we saw on the passport and visa pages elsewhere in this document?

A The same.

Q All right. Now, I will turn to page 2 of Government 14.

Does this document contain any information about whether or not Mohammed Ashafa traveled from Pakistan to Nigeria?

A Yes.

Q Referring you to the first paragraph, what does that say?

A I, Ali Ocheni, minister counselor, Nigeria High Commission, Islamabad, Pakistan, hereby hand over Mr. Mohammed Ashafa Suleiman, Nigerian national, deported

from Pakistan, to Mr. -- and it's ineligible -- or illegible. Excuse me.

Q Is there a passport number identified on this document?

A Yes.

Q What is that passport number?

A A1680917.

Q Is that passport number the same or different than the passport number we saw on the emergency certificate, the passport photo page, and the visa page?

A The same.

MS. WELLS: All right. Let's turn to the next clip. For this one we will be starting, for everyone's reference, on page 100, line 13. This clip lasts approximately six minutes.

(Recording played.)

MS. WELLS: All right. Let's stop there.

I would like to show the witness what's in evidence as Government Exhibit 206. All right.

Q Special Agent Paciorek, once again, there were a number of different locations that were described in that last clip.

First, can you show us where Libya is located on that map?

A Yes. Libya is in North Africa, here.

Q Where is that relative to Nigeria?

A It's north of Nigeria.

Q Nigeria is where?

A Here.

Q Where is Libya relative to Europe?

A Libya is south of Europe, across the Mediterranean Sea.

Q Can you just identify the Mediterranean and Europe for us.

A The Mediterranean and Europe.

Q Towards the end of the clip the defendant asked if he could have some water.

Was water or other drinks and food made available to him?

A Yes.

Q About how much longer did the interview continue on day two?

A Roughly 20 minutes.

Q Generally speaking, what was the defendant's demeanor like throughout the second day?

A Very similar to his demeanor on the first day.

Q And how was that?

A He was calm, he was composed, he was verbose, and he was very willing to answer questions.

Q All right. Did the interview continue on to a third day?

A Yes.

Q And where did the interview take place?

A In the same location as the previous two days.

Q Once again, who was present, just very briefly, on the third day of interviews?

A It was the same individuals as before: The defendant, the Hausa-English interpreter, the English-Italian interpreter, myself, AUSA Ariail, AUSA Bitkower, the Italian judge, and others for ministerial purposes.

Q Were the defendant's lawyers present?

A Yes.

Q About what time did you start on the third day?

A Roughly 9:30 in the morning.

Q And was it a full day, or was it a partial day?

A A partial day.

Q All right. At the outset of day three, was any information provided to the defendant?

A We provided the defendant his advice of rights.

Q And upon hearing those advice of rights, what did the defendant do?

A He waived those rights and agreed to speak.

MS. WELLS: All right. I would like to play the first clip. For everyone's reference, it begins on page 108, line 31, and lasts just under six minutes.

(Recording played.)

Q All right. Special Agent Paciorek, in the clip we just

listened to, there was a name Abu Walid that was mentioned.

Do you recall that?

A Yes.

Q Showing the witness what's in evidence as Government 400, is Abu Walid identified in the exhibit and, if so, under what category? Just give it a moment until we have it on the screen.

A Yes, under individuals in Angor Ada, number three.

MS. WELLS: All right. I will queue up the next clip. This one is about five minutes long, and it begins on page 114, line 27.

THE COURT: How long?

MS. WELLS: Five.

THE COURT: Okay.

(Recording played.)

MS. WELLS: Okay. Let's pause there.

Q Special Agent Paciorek, there were a few references in the last clip to someone by the name of Sohaib al-Amriki.

Do you recall that?

A Yes.

Q In this last portion was there -- did the defendant record or -- did the defendant record information about that name anywhere other than in his oral statements?

A Yes, he did.

Q Where was that?

A He wrote them down.

MS. WELLS: I would like to show the witness what's been marked for identification as Government 34.

Q When we have this on the screen, let me know if you see it and if you recognize it.

A Yes.

Q What is it?

A This is the defendant's writing with Latin characters that I recognize, S-W-H-I-P, or Sohaib.

MS. WELLS: Your Honor, I would like to admit Government Exhibit 34.

THE COURT: Any objection?

MR. DRATEL: No objection.

THE COURT: Received.

(Government Exhibit 34 so marked.)

MS. WELLS: Thank you, and permission to publish, please.

Q All right. You indicated that there were Latin characters written on this document.

Can you just show us where they are and tell us what they are?

A Yes, at the top here, S-W-H-I-P.

Q Are there also letters or words written in another script?

A Yes.

Q And where are those?

A Here.

MS. WELLS: All right. Your Honor, I would like to move to admit Government 307, which is a stipulation, and read a portion of it.

THE COURT: All right. It's admitted. Go ahead.
(Government Exhibit 307 so marked.)

MS. WELLS: All right. The parties have stipulated that Government Exhibit 34 contains handwritten text in Arabic; and Government Exhibit 34-T contains a true and accurate English translation of the Arabic text in Government Exhibit 34.

Now, your Honor, I would like to move to admit Government 34-T, with permission to publish.

THE COURT: All right. You may.
(Government Exhibit 34-T so marked.)

Q All right. There is the exhibit stamp.

Special Agent Paciorek, does this document contain a translated version of the Arabic text that was written on the handwritten document we just saw?

A Yes.

Q What does this say?

A Suhaib, S-U-H-A-I-B.

MS. WELLS: Your Honor, I'm turning to the next clip.

THE COURT: I think you will turn there tomorrow morning.

MS. WELLS: Thank you.

THE COURT: All right. Ladies and gentlemen, again, I need to give you these reminders.

Do not talk to anybody about this case. Do not research anything in this case. No Googling, no Myspace-ing, no Linking In, no tweeting, nothing to do with this case overnight. Stay away from any media coverage that might be there. If you see something, turn the page, hit the button on TV remote, and keep an open mind, please.

We are making good progress. We will see you here tomorrow morning at 9:30 sharp. Have a restful night.

(Jury exits.)

THE COURT: Okay. If anyone thinks of anything that they need to talk about before we start at 9:30 tomorrow, please file a notice or a letter on ECF. If that pops up then we will convene at 9:15. Okay.

MR. ARIAIL: Certainly, your Honor. Just to preview that, we have been speaking with defense counsel about possible 403 objections with respect to the next part of the case. Obviously, there are a number of soldiers who are going to be testifying. Their testimony is fairly graphic. We are trying to limit it in certain ways that we think will accommodate the defense's concerns.

I just want to flag that, because if we can't come to some agreement we will have to bring it up to with your Honor.

THE COURT: Okay. That will be at 9:15 testimony.

Also, I reviewed the CIPA proceedings in connection with the Government's request to seal the first sidebar that we had yesterday. I'm granting that request. I'm finding that the interests of national security trump those of the public, under the First Amendment and the common law, to gain access to public proceedings, as the Government interests would clearly be compromised if that sidebar were disclosed. All right.

Anything else? Okay.

MR. DRATEL: Yes, your Honor.

THE COURT: Okay. I don't want to keep everyone standing. You can all sit down.

MR. DRATEL: Just when I was outside before during the break, I noticed what may be the next government witness is a military person in full uniform and a uniform completely stock full of decorations and all that. I think that is going too far. I don't think they should be testifying in uniform. It's a layer that -- it's just adds a layer of theater to this that is not necessary to the case. It's prejudicial. It creates an aura that's just not part of the evidentiary value of the case.

MS. WELLS: Your Honor, we have some but not all of our military witnesses who are still active duty. For those who are still active duty, it is appropriate for them to appear in a formal setting like a courtroom in their uniforms, and, I believe, it's perhaps expected.

THE COURT: I believe these are class A uniforms. Do they really wear the class A uniforms every day on active duty? They wear ACUs, right?

MS. WELLS: I don't know if they wear them every day. Your Honor, I can't speak to what they wear every day, but I know that -- it is my understanding that in formal settings, like a court appearance or some other situation in which they are appearing as an active duty military person, which they are doing here, it is appropriate and, I don't want to overstate it, but perhaps expected that they would wear their uniforms.

THE COURT: Tell them class B.

MR. ARIAIL: I think, your Honor, the issue is they have flown all the way here. They only have one uniform.

THE COURT: Class B is you take the coat off and have your shirt and tie.

MR. DRATEL: Your Honor, just --

MS. WELLS: Your Honor, I guess we can't make that request without knowing a little bit more. Unlike

Mr. Dratel, I have not seen any of the witnesses today. Without knowing more about what they brought, we will make that request.

THE COURT: I suspect they have class B. If there is a problem with that, if they tell you there is a problem, I will see you at 9:15.

MS. WELLS: Thank you, your Honor.

MR. DRATEL: Your Honor, we object obviously. I appeared with military lawyers and officers in public settings where they are on active duty and members of the military, and they wear a suit and tie, like the rest of us.

THE COURT: We have police officers all the time in uniform. I mean, sometimes they do, sometimes they don't. The detectives don't, the officers do.

You know, I think they should wear what they normally wear; but to treat this as a formal setting and therefore wear a class A, which is probably not what they wear every day, but if they tell you that's what they wear every day to go to work then, yes, they can wear it here. I don't think they will.

MS. WELLS: We simply told them that they should wear what they are comfortable in. They showed up, some in uniform and some not. We gave them the option to wear business clothes or otherwise.

THE COURT: They should wear what they wear to

work every day.

MR. DRATEL: Thank you, your Honor.

THE COURT: You will let me know if we need to talk about this at 9:15. Have a good night.

MR. ARIAIL: Good night, your Honor.

(Trial adjourned to Wednesday, March 8, 2017 at 9:30 a.m.)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X	:	
UNITED STATES OF AMERICA,	:	12-CR-134(BMC)
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
IBRAHIM SULEIMAN ADNAN	:	Wednesday, March 8, 2017
ADAM HARUN HAUSA,	:	9:30 a.m.
	:	
Defendant.	:	
- - - - -X	:	

TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE BRIAN M. COGAN
UNITED STATES DISTRICT JUDGE

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A P P E A R A N C E S: (Continued.)

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Proceedings recorded by computerized stenography. Transcript
produced by Computer-aided Transcription.

1 (In open court.)

2 (Defendant not present in open court.)

3 COURTROOM DEPUTY: All rise. The United States
4 District Court for the Eastern District of New York is now in
5 session. The Honorable Brian M. Cogan is now presiding.

6 (Honorable Brian M. Cogan takes the bench.)

7 COURTROOM DEPUTY: Calling criminal cause for jury
8 trial in Docket No. 12-CR-134, *United States of America*
9 *against Ibrahim Suleiman Adnan Adam Harun Hausa*.

10 Counsel, please note your appearances for the
11 record.

12 MR. ARIAIL: For the United States of America,
13 Assistant United States Attorney Shreve Ariail, Melody Wells,
14 and Matt Jacobs. With us at counsel table are Special Agents
15 Joe Kaster and Greg Paciorek.

16 Good morning, your Honor.

17 MS. KELLMAN: Susan Kellman, David Stern, and Joshua
18 Dratel for Mr. Harun.

19 Good morning, your Honor.

20 THE COURT: Good morning. Have a seat, please.

21 MS. KELLMAN: Good morning.

22 MR. ARIAIL: Good morning.

23 THE COURT: First, we have again invited the
24 defendant to appear, I assume, and he has declined.

25 MR. ARIAIL: That's correct, your Honor. I received

1 an e-mail from the marshals that he declined this morning.

2 THE COURT: All right.

3 Second, with regard to the uniform question. The
4 reason I changed my mind is this. It occurred to me that we
5 had carefully screened this jury to make sure that they would
6 not give special credit to someone just because they're
7 wearing a military uniform. So they've been cleared for that.
8 And I really thought for me to start telling witnesses what to
9 wear is not appropriate unless I think there's some prejudice.
10 The jury's going to again be instructed at the end of the case
11 that they can't give any special credit to people wearing
12 uniforms. And I've had police captains come in here in
13 uniforms and lots of chest candy on it and all kinds of
14 uniforms. And I think to single out the U.S. military to tell
15 them how to dress would not be appropriate. So I've decided
16 since there is no prejudice to the defendant they can wear
17 what they want. That's on that point.

18 MR. ARIAIL: Your Honor, if I may? At one point,
19 which is just for purposes of the record, at least I think
20 it's three of the eight witnesses who will provide testimony
21 about the attack will be wearing their uniforms. So it's not
22 as though all of them will be coming here in their uniforms.

23 THE COURT: Okay. That's fine.

24 Second, I have the Government's letter, and I want
25 to make sure we're on the same page with this. Old Chief does

1 not require me to hear the same evidence over and over again
2 from multiple witnesses where the facts to which they are
3 testifying are not seriously disputed and their credibility
4 has not seriously been put into issue. I am allowed to
5 eliminate cumulative testimony. If it's overlapping to some
6 degree, as I said, I will allow that if the witness is adding
7 some new facts in addition to what's been testified to because
8 it may be necessary for the witness to demonstrate that that
9 witness was there and had the same thing in order to add the
10 additional facts.

11 But if I keep hearing the same thing over and over
12 again, then, and I get an objection, and even if I don't get
13 an objection for cumulative evidence, I'm going to ask the
14 Government to proffer what new information the additional
15 witness intends to offer, or what facts does it think might
16 cause the jury to call into question the testimony of the
17 prior witnesses so that more corroboration is needed.

18 So if someone testifies I saw A, B, and C, and their
19 credibility is shaken on cross-examination, I perfectly
20 understand the need to call another witness to say, yes, I saw
21 A, B, and C, too, that's all fine. But if the witness saw A,
22 B, and C, and we can make it two witness as to A, B, and C,
23 unless there's a reason to think that witness one and two the
24 jury may not believe what that are saying.

25 MR. ARIAIL: Understood, your Honor.

1 And I didn't mean to be too defensive in our
2 presentation. We have tailored the witness's testimony
3 significantly so that, for example, if witness A gives an
4 overview of the attacks and the events leading up to the
5 attacks, witness three will just talk about the discrete part
6 of part of the attack or engagement that he or she has been
7 involved in. We've definitely done that, and that is
8 certainly the case in all these witnesses from the
9 Government's perspective will absolutely necessary.

10 THE COURT: Let's see how it goes. Anything further
11 we need to address this morning?

12 MR. DRATEL: Yes, your Honor. With respect to the
13 Government's letter, a couple things. Old Chief doesn't
14 overrule §403 so to the extent.

15 THE COURT: The Government loves Old Chief. I hear
16 a lot about Old Chief.

17 MR. ARIAIL: The Supreme Court did us a solid, your
18 Honor.

19 MR. DRATEL: There are certain parts of the
20 testimony, in particular, Blackwell's testimony with respect
21 to very graphic testimony about the injuries suffered by
22 Mr. Losano, and we don't think that's necessary to prove
23 anything in the case. There's no -- and also anything that
24 happens after the battle or after is not relevant. This is
25 not a civil case with pain and suffering or any emotional

1 aspect of the events.

2 THE COURT: That's an entirely separate issue from
3 what we've been discussing which is, is the testimony
4 describing the injuries unduly prejudicial and I want to hear
5 from the Government on that.

6 MR. ARIAIL: With respect to Airman Raymond Losano.
7 As the Government proffered Airman Losano was shot in the face
8 and died as a result of his injuries. In terms of the
9 evidence that the Government intends to elicit in terms of
10 testimony of that death, it is going to be the testimony of
11 Lee Blackwell who was standing right next to Airman Losano at
12 the time he was shot in the face.

13 THE COURT: His competence is not the question.
14 He's competent to give the testimony. The question is, is the
15 description of what it looks like to get a bullet in the face
16 unduly prejudicial when the only fact the Government needs to
17 establish is that the airman died.

18 MR. ARIAIL: Your Honor, may we approach?

19 THE COURT: Okay.

20 (Continued on the next page.)
21
22
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25

1 (Sidebar conference held on the record in the
2 presence of the Court and counsel.)

3 MR. ARIAIL: Your Honor, Airman Losano's wife is
4 here. Sorry, Blackwell's wife is here. She's present in the
5 courtroom.

6 THE COURT: Right.

7 MR. ARIAIL: I thought it would be more appropriate
8 to address this outside of her hearing.

9 THE COURT: That's fine.

10 MR. ARIAIL: So in terms of the narrative of the
11 Government's evidence in the case, and I may have to defer to
12 Ms. Wells and Mr. Jacobs -- I know you don't know like having
13 more than one attorney arguing -- but in terms of the actual
14 crimes that the defendant is charged with, he's charged with
15 conspiracy to murder and his conspiracy to murder includes
16 attacks on the base in the advance of the April 25th attack.
17 And it also includes a series of -- his involvement in a
18 series of engagements out on the ridgeline at FOB Shkin.

19 The narrative of the case is such that the soldiers
20 respond essentially to the shelling from the base to
21 investigate. They go up to the ridgeline and they break up
22 into several different groups throughout the course of the
23 day. Essentially, there's a series of attacks from al-Qaeda
24 fighters. One of the attacks involves Jerod Dennis. It's an
25 ambush that he occurs sort of later in the events. He's

1 killed.

2 The Government is not seeking to present significant
3 evidence about that attack and Jerod Dennis's death even
4 though it has substantial evidence that it could provide about
5 this.

6 However, with respect to Ray Losano, the narrative
7 of the events is such that in conjunction with the other
8 evidence that the Government has proffered in the case, and
9 the confessions that were elicited during testimony yesterday,
10 it is likely that the bullet that entered Raymond Losano's jaw
11 either was shot from the defendant's gun or another al-Qaeda
12 fighter within proximate range to the defendant very close to
13 him.

14 THE COURT: It's this the just likely seas certain,
15 right.

16 MR. ARIAIL: There are a number of fighters. It's a
17 fog of war.

18 THE COURT: Right.

19 MR. ARIAIL: And it's very hard to say exactly who
20 pulled what trigger and when.

21 THE COURT: Someone from al-Qaeda shot him, I
22 assume.

23 MR. JACOBS: Correct.

24 MR. ARIAIL: That's correct.

25 THE COURT: So my only question is why would the

1 witness need to testify, And I saw the bone in his jaw
2 separating as blood oozed out.

3 MR. ARIAIL: Sorry. To be clear, we are not
4 offering photographic evidence of the victim and the injuries.
5 We're not offering photographs of the autopsy of the victim.
6 The defense has refused to stipulate as to cause of death, and
7 so that's a factor that we're considering as well.

8 So we do need to prove how he died, and we intend to
9 do that through that testimony. We have spoken with Lee
10 Blackwell and this is where I will defer a little bit to my
11 co-counsel, but we have instructed him to keep out the very
12 gory parts.

13 THE COURT: Fine.

14 MR. ARIAIL: Just to be clear, he, in his normal
15 course of telling the story, he's emotional. He likely
16 suffers from PTSD. He talks about blood gushing from the
17 victim's mouth. He talks about pieces of bone and jaw being
18 seen on his face and we have asked him specifically not to
19 testify about those thing. However, he will testify about the
20 fact that the victim was shot in the face. There was a lot of
21 blood, and, I'm sorry, just to be --

22 MS. KELLMAN: We're passing on the holding his face
23 to keep it together.

24 MR. ARIAIL: Losano was holding his face and that a
25 portion of the jaw was missing. So that is the sort of four

1 operative points in terms of his testimony that we intend to
2 elicit from Blackwell.

3 THE COURT: I think it's more than you need. Shot
4 in the face definitely. Shot in the jaw, that's okay. I even
5 think it's okay, profusely bleeding. That's okay. But pieces
6 of the jaw, where they are, I don't think we need that.

7 MR. ARIAIL: Understood.

8 MR. JACOBS: Judge, Mr. Blackwell is likely going to
9 say he saw Mr. Losano holding his face, but he's not going to
10 say "holding his face together."

11 THE COURT: Fine. That's okay.

12 MR. JACOBS: Just to add a little gloss to what
13 Mr. Ariail said. This man plays this event over in his head
14 every single day. He's told this story thousands of times and
15 it's the same every time. He has intense survivor's guilt and
16 serious PTSD. We had to make accommodations for a dog a PTSD
17 to fly him out which actually didn't happen at the end of day,
18 but we've instructed him carefully to avoid these things.
19 We'll do our best efforts but it's a little different than a
20 typical witness.

21 THE COURT: If he gets too emotional, we'll take a
22 break and he's going to have to compose himself.

23 MR. DRATEL: Your Honor, this is a difficult
24 situation. It's truck for the witnesses, but we're not
25 responsible for the Government's witnesses and their ability

1 to prepare them properly to put in only evidence that the
2 Court permits. They have 15 witnesses, they shouldn't be
3 putting the one who's least capable of handling himself on the
4 stand.

5 I want to put on record from the Government's letter
6 that I received when I got to court this morning that here's
7 what they want to limit Blackwell to serious gun shut wound to
8 the face, Losano holding his face in hands, significant amount
9 of blood loss, and that part of Losano's jaw was missing. So
10 I'm guessing that number four is out, correct? Is that right,
11 your Honor, that part of Losano's jaw was missing?

12 THE COURT: That part is out.

13 MR. ARIAIL: That's our understanding.

14 MR. DRATEL: Now, with respect to some of the other
15 issues.

16 MR. ARIAIL: Just can I address since we're moving
17 on?

18 MR. DRATEL: No. Please wait.

19 The other part is that there's a been a lot of \$3500
20 material, there's a fair amount of -- I want to talk about --
21 let's talk about Dennis first, specifically.

22 The medic who treated Dennis talks about certain
23 first aid and other aid that he provided such as trying to
24 help him breathe, mouth to mouth, things like that. That's
25 not necessary, that's after the fact. There's no relevance to

1 that, there's no need. There's a serious §403 problem with
2 that as well. I'm sure it will be more emotional than
3 probative. So that's with respect to that witness. The
4 witness is Simmons and he's talking about the other deceased
5 soldier.

6 MR. ARIAIL: I'm sorry.

7 MR. DRATEL: Please let me finish.

8 THE COURT: You can finish.

9 MR. DRATEL: The other part of the §3500 material
10 contains a fair amount of information afterwards. So we think
11 that that is not relevant at all about what happened back at
12 the base. This is agonizing, again, this is traumatic, but
13 the point is there is no relevance. There's no probative
14 value in anything other than what happened during the battle.
15 All the rest of it is for a civil case not for this case.

16 THE COURT: All right. Can I hear from the
17 Government?

18 MR. ARIAIL: Certainly, your Honor.

19 So just addressing Mr. Dratel's comments. The
20 testimony of Simmons, the medic. Simmons is not testifying
21 about Jerod Dennis, he's testifying about Ray Losano as we set
22 forth in the letter.

23 With respect to Simmons, the Government expects that
24 he will provide brief testimony regarding his medical
25 treatment of Losano on the ridgeline which, while significant

1 to the narrative, is largely clinical in nature and
2 necessarily reference his difficulties in attending to his
3 injuries. But I, again, largely clinical in nature and it's
4 brief, it's not about Jerod Dennis.

5 THE COURT: Look, I can't get the sense of it from
6 the proffer. If I start to hear it, and it's too prejudicial,
7 the defendants aren't going to have to object. I'm going to
8 be listening closely and if I think it's crosses the line, I'm
9 going to stop it and tell the witness to just give us an
10 overview of what he did which is really, I think, all the
11 Government should need.

12 MR. DRATEL: Obviously, your Honor.

13 Our point is they shouldn't need anything that
14 happens that's related to anything other than how he died.

15 THE COURT: I do think that's a relevant point of
16 the conspiracy charge that someone died as a result of the
17 action.

18 MR. DRATEL: Yes, but not the granular nature of the
19 first aid supplied before he died.

20 THE COURT: But until there's a stipulation that
21 says he died as a result of the wounds that he suffered at the
22 defendant's hands, the jury's got to draw that inference.

23 MR. DRATEL: And it's very easy to do with two
24 questions rather than seven.

25 MR. JACOBS: One second.

1 (A brief pause in the proceedings was held.)

2 MR. DRATEL: Your Honor, we will stipulate that they
3 both died.

4 MR. ARIAIL: Your Honor, to be clear, we have
5 discussed the stipulation as to the cause of death with
6 defense counsel repeatedly.

7 THE COURT: It is too late for a stipulation. I
8 think I have the concern. I've instructed the Government that
9 I want as little blood and gore as possible, and I will stop
10 the witness on my own if I see that line being crossed.

11 MR. ARIAIL: Certainly, your Honor.

12 THE COURT: You should tell your witness that. The
13 jury needs to know what happened, but they don't need to know
14 every detail of what happened.

15 MS. KELLMAN: Just one moment Judge.

16 (A brief pause in the proceedings was held.)

17 THE COURT: This is the kind of discussion that's
18 academic until we actually try it out and see if it's going to
19 go too far or not. So let's try it out.

20 (Sidebar discussion concludes.)

21 (Continued on the next page.)

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23

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25

1 (In open court.)

2 (Witness takes the witness stand.)

3 **S.A. GREG PACIOREK,**

4 called as a witness, having been previously duly
5 sworn, was examined and testified as follows:

6

7 COURTROOM DEPUTY: Jury entering.

8 (Jury enters courtroom at 9:46 a.m.)

9 THE COURT: Be seat Ed, please. Good morning,
10 ladies and gentlemen. Hope you had a good night. We will
11 continue with direct examination.

12 MS. WELLS: Thank you, your Honor.

13 DIRECT EXAMINATION

14 BY MS. WELLS:

15 (Continuing.)

16 Q Good morning, Special Agent Paciorek, and welcome back.

17 A Good morning. Thank you.

18 Q When we left off yesterday, we listened to a portion of
19 the interview with the defendant in which he described meeting
20 a number of different al-Qaeda affiliated individuals. Do you
21 recall that?

22 A Yes.

23 Q Was there any further discussion by the defendant about
24 additional al-Qaeda related people who he met?

25 A Yes, there was.

1 Q All right. I'd like to play the next clip and I think
2 folks still have their transcripts which they can use to
3 assist in following along.

4 We're going to begin next on Page 119, Line 21, and
5 this clip lasts just about five minutes.

6 (Audio file played in open court.)

7 (Audio file concludes.)

8 Q Let's pause there.

9 Special Agent Paciorek, I'm showing you what's in
10 evidence as Government Exhibit 400.

11 In the clip that we just listened to, were any of
12 the individuals in Afghanistan and Pakistan identified on this
13 page of Government 's 400 listed by the defendant?

14 A Yes.

15 Q What were some of those names?

16 A Some of those names were Abdul Hadi al-Iraqi; Abdul Faraj
17 al-Libi; Hamza Rabia; Ramzi bin al-Shibh. Abu Ayman a/k/a
18 Abdul Wahed. Abu Zubaydah. Abu Laith al-Libi. Hamza
19 al-Jawfi. Abu Khabaab al-Masri. Saif al-Adli. And Osama
20 al-Kini.

21 Q Turning later in the document to the heading "Weapons and
22 Chemicals." Were any of the items identified on this portion
23 of Government Exhibit 400 listed by the defendant?

24 A Yes.

25 Q What were those?

1 A Hydrogen peroxide, Ricin, Cyanide sodium, Cyanide.

2 MS. WELLS: All right. Let's turn to the next clip.
3 For everyone's reference we'll pick up where we left off and
4 that's on Page 121 Line 36. This clip is just a little over a
5 minute.

6 (Audio file played in open court.)

7 (Audio file concludes.)

8 MS. WELLS: Pause there.

9 Q Special Agent Paciorek, I refer you back to
10 Government Exhibit 400.

11 Were any of the items listed under names for Harun
12 identified by the defendant in the last clip?

13 A Yes. He identified Adnan "Spin Ghul," Abu Tamin.
14 Mortala Muhammadu and Joseph Johnson Masheni.

15 MS. WELLS: We'll turn to the next clip. For
16 everyone's reference we'll begin here on Page 123, Line 4.
17 And this clip lasts just about five minutes.

18 (Audio file played in open court.)

19 (Audio file concludes.)

20 Q Special agent Paciorek, in the last clip that we listened
21 to, is there any reference to something called a "777" number?

22 A Yes, there was.

23 Q Was that number mentioned once or more than once that by
24 the defendant during the interviews in Italy in September of
25 2011?

1 A It was mentioned multiple times.

2 Q And in what sort of context?

3 A It was his home telephone number in Saudi Arabia.

4 Q I'm showing the witness what is in evidence as
5 Government Exhibit 34.

6 Pardon me.

7 Special Agent Paciorek other than answering
8 questions about the 777 number, what, if anything, else did
9 the do it record the 777 number?

10 A The defendant wrote down the 777 number on a piece of
11 paper.

12 Q All right. Showing the witness what's in evidence as
13 Government Exhibit 34, there's a stamp.

14 What is this document?

15 A This is the sheet of paper that the defendant wrote down
16 the 777 number upon.

17 Q Are you able to read any of the numbers or letters on
18 this document?

19 A Yes.

20 Q And can you -- what can you read?

21 A Near the top of the page it reads 00, and there's a digit
22 that appears to be scratched out followed by 966-2-7425777.

23 Q I'm now showing you government 34-T.

24 What is 34-T?

25 A It's the same number and words underneath that number.

1 Q And what number appears here on 34-T?

2 A 00966-2-7425777.

3 Q And just to clarify.

4 This document, which is 34, the defendant's
5 handwritten notes. In addition to the numbers that you read,
6 are there other letters or words that are written in a script
7 other than English?

8 A Yes.

9 Q And does 34-T contain a translation of those words and
10 letters?

11 A Yes, it does.

12 MS. WELLS: Your Honor, at this point, I would like
13 to move to admit Government Exhibit 315 which is a stipulation
14 and read a portion of it to the jury.

15 THE COURT: It's admitted. Go ahead.

16 (Government's Exhibit 315 was received in evidence
17 as of this date.)

18 MS. WELLS: Government 315. The parties have
19 stipulated that the telephone and country code for Saudi
20 Arabia is 966. And the stipulation is signed and dated by the
21 parties.

22 All right. We'll turn to the next clip which begins
23 on Page 130, Line 22. This clip is just about a little less
24 than a minute long.

25 (Audio file played in open court.)

1 (Audio file concludes.)

2 MS. WELLS: Stop there I'll play one final clip
3 which began on page 137, line 4. This clip is just about one
4 minute long.

5 (Audio file played in open court.)

6 (Audio file concludes.)

7 Q Special Agent Paciorek, after your involvement with the
8 defendant in Italy in September 2011, did you participate in
9 other aspects of this investigation?

10 A Yes, I did.

11 Q At some point, was the defendant charged with crimes here
12 in the United States based in part on the information obtained
13 in Italy?

14 A Yes.

15 Q And do you have an understanding of what process, if any,
16 the defendant was brought into the U.S.?

17 A The defendant was brought.

18 MR. DRATEL: Objection. Foundation.

19 THE COURT: Yes. Sustained.

20 MS. WELLS: Nothing further.

21 THE COURT: Okay. Any cross.

22 MR. DRATEL: No questions, your Honor. Thank you.

23 THE COURT: You may step down. Thank you very much.

24 THE WITNESS: Thank you, your Honor.

25 THE COURT: Government may call its next witness.

1 MR. ARIAIL: Your Honor, the Government calls
2 Colonel Gregory Scott Trahan.

3 COURTROOM DEPUTY: Please raise your right hand.

4 **COL. GREGORY SCOTT TRAHAN**, called by the Government, having
5 been first duly sworn, was examined and
6 testified as follows:

7 THE WITNESS: I do.

8 COURTROOM DEPUTY: Please state your name for the
9 record.

10 THE WITNESS: My name is Colonel Gregory Scott
11 Trahan. My last name is T-r-a-h-a-n. First name is Gregory.
12 Middle name Scott.

13 COURTROOM DEPUTY: Thank you. You may be seated.

14 THE COURT: You may inquire.

15 MS. WELLS: Thank you, your Honor.

16 DIRECT EXAMINATION

17 BY MS. WELLS:

18 Q Good morning, sir.

19 A Good morning.

20 Q Where were you on April 25, 2003?

21 A April 25, 2003, I was involved in an engagement with my
22 army unit in which two members of my company were killed and
23 several others including myself wounded.

24 Q I'd like to turn back to the events of April 25th in just
25 a moment.

1 But first are you still in the military?

2 A Yes, ma'am, I am.

3 Q What's your current rank?

4 A I'm an active duty Colonel, ma'am.

5 Q Can you give us a brief overview, very brief overview of
6 your career in the army?

7 A Yes, ma'am. I enlisted in the Army in 1987 straight out
8 of high school. Along the way, I earned a scholarship to get
9 a college degree. Went to school in Fayetteville,
10 North Carolina. Upon graduation, I was commissioned as a
11 Second Lieutenant In the infantry. After that, I was assigned
12 to Fort Hood, Texas. And then after that tour, I was assigned
13 to Fort Bragg, North Carolina which is what brought me to the
14 events of April 25th.

15 Q And turning your attention to that time period.

16 Was there some point in time when you were deployed
17 to Afghanistan?

18 A Yes, ma'am. I was deployed to Afghanistan in January of
19 2003.

20 Q And what was your rank and your job at that point in
21 time?

22 A At that time, I was a CAPTAIN in the Army and I was a
23 company commander.

24 Q Can you tell us just generally what a company commander
25 does?

1 A A company commander's responsible for, approximately,
2 130, 140 men. And the commander's responsible for the
3 training, the morale, the planning of operations, the health
4 and welfare of everyone in the organization. During combat,
5 as we were in Afghanistan, you're responsible for the lives of
6 your men.

7 Q All right. I'm showing the witness what's in evidence as
8 Government Exhibit 206.

9 THE COURT: We're having a technical difficulty.

10 (A brief pause in the proceedings was held.)

11 THE COURT: We need to go backwards before we can go
12 forward.

13 (A brief pause in the proceedings was held.)

14 THE COURT: Okay.

15 EXAMINATION BY

16 MS. WELLS:

17 (Continuing.)

18 Q You mentioned a moment ago that your deployment was to
19 Afghanistan.

20 Do you have an image up on your screen right now?

21 A Yes, ma'am, I do.

22 Q Can you show us where on that map Afghanistan is located
23 and you can do that just by pressing on the screen?

24 A Yes, ma'am. Afghanistan is located here. (Indicating).

25 Q All right. We're not getting an image.

1 Can you tell us what other countries it's next to?

2 A Yes, ma'am. There's a red dot on Afghanistan on my map
3 now. To the east is, correction, to the west is Iran. And to
4 the east is Pakistan, and then the other countries of Central
5 Asia are located to the north.

6 Q When you and your company deployed to Afghanistan in
7 January of 2003, what generally, was your mission?

8 A Yes, ma'am. To the extent that I can remember,
9 generally, our mission was to provide security to the growing
10 government of Afghanistan. What I mean by that is that
11 Afghanistan did not have an army at that time. So we were
12 essentially the security forces of the growing, the nascent
13 Afghan government.

14 Generally, our mission was stated specifically was
15 to destroy any elements of the Taliban and to find any
16 elements of al-Qaeda and destroy them as well.

17 Q Were you or the members of the U.S. military working with
18 the Afghan people during this time?

19 A Yes, ma'am. Any operations that we did, we would come
20 into contact with the local villagers. We would also work
21 with what we called the Afghan militia which were civilian
22 population that decided to take up arms with the U.S. forces
23 and other allied nations against what we called anti-coalition
24 militants or the, broadly speaking, the enemy at that time.

25 Q At the time of your deployment, were you part of any

1 particular division within the U.S. Army?

2 A Yes, ma'am. I was part of the 82nd Airborne Division.

3 Q And tell us what the 82nd Airborne Division is?

4 A Yes, ma'am. The Army has ten divisions. It's a tactical
5 unit, and it's -- basically, it has three infantry brigades.

6 The brigades consist of about 5,000 men and women apiece. So
7 a division strength is somewhere between 15 and 20,000.

8 The mission of it is to deploy anywhere in the world
9 in 18 hours or less, specifically, to give the United States a
10 force entry capability. So the United States would send the
11 82nd Airborne somewhere where they didn't want us to go. In
12 other words, we would, in colloquial terms, be the ones that
13 kick the doors in to get there.

14 Q All right. I'm showing the witness what's in evidence as
15 Government Exhibit 208.

16 All right. Now, this is a map of Afghanistan. When
17 you first deployed, where did you go?

18 A Ma'am, when I first went to Afghanistan, we were sent to
19 Kandahar.

20 Q Can you show us where Kandahar is located on the map?

21 A (Indicating). It's located in the south, in the province
22 of Kandahar.

23 Q From Kandahar, where did you go next?

24 A From Kandahar, we went to Forward Operating Base Salerno
25 located in Khost, Afghanistan.

1 Q Showing you what's in evidence as Government Exhibit 201.

2 Where, if at all, is Khost located on this map?

3 A Khost is located here just to the west of the
4 Afghan-Pakistan border.

5 Q Were you at a particular base big near there?

6 A I was. I was at Forward Operating Base Salerno.

7 Q Can you tell us what a forward operating base is?

8 A A forward operating base is merely a place where men,
9 equipment, and supplies are kept and secured in preparation
10 for military operations in a specific area of operation.

11 Q About how big was Forward Operating Base Salerno?

12 A Ma'am, Forward Operating Base Salerno was big enough to
13 house two infantry companies. An infantry company had,
14 approximately, 130, 140 men at that time. It also had our
15 battalion headquarters, another 30 to 60 men. And then we
16 also had a couple of helicopter units. So there would have
17 been four to six helicopters there at that time. And then
18 whatever compliment of combat vehicles Humvees or logistics
19 trucks that we needed. So it was a sizeable forward operating
20 base. And then, finally, the last part of the -- it was large
21 enough to land, like, a small aircraft there.

22 Q About how long were you at Forward Operating Base
23 Salerno?

24 A That I could remember, ma'am, approximately a month.

25 Q Are you familiar with a place called Firebase Shkin?

1 A Yes, ma'am, I am.

2 Q What is a firebase?

3 A Ma'am, a firebase would be a smaller place to keep men
4 and supplies and equipment. Smaller than a forward operating
5 base. Its primary purpose is to secure indirect fire
6 capability so that it could be provided in a specific
7 geographical area.

8 Q What does indirect fire mean?

9 A Indirect fire is fire is against the enemy that comes
10 from artillery or mortar tube. And it's indirect because the
11 person that's doing the fire cannot actually see the target or
12 the impact of the rounds. So a third person, or second
13 person, is entered into the equation that of the forward
14 observer. The forward observer tells the guns where the
15 target is and also relays the effects of the fires on the
16 particular target, therefore, it's indirect fire.

17 Q All right. So turning back to Firebase Shkin, which we
18 mentioned a moment ago.

19 Was there some point in time when you and your
20 company were deployed to Firebase Shkin?

21 A Yes, ma'am. We were sent part of my company and I were
22 sent, approximately, mid-March of 2003.

23 Q And looking again on this map which is Government 201.
24 Can you show us, approximately, where Firebase Shkin was
25 located?

1 A Yes, ma'am, it's located further south and just west of
2 the Pakistan-Afghanistan border here.

3 Q All right. So to save everyone's eyes, I'm showing you
4 what's in evidence as Government Exhibit 201-B. This is an
5 excerpt of the same map just blown up a little larger.

6 Can you show us again here where the firebase was
7 located?

8 A Yes, ma'am. Just west of the Afghan-Pakistan border
9 located here.

10 Q There's a notation here on the map. It says the word,
11 "Shkin."

12 Was that the location of the firebase, or was that
13 something else?

14 A There was a town or village Shkin, and the firebase was
15 located just to the north of the village.

16 Q Just so the record is clear. What side of the
17 Afghanistan-Pakistan border was the firebase located?

18 A Ma'am, it was located in Afghanistan.

19 Q Now, what was the nearest town or village on the Pakistan
20 side of the border from Firebase Shkin?

21 A The nearest town in Pakistan was called Angoor Ada and it
22 was located right on the border.

23 Q Can you show us on the map?

24 A (Indicating).

25 Q What region of Afghanistan was Firebase Shkin located in?

1 A It was located in the province of Paktika. And more,
2 specifically, in the Burnell Valley. We call it the
3 Burnell Valley, because there was a mountain range in
4 Afghanistan that generally ran north to west, and then there
5 was a subsequent mountain range in Pakistan that generally ran
6 north and south.

7 Q So you mentioned a couple of mountain ranges. Can you
8 tell us generally what the terrain was like in the area the
9 Shkin and the Burnell Valley?

10 A Firebase Shkin sat at the foothills of a mountain range
11 that ran north to south in the Burnell Valley. So it kind of
12 sat up in a high area that allowed for good visibility. And
13 the valley north to south, it was kind of undulating terrain
14 but it had a series of road networks that allowed you to
15 travel from east to west.

16 And then across the border in Pakistan, the
17 mountains were, I mean, fairly significant in that it was
18 going to be all-day hike if you ever had to climb up any of
19 them. I mean, they were significant mountains.

20 Q Were there any other American bases or installations in
21 the vicinity of Firebase Shkin?

22 A There were two bases to the north of the firebase, ma'am.

23 Q What were those?

24 A The first one to the north was called Organy. And the
25 second one was the one I spoke previously about, Forward

1 Operating Base Salerno.

2 Q All right. Can you show us where, approximately, the
3 Organy base was located on this map?

4 A Yes, ma'am. (Indicating).

5 Q And, again, it's not on this map, but relative to
6 Firebase Shkin, which direction did you have to go to get to
7 Forward Operating Base Salerno?

8 A We would have had to travel north, ma'am.

9 Q About how far away, or what was the travel time to get
10 from Firebase Shkin to Forward Operating Base Salerno?

11 A I don't remember the driving time, but flight time was
12 approximately 30 to 45 minutes.

13 Q When you say, "flight time," how would you generally
14 travel?

15 A By helicopter, ma'am.

16 Q Can you describe what Firebase Shkin looked like?

17 A Yes, ma'am. Firebase Shkin had a helicopter landing zone
18 immediately outside of the firebase. The firebase itself was
19 ringed by triple strand concertina wire and what we called
20 HESCO bastions. A HESCO bastion is nothing like a large
21 canvas and wire bucket to put sand and rocks in to provide
22 protection. It's like a ready made wall.

23 And then closer in, the internal compound itself was
24 made out of a local brick that's made from wood and hay is a
25 really sturdy, hard brick that provides significant protection

1 from small arms fire or even grenades.

2 The compound its itself was a square, a perfect
3 square. On each of the four corners, there is a guard tower.
4 And then inside the compound itself would have been living
5 quarters, what we call barracks. There would have been space
6 to plan for operations, space to conduct maintenance, and then
7 store vehicles keep our equipment. And it wasn't very large,
8 I could probably throw a football from one side of Forward
9 Operating Base Shkin to the other easily.

10 Q I would like to show the witness what's been marked for
11 identification as Government Exhibit 268.

12 Sir, once this picture is up on your screen, let me
13 know if you recognize it?

14 A Yes, ma'am, I do recognize it.

15 Q What's this?

16 A That is the front gate to Forward Operating Base Shkin.

17 MS. WELLS: I move to admit Government Exhibit 268
18 and request permission to publish.

19 THE COURT: Any objection?

20 MR. DRATEL: No objection.

21 THE COURT: Received. Go ahead.

22 (Government's Exhibit 268 was received in evidence
23 as of this date.)

24 (The above-referred to exhibit was published in
25 open court.)

1 Q Colonel Trahan, can you describe what that is?

2 A This is front gate of Firebase Shkin. That would be the
3 very front entrance. So beyond that would be concertina wire
4 that I spoke about before. The wall that you see there is of
5 the fashion that I spoke which is the fashion that I spoke
6 about which is the mud brick thatch that was common place
7 throughout Afghanistan. And then on top there you see what
8 looks like probably some living space.

9 Q And now I'd like to show the witness what's been marked
10 for identification as Government Exhibit 267,
11 Government Exhibit 127, and Government Exhibit 262.

12 Sir, beginning with 267, when that comes up on your
13 screen let me know if you recognize it.

14 A Yes, ma'am, I do recognize it.

15 Q What is this?

16 A That's another photograph of Firebase Shkin but this time
17 from the inside of the compound.

18 MS. WELLS: Your Honor, move to admit 267.

19 MR. DRATEL: No objection.

20 THE COURT: Received.

21 (Government's Exhibit 267 was received in evidence
22 as of this date.)

23 Q Turning to 127. Do you recognize this?

24 A Yes, ma'am, I do. This is another internal photograph of
25 Firebase Shkin taken from an opposite corner.

1 MS. WELLS: Move to admit 127?

2 MR. DRATEL: No objection.

3 THE COURT: Received.

4 (Government's Exhibit 127 was received in evidence
5 as of this date.)

6 Q And then finally, 262. Do you recognize this?

7 A Yes, ma'am. This is another photograph internally of
8 Firebase Shkin. In this one here it specifically you can see
9 where the wires and the antenna. That was where the tactical
10 operating center was. And the flag that you see there kind of
11 draped on the stick there, that would have been where myself
12 and my first sergeant actually lived.

13 MS. WELLS: All right. Move to admit 262 and
14 permission to publish 267, 127 and 262?

15 MR. DRATEL: No objection.

16 THE COURT: Received.

17 (Government's Exhibit 262 was received in evidence
18 as of this date.)

19 THE COURT: Go ahead.

20 Q Turning back to this photograph, 267. Can you describe
21 for us what you see we see here?

22 A Yes, ma'am. In the foreground where the U.S. flag is,
23 that would have been the front gate on top there. There was
24 some living quarters, or what we call barracks. In the center
25 of the photograph, is either some living structures that I can

1 remember or space to house equipment and materiel. I don't
2 remember exactly what each of these buildings would have been
3 for. In the far left of the building, you'll see kind of what
4 looks like be a hut that was one of the four guard towers that
5 we had at the firebase.

6 (Continued on the next page.)
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1 DIRECT EXAMINATION

2 BY MS. WELLS:

3 Q Is that right here?

4 A Yes, ma'am, that is.

5 Q Now, turning to the next exhibit, which is 127.

6 Again, just briefly can you describe for us
7 the layout of the base from this vantage point?

8 A Yes, ma'am.

9 Another internal photograph taken from the
10 opposite corner from the previous photo. In the background
11 you see the guard tower, the box shape, it looks like a hut.
12 Then you essentially see the other angle of the same
13 buildings that we saw in the previous shot. And then in the
14 center of the courtyard you see kind of our mission
15 preparation area where the vehicles are stored. You see the
16 overhang there where maintenance would have been conducted
17 and preparation for missions would have been conducted.

18 Q And turning to 262, what do we see here?

19 A To the left, ma'am, is living quarters, then to the
20 right is the antenna wires I was talking about that would
21 have been for communications for tactical operations center.
22 Then the flag there denotes where myself and my first
23 sergeant lived.

24 Q Can you show us first just by pointing on the screen
25 where that tactical operations center was?

1 A It would have been along this area right here.

2 (Indicating).

3 Q And then you mentioned a flag, can you show us where
4 that is?

5 A Yes, ma'am. (Indicating).

6 Q Remind us what was behind the flag or next to the flag?

7 A The flag denoted the entrance to the first sergeant and
8 I's living quarters.

9 Q By the way, when you say the first sergeant, what was
10 the name of that person?

11 A My first sergeant was Brian Severino.

12 Q During the point in time when you arrived at Shkin,
13 about how many people were stationed there?

14 A It was between 80 and a hundred soldiers, ma'am.

15 Q Now you were there as a member of the Army, but were
16 there members of any other branches of the military
17 stationed at Shkin?

18 A Yes, ma'am. With our company was a member of the Air
19 Force, two members of the Air Force that I remember, and
20 their responsibility was to assist us in coordinating fire
21 from Air Force aircraft.

22 Q Do you remember the names of any of the Air Force
23 members who were there?

24 A I remember one name, ma'am, Airman Ray Losano.

25 Q By the way, why did the Air Force have anyone assigned

1 to your company or to Shkin?

2 A Yes, ma'am. It's typical that the Air Force, the Army
3 assign what we call a tactical air control party to Army
4 units because the Army doesn't have the specific capability
5 to coordinate with Air Force aircraft for fire. We don't
6 have the radios and most cases we don't have the training in
7 order to talk to pilots in order to guide their bombs, guns
8 directly on to targets.

9 MS. WELLS: Your Honor, I would like to show the
10 witness two exhibits that have been marked for
11 identification. Those are Government Exhibits 500 and 507.

12 Q So looking first at Government Exhibit 507, do you
13 recognize this person?

14 A Yes, ma'am, that's my First Sergeant Brian Severino.

15 MS. WELLS: Move to admit 507.

16 MR. DRATEL: No objection.

17 THE COURT: Received.

18 (Government's Exhibit 507 was received in evidence
19 as of this date.)

20 Q Showing you Government 500, do you recognize this
21 person?

22 A Yes, ma'am, that's Airman Ray Losano.

23 Q Then I'd also like to show the witness what has been
24 marked as Government Exhibit 502.

25 Do you recognize this person?

1 A Yes, ma'am. That's me at the time.

2 MS. WELLS: Your Honor, move to admit all three
3 exhibits and permission to publish to the jury.

4 MR. DRATEL: No objection.

5 THE COURT: Received. Go ahead.

6 (Government's Exhibits 500 and 502 were received in
7 evidence as of this date.)

8 (Exhibit published.)

9 Q All right, beginning with this photograph, can you tell
10 the jury who we're looking at here?

11 A Yes, ma'am, that's a picture of me in 2003 at
12 Firebase Shkin.

13 Q Turning to Government 507, who is this?

14 A Yes, ma'am, that's my First Sergeant Brian Severino.

15 Q And then Government Exhibit 500. Who is this?

16 A Yes, ma'am, that's Airman Ray Losano.

17 MS. WELLS: With the Court's permission, as we put
18 in some of these photographs we'd like to use the board up
19 there, may I approach?

20 THE COURT: Go ahead.

21 BY MS. WELLS:

22 Q How would you describe the difference in any of the
23 readiness of troops at Firebase Shkin compared to Salerno?

24 A At that time, ma'am, there was a heightened level of
25 expected enemy contact at Firebase Shkin than there was at

1 firebase Salerno, and what I remember was that was driven
2 primarily by our proximity to the Pakistan border and also
3 because of our relative distance to other U.S. troops in the
4 area. And because of that heightened security, we took
5 additional measures, we had additional patrols that were --

6 MR. DRATEL: Objection.

7 THE COURT: Hold it, hold it. Wait a minute.

8 Overruled.

9 Q Please continue.

10 THE COURT: You may continue.

11 A Because of that heightened security, we took additional
12 measures that we put additional patrols out beyond the walls
13 of the firebase and we also conducted security convoys and
14 then most -- you know, most closely to me or to the internal
15 operations of the firebase is that we kept magazine loaded
16 in our weapon at all time.

17 Q What was day-to-day life like at Shkin?

18 A Day-to-day life was a combination of security patrols.
19 So there's roughly a couple of platoons of about 30 to 40
20 men located at the four operating bases plus some folks for
21 logistics and communications and planning. We would have
22 patrols that went out by foot that secured the local area,
23 kind of gained an assessment of the local population. Then
24 we had vehicle patrols that went further out into our area
25 of operations, again trying to assess the situation and have

1 a U.S. presence in the Bermel Valley.

2 Then beyond that we would conduct planning,
3 preparation for operations in a broader area of operations
4 that were tied to intelligence that we would get. Those
5 would occur may be every 96 or once a week or -- 96 hours or
6 every once a week.

7 So the day-to-day life was a combination of
8 executing those patrols or planning and preparation for
9 those patrols or operations that we were doing.

10 Q I'd like to direct your attention to the days leading
11 up to April 25th, 2003. Were there any attacks on
12 Firebase Shkin that you recall?

13 A Yes, ma'am. One that I specifically recall was a
14 matter of days before, I don't remember specifically how
15 many days before, but we sustained a significant rocket
16 attack less than a week before the actual engagement on the
17 25th of April.

18 Q Can you describe what it means to sustain a rocket
19 attack or what's that like?

20 A Yes, ma'am. This particular rocket attack, if you can
21 imagine perhaps two large trucks or two large trains
22 crashing together head on and the force of it, you know, you
23 kind of feel kind of knocked -- it blows you back a little
24 bit and then anything that's kind of set on end on a flat
25 surface would either have been shaken or maybe even knocked

1 over. We had some plate glass windows on the firebase. I
2 remember a few of those had been shattered.

3 And in this particular rocket attack, I
4 remember there being at least seven to 10 of those sustained
5 impacts and outside of the firebase, luckily none of them
6 hit inside.

7 Q When you say seven to 10 impacts, what does that mean?
8 Was there one rocket or more than one rocket or something
9 else?

10 A Yes, ma'am. That means that there was seven different
11 rockets that impacted in and around the firebase.

12 Q How did you know they were rockets?

13 A I knew that they were rockets because after each one of
14 these attacks it was standard procedure to go out and
15 determine the impact of the site. And once we got to the --
16 a patrol got to the impact of the site you would see
17 shrapnel, you would see the fragments of a rocket and in
18 some cases you could see markings, so that was standard
19 procedure. And in this particular case we executed that
20 procedure and the elements of my company came back and
21 reported to me that, yes, it was a rocket.

22 In addition to that, as I stated, I've been in
23 a rocket attack previous to that and this was the same
24 thing.

25 Q I'd like to turn your attention to April 25th. How did

1 your day begin?

2 A It began kind of normal in that we started out with a
3 operations and intelligence briefing with me, members of our
4 the intelligence community and subordinate leaders, my
5 platoon sergeant, platoon leaders, the first sergeant would
6 have been there and we would have discussed the patrols that
7 were ongoing that day, we would have discussed the
8 preparations for upcoming operations, and then any logistic
9 matters, soldier matters that needed to be covered, and then
10 also any specific intelligence that we spoke to the threat
11 of the area.

12 Q After that meeting ended, where did you go?

13 A There was really nothing of highlight, nothing of note
14 in that particular meeting above what we had seen before and
15 I returned back to the quarters that we had in the
16 photograph before.

17 Q What, if anything, happened while you were in the
18 quarters?

19 A I hadn't been long back in the quarters when a member
20 of the company came and said that, hey, there was an
21 intelligence report and that I better go back to the
22 operations center in order to get more information.

23 Q And did you go back to the operations center?

24 A Yes, ma'am, I did.

25 Q What did you learn?

1 A At that time we had received a report, I don't exactly
2 remember where it came from specifically, but the
3 intelligence analysts that were working in the operations
4 center said that there were 10 to 12 individuals coming
5 across the border from Pakistan into Afghanistan roughly
6 about the point where we had sustained the rocket attacks
7 from.

8 Q When you say roughly the point that you sustained
9 rocket attacks from, what do you mean?

10 A They -- the report was specifically that they were
11 crossing the border. The place that we had received the
12 rocket attacks was right on the border with Pakistan and
13 Afghanistan.

14 Q And so the record is clear, is that the place where
15 rockets had impacted, or the location from which they were
16 fired?

17 A That was the location that we assessed that they had
18 been fired from.

19 Q So was that location familiar to you when you got this
20 report?

21 A Yes, ma'am, it was.

22 Q After receiving the report, what did you do in
23 response?

24 A I remembered thinking it was such a beautiful day and
25 it was, you know, kind of -- the sun was high in the sky, it

1 was kind of a beautiful spring day, the temperature was --
2 it was perfect, perfect day. And I remembered thinking that
3 I'm not sure I believe this, but I directed that a patrol,
4 specifically a quick reaction force or what we call a QRF be
5 put together in order to go and investigate and assess the
6 situation.

7 Q What is a QRF or a quick reaction force?

8 A So I discussed the patrols that were regularly out in
9 our area of operations. A quick reaction force would have
10 been a couple of -- an infantry platoon or two infantry
11 platoons specifically for a purpose and in this case to go
12 investigate the intelligence report that we had received.

13 Q Where did you go upon leaving the base with the patrol?

14 A After leaving the base in order to gain more
15 information, we took the patrol from Firebase Shkin to what
16 was called the border checkpoint. The border checkpoint is
17 a -- was a place on the Pakistan/Afghanistan border that was
18 manned on the Afghan side by Afghan militia and on the
19 Pakistan side it was manned by members of the Pakistan
20 security forces. And that checkpoint would monitor vehicle
21 traffic that traveled east/west, west/east and foot traffic
22 that traveled, east/west, west/east.

23 MS. WELLS: Your Honor, may I approach the
24 witness?

25 THE COURT: You may.

1 Q Sir, do you recognize this?

2 A Yes, ma'am. This is a tactical map of our area of
3 operations in the Berme1 Valley.

4 Q Is that a fair and accurate representation of the area
5 of operations from that point in time?

6 A Yes, ma'am, it is.

7 MS. WELLS: Your Honor, I move to admit.

8 MR. DRATEL: What number?

9 MS. WELLS: Pardon me. Five.

10 MR. DRATEL: Can I have brief voir dire, Your
11 Honor?

12 THE COURT: Yes.

13 MR. DRATEL: I can do it from here.

14 VOIR DIRE EXAMINATION

15 BY MR. DRATEL:

16 Q There's handwritten on this map.

17 A Yes, sir, there is.

18 Q Is that your handwriting?

19 A I'm not sure if it's mine or someone else's, sir.

20 Q Was this something that you had at the time at the
21 firebase?

22 A Yes, sir.

23 MR. DRATEL: No further questions, Your Honor.
24 Thank you.

25 THE COURT: Any objection?

1 MR. DRATEL: No. No, Your Honor.

2 THE COURT: It's admitted.

3 (Government's Exhibit 5 was received in evidence as
4 of this date.)

5 MS. WELLS: Permission to publish, Your Honor?

6 (Exhibit published.)

7 Q Using this map as a reference, can you first show us
8 where Firebase Shkin was located?

9 A Yes, ma'am. If you look to the far left of the map,
10 Firebase Shkin is located here by kind of a square. It's
11 also marked as B Shkin.

12 Q Right there.

13 A Yes, where the red dot is, ma'am.

14 Q Upon leaving the base with the patrol, can you tell us
15 which direction you went or which route you took?

16 A Yes, ma'am. We would have first traveled north and
17 then southeast, what we called route Corvette. All the
18 routes that travel east/west were named after automobiles.

19 Q You mentioned a border checkpoint area, where is that?

20 A It's a difficult to see on the map, but it would have
21 been the vicinity of Afghan/Pakistan border here.

22 Q Upon reaching the border checkpoint area, what happened
23 next?

24 A I don't remember exactly who, but members of the
25 patrol, it may have been me, I don't specifically remember,

1 members of the patrol had got -- dismounted vehicles and
2 spoke with the Afghan militia to determine what, if
3 anything, they knew about these 10 to 12 individuals that
4 were coming across the border.

5 Q What did you do from there?

6 A We didn't receive any additional information from the
7 Afghan militia at the border checkpoint so we mounted back
8 up, then we proceeded south on what's marked as route Chevy
9 to determine what, if anything, was -- to assess the
10 intelligence that we had received.

11 Q Can you show us what route Chevy is?

12 A It's at the very bottom the map and south of the border
13 checkpoint and it runs north and south here.

14 Q After you turned in that direction, did you make any
15 stops?

16 A Yes, ma'am. The patrol made several, at least two to
17 three stops while on route Chevy.

18 Q What did you do?

19 A The purpose of the stops on route Chevy were to solicit
20 information from the local Afghan population to determine
21 what, if anything, or indeed if any enemy elements were in
22 the compounds along route Chevy. So what we would do is
23 conduct a search of living -- living structures along the
24 route and then question local people if they saw or knew of
25 anything going on.

1 Q And can you show us -- actually could I request for the
2 screen to be cleared. Let me move this up so it's a little
3 easier to see.

4 Can you show us first, roughly speaking, where
5 was the Afghanistan/Pakistan border?

6 A Yes, ma'am. Basically it ran more south here. That
7 will complete it this way.

8 Q And at the point when you were making stops after going
9 to the border checkpoint area, what was the result of that,
10 if anything?

11 A We didn't find any sign of enemy presence and no one in
12 the area had seen or heard of anything that we described.

13 Q And around the time that you were making those stops
14 and looking for additional information, did you receive any
15 information back from Firebase Shkin?

16 A Yes, ma'am. Actually while we were en route along
17 route Corvette I was contacted by my battalion executive
18 officer Major John Hanson and he told me that the firebase
19 was currently being resupplied with mail and food and with
20 that resupply came two Apache helicopters as escort of the
21 helicopters that were resupplying the airways. So he said
22 that I could use them as part of my search.

23 Q How would you use Apache helicopters as part of a
24 search?

25 A Yes, ma'am. The helicopters would have been placed

1 under my command and I would have directed my fire support
2 officer, Mike Dolan, who was traveling with me in my
3 vehicle, I would have given him specific coordinates on a
4 map and told him to establish a search pattern in a
5 particular area of interest, and then the Apache helicopters
6 would have flown in a circular manner around that specific
7 area in order to see if there was any enemy presence.

8 Q Do you recall if you received the results from that
9 search?

10 A I did, but I didn't receive them specifically, ma'am, I
11 got them from Mike Dolan who was in contact by radio either
12 to the pilots or back to Firebase Shkin, but the report came
13 back that they didn't see any presence of -- any foot
14 traffic in the border region.

15 Q I'd like to show the witness what's been marked for
16 identification as Government 503.

17 Sir, do you recognize this photograph?

18 A Yes, ma'am. That's my fire support officer Mike Dolan.

19 MS. WELLS: Move to admit and permission to
20 publish.

21 MR. DRATEL: No objection.

22 THE COURT: Received.

23 (Government's Exhibit 503 was received in evidence
24 as of this date.)

25 (Exhibit published.)

1 Q Do you recall Mike Dolan's rank at the time?

2 A He was a first lieutenant, if I remember, ma'am.

3 MS. WELLS: Your Honor, if I also may approach to
4 the board?

5 THE COURT: Go ahead.

6 BY MS. WELLS:

7 Q After you received the report that the helicopter
8 search did not result in any information, with that in mind
9 what did you do next?

10 A Yes, ma'am. After the report from the helicopter and
11 the searches of the compound, I remembered thinking that it
12 was a bogus report, which was not uncommon for the area, but
13 since we had such a significant force out already I thought
14 that it prudent to go and check the specific area that we
15 had sustained rocket attacks from previously, so I directed
16 that the patrol proceed to that area.

17 Q What, if anything, happened along the way?

18 A Either during our movement to the place that we had
19 received rockets from or just prior, one of our vehicles had
20 a mechanical failure either a tire or to the engine, but I
21 remember thinking it wasn't significant and that the crew
22 would be able to get the vehicle running itself and we left
23 the vehicle there with a small security element, then the
24 rest of the patrol proceeded to where the rocket attack had
25 occurred before.

1 Q And at some point did you arrive at that place where
2 the rocket attack had occurred before?

3 A Yes, ma'am, I did.

4 Q Can you describe that location for us.

5 A Yes, ma'am. It would have been at the foothills of the
6 mountain range that was in Pakistan but it was in
7 Afghanistan, Afghanistan side of the border. It was a large
8 hilltop. It would have taken a significant amount of time
9 in order to walk up, but we were able to drive, it was
10 essentially a dirt road that locals had used to drive up and
11 down either to gather wood or for whatever purpose.

12 At the top of the hill was not a lot of room,
13 it was enough to get a couple of vehicles up there. It
14 was -- the terrain was undulating in that there is large
15 mounds on top of the hilltop such that if you walked, you
16 know, maybe 10 meters it was possible not to see the person
17 that was directly in front of you because he was obstructed
18 by the mounds, the mounds of rocks and dirt and stuff like
19 that. Also on the mounds were scrub brush, kind of trees
20 that were devoid of any kind of vegetation but they were
21 thick enough consistency that it could obscure humans
22 from -- you know, you could hide behind the trees
23 essentially, the scrub brush essentially. It didn't have
24 any leaves or anything like that, it was just thick under
25 brush.

1 The hilltop was steep enough that on the
2 eastern side as you traveled into Pakistan, was -- you
3 couldn't see -- if you were in the center of the hilltop you
4 couldn't see immediately on the other side of hilltop,
5 that's how steep it was. And the same thing as you looked
6 to the west, you actually had to move to the edge of the
7 hilltop in order to see down. It was a fairly steep
8 hilltop.

9 Q I just want to explore that last piece. You were
10 talking about whether you were facing east or west. If you
11 just approached towards the edge of the hilltop, what could
12 you see ahead you and around you, and what could you see
13 below you on the down slope of the hill?

14 A As you approached the edge of the hilltop, you could
15 see the expanse of the Pakistan mountains to your east. It
16 was a relatively unobstructed view. And you could see up
17 and down the Bermel Valley. Then to the west, you could see
18 the rest of the Bermel Valley. You could see the opposite
19 side of the Valley where the mountain range was in
20 Afghanistan, you could also see Firebase Shkin, but you
21 would actually have to walk to the edge, the very edge of
22 this hilltop in order to see immediately down. So if
23 somebody was on the other side of the hilltop they could be
24 obstructed from your view unless you went to the very edge.

25 Q When you arrived at this hilltop area, about how many

1 people were with you, what was the size of the QRF at this
2 point?

3 A Because we had to leave someone behind, I would say
4 there was probably maybe 15 to 20 U.S. forces and maybe
5 another 15 to 20 Afghan militia.

6 Q When you arrived on the hilltop, did you get out of
7 your vehicle?

8 A Yes, ma'am. The security element dismounted first, the
9 U.S. forces would have gone to my right or to the south, and
10 the Afghan militia went to my left or to the north. And
11 then myself and my security element, Mike Dolan and other
12 members would have been in the center so that we could
13 maintain command and control of the two elements.

14 Q When you got out of your vehicle, what did you do next?

15 A I remembered thinking, ma'am, that the U.S. forces were
16 drifting a little bit further to the south than I wanted
17 them to, I wanted them to go to a specific location, but
18 everything seemed to be going okay, so I let them continue
19 on. And myself and the security element walked forward
20 towards the edge of the hilltop.

21 Q And what did you see, if anything?

22 A Once I got further away from the vehicles, I saw what I
23 believe was a enemy patrol base. I saw rockets set to be
24 fired, I saw rockets that were cached, set aside in
25 preparation for firing. I saw several canteens of water --

1 or I saw several canteens and I saw large burlap bags that
2 could have been used either for carrying equipment and
3 supplies or could have been used to obscure people from
4 observation.

5 Q After you saw these canteens and rockets and burlap
6 bags, what did you do next?

7 A I immediately turned around and then that's when the
8 ground erupted around me with small arms fire.

9 Q When you say the ground erupted around you, what does
10 that mean?

11 A It means, ma'am, that the ground on that particular
12 hilltop is of a soft soil, sandy soil nature. If you could
13 visualize walking in a, you know, rain shower then looking
14 down at the pavement and seeing the water kind of jump up,
15 that's what I saw all around me.

16 Q What happened next?

17 A I got down to seek cover and then after the fire
18 subsided I ran back to the location of the vehicles.

19 Q When you ran back to the location of the vehicles, were
20 you able to see anyone or anything around you?

21 A Yes, ma'am. I saw that a member of the patrol, Staff
22 Sergeant Brown, who was a squad leader for one of the
23 trucks, the gun trucks that were out on patrol, had been
24 shot in either his left or right knee.

25 Q Can you tell us what Sergeant Brown looked like?

1 A Yes, ma'am. He's a large man, looks like a middle
2 linebacker, black, bald.

3 MS. WELLS: Your Honor, I'd like to show the
4 witness what has been marked for identification as
5 Government 84 and Government 504.

6 Q Sir, when that comes up on your screen let me know if
7 you recognize this photo.

8 A Yes, ma'am, that's Sergeant Brown.

9 Q And then Government 504.

10 A Another closeup of Sergeant Brown, ma'am.

11 MS. WELLS: Your Honor, move to admit
12 Government Exhibit 84 and Government 504.

13 MR. DRATEL: No objection.

14 THE COURT: Received.

15 MS. WELLS: And permission to publish.

16 THE COURT: Yes.

17 (Government's Exhibits 84 and 504 were received in
18 evidence as of this date.)

19 (Exhibit published.)

20 Q Sir, just now that we have the photo up for everyone,
21 who is this?

22 A That's a picture of Staff Sergeant Brown.

23 MS. WELLS: And, Your Honor, if I may approach to
24 the board?

25 THE COURT: You may.

1 Q At the point in time when you saw Sergeant Brown and
2 you mentioned that he'd been injured, was anyone around him?

3 A Yeah, I remember members of the patrol were lending
4 assistance and first aid and then trying to get Sergeant
5 Brown back to one of the gun trucks that we were using as
6 part of the patrol.

7 Q Around this time what could you hear?

8 A When I saw Sergeant Brown I remembered that the firing
9 had generally subsided. I don't remember if it was -- we
10 were still actively being engaged, but I remember it being
11 sufficient enough that I could have a conversation and
12 receive reports from my subordinate leaders.

13 Q What did you do next?

14 A Well, I linked back up with my fire support officer and
15 radio telephone operator and I remember either directing
16 that we send a report back that we had been in an engagement
17 and also receiving a report from one of my platoon leaders,
18 Joe Milan, that his element had seen two to three
19 individuals and had taken fire from two to three
20 individuals.

21 Q You mentioned a fire support officer, who is that?

22 A That was Mike Dolan.

23 Q What happened next?

24 A After receiving the report, I remember the firing
25 picking up again but this time of a stronger nature and

1 having be -- it was more than just small arms, this time it
2 was machine gun fire and I couldn't -- from my location I
3 couldn't actually tell exactly where the firing was coming
4 from.

5 Q What's the difference between small arms fire and
6 having machine gun fire?

7 A Small arms fire is like a rifle, like an AK-47 or M16.
8 A machine gun is something that has a higher rate of fire
9 and a larger caliber so the difference is a deeper thud when
10 it's being fired at you.

11 Q What happened next?

12 A Well, after that, since I couldn't actually tell what
13 was -- where the fire was coming from or what our men were
14 firing at, I moved forward in order to get a better idea of
15 where the fire was coming from.

16 Q Moved forward where?

17 A I moved from the vehicle location where the vehicles
18 were stopped, I moved east towards the edge of the hilltop.

19 Q And as you moved forward towards the edge of the
20 hilltop, what happened?

21 A First, I was shot in my right arm, a grazing wound. I
22 moved a little bit further forward and got down in order to
23 determine exactly where this fire was coming from.

24 Q After you got down, what could you see?

25 A I hadn't been down very long and then two individuals

1 popped up from the edge of the hilltop, one fired an AK-47,
2 and one threw a hand grenade in my direction.

3 Q Do you remember anything about what those individuals
4 looked like?

5 A What I remember, ma'am, was that they had a bushy beard
6 that's -- and were kind of dark skinned, like they had been
7 in the sun for a long time.

8 Q About how far away from you were they?

9 A About 10 to 15 meters, ma'am.

10 Q After you saw these two people pop up -- I'm sorry,
11 what were they doing when you saw them?

12 A When they first popped up over the edge of the hilltop
13 one was firing a AK-47 in my direction and another one threw
14 a grenade in my direction.

15 Q What happened from there?

16 A I don't remember the grenade exploding but it wasn't
17 anywhere around me, but the AK -- I was shot twice in my
18 right leg, once in my left leg, and then a bullet entered
19 inside my helmet and then grazed around and behind and then
20 ended up lodging it in the left side of my helmet, ma'am.

21 Q After you sustained those injuries, were you able to
22 move anywhere?

23 A Yes, ma'am. I was able to crawl, kind of run hunchback
24 to the vehicles where I had come from, I hadn't traveled
25 that far.

1 Q And who was around those vehicles when you got back?

2 A Mike Dolan, the fire support officer, and I remembered
3 Sergeant Cyr, a team leader with the security element also
4 coming shortly after I arrived and assisting me in providing
5 first aid.

6 Q At the point that you got back to the area where
7 Lieutenant Dolan was and where Sergeant Cyr joined you, what
8 were your goals?

9 A I remember thinking that I had allowed the element to
10 be surprised and it was time for us to get out of this --
11 out of the area. So I directed that we mount the patrol
12 back up and then pull back in order to kind of regroup and
13 then continue on from there.

14 Q Do you remember what, if anything, Mike Dolan was doing
15 around this time?

16 A I directed Mike to prepare a fire mission, an indirect
17 fire mission that would allow us to pull back from the
18 hilltop.

19 Q And again, can you remind what indirect fire means?

20 A So in that particular area we probably would have had a
21 target worked up, so it's a predetermined place on the
22 ground where artillery could be fired in order to suppress
23 the enemy contact. So I remember telling Mike that -- or
24 Mike Dolan that make sure you pass our location to the
25 firebase, pass the target that we want fired and the

1 indirect fire would kind of allow us to pull off the
2 hilltop.

3 Q Around this point in time do you remember seeing if
4 anyone else from your company was injured?

5 A Yes, ma'am. I did see one other person injured that
6 was Airman Losano.

7 Q Where did you go next?

8 A After giving those orders, making those reports, I was
9 loaded into the vehicle and we went back down the hilltop to
10 what we call a casualty collection point, a point on the
11 ground where a higher level of care would be administered
12 and then transportation towards a hospital.

13 Q Who, if anyone, do you remember seeing at the casualty
14 collection point?

15 A There was several soldiers there by the time my vehicle
16 got to the casualty collection point, but specifically I
17 remember Brian Severino, my first sergeant being there.

18 Q What was your physical condition, were you awake, were
19 you conscious at this point?

20 A I remember being in and out of conscious after being
21 loaded into the Humvee. Once we got to the casualty
22 collection point I remember having a conversation briefly
23 with Brian Severino and -- but I don't remember exactly what
24 was said.

25 Q Where if anywhere did you go from the casualty

1 collection point?

2 A From the casualty collection point I was placed on an
3 ambulance, essentially an open bed cargo truck and taken
4 back to Firebase Shkin.

5 Q What happened at Shkin?

6 A At Shkin there was already one or two helicopters
7 waiting for casualties, so myself and one of the other
8 casualties, I don't remember who -- again I was in and out
9 of consciousness it's been a while -- were loaded onto the
10 helicopter.

11 Q Where did you go next?

12 A From there we were flown back to forward operating base
13 Salerno.

14 Q What happened at Salerno?

15 A At Salerno I think my arm was stitched up and I
16 probably had the first of several surgeries and my wounds
17 were cleaned and stabilized at Salerno.

18 Q Where did you go next?

19 A From there we were flown to -- or I was flown to Bagram
20 Air Base, which is a larger forward operating base, larger
21 than forward operating base Salerno and I was given the
22 first or -- the second of several surgeries.

23 Q From there?

24 A From there I spent the night at Bagram, and then I was
25 flown by Air Force aircraft to Landstuhl, Germany and I was

1 there for about another week and a half and had another
2 series of surgeries to close my wounds.

3 Q And finally from Germany where did you go?

4 A From Germany I went to Walter Reed Army Hospital and I
5 was there a little less than a month and went several
6 surgeries and physical therapy to recover from my wounds.

7 Q Upon your release from Walter Reed, where were you
8 assigned?

9 A I was sent back to Fort Bragg, North Carolina after
10 that, underwent physical therapy and then I was reassigned
11 to the division headquarters -- 82nd Airborne division
12 headquarters.

13 Q Did you deploy overseas again?

14 A Once I healed up in September of 2003, the same year, I
15 was sent to Iraq.

16 MS. WELLS: Nothing further, Your Honor.

17 THE COURT: All right. Let's take a morning
18 break, ladies and gentlemen, we'll reconvene at 11:25.

19 Please remember do not discuss the case
20 amongst yourselves, keep an open mind, we will see you back
21 here in 15 minutes.

22 (Jury exits.)

23 THE COURT: Okay, recess, 11:25.

24 MR. STERN: Can we talk about one thing before you
25 go? It will take a second.

1 THE COURT: In open court?

2 MR. STERN: Yes.

3 THE COURT: I didn't lose the prosecutors.

4 MS. WELLS: You didn't, your Honor.

5 THE COURT: Okay. What's up.

6 MR. STERN: We would like to possibly at lunch to
7 have the courtroom cleared except for the interpreters so we
8 can try and talk to our client about what's going on and
9 what our plans are, which we don't intend to share with
10 everyone, but we would like to at least put them out in the
11 ether and see if they are received by him.

12 THE COURT: Granted. We'll set aside a time.

13 MR. STERN: Thank you.

14 (Recess.)

15 (Continued on the next page.)

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1 (In open court; 11:19 a.m.)

2 COURTROOM DEPUTY: All rise.

3 THE COURT: Let's have the jury, please.

4 (A brief pause in the proceedings was held.)

5 COURTROOM DEPUTY: Jury entering.

6 (Jury enters courtroom at 11:32 a.m.)

7 THE COURT: Please be seated. Any

8 cross-examination?

9 MR. DRATEL: No, your Honor. No questions.

10 THE COURT: You may step down. Thank you very much.

11 THE WITNESS: Thank you, your Honor.

12 (Witness leaves the witness stand.)

13 THE COURT: Government's next witness.

14 MR. JACOBS: Judge, the Government calls Sergeant

15 First Class Conrad Reed.

16 (Witness takes the witness stand.)

17 COURTROOM DEPUTY: Please raise your right hand.

18 **SFC. CONRAD LUCAS REED**, called by the Government, having

19 been first duly sworn, was examined and

20 testified as follows:

21 THE WITNESS: I do.

22 COURTROOM DEPUTY: Please state your name for the

23 record.

24 THE WITNESS: Conrad Lucas Reed.

25 THE COURT: All right. Please proceed.

1 MR. JACOBS: Thank you, Judge.

2 DIRECT EXAMINATION

3 BY MR. JACOBS:

4 Q Good morning, sir.

5 A Good morning.

6 Q Who do you work for?

7 A I'm currently employed by the United States Army.

8 Q What's your rank?

9 A I'm currently a Sergeant First Class.

10 Q Where are you based right now?

11 A At Fort Carson, Colorado with 10th Special Forces Group.

12 Q When did you join the Army?

13 A I joined in the Army in November of 1999.

14 Q And when were you first deployed overseas?

15 A My first deployment overseas was to Afghanistan in 2003.

16 Q I'd like to direct your attention to April 2003.

17 Where in Afghanistan were you based then?

18 A I was, in April of 2003, I was at FOB Shkin in the

19 Bermel Valley in Afghanistan.

20 Q And what was your rank at that time?

21 A At that time, I was a sergeant.

22 Q What was your job?

23 A I was a forward observer for Bravo Company responsible
24 for using or putting artillery or helping get artillery in the
25 plans and operations that the company conducted.

1 Q What's artillery?

2 A Artillery is larger caliber weapons systems that are not
3 able to be carried by individual personnel. So they shoot
4 projectiles, like, roughly the diameter of a football or
5 something like that. And use them to target locations that
6 wouldn't otherwise be able to be targeted with organic systems
7 to the maneuver units.

8 Q I'd like to direct your attention to the weeks before
9 April 25, 2003.

10 Was Firebase Shkin attacked during this period?

11 A During the few weeks up to or during the few weeks that I
12 was there, Firebase Shkin was attacked three to four times a
13 week with 107 millimeter rockets that were fired at us from
14 near the Pakistan-Afghan border seven to eight kilometers.

15 Q And do these 107 millimeter rockets that were fired at
16 the firebase go by any other names?

17 A At the time, we called them Katyusha Rockets. They're
18 very similar in type and caliber in the way they operate to
19 rockets that were used back in Vietnam.

20 Q I'd like to show the witness only what's marked for
21 identification as Government Exhibit 128?

22 THE COURT: All right.

23 Q Sergeant, can you describe what's depicted in this photo?

24 A The photo shows a picture of myself doing what's called
25 crater analysis. It's a technique we use to analyze impact

1 locations of things such as rockets or enemy artillery.

2 MR. JACOBS: Your Honor, at this time, I move to
3 admit Government Exhibit 128.

4 MR. STERN: No objection.

5 THE COURT: Received.

6 (Government's Exhibit 128 was received in evidence
7 as of this date.)

8 MR. JACOBS: And publish to the jury.

9 THE COURT: Okay.

10 (The above-referred to exhibit was published in
11 open court.)

12 Q Sergeant, was this photograph taken in the vicinity of
13 Shkin?

14 A From what I can tell, that picture appears to be from
15 the -- from the time period at which I was at Shkin.

16 Q And you mentioned a crater analysis. Can you, in
17 laymen's terms, explain what that is?

18 A We utilize, basically, we find the craters. We determine
19 what their point of impact was, so where the center of the
20 crater is. We identify any fragmentation that was at the
21 crater and then we use the spray that's created from the
22 fragmentation and the blast off the crater to determine the
23 direction in which to came from.

24 By using multiple crater impacts, you're able to
25 determine the direction in which they came from each location

1 and where those direct -- where that direction from each of
2 those locations intersect is generally the area in which the
3 rockets originated from.

4 Q Were you able to determine the origination point of the
5 rockets that were being fired at Firebase Shkin?

6 A Through crater analysis, and then also from individuals
7 that observed the actual launches of the, or, like,
8 signatures. So smoke or a flash of light that came off of the
9 launch sites, we were able to identify an area about a
10 kilometer to two kilometers south of the border checkpoint on
11 the Afghanistan-Pakistan border where we believe the rockets
12 to came from.

13 Q On April 25, 2003, were you part of a patrol?

14 A I was.

15 Q Where ultimately did this patrol go?

16 A The patrol I was part of left Firebase Shkin and we
17 traveled over near the border the Pakistan-Afghanistan border
18 checkpoint to, approximately, the area where rockets came from
19 about one to two kilometers south of the border checkpoint.

20 Q Now, do you remember any of the individuals that were in
21 the first vehicle of this patrol?

22 A In the first vehicle, the first vehicle was Staff
23 Sergeant Brown's vehicle. He was the Military Police Section
24 Sergeant that was with our company. Along with him was
25 Lieutenant Michael Dolan and Captain Trahan.

1 Q Sergeant, I'm not sure if you can see from where you're
2 sitting, but if you can stand and look at that board to your
3 right.

4 THE COURT: You can step down, Sergeant.

5 Q Just focusing on the three individuals to the right of
6 the board, do you recognize them?

7 A Yes.

8 Q Who are they?

9 A Lieutenant Dolan, Captain Trahan and Staff
10 Sergeant Brown.

11 Q I would like to show the witness only what's marked for
12 identification as Government Exhibit 508.

13 Do you recognize this person?

14 A That is a picture of me taken about the same time period.

15 MR. JACOBS: Move to admit Government Exhibit 508
16 and publish.

17 MR. STERN: No objection.

18 THE COURT: Received.

19 (Government's Exhibit 508 was received in evidence
20 as of this date.)

21 MR. JACOBS: And, your Honor, I'd request permission
22 to go to the board and place name tags.

23 THE COURT: Go ahead.

24 Q Sergeant, you mentioned that the patrol ultimately went
25 to a location where the rockets had been fired from. What did

1 you see and do when you first got to that location?

2 A So we initially had four vehicles. On the way there, one
3 of the vehicles got a flat tire and was left in an area along
4 the way. When we got to the area that we were going to, there
5 was a -- we were down in a wadi and there was a hilltop to our
6 let that we went up on top of.

7 We went up on top of the hill. The first vehicle
8 was the vehicle that Captain Trahan was in, Staff Sergeant
9 Brown's vehicle. It stopped on the far side of the hilltop.
10 The vehicle I was in was a, like, an unarmored, so no armor,
11 cargo Humvee. It stopped, generally, in the center of the
12 hilltop. And then the third vehicle was another up-armored
13 Humvee that stopped at the close side of the hill.

14 Q Did you dismount from your vehicle at any point?

15 A I did. I got out of my vehicle. As I was getting out of
16 my vehicle, I saw Captain Trahan, Lieutenant Dolan, and
17 Staff Sergeant Brown coming to the back of the vehicle that
18 they were in. I moved up to their location and began talking
19 to them about what we were there to look for.

20 Q Now, after your discussion with your fellow soldiers,
21 what happened next?

22 A We decided we needed to get a better understanding,
23 better eyes on what the area around us was and if there is any
24 possible enemy, any fighters in that area. Captain Trahan and
25 Lieutenant Dolan were going to go to one side of the vehicle.

1 And myself and Staff Sergeant Brown were going to go in the
2 direction that we were already at towards the south edge of
3 the or the south crest of the hilltop.

4 Q So as you and Staff Sergeant Brown walked to the crest of
5 the hilltop, what happened?

6 A So as we left the vehicle, I was directly behind
7 Staff Sergeant Brown, maybe a foot or two behind him. We were
8 moving relatively slowly. We didn't know what we were going
9 to find or see, so we were being very cautious. As we came up
10 to the edge of the hill, I heard gunfire coming from in front
11 of us and then I saw Staff Sergeant Brown go to the ground.

12 Q After you heard the gunfire and saw Staff Sergeant Brown
13 go to the ground, what did you see?

14 A So, as I was sitting there, I saw Sergeant Brown fall to
15 the ground, and about 10 to 12 feet in front of me there was
16 an individual standing there with an AK-47 up to his shoulder.
17 He had just -- looking like he was ready to fire again.

18 Q Do you recall what that individual looked like?

19 A I don't remember facial features or what like what his
20 skin color was, but I noticed his uniform was -- he was
21 wearing a military-type uniform wearing a green, like, jacket
22 or something like that. And he was also had ammunition
23 bandolier that he wore across his chest and then he had the
24 rifle.

25 Q What happened after you saw this individual,

1 approximately, 10 to 12 feet from you?

2 A I immediately tried getting into a better position where
3 I could have some cover as well as return fire on the
4 individual that had just shot Sergeant Brown. I went to the
5 ground. As I went to the ground, I was trying to see where
6 the individual was at from where I was and he had appeared to
7 have done the same thing, so I was no longer able to see him.
8 But as I was looking, I saw flashes, muzzle flashes, coming
9 from the hilltop directly to the south of us. Couple -- about
10 150 meters from my location. I saw about 20 to 30 different
11 muzzle flashes light up from across the hillside.

12 Q Now, you mentioned this individual was wearing some sort
13 of garb. Can you describe it in a little more detail, the
14 color, the type?

15 A It was, like, a we call it OD green. It's like an pale
16 greenish colored jacket. The bandolier was very similar to a
17 Soviet-style ammunition rack. So it allows you to store
18 magazines across your chest.

19 Q So would it be fair to describe this as -- his garb as
20 fatigues as opposed to a uniform?

21 A Yes.

22 Q Now, after you saw the muzzle flashes from the hill
23 across the way, what position were you in?

24 A At first, I started out, I was generally -- I was on my
25 stomach or kind of halfway on my side. I had a backpack on my

1 back that didn't allow me to lay any flatter to the ground.
2 And then as I saw the other fire coming from the other
3 hillside, I started to hear rounds and see rounds impact near
4 me. So I laid flat on my, I ended up laying flat on my back
5 with my head pointed directly towards where I saw the fire
6 coming from.

7 Q And why did you put your head closer to where the fire
8 was coming from?

9 A I put my head in that direction because I was wearing a
10 Kevlar helmet, and that was the most protected part of my
11 body. I felt if I laid anywhere, any other direction, that I
12 would expose myself to gunfire.

13 Q Did you try to move off your back at that time?

14 A Small movement, but I quickly realized that if I were to
15 move much -- anywhere at all -- I would expose myself and
16 potentially receive wounds from it.

17 Q Did you attempt to fire back in any way?

18 A I was very -- I was confident in where the other
19 positions were at, so I without looking down the scope of my
20 weapon. I had my weapon laying in line with my body, and I
21 was firing multiple rounds at that point in time to try and
22 basically just suppress where the fire was coming from.

23 Q So if I'm understanding this, right, you were on your
24 back and the weapon is pointing in the direction your head is
25 facing?

1 A Yeah. The rifle was pointed, basically, in line with my
2 body with the muzzle of the weapon being above my head firing
3 towards the positions.

4 Q How many rounds were you able to get off?

5 A I was only able to fire off about 25 to 30 rounds. One
6 magazine worth of rounds.

7 Q Why were you only able to fire off that many?

8 A At that time, I was -- I had fired off my first magazine.
9 I brought my weapon down on top of my body and had it laying
10 flat on my body. I was in the process of trying to pull a
11 magazine out of my one of my pouches to change out the
12 magazine in the weapon, when I heard Lieutenant Dolan yell,
13 "Grenade." I wasn't sure where it came from, or where he was
14 talking about specifically, but I felt very confident at the
15 time that he was yelling to me that there was a grenade. So I
16 started looking around to see where the grenade was at or
17 where it was like see it as it was coming through the air
18 basically. It wasn't until the weapon or the grenade came
19 into my view basically as it was hitting my weapon as it was
20 laying across my body.

21 Q After the grenade hit your weapon that was laying on your
22 body, what did you do?

23 A At that point, I felt that if I stayed where I was at I
24 would suffer pretty significant injuries. So I decided that I
25 was going to try and get away from it as fast as I could so I

1 rolled to my stomach and I began to crawl away from where I
2 was previously as fast as I couldn't.

3 Q Did that grenade detonate?

4 A The grenade did detonate. When it blew up, it sent
5 shrapnel into my left foot.

6 Q Now, were you injured in any other manner at this time?

7 A At that time, I also received some pretty significant
8 bruising and, basically, damage to my left foot from pressure
9 from the grenade exploding.

10 Q Now, after the grenade detonated, and you were impacted
11 in this way, where did you go and what did you do?

12 A So once the grenade detonated, I had to move. I moved
13 away from where I was at previously. I was in a relatively
14 exposed area. So I decided that I would move back to where I
15 had previously been with Lieutenant Dolan and Captain Trahan.

16 So I crawled back to where they were located. At
17 that point, I had no longer had my weapon or my radio that I
18 was carrying on my back and I linked up with Captain Trahan
19 and Lieutenant Dolan near the vehicle.

20 Q Just approximately how far was the vehicle from the edge
21 of the hilltop that you described earlier?

22 A I would say the vehicle is probably around 20 to 25 feet
23 from the edge of the hill where I was at.

24 Q When you got back to the vehicle, what did you do?

25 A When I get back to the vehicle, I started talking to

1 Lieutenant Dolan and Captain Trahan. We wanted to use the
2 artillery that was located at Firebase Shkin to fire a target
3 that the artillery had from, basically. Before I left the
4 firebase that morning, I gave some potential target
5 information to the artillery unit; however, I did not have my
6 radio at that point in time, so Lieutenant Dolan grabbed his
7 radio out of the vehicle that he had rode in. Once he got his
8 radio, I began talking to the artillery. The target that we
9 had previously planned for was too far away from where we were
10 at and where the enemy positions were firing on us from it
11 have an effect on them at that time.

12 Q So in laymen's terms, did you have the coordinates of the
13 enemy at this point?

14 A At that point in time, we didn't have the coordinates of
15 where the enemy was specifically at, but we knew where we were
16 at. We knew where the enemy was in relation to us and we knew
17 where the other target was.

18 Q What, if anything, did you, Lieutenant Dolan, or
19 Captain Trahan do to get more accurate location information
20 about the enemy?

21 A At that point in time, Captain Trahan told us, told me to
22 wait on a fire mission and that he wanted to get a better idea
23 of where the enemy positions were at before we shot artillery.

24 Q After Captain Trahan told you to hold off on the
25 artillery fire, what did you see. What happened?

1 A So I was sitting there with Lieutenant Dolan and
2 Captain Trahan had just told us that. So he said he was going
3 to get a better look at where the enemy was at. He stood up,
4 took about two to three steps from where we were, where we
5 were at.

6 Q In direction what was he walking?

7 A Towards of the crest of the hill where I was at
8 previously.

9 Q As Captain Trahan walked toward the crest of the hill,
10 what did you see?

11 A So as he was walking away from us, I was trying to see
12 where the enemy positions were at. I was trying to see where
13 he was going, and all I saw was from the back of his body from
14 the legs was generally a like a red mist like kind of spray
15 out from behind him as we heard gunfire kind of pick up again.

16 Q And what happened, what did you see with Captain Trahan
17 at this point?

18 A Captain Trahan immediately went straight to the ground at
19 that point in time, and was not moving around.

20 Q After seeing Captain Trahan go to the ground, what
21 happened next?

22 A I was next to Lieutenant Dolan, and almost immediately
23 after Captain Trahan went down, I heard Lieutenant Dolan yell
24 "grenade" again. As he yelled "grenade," I tried looking
25 around to see where it was coming from. I couldn't see

1 exactly where he was talking about, or if it was even coming
2 towards us. I decided that, well, sorry, I really don't know
3 for certain what happened at that point in time. I woke up
4 after being knocked unconscious a few minutes later. I had
5 been thrown about 15 feet away from where I was previously
6 sitting and I was -- my arms and legs were covered in blood
7 and my body armor on the front side was mangled and destroyed.

8 Q And when you regained consciousness after that grenade
9 detonated, did you understand or know the extent of your
10 injuries at that upon the?

11 A At that point in time, I did not know how bad off I was,
12 or if I was bad off at all. I assumed at that point that I
13 had suffered pretty extensive damage. My ears were ringing
14 significantly and I was in a very immense amount of pain. And
15 like I stated, my uniform, my sleeves and legs were covered in
16 blood.

17 Q Now, at that point, after remaining consciousness and
18 taking stock of your condition, what did you do?

19 A At that point in time, I wasn't entirely certain of what
20 the situation was for the rest of our people on top of the
21 hill, but I felt pretty confidently that if we didn't receive
22 some type of artillery fire or something additional support
23 relatively soon that we would end up receiving a lot more
24 casualties and we could potentially be overran.

25 Q You mentioned this before, but is artillery fire big guns

1 that shoot from a far away location?

2 A In a very basic way, yes.

3 Q Where did you go and what did you do at that point?

4 A At that point in time, I moved. I got the radio that I
5 had previously had when I was by Lieutenant Dolan. I moved
6 back to that location and I began talking again to the
7 artillery. I had not given them a new target at that point in
8 time or prior to this, so I had pulled up my GPS.

9 My GPS had been blown up by the grenade the screen
10 was cracked and the rubber around the GPS was burned and
11 mangled. I was able to get -- fortunately, the screen had
12 froze when it got blown up and I was able to read off the
13 coordinates that were on the GPS. That allowed me to develop
14 a target location and send it to the fire direction center,
15 the personnel that provided the target data directly to the
16 guns themselves.

17 Q Now, what did you use to communicate back to the
18 artillery folks at Firebase Shkin?

19 A I used a military FM radio.

20 Q Can you describe what that radio looked like?

21 A The radio is about six inches by five inches on the top
22 of it and it's about a foot in depth. Roughly, a shoe box
23 size. Has an antenna that comes out the main end with a
24 screen and display and to also has a, like, a --

25 MR. JACOBS: I think, we may have lost the mic.

1 THE COURT: Okay.

2 A It has a microphone or, like a telephone-type handset.

3 Q Sergeant, we'll give it a second. It's a little hard to
4 hear.

5 A I think it's back on.

6 THE COURT: Okay.

7 A It has an antenna as well as a handset, like, a telephone
8 handset that comes out the one end.

9 Q I'm sorry, now, mine's broken.

10 Would you mind repeating that answer again. I had a
11 little difficulty hearing it.

12 A There we go.

13 The radio has -- it's roughly a shoe box size. It's
14 green in color and has an antenna, a display, as well as
15 controls, and a hand mic similar to what's on, like, a
16 telephone, like, a handset that comes out the one end.

17 Q And, approximately, how far were you from the edge of the
18 crest of the hilltop when you were making this call on the
19 radio to the base?

20 A I was, approximately, 20 feet from the very edge of the
21 hilltop at that point.

22 Q Now, how many times in your career have you called in
23 artillery strikes?

24 A Over the course of my career, probably several thousand
25 times. Probably around two to three hundred times in combat

1 situations.

2 Q And how did this particular call compare to all of the
3 areas?

4 A I knew based off of the situation, I knew that I wanted
5 the information to be able to be passed very clearly and I
6 wanted them to get the information the first time. I didn't
7 want them to have to ask me to read back information or to --
8 I didn't want there to be any misunderstanding between myself
9 and the people on the other end of the radio as to exactly
10 what I wanted done.

11 Q And why in this particular situation was it so important
12 not to have a misunderstanding?

13 A Time was important for us at this point in time. I felt
14 that any additional time that it took to do this would
15 potentially lead to more injuries or people potentially dying
16 on top of the hill.

17 Q Given all that, can you describe what your voice was like
18 when you called in this artillery strike?

19 A I tried to be as clear and as loud and monotone as I
20 possibly could. I didn't want there to be any confusion.

21 Q Did you receive the artillery strikes that you called in
22 for?

23 A From the time I called it in, it took about 30 seconds
24 for the rounds to be -- to impact on the hilltop to the south
25 of us.

1 Q And around this time, during this 30-second period about,
2 did you hear anybody scream out?

3 A I heard some of our individuals. It was in English, it
4 was very clear. I heard some of our people that were in a
5 position near me yell, "They're trying to get him."

6 Q And who did you understand these people to be referring
7 to when they said trying to get him?

8 A Based off of where Captain Trahan's body was located
9 forward of our location and where that position was at, I
10 believe that there was someone trying to get to
11 Captain Trahan, like, some of the enemy fighters.

12 Q Did the enemy fighters manage to capture Captain Trahan?

13 A To my understanding, they did not manage to get to
14 Captain Trahan. I'm not exactly certain as to what happened,
15 but Captain Trahan did end up getting recovered and taken back
16 to one of our vehicles.

17 Q After the artillery strikes hit, did they have any
18 effect?

19 A The artillery strikes landed just to the south uphill
20 from the previous positions that I saw when I was forward.
21 They were effective, but they did not land exactly where we
22 wanted them to. And because we were still receiving pretty
23 heavy fire, at that point in time, myself and Lieutenant Dolan
24 decided we wanted to bring the rounds about a hundred meters
25 closer to our location. So we sent that adjustment, sent that

1 back to the artillery for them to fire another volley a
2 hundred meters closer to us.

3 Q Just to be clear, was the target for these artillery
4 strikes the slope of the hill you were on or the next hill
5 over?

6 A The initial target was the uphill slope of the next hill
7 over, but what we were trying to do was to bring the rounds
8 gradually closer to our location. So the next set of rounds
9 we expected to land at the base of the hill between the two
10 hilltops.

11 Q What happened after the second volley of artillery
12 strikes?

13 A So the second volley impacted. Lieutenant Dolan who was
14 there with me, I handed the radio back to him. Again, I
15 didn't know how -- the extent of my injuries. I just knew, I
16 was in an a lot of pain. So I gave the radio to him, and I
17 had moved to the up-armored vehicle that was further down the
18 hill. I stood up and walked over to the other vehicle.

19 Q When you got to that vehicle who, if anyone, do you
20 remember being there?

21 A When I got to the other vehicle, there was a couple
22 soldiers, I don't recall their names, but they were in the
23 process of trying to load Captain Trahan into the back seat of
24 the vehicle. There was stuff in the way, so I climbed across
25 from the inside of the vehicle and moved some stuff out of the

1 way so they could place him in the seat. After he was placed
2 in the back seat of the vehicle, I went around to the back of
3 the vehicle and they were loading another soldier into the
4 back of the vehicle.

5 Q And without getting into too much detail, was that -- who
6 was that other soldier that was transferred?

7 A Initially I was unable to tell who it was based off of
8 where the soldier was injured. But his face was -- I was
9 unable to recognize his face. So by talking to the individual
10 there, they told me that it was Airman Losano. And then, at
11 that point in time, I noticed his name tape on his body armor.

12 Q Sergeant Reed, would you mind standing up again and
13 looking at the board, the picture to the far left. Do you
14 recognize that individual?

15 A That is a picture of Airman Raymond Losano.

16 MR. JACOBS: Your Honor, may I approach.

17 THE COURT: You may.

18 (Approaching the witness.)

19 Q Were you eventually driven off the hilltop in that
20 vehicle?

21 A I was. After Losano had been loaded up into the back of
22 the vehicle, I got in the rear passenger seat of the vehicle.
23 As we left the hilltop the same way that we came in the
24 hilltop. So we went down the hill and then we turned north
25 from the base of the hill to drive away from there, yeah.

1 Q As you were driving away from the hilltop where the
2 attack occurred, what, if anything, did you come across?

3 A As we were leaving the hilltop, we met a vehicle, a
4 Toyota High Luxe vehicle. In that vehicle, was Sergeant First
5 Class Setzer, an Afghan AMF soldier, Specialist Comacho, and
6 Private Dennis.

7 Q I would like to show the witness only what's marked for
8 identification as Government's 115?

9 THE COURT: All right.

10 Q Sergeant Reed, generally, do you recognize the vehicle on
11 the left side of this photograph?

12 A Yes.

13 Q What does it appear to be to you?

14 A From what I can see, it appears to be a Toyota High Luxe
15 or very similar type of vehicle.

16 MR. JACOBS: I'll move to admit and publish 115.

17 MR. STERN: No objection.

18 THE COURT: Received.

19 (Government's Exhibit 115 was received in evidence
20 as of this date.)

21 Q Now, that the jury can see the photograph, can you please
22 point to the vehicle you described as the Toyota High Luxe?

23 A The vehicle is the blue vehicle.

24 Q It's a little better. What's in the back part of that
25 vehicle?

1 A The back part of that vehicle would be opened. It would
2 be just, like, cargo space like a pickup truck.

3 Q What sort of armor protection does a Toyota High Luxe
4 pickup have?

5 A It doesn't have any armor. It would be normal sheet
6 metal or plastic or aluminum whatever the vehicle is made out
7 of.

8 Q I believe you mentioned you saw four individuals in this
9 Toyota High Luxe can you repeat the names?

10 A Sergeant First Class Setzer, there was an Afghan AMF
11 soldier that was in the vehicle, as well as Eddie Comacho and
12 Jerod Dennis.

13 MR. JACOBS: Your Honor, I would like to show just
14 the witness what's marked for identification as
15 Government Exhibit 501.

16 THE COURT: Okay.

17 Q Sergeant Reed, do you recognize the soldier in this
18 photo?

19 A That's PFC Dennis.

20 MR. JACOBS: Move to admit and publish this.

21 MR. STERN: No objection.

22 THE COURT: Received.

23 (Government's Exhibit 501 was received in evidence
24 as of this date.)

25 MR. JACOBS: For the last time, may I approach the

1 board.

2 THE COURT: Yes.

3 Q When you saw Private First Class Dennis and the others in
4 that Toyota High Luxe pickup, were any of them injured?

5 A From what I could see, they were uninjured and they were
6 all talking and up and mobile.

7 Q What, if anything, was discussed at that time?

8 MR. STERN: Objection.

9 THE COURT: Sustained.

10 Q Did Captain Trahan give any orders at that time or
11 instructions?

12 A Captain Trahan had told Sergeant Setzer to go up to the
13 hill and to get our forces that were on top of the hill
14 reorganized and make sure we had accountability of everybody
15 and to get any of the additional wounded evacuated.

16 Q And when Captain Trahan told Setzer this, were you able
17 to hear?

18 A Because of where I was located in the vehicle,
19 Sergeant Setzer was on my side of the vehicle talking over me
20 to Captain Trahan.

21 Q In which direction, if any, did you see the Toyota High
22 Luxe pickup depart?

23 A We left traveling to the north and they were heading
24 south towards where the firefight had happened.

25 Q After the Toyota High Luxe pickup headed back in

1 direction of the firefight what, if anything, did you hear?

2 A I heard a very loud almost -- so at that point in time,
3 there was still what I would call sporadic. So gunfire that
4 was random at that point in time. But as we were driving
5 away, we heard what I would, I guess, describe as an explosion
6 of gunfire and different weapon systems. It was very loud and
7 seem to come from directly behind us. There was what sounded
8 like RPGs as well as machine gun fire.

9 Q I apologize if you said this as part your answer.

10 Approximately how long after you parted ways with
11 the Toyota High Luxe pickup did you hear this?

12 A It was about 30 seconds. It was not long after we went
13 the opposite direction.

14 Q Based on your experience, what does the simultaneous
15 firing of so many weapon systems indicated?

16 MR. STERN: Objection.

17 THE COURT: You need more foundation if you want to
18 do that.

19 Q In your experience in the military, have you obtained
20 familiarity with different weapon systems?

21 A Yes.

22 Q Have you obtained familiarity when certain weapon systems
23 are used?

24 A Yes.

25 Q And have you obtained familiarity when certain weapon

1 systems, diverse weapon systems, are used together?

2 A Yes.

3 Q So based on that experience, when would a diverse set of
4 weapons systems be used simultaneously?

5 MR. STERN: Objection.

6 THE COURT: Overruled.

7 A From what I've experienced, from what I've seen, the only
8 time that you want to maximize or integrate all your systems
9 at the same time is when you're trying to -- basically, we
10 call it an ambush. You're trying to overwhelm whatever the
11 approaching element is, or enemy element, and you're trying
12 to -- like I said -- maximize all your weapons systems at the
13 same time.

14 Q After hearing this explosion of weapons systems, where
15 did you go?

16 A From there, we continued to drive away from where we met
17 the other vehicle. We continued on to, I guess, it was about
18 a kilometer back in the direction we originally came from. We
19 stopped. When we met up with First Sergeant Severino and the
20 physician that was with him at the casualty collection point.

21 Q Without getting into too many details, what happened at
22 the casualty collection point?

23 A At the casualty collection point is where we pulled
24 Captain Trahan out of the vehicle. The physician that was
25 there started treating his wounds. We were very concerned

1 that there was possibly -- he had possibly suffered a head
2 wound because of where his helmet had been struck. But we
3 discovered at that point in time that it was not as severe as
4 we thought it to be. And then that was also when Losano was
5 initially treated by the physician and the physician at that
6 point in time had informed us that he was deceased.

7 Q Did you eventually go back to the firebase?

8 A We sat at the casualty collection point for a few moments
9 for any additional casualties to potentially come in. After
10 waiting for a few minutes, the First Sergeant decided that he
11 wanted us to go back to the base so they can get
12 Captain Trahan on a helicopter.

13 So we started back to the base. It was myself in
14 the passenger seat of this vehicle. There was a driver which
15 I don't remember the individual's name. The physician was in
16 the back of the vehicle with Captain Trahan who was on a
17 stretcher.

18 Q How long was the ride back from the casualty collection
19 point to the firebase?

20 A It was about a 20- to 30-minute ride. Gravel roads the
21 whole way.

22 Q When you got back to the firebase, what, if any, medical
23 attention did you receive?

24 A I was taken into the medical area on the firebase.
25 Stripped my remaining uniform and what I had left of my

1 equipment off of me. That's where I discovered, basically,
2 the extent of my wounds. I was bruised, black and blue,
3 starting to bruise from my armpits to my hands on both arms,
4 and from my groin area all the way down to my feet on my legs.
5 And I had around 40 to 50 different shrapnel-like lacerations
6 on my body as well as I had been grazed by a bullet on my left
7 forearm.

8 Q At any point, did helicopters arrive to evacuate the
9 injured?

10 A When we got back to the -- as we got back to the base,
11 the first helicopter arrived and Captain Trahan was taken
12 immediately to the first helicopter.

13 While I sat inside the medical area, I was informed
14 that there was additional casualties coming in and that there
15 was another helicopter, and if they had room on it that they
16 would put me on the helicopter to FOB Salerno.

17 Q You mentioned additional casualties. At any point, did
18 you see who these additional casualties were?

19 A When I was being loaded onto the helicopter, I saw
20 Private Dennis, the Afghan soldier, and Sergeant First Class
21 Setzer.

22 Q And when was the last time that you had seen these three
23 individuals?

24 A The last time I saw those three individuals is when I
25 was -- is when we left them after having a brief conversation

1 on our way out of the area where we had the firefight.

2 Q And what vehicle were they in at the time?

3 A They were in the Toyota High Luxe pickup at the time.

4 Q What condition was Private First Class Dennis in when you
5 saw him?

6 A I didn't know the extent of his injuries but he was very
7 pale in color. His skin was, like, a whitish gray color. He
8 was receiving rescue breathing from the medics that were on
9 the helicopter.

10 Q Now, approximately how long did this helicopter ride take
11 from Firebase Shkin to FOB Salerno?

12 A It was a 30-minute flight by helicopter.

13 Q What were you doing during this flight?

14 A Shortly after I got on the helicopter, I realized that
15 the Afghan soldier had started bleeding from the gunshot wound
16 he had on his back. I started -- I realized that the medics
17 were not going to be able to treat anybody else because of
18 them being busy trying to keep Private Dennis alive. So I
19 found a pair of gloves, put the gloves on, and I started
20 treating and applying a pressure dressing to the Afghan
21 soldier as well as I rewrapped Sergeant First Class Setzer's
22 jaw with a new bandage.

23 Q Just to be clear, this AMF or Afghan soldier you're
24 referring to, he was fighting with the Americans?

25 A He was.

1 Q What happened when you arrived at FOB Salerno?

2 A When I arrived at Salerno, all the casualties were taken
3 in the medical area at Salerno, which is a large tent about
4 20- by 30-foot tent that had multiple stretchers laid out
5 like, I guess, tables. They were -- everybody was taken in
6 the tent initially together. And then, depending on what
7 their injuries were, they were treated there at that location.

8 Q What did you observe happening with Private First Class
9 Dennis at this location?

10 A At this point, the other casualties that had been wounded
11 were in varying degrees between severity from where I was at
12 and where Dennis was at. Because I was the least critical,
13 and because Dennis was the most critical, myself and Dennis
14 were left in FOB Salerno at the medical area, basically, to
15 stabilize him prior to us moving.

16 We had arrived at Salerno around 9:00, somewhere
17 between 9:00 and 10:00 in the morning, and it was throughout
18 the day I continued to receive treatment -- pain medications
19 and rebandaging of my legs and arms. And while I was doing
20 that, Dennis was receiving surgical procedures trying to keep
21 him alive.

22 Q And was there an opaque wall between you and Private
23 First Class Dennis when he was receiving the surgical
24 procedures?

25 A There was no -- there's no wall separating the different

1 areas. It was like at one point in time I was outside of the
2 tent, but even outside the tent, the only thing that was
3 between me and where he was at was screened this windows and
4 not glass windows. Just like a bug screen, basically.

5 Q At any point, were you and Private First Class Dennis
6 transported to another higher level medical facility?

7 A Late that night, after they believed they had stabilized
8 Dennis. We, myself and Dennis, were loaded onto a medical
9 helicopter and we traveled to Bagram. It was a 30- to
10 40-minute flight by helicopter.

11 Q Where were you headed?

12 A To Bagram Airfield. Bagram Airfield at the time was the
13 highest level of medical care. We call it a "Roll 3."

14 Q And did you see Private First Class Dennis when you
15 arrived at Bagram?

16 A When we arrived at Bagram, as we were being taken in,
17 they took Dennis in first and I was directly behind him. As
18 we went in, they rolled Dennis directly into surgery and I was
19 taken for additional treatment at the medical facility.

20 Q After being taken away for additional treatment, did you
21 ever see Private First Class Dennis alive again?

22 A I did not.

23 Q How long did it take you to recover from your injuries?

24 A From the bruising and the shrapnel, initially took me
25 about two weeks to where I was able to do things on my own

1 like using the bathroom or do personal hygiene, clean myself,
2 feed myself.

3 Q Were you sent home from Afghanistan then?

4 A I was not. I stayed in Afghanistan.

5 Q Until when?

6 A I stayed in Afghanistan 'til around the first of August.

7 Q So after your 2003 deployment to Afghanistan, how many
8 times were you deployed overseas again?

9 A Six.

10 Q Where?

11 A I did three additional deployments in Afghanistan and
12 three additional employments in Iraq.

13 Q When and where is your next deployment?

14 A I leave in September to go back to Afghanistan.

15 MR. JACOBS: No further questions.

16 THE COURT: All right. Any cross?

17 MR. STERN: No.

18 THE COURT: All right. You may step down. Thank
19 you very much.

20 (Witness leaves the witness stand.)

21 THE COURT: Can you finish direct on next witness in
22 35 minutes.

23 MR. JACOBS: I can't guarantee it, Judge.

24 THE COURT: Okay. Then I can't guarantee I won't
25 interrupt if you haven't but let's try.

1 MR. JACOBS: The Government calls Sergeant First
2 Class David Cyr.

3 (Witness takes the witness stand.)

4 COURTROOM DEPUTY: Please raise your right hand.

5 **SFC. DAVID FRANKLIN CYR, JR.**, called by the Government,
6 having been first duly sworn, was examined
7 and testified as follows:

8 THE WITNESS: I do, ma'am.

9 COURTROOM DEPUTY: Please state your name for the
10 record.

11 THE WITNESS: My name is Sergeant First Class David
12 Franklin Cyr, Jr. D-a-v-i-d. F-r-a-n-k-l-i-n. C-y-r.

13 THE COURT: Please proceed.

14 MR. JACOBS: Thank you, Judge.

15 DIRECT EXAMINATION.

16 BY MR. JACOBS:

17 Q Good afternoon, sir.

18 A Good afternoon.

19 Q Who do you work for?

20 A I work for the United States Army.

21 Q What's your rank?

22 A I am a Sergeant First Class.

23 Q And what's your job?

24 A Currently I am a 79 Romeo, Recruiter, and I'm assigned to
25 the New England Recruiting Battalion as a Master Trainer.

1 Q When did you first join the Army?

2 A April 7, 1995.

3 Q How long were you enlisted for?

4 A April 7th will be 22 years total, sir.

5 Q And at some point, did your first enlistment end and when
6 did the second one begin?

7 A I left, separated from active duty service on August 3,
8 1998. On August 9, 1998, I enlisted in the Connecticut Army
9 National Guard. During my time in the National Guard, I
10 served also as a restaurant manager and then moved into the
11 cable industry.

12 Q Now, I would like to direct your attention to April 25th
13 or --

14 MR. JACOBS: Withdrawn.

15 Q I would like to direct your attention to April 2003.
16 Where were you deployed at that time?

17 A I was in the vicinity of Shkin, Afghanistan in the
18 Paktika Province.

19 Q Were you at a particular U.S. installation?

20 A I was Firebase Shkin.

21 Q And just in a sentence, how would you describe the
22 landscape around Firebase Shkin?

23 A It was arid, it was rocky, mountainous. You could see
24 for quite awhile, around four miles out to the base of the
25 mountains, and that's where your line of sight kind of was

1 limited. In between, with the open spaces, there was actually
2 wadis that were dropped below line of sight, so there were
3 blind spots.

4 Q Now, Sergeant Cyr, you mentioned wadis. What's an wadi?

5 A Sir, it's a river bed which has been washed out due to
6 excessive rainfall, sir.

7 Q I would like to show the witness what's been marked as
8 Government Exhibit 113.

9 Do you recognize the natural formation in this
10 photograph, sir?

11 A I do, sir.

12 Q What is it?

13 A We're flying in a CH-47 helicopter. In the foreground is
14 actually a wadi that actually extends off into the background.

15 Q What took this photograph?

16 A I did, sir.

17 MR. JACOBS: I move to admit and publish
18 Government Exhibit 113.

19 MR. DRATEL: Objection. Lack of foundation.

20 THE COURT: Ask one more question.

21 Q When did you take this photograph?

22 A It was April 3, 2003.

23 THE COURT: That wasn't a question.

24 MR. JACOBS: Excuse me, your Honor.

25 THE COURT: Reasonably and accurately.

1 Q Does this fairly and accurately depict the wadi
2 formations around Firebase Shkin at that time?

3 A It does, sir.

4 MR. JACOBS: Thank you, your Honor.

5 At this point, I move to admit

6 Government Exhibit 113.

7 MR. DRATEL: No objection.

8 THE COURT: Received.

9 (Government's Exhibit 113 was received in evidence
10 as of this date.)

11 MR. JACOBS: And I move to publish to the jury.

12 Q Can you, just pointing at your screen, Sergeant Cyr,
13 point out what you describe as a wadi?

14 A So this area here, sir, down is a wadi, this large area
15 here. And if you look right around here, there's actually
16 visible tire tracks. They would actually use this as a main
17 thoroughfare. They would use to navigate the terrain to
18 navigate the wadi system. You would see the road coming, it
19 drops down into wadi systems.

20 Q Thank you.

21 Now, directing your attention to the weeks before
22 April 25, 2003.

23 Do you recall any attacks on Firebase Shkin around
24 that time?

25 A Yes, sir, we would receive quite frequently. 107

1 millimeter rocket attacks.

2 Q I would like to show just the witness what's marked for
3 identification as Government Exhibit 109.

4 Does this photo look familiar to you, sir?

5 A It does, sir.

6 Q What depicted in it?

7 A Two Afghan militia force soldiers holding 107 millimeter
8 rockets.

9 Q When was this photo taken?

10 A It was taken on April 13, 2003.

11 Q Who took it?

12 A I took the photo.

13 MR. JACOBS: I move to admit and publish
14 Government Exhibit 109.

15 MR. DRATEL: No objection.

16 THE COURT: Received.

17 (Government's Exhibit 109 was received in evidence
18 as of this date.)

19 Q Now, you said these are Afghan soldiers that found 107
20 millimeter rockets.

21 Where, if you recall, were these rockets recovered
22 from?

23 A These were recovered from the ridgeline that would later
24 be the site of the ambush on 25 April.

25 Q Sergeant, What was your rank when you were deployed to

1 Shkin?

2 A I was a sergeant E-5. E-5 sergeant.

3 Q Is that a lower grade than you are now?

4 A Yes, sir.

5 Q Were you in charge of any soldiers while you were?

6 A I was. I was the fire team leader, so I had three
7 soldiers under my charge.

8 Q Who were they?

9 A It was PFC Beard, Private Dennis, and Specialist Beasley.

10 Q I would like to show the witness what's marked for
11 identification as Government Exhibit 111.

12 Do you recognize any of the individuals in this
13 photograph, sir?

14 A I do, sir.

15 Q Can you please identify them?

16 A Yes, sir. I am on the far left looking at the picture,
17 Private Dennis is in the middle, and then Specialist Comacho
18 is the right side of the picture.

19 MR. JACOBS: I move to admit and publish
20 Government Exhibit 111.

21 MR. DRATEL: No objection, your Honor.

22 THE COURT: Received.

23 (Government's Exhibit 111 was received in evidence
24 as of this date.)

25 Q Now, that the jury can see, can you please point to the

1 three people that you described before?

2 A Yes, sir. The first picture is myself, the second in the
3 middle would be Private Dennis, and then on the right-hand
4 side would be Sergeant Camacho, or Specialist Camacho at the
5 time.

6 Q Now, you mentioned Private Dennis was one of the three
7 soldiers you were in charge of. What was his full name?

8 A Jerod Rhoton Dennis.

9 Q How old was he when this photograph was taken?

10 A He was 19 years old.

11 Q And where, if you know, was Private Dennis from?

12 A Antlers, Oklahoma.

13 Q I would like to direct your attention now to the morning
14 of April 25, 2003.

15 Were you sent out on a QRF that morning?

16 A Yes, sir, I was, or we were.

17 (Continued on the next page.)

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1 DIRECT EXAMINATION

2 BY MR. JACOBS:

3 Q What location did the QRF eventually go to?

4 A The ridge line where the ambush took place, sir.

5 Q Would it also be accurate to refer to the ridge line as
6 a hilltop?

7 A Indeed.

8 Q I may refer to it both ways.

9 Who was in the lead vehicle in the QRF?

10 A The lead vehicle was Staff Sergeant Brown's vehicle, so
11 it was Staff Sergeant Brown, his gunner, his driver, Captain
12 Trahan, my company commander and Lieutenant Dolan.

13 Q What happened when you first got to the ridge line and
14 got out of your vehicle?

15 A Their vehicle had pulled up forward of us, our position
16 so we dismounted the vehicle, we immediately received a hand
17 and arm signal from Captain Trahan which is a double time,
18 which means to run. So we began to double time to their
19 position. Almost immediately we received a second hand and
20 arm signal which depicts, you know, to slow down, so we
21 slowed back down to a walk at that point in time as we were
22 moving up to Captain Trahan's position.

23 Q After you slowed to a walk and were moving toward
24 Captain Trahan's position, what happened next?

25 A We started receiving direct enemy fire, sir.

1 Q When you started receiving direct enemy fire, what did
2 you do?

3 A I hit the ground, sir, low crawled up to a tree for
4 cover and concealment and brought my team up on line with
5 me.

6 Q If we could have the Elmo back for a quick second.

7 Do you recognize any trees in this photograph?

8 A Yes, sir. The tree off of the back of the vehicle was
9 the tree that I used for cover and concealment.

10 Q When you were behind this tree, could you tell where
11 the fire was coming from?

12 A Yes, sir. It was coming from our front. It was coming
13 directly from our front. We could observe the enemy muzzle
14 flashes from the adjacent ridge line.

15 Q What sort of guns were being used to fire at you?

16 A AK-47s, RPK machine guns.

17 Q How could you tell the fire was coming from those
18 weapons?

19 A They make a very distinct sound when fired that's
20 different from the weapons in which we use.

21 Q After the enemy fire started and you were behind that
22 tree, did you hear any of your fellow soldiers call out?

23 A I did. I heard Sergeant Brown call out for help for a
24 medic.

25 Q And what happened after you heard Sergeant Brown call

1 out for a medic?

2 A I immediately saw Specialist Simmons, Doc Simmons
3 moving up to my position from my right.

4 Q What happened after Simmons got to your position?

5 A He took a knee beside me, asked me where Sergeant Brown
6 was located. I directed him to Sergeant Brown's position
7 and he picked up and ran across the rest of the enemy
8 fire -- the rest of the fire line to Sergeant Brown's
9 position to render aid.

10 Q What was Simmons job?

11 A He was a our platoon medic.

12 Q And when he ran across the fire line from your position
13 to Sergeant Brown's position, what did he have to protect
14 him?

15 A Just his helmet and body armor.

16 Q Did you eventually do anything to help Sergeant Brown?

17 A Yes, sir. A little while later I heard Specialist
18 Simmons, Doc Simmons calling for help. At that point in
19 time I directed the vehicle that we were driving, which was
20 with Specialist Camacho to bring the vehicle around to
21 Sergeant Brown's position and then Doc Simmons was asking
22 for help loading Sergeant Brown onto the vehicle. So I
23 picked up from my position and moved up to Specialist
24 Simmons and Sergeant Brown and assisted Specialist Simmons
25 in loading Sergeant Brown in the vehicle.

1 Q Why did it take more than one person to load Sergeant
2 Brown into the vehicle?

3 A Sergeant Brown's a pretty good sized guy, six plus
4 feet, pretty close to 200 pounds that's not including the
5 gear that we are wearing.

6 Q I'd like to show the witness what's marked for
7 identification as Government Exhibit 506.

8 Do you recognize this person?

9 A I do, sir.

10 Q Who is it?

11 A That's Specialist David Simmons.

12 MR. JACOBS: Move to admit and publish Government
13 Exhibit 506.

14 MR. DRATEL: No objection.

15 THE COURT: Received.

16 THE JURORS: The screen is off.

17 THE COURTROOM DEPUTY: I know they're coming up.

18 THE COURT: Hang on one second.

19 Continue, please.

20 MR. JACOBS: Your Honor, may I add this to the
21 board?

22 THE COURT: You may.

23 MR. JACOBS: May I inquire from here, Your Honor?

24 THE COURT: You may.

25 BY MR. JACOBS:

1 Q Sergeant Cyr, if you wouldn't mind stepping around to
2 the board for a second. Who, if any of these individuals,
3 are you able to identify?

4 A I've already identified Medic Simmons, this is Private
5 Dennis, my company commander Captain Trahan, Lieutenant
6 Dolan, our fire support officer, Staff Sergeant Brown, and
7 Sergeant Reed.

8 Q Thank you, sir.

9 Was Staff Sergeant Brown driven off the
10 hilltop?

11 A Yes, he was, prior to medic Simmons explaining to me
12 that he believed that Sergeant Brown had a small --

13 MR. DRATEL: Objection.

14 THE COURT: Sustained. Hang on.

15 Next question.

16 BY MR. JACOBS:

17 Q What happened after Sergeant Brown was driven off the
18 hilltop?

19 A I returned back to my fighting position, sir.

20 Q And what did you do when you got back to that position?

21 A I began taking pretty heavy enemy fire, sir.

22 Q Did you try shooting back?

23 A I did, but I am a right-handed firer and the fire was
24 pretty intense to the point where I could not fire. As a
25 right-handed firer, I would need to fire properly from the

1 right side of the tree, I could not do so; watched the bark
2 on the tree in front of me peeling off and the rocks to my
3 right side were kicking up from the enemy fire.

4 Q What was causing the tree bark and rocks to move?

5 A It was the enemy fire hitting the tree and the ground
6 beside me.

7 Q At that point what were you thinking and what did you
8 do?

9 A At that point in time I was pretty much thought it was
10 going to be the end and at one point I put my head down
11 and -- because I couldn't -- I had no other course of action
12 at that point, but I got angry, and it was at that point in
13 time I made the decision that I wasn't going to die that
14 day. And I called out to Sergeant Ray and his automatic
15 rifleman asking them what they had at their position.

16 Q And you say Sergeant Ray, he was another American
17 soldier on the hilltop?

18 A He was.

19 Q And what do you mean you asked them what they had at
20 their position?

21 A If they could fire, if they were receiving enemy fire
22 as heavy as I was.

23 Q After thinking these things, where did you go and what
24 did you do?

25 A Sergeant Ray said we're good. And I picked up and

1 began to move to their position.

2 Q Approximately how far away was Sergeant Ray's position
3 from where you were by the tree?

4 A About 15 meters, sir.

5 Q What happened as you proceeded to Ray's position?

6 A I made it about half way, sir, and I saw the sunlight
7 reflect off a metal object in the air coming towards me. I
8 didn't see exactly what that item was but I knew
9 instinctively it was a hand grenade. At that point in time
10 I yelled to Ray and his Automatic Rifleman, PFC Gorecon,
11 grenade, and I turned to dive away from it.

12 Q What happened next?

13 A I found myself laying on my back and my rifle coming
14 down and crashing me in the face.

15 Q Had the grenade detonated?

16 A It had. It was close enough to me apparently that when
17 I tried to dive away from it, it spun me in the air and
18 causing me to land on my back.

19 Q What happened after you were knocked down by the first
20 grenade?

21 A I immediately rolled over, low crawled back to the tree
22 that I had been previously been behind and another grenade
23 landed where I had been laying and detonated.

24 Q When you were at the tree, how close were you to the
25 edge of the hilltop?

1 A I was fairly close to the edge, a couple of meters
2 away, but it was far enough back off the edge that I could
3 not see the down slope of the hill.

4 Q After these two grenades hit, could you see Captain
5 Trahan at this point?

6 A I could, sir.

7 Q What, if anything, did you see Captain Trahan do?

8 A At this point in time Captain Trahan stood up in a low
9 crouch position, as he was moving up to the edge of the
10 ridge, and was going to fire on the enemy that was there
11 where the hand grenades were coming from.

12 Q What did you see happen?

13 A I saw his legs come out from underneath him, he hit the
14 ground and rolled back behind the rocks that he was behind.

15 Q Did you yell anything to him at this time?

16 A Yes, sir. Sergeant Ray and I both yelled to him asking
17 him if he was okay. He looked up at us with a grimace that
18 I'll never forget and answered -- he yelled out no.

19 Q What happened after Captain Trahan responded?

20 A Sergeant Ray looked at me, looked back at me and
21 yelled, let's frag these motherfuckers. We both hopped up on
22 our knee, the way our kits were, our grenades were right on
23 our front so we had to get up off of our stomachs in order
24 to access our grenades. I was having a hard time getting my
25 grenade out of its pouch. Ray was able to get his out,

1 prepped it, and threw the grenade before I had mine in my
2 hand, and it fell short of his intended target. At that
3 point it detonated closer to Captain Trahan than it did any
4 of the enemy and Captain Trahan yelled out, no more
5 grenades. So at this point I had finally had my grenade
6 out, I pulled my pin, had to place the pin back in the
7 grenade and put it back in my pouch.

8 Q What, if anything, did you do to help Captain Trahan?

9 A It was immediately following that Sergeant Ray, as our
10 standard operating procedure is, began yelling for a medic.
11 I echoed it. Then realizing that Specialist Simmons had
12 left with Sergeant Brown, I was the only one had knowledge
13 of that, so I told Sergeant Ray to give me covering fire
14 that I was going to move to Captain Trahan's position.

15 Q Did you eventually move up to Trahan's position?

16 A I did, sir. I moved up under fire to Captain Trahan's
17 position, taking a knee beside him.

18 Q How far was Captain Trahan approximately from the edge
19 the hill at this point?

20 A Again, about the same distance that I had been. Close
21 enough, only a couple of meters from the edge but far enough
22 back where you could not see down the down slope of that
23 hill.

24 Q What did you do or what happened when you got to
25 Captain Trahan?

1 A As I took a knee beside him, began observing his wounds
2 and I said, sir, your knees. At that point in time Captain
3 Trahan looked back at me over his shoulder and said,
4 "Sergeant Cyr, calm the fuck down." I said, "Sir, I'm calm.
5 I was just letting you know what's wrong." I had taken a
6 knee so I was on my right knee, had my left knee up, and
7 took his legs, placed them on my knees. I accessed his
8 medical dressing as well as mine and I began dressing his
9 wounds.

10 Q As you were dressing or bandaging Captain Trahan's
11 wounds, what happened?

12 A We had another grenade. I watched as another grenade
13 came up over the hill, landed and rolled up to the other
14 side of the rock that we were being -- that Captain Trahan
15 was using for cover to the point where it rolled up close
16 enough to even with me being on a knee I could no longer
17 visually see the grenade.

18 Q How big was this rock that you and Captain Trahan were
19 behind at this point?

20 A Sir, my best estimate is that the rock was around
21 four feet long, two feet wide and at best 12 inches high.

22 Q And the grenade was close enough to the rock on the
23 other side that you couldn't see it?

24 A Yes, sir.

25 Q What went through your mind when you saw that grenade

1 roll to the rock?

2 MR. DRATEL: Objection.

3 THE COURT: Sustained.

4 A Again, sir --

5 Q You don't need to answer that.

6 THE COURT: Wait for another question.

7 THE WITNESS: Yes, sir.

8 BY MR. JACOBS:

9 Q Did the grenade detonate?

10 A It did, sir.

11 Q Can you describe where the blast occurred?

12 A Yes, sir. It blasted, as a grenade does, up and out,
13 but because it was so close to the rock, the rock actually
14 prevented the blast from hitting myself and Captain Trahan.

15 Q You said the rock was only 12 inches tall
16 approximately?

17 A Yes, sir.

18 Q After that grenade went off, what happened next?

19 A My ears immediately starting ringing, my hearing was
20 muffled. I looked up and watched a fourth grenade go over
21 our position and land and hit and roll next to Sergeant Reed
22 and detonate.

23 Q What happened to Sergeant Reed?

24 A He received shrapnel on the right side of his body from
25 the hand grenade.

1 Q Around this time did you or any other U.S. soldiers
2 counterattack in any way?

3 A Yes, sir. Sergeant Ray again withdrew a second grenade
4 and employed his grenade, threw it down into the low ground
5 in the vicinity of where the enemy grenades were originating
6 from.

7 Q When you say low ground, do you mean the area over the
8 edge of the hill?

9 A Yes, sir, the down slope.

10 Q Did you see that grenade land around there?

11 A I didn't see where it landed, sir, because once it
12 dropped below the ridge line, it was out of my line of
13 sight.

14 Q After the grenade from -- after Sergeant Ray threw the
15 grenade, what, if anything, happened with the enemy's
16 grenade fire?

17 A It ceased.

18 Q Now you were with Captain Trahan by that rock --

19 A Yes, sir.

20 Q -- what, if any, instructions or warnings did you
21 receive?

22 A At that point in time I was preparing Captain Trahan to
23 let him know I was going to pick him up and carry him back
24 to safety. It was at that time I heard Lieutenant Milan
25 from behind us yell to me, "Do not move we are going to drop

1 artillery."

2 Q What happened next?

3 A They fired three 105 howitzer rounds from
4 Firebase Shkin to the position. I just remember it hitting,
5 it kind of lifted us up off the ground it was pretty close.
6 I had told Captain Trahan that once those rounds were
7 complete, if we were still alive I was going to pick him up
8 and carry him back.

9 Q What did you do after the U.S. artillery hit?

10 A I picked him up -- I attempted to pick him up a
11 fireman's carry over my shoulders and carry him back; he
12 refused to let me. He wanted to try, despite the injuries
13 to his legs, to walk off on his own power if he could.

14 Q Where did you take Captain Trahan?

15 A I took him back behind the fire line to our Humvee and
16 placed him in the back seat of our Humvee.

17 Q Do you recall anybody else in the Humvee?

18 A Yes, sir. After I placed Captain Trahan in the Humvee
19 a wounded Sergeant Reed also entered the Humvee, sir.

20 Q Approximately what time did you leave the hilltop that
21 day?

22 A It was around dusk, sir.

23 Q Where did you go when you left?

24 A Initially we had pulled back off the objective to the
25 back side of that ridge line, set up a perimeter to give us

1 some security so we could push out patrols to look for the
2 enemy and to secure the area. And then when we -- once we
3 left the actual ridge line all together we returned to
4 Firebase Shkin.

5 Q How long were you at Shkin after the April 25th attack?

6 A We left towards the end of July.

7 Q And when ultimately did you leave Afghanistan?

8 A August 23rd, sir.

9 Q Did you deploy on other foreign tours?

10 MR. DRATEL: Objection.

11 A I did, sir. I deployed twice after.

12 THE COURT: I'm not hearing you.

13 MR. DRATEL: Objection, Your Honor.

14 THE COURT: Overruled.

15 THE WITNESS: I did, sir. I deployed twice in
16 January 2004 to Iraq and then again to Iraq in
17 September 2005.

18 MR. JACOBS: May I have a moment, Your Honor?

19 THE COURT: Yes.

20 (Pause in proceedings.)

21 MR. JACOBS: No further questions, Judge.

22 THE COURT: Any cross?

23 MR. DRATEL: No, Your Honor.

24 THE COURT: You may step down. Thank you very
25 much.

1 THE WITNESS: Thank you, sir.

2 (Witness excused.)

3 THE COURT: All right, ladies and gentlemen, we're
4 going to take our lunch break. We have a little business to
5 do, so please come back at 2:05. Remember, do not talk
6 about the case amongst yourselves or with anyone else, keep
7 an open mind.

8 We will see you at 2:05. Have a good lunch.

9 (Jury exits.)

10 (In open court.)

11 THE COURT: Have a seat. Two things: First, it
12 is getting a little cumulative, right? I mean we've heard
13 three perspectives that all agree, I think I really
14 understand this battle at this point, not that it isn't
15 riveting it is, but do the other witnesses really have more
16 to add?

17 Let me put it this way: If someone has been
18 injured, I understand that, they want to talk about their
19 injury, that's fine, but can't we at least pick up with
20 saying to a witness, we've heard prior testimony about the
21 battle that occurred on this date, can you tell us where you
22 were when that happened and what happened to you and maybe
23 you'll shorten it a little. Can't we do some of that?

24 I'm not going to ask you for an answer.
25 Think about it after lunch, all right? We've heard about

1 the battle, we have.

2 Yes, sir.

3 MR. JACOBS: Your Honor, if I could just give an
4 example of why the overlap is necessary to build up to a
5 corroborative point.

6 THE COURT: Okay.

7 MR. JACOBS: The defendant specifically says that
8 he hears a U.S. soldier talking on a radio. So Sergeant
9 Reed testified that after he was hit, he was approximately
10 20 feet from the edge of the ridge and in a loud, clear,
11 monotone voice made the call for artillery. In summation we
12 plan to juxtapose the defendant's confession and that
13 testimony and it would seem a little artificial in a way to
14 have that corroborative piece come out without the context.

15 THE COURT: I agree with you and you are entitled
16 to have that corroborative piece plus some context, but even
17 allowing for that, it still seems to me we're getting a lot
18 of the same details that are unnecessarily completing the
19 context. I'm just asking you to try to streamline it a
20 little bit if you can. I recognize what you're saying and
21 it's perfectly okay.

22 MR. JACOBS: Understood, Your Honor. The next
23 soldier witness, I think we have four more plus a custodial,
24 will be shorter.

25 THE COURT: Yes.

1 MR. DRATEL: Your Honor, with respect to what we
2 talked about this morning.

3 THE COURT: Yes.

4 MR. DRATEL: The two questions about Mr. Dennis'
5 age and where he's from were gratuitous. They just elicited
6 an emotional reaction, it really was not relevant.

7 THE COURT: Did you object to those?

8 MR. DRATEL: No, but I didn't know where it was
9 going, but, you know, obviously --

10 THE COURT: Right.

11 MR. DRATEL: -- but the point was it was clear
12 that it just got an emotional reaction from the witness, it
13 was gratuitous, it was unnecessary.

14 THE COURT: I would have sustained those
15 objections, just so the Government knows, okay? Asking
16 where the soldier is from, how old is he, it doesn't really
17 bear on the crime, does it? I don't think so.

18 MR. DRATEL: Thank you, Your Honor.

19 THE COURT: I think it's like meant to make this
20 jury feel bad for A-19-year old kid, which I can understand.

21 MR. ARIAIL: Your Honor, I'm sorry, it's just a
22 basic fact about the person's age and where he's from. I
23 understand what you're saying --

24 THE COURT: What's the probative value?

25 MR. ARIAIL: What's that?

1 THE COURT: What's the probative value of it?

2 Okay, try to keep it out.

3 MR. ARIAIL: Who he is, Your Honor, that's it.

4 Literally, who he is.

5 THE COURT: Listen, it's not terribly prejudicial,
6 it's probably not prejudicial at all, but it is certainly
7 not probative, so let's leave it out.

8 MR. DRATEL: Your Honor, and my particular
9 objection is that what it did was get that witness to a
10 state of near crying. The record should reflect that it
11 occurred.

12 THE COURT: I must disagree with you. I was
13 watching the witness and I don't think that was the
14 perception. If you saw it that way, and maybe I didn't, but
15 I didn't think this witness got near to losing control.

16 MR. JACOBS: Your Honor, I'll just mention one
17 thing, the event itself and not my questions are the trigger
18 for emotions.

19 THE COURT: We don't know what triggers emotions.
20 We don't know, so let's eliminate the unnecessary questions
21 and then we'll know it's not those.

22 All right. Now something else?

23 MR. DRATEL: Yes. 12:45, Your Honor -- rather,
24 yes, 12:45 -- 1:45. I'm sorry, 1:45.

25 THE COURT: I was going to say do it now. Do you

1 want to do it now?

2 MR. DRATEL: We can do it now it's just that we
3 figured it would be easier --

4 MR. STERN: It requires the courtroom to be
5 cleared.

6 THE COURT: All right. Let's do it at 12:45.

7 MR. DRATEL: 1:45.

8 THE COURT: 1:45. What we're going to do, for the
9 record I'm noting this, we're going to empty and lock down
10 the courtroom at 1:45 so that defense counsel can attempt to
11 have a conversation with their client over the audio/video
12 link that we have hooked up here. Obviously, that's got to
13 be a private conversation or attempt at conversation. So no
14 one will be permitted into the courtroom at that time other
15 than defense counsel.

16 I will also note that we have external
17 monitoring of the courtroom proceedings in several locations
18 including my chambers on several computers. We're going to
19 shut that down. We're going to shut down the overflow
20 courtroom as well, so to the extent the defendant really
21 wants to talk to his attorney it will just be between them.

22 Then when you're done, call Ms. Clarke on
23 this phone at 2235 and she'll come and reopen the courtroom.

24 MR. DRATEL: Thank you.

25 MR. STERN: Judge, we just have to be sure it's

1 open both ways, which it's typically not. We need to be
2 able to hear him if he has something to say.

3 THE COURT: Right.

4 MS. KELLMAN: It's on mute.

5 MR. STERN: Because we had him on mute.

6 THE COURT: Oh, yes, absolutely. I'll note we had
7 him on mute yesterday because, I don't know if you were in
8 the room, we were testing the connection and when we put it
9 off mute he was screaming, so we had to turn it off. But if
10 he screams at you it's okay, so let's try it that way.

11 MR. ARIAIL: One more thing, Your Honor.

12 THE COURT: Yes.

13 MR. ARIAIL: I think just in the context of this
14 conversation that we're having right here, today for the
15 first time we've heard from the defense that they may have a
16 case. Obviously, there's certain discovery obligations that
17 the defense is required to comply with under Rule 26.52.
18 We've had a lot of discussion about Daubert historically.
19 We're just trying to get a sense of what kind of a case
20 we're looking at and when we're going to get notice of
21 exhibits and witnesses so that we can prepare a rebuttal
22 case so we don't interrupt the flow here, or possibly move
23 to preclude depending on the significance of the expected
24 case.

25 THE COURT: What do you have in mind?

1 MS. KELLMAN: Well, Your Honor, as you pointed out
2 yesterday, and we appreciate it, we know the rules, we know
3 our obligations and we will comply with every rule.

4 THE COURT: Okay. I'm going to leave it there for
5 now. If -- and I will harken back to this conversation if
6 they hit you with something by surprise and I'll say to
7 Ms. Kellman, remember you said you knew your obligations and
8 you haven't met them, if she hasn't met them.

9 MR. ARIAIL: Understood. Ms. Kellman represented
10 to me that, you know, if she has her way it would be the day
11 before the testimony, so I just don't want --

12 MS. KELLMAN: I said the day after.

13 MR. ARIAIL: Oh, sorry, the day after, that's
14 correct.

15 MS. KELLMAN: That's why I thought you knew it was
16 a joke.

17 THE COURT: I will ask defense counsel, even
18 beyond your obligations, if you can avoid unnecessary delay
19 in the trial without prejudicing your client, please keep
20 that in mind.

21 MS. KELLMAN: Understood, Judge.

22 MR. ARIAIL: Thank you, Your Honor.

23 THE COURT: See you at 2:05.

24 (Luncheon recess: 1:03 p.m.)

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A F T E R N O O N S E S S I O N

(In open court.)

THE CLERK: All rise.

THE COURT: Did we have any luck reaching the
defendant.

MR. STERN: Yes, we did have luck reaching the
defendant, if you mean by that hearing him and him hearing
us.

THE COURT: He has not changed his mind about
attending?

MR. STERN: No. If you mean by reaching him,
getting him to agree to something, we didn't have much luck
with that.

MS. KELLMAN: There was nothing we could repeat.

THE COURT: All right. Let's have the jury.

MR. ARIAIL: Your Honor, I just want to flag to
the court, just in terms of the amount of cross seems to be
getting reduced, and we are doing our best to get extra
witnesses in for tomorrow. I'm just flagging it for the
court. We are making efforts.

THE COURT: I understand.

(Pause.)

(Continued on the next page.)

1 (Jury enters.)

2 THE COURT: All right. Everyone be seated.
3 Welcome back, ladies and gentlemen. We will continue with
4 the Government's next witness.

5 MR. JACOBS: The Government calls Lee Blackwell.

6 THE CLERK: Please raise your right hand.

7

8 LEE BLACKWELL, called as a witness, having been first duly
9 sworn/affirmed, was examined and proceeded to testify as
10 follows:

11 THE CLERK: Please state and spell your name for
12 the record.

13 THE WITNESS: Lee Marvin, L-E-E M-A-R-V-I-N
14 B-L-A-C-K-W-E-L-L.

15 THE CLERK: You may be seated.

16 THE WITNESS: Thank you, ma'am.

17 THE COURT: You may inquire.

18 MR. JACOBS: Thank you, judge.

19 DIRECT EXAMINATION

20 BY MR. JACOBS:

21 Q Good afternoon, Mr. Blackwell.

22 A Good afternoon, sir.

23 Q Have you previously served in the military?

24 A Yes, sir. I was in the air force.

25 Q How many years were you in the air force for?

1 A Almost 21, just shy of 21 years.

2 Q Mr. Blackwell, would you mind pulling the microphone
3 just a tad bit closer.

4 A Yes, sir.

5 Q Thank you. Because I interrupted you, I didn't hear
6 the answer to that question.

7 A I was almost 21 years, so 20 years.

8 Q What was your rank when you retired?

9 A Master sergeant.

10 Q Now, what job did you hold in the air force, or jobs,
11 during these 20, 21 years?

12 A My first four years I was a jet engine mechanic on
13 F-16s, fighters, and then I cross trained to become a
14 tactical air commanding control specialist, which is called
15 a TACP.

16 Q In laymen's terms, for those who haven't served in the
17 air force, what does a TACP do?

18 A I'm the radio guy on the ground that talks to the
19 fighters, tells them where there are bombs.

20 Q During your active duty career did you deploy overseas?

21 A Yes, deployed three times. First in 1991, Desert
22 Storm, as an engine mechanic; and then in the beginning of
23 2003 I was in Afghanistan and in Kandahar and Shkin; and in
24 the end of 2003 I was in Fallujah, Iraq.

25 Q I would like to focus on your tour in Afghanistan,

1 specifically around April 2003.

2 A Yes, sir.

3 Q Where were you stationed at that time?

4 A I was at FOB Shkin. It's along the
5 Pakistan-Afghanistan border, on the east side.

6 Q You arrived there around mid-April?

7 A Yes, sir.

8 Q How many air force airmen were at FOB Shkin at the
9 time?

10 A Two, sir.

11 Q What branch of the military, if you know, were all the
12 other soldiers at FOB Shkin?

13 A They were all army.

14 Q Just in very broad strokes, why did this army unit need
15 two air force airmen with them?

16 A The ground commander, all the -- we call organic
17 assets, what he has, he owns, the mortars, artillery, the
18 tanks, whatnot, those are his organic assets. He doesn't
19 own the air force or the aircraft. I'm the person that
20 talks to them. That's my sole job.

21 Q Who was the other air force airman who was at FOB
22 Shkin?

23 A First Class Raymond Losano.

24 MR. JACOBS: I would like to show the witness
25 what's in evidence as Government's 500.

1 THE COURT: Okay.

2 Q Do you recognize this individual?

3 A Yes, sir. That's Ray.

4 Q What was the working relationship like between you and
5 Ray, in terms of seniority?

6 A Ray was the TACP. He was my radio guy, and I was the
7 enlisted terminal attack controller. I was the one
8 qualified to control the air strikes.

9 Q And would you work separately, or together?

10 A Together.

11 Q Now, I would like to skip ahead a little bit to the day
12 of April 25, 2003.

13 Were you part of a QRF that day?

14 A Yes, sir, I was.

15 Q And did that QRF ultimately go to a ridgeline or a
16 hilltop?

17 A Yes, sir, it did.

18 Q All right. I want to pick up the story, the account,
19 when you got up to the hilltop.

20 A Yes, sir.

21 Q When you got there and got out of your vehicle --

22 A Yes, sir?

23 Q -- what happened?

24 A As I got out of the vehicle, Ray was getting his
25 rucksack, had the radio and all the equipment in it. He was

1 getting it on. I looked to my far left. Captain Trahan,
2 Lieutenant Milan, Lieutenant Dolan, all the officers and
3 their radio guys, the RTOs, were all standing off to my
4 front left; and that's where Ray and I started walking
5 towards.

6 Q As you walked toward the group of the army soldiers,
7 what happened?

8 A We immediately started getting shot at from all
9 different directions, hand grenades, AK-47s, RPGs.

10 Q When this firing began what did you do?

11 A Ray and I hit the ground. I turned to Ray and I told
12 him, to call tombstone on the radio.

13 Q When you say tombstone, what is that?

14 A Tombstone, that's the ASOC, the air support operations
15 center. That's where we call and request close air support.

16 Q Where was the ASOC, or the air control center, located,
17 in what city?

18 A In Bagram, the city. I told Ray, I said, call
19 tombstone, tell them troops in contact, and we'll 1972
20 enable.

21 Q Without getting into details, 1972 enable, that's a
22 process that's --

23 A It's a format. We give them all the information. I
24 didn't have time to give them information. We just needed
25 air.

1 Q After you asked Ray to call tombstone, the air control,
2 what happened next?

3 A I started looking for cover. I didn't want to go to my
4 left, where everybody was getting shot at. I looked around.
5 I saw a vehicle, an up-armor Humvee with a 50-count machine
6 gun on top of it, shooting straight down; and I said, there
7 is cover, because there was nowhere to hide.

8 Q After you saw this armored Humvee, what did you do?

9 A I told Ray, I said, you grab your ruck, I will grab the
10 antenna, and we are running to the vehicle. He said, what?
11 I said, we are going to run for cover, brother.

12 Q What did you do?

13 A Got up and ran as fast as I could to the vehicle, sir.

14 Q Did you and Ray make it to the vehicle?

15 A We did. I started patting Ray down.

16 Q Why?

17 A Just wanted to make sure he wasn't shot. Then I asked
18 him to make sure I wasn't shot, and he patted me down to
19 make sure I wasn't shot.

20 Q When you got to this armored vehicle, after patting
21 each other down, what did you do next?

22 A We low crawled up by the front passenger front tire.
23 I'm laying right beside the tire, and Ray is laying right
24 beside me.

25 Q What did you do at that point?

1 A I'm now looking over the edge of the ridgeline. I can
2 see insurgents either coming towards us, some getting away,
3 hiding behind boulders, some shooting at us and the rest of
4 us. I needed to tell the driver that we were laying there.

5 Q Why did you have to tell the driver?

6 A I didn't want the driver to, one, driver over the top
7 of us, or, two, drive away so we lost our cover.

8 Q So did you eventually open the door and tell the
9 driver?

10 A I eventually opened up the back passenger door and told
11 the driver, I said, brother, be advised you got two dudes
12 laying right here beside the front tier. If you need to
13 leave, lay on the horn, and we will get in the vehicle with
14 you, so I don't get left.

15 Q After notifying the driver that you and Ray were next
16 to the wheel, what happened next?

17 A I had the Hummer door open. I had taken some shoots at
18 me, a 50-gunner is above me, and I started just surveying
19 what was going on. Ray yelled at me.

20 Q Can I just unpack some things you just said?

21 A Yes, sir.

22 Q You said you were taking some shots after you opened
23 the door.

24 What do you mean by that?

25 A I had -- I got shot at several times, and it hit the

1 door in front of me.

2 Q You mentioned 50-cal gunner.

3 What is that?

4 A It's a heavy machine gun. It's a turret-mounted gun on
5 top of the Humvee, and the young man shooting straight down.
6 That's how close the enemy was to us.

7 Q I interrupted you.

8 At this point what happened?

9 A Ray yells at me. He said we got fighters inbound. I
10 returned and said, tell me what the call sign is and tell me
11 what the ETA is. Tell me when they are going to get here.

12 Q When Ray tells you there are fighters inbound, what is
13 he referring to? What does fighters mean?

14 A It's a jet. It's like an F-16, an A-10, F-15, F-18.

15 Q What types of jets were coming in?

16 A Last thing Ray told me was we have Blue-zero-three in
17 five minutes.

18 Q And what did Blue-zero-three mean to you?

19 A It was a Norwegian or a Danish. It's a coalition F-16.
20 It's a foreign pilot and he is working with us. We have two
21 of them, and they each have two 500-pound laser-guided
22 bombs, missiles.

23 Q I want to ask you about those bombs.

24 Were you able to deploy those bombs in that
25 situation?

1 A No, I could not. As soon as I knew aircraft was
2 coming, I knew all ordinales he had were ineffective
3 ordinales.

4 Q Why do you say those in that situation those 500 pound
5 bombs were ineffective?

6 A The blast-frag radius would have killed not only the
7 enemy, it would have killed most of us as well.

8 Q So using those bombs wasn't an option.

9 Were the planes of any use to you?

10 A Oh, definitely. I knew at that moment that I was going
11 to bring the aircraft in. If I'm looking east towards
12 Pakistan down the ridgeline, it took the driver to what we
13 call a wadi. That's looking east. I know I'm going to
14 bring the aircraft from south to north or north to south,
15 and I'm keeping really low, do a show of force for me.

16 Q What's the purpose of a show of force?

17 A When aircraft comes with a lot of weapons, ordinales,
18 and they come down real nice and loud, the enemy tends to
19 scatter. They don't like that.

20 Q Okay. After Ray told you Blue-zero-three, what
21 happened next?

22 A Last thing I told Ray was stay behind your ruck, you
23 will be fine. That's when the 50-gunner got shot in the
24 head, and he fell inside the vehicle. I thought he was
25 dead.

1 Q Now, after you saw the 50-gunner, that's a U.S.
2 soldier, correct?

3 A Yes, sir.

4 Q After you saw him fall into the vehicle, what did you
5 do?

6 A I climbed partially in the vehicle, and I rolled the
7 young man over, expected I would see some something ugly.

8 MR. DRATEL: Objection.

9 A (Continuing) I saw him looking up at me, glassy-eyed,
10 and knocked out.

11 THE COURT: Tell what you did. What did you do?

12 THE WITNESS: I rolled him over, sir.

13 THE COURT: What happened next?

14 THE WITNESS: I knew he was not dead. That's when
15 the door of the Humvee started slamming into me.

16 Q How heavy is this door?

17 A Two hundred fifty, three hundred pounds.

18 Q After you saw this door slamming into you and felt it,
19 what did you see next?

20 A I -- I climbed out of the vehicle. Now the door is in
21 front of me. I'm looking through the window, really thick
22 glass, and I can see Ray sitting back. He is kicking at the
23 door. He is holding his face, a lot of blood. He has been
24 shot in the face.

25 Q Okay. After you saw Ray on the ground like this, what

1 did you do, or where did you take him?

2 A I talk in a colorful language, obviously. Ran around
3 the door, started to grab him, dragged him behind the
4 vehicle.

5 Q When you got him behind the vehicle, what did you do?

6 A I held him. Started screaming for the medic, to my
7 left. They had one medic. I knew he was busy. A lot of
8 people shot. If I stop screaming no one come help me.

9 Q While you were with him, did you hear anything or see
10 anything?

11 A I heard my radio. I heard Blue-zero-three calling me
12 on the radio.

13 Q What did you do at that point?

14 A I had to lay Ray down. I had to low crawl forward, and
15 I had to grab the ruck, the radio antenna, our weapons, low
16 crawl back. I called Blue-zero-three. I said,
17 Blue-zero-three, Hard rock-one-one, standby; and I put the
18 radio down.

19 Q Is Hard rock-one-one your --

20 A It's my call sign, sir. I'm Hard rock-one-one. Ray is
21 Hard rock-one-one-bravo.

22 Q When you got back to Ray what, if anything, did you
23 tell him?

24 A Well, I picked him up. I kept screaming for the medic.
25 Ray is pulling at me, clawing at me, and told him Ray love

1 him, I was proud of him. I told him his family loves him.
2 I told him to hang in there, told him to calm down. He was
3 losing a lot of blood.

4 THE COURT: Okay. Let's go to another question.

5 Q I want to -- at around this time did artillery
6 rounds --

7 MR. DRATEL: Objection, leading.

8 THE COURT: I don't know if he is or not.

9 MR. JACOBS: I'm leading for a reason, judge.

10 THE COURT: Let me hear the question.

11 Q Around this time did you see artillery rounds impact?

12 THE COURT: I will allow it.

13 A As I'm holding Ray, calling for the medic, when someone
14 hit him, rounds start coming down into the ravine, artillery
15 rounds exploding right in front of us, very low.

16 Q Just yes or no, was Ray eventually evacuated from that
17 scene?

18 A Eventually he was, yes, sir.

19 Q All right. After Ray was taken away, where did you go?

20 A Lieutenant Milan was calling for fallback because we
21 had all started taking ground across the top of the
22 ridgeline erratically, and if we fall back, you regroup, you
23 take ground effectively, we can be more effective that way.

24 So I grabbed all the gear, ran to the other
25 side of the ridgeline, took a seat next to Lieutenant Dolan,

1 the fire support officer.

2 Q Is it fair to say Lieutenant Dolan asked you if you
3 were injured?

4 A Yes, sir, he did.

5 Q And did you tell him it was not you that was injured
6 but somebody else?

7 A Yes, sir. It wasn't my blood.

8 Q At that point did you still have a job to do out there?

9 A Yeah, Blue-zero-three is calling me. I get on the
10 radio and I called Blue-zero-three. I said, Blue-zero-three
11 Hard rock-one-one say play time. Tell me how much time you
12 are going to be here to help me. I got no response.

13 I called again, Blue-zero-three, Hard
14 rock-one-one, go fighter to fact. Tell me --

15 Q Go ahead.

16 A Tell me the information you have, what kind of
17 ordinates you have, what's your call assigned mission
18 number, play time, abort code, in case we needed abort code.

19 Q After trying to communicate with the airplanes, did you
20 receive any response?

21 A No, sir. I went from primary frequency to secondary, I
22 went from secure to unsecure columns, still got no response.

23 Q And without providing too many details, did you
24 eventually determine why you were unable to communicate to
25 the airplanes using that radio?

1 A Yes, sir. Lieutenant Dolan's RT0, his radio guy came
2 over, tried to assist me because I was getting frustrated.
3 We found out the radio was shot at the time. I was able to
4 receive but I was not able to transmit.

5 Q Was that the radio Ray was holding?

6 A Yes, sir. He was monitoring the radio when the round
7 came through the radio.

8 Q Now, at any point were you able to make contact with
9 the airplanes that you needed to communicate with?

10 A Eventually I did, but the only way I was able to do it,
11 we had two attack helicopters and a Medevac that came to
12 evacuate the wounded at the fire base; and those attack
13 helicopters pushed forward to assist us, and at that point,
14 as they flew past, Lieutenant Dolan I could hear now
15 Boar-five-two talking to Blue-zero-three.

16 Q All right, and who is Boar-five-two?

17 A They are 2-A-10s.

18 Q What's an A-10?

19 A It's an attack aircraft, tank killing, shoots a bullet
20 about that big. It's an awesome aircraft.

21 Q So explain how, if so, you were able to ultimately
22 communicate to the jet planes?

23 A When I saw the helicopters fly past Lieutenant Dolan, I
24 realized that Lieutenant Dolan had an FM radio, the attack
25 helicopters had FM radio, the A-10s had FM radio; and that's

1 how I eventually got a hold of Boar-five-two.

2 Q So you called the attack helicopter?

3 A Yes, sir.

4 Q Who did the attack helicopter?

5 A They called the fire aircraft, and that's how they got
6 down to the frequency. Now, the frequency I'm on also is
7 the net that artillery is still now shooting.

8 Q Your entire career, how many times did you coordinate
9 multiple jets over an FM radio frequency?

10 A Once.

11 Q All right. You testified earlier about artillery
12 copters and planes.

13 What was your priority at this time?

14 A Because there is a live gun-to-target line, artillery
15 is shooting, there is an azimuth they shoot on, and max
16 ordinates that is attached to that artillery round, I need
17 to tell all the fighters, aircraft, and attack helicopters
18 where -- what's going on. So now I have to deconflict that
19 air space. If I keep the attack helicopters north of that
20 gun and target line and I keep the fighter aircraft above
21 that max ordinate everybody will be safe.

22 Q Just for us laymen, what does deconflict mean, when it
23 comes --

24 A Make sure no one gets shot at, no one runs into each
25 other.

1 Q How many aircraft crashed into each other that day?

2 A None, sir.

3 Q When the aircraft came did you order that any of the
4 aircraft drop munitions in the attack site?

5 A No. I was coordinating shell force. I could not drop
6 for two reasons. One, because there was danger close. It
7 would have, again, hit enemy and hit friendly troops; and we
8 also had an MIA.

9 Q And who was the MIA, and what does MIA mean?

10 A Missing in action. It was Private Dennis we had -- we
11 lost him.

12 Q So you didn't order any attack.

13 What did the planes do?

14 A They did some show of forces for me. I eventually had
15 eight attack helicopters, 2-F-16s, 2-A-10s or 4-A-10s, two
16 Harriers, and a B-1 bomber.

17 Q Just to be clear, are A-10s jets?

18 A Yes, sir, they are.

19 Q You mentioned various aircrafts, including helicopters
20 and jets.

21 How many of these aircraft were visible from
22 the ground during the attack sites?

23 A All the attack helicopters I could see, they were all
24 very low, especially when the artillery had stopped; both --
25 all 4-A-10s; I could see the B-1 bomber pretty good, it's a

1 big aircraft.

2 Q When the jets and helicopters were doing a show of
3 force approximately how much from the ground were they?

4 A A couple of hundred feet. They knew what was going on,
5 how bad it was. So they really helped us out.

6 Q But they never fired their weapons?

7 A Could not, no, sir.

8 MR. JACOBS: One moment.

9 (Pause.)

10 MR. JACOBS: No further questions.

11 THE COURT: All right. Any cross?

12 MR. DRATEL: No, your Honor. Thank you.

13 THE COURT: You may step down. Thank you very
14 much.

15 Government's next witness.

16 MS. WELLS: Your Honor, the Government calls David
17 Simmons.

18 THE CLERK: Please raise your right hand.

19

20 DAVID SIMMONS, called as a witness, having been first duly
21 sworn/affirmed, was examined and proceeded to testify as
22 follows:

23 THE CLERK: Please state and spell your name for
24 the record.

25 THE WITNESS: David Allen Simmons. D-A-V-I-D

1 A-L-L-E-N S-I-M-M-O-N-S.

2 THE CLERK: Thank you. You may be seated.

3 THE COURT: All right. Please proceed.

4 MS. WELLS: Thank you, your Honor.

5 DIRECT EXAMINATION

6 BY MS. WELLS:

7 Q Good afternoon.

8 A Good afternoon.

9 Q Were you in the military?

10 A Yes, ma'am.

11 Q Which years did you serve?

12 A I went in January 2002, and I got off active duty
13 January 2006.

14 Q After you were on active duty service, did you have any
15 other military relationship?

16 A Yes, ma'am. I went into the reserves in March of 2010,
17 and I'm currently serving in the reserves.

18 Q Which branch of the military have you served in?

19 A The active army, U.S. Army, and the army reserves.

20 Q While you were active duty, what different ranks did
21 you hold?

22 A I went in as an E1, a private; and I'm currently an E5
23 sergeant.

24 Q What was your job while you were active duty military?

25 A I was a combat medic.

1 Q What does a combat medic do?

2 A There is many jobs they can hold, different
3 assignments. I was assigned to an infantry battalion as a
4 platoon medic during my active time.

5 Q Just very briefly, what kind of training does a medic
6 receive?

7 A They go through basic training, just like everyone that
8 enlists, and then they go to Fort Sam Houston for their AIT
9 training. It's a few months in San Antonio.

10 Q Is being a medic in the army the same as being a
11 doctor?

12 A No, ma'am.

13 Q Despite that, what are medics common referred to as?

14 A Doc.

15 Q All right. Turning your attention to April of 2003,
16 where were you stationed?

17 A I was stationed at Firebase Shkin in Afghanistan.

18 Q And focusing just on April 25, were you part of a quick
19 reaction force that day?

20 A Yes, ma'am.

21 Q As part of that quick reaction force, did there come a
22 point in time when you arrived at the ridgeline or the
23 hilltop where there was an ongoing engagement?

24 A Yes, ma'am.

25 Q All right. At the point at which you arrived at the

1 ridgeline, can you just tell us what happened?

2 A When I crested the hill on the ridgeline, I was the
3 driver in a vehicle, and I noticed the vehicle in front of
4 us stopped, and then my ears started ringing. And everyone
5 was exiting the vehicle that was in front and then our
6 vehicle. So I exited my vehicle as well and got down behind
7 a tree.

8 Q Once you were behind that tree, what could you see and
9 hear around you?

10 A This was hearing -- my ears were still ringing. So I
11 just remember being really -- just a ringing sound. There
12 were bushes around me.

13 I turned to my left and looked towards where
14 the enemy may have been and seen a couple of soldiers laying
15 on the ground that were getting ready to bound in that
16 direction; and then, before I could look, to my right I
17 heard someone yelling "medic," and then --

18 Q Specifically what did you hear being yelled?

19 A I heard someone yelling "medic," and then some other
20 people were saying, "doc," and that was when I guess forgot
21 that we were in a fire fight, and I went towards that sound.

22 Q When you say you forgot you were in a fire fight and
23 you went towards that sound, what specifically did you do?

24 A I stood up and ran towards that direction.

25 Q Where did you end up?

1 A I ended up, it was to my right, ran about 15,
2 20 meters, and knelt down beside a soldier that had been
3 shot.

4 Q Who was that soldier?

5 A That was Staff Sergeant Brown.

6 Q Sergeant Simmons, if you can, you may need to stand up
7 for just a second, but there is a board right there. If you
8 could take a look and let me know if you recognize the
9 second photo from the right at the top.

10 A Yes, ma'am.

11 Q Okay. You can have a seat.

12 Who is in that photograph?

13 A That's Sergeant Brown.

14 Q All right. When you arrived at Sergeant Brown's
15 location, what did you do?

16 A I saw him there, and I immediately noticed he was
17 bleeding out of his left leg, just above the knee; and I
18 knelt down beside him and tried to control that bleeding by
19 just applying direct pressure, and that wasn't working.

20 Q So what did you do?

21 A I pulled out a cravat and put it a couple of inches
22 above the wound and took out a stick I had, to make a
23 tourniquet. I had prepped a stick. It was a whittled stick
24 about eight to ten inches long, and I applied the tourniquet
25 to control the bleeding, to get him out of the area.

1 Q Were tourniquets standard issue to medics at that point
2 in time?

3 A No, ma'am, not at that time.

4 Q After you applied the tourniquet to Sergeant Brown,
5 what did you do next?

6 A We were still -- I notice now we were still under heavy
7 fire, and I pulled him back. I had someone pull him back
8 and said we need to get him out of there; and we evacuated
9 him onto a vehicle out of the direct fire zone.

10 Q When you say "we," who were you referring to, or how
11 many of you?

12 A There was two other people. I don't remember exactly
13 who. I just know I was keeping an eye on his status,
14 Sergeant Brown, talking with him, and then drug him back
15 towards the vehicle and I got back on the vehicle with him.

16 Q Why did you need more than one person to move Sergeant
17 Brown?

18 A He was a pretty big guy and with all of his equipment,
19 we just needed assistance to get him over to the vehicle.

20 Q After you and Sergeant Brown were loaded into the
21 vehicle, where did you go?

22 A I wanted to get out of the fire area. So we started to
23 drive down over the ridge and didn't quite get to the
24 casualty collection point I would have set up because that
25 vehicle had disabled before we could get there.

1 Q When you say, "that vehicle had disabled," which
2 vehicle?

3 A The vehicle we were evacuating on, the one with
4 Sergeant Brown and myself, and had Sergeant Eddie Comacho
5 was on there as well, helping start an IV.

6 Q After your vehicle broke down, what did you do?

7 A I looked at the location we were at because that was
8 going to have to become the casualty collection point for
9 anyone else that might have been wounded, because I was
10 hearing over the radio that Captain Trahan had been wounded
11 and then that there was others; and I told them where to
12 bring the casualties.

13 Q Were there any other medics assigned that day?

14 A No, ma'am.

15 Q Where did you go from there?

16 A I stayed there. Sergeant Setzer came down there. He
17 had been wounded and just had some burn marks. I think he
18 thought he was wounded more severely at that time. Just
19 burn marks on his neck. I thought maybe he had been
20 ricocheted and it had something there. So I put a field
21 dressing on him to let him know he was going to be okay, and
22 he went back up on the ridge and then they brought me
23 Sergeant Losano -- Losano to the vehicle as well.

24 Q Just very specifically, who was in the vehicle with you
25 at this point?

1 A I had -- I'm not sure who the driver was. I had
2 Comacho was assisting me with Sergeant Brown, getting the
3 I.V. prepped, and then Private Dennis was pulling security
4 on the vehicle. He was up in the standing-up area, just
5 watching out, point of security for us.

6 Q Just so that's clear, when you are describing Private
7 Dennis, where was he relative to you?

8 A Towards like the front of the vehicle. I was in the
9 back of the vehicle. He was in -- it's a cargo stow Humvee.
10 He was standing up about midway of the vehicle.

11 Q Who else was with you in the back of vehicle?

12 A Sergeants Brown and then now Losano.

13 Q Where did you go from there?

14 A I attempted to treat Losano and he arrived to me and --

15 THE COURT: Just tell us what you did.

16 A (Continuing) I didn't see any life in him. So I began
17 just talking with him and trying to keep Sergeant Brown from
18 knowing how he was doing because he was asking, and I knew
19 if he had found out how Losano was it may affect his
20 condition.

21 And I attempted to breathe for him. So I had
22 tilt chin lift, trying to open his airway, but he had been
23 wounded in the neck, and there was just blood and bubbling
24 in that area. So there was no way for me to get air in. So
25 I took a pocket mask and did attempt to do so, and there was

1 resistance. There was no rise and fall in his chest.

2 Q At some point did you make it back to the base?

3 A Yes, ma'am. We got onto another vehicle, and I took
4 Sergeant Brown and Losano with me on that vehicle back to
5 the base to be airlifted back to a hospital.

6 Q So you switched vehicles another time?

7 A Yes, ma'am. We switched vehicles.

8 Q After Brown and Losano were airlifted out did you
9 return to the ridgeline?

10 A Yes, ma'am.

11 Q When you arrived there, what did you see?

12 A On the way back to the ridgeline, there were -- I was
13 confused because I heard them on the radio saying that they
14 were missing code name Private Dennis. So I reminded them
15 of the location where the disabled vehicle was, because
16 that's where he stayed with that vehicle, him and Comacho,
17 and then when I got back that wasn't the case.

18 When I got back onto the ridge, there didn't
19 seem to be any more gunfire going on, and I looked at the
20 tree that I had got behind and just reminded myself where I
21 was at and I saw a bunch of bullet holes in that tree and
22 just thankful that I hadn't been killed earlier in the day;
23 and just on the other side of that tree there was a body
24 that was on the ground.

25 Q All right. So I just want to backup and break down a

1 couple of things that you said.

2 On your way back did you receive any radio
3 messages?

4 A There were just radio message not directly to me, but
5 they were looking -- I don't remember who it was but they
6 were asking for anyone knowing where code name Private
7 Dennis was located.

8 Q When you heard code name Private Dennis what do you
9 remember?

10 A I knew it was Private Dennis they were asking. So I
11 just kind of wondering why they said code name.

12 Q Did you respond to that radio message?

13 A I did.

14 Q How did you respond?

15 A I responded with location that the disabled vehicle was
16 at because that's where he had been when I left back towards
17 the base with the casualties.

18 Q All right. So then, you also mentioned that you had at
19 some point returned back to the ridgeline and you saw the
20 tree where you had been before.

21 At some point in time after you arrived at the
22 ridgeline for the second time did you learn whether any
23 enemy fighters had been killed that day?

24 A Yes, ma'am.

25 MR. DRATEL: Objection, your Honor.

1 THE COURT: Sustained.

2 Q Did you see any enemy fighters who had been killed that
3 day?

4 A Yes, ma'am.

5 Q What did you see?

6 A I saw a body that was close to another tree that was
7 just within meters of the tree I had been behind, kind of on
8 another side of the ridge, and it was laying in that
9 position, like right up against the tree where he was using
10 the tree for cover, and there were -- I remember seeing pins
11 from grenades in that area around him and then he was
12 missing the lower half of his leg.

13 MS. WELLS: Your Honor, I would like to show the
14 witness exhibits that have been marked for identification
15 only at this point. It's Government 101, Government 280,
16 and Government 282.

17 THE COURT: All right.

18 Q Let me know when that image comes up on your screen.
19 Once it does, tell me if you recognize this photo.

20 A Yes, ma'am. That's the enemy casualty I had seen that
21 day.

22 Q And is this a fair and accurate representation of that
23 person's appearance?

24 A Yes, ma'am.

25 Q All right. Looking at the next photo, 282, do you

1 recognize this?

2 A That's the wounds to that enemy's leg.

3 Q Is that also a fair and accurate representation of how
4 this person looked on April 25?

5 A Yes, ma'am.

6 Q And finally, 280, do you recognize this and what is it?

7 A This is the same, kind of blurry now. It's the same
8 photo, the same individual.

9 Q Again, is this a fair and accurate representation of
10 that persons appearance when you saw him?

11 A Yes, ma'am.

12 MS. WELLS: Your Honor, I move to admit
13 Government 280, 282, and 101.

14 THE COURT: Any objection?

15 MR. DRATEL: No, your Honor.

16 THE COURT: Received.

17 (Government Exhibits 101, 280, 282 so marked.)

18 Q Could you just describe for us just generally what's
19 contained in this photo, 101.

20 A This is the --

21 Q Now that the jury can see it.

22 A This is the enemy casualty that I saw that day in the
23 ridgeline, on the ridgeline after I returned.

24 Q Turning to the next photograph, can you describe the
25 nature of the injury that you recalled, just briefly can you

1 describe the contents of the photo and how that relates to
2 what you remember?

3 A I remember seeing that he was -- at first I didn't even
4 notice his leg until I walked around, and it was over to the
5 side and a real large wound to the part of his leg that was
6 still connected to his body.

7 (Continued on the next page.)

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1 DIRECT EXAMINATION (CONTINUED)

2 BY MS. WELLS:

3 Q Finally, again, is this the same individual who was
4 killed?

5 A Yes, ma'am.

6 Q All right. How long were you at Shkin before you went
7 back to the United States?

8 A We were remained at Shkin until August of that year.

9 Q Okay. Did you ever deploy again?

10 A Yes, ma'am.

11 Q When and where?

12 A I went to Iraq on January 10th of 2004. And then I went
13 on a deployment with the Reserves on January 10th of 2013.

14 MS. WELLS: And finally, your Honor, I just want to
15 show the witness Government 505 marked for identification.

16 THE COURT: All right.

17 BY MS. WELLS:

18 Q Do you we recognize this person?

19 A Yes, ma'am, that's Private David Cyr.

20 MS. WELLS: I move to admit into evidence.

21 MR. STERN: No objection.

22 THE COURT: Received.

23 (Government's Exhibit Number 505 so marked and
24 received in evidence.)

25 BY MS. WELLS:

1 Q And again, now that the jury can see it, who is this man?

2 A It's Sergeant Cyr.

3 MS. WELLS: Your Honor, nothing further.

4 THE COURT: All right. Any cross?

5 MR. STERN: No, your Honor.

6 THE COURT: All right. You may step down. Thank
7 you.

8 The Government's next witness?

9 MR. JACOBS: The Government calls Victor Keith Graf.

10 **VICTOR KEITH GRAF,**

11 called as a witness having been

12 first duly sworn/affirmed, was examined and

13 testified as follows:

14 THE CLERK: Please, state and spell your name for
15 the record.

16 THE WITNESS: Victor Keith Graf; V-I-C-T-O-R,
17 K-E-I-T-H, G-R-A-F.

18 THE COURTROOM DEPUTY: Thank you. You may be
19 seated.

20 THE COURT: All right. You may proceed.

21 MR. JACOBS: Thank you, Judge.

22 **DIRECT EXAMINATION**

23 **BY MR. JACOBS:**

24 Q Good morning, sir.

25 A How are you today?

- 1 Q Who do you work for?
- 2 A United States Army.
- 3 Q And what's your rank?
- 4 A Staff Sergeant First Class.
- 5 Q When did you join the Army?
- 6 A I joined in August of 1987.
- 7 Q And since that time, have you been deployed overseas?
- 8 A I have, four times.
- 9 Q Have you ever been deployed to Afghanistan?
- 10 A Yes, sir.
- 11 Q When?
- 12 A Once in 2003 and a second time in 2005.
- 13 Q Where were your other deployments?
- 14 A Iraq, and I went to -- I was in Desert Storm.
- 15 Q What was your rank at the time of deployment to
- 16 Afghanistan in 2003?
- 17 A Staff sergeant.
- 18 Q And what unit were you in at the time?
- 19 A I was in the Navy, Second MP Company.
- 20 Q And what was your job in Afghanistan?
- 21 A My job was area security and reconnaissance, providing
- 22 escort and assisting and gathering intelligence.
- 23 Q And were you a military police officer?
- 24 A Yes.
- 25 Q I would like to direct your attention to April 25th,

1 2003. Were you informed that morning that certain soldiers
2 had been attacked?

3 A That certain soldiers had been attacked? Yes.

4 Q And after receiving that information, did you go out on
5 patrol?

6 A We went out as a QRF, secondary to the initial group that
7 went out.

8 Q And what was the objective of your QRF?

9 A To provide support for the first group that went out.

10 Q And who, if you remember, was in charge of your QRF, the
11 second QRF?

12 A The second QRF I believe was First Sergeant Severino.

13 Q Sir, would you mind standing up and looking at the
14 photograph on the bottom left of that board and just tell me
15 if you recognize that person?

16 A That was First Sergeant Severino.

17 Q Now, generally speaking, where did you go when you left
18 the base on this QRF?

19 A We went to where they -- they had began setting up a
20 casualty collection point.

21 Q And when you got to that casualty collection point, did
22 you receive any orders?

23 A As soon as we got there, again, I believe it was
24 First Sergeant Severino, came up to let me know that a GMV, or
25 general military vehicle, had broken down probably about a

1 kilometer away but outside of the area of the main engagement.

2 Q Were you asked to do anything related to the GMV?

3 A Yes. I'm sorry. He -- he asked me to go -- or told me
4 to go and recover it and bring it back.

5 Q And after you were told to do that, where did you go?

6 A As we were getting ready to go in the direction that he
7 was sending me, I noticed a rather large cloud of dust just
8 out of to blue, abnormal. I knew there was one of our
9 vehicles over there, so the thought crossed my mind of there
10 was a possibly an attack of some sort over in that area. So
11 we loaded up and headed over to the GMV.

12 Q And when you got to the GMV, what happened?

13 A We made contact with the driver, and at that point, three
14 other people were coming up, a Sergeant Setzer, I believe he
15 was a specialist at the time; Comacho; and an Afghan national;
16 and Sergeant Setzer and the Afghan National were wounded.

17 Once we were talking with them, Sergeant Setzer
18 tried to talk to me, but his injury to his jaw, you know, I
19 wasn't able to understand what he was saying. I was
20 interested in getting him loaded up and get him back to the
21 casualty collection point to -- and then Comacho came up to me
22 and let me know that somebody was still out there.

23 Q And did you later come to learn who that person was who
24 was still out there?

25 A I did. At the time, they said Dennis was out there.

1 Q Now, at that point what did you do with respect to the
2 GMV and Setzer and the Afghan soldier?

3 A Given the appearance of Sergeant Setzer's injuries, and I
4 didn't know how badly the Afghan National was wounded, and
5 Comacho was not hysterical, but he was pretty amped up, I
6 decided to go ahead and send a -- my other vehicle and towed
7 the GMV back to the casualty collection point. And I got on
8 the radio trying to make contact with as many people as I
9 could to find out if Dennis, by chance, made it back to one of
10 them before I went to help.

11 Q And did you receive any response when you asked about
12 Dennis?

13 A They were all negative as far as him being with them.

14 Q What, if anything, did you do at that point?

15 A At that time I was still waiting on my Bravo Team truck,
16 and I stood out in front of my truck yelling his name just
17 hoping to get a response. I probably yelled for a good four
18 or five minutes and could have sworn to God that I heard an
19 answer.

20 Q And from what direction did you think you heard an
21 answer?

22 A Up towards the -- kind of to, I would say, 11 o'clock of
23 where we were, off in the direction. At -- while we were
24 there, waiting and just before I started yelling his name, we
25 were obviously scanning the area, and at the top of the ridge,

1 I noticed it was white and I could make out just enough to see
2 that it was a truck.

3 Q What type of truck?

4 A It turned out to be a Toyota High Luxe.

5 Q And was the top of the Toyota High Luxe truck that you
6 could see, was that near or far from the plume of the dust
7 that you saw earlier?

8 A It -- it was near.

9 Q And where relative to the High Luxe -- well, withdrawn.

10 At that point in time, what, if anything, did you do
11 to try to find Dennis?

12 A Like I said, I tried hollering the name first. I was
13 waiting on my Bravo Team to return, try to contemplate what I
14 was going to do because I had choices. My initial thought
15 before knowing that Dennis was out there was to do
16 reconnaissance by fire.

17 Q What is a reconnaissance by fire?

18 A A reconnaissance by fire, basically, we would have sat
19 where we were and just fired rounds in the direction of where
20 we saw the plumes of dust and everything, hoping to get the
21 enemy to reveal their location. And if not, then at least let
22 them know that we're coming up with some heat.

23 Q And is there a particular reason you didn't choose to do
24 a reconnaissance by fire?

25 A Yes, sir. Knowing that Dennis wasn't with anybody else,

1 the high probability he was out there somewhere, it wasn't --
2 and we weren't going to take the risk of hitting him.

3 Q What happened next?

4 A The Bravo Team had showed up. I called the command post.
5 And when they called me -- or called me back, they asked me to
6 sit tight. There was an infantry group on foot coming to us.

7 Q And when they said sit tight, do you mean sit -- don't go
8 out and look for Dennis right away?

9 A Yes, sir.

10 Q And how did you respond to that?

11 A I didn't want to wait, so I choose to act like my radio
12 wasn't working well and went ahead and proceeded up the hill.

13 Q All right. How many vehicles proceeded up the hill?

14 A Two.

15 Q And who was in charge of those vehicles?

16 A I was.

17 Q How many people; how many U.S. Soldiers were in those
18 vehicles?

19 A I believe we had seven.

20 Q And where did you drive?

21 A We went pretty much straight up the hill and in the
22 direction of where the High Luxe was.

23 Q All right. And what happened when you got to the High
24 Luxe?

25 A As soon as we got to the High Luxe, we established

1 security. We scanned the area as best we could to make sure
2 we weren't stepping out of our trucks into a fight. At that
3 time, we walked up to the High Luxe, noticed large arguments
4 of brass, which is extended casings from weapons. Then we
5 made or way over to the High Luxe and found an M-4 lying on
6 top of the High Luxe.

7 Q Let me unpack a little of what you said -- a little of
8 what you said.

9 The brass or the shell casings that you saw, were
10 your able to determine whether they came from American
11 firearms or other firearms?

12 A Yes, sir, they were -- they were enemy, enemy weapons.

13 Q And approximately how many shell casings were you able to
14 see?

15 A There was a lot, probably -- probably way in the
16 hundreds, probably close to a thousand possibly.

17 Q And given the number of shell casings, what did you
18 conclude about how many enemies were there?

19 MR. STERN: Objection.

20 THE COURT: Sustained.

21 BY MR. JACOBS:

22 Q How many rounds are in a typical magazine?

23 A A typical AK will hold 30.

24 Q Okay. And you said you saw upwards of a thousand shell
25 casings there?

1 A Yes, sir.

2 Q Did you conclude that there were one or more enemy
3 involved in that attack?

4 A More.

5 Q You mentioned an M-4. What's an M-4?

6 A An M-4 is a standard-issued carbine to U.S. Military.

7 Q And where did you see that?

8 A It was lying on top of the High Luxe.

9 Q Now, after getting up there from the High Luxe, seeing
10 the brass and the M-4, what did you do?

11 A At that time I had to make a choice going and looking for
12 Dennis. My assumption or my hope at the time was that he
13 hadn't been carried off is that he was back down the hill
14 towards where Sergeant Setzer and Comacho said that they ran
15 to get back to the GMV. So I choose to go leave my vehicles
16 at the top of the hill to provide security, and I choose to go
17 down the hill to look for Dennis.

18 Q How many people went down the hill?

19 A Just me.

20 Q And why was it necessary to leave the others by the
21 vehicle?

22 A You got to have at least two people for a truck to be
23 efficient. You've got to have at least a driver and a gunner.
24 And then I choose to leave my other team leader so somebody
25 was in charge of the vehicles if they needed to move.

1 Q What state of readiness were you at?

2 A Extremely high.

3 Q And describe what happened as you walked down the hill?

4 A I started getting down the hill. I got out of sight of
5 everybody. I probably went 200, maybe 300 meters and I
6 noticed what looked like a pair of red pants.

7 Q And without explaining in detail about the clothing or
8 the color, what did you do when you saw -- when you saw what
9 you saw?

10 A When I saw what I saw, I scanned the area one more time,
11 and I started getting up closer to it and I started
12 whispering, you know, Dennis. I didn't want to yell, because
13 if I yelled, I didn't want my team to get amped up at the top
14 and come down too soon. And then as I got closer, I realized
15 that I saw desert boots, which are our basic-issued boots,
16 brown T-shirt, then I saw Dennis.

17 Q When you saw Dennis, what did you say or do?

18 A When I first got up to him, I rolled him towards me a
19 little bit and pulled him from underneath the tree. He was --
20 he was real lethargic, he was moving slowly on his own. He
21 wasn't saying anything to me. I just looked at him, and I
22 said, Buddy, we found you. We're going to get you out of
23 here.

24 Q And is it fair to say he looked like he lost --

25 MS. KELLMAN: Objection.

1 BY MR. JACOBS:

2 Q -- a fair amount --

3 THE COURT: Sustained.

4 MR. JACOBS: I'm just trying to lead carefully, your
5 Honor.

6 THE COURT: Well, I do not think you have to.

7 MR. JACOBS: But I'll withdraw.

8 THE COURT: I think there is another way to do it to
9 achieve what you are trying to achieve.

10 MR. JACOBS: Okay.

11 BY MR. JACOBS:

12 Q After finding Dennis there, did you -- did you call out
13 to anyone?

14 A At that point, I did. I called out to the rest of my
15 squad at the top of the hill.

16 Q And what happened next?

17 A At first, I gave him a quick once-over and realized that
18 the amount of blood that he already lost, I wasn't going to
19 try to do any type of first-aid or anything there. I mean,
20 all of his pants were red. That was what I thought I saw as
21 sweat pants. Then the -- as the trucks were coming down to
22 me, I went to pick him up and the fireman carried him over to
23 get him to the trucks. And about that time, I believe it was
24 Sergeant Pehowic that came to me, and together we got him into
25 my truck.

1 Q And after getting him into your truck, where did you
2 bring him?

3 A We took him back to the casualty collection point.

4 Q What happened when you got to the casualty collection
5 point?

6 A Once we got him to the casualty collection point, we
7 turned him over to the medics and the docs that were there,
8 and then we were sent back over to the same area.

9 Q Now, when you went back to the same area, did you later
10 proceed eastward?

11 A We did.

12 Q And without getting into details, did you come -- were
13 you able to observe a militia later that day?

14 A No, sir.

15 Q Did you encounter any armed individuals later that day?

16 A Yes, sir.

17 Q Okay. And what uniforms were those armed individuals
18 wearing?

19 A Pakistani uniforms.

20 Q And where relative to the Afghanistan-Pakistan border
21 were they?

22 A Right on it.

23 Q On which side?

24 A Their side.

25 Q By "their side," do you mean the Pakistani side?

1 A The Pakistani side, yes, sir.

2 MR. JACOBS: No further questions, sir.

3 THE COURT: All right. Any cross?

4 MR. STERN: No.

5 THE COURT: All right. You may step down. Thank
6 you.

7 All right, ladies and gentlemen, let's take our
8 mid-afternoon break. We will reconvene at 3:25.

9 Please remember not to discuss the case with anyone,
10 not even among yourselves. See you shortly.

11 (Jury exits.)

12 (The following matters occurred outside the presence
13 of the jury.)

14 THE COURT: Be seated, please.

15 What is coming up in the Government's case?

16 MS. WELLS: Your Honor, we have one more witness who
17 we're calling regarding the events of April 25th, Command
18 Sergeant Major Brian Severino's testimony.

19 He was not present during any portions of fire
20 fight. He does have some -- he has some testimony about the
21 helicopter fight process, which is pertinent. He also has
22 some testimony about the directions and orders from the
23 casualty collection point. And he has some additional
24 evidence that we're going to -- physical evidence that we'll
25 offer through him.

1 THE COURT: And what after him?

2 MS. WELLS: Dwayne McKnight, who is the custodial
3 witness as to certain items collected from the battle.

4 THE COURT: Okay. Are you going to finish both of
5 those witnesses by this afternoon --

6 MS. WELLS: I think that --

7 THE COURT: -- if we start at 3:25?

8 MS. WELLS: I suspect we will, given --

9 THE COURT: Depending on the cross?

10 MS. WELLS: -- the day. I can't say.

11 Dwayne McKnight's testimony is extremely short,
12 maybe 15 minutes.

13 THE COURT: Okay.

14 MS. WELLS: Then Sergeant Major Severino, he will
15 come in between 45 and an hour.

16 THE COURT: Okay.

17 MS. WELLS: Maybe less.

18 THE COURT: All right. Well, then I would say you
19 probably will not finish today, but that is okay.

20 And how are we set for tomorrow? I don't need to
21 know who is going, but I just want to know, are you going to
22 be able to fill the day?

23 MR. ARIAIL: I think we'll be able to fill most of
24 the day, your Honor. I am a little concerned we're going to
25 come up short in the afternoon.

1 THE COURT: Okay. Do the best you can.

2 MR. ARIAIL: Most of the witnesses, obviously, are
3 coming from out of town.

4 THE COURT: Right.

5 Okay. 3:25.

6 MR. STERN: Judge, we would like to talk to you
7 *ex parte* for a minute, if we could?

8 THE COURT: *Ex parte* off the record or on the
9 record?

10 MR. STERN: I guess that's up to you.

11 THE COURT: Okay. We are in recess. Everyone can
12 go. I will speak to defense counsel at sidebar on the record
13 and then make a determination whether to seal the transcript
14 or not.

15 MR. ARIAIL: We consent to the *ex parte*, your Honor.

16 THE COURT: Thank you.

17 (The following occurred at sidebar with Defendants
18 *ex parte*.)

19 THE COURT: What's up?

20 MR. STERN: We just wanted to tell our -- I guess I
21 can characterize that this tactical plan is not all that
22 tactical.

23 THE COURT: Well, okay.

24 MR. STERN: It really goes to timing, not because we
25 expected to give any opinion about it.

1 THE COURT: I understand. But I think that the
2 Government has the right to have the same information I have
3 about how the defense is going to proceed.

4 MR. STERN: Okay.

5 THE COURT: So I would --

6 MR. STERN: Then we won't talk.

7 THE COURT: We will hold off.

8 MR. STERN: Okay. Thank you, Judge.

9 (Recess taken.)

10 (Continued on next page.)

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1 (In open court; 3:30 p.m.)

2 COURTROOM DEPUTY: All rise.

3 THE COURT: Okay. Let's have the jury, please.

4 COURTROOM DEPUTY: All rise.

5 (Jury enters courtroom at 3:30 p.m.)

6 THE COURT: Already of the be seated, please.

7 Government's next witness.

8 MS. WELLS: Your Honor, the Government calls Command
9 Sergeant Major Brian Severino.

10 COURTROOM DEPUTY: Please raise your right hand.

11 CSM BRIAN SEVERINO, called by the Government, having been
12 first duly sworn, was examined and
13 testified as follows:

14 THE WITNESS: I do.

15 COURTROOM DEPUTY: Please state your name for the
16 record.

17 THE WITNESS: Brian Severino. B-r-i-a-n.
18 S-e-v-e-r-i-n-o.

19 COURTROOM DEPUTY: You may be seated.

20 THE COURT: All right. You may inquire.

21 MS. WELLS: Thank you, your Honor.

22 DIRECT EXAMINATION

23 BY MS. WELLS:

24 Q Good afternoon, sir.

25 A Good afternoon.

1 Q Who do you work for?

2 A I work for the United States Army.

3 Q What is your current rank?

4 A I'm a Command Sergeant Major.

5 Q Where are you stationed now?

6 A I'm currently stationed at Fort Bragg, North Carolina.

7 Q Very briefly, what are your responsibilities now at
8 Fort Bragg?

9 A I'm currently the Command Sergeant Major for Task Force
10 Dragon, which is the rear element for the 18th Airborne Course
11 of since they are forward deployed to Iraq at this time.

12 Q In your own career, have you deployed overseas?

13 A I've been deployed several times, yes.

14 Q When was your first deployment to Afghanistan?

15 A I've deployed to Afghanistan for the first time in
16 January of 2003.

17 Q And during that period of time, during that deployment, I
18 should say, were you station the at Firebase Shkin?

19 A Yes, I was at Firebase Shkin in late March 2003 through
20 August-September 2003.

21 Q What was your rank at that time?

22 A I was a Company First Sergeant.

23 Q And what were your responsibilities as the company's
24 First Sergeant?

25 A As the First Sergeant, basically, I'm responsible for the

1 health and welfare of all the soldiers. I'm also the advisor
2 to the company commander.

3 Q And who was the company commander at the time?

4 A At this time, it was Captain Trahan.

5 Q All right. I want to turn your attention in a few
6 minutes to the date of April 25th.

7 But just briefly, in the days leading up to
8 April 25th, do you recall any attacks on the firebase?

9 A We received several days -- over a period of several days
10 a lot of indirect fire, mainly at night.

11 Q What kinds of weapons were being used for that indirect
12 fire?

13 A Typically, it was 107 millimeter rockets or mortar rounds
14 would be fired at us.

15 Q Was there another name that 107 millimeter rockets were
16 known by?

17 A I think the Russian name is Katyusha.

18 Q All right. I want to turn your attention now to
19 April 25th.

20 Some time that morning, did you receive any reports
21 of enemy activity coming across the border to Afghanistan?

22 A In the morning, we received a report of suspicious
23 activity in an area of a known P00 site.

24 Q What's a P00 site?

25 A A P00 is acronym that we use. It means Point of Origin.

1 Q Point of Origin for what?

2 A When we get indirect fire shot at us be it the rockets or
3 mortars, we are able to identify where the rockets and mortars
4 are fired from the Point of Origin.

5 Q And so, was the location of this particular report
6 familiar to you?

7 A Yes, it was.

8 Q Was this the first time that there had been a report of
9 this kind of cross border activity?

10 A No, it was pretty common.

11 Q All right. That morning, after this report came in, was
12 a group of soldiers sent out to investigate?

13 A When we received the report of the suspicious activity,
14 the company commander took a patrol out to go investigate this
15 area, yes.

16 Q Did you go on to patrol yourself?

17 A No, I didn't.

18 Q What did you do?

19 A As the First Sergeant, I was responsible for the
20 resupply. We were expecting a resupply ring to come in some
21 time that morning, so I stayed back to secure it.

22 Q All right. So let's talk a little bit about the resupply
23 process at Shkin.

24 How were supplies brought into the base?

25 A At this time, it was mainly brought in by rotor wing

1 aircraft, helicopters.

2 Q What kinds of helicopters were used to bring in the
3 supplies?

4 A Mainly a CH-47 Chinook helicopter was brought in or used
5 to bring in supplies.

6 Q Did any other kind of helicopter accompany a Chinook?

7 A Typically, accompanying the Chinook would be an AH-64
8 Apache gunship.

9 Q And I want to turn back to those particular helicopters
10 in a moment.

11 But why was it necessary that supplies be brought in
12 via helicopter?

13 A We had no secure ground locks between the two major bases
14 that we had in Afghanistan which was Bagram and Kandahar. And
15 so, the routes from those two locations, there really was no
16 roads established in 2003. And to maintain constant resupply
17 of our base, we had to get resupplied pretty much on a weekly
18 basis by lift aircraft.

19 Q What kinds of things would be brought in on the resupply?

20 A We have, in the military, we call it classes of supplies,
21 Class 1 through 9 and they had different -- whatever class of
22 supply it is. Typically we get in Class 1, which is mainly
23 food and water. Class 5 is typically ammunition. Class 8
24 would be medical type supplies.

25 So really whatever we needed to sustain ourselves to

1 include the parts to build a pump for the wells or something
2 like that, we just put in a request for supplies. And next
3 week, when the ring route would come in, the helicopters fly
4 in, they drop it off for us.

5 Q Where would the helicopters come in from, which
6 direction?

7 A It depends. If it was, excuse me, if it was coming out
8 of Kandahar, it basically would be coming from, like, the
9 north, northwest. Generally, from the northwest area. If it
10 was coming out of Bagram, it pretty much comes straight from
11 the north.

12 MS. WELLS: Your Honor, I would like to show the
13 witness what's been marked for identification as Government
14 Exhibits 254, 256 and 250.

15 THE COURT: All right.

16 Q Sir, when this comes up on your screen, can you tell me
17 if you recognize what's in this photograph?

18 A Yes, I recognize it.

19 Q What is it?

20 A That is a CH-47 Chinook helicopter.

21 Q And is this a fair and accurate representation of the
22 type of Chinook helicopter that was used to deliver supplies
23 to Shkin in April 2003?

24 A Yes, it was.

25 MS. WELLS: Move to admit 254, your Honor.

1 MR. DRATEL: No objection.

2 THE COURT: Received.

3 (Government's Exhibit 254 was received in evidence
4 as of this date.)

5 Q And taking a look at this photograph. Do you recognize
6 this?

7 A That is all the tail end of a CH-47 Chinook helicopter.

8 Q And same question.

9 Fair and accurate representation of the type of
10 helicopter used to do the resupplies?

11 A Yes, it is.

12 MS. WELLS: Move to admit.

13 THE COURT: Any objection?

14 MR. STERN: No objection.

15 THE COURT: Received.

16 (Government's Exhibit 256 was received in evidence
17 as of this date.)

18 Q And then, finally, 250 do you recognize this?

19 A That is an AH-64 Apache gunship.

20 Q Fair and accurate representation of the type of
21 helicopter used in connection with resupplies?

22 A Yes, it is.

23 MS. WELLS: Move to admit.

24 MR. STERN: No objection.

25 THE COURT: Received.

1 (Government's Exhibit 250 was received in evidence
2 as of this date.)

3 MS. WELLS: Permission to publish.

4 THE COURT: Go ahead.

5 Q All right. Now that the jury and the courtroom has this
6 image in front of them, can you tell us again which helicopter
7 is this?

8 A This is the CH-47 Chinook helicopter.

9 Q What role did the Chinook helicopter have in the resupply
10 process?

11 A That's basically the -- it's a cargo helicopter. That's
12 the one that would carry in all the supplies and all that we
13 requested.

14 Q Then turning to 256 again. Which type of helicopter is
15 this?

16 A This is the Chinook, CH-47.

17 Q And then, finally, looking at 250. Which kind is this?

18 A This is the AH-64 Apache gunship.

19 Q And now why was an Apache gunship involved in the
20 resupply process?

21 A It would, basically, just fly an escort, armed escort,
22 for the Chinooks because the Chinook helicopter really is
23 unarmed. It did carry some defensive weapons for it just for
24 defensive purpose, but it had no way to really engage a
25 threat. So if the helicopters were ever targeted from ground

1 fire from the enemy, the AH-64s would respond and destroy or
2 eliminate the target.

3 Q All right. So I want to turn back to April 25th. You
4 mentioned a moment ago that you were in charge of accepting
5 the resupply that day. As that was happening, what
6 instructions, if any, did you get give regarding the Apache
7 helicopters?

8 A Basically, as we were receiving the resupply, the
9 Chinooks touched down on landing zone, the LZ, and the Apache
10 gunships were circling overhead. What I did on this
11 particular day, since we had a patrol led by Captain Trahan
12 going out to investigate the suspicious activity by the
13 P00 site, I had the TOC contact helicopter and the Apache
14 gunships and I asked them to punish out towards the objective
15 area. I told him to make sure they reach down and give them
16 the frequency to Captain Trahan so they can communicate so he
17 could better direct them to target area that he wants them to
18 investigate.

19 So, basically, I was giving instructions for them to
20 use the helicopter as a, basically, an aerial reconnaissance
21 at this point to go out and survey the location. I mean, if
22 there was a threat out there, I didn't want Captain Trahan and
23 the patrol walking into something blindly so we had overhead
24 reconnaissance basically at this time.

25 Q Did the Apache helicopter or helicopters go out and do

1 that reconnaissance in the area where the patrol was headed?

2 A Yes, they flew out toward the objective area.

3 Q While the Apache was doing the search in that area, where
4 was the Chinook?

5 A The Chinook was on the ground when we were offloading all
6 the supplies.

7 Q All right. What, if anything, came out of the search
8 that the Apache conducted?

9 A Pretty much nothing came out of it. Nothing was seen at
10 the time.

11 Q And then what happened to the helicopters?

12 A Once we were done offload all supplies from the
13 helicopter, they lifted off and they went on to their next
14 place that they had to go drop off supplies.

15 Q So somewhere other than Shkin?

16 A Yes.

17 Q At some point in time, did you receive reports about the
18 patrol that had gone out earlier that morning with
19 Captain Trahan?

20 A Time wise, I don't remember how much time had elapsed,
21 but we were back inside the firebase sorting through the
22 supplies. I was in my room taking care of some business when
23 someone came in my room and exclaimed that we had troops in
24 contact and we had men down.

25 Q And just for us lay people, what does troops in contact

1 mean?

2 A Troops in contact is just that. It means that we have
3 soldiers that have engaged with enemy forces. And when we
4 say, "men down," it's people that are wounded or -- that are
5 wound.

6 Q What did you do in response to that report?

7 A Immediately, I told the TOC to alert the QRF, the Quick
8 Reaction Force that we had. We had the -- at the firebase
9 with us, we had the division surgeon with part of his surgical
10 team. I grabbed a PA and I grabbed a senior medic, I told the
11 QRF to grab extra Class 1 and Class 5 and throw it in the back
12 of their vehicles and we quickly launched out to link up with
13 Captain Trahan.

14 Q All right. So I just want to break down some of the
15 things that you just talked about.

16 You mentioned something called the TOC. What is
17 that?

18 A TOC is the Tactical Operations Center.

19 Q Where was that located?

20 A That was located inside the firebase.

21 Q All right. And so, you were describing the different
22 steps that you took in connection with rounding up this next
23 QRF or this next patrol.

24 You mentioned a PA, what was that a reference to?

25 A Part of the medical team that we had with us with the

1 division surgeon at the firebase, the PA is a physician's
2 assistant.

3 Q And you also said that you were bringing along with you
4 Class 1 and Class 5 supplies. What are those?

5 A Class 1 supplies is food and water. We have -- we had at
6 the firebase what we routinely would get would be cases of
7 bottled water and most of our Class 1 was boxes of MREs, Meals
8 Ready to Eat.

9 Q Class 5?

10 A And Class 5 is ammunition. I figured if we had troops in
11 contact, we'd be -- they'd be expending -- you can only carry
12 so much ammunition on you, it weighs you down. So I made the
13 assumption that they were going to be firing through a lot of
14 ammunition and they would need resupply. So instead of
15 waiting for them to tell me this needed ammunition, I just
16 loaded extra ammunition in the back of the vehicles.

17 Q And after all of those supplies were collected, who did
18 you take with you, or how many people did you take with you
19 and where did you go?

20 A We loaded up I don't remember how many vehicles. I think
21 it was like four or five vehicles we launched and we rolled
22 out the wire and we headed in the direction of where the
23 report of the troops in contact were at.

24 Q What's the wire?

25 A It's just a term that we had used. At the firebase any

1 time you left the firebase, and Firebase Shkin was a very
2 small calotte that was built up with HESCO barriers around it
3 to make it a little bit livable for the amount of people we
4 had there and the equipment that we had there. So any time we
5 went outside the gate, we refer to that as the wire.

6 Q So you headed out. And did you stop somewhere along the
7 way.

8 A Some of the reports I was receiving were pretty dire in
9 nature. So I stopped along one of the routes, along the route
10 as closely as we could to where the troops were in contact
11 outside the firebase. And, basically, I occupied a piece of
12 terrain that I deemed as defensible. It had some walls there.
13 It was a local national farmers -- another calotte with a
14 small wall there. And that's where I established the CCP and
15 so we could get casualties.

16 Q What's a CCP?

17 A CCP stands for Casualty Collection Point.

18 Q And what was the purpose of that setting that up?

19 A In the Army, the military, we refer to when we have
20 casualties, we refer to something called The Golden Hour.
21 From the time someone's injured, point of injury, the
22 survivability rate of that soldier increases if we get him to
23 a treatment facility within one hour, which is The Golden
24 Hour.

25 Firebase Shkin was pretty far from any location. We

1 were almost at The Golden Hour just in flight time alone. So
2 the Casualty Collection Point, what I figured I'd do is we set
3 it up, and as the PA was there and he was -- any casualties we
4 brought in, he would be able to give some better primary care
5 that the local line medic that we had with us he could
6 provide. We could extend The Golden Hour a little bit longer
7 and give the soldier a fighting chance.

8 Q After the Casualty Collection Point or the CCP was set up
9 was anyone brought in?

10 A Several casualties, yes, were brought into the collection
11 point.

12 Q Do you remember seeing anyone in particular?

13 A My company commander.

14 Q And who was that?

15 A Captain Trahan.

16 Q Now, once the casualties that were brought into the CCP
17 arrive, did they all stay there or was there some point where
18 they were moved to another location?

19 A No. Like I said, I had the PA with me. He was there and
20 he did a little bit better care than the line medic did
21 helping to stabilize the casualty. And because we're about --
22 Firebase Shkin was about 45-minute flight time from Kandahar.
23 It was about a 40-minute flight out of FOB Salerno, which was
24 north of us which was where additional medevac support was
25 located.

1 A decision was made not to bring aircraft, medevac
2 aircraft, to where we were at the CCP. A decision was made to
3 evac our casualties by ground back to the firebase where the
4 division surgeon is so he could start rendering care until the
5 helicopters arrived.

6 So that's basically what we did is once the PA
7 stabilized the casualty, we put them on the back of some
8 vehicles and ground evaced them back to Firebase Shkin.

9 Q Now, after the casualties had been evacuated, did you
10 hear anything happen?

11 A I'm not sure what you mean by that.

12 Q Did you receive any reports about other soldiers on the
13 field?

14 A While I was receiving all kinds of reports from the
15 ridgeline where the troops were in contact, but things started
16 to quiet down. There was one point, I cleared the casualties
17 that I had at the collection point now, and they were leaving.
18 And off to our south, couple hundred meters away, there was a
19 long burst, time gets elapsed, I'm not sure, I think it was
20 only about 20 seconds, I could be wrong.

21 Q When you say, "A long burst," a long burst of what?

22 A Automatic weapons fire. I couldn't determine if it was
23 an AK or some sort of machine gun, but I heard a burst of
24 fire. It lasted, I don't know, I thought it lasted about 15
25 or 20 seconds. And then, again, time goes by quick in these

1 conditions so I wasn't looking at my watch. Minutes later, a
2 vehicle rolled into the Casualty Collection Point. I had some
3 more casualties inside my CCP.

4 Q At some point, did you learn if one of the soldiers was
5 missing?

6 A Yes.

7 Q And what did you learn?

8 A They had told me that one our soldiers was not accounted
9 for at this point in time.

10 THE COURT: Put another question, please.

11 Q Do you remember the name of the soldier?

12 A PFC Jerod Dennis.

13 Q What instructions did you give after you learned that?

14 A As soon as they told me that we were missing a soldier,
15 Dennis was missing, I told a one element we had some MPs with
16 us, Sergeant Graf. He has vehicles, I told him to take a
17 mounted patrol. Go down the road towards the coal burners and
18 see if you could locate Dennis. I had a squad leader there,
19 Sergeant Cunningham was with me and I told him take his squad
20 and more overland from where we were same direction toward the
21 coal burners and try to close in and locate and find Dennis.

22 Q Did Sergeant Graf leave to go search for Dennis?

23 A Yes, he did.

24 Q At some point, did you see Graf again at the CCP?

25 A A little while later, he rolled back into the CCP. They

1 had found Dennis.

2 Q After that what happened?

3 A The medics, the PA, they stabilized Dennis. I talked to
4 him for a little bit trying to calm him down. We put him on
5 the back of some litters him and some of the other casualties
6 we had at that time still and we evaced him back to
7 Firebase Shkin.

8 Q After that round of evacuations, did there come some
9 point in time when you personally went out to the ridgeline?

10 A After we have had identified that all casualties had been
11 secured off the field and evaced, we pushed forward to link up
12 with the element that was in contact with the enemy.

13 Q When you arrived on the ridgeline, what generally was
14 happening?

15 A When I got up there, the contact was pretty much over.
16 Couple shots still rang out, but it was pretty much done at
17 this point in time. As I walked around and surveyed the
18 ridge, there was a little disarray. Most of the leaders were
19 casualties, and so I basically just took charge and started
20 making sure what we had to do as soldiers in case we were
21 attacked again.

22 I reorganized a perimeter. I called in some of the
23 junior leaders that were there. Some of them stepped up to be
24 team leaders and squad leaders and started doing things that
25 we were trained to do as soldiers after contact. Basically,

1 reissuing sectors of fire. I brought Class 1 food and water
2 with me. I brought ammunition and Class 5 with me. And I had
3 all the is ammo redistributed.

4 One of the things I had asked because the way
5 terrain was, I asked if any security was put out around us to
6 make sure that there was no enemy trying to counter attack or
7 get close enough to toss a grenade into the perimeter or get
8 close enough to take a good shot. I asked if there was a
9 patrol out there and they said no. So I basically told
10 them -- we identified several soldiers to go out and do a
11 quick screen around the perimeter. Go out about 150 meters
12 outside to make sure that there was no enemy still in the
13 area.

14 Q Did you, at some point, did you see if any enemy fighters
15 had been killed that day?

16 A It wasn't long after that we sent this patrol out that
17 the report came in that there was one enemy KIA not interest
18 far from where we were at.

19 Q And did you see that enemy KIA?

20 A Yes, I did.

21 Q What, if anything, do you recall about that person's
22 injuries?

23 A He had some pretty significant traumatic injuries to his
24 right leg.

25 Q Showing the witness what's in evidence as Government 282.

1 Do you recognize this?

2 A Yes, that's the enemy KIA that day.

3 Q And showing you what's in evidence as Government 101. Do
4 you recognize this?

5 A That's the same individual.

6 Q Looking at Government 101, who took that photograph?

7 A This photo was taken by myself.

8 Q When you encountered the enemy who had been killed that
9 day, what instructions did you give to the soldiers you were
10 with?

11 A Well, typically, what we do in the Army when we come
12 across an objective, we call it a POW search. If it's a
13 living or dead enemy soldier, we have to search them. In this
14 case, he was a KIA. So I called forward for the POW search
15 teams and basically told them to go through all his pockets and
16 remove all items that were on him and collect up for Intel.

17 Q What's the purpose of conducting this kind of search?

18 A Well, I mean, I don't know what's on him. I don't know
19 what he's carrying. I mean, when we go out on patrol, we have
20 notebooks, we carry maps and stuff like that with us. And so,
21 anything retrieved off the person can be deemed as
22 intelligence value based off of what it is.

23 Q Were there people that worked at Shkin who had
24 responsibility for dealing with items that had intelligence
25 value?

1 A We had some individuals there, yes.

2 Q And what about items or documents that were written in a
3 foreign language, were there any people who could process that
4 kind of information?

5 A Yes, we had some people there.

6 Q And what did they do?

7 A Well, we had a team there for signal intelligence and we
8 had a couple individuals that were, basically, his job was to
9 listen in on and do real-time translation of what they heard,
10 so they were very fluent in the language.

11 So, I mean, anything that we found that I couldn't
12 speak the language. So anything we found we basically they
13 had the security clearance. They could review it quickly for
14 us and tell us basically what was in the books or whatever.

15 Q So at the base there were interpreters?

16 A Yes, there were.

17 Q And there were intelligence analysts?

18 A Yes, there were.

19 Q All right. Showing you what's been marked for
20 identification as Government Exhibit 102.

21 Do you recognize this?

22 A Yes, I do.

23 Q What's contained in this photograph?

24 A Well, in the top portion, there is an AK --

25 Q Just generally speaking, what do you recognize this

1 photograph as?

2 A Some of the stuff that we had pulled off the enemy KIA.

3 Q Who took this photograph?

4 A I did.

5 Q And, approximately, when was it taken?

6 A It was taken after we had done the search of the KIA.

7 Q And does this fairly and accurately represent the items
8 that were taken off of the enemy KIA on April 25th?

9 A Yes, it does.

10 MS. WELLS: Your Honor, move to admit
11 Government Exhibit 102 and permission to publish.

12 THE COURT: Any objection?

13 MR. STERN: No.

14 THE COURT: Received.

15 (Government's Exhibit 102 was received in evidence
16 as of this date.)

17 Q You mentioned that this photograph contains items that
18 were taken off of the enemy KIA after the search was
19 conducted.

20 Can you please describe for us what different items
21 are contained in this photo?

22 A Well, near the top --

23 Q Just for your reference, sir, if you mark the screen,
24 you'll be able to show us different items that you're talking
25 about?

1 A There you go. That's an AK-47 assault rifle. Those are
2 AK-47 magazines that contain ammunition for the rifle. This
3 was a pocket knife that was pulled off the enemy KIA. That
4 was a hat that was on him. This was, I can't remember what it
5 was, but it was in a sealed, like, a plastic bag and this was
6 a notebook that we had recovered off of him.

7 MS. WELLS: Your Honor, may I approach the witness?

8 Q Showing the witness what's been marked for identification
9 as Government Exhibit 8.

10 (Handing to the witness.)

11 A I'm having a little trouble here. Okay.

12 Q Do you recognize that item?

13 A Yes, this is what was recovered as depicted in the
14 picture.

15 Q And how do you recognize it?

16 A Well, it's -- I mean, it's pretty much the same as you
17 could see, I marked it up. The picture, same markings on the
18 book as you could see, same -- the MCH thing on the front.
19 Looks like some sort of tower or rocket looking thing, same as
20 it is on the picture. And then, if you look on the binder,
21 the binding is kind of tore up same way as it is in the
22 picture, also.

23 MS. WELLS: Your Honor, move to admit
24 Government Exhibit 8 and permission to publish.

25 THE COURT: Any objection?

1 MR. STERN: No objection, subject to connection. It
2 hasn't yet been shown to be relevant.

3 MS. WELLS: I'm sorry.

4 THE COURT: There's a relevance objection. Let's
5 have a sidebar.

6 (Continued on the next page.)
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1 (Sidebar conference held on the record in the
2 presence of the Court and counsel, out of the hearing of the
3 jury.)

4 THE COURT: How is it relevant?

5 MS. WELLS: Your Honor, this is the book we've
6 briefed. This already we're going to have a translator who is
7 going to testify it contains the defendant's name and
8 references to missiles being fired in the days leading up to
9 April 25th.

10 THE COURT: Okay. Thank you.

11 (Sidebar discussion concludes.)

12 (Continued on the next page.)

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1 (In open court.)

2 THE COURT: It is admitted subject to connection.

3 (Government's Exhibit 8 was received in evidence as
4 of this date.)

5 Q All right. Now that the jury can see the same item that
6 we can.

7 You described a moment ago how you recognized this.
8 Can you just explain that one more time so they can see?

9 A In the previous -- on the photo that I had taken that was
10 displayed earlier, the binding on the side is kind of tore up
11 and then it has, basically, the same markings on both.

12 Q All right. Thank you. All right.

13 At some point, later in the day, did you return to
14 the Tactical Operations Center at the base?

15 A Yes. Eventually, we left the objective area. We had
16 people from a QRF that came out of Kandahar flew in. And
17 later that day, we did return all the persons from the
18 objective to Firebase Shkin.

19 Q And during the engagement that day, were any
20 U.S. soldiers' weapons lost?

21 A We did lose accountability of one M4 rifle.

22 Q Just very quickly, what's an M4 rifle?

23 A The M4 is the standard rifle that we carry in the Army.

24 Q When you returned back to the Tactical Operations Center,
25 did you take any additional photographs?

1 A All items that were recovered from that day were put out
2 for inventory and we laid them out on a table inside the TOC,
3 yes, and I took a couple photos of it.

4 Q I would like to show the witness what has been marked for
5 identification as Government Exhibits 103 and 104.

6 Sir, can you see that photograph?

7 A Yes, I do.

8 Q What is it?

9 A That's some of the items that were recovered from the
10 objective that day.

11 Q And who took this photograph?

12 A I took the photo.

13 Q Approximately when?

14 A It was that night.

15 Q Then showing you Government Exhibit 104. Do you
16 recognize this?

17 A That's some more items that were recovered from that day,
18 yes.

19 Q And who took this photograph?

20 A I took it again.

21 Q And, again, approximately when?

22 A About the same time that I took the other one at night.

23 MS. WELLS: Your Honor, permission to, excuse me,
24 move to admit 103 and 104 and permission to publish.

25 THE COURT: Any objection?

1 MR. STERN: No.

2 THE COURT: Received.

3 (Government's Exhibits 103 and 104 were received in
4 evidence as of this date.)

5 Q All right. So starting with Government Exhibit 103. Can
6 you describe for us the various items that are contained in
7 this photograph?

8 A In this photo, can I touch the --

9 Q Yes, please.

10 A Here's some those are AK-47 magazines that we recovered
11 off of the objective that day.

12 Q Are some of those magazines the same magazines that we
13 saw in the previous photo near the enemy KIA?

14 A Yes.

15 Q Please continue.

16 A Okay. Here's that pocket knife that was recovered from
17 the enemy KIA. I don't recall exactly what this is, but it
18 was some sort of an electrical device for a 9-volt battery.
19 That's lensatic compass. I don't remember what was in this
20 white box, and I don't recall what that item was there. This
21 was a device that was able to be used -- I don't know what
22 it's called, it basically measures the angle and deflexion,
23 the angle for -- it measures angles. You set something up
24 that, typically, what we found out is the enemy used it to
25 basically set up the rockets for the proper angle to shoot at

1 our firebase. And then up in this corner here, is a set of
2 prayer beads.

3 Q Then turning to Government 104, in this photograph, can
4 you walk us through the various items that are contained in
5 it?

6 A Okay. Up here is the AK -- the enemy KIA, he had had
7 rack to carry his AK-47 magazines. That's his vest. This is
8 another vest that was recovered not by the enemy KIA, but was
9 recovered that day. It's like a utility vest. It's real
10 simple, this is a roll of toilet paper. The Afghan males
11 typically wore a hat, I don't remember how to pronounce the
12 name of it, but that's a hat, cap, that they would wear. This
13 is also a cap typically worn by Pashtu individual in
14 Afghanistan.

15 Inside this cap, there are some spoons that were
16 recovered off the objective that the enemy used. They threw
17 grenades at the soldiers those were some of the spoons that we
18 had recovered that day.

19 Q What's a grenade spoon?

20 A There are several different parts to a hand grenade.
21 Basically, the main body with the grenade with the metal
22 casing and the explosive body of the grenade. It also has a
23 fuse. Has really what you would see on there was a pin and it
24 has a spoon. So at when the pin is pulled the spoon pops,
25 basically, setting the fuse and igniting the fuse and you have

1 three to five seconds to get rid of the hand grenade before
2 someone has a bad day. And so, that's just the spoons that
3 basically hit the fuse.

4 This you can barely see in the picture that's
5 canteen that we recovered that day. I don't recall what this
6 tube of what I don't remember what that was. Here's some
7 gloves. Waterproof matches and a cap. This was a pill
8 packet, I don't remember what that was. You could see here's
9 two sets of nine-volt batteries. In this image, it doesn't
10 come out very good, but this looks like that's a flashlight
11 right there. There's a set of tools that's a needle nose
12 pliers, a wrench, and a regular set of pliers. Here's from --
13 as you saw in the other picture, prayer beads and here's a
14 leather bound case.

15 Q I'm going to see if this picture is a little dark coming
16 up on the screen. Let me see if this helps us a little bit.
17 Almost did.

18 Can we clear the screen, please. All right.

19 Turning your attention back to the prayer beads that
20 you identified can you just describe generally what they look
21 like?

22 A They're typically little wooden beads around a cord.
23 And, in this case, as you could see, there's also a tassel,
24 little green tassel, that was attached to them.

25 Q Then turning your attention back to what I think you

1 called a leather bound case. If you can see that any more
2 clearly, can you describe what it looks like?

3 A Well, a leather bound case, it was a zippered leather
4 case what looks like a booklet inside of it. And on the
5 front, it had some sort of metallic emblem on the front of the
6 leather case.

7 MS. WELLS: Your Honor, permission to approach the
8 witness.

9 THE COURT: Go ahead.

10 MS. WELLS: I'm showing the witness what's been
11 marked for identification as Government Exhibits 1 and 2.

12 (Approaching the witness.)

13 (Handing to the witness.)

14 Q All right of the beginning with Government Exhibit 2. Do
15 you recognize these?

16 A These are the prayer beads.

17 Q Same ones depicted in the photograph we were just looking
18 at?

19 A Yes.

20 Q Turning to Government Exhibit 1. Do you recognize that?

21 A This is the book that was in the photo, yes.

22 Q And how do you recognize it?

23 A It's the same emblem that's in the picture and it's the
24 leather case and has the zipper as you can see in there.

25 MS. WELLS: Your Honor, I move to admit Government

1 Exhibits 1 and 2.

2 MR. STERN: No objection.

3 THE COURT: Received.

4 (Government's Exhibits 1 and 2 were received in
5 evidence as of this date.)

6 MS. WELLS: Permission to publish.

7 THE COURT: Go ahead.

8 Q Starting first with Government Exhibit 2 now that
9 everyone can see it clearly, can you just describe what this
10 item is?

11 A Those are the prayer beads.

12 Q Then turning next to Government Exhibit 1.

13 A That's the leather bound case booklet.

14 MS. WELLS: Just one moment, your Honor.

15 (Pause.)

16 MS. WELLS: Nothing further.

17 THE COURT: Any cross.

18 MR. STERN: No.

19 THE COURT: Thank you, Command Sergeant Major.

20 THE WITNESS: Yes, your Honor.

21 (Witness leaves the witness stand.

22 THE COURT: I'm inclined to adjourn for the day.

23 Any reason I shouldn't?

24 MS. WELLS: Your Honor, we have the next witness.

25 We're prepared to go or we can wait until tomorrow either way.

1 THE COURT: Are you going to finish by 4:30?

2 MS. WELLS: I believe that I can.

3 THE COURT: Let's try. Okay.

4 MS. WELLS: In that case, the Government calls
5 Dwayne McKnight.

6 THE COURT: Okay.

7 (Witness takes the witness stand.)

8 COURTROOM DEPUTY: Raise your right hand.

9

10 **DWAYNE MCKNIGHT**, called by the Government, having been first
11 duly sworn, was examined and
12 testified as follows:

13

14 THE WITNESS: I do.

15 COURTROOM DEPUTY: Please state your name for the
16 record.

17 THE WITNESS: Dwayne McKnight. D-w-a-y-n-e. Last
18 name, M-c-K-n-i-g-h-t.

19 COURTROOM DEPUTY: You may be seated.

20 THE COURT: All right. You may inquire.

21 MS. WELLS: Thank you, your Honor.

22 DIRECT EXAMINATION

23 BY MS. WELLS:

24 Q Good afternoon, sir.

25 A Hello.

1 Q Did you serve in the military?

2 A Yes.

3 Q What years?

4 A From 2000 to 2004.

5 Q What branch did you serve in?

6 A The U.S. Army.

7 Q What different ranks did you hold while you were in?

8 A Private First Class, to Sergeant.

9 Q At some point during your service, were you deployed to
10 Afghanistan?

11 A Yes.

12 Q And on April or in April through August of 2003, where
13 were you serving?

14 A In April I was at FOB Shkin.

15 MS. WELLS: Your Honor, I would like to show the
16 witness what's in evidence as Government Exhibit 5.

17 Q Do you recognize this?

18 A Yes.

19 Q What is it?

20 A That is a map that I carried when I was there.

21 Q And when you say, it's a map that you carried while you
22 there, what does it depict?

23 A The different routes that we took, the border, our FOB,
24 our base.

25 Q And why did you carry it?

1 A I carried this -- I called it by bug out map in case I
2 got separated from in unit, I could make my way back to my
3 firebase.

4 Q At what point in time did you leave Shkin?

5 A It was late July, early August timeframe.

6 Q And other than the personal belongings that you went to
7 Shkin with did you bring anything else home with you?

8 A Yes.

9 Q What were those items or what were those things?

10 A I brought back a knife, a handheld Koran, what we called
11 a chest rack, and some prayer beads.

12 Q Where did those items that you just described where did
13 you get them from?

14 A They were in a cardboard box in our supply room as Shkin.

15 Q And about when did you get these items -- or should I
16 said when you saw them in the cardboard box, what did you do?

17 A I asked the supply sergeant at that time if I couldn't
18 take them.

19 Q And about when was this?

20 A This was right before we pulled out of Shkin. Again,
21 late July, early August.

22 MS. WELLS: Your Honor, may I approach the witness.

23 THE COURT: You may.

24 (Approaching the witness.)

25 Q Beginning here with Government Exhibit 1. What is this?

1 A This is the handheld Koran that I took.

2 Q And Government Exhibit 2, what are those?

3 A The prayer beads.

4 Q And Government Exhibit 3?

5 A What I'd say was a chest rack.

6 Q And finally, Government Exhibit 4?

7 A The knife that I took.

8 MS. WELLS: Your Honor, I move to admit
9 Government Exhibit also 3 and 4 and request permission to
10 publish.

11 MR. STERN: No objection.

12 THE COURT: No objection. Received.

13 (Government's Exhibits 3 and 4 were received in
14 evidence as of this date.)

15 MS. WELLS: All right.

16 Q Just taking these in reverse order. What is this?

17 A That is a knife that I took.

18 Q And how do you recognize it?

19 A You could pull it out of the sheathe. There is a stamp
20 on the blade itself that says steel and then there's a bird
21 flying down. That's what I recognize.

22 Q Then turning to Government Exhibit 3. Tell us again what
23 this item is called?

24 A We called to a chest rack, but it holds ammunition of
25 like an AK-47.

1 Q Where is the ammunition held?

2 A In these pouches. There should be three if you can
3 unfold to. There you go. There's three large sleeves that
4 you can put AK-47 magazines.

5 Q These pieces?

6 A Yes.

7 Q Okay. Then turning to Government Exhibit 2. What are
8 these?

9 A Those are the prayer beads.

10 Q Then finally what is Government Exhibit 1?

11 A That's the Koran.

12 Q And how do you recognize the Koran?

13 A I recognize it because first it's handheld it's very
14 small and second the if you look at the cover of the Koran
15 it's sowed in and there's an actual zipper on the Koran.

16 Q After you collected these four items from that cardboard
17 box at Shkin, did you keep them?

18 A I did.

19 Q And at some point did the FBI contact you in connection
20 with this case?

21 A Yes.

22 Q About when was that?

23 A 2012.

24 Q And after the FBI contacted you, what did you do with
25 these items?

1 A I went to the FBI office where I live and I gave them
2 these items.

3 MS. WELLS: Nothing further.

4 THE COURT: Any cross-examination.

5 MR. DRATEL: No, your Honor.

6 THE COURT: All right. You may step down. Thank
7 you.

8 THE WITNESS: All right, sir.

9 (Witness leaves the witness stand.)

10 THE COURT: All right. Ladies and gentlemen, we
11 will adjourn for the evening. I need to remind you, you heard
12 a lot of information today please don't check any of it out on
13 the Internet don't post anything about this case. No
14 searches, put the case completely out of mind. Don't talk to
15 anybody about it. Stay away media exposure about the case if
16 there is any. Get a night's sleep.

17 I will tell you we're making excellent progress. I
18 can't guarantee I anything I'm expecting we'll get you out
19 sooner than we originally anticipated.

20 So have a good night, we'll see you in the morning.

21 (Jury exits courtroom at 4:22 p.m.)

22 THE COURT: Anything we need to talk about?

23 MR. ARIAIL: No, your Honor.

24 THE COURT: Amazing. See you tomorrow morning at
25 9:30 unless something comes up then file a notice and if I get

1 the notice we'll meet at 9:0.

2 MR. STERN: If we can get the notice before
3 8:27 a.m. we'd have time to think about it.

4 THE COURT: I did think letter was rather late.

5 MR. ARIAIL: I was drafting entire letter about
6 whole separate subject and had stopped and started the second
7 one, your Honor.

8 THE COURT: Let me also mention this. If we are
9 moving fast that we thought we would, and it seems to me that
10 we are, then I think I'm going to need proposed instructions
11 from the Government on Monday probably.

12 MR. ARIAIL: Sounds reasonable, your Honor.

13 THE COURT: Okay. Let's try for that.

14 MS. KELLMAN: Your Honor I did have one very minor
15 thing. I am preparing an order with a cover letter for the
16 Court to direct that the MDC preserve the tape recordings that
17 are normally made inside our client's cell from the beginning
18 of the trial 'til the end of the trial. I've already
19 discussed it with Mr. Johnson he's given me an instruction I
20 think it would helpful to have an order from the Court.

21 THE COURT: Yes, I would sign it. Thank you.

22 (WHEREUPON, this matter was adjourned to March 9,
23 2017, at 9:30 a.m.)

24 * * *

25

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X	:	
UNITED STATES OF AMERICA,	:	12-CR-134(BMC)
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
IBRAHIM SULEIMAN ADNAN	:	Thursday, March 9, 2017
ADAM HARUN HAUSA,	:	9:30 a.m.
	:	
Defendant.	:	
- - - - -X	:	

TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE BRIAN M. COGAN
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by computerized stenography. Transcript
produced by Computer-aided Transcription.

1 (In open court.)

2 (Defendant not present in open court.)

3 COURTROOM DEPUTY: All rise. The United States
4 District Court for the Eastern District of New York is now in
5 session. The Honorable Brian M. Cogan is now presiding.

6 (Honorable Brian M. Cogan takes the bench.)

7 COURTROOM DEPUTY: Calling criminal cause for jury
8 trial in Docket No. 12-CR-134, *United States of America*
9 *against Ibrahim Suleiman Adnan Adam Harun Hausa*.

10 Counsel, please note your appearances for the
11 record.

12 MR. ARIAIL: For the United States of America,
13 Assistant United States Attorney Shreve Ariail, Melody Wells,
14 and Matt Jacobs. With us at counsel table are Joe Kaster from
15 the Department of Justice and Special Agent Greg Paciorek.

16 Good morning, Your Honor.

17 MS. KELLMAN: Susan Kellman, David Stern, and Joshua
18 Dratel for Mr. Hausa.

19 Good morning, Your Honor.

20 COURTROOM DEPUTY: All rise.

21 THE COURT: Good morning. Let's have the jury.

22 COURTROOM DEPUTY: Jury entering.

23 (Jury enters courtroom at 10:11 a.m.)

24 THE COURT: All right. Everyone be seated. Good
25 morning, ladies and gentlemen.

2 THE COURT: Off to a little late start this morning.
3 These things happen in New York. I know you're all trying to
4 get here on time as hard as you can, so I just ask you to keep
5 trying.

8 MR. KASTER: Yes, Your Honor. Good morning.

11 THE COURT: All right.

13 | COURTROOM DEPUTY: Please raise your right hand.

17 THE WITNESS: I do.

20 THE WITNESS: My name is Nicole Bagley.

22 | COURTROOM DEPUTY: You may be seated.

24 MR. KASTER: Thank you, your Honor.

Anthony D. Frisolone, FAPR, RDR, CRR, CRI, CSR
Official Court Reporter

1 DIRECT EXAMINATION

2 BY MR. KASTER:

3 Q Good morning, Ms. Bagley.

4 A Good morning.

5 Q Where do you work?

6 A I am employed by the Federal Bureau of Investigation
7 Laboratory Division.

8 Q What do you do for the FBI?

9 A I work in the Latent Print Operations Unit.

10 Q How long have you worked in the Latent Print Operations
11 Unit?

12 A I have been there for almost six years now.

13 Q And did you work for the FBI prior to that?

14 A Yes, I did. In total I've been with the Bureau for
15 almost eight years.

16 Q Ms. Bagley, do you have a college degree?

17 A Yes. I have a Bachelor of Science in Forensic and
18 Investigative Science from West Virginia University.

19 Q Ms. Bagley, let me just ask you very briefly.

20 With regards to your job as a forensic examiner at
21 the FBI lab, what are your primary duties?

22 A On a daily basis, I receive an inventory evidence and
23 also process it for the development of latent fingerprints.
24 If I detect latent prints, and they end up being of value,
25 I'll go on to compare those latents to the prints of known

1 individual or search them in our automated database and I
2 issue report as to those findings.

3 Q In order to become a fingerprint examiner, did you have
4 to undertake any specialized training at the FBI?

5 A Yes. The FBI Latent Print Operations Unit has an
6 approximate 18-month training program. Throughout the course
7 of this training, it involves classroom lectures, practical
8 exercises, oral boards, moot courts, covering topics such as
9 the biology of friction ridge skin as well as how to
10 appropriately process items of evidence for the detection of
11 latent prints.

12 Q Did you complete this 18-month program?

13 A Yes, sir, I did.

14 Q Did you work by yourself, or did you work under the
15 supervision of a superior examiner?

16 A For about one year during that training, I worked cases
17 under the mentorship of two other qualified examiners.

18 Q Approximately how many latent prints did you need to
19 examine before being qualified as a fingerprint examiner for
20 the FBI?

21 A At least 100,000 comparisons.

22 Q Was there a final exam to pass before you became
23 qualified to be an examiner for the FBI?

24 A Yes, there was a cumulative exam, and I did successfully
25 pass it to become qualified.

1 Q In all your years as a fingerprint examiner for the FBI
2 lab at Quantico, give us a ballpark figure for how many latent
3 prints you've examined during your career.

4 A The 100,000 done during training, plus any subsequent
5 comparisons done during case work that I currently work, I'd
6 say approximately 200,000.

7 Q Have you previously ever been qualified to testify as a
8 fingerprint examiner in court?

9 A Yes, I have.

10 Q How many times?

11 A Three times.

12 MR. KASTER: At this time, the Government would
13 offer Ms. Bagley as a witness in the forensic science of
14 latent fingerprint analysis and examination.

15 THE COURT: Any objection?

16 MR. STERN: No.

17 THE COURT: She may testify as to her opinions.

18 MR. KASTER: Thank you, your Honor.

19 Q Ms. Bagley, before we get to discussing particular
20 examinations in this case, I want to ask you a few questions
21 regarding some critical terms and concepts involved in
22 fingerprint analysis, okay?

23 A All right.

24 Q Would you define briefly for the jury what is a latent
25 print?

1 A If you were to look at the palmar service on your hand as
2 well as the soles of the feet, there's a specialized type of
3 skin that has raised portion which are known as friction
4 ridges. And a latent print would be the unintentional
5 reproduction of that friction ridge arrangement which can
6 happen when, throughout the course of the day, those ridges
7 can become coated in substances such as sweat, oils, or dirt.

8 And then there's the possibility that when a person
9 then touches an object, that they would be transferring part
10 of that friction ridge arrangement onto that object.

11 Q Could you explain to the jury the concepts of persistence
12 and uniqueness as they apply to the field of fingerprint
13 examination?

14 A Fingerprints are both persistent and unique. They are
15 persistent in the fact that they are formed in the womb before
16 birth, and they remain unchanged throughout life barring any
17 permanent scarring or decomposition after death.

18 They are unique in the fact that no two individuals
19 share the same friction ridge arrangement as well as even
20 within the same person from finger to finger those
21 arrangements are different and even in small areas as well.

22 MR. KASTER: Your Honor, I have marked for
23 identification Government Exhibit No. 59.

24 With the Court's permission I would like to show it
25 to the witness.

1 THE COURT: Okay.

2 Q Ms. Bagley, would you take a moment to look at
3 Government's Exhibit 59. It's a one-page document with a
4 diagram on the top and bottom.

5 Would you look at it and tell me when you're done
6 looking at it.

7 A Yes.

8 Q Is Government's Exhibit 59 a fair and accurate depiction
9 of a generic fingerprint pattern as well as the cross-section
10 of skin structure?

11 A Yes, it is.

12 Q Would this exhibit be helpful to you in explaining some
13 of these concepts to the jury?

14 A It would be.

15 MR. KASTER: Your Honor, at this time, I offer
16 Government Exhibit 59 into evidence.

17 MR. STERN: No objection.

18 THE COURT: Received.

19 (Government's Exhibit 59 was received in evidence
20 as of this date.)

21 MR. KASTER: May I publish it to the jury, your
22 Honor.

23 THE COURT: Yes.

24 (The above-referred to exhibit was published in
25 open court.)

1 Q Ms. Bagley, let's start first very briefly with the
2 bottom half of this exhibit and ask you, right above the
3 exhibit sticker what is this a diagram of?

4 A This is a diagram of a cross-section of that specialized
5 skin I had mentioned, the friction ridge skin.

6 Q Could you point to any area that shows friction ridges on
7 this diagram?

8 A Yes. If I can direct your attention to the -- there we
9 go. The top portion, you can see that it's kind of three
10 dimensional, almost looks like a mountain range. Those raised
11 portions that you're seeing are the friction ridges that we're
12 talking about, and the valleys in between are what are known
13 as furrows.

14 Q And what, if any, relationship is there between the sweat
15 glands underneath the surface of the skin and the friction
16 ridges?

17 A I had discussed how throughout the course of the day,
18 it's possible for the ridges to become coated in certain
19 substances. One of those is possibility of sweat. The
20 structure of the skin, in the dermal layer, there are sweat
21 glands and ducts. And if someone were to start sweating, that
22 sweat would travel up to the friction ridge arrangement, and
23 if you look here, those lines are pointing to the pores which
24 is where the sweat would come out of and then coat those
25 ridges.

1 Q I'm now going to draw your attention to the top diagram
2 on Government's Exhibit 59.

3 What does that diagram depict?

4 A This is a blown-up portion of what is either a known
5 print or a latent fingerprint, and just displays some of the
6 typical characteristics I look at when comparing or analyzing
7 latent fingerprint.

8 Q Can you point out to the jury an example of a friction
9 ridge that is a bifurcation?

10 A Yes. Bifurcation is when a ridge flows and then splits
11 into two and that can be seen in points eight, ten, and
12 eleven.

13 Q What do points nine and three display?

14 A Points nine and three are what is known as a dot. And
15 this is a single-ridge unit which is as wide as it is long.
16 You can see it resembles the period at the end of a sentence.

17 Q Finally, could you point to an enclosure?

18 A An enclosure can be seen this point six, and this could
19 also be viewed as two bifurcations flowing toward one another
20 and then opening up to close into that enclosure.

21 Q When you encounter latent prints in your work, are these
22 prints typically portion formation of fingerprints or fully
23 formed fingerprints?

24 A Latent prints are fragmentary in nature.

25 Q Why is that?

1 A Due to several factors. It could be the amount of
2 substance that's coating the ridges. It could be the surface
3 area that comes into contact with an item; for example, if
4 just the tip of a finger touches an item, that would only
5 leaving a partial reproduction of the friction ridge arrange
6 behind.

7 Q When an individual leave a latent print on an object,
8 what factors go into the durability of that print as to
9 remains on that object?

10 A That could also again be several factors. It could be
11 the nature of the item itself, whether it's a surface that
12 prints are easily wiped away on, or if it's not could also be
13 the circumstances under which the print was left. Something
14 as the weather conditions, whether it's humid or hot, or
15 whether that evidence is subsequently exposed to any kind of
16 water if it's submerged, or it gets handled aggressively that
17 also wipes something off.

18 Q What, if any, reports are there in the literature
19 regarding the durability of latent prints on paper objects?

20 A Paper object would be something that's considered a
21 porous surface. And by porous, I mean that the latent
22 residues get absorbed into that surface as opposed to sitting
23 on top of it.

24 So since the latent residues get absorbed into
25 paper, they're much more robust as far as the ability for them

1 to be retained inside of that object.

2 Q I would like to ask you to briefly describe just some of
3 the techniques that you utilize at the FBI lab at Quantico to
4 identify or enhance a latent print on an object that's
5 submitted for your examination.

6 A Every item of evidence that gets submitted to the lab is
7 subjected to, first, a visual examination. That would be when
8 we just pick the item up without any kind of fancy involvement
9 of chemicals or lights and just use ambient or white flash
10 light to obliquely light it and see if there is anything on
11 the surface. A good example of that would be a lot of people
12 have touch screen cell phones. If you have a greasy hand and
13 you touch it, if you just tilt it in the light, you can see
14 that print pretty well.

15 All items also go through forensic light source
16 examinations which can include a laser or ultraviolet light,
17 and those get used with Vario Filter goggles with can use
18 different colors depending upon the wavelength of light that's
19 getting use.

20 Q Besides light-based techniques, are there other types of
21 techniques that you use?

22 A There are also various chemicals that can be used as well
23 as powders.

24 Q Next, would you define the term "inked print"?

25 A An inked print, or a known print, is the intentional

1 recording of the friction ridge arrangement on the end joint
2 of the finger. This is typically by done by rolling out
3 printers ink and then rolling the finger nail bed to nail bed
4 in the ink and then repeating that motion onto a contrasting
5 background nail bed to nail bed such as a standard fingerprint
6 card. This is done to maintain a permanent record of
7 identity.

8 MR. KASTER: Your Honor, at this time, I would ask
9 the Court's permission to read a stipulation into the record.
10 It's Government's Exhibit 317.

11 THE COURT: All right. That's admitted.

12 (Government's Exhibit 317 was received in evidence
13 as of this date.)

14 THE COURT: Go ahead.

15 MR. KASTER: The parties in this case agree that,
16 and stipulate, that Government's Exhibit 60 contains true and
17 accurate impressions of the defendant's fingerprints which
18 were properly obtained from the defendant on October 4, 2012,
19 in New York, New York.

20 And, for the record, I am displaying to the jury the
21 first page of Government's Exhibit 317.

22 Your Honor, next I would like to show to Ms. Bagley
23 what's been marked for identification as Government's Exhibit
24 60.

25 THE COURT: Go ahead.

1 MR. KASTER: Thank you.

2 Q This is a two-page document, Ms. Bagley. Would you take
3 a look at both the first page and the second page and tell me
4 when you're done looking at it.

5 A I'm done with the first page. All right.

6 Q Are you finished?

7 A Yes, sir.

8 Q Do you recognize Government's Exhibit 60?

9 A Yes, I do.

10 Q What is it?

11 A Government's Exhibit 60 is a known fingerprint card
12 bearing the name Ibrahim S. Harun that was submitted to me at
13 the FBI laboratory.

14 MR. KASTER: Your Honor, at this time, I offer into
15 evidence Government's Exhibit 60.

16 THE COURT: Any objection?

17 MR. STERN: No.

18 THE COURT: Received.

19 (Government's Exhibit 60 was received in evidence
20 as of this date.)

21 Q Ms. Bagley, what, if anything, did you do with
22 Government's Exhibit 60 as part of your work in this case.

23 At a very general level, did you use it?

24 A Generally, yes, it was used for comparison purposes to
25 latent prints.

1 Q I'm going to get back to Government's Exhibit 60 in a
2 moment, but I just want to finish with a couple final
3 questions regarding the general processes that you use at
4 Quantico.

5 Could you describe for the jury the basic
6 methodology for comparing and analyzing a latent print to a
7 known print in your work?

8 A The methodology I use is known as ACE-V. It's A-C-E-V.
9 It's an acronym that stands for the series of steps that I
10 have take to conduct comparisons and analysis of latent
11 prints.

12 Q Briefly take each one of those letters one at a time.

13 What does the A stand for?

14 A A is for analysis. And that's the general information
15 gathering phase when looking at a latent by itself. Looking
16 at overall ridge flow, the clarity and the quality of the
17 print, and determining if it's of value. And when I say, "of
18 value," I mean that there is enough quantity and quality of
19 information; that if given the corresponding area of the known
20 card that was the source of that latent print, I would be able
21 to make an identification.

22 Q What does the C stand for?

23 A C is the comparison part. And that would be once a
24 latent print is claimed to be of value, we would move on to
25 comparison which is when I would then put the latent print

1 side by side with the known card to look for similarities and
2 differences between the prints.

3 Q Next, what does the E stand for?

4 A The evaluation phase is where I would come to one of
5 three conclusions. And those could be identification,
6 exclusion, or inconclusive.

7 Q Briefly define what those three terms mean?

8 A An identification would be that the latent print came
9 from the same source as the known print. An exclusion means
10 that the latent print was a not left by the same source of the
11 known print. And an inconclusive would mean that there's not
12 the corresponding area on the known card recorded.

13 For example, I had mentioned touching the object and
14 leaving the extreme tip of a finger. That's not something
15 that's typically recorded on a known fingerprint card, so I
16 won't have that area available to me to compare so that would
17 be inconclusive.

18 Q Generally speaking, how do you receive objects at
19 Quantico from the various field offices in order to conduct an
20 examination?

21 A The laboratory is a request-driven laboratory. So we
22 would have to receive a request specifically from federal
23 agency, local or state in the field, and those would be
24 considered contributors. So the contributor would have to
25 draft what they want done with the evidence and send it in to

1 the laboratory.

2 The evidence would then be received by someone known
3 as a request coordinator, and their job is to look at the
4 evidence and break it down into what various units it needs to
5 go to for examinations in the laboratory. And then if it gets
6 designated as needing latent print exams, that would obviously
7 come to me.

8 Q Ms. Bagley, I apologize, I may have interrupted your
9 summary of the methodology.

10 Did you define the V in the description for the
11 jury?

12 A No, sir, I did not. Excuse me.

13 The V part of ACE-V is for verification. And that
14 would be when the print and the known print, so the latent and
15 the known, go to another qualified examiner and they perform
16 their own separate ACE on that comparison to come to their own
17 conclusion.

18 Q Finally what role, if any, does the taking of photos of
19 latent prints factor into your examination of latent prints
20 for cases?

21 A So within the laboratory when we detect a latent print,
22 we always stop the processing and have that latent print -- if
23 we think it's potentially of value -- captured
24 photographically. We don't actually compare off of the object
25 itself. So if I detect a latent print on this picture, I'm

1 not going to take this picture back to my desk and compare
2 directly off of it. I would have it photographically captured
3 and then I would compare it off of the photograph of that
4 print.

5 Q All right. Ms. Bagley, let's turn now to your
6 examination analysis that you did in this case.

7 MR. KASTER: Your Honor, with the Court's
8 permission, I would like to show the witness what's already
9 been admitted into evidence as Government's Exhibit No. 1.

10 THE COURT: All right. Go ahead.

11 Q Ms. Bagley, do you recognize Government's Exhibit No. 1?

12 A Yes, I do.

13 Q What do you recognize it to be?

14 A This is a Koran that was submitted to the laboratory for
15 exams.

16 Q I'm going to turn the cover and show you the first couple
17 pages of the Koran.

18 Could you explain to the jury why some of these
19 pages have a coloration to them?

20 A Yes. I had discussed the various processes that can be
21 used some of them are chemicals. The reason that some of the
22 pages appear to be pink or purple tinged is because I used
23 chemicals known as Ninhydrin and DFO on the first few pages of
24 this book. And those -- the point of those chemicals is it
25 interacts with the amino acids that are present in the sweat

1 of latent residues. And when it does interact with it, it
2 turns it into a bright purple.

3 So the prints that are developed from Ninhydrin
4 would be a visual bright purple. Whereas, DFO is a
5 fluorescent process. So those would need to be made visible
6 with a laser.

7 Q And just going further into Government's Exhibit No. 1.

8 With regards to the pages that don't have the
9 coloration, why is that?

10 A The pages more towards the center were further away from
11 where the Ninhydrin was applied. So those were strictly
12 processed with DFO which, again, is a fluorescent process.

13 So that was done in an attempt to be least
14 destructive to the book as possible. And, again, it would
15 have to be illuminated with a laser to be able to see any
16 prints that were involved with the DFO, it wouldn't be visual.

17 (Continued on the next page.)
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1 DIRECT EXAMINATION (continued)

2 BY MR. KASTER:

3 Q Was this Koran, Government's Exhibit Number 1, submitted
4 to you for examination once or more than once?

5 A It was received on two separate occasions at the
6 laboratory.

7 Q Let's first talk briefly about the first time.

8 When was the first time that you were asked to
9 analyze Government's Exhibit Number 1?

10 A The first submission I received in April of 2013.

11 Q Generally describe for the jury the type of examination
12 you did in April of 2013 regarding Government's Exhibit
13 Number 1?

14 A Are you referring to the chemical processes that were
15 used?

16 Q Yes.

17 A As you can see, the Koran has a leather bound case, which
18 would be considered a non-porous item. So that's where the
19 latent residue sit on top. Non-porous get subjected to
20 different processes than porous, which is the paper.

21 So for the purposes of processing the cover, it was,
22 as I had said, everything gets a visual and light source exam.
23 It was also glued, and there was also a dye stain applied.

24 Q What do you mean by "glued"?

25 A Superglue fuming, which is a process that we use.

1 Q Could you describe very briefly what that is?

2 A Yes. If you subject superglue to high heat, it turns
3 into a gas, which would then adhere to any latent residues
4 which would be on an object and perform -- and it would result
5 in a hard plasticized print that you would be able to see on
6 that.

7 Q Were you able to capture any latent prints during this
8 first examination in April of 2013?

9 A During the examination of the paper portion of the Koran,
10 there were some latent prints of value that were detected,
11 yes.

12 Q And what did you do once you found latent prints of
13 value?

14 A Once I found latent prints of value, those were captured
15 photographically, and then those were analyzed, which is that
16 A in ACE-V. Four of them were found to be of value, meaning I
17 could move on to the comparison phase of those, and when those
18 prints were compared to what was shown to you as
19 Government Exhibit 60, which was that known fingerprint card
20 bearing the name "Ibrahim S. Harun," there was one fingerprint
21 that was identified to Government Exhibit 60.

22 Q What about the second examination, when did that take
23 place?

24 A The second examination wasn't until April of 2016.

25 Q And very briefly, describe for the jury how that

1 examination differed from the first one?

2 A During the first submission, the instruction from the
3 contributor, which was the agent that had submitted the item
4 of evidence, was to use the least destructive processing
5 possible. They wanted to maintain the integrity of the how
6 the book looked. So in the first submission, the paper inside
7 the Koran wasn't fully processed. There were only partial
8 pages that were processed. The very inner part of the book
9 wasn't processed on the first submission.

10 Whereas in the second submission in April of 2016,
11 the request was still to use least destructive processing, so
12 that's why that DFO was used, because you would need to use a
13 laser to visualize it. It's not going to look out of the
14 ordinary to the naked eye. And the rest of the pages that
15 were on the inside were processed with DFO in the second
16 submission. So the pages were processed in their entirety
17 then in the second submission.

18 Q What were the results of the processing during the second
19 submission?

20 A After the rest of the pages were processed, there were
21 five additional latent prints of value. Four were
22 fingerprints and one was a latent impression. An impression
23 is something that as an examiner I can't tell if it came from
24 the fingertip or the finger -- the end joint of the finger
25 itself. It could be from the palm or perhaps like the end

1 joint of a finger. So it would be called an impression
2 because we can't tell anatomically where it came from.

3 Q What, if any, comparison analysis did you do in regards
4 to those latent prints?

5 A The latent prints, the five latent prints in the second
6 submission were compared to, again, Government Exhibit 60, as
7 well as to a known fingerprint card of an individual by the
8 name of Dwayne McKnight and the end result was that four
9 fingerprints out of those five new ones were identified again
10 to Government Exhibit 60, which is the known fingerprint card
11 bearing the name Ibrahim S. Harun.

12 MR. KASTER: Your Honor, I'd ask the Court's
13 permission to show to the witness what's been marked for
14 identification as Government's Exhibit 61.

15 THE COURT: Go ahead.

16 (The above-referred to exhibit was published to the
17 witness.)

18 Q Ms. Bagley, Government Exhibit 61 is on the Elmo. It's
19 A-6-page document. I will briefly flip through the pages. If
20 you need more time to look at it, just let me know.

21 A Okay.

22 (Pause.)

23 Q Do you recognize Government's Exhibit 61?

24 A Yes, I do.

25 Q What do you recognize it to be?

1 A Government Exhibit 61 are copies of my exam photos. I
2 had said I compare off of photographs, and these are the
3 photographs that I used during my analysis and comparison, and
4 these specific photographs are the five identifications that
5 were made to Government's Exhibit 60.

6 Q Does Government's Exhibit 61 fairly and accurately show
7 the exam photos that you used when you made those matches?

8 A It does.

9 MR. KASTER: Your Honor, I'd offer into evidence
10 Government's Exhibit 61 at this time.

11 MR. STERN: No objection.

12 THE COURT: Received.

13 (Government's Exhibit 61 was received in evidence.)

14 MR. KASTER: Your Honor, with the Court's
15 permission, I would like to just publish a couple of pages of
16 this document.

17 THE COURT: Okay.

18 BY MR. KASTER:

19 Q Ms. Bagley, I'm going to ask you to just look first at
20 Government's Exhibit 61, page 1. And since it's a little bit
21 too large for the Elmo, I'm going to move it up and down a
22 little bit. But you see the exhibit sticker at the bottom
23 right-hand corner, right?

24 (The above-referred to exhibit was published.)

25 A Yes.

1 Q Okay. Can you explain to the jury the four photos that
2 are on this page, what are they?

3 A So, this is displaying the identification that was made
4 in the first submission. If you look in the upper left-hand
5 corner, that is the photograph that I personally produced.
6 There is, you can see, a horseshoe structure that's drawn, and
7 that's drawn around the fingerprint that was claimed of value.

8 Q Feel free if you want to touch this screen in front of
9 you if you want to mark anything.

10 A (Marking.)

11 Q Thank you.

12 A Then if you were to look on that photo right there
13 (indicating), that is where we designate the individual who
14 the identification was made to with a finger number. In this
15 case, it was the number 2 finger which is the right index
16 finger, and as well as a unique identifying number.

17 Q There are various initials in writing on the borders of
18 this page.

19 Do you recognize those initials?

20 A Correct. If you look in the upper right-hand corner of
21 that specific photograph, those are my initials.

22 Q How about the other three photos on the first page, what
23 are they showing us?

24 A The upper right corner is the verifier's photo. So we
25 had talked about the V and ACE-V is when another qualified

1 examiner does another separate analysis, comparison and
2 evaluation. So that is the verifier's photograph. And in the
3 bottom left is the photograph from the blind verifier.

4 Q Who was the blind verifier as part of the protocol?

5 A Yes, the difference between verification and blind
6 verification. In verification, when the other qualified
7 examiner gets the photograph and the known card to do the
8 comparison again, they're aware of what my conclusion was.

9 So, the verifier would have known that I had already
10 identified it to the number 2 finger. Whereas blind
11 verification, the other examiner is unaware of the
12 circumstances of the case and of what my conclusion was. So
13 they're just given a clean copy of the photograph, as well as
14 a known card, and told to come to their own conclusion.

15 Q I'm going now just to turn briefly to the third page of
16 Government Exhibit 61, and ask you with regards to these three
17 photos, could you explain briefly to the jury what they are
18 photos of?

19 A Yes. Again, the upper left corner is the exam photo that
20 I personally generated, and the upper right-hand corner again
21 is a verification photo done by another qualified examiner.
22 And the photograph at the bottom is just a clean, unmarked
23 copy so that you can see what it looks like that we're looking
24 at before we start actually putting the marks on it.

25 Q Now, during your examination and analysis of the latent

1 prints that were in these photographs from the Koran, why do
2 you use black and white photos?

3 A Yes. So, I had mentioned that DF0 is fluorescent process
4 and gets visualized with a laser. So, to the individual's eye
5 when they're visualizing it with the laser, it will appear to
6 be a bright orange because an orange filter is used with the
7 laser.

8 The reason that we have those converted into a black
9 and white image is if you were to look at a standard
10 fingerprint card, such as Government Exhibit 60 which was that
11 known fingerprint card, those typically appear in black and
12 white. So we changed the latent into a black and white image
13 just so it's essentially easy to go back and forth between the
14 two.

15 MR. KASTER: Your Honor, at this time, I'd like to
16 show the witness what's been marked for identification as
17 Government Exhibit 62, 63, 64, 65, and 66.

18 THE COURT: Go ahead.

19 MR. KASTER: I'm going to put all these on there and
20 I'll flip through them, and tell me if you need any more time
21 in looking at them, okay.

22 Government's Exhibit 62.

23 (The above-referred to exhibit was published.)

24 MR. KASTER: Finally, Government's Exhibit 66.

25 (The above-referred to exhibit was published.)

1 Q Do you recognize these five exhibits, Ms. Bagley?

2 A Yes. Those are printed out enlargements of what would
3 have been the original captures of the latent prints. So, if
4 you're able to look at them, those appear orange, as I had
5 said, because those are the original captures done of the
6 laser with the orange barrier filter.

7 Q And do these five exhibits fairly and accurately show
8 color photos of the latent prints that were used in your
9 examination?

10 A They do, yes.

11 MR. KASTER: Your Honor, at this time, I'd offer
12 into evidence Government's Exhibits 62, 63, 64, 65 and 66.

13 MR. STERN: No objection.

14 THE COURT: Received.

15 (Government's Exhibit 62, 63, 64, 65 and 66 were
16 received in evidence.)

17 BY MR. KASTER:

18 Q All right. Ms. Bagley, with the Court's permission, I'd
19 like to publish just a couple of them to the jury. I'm going
20 to show you what's been received in evidence as Government's
21 Exhibit 62.

22 (The above-referred to exhibit was published.)

23 Q And using the touchscreen in front of you, can you
24 indicate where the latent print is on this photo?

25 A Yes. If I can draw your attention to this region

1 (indicating), that's where the friction ridge arrangement in
2 question is, and also if you look at what's known as a Q-tag,
3 you'll see the process used right here is the DF0 laser that
4 we had discussed.

5 Q Now, when you were examining the Koran, did you mark the
6 pages in any way, or not, in terms of did you number them?

7 A No, I did not manually number any of the pages.

8 Q And secondly, let me show you Government's Exhibit 64
9 that's been received into evidence.

10 (The above-referred to exhibit was published.)

11 Q With regards to this page, what is this photo showing us?

12 A This is another latent print that was developed and
13 photographically captured, and in this region is where you can
14 see the friction ridge arrangement in question (indicating.)

15 Q Now, in your analysis of the various latent prints that
16 you matched to the defendant, did you apply the ACE-V
17 methodology throughout?

18 A Yes.

19 Q And based on your training and experience as a
20 fingerprint examiner, in all the examinations that you
21 conducted in this case, how many latent prints in total were
22 found on the Koran, Government Exhibit 1, that matched the
23 defendant's known prints?

24 A There were five total latent fingerprints that were
25 identified to Government Exhibit 60.

1 MR. KASTER: Thank you, your Honor. I pass the
2 witness.

3 THE COURT: All right. Any cross?

4 MR. STERN: No.

5 THE COURT: All right. You may step down. Thank
6 you, very much.

7 (The witness leaves the witness stand.)

8 THE COURT: Government's next witness?

9 MR. KASTER: Yes. Thank you, your Honor.

10 At this time, the Government will call Aiyesha
11 Khawaja to the stand, please.

12 (Aiyesha Khawaja enters the courtroom and takes the
13 witness stand.)

14 COURTROOM DEPUTY: Please raise your right hand.

15 AIYESHA KHAWAJA,

16 called by the Government, having been first duly
17 sworn, was examined and testified as follows:

18 COURTROOM DEPUTY: Please state and spell your name
19 for the record.

20 THE WITNESS: Aiyesha Khawaja.

21 COURTROOM DEPUTY: Could you please spell it?

22 THE WITNESS: A-I-Y-E-S-H-A, last name
23 K-H-A-W-A-J-A.

24 COURTROOM DEPUTY: Thank you. You may be seated.

25 THE COURT: All right. Please proceed.

1 MR. KASTER: Thank you, your Honor.

2 DIRECT EXAMINATION

3 BY MR. KASTER:

4 Q Good morning, Ms. Khawaja.

5 A Good morning.

6 Q Where are you employed?

7 A I work for FBI.

8 Q In which office?

9 A New York.

10 Q Do you work in the field office, or do you work in
11 another related office?

12 A I work in the field office.

13 Q What is your position with the FBI field office?

14 A I'm a contract linguist.

15 Q How long have you been a contract linguist with the FBI?

16 A Fourteen years.

17 Q Where were you born?

18 A Pakistan.

19 Q What languages do you speak fluently?

20 A Urdu, Punjabi and English.

21 Q Can you read or understand any other languages?

22 A No.

23 Q What are your duties as a contract linguist for the FBI?

24 A On daily basis, translating documents, audio recordings,
25 and helping with the interviews and stuff.

1 Q In what language in particular do you do this translation
2 work?

3 A Mostly in Urdu.

4 Q And before being allowed to translate materials for the
5 FBI, did you need to pass any examination?

6 A Yes. We had to take series of test, pass them to
7 qualify.

8 Q Do you have a college degree?

9 A Yes.

10 Q And what's your college degree in?

11 A Computer science.

12 Q How frequently do you translate Urdu?

13 A Daily.

14 Q Do you use the Urdu language outside of work?

15 A Yes. I -- I talk to my husband in Urdu, with relatives,
16 watch Urdu channels, read newspapers daily basis.

17 MR. KASTER: Your Honor, at this time, we'd ask that
18 the witness be recognized as an expert in the field of
19 translating Urdu to English and English to Urdu.

20 THE COURT: Any objection?

21 MR. STERN: No objection.

22 THE COURT: All right. She may testify as to her
23 opinions.

24 BY MR. KASTER:

25 Q I want to ask you, Ms. Khawaja, just a few questions

1 regarding sort of the general methodology that you and other
2 translators at the FBI use in your daily work, okay?

3 A Okay.

4 Q When a document is submitted to you to translate, just
5 tell us very briefly, you know, what steps do you generally do
6 in order to make a translation?

7 A I usually just read through the -- the whole document, if
8 it's not in order, try to put it in order, and just translate.

9 Q What, if any, quality control processes or steps does the
10 FBI have to insure that the translations made are accurate and
11 complete?

12 A Anything that's going to -- to be used in the court is
13 always reviewed by another linguist. It's operationally
14 reviewed.

15 MR. KASTER: Your Honor, I would ask permission to
16 show the witness Government's Exhibit Number 8, which has been
17 already received into evidence.

18 THE COURT: All right.

19 (The above-referred to exhibit was published to the
20 witness.)

21 Q Government's Exhibit Number 8 is now displayed on the
22 Elmo.

23 Do you recognize it?

24 A Yes.

25 Q And what do you recognize it to be?

1 A It's a journal, like a notebook. It was given to me to
2 be translated.

3 Q What languages were contained in this notebook?

4 A Mostly in Urdu, but there was little bit of Arabic and
5 Pashto as well.

6 Q And which portions were you asked to translate?

7 A Just the Urdu portions.

8 MR. KASTER: Your Honor, next I would like
9 permission, if I may, to show the witness what's been marked
10 as Government Exhibit 8-A.

11 THE COURT: Okay.

12 (The above-referred to exhibit was published to the
13 witness.)

14 Q Government's Exhibit 8-A is now up on the Elmo. It's a
15 multipage document.

16 Ms. Khawaja, do you recognize this document?

17 A Yes.

18 Q And what do you recognize it to be?

19 A It's the first page of the journal.

20 Q What about the subsequent pages that are displayed here?

21 A Yes, same.

22 Q And what are those pages?

23 A Pages from the journal.

24 Q If I could draw your attention to the bottom right-hand
25 corner of this exhibit, do you see where I'm pointing the pen

1 in the bottom right-hand corner (indicating)?

2 A Yes.

3 Q What am I pointing to?

4 A Pages 1 and 2.

5 Q And who wrote those page numbers there?

6 A I did.

7 Q Did you write them throughout the document at the bottom
8 right-hand corner?

9 A Yes.

10 Q Is Government's Exhibit 8-A a accurate and complete color
11 copy of the contents of Government's Exhibit 8?

12 A Yes.

13 MR. KASTER: Your Honor, I'd offer into evidence
14 Government's Exhibit 8-A at this time.

15 MR. STERN: No objection.

16 THE COURT: Received.

17 (Government's Exhibit 8-A was received in evidence.)

18 MR. KASTER: And if I may publish briefly to the
19 jury Government's Exhibit 8-A.

20 (The above-referred to exhibit was published.)

21 BY MR. KASTER:

22 Q Ms. Khawaja, let me just point out very briefly a couple
23 of things we just discussed a minute ago. And again, feel
24 free if you want, you can touch the screen if you want to make
25 a arrow or point to anything.

1 The numbers at the bottom right-hand part of the
2 page where I'm pointing my pen, do you see those (indicating)?

3 A Yes.

4 Q And what are those page numbers again, please?

5 A Pages 1 and 2.

6 Q And who wrote those?

7 A I did.

8 Q With regards to the subsequent page numbers, for example
9 at the bottom of this page where it says page 11 and 12, who
10 wrote that?

11 A I did.

12 Q Did you write the page numbers throughout the bottom
13 right-hand corner in this document?

14 A Yes.

15 Q Let's just start real quickly with page 1.

16 What language are we seeing depicted here on page 1
17 and 2 of Government's Exhibit 8-A?

18 A The top part is in Arabic, basically the verses from
19 Koran, and the bottom part is the translation for that.

20 Q I'm going to put this exhibit to the side for one moment
21 and ask the Court if I may show just to the witness what's
22 been marked as Government's Exhibit 8T.

23 May I proceed, your Honor?

24 THE COURT: You may.

25 (The above-referred to exhibit was published to the

1 witness.)

2 Q On the Elmo now is Government's Exhibit 8T. It's a
3 multipage document.

4 Ms. Khawaja, I'm just going to briefly flip through
5 it and ask you do you recognize this document?

6 A Yes.

7 Q And at the back of each page there are initials.

8 Do you see those initials?

9 A Yes.

10 Q Whose initials are those?

11 A Mine.

12 Q What do you recognize this document to be?

13 A It's the translation of the journal.

14 Q Is this the translation of the journal that you prepared?

15 A Yes.

16 Q Is it a complete and accurate translation of the Urdu
17 portions of Government's Exhibit Number 8?

18 A Yes.

19 MR. KASTER: Your Honor, I'd offer Government's
20 Exhibit 8T into evidence at this time.

21 MR. STERN: No objection.

22 THE COURT: Received.

23 (Government's Exhibit 8T was received in evidence.)

24 (The above-referred to exhibit was published.)

25 ///

1 BY MR. KASTER:

2 Q Let me ask you just a brief overview question with
3 regards to Government's Exhibit 8T.

4 What kinds of topics are included in your translated
5 text?

6 A There were prayers, name of places visited, names of
7 people, daily routine stuff.

8 Q Let's start with just a few examples.

9 As to the first page of Government's Exhibit 8T,
10 would you explain to the jury what are we looking at here?

11 A The top part, which is underlined and italic, that is the
12 translation from Arabic which were the verses from Koran, and
13 the bottom part is the translation which was translated from
14 Urdu to English.

15 Q And who did that translation from Urdu to English?

16 A I did.

17 MR. STERN: I'm sorry, Judge. Can we approach for a
18 moment?

19 THE COURT: Yes.

20 (Sidebar; continued on next page.)
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1 (Sidebar conference held on the record out of the
2 hearing of the jury.)

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4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

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10 [REDACTED]

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- 8 [REDACTED]
- 9 [REDACTED]
- 10 [REDACTED]
- 11 [REDACTED]
- 12 [REDACTED]
- 13 [REDACTED]
- 14 [REDACTED]
- 15 [REDACTED]
- 16 [REDACTED]
- 17 [REDACTED]
- 18 [REDACTED]
- 19 [REDACTED]
- 20 [REDACTED]
- 21 [REDACTED]
- 22 [REDACTED]
- 23 [REDACTED]
- 24 [REDACTED]
- 25 (Sidebar end.)

1 (In open court.)

2 THE COURT: All right. Ladies and gentlemen, you've
3 heard certain testimony from this witness about a translation
4 from Arabic into English. As the witness told you, she's not
5 an expert in Arabic, and therefore there's no evidence before
6 you that that translation is true and accurate. The only
7 thing you can consider the translation from Arabic to English
8 for is that it is one of the things that she is basing her
9 opinion on. She is considering that translation.

10 So, it's the basis of her opinion that you can use
11 it for. You cannot assume that it is accurate. You can only
12 consider the translation from the Arabic to the extent you
13 think it bears on the reliability of her opinion of the
14 translation into Urdu or Pashtun.

15 MR. KASTER: Thank you, your Honor.

16 May I continue?

17 THE COURT: Yes.

18 BY MR. KASTER:

19 Q And just so we're clear here then, with regards to the
20 first page of Government's Exhibit 8-A, and you can point to
21 the screen in front of you, the portion that's only the Urdu
22 translated portion, could you draw a line in red around that?

23 A (Marking.)

24 Q And what is -- this portion that's translated, did you
25 previously testify it's a prayer, essentially?

1 A It's a prayer. It's the -- the --

2 Q Please continue.

3 A It's the words from the Koran and that's the translation
4 of it.

5 Q I am next going a couple of pages into
6 Government Exhibit 8T, and with regards to this page, the
7 translation that's there, was that only Urdu translation, or
8 was there some mix of Arabic and Pashto as well?

9 A No, this was all Urdu.

10 Q Just going back very briefly to Government's Exhibit 8-A,
11 for pages 5 and 6.

12 (The above-referred to exhibit was published.)

13 Q From the copy of the Government's Exhibit 8, does this
14 correspond to the translated version in Government's Exhibit
15 8T?

16 A Yes.

17 Q This page reads "19-4-03 Saturday."

18 What is the convention in countries such as Pakistan
19 with regards to how individuals write the month and date?

20 A So, the date comes first, then the month, and then the
21 year.

22 Q And below that there's the word "kameen," K-A-M-E-E-N,
23 "11 individuals."

24 What does the word "kameen" translate to?

25 A Kameen has two meanings. It means ambush or it can mean

1 low life, like a bastard.

2 Q Okay. And below that first mention of the word "kameen"
3 there's another date 21-4-03 Monday.

4 Did I read that correctly?

5 A Yes.

6 Q And below that kameen it says "Departure at night 9:45";
7 is that right?

8 A Yes.

9 Q Could I just have you draw your attention down to the
10 third entry, the one that begins 22/4/03? Do you see that?

11 A Yes.

12 Q Could you read the first line after that date, the one
13 that begins "after"?

14 A "After Asar prayer at Mashadkore at 5:30 fired 12 BM
15 missiles."

16 Q Let me just turn to one additional example in the
17 following page, page 7 and 8.

18 Again, let me ask you as a preliminary question, the
19 English that's on this page, was this translated only from
20 Urdu, or was it translated from a mix of Urdu and other
21 languages?

22 A No, this is all Urdu.

23 Q And on this page there's a list of names that are in the
24 last section which I'm going to point to with my pen
25 (indicating).

1 Do you see that?

2 A Yes.

3 Q Could you draw a red line around those names?

4 A (Marking.)

5 Q The fourth name from the top reads Abu Tameem Abu Tarrab
6 with a parenthetical A after it.

7 Do you see that?

8 A Yes.

9 Q What does the parenthetical A mean after that?

10 A I don't know. That's how it was written.

11 Q Okay. So that's a literal translation, fine.

12 And then the last name, the last line, rather,
13 Khalid Waleed Hamza Australia.

14 Did I read that correctly?

15 A Yes.

16 Q Again, using the convention of the dates as you explained
17 a moment ago, that last section, what was the date listed
18 above that last section?

19 A 18-4-03, so that would be April 18th, 2003.

20 Q And the list of names as they're just listed in a row,
21 those are translated from Urdu into this block; is that right?

22 A Yes.

23 Q The name Abu Tameem that appears on the fifth -- fourth
24 line, I'm sorry, in that last paragraph, Abu Tameem, did you
25 find that name anywhere else in the journal?

1 A Yes. It appeared at one more place.

2 Q Let me draw your attention several pages in to
3 Government's Exhibit 8T and the page that at the top says
4 pages 11-12.

5 Do you see where I'm at?

6 A Yes.

7 Q Let me ask you again a preliminary question.

8 With regards to the English that's translated here,
9 was that all from Urdu, or were there portions that had Arabic
10 or Pashto?

11 A It's all Urdu.

12 Q And the first paragraph where the date is 11-4-03, what's
13 the word directly underneath that?

14 A Kameen.

15 Q And would you -- and it says after that "12 individuals."

16 Did I read that correctly?

17 A Yes.

18 Q "Departure around 8 o'clock at night. Return 2:30 at
19 night. Ameer Abdullah Masoodi."

20 Did I read that correctly?

21 A Yes.

22 Q And if we could just skip down to the last section, the
23 date that begins 14-3-03 Tuesday.

24 Do you see where I'm at?

25 A Yes.

1 Q And the third line that has the name Abu Tamima, bracket,
2 Tameem, comma.

3 Did I read that correctly?

4 A Yes.

5 Q Why is Tameem, T-A-M-E-E-M, in brackets after that name
6 Abu Tamima?

7 A So, since it's a handwritten document, at this place, it
8 looked like it could be Tamima because the way it ended, so,
9 but it -- I thought it was still Tameem, so I put that in
10 bracket. But since it's handwritten, I just wanted to make
11 sure that there's -- it -- just in case if it was -- it could
12 be Tamima or Tameem.

13 THE COURT: In other words, the brackets mean you
14 weren't a hundred percent sure.

15 THE WITNESS: Yes.

16 MR. KASTER: Thank you, your Honor.

17 Q And let me just ask you in the expert analysis you did in
18 translating the Urdu into English, were there any words in
19 which you or one of your fellow translators had a difference
20 of opinion as to what they meant?

21 A Only one word, which was "kameen."

22 Q And what was your interpretation or translation of that
23 word?

24 A I translated it to be ambush.

25 Q And what did your colleague translate it to be?

1 A He thought it was Makeen, which is a place in Pakistan.

2 Q And that word was translated from the journal, correct?

3 A Yes.

4 Q And again, the journal, was it a handwritten document, or
5 was it a typed document?

6 A Handwritten.

7 Q And approximately how many pages in total was the
8 journal?

9 A I think it's like 30-something, 36.

10 Q Okay. And approximately how many Urdu words did you
11 translate into English from this journal?

12 A Hundreds.

13 Q And among those hundreds of translations, were there any
14 other words that you had a difference of opinion with one of
15 your colleagues besides the kameen/Makeen?

16 A No.

17 MR. KASTER: Thank you, your Honor. I pass the
18 witness.

19 THE COURT: All right. Any cross?

20 MR. STERN: No.

21 THE COURT: All right. You may step down. Thank
22 you, very much.

23 (The witness leaves the witness stand.)

24 THE COURT: Ladies and gentlemen, we'll take our
25 midmorning break now. We'll reconvene at 11:30. Please

1 remember do not discuss the case amongst yourselves or with
2 anyone else. Keep an open mind.

3 We'll see you in 15 minutes.

4 (Jury exits the courtroom.)

5 THE COURT: Before we recess, did the Government
6 receive a report from the marshals today?

7 MR. ARIAIL: Yes, it did, your Honor. And just to
8 tell the Court, we're going to compile all the e-mails we're
9 getting and at some point submit them to the Court.

10 THE COURT: Okay.

11 MR. ARIAIL: The defendant refused to come.

12 THE COURT: Okay. I did want to mention that at the
13 conclusion of the Government's case, I am probably, through
14 the audio system, going to try to advise him that he has the
15 right to testify if he wants to testify and see if I can get
16 him to either do that or give me a knowing waiver. I'm not
17 that optimistic, but I'm going to give it a try.

18 MR. ARIAIL: Understood, your Honor.

19 Just in terms of timing, given the lack of cross on
20 some of these witness, I don't know whether we're going to get
21 some more or not, but this is moving in extraordinarily fast.

22 We have one more witness today that's ready to go.
23 It's about two hours. It's Evan Kohlmann, the expert. But
24 that's it, your Honor.

25 THE COURT: That's your last witness?

1 MR. ARIAIL: Not for the case, but for today, your
2 Honor.

3 THE COURT: Okay.

4 MR. ARIAIL: And everybody else is out of town.

5 But I think if we continue at this pace, it's likely
6 we'll close our case or end on Wednesday, and so we probably
7 would be prepared for summations on Thursday. Obviously we
8 don't know anything about the defense case, but I think jury
9 charge and Wednesday afternoon is realistic.

10 THE COURT: Okay. Thanks for the update.

11 Okay. See you at 11:30.

12 (Recess taken.)

13 (Continued on following page.)

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1 (In open court; jury not present.)

2 THE COURTROOM DEPUTY: All rise.

3 THE COURT: Just for the record, we lost the video
4 feed to the MCC during the break, we've been trying to
5 restore it without success. As I previously noted, the
6 defendant, by choosing to absent himself from these
7 proceedings, is taking the risk that the video will go down
8 and we cannot wait indefinitely for it to go back. He does
9 still have audio and we're going to proceed on that basis
10 while continuing to attempt to restore the video.

11 Let's have the jury, please.

12 I've now been informed the video is back on.

13 MS. KELLMAN: There is a God.

14 THE COURT: Or not.

15 (Jury enters.)

16 THE COURT: Be seated, please. The Government's
17 next witness.

18 MR. ARIAIL: The Government calls Evan Kohlmann.

19 THE COURT: Okay.

20 THE COURTROOM DEPUTY: Please raise your right
21 hand.

22 EVAN KOHLMANN, called as a witness, by the
23 Government, having been first duly sworn/affirmed, was
24 examined and testified as follows:

25 THE COURTROOM DEPUTY: Please state and spell your

1 name for the record.

2 THE WITNESS: Of course. My name is Evan F.
3 Kohlmann, E-V-A-N K-O-H-L-M-A-N-N.

4 THE COURT: You may proceed.

5 MR. ARIAIL: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. ARIAIL:

8 Q Good morning.

9 A Good morning.

10 Q What do you for a living, Mr. Kohlmann?

11 A I work as an international terrorism consultant and I
12 work as the chief innovation officer at Flashpoint here in
13 New York City.

14 Q Is there a particular field of study that you focus on?

15 A Yes. My focus is on international terrorism, terrorist
16 hierarchy, communications, leadership and infrastructure.

17 Q How long have you been working in the field of
18 international terrorism?

19 A Since approximately 1998.

20 Q And do you have a college degree?

21 A Yes, I do.

22 Q Where did you do your undergraduate studies?

23 A I have a bachelor in the science of foreign service
24 from the Edmund A. Walsh School of Foreign Service at
25 Georgetown University in Washington, D.C.

1 Q Tell us briefly what you studied when you were in
2 college.

3 A The focus of my study was international politics with a
4 focus in international security studies.

5 Q And did you have a degree focus or did you do specific
6 course work related to international terrorism or other
7 issues?

8 A Yes. My focus, generally speaking, was on
9 international terrorism, extremism and a variety of conflict
10 in the Middle East and the Muslim world. I also attained a
11 certificate in Islam and Muslim-Christian Understanding from
12 the Prince Alwaleed bin Talal Center for Muslim-Christian
13 Understanding at Georgetown University.

14 Q Did you write a thesis?

15 A I did, yes.

16 Q And could you tell the jury just a little bit about
17 your thesis?

18 A Sure. In order to obtain honors in international
19 politics at Georgetown University, I applied to write an
20 undergraduate honors thesis on the subject of the Arab
21 Afghan Movement of the 1980s. My application was approved
22 and subsequently I did write that thesis and it was approved
23 by the faculty and I received honors as a result.

24 Q The Arab Afghan Movement in the 1980s, can you just
25 explain that a little bit?

1 A Sure. The Arab Afghan Movement refers to a group of
2 foreign fighters who travel to Pakistan and Afghanistan
3 during the late 1980s in order to assist in the
4 Soviet-Afghan War, to fight and participate in the
5 Soviet-Afghan War. These individuals believed it was their
6 religious duty to serve alongside Afghan rebels or
7 mujahideen fighters who were fighting against Soviet forces
8 and these individuals believed that as a result, they would
9 obtain training, expertise and organization that would allow
10 them to use the same skills and the same capabilities to
11 target their own enemies in their own home countries.

12 Q Now that thesis, did that become a book?

13 A Yes, it did.

14 Q What was the name of that book?

15 A The name of the book was "Al-Qaeda's Jihad in Europe,
16 The Afghan Bosnian Network."

17 Q It was a published book?

18 A Yes.

19 Q Has that book been used in academic or policy settings
20 to your knowledge?

21 A Yes, it has.

22 Q Tell the jury just a little bit about that.

23 A It was cited in the footnotes of the final report of
24 the Bipartisan Congressional 9/11 Commission. It has been
25 used as course text in a variety of academic institutions,

1 including Harvard's Kennedy School of government, Johns
2 Hopkins School of Advanced International Studies,
3 institutions in the United Kingdom, Australia and elsewhere.

4 Q Do you have a graduate degree?

5 A Yes, I do.

6 Q What's your graduate degree in?

7 A I have a JD or doctors of law from the University of
8 Pennsylvania Law School.

9 Q And did your legal studies also touch on international
10 terrorism?

11 A Yes.

12 Q Could you tell the jury a little bit about that.

13 A While I was at the University of Pennsylvania in law
14 school I did course work both in the law school as well as
15 outside the law school in the Graduate School of Arts and
16 Sciences in a variety of topics related to international
17 terrorism. Everything from looking at the death penalty
18 case surrounding an al-Qaeda operative here -- held here in
19 the United States, Zacarias Moussaoui, a course that I
20 believe was titled, "Democracy and Terrorism," as well as
21 taking, again, course work in the Graduate School of Arts
22 and Sciences in Afghanistan and Islamism.

23 Q When you were in college were you also employed?

24 A Yes.

25 Q What did you do for work when you were in college?

1 A Starting in February 1998 I worked at a Washington,
2 D.C. based think tank and counter-terrorism watch dog group
3 known as the Investigative Project.

4 Q What's the Investigative Project or what was the
5 Investigative Project?

6 A The Investigative Project was, again, a nonprofit
7 counter-terrorism research and watch dog group that was
8 founded in 1995 by a former CNN journalist. The purpose of
9 the Investigative Project was to produce unclassified, open
10 source research, memorandums, magazine articles, videos,
11 material for the consumption of every one from academics,
12 policy makers, law enforcement, with very specific focus on
13 the communications, infrastructure, hierarchy, support
14 networks that were behind international terrorist
15 organizations with a focus on al-Qaeda, Hamas and Hezbollah.

16 Q In connection with your work at the Investigative
17 Project and elsewhere, have you testified before Congress?

18 A Yes.

19 Q Can you tell the jury just a little bit about that.

20 A Yes. I have either testified orally in front of a
21 variety of House and Senate subcommittees, as well as I have
22 submitted written testimony for these subcommittees on
23 topics such as al-Qaeda's leadership, al-Qaeda financing,
24 al-Qaeda's communication methods and other subjects.

25 Q And over the course of your career have you written

1 various articles about terrorism and al-Qaeda?

2 A Yes.

3 Q Can you tell the jury just a little bit about that.

4 A Yes. I publish a variety of different work, written
5 work on subjects such as the means by which al-Qaeda
6 communicates on the Internet, the leadership figures behind
7 particular al-Qaeda factions and al-Qaeda central
8 leadership, the history of al-Qaeda, the history of
9 particular al-Qaeda affiliate groups, financing networks, et
10 cetera.

11 Q What are some of the journals or magazines that you've
12 been published in?

13 A Sure. The most recent -- one of the most recent would
14 be the West Point Counter-terrorism Center Sentinel Journal,
15 that's the official journal of the West Point
16 Counter-terrorism Sentinel of the U.S. military academy at
17 West Point.

18 I've also published in such journals as
19 African Security studies -- African Securities, excuse me,
20 foreign affairs, foreign policy, a variety of different
21 publications.

22 Q I want to go back to your Investigative Project work.
23 When you were at the Investigative Project, what areas were
24 you working on when you were at the Investigative Project?

25 A My primary focus was on the communications, financing

1 and hierarchy of particular international terrorist
2 organizations, again specifically look primarily at al-Qaeda
3 as well as in part Hamas and Hezbollah.

4 Q When you were at the Investigative Project, did you
5 work in terms of dealing with technology or electronics at
6 that company --

7 A Yes.

8 Q -- at that organization?

9 A Yes.

10 Q Can you tell the jury just a little bit about that.

11 A While at the Investigative Project I was responsible
12 for building a digital database comprised of all of the
13 research that was being collected by the Investigative
14 Project. The purpose of building this database was to allow
15 the rapid search and recovery of particular original
16 documents that had been discovered or been uncovered by the
17 Investigative Project, thus allowing a researcher to be able
18 to search for a very, very specific subject and immediately
19 see all the sources of information arrayed together, so one
20 could easily put together a common narrative about a
21 particular subject with all of the relevant sourcing at
22 their fingertips.

23 Q Now at some point did you leave the Investigative
24 Project?

25 A Yes, I did.

1 Q Did you start your own company?

2 A I did.

3 Q When approximately was it that you started your own
4 company?

5 A That would have been in late 2003.

6 Q Now, just briefly, what are the types of materials that
7 would be -- or that you would put together in terms of like
8 from the Internet or elsewhere in terms of the Investigative
9 Project?

10 A Sure. So the materials that we would collect would be
11 primary, secondary and tertiary sources of information.

12 A primary source of information would be an
13 original interview that we had done with a representative of
14 a terrorist group or extremist group, an original video
15 recording of some conference raising money for terrorism,
16 that kind of thing. That would be a primary source of
17 information.

18 We also collected secondary sources of
19 information. A secondary source of information would be a
20 video recording, an official video recording released by a
21 terrorist group, an official sermon by the leader of a
22 terrorist group. An official magazine or official
23 communique released by a terrorist group.

24 Then a tertiary source of information would be
25 a report produced by another academic or another watch dog

1 group looking at some specific aspect of international
2 terrorism, terrorist financing, communication, would be
3 newspapers articles, would be magazine articles. And by
4 magazine articles I don't mean like a terrorist magazine, I
5 mean like Time Magazine or Newsweek, that would be a
6 tertiary source.

7 Q Now what was the name of company that you found after
8 you left the Investigative Project?

9 A Sure. The company initially was known as
10 GlobalTerrorAlert.com, it later became known as Flashpoint.

11 Q Can you tell the jury a little bit about Flashpoint,
12 how many people work there, what do you do?

13 A Sure. Flashpoint currently employs between 85 and 100
14 people. We have offices here in New York City as well as in
15 Washington, D.C. and Dublin Ireland.

16 We specialize in business risk intelligence
17 looking very specifically at information that can be
18 collected from extremists, from hackers, from other threats
19 to governments, to private organizations, private companies,
20 that kind of thing.

21 We have a variety of subject matter experts
22 who speak all sorts of different languages like Russian,
23 Arabic, German, Spanish, Italian on down the line, and these
24 individuals have a particular expertise in various different
25 areas that they focus in everything from again, hackers,

1 cyber criminals, terrorists, et cetera.

2 Q The database project that you talked about at the
3 Investigative Project, did you replicate that or advance
4 that at your current job at Flashpoint?

5 A Yes.

6 Q Tell the jury a little bit about how your database
7 works at Flashpoint.

8 A We have multiple different databases relevant to
9 international terrorism that we maintain at Flashpoint. One
10 database that we maintain is basically an entire compendium,
11 entire archive of every single official communique, official
12 video, official magazine, official statement put out by
13 al-Qaeda's central leadership or the official credible
14 leadership of every other single major al-Qaeda affiliate or
15 al-Qaeda partner group or major jihadi organization. We
16 file all this stuff by region, by group, by date so, in
17 other words, if you wanted to recover a statement issued by
18 al-Qaeda central leadership in July of 2006, within a matter
19 of moments we could quickly pull that up long with an
20 English translation, et cetera.

21 We also maintain other database. We maintain
22 databases which contain all the chatter that is taking place
23 online among supporters and representatives of these
24 organizations. So we assess not only the propaganda being
25 put out by these groups, but we also assess the actual

1 conversations that are taking place between people that
2 support these groups, that finance these groups, that
3 represent these groups in order to understand how they view
4 the propaganda and in order to understand what questions
5 they have and what responses these groups are giving to
6 their supporters.

7 Q You mentioned before about translators, you employ
8 translators at Flashpoint as well obviously.

9 A Correct.

10 Q Why do you employ translators at the company?

11 A We deal with terrorist organizations, extremists,
12 hackers from all around the planet. People that speak a
13 variety of different languages, Mandarin, Russian, Arabic,
14 you name it. It's very, very challenging to find one person
15 who speaks all of these languages. We have one person on
16 our staff who speaks Arabic, Farsi, Russian, but that's
17 very, very rare.

18 So in order to make sure that we're able to
19 understand all of the content that we're gathering, we need
20 to have folks that have a specific knowledge and
21 understanding of these languages and of these areas.

22 Q Do you speak any foreign languages?

23 A I do.

24 Q Which ones do you speak?

25 A I speak French fluently.

1 Q Do you also speak some Arabic?

2 A I do, yes.

3 Q Do you speak Farsi or Urdu?

4 A No, I do not.

5 Q Pashto.

6 A No, I do not.

7 Q Why is it that you rely on a translation team to
8 support you?

9 A It's very, very challenging to learn -- Arabic is a
10 very challenging language to learn. It takes a long, long
11 time. There are nuances in Arabic that as a non-native
12 speaker, no matter how long you study you don't necessarily
13 pick up on them. It's very helpful to have native speakers
14 in particular of these languages who have a native
15 understanding and who are able to parse this information the
16 same way again a native speaker would, otherwise you tend to
17 lose some stuff in the analysis.

18 Q You mentioned a second ago about terrorists
19 organizations putting stuff out on the Internet. Do
20 terrorists organizations have media arms or media wings?

21 A Yes. And in particular al-Qaeda has -- and it's
22 various affiliate groups have their own official media wings
23 that are responsible for disseminating official credible
24 communiques, propaganda videos, magazines, et cetera.

25 Q What's the official media arm for al-Qaeda?

1 A Al-Qaeda's central leadership, the official media arm
2 for them it's known as As-Sahab Media Foundation.

3 Q How do you know that?

4 A Because --

5 Q Sorry, withdrawn.

6 When did As-Sahab come online?

7 A As-Sahab began producing material in approximately the
8 year 2000.

9 Q And does it continue producing material to this day?

10 A Yes, it does.

11 Q In terms of your work as -- in international terrorism
12 studies, have you been involved in the interviews of
13 terrorists or suspected terrorists?

14 A Yes.

15 Q And without saying their specific names, approximately
16 how many terrorists or suspected terrorists have you
17 interviewed over the course of your career?

18 A Approximately seven or eight.

19 Q And could you just characterize, without going into too
20 many specifics, what types of people you've interviewed?

21 A Sure. I've interviewed individuals who are recruiters
22 and financiers for al-Qaeda. I've interviewed individuals
23 who were recruited by al-Qaeda to carry out terrorist
24 attacks inside the United States and who received training
25 at al-Qaeda camps in Afghanistan and Pakistan. I've

1 interviewed the individuals who participated in regional
2 conflicts on behalf of al-Qaeda and other jihadi groups.
3 I've interviewed representatives of al-Qaeda affiliates,
4 Iraqi insurgent groups, other jihadist groups in Pakistan,
5 et cetera.

6 Q In terms of your work at Flashpoint, do other terrorism
7 experts and consultants come to you for assistance?

8 A Yes.

9 Q Can you tell the jury just a little bit about that.

10 A Yes. It doesn't require a Ph.D to get access to
11 al-Qaeda propaganda or al-Qaeda's official propaganda.
12 However, there is a mechanism through which these
13 individuals release it online. It does require some
14 knowledge or understanding of how al-Qaeda communications
15 work. These -- the places in which this stuff is released
16 online these are basically Arabic language chat forums, or
17 at least they were up until about a year ago. These forums
18 are password protected, meaning if you have don't have a
19 log-in and password, you can't get into them. Technically,
20 these log-ins and passwords you can come by them over time,
21 but unless you're focused on gathering the communications on
22 day in/day out basis, you might not have direct access to
23 the original sources of release.

24 We have a number of our colleagues who come to
25 us because of the fact that they know that we have basically

1 direct access to the raw flow of data coming directly from
2 al-Qaeda and its representatives. So when our colleagues
3 want to get access to a particular document or a particular
4 video that has just been released by al-Qaeda, they often
5 come to us for copies of that. And we do the same thing,
6 for instance, for NBC news, for which I work, and NBC relies
7 on us to provide them with the original videos that are
8 coming out from groups like al-Qaeda and ISIS.

9 Q Without going into too many details, how is it that you
10 verify that a particular piece of media or propaganda that's
11 put out by al-Qaeda or its media arm As-Sahab?

12 A There are ultimate different methods. The first method
13 is that within these actual websites that this stuff is
14 released through, this content is actually released in
15 particular areas of these sites where only authenticated
16 al-Qaeda online couriers can post information. Ordinary
17 users can't go on there and post. Only people that have
18 been vetted and proven to be official al-Qaeda couriers can
19 go on and post in that particular location.

20 When a new item goes up in that location, it
21 is marked -- it is actually watermarked were al-Qaeda's
22 official media logo. Once we acquire that material, we then
23 also then discuss these new propaganda items with other
24 experts in the field to verify that they also agree that
25 this is a credible, authentic representation of what

1 al-Qaeda's leadership is attempting to say. But again, the
2 system is not entirely foolproof but it's very strong
3 because of the fact that again these are places where only
4 authenticated couriers can post and, thus, there is a very
5 high degree of certainty when something goes up there that
6 it is real, it is authentic, it is credible.

7 Q In terms of databases containing terrorist literature,
8 videos and other propaganda, are you aware of any other
9 organization in the world that has as an extensive
10 collection as you do?

11 A Not quite as extensive as we are -- we have, excuse me.
12 There are a couple of other organizations that also collect
13 similar research such as the Site Intel group in
14 Philadelphia and such as Aaron Zelin at the blog Jihadology,
15 but it is my understanding, based on my conversations with
16 them, that our collection is probably the most authoritative
17 and is probably the most comprehensive in terms of the time
18 in which we've collected and the amount of material that
19 we've collected.

20 Q Do you rely on that information from that database in
21 your work?

22 A Yes, I do.

23 Q Did you also rely on information obtained from your
24 interviews of people in your work?

25 A Yes, I do.

1 Q Now over the course of your career, have you worked
2 previously with the United States Government agencies?

3 A Yes.

4 Q Which ones?

5 A I have -- in the course of my work I've worked with the
6 Department of Justice and the Federal Bureau of
7 Investigation. I worked with the United States military,
8 the Department of Treasury, and I've also done some
9 consulting work on behalf of part of the intelligence
10 community, including the Central Intelligence Agency.

11 Q And, generally, what kinds of work have you done for
12 U.S. government agencies?

13 A I have provided -- I've recovered and provided original
14 al-Qaeda media or communications that were in our archive
15 that were germane or relevant to a particular investigation.

16 I have provided expert analysis on seized
17 media, digital media. In other words, seized hard drives or
18 thumb drives that were confiscated in the context of
19 international terrorism investigation in terms of
20 identifying the media, the relevance and the content on
21 there to international terrorism.

22 I've obviously served as an expert witness.
23 I've served as an expert consultant.

24 I've interviewed individuals on behalf of my
25 clients, et cetera.

1 Q And I assume you're paid for your work?

2 A That's correct, yes.

3 Q Over the course of your career, how much money have you
4 been paid over the years by U.S. Government agencies?

5 A Over the last, approximately, 16 years I have been paid
6 about \$1.3 million by the U.S. government.

7 Q And what does that money go to?

8 A Sure. Obviously, now the contracts that we take they
9 don't go to me, they go to the company. But previously when
10 the money was going to me I used that money in order to fund
11 our research, in order to pay for translators, analysts, in
12 order to pay for computer equipment, in order to pay for
13 travel. A variety of different costs associated with our
14 research.

15 Q You pay your own salary too, right?

16 A Yes, yes.

17 Q Okay. Now, have you been previously been qualified as
18 a terrorism expert in federal court?

19 A I have.

20 Q Can you tell the jury approximately how many times
21 you've been qualified as an expert?

22 A Yes, this is the 35th time I've been qualified as an
23 expert witness in federal court.

24 Q Well, almost there but...

25 A Excuse me, I'm sorry. Thirty-four times previously.

1 Q And in overseas courts, have you been qualified?

2 A Yes.

3 Q Approximately how many times?

4 A I have testified 12 times in overseas jurisdictions.

5 Q Have you ever not been qualified as an expert in a
6 case?

7 A On one occasion, yes.

8 Q Tell the jury a little bit about that.

9 A Sure. In 2004, I was asked to testify in a case in
10 Northern Virginia. My testimony was not allowed but I was
11 told that the reason for that was --

12 MR. STERN: Objection.

13 MS. KELLMAN: Objection.

14 THE COURT: Sustained.

15 MR. ARIAIL: At this point, Your Honor, I'd offer
16 Evan Kohlmann as an expert in the study of terrorism, in
17 particular the history of al-Qaeda terrorist group.

18 THE COURT: Any voir dire?

19 MR. DRATEL: No, Your Honor, just our previous
20 stated objection.

21 THE COURT: Okay, I've ruled on that. He may
22 testify as to his opinions on terrorism and al-Qaeda.

23 BY MR. ARIAIL:

24 Q Mr. Kohlmann, what is al-Qaeda?

25 A Al-Qaeda is an international terrorist organization.

1 Q And what is al-Qaeda's mission or purpose?

2 A Al-Qaeda's purpose is multi-fold. Al-Qaeda seeks to
3 wage a violent holy struggle, or a jihad, against the
4 perceived enemies of Islam. In this case, al-Qaeda views
5 the enemies of Islam as the United States, its allies and
6 other countries that are judged to be participating in the
7 war against Islam, including countries like Russia and
8 Israel.

9 Q Let's sort of unpack a little bit of that.

10 You said the word "jihad," what is jihad?

11 A Jihad is an Arabic word that means a holy struggle.
12 There could be an internal jihad, it could be a non-violent
13 jihad. If you're trying to stop smoking, you could do a
14 jihad against smoking. But when it's -- when you're talking
15 about external jihad, and particularly in the contemporary
16 context, the word jihad has become primarily affiliated with
17 the notion of external jihad, physical jihad or holy war.

18 Q What's the most important historical event that led to
19 the formation of al-Qaeda?

20 A The Soviet-Afghan War, the war of the 1980s.

21 Q What was that?

22 A In 1979, the Soviet Union invaded the country of
23 Afghanistan in order to prop up a failing communist regime
24 that was in place there. Within weeks or days really of the
25 Soviets invading Afghanistan, Afghan rebels who called

1 themselves mujahideen, or holy warriors, began fighting
2 against the Soviets who they saw as infidel or non-Muslim
3 invaders in a Muslim land. The war lasted from
4 approximately 1979 until 1989.

5 Within a few weeks of the initial invasion,
6 Soviet forces became bogged down in kind of a guerilla-style
7 conflict fighting against mujahideen forces that were hidden
8 in a variety of locations including mountains and other
9 locations that made it difficult for the Soviets to target
10 them.

11 Q And you used a couple of words there, infidel, what is
12 infidel?

13 A Infidel is a word which means -- in Arabic it's "Kafir"
14 K-A-F-I-R. It means a nonbeliever. In other words, someone
15 who does not believe in the faith of Islam.

16 Q And mujahideen, what was that?

17 A Sure, mujahideen -- this is the singular version of
18 mujahid, it comes from the root word of jihad, mujahid means
19 holy warrior and mujahideen are the holy warriors.

20 Q And this group of mujahideen that is fighting against
21 the Soviets back in the late 1970s and '80s, where did this
22 group of people come from?

23 A Initially for about the first five years of the
24 conflict by and large almost all of the mujahideen fighters
25 were of Afghan origin. They were Afghan rebels fighting

1 against the Soviets. However, in approximately 1984, 1985
2 the conflict in Afghanistan began to attract the attention
3 of individuals from outside of the region and particularly
4 it attracted the attention of individuals who considered
5 themselves to be jihadists, who considered themselves to be
6 supporters of violent jihad, who were from countries across
7 the Muslim world including particularly in the Middle East.
8 Small groups of these individuals began traveling from
9 places like Egypt and Saudi Arabia, Algeria and traveled to
10 Pakistan and Afghanistan with the idea that they would join
11 alongside these fighters and, again, that they would gain
12 skills, military skills that would be useful not only in
13 liberating Afghanistan, but also in waging their own fights
14 after the conflict was over.

15 Q Now can you just summarize the conflict between the
16 Soviets and the mujahideen over that -- over the course of a
17 war how it ultimately ended?

18 A Sure. Again, almost immediately following the Soviet
19 invasion, the conflict became bogged down into a stalemate.
20 It became a gorilla war where the Soviet forces were in the
21 position to trying to launch raids and ambushes and were
22 being targeted in response.

23 Within a few years it became clear that it
24 would be very difficult for the Soviets to win in
25 Afghanistan and, indeed, by 1988 the Soviets agreed to

1 withdraw. Something that took place finally in February of
2 1989. The Soviets left an Afghan communist government in
3 power which continued to fight against the Afghan mujahideen
4 until approximately 1991, at which point the Afghan
5 communist government was finally overthrown, and the country
6 was taken over by the mujahideen.

7 Q How did that war lead to the formation of al-Qaeda?

8 A When foreign fighters began arriving from a variety of
9 places in Middle East in Pakistan, they began organizing
10 with each other and their mission included not just to
11 liberate Afghanistan, but primarily to see how they could
12 use the safe haven of Afghanistan, and the training space
13 that was afforded by Afghanistan, to learn military skills
14 that they could then turn around and use to overthrow
15 regimes in the Middle East. In places like Egypt and Saudi
16 Arabia that they deemed to be insufficiently Islamic. They
17 called them they apostate regimes. These individuals then,
18 when they saw the victory of the Afghan mujahideen over the
19 Soviets, they believed that this was a divine sign. It was
20 a symbol that they too could achieve the same kind of
21 victory by using these same skills, by using these same
22 methods to decapitate apostate regimes, again in places like
23 Egypt and Saudi Arabia.

24 Q Then how specifically did al-Qaeda get -- become formed
25 out of that?

1 A Sure. In September of 1988, a group of senior foreign
2 fighters led by a Saudi by name of Usama Bin Laden gathered
3 on the Afghan/Pakistani border and they decided to take an
4 organization or the ashes of an organization that was
5 preexisting, that was the Mujahideen Services Office for
6 supporting foreign mujahideen, and turned that into
7 something much bigger, something that would be known as
8 al-Qaeda.

9 Q And who specifically was involved in the founding of
10 al-Qaeda at the start?

11 A In the very beginning, obviously, the first commander
12 or one of the very first senior people behind al-Qaeda was a
13 Saudi national by the name of Usama Bin Laden. He was
14 joined by a variety of other individuals who were veterans
15 of other jihadist groups in the Middle East, including
16 Egypt, Saudi Arabia and elsewhere who joined alongside him.

17 Q Who were some of those individuals?

18 A Sure. Those individuals included Dr. Ayman
19 al-Zawahiri, the leader of a faction of the Egyptian Islamic
20 Jihad Movement.

21 Abu Ubaidah al-Banshiri, another Egyptian
22 Islamic jihad operative who was famous for fighting in
23 Afghanistan.

24 Mamdouh Mahmud Salim, an individual who has
25 been subsequently convicted in a U.S. Court and a variety of

1 other individuals.

2 MR. ARIAIL: Your Honor, may I approach the
3 witness?

4 THE COURT: You may.

5 MR. ARIAIL: Showing the witness Government's
6 Exhibit 401 and 409.

7 Q Mr. Kohlmann, if you could take a look at these items.
8 Do you recognize the individuals depicted in these items?

9 A Yes.

10 Q Are these two members of al-Qaeda?

11 A Yes.

12 MR. ARIAIL: I offer 401 and 409, Your Honor?

13 THE COURT: Any objection?

14 MR. DRATEL: Just one moment.

15 No, Your Honor, no objection.

16 THE COURT: All right, 401, 409 received.

17 (Government's Exhibits 401 and 409 were received in
18 evidence as of this date.)

19 MR. ARIAIL: Permission to publish, Your Honor.

20 THE COURT: Go ahead.

21 (Exhibit published.)

22 Q Who is depicted in Government's Exhibit 401?

23 A That is Usama Mohammed Bin Laden.

24 Q And who, Mr. Kohlmann, is depicted in Government's
25 Exhibit 409?

1 A That is Dr. Ayman al-Zawahiri.

2 Q Again, Dr. Ayman al-Zawahiri, who is he again?

3 A He is currently the top commander of al-Qaeda. He has
4 been the top leader of al-Qaeda since the death of Usama Bin
5 Laden, but prior to the death of Bin Laden, Dr. Al-Zawahiri
6 was the number two man in al-Qaeda, the deputy commander,
7 the deputy Emir in al-Qaeda.

8 Q What organization did he come from initially?

9 A He was initially the leader of a faction within the
10 Egyptian Islamic jihad movement.

11 Q Now, Usama Bin Laden you said I think at some point he
12 was initially the head of al-Qaeda?

13 A That's correct, yes.

14 Q And at some point did he cease to being the head of
15 al-Qaeda?

16 A Yes.

17 Q Approximately when was that?

18 A In 2011.

19 Q Now are you familiar with the term "fatwa"?

20 A Yes.

21 Q What's a fatwa?

22 A A fatwa is an Arabic word which refers to a religious
23 or political edict. In Islam there is no Pope, there is no
24 central religious authority, so it is incumbent upon
25 someone, if they follow a particular leader or religious

1 leader, if they issue a fatwa, it's incumbent on whoever
2 follows them to follow what the instructions that are in
3 that fatwa or edict.

4 Q At some point in its history did -- or in his history
5 did Usama Bin Laden issue fatwas?

6 A Yes.

7 Q What was the first fatwa -- sorry, I should ask this
8 question. Did Usama Bin Laden at some point issue a fatwa
9 against the United States?

10 A Yes.

11 Q What was the first fatwa that Usama Bin Laden issued?

12 A In August of 1996, Usama Bin Laden published a fatwa
13 endorsing violent jihad or endorsing terrorist attacks
14 targeting U.S. troops, U.S. soldiers stationed in Arabian
15 Peninsula. The Arabian Peninsula is the peninsula that
16 comprises Saudi Arabia, Yemen, the United Arab Emirates, et
17 cetera.

18 Q Why was Usama Bin Laden, in your opinion, so focused on
19 the American troops the Arabian Peninsula?

20 A Bin Laden viewed the United States as the enemy of
21 Islam and among Bin Laden and his supporters, the Arabian
22 Peninsula is considered sacred land. It's consider sacred
23 territory and they believed that the presence of U.S. forces
24 there was an insult to Islam, was an offense to Islam even
25 if they were there to ostensibly to defend Saudi Arabia

1 against its neighbor Iraq.

2 Q After '96, did Usama Bin Laden and al-Qaeda issue any
3 additional fatwas?

4 A Yes.

5 Q Can you tell the jury a little bit about those.

6 A In February of 1998, Bin Laden issued a joint fatwas
7 alongside Dr. Ayman al-Zawahiri and other jihadist leaders
8 from across the Middle East. The fatwa was issued under the
9 title, The World Islamic Front Against Jews and Crusaders.
10 This fatwa, this edict endorsed once again the previous
11 fatwa calling for the deaths of U.S. soldiers in the Arabian
12 Peninsula, and expanded the fatwa. It now said it was
13 incumbent upon supporters of jihad and supporters of Islam
14 to kill Americans and their allies not just in the Arabian
15 Peninsula, but anywhere. Not just American soldiers, but
16 American soldiers, American civilians, anyone that they
17 could get their hands on.

18 Q And to be clear, were there more than one fatwa in
19 1998?

20 A Yes, there was.

21 Q And did any terrorist attacks by al-Qaeda follow Bin
22 Laden's fatwas from 1998?

23 A Yes.

24 Q Can you tell the jury a little bit about those.

25 A In August of 1998, al-Qaeda suicide bombers attacked

1 two U.S. Embassies in East Africa and Nairobi, Kenya, and
2 Dar es Salaam, Tanzania. The attacks killed over 200
3 people.

4 Q And in October 2000, are you familiar with another
5 al-Qaeda attack that took place?

6 A Yes.

7 Q Was is that attack referred to as the Cole attack?

8 A Yes.

9 Q And after that was there another significant attack
10 carried out by al-Qaeda against the United States?

11 A Yes.

12 Q What was that?

13 A That would be the September 11, 2001 terrorist attacks
14 on the United States.

15 Q And can you just generally explain to the jury how is
16 al-Qaeda organized?

17 A Al-Qaeda is organized at the very top, it's led by what
18 is known as a Shura Counsel or leadership counsel. The
19 Shura Counsel was, until 2011, headed by Usama Bin Laden and
20 each member of the Shura Counsel was responsible for a
21 portfolio, in other words, a committee. So there's a
22 financial subcommittee, there is a military subcommittee,
23 there is a propaganda media subcommittee and each member of
24 the Shura Counsel is responsible for one of these
25 portfolios. There is someone responsible for financing, for

1 communications, for military, for security.

2 Q Does al-Qaeda, in its history has it had an external
3 operations arm?

4 A Yes.

5 Q Can you tell the jury just a little bit about that.

6 A Al-Qaeda has focused very heavily on carrying out
7 external operations, i.e. operations outside of Pakistan and
8 Afghanistan. It has directed a substantial amount of
9 effort, resources and personnel to carrying out terrorist
10 attacks inside the United States, the United Kingdom, other
11 European countries, elsewhere.

12 Q And you talked previously about As-Sahab. What was
13 As-Sahab again?

14 A As-Sahab Media Foundation is the official media wing of
15 al-Qaeda's central leadership.

16 Q In your opinion what's the purpose of As-Sahab.

17 A The purpose of As-Sahab is, number one, to attract
18 attention from individuals who might be sympathetic to
19 al-Qaeda's goals and aims and might wish to join al-Qaeda.
20 The purpose of As-Sahab is to also communicate messages to
21 the outside world and to terrify the enemies of al-Qaeda.

22 Q I'm going to ask you about a term, are you familiar
23 with the term "bayat"?

24 A Yes.

25 Q Can you just spell that for the record.

1 A B-A-Y-A-T.

2 Q What is Bayat?

3 A A bayat is an oath of allegiance. In order to be an
4 official sworn member of al-Qaeda, to be officially part of
5 the organization and an official member you have to swear an
6 official oath of allegiance, a bayat, either directly to --
7 when Bin Laden when still alive to Usama Bin Laden or to a
8 designated representative of al-Qaeda senior leadership.

9 Q Does this have to be done in person?

10 A No, it can be done sometimes indirectly. It often was
11 done in person, but it could be done through a
12 representative.

13 Q Okay. So are there people who assist al-Qaeda who are
14 not actual sworn members of al-Qaeda?

15 A Yes.

16 Q Can you tell the jury a little bit about that.

17 A Al-Qaeda works with a variety of other jihadist groups
18 who have very similar aims and goals to al-Qaeda. The
19 leaders of these organizations sometimes have not officially
20 sworn an oath of allegiance to al-Qaeda but they believe in
21 attacking the same targets that al-Qaeda does, they believe
22 in the same methodology that al-Qaeda uses, and thus these
23 groups will lend resources, money, recruits, training,
24 expertise, that kind of thing, in order to support
25 al-Qaeda's operations and this underlies the hold idea

1 behind the World Islamic Front Against Jews and Crusaders.

2 (Continued on the next page.)

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1 EXAMINATION BY

2 MR. ARIAIL:

3 (Continuing.)

4 Q You mentioned earlier a group, I think you called it the
5 Taliban.

6 What is the Taliban?

7 A The Taliban is, well, now it's a rebel group inside of
8 Afghanistan. Initially, to started as a militia, as an
9 Islamist militia, in Afghanistan and on the Pakistani border.
10 The Taliban believe in a very fundamentalist interpretation of
11 Islam. A very rigid, fundamentalist interpretation of Islam.

12 They slowly took power in Afghanistan during the
13 1990s. They took advantage of chaos and warfare in
14 Afghanistan, and they began consolidating power starting in
15 southern Afghanistan and then gradually taking over the rest
16 of the country until, in 2001, they controlled approximately
17 95 to 96 percent of Afghan territory.

18 Q Directing your attention to shortly before September 11,
19 2001. What was the relationship between al-Qaeda and the
20 Taliban in Afghanistan at that time?

21 A There was a symbiotic relationship between al-Qaeda and
22 the Taliban at that time. al-Qaeda was able to provide to the
23 Taliban money, religious, and political legitimacy; was able
24 to provide them with specialized training and specialized
25 equipment for fighting their enemies inside of Afghanistan;

1 was actually able to carry out attacks on behalf of the
2 Taliban.

3 Conversely, what the Taliban provided al-Qaeda was
4 safe haven. In 1996, al-Qaeda was kicked out of its then safe
5 haven in Sudan in North Africa and it had nowhere else to go.
6 And the only people that were willing to provide it safe
7 haven, safety from its adversaries were the Taliban who viewed
8 these individuals as allies in their fight.

9 Q How did that work exactly? Just talk it through a little
10 bit.

11 A Sure. The Taliban were essentially the Government of
12 Afghanistan, or running Afghanistan. And they essentially
13 gave al-Qaeda the opportunity and the authorization to conduct
14 training camps, to have various facilities, to bring people in
15 and out of the country. They provided documentation to
16 al-Qaeda operatives. They essentially operated as an arm of
17 al-Qaeda at one point.

18 Q Prior to September 11, 2001, how did al-Qaeda train its
19 military recruits?

20 A Primarily, at training camps inside of Afghan territory
21 in southern and eastern Afghanistan.

22 Q Can you tell the jury just a little bit about that.

23 A Sure. al-Qaeda operated a number of official training
24 camps inside of Afghan territory, most notably near Kabul and
25 Kandahar, Afghanistan as well as some near Jalalabad.

1 al-Qaeda also took advantage of other training camps
2 that were inside of Afghanistan that were run by other
3 jihadists or jihadist groups that were not necessarily
4 official members or officially sworn to join al-Qaeda, but
5 that were allied with al-Qaeda, that had similar aims and
6 goals and mission with al-Qaeda. And these individuals could
7 receive reciprocal training at these camps because some of
8 these camps offered specialized training in urban warfare and
9 explosives, et cetera.

10 So, in other words, someone that wanted to receive
11 training in something that wasn't available at a particular
12 al-Qaeda camp, they could go to another camp run by another
13 allied jihadi organization inside of Afghanistan.

14 Q Prior to September 11, 2001, that was the most
15 significant al-Qaeda training camp in Afghanistan?

16 A The most important al-Qaeda training camp in Afghanistan,
17 the most significant, was known as the al-Farouq camp. Also
18 known the camp of Sheikh Bin-Laden. This camp was located
19 just west of Kandahar in Kandahar Province in southern
20 Afghanistan.

21 Q These training camps that you're talking about. How do
22 recruits actually get into these training camps? What process
23 do they go through?

24 A The normal process was, first of all, to travel to
25 Pakistan. At this point, someone would already have made

1 contact with someone been a lot of organization in order to
2 find a way in.

3 Upon arriving in Pakistan, and making contact with
4 someone within the organization, this recruit would be brought
5 to what is known as a guest house inside of Pakistani
6 territory. At the guest house, this individual would have
7 their passport and personal documents taken from them. They
8 would be assessed by an al-Qaeda representative to make sure
9 that they weren't a spy, to make sure they weren't crazy, to
10 make sure that they were useful or potentially useful to the
11 organization.

12 At that point, they would be given a combat nickname
13 or a name to call themselves which is not their real name, and
14 they would sent cross the board, across the Afghan-Pakistan
15 border to another guest house inside of Afghan territory
16 either near a place like Spin Boldak or Kandahar.

17 Once at the guest house inside of Afghanistan, they
18 would wait in the company of other al-Qaeda recruits for an
19 opportunity to open up at a training camp. Basically, what
20 they're looking for is a spot to open up in a training camp.
21 Once a spot opens up, and once they've been approved for going
22 there, they then go from the second guest house or the third
23 guest house onto the training camp.

24 Following, approximately, a 30-day regimen of
25 training, these individuals would return to the guest house

1 and either would wait for another opportunity to open up at
2 another training camp, or alternatively, they would be sent to
3 the frontline to go fight alongside the Taliban against their
4 enemies, the Northern Alliance. The purpose of this was so
5 that after receiving training, that these individuals would
6 then be able to get some measure of battlefield experience,
7 combat experience. So that, number one, they would have some
8 concept of what exactly they were in for. And, number two, so
9 that al-Qaeda's leadership would have an opportunity to vet
10 that these people would actually be able to fight under fire
11 and that they wouldn't run away.

12 Q You said a couple things that I want to unpack just
13 briefly.

14 You said a battle name. Is there a particular
15 description or term for a battle name in Arabic?

16 A Yes.

17 Q What is that term?

18 A A Kunya.

19 Q What's a Kunya?

20 A A Kunya is a, like I said, it's a combat pseudonym
21 basically. The form of a Kunya goes as follows.

22 A person usually takes a Kunya based on the names of
23 their children. So if my child's name is Hamza, my Kunya
24 would be Abu Hamza. And Abu just means father of. So father
25 of Hamza. And at the end of the name, you would add a part of

1 the name that would tell you where this person is from. So,
2 for instance, I'm from the United States. So if my son was
3 named Hamza, my Kunya Abu Hamza al-Amriki. The father of
4 Hamza from America, right. Abu Hafs al-Masri the father of
5 Hafs from Egypt. Masri means Egypt.

6 That is the traditional form of a Kunya. Some
7 individuals who didn't have children, who didn't have anyone
8 in their family, they would instead take nicknames from the
9 names of very lofty and important figures from the history of
10 Islam.

11 That's the traditional form of a Kunya.

12 Q And the other term you used there, the Northern Alliance.

13 Could you just briefly tell the jury what's the
14 Northern Alliance?

15 A The Northern Alliance was a collection of mujahideen
16 fighters who were determined to prevent the Taliban from
17 taking over control of Afghanistan. They were opposed to both
18 al-Qaeda and the Taliban. They were led primarily by an
19 individual by the name of Ahmad Shah Massoud who was a very,
20 very famous mujahideen commander from the Soviet-Afghan war of
21 the 1980s. They were loosely aligned with western countries
22 and, again, they were determined to prevent the takeover of
23 Afghanistan by the Taliban and their al-Qaeda allies.

24 Q All right. Prior to 9/11, what were some of the key
25 guest houses for al-Qaeda in you said Kabul and I think

1 Kandahar?

2 A Sure some of the guest houses include guest houses
3 included the Haji Habash guest house, the Anibras guest house,
4 a variety of different guest houses.

5 Q The Anibras guest house, where was that located?

6 A That, I believe, was near Kandahar.

7 Q And just generally, who was that guest house named after?

8 A It was named after an al-Qaeda suicide bomber who had
9 carried out a terrorist attack targeting the United States.

10 Q Now, let's just talk briefly about the training at
11 al-Farouq. Can you talk about that?

12 A Yes. The training at al-Farouq consisted multiple
13 different levels. At al-Farouq, you had everything from basic
14 training i.e. basic calisthenics, basic firearms, standard
15 frontline warfare to more advanced subjects -- explosives,
16 urban warfare, assassination, that kind of thing. It was a
17 fairly diverse camp, it had a number of instructors, and they
18 offered a variety of different levels of training.

19 Q All right. And is there actual video footage from the
20 Al-Farouq Training Camp?

21 A Yes.

22 Q And have you seen that video footage?

23 A Yes.

24 Q How did you get that video footage, or how did you see
25 that video footage?

1 A I first obtained that video footage in 2001 shortly after
2 its release from a jihadi publishing or media outlet in the
3 United Kingdom.

4 Q Have you seen that footage? Is it publicly available
5 online, too?

6 A Yes, it has been rereleased by al-Qaeda on a variety of
7 different occasions. It has also been aired on Arabic
8 language satellite television channels. It has been aired on
9 U.S. television networks. It's probably among the most
10 recognizable pieces of al-Qaeda video footage ever to emerge.

11 MR. ARIAIL: And may I show the witness an exhibit
12 on the Elmo?

13 THE COURT: Okay. What's the number.

14 MR. ARIAIL: 426.

15 THE COURT: Okay. Just put it down.

16 MR. ARIAIL: Sorry.

17 Q Do you see this?

18 A Yes.

19 Q Have you look at this before?

20 A Yes.

21 Q And does this CD, does it contain clips from al-Qaeda
22 propaganda?

23 A Yes, it does.

24 Q And do those clips fairly and accurately depict a
25 particular piece of al-Qaeda propaganda that you have seen

1 released before?

2 A Yes.

3 Q And without going into too many details, is that piece of
4 al-Qaeda propaganda known as "State of the Ummah"?

5 A Correct.

6 Q And within --

7 MR. ARIAIL: At this time, your Honor, we offer
8 Government Exhibit 426 which contains a series of clips. I'm
9 not going to publish them at this time.

10 MR. STERN: Just note our objection.

11 THE COURT: Prior objection. That's been overruled.
12 Go ahead.

13 (Government's Exhibit 426 was received in evidence
14 as of this date.)

15 Q Mr. Kohlmann, within this CD, is there a particular
16 clipped marked 426-A-1?

17 A I believe there is, yes.

18 Q And prior to your testimony here today, did you review
19 that clip?

20 A Yes.

21 Q And in that clip, is there video footage of the camp
22 al-Farouq?

23 A Yes.

24 Q If you can just tell the jury, or, for the record really,
25 the timestamps or the video footage from al-Farouq?

1 A Upon reviewing this, I identified footage of the
2 Al-Farouq Training Camp at time codes 0039 to one minute and
3 five seconds. From one minute and ten seconds to two minutes
4 and forty-five seconds. From three minutes and
5 fifty-three seconds to four minutes and fifty-seven seconds
6 from six minutes and fifteen seconds to 6:26. And from 6:50
7 to 7:08.

8 Q If you could just generally briefly characterize the
9 footage that you reviewed?

10 A Sure. The footage that I reviewed includes footage of
11 al-Qaeda recruits receiving training at the Al-Farouq Training
12 Camp in Kandahar, Afghanistan.

13 The training consists of calisthenics, firearms,
14 marching. Lessons in a shoulder-fired surface to air missile
15 launcher. And I believe also pieces in explosives and urban
16 warfare.

17 Q And the location of the camp, just generally, where was
18 that camp?

19 A It was just west of Kandahar in Afghanistan.

20 Q All right. Now, after September 11th, can you tell the
21 jury what happened to al-Farouq?

22 A Sure. By November of 2001, the Al-Farouq Training Camp
23 had been bombed to smithereens.

24 Q After 9/11, can you tell the jury what happened to
25 al-Qaeda?

1 A Sure. al-Qaeda initially attempted to fight alongside of
2 the Taliban and defend Afghan territory against the arrival of
3 U.S. and allied forces seeking to liberate the country from
4 Taliban control.

5 al-Qaeda forces were quickly pushed out of the major
6 cities of Kabul and Kandahar, and were pushed into far-reaches
7 of eastern and southern Afghanistan. In places like Tora
8 Bora, et cetera, that were basically rugged areas, very
9 mountainous terrain, the Hindu Kush that separates Pakistan
10 from Afghanistan. Following a number of the battles that took
11 place there the fighters then actually began escaping
12 Afghanistan into Pakistani territory.

13 Q And then the Pakistani territory you're talking about,
14 are there particular provinces that al-Qaeda was based in
15 after September 11th?

16 A Yes. While al-Qaeda maintained a presence in a variety
17 of border provinces along the Afghan boarder inside Pakistani
18 territory, one region in particular became a major haven for
19 activity by al-Qaeda and its various jihadi allies. That
20 region is known as Waziristan, North and South Waziristan.

21 Q From Waziristan, with al-Qaeda carry out attacks back
22 into the Afghanistan?

23 A Yes. Essentially, what happened was is that al-Qaeda and
24 its allies used the safe haven afforded it by using Pakistani
25 territory as a base and would launch cross border raids into

1 Afghan territory. Meaning, that U.S. aircraft and
2 U.S. personnel it came more difficulty for us to try to go
3 after their bases of operation to attack them where they were
4 organizing we would have to wait until they appeared in the
5 field.

6 Q And in 2002 and 2003, and in 2004, was this going on?

7 A Yes.

8 Q And were there particular time periods during those years
9 that attacks were coming back across the border into
10 Afghanistan?

11 A Yeah. Basically throughout those years, although the
12 prime time of fighting, and this just has to do with the way
13 that Afghanistan works, the prime time of fighting was in the
14 spring and summer of those years. That is the fighting season
15 because that's the season where the snow melts and it's easy
16 enough to move around and travel and whatnot that these folks
17 can launch operations.

18 Q And after September 11th and the time period that you're
19 talking about -- 2002, 2003 and I would add 2004 and 2005, did
20 al-Qaeda continue to seek to carry out attacks on U.S. and
21 western interests around the world?

22 A Yes.

23 Q If I could, your Honor, publish to the jury and the
24 witness Government's Exhibit 400 which is in evidence.

25 THE COURT: All right.

1 Q Mr. Kohlmann, do you see the exhibit in front of you?

2 A Yes.

3 Q And prior to your testimony today did you have a chance
4 to review this exhibit?

5 A Yes.

6 Q Okay. And I'm going to direct your attention to the
7 exhibit. Obviously, there's some names on there that you've
8 already mentioned.

9 Who is the person in position one?

10 A That is Usama bin Mohamed bin Laden.

11 Q Okay. Now, I'm going to direct your attention to the
12 second line.

13 There's a name there, could you read that name
14 ^ allowed ^ aloud?

15 A Abdul Hadi al-Iraqi.

16 Q Could you tell the jury what does that mean?

17 A It means basically the son of Hadi the Iraqi.

18 Q Okay. Now, are you familiar with an individual named
19 Abdul Hadi al-Iraqi in connection with the group al-Qaeda?

20 A Sorry, excuse me, his name doesn't have any particular
21 significance but, yes, he is a significant member of al-Qaeda.
22 He is an al-Qaeda shura council member, and he was one of the
23 most important leaders of al-Qaeda particularly on the
24 military side.

25 Q And what time period was Abdul Hadi al-Iraqi a

1 significant figure within al-Qaeda on the military side?

2 A He was a significant figure for al-Qaeda going all the
3 way back into the 1990s. His role was particularly important
4 in the late 1990s and early 2000s.

5 Q And after 9/11, what role Abdul Hadi al-Iraqi play within
6 al-Qaeda?

7 A He was one the senior leaders. He was essentially in
8 charge of al-Qaeda's frontline operations. He was the key
9 conduit for communications between al-Qaeda personnel and
10 Taliban and other jihadi groups that were fighting there.

11 He was essentially one of the key frontline
12 commanders. He was responsible for passing orders, for
13 organizing battles, for leading the battles. He said his role
14 kind of moved between chief of picking targets and chief of
15 ordering the targets to be carried out or to be attacked.

16 Q Now, I'm going to direct your attention just to the line
17 below that.

18 Is there a name there next to the number three?

19 A Yes, there is.

20 Q And what is that name?

21 A Abu Faraj al-Libi.

22 Q Sorry. The end of the name al-Libi, what does that stand
23 for?

24 A The Libyan.

25 Q In connection with the group al-Qaeda, are you familiar

1 with an individual named Abu Faraj al-Libi?

2 A Yes.

3 Q Who is Abu Faraj al-Libi in connection with al-Qaeda?

4 A Abu Faraj al-Libi was a Libyan national and a senior
5 operational commander for al-Qaeda inside of Afghanistan.

6 Abu Faraj played a key role in al-Qaeda's external
7 operations i.e., their attempts to carry out terrorist attacks
8 on their overseas adversaries including the United States.

9 Abu Faraj was reportedly responsible for selecting
10 individuals to carry out those attacks.

11 Q And are there other individuals that in your opinion work
12 with him?

13 A Yes. Abu Faraj was known for working among others with
14 another individual known as Hamza Rabia who was also deeply
15 involved in planning overseas operations on behalf of
16 al-Qaeda.

17 MR. ARIAIL: Your Honor, may I approach?

18 THE COURT: You may.

19 MR. ARIAIL: Showing the witness what's been marked
20 as Government's Exhibits 402 and 403.

21 Q Mr. Kohlmann, if you can take a look at these photographs
22 and tell me whether or not you recognize them?

23 A Yes.

24 Q And are these two individuals members of al-Qaeda?

25 A Yes.

1 MR. ARIAIL: I offer 402 and 403.

2 MR. DRATEL: No objection.

3 THE COURT: Received.

4 (Government's Exhibit 402 and 403 was received in
5 evidence as of this date.)

6 Q Who are the two individuals depicted in those
7 photographs?

8 A This one right here is Abdul Hadi al-Iraqi, and this one
9 right here is Adbul Faraj al-Libi.

10 MR. ARIAIL: Permission to publish.

11 THE COURT: Go ahead.

12 (The above-referred to exhibit was published in
13 open court.)

14 Q Mr. Kohlmann, I'm going to -- I think you already
15 mentioned Hamza Rabia, but I'm going to direct your attention
16 to Line 5.

17 There's another name there. Could you read that
18 ^ allowed ^ aloud?

19 A Hamza, sorry, Adbul Wakil al-Masri.

20 Q Are you familiar with the individual named Abdul Wakil
21 al-Masri in connection with al-Qaeda?

22 A Yes.

23 Q Who is Abdul Wakil al-Masri?

24 A This individual's real name is Mustafa Faddle this is an
25 Egyptian national, an al-Qaeda operative, who was centrally

1 responsible for assisting in the planning and organization of
2 the August 1998 East Africa embassy bombings targeting two
3 U.S. embassies in Kenya and Nairobi.

4 Following the bombing of those embassies, Abdul
5 Wakil escaped from East Africa and traveled to Afghanistan
6 where he became an instructor at an al-Qaeda training camp and
7 became a frontline fighter and commander on behalf of
8 al-Qaeda's forces inside of Afghanistan. He was killed,
9 approximately, in 2005.

10 Q And the name below there. Could you read that
11 ^ allowed ^ aloud?

12 A Abu Hafs al-Mauritani.

13 Q Are you familiar with an individual named Abu Hafs
14 al-Mauritani in connection with the group al-Qaeda.

15 A Yes.

16 Q Who is Abu Hafs al-Mauritani?

17 A Abu Hafs al-Mauritani was a member of the al-Qaeda shura
18 council. He head was the head of the religious subcommittee.
19 He was highly praised that he was held in high esteem by
20 al-Qaeda central leadership including Usama bin Laden. He ran
21 a Qu'ranic institute in Kandahar that was frequented by many
22 members of al-Qaeda's leadership and many VIPs who were
23 visiting al-Qaeda's leadership.

24 Q And the end of name there al-Mauritani. What does that
25 mean?

1 A That means the Mauritanian. It means he was from
2 Mauritania.

3 MR. ARIAIL: May I approach.

4 THE COURT: You may.

5 (Approaching the witness.)

6 MR. ARIAIL: Showing the witness what's been marked
7 has Government Exhibits 404 and 415.

8 Q Mr. Kohlmann, do you recognize these individuals?

9 A Yes, I believe I do.

10 Q Exhibits 404 and 445?

11 A Yes.

12 Q Are they members of al-Qaeda?

13 A Yes.

14 Q I offer them and ask for permission to publish them?

15 MR. DRATEL: No objection.

16 THE COURT: Received.

17 (Government's Exhibit 404 and 445 was received in
18 evidence as of this date.)

19 Q Sorry. Who is the individual depicted in Government's
20 Exhibit 404?

21 A This is Abdul Wakil al-Masri also known as Mustafa
22 Faddle.

23 Q Who is the individual depicted in Government's 415?

24 A Abu Hafs al-Mauritani.

25 Q Mr. Kohlmann, I'm going to direct your attention to

1 Line 7 of Government's Exhibit 400.

2 Do you see another name there?

3 A Yes.

4 Q Could you read that ^ allowed ^ aloud?

5 A Ramzi bin al-Shibh.

6 Q Are you familiar with an individual Ramzi bin al-Shibh in
7 connection group al-Qaeda?

8 A Yes.

9 Q Who is Ramzi bin al-Shibh?

10 A He is the confessed coordinator of the September 11,
11 2001, terrorist attacks on the United States. Ramzi bin
12 al-Shibh was responsible for providing financing, support,
13 training, and coordination, assistance, to al-Qaeda hijackers
14 that were involved in the 9/11 attack. At one point, I
15 believe he wanted to be one of the hijackers. He was the top
16 aide to the main organizer behind those attacks, Khalid Sheikh
17 Mohammed.

18 Q Now, I'm going to direct your attention to just below to
19 Line 8.

20 Do you see Line 8?

21 A Yes.

22 Q Khallad?

23 A Yes.

24 Q Khallad al-Kuwati, actually.

25 Are you familiar with an individual named Khallad in

1 connection with the group al-Qaeda?

2 A Yes.

3 Q And could you just describe Khallad in terms of his
4 relationship with al-Qaeda?

5 A Khallad was a senior al-Qaeda commander in Afghanistan
6 responsible for both coordinating overseas terrorist attacks
7 on behalf of al-Qaeda as well as he commanded a group of
8 al-Qaeda fighters in the battle of Tora Bora in November and
9 December of 2001.

10 He was a well-known figure within al-Qaeda. He was
11 also when known because of the fact that he had been badly
12 injured in battle. He had badly injured his leg and he wore a
13 prosthesis leg. There was very few people obviously like that
14 so he stood out.

15 Q All right. Now, below there, there's a name at Line 9.
16 Are you familiar -- if you could read in a now familiar with
17 it?

18 A Sohaib al-Amriki.

19 Q Are you with individual named Sohaib al-Amriki in
20 connection with the group al-Qaeda?

21 A Yes.

22 Q Who is Sohaib al-Amriki?

23 A I am familiar with this as an alias for an American
24 national by the name of Adam Gadahn who, until several years
25 ago, was al-Qaeda's primary English language spokesperson and

1 was responsible for assisting in the production of much of
2 al-Qaeda's online media. Adam Gadahn is also known by several
3 aliases although this is one of his most prominent aliases.

4 Q All right. And then the line after there. At ten, Abu
5 Ayman a/k/a Abdul Wahed.

6 Are you familiar with an individual associated with
7 al-Qaeda named Abu Ayman also known as Abdul Wahed?

8 A No, I am not.

9 MR. ARIAIL: May I approach.

10 THE COURT: You may.

11 MR. ARIAIL: I'm showing the witness what's been
12 marked as Government's Exhibit 406 and 412.

13 Q Mr. Kohlmann, do you recognize the individuals in these
14 photographs?

15 A Yes.

16 Q And are they both members of al-Qaeda?

17 A Yes.

18 MR. ARIAIL: I offer 406 and 412.

19 THE COURT: No objection.

20 MR. DRATEL: No objection.

21 THE COURT: Received.

22 (Government's Exhibit 406 and 412 was received in
23 evidence as of this date.)

24 Q Who's in Government's Exhibit 406?

25 A This is Ramzi bin al-Shibh the coordinator of the

1 September 11, 2001, terrorist attacks. And this is Adam
2 Gadahn, American spokesperson and representative of al-Qaeda.

3 MR. ARIAIL: Permission to publish?

4 THE COURT: Go ahead.

5 (The above-referred to exhibit was published in
6 open court.)

7 THE COURT: Mr. Ariail at a convenient point.

8 MR. ARIAIL: I'm nearly finished, your Honor. Ten
9 minutes at the most.

10 THE COURT: Go ahead.

11 MR. ARIAIL: I apologize. Probably 15, 20 minutes
12 or so.

13 THE COURT: Lawyers are famous for underestimating.

14 MR. ARIAIL: That's why I corrected myself, your
15 Honor.

16 THE COURT: Lets take our lunch break, ladies and
17 gentlemen. We'll come back here at 2:00 p.m.

18 Please do not talk about the case amongst yourselves
19 or with anyone else.

20 Have a good lunch. We'll see you back here shortly.

21 (Jury exits courtroom at 12:58 p.m.)

22 THE COURT: Okay. Recess 2:00 p.m.

23 (Luncheon recess taken; 12:59 p.m.)

24 (Continued on the next page.)
25

1 (In open court.)

2 THE COURT: Let's have the jury, please.

3 (Jury enters the courtroom.)

4 THE COURT: All right. Everyone, be seated.

5 Welcome back, ladies and gentlemen.

6 We'll continue with direct examination.

7 MR. ARIAIL: May I inquire, your Honor?

8 THE COURT: Go ahead.

9 DIRECT EXAMINATION (continued)

10 BY MR. ARIAIL:

11 Q Mr. Kohlmann, right before we left, I was pointing at
12 line 10. You see line 10 on this document, Government's
13 Exhibit 400?

14 A Yes, I do.

15 Q Okay. And the name there, what's the name there?

16 A Abu Ayman, a/k/a "Abdul Wahed."

17 Q And in connection with al-Qaeda, are you familiar with an
18 individual named Abu Ayman, a/k/a "Abdul Wahed"?

19 A I don't believe so, no.

20 Q Now I'm going to direct your attention to the next line,
21 11.

22 Is there a name there, and if you see it, could you
23 read it ^ allowed ^ aloud?

24 A Yes. Abu Zubaydah, a/k/a "Abu Zubaydah Filistini" and
25 "Abu Tariq."

1 Q And the name Abu Zubaydah, are you familiar with an
2 individual named Abu Zubaydah who's associated with the group
3 al-Qaeda?

4 A Yes.

5 Q Who is that?

6 A Abu Zubaydah Filistini was a Palestinian jihadi organizer
7 and was responsible for providing financing organization
8 essentially at the head of a particular set of training camps
9 inside of Afghanistan, namely the Khalden and Deronta camps.
10 Most notably Khalden.

11 While these camps were not official al-Qaeda camps
12 and Abu Zubaydah was not an official al-Qaeda member, al-Qaeda
13 recruits could receive reciprocal training at Khalden and
14 Deronta camps. In other words, they were allied alongside
15 al-Qaeda.

16 After the August 1998 East Africa embassy bombings,
17 the U.S. military and the United States Government launched
18 raids on various training camps inside of Afghanistan, and as
19 a result, Abu Zubaydah and others who were not official
20 al-Qaeda members grew closer with al-Qaeda and again began
21 increasingly pooling their resources and sharing resources,
22 including training camps because of the fact that they viewed
23 themselves as fighting against a common adversary, a/k/a the
24 United States.

25 Q I want to direct your attention to line 12. Could you

1 read the name at line 12?

2 A Yes. Abu Laithe al-Libi.

3 Q Are you familiar with an individual named Abu Laithe
4 al-Libi?

5 A Yes.

6 Q In connection with the group al-Qaeda?

7 A Yes.

8 Q And who's Abu Laithe al-Libi?

9 A Abu Laithe al-Libi was one of al-Qaeda's senior
10 commanders in Afghanistan. He first arrived in Afghanistan in
11 1989. He was trained at the al-Farouq training camp or the
12 earliest iteration of the al-Farouq training camp. He was
13 later imprisoned in Saudi Arabia for several years, but
14 managed to escape. After his escape from prison, he went back
15 to Afghanistan, he rejoined al-Qaeda, and he became one of
16 al-Qaeda's most important training camp instructors, training
17 camp managers, field commanders. He was someone who directed
18 fighters in the field, including gorilla attacks on U.S. and
19 coalition forces in the wake of September 11, 2001.

20 Q I'm going to direct your attention to line 13. Could you
21 read the name ^ allowed ^ aloud there?

22 A Hamza al Jawfi.

23 Q And are you familiar with the name Hamza al Jawfi as it
24 relates to al-Qaeda?

25 A No, I'm not.

1 MR. ARIAIL: May I approach, your Honor?

2 THE COURT: You may.

3 MR. ARIAIL: I'm showing the witness what's been
4 marked as Government's 407 and Government's 408.

5 Q Can you take a look at those and tell me whether you
6 recognize the individuals depicted in those photographs?

7 A Yes.

8 Q Who is depicted in those photographs?

9 A This is Abu Zubaydah al Filistini and that is Abu Laithe
10 al-Libi.

11 Q When you say "this is" are you referring to --

12 A Sorry, 407 is Abu Zubaydah al Filistini. 408 is Abu
13 Laithe al-Libi.

14 MR. ARIAIL: Offer and request permission to
15 publish, your Honor.

16 MR. DRATEL: No objection.

17 THE COURT: Received.

18 MR. ARIAIL: Thank you.

19 (Government's Exhibit 407 and 408 were received in
20 evidence.)

21 BY MR. ARIAIL:

22 Q Mr. Kohlmann, I'm going to direct your attention to line
23 14. Could you read ^ allowed ^ aloud the name at line 14?

24 A Abu Khabaab al Masri.

25 Q Are you familiar with an individual named Abu Khabaab al

1 Masri as associated with the group al-Qaeda?

2 A Yes.

3 Q Who is Abu Khabaab al Masri?

4 A Abu Khabaab al Masri was an al-Qaeda member, an Egyptian
5 al-Qaeda member, who specialized in training recruits in
6 advanced explosives and advanced warfare techniques. So
7 primarily he focused on training recruits how to make
8 explosives out of household chemicals and household
9 ingredients, fertilizer, that kind of thing. He also
10 specialized in training recruits in advanced warfare, such as
11 specifically crude chemical weapons.

12 Q And the end of the name there, al Masri, what does that
13 mean?

14 A Al Masri means "the Egyptian" or "of Egypt."

15 Q I'm going to direct your attention to line 15. Could you
16 read ^ allowed ^ aloud the name at line 15?

17 A Saif al Adli.

18 Q And in connection with al-Qaeda, are you familiar with an
19 individual who has a very similar name?

20 A Yes.

21 Q And who is that?

22 A Saif al Adl.

23 MR. STERN: Objection.

24 THE COURT: Well, how similar is the name?

25 MR. ARIAIL: One letter different, your Honor.

1 THE COURT: I'll allow it. The jury can determine
2 if it's the same person or not.

3 A Sorry, Saif al Adl.

4 Q And could you spell the last name?

5 A Sure, it's exactly the same, just without that "I" at the
6 end.

7 Q And in connection with al-Qaeda, who's Saif al Adl?

8 A Saif al Adl is one of al-Qaeda's Shura Council members.
9 He was in charge or was in charge of al-Qaeda's security
10 subcommittee. He was responsible for vetting recruits coming
11 to join al-Qaeda, for protecting al-Qaeda's senior leadership.
12 He was involved in planning al-Qaeda's overseas attacks. He's
13 a very, very senior, very, very long-time member of al-Qaeda,
14 also an Egyptian national.

15 MR. ARIAIL: May I approach, your Honor?

16 THE COURT: You may.

17 MR. ARIAIL: Showing the witness what's been marked
18 as 414 and 413.

19 Q Do you recognize the individuals depicted in 414 and 413?

20 A Yes.

21 Q And who is depicted in 414?

22 A 414, this is Abu Khabaab al Masri and 413 is Saif al Adl.

23 MR. ARIAIL: I'd offer 413 and 414 and
24 request permission to publish.

25 MR. DRATEL: Objection.

1 THE COURT: Overruled. I'll receive it.

2 (Government's Exhibit 413 and 414 were received in
3 evidence.)

4 BY MR. ARIAIL:

5 Q Just to be clear, who is 413?

6 A 413 is Saif al Adl.

7 Q And who is 414?

8 A 414 is Abu Khabaab al Masri.

9 Q Mr. Kohlmann, I'm going to direct your attention to line
10 16 of the document. Can you read ^ allowed ^ aloud the name
11 that's depicted at line 16 of Government's Exhibit 400?

12 A Usama al-Kini.

13 Q And in connection with al-Qaeda, are you familiar with an
14 individual named Usama al-Kini?

15 A Yes.

16 Q And who is Usama al-Kini?

17 A Sure, this is the Kunya, the combat name for Fahid
18 Msalam.

19 Q And who is Fahid Msalam?

20 A Fahid Msalam is one of al-Qaeda's operatives who were
21 involved in planning and executing the 1998 East Africa
22 embassy bombings targeting U.S. Embassy in Kenya and Nairobi.
23 Following the bombings, Msalam fled Kenya and traveled on to
24 Afghanistan and Pakistan. He participated in al-Qaeda
25 operations both inside of Afghan territory, as well as

1 reportedly also targeting Pakistani military and security
2 inside of Pakistani territory on behalf of al-Qaeda.

3 Q I'm going to direct your attention to line 17. Are you
4 familiar with an individual named -- sorry, could you read
5 that name ^ allowed ^ aloud?

6 A Abdul Rahman al-Kanadi.

7 Q And are you familiar with an individual named Abdul
8 Rahman al-Kanadi who is associated with the group al-Qaeda?

9 A Yes.

10 Q And could you tell the jury who's Abdul Rahman al-Kanadi?

11 A Sure. This again is a combat name. The real name of
12 this individual is Ahmed Said Khadr. This is a Canadian
13 national originally from Egypt who had been involved with the
14 Afghan jihad all the way back to the late 1980s. He was
15 responsible for fund-raising, raising money to support jihadi
16 operations and al-Qaeda's operations. He also was allegedly
17 involved in the 1995 bombing of the Egyptian consulate in
18 Islamabad, Pakistan, and he was named by the U.S. Government
19 as a especially designated global terrorist I believe in
20 October of 2001.

21 Q Now, this individual Abdul Rahman al-Kanadi, does he have
22 any children that you're aware of?

23 A Yes.

24 Q What are their names?

25 A He has, I believe, four sons: Omar, Abdullah, Abdul

1 Rahman, and Abdul Karim.

2 Q I'm going to direct your attention to lines 18, 19, 20
3 and 21. Do you see those names listed on Government's Exhibit
4 400?

5 A Yes. Yes, those are the names listed.

6 MR. ARIAIL: May I approach, your Honor?

7 THE COURT: You may.

8 MR. ARIAIL: Showing the witness 416 and 419.

9 Q Do you recognize the individuals in these pictures?

10 A Yes.

11 Q Who is depicted in 416?

12 A 416 is Fahid Msalam, a/k/a Usama al-Kini.

13 Q And who's depicted in 419?

14 A 419 is Ahmed Said Khadr, a/k/a Abdul Rahman al-Kanadi,
15 the Canadian.

16 MR. ARIAIL: I'd offer at this time, your Honor,
17 416, 419 and request permission to publish.

18 MR. DRATEL: No objection, your Honor.

19 THE COURT: They are received.

20 (Government's Exhibit 416 and 419 were received in
21 evidence.)

22 BY MR. ARIAIL:

23 Q Mr. Kohlmann, I'm going to turn this document over to the
24 second page, and I'm going to direct your attention to the
25 list at the bottom of the second page that's headed

1 "Individuals in Nigeria, Niger or Libya."

2 If you could, take a look at that list of names and
3 let me know if you recognize any of the names on that list.

4 A I do.

5 Q And which name do you recognize?

6 A The name that's listed next to the number 5, Abda Razak
7 it's listed as al Bara. It's al Para.

8 Q And how do you recognize it?

9 A Because it's the known alias for a senior leader of an
10 al-Qaeda affiliate.

11 Q And what's that al-Qaeda affiliate?

12 A The Salafist Group For Prayer and Combat, otherwise known
13 as GSPC, now known as al-Qaeda in the Islamic Maghreb.

14 Q Sorry, just in terms of the --

15 MR. DRATEL: I object and move to strike the last
16 part of it, "now known as," just for timing purposes.

17 THE COURT: No. I will overrule that.

18 Q In terms of the history of the group GSPC and the group
19 AQIM, or al-Qaeda in Islamic Maghreb, you said that they are
20 now known as AQIM or al-Qaeda in Islamic Maghreb.

21 Can you just talk a little bit about the history?

22 MR. DRATEL: Your Honor, may we approach?

23 THE COURT: Yes.

24 (Sidebar; continued on next page.)

25

1 (sidebar conference held on the record out of the
2 hearing of the jury.)

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 (Sidebar end.)

1 (In open court.)

2 BY MR. ARIAIL:

3 Q Mr. Kohlmann, if you could just answer, very simply, the
4 question when did GSPC become AQIM?

5 A I believe September of 2006.

6 Q Now, the group GSPC you were talking about just a second
7 ago, sorry, what is the name GSPC literally?

8 A Salafist Group For Prayer and Combat. GSPC is simply the
9 acronym written in French because GSPC was started in Algeria,
10 which is a Francophone country.

11 Q Okay. And I think you almost got to my next question,
12 which is where generally in the world did the group GSPC
13 operate in the time period 2002 until 2004?

14 A Sure. GSPC was founded from the ashes of another jihadi
15 group called the Armed Islamic Group, which was primarily
16 based in Algeria. However, the GSPC started in Algeria, but
17 had activities across the region. Southern Algeria, the
18 border, it's a desert, so it's a very porous border. It's
19 very easy for individuals to cross between Algeria, Niger,
20 Mali. And as such, there are GSPC units that operate in this
21 region that trans -- that transfer across borders all the
22 time.

23 Q All right. And I'm going to direct your attention to the
24 last page of Government's Exhibit -- or, sorry, second to last
25 page of Government's Exhibit 400. At the top there's a

1 section called "Groups." Do you see the name listed at
2 Government's Exhibit 3 -- sorry, at line 3?

3 A Yes.

4 Q Could you read that name ^ allowed ^ aloud?

5 A Group That Preaches, Gives Religious Advice and Kills.

6 Q Is this the GSPC?

7 A Yes, Salafist Group For Prayer and Combat, yes.

8 Q And at the second line here in the group list, could you
9 read the name ^ allowed ^ aloud?

10 A Nigerian Taliban.

11 Q And are you familiar with the term "Nigerian Taliban"?

12 A Yes, I am.

13 Q And very generally, to what does that refer?

14 A I am familiar with it as a euphemism for the jihadi
15 movement in Nigeria that is represented by the group Boko
16 Haram.

17 MR. DRATEL: Objection.

18 MR. ARIAIL: Strike that, your Honor.

19 THE COURT: The jury will disregard the last part of
20 that answer.

21 Q I'm going to direct your attention to the section that
22 says "Camps Or Guesthouses."

23 Directing your attention to the first line, could
24 you read that ^ allowed ^ aloud?

25 A Number one, Anibras guest house.

1 Q And in connection with al-Qaeda, I think you may have
2 mentioned the name Anibras before; is that correct?

3 A Yes.

4 Q And 2, the name there, al-Farouq, that's a name you've
5 mentioned before too?

6 A That's the camp I was describing earlier, yes.

7 Q The last two names, can you read those ^ allowed ^ aloud?

8 A Number 3 Camp 9 and number 4 Camp Malik.

9 Q And in connection with al-Qaeda, are you familiar with
10 those names?

11 A Yes.

12 Q Could you tell the jury just a little bit about that?

13 A I am familiar with them as being at a location near Kabul
14 and serving as an al-Qaeda training camp. It's not clear if
15 they were two separate camps that were located next to each
16 other or they were all part of one camp, but essentially
17 al-Qaeda training facilities near the city of Kabul and
18 Afghanistan.

19 Q I'm turning to the last page of Government's Exhibit 400.
20 Directing your attention to the bottom of that "Other terms."

21 At line 1, could you read ^ allowed ^ aloud that
22 word?

23 A Shahid.

24 Q And what does that mean?

25 A Martyr.

1 MR. DRATEL: Your Honor, just object because of
2 language. He's not an interpreter.

3 MR. ARIAIL: Withdrawn, your Honor.

4 THE COURT: No. You can withdraw it. I think he
5 said enough about his knowledge of Arabic to allow him to give
6 answers to these questions.

7 Q And I'll direct your attention, Mr. Kohlmann, to line 2.
8 Could you read ^ allowed ^ aloud the words at line 2?

9 A Allahu Ahkbar.

10 Q And what does that mean?

11 A That means God is the greatest.

12 Q And line 3, the word there?

13 A Bayat.

14 Q And you discussed that already?

15 A Correct.

16 Q Line 4, could you read ^ allowed ^ aloud the word there?

17 A Tasisi.

18 Q What does tasisi mean?

19 A It means the initial or the founding or the first part.

20 Q Is that a term used in connection with al-Qaeda training
21 camps?

22 A It's used to refer to the initial stage of training at a
23 camp, the initial stage for recruits that are first arriving.

24 MR. ARIAIL: May I have a second, your Honor?

25 THE COURT: Yes.

1 (Pause.)

2 MR. ARIAIL: I almost forgot.

3 Q Mr. Kohlmann, I'm going to direct your attention to one
4 other spot here. The section entitled "Individuals in Angor
5 Ada."

6 Do you see that section?

7 A Yep.

8 Q Could you take a look at that list and see whether there
9 are any particular names on that list that stand out to you in
10 connection with al-Qaeda?

11 A Yes, there are.

12 Q And what name?

13 A In particular, the name listed next to the number 2 Abu
14 Hamza al-Australi.

15 Q Okay. And who is Abu Hamza al-Australi in connection
16 with al-Qaeda?

17 A Abu Hamza al-Australi is a combat name for Australian
18 national Mathew Stewart. Mathew Stewart was obviously
19 originally from Australia, an individual to traveled to
20 Afghanistan and joined al-Qaeda and was featured in al-Qaeda
21 propaganda, was also photographed in this region fighting with
22 al-Qaeda forces. Abu Hamza al-Australi.

23 MR. ARIAIL: May I approach, your Honor?

24 THE COURT: You may.

25 MR. ARIAIL: Showing the witness Government's

1 Exhibit 411. The last exhibit, your Honor.

2 Q Do you recognize that?

3 A Yes, I do.

4 Q And who is that?

5 A This is Mathew Stewart, otherwise known as Abu Hamza
6 al-Australi.

7 MR. ARIAIL: I'd offer 411, your Honor, and request
8 permission to publish.

9 MR. DRATEL: No objection.

10 THE COURT: Received.

11 (Government's Exhibit 411 was received in evidence.)

12 (The above-referred to exhibit was published.)

13 MR. ARIAIL: Nothing further, your Honor.

14 THE COURT: All right. Cross-examination.

15 MR. DRATEL: Yes, thank you, your Honor.

16 CROSS-EXAMINATION

17 BY MR. DRATEL:

18 Q Good afternoon, Mr. Kohlmann.

19 A Good afternoon.

20 Q Now, one of the people you mentioned who's in
21 Government Exhibit 400 is Abu Hadi al-Iraqi?

22 A Correct, yes.

23 Q And he worked directly with the Taliban, correct, at
24 times?

25 A Yes, that's correct, yes.

1 Q And part of his responsibilities in that regard was to
2 determine -- well, to have lines of communication between the
3 Taliban and al-Qaeda?

4 A Correct, yes.

5 Q And also between Taliban and al-Qaeda leaders in
6 Afghanistan, correct?

7 A Correct.

8 Q And specifically with regard to military operations?

9 A Yes, correct.

10 Q Including military operations against United States
11 forces in Afghanistan?

12 A Correct.

13 Q When I say "United States forces," United States military
14 personnel, right?

15 A Yeah, that's correct.

16 Q And he was also -- and he was responsible for supervision
17 of approximately 200 Arab and Taliban soldiers in Kabul?

18 A At one point, yeah. Yeah, sure.

19 Q And when you say "Arab," we talk about people from other
20 parts of the world who came to Afghanistan or Pakistan to
21 fight, correct?

22 A Correct, yes.

23 Q So they might not all be Arab, correct?

24 A That was the description. Although I think it's fair to
25 say that they might have included individuals who were just

1 foreign fighters and labeled as Arab fighters 'cause they
2 weren't Afghans. It's certainly possible, yes.

3 Q And in fact, the foreign fighters included non-Arabs from
4 Somalia?

5 A Correct.

6 Q From North Africa as well, right?

7 A Correct, yes.

8 Q From West Africa, even East Africa, other parts beyond
9 Somalia?

10 A Correct.

11 Q Now, another person that is in Government Exhibit 400 who
12 you talked about is Abu Laithe al-Libi, correct?

13 A Correct.

14 Q And he also had a major role in al-Qaeda military
15 operations in Afghanistan after September 11th, 2001?

16 A Correct.

17 Q And with respect to someone else also in Government's
18 Exhibit 400, you recall Mr. Walid bin Attash, also known as
19 Khallad?

20 A Yes.

21 Q And he also was a commander of al-Qaeda fighters in the
22 fall of 2001, correct?

23 A Correct, yes.

24 Q In the far reaches of Afghanistan called Tora Bora,
25 correct?

1 A Correct, yes.

2 Q One of al-Qaeda's last holdouts in the sort of the 2001
3 era, correct?

4 A That's exactly correct, yes.

5 Q Now, with respect to Government Exhibit 426, that was the
6 CD with the State of the Ummah video, correct?

7 A Yes.

8 Q And you've never been to al-Farouq Camp in Afghanistan,
9 correct?

10 A No, no, I have not.

11 Q And you've heard of Sajid Badat?

12 A Yes.

13 Q S-A-J-I-D last name B-A-D-A-T.

14 You've heard of Sajid Badat?

15 A Yes.

16 Q And he's a UK citizen, correct?

17 A Correct.

18 Q Who traveled to Afghanistan and trained with al-Qaeda?

19 A Correct.

20 Q And who then returned to the UK, he was arrested and
21 prosecuted?

22 A Correct.

23 Q And he also testified for the United States as a
24 government witness in at least three cases, right?

25 A I believe so, yes.

1 Q And he has testified, correct, that the video that we're
2 talking about, State of the Ummah, was filmed at a different
3 camp, at the Ubaydah or Mutiara Camp, right?

4 A I'm not familiar with that piece of his testimony
5 offhand.

6 Q So you're not familiar with it?

7 A That particular piece, no, I'm not familiar with him
8 saying that the footage there is not al-Farouq, no.

9 Q Are you familiar with the trial of Abu Ghaith in the
10 Southern District of New York?

11 A I am, yes.

12 Q Did you testify at that trial?

13 A I did, yes.

14 Q And in fact, Mr. Badat testified at that trial as well,
15 correct?

16 A I believe he did, but since I was a witness, I wasn't
17 able to watch his testimony.

18 Q Have you reviewed it since he testified?

19 A Perhaps, but it's been a while, I think.

20 MR. DRATEL: So I'm going to, if I may approach,
21 your Honor.

22 THE COURT: You may.

23 MR. ARIAIL: Your Honor?

24 (Pause.)

25 Q I'm just going to ask you to read from page -- well,

1 rather than identify it, I'm just going to ask you if it
2 refreshes your recollection from on this page read from line
3 14 there through probably about three pages.

4 A Sure, no problem.

5 (Perusing document.)

6 Yes, I know what he's talking about now.

7 (Continued on following page.)

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1 CROSS-EXAMINATION (CONTINUED)

2 BY MR. DRATEL:

3 Q So does that refresh your recollection, that Mr. Badat
4 testified that the video was not made at al Farouq, but it was
5 made at a camp called Metar or the Ubaydah Camp?

6 A I believe he's referring to a different part of that
7 video, because the video -- the state of the video contains
8 video footage from two different training camps. Although all
9 of it's labeled as al Farouq, part of the video footage in
10 there was actually taken from a camp that was widely -- more
11 widely known as Tarnak Farms, which also included
12 Ubaydah Camp. That facility is very recognizable because it
13 has a ten-foot mud, brick wall surrounding it. So any video
14 footage from there from -- from that video that shows a camp
15 with no mountains behind it -- because there were no mountains
16 behind the Ubaydah Camp or near Tarnak Farms, any video
17 footage that show a ten-foot wall, that's not al Farouq.
18 That's Tarnak Farms/Ubaydah Camp. That's different.

19 But the video footage that was played earlier that I
20 reviewed, that should all be from al Farouq.

21 Q Now, you've not been to Tarnak Farms either, right?

22 A Not -- not physically, no.

23 Q And do you recall that Badat testified that he was
24 actually present for the filming that he talks about at Batar
25 and Ubaydah, but that he was injured and could not participate

1 in the training that was in that video, right?

2 A I believe so, yes.

3 Q Thank you.

4 Now, are you familiar with something called the
5 authorization for use of military force?

6 A Generally, yeah.

7 Q And that's a September 18th, 2001 congressional
8 legislation authorizing use of force against Al-Qaeda and
9 associated forces, correct?

10 A I'm generally familiar with it.

11 Q And that put the United States in a state of war with
12 Al-Qaeda, right, officially as a matter of legislative policy?

13 A I'm not --

14 MR. ARIAIL: Objection.

15 A -- I'm not 100 percent sure about that.

16 BY MR. DRATEL:

17 Q Are you familiar --

18 THE COURT: Hold it. Hold it.

19 MR. ARIAIL: Objection.

20 THE COURT: Well, he answered. Put another
21 question.

22 BY MR. DRATEL:

23 Q And you've testified in the military commissions there at
24 Guantanamo Bay, correct?

25 A Yes.

1 Q And you've participated -- in fact, that is the position
2 of the United States Government in the military commissions,
3 correct, that since at least September 18th, 2001 with the
4 passage of this legislation that we are in a state of war --
5 the United States is in a state of war with Al-Qaeda?

6 MR. ARIAIL: Objection, your Honor.

7 THE COURT: Sustained.

8 MR. DRATEL: May we approach, your Honor?

9 THE COURT: Sure.

10 (Continued on the following page.)
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1 (The following occurred at sidebar.)

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(Continued on the following page.)

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1 (In open court; sidebar ends.)

2 MR. DRATEL: I have nothing further, your Honor.

3 THE COURT: Thank you.

4 Redirect?

5 MR. ARIAIL: Just briefly, your Honor.

6 REDIRECT EXAMINATION

7 BY MR. ARIAIL:

8 Q Mr. Kohlmann, you were asked a question about a training
9 camp on the video. Sir, could you just explain that a little
10 bit more in the terms of the clips that you reviewed?

11 A Sure. So the "*State of the Ummah*," the original video,
12 and it contains video footage of two different training camps.
13 It contains footage of the training camp al Farouq, which is
14 very recognizable because there are big, big mountains behind
15 it. This is very different from the other camp that's shown
16 in the video, which is broadly known as Tarnak Farms.
17 Tarnak Farms was a leadership compound near Kandahar. It also
18 comprised the Ubaydah Camp. But that footage is not what is
19 in the clips that I was -- that I reviewed. The clips that I
20 reviewed clearly show the mountains behind it. That's clearly
21 al Farouq.

22 Q Okay. I'm sorry, and just to be clear, the Tarnak Farms
23 footage and Ubaydah Camp footage is not contained in
24 Government's Exhibit 426, right?

25 A Definitely not, because you can -- in the -- the video

1 footage that's in "*State of the Ummah*," that shows
2 Tarnak Farm/Ubaydah Camp, you can see very clearly a big, mud
3 brick wall surrounding the whole thing, and there are no
4 mountains in the background. That clearly is not where
5 al Farouq is. That's right next to Kandahar International
6 Airport, which was where Tarnak Farms is.

7 And also the U.S. Military took photographs of these
8 locations, afterwards satellite photos and aerial
9 reconnaissance photos. The photos of Tarnak Farms, you could
10 not mistake the two. They're very, very different camps. Why
11 they were put together in this video like this, we don't know.
12 But like I said, the clips that -- on the CD that I was
13 provided, that is definitely not Tarnak Farms, at least as far
14 as my information -- the information at my disposal indicates.
15 Everything that I've seen indicates that that is
16 al Farouq Camp.

17 MR. ARIAIL: Nothing further, your Honor.

18 MR. DRATEL: Your Honor, may I just --

19 THE COURT: Sure. Go ahead.

20 MR. DRATEL: It's having to do with what's here,
21 these items.

22 THE COURT: Go ahead.

23 RECROSS EXAMINATION

24 BY MR. DRATEL:

25 Q You've never been to Afghanistan --

1 A Correct.

2 Q -- correct?

3 A Correct.

4 Q So all of your -- all of your knowledge that you've
5 stated your testimony about, which camp is which, is based
6 essentially secondhand?

7 A Correct, correct.

8 Q And Mr. Badat was actually at the Metar Camp training
9 there with Al-Qaeda, correct?

10 A I believe so, yes.

11 MR. DRATEL: Nothing further.

12 THE COURT: You may step down.

13 THE WITNESS: Thank you very much, your Honor.

14 THE COURT: Does the Government have anything else
15 it wants to do today?

16 MR. ARIAIL: The Government would like to do more,
17 your Honor, but I'm afraid we're at a point where we can't.

18 THE COURT: Like I said, ladies and gentlemen, it is
19 not a Broadway play, and it does not always go one act to
20 another act without any breaking.

21 The good news is we are moving much faster than we
22 anticipated, and this case is unlikely to be as long as we
23 told you it might be. The bad news -- although maybe you will
24 think it is good news -- is you get to go home now. I very
25 rarely get too much disappointment when I say that.

1 All right. Please remember no researching of
2 anything in the case, no interneting, no putting anything on
3 Facebook, no tweeting about anything you have heard here
4 today. Stay away from newspaper or radio or television
5 coverage or Internet coverage of anything having to do with
6 this case. If you see it, just avert your eyes or go to
7 another room. Do not read it. Keep an open mind. And we
8 will see you here tomorrow --

9 THE COURTROOM DEPUTY: No, Monday.

10 THE COURT: Monday. Is today Thursday? Great.

11 Okay. See you Monday morning at 9:30 a.m. Have a
12 great weekend.

13 (The following matters occurred outside the presence
14 of the jury.)

15 THE COURT: I am going to want to talk to the
16 lawyers at sidebar for just a minute, and I am going to want
17 Mr. Rucker in on that conversation.

18 (Continued on the following page.)
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1 (The following occurred at sidebar.)

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THE COURT: Have a good weekend.

(Matter adjourned to March 13, 2017 at 9:30 a.m.)

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LISA SCHMID, CCR, RMR OFFICIAL COURT REPORTER

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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LISA SCHMID, CCR, RMR

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 UNITED STATES OF AMERICA

12 CR 134(BMC)

versus

IBRAHIM SULEIMAN ADNAN
 ADAM HARUN HAUSA

U. S. Courthouse
 225 Cadman Plaza East
 Brooklyn, NY 11201
 March 13, 2017

Defendant.

-----x 9:30 a. m.

TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL

BEFORE THE HONORABLE BRIAN COGAN

UNITED STATES DISTRICT JUDGE

APPEARANCES

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Proceedings recorded by mechanical stenography. Transcript
produced by computer-aided transcription.

PROCEEDINGS

1 (In open court, outside the presence of the jury.)

2 (Defendant not present in open court.)

3 COURTROOM DEPUTY: All rise. The United States
4 District Court for the Eastern District of New York is now in
5 session. The Honorable Brian M. Cogan is now presiding.

6 (Honorable Brian M. Cogan takes the bench.)

7 COURTROOM DEPUTY: Calling criminal cause for jury
8 trial in Docket No. 12-CR-134, United States of America
9 against Ibrahim Suleiman Adnan Adam Harun Hausa.

10 Counsel, please note your appearances for the
11 record.

12 MR. ARIAIL: For the United States of America,
13 Assistant United States Attorney Shreve Ariail, Melody Wells,
14 and Matt Jacobs. With us at counsel table is Joe Kaster from
15 the Department of Justice and Special Agent Greg Paciorek.

16 Good morning, your Honor.

17 MS. KELLMAN: Susan Kellman, David Stern, and Joshua
18 Dratel for Mr. Hausa.

19 Good morning, your Honor.

20 THE COURT: Good morning. Let's have the jury,
21 please.

22 COURTROOM DEPUTY: Jury entering.

23 (Jury enters.)

24 THE COURT: All right. Everyone have a seat,
25 please. We're just waiting for one more juror who is here.

PLAYER/DIRECT/KAster

1 Okay. Have a seat. Welcome back, ladies and
2 gentlemen. Hope you had a restful weekend. One thing seems
3 for sure it's good that we picked tomorrow to have the day off
4 by the weather forecast. So that should make it easier on
5 everybody.

6 All right. We will proceed with the Government's
7 next witness.

8 MR. KASTER: Good morning, your Honor. The
9 United States called Colonel Ricardo Player.

10 (Witness takes the witness stand.)

11 COURTROOM DEPUTY: Please raise your right hand.

12 COL. RICARDO T. PLAYER, called by the Government, having been
13 first duly sworn, was examined and testified as follows:

14 COURTROOM DEPUTY: State your name for the record.

15 THE WITNESS: Ricardo T. Player. P-l-a-y-e-r.

16 THE COURT: All right. You may inquire.

17 MR. KASTER: Thank you, your Honor.

18 DIRECT EXAMINATION

19 BY MR. KASTER:

20 Q Good morning, sir.

21 A Good morning.

22 Q What branch of the United States military do you serve
23 in?

24 A United States Marine Corps.

25 Q How long have you been an officer in the Marine Corps?

PLAYER/DIRECT/KASTER

1 A 28 years.

2 Q Where are you currently stationed?

3 A New Orleans, Louisiana.

4 Q What is your current duty assignment in New Orleans?

5 A I'm Chief of Staff for Force Headquarters Group.

6 Q During your career in the Marines, have you worked as a
7 public affairs officer or media liaison?

8 A I have.

9 Q I'd like to turn your attention, Colonel, to the spring
10 of 2003, in particular, April-May of 2003. Where were you
11 assigned at that time?

12 A The Pentagon, Washington, D.C.

13 Q And what was your job in April of 2003 at the Pentagon?

14 A At that time, I was the Military Assistant to Secretary
15 Clarke and the Public Affairs Officer For International Travel
16 for Secretary Rumsfeld.

17 Q What was your rank at that time?

18 A I was a major.

19 Q And as a major working for the then Secretary of Defense
20 Donald Rumsfeld, what were your duties at that point?

21 A At that time, I managed the media. Managed, meaning,
22 their accountability, their care, during travel to several
23 different countries.

24 Q In April of 2003, did you have as part of your duties the
25 occasion to be part of a delegation with the Secretary of

PLAYER/DIRECT/KAster

1 Defense that went to the Middle East?

2 A Yes.

3 Q And this trip to the Middle East, which countries were on
4 the itinerary?

5 A Qatar, Iraq, Afghanistan and the United Kingdom.

6 Q Generally speaking, what was the purpose of the trip to
7 the Middle East in April of 2003?

8 A The diplomacy and opportunity for Secretary Rumsfeld to
9 touch base with the ground commanders.

10 Q And you mentioned among the countries Afghanistan. Did
11 you, in fact, visit Afghanistan as part of this delegation on
12 or about May 1, 2003?

13 A Yes.

14 MR. KASTER: Your Honor, I would like to show the
15 witness what's been marked for identification as Government's
16 Exhibit 70.

17 Q Colonel Player, displayed on your monitor is Government's
18 Exhibit 70.

19 Do you recognize what it is?

20 A I do.

21 Q And could you briefly describe what is it?

22 A That is a picture of the delegation inside a C-5 tactical
23 aircraft.

24 Q And does this photo fairly and accurately depict the
25 members of the delegation that went to the Middle East

PLAYER/DIRECT/KAster

1 including Afghanistan on or about May 1st of 2005?

2 A Yes, it does.

3 MR. KASTER: Your Honor, at this time, I offer into
4 evidence Government's Exhibit 70.

5 THE COURT: Any objection?

6 MR. STERN: No.

7 THE COURT: Received.

8 (Government's Exhibit 70 was received in evidence as
9 of this date.)

10 Q And if I may, your Honor, just briefly display it to the
11 jury.

12 Colonel Player, Government's Exhibit 70 is now on
13 the display. If you wouldn't mind, do you recognize, first,
14 in this photo Secretary Rumsfeld?

15 A Yes.

16 Q Could you point him out by touching the monitor in front
17 of you or circling him?

18 A (Marking).

19 Q And are you in this photo, sir?

20 A Yes, I am.

21 Q And would you show where in the photo you are?

22 A (Marking).

23 MR. KASTER: Thank you, your Honor. No further
24 questions.

25 THE COURT: Any cross?

PLAYER/DIRECT/KAster

1 MR. DRATEL: No.

2 THE COURT: You may step down. Thank you very much.

3 THE WITNESS: Thank you, sir.

4 (Witness leaves the witness stand.)

5 THE COURT: Government's next witness.

6 MR. KASTER: Yes, your Honor.

7 First, if I may, the Government has a stipulation it
8 would like to read into the record very briefly.

9 Your Honor, this is a stipulation that's been marked
10 as Government's Exhibit 320, and it reads as follows:

11 The parties have stipulated that in October 2012,
12 the defendant was legally transported from Italy to the
13 United States and was first brought to a location in the
14 United States within the Eastern District of New York.

15 THE COURT: All right. 320 is received.

16 (Government's Exhibit 320 was received in evidence
17 as of this date.)

18 MR. KASTER: Thank you, your Honor.

19 As its next witness, the United States called
20 Christopher Reimann.

21 THE COURT: All right.

22 (Witness takes the witness stand.)

23 COURTROOM DEPUTY: Please raise your right hand.

24 S.A. CHRISTOPHER REIMANN, called by the Government having been
25 first duly sworn, was examined and testified as follows:

REIMANN/DIRECT/KASTER

1 THE WITNESS: I do.

2 COURTROOM DEPUTY: Please state your name for the
3 record.

4 THE WITNESS: Christopher Reimann. R-e-i-m-a-n-n.

5 THE COURT: Please proceed.

6 MR. KASTER: Thank you, your Honor.

7 EXAMINATION

8 BY MR. KASTER:

9 Q Good morning Mr. Reimann.

10 A Good morning.

11 Q Where do you work?

12 A For the FBI.

13 Q What do you currently do for the FBI?

14 A I'm a personal security specialist.

15 Q And what does a personal security specialist do?

16 A I manage the background investigations for political
17 appointees, cabinet members, U.S. attorneys, those types of
18 things.

19 Q Prior to your current job with the FBI, did you work
20 previously with the FBI as a special agent?

21 A Yes, sir, I did.

22 Q And for how many years did you work as a special agent
23 with the FBI?

24 A Nearly 25 years.

25 Q Which field offices in the United States did you work at

REIMANN/DIRECT/KASTER

1 during your 25-year career with the FBI?

2 A I worked out of the Albuquerque, New Mexico Field Office
3 and I worked in the Los Angeles Field Office and the Tampa
4 Field Office.

5 Q Generally speaking, what types of cases did you
6 investigate as an agent in those field offices?

7 A All criminal matters as well as counterterrorism and
8 counter intelligence.

9 Q Apart from your work domestically at field offices, did
10 you have occasion during your career with the FBI to work
11 overseas?

12 A Yes, sir, I did.

13 Q And which locations overseas with you work at as a FBI
14 agent?

15 A I conducted a number of investigations throughout the
16 former Eastern Bloc -- Russia, the Ukraine, Estonia, Latvia.
17 But those were investigations with I did went did some work
18 and returned to my home office. But I was a signed
19 permanently in Pakistan as well as Singapore.

20 Q Mr. Reimann, what is a Legal Attache or the acronym.
21 LEGAT.

22 What does a LEGAT do?

23 A The LEGAT is the senior FBI representative in that
24 country. And, in most cases, also has responsibility for
25 surrounding countries. And the job is to develop

ANTHONY FRISOLONE, CSR, RDR, CRR

REIMANN/DIRECT/KASTER

1 relationships and liaison with the local host country law
2 enforcement and intelligence organizations.

3 Q I'd like to ask you a few questions regarding,
4 specifically, your time as the Legal Attache or LEGAT in
5 Pakistan?

6 A Yes, sir.

7 Q What was the time period that you served as a LEGAT in
8 Pakistan?

9 A I arrived January of 1999 and departed July of 2002.

10 Q And describe, generally, the type of work you did it's
11 LEGAT in Pakistan. Was it similar or different to the work
12 that LEGATs do around the world?

13 A It's quite similar. There are some differences depending
14 on the relationships they have with the host country. But
15 helping them develop their police forces, help them with
16 equipment, help them with training. Develop liaison to get
17 assistance and provide assistance to the different law
18 enforcement agencies.

19 Q Did you do any work outside of Pakistan in the region
20 there?

21 A I did.

22 Q And describe, generally, what kind of work you did in the
23 region?

24 A I was responsible for Afghanistan before and after 9/11,
25 so I traveled to Afghanistan on a number of occasions.

REIMANN/DIRECT/KASTER

1 Q Did you participate in investigations in Pakistan in your
2 capacity as a LEGAT?

3 A Yes, sir.

4 Q Could you describe, generally speaking, how crime scene
5 investigations in Pakistan differed from the ones you
6 participated in when you were an agent here in the
7 United States?

8 A Primarily, after we had developed a relationship with the
9 Pakistani authorities, they required our assistance in the
10 techniques and ability to collect evidence. So, in many
11 cases, they would allow us to come in after arrests were made,
12 or after the areas were cleared, to assist them and show them
13 collection techniques -- how to preserve evidence, how to bag
14 to and identify it and such. So we were able to do that. To
15 assist them as well as develop cases for ours.

16 Q As a general matter, when there was an arrest to take
17 place in Pakistan, who had primary authority to conduct the
18 arrests, Pakistani authorities or you and other FBI agents?

19 A The Pakistani authorities.

20 Q And why is that?

21 A It's a sovereign country, it's their country. The
22 arrests were conducted by them.

23 Q All right. I'd like to have you turn your attention to
24 the events of the evening of March 27th and the night of March
25 28, 2002, okay?

REIMANN/DIRECT/KASTER

1 A Yes, sir.

2 Q At that time, were you serving as LEGAT?

3 A I was.

4 Q And did you come to participate in a planned arrest
5 operation on that night?

6 A I did.

7 Q And who was the target of the arrest operation?

8 A Primary target was an individual named Abu Zubaydah.

9 Q And what was your role to be in the operation of Abu
10 Zubaydah?

11 A I was to organize the FBI team to conduct the searches
12 and seizure of any evidence at the various arrest sites.

13 Q Which cities in Pakistan were the focus of this arrest
14 operation?

15 A There were two cities, Faisalabad and Lahore.

16 Q And which city did the authorities believe Abu Zubaydah
17 was located in?

18 MR. STERN: Objection.

19 THE COURT: Sustained. Rephrase the question.

20 Q As part of this arrest operation, which cities did you go
21 to?

22 A I was in Faisalabad. I started in Lahore and went to
23 Faisalabad.

24 Q Why did you start in Faisalabad?

25 A That was one of the cities and that was the primary city

REIMANN/DIRECT/KASTER

1 where we believed Abu Zubaydah to be.

2 Q What was your role as part of this arrest operation?

3 A Just to make sure that the FBI personnel were safe, that
4 they had the equipment, they needed to conduct the searches;
5 that the evidence was controlled and, you know, basically I
6 operated the command center.

7 Q What was the plan ahead of time for how you and your
8 fellow FBI ate were to handle the evidence that was seized as
9 part of this operation?

10 A Well, the plan was the Pakistani authorities were to
11 enter the different residences where we believed the different
12 suspects to be. They would conduct the arrests and make sure
13 that the houses were clear. They also conducted a bomb search
14 to make sure there was no bombs left behind. And after that
15 everything was clear, the FBI personnel were going to go
16 inside, conduct their searches and recover the evidence, and
17 take it back to a location we had in the City of Faisalabad.

18 Q And what would you do with the evidence then once it was
19 taken back to the location?

20 A When all of the teams returned to the location, the
21 evidence was then put into several vehicles and we drove
22 several hours to the City of Lahore.

23 Q Let's then discuss briefly what happened that night.

24 Where were you positioned yourself in Faisalabad?

25 A Just in the within the city, but in the outskirts a

REIMANN/DIRECT/KAster

1 little bit. I was in the safe house, the command center, that
2 we had acquired and was operating from there when the teams
3 were deployed.

4 Q What happened when the arrest operation started?

5 A About 15, 20 minutes after the all the arrests took
6 place, approximately, 2:00 a.m. was the launch time for the
7 various sites. About 15, 20 minutes later, we heard gunfire.
8 We could hear that from the command post and it was in the
9 area of one of our sites.

10 Q What did you do after hearing gunfire?

11 A I confirmed via radio traffic that there was gunfire at
12 one of the -- at our site, and I advised that I was on my way
13 there. So I left in a vehicle to that site.

14 Q And where, specifically, did you go?

15 A I went to the residence of where Abu Zubaydah was
16 actually captured.

17 Q And what did you find when you got there?

18 A When I arrived there, there were two local authority,
19 Pakistan authority, vehicles parked out front, pickup trucks.
20 And in the back, there were two individuals in the back of the
21 bed in one vehicle, and the second vehicle had what was later
22 to be determined Abu Zubaydah.

23 MR. STERN: Objection.

24 Q Let's talk about what you did --

25 MR. KASTER: I'll rephrase the question.

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1 THE COURT: Hold it. I'll strike the last part of
2 that answer.

3 Go ahead.

4 Q Let me back up if you don't mind, Mr. Reimann.

5 What did you did you, yourself, once you got that
6 location and saw those vehicles?

7 A I approached the vehicles and I approached the FBI agent
8 there at the scene to discuss with him what had happened.

9 Q And who was that agent?

10 A That was Special Agent David Franco.

11 Q And what did you do after approaching Mr. Franco. What
12 did you do?

13 A I asked him if he was okay, was there anybody hurt? I
14 asked about the -- what actually happened. He then --

15 MR. DRATEL: Objection.

16 Q What did you do then? Let me break it down a little bit?

17 THE COURT: He's talking about actions rather than
18 words.

19 THE WITNESS: Okay.

20 Q What did you do, Mr. Reimann, after speaking to
21 Mr. Franco? What did you do in relation to those two vehicles
22 you described a moment ago?

23 A We discussed the identity of the individuals in the
24 vehicles.

25 Q And did you do anything to try to confirm identity?

REIMANN/DIRECT/KAster

1 A Yes. We had a photo of our main suspect and several
2 other photos. In trying to compare the photo me and of Abu
3 Zubaydah with one of the individuals in the vehicle.

4 Q What was your initial assessment as to whether one of
5 those individuals was Abu Zubaydah?

6 A Yes. Initially, I was -- I thought he did resemble the
7 photograph we had of Abu Zubaydah but I wasn't a hundred
8 percent convinced that that was him.

9 Q After looking at the individuals in the vehicle, what
10 happened next to you?

11 A Approximately several minutes later, I received a radio
12 call from one of the other sites, and they had --

13 MR. DRATEL: Objection.

14 MR. KASTER: Let me hold on a second. I think the
15 mic went off. It seemed like it went down a little bit to me.

16 MR. ARIAIL: The courtroom speaker went off, your
17 Honor.

18 THE COURT: Seems to be happening intermittently.

19 Q Let's try again, Mr. Reimann.

20 A Okay.

21 Q I apologize. Let me reask the question, if I may.

22 Where, if anywhere, did you go after looking at the
23 individuals in the vehicle?

24 A After receiving the call that one of the other --

25 MR. DRATEL: Objection.

REIMANN/DIRECT/KASTER

1 THE COURT: Sustained. Just where did you go.

2 THE WITNESS: To one of the other arrest sites.

3 Q Why did you go to one of the other arrest sites?

4 A Because they believed --

5 MR. DRATEL: Objection.

6 MR. KASTER: It's not for truth of the matter, your
7 Honor.

8 THE COURT: I agree. Overruled.

9 Q You may answer the question.

10 Why did you go to another arrest site?

11 A The FBI agents at the scene there believed that Abu
12 Zubaydah had been detained there.

13 MR. DRATEL: Your Honor, may we have an
14 instruction?

15 THE COURT: Yes. Ladies and gentlemen, you're not
16 to take that statement that other FBI agents had seen Abu
17 Zubaydah there as true. They're not why it's being offered.
18 Just being offered to show why this agent went to the site.

19 Q Did you go to a second site?

20 A Yes, sir.

21 Q And what, if anything, did you determine as to whether or
22 not Abu Zubaydah was at the second site?

23 A That the individual was definitely not Abu Zubaydah.

24 Q After the second site, where did you go?

25 A I received a call that there was a third site.

REIMANN/DIRECT/KAster

1 Q Did you go to the third site?

2 A I did.

3 Q And what did you find there?

4 A Similarly, that that individual was not Abu Zubaydah.

5 Q After the third site, did you return back to the original
6 house?

7 A I did.

8 Q Once you go back to the original house, what did you do
9 next?

10 A When I arrived at the original scene, there was a large
11 crowd of local Pakistani authorities outside congregated
12 around the trucks and I saw Agent Franco in that crowd.

13 Q What did you do once you saw Agent Franco in the crowd?

14 A I approached Agent Franco, we discussed the identity of
15 Abu Zubaydah.

16 Q Let me stop you there for a second.

17 A Yes, sir.

18 Q Let me ask you this question.

19 What, if anything, did Agent Franco have with him
20 when you approached him?

21 A He was carrying some bags, some bags of evidence.

22 Q What did you then do once you approached Agent Franco?

23 A We went to the back of the pickup again, discussed the
24 condition and the identity of --

25 MR. DRATEL: Objection.

REIMANN/DIRECT/KAster

1 THE COURT: Overruled so far. Don't give us the
2 substance of what you said, but you can tell us what the topic
3 was that you discussed.

4 Q You may finish your question, or finish your answer.

5 A We discussed what we'll do. I instructed Agent Franco to
6 go in the vehicle to take the individuals to a local hospital
7 and I took the bags that he had in his possession.

8 Q What did you then do with the bags that you received from
9 Agent Franco?

10 A I put them in the vehicle that I had drove there to, and
11 returned to the safe house.

12 Q After you got back to the safe house, what did you do
13 with the bags that you received from Agent Franco?

14 A I removed the bags from that vehicle and placed them into
15 my personal vehicle which was parked at our house there.

16 Q And then ultimately what happened with the bags that you
17 put into your personal vehicle that you had parked there?

18 A Several hours later, we drove to Lahore and placed all
19 the evidence that was collected in the various sites in a safe
20 house that we had established in Lahore.

21 Q After you were given the bags from Agent Franco, were
22 these bags ever out of the possession of you or another FBI
23 agent before being sent back to the U.S.?

24 A No, sir, they were not.

25 MR. KASTER: No further questions, your Honor.

REIMANN/CROSS/DRATEL

1 THE COURT: Cross.

2 MR. DRATEL: Yes. Thank you, your Honor.

3 CROSS-EXAMINATION

4 BY MR. DRATEL:

5 Q Now, with respect to those bags of materials that you
6 were given by Agent Franco, that was from a location known as
7 F3; is that correct?

8 A That's correct.

9 Q And you personally don't know where any particular item
10 in those bags was seized from in that F3; right?

11 A That's correct, I do not.

12 Q And that was a house; correct?

13 A Yes, it was.

14 Q It was a two-floor, two-story residence?

15 A Two- or three-story, yes. Yes, it was.

16 Q And this was 2002, right? March 2002?

17 A Yes, sir.

18 MR. DRATEL: Nothing further. Thank you.

19 THE COURT: Any redirect?

20 MR. KASTER: No, your Honor.

21 THE COURT: You may step down. Thank you.

22 (Witness leaves the witness stand.)

23 THE COURT: Call your next witness.

24 MS. WELLS: Your Honor, the Government calls David
25 Franco.

FRANCO/DIRECT/WELLS

1 (Witness takes the witness stand.)

2 COURTROOM DEPUTY: Good morning. Raise your right
3 hand.

4 DAVID FRANCO, called by the Government, having been first duly
5 sworn, was examined and testified as
6 follows:

7 THE WITNESS: I do.

8 COURTROOM DEPUTY: Please state your name for the
9 record.

10 THE WITNESS: David Franco. D-a-v-i-d.
11 F-r-a-n-c-o.

12 COURTROOM DEPUTY: Thank you. You may be seated.

13 THE COURT: All right. You may inquire.

14 MS. WELLS: Thank you, your Honor.

15 DIRECT EXAMINATION

16 BY MS. WELLS:

17 Q Good morning, sir.

18 A Good morning, ma'am.

19 Q Are you a former law enforcement agent?

20 A I am.

21 Q Who did you work for?

22 A Federal Bureau of Investigation.

23 Q And for about how long did you work for the FBI?

24 A I approximately 24 years.

25 Q Now, during that 24 years when you work for the FBI, did

FRANCO/DIRECT/WELLS

1 you tell us just what different titles you held?

2 A Special agent, Supervisory Special Agent, Unit Chief.

3 Q And which different geographical areas did you work in
4 within the United States?

5 A I worked in El Paso, Texas and the Washington,
6 D.C.-Quantico area.

7 Q And during your tenure with the FBI, what different kinds
8 of investigations did you handle?

9 A I worked various criminal violations, white collar crime,
10 drug trafficking, public corruption. I also was a Supervisory
11 Program Manager at FBI headquarters in the Criminal Division
12 for financial crimes as well as asset forfeiture, money
13 laundering.

14 I worked in crisis management down at Quantico. And
15 then I was in the Counterterrorism Division, was a Supervisory
16 Special Agent and then a Unit Chief.

17 Q Now, I want to direct your attention to 2002.

18 At some point that year, were you sent on a
19 temporary detail for the FBI?

20 A Yes, ma'am, I was.

21 Q Where did you go?

22 A I was detailed to Islamabad, Pakistan.

23 Q And how did you get that assignment?

24 A I requested, I volunteered for it. They were looking for
25 some --

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1 MR. DRATEL: Objection.

2 THE COURT: I don't think we have enough of the
3 answer.

4 Go on to something else.

5 Q What was the purpose your assignment?

6 A To assist with various leads that were coming into the
7 Legal Attache office in Islamabad, Pakistan from all the FBI
8 field offices around the country mostly as a result of the
9 9/11 incident.

10 Q What was period your detail, what months or dates were
11 you in Pakistan?

12 A Approximately, from March of 2002 until May of 2002.

13 Q Who did you report to while you were in Pakistan on this
14 detail?

15 A Legal Attache Christopher Reimann.

16 Q All right. Did there come a point in time when, during
17 your detail, in which you assigned to participate in a raid or
18 an FBI operation in Pakistan?

19 A Yes.

20 Q Approximately when did that take place?

21 A The actual raid occurred on March 28th of 2002 in
22 Faisalabad, Pakistan.

23 Q And what was your assignment in connection with that
24 raid?

25 A I was one of -- I was one assigned agent to a particular

FRANCO/DIRECT/WELLS

1 location designated as F3 in Faisalabad, Pakistan. And I was
2 assigned to look for an individual who was believed to be Abu
3 Zubaydah, as well as to conduct searches of any particular
4 items I thought pertinent from that particular location.

5 Q Okay. And I want to turn back to what happened during
6 the raid.

7 MS. WELLS: But first, I'd like to show the witness,
8 your Honor, what's in evidence as Government Exhibit 207.

9 THE COURT: All right.

10 Q Mr. Franco, I'm going to see if we can zoom in a little
11 bit so it's easier to see.

12 This is a map of Pakistan and you mentioned a couple
13 of different locations. First of all, which city were you
14 primarily working from during your temporary detail in
15 Pakistan?

16 A Islamabad, Pakistan.

17 Q Can you show us on the map and you can do that by
18 touching the screen?

19 A (Marking).

20 Q You also mentioned the location of this particular raid
21 that took place in March of 2002. What city was that in?

22 A Faisalabad, Pakistan.

23 Q Can you show us where Faisalabad is located on the map?

24 A (Marking).

25 Q All right. And during the raid or the operation on

FRANCO/DIRECT/WELLS

1 March 28, 2002, was there any other cities in Pakistan where
2 FBI agents and other finals had set up or had offices or
3 facilities located?

4 A Yes, ma'am. Lahore, Pakistan.

5 Q Can you show us where Lahore is located?

6 A (Marking).

7 Q Thank you very much.

8 A You're welcome.

9 Q So you mentioned a moment ago that one of your
10 assignments during this March 28, 2002, raid was to look for
11 an individual who you knew by the name Abu Zubaydah?

12 A That's correct.

13 Q Were you given any information or resources to help you
14 identify that person?

15 A Yes. I was given some photographs.

16 Q All right.

17 MS. WELLS: Your Honor, I would like to show the
18 witness what is already in evidence as Government 407.

19 THE COURT: Okay.

20 Q Do you recognize this photograph?

21 A I do.

22 Q What is this photograph?

23 A This is a photograph of the individual identified as Abu
24 Zubaydah.

25 Q And was this one of the photographs you received in

FRANCO/DIRECT/WELLS

1 advance of the March 28, 2002, raid?

2 A It was.

3 Q Now, I'd like to walk through what took place during that
4 operation just from the beginning.

5 Where did you first set up, or as I think the FBI
6 calls it, "stage," for that operation?

7 A We first staged in Lahore, Pakistan.

8 Q And what did you do in Lahore?

9 A It was generally a briefing on what was expected, what we
10 needed to expect, and team assignments. Who was going to what
11 location with what individuals.

12 Q Were there any other FBI agents on the team that you were
13 assigned to?

14 A On F3, no.

15 Q All right. After meeting in the Lahore, Pakistan
16 location, where did you go next?

17 A Then we drove to Faisalabad, Pakistan.

18 Q And what, if anything, did you do at that first location
19 in Faisalabad?

20 A Regrouped with the individual team I was assigned in
21 Faisalabad, and at a safe house in Faisalabad, Pakistan.

22 Q Now, I want to turn to what you've described as the "F3."

23 Can you describe what the F3 was?

24 A It was a two-story house. Affluent, by Pakistani
25 standards, in an affluent neighborhood by Pakistani standards.

FRANCO/DIRECT/WELLS

1 It had tall, cement brick walls meant to, you know, keep
2 people out.

3 MR. DRATEL: Objection.

4 THE COURT: Overruled.

5 A It was a cement stucco, I don't know if stucco is the
6 correct term, but something similar to that two-story
7 structure. Very large, had a number of bedrooms. Had an iron
8 fence in the front, steel fence. And a courtyard, large court
9 yard.

10 Q Did there come a point in time when you and the members
11 of your team arrived near that location near that two-story
12 home?

13 A Yes, ma'am. It was approximately 2:30 in the morning on
14 March 28th.

15 Q And where did you set up relative to the house?

16 A I was in a vehicle just adjacent to the house in the
17 front. So, you know, one house up in a vehicle in the street.

18 Q After you arrived, and you were in that vehicle adjacent
19 to the house, what happened next?

20 A Some Pakistani officials approached the residence and
21 began what we call a knock and announce.

22 Q What's a knock and announce?

23 A Just identifying who they were, trying to begin entry
24 into a particular location, explain what they were there for.
25 Obviously, I didn't speak Punjab, but the same type of

FRANCO/DIRECT/WELLS

1 terminology. They were knocking, announcing, and it took --
2 they were there for a good 20, 25 minutes trying to gain
3 entry.

4 Q As the local Pakistani authorities were doing this knock
5 and announce what, if anything, happened?

6 A Towards the end of that, lights would come on in the
7 residence, it would go off. A lot of yelling and screaming by
8 the Pakistani officials. And then, eventually, it got really
9 loud and then there was a gun fight.

10 Q Can you describe what happened or what you heard?

11 A A lot of yelling, screaming, they were making entry
12 through the iron gate which took a long time and there was
13 quite a bit of gun exchange, gunfire exchanged that had
14 occurred.

15 Q At the point where there was a lot of gunfire, what did
16 you do?

17 A We were instructed to disengage if we were able to once
18 we got into an adversarial situation. So when it was safe, we
19 disengaged and we retreated back to the end of the block.

20 Q And then once you went back to the end of the block, what
21 happened next?

22 A I sat there. LEGAT Reimann was at the safe house in
23 Faisalabad which was relatively close, approximately, a mile
24 or so. It's a guesstimate. So he arrived at my location and
25 then, after about 15 minutes after the gunfire had subsided,

FRANCO/DIRECT/WELLS

1 LEGAT Reimann and myself returned back down the street to the
2 location, to the F3.

3 Q When you got back to the house, the F3, what did you see?

4 A There was two Pakistani official pickup trucks in the
5 street, blue pickup trucks, that they used to transport their
6 particular officials. And in one of the beds was a -- it
7 appeared to be a deceased individual who had been shot and he
8 was in the base of the bed, and there was another individual
9 who was shot but still alive who was on one of the seats of
10 the pickup truck in the back bed.

11 Q What, if anything, did you see in the second pickup
12 truck?

13 A In the second pickup, there was another individual who
14 was shot but still alive. After I worked with him for a few
15 minutes was able to take a look at his face. It was Abu
16 Zubaydah.

17 Q And if I just may have the Elmo again, please.

18 And, Mr. Franco, did you recognize the individual in
19 Government Exhibit 407?

20 A Yes, I did.

21 Q All right. At that point, after you determined that you
22 recognized the individual who was in the truck, what did you
23 do next?

24 A Discussed it with LEGAT Reimann. Discussing the
25 identity. And then I was asked to go into the residence of F3

FRANCO/DIRECT/WELLS

1 and collect some of the evidence that was in the house.

2 Q All right. So I want to talk about what happened when
3 you went inside the house.

4 But first, as you were going inside, can you
5 describe what was happening, what was happening around you?

6 A Very chaotic scene. In a normal law enforcement
7 operation here in the United States whether it's the local,
8 state, federal, or FBI, we usually what we call "own the
9 environment." So before we'll make entry to do a search, we
10 make sure it's safe and secure. The entire area was very
11 volatile, very chaotic. The neighbors were starting to come
12 out from the actual gunfire and all the noise.

13 In the courtyard, they had a bunch of females that
14 had been in the residence that had been pulled out and
15 sequestered to the side they were obviously very upset. They
16 had, approximately, ten other males that were in the courtyard
17 that had been arrested, detained, in addition to the three
18 other males out in the pickup trucks. A lot of officials
19 walking around very chaotic scene and that was it.

20 Q And given the scene outside the house, what affect if
21 any, did that have on your approach to conducting the search
22 inside the house?

23 A Realizing at any particular point in time that the search
24 could have been terminated by any of the officials on the
25 location for any number of reasons, normal procedures where

FRANCO/DIRECT/WELLS

1 time was on your side, and we controlled the environment, it
2 was just not a feasible opportunity to do that.

3 Q All right. At some point, did you go inside the house?

4 A Yes, I did. I made entry.

5 Q Can you describe what you saw when you went inside?

6 A Very transient. Very large home, multiple bedrooms.
7 Mattresses on the floor. Sparse to no furniture at all in the
8 residence. It just looked like a type of residence where you
9 had a number of individuals just living in the residence on a
10 temporary basis just transient type.

11 Q Now, as you went in to conduct the search, what types of
12 items were you looking to collect?

13 A My first priority was collecting any items that were
14 indicative of a planned attack against the United States or
15 any of its allies, friends. Next concern was to attempt to
16 collect any evidence that I thought would link anyone in that
17 residence back to the 9/11 attacks because realizing this was
18 extremely fresh. This was only a few months, this was March
19 of 2002 after September of 2001.

20 Q And what kinds of items were you looking for?

21 A I would look for anything that would bomb-making
22 materials, computers, logs, registers, phone books, pictures,
23 passports. Anything like that.

24 Q Can you describe for us the process that you used in
25 actually collecting evidence inside the house?

FRANCO/DIRECT/WELLS

1 A I would just make, as I'd go through each room, I would
2 pick up any items that I thought, in my opinion, were relevant
3 to those particular issues I just explained.

4 Q About how much time did you spend inside the house?

5 A I was only in the house for about 15 minutes due to the
6 volatility of the environment.

7 Q And you remember what kinds of items were actually
8 collected?

9 A I did. I did collect some computers, some address books
10 that appeared to be address books, phone books, photographs,
11 passports, appeared to be bomb-making materials, soldering
12 iron, wires, circuitry boards.

13 Q What did you do with the items that you collected?

14 A I put them in bags.

15 Q After you completed the search inside the house, what did
16 you do next?

17 A I then proceeded outside the residence where I was met
18 again by Chris Reimann, the LEGAT, and Abu Zubaydah was
19 obviously severely wounded, and he instructed me to accompany
20 him to the hospital. So I gave him the bags of evidence that
21 I had collected and then I proceeded to the Faisalabad
22 hospital with Abu Zubaydah.

23 Q Just so the record is clear, who did you give the bags of
24 evidence to?

25 A Christopher Reimann.

FRANCO/DIRECT/WELLS

1 Q And so, did you go to the hospital with Abu Zubaydah?

2 A I did.

3 Q Did he receive medical treatment there?

4 A He did.

5 Q Did there come a point in time in which you left the
6 hospital?

7 A Yes.

8 Q And where did you go?

9 A I returned back to the Faisalabad safe house where I
10 was -- where Chris Reimann and I gathered all the evidence
11 from that location and I don't know if there were other
12 locations I believe there were. We gathered that evidence and
13 then he and I traveled to Lahore to the other safe house with
14 the evidence.

15 Q What did you do when you arrived in Lahore?

16 A We dropped the other evidence in Lahore. By this time,
17 we had been awake for more than 24 hours straight, so we
18 dropped the evidence off and then we proceeded to a hotel in
19 Lahore to get some rest.

20 Q Did there come a point in time when you went to the safe
21 house in Lahore again?

22 A Yeah. After we got some rest at the hotel, we came back
23 later that afternoon, early evening, and then I processed all
24 my evidence.

25 Q When you say, "processed all your evidence," tell us what

FRANCO/DIRECT/WELLS

1 that means?

2 A We put it on a FD-192, it's an evidence log form. So I
3 took the evidence and just categorized it as best I could on
4 that form, basically, saying that I had collected that group
5 of evidence out of those bags from that location at F3.

6 Q And when you were conducting -- when you were processing
7 this evidence and filling out the form that you described, did
8 you recognize, generally speaking, the evidence that was in
9 the bag that you collected?

10 A I did. And the best way to describe that was it was
11 relatively fresh, but I had collected it, you know, within
12 several hours. There was nothing in the bags that surprised
13 me that I didn't remember collecting, and there was nothing I
14 didn't remember collecting that wasn't in the bags. So, in my
15 opinion, the full population of what I had collected out of F3
16 was in those bags and I had processed it.

17 MS. WELLS: All right. Your Honor, may I approach
18 the witness, please.

19 THE COURT: You may.

20 (Approaching the witness.)

21 Q What is the item that I've just shown you, and I
22 apologize, this has been marked for identification as
23 Government Exhibit 7?

24 A It appears to be a leather notebook, small leather
25 notebook.

FRANCO/CROSS/DRATEL

1 Q Do you know where that item is from?

2 A Yes, this is one the items that I collected from F3 on
3 March 28, 2003.

4 MS. WELLS: Your Honor, move to admit
5 Government Exhibit 7.

6 THE COURT: Any objection?

7 MR. DRATEL: Previous objection, your Honor.

8 THE COURT: All right. Overruled.

9 (Government's Exhibit 9 was received in evidence as
10 of this date.)

11 MS. WELLS: Permission to publish, please.

12 THE COURT: You may.

13 (The above-referred to exhibit was published in open
14 court.)

15 Q All right. Now, that the jury can see this can you tell
16 us what is this item?

17 A It's a leather notebooks with notes inside of it
18 scribbled inside of the pages.

19 Q And where is this item from?

20 A From the F3 in Faisalabad.

21 MS. WELLS: Nothing further, your Honor.

22 THE COURT: All right. Any cross?

23 MR. DRATEL: Yes. Thank you, your Honor.

24 CROSS-EXAMINATION

25 BY MR. DRATEL:

FRANCO/CROSS/DRATEL

1 Q Good morning, Mr. Franco.

2 A Good morning, sir.

3 Q I want to go back again to March 28, 2002, which was the
4 date of the events that you were just describing; correct?

5 A Yes, sir.

6 Q And your entry into what we'll call F3, that two-floor
7 home that you described in Faisalabad, Pakistan, okay? Just
8 so we know the terms, I'll just describe it as F3?

9 A Yes, sir.

10 Q And your entry into F3 was only after Pakistani
11 authorities had been through it to make arrests and had gone
12 through it secure the location?

13 A Correct.

14 Q And about how long did that take before it was, you know,
15 from the time that the Pakistani authorities gained entry
16 until the time that you were permitted to enter?

17 A As I said, it was about 15 minutes. I was down the
18 street from the time of the shooting. Exactly when they made
19 it into the residence, I'm not sure during that period. And
20 then I came back, was examining Abu Zubaydah with
21 LEGAT Reimann and, I don't know, I would say it was another
22 ten minutes.

23 Q And you mentioned that there were other people detained
24 by Pakistani authorities who had been in F3 at the time;
25 correct?

ANTHONY FRISOLONE, CSR, RDR, CRR

FRANCO/CROSS/DRATEL

1 A Yes, sir.

2 Q And about ten males you said; right?

3 A Approximately yes, sir.

4 Q And some women as well?

5 A Yes, sir.

6 Q And do you know how many women? Do you remember?

7 A I don't remember, sir. I'm sorry.

8 Q And they had been in F3 at the time that the Pakistani

9 authorities performed the raid there; right?

10 A Yes, sir.

11 Q And you don't know what rooms they occupied within that

12 structure, right?

13 A No, sir.

14 Q And, in fact, the people, the three men in the two trucks

15 that you saw, you don't know what rooms they occupied within

16 the structure?

17 A No, sir.

18 Q And inside the -- inside F3 you said there were

19 mattresses on the floor; right?

20 A Yes, sir.

21 Q And you described it, I think, in your direct, as a

22 transient place; right?

23 A Yes, sir.

24 Q And it looked like a place, just to go further with that,

25 just a place where people came and went within a short period

FRANCO/CROSS/DRATEL

1 of time transient, right?

2 A It didn't have furniture in it, sir.

3 Q Right. So it was not a permanent residence for people.

4 Did not look like it to you?

5 A No, sir.

6 Q And you don't know how long any of the people who were
7 detained or arrested or killed that night from F3 how long
8 they had been at F3; right?

9 A No, sir.

10 Q And you don't know how many people had been there the day
11 before or the day before that or the week before; right?

12 A No, sir.

13 Q Or how many different people had been there; right?

14 A That's correct.

15 Q Now, with respect to Government Exhibit 7 --

16 MR. DRATEL: Withdrawn.

17 Q There were multiple bedrooms in F3?

18 A Yes, sir.

19 Q Now, with respect to Government's Exhibit 7 and the
20 person you described as -- person you identified as Abu
21 Zubaydah. You didn't ask that person whether or not
22 Government Exhibit 7 belonged to him; right?

23 A No, sir. No, sir, I did not.

24 Q And you didn't ask anyone who was detained or arrested at
25 F3 whether Government's Exhibit 7 belonged to them or to

ANTHONY FRISOLONE, CSR, RDR, CRR

FRANCO/CROSS/DRATEL

1 someone else; right?

2 A No, I did not.

3 Q And are you aware of any fingerprints being taken or
4 tested or government's seven?

5 A I was present when we fingerprinted Abu Zubaydah.

6 MR. DRATEL: Objection, move to strike.

7 THE COURT: Sustained.

8 Q Were there any fingerprints taken or tested to your
9 knowledge from Government's Exhibit 7?

10 A I'm not aware, no, sir.

11 Q But you are aware that Abu Zubaydah was fingerprinted at
12 some point?

13 MS. WELLS: Objection, your Honor. He just moved to
14 strike the same information.

15 THE COURT: Now he wants it. Before it was
16 nonresponsive.

17 MR. DRATEL: It wasn't responsive.

18 THE COURT: Now, you can answer it.

19 A Yes, sir.

20 Q Now, the person you identified as Abu Zubaydah, you don't
21 know room in F3 he occupied; right?

22 A No, sir.

23 Q And with respect to your collection of the evidence, that
24 was about a 15-minute process; right?

25 A Yes, sir.

FRANCO/CROSS/DRATEL

1 Q So you didn't collect everything in the home, just what
2 you thought was pertinent from your quick review?

3 A Correct. Yes, sir.

4 Q And because of the time constraints that you had with
5 respect to the limited amount of time you had to perform the
6 search, you just threw the stuff in the bag and didn't make a
7 distinction with respect to where in F3 you had recovered any
8 particular item?

9 A No, sir, there was no time for that. No, sir.

10 Q But you didn't do any of that, right? You didn't specify
11 where particular items were recovered from within F3?

12 A No, sir, I didn't.

13 Q Okay. And with respect to identifying Abu Zubaydah, you
14 did it from a photograph, and one of the photographs we saw;
15 right?

16 A Yes, sir.

17 Q You didn't make a positive identification at that time
18 that it was Abu Zubaydah; correct?

19 A My opinion it was, sir.

20 Q In your opinion. But in Mr. Reimann's opinion was that
21 it wasn't; right?

22 A I think there was some discussions between who thought
23 they saw Abu Zubaydah at their location, but I was pretty
24 positive it was him.

25 Q And by the way with respect to Government's

FRANCO/CROSS/DRATEL

1 Exhibit -- the Government Exhibit, I think --

2 MR. DRATEL: Is it 407?

3 MS. WELLS: Yes, it's 407.

4 Q 407. The person in the back of the truck didn't have
5 facial hair; correct?

6 A That's correct.

7 Q And was significantly heavier than the person who was in
8 that photograph, 407; correct?

9 A I wouldn't say heavier. The facial features look --
10 that's what I identified him from, sir.

11 Q But, again, he was clean shaven in the truck?

12 A Yes, sir.

13 MR. DRATEL: Nothing further. Thank you.

14 THE COURT: Any redirect?

15 MS. WELLS: No, your Honor.

16 THE COURT: You may step down. Thank you.

17 (Witness leaves the witness stand.)

18 THE COURT: Government's next witness.

19 MR. JACOBS: Your Honor, the Government calls
20 Ladislao Carballosa.

21 COURTROOM DEPUTY: Good morning. Please raise your
22 right hand.

23 LADISLAO CARBALLOSA, called by the Government, having been
24 first duly sworn, was examined and testified as follows:

25 THE WITNESS: I do.

CARBALLOSA/DIRECT/JACOBS

1 COURTROOM DEPUTY: Thank you. Please state your
2 name for the record.

3 THE WITNESS: Ladislao, L-a-d-i-s-l-a-o.
4 Carballosa, C-a-r-b-a-l-l-o-s-a.

5 COURTROOM DEPUTY: Thank you. You may be seated.

6 THE COURT: All right. Please proceed.

7 MR. JACOBS: Thank you, Judge.

8 DIRECT EXAMINATION

9 BY MR. JACOBS:

10 Q Good morning, sir.

11 A Good morning.

12 Q Are you former law enforcement officer?

13 A I am.

14 Q Who did you work for?

15 A Federal Bureau of Investigation.

16 Q And, approximately, how long did you work for the FBI?

17 A Little over 21 years.

18 Q And what was your title in the FBI?

19 A I was a special agent.

20 Q Just very generally, during your 21-plus year career at
21 the FBI, what sort of crimes did you investigate?

22 THE COURT: Can you pull the mic closer to you?

23 THE WITNESS: Yes, sir.

24 A Everything from gangs to organized crime to drug cartels
25 to counterterrorism, white collar fraud, money laundering.

CARBALLOSA/DIRECT/JACOBS

1 Q Now, did there come a time during your career at the FBI
2 where you were detailed to another government agency?

3 A Yes, sir.

4 Q And approximately what years were you detailed to that
5 other government agency?

6 A From 2000 to 2005.

7 Q And were you still an FBI Special Agent while you were
8 detailed to that other government agency?

9 A I was.

10 Q Now, during the detailed to this other government agency,
11 did you attend intelligence briefings and meetings?

12 A I did.

13 Q Generally, approximately, how frequently?

14 A About two meetings a day at least.

15 Q All right. I'd like now, sir, to direct your attention
16 to 2004, to late July 2004.

17 Did you attend any significant briefings around that
18 time?

19 A I did.

20 Q What did you come to learn as a result of those briefings
21 and what did you do as a result?

22 MR. DRATEL: Objection as to the learned.

23 THE COURT: Let's start with the do, and then you
24 can ask why.

25 MR. JACOBS: Okay.

CARBALLOSA/DIRECT/JACOBS

1 Q As a result of those briefings, what, if any, requests
2 did you make?

3 A Well, it came to my knowledge that the Government of
4 Pakistan --

5 MR. DRATEL: Objection.

6 THE COURT: Sustained. Just what requests did you
7 make?

8 THE WITNESS: I made a request to obtain certain
9 electronic media from the FBI.

10 Q I apologize for interrupting.

11 A Yes, sir. Some electronic media for the FBI.

12 Q And why did you request that electronic media from the
13 FBI?

14 A It came to my knowledge.

15 MR. DRATEL: Objection.

16 THE COURT: Overruled.

17 A That some of the media contained information on two high
18 value targets that I had been looking at that were of interest
19 in the FBI.

20 Q And why were those high value targets of interest to the
21 FBI?

22 A They were involved in terrorism.

23 Q In any particular location?

24 A In Pakistan.

25 MR. DRATEL: Your Honor, can we have the same

CARBALLOSA/DIRECT/JACOBS

1 instruction?

2 THE COURT: All right.

3 Again, ladies and gentlemen, the reason that this
4 witness took the action that he took is the evidence before
5 you.

6 You cannot assume that it is, in fact, true that the
7 media contained information on high value targets that hasn't
8 been proven he just thought that and that's why he did what he
9 did.

10 Q Now, were you ultimately successful in obtaining a copy
11 of this media?

12 THE COURT: Let me interrupt you.

13 When I say that hasn't been proven, what I mean is
14 you can't take his testimony believing that as proof.

15 Go ahead.

16 MR. JACOBS: Thank you, Judge.

17 Q Were you ultimately able to obtain a copy of that media?

18 A I was.

19 Q And when were you able to obtain it?

20 A August 1, 2004.

21 Q And approximately how long was that after the media had
22 been obtained by the United States Government?

23 A About a week.

24 Q Now, where did you physically go to obtain a copy of that
25 media?

CARBALLOSA/DIRECT/JACOBS

1 A To the conference room in my office.

2 Q And who brought you a copy of it? Who brought a copy of
3 that media to your office on August 1, 2004?

4 A Individuals assigned to the group that actually made the
5 copies of the media.

6 Q Now how, if at all, was the copy of that media packaged
7 when you received to?

8 A As part of our standard procedure, we make sure that
9 everything is packaged in waterproof, watertight containers or
10 black containers. They're locked and they're sealed and
11 that's what it came in.

12 Q Were there any markings on these containers?

13 A None other than the manufacturer.

14 MR. JACOBS: Your Honor, may I approach the witness?

15 THE COURT: You may.

16 (Approaching the witness.)

17 Q I've just handed the witness what's marked for
18 identification as Government Exhibit 20.

19 Sir, what is that?

20 A It's a hard drive.

21 Q And do you recognize that as the hard drive for one of
22 the pieces of media that you received on August 1, 2004?

23 A I do.

24 Q How do you recognize it as such?

25 A It's got a single use identification number starts with

CARBALLOSA/DIRECT/JACOBS

1 REQ and then the year 2004 0982. And then underneath it says,
2 "Task 1."

3 Q I would like to now shows the witness what's marked for
4 identification as Government Exhibit 20-A.

5 THE COURT: All right.

6 Q Do you see this image on the screen, sir?

7 A Yes, sir.

8 Q What is it?

9 A It's a facsimile copy of the same hard drive that you
10 just showed me.

11 Q Is it a true and accurate version of the hard drive?

12 A It is.

13 MR. JACOBS: I move to admit and publish
14 Government Exhibit 20-A.

15 MR. DRATEL: Prior objection, your Honor.

16 THE COURT: Overruled it is received.

17 (Government's Exhibit 20-A was received in evidence
18 as of this date.)

19 (The above-referred to exhibit was published in open
20 court.)

21 Q Now, that the image is visible to the jury, can you
22 please point to the unique identifier you can circle on your
23 touch screen.

24 A (Circling). That's the single use identifier that
25 identifies this hard drive.

CARBALLOSA/DIRECT/JACOBS

1 Q And upon receiving this media, did you sign any
2 paperwork?

3 A I did.

4 Q And what identifier, if any, was on that paperwork that
5 you signed?

6 A The single use number the 2004 0982 number.

7 Q You see the 2004 prefix on the unique identifier?

8 A Yes, sir.

9 Q What does that represent?

10 A The year of which the item was taken.

11 Q Besides signing the document that you just described, did
12 you do anything else to memorialize your receipt of this
13 media?

14 A We wrote down -- we identified all the media that was
15 actually taken that day, and then we prepared a communication
16 to FBI headquarters that detailed the items that were taken
17 and the individuals involved with the raid.

18 Q Did that memorialization contain acquisition details?

19 A It did.

20 Q And what did those reflect?

21 A It also identified the items that were taken, for
22 example, the REQ number, it actually stated out the REQ number
23 and all the other individual details pertaining to the hard
24 drive.

25 Q And did it reflect where the items came from?

CARBALLOSA/DIRECT/JACOBS

1 A It did.

2 Q Where was that?

3 A The Government of Pakistan.

4 Q Now, when you received this media at your office on
5 August 1, 2004, was anybody else with you?

6 A Yes, sir.

7 Q Who?

8 A Special Agent Jim Worth.

9 Q And to the organization did Special Agent Jim Worth, or
10 James Worth, work for at the time?

11 A He was part of the FBI's document team.

12 Q And how did Special Agent Worth know to come to your
13 office that day?

14 MR. DRATEL: Objection.

15 THE COURT: Sustained.

16 Q Did you communicate with Special Agent Worth at any
17 point?

18 A We did. We had prearranged us meeting, once we found out
19 the media was going to come to my office or to my office on
20 Sunday, we had communicated and arranged for him to come to my
21 office on that day.

22 Q You mentioned Sunday, I apologize if I didn't ask this
23 before.

24 What day of the week was August 1, 2004?

25 A It's a Sunday.

CARBALLOSA/DIRECT/JACOBS

1 Q Why did you transfer custody of the media --

2 MR. JACOBS: Withdrawn.

3 Q At any point, did you transfer custody of the media?

4 A We did that Sunday.

5 Q And to whom?

6 A To Special Agent Jim Worth.

7 Q Did you normally go into the office on Sunday?

8 A No, sir.

9 Q Why didn't you wait until the next work day, until
10 Monday?

11 MR. DRATEL: Objection, relevance.

12 THE COURT: Overruled.

13 Q I'll start again.

14 Why didn't you wait until the next work day, until
15 Monday, to transfer that media to Jim Worth?

16 A Well, it was my belief that there was information --

17 MR. DRATEL: Objection.

18 THE COURT: Let's have a sidebar.

19 (Continued on the next page.)
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SIDEBAR

1 (Sidebar.)

2 THE COURT: This is being offered to explain the
3 delay from Sunday to Monday as to why he waited until --

4 MR. JACOBS: No it was being offered that this was
5 an emergency and it was an atypical method of transferring.

6 THE COURT: I believe that unless they open that on
7 cross and I'll get you do it on redirect.

8 MR. JACOBS: Thank you, Judge.

9 (Sidebar discussion concludes.)

10 (Continued on the next page.)

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CARBALLOSA/CROSS/DRATEL

1 (In open court.)

2 EXAMINATION

3 BY MR. JACOBS:

4 Q Sir, did you participate in the analysis or exploitation
5 of this hard drive?

6 A I did not.

7 Q Sitting here today, are you familiar with its contents?

8 A I am not. I do not.

9 Q Are you familiar with the defendant in this case?

10 A No, sir.

11 MR. JACOBS: No further questions.

12 THE COURT: Any cross?

13 MR. DRATEL: Yes. Thank you.

14 CROSS-EXAMINATION

15 BY MR. DRATEL:

16 Q Good morning, Mr. Carballosa.

17 A Good morning, Counselor.

18 Q Government's Exhibit 20, the hard drive itself, is not
19 the original hard drive that was seized by the Government of
20 Pakistan; correct?

21 A Correct.

22 Q It's an image made by another U.S. Government agency;
23 correct?

24 A Correct.

25 Q Actually, was the image made by the Government of

CARBALLOSA/CROSS/DRATEL

1 Pakistan, or by the U.S. Government agency, if you know?

2 A By the Government agency.

3 Q And so, the original has not been in United States'
4 custody; correct?

5 A That is correct.

6 Q And, as far as you know, there was no chain of custody
7 that you can testify to with respect to the original in the
8 custody the?

9 MR. JACOBS: Objection.

10 THE COURT: Sustained.

11 Q Do you have any information about who had, specifically,
12 in terms of persons and places with respect to the specific?

13 MR. JACOBS: Objection, your Honor.

14 THE COURT: Well, I haven't heard the question, but
15 I don't think I'm going to sustain it.

16 Q With respect to what happened to this hard drive from the
17 time it was seized until the time it was imaged by the
18 United States Government agency?

19 A Well, I hope the original hard drive was seized by the
20 Government of Pakistan.

21 Q Right. But between that point and the imaging by the
22 United States Government agency, you don't have any
23 information as to what happened to that hard drive?

24 A I have no direct knowledge, yes, sir.

25 MR. DRATEL: Nothing further. Thank you.

PITESKY/DIRECT/WELLS

1 THE COURT: Any redirect?

2 MR. JACOBS: No redirect, Judge.

3 THE COURT: You may step down. Thank you.

4 THE WITNESS: Thank you, your Honor.

5 (Witness leaves the witness stand.)

6 THE COURT: Government's next witness.

7 MS. WELLS: Your Honor, the Government calls
8 Special Agent Ray Pitesky.

9 (Witness takes the witness stand.)

10 COURTROOM DEPUTY: Please raise your right hand.

11 S.A. RAYMOND M. PITESKY, called by the Government, having been
12 first duly sworn, was examined and testified as follows:

13 THE WITNESS: I do.

14 COURTROOM DEPUTY: State your name for the record.

15 THE WITNESS: Raymond M. Pitesky. P-i-t-e-s-k-y.

16 THE COURT: Please proceed.

17 MS. WELLS: Thank you, your Honor.

18 DIRECT EXAMINATION

19 BY MS. WELLS:

20 Q Good morning.

21 A Good morning.

22 Q Who do you work for?

23 A The FBI.

24 Q What is your title?

25 A Legal Attache.

PITESKY/DIRECT/WELLS

1 Q Are you also a Special Agent With the FBI?

2 A Yes.

3 Q And for how many years have you work for the FBI?

4 A Just over 25 years.

5 Q Now, you mentioned a moment ago Legal Attache, what is
6 your current assignment?

7 A I'm currently assigned to our office in Islamabad,
8 Pakistan.

9 Q Is your role there as the Legal Attache?

10 A Yes.

11 Q Very briefly, what do you do as the Legal Attache or the
12 LEGAT in Islamabad?

13 A Our job is to liaison between the FBI and foreign law
14 enforcement in Pakistan.

15 Q How long have you been working as the LEGAT in Islamabad
16 on this current tour?

17 A My tour began at the beginning of October of last year.

18 Q And will continue for how long?

19 A For one year ending at the beginning of October 2017.

20 Q Is this the first time you've worked in Pakistan for the
21 FBI?

22 A No.

23 Q How many tours in Pakistan have you done?

24 A Six times total being in Pakistan but three tours.

25 Q And very briefly, can you just describe for us what those

PITESKY/DIRECT/WELLS

1 were for?

2 A The first tour was in, approximately, '98 or '99 for
3 providing training to the Pakistanis. The second time I was
4 there was in response to a rocket attack of the U.S. embassy
5 where we collected evidence. The third tour was after
6 September 11th in support of our mission over there. And the
7 last three times including this were one-year assignments as
8 either the Assistant Legal Attache, or as the Legal Attache.

9 Q All right. I'd like to turn your attention to 2004.
10 Where were you assigned during that year.

11 A I was assigned to our office in Islamabad as the
12 Assistant Legal Attache or ALAT.

13 Q And what does the ALAT, or the Assistant Legal Attache
14 do?

15 A The ALAT supports the LEGAT office and is the deputy to
16 the Legal Attache.

17 Q And, by the way, what building or facility does the ALAT
18 and the Legal Attache work from in Islamabad?

19 A Our office is within the U.S. embassy.

20 Q At the point in time when you were the ALAT during 2004,
21 who did you report to?

22 A The Legal Attache who, at the time, was Ellis Kupferman.

23 Q What were the working conditions in Islamabad like during
24 2004?

25 A 2004 was a difficult time mostly because of the

PITESKY/DIRECT/WELLS

1 heightened security in the city and the country. We would
2 have to commute to and from our residences and meetings in
3 fully armored vehicles. The security posture within the
4 country for our office, our embassy, as well as other western
5 embassies was extremely heightened.

6 Q What percentage of your time, if any, did you spend
7 working on counterterrorism-related investigations in 2004?

8 A I would estimate approximately 95 percent.

9 Q During the period of time that you were the Assistant
10 Legal Attache in 2004, were there any other individuals who
11 worked as ALATs or Assistant Legal Attaches in Pakistan?

12 A Yes.

13 Q Who was that?

14 A The other Assistant Legal Attache was Katrina Amos.

15 Q And about when did she begin working at the embassy?

16 A She arrived, approximately, February, mid-February.

17 Q Did there come a point in time during 2004 that you
18 became aware of raids that had taken place in Pakistan?

19 A Yes.

20 Q Were you personally involved in those?

21 A No.

22 Q And under what circumstances did you come to learn about
23 these raids?

24 A We were informed that some raids --

25 MR. DRATEL: Objection.

PITESKY/DIRECT/WELLS

1 THE WITNESS: I'm sorry.

2 THE COURT: I'm going to overrule the objection and
3 I will give a limiting instruction if you want.

4 MR. DRATEL: Thank you, your Honor.

5 Q Please continue.

6 A Okay. We were informed that some raids were about to
7 occur in the near future.

8 THE COURT: Okay.

9 Again, ladies and gentlemen, that's not being
10 offered to show that, in fact, some raids were about to occur
11 in the near future. It's just to show what there witness knew
12 and why he did what he did based on that belief.

13 Go ahead.

14 Q And based on that information what, if anything, were you
15 assigned to do?

16 A My assignment was to help exploit, or really copy, any
17 digital or electronic evidence that was obtained.

18 Q And did there come a point in time where you were, in
19 fact, asked to copy electronic evidence that had come out of
20 those raids?

21 A Yes.

22 Q Can you describe for us, well, actually let me ask you
23 another question.

24 What was your understanding, if any, of what the
25 expected turnaround time would be to copy that electronic

ANTHONY FRISOLONE, CSR, RDR, CRR

PITESKY/DIRECT/WELLS

1 evidence?

2 MR. DRATEL: Objection. This is anticipation.

3 THE COURT: I'm not sure what you mean by that. I'm
4 going to --

5 MR. DRATEL: It's speculation. It's something that
6 he --

7 THE COURT: There's not enough foundation.

8 Q Were you given any instructions about the time period by
9 which you needed to ensure that this evidence, this electronic
10 evidence, was copied or processed?

11 A Yes.

12 Q And what were those instructions?

13 A We were supposed to make the copies as soon as possible.

14 Q And what was going to --

15 What were you instructed to do with the copies after
16 they were made?

17 A It was expected that after we made the copies, they were
18 going to be transported to the United States as quickly as
19 possible.

20 Q Did there come a point in time when you received any
21 electronic media?

22 A Yes.

23 Q What did you do with it?

24 A I worked on making copies of that digital media.

25 Q Did you do that by yourself or with someone else?

PITESKY/DIRECT/WELLS

1 A With somebody else.

2 Q And can you describe for us the process that was used to
3 copy that electronic media?

4 A The other individual gave me specific instructions as how
5 to make the copies, specifically telling me what cables to
6 attach, what key strokes to make.

7 Q Why were you working with this other individual who gave
8 you those instructions about cables to attach and key strokes
9 to take?

10 A This was a person that had the knowledge of how to
11 duplicate or copy the evidence of which I did not have that
12 skill.

13 Q What, if anything, do you recall about the time or the
14 timing when you met with this other individual to make copies
15 of the electronic evidence?

16 A It was not during normal business hours. It was after
17 hours at night.

18 Q Where do you recall meeting to make the copies of the
19 electronic evidence?

20 A Inside the U.S. embassy.

21 Q Anywhere specifically within the U.S. embassy?

22 A In a separate office that we maintained, meaning, the
23 Legal Attache Office maintained within the embassy.

24 Q And after the copies or after the electronic evidence was
25 copied, what, if anything, did you do with it?

PITESKY/DIRECT/WELLS

1 A Then the evidence was, we had to make arrangements for it
2 to be transported to the United States.

3 Q What options were available for transporting the
4 electronic evidence to the United States at that point in
5 time?

6 A The options were limited especially keeping in mind we
7 wanted to get the evidence back to the United States as
8 quickly as possible.

9 One option was commercial flights which are not
10 exactly frequent going from Islamabad to the U.S. The other
11 option was using a U.S. Government plane.

12 Q Do you remember which option was used, if either?

13 A The U.S. Government plane.

14 Q Special Agent Pitesky, at this time, do you recall
15 whether or not you generated any documentation in connection
16 with the copying of the media?

17 A No.

18 Q And have you looked to see if you could find any such
19 documentation?

20 A Yes.

21 Q And did you find anything?

22 A No.

23 MS. WELLS: Just a moment, your Honor.

24 (A brief pause in the proceedings was held.)

25 MS. WELLS: Nothing further.

PITESKY/CROSS/DRATEL

1 THE COURT: Cross.

2 MR. DRATEL: Yes, your Honor.

3 CROSS-EXAMINATION

4 BY MR. DRATEL:

5 Q Now, what you copied at the instruction of the more
6 technical person was received from the Government of Pakistan;
7 correct?

8 A I do not know that.

9 Q You don't know where it was from?

10 A No.

11 Q Okay.

12 MR. DRATEL: Nothing further.

13 THE COURT: Any redirect.

14 MS. WELLS: No, your Honor.

15 THE COURT: All right. You may step down. Thank
16 you.

17 THE WITNESS: Thank you.

18 (Witness leaves the witness stand.)

19 THE COURT: All right. Government's next witness.

20 MR. JACOBS: The Government calls Jason Abramowitz.

21 (Witness takes the witness stand.)

22 COURTROOM DEPUTY: Please raise your right hand.

23 JASON ABRAMOWITZ, called by the Government, having been first
24 duly sworn, was examined and testified as
25 follows:

ABRAMOWITZ/DIRECT/JACOBS

1 THE WITNESS: Yes.

2 COURTROOM DEPUTY: Please state your name for the
3 error.

4 THE WITNESS: Jason, J-a-s-o-n. Abramowitz,
5 A-b-r-a-m-o-w-i-t-z.

6 COURTROOM DEPUTY: You may be seated.

7 THE WITNESS: Thank you.

8 THE COURT: All right. Go ahead.

9 MR. JACOBS: Thank you.

10 DIRECT EXAMINATION

11 BY MR. JACOBS:

12 Q Good morning, sir.

13 A Good morning.

14 Q Who were you employed by?

15 A The Federal Bureau of Investigation.

16 Q And what was your title at the FBI?

17 A I'm currently a computer scientist.

18 Q How long have you been with the FBI?

19 A Approximately 14 years.

20 Q And what degrees, if any, do you hold?

21 A I have a Bachelors of Science in Electrical Engineering.

22 Q Did there come a time during your tenure with the FBI
23 where you were involved in the creation of a new lab or unit?

24 A Yes.

25 Q What unit or lab?

ABRAMOWITZ/DIRECT/JACOBS

1 A I started a hard drive data recovery lab in Quantico,
2 Virginia.

3 Q And what did the hard drive data recovery lab do?

4 A We would get case evidence from different FBI offices
5 that were hard drives that the field office would not be able
6 to perform an examination on because the drives were
7 nonfunctional.

8 And so, our process was to repair, preserve the data
9 that was on that hard drive, and put it onto another drive for
10 it to go back to that field office for what we call a
11 traditional computer forensic examination.

12 Q And during your career with the FBI, approximately, how
13 many nonfunctional hard drives have you worked to repair?

14 A Over a thousand.

15 Q I'd like to direct your attention to around March 20th of
16 2012.

17 Did you receive a hard drive at that time?

18 A Yes, I did.

19 MR. JACOBS: May I approach, Judge.

20 THE COURT: You may.

21 (Approaching the witness.)

22 Q I just put before the witness what's been marked for
23 identification as Government Exhibit 20.

24 Sir, what is this?

25 A This is the hard drive that was sent in to me from the

ABRAMOWITZ/DIRECT/JACOBS

1 New York Field Office.

2 Q And how do you recognize it to be the hard drive that was
3 sent to you?

4 A It has New York Field Office case I.D. It has my
5 laboratory number that assigned when it comes in to my lab in
6 Quantico, Virginia, and my initials on the hard drive itself.

7 Q Thank you. I'd like to show you what's in evidence as
8 Government Exhibit 20-A.

9 Is this a photocopy of the hard drive that you just
10 looked at, sir?

11 A Yes.

12 Q And can you please point by touching the touch screen in
13 front of you to where your initials are on it?

14 A (Circling). Right here by the evidence tape. And the
15 evidence tape is placed in that manner after I performed the
16 examination because there's one screw. We could see six
17 screws on the outside. There's one screw under there that's
18 under the label. That has to be -- the label has to be
19 pierced or broken to obtain access to inside the drive. So
20 part of my policy is to, after I gain access, and I'm done
21 with the examination, is to reseal it, to further know if
22 anyone else went into the hard drive after I've been inside.

23 Q I'd like to ask you a few questions about the examination
24 you did on this hard drive.

25 When you got the hard drive, what were you asked to

ABRAMOWITZ/DIRECT/JACOBS

1 do with it?

2 A Repair and recover the data off the hard drive.

3 Q And after getting that instruction, what did you do, what
4 were the steps you took?

5 A So the first steps is connecting the drive in this matter
6 as it comes in the lab by hooking it up to my examination
7 machine and powering it on with special hardware/software that
8 allows me to monitor the drive itself.

9 Q And did you do that?

10 A Yes, I did.

11 Q What happened after you turned it on the first time?

12 A So the drive was not functional, and it reacted as a
13 clicking noise. And that clicking noise is the heads which
14 read the data or write the data off the hard drive platters
15 trying to find its firmware from the platters. And the
16 firmware cannot be found because it's not reading properly, or
17 there is an issue. So it just keeps clicking going back and
18 forth. The platters itself are part inside the hard drive
19 that actually contain the firmware and user data on the drive.

20 So it's a round, circular object with metal
21 substrate on it. That metal substrate allows the heads to
22 write or read the data off magnetically. So we like to think
23 of the platters inside the hard drive as similar to old
24 audiotape. The audiotape is the media that would have
25 magnetically stored the data or the audio. The heads are just

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1 like the heads in audio player when you hit play or record,
2 the head would come up and touch the audiotape and
3 magnetically read or get the audio out, or if you're in the
4 recording phase, write audio to the tape.

5 So the platter is the media where the heads are the
6 objects that reads and writes the data off the platters.

7 Q Now, after you opened the drive up and could see the
8 platter and the heads, what did you do next?

9 A So after I realized the drive was nonfunctional, and was
10 clicking, I brought the drive into our clean room in my
11 laboratory that allows me to open the drive top cover.

12 At that point, I removed the heads off the platters
13 themselves and replaced them with what we call an exemplar or
14 match set of heads from another make and model drive that is
15 similar to this one.

16 Q And after replacing the reader heads, what happened next?

17 A The drive was put back on my exam station but, in this
18 case, it clicked or it still was not able to be reading the
19 drive.

20 Q What did you do then?

21 A So I went back to the original set of heads that came out
22 of the drive and took a closer look at it and saw there was no
23 physical damage, meaning, they were not bent or damaged
24 physically, but only a layer of what we call a "film layer" on
25 top of the heads. So there was dirt on top of the heads

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1 themselves.

2 So I used head cleaner to remove the film off
3 original heads and placed the original heads back into the
4 hard drive assembly to be read off the platters that are
5 inside.

6 Q And when you cleaned the original heads, and put them
7 back inside the hard drive, what happened next?

8 A The drive was able to read the data off onto my exam
9 machine.

10 Q Now, after the drive became able to read the data, what
11 did you do?

12 A So the first step is the drive comes up, gives me make,
13 model, and serial number. So I put on my same exam machine a
14 wiped drive to be able to image the data off this drive that
15 we have in front of us to another drive.

16 Q Could I ask you, Mr. Abramowitz, in laymen's terms what
17 does it mean to image a drive?

18 A Imaging is just copying. So we're copying sectors or
19 areas on the drive all the areas to another drive in its
20 original location.

21 MR. JACOBS: May I approach, your Honor.

22 THE COURT: Yes.

23 Q I'm showing the witness what's marked for identification
24 as Government Exhibit 21.

25 Sir, do you recognize that?

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1 A Yes, I do.

2 Q What is it?

3 A It is the drive that I prepared to copy the data off from
4 this drive. I labeled it DE1 which stands for Derived
5 Evidence 1.

6 Q Now, I'd like to show just the witness what's market for
7 identification as Government Exhibit 21-A.

8 What is this, Mr. Abramowitz?

9 A This is the DE drive or the drive that has been copied
10 to. The drive that you just showed me a photocopy of the top
11 cover.

12 Q Is this a true and accurate color copy of the drive that
13 you just looked at?

14 A Yes.

15 MR. JACOBS: At this time, I move to admit and
16 publish Government's 21-A.

17 MR. DRATEL: Your Honor, same objection as before.

18 THE COURT: Overruled it's received.

19 (Government's Exhibit 21-A was received in evidence
20 as of this date.)

21 Q Now that the jury can see this drive, sir, can you please
22 indicate where on the drive -- where the photograph if
23 anywhere your initials appear?

24 A Right here. (Circling).

25 Q Now, before copying the data from the original drive to

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1 this new drive what, if anything, did you do to the new drive?

2 A I wiped the drive.

3 Q And what does it mean to wipe the drive?

4 A Wiping a drive is to write my data to all the sectors on
5 the drive. So I'm cleansing it in such a manner that there
6 would be no information on that before I write my data to it.

7 Q Now, how would you describe the quality of the copy, the
8 imaged drive that you created?

9 A The quality from copying from the original evidence to
10 this one is pretty outstanding. I was able to copy
11 99.99 percent of the original data to this drive.

12 Q And how do you know that the data that 99.99 percent of
13 data was copied accurately from the original drive to the new
14 drive?

15 A So my utility that I use to copy the data when it does
16 reads of each individual sector which is an area of a drive
17 checks for Error Correction Code. We call it ECC. And if the
18 Error Correction Code passes, then it is okay and it will
19 write that sector to my destination drive right there. If the
20 Error Correction Code does not pass, or is not readable, then
21 that sector, that one area of data off that original hard
22 drive, is not written to this drive. It's just skipped over
23 and goes to the next sector.

24 Q And you mentioned sectors. Just in laymen's terms what
25 is a sector?

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1 A A sector is 512 bytes of data.

2 Q How many sectors were there on the old drive and the new
3 drive?

4 A As we could see, this drive is the same size as the old
5 drive. And there's this area which is identical is 78,165,360
6 sectors on the hard drive.

7 Q And of those 78-million plus sectors, how many were
8 copied over successfully from the old drive to the new drive?

9 A I copied all of them excluding 233 sectors.

10 Q What affect, if any, did that small number of sectors,
11 233 sectors, couldn't copy over what effect, if any, did it
12 have of the on the new data?

13 A So it would be just missing 233 sectors. So that data
14 would be missing. The data that is written to the drive is
15 all valid and current, so that data would not have changed.
16 It's just missing a small number of sectors.

17 Q Now, after making the forensic copy, what did you do with
18 the original hard drive and the copy?

19 A Both of them were sealed off with FBI evidence tape and
20 brought to my Evidence Control Center in Quantico where they
21 were sent back by evidence control technicians to be sent back
22 to the New York office that submitted them originally.

23 MR. JACOBS: Nothing further, Judge.

24 THE COURT: All right. Any cross?

25 MR. STERN: No, your Honor. Thank you.

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1 THE COURT: You may step down. Thank you.

2 (Witness leaves the witness stand.)

3 Proceedings THE COURT: Government's next witness?

4 MR. ARIAIL: Your Honor, this might be a good time
5 to take a break.

6 THE COURT: Ladies and gentlemen, we'll take our
7 morning break. Please resist any temptation to talk about the
8 case. You cannot talk about it yet. Talk about anything
9 else. Keep your minds open.

10 We'll see you back here at 11:30.

11 (Jury exits.)

12 THE COURT: All right. Be seated just a minute
13 before we recess.

14 First, I didn't note this morning what the result
15 was of the Government's effort to procure the defendant's
16 attendance.

17 MR. ARIAIL: Your Honor, we received a message from
18 the marshals this morning that the defendant refused to come
19 to court after he was invited.

20 THE COURT: Okay.

21 Second, what time today am I going to get the
22 Government's proposed charge? Midnight?

23 MR. ARIAIL: No, your Honor. Fair point. We have a
24 pretty close to final draft. I think we probably need an hour
25 or so after Court and we can get it to your Honor. I think

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1 it's mostly ready to go.

2 THE COURT: Depending on what the defendant intends
3 to do, if possible. I'd like to get any objection or
4 supplements if possible. I'm going to hold you do it.

5 MR. DRATEL: Objections. By Wednesday morning, the
6 three of us we'll try it do it by tomorrow I don't know how
7 long it will be. As far as supplements, it may await the
8 close of the Government's cause but it will be brief and
9 simple.

10 THE COURT: I assume everyone understands only give
11 me boilerplate, you know, the preliminary stuff if there's
12 something you really think is good that is somehow different
13 than what you've seen me using in other cases. Otherwise, I
14 have all of that. I'm mainly interested in the substantive
15 instructions.

16 MR. ARIAIL: Understood, your Honor.

17 If I may, at this point, just raise this issue,
18 Mr. Dratel, and the Court alluded to was the defense case
19 which this came up on Wednesday. We obviously wanted to know
20 in terms of planning what we have here. I didn't want to
21 raise it again with the Court. I raised it with defense
22 counsel again on Thursday and Friday. I thought I was going
23 to get some understanding from the defense about what the case
24 was, I did not. And then I received an e-mail last night at
25 about 9:00 o'clock from Mr. Dratel indicating that the defense

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1 did not intend to tell the Government anything about their
2 case, and who is going to be called until after the Government
3 closes its case.

4 The issue as it stands is with the weather also with
5 everybody coming in from out of state and out of country.
6 We're struggling to get everybody here as it is. I think if
7 we wait until our case closes and right now we're tracking to
8 Wednesday and get notification from the defense for us to put
9 on a rebuttal case, we're going to have to reach out to people
10 who were out of state, out of country to get them here. And I
11 just think it's going to be a logistical process that's going
12 to delay what's going on, and I think the jurors are going to
13 be sitting in here for an extra day or two while we try to get
14 our people in. I don't know what their case is, but I can
15 anticipate that we're going to have a rebuttal case just
16 generally.

17 So what I'd ask for is a disclosure by the defense.
18 I don't need to know that they're committing to a defense or
19 whatever but just the names and 26.2 materials by the end of
20 the day so that we could adequately determine whether or not
21 we need to put on a rebuttal case.

22 MR. DRATEL: Your Honor, what Mr. Ariail left out
23 from my e-mail is that when and if we commit to a defense
24 case, we will notify the Government. We have not done that
25 yet because we don't know and the Government should have to

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1 its rebuttal witnesses here because if we call one, 15-minute
2 witness they have to have their rebuttal witnesses here
3 anyway.

4 THE COURT: But if they don't know who that witness
5 is you're calling, they don't know who the rebuttal witness
6 is.

7 MR. DRATEL: We haven't made any commitment.

8 THE COURT: Well, I know, but I think you're going
9 to have to, not this moment, but I'd say by midnight tonight.
10 You know the Government's case cold at this point.

11 MR. DRATEL: Not necessarily. There are still
12 witnesses who we haven't seen, who have been noticed in terms
13 of 3500 material, and I don't know if they're going to testify
14 or not at this point.

15 THE COURT: The Government is prepared to tell you
16 now who the remaining witnesses are; right?

17 MR. ARIAIL: Your Honor, we've noticed a number of
18 witnesses. We have been trying to trim them back and we may
19 have some cuts that we'll make at the end of the day today.
20 We'll let the defense know at the end of the day who we're
21 going to call.

22 THE COURT: Within 24 hours of you giving them your
23 final witness list, they have to give you their witness list.

24 Yes, you're right. That's a little long with
25 overseas witnesses.

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1 MR. ARIAIL: That's the issue. Obviously, they've
2 had the 3500 material for all our potential witnesses for some
3 time it's not as though they're not on notice of who we might
4 call.

5 THE COURT: That's a similar problem that they have.

6 MR. ARIAIL: We just need to talk for a moment or
7 two amongst our ours probably by lunchtime we can tell them.

8 THE COURT: We'll do that during the break. It
9 seems to me the Government may well be resting today.

10 MR. ARIAIL: I would say the issue that we have,
11 your Honor with the snowstorm. We have gotten as many people
12 as we could possibly get today. We have 11, possibly a 12th
13 witness. As you can see, the witnesses are going very fast.

14 We have a couple of witnesses at least who would be
15 testifying on Wednesday. They are flying in from out of state
16 tomorrow. And, obviously, we are going to be dealing with the
17 weather. We're trying to work around that, trying to make
18 sure that they all get here on Wednesday, but that's what
19 we're working with right now, your Honor.

20 THE COURT: I see. Okay.

21 MR. ARIAIL: It's a logistical complication.

22 THE COURT: Well, at the end of the day today, I
23 want you to tell the defense who you're calling. And then I
24 would say by 1:00 o'clock tomorrow the defense can tell you if
25 they're going to put on a case and who is in it. And that

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1 should give you enough time because you should have everyone
2 on the standby to get people back if not Wednesday then
3 Thursday but we'll do what we have to do if it comes to that.

4 MR. ARIAIL: Understood, your Honor.

5 Just so the Court is aware, there are some people
6 who we may have to reach out to bring them from places that we
7 hadn't anticipated so that's it.

8 THE COURT: Okay.

9 MR. ARIAIL: And then, sorry, just for today, I'm
10 sorry, we do have 11 witnesses here, we have a 12th on the
11 way. But as you're watching, this is moving very fast. And
12 so, I'm afraid we're going to be close to midafternoon is when
13 we're probably tracking to finish for today.

14 THE COURT: I understand. Okay. Anything further
15 Mr. Dratel.

16 MR. DRATEL: Just, your Honor, with respect to two
17 things. One is get this out of the way first.

18 With respect to -- we have our objections as to the
19 admissibility of those exhibits that were put in. But with
20 respect to Mr. Pitesky's testimony which was, I guess, the
21 second-to-last witness, I move to strike it. There's no
22 connection to anything in this case. He was never asked to
23 identify the hard drive. He has no idea what drive he has no
24 idea where it came from it is sitting out there completely
25 untethered to any other part of the case.

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1 MS. WELLS: Your Honor, I disagree. I think there
2 is more than enough evidence to link the electronic evidence
3 that was copied by Mr. Pitesky with the electronic evidence
4 that was received by Ladislao Carballosa. And if they want to
5 make an argument that there is no connection at all, they're
6 welcome to do that. But there is more than enough
7 circumstantial evidence for the jury to make that connection
8 and for us to make that connection.

9 THE COURT: I will deny the motion to strike.

10 MR. DRATEL: Thank you, your Honor.

11 THE COURT: There is one other thing. We had a
12 sidebar motion involving the cross-examination of Mr. Kohlmann
13 which was placed under seal by the defendant. I think I can
14 say felt that he was entitled to additional examination based
15 on the Government's examination and I'm denying that motion as
16 well. I'm finding that there is no door opening by the
17 Government as to that and no grounds for the expanded
18 examination.

19 MS. KELLMAN: Just one minute, Judge.

20 (A brief pause in the proceedings was held.)

21 MR. DRATEL: This doesn't have to be on the record.

22 We're curious about scheduling in terms of
23 contingencies. The Court's session tomorrow doesn't go
24 forward we're still going forward Wednesday I assume.

25 THE COURT: We are. And I think my session tomorrow

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1 is going to happen because I can get here and that's all that
2 matters to me.

3 MR. ARIAIL: We anticipate closing our case by
4 Wednesday, your Honor, and I think realistically summations
5 could be Thursday if all goes well. Fingers crossed.

6 THE COURT: Okay.

7 MR. ARIAIL: Depending on the defense case
8 obviously. Sorry. The goal would be a charge conference, I
9 guess, late afternoon on Wednesday if all goes well.

10 MR. DRATEL: And just with respect to, I'm thinking
11 more about the jurors, rather than myself or us. In terms of
12 Wednesday morning, is there a way that we will know -- I think
13 we should be in touch with Ms. Clarke about scheduling.

14 THE COURT: If there is some reason to think we're
15 not proceeding on Wednesday morning, by which time I think
16 the worst of everything should be past, I'll post an order
17 telling everybody that and Ms. Clarke will call the jurors and
18 tell them not to come in but it strikes me as highly unlikely.

19 MR. DRATEL: I don't know what it looks like
20 tomorrow at the end of the day.

21 THE COURT: Okay. Anything else? See you in a few
22 minutes.

23 (A recess in the proceedings was taken.)

24 (Continued on the next page.)

25

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1 THE COURT: Okay. Let's have the jury, please.

2 Also, I assume the Government has no objection to
3 the defense's motion to have the MCC preserve the videos?

4 MR. ARIAIL: No, Your Honor.

5 MS. KELLMAN: I also spoke with M. Johnson who is
6 preserving that, he's giving his people instructions to
7 preserve them the first day of trial.

8 THE COURT: Good.

9 MS. KELLMAN: Assuming Your Honor signs the order.

10 THE COURT: Yes, I will.

11 (Jury present.)

12 THE COURT: All right. Be seated, please.

13 Government's next witness.

14 MS. WELLS: Your Honor, the Government calls Craig
15 Roth.

16 THE COURT: Okay.

17 THE CLERK: Please raise your right hand.

18 CRAIG ROTH, called as a witness having been first duly
19 sworn/affirmed, was examined and testified as follows:

20 THE CLERK: Please state and spell your name for the
21 record.

22 THE WITNESS: Sure. It's Craig, C-R-A-I-G; Roth,
23 R-O-T-H.

24 THE CLERK: You may be seated.

25 THE WITNESS: Thank you.

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1 THE COURT: All right. Go ahead.

2 MS. WELLS: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MS. WELLS:

5 Q Good morning.

6 A Good morning.

7 Q Who do you work for?

8 A I work for the FBI.

9 Q How long have you worked for the FBI?

10 A For a little over six years now.

11 Q What is your title with the FBI?

12 A I'm an IT specialist, forensic examiner.

13 Q Can you tell us what you do as an IT specialist forensic
14 examiner?

15 A Sure. So we would work on any forensic analysis on any
16 electronic media.

17 Q And when you say forensic analysis, can you give us an
18 example or an explanation of what that means?

19 A Sure. We would examine any electronic media that would
20 store a file, such as a cell phone, a laptop, a hard drive,
21 that kind of stuff.

22 Q How long have you been a forensic examiner for the FBI?

23 A For about six years now.

24 Q And just very briefly, what is your educational
25 background?

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1 A Sure. I have an undergrad in information technology from
2 the University of Hartford. I have a Master's in what is
3 called computer information systems from Boston University.

4 Q What did you do before you joined the FBI?

5 A Prior I was an IT security analyst at an engineering and
6 aerospace company.

7 Q All right. So you mentioned a moment ago that one of
8 your responsibilities is processing electronic devices. Can
9 you tell us what the first step you take is when you process
10 an electronic device like a computer or a hard drive?

11 A Sure. So the first thing we do with the hard drive is we
12 want to assign it a unique number, that way we could have
13 something to reference it and it can never get mixed up with
14 something else.

15 Q And what's the purpose in doing that?

16 A Just so you could have an ID, sort of tracking number.
17 It's a unique -- it's a unique item number.

18 Q Then after that unique item number is assigned, what
19 happens next?

20 A After that, we would start our analysis. We would hook
21 it up to your exam station. And the way we would do that is
22 through a physical piece of hardware, through a write block.
23 And what that is, is just a small square that has wires coming
24 out of it. And you hook that up to your exam station and you
25 hook the hard drive up to that. And what that does, it

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1 prevents any alteration, you know, to your source media. It
2 prevents any writing to that hard drive.

3 Q Okay. So just for a layperson's explanation, why is it
4 important to use a write block to prevent any alterations to
5 the original piece of media?

6 A Well, it's important because you don't want to modify any
7 of your source evidence items. That way you want to make a
8 forensic copy of it.

9 Q And why do you work from a forensic copy instead of just
10 working from the original?

11 A Well, if you work from the original item you have the,
12 you know, possibility to alter it or edit it, so you don't
13 want to do that. You always want to work off a second image
14 copy.

15 Q And once you make that second image copy, is there any
16 way that you're able to verify whether or not the image copy
17 is identical to the original media?

18 A Sure. So the image copy or an exact copy, which is
19 created by specific software -- software. Once it's done
20 creating that file, it automatically runs a mathematical
21 calculation that is referred to as a hash. And what that hash
22 shows and what the hash proves that your source media matches
23 exactly as your image copy.

24 Q Okay. Now, all of these steps that you just described,
25 including the identifying number, the write block software,

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1 the hash value for the copy of the media, are those all
2 standard steps that are used when you process any hard drive
3 or electronic device?

4 A Yes.

5 MS. WELLS: Your Honor, may I approach the witness?

6 THE COURT: You may.

7 MS. WELLS: I'm showing the witness what has been
8 marked for identification as Government Exhibit 20.

9 BY MS. WELLS:

10 Q Do you recognize this?

11 A Yes.

12 Q And what is it?

13 A This is a hard drive that I was asked to examine.

14 Q How did you recognize Government Exhibit 20 as a hard
15 drive that you had been asked to examine?

16 A It has the unique item number on it as well as my
17 initials.

18 MS. WELLS: All right. And I'm showing the witness
19 what is in evidence as Government Exhibit 20-A.

20 BY MS. WELLS:

21 Q All right. And can you see on your screen what this is?

22 A Yes.

23 Q What is it?

24 A This is a hard drive.

25 Q Is this a copy of the hard drive that I just showed you

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1 in Government Exhibit 20, the cover?

2 A Yes, it is.

3 Q And can you show us where your initials are located on
4 this?

5 A On the top right.

6 Q Thank you.

7 When you received this hard drive, what were you
8 asked to do with it?

9 A I was asked to examine it and run it through our forensic
10 software.

11 Q And were you able to do that?

12 A I was not.

13 Q Why not?

14 A When I attempted to hook up the hard drive to the write
15 block, the hard drive itself would not actually power on.

16 Q And so what did you do when you realized that, that the
17 hard drive would not power on?

18 A I shut off the write block and I let the case squad know
19 that the hard drive would not actually turn on and that
20 there's a unit at headquarters that might with able to fix it
21 for them.

22 MS. WELLS: And, Your Honor, may I approach the
23 witness one more time?

24 THE COURT: Yes.

25 MS. WELLS: Showing you what has been marked for

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1 identification as Government Exhibit Number 21.

2 BY MS. WELLS:

3 Q Do you recognize this?

4 A Yes.

5 Q What is it?

6 A This is a hard drive that I examined.

7 Q All right. Thank you.

8 How do you recognize Government Exhibit 21 as a hard
9 drive that you examined?

10 A My initials are on it also.

11 Q All right.

12 MS. WELLS: I'm showing the witness what is in
13 evidence as Government Exhibit 21-A.

14 BY MS. WELLS:

15 Q All right. What is this?

16 A This is a photocopy of the hard drive.

17 Q The one we just saw?

18 A Yes.

19 Q Is that correct?

20 And can you show us where your initials are located
21 on this?

22 A Sure. They are on the bottom right.

23 Q Thank you.

24 Now, Mr. Roth, when you received this hard drive
25 what, if anything, did you do with it?

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1 A The same thing that I tried to work on with the first
2 hard drive. I would hook up to a write block, assign a unique
3 NY number and examine it from there.

4 Q And so were you able to read the contents of this hard
5 drive?

6 A Yes, I was.

7 Q All right. After you took all of those preliminary
8 forensic steps that you explained to us a moment ago, did you
9 generate any reports from the hard drive represented in
10 Government 21-A?

11 A Yes, I did.

12 Q What kinds of reports?

13 A The reports that were run was through the specific
14 forensic software that we use called FTK.

15 Q What is FTK?

16 A FTK is an industry standard forensic software tool which
17 stands for forensic tool kit.

18 Q And just very briefly, what happens or what is contained
19 within an FTK report?

20 A An FTK report is going to include all the files that you
21 flagged to be included in that report.

22 Q And so does it generate copies of contents of files that
23 are contained on a hard drive or a computer?

24 A Yes, it does.

25 MS. WELLS: All right. Your Honor, I would like to

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1 show the witness what has been marked for identification only
2 at this point, it's Government Exhibits 25 and 23.

3 BY MS. WELLS:

4 Q Mr. Roth, starting with 25, this is a multi-paged
5 document. I'll just flip through it and let me know if you
6 can see. All right. Do you recognize Government Exhibit 25?

7 A Yes.

8 Q What is this?

9 A This is an actual printout of the FTK report.

10 Q For -- for which file or which type of file?

11 A This is a printer spool file.

12 Q And did you generate this FTK report?

13 A Yes.

14 Q And how do you recognize it?

15 A My initials are on it.

16 MS. WELLS: All right. Your Honor, move to admit
17 Government Exhibit 25.

18 MR. DRATEL: Same as the previous objection.

19 THE COURT: Overruled. It is admitted.

20 (Government's Exhibit Number 25 so marked and
21 received in evidence.)

22 BY MS. WELLS:

23 Q And, Mr. Roth, turning to Exhibit 23. This is another
24 multi-page --

25 MS. WELLS: Oh, I'm sorry, this is still just marked

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1 for identification.

2 BY MS. WELLS:

3 Q This is another multi-paged document. I'll flip through
4 it and then ask you questions.

5 All right. Do you recognize Government Exhibit 23?

6 A Yes.

7 Q What is this?

8 A This is another actual printout of the FTK report.

9 Q For which file or type of file?

10 A This one is ESBINN, or E-S-B-I-N-N.

11 Q And did you generate this FTK report?

12 A Yes.

13 Q How do you recognize the report?

14 A My initials are on it also.

15 MS. WELLS: All right. Your Honor, move to admit
16 Government Exhibit 23 and permission to publish both 23 and
17 25.

18 THE COURT: Same objection?

19 MR. DRATEL: Yes, Your Honor. Thank you.

20 THE COURT: Okay. Overruled. They are admitted.

21 (Government's Exhibit Number 23 so marked and
22 received in evidence.)

23 BY MS. WELLS:

24 Q All right. Now that the jury can see, this is Government
25 Exhibit 25. Can you tell us generally what we're looking at

1 here?

2 A Sure. So this is the actual printout of the FTK report
3 for the one printer stool file.

4 Q And you mentioned a moment ago that your initials were on
5 this report. Can you show us where those are?

6 A Sure. They're on the bottom right.

7 Q All right. Thank you.

8 Then starting with the last page of this document,
9 what's contained on this page?

10 A This is the file information page.

11 Q And what's on the file information page?

12 A Exactly that. Information regarding the file itself.

13 Q You mentioned, I think a moment ago, that this was
14 something that's called a printer spool file; is that right?

15 A Yes.

16 Q What is a printer spool file?

17 A So a printer spool file is a file that is created by the
18 operating system automatically and sent to the actual printer
19 itself. It's sent in a language that the printer can
20 understand. And it's referred to as a spool file.

21 Q So under what circumstances is a printer spool file
22 created if someone's just working on their computer?

23 A So a printer spool file is going to be created any time
24 something is actually printed.

25 Q And is the content of a printer spool file the same or

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1 different than the content of whatever the file is that's
2 being printed?

3 A It is the same.

4 Q And turning now to the FTK report here, does this file
5 information sheet for the printer spool file tell us anything
6 about where this file was located on the hard drive?

7 A Yes, it does.

8 Q And where is that?

9 A There's a row called "path." And that row tells us where
10 the file is found on the hard drive.

11 Q Can you show us where the row called "path" is located on
12 this form?

13 A Sure.

14 Q And then can you also tell us where on the hard drive
15 this sprinter -- printer spool file, excuse me, was located?

16 A Sure. So if you look to the right, it was found in the
17 unallocated space of the hard drive.

18 Q What is unallocated space on a hard drive?

19 A So the hard drive is split up into separate sections.
20 You have your allocated space, which is where your actual
21 files are, your operating system, and then there's the
22 unallocated space which is also referred to as your free
23 space.

24 And when something is removed by the operating
25 system either by the user or by the operating system itself,

1 it doesn't actually get rid of the file, it just moves it into
2 unallocated or free space, and it's going to remain there
3 forever until it's overwritten.

4 Q So under what circumstances would a printer spool file be
5 moved into unallocated space on the hard drive?

6 A These spool files are removed automatically by the
7 operating system after the file was actually printed.

8 Q Okay. So again, just for a layperson's explanation, if I
9 hit print on a Word document that I'm using on my printer, at
10 what point does the printer spool file for that Word document
11 get moved into unallocated space?

12 A Once the file is finished printing.

13 Q All right. Now I would like to turn to the second page
14 of this FTK report.

15 A (Witness complies.)

16 Q All right. Does this -- does this file have a header at
17 the top of the page?

18 A It does.

19 Q And can you point that out to us and then just read what
20 it says, please.

21 A Sure.

22 So it's called e-mail_N_NOS.

23 Q And it has an extension there, dot TXT. Do you see that?

24 A Yes.

25 Q What is a dot TXT extension?

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1 A That is a Notepad file.

2 Q And what's a Notepad file?

3 A A Notepad file is a file that's opened by Notepad that
4 you could, you know, type words into.

5 Q Okay. Is there a section of this printer spool file that
6 has the heading "e-mail addresses"?

7 A Yes.

8 Q And where is that?

9 Are there any e-mail addresses that are listed
10 underneath that header associated with the word or name Esbin
11 Ghul.

12 A Yes, there are two.

13 Q Can you show us those to us, please?

14 A Sure.

15 Q And beginning with the first of those two e-mail
16 addresses, can you read in what the e-mail addresses and what
17 the password information is?

18 A Sure. So the first one is spelled USUS -- yeah, TS at
19 Yahoo! dot CO dot UK. And the password is listed as ASAS123.

20 And the second e-mail is spelled out as SLSLGLGLSH,
21 at Yahoo! dot CO dot UK, and the password is listed as
22 ESES456.

23 Q Thank you.

24 All right. Now showing you what's in evidence as
25 Government Exhibit 23, what is this item?

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1 A This is another actual printout of the FTK report.

2 Q And I think you mentioned a few moments ago that your
3 initials were on this document. Can you show us where those
4 are?

5 A Sure.

6 Q What is the name of the file associated with -- or let me
7 ask you a different question.

8 How many files from the hard drive are contained
9 within this FTK report?

10 A There is one file.

11 Q And what's the name of that file?

12 A It's called ESBINN, or spelled out E-S-B-I-N-N.

13 Q So I'm showing you -- this is Page 3 and I'll flip
14 through the next several pages of this document just briefly.

15 What's contained in the pages that I just flipped
16 through?

17 A Arabic wording.

18 Q And are these pages the E-S-B-I-N-N file, the ESBINN file
19 you just described?

20 A Yes.

21 Q And do you read Arabic?

22 A I do not.

23 Q Now, I want to direction your attention to the file
24 information sheet contained in Government 23. Can you show us
25 where on this information sheet, if anywhere, the file is

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1 contained?

2 A Sure. It's going to be the name called -- the row called
3 "name."

4 Q And where is that?

5 A (Witness complies.)

6 Q Is there any information in the sheet that tells us where
7 the ESBINN.TXT file came from within the hard drive?

8 A Yes.

9 Q Where is that?

10 A There's another row called "path."

11 Q And can you show us where that is, please?

12 A (Witness complies.)

13 Q So in this case, where did the ESBINN.TXT file come from
14 within the hard drive?

15 A That file was found in the my_docs folder and another
16 folder called MISC.

17 Q Now, is there a field on this document that has the words
18 "created date"?

19 A Yes.

20 Q Can you show us where that is?

21 A Sure.

22 Q What kind of information is contained within the created
23 date field of an FTK report?

24 A Exactly that. It's going to be the file creation time
25 for that file.

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1 Q And what, if anything, do you know about -- or I'm sorry,
2 let me...

3 What is the file creation date associated with this
4 file?

5 A It is listed as June 29th, 2004.

6 Q And what, if anything, does the created date tell you
7 about when the file -- when the file existed on this hard
8 drive versus when it was originally drafted, if anything?

9 A Sure. So the actual creation date is going to be the
10 first time that file existed on the hard drive.

11 Q So how are -- what are some of the different ways that a
12 file can come to exist on a hard drive?

13 A You could physically, you know, transfer it with a thumb
14 drive or you could find it on the Web.

15 Q Is there --

16 A Those kind of ways.

17 Q Could you also type it up and create it for the first
18 time on a computer?

19 A Sure.

20 Q Okay. There's also a modified date on this form. Can
21 you show us where that is?

22 A Yes.

23 Q What is the modified date; what kind of information does
24 the modified date contain in an FTK report?

25 A The modified date is going to show the last time that

1 file was altered.

2 Q And what does that mean, the last time a file was
3 altered?

4 A The last time any changes were made to the file.

5 Q And what's the modified date associated with this file?

6 A Showing as June 28th, 2004.

7 Q Finally, is there an access date field on the document?

8 A Yes, there is.

9 Q Where is that?

10 A (Witness complies.)

11 Q What kind of information is contained in the access date
12 field?

13 A So the access date is going to be the last time that
14 something or someone, you know, touched that file.

15 Q When you say "touched that file," what do you mean?

16 A Well, it can be that it was actually opened or there's a
17 few other alterations that could have happened to change that
18 date.

19 Q Like what?

20 A The access date could also be changed by an antivirus
21 scan or a Windows update, essentially something that the
22 system could have also run.

23 Q So again, just in layperson's terms, what's the
24 difference between the modified date and the access date?

25 A The modified date is the last time that that file was

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1 edited in any way whereas the access date could be the last
2 time it was opened or the last time some sort of system
3 function touched it.

4 Q Even if the time that it was opened or the system
5 function did not edit the document; is that correct?

6 A Yes.

7 MS. WELLS: Just one moment, Your Honor.

8 Nothing further.

9 THE COURT: All right. Any cross?

10 MR. DRATEL: Yes, Your Honor. Thank you.

11 CROSS-EXAMINATION

12 BY MR. DRATEL:

13 Q Good morning.

14 A Hello.

15 Q With respect to Government's Exhibit 20 or 20-A, which is
16 this -- this is a photograph of the actual hard drive that you
17 were shown on direct, right?

18 A Yes.

19 Q Okay. So with respect to that, you don't have any
20 knowledge about -- withdrawn.

21 What you were using for your hash values to
22 determine your image is this hard drive, right, in terms of
23 that -- what you imaged was an exact copy of this hard
24 drive -- withdrawn. Withdrawn.

25 I apologize. It was really 21 that you imaged,

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1 right?

2 The one that was sort of the fixed one, the one that
3 you were actually able to capture information from, right? I
4 apologize I'll put it here for you.

5 A There was a -- there was an image file that was already
6 placed onto that hard drive, which I then copied off on hash.

7 Q Right. So -- so the hash value that you talked about to
8 confirm for you that you had an exact copy was off of 21-A,
9 right?

10 A So the hash value shows me that I have an exact copy from
11 whatever source media it's from.

12 Q Right. But that would be 21-A, right?

13 A Which is up there right now?

14 Q Yes.

15 A Yes.

16 Q And that was something that you would send out to be
17 repaired from 20, right -- or 20-A, right?

18 A Someone else sent -- sent it out, correct.

19 Q But that's where it's from.

20 But the point is it's just a long way to try to get
21 there just to make sure that it's precise. But you don't know
22 about the hash value with respect to comparing or whether it's
23 an exact copy of what this hard drive, 20, was copied from,
24 right?

25 A I was unable to examine that hard drive, so I don't know

1 anything about it.

2 Q No, no. But where this was copied from, in other words,
3 if this is a copy of a hard drive, this is an image of a hard
4 drive, a copy of a hard drive, you did not do any hash value
5 testing to determine whether this is an exact copy of the
6 original, right?

7 A That's correct.

8 Q And with respect to this -- this is the one, we'll call
9 this, sort of the nonworking drive just for purposes of --

10 A Sure.

11 Q -- clarifying.

12 All right. And if you notice there's an --
13 underneath the part that's -- that's blacked out there's an
14 REQ number, correct?

15 A Yes.

16 Q Do you see that?

17 And that's 2004-0982, right?

18 A Yes.

19 Q And that indicates that it's a piece of evidence from
20 2004, right?

21 A I'm not sure.

22 Q And you weren't asked to examine this until 2012,
23 correct?

24 A I was asked to examine it in -- around that timeframe,
25 yes.

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1 Q Well --

2 MR. DRATEL: May I approach, Your Honor?

3 THE COURT: Yes.

4 BY MR. DRATEL:

5 Q Let me show you what's marked as 35 -- excuse me.

6 THE COURT: Mr. Dratel, if it serves -- if it saves
7 time, I think he said he did it in 2012, around that time.

8 MR. DRATEL: All right. Thank you, Your Honor.
9 That's fine.

10 BY MR. DRATEL:

11 Q Now, with respect to the document that you just described
12 recently, it's Government Exhibit 23, which is the ESBINN.TXT
13 file.

14 A Yes.

15 Q And you don't know how that got on this hard drive,
16 correct?

17 A No.

18 Q And with respect to the modification and creation dates,
19 the creation date is June 29th, 2004, right?

20 A If you could show it up on the screen, I can verify.

21 Q Sure.

22 MR. DRATEL: Do you have 25? Thanks.

23 BY MR. DRATEL:

24 Q I'll do it this way: So you have a created date of --
25 you testified June 29th of 2004, correct?

1 A Yes.

2 Q And a modified date of June 28th, 2004, correct?

3 A Yes.

4 Q So can you explain just, you know, how a modified date is
5 prior to creation date for a document?

6 A Sure. So when you transfer a file from one hard drive
7 over to another, it's going to put the creation date of that
8 file as the date and time when you actually moved that file
9 over, and it's going to retain all the other information such
10 as modified and access date.

11 Q So that would lead us to believe that the document was
12 created on another device over than this hard drive, right?

13 A Well, I'm unsure of that.

14 Q Okay. But it could be that, correct?

15 A Yes.

16 Q And, in fact, what we're talking about in terms of
17 creation date and modified date, that's what's called
18 metadata?

19 A Correct.

20 Q Metadata, correct?

21 A Yes.

22 Q And that -- the timing of that, in other words, the time
23 stamp of June 29th or June 28th, or any other time stamp that
24 you can locate through your forensic examination on a computer
25 is dependent on the -- the system of the computer, in other

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1 words, the clock inside the computer, correct?

2 A Yes. The metadata of the files is going to be looked by
3 the operating system clock is set to.

4 Q And that can be manipulated, correct?

5 A The user can alter it, yeah.

6 Q So that this doesn't necessarily tell us a specific
7 accurate date; it depends on whether the clock was accurate or
8 whether the metadata through the clock had been changed in
9 some way?

10 A Those fields show what the clock was set to when the file
11 was altered or actually, you know, created.

12 Q But we don't know whether that clock was accurate at the
13 time in the sense that it could be changed by the user to
14 reflect any date or time, right?

15 A It -- you know, yes, it's -- the system clock can be
16 changed.

17 Q Okay.

18 Thank you very much.

19 MR. DRATEL: I have nothing further.

20 THE WITNESS: Okay. Thank you.

21 THE COURT: All right. Any redirect?

22 MS. WELLS: No, Your Honor.

23 THE COURT: All right. You may step down. Thank
24 you.

25 THE WITNESS: All right. Thank you.

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1 MR. JACOBS: Your Honor, the Government calls Nehad
2 Abusuneima.

3 THE CLERK: Please raise your right hand.
4 NEHAD ABUSUNEIMA, called as a witness having been
5 first duly sworn/affirmed, was examined and testified as
6 follows:

7 THE CLERK: Please state and spell your name for the
8 record.

9 THE WITNESS: Nehad Abusuneima, N-E-H-A-D, last name
10 is Abusuneima, A-B-U-S-U-N-E-I-M-A.

11 THE CLERK: You may be seated.

12 THE COURT: All right. You may inquire.

13 DIRECT EXAMINATION

14 BY MR. JACOBS:

15 Q Good afternoon, sir.

16 A Good afternoon.

17 Q Where are you employed?

18 A I'm employed with the Federal Bureau of Investigation.

19 Q And what's your title?

20 A I'm an Arabic language analyst.

21 Q How long have you been an Arabic language analyst with
22 the FBI?

23 A Ten years.

24 Q And very briefly, can you describe what your duties are
25 as a language analyst with the FBI?

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1 A It entails a variety of tasks, you know, sometimes I go
2 interview, interrogations with the agents. I do a variety of
3 transcriptions, documents, audios.

4 I also travel overseas on deployments, trainings for
5 our law enforcement partners. So basically that pretty much
6 sums it up.

7 Q Now, what languages do you speak?

8 A My native language is the Arabic, of course, I speak
9 English and I speak French, too.

10 Q Do you speak these three languages fluently?

11 A Yes, sir.

12 Q Do you also read them?

13 A Absolutely.

14 Q Where were you born?

15 A I was born in Beirut, Lebanon.

16 Q And have you spoken Arabic your entire life?

17 A Yes, sir.

18 Q When did you begin studying English; how old were you?

19 A I was 15 years old, I remember it was in high school.
20 And then I went to England, I remember, for -- in summer of
21 1978. I went to a school, summer school, just to study
22 English and to learn English.

23 Q When did you come to the United States?

24 A In 1998.

25 Q And before and after that time, what's your educational

1 background?

2 A I have a Bachelor of Science and am an agricultural
3 engineer. I graduated from the Agronomy Institute of -- in
4 Tunis.

5 Q And what was the language of instruction?

6 A It was in French. It was taught in French.

7 Q After moving to America, did you take any courses or
8 classes that were taught in English?

9 A Yes, I took a lot of computer classes. I obtained a lot
10 of certifications. All these classes were taught in English.

11 Q Does the FBI give examinations to language analysts?

12 A Yes. I mean, initially before you apply for this job you
13 have to go through exams and tests. They test you in your
14 native language and speaking proficiency of the English. And
15 it's like in two phases, you know, they test you in your
16 reading ability, understanding ability, listening
17 comprehension, everything.

18 Q And did you take these tests?

19 A I did, sir.

20 Q And did you pass or fail them?

21 A Yes, I did. I did pass, yeah.

22 Q Have you done any -- excuse me.

23 Have you undergone any training during your tenure
24 with the FBI?

25 A Yes. So we are mandated by our job to go periodically on

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1 training just to sharpen our skills, to improve our skills.
2 The domain we work in is evolving. It's always like there's
3 something new, so we have to keep ourself up-to-date to the
4 latest, you know, skills.

5 MR. JACOBS: Your Honor, at this time I'd move to
6 qualify the witness as an expert in Arabic English
7 interpretation and translation.

8 THE COURT: Any objection?

9 MS. KELLMAN: No, Your Honor.

10 THE COURT: Okay. He may testify to his opinions.

11 MR. JACOBS: Your Honor, may I approach?

12 THE COURT: You may.

13 BY MR. JACOBS:

14 Q I'm showing the witness what is in evidence as Government
15 Exhibit 7.

16 Sir, have you seen this item previously?

17 A Yes, I did.

18 Q And have you reviewed the contents of this item?

19 A Yes, sir.

20 Q All right. I'm going to put -- put the item marked for
21 identification or in evidence as Government 7 on the overhead,
22 and flip through just a couple pages.

23 Generally, Mr. Abusuneima, what sort of information
24 did you see when you reviewed this address book?

25 A I saw names. Most of the names are written in Arabic, of

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1 course.

2 I saw numbers that appears to me like phone numbers.
3 A couple of items of a couple of lines that I saw also they
4 are like e-mails and Web addresses.

5 Q And was most of the text in this book in Arabic?

6 A Yes, sir.

7 Q I would like to turn to Page 32 of the book.

8 Can you please read into the record the English
9 language appearing at the top left of Page 32?

10 A It reads, "International direct dialing codes."

11 Q Thank you.

12 Now, I would like to show just the witness what's
13 marked for identification as Government's 7-T, as in
14 translation.

15 Sir, I'm going flip through a few pages of this.
16 And then ask you some questions about it.

17 What is this?

18 A This is the translation that I did for this address book.

19 Q Okay. And how do you know this document itself is the
20 translation that you personally created?

21 A Because after the translation, I reviewed this document,
22 I certified its accuracy, and I initialed the bottom of this
23 document.

24 MR. JACOBS: At this time, I move to admit
25 Government's Exhibit 7-T.

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1 THE COURT: Same objection?

2 MS. KELLMAN: No, Your Honor.

3 THE COURT: Overruled.

4 It's admitted.

5 (Government's Exhibit Number 7-T so marked and
6 received in evidence.)

7 MR. JACOBS: Now that it's visible --

8 THE COURT: Go ahead.

9 BY MR. JACOBS:

10 Q Now that it's visible for the jurors, I just want to ask
11 you a couple questions about the layout of this document.

12 A Okay.

13 Q I'm going to turn just arbitrarily to, I guess, Page 7.
14 Can you describe what we're looking at here on the top half of
15 the page, what this image is?

16 A In this image there's like names and phone numbers on the
17 left side which correspond to the translation that I performed
18 on the left side. The same thing for the right side, you
19 know, what is written on this right side is also translated on
20 the right side of the document.

21 Q Okay. And the image we see at the top of Page 7 of
22 Government Exhibit 7-T is that a photocopy of pages in
23 Government Exhibit 7 --

24 A Yes.

25 Q -- which I'm holding up?

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1 A Yes.

2 Q Thank you.

3 And you touched on this, but I'll ask again so the
4 record's clear. The English language text underneath the
5 photocopy image of the address book, what does that correspond
6 to?

7 A The English translation corresponds exactly to the
8 content of that page that we are seeing on the monitor.

9 Q Thank you.

10 I would like to turn now to Page 33 of the
11 Government Exhibit 7-T and I'll zoom in a little bit.

12 Sir, directing your attention to Page 33 of the
13 address book, do you see the number ending in 777?

14 A Yes, sir, I do.

15 Q Can you please circle it on your screen?

16 A (Witness complies.)

17 Q And can you please read that number into the record.

18 A It's 027425777.

19 Q Do you see any text in Arabic immediately under the 777
20 number?

21 A Yes, sir, I do.

22 Q Would you mind circling that?

23 A (Witness complies.)

24 Q And before I ask you what the translation of that is, is
25 Arabic text written from left to right like English or right

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1 to left?

2 A No, it's written from right to left.

3 Q All right.

4 Does the English translation of that Arabic text
5 appear on this page?

6 A Yes, it does.

7 Q Can you circle the English translation of that text?

8 A (Witness complies.)

9 Q And can you please read into the record the English
10 translation beginning with what's in the parenthetical?

11 A Between brackets, Harun on behalf of Adnan Abd al-Lahi.

12 Q And do you see the 777 number also in English translation
13 portion?

14 A Yes, I do. It's right here.

15 Q Literally speaking, what do the words Abd al-Lahi mean?

16 A It is -- it means like the slave of God, the slave of
17 Allah.

18 MR. JACOBS: I would like to show to the witness
19 what's in evidence as Government Exhibit 23. And I will flip
20 through a few pages on the overhead.

21 BY MR. JACOBS:

22 Q Do you recognize the document, sir?

23 A Yes, I do.

24 Q What is it?

25 A It's a document that I've operationally reviewed and that

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1 testified to the translation, accurate translation.

2 MR. JACOBS: Now I would like to show just the
3 witness what's marked for identification as Government
4 Exhibit 23-T. And it may be easier, Your Honor, if I approach
5 here.

6 THE COURT: If you prefer.

7 MR. JACOBS: Thank you.

8 I'm handing the witness what's marked for
9 identification as Government Exhibit 23-T.

10 BY MR. JACOBS:

11 Q What is this, sir?

12 A This is the translation of the Arabic document.

13 Q And is that a true and accurate translation of the
14 document in Arabic?

15 A It is true and correct, yes, sir.

16 MR. JACOBS: All right. At this point, I move to
17 admitted Government Exhibit 23-T, Your Honor.

18 MS. KELLMAN: Same objection.

19 THE COURT: Overruled. It is admitted.

20 (Government's Exhibit Number 23-T so marked and
21 received in evidence.)

22 MR. JACOBS: I would also like to show the witness
23 what's marked for identification as Government's 23-H.

24 BY MR. JACOBS:

25 Q What is this, sir?

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1 A This is a copy of this translation.

2 Q And is the text in 23-H identical to the text in 23-T?

3 A Yes, sir.

4 Q What's different about it, if anything?

5 A Well, in this document there's, like, portions that are
6 highlighted.

7 MR. JACOBS: Your Honor, at this point, I move to
8 admitted Government's 23-H, or in the alternative, use it as a
9 jury aid.

10 MS. KELLMAN: Same objection.

11 THE COURT: Overruled. Received.

12 (Government's Exhibit Number 23-H so marked and
13 received in evidence.)

14 MR. JACOBS: Thank you.

15 May I publish to the jury, Your Honor, 23-T?

16 THE COURT: Yes.

17 BY MR. JACOBS:

18 Q I'm showing you first now that the jury can see 23-T, can
19 you please circle your initials on this page, sir.

20 A (Witness complies.)

21 Q And is this the translation you mentioned just a minute
22 ago?

23 A Yes, sir.

24 Q I'm now showing you Government's 23-H.

25 Can you circle your initials again?

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1 A (Witness complies.)

2 Q Thank you.

3 Okay. Sir, I would like now to walk through this
4 letter with you and read only select portions which you'll see
5 are highlighted on the screen instead of reading the whole
6 thing.

7 First, directing your attention to the highlighted
8 portion here, can you please read it into the record?

9 A "My beloved and dear brother, Spin."

10 Q And what page of the letter is this?

11 A It's Page 1.

12 Q All right. I now would like to go to the final page of
13 the letter, Page 14, and ask you to read into the record the
14 signature line which is highlighted.

15 A "Your brother and friend, Tom."

16 Q Okay. Turning back to Page 1 of the letter. Sir, can
17 you please read the highlighted text beginning here all the
18 way down to these lines (indicating)?

19 A "I was very pleased with your precious letter, and I
20 benefitted very much from it.

21 Please allow me to divide this letter into four
22 important portions as follows: First: Our general work plan,
23 and God willing, the plan of the upcoming phase.

24 Second: Important recommendations that should be
25 followed.

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1 Third: Our latest news and the news of your loved
2 ones here."

3 Q Okay. Now, you just read that, the letter is divided
4 into four important portions. What's the first portion
5 titled?

6 A The first portion is Our General Work Plan.

7 Q And down below on the page, do you see a similar title?

8 A Yes, sir.

9 Q Can you please read starting below these lines with
10 First: Our General Work Plan, and you can read the end of the
11 highlighting on this page?

12 A "First: Our general work plan."

13 MS. KELLMAN: Objection to this particular witness
14 reading aloud in English.

15 THE COURT: I'm going to overrule it, just for
16 convenience, you know. You can read it yourself if you would
17 like.

18 MR. JACOBS: I'm happy to read it, then, ask if it's
19 an accurate translation afterwards, Judge.

20 THE COURT: Yeah, I think counsel is allowed to
21 highlight certain portions for the jury. How he does it does
22 not much matter, I think, because the document is in evidence,
23 so... It could be highlighted for the jury.

24 MR. JACOBS: Should we continue with the witness
25 reading it, Judge?

ABUSUNEIMA/DIRECT/JACOBS

1 THE COURT: I leave it to you.

2 MR. JACOBS: Okay.

3 THE COURT: Your examination.

4 MR. JACOBS: Since the witness translated it, we'll
5 continue with Mr. Abusuneima.

6 MS. KELLMAN: Your Honor, perhaps we could just
7 have a foundational question; in other words, did you
8 translate this paragraph? Did you translate it accurately?
9 Can you read -- I mean...

10 THE COURT: That would not highlight it. He wants
11 to highlight it. He has that right since the document is in
12 evidence.

13 MR. JACOBS: All right.

14 BY MR. JACOBS:

15 Q Please read, sir.

16 A "First: Our general plan on your end, and God willing,
17 the plan of the upcoming phase. We have learned from our
18 brother Abu Ibrahim that there is fairly considerable Jihad
19 awakening at your place; there are many young individuals,
20 especially student of the religious schools of mosques who are
21 heading toward Jihad action."

22 Q All right. I'll now turn the Page 3 of the letter and
23 ask you to read -- but before then, sir, is everything
24 highlighted in this letter a true and accurate English
25 translation of the Arabic you read?

ABUSUNEIMA/DIRECT/JACOBS

1 A Yes, sir.

2 Q Okay. And please proceed and read the highlighted
3 portion on Page 3.

4 A "Therefore, God willing, we, along with other Muslim
5 brothers and the Jihadists in the region at your end, are
6 seeking to deny the Jews and the Americans access of the
7 region of West Africa. For your information, the Americans
8 are utilizing Nigeria as their own case to control the West
9 African region.

10 Nigeria is considered an important central and
11 pivotal country in the West African region. We thank Allah
12 for the presence of the jihad awakening in this region.

13 You know very well the importance of targeting the
14 Jews and Americans during this stage. They represent the head
15 of the snake, and they are the devils who kill Muslims in many
16 Islamic countries."

17 Q Turning to Page 4 of the letter, sir, can you please read
18 the highlighted text here.

19 A "This is what I want you to focus on during the upcoming
20 phase: Preparing for a military action at your end. This
21 military action requires a few important necessities that must
22 be available to get the job done."

23 Q Now turning to Page 5: Can you start the reading, the
24 highlighted -- can you read the highlighted text beginning
25 with the words "First personnel..."?

ABUSUNEIMA/DIRECT/JACOBS

1 A "First personnel during the upcoming stage you will need
2 at least two or three additional individuals to assist you and
3 to participate with you in the work. Consequently, I ask
4 Brother Ibrahim to cooperate with you in selecting two or
5 three decent young men with good morals. They must be smart,
6 as well as being devoted to Jihad and martyrdom.

7 Send them to us in order to properly prepare them.
8 This preparation will last approximately five or six months,
9 but don't mention it to those young men.

10 However, in case they do not have the means to
11 prepare for their travel, which from what I know and from what
12 Brother Ibrahim had told me might likely be the case, then we
13 will fund them. I will send you a sum of money with
14 Brother Ibrahim to cover the cost of preparing two brothers;
15 and if it is not enough, we will reserve the tickets for them
16 from here, the same way we did for Brother Ibrahim.

17 Q Okay. Now let's move to the next part. Can you please
18 read the highlighted text here beginning with the word "second
19 materials..."?

20 A "Second materials: It is considered the most important
21 reason behind the success of any operation. After relying on
22 Allah, the Almighty, materials are extremely important. The
23 exact materials I mean are basically explosives. Of course,
24 we prefer them to be original as they are much better than --
25 than what we personally manufacture. We basically need

ABUSUNEIMA/DIRECT/JACOBS

1 general explosives; therefore, I hope from Allah that you
2 immediately start searching to purchase general explosives in
3 the country that you are in, and also in Niger.

4 In regards to the quantity that we need, we are in
5 need for at least one ton. Even if it takes a long time to
6 gather this amount, there is no problem with that. Shortly
7 before starting to acquire this amount, you must prepare
8 suitable location to properly and securely store these
9 materials. I have mentioned to Brother Ibrahim a few ideas
10 about the storage issue, which included purchasing a piece of
11 land, building a block fence and a few rooms. Then, bury --
12 bury the material properly in the ground so that it will not
13 get damaged underground. This piece of land can be disguised
14 as being a farm, a place for storing building equipments, or
15 any other covers that you deem suitable for the region.

16 In case that the required amount of explosives is
17 not available, we will resort to manufacturing. Nevertheless,
18 even with manufacturing, an amount of ready explosives at
19 least 100 kilograms must be available in order to act as an
20 activator for the manufactured explosives. We realize through
21 experiment the importance of the availability of ready
22 explosives to activate the improvised explosives."

23 Q Okay. Turning now to Page 7 of the letter.

24 The third bucket. Can you please read the
25 highlighted text here beginning with "Third: Information"?

ABUSUNEIMA/DIRECT/JACOBS

1 A "Third: Information: It is extremely important, and God
2 willing, it comes after the material in its importance to
3 accomplish the task. Collecting information about the target
4 requires good training on this type of work. The training
5 that you acquired in this field may not be currently
6 sufficient for our work because the enemy is vigilant to a
7 great extent, and their eyes are wide open. This does not
8 mean that the training that you attended is completely
9 inadequate, but it is suitable for collecting basic
10 information about the target such as locations where Americans
11 congregate, like embassies and some military bases, as well as
12 hotels and amusement centers, where they frequently,
13 especially in the cities located on the coast. This is in
14 addition to places where they gather for fun, like some clubs
15 and their large companies, especially their petroleum
16 companies and others."

17 Q And lower on the page can you please read the note at the
18 bottom?

19 A "Note: You will mostly need to stay in Abuja or Lagos
20 for a period of time during the search for some information,
21 so if you need to do that, there is no problem with it. You
22 may prepare a suitable location in these cities to complete
23 your work because as far as I know, the American presence, as
24 well as their interest, are more likely to be in the likes of
25 these large cities."

ABUSUNEIMA/DIRECT/JACOBS

1 Q Flipping back very briefly to Page 1 in the letter, what
2 was the label for the second portion of the letter?

3 A "Important recommendation that should be followed."

4 Q Now advancing to Page 8. Can you please read the title
5 of the section into the record?

6 A "Second important recommendations."

7 Q And how many recommendations were there in total -- and
8 let me just zoom out and show you page and Page 9 and Page 10.

9 A There are ten -- ten recommendations.

10 Q All right. We're not going to read all of them. Just a
11 couple. Starting with the second recommendation on Page 8,
12 would you please read, sir.

13 A "Second: Please do not rush to perform your work.
14 Always slow down and show restrain because in this war we are
15 not too concerned about promptness and speed. It is a long
16 war. If the matter that you are handling will take some time
17 and delays as a result of security considerations and
18 precautions, there is no problem with that; we will be
19 patient. As far as we are concerned, the brief delay in the
20 work is better than, God forbids, destroying the whole work
21 because of speed and rush."

22 Q Turning now to Page 9, can you please read the fourth
23 recommendation, sir, excuse me.

24 A "Fourth: By God I hope that you take precautions while
25 purchasing weapons and explosive materials because most

ABUSUNEIMA/DIRECT/JACOBS

1 traders of these items are connected to law enforcement.
2 Often enough, the law enforcement allows them to trade these
3 items with some of the public on a condition that they inform
4 them about any stranger or suspected individuals, if they come
5 to purchase from them; therefore, you must provide good cover
6 so that it will not raise suspicion.

7 Also, if possible, you should have more than one
8 trusted intermediary between yourself and the dealers of these
9 items; God forbid if they suspected something, that will not
10 reach you directly."

11 Q And please read just the portion of the fifth that's
12 highlighted.

13 A "Fifth: Arrange for you yourself and your brothers a
14 contingency plan, (such as spare passports with names, which
15 you will mostly use; and explore itineraries to flee the
16 country) in the event that something happens, God forbids, and
17 some issues were disclosed. Thus, there will be an evacuation
18 plan from the country to a neighboring one or elsewhere."

19 Q Lower on Page 9, please read the highlighted portion of
20 Recommendation 8.

21 A "Eighth: In regards to utilizing the Internet, do not
22 use and do not get into the habit of always using one specific
23 Internet cafe. You must always change the Internet cafe that
24 you use and should always use a different one. If you were
25 entering an Internet cafe to check if there are messages or

ABUSUNEIMA/DIRECT/JACOBS

1 not, don't stay at the cafe for more than ten minutes. You
2 view the messages and leave promptly. Do not sit and open
3 websites of Arabic news and websites of the brothers, while at
4 the same time you had opened your mailbox to see if you have
5 messages or not."

6 Q Turning now to Page 10, can you please read into the
7 record the highlighted portions of the ninth and tenth
8 recommendation?

9 A "Ninth: Never converse in an obvious manner or in clear
10 language over the Internet or over the phone. Always use a
11 code or a cipher in your conversation. I will send you a few
12 additions to the cipher that we had previously agreed on."

13 "Tenth: As for the phone that you are using inside
14 Nigeria and countries at your end, do not use it to dial or
15 receive international phone calls.

16 Q Just a little bit more. Going back to Page 1, can you
17 please read so into the record of the title of the third
18 important portion of the letter?

19 A "Third: Our latest news and the news of your loved ones
20 here."

21 Q And returning to Page 10 of the letter, can you please
22 read the title of this section into the record?

23 A "Third: Our conditions and our latest news."

24 Q And if you would, can you continue reading the
25 highlighted text on this page?

ABUSUNEIMA/DIRECT/JACOBS

1 A "Praise Allah, our conditions are generally good, but at
2 times, the situation intensifies and chasing increases, as it
3 is these days, especially in the Waziristan region. They are
4 launches one campaign after the other, especially with the
5 beginning of the summer season. This is to preoccupy the
6 brothers here -- there with the Pakistani army, so that the
7 brothers are not dedicated to operating against the Americans
8 inside of Afghanistan.

9 Many of the brothers have been killed and a few
10 other brothers arrive to participate in the work with us. Of
11 course, I can't possibly remember all the names of the
12 brothers whom we consider as martyrs. My memory is not
13 helping me. Some of the brothers who were killed are: (Abu
14 Abdul Rahman Al-Canadi; Abu Muhammad Al-Turkistani;
15 Abu Samarqund, who was in Mir Ali; Abu Ayman, who was killed
16 while engaged in combat with a group of American intelligence
17 riding an ordinary vehicles and guarded by some devious
18 individuals. At least three persons from the American
19 intelligence were killed."

20 Q This first name here Abdul Rahman Al-Canadi, what is the
21 English translation of Al-Canadi?

22 A Al-Canadi means the Canadian.

23 Q All right. I'm just going to show you but not ask you to
24 read anything on Pages 12 of the letter and 13 of the letter.
25 Just very generally, what do you see on these pages?

ABUSUNEIMA/DIRECT/JACOBS

1 A I see letters and numbers.

2 Q And now turning to the next page with text, 14. Can you
3 please read the first two lines which are highlighted?

4 A "The above represents an English letter of a number for
5 every Arabic letter. Of course, as I had previously mentioned
6 to you, use this cypher to inform me about some critical
7 word."

8 MR. JACOBS: No further questions, Your Honor.

9 THE COURT: All right. Any cross?

10 MS. KELLMAN: No, Your Honor.

11 THE COURT: All right. You may step down.

12 THE WITNESS: Thank you, sir.

13 THE COURT: Let me see counsel at sidebar for a
14 minute.

15 (Sidebar.)

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SIDEBAR

1 (The following occurred at side bar.)

2 THE COURT: Did I understand correctly that
3 the Government has no more witnesses today?

4 MR. ARIAIL: No.

5 MS. WELLS: We have three.

6 MR. JACOBS: Three more witnesses.

7 THE COURT: Okay. So we'll break for lunch.

8 (Sidebar concluded.)

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PROCEEDINGS

1 (In open court, sidebar ends.)

2 THE COURT: All right. Ladies and gentlemen, we
3 will break for lunch now. We will come back here at, say, 5
4 to 2:00.

5 Please do not talk about the case with anyone, no
6 posting about it. Do not send an e-mail to anybody about it,
7 no research about it. Keep an open mind and we will see you
8 back here about 5 to 2:00.

9 Have a good lunch.

10 (Jury exits.)

11 THE COURT: Okay. 5 to 2:00. Thank you.

12 (Recess taken.)

13 (Continued on the next page.)

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CHILDERS/DIRECT/JACOBS

1 A F T E R N O O N S E S S I O N

2 (In open court, outside the presence of the jury.)

3 THE CLERK: All rise. Okay.

4 Let's bring in the jury, please.

5 (Jury enters.)

6 THE COURT: All right. Everyone be seated.

7 Welcome back, ladies and gentlemen.

8 Government's next witness.

9 MR. JACOBS: The Government calls Special Agent
10 Micah Childers.

11 THE CLERK: Please raise your right hand.

12 (Witness sworn.)

13 THE CLERK: Please state and spell your name for the
14 record.

15 THE WITNESS: Micah Childers. M-I-C-A-H,
16 C-H-I-L-D-E-R-S.

17 THE CLERK: You may be seated.

18 THE COURT: All right. You may be inquire.

19 MR. JACOBS: Thank you.

20 DIRECT EXAMINATION

21 BY MR. JACOBS:

22 Q Good afternoon, sir.

23 A Good afternoon.

24 Q Who do you work for?

25 A The Federal Bureau of Investigation.

CHILDERS/DIRECT/JACOBS

1 Q And what's your title?

2 A Special Agent.

3 Q How long have you been a Special Agent with the FBI?

4 A Approximately seven years.

5 Q And at a high level what do you do as an FBI Special
6 Agent?

7 A I investigate Federal crimes and also gain intelligence
8 where needed.

9 Q Which FBI office are you based out of?

10 A Currently based out of the Richmond division at the
11 Bristol Resident Agency.

12 Q And that's in Virginia?

13 A Correct.

14 Q I'd like to direct your attention to the latter part of
15 2016.

16 Were you detailed to a different location at that
17 time?

18 A I was.

19 Q Where?

20 A To Abuja, Nigeria.

21 MR. JACOBS: I'd like to show the witness what's in
22 evidence as Government Exhibit 203.

23 (Government Exhibit Number 203 published to the
24 jury.)

25 BY MR. JACOBS:

CHILDERS/DIRECT/JACOBS

1 Q Special Agent Childers, can you please using the
2 Touchscreen point to where Abuja, Nigeria, is on this map.

3 A (Complies.) See that.

4 Q Now, approximately how long were you in Abuja, Nigeria?

5 A Three months.

6 Q And in broad strokes why were you detailed over there?

7 A I was assigned to Abuja through our International
8 Corruption Unit, focusing on international corruption and
9 fraud investigations.

10 Q Did there come a time when you left Abuja and traveled
11 elsewhere in Nigeria?

12 A There did.

13 Q And where did you go?

14 A Kano, Nigeria.

15 Q I'm going to zoom in on this map just a little bit.

16 Can you please point on the map to where Kano is?

17 A (Complies.)

18 Q Thank you.

19 How did you get from Abuja to Kano?

20 A Rode in a vehicle.

21 Q And in general terms can you describe the size and
22 population of Kano?

23 A Kano was an immense, surprisingly large city, a million
24 people or so. I mean a very large, old city.

25 Q And broadly speaking what was the purpose of your trip to

CHILDERS/DIRECT/JACOBS

1 Kano?

2 A I was detailed to do a site survey, directed to a certain
3 area, and then take pictures and kind of understand the area.

4 Q What particular area of Kano did you focus on?

5 A Zaria Road. And then there was a couple of roundabouts
6 and then a Unity Bank building.

7 MR. JACOBS: I would like to show just the witness
8 what's in evidence -- excuse me -- what's marked for
9 identification as Government Exhibit 151.

10 (Exhibit Number 151 published to the witness.)

11 BY MR. JACOBS:

12 Q What is this?

13 A That would be a map of Kano, Nigeria.

14 Q Does this map truly and accurately depict the area where
15 you conducted the site survey?

16 A It does, with the exception of where the Unity Bank
17 marker is located. The actual building is a little more
18 south.

19 MR. JACOBS: At this time, Your Honor, I'd move to
20 admit and publish Government Exhibit 151.

21 THE COURT: Any objection?

22 MR. STERN: No.

23 THE COURT: Received.

24 (Government Exhibit Number 151 received in
25 evidence.)

CHILDERS/DIRECT/JACOBS

1 (Government Exhibit Number 151 published to the
2 jury.)

3 BY MR. JACOBS:

4 Q Special Agent Childers, now that the jury can see
5 Government Exhibit 151, would you mind using the Touchscreen
6 to show where Zaria Road is?

7 A (Complies.)

8 Q And earlier you testified about some roundabouts. Can
9 you please circle or point to them on the map?

10 A They were two roundabouts, one here and one here
11 (indicates).

12 Q And you mentioned a building, the Unity Bank building.
13 Where approximately was the building?

14 A This whole property appeared to be the Zaria Road or --
15 I'm sorry -- Unity Bank building property but the building
16 itself was approximately right there.

17 MR. JACOBS: And I'd like to show the witness a
18 series of seven photos marked for identification as Government
19 Exhibit 152 through 158.

20 BY MR. JACOBS:

21 Q And, Special Agent, I'll flip through them all first; and
22 them I'll ask you about them.

23 (Showing photos.)

24 Here's 152, 153, 154, 155, 156, 157, and 158.

25 Do you recognize these photos?

CHILDERS/DIRECT/JACOBS

1 A I do.

2 Q Who took them?

3 A I did.

4 Q And do they -- and what area did you take them?

5 A That would have been Zaria Road.

6 Q Do they fairly and accurately depict Zaria Road and the
7 areas around it?

8 A They do.

9 MR. JACOBS: At this point I'd move to admit and
10 publish Government Exhibit 152 through 158.

11 MR. STERN: No objection.

12 THE COURT: Received.

13 (Government Exhibit Numbers 152 to 158 received in
14 evidence.)

15 (Government Exhibit Numbers 152 to 158 published to
16 the jury.)

17 BY MR. JACOBS:

18 Q Now that the jury can see the photos, I'm going to show a
19 series of four and then ask you questions about them.

20 First, Government Exhibit 152 and 153 and 154 and
21 155, where were you when you took these photos?

22 A I was located in a vehicle traveling on Zaria Road from
23 south to north.

24 Q And did you notice a building in these sequence of
25 photos?

CHILDERS/DIRECT/JACOBS

1 A Yes.

2 Q And is it in this photo you were looking at, Government
3 Exhibit 155?

4 A It is.

5 Q What building is that?

6 A Unity Bank building.

7 Q Now, showing you Government Exhibit 157 which is in
8 evidence, where was this photograph taken?

9 A It would be located just outside the Unity Bank building
10 property at the front gate.

11 Q And approximately how far were you from Zaria Road when
12 you took this photo?

13 A Maybe 20 to 30 yards, just off the road.

14 Q And now Government Exhibit 158, which is in evidence,
15 where did you take this photograph?

16 A This would have been within the gate itself, going toward
17 the front entrance.

18 Q Now when you got to the Unity Bank building, what, if
19 anything, did you observe?

20 A When I got to the building itself, it's a very
21 substantial building, the tallest by far of any of the
22 buildings around. There was a gate in front, and then we
23 entered the building itself.

24 Q And around the entrance of the building, did you observe
25 anything on the ground level?

CHILDERS/DIRECT/JACOBS

1 A I did.

2 Q What?

3 A There were two plaques located in front of the front
4 entrance.

5 MR. JACOBS: I would like to show the witness
6 what's -- and just the witness what's marked for
7 identification as Government Exhibit 160.

8 BY MR. JACOBS:

9 Q Do you recognize the object in the photograph, sir?

10 A I do.

11 Q What is it?

12 A It's one of the two plaques located at base of the
13 building.

14 Q And is this a true and accurate depiction of one of those
15 plaques?

16 A It is.

17 MR. JACOBS: I'd move to admit and publish
18 Government's 160.

19 MR. STERN: Objection to relevance.

20 THE COURT: Let's have a sidebar.

21 (Sidebar.)

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SIDEBAR

1 (Sidebar.)

2 THE COURT: What does the plaque show?

3 MR. JACOBS: The plaque states that the building was
4 commissioned by the commander in chief of the armed forces and
5 there's a date, 1989. The relevance is that the building
6 existed at the time the defendant said it was there in Kano.

7 THE COURT: Okay.

8 MR. JACOBS: And it's not being offered for the
9 truth because we don't care that the president and the
10 commander in chief commissioned the building.

11 MR. STERN: It's not being offered for the truth,
12 then the date might not be true, too.

13 THE COURT: Well, part of it is not offered for the
14 truth. The date is being offered for the truth.

15 MR. JACOBS: The existence of the date on the plaque
16 is not the assertion that's contained on the plaque.

17 THE COURT: What is?

18 MR. JACOBS: The assertion is that this -- exactly
19 that this commission -- this plaque was unveiled by the
20 president and commander in chief of the armed force of
21 Nigeria, his name.

22 And then what I'm going to do is argue by inference
23 that the jury can assume that because this date is on a
24 cornerstone plaque that the building was made around this
25 indictment.

SIDEBAR

1 THE COURT: You're asking them to assume that's
2 true.

3 MR. STERN: Yeah. I mean, it is being offered for
4 the truth. When you want to get up and tell the jury, this is
5 the date the building was built, you're saying it's true.
6 You're not saying the statement was being put in for some
7 rather reason to explain someone's state of mind or actions
8 they took or anything remotely like that, but that's purely
9 for the truth.

10 THE COURT: You don't need to argue with them, so --

11 MR. STERN: I was talking to you.

12 THE COURT: -- I'm not convinced. So I want to hear
13 my what's not hearsay.

14 MR. JACOBS: Because we're not interested in the
15 truth of the statement that the building was commissioned on a
16 particular date by a particular person. What we're going to
17 argue is that you can infer from this that the building
18 existed in 2003. The fact that it was commissioned in 1989 is
19 irrelevant for our purposes.

20 THE COURT: Why couldn't you just have a picture of
21 the building and say he saw it in 2003, instead of the plaque?

22 MR. JACOBS: We don't have that evidence, Judge.

23 THE COURT: Didn't he see it?

24 MR. JACOBS: At a different time, though.

25 THE COURT: When?

SIDEBAR

1 MR. JACOBS: 2016. It's a small point, Judge and if

2 --

3 THE COURT: It is hearsay because you're saying it
4 tends to show that the building was there in 2002, since it
5 was built in 1989. Right? That's the point?

6 MR. JACOBS: Since a mason made the assertion that
7 it was commissioned by the president in 1989.

8 THE COURT: If this is not true, then you cannot
9 draw the inference that makes it relevant; therefore, it's
10 being offered for the truth.

11 MR. JACOBS: Okay.

12 THE COURT: Okay. You're withdrawing it?

13 MR. JACOBS: Yes.

14 THE COURT: Okay.

15 (Sidebar ends.)

16 (Continued on the next page.)

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CHILDERS/DIRECT/JACOBS

1 (In open court.)

2 BY MR. JACOBS:

3 Q Special Agent Childers, did you ultimately go inside the
4 Unity Bank building?

5 A I did.

6 Q And what did you do after going inside the building?

7 A After I went inside the building, I went to the elevator,
8 which was not operational, and then walked up 15 flights of
9 stairs to the top of the building.

10 Q And what, if anything, did you do when you got to the top
11 of the building?

12 A I observed Kano from that view and then took numerous
13 pictures from all directions.

14 Q I would like to show you a photo that's marked for
15 identification as Government Exhibit 161.

16 Do you recognize this photo?

17 A I do.

18 Q Who took it?

19 A I did.

20 Q And where did you take it from?

21 A This would have been looking out, again, the Unity Bank
22 building, more in the northern direction towards Zaria Road
23 with a flyover kind of in the middle of it.

24 Q And is this a true and accurate depiction of the view
25 from Unity Bank Tower?

CHILDERS/DIRECT/JACOBS

1 A It is.

2 MR. JACOBS: I'd move to admit and publish
3 Government's 161.

4 MR. STERN: I have no objection as long as we
5 establish the year these things were done.

6 THE COURT: "These things," the photograph that was
7 taken?

8 MR. STERN: Yes.

9 THE COURT: When was the photograph taken? Do you
10 know?

11 THE WITNESS: 2016.

12 THE COURT: Okay. It's received.

13 (Government Exhibit Number 161 received in
14 evidence.)

15 (Government Exhibit Number 161 published to the
16 jury.)

17 BY MR. JACOBS:

18 Q Now that the jury can see the photograph, sir, can you
19 please using your Touchscreen indicate where Zaria Road is?

20 A Zaria Road is from the center down through the bottom
21 right of the picture.

22 Q And can you please describe the road structures that you
23 see toward the northern part of Zaria Road in this photo?

24 A There's a roundabout just beside of Zaria Road. There's
25 a flyover. The term is used in Nigeria. It's an overpass, if

CHILDERS/DIRECT/JACOBS

1 you will, that's located kind of to the center of the picture.

2 Q Can you indicate where the roundabouts are on the screen?

3 A There's a roundabout here, and then the flyover that I
4 was mentioning is in the middle.

5 Q What was the visibility like?

6 Sorry. I'll put this back on the screen.

7 What was the visibility like from the 15th floor of
8 the Unity Bank building on the day you were up there?

9 A That day was very good. I would estimate, as you can see
10 from the picture, you can see more than a mile.

11 Q And from that vantage point were you able to see any
12 buildings as tall or taller than the Unity Bank building?

13 A No. Unity Bank building was substantially taller than
14 any building definitely within view.

15 Q And what directions could you see from the Unity Bank
16 building?

17 A All directions.

18 Q During this site survey did you survey the areas around
19 the Unity Bank building?

20 A I did.

21 Q And, generally speaking, what sort of structures or
22 establishments did you observe in the area?

23 A It was varied, kind of an urban environment that included
24 retail, residential, a number of restaurants on Zaria Road.

25 There was a construction company, taxi stand, multiple types

CHILDERS/DIRECT/JACOBS

1 of businesses.

2 Q And generally can you describe what the structures these
3 businesses were in looked like near Zaria Road and as you move
4 further away?

5 A Zaria Road appeared to have buildings that were of a
6 nicer construction. The majority of the buildings in Kano are
7 concrete construction. In nature, it's a good resource to use
8 for the building of buildings there. As you would go from
9 Zaria Road, the buildings were maybe not as high of a
10 construction, shorter buildings as you would then go away from
11 the main road itself.

12 MR. JACOBS: I'd like to show the witness a series
13 of three photographs marked for identification as Government
14 Exhibit 179 and 180 and 181.

15 BY MR. JACOBS:

16 Q I'll first flip through these, sir; and then I'll ask you
17 a question or two about them.

18 Do you recognize these photographs?

19 A I do.

20 Q What do they depict?

21 A A construction company that's located behind a taxi
22 stand, adjacent to Zaria Road.

23 MR. JACOBS: Move to admit. Withdrawn.

24 BY MR. JACOBS:

25 Q Are these photographs true and accurate depictions of the

CHILDERS/DIRECT/JACOBS

1 area that you observed?

2 A They are.

3 MR. JACOBS: I'd move to admit and publish these.

4 THE COURT: Any objection?

5 MR. STERN: No.

6 THE COURT: Received.

7 (Government Exhibit Numbers 179, 180, and 181
8 received in evidence.)

9 BY MR. JACOBS:

10 Q Now that the jury can see, I'll show Government Exhibit
11 179.

12 (Government Exhibit Number 179 published to the
13 jury.)

14 BY MR. JACOBS:

15 Q What do you see in this photograph?

16 A This was the front gate to the construction company
17 located adjacent to Zaria Road. You can see a couple of armed
18 guards were standing behind the fence there. In the
19 background you can see some of the equipment that would be
20 used to make concrete.

21 (Government Exhibit Number 181 published to the
22 jury.)

23 BY MR. JACOBS:

24 Q I'm showing you 181.

25 What do you see here?

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1 A This would have been another angle of the same location
2 from the Zaria Road side through the taxi stand.

3 (Government Exhibit Number 161 published to the
4 jury.)

5 BY MR. JACOBS:

6 Q And going back to Government Exhibit 161, which is in
7 evidence, can you please indicate where, if anywhere, on this
8 photograph the what you refer to as a construction company,
9 where that is located?

10 A Do you want me to mark on the --

11 Q If you can, please.

12 A It's in this area (indicates) with the taxicab stand
13 right in front of it.

14 Q Now, how many times have you been to Kano, Nigeria?

15 A Once.

16 Q Do you know what Kano looked like in the 2000s?

17 A I do not.

18 Q When was your trip to Kano?

19 A It was in 2016.

20 MR. JACOBS: No further questions.

21 THE COURT: All right. Any cross?

22 MR. STERN: No. But I'd like to approach before the
23 next witness, if we could.

24 THE COURT: You would like to --

25 MR. STERN: No, cross but I'd like to approach

CHILDERS/DIRECT/JACOBS

1 before the next witness, if we could.

2 THE COURT: You may step down. Thank you.

3 (Special Agent Micah Childers leaves the witness
4 stand.)

5 THE COURT: We'll have a sidebar.

6 (Sidebar.)

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SIDEBAR

1 (Sidebar.)

2 MR. STERN: Judge, I move to strike Agent Childers'
3 testimony. He went there in 2016. There's no indication he
4 looked at historical maps, historical blueprints, historical
5 photographs, what was there before and what's there now.

6 It's really irrelevant to this case what Kano looks
7 like today. It doesn't confirm anything the defendant said
8 because things could have been built since he was there or
9 torn down since he was there. Roads could have been changed

10 THE COURT: I've got the point.

11 MR. JACOBS: Your Honor, that argument goes to the
12 weight of the evidence and it's one which we expected defense
13 to make. The defendant is very specific when he described
14 where he sent.

15 THE COURT: You mean the witness -- oh, yes. The
16 defendant.

17 MR. JACOBS: The defendant. Where he said his
18 accomplice to purchase explosives. He said in Kano, to a
19 storefront off Zaria Road next to the only tall building in
20 town by a roundabout.

21 Of course, it would be great if we had witness from
22 2003 and four and five to testify that the location was the
23 same. We don't, but these are landmarks in a city. Excuse
24 me. We have another witness who's about to testify now that
25 the building existed back then, as well.

SIDEBAR

1 THE COURT: Isn't that a good reason to grant the
2 motion to strike?

3 MR. JACOBS: No, Judge. This is photographic proof
4 that the same structures, the landmarks that the defendant
5 said were there are actually there.

6 THE COURT: Okay. I'm not going to strike the
7 testimony subject to connection. Let's see what the next
8 witness says.

9 (Sidebar ends.)

10 (Continued on the next page.)

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BARNES/DIRECT/WELLS

1 (In open court.)

2 THE COURT: All right. Government's next witness?

3 MS. WELLS: Your Honor, the Government calls Jerald
4 Barnes.

5 THE WITNESS: Good morning.

6 THE CLERK: Please raise your right hand.

7 (Witness sworn.)

8 THE WITNESS: I do.

9 THE CLERK: Please state and spell your name for the
10 record.

11 THE WITNESS: My name is Jerald Houston Barnes.

12 First name is spelled J as in "John" E-R-A-L-D.

13 Middle name is spelled H as in "Henry" O-U-S-T-O-N. Last
14 name, Barnes, spelled B as in "boy" A-R-N-E-S.

15 THE CLERK: You may be seated.

16 THE COURT: You may proceed.

17 MS. WELLS: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. WELLS:

20 Q Good afternoon, Mr. Barnes.

21 A Good afternoon.

22 Q Was there a time that you worked for the United States
23 Department of State?

24 A Yes.

25 Q Approximately what years did you work for the State

BARNES/DIRECT/WELLS

1 Department?

2 A I worked for the U.S. Department of State from 1985 until
3 2008.

4 Q And very briefly, before 1985, what did you do for a
5 living?

6 A I was a Washington D C. police officer.

7 Q Now, once you joined the State Department, what different
8 titles specifically did you hold during your career?

9 A During my State Department career, I was a Special Agent,
10 commonly referred to many times as a Federal Agent. Some
11 organizations give a title of Federal Agent. Other
12 organizations give the title of Special Agent.

13 And in the case of the Bureau of Diplomatic
14 Security, it's Special Agent and that's a title that we as
15 Special Agents held domestically within the United States but
16 once we traveled overseas and we're assigned to American
17 embassies, our titles change to Regional Security Officer.

18 Q Okay. All right. So during the course of your career,
19 did you work both as a Special Agent domestically here in the
20 U. S. and as a Regional Security Officer overseas?

21 A Yes.

22 Q During the period of time or periods of time when you
23 worked abroad, which different countries were you stationed
24 in?

25 A During my career I was stationed in France, I was

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1 stationed in Ghana, I was stationed in Togo, I was stationed
2 in the Kingdom of Saudi Arabia, and I was stationed in
3 Nigeria.

4 Q Were you a Regional Security Officer at all of those
5 posts overseas?

6 A Yes, I was.

7 Q All right. Now, can you tell us just generally what a
8 Regional Security Officer does at a U.S. Embassy?

9 A A Regional Security Officer assigned to an American
10 embassy for comparison could be considered like the chief of
11 police in some cases. We were responsible for all security
12 for the U.S. Government in reference to Federal laws, in
13 reference to protecting classified information, in reference
14 to protecting people, in reference to protecting property, in
15 conducting investigations. We managed many different
16 disciplines within security.

17 Q Tuning your attention to July of 2003, where were you
18 stationed then?

19 A I was assigned to Abuja, which is where the American
20 Embassy was located.

21 Q And what -- or excuse me. What country is Abuja in?

22 A Abuja is in the country of Nigeria.

23 Q And what significance, if any, does Abuja have within
24 Nigeria?

25 A Abuja is the capital of the country, and that is where

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1 the Nigerian government maintains their primary operation.

2 Q Now, was the U.S. Embassy in Nigeria also located in
3 Abuja?

4 A No, it was not.

5 Q Where would the U.S. Embassy have been located before?

6 A Previously, the American Embassy was located in Lagos,
7 Nigeria.

8 Q And approximately when did the embassy move from Lagos,
9 Nigeria, to Abuja, Nigeria?

10 A It would have been approximately 2003 when I was assigned
11 there.

12 MS. WELLS: All right. I'd like to show the witness
13 what is in evidence as Government Exhibit 203.

14 (Government Exhibit Number 203 published to the
15 jury.)

16 BY MS. WELLS:

17 Q Using the Touchscreen in front of you, can you just point
18 to quickly where Abuja and Lagos, Nigeria, are located?

19 A Yes. Nigeria is right here, and Abuja is directly under
20 Nigeria. It has a star directly to the left of the word
21 "Abuja," and it's spelled A-B-U-J-A.

22 And if you move further down, heading towards the
23 water, a little bit to the left you'll see the word "Lagos,"
24 L-A-G-O-S, right next to the word "Porto-Novo."

25 Q And can you mark "Lagos" for us on the Touchscreen?

BARNES/DIRECT/WELLS

1 A Yes. That's it right there (indicates).

2 Q During your tenure in Nigeria, did you have travel to
3 Lagos?

4 A Yes, I did.

5 Q Was there an airport there?

6 A Yes, there was.

7 Q Did you fly in and out of that airport from time to time?

8 A Yes, I did.

9 Q And by the way, I don't think I asked you this before.

10 When did you first start working in Abuja, Nigeria;
11 and how long were you there?

12 A I started working in Abuja, Nigeria, in July, 2003; and
13 my assignment ended in July of 2006.

14 Q All right. Now, after the embassy moved from Lagos to
15 Abuja, did the United States maintain any diplomatic
16 facilities back in Lagos?

17 A Yes, they did.

18 Q What was located there?

19 A The former American Embassy in Lagos was then
20 redesignated as a consulate in Lagos, while the American
21 Embassy was designated in Abuja.

22 Q Can you explain to us what the differences are, if any,
23 between what happens at an embassy and what happens at a
24 consulate?

25 A Both facilities in most countries primarily provide the

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1 same services to American citizens and to host country
2 nationals and third-country nationals.

3 Lagos, for example, provided visa services for
4 Nigerian nationals and third-country nationals, as well as
5 passport services for American citizens that were in-country.

6 And the American Embassy does the same thing; and
7 normally the American Embassy is a much, much larger facility
8 with many more employees working there.

9 Q Where, if anywhere, does the ambassador to a country sit?

10 A The ambassador is resident where the American Embassy is
11 located.

12 Q All right. Turning back to your job as the Regional
13 Security Officer at the embassy in Abuja, in addition to the
14 routine responsibilities that you just discussed, did you have
15 any specific assignment related to the location of the
16 American Embassy?

17 A Yes. At that time there was a new American Embassy
18 facility that was under construction; and as a Senior Regional
19 Security Officer, I was responsible for the oversight of that
20 particular construction project.

21 Q And so was that new American Embassy that you just
22 mentioned complete when you began working in Abuja or still in
23 progress?

24 A It was still in progress.

25 MS. WELLS: Your Honor, may I approach the witness?

BARNES/DIRECT/WELLS

1 THE COURT: You may.

2 MS. WELLS: I'm going to show the witness what's
3 already in evidence as Government Exhibit 9, which is going to
4 be on the board.

5 BY MS. WELLS:

6 Q Mr. Barnes, I may need you to step up for just a minute
7 with the Court's permission.

8 Take a look at this, and let me know if you
9 recognize it.

10 A (Leaves witness stand.) Yes. This is a --

11 Q Hold on a second.

12 A I do. I do.

13 Q And if you can just turn this way so everybody can hear
14 you, what is this?

15 A Yes, I do. It's a map of the city of Abuja.

16 Q And what kind of information is contained on this map?

17 A Similar to our cities, they have the different districts
18 that compose the city of Abuja.

19 Q Are there diplomatic facilities documented on this map?

20 A Yes, there are diplomatic facilities documented on the
21 map.

22 Q Can you show us first where the embassy that you were
23 operating out of in Abuja is located here, if anywhere?

24 A Yes. It's here (indicates).

25 MS. WELLS: And for the record, the witness is

BARNES/DIRECT/WELLS

1 indicating in the upper right-hand portion of the map.

2 BY MS. WELLS:

3 Q And where, if anywhere, was the new U.S. Embassy that was
4 under construction located?

5 A Right here (indicates).

6 MS. WELLS: And for the record, the witness is
7 indicating the lower left-hand side under the words "district"
8 and "central business district."

9 All right. I'd now like to show the witness what's
10 been marked for identification only as Government Exhibit 9A.

11 (Government Exhibit 9A published to the witness.)

12 BY MS. WELLS:

13 Q All right. Mr. Barnes, do you recognize this?

14 A Yes, I do.

15 Q What is it?

16 A This is an excerpt or small portion of the much larger
17 map that I previously looked at.

18 Q And what information, if any, is reflected on this
19 excerpt of the larger map that we just looked at?

20 A It shows the location of where the temporary U.S. Embassy
21 was located.

22 Q And is this a fair and accurate depiction of the location
23 of the temporary U.S. Embassy during your tenure in Nigeria?

24 A Yes.

25 MS. WELLS: Your Honor, I move to admit Government

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1 Exhibit 9A and request permission to publish.

2 MR. STERN: No objection.

3 THE COURT: Received.

4 (Government Exhibit 9A was received in evidence.)

5 (Government Exhibit 9A published to the jury.)

6 BY MS. WELLS:

7 Q All right. Mr. Barnes, now that the jury has the benefit
8 of looking at the same document that we can see, can you using
9 your Touchscreen please show us where the temporary
10 U.S. Embassy that you worked in is located?

11 A Where it was located?

12 Q Yes, please.

13 A (Indicates.)

14 Q All right. And what street was the temporary --

15 THE COURT: I'm sorry. Did he touch it?

16 MS. WELLS: He did. It's very faint.

17 BY MS. WELLS:

18 Q Actually could you make another mark there, sir, so
19 everybody can see a little more clearly?

20 A There's two there (indicates).

21 Q And you can draw lines, too. You can draw a circle.

22 A (Complies.)

23 Q There we go.

24 What street was the temporary U.S. Embassy located
25 on?

BARNES/DIRECT/WELLS

1 A Mambilla.

2 Q And just so the record is clear, during what period of
3 time were you working out of the temporary U.S. Embassy?

4 A From approximately 2003 until the end of 2005 or the
5 beginning of 2006.

6 Q And at that point, end of 2005, beginning of 2006, where
7 did you start working then?

8 A At that point the new embassy compound was completed, and
9 we relocated our operations from the temporary U.S. Embassy
10 over to the new embassy compound.

11 Q Okay. And we'll get back there in just a minute.

12 Looking back at Government Exhibit 9A, in the area
13 surrounding the temporary U.S. Embassy, were there other
14 diplomatic facilities located nearby?

15 A Yes.

16 Q What were some of those?

17 A The Iranian Embassy, the French Embassy. They had the
18 French Cultural Centre in the general area, and there were
19 several foreign ambassadors that lived in that particular
20 neighborhood.

21 Q What were some of the foreign ambassadors in the
22 neighborhood?

23 A The Czechoslovakian ambassador at the time and the
24 Ukrainian ambassador.

25 Q Can you describe for us what this neighborhood containing

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1 Mambilla Street and the other streets in the area around the
2 embassy, what that neighborhood was like?

3 A It was a very affluent neighborhood, and it was primarily
4 occupied by diplomatic facilities and by individuals that were
5 very wealthy.

6 Q Would you characterize it as residential, commercial, or
7 as something else?

8 A I would characterize it as residential primarily. As far
9 as I can remember, there were no commercial facilities there.

10 Q If you wanted to drive to the embassy, how would you
11 access this area, this neighborhood?

12 A You would still be able to use the public roadways,
13 Mambilla Street; and you can come through Aso Drive. They
14 both led up to where you would turn into Mambilla, and you
15 could drive into that area.

16 Q Were Mambilla Street or Aso Drive large thoroughfares or
17 smaller streets or something else?

18 A They were not large thoroughfares. They were not
19 frequently traveled. They had minimal traffic. If you had a
20 reason to be there, you would be there, but it was not a route
21 that the general public would normally take.

22 Q Were there road signs or other markers directing people
23 to the location of the embassy in the 2003, 2004 and 2005
24 timeframe?

25 A As far as I can remember there were none.

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1 MS. WELLS: All right. I'd like to now show the
2 witness what's in evidence as Government Exhibits 90, 91 and
3 92.

4 THE COURT: Just the witness, right?

5 MS. WELLS: Everyone, Your Honor.

6 THE COURT: It's in evidence?

7 MS. WELLS: It's in evidence.

8 THE COURT: All right.

9 (Government Exhibit 90 published to the jury.)

10 BY MS. WELLS:

11 Q All right. Mr. Barnes, taking a look at Government
12 Exhibit 90, do you recognize what's in this photograph?

13 A Yes, I do.

14 Q What is this?

15 A This is the main entrance to the American Embassy in
16 Abuja.

17 Q And is this the main entrance to the temporary embassy or
18 the new embassy that you mentioned earlier?

19 A The temporary embassy.

20 Q And, again, just using the Touchscreen, can you describe
21 for us the different components of the facility that's in
22 Government Exhibit 90?

23 A Yes. This right here (indicates) is a primary screening
24 area where visitors would enter onto the embassy compound. At
25 that point they would be searched. There would be a

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1 receptionist there and the receptionist would basically call
2 whomever you were coming to meet and you would have to walk
3 through a walk-through metal detector at that point and an
4 x-ray machine in some cases. And that would be called the
5 Main Compound Access Control Point.

6 You have two -- you have two large black vehicle
7 gates, one on the right and one on the left. Those are the
8 vehicle entrance gates leading into the compound and exiting
9 the compound, and that's where cars would be screened before
10 they entered the compound.

11 Q Does the photograph contain in Government Exhibit 90
12 fairly and accurately reflect the appearance of the
13 U.S. Embassy, temporary U.S. Embassy, when you worked there in
14 2003, 2004 and 2005?

15 A Yes.

16 Q You mentioned a moment ago the embassy compound.

17 Were there other buildings or U.S. Embassy
18 facilities located behind the guardhouse and the gates that we
19 see in the photograph?

20 A Yes.

21 Q Generally speaking, what was there?

22 A We had a warehouse. We had some storage facilities that
23 were located on the compound. There was a small medical unit
24 that was located on the compound and other general type
25 facilities that would normally be in a large office building,

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1 but there was not enough room in our primary building and they
2 would be housed in smaller facilities.

3 Q All in the area behind what we can see in Government
4 Exhibit 90?

5 A Yes.

6 Q About how many people worked at the embassy while you
7 were there?

8 A I would say at least one hundred people were working at
9 that particular location daily.

10 Q What were some of the different organizations or units
11 within the embassy?

12 MR. STERN: Objection.

13 THE COURT: Sustained.

14 MS. WELLS: Your Honor, may we approach?

15 THE COURT: Sure.

16 (Sidebar.)

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SIDEBAR

1 (Sidebar.)

2 THE COURT: Ms. Wells?

3 MS. WELLS: One of the jurisdictional bases for the
4 bombing of a government facility charge that we have is that
5 there was an impact on the economics of the United States
6 related to that facility. In this case, I just want to
7 establish that there's an economics unit within the embassy
8 that dealt with trade issues and other similar things between
9 the U. S. and Nigeria.

10 MR. STERN: Doesn't just bombing the embassy create
11 an economic impact?

12 MR. ARIAIL: One or two questions.

13 MS. WELLS: It's just one or two questions, Your
14 Honor. It goes directly to --

15 THE COURT: Very careful prosecutors in this case.
16 You could have the question for that purpose.

17 MS. WELLS: And just so --

18 THE COURT: But I don't want a whole description of
19 every building in there. All right?

20 MS. WELLS: Fair enough.

21 MR. ARIAIL: Also we have a show an impact -- one of
22 the bases we need to show is an impact on foreign or
23 interstate commerce. That's one of the other -- on the other
24 charges. So that's a similar issue, Your Honor.

25 THE COURT: I have the same reaction as Mr. Stern.

SIDEBAR

1 You know, I really think, you know, bombing an embassy is kind
2 of self-evident, but got ahead. It's one question. We're
3 spending more time talking about it.

4 (Sidebar concluded.)

5 (Continued on the next page.)

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BARNES/DIRECT/WELLS

1 (In open court.)

2 BY MS. WELLS:

3 Q Mr. Barnes, in the embassy was there an Economics Unit or
4 something that went by a similar name?

5 A Yes.

6 Q And very briefly what did that -- what did that
7 organization or unit do?

8 A The Economic section of the American Embassy would have
9 liaised with the Nigerian government and would have been
10 responsible for monitoring and reporting on the Nigerian
11 government's economic policies as they would pertain to U.S.
12 Government policies and they would advise the ambassador in
13 reference to the these policies.

14 (Government Exhibit 91 published to the jury.)

15 BY MS. WELLS:

16 Q And then very briefly, taking a look, Mr. Barnes, at
17 Government Exhibit 91, what's contained in this photograph?

18 A It's similar to Exhibit 90 that was previously there, and
19 it's the vehicle entrance gate located to the left of the main
20 entry point for the American Embassy at that time.

21 (Government Exhibit 92 published to the jury.)

22 BY MS. WELLS:

23 Q And just so the record is clear, does Government 92 also
24 depict the U.S. Embassy location?

25 A Yes.

BARNES/DIRECT/WELLS

1 MS. WELLS: All right. I'd like to show the witness
2 what has been marked for identification only as Government
3 Exhibit 9B.

4 (Government Exhibit 9B published to the witness.)

5 BY MS. WELLS:

6 Q Mr. Barnes, do you recognize this?

7 A Yes.

8 Q What is this?

9 A This is a portion or an excerpt of the map of Abuja
10 containing the future locations for the U.S. Embassy, the
11 British High Commission, and the Chinese Embassy.

12 Q And does this fairly and accurately depict the locations
13 of those facilities including the U.S. Embassy where you
14 ultimately worked?

15 A Yes, it does.

16 MS. WELLS: Your Honor, I'd move to admit Government
17 Exhibit 9B and request permission to publish.

18 MR. STERN: I have no objection if they're already
19 off that map. They don't have to ask every time.

20 THE COURT: Okay. You might just -- well, the jury
21 needs to know what they are anyway. So she's got to ask a
22 couple of questions.

23 It's admitted.

24 MS. WELLS: Thank you, Your Honor.

25 (Government Exhibit 9B was received in evidence.)

BARNES/DIRECT/WELLS

1 (Government Exhibit 9B published to the jury.)

2 BY MS. WELLS:

3 Q All right. Now that the jury has the benefit of seeing
4 the same document that we do, you've circled a location on
5 this map. Can you just tell us what you circled?

6 A That's where the future U.S. Embassy was being built.

7 MS. WELLS: All right. Now I'd like to show just
8 the witness what has been marked for identification as
9 Government Exhibit 192.

10 (Government Exhibit 192 published to the witness.)

11 BY MS. WELLS:

12 Q Sir, do you recognize this?

13 A Yes.

14 Q And what is it?

15 A That's the front of the new embassy building.

16 Q And is this a fair and accurate representation of the new
17 embassy building that you worked in beginning at the end of
18 2005 or early 2006?

19 A Yes.

20 MS. WELLS: Move to admit, Your Honor.

21 Permission to publish?

22 THE COURT: Any objection?

23 MR. STERN: Yes.

24 THE COURT: I don't know what.

25 MR. STERN: It was built in 2006. I don't really

BARNES/DIRECT/WELLS

1 understand the relevance of it.

2 MS. WELLS: May we approach, Your Honor?

3 THE COURT: No. I see the relevance. Objection
4 overruled.

5 It's admitted.

6 (Government Exhibit 192 was received in evidence.)

7 (Government Exhibit 192 published to the jury.)

8 BY MS. WELLS:

9 Q And, once again, now that the jury has the benefit of
10 seeing the photograph, can you just tell us what's contained
11 in Government 192?

12 A It's the main entrance of the new embassy building taken
13 from where we would call Post Compound Access Control Point.
14 You would have to basically have entered the compound to take
15 this picture right here.

16 Q All right. Now, I'd like to turn back to your
17 responsibilities and your experience as the RSO in Abuja.

18 Did you ever travel to other cities in Nigeria?

19 A Yes.

20 Q Did you ever visit a city called Kano?

21 A Yes.

22 Q And about how many times?

23 A Approximately 12.

24 Q Where within the country of Nigeria is Kano located?

25 A It's located in the northern area.

BARNES/DIRECT/WELLS

1 Q And just very briefly, what kind of city was Kano? Can
2 you describe it for us?

3 A Kano was a very old city in Nigeria and at one time, it
4 was considered to be the commercial capital of Nigeria.
5 That's what I was told when I first arrived there during my
6 first visit. It still has a lot of ancient walls that were
7 erected hundreds of years ago, and it's a city with a vast
8 majority of Muslims and Christians.

9 Q Was there a large population or a small population in
10 Kano?

11 A They were both large, approximately 50/50.

12 Q I'm sorry. My question was a little different. The
13 overall population of the city, was it large or small?

14 A I would say it was large.

15 Q All right. On the occasions when you traveled to Kano,
16 how would you get there?

17 A There was primarily only one highway that you could take
18 leading from Abuja to Kano.

19 MS. WELLS: Your Honor, I'd like to show the witness
20 what's been marked for identification as Government Exhibit
21 204.

22 THE COURT: Okay.

23 (Government Exhibit 203 published to the witness.)

24 BY MS. WELLS:

25 Q Mr. Barnes, do you recognize this?

BARNES/DIRECT/WELLS

1 A Yes.

2 Q And what is it?

3 A It's a roadmap of Nigeria, a portion of a roadmap of
4 Nigeria; and on this nap is the highway that you would take,
5 leaving from Abuja to Kano.

6 Q And does this fairly and accurately represent the
7 locations of Abuja and Kano, as well as the route that you
8 would take when you drove there?

9 A Yes.

10 MS. WELLS: Move to admit Government Exhibit 204 and
11 request permission to publish.

12 MR. STERN: No objection.

13 THE COURT: Received.

14 (Government Exhibit 204 was received in evidence.)

15 (Government Exhibit 204 published to the jury.)

16 BY MS. WELLS:

17 Q All right. Mr. Barnes, just using the Touchscreen in
18 front of you, can you please identify for us where Abuja is
19 located on the map?

20 A Yes.

21 Q And you can circle it?

22 A (Indicates.)

23 Q All right. What about Kano?

24 A (Indicates.)

25 Q And what route would you use to take -- or excuse me.

BARNES/DIRECT/WELLS

1 What route would you take when you would drive from
2 Abuja to Kano?

3 A This map lists the highway as being A2. So, you would
4 take A2 all the way up into Kano.

5 Q Can you show us where that A2 highway is?

6 A Yes (complies).

7 Q What cities would you pass through or what primary cities
8 would you pass through on the way from Abuja to Kano?

9 A Kaduna and Zaria were the primary cities. They were the
10 largest cities along the route.

11 MS. WELLS: I'd now like to show the witness what is
12 in evidence as Government Exhibit 152.

13 (Government Exhibit 152 published to the witness.)

14 BY MS. WELLS:

15 Q Sir, do you recognize the photograph in Government
16 Exhibit 152?

17 A Yes.

18 Q What does this contain?

19 A This picture appears to be taken as you're entering the
20 city of Kano.

21 Q And when you say as you're entering the city of Kano, is
22 that on the same route that you would drive when you were the
23 RSO?

24 A Yes.

25 Q And how do you recognize it?

BARNES/DIRECT/WELLS

1 A I recognize it because there is a highrise building there
2 that was pretty unique. It was the tallest building in the
3 city based on my recollection.

4 Q And where is that building using your Touchscreen?

5 A (Indicates.)

6 MS. WELLS: All right. Now, I'd like to show the
7 witness what is in evidence as Government Exhibit 158.

8 (Government Exhibit 158 published to the jury.)

9 BY MS. WELLS:

10 Q Sir, do you recognize this?

11 A Yes.

12 Q And what is it?

13 A This is the building that you would see as you were
14 entering Kano.

15 Q Were there other buildings in Kano that were similar to
16 this?

17 A I believe there may have been one or two more highrises,
18 but nothing that would attract your eye like this one.

19 Q How was this distinct, if at all?

20 A The two towers on top make it stand out, and it's a
21 pretty modern-looking architecturally-pleasing-looking
22 building.

23 Q During what period of time -- withdrawn.

24 You stated that your tenure in Nigeria began in 2003
25 and continued through 2006. When you would travel to Kano,

BARNES/DIRECT/WELLS

1 was that during any particular period during your tenure; or
2 was it scattered throughout?

3 A Normally, I would travel to Kano every three months or
4 whenever the ambassador would decide to travel up north.

5 Q While you worked in Nigeria, did you become familiar with
6 something called ECWAS?

7 A Yes.

8 Q What is that?

9 A That's the Economic Community of West African States.
10 That's what ECWAS stands for.

11 MS. WELLS: And I'm showing the witness what is in
12 evidence as Government Exhibit 202.

13 (Government Exhibit 202 published to the jury.)

14 BY MS. WELLS:

15 Q Mr. Barnes, what's contained in this map?

16 A Based on the map, it look like it's consisting of the
17 countries that compose ECWAS which has approximately 15 member
18 states.

19 Q Are you familiar with something called an ECWAS travel
20 document or an ECWAS passport?

21 A Yes.

22 Q Can you explain what that is?

23 A An ECWAS document would be issued to African nationals in
24 one of the member countries to provide them a form of
25 identification, and in many cases they would use that

BARNES/DIRECT/WELLS

1 similarly to a passport as we use it to cross borders.

2 Q And so if someone had an ECWAS passport, could they
3 travel among the member states?

4 A In most cases, yes.

5 Q Sorry. Using that document, could they travel among the
6 members states?

7 A Yes, in most case.

8 Q And were ECWAS passports available in the 2003 to early
9 2006 timeframe during which you worked in Nigeria?

10 A Yes.

11 MS. WELLS: Nothing further, Your Honor.

12 THE COURT: All right.

13 Cross?

14 MR. STERN: No.

15 THE COURT: All right. You may step down.

16 THE WITNESS: Thank you, sir.

17 THE COURT: What is the Government doing now?

18 MS. WELLS: Your Honor, our next witness is Special
19 Agent Jennifer Keenan.

20 THE COURT: All right.

21 MR. STERN: Judge, could we come up for a second
22 before Agent Keenan?

23 THE COURT: Okay.

24 (Sidebar.)

25

SIDEBAR

1 (Sidebar.)

2 MR. STERN: Judge, I'm going to renew my application
3 to strike Agent Childers' testimony with exception of the bank
4 building.

5 THE COURT: Say that again?

6 MR. STERN: I'm moving to strike Agent Childers'
7 testimony with the exception of the bank building. All the
8 other things he testified to, a taxi stand, an auto shop,
9 roundabouts, flyovers, all of those things --

10 THE COURT: First of all, you generally have to
11 raise those objections when the question is asked, not after
12 the witness has finished testifying. I understand your point,
13 that but for this testimony, the whole thing is irrelevant,
14 but I'm not going to sort it out at this point. It's
15 certainly not prejudicial. So I think you've got to be more
16 specific.

17 I will say, though, to the government, some of these
18 things are not necessary and I'm sure the jury would like to
19 get done sooner than later, but I'm not finding any prejudice
20 from anything, the things that you're leaving in.

21 MR. STERN: It's prejudicial if the government
22 argues this is proof that that's where the taxi stand was.
23 This is proof that that's where the construction store was.
24 And they are going to say that because those are things that
25 were talked about by my client in his statement.

SIDEBAR

1 THE COURT: Oh.

2 MR. STERN: They can correct me if I'm wrong. If
3 they don't intend to say those things, that's fine.

4 MR. JACOBS: That's incorrect. Childers' testimony
5 is extremely relevant because the defendant -- it proves that
6 the defendant was telling the truth when he described where he
7 went to buy explosives right next to the Zaria Road. I
8 understood it's in 2016. But the defendant was there in 2004.
9 If someone had taken pictures the week after he left, they
10 would still be relevant.

11 THE COURT: I do think the government has crossed
12 the line to admissibility and anything else goes to weight for
13 your argument in closing.

14 MR. ARIAIL: Your Honor just asked, this is our last
15 witness today.

16 THE COURT: Yes, understood.

17 (Sidebar concluded.)

18 (Continued on the next page.)
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KEENAN/DIRECT/WELLS

1 (In open court.)

2 THE CLERK: Please raise your right hand.

3 (Witness sworn.)

4 THE WITNESS: Yes, I do.

5 THE CLERK: Please state and spell your name for the
6 record.

7 THE WITNESS: Jennifer Hale Keenan, K-E-E-N-A-N.

8 THE COURT: All right. You may inquire.

9 MS. WELLS: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MS. WELLS:

12 Q Good afternoon.

13 A Good afternoon.

14 Q Who do you work for?

15 A The Federal Bureau of Investigation.

16 Q How long have you worked for the FBI?

17 A Approximately 27 years.

18 Q What field office are you currently assigned to?

19 A I'm in the Boston field office.

20 Q Was there a point in time in which you worked in the New
21 York field office for the FBI?

22 A Yes. I started off in New York.

23 Q Which years did you work in New York?

24 A 1989 to '01.

25 Q And can you tell us what your areas of responsibilities

KEENAN/DIRECT/WELLS

1 were during the time that you spent in New York?

2 A In New York, I spent the early years in white-collar
3 crime doing a variety of violations; and then for the last
4 three years of my time there, I worked terrorism and primarily
5 on the Osama bin Laden Investigative Squad.

6 Q Immediately after your time in New York, where were you
7 stationed?

8 A I was stationed in Islamabad, Pakistan.

9 Q What was your job there?

10 A My job was the Assistant Legal Attaché or commonly
11 referred to as the ALAT. I was the deputy in the office.

12 Q What month and year did you become ALAT? Or I'll just
13 ask you more broadly. What was your tenure in Islamabad?

14 A I started in June of '01 and finished up in July of '03.
15 So I was there for two years.

16 Q And what building did you work out of in Islamabad?

17 A The Legal Attaché office was in the embassy in Islamabad.

18 Q What different geographic areas did you cover as an ALAT
19 in Islamabad during the '01 to '03 period?

20 A The region or the area of responsibility for Legat
21 Islamabad was Pakistan and Afghanistan.

22 Q Now, why did you have responsibilities for Afghanistan if
23 you were working in Pakistan?

24 A Every legal attaché office -- and there's over 70-odd
25 offices and suboffices around the world -- cover some part of

KEENAN/DIRECT/WELLS

1 the world. So the whole world is covered by an office, but
2 not all offices are located in every country. So some offices
3 cover one or two countries, others three, four, five, and six.

4 Q Was there an active United States Embassy in Afghanistan
5 from 2001 to 2003?

6 A No.

7 Q All right. Were you in Pakistan on September 11, 2001?

8 A Yes, I was.

9 Q And did the effects of September 11th have any effect on
10 your responsibilities as the ALAT?

11 A Yes, they did.

12 Q And just very briefly how were your responsibilities
13 affected?

14 A Our investigative focus shifted in priorities to the
15 attacks of 9/11 and investigating the attacks and any leads
16 that emanated from the U.S. Most touched Pakistan in some
17 way. So we were involved in that.

18 Q Was there any effects -- withdrawn.

19 Did the presence of U.S. troops in Afghanistan
20 affect your work in anyway?

21 A Yes, it did.

22 Q In what way?

23 A As the U.S. and U.S. personnel started their efforts in
24 Afghanistan, they collected a variety of things from different
25 raids, et cetera, that they did in Afghanistan; and as the

KEENAN/DIRECT/WELLS

1 only U.S. base office close to that region, Islamabad and the
2 embassy there and my office in particular received much of
3 that evidence or proffer letter or collection off the
4 battlefield in Afghanistan.

5 Q And so during your period as ALAT, did you receive items
6 that were collected from Afghanistan as the embassy in
7 Islamabad?

8 A Yes, I did.

9 Q And in general what would happen to those items when you
10 received them?

11 A As quickly as we could, with the limited staff we had --
12 we had a few translators but our staff was pretty small. We
13 would triage the items. I would start the chain of custody
14 for those items in a law enforcement chain, inventory as best
15 we could, and then we would ship them back to the States for
16 further exploitation and for document exploitation for the
17 items.

18 Q And just for the lay people in the room, what does
19 document exploitation mean?

20 A Document exploitation, when you do a search or any type
21 of collection, you'll get documents. They might be in foreign
22 languages. They might have numbers on them. They might have
23 photographs and you either translate them. You determine the
24 significance. If it's a train ticket, you know, what date was
25 the ticket? Where was the train going? If it was a letter,

KEENAN/DIRECT/WELLS

1 who was it written to? Was it typed? Was it written? The
2 language, et cetera.

3 So you fully analyze it, and then you may do further
4 investigation based on what you found on that document.

5 Q Turning your attention to December 15 of 2001, where were
6 you physically located that day?

7 A I was in Islamabad --

8 Q Did you --

9 A -- at the embassy.

10 Q Pardon me. I didn't mean to interrupt.

11 Did you receive a shipment that day?

12 A Yes, I did.

13 Q And did you review the content of that shipment?

14 A Yes, a per cursory review.

15 Q And what, if anything, did you determine based on your
16 review of the contents?

17 A There were 22-odd containers of trunks and bags and
18 duffels and boxes, of items that had been taken off in
19 Afghanistan, based on the review of the items, the languages
20 on the documents, et cetera.

21 Q You mentioned --

22 A They --

23 Q Pardon me.

24 A They came from Afghanistan.

25 Q You mentioned 22 containers.

KEENAN/DIRECT/WELLS

1 What different kinds of containers do you remember
2 arriving?

3 A A variety of trunks, some similar size, some not. Boxes,
4 some boxes were obviously local type. I remember one oil box
5 where, you know, a cooking oil container. Some of them were
6 MRE boxes that were boxes used for the U.S. military to
7 contain their Meals Ready-to-Eat. Some of them were bags like
8 a duffel bag, some local -- local-type duffels bags that I
9 became familiar with, sort of a variety of things.

10 MS. WELLS: Your Honor, I'd like to now show the
11 witness what has been marked for identification as Government
12 Exhibit 15. It's a rather large item. So I might ask if she
13 could come this way before we publish it.

14 THE COURT: Okay. You can step down.

15 THE WITNESS: Thank you. (Leaves witness stand.)

16 BY MS. WELLS:

17 Q So taking a look at Government Exhibit 15, do you
18 recognize this?

19 A Yes, I do.

20 Q And how do you recognize this?

21 A A couple different ways. I have some of my handwriting
22 is on the document or is on the container, my number 2 of 5
23 here. The writing of the investigative case file is in my
24 handwriting. Number 4, this is part of the fourth item on the
25 inventory sheet for that December 15th group of documents.

KEENAN/DIRECT/WELLS

1 And then this label is part of the inventory that I actually
2 put on that box.

3 Q All right. And the first question I should have asked
4 which is: What is this?

5 A This is one of the 22 containers that came in that day,
6 and it's a trunk.

7 Q And that day being December 15th, 2001.

8 A Correct.

9 MS. WELLS: Your Honor, at this point I'd move to
10 admit Government's 15 which is the trunk and not yet the
11 contents of the trunk, so the record is clear.

12 MS. KELLMAN: No objection.

13 THE COURT: Received.

14 MS. WELLS: Permission to publish.

15 THE COURT: How are you going to do that?

16 (Government Exhibit 15 was received in evidence.)

17 (Government Exhibit 15 published to the jury.)

18 MS. WELLS: I've got some assistance on this one.

19 THE COURT: Okay.

20 BY MS. WELLS:

21 Q All right. Special Agent Keenan, after you received this
22 trunk, Government 15, what did you do? What did you do with
23 the trunk and its contents?

24 A Okay. Since this was part of a larger group of items, we
25 separated the items using the writing on the different

KEENAN/DIRECT/WELLS

1 containers. This was a trunk, one trunk of a set of five. So
2 we organized them that way.

3 We performed an inventory. So the typed list on the
4 box was done by my office, which corresponded to what was
5 listed on the trunk; and we did that for all 22 containers.

6 And then, you know, once we had the list in an
7 inventory base sheet, then we would do some, as I said before,
8 some preliminary review of the items and almost like a triage,
9 you know, looking for immediate-threat items that could be
10 exploited in Islamabad if necessary.

11 Q After that inventory and then triage process was
12 complete, what, if anything, did you do with this and the
13 other 21 containers?

14 A They were immediately schedule to be sent back to --

15 MS. KELLMAN: Your Honor, I object to this.

16 Can we approach?

17 THE COURT: Okay.

18 (Sidebar.)

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SIDEBAR

1 (Sidebar.)

2 MS. KELLMAN: I think the questions keep coming,
3 what did you do next and what did you do next, which are
4 perfectly proper, but her answers are always, well, they did
5 this and they did that, and the office did this and the office
6 did that. So I don't know if she did it, if she supervised
7 it, if she was there when it was done, if she was involved
8 with all 22 containers or just this container. But it just
9 seems to me from her answers, she doesn't appear to have any
10 hands-on relationship. She is describing the process of what
11 it sounds like what's she not involved in.

12 THE COURT: I think you should ask her what her role
13 was in the process and get that.

14 MS. WELLS: Fair enough.

15 THE COURT: And then the rest of it, I think is
16 going to be for cross-examination.

17 (Sidebar concluded.)

18 (Continued on the next page.)
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KEENAN/DIRECT/WELLS

1 (In open court.)

2 BY MS. WELLS:

3 Q Special Agent Keenan, just so the record is clear, did
4 you have personal responsibility for the item here in
5 Government Exhibit 15?

6 A Yes, I did.

7 Q And did you personally review this item and the other 21
8 containers that you've been describing today?

9 A Yes, I did.

10 Q All right. After you conducted the inventory of
11 Government 15 and the triage process was complete in
12 Islamabad, what, if anything, did you do with this item and
13 the other 21 containers?

14 A We packaged them up for onward shipment to Washington.

15 Q And how were these items transported to Washington?

16 A They were transported initially by van to the airport;
17 and then the FBI sent their airplane, a G5, to pick them up.

18 Q And to whom did you send these items in Washington DC?

19 A I sent the items to what is now called Document
20 Exploitation Unit to Deb Doran, Dan Coleman, and Steve Godden.

21 MS. WELLS: Nothing further.

22 THE COURT: All right. Any cross?

23 MS. KELLMAN: Very briefly, Judge.

24 THE COURT: Okay.

25 CROSS-EXAMINATION

KEENAN/CROSS/KELLMAN

1 BY MS. KELLMAN:

2 Q You were asked a number of questions by the Government
3 lawyer about your role in connection with this exhibit,
4 correct?

5 A Yes.

6 Q And you were asked what your particular role was -- or
7 withdrawn.

8 I think you testified that the -- when the 22
9 containers came that they were inventoried; am I right?

10 A That's correct.

11 Q And would it be fair to say that you didn't inventory all
12 22 of them?

13 A Myself, inventory, I prepared the overall inventory
14 sheet. I did not inventory every single container and the
15 contents therein.

16 Q And would it be fair to say that you couldn't tell this
17 jury which of the 22, as you sit here today, which of those 22
18 containers you personally had a hands-on role in? Am I right?

19 A No. I had a hands-on role with all of them because I
20 labeled each container as part of the inventory.

21 So on Government Exhibit 15, for instance, I noted
22 that it's Item Number 4. It was trunk 2 of 5. So I prepared
23 all of them because I took custody of them all.

24 Q But you did that as a result of work that other people
25 did. In other words, you didn't go through every box and say,

KEENAN/CROSS/KELLMAN

1 "I'm going to label this Number 1." Someone else labeled it
2 Thing Number 1 and Thing Number 2, am I right?

3 MS. WELLS: Objection.

4 BY MS. KELLMAN:

5 Q And you supervised that, correct?

6 THE COURT: Overruled.

7 THE WITNESS: Actually, no. I labeled each of the
8 22 items. I had people helping me with the triage; but as a
9 responsibility, I had four. Being custodian of all the items,
10 I made sure each one was part of my inventory.

11 BY MS. KELLMAN:

12 Q When you say each one, you're talking about the 22
13 containers, correct?

14 A Uh-hum (affirmative response).

15 Q I'm talking about the contents of the containers.

16 A No, I did not personally review all contents of all 22
17 containers; that's correct.

18 Q And would it be fair to say as you sit here today you
19 can't tell the jury which of the 22 containers you looked into
20 the contents of, correct?

21 That was a terrible question.

22 A From my inventory of the 22 containers, certain
23 containers had items called out. Those were reviewed.

24 Q Okay. And this -- and -- withdrawn.

25 When you say certain items were called out, they

LISA SCHMID, CCR, RMR

KEENAN/CROSS/KELLMAN

1 were called out to you; am I right? Not by you.

2 A A little of both. We had translators helping us, a lot
3 of people helping us. So it wasn't like I was the only one
4 reviewing the boxes.

5 Q So what I'm saying is, what I'm asking you is: What you
6 were doing in the final analysis as a supervisor was
7 confirming work that other people did, correct?

8 A In part but we had a very small group. So we're all
9 working shoulder to shoulder.

10 Q Well, when you say "shoulder to shoulder," were you doing
11 your work at the same time, looking at the other nine people
12 who were doing their work; or were you relying on other people
13 who were there to do their job?

14 A A little bit of both.

15 Q So you can't say with any clarity or any certainty what
16 it was that you looked at, at least from looking at this one
17 container. Would it be fair to say you can't tell the jury
18 how many of the 22 containers you actually personally
19 inventoried? Correct?

20 MS. WELLS: Objection.

21 THE COURT: Overruled. I'll allow it.

22 THE WITNESS: If I can break it in two pieces, each
23 one of the 22 items, I did the overall inventory. I did not
24 look to --

25 BY MS. KELLMAN:

LISA SCHMID, CCR, RMR

1 Q Let's stop there. What does that mean? First of all,
2 when you talk about 22 items, you're talking about 22
3 containers, not the things inside the container, correct?

4 A Correct.

5 Q So, right now the containers are closed, correct?
6 Let's -- that's our starting point. There are closed 22
7 containers, correct?

8 A Yes.

9 Q And at a point in time each of the 22 containers is going
10 to be opened, correct?

11 A Yes.

12 Q Would it be fair to say that you were not -- well,
13 withdrawn.

14 And would it be fair to further say that when each
15 one was opened, somebody or some team of people were going to
16 make a list of the contents of that container? Correct?

17 A Yes.

18 Q Yes or no?

19 A No, I'll say yes. It's just that that didn't all happen
20 in Islamabad. We only had the items for a very short time.
21 So we did not look at every single 22 container. We looked at
22 specific ones.

23 Q Okay.

24 A And in the overall inventory, you can tell if, for
25 instance, this box is -- is -- it's highlighted as one of the

KEENAN/REDIRECT/WELLS

1 items in Item Number 4. It doesn't have anything else
2 underneath it. So that was not part of the initial triage in
3 Islamabad. That was sent back to headquarters for a full
4 exploitation.

5 Q So you testified on direct about this box that contained
6 items in it, but you have in idea what was contained in it
7 because the triage was not done in Islamabad, correct?

8 A Correct.

9 MS. KELLMAN: I have nothing further.

10 THE COURT: Okay. Any redirect?

11 MS. WELLS: Yes, Your Honor.

12 REDIRECT EXAMINATION

13 BY MS. WELLS:

14 Q Special Agent Keenan, you were asked a series of
15 questions on cross-examination about your involvement in the
16 inventory and triage process for Government Exhibit 15. Do
17 you recall that?

18 A Yes.

19 Q And I just want to make sure that the record on this is
20 clear. Did you personally have any responsibility for taking
21 in Government Exhibit 15 which is the trunk on the table?

22 A Yes, I did.

23 Q And did you personally mark that item or otherwise
24 document that you handled the receipt and inventory of that
25 item?

KEENAN/REDIRECT/WELLS

1 A Yes, I did.

2 MS. WELLS: Your Honor with the Court's permission,
3 I'd like the witness to just be able to approach the trunk,
4 Government Exhibit 15.

5 THE COURT: Okay.

6 THE WITNESS: (Leaves witness stand.)

7 BY MS. WELLS:

8 Q Can you please show us on that exhibit where, if
9 anywhere, you documented your inventory process or your
10 receipt of this item?

11 A This is the typed label that I had typed for this
12 container. This is my writing (indicates). This is the
13 investigative case number that we used at that time. Number
14 4, that's my writing, saying this was Item Number 4 on the
15 inventory. And my penmanship, this says 2 of 5 and up here it
16 says 2 of 5 and this is the second trunk of the five trucks
17 that were -- that made up Item Number 4.

18 Q All right. And all of those locations on the trunk that
19 you just indicated, are these all in your handwriting or
20 otherwise documents that you wrote or typed?

21 A Yes, they are.

22 Q Thank you. You can have a seat.

23 A (Resumes witness stand.)

24 Q Then separately you were asked a series of questions
25 about the triage process for the documents. You described on

KEENAN/RECROSS/KELLMAN

1 direct examination the document exploitation group which was
2 back in Washington DC. Do you recall that?

3 A Yes.

4 Q Did you have the resources in Islamabad to do a full
5 exploitation of all of the documents and items that came in in
6 Government Exhibit 15 and the other 21 containers that you
7 referred on December 15th?

8 A No, we did not.

9 Q As a result, what did you personally do with the items
10 that came in?

11 A We immediately prepared them to go back to DC and had the
12 FBI plane come get them.

13 Q And to whom did you send them in DC?

14 A To the Deb Doran, Dan Coleman, Steve Godden, the Document
15 Exploitation Group.

16 MS. WELLS: Just a moment, Your Honor.

17 Nothing further.

18 MS. KELLMAN: Can I just -- one further question, if
19 I may, Judge.

20 THE COURT: All right.

21 RECROSS EXAMINATION

22 BY MS. KELLMAN:

23 Q I'm sorry. I can't see.

24 Now, if I understand your testimony, would it be
25 fair to say that you didn't inventory anything in that box?

PROCEEDINGS

1 Am I right?

2 A Inside the box, no, I do not.

3 MS. KELLMAN: Nothing further.

4 THE COURT: All right. You may step down.

5 Thank you.

6 (Special Agent Jennifer Keenan leaves the witness stand.)

7 THE COURT: All right. Ladies and gentlemen, we're
8 going to let you go a little bit early today. You know we
9 have tomorrow off. It will likely be a snow day in any event.

10 I need to remind you again please do not view any
11 media reports, any newspapers, TV, internet sites having to do
12 with this case, if there are any. Please do not do any
13 research on the case. Do not say anything to your family or
14 friends or anyone else about the case. Do not post anything.
15 Do not tweet anything.

16 Keep your mind entirely clear of this case until we
17 see you again Wednesday morning, 9:30. Everyone please stay
18 safe. Don't shovel too much snow, and have a good day off.

19 (Jury exits.)

20 THE COURT: Have a seat.

21 Now that it's the end of the day, let's hear from
22 the Government first as to where you're going on Wednesday.

23 MR. ARIAIL: We'll be calling Debbie Doran, Your
24 Honor, who will testify as to the contents of the box on the
25 inventory.

PROCEEDINGS

1 THE COURT: Okay.

2 MR. ARIAIL: We'll also be calling Abdelmajid, who
3 is a translator, Arabic translator, and Tony Graziano who did
4 a Sensitive Site Exploitation at the Alpha Group Camp. During
5 his testimony, it's likely we'll play the clips of the State
6 of the Ummah tapes.

7 And at this point, we do not intend to call anymore
8 Italian witnesses or the cooperating witness we indicated
9 previously. Things could change, obviously, depending on what
10 the defense's case is.

11 THE COURT: Okay. So based on that, can you let the
12 Government know tomorrow what you want to do before 5:00 --
13 well before 5:00?

14 MR. ARIAIL: I thought it was by 1:00, Your Honor.

15 THE COURT: Yes, well. I said well before 5:00.
16 I'm seeing if there's any counterproposal.

17 MR. DRATEL: If we're directed to, we will, Your
18 Honor.

19 THE COURT: I'm directing you to.

20 MR. DRATEL: Okay.

21 THE COURT: Thank you, all.

22 MR. ARIAIL: To be clear, when are we getting --

23 THE COURT: You're going to have them before 1:00.

24 MR. ARIAIL: Okay. Thank you, Your Honor.

25 THE COURT: See you Wednesday, 9:30 a.m.

PROCEEDINGS

1 MS. KELLMAN: Thank you.
2 (Trial adjourned to March 15, 2017, at 9:30 a.m.)
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1 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

2 -----x
UNITED STATES OF AMERICA

12 CR 134(BMC)

3 versus

4 IBRAHIM SULEIMAN ADNAN
5 ADAM HARUN HAUSA

U. S. Courthouse
225 Cadman Plaza East
Brooklyn, NY 11201

6 Defendant.

March 15, 2017

-----x 9:30 a. m.

7
8 TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL

9 BEFORE THE HONORABLE BRIAN COGAN

10 UNITED STATES DISTRICT JUDGE

11 APPEARANCES

12
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Proceedings recorded by mechanical stenography. Transcript
produced by computer-aided transcription.

1 (In open court, outside the presence of the jury.)

2 THE CLERK: All rise.

3 THE COURT: Good morning. Okay.

4 I know we have a point about the defendant's case,
5 but we'll take that during the first break.

6 Let's have the jury, please.

7 (Jury enters.)

8 THE COURT: All right. Everyone be seated.

9 Good morning, ladies and gentlemen.

10 JURORS: (Good morning.)

11 THE COURT: You are a very good jury, getting here
12 on time in this terrible weather. Your reward is a nice, warm
13 courtroom, being at least warmer than it is out there.

14 We will proceed with the Government's case.

15 MR. JACOBS: Thank you, Judge.

16 The Government calls Mary Deborah Doran.

17 (Mary Deborah Doran enters the courtroom.)

18 THE COURT: All right.

19 THE CLERK: Please raise your right hand.

20 (Witness sworn.)

21 THE WITNESS: I do.

22 THE CLERK: Please state and spell your name for the
23 record.

24 THE WITNESS: Mary Deborah Doran; M-A-R-Y,
25 D-E-B-O-R-A-H, D-O-R-A-N.

DORAN/DIRECT/JACOBS

1 THE CLERK: You may be seated.

2 THE COURT: All right. You may inquire.

3 MR. JACOBS: Thank you.

4 DIRECT EXAMINATION

5 BY MR. JACOBS:

6 Q Good morning.

7 A Good morning.

8 Q Have you previously served as a law enforcement agent?

9 A I have.

10 Q Who are you employed by?

11 A I was employed by the FBI.

12 Q And what was your title with the FBI?

13 A I was a Special Agent.

14 Q How many years were you an FBI Special Agent?

15 A Just over 20 years.

16 Q Was there a time during your tenure as a Special Agent
17 when you were assigned to the New York field office in the
18 FBI?

19 A Yes, there was.

20 Q What time period approximately?

21 A Approximately 1996 to 2006.

22 Q And what was your primary investigative focus while you
23 were at the New York field office?

24 A We focused on al Qaeda, investigations of al Qaeda.

25 Q I would like to direct your attention specifically to

DORAN/DIRECT/JACOBS

1 January of 2002.

2 A Uh-hum (affirmative response).

3 Q Around this time did you leave the New York field office
4 for an assignment elsewhere?

5 A I did.

6 Q And where did you go?

7 A I went to our headquarters, to an off-site in Virginia.

8 Q And where is headquarters?

9 A Headquarters is located in Washington, DC.

10 Q All right. And you mentioned to an off-site in Virginia.
11 What do you mean by off-site?

12 A It was a temporary property that was being utilized by
13 the FBI at the time.

14 Q And just in general terms, why did you go to this
15 off-site in Virginia in January, 2002?

16 A I had learned that there was a room full of material that
17 had been picked up in Afghanistan.

18 Q Now, when you arrived at this off-site, what type of
19 material or materials were in the off-site?

20 A There were papers, computer media, footlockers, duffel
21 bags, things like that.

22 Q And how, if at all, were these materials secured at the
23 off-site?

24 A The Bureau had a room that was secured with a door that
25 had a lock on it to which the Bureau only had access.

LISA SCHMID, CCR, RMR

DORAN/DIRECT/JACOBS

1 Q Okay. Now, did you review any of the materials in the
2 off-site?

3 A I did.

4 Q Can you walk us through just in general terms the steps
5 you took when reviewing these materials?

6 A There was a group of translators who were on-site. So
7 when I could, I would grab a translator, because most of the
8 written materials were in a language other than English, and
9 we would take a particular item and go through all of the
10 items, if it was as box, everything in it.

11 Q So you would go through a content -- the contents of the
12 larger box.

13 A Yes. The point was to try to get an idea of what it was
14 we had.

15 Q And were the materials in these containers prenumbered
16 anyway?

17 A They were. They were labeled with numbers that we
18 referred to as harmony numbers. They were generally started
19 "AFGP," the year 2002, and then a unique number that
20 identifies a specific item.

21 MR. JACOBS: Your Honor, may I ask the witness to
22 step down and approach what's on the table and in evidence as
23 Government Exhibit 15?

24 THE COURT: Yes.

25 THE WITNESS: (Leaves witness stand.)

LISA SCHMID, CCR, RMR

DORAN/DIRECT/JACOBS

1 BY MR. JACOBS:

2 Q Ms. Doran, the item on the table is in evidence as
3 Government Exhibit 15. What is it?

4 A It's one of the footlockers that was in the room.

5 Q The room at the off-site?

6 A When I arrived, yes.

7 Q Okay. And how do you know that's one of the footlockers
8 that was in the room at the off-site?

9 A There's a couple of things, but the main one would be
10 that my initials and the date are on the red tape in front.

11 Q Would you mind just pointing to where your initials are?

12 A Sure. "M.D. Doran," the date of January 11th, 2002.

13 Q And who wrote those initials?

14 A That was me.

15 Q Thank you. You can go back to your seat now.

16 A (Returns to witness stand.)

17 Q Now, how were the contents of the box arranged, if at
18 all, when you first got it?

19 A To my recollection there was no real arrangement. It was
20 a box full of items with their harmony number.

21 MR. JACOBS: May I approach the witness, Your Honor?

22 THE COURT: You may.

23 MR. JACOBS: I would like to show the witness what's
24 marked for identification as Government Exhibit 16.

25 (Government Exhibit 16 published to the witness.)

DORAN/DIRECT/JACOBS

1 BY MR. JACOBS:

2 Q Ms. Doran, what are these materials?

3 A These are some of the materials that were located in the
4 footlocker.

5 Q And how do you know that these materials were in the
6 footlocker at the off-site?

7 A I know because, when I was reviewing these items, I took
8 notes and I know, after reviewing my notes, that these are the
9 items that have a matching harmony number to my notes and the
10 description is that what's in my notes.

11 MR. JACOBS: At this point, I would like to move
12 into evidence Government Exhibit 16A, which is one of the
13 items in this pile of materials.

14 THE COURT: Any objection?

15 (No response from defense counsel.)

16 THE COURT: Sounds like no.

17 Received.

18 (Government Exhibit 16A was received in evidence.)

19 MR. JACOBS: And before I go back to the podium, may
20 I publish Government Exhibit 16A, Judge?

21 THE COURT: Yes.

22 BY MR. JACOBS:

23 Q Would you mind holding that up for the jury and just
24 describing generally to me what it is?

25 A This is a spiral-bound notebook. It has notes and

DORAN/CROSS/KELLMAN

1 diagrams that are written in a non-English Language.

2 MR. JACOBS: Thank you.

3 (Government Exhibit 16A published to the jury.)

4 MR. JACOBS: I'm showing the witness and the jury
5 one page from this notebook with the suffix "0028."

6 BY MR. JACOBS:

7 Q Ms. Doran, is this an example of the text and diagrams
8 that you were just referring to?

9 A Yes.

10 Q Can you read Arabic, Ms. Doran?

11 A I can't.

12 Q Have you ever seen a translation of this notebook?

13 A I have not.

14 Q And besides meeting with the Government in connection
15 with your testimony today, did you play any role in the
16 investigation of this case?

17 A No, I did not.

18 MR. JACOBS: No further questions, Judge.

19 THE COURT: Ms. Kellman, any cross?

20 MS. KELLMAN: Very briefly, if I may, please.

21 CROSS-EXAMINATION

22 BY MS. KELLMAN:

23 Q You testified on direct that you were looking through the
24 materials that came from overseas and that you came across
25 this particular notebook, correct?

DORAN/CROSS/KELLMAN

1 A Yes.

2 Q You don't have any information about how that notebook
3 came to be in that room or where it came from, am I right?
4 You have no personal knowledge?

5 A No, no personal knowledge. I rely on the communications
6 of other agents.

7 Q Right. And you have no idea personally how it was
8 collected or how it was maintained, correct?

9 A Apart from what I may have been told by other agents, no.

10 Q My question is, do you have any --

11 A No.

12 Q -- personal knowledge?

13 A No.

14 MS. KELLMAN: Nothing further.

15 THE COURT: All right. Any redirect?

16 MR. JACOBS: No redirect.

17 THE COURT: All right. You may step down. Thank
18 you very much.

19 THE WITNESS: Thank you, Judge.

20 (Mary Deborah Doran leaves the witness stand.)

21 THE COURT: Government's next witness?

22 MR. JACOBS: Yes. The Government calls
23 Mr. Abdelmajid Faoud.

24 (Abdelmajid Faoud enters the courtroom.)

25 THE CLERK: Raise your right hand, please.

FAOUD/DIRECT/JACOBS

1 (Witness sworn.)

2 THE WITNESS: Yes, I do.

3 THE CLERK: Please state and spell your name for the
4 record.

5 THE WITNESS: Abdelmajid Faoud; A-B-D-E-L-M-A-J-I-D,
6 F-O-U-A-D.

7 THE CLERK: Thank you.

8 THE COURT: You may inquire.

9 MR. JACOBS: Thank you, Judge.

10 DIRECT EXAMINATION

11 BY MR. JACOBS:

12 Q Good morning, Mr. Faoud.

13 A Good morning.

14 Q What is your profession?

15 A I'm a professional translator/interpreter.

16 Q And how long have you worked as a professional
17 translator/interpreter approximately?

18 A I have worked as a professional translator/interpreter
19 for the last ten years.

20 Q And do you work as an independent contractor?

21 A Yes.

22 Q What sort of companies do you contract your services to?

23 A I contract with the translation and interpreting
24 agencies.

25 Q Approximately how many hours a week would you say you

1 work as an interpreter or translator?

2 A Approximately 40 to 50 hours a week.

3 Q And has that been fairly consistent over the past ten
4 years?

5 A Yes, sir.

6 Q What languages do you speak and read?

7 A I speak English, Arabic. I speak and read English,
8 Arabic, and French.

9 Q And do you speak and read these three languages fluently?

10 A Yes, sir.

11 Q What's your native language?

12 A My native language is Arabic.

13 Q And where were you born?

14 A I was born in Morocco.

15 Q Have you spoken Arabic your whole life?

16 A Yes, sir.

17 Q When did you first begin to study English?

18 A I first began to study English at the high school level.

19 Q And just very generally what's your educational
20 background?

21 A Yeah. I'm a major in English. I have a bachelor degree
22 in English.

23 Q And from what university is your English language
24 bachelors?

25 A From King Hassan II University in Morocco.

1 Q And when did you come to the United States?

2 A I came to the United States in 1988.

3 Q And did you take any courses or classes in English after
4 arriving?

5 A Yes. I took two courses at graduate level in Jersey City
6 State College, bilingualism, English as a second language --
7 two courses actually, applied linguistics and bilingualism.

8 Q And just in very general terms can you describe what you
9 do as an Arabic-English interpreter/translator?

10 A I also -- before that, I also took interpreting courses
11 at New Mexico Center for Language Access, one in 2013,
12 Introduction to Court Interpreting, and another one also in
13 2013, Intermediate Simultaneous Interpreting, and another
14 course, Consecutive Interpreting Techniques, in 2016.

15 Q Thank you.

16 And then over your -- the course of your years as an
17 interpreter and translator, just for the jury, what generally
18 did you do? What source of tasks would you perform?

19 A I translate documents from English to Arabic, from Arabic
20 to English, sometimes French to Arabic and English. I also
21 interpret speeches and -- yes, speeches also from Arabic to
22 English and English into Arabic.

23 Q And do you ever interpret court proceedings?

24 A Yes. I interpreted for criminal courts, family courts,
25 depositions, mediations, arbitrations.

FAOUD/DIRECT/JACOBS

1 MR. JACOBS: Okay. At this time, I'd move to
2 qualify the witness as an expert in Arabic to English and
3 English to Arabic translation and interpretation.

4 MR. STERN: No objection.

5 THE COURT: All right. He may testify as to his
6 opinion.

7 MR. JACOBS: May I approach, briefly, Judge?

8 THE COURT: You may.

9 MR. JACOBS: Showing the witness what's in evidence
10 as Government Exhibit 16A.

11 (Government Exhibit 16A published to the witness.)

12 BY MR. JACOBS:

13 Q Do you recognize this, Mr. Faoud?

14 A Yes.

15 Q What is it?

16 A Yes, I do. This is a notebook, a document.

17 Q And what, if anything, did you do with this notebook?

18 A I translated this notebook from Arabic to English.

19 MR. JACOBS: And I'll now show the witness what's
20 marked for identification, not yet in evidence as Government
21 Exhibit 16T.

22 (Government Exhibit 16T published to the witness.)

23 BY MR. JACOBS:

24 Q Do you recognize this document, sir?

25 A Yes, I do.

FAOUD/DIRECT/JACOBS

1 Q What is it?

2 A This is a translation of the notebook that you just
3 showed me.

4 Q And how do you recognize it to be the translation or who
5 did this translation?

6 A I did it.

7 Q And how do you recognize it to be the one that you did?

8 A I have my initials on each page.

9 MR. JACOBS: Your Honor, I move to admit and publish
10 Government's 16T.

11 MR. STERN: No objection.

12 THE COURT: Received.

13 (Government Exhibit 16T was received in evidence.)

14 (Government Exhibit 16T published to the jury.)

15 MR. JACOBS: Showing the witness a page from the
16 notebook that's Government 16A with -- labeled with a suffix
17 "0028."

18 (Government Exhibit 16A, "0028" published to the
19 witness.)

20 MR. JACOBS: And now I'd like to show the witness a
21 page from the English translation, Government Exhibit 16T with
22 the suffix "0028."

23 (Government Exhibit 16T, "0028" published to the
24 witness.)

25 BY MR. JACOBS:

FAOUD/DIRECT/JACOBS

1 Q Mr. Faoud, is this page a fair and accurate English
2 translation of the Arabic language on page 0028 of the
3 notebook?

4 A Yes, sir.

5 Q Can you please read into the record the second line in
6 this notebook, if you can see it on your screen.

7 A It says: "The daily schedule for Camp Malik. May
8 Allah's mercy be on him."

9 Q And can you please read the top row on the chart, what
10 the two columns represent?

11 A The time --

12 THE COURT: Are you going to offer it into evidence?

13 MR. JACOBS: I apologize, Judge. I move to offer
14 Government Exhibit 16T into evidence at this time.

15 MR. STERN: No objection.

16 THE COURT: Received.

17 (Government Exhibit 16T was received in evidence.)

18 MR. JACOBS: And it's a little late, but I'd move to
19 publish it, too.

20 (Government Exhibit 16T published to the jury.)

21 MR. JACOBS: With apologies.

22 BY MR. JACOBS:

23 Q Mr. Faoud, could you please read what's visible as the
24 second line on page -- the page before you?

25 A "The daily schedule for Camp Malik. May Allah's mercy be

1 on him."

2 Q Can you please read what appears in the first row of the
3 chart?

4 A "Time/program."

5 Q And can you please read the first one, two, three, four,
6 five -- six entries in this chart, both the time and the
7 corresponding --

8 A "After dawn to 4:45, Qur'an studies 'til 5:30; 5:30,
9 training assembly; 6:30, breakfast; 7:30, military classes
10 being at the class before the start time; after (Wird), daily
11 recitation, all administrative work; ten minutes (Asr) or
12 afternoon prayer, military class; after (Maghrib) or sunset
13 prayer, Shari'a program; after (Isha) evening prayer, night
14 assembly."

15 Q And just ask you to look at one other page from this
16 notebook. It's a page from Government's 16A that's marked
17 with suffix "0030." Do you recall translating this page?

18 A Yes, sir.

19 Q And now showing you a page from Government Exhibit 16T
20 with suffix "0030," is the English on this page a true and
21 accurate translation of the Arabic you just looked at?

22 A Yes, sir.

23 Q Can you just read, please, this paragraph here?

24 A Yes. "Shooting at the withdrawing enemy starting with
25 the first line. Shooting at -- an unintelligible word --

FAOUD/DIRECT/JACOBS

1 emerging from behind the barrier and firing, shooting at
2 multiple targets, advancing and withdrawing -- unintelligible
3 word, unintelligible word, another unintelligible word -- in
4 an interrupted way, sniping and firing, jumps --
5 unintelligible word -- firing simultaneously at three
6 targets."

7 Q That's fine, sir. Thank you.

8 MR. JACOBS: I would like to move on.

9 May I approach the witness?

10 THE COURT: You may.

11 MR. JACOBS: I'm showing the witness what's marked
12 for identification as Government Exhibits 13 and 13A.

13 (Government Exhibit 13 and 13A published to the
14 witness.)

15 BY MR. JACOBS:

16 Q Do you recognize these items, sir?

17 A Yes, sir.

18 Q What tasks, if any, did you perform with respect to these
19 items?

20 A I translated this document from Arabic into English.

21 Q And is Government Exhibit 13A simply a photocopy of 13?

22 A That's correct.

23 Q Showing you now what's marked for identification as
24 Government Exhibit 13T.

25 A Yes.

FAOUD/DIRECT/JACOBS

1 Q Do you recognize this?

2 A Yes, I do.

3 Q What is it?

4 A It's a translation of the Arabic document, 13A.

5 Q And did you perform that translation?

6 A Yes, I did.

7 Q Is that a true and accurate translation of the Arabic
8 language in Documents 13 and 13A?

9 A Yes, sir.

10 MR. JACOBS: Judge, at this time I'd move to admit
11 Government Exhibit 13T subject to connection; and I will not
12 publish it to the jury until the underlying evidence is in.

13 MR. STERN: That's fine.

14 THE COURT: All right. Received on that basis.

15 (Government Exhibit 13T was received in evidence.)

16 MR. JACOBS: No further questions.

17 THE COURT: Okay. Any cross?

18 MR. STERN: No.

19 THE COURT: All right. You may step down.

20 Thank you.

21 (Abdelmajid Faoud leaves the witness stand.)

22 THE COURT: All right. Government's next witness?

23 MR. ARIAIL: Your Honor, at this time the Government
24 calls Anthony Graziano.

25 (Anthony Graziano enters the courtroom.)

GRAZIANO/DIRECT/ARIAIL

1 THE CLERK: Please raise your right hand.

2 (Witness sworn.)

3 THE CLERK: Please state and spell your name for the
4 record.

5 THE WITNESS: Anthony Frank Graziano, A-N-T-H-O-N-Y.
6 My last name is spelled G-R-A-Z-I-A-N-O.

7 THE CLERK: Thank you. You may be seated.

8 THE COURT: All right. Please proceed.

9 MR. ARIAIL: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. ARIAIL:

12 Q Good morning. Mr. Graziano, where do you work?

13 A I currently work at the Department of Labor.

14 Q And what do you do for the Department of Labor?

15 A I'm an investigator in a department within the Department
16 of Labor called the Office of Labor Management Standards.

17 BY MR. ARIAIL:

18 Q And what do you do with the Office of Labor-Management
19 Standards?

20 THE COURT: Mr. Ariail, the court reporter.

21 MR. ARIAIL: I'm sorry. I couldn't hear.

22 THE WITNESS: Yes, ma'am.

23 BY MR. ARIAIL:

24 Q All right. Mr. Graziano, what do you do for the
25 Department of Labor again?

GRAZIANO/DIRECT/ARIAIL

1 A I work in a department within the Department Of Labor
2 called the Office of Labor Management Standards.

3 Q And what do you do for them?

4 A We do a number of things in my department, but in a
5 nutshell we enforce a Federal law that is geared towards
6 preventing corruption in labor unions.

7 Q All right. And do you have a specific title?

8 A Investigator.

9 Q All right. How long have you been working at the
10 Department of Labor?

11 A Five-and-a-half years.

12 Q Okay. So let's go back to 2011. Prior to 2011, where is
13 it that you worked?

14 A The U. S. Army.

15 Q And what did you do for United States Army?

16 A I was a Special Agent assigned to the U.S. Army Criminal
17 Investigation Division.

18 Q And what's the Criminal Investigation Division?

19 A The Army CID is the acronym is what it's called.
20 Essentially, it's the FBI for the U.S. Army. It's the Army's,
21 you know, top premier law enforcement agency.

22 Q And did you have a title at CID?

23 A Special Agent.

24 Q All right. Now, in connection with your work, have you
25 traveled overseas?

LISA SCHMID, CCR, RMR

GRAZIANO/DIRECT/ARIAIL

1 A I have.

2 Q And in particular, have you conducted crime scene
3 investigations on particular geographic regions overseas?

4 A Yes, sir.

5 Q And did some of those crime scene investigations occur in
6 Afghanistan?

7 A Yes.

8 Q Now, is there a particular term of art that you use to
9 describe a crime scene such as the type that you did in
10 Afghanistan?

11 A We used the term "sensitive site exploitation."

12 Q What is that?

13 A It's essentially a crime scene examination, but it could
14 be done after the fact like sort of like a crime scene
15 verification or it could be just be to the exploitation of a
16 site that we feel is sensitive for a number of different
17 reason.

18 Q I guess, how do you distinguish crime scene investigation
19 and sensitive site exploitation, if at all?

20 A In a combat environment, the big distinction's one's in a
21 combat environment and one's not.

22 Q Okay. So, sorry. Sensitive site exploitation is
23 essentially conducting a crime scene investigation in a combat
24 environment?

25 A Yes, sir.

LISA SCHMID, CCR, RMR

GRAZIANO/DIRECT/ARIAIL

1 Q Now, I'm going to direct your attention to July of 2004.
2 Were you involved in a sensitive site exploitation at a
3 mountainous region known as -- near Afghanistan -- I'm
4 sorry -- near Kandahar, Afghanistan?

5 A Yes, sir.

6 Q And did you do exploitation at a particular location that
7 you knew as al-Farouq?

8 A Yes, we did.

9 Q Where specifically did you do the sensitive site
10 exploitations?

11 A It was at a location that was about 75 kilometers west by
12 northwest of the city of Kandahar.

13 Q And just generally what were the sort of terrain features
14 in that area?

15 A Where we went to was a place that was at the base of a
16 mountain range called that Garmabak Ghar mountain range, which
17 is essentially is the southern -- southwestern corner of the
18 Hindu Kush mountain range which traverses Afghanistan. So it
19 was at the base of that mountain range.

20 Q Now, prior to your departure -- I'm sorry.

21 When did you do this exploitation?

22 A In July of 2004.

23 Q Now, prior to departing to go do this exploitation, did
24 you review any particular al Qaeda media propaganda?

25 A Yes, sir.

LISA SCHMID, CCR, RMR

GRAZIANO/DIRECT/ARIAIL

1 Q And why did you do that?

2 A We wanted to familiarize ourselves with where we were
3 going and the videos that we were watching was a lot of al
4 Qaeda training in those videos and we wanted to know where
5 they were doing that training. There were also speeches of
6 bin Laden and stuff like that.

7 Q I'm sorry. Did I cut you off?

8 A No, no. Go ahead.

9 Q All right. In particular, did you a review a video known
10 as "State of the Ummah"?

11 A Yes.

12 MR. ARIAIL: May I approach, Your Honor?

13 THE COURT: Yes.

14 MR. ARIAIL: Show the witness what's in evidence as
15 Government Exhibit 426. It contains a series of clips that
16 are also in evidence and have not been published, Your Honor.

17 (Government Exhibit 426 published to the witness.)

18 BY MR. ARIAIL:

19 Q Do you recognize that?

20 A Yep.

21 Q And just generally, could you tell the jury what is on
22 that item of Government Exhibit 426?

23 A There are some video clips that were taken from that
24 video that you just referenced, the "State of the Ummah," and
25 some photographs I took, as well. Some of those were

LISA SCHMID, CCR, RMR

GRAZIANO/DIRECT/ARIAIL

1 juxtaposed over the videos. I think that's what was on the
2 disk.

3 Q And prior to your testimony today, did you have a chance
4 to review that disk?

5 A Yes, sir.

6 Q And were your initials on that disk?

7 A Yes, sir.

8 Q Now, Investigator Graziano, I'm going to direct your
9 attention to a particular clip --

10 MR. ARIAIL: -- which if I could have the
11 audio/visual up, 426-A1. We're going to play it.

12 BY MR. ARIAIL:

13 Q But could you just tell the jury what is it that we're
14 going to be looking at here?

15 A Oh, this is some clips that were taken from that video,
16 "State of the Ummah," clips of Osama bin Laden speaking, and
17 some clips of some terrorists that were doing training when
18 they were at the place that we visited.

19 Q All right. Does this clip also contain footage from the
20 area that you went to known as al-Farooq?

21 A Absolutely, yes.

22 MR. ARIAIL: All right. Request permission to
23 publish 426-A1, Your Honor.

24 THE COURT: All right.

25 MR. ARIAIL: Sorry. Technical error, Your Honor. I

GRAZIANO/DIRECT/ARIAIL

1 might need to plug it in. Apologies.

2 All right. And I'm going to play this. It's about
3 a seven-and-a-half minute clip, Your Honor.

4 THE COURT: Okay. Let's dim the lights so the jury
5 can see it better.

6 MR. ARIAIL: Hope it works this time.

7 (Government Exhibit 426-A1 published to the jury.)

8 BY MR. ARIAIL:

9 Q I'll just pause it here briefly.

10 Investigator Graziano, on screen, there are some
11 individuals marching and there's some mountains in the
12 background. Is that the location you traveled to?

13 A Yes, sir.

14 (Government Exhibit 426-A1 published to the jury.)

15 BY MR. ARIAIL:

16 Q I'm just going to pause it there for a second.

17 Investigator Graziano, in that last bit of tape
18 there, were there particular geological features that you were
19 focused on when you went to the location at al-Farooq?

20 A Yes, sir.

21 Q And what were those geological features?

22 A Oh, well, there were two primary ones. There was a draw
23 that we were looking for that we saw in the video.

24 Q What's a draw?

25 A A draw is a low level of ground that's between two higher

GRAZIANO/DIRECT/ARIAIL

1 levels of ground that's -- whichever way you want to look at
2 it, it's going up or down a mountain. Usually like where
3 water is running off a mountain, that would be a draw.

4 Q All right. And what was the other geological feature?

5 A It was a big hilltop on the other end of the facility.

6 Q When you say hilltop, what do you mean exactly?

7 A The top of a mountain.

8 Q And was it particularly distinct in a certain way?

9 A It was, yeah.

10 Q And how, if you could?

11 A It sort of had this -- just had to see a picture. Had a
12 peak to it that was very identifiable.

13 Q All right. And I'm going to continue playing at 2:18.

14 (Government Exhibit 426-A1 published to the jury.)

15 BY MR. ARIAIL:

16 Q Is that the peak you were referring to?

17 A Yes, sir.

18 (Government Exhibit 426-A.1 published to the jury.)

19 BY MR. ARIAIL:

20 Q Now, Investigator Graziano, just to be clear, those are
21 clips from a larger video; is that correct?

22 A That is correct, sir.

23 Q And generally though at the end there you saw some more
24 footage. Where was that from?

25 A The one with the blue wall?

LISA SCHMID, CCR, RMR

GRAZIANO/DIRECT/ARIAIL

1 Q I'm sorry, no. In terms of military or -- sorry -- sort
2 of in terms of training.

3 A All the training that I saw on that video was from
4 al-Farouq.

5 Q Okay. Now, prior to traveling out to the location at
6 al-Farouq, separate from reviewing the video, did you also do
7 any recognizance or surveillance in advance of your
8 deployment?

9 A We did. It was a rather large mission. There was a lot
10 of planning involved.

11 Q And can you just -- I'm talking about in terms of aerial
12 reconnaissance. Did you do any aerial reconnaissance?

13 A We did. That was the first piece. It was about a week
14 prior to the mission. We did send up a reconnaissance
15 helicopter to survey the area.

16 Q What was the purpose?

17 A Well, it was reconnaissance. So we wanted to know, you
18 know, where we were going, making sure it was the right spot.
19 We needed to find out safe places to land the helicopters,
20 were there any indigenous people that were living out there,
21 avenues that the enemy could use to approach us, if there was
22 any major obstacles. So there was a number of reasons why we
23 did it.

24 Q All right. Could you just generally characterize the
25 state of combat in the area around that particular location

LISA SCHMID, CCR, RMR

GRAZIANO/DIRECT/ARIAIL

1 around the time that you were headed out there?

2 A It was full combat.

3 Q And what do you mean by that?

4 A When you left Kandahar airport, you were behind enemy
5 lines.

6 Q And at the time who were the enemy?

7 A Well, in 2004, there were remnants of al Qaeda, the
8 Taliban, of course, and then a group of folks that we -- at
9 the time, we termed as Anti-Coalition Militia, or ACM. And
10 those are loose Taliban sort of groups or other mujahideen
11 groups or Afghan fighters that had their own small groups, so
12 to speak. So, there were a number of different people. We
13 rolled them all up into one group called ACM.

14 Q All right. And you mentioned the city of Kandahar. Are
15 you generally familiar with the city of Kandahar?

16 A Yes, sir.

17 Q All right. Could you just characterize or describe the
18 city of Kandahar in general terms for the jury?

19 A Well, it's the -- Kabul is the largest city in
20 Afghanistan and it's essentially what you think of as a city
21 or country like that. Kandahar is the second largest city.
22 It's a very busy, popular city. It's about a 15-minute drive
23 outside Kandahar airport, which I think is the second largest
24 airport in the country, too. It's a good-sized city.

25 Q And in terms of its relationship to the location that you

GRAZIANO/DIRECT/ARIAIL

1 went, where is it again?

2 A It's about 75 kilometers to the southeast of where the
3 camp was located.

4 Q Sorry. The camp is to the southeast or I --

5 A No. The camp would be to the northwest of the city.

6 Q Right. Now, how developed in your experience is the road
7 system between Kandahar and the camp?

8 A I didn't see any developed roads leading to that camp.

9 Q All right. Now, did you take any other steps after you
10 deployed the reconnaissance team to scout the location?

11 A Well, the second piece we did was either the night before
12 or that -- early that morning we saturated the area with a
13 ground combat unit that sort of established a perimeter around
14 the whole area to sort of cordon it off, protect us, if you
15 will, while we did our work. So that was the second piece.

16 Q And --

17 A They were in position before we got there.

18 Q Okay. And you obviously traveled -- you traveled with a
19 team of investigators; is that right?

20 A Yes.

21 Q Did you also have any other air or support while you were
22 out there?

23 A We did. While we were on the ground, we had attack
24 helicopter, too, that was on station. It was -- got flying
25 around, looking for people.

LISA SCHMID, CCR, RMR

GRAZIANO/DIRECT/ARIAIL

1 Q All right. And could you talk about the team that you
2 actually took out to the site?

3 A The team basically consisted of two different parties.
4 We had another security element, a ground security element
5 that was actually with us. These were infantry soldiers. My
6 team were all -- was a mix of civilian and military
7 investigators. We had some FBI folks with us, some linguists,
8 a bomb tech. I think that's it.

9 Q Okay. Now, where did you all deploy from?

10 A From Kandahar airport.

11 Q And approximately when did you deploy?

12 A In the morning? Like time?

13 Q Yes. In terms of what time?

14 A It was 7:00, 8:00 in the morning maybe is when we took
15 off.

16 Q And approximately how long did it take you to get to the
17 location?

18 A If I recall, it was like a 45-minute flight or so.

19 Q Okay. Now, I'm going to ask you, if you could, just can
20 you just generally describe the location that you were going
21 to in terms of orientation and what you were going to look at?

22 A Okay. Well, the facility itself is a rather large place.
23 It's not well-defined like you would think of like the
24 military base with fences and stuff like that.

25 We were more focused though on the main part of the

LISA SCHMID, CCR, RMR

GRAZIANO/DIRECT/ARIAIL

1 encampment which is where we went and that main part was sort
2 of linear in shape and it was orientated north and south. It
3 was about 200 meters by 4 or 500 meters maybe, which is the
4 main camp part.

5 MR. ARIAIL: All right. Your Honor, may I publish
6 to the witness only Government Exhibit 450?

7 THE COURT: Yes.

8 (Government Exhibit 450 published to the witness.)

9 BY MR. ARIAIL:

10 Q Can you see the photograph?

11 A Yes, sir.

12 Q Okay. Generally, what is Government's Exhibit 450?

13 A This is a photograph of most of the camp but,
14 particularly, the main part here in the center.

15 Q Okay. And does this photograph fairly and accurately
16 reflect generally the state of the area around the camp that
17 you went to in 2004?

18 A That's what it looked like when I was there.

19 MR. ARIAIL: Request permission to publish. I offer
20 it, as well.

21 THE COURT: Any objection?

22 MR. STERN: No objection.

23 THE COURT: Received.

24 (Government Exhibit 450 received in evidence.)

25 (Government Exhibit 450 published to the jury.)

GRAZIANO/DIRECT/ARIAIL

1 BY MR. ARIAIL:

2 Q I'm not sure which is better here. Can you see that
3 better?

4 A I can see it fine.

5 Q Okay. All right. If you could, Investigator Graziano,
6 could you just talk the jury through what are we looking at
7 here in Government Exhibit 450? And if you need to use the
8 screen, you can touch it and draw on it.

9 A Okay. Well, it looks like this is a Google image. It
10 says "Google" on it. We're looking right overhead at the main
11 part of the camp. I said the main part, the linear part.
12 That was this part (indicates) right here. We had three areas
13 that we were focusing on. That was one of them, the primary
14 one.

15 Does that answer your question?

16 Q That's fine. That's fine.

17 MR. ARIAIL: And then if I could show the witness --
18 if I may approach, Your Honor?

19 THE COURT: Yes.

20 MR. ARIAIL: I'm showing the witness Government
21 Exhibits 475 and 476.

22 (Government Exhibits 475 and 476 published to the
23 witness.)

24 BY MR. ARIAIL:

25 Q (Handing). Do you recognize these?

LISA SCHMID, CCR, RMR

GRAZIANO/DIRECT/ARIAIL

1 A (Reviews photographs). Yes, I do.

2 Q And are these -- what are these photographs?

3 A These were taken from the helicopter when we did the
4 aerial recon.

5 Q All right. And do these fairly and accurately reflect
6 the conditions in the area of the camp at the time you
7 traveled out there?

8 A Absolutely.

9 MR. ARIAIL: I'd offer 475 and 476 and request
10 permission to publish, too, Your Honor.

11 MR. STERN: No objection.

12 THE COURT: Received.

13 (Government Exhibits 475 and 476 received in
14 evidence.)

15 BY MR. ARIAIL:

16 Q Investigator Graziano, on the screen, 450, were there
17 particular physical structures that you can see from the
18 overview that you actually saw in person?

19 A Yes. There's -- do you want me to mark on here?

20 Q Yes, go ahead. If you could, just identify them for the
21 jury.

22 A Well, the first ones we saw is when we got -- we came
23 into the camp, we came this way, traveled up that way
24 (indicates). The first ones we saw were these right here
25 (indicates.)

GRAZIANO/DIRECT/ARIAIL

1 Q And could you just generally describe what are those?

2 A They were two skinny buildings essentially that were side
3 by side to each other, made out of the very traditional Afghan
4 hay-and-mud brick that a lot of structures there are made
5 from.

6 And then there was this one right here, as well,
7 which consisted of a foundation and some pillars that were
8 within the outline of the foundation.

9 MR. ARIAIL: All right. And show on the screen
10 Government's Exhibit 476.

11 (Government Exhibit 476 published to the jury.)

12 BY MR. ARIAIL:

13 Q If you could, Investigator Graziano, just explain to the
14 jury what we're looking at in this photograph.

15 A So the photograph on the left I'll start off with. You
16 can see right here those two structures that are side-by-side,
17 and they're running north and south.

18 Q And just generally the bottom left of this photograph.

19 A I think that those -- oh, I'm sorry.

20 Q Sorry. In the bottom left of this photograph, what are
21 we looking at here?

22 A The bottom left were some trenches. You can also see
23 right here the foundation for some tents that used to be
24 there, and these are the trenches right here (indicating.)

25 Q And on the right side of 476, what are we looking at

GRAZIANO/DIRECT/ARIAIL

1 there?

2 A There's a wadi, which is a dry riverbed, that's running
3 north to south. I'm not really quite sure what this thing
4 was. It's difficult to tell what that was.

5 Q Okay. And on the right side of the Government's Exhibit
6 476 is another photograph. What is that? (Exhibit published.)

7 A It's the same general area, just taken from a different
8 angle. You see the two parallel buildings are right here.
9 You can see the trenches right over there (indicates), and the
10 row of tent foundations goes up that way (indicates).

11 Q And if you could clear your screen or I'll do it. Oh, it
12 looks like it's cleared.

13 MR. ARIAIL: I'm going to show onscreen what's been
14 marked as Government Exhibit 475.

15 (Government Exhibit 475 published to the jury.)

16 BY MR. ARIAIL:

17 Q What are we looking at in 475?

18 A These are those six pillars that I referenced earlier.

19 Q And you said something about a foundation. Could you
20 just point out where the foundation is that you're talking
21 about?

22 A Yeah, you can see it right here. I'm drawing a line
23 around it (indicates). There you go. Like that (indicates).
24 I think it goes a bit further right there.

25 Q And in the bottom of the photograph it looks like there's

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1 a large hole. What is that, if you know?

2 A What is the hole?

3 Q Yeah. What's the hole?

4 A It was a crater.

5 MR. ARIAIL: Your Honor, if I may approach the
6 witness, I have a series of photographs that I'll read in the
7 record.

8 THE COURT: Okay.

9 MR. ARIAIL: 451 --

10 THE COURT: Are they consecutive?

11 MR. ARIAIL: Mostly.

12 THE COURT: Okay.

13 MR. ARIAIL: 451 through 454, and then there's
14 454.1, and then 455 through 473.

15 BY MR. ARIAIL:

16 Q Investigator Graziano, I'd ask you just to take a look
17 through all of these photographs.

18 A Okay.

19 Q And let me know when you're finished.

20 A (Reviews photographs). Okay.

21 Q And do you recognize these photographs?

22 A Yes, I do.

23 Q Are those generally photographs that were taken in
24 connection with your sensitive site exploitation at al-Farouq?

25 A They were either taken by me or one of my teammates,

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1 yeah.

2 MR. ARIAIL: I'd offer --

3 BY MR. ARIAIL:

4 Q Do they fairly and accurately reflect --

5 A Yes, sir.

6 Q -- the camp at that time?

7 A Yes, sir.

8 MR. ARIAIL: I'd offer 451 through 473 as previously
9 identified, Your Honor.

10 MR. STERN: No objection.

11 THE COURT: Received.

12 (Government Exhibits 451 to 473 received in
13 evidence.)

14 MR. ARIAIL: And request permission to publish, Your
15 Honor.

16 THE COURT: Go ahead.

17 (Government Exhibit 451 published to the jury.)

18 BY MR. ARIAIL:

19 Q Showing on screen Government's Exhibit 451, what are we
20 looking at here, Investigator Graziano?

21 A This is a photograph of the camp mainly orientated west,
22 a little northwest, around the other side of the wadi. The
23 wadi runs right through here (indicates). Can't see it
24 because it's a depression. There was a physical training area
25 that was right here (indicates). You can still see the

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1 remnants of that with these high walls.

2 There's a running track here. (Indicating.) You
3 can see the two buildings again right here. You could also
4 see these pillars here (indicates). And you can also get an
5 understanding of where the camp was located because that is
6 the Hindu Kush behind, the very southern bottom edge of it.

7 So I was telling you folks that the camp was at the
8 bottom of the mountain range; and that's what it looked like.

9 Q And showing on screen Government's Exhibit 452, what are
10 we looking at here? Oh, it's just a little blurry.

11 Tell the jury what we're looking at in this
12 photograph.

13 A This is a photograph that's facing generally southeast.
14 It was taken on top of a hill which is one of our -- also one
15 of our focuses. I said that we had three focuses there. The
16 main part was the main camp. One of the other two was on top
17 of this hill. And this is where we landed, by the way, out
18 here (indicates); and we had to very carefully make our way to
19 the camp. You can see one of our vehicles there that we sent
20 out there earlier to seal off this area, and you can start to
21 see some of the PT field here (indicates).

22 Q When you say "PT field," what do you mean?

23 A Physical training, track, you know, similar to what you'd
24 see like at an Army basic training base or maybe at a high
25 school, you know, track. It had stuff that you could jump

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1 over, climb, holes you could go into, stuff like that.

2 Q And I'm showing on screen Government's Exhibit 453.

3 What are we look at here?

4 A We saw a photo, I think, similar to this. This is,
5 again, on the other side of the wadi which is running right
6 here (indicates); but, again, you can't see it because it's
7 lower elevation. This is us right here (indicates), moving
8 into the camp. You can tell we're spread out for a reason
9 there.

10 Q And in particular in this photograph can you see some of
11 the physical structures that you had described earlier?

12 A The two buildings right here, there's some of the PT
13 field, the physical training field. You can see some of the
14 obstacles on that. And it's hard to see where the pillars are
15 in this photograph. Yeah. That's better. Yeah. You can see
16 them right here (indicates) now.

17 Q Okay. And if you could, just point out. Where is the
18 wadi that you were talking about?

19 A The wadi is on the other side of these two structures
20 here. So, it's -- I'm going to clear this.

21 There you go. So, my thing's not working. There it
22 goes.

23 The wadi's down in here (indicates); and it goes all
24 the way, you know, all the way north.

25 Q And generally which way does it run alongside the camp?

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1 A North and south.

2 Q All right.

3 THE COURT: Mr. Ariail --

4 THE WITNESS: It runs parallel with the camp.

5 THE COURT: Do we need to go through every picture?

6 MR. ARIAIL: Some of -- they're all fairly relevant,
7 Your Honor.

8 THE COURT: Okay.

9 MR. ARIAIL: This is a little bit redundant, but --

10 THE COURT: Okay.

11 (Government Exhibit 454 published to the jury.)

12 BY MR. ARIAIL:

13 Q I'm showing on screen Government's Exhibit 454.

14 What are we looking at here?

15 A This is the physical training area. You can also see the
16 wadi. I'll circle the physical training area for you. You
17 can see the wadi running down here (indicates). And one of
18 the two main terrain feature that's we were looking for is
19 this draw (indicates) right here.

20 Q I'm showing on screen Government's Exhibit 457.

21 What are we looking at in 457?

22 A This is the main part of the camp again. You can see the
23 six pillars (indicates) right here and you can -- this is a
24 better photograph to see where the foundation of the buildings
25 are.

GRAZIANO/DIRECT/ARIAIL

1 Q With respect to the building or the structure that you're
2 circling right now, did you make any determination about the
3 orientation of that building?

4 A Yes. That building was orientated differently than any
5 other building that I recall at the camp. It was orientated
6 from the northeast to the southwest and, you know, all the
7 other buildings were sort of like, you know, dressed right,
8 dressed next to each other.

9 Q And --

10 A This one was angled a lot different.

11 Q And did you draw any conclusions based on the orientation
12 of that building?

13 A I did. The building faces towards Mecca, Saudi Arabia,
14 where the holy mosque is at.

15 Q And as a result what did you conclude?

16 A We concluded that this structure was a mosque.

17 Q Showing on screen Government's Exhibit 458 -- almost --
18 can you tell the jury what are we looking at here? (Exhibit
19 published.)

20 A These are just parallel buildings right here (indicates).
21 You can see some of the pillars to that building over there,
22 but you also see the second terrain feature that we were very
23 interested in which is that mountain peak right there.

24 Q When you were at al-Farouq, were there any caves?

25 A There were.

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1 Q And --

2 A A lot.

3 Q And did you go into any of the caves that were at
4 al-Farouq?

5 A Very few. I only went into one.

6 Q Okay. I'm going to show on screen what's been entered
7 into evidence as Government's Exhibit 460. (Exhibit
8 published.)

9 What are we looking at here?

10 A That was the bomb technician that we brought with us, and
11 we found some Soviet antitank mine shipping containers in
12 there. That's one of them.

13 Q Okay. Could you just point onto the screen where the
14 antitank mine shipping container is?

15 A (Complies.)

16 Q And while you were there, did you identify other
17 ordnance?

18 A We did.

19 Q And what generally were some of the types of ordnance or
20 weapons or shell casings or whatever you found? Could you
21 just generally describe what you found there?

22 A We found shell casings anywhere from 7.62 by 39, which is
23 the standard round that the Soviet and Chinese versions of the
24 AK-47 use; 7.62 by 54, which is a larger bullet, more for
25 crew-served weapons that take more than one individual to

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1 operate; all the way to antiaircraft casings, big, you know,
2 20-, 30-millimeter casings; recoilless rifle round shipping
3 containers, which is essentially a very large, large rifle.

4 Q How about can you explain a few of those things? What's
5 a -- you said something there. What's a crew -- you said
6 crew-served. What's a crew-served weapons system?

7 A Crew-served weapons systems, yeah, weapons systems that
8 are designed to have more than one operator, you know, run it.
9 So you could think of one person firing the weapons system,
10 another person feeding it ammunition. Those would be
11 crew-served weapons. Usually they're the larger-caliber
12 rounds.

13 Q And when you were there, did you also find evidence of
14 any tents or anything else?

15 A Of tents?

16 Q Yes.

17 A Yes, we did find canvas-type material laying around
18 everywhere.

19 Q Taking a look at Government's Exhibit 461, what are we
20 looking at there?

21 A That's just a sample of some of the canvas that we found.

22 Q And could you just characterize just generally in terms
23 of the canvas material that you saw how prolific or how much
24 was there?

25 A Well, it was scattered throughout the camp in various

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1 shapes and sizes and amounts. You know, it would be a little
2 piece and then a much bigger pile of it was littered
3 throughout the whole main camp part, but it was heavily
4 concentrated in areas that we knew tents were at because we
5 saw them in the video. You could tell where a lot of tents
6 were at. We did find a lot of canvas, you know, in those
7 areas; but it was also littered throughout the whole
8 objective.

9 Q And in terms of ammunition or ordnance that you found,
10 could you generally characterize the quantities and types
11 again for the jury?

12 A We found small-arms ammunition, like I said, 7.62 by 39,
13 7.62 by 54, rifle rounds essentially. We didn't find, you
14 know, the weapon that used those round, just the casings
15 themselves. Anti-aircraft casings --

16 Q In term of quantity, though.

17 A Oh. Every -- I don't know. Just hundreds? Thousands?
18 It was littered everywhere.

19 Q Showing on screen Government's Exhibit 462, what are we
20 looking at here?

21 A That's what's left of a helmet.

22 Q And where generally was this item located, if you know?

23 A I don't recall the exact spot. It was somewhere between
24 those trenches and the pillars, that area. We found it
25 somewhere in between those two points. I want to say it was

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1 closer to the pillars. I'm not exactly sure.

2 Q I'm showing you on the screen Government's Exhibit 463.

3 What are we looking at in this photograph?

4 A This is a -- you're talking about down here, this
5 (indicates)?

6 Q What is that?

7 A That's a dilapidated bunker, fighting position.

8 Q Can you explain that a little bit?

9 A It's a hole in the ground that has been fortified with
10 sandbags here.

11 Q What's the purpose of something like that?

12 A To fight from.

13 Q Showing you on screen Government's Exhibit 463, what are
14 we looking at here? Sorry, 464. Apologies.

15 A This was one of the dirt roads that came into the camp.
16 We think that this is one of the entry/exit points. You can
17 also see some of the recoilless rifle round shipping
18 containers here, some more back here.

19 Q When you say recoilless rifle round shipping containers,
20 can you explain that a little bit more?

21 A Well, the recoilless rifle, it almost looks like what you
22 think is like a Bazooka. It a big, long tube. They come in
23 different sizes, you know, 4 or 5 inches, maybe a little
24 smaller in diameter. There's a large bullet essentially that
25 gets loaded into that. It's mainly used for vehicles and

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1 stuff like that.

2 There's a propellant that you have to add to it, and
3 it's called a recoilless rifle because you'll fire it. There
4 is no recoil. It's almost like a modern Bazooka.

5 Q And what is it used for in military terms?

6 A It's used -- it can be used against, you know, an
7 antipersonnel weapon. You can use it against people; but it's
8 usually used for structures, buildings, or vehicle.

9 Q And when you say it's used for structures, buildings, and
10 vehicles, explain that a little bit more.

11 A Well, you could launch a round into a room and kill
12 everybody inside. If you hit a car with that round, it's
13 definitely going to blow up. I mean, it's used to just kill
14 stuff.

15 Q And showing you on screen Government's Exhibit 465, what
16 are we looking at here?

17 A Those were larger casings from an antiaircraft gun. We
18 found these casings on top of the hill which was our second
19 main focus of this area; and we knew this area, what we
20 suspected, it had an antiaircraft gun training there because
21 you could see it in video. So that's one reason why we went
22 up there.

23 We found a big pile of brass there.

24 And you could also see another tube here back, too,
25 for a recoilless rifle.

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1 And this thing right here (indicates) I believe's a
2 shipping container for the propellant that's used for the
3 recoilless rifle.

4 Q Can you explain that a little bit?

5 A There's two components to the recoilless rifle, depending
6 on what version you have. Our military doesn't have anything
7 like this but there's a round that's used and then there's a
8 propellant charge also. They're shipped separately. You have
9 to attach both to the tube itself for it to operate.

10 Q And I'm showing on screen, if you could clear your
11 screen, Government's Exhibit 466. What is this? (Exhibit
12 published.)

13 A That's a mask that we found. It was actually laying
14 right next to one of the pillars. You can -- it's hard to see
15 in that photograph but right at the top of that mask is the
16 base of a pillar, one of the pillars.

17 Q And showing you Government's Exhibit 467, what are we
18 looking at here?

19 A This is a chest plate or chest rig, chest plate carrier.
20 It's used to carry your ammunition, your magazines, your
21 grenades. Your magazines go in here (indicates), your AK-47.
22 This pouch here I believe is for a grenade. So the straps go
23 around you back. All your magazines and your fragmentation
24 grenades are right here so you can easily access them. That's
25 not U. S. equipment.

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1 Q Showing on screen what's been marked as Government's
2 Exhibit 469, what are we looking at in this photograph?

3 A A document that we found in a crater.

4 Q When you say a document you found in a crater, where did
5 you find it specifically?

6 A That was found in a crater that was next to where those
7 pillars were at, in that vicinity.

8 MR. ARIAIL: May I approach, Your Honor?

9 THE COURT: You may.

10 MR. ARIAIL: I'm showing the witness what's been
11 marked as Government's Exhibit 12.

12 BY MR. ARIAIL:

13 Q Investigator Graziano, do you recognize this?

14 A Uh-hum (affirmative response).

15 Q And what do you recognize this to be?

16 A That should be the mask, right? I think so.

17 Q Well, do you want to take a look inside and see?

18 A Yeah, those are my initials on it. Yeah, this is the
19 mask.

20 Q Okay. When you say "this is the mask," what do you mean?

21 A The mask that you had on the screen two or three pictures
22 ago.

23 MR. ARIAIL: Your Honor, I'd offer Government's
24 Exhibit 12 and request permission to publish it.

25 MR. STERN: Objection.

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1 THE COURT: Let's have a sidebar.

2 (Sidebar.)

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SIDEBAR

1 THE COURT: Okay. We've got pictures of the mask.
2 We've got the mask.

3 Do we need all this detail?

4 MR. ARIAIL: I would -- literally, Judge, we're just
5 trying to prove it up that it is a terrorist training camp.

6 THE COURT: My God. I mean really.

7 MR. ARIAIL: We don't need to pull this out in front
8 of the jury right now. That's fine. We do have one document
9 that we recovered that we do need to authenticate and have him
10 publish.

11 THE COURT: I'm going to sustain the objection just
12 because it's cumulative already.

13 MR. ARIAIL: Thank you.

14 (The following proceedings occurred in open court:)

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GRAZIANO/DIRECT/ARIAIL

1 MR. ARIAIL: May I approach, Your Honor?

2 THE COURT: You may.

3 BY MR. ARIAIL:

4 Q Investigator Graziano, I'm showing you what's been marked
5 as Government Exhibit 13.

6 Do you recognize this?

7 A I do.

8 Q And what do you recognize this to be?

9 A That is the document that's in that picture.

10 MR. ARIAIL: All right. I'd offer Government's
11 Exhibit 13 and request permission to publish, Your Honor.

12 MR. STERN: No objection.

13 THE COURT: Received.

14 (Government Exhibit 13 received in evidence.)

15 MR. ARIAIL: I'd also offer Government's Exhibit
16 13-A.

17 BY MR. ARIAIL:

18 Q If you'd take a look at this, is this a photographic copy
19 of Government's Exhibit 13?

20 A Yep, yes, sir.

21 MR. ARIAIL: And I'd offer 13-A and 13-T pursuant to
22 previous testimony.

23 MR. STERN: No objection.

24 THE COURT: Received.

25 (Government Exhibits 13-A and 13-T were received in

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1 evidence.)

2 (Government Exhibit 13 published to the jury.)

3 BY MR. ARIAIL:

4 Q Investigator Graziano, I'm just going to show on screen
5 Government's Exhibit 13. If you could take a look at that and
6 just tell the jury what it is we're looking at onscreen.

7 A That's a document that we found in a crater at al-Farouq.

8 Q And I'm just turning it over and showing the back side
9 here. What are we looking at here? (Exhibit published.)

10 A That's just another page of the document.

11 Q And these particular drawings on here, did they have any
12 significance to you?

13 A The -- I mean, yeah, they do. They represent vehicles.
14 They're more significant to the training that was being
15 presented in the document.

16 Q And I'm going to publish on screen Government's Exhibit
17 13-T which is in evidence.

18 (Government Exhibit 13-T published to the jury.)

19 BY MR. ARIAIL:

20 Q Investigator Graziano, what are we looking at on the
21 screen here?

22 A That's a translation of one of the pages, and it's
23 describing how to attack and, you know, kill your enemy.

24 Q Now, Investigator Graziano, there were two particular
25 features that you mentioned earlier, geological features, I

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1 believe. What were those again?

2 A There was a draw on the southern part of the camp that we
3 were interested in, and then towards the north there was a
4 mountain peak.

5 Q And I'm showing you on screen what's been marked as
6 Government's Exhibit 471. What are we looking at here?

7 A That's the draw.

8 Q When you say a "draw," can you just explain that to the
9 jury?

10 A Okay. So this is the area of low ground right here.
11 This would be the draw. You have the high ground on both
12 sides. Those are called spurs. I know this is all Army
13 lingo. So the draw goes up, low ground in between the two,
14 parallel pieces of high ground.

15 Q And showing you on screen Government's Exhibit 472, what
16 are we looking at here?

17 A The mountain peak that's right here.

18 MR. ARIAIL: At this time, Your Honor, I'd request
19 permission to publish 426-D.

20 BY MR. ARIAIL:

21 Q Investigator Graziano --

22 MR. ARIAIL: It's in evidence, Your Honor.

23 THE COURT: Go ahead.

24 BY MR. ARIAIL:

25 Q During the course of your investigation at the particular

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1 camp or subsequent, did you review some of the video clips
2 from the "State of the Ummah"?

3 A Yes.

4 Q And did you review some of those video clips juxtaposed
5 to some of the geological features that you can identify?

6 A Yes, we did.

7 MR. ARIAIL: All right. I'm going to publish here
8 Government's Exhibit 426-D.

9 Just briefly, I need the audio/visual.

10 (Government Exhibit 426-D published to the jury.)

11 BY MR. ARIAIL:

12 Q And, Investigator Graziano, is the photograph in that
13 clip, is that a photograph that you took at al-Farouq?

14 A Yes.

15 Q Now, during your review of the "State of the Ummah"
16 video, did you also see anymore building structures that
17 appeared similar to anything you observed at the location you
18 identified as al-Farouq?

19 A Yes.

20 Q Could you tell the jury just a little bit about that?

21 A Well, there's the tents that you can see in the video.
22 We could see what remained of those at the scene. There is a
23 mosque in the video, and we believe that was the mosque that
24 was at al-Farouq.

25 Q Why is that?

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1 A Because of the pillars. They're the same pillars. And
2 everything else in the video -- you showed those clips -- was
3 all al-Farouq.

4 Q And any doubt in your mind that the training area that
5 was depicted in 426-A.1 were the training areas that were
6 observed by you in person in 2004?

7 A No doubt in my mind.

8 MR. ARIAIL: Nothing further, Your Honor.

9 THE COURT: Any cross?

10 MR. STERN: No. I've heard enough about al-Farouq.

11 THE COURT: Thank you. You may step down.

12 (Special Agent Anthony Graziano leaves the witness
13 stand.)

14 THE COURT: Government's next witness?

15 MR. ARIAIL: Your Honor, if we may take a short
16 break?

17 THE COURT: All right. Let's take our morning
18 break, ladies and gentlemen. We'll reconvene at 11:20.
19 Please don't talk about the case. We're making very good
20 progress. We'll be back here in 15 minutes.

21 (Jury exits.)

22 THE COURT: Okay. Have a seat.

23 Where do we go from here?

24 MR. ARIAIL: Your Honor, I think we just need a
25 minute to talk amongst ourselves; but I think we're prepared

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1 to rest. So I just want to do some housekeeping for a second,
2 if we could, in terms of our case.

3 THE COURT: Well, let's do this. Let's come back.
4 I'm going to have Ms. Clarke tell the jury we'll take another
5 ten minutes and we'll reconvene at 11:30 and then you can
6 clean house or whatever you want to do.

7 And I think the time has come for the defense to let
8 us know if they're going to be putting on any case.

9 MS. KELLMAN: Before 11:30?

10 THE COURT: Like now. Yes.

11 MS. KELLMAN: I'll defer to my colleague.

12 THE COURT: Okay.

13 MR. DRATEL: Your Honor, other than the Court
14 allocuting the defendant --

15 THE COURT: Right.

16 MR. DRATEL: -- which is sort of out of our control
17 as well --

18 THE COURT: Right.

19 MR. DRATEL: -- we do not have any witnesses.

20 We do have some documents. We have either one or
21 two or four. We have -- two is really what will do it, but we
22 put in a few just for purposes of just being sure that we get
23 them in but they're all pretty much the same except for one.

24 One is the AUMF, the "Authorization for Use of
25 Military Force," and then there are some filings by the

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1 Government in the *Military Commission* case and in the habeas
2 case in Federal court, in which the Government states that the
3 U. S. is in a state of war with al Qaeda.

4 THE COURT: All right. I think the Government may
5 object to what you're proffering.

6 MR. DRATEL: Yes, I understand that.

7 THE COURT: So I'd like you to show it to them.

8 MR. DRATEL: Oh, we did yesterday.

9 THE COURT: They have seen it. We've resolved that
10 issue on the document. Okay.

11 MR. KASTER: Actually, we do object, Your Honor.

12 THE COURT: I know, but I mean, we've resolved the
13 Government's opportunity-to-see-them issue.

14 MR. KASTER: Yes, sir. We saw them yesterday
15 afternoon.

16 THE COURT: Okay. So that's fine. So I think I
17 might as well hear the objection. I don't think we have to go
18 strictly in order. Let me hear the objection now.

19 MR. KASTER: Yes, Your Honor.

20 I think I will object on a couple of grounds. The
21 most prominent is relevancy, Your Honor. This issue as to the
22 lawful combatant community defense has been, as the Court well
23 knows, one that --

24 THE COURT: Let me put you off only because I know
25 the point.

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1 Is there any response to it in light of my prior
2 rulings?

3 MS. KELLMAN: There is, Your Honor, and we
4 anticipate filing papers this morning on this very issue and
5 the issue is that we're not raising a combatant defense here
6 or a legal combatant defense.

7 United States Government has declared war on global
8 terrorism. The documents substantiate that, and essentially
9 everything that the Government has put in its case supports
10 the notion that this is a war. It's not -- these aren't
11 lawful or unlawful combatant issues. They're issues -- and I
12 take them separately but the -- I think Mr. Dratel can address
13 the first count. Even with respect to the second count, which
14 is the embassy bomb, the conspiracy to bomb an embassy, the
15 exemption that exists is the statute itself. It refers to
16 armed forces in the armed conflict. And by every definition
17 that we found that the United States Government relies upon,
18 this -- al Qaeda is an armed force, and it is engaged in armed
19 combat with the United States and coalition forces.

20 And we're prepared to, as soon as I format this,
21 properly file it.

22 MR. DRATEL: As soon as they rest.

23 MR. STERN: And --

24 MS. KELLMAN: When they rest, obviously.

25 But that is -- this is not about whether it's lawful

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1 combatant immunity. This is about whether or not -- this is
2 with respect to Count 2 -- whether or not the exemption that
3 was created really, if you look at legislative history -- and
4 we'll give you an opportunity to do that in our brief -- the
5 legislative history makes it clear that the reason for the
6 exemption is because the United States wanted to be able to
7 prosecute these cases not in the District Court but in
8 Military Commissions. And that's where every one of these
9 cases has been prosecuted but this one and there is one other
10 one that's in -- it's on appeal in Virginia.

11 So, we don't see this as being an issue that
12 involves a legal combatant or an illegal combatant. We see it
13 as whether or not at least with respect to Count Two as to
14 whether or not the exemption that takes this kind of case out
15 of the District Court, which is exactly what Congress intended
16 to do, and puts it in the Military Commission, whether or not
17 that is -- that is the standard that the Court should apply
18 here.

19 THE COURT: Let me hear the Government's argument as
20 to why there's no distinction between the armed combatant
21 defense and the defense that counsel is positing.

22 MR. KASTER: Yes, Your Honor.

23 First, we would very much like to see such
24 legislative history because we have not seen any to date; and
25 this issue has come up repeatedly with the Court. We tried to

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1 explore this with our motion in limine, and the defense
2 conceded that the lawful combatant immunity at least to the
3 common-law defense didn't apply.

4 So then what they did is they repackaged it and
5 tried to get it before the Court and the jury through an
6 expert. We opposed that. The Court agreed with our motion
7 and struck the expert. And then in that order the Court said
8 that the Government has argued that it would make no sense for
9 Congress in passing the implementing legislation for the
10 Terrorist Bombings Convention to carve out the safe harbor for
11 terrorists accused of conspiring or actually committing
12 terrorist bombings.

13 And if the defense, you know, wanted to present
14 either evidence or a jury instruction, this issue was flagged;
15 and it had a full and fair opportunity to do it then. They
16 didn't.

17 So, instead, this is like a legal zombie. It just
18 keeps coming back again and again and again. On the eve of
19 jury charging, we find out that not only do they have a brief
20 that they're ready to file, that they've unearthed some
21 legislative history somewhere that would support this.

22 So by all means, Your Honor, we'd love to see the
23 legislative history, but terrorists accused of conspiring to
24 commit terrorist bombings have been prosecuted in this Federal
25 court, in Federal courts throughout the country. Some

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1 terrorists are prosecuted in Guantanamo Bay. They're not
2 mutually exclusive. The statute allows us, gives us
3 jurisdiction to prosecute this individual for conspiring to
4 blow up the embassy and the consular facilities.

5 And nothing within that jurisdictional exception
6 allows them to either present those documents, the statutes,
7 or the legal briefs, let alone to instruct the jury on this
8 issue. It will just inject massive confusion when there's
9 really no foundation in the record or in law for a valid
10 defense under that exemption.

11 THE COURT: All right. I'm not going to rule now.

12 I'm obviously going to look at your letter brief.
13 I'd like you to give, mark copies of the exhibits to my clerk,
14 so I can look at those but I think I know what they are and I
15 think I haven't heard the last of this at least until I read
16 the brief. So we'll see what happens.

17 I am troubled by the lateness of this discovery of
18 this legislative history. It is something we've been through
19 a number of times, and to have to have new material on it this
20 time concerns me. But I will look at what you have and then
21 decide whether I'm going to allow it and, if I'm not, on what
22 basis I'm not.

23 MR. ARIAIL: Your Honor, if I may just add one
24 factual point which was if you recall during the testimony of
25 Evan Kohlmann, Mr. Dratel sought to elicit testimony from Evan

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1 Kohlmann about the authorization and use of military force.
2 We objected. We approached at sidebar. The idea was, okay,
3 we're going into a new world that we didn't realize we were
4 going into because we closed it. Mr. Dratel at sidebar said
5 he withdraw his line of questioning and was not going to
6 pursue it any further.

7 And so we're just a little surprised here and --

8 THE COURT: We're all surprised. Let's see what it
9 means.

10 Yes. Something else, Mr. Dratel?

11 MR. DRATEL: Yes, Your Honor.

12 With respect to some of these exhibits, with respect
13 to the exhibits as some alternative purpose which is some
14 proposed charge that we have, we understand in the context of
15 the Court's rulings but for purposes of us preserving our
16 issues.

17 THE COURT: Sure. Of course. In fact, I wanted to
18 ask you: When am I getting those proposed charges?

19 MR. DRATEL: As soon as they rest, Your Honor.

20 THE COURT: Can't I get them sooner than that?

21 MR. DRATEL: Your Honor, it's important for us to
22 preserve --

23 THE COURT: Surprise issues?

24 MR. DRATEL: It's not a question of surprise. It's
25 really a question of if we feel that the Government has failed

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1 to do certain things. We don't --

2 MR. KASTER: Your Honor, if I could just make one
3 point on this. We have been assiduous in trying to avoid any
4 404(b) type evidence for which the defendant was not directly
5 involved -- for example, the Daniel Pearl investigation.

6 There's dozens of videos about al Qaeda showing it
7 is not a legitimate armed force, and we did not raise things
8 such as the Pearl investigation. We did not lard the record
9 with all these other videos because the Court had ruled during
10 our pretrial motion in limines on this very issue.

11 And for the defense now still to say they're going
12 to clutch a card so close to their chests that they're going
13 to wait to the exact nanosecond by which when the Government
14 closes and then they're going to completely do an
15 about-face --

16 THE COURT: I understand.

17 MR. KASTER: -- is utterly unfair.

18 THE COURT: I understand.

19 So that answers my questions on the instructions.

20 Next, I did want to note for the record that I
21 assume the defendant has again refused to come to court.

22 Is that correct?

23 MR. ARIAIL: He has, Your Honor; and the marshals
24 sent an email to me and also to your clerk this morning,
25 confirming that he's refusing.

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1 THE COURT: Okay. And I think, because I do expect
2 the Government to rest at 11:30 when we convene, I'm not
3 binding you to it, but you may have a few more documents or
4 something, I understand. The question is, should we do
5 motions now? Should I give the defendant the last opportunity
6 to testify now? Or should we wait until after the Government
7 has rested?

8 MR. ARIAIL: I think we should do that now.

9 And I think also, Your Honor, in terms of resting
10 our case, much is predicated upon the defense's theories of
11 defense in the sense that if they're going to change the law
12 as we -- as of the case as we imagined it, as Mr. Kaster had
13 pointed out, we would have entered this a lot of differently.

14 THE COURT: Obviously, if I let the defendant put in
15 the evidence that he wants to put in, that has been described
16 to me, it's a whole new ballgame. The Government is going to
17 get a rebuttal case to show that this is not, in fact,
18 something that qualifies as exempt from being tried in a
19 civilian court because it's not the kind of case that Congress
20 intended to exclude and there'll be lots of evidence on that
21 and we'll have a very lengthy rebuttal case, I have no doubt.

22 But short of that, is there anything else that the
23 Government thinks it's going to need to do? You still want to
24 talk?

25 MR. ARIAIL: No, I think we're okay, Your Honor. I

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1 guess typically we would put that in our direct case if we
2 actually knew what the law was.

3 THE COURT: Yeah, well, effectively, I might even
4 consider that I'm reopening your direct case if I allow it to
5 happen.

6 MR. ARIAIL: Thank you, Your Honor.

7 MR. STERN: Judge, as to the issue of allocuting
8 Mr. Harun, I have no idea whether he's listening or not.

9 THE COURT: Right.

10 MR. STERN: But I don't think he can or should be
11 allocuted until after the Government rests. I don't know that
12 that half-hour makes any difference really, but to the extent
13 it does in his decision-making process, assuming such a
14 process exists, he should have all the evidence before him
15 before he makes that decision.

16 THE COURT: We have come this far in an effort to
17 give the defendant every opportunity to reconsider the
18 position he's taken and for that reason I'm going to say
19 you're right and we will continue in that direction.

20 So we'll reconvene here at 11:30. The Government
21 will let me know if they rest and we'll excuse the jury again,
22 maybe give them an early lunch, and see what we're going to
23 do.

24 Okay. Thank you.

25 MR. KASTER: Thank you, Your Honor.

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1 (Whereupon a recess is taken.)

2 (In open court, outside the presence of the jury.)

3 THE CLERK: All rise.

4 THE COURT: Okay. Be seated.

5 What does the Government want to do?

6 MR. ARIAIL: Apologize, Your Honor.

7 We're prepared to rest, Your Honor, subject to
8 obviously to potentially reopening but --

9 THE COURT: Right.

10 MR. ARIAIL: -- I'm not sure we're getting to that.

11 THE COURT: Okay.

12 MR. DRATEL: Your Honor, just for the record, not
13 potential reopening. Rebuttal.

14 THE COURT: No, no. I don't know exactly what your
15 position is, but if it's brand new, when it touches upon in a
16 substantial way the issue that you raised several times in
17 pretrial proceeding, it will be a reopening of the
18 Government's case because they would have planned their case
19 very differently had you not tried to ambush them like you are
20 now.

21 MR. DRATEL: Your Honor, it's not an ambush, and
22 besides, there are issues that are completely legal and
23 Rule 29 oriented that should come at the close of the
24 Government's case.

25 THE COURT: If you want to make a Rule 29 motion,

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1 that's fine.

2 MR. DRATEL: Okay.

3 THE COURT: You can make whatever Rule 29 motion you
4 want to.

5 MR. DRATEL: Okay.

6 THE COURT: Okay. What I propose to do then is have
7 the jury come back in, tell -- have the Government tell them
8 that they have rested. Then I'm going to send them home for
9 the day and have them back at 9:30 tomorrow morning.

10 We will hash out the stuff we have to hash out
11 today. Hopefully I get defense instructions. Then we can
12 have a charging conference today, and then we can go to the
13 jury tomorrow.

14 MR. DRATEL: Your Honor, we can do that.

15 With respect to the comments on the Government's, I
16 did ask twice yesterday for a Word version, so I could simply
17 do track changes. I got no response. So I have my notes.
18 That's all. I'm going to have to do it the old-fashioned way.
19 What can I tell you?

20 THE COURT: That's right. Okay.

21 Let's have the jury, please.

22 It will take a minute to line them up. You might as
23 well sit down.

24 (Jury enters.)

25 THE COURT: All right. Everyone, be seated.

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1 All right. How does the Government wish to proceed?

2 MR. ARIAIL: Your Honor, the Government rests.

3 THE COURT: All right. Ladies and gentlemen, what
4 we're going to do now is send you home for the day because
5 tomorrow, we should finish the case and very likely -- no
6 guarantee -- it's very likely get it to you to start
7 deliberating.

8 So, again, I have to remind you, although it's only
9 been one session since we've been apart, stay away from any
10 media coverage, please. Do not communicate with anyone about
11 this case. Don't do any research on the Internet or any other
12 way. Don't do any social media that mentions the case in
13 anyway, no posting, nothing like that.

14 We will be back at 9:30 tomorrow, and we'll proceed
15 from there. Have a very good evening. See you then.

16 (Jury exits.)

17 THE COURT: All right. Be seated.

18 Now, how does the defense intend to proceed?

19 MS. KELLMAN: May we have a minute, Judge?

20 THE COURT: Sure.

21 MS. KELLMAN: (Confers with co-counsel.)

22 MR. DRATEL: Your Honor, the order is up to the
23 Court, how you think it's best efficient is to allocute the
24 defendant as to whether he wants to testify and then to
25 discuss the documents.

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1 THE COURT: Okay.

2 MR. DRATEL: Whether the Court would permit us to
3 admit them.

4 THE COURT: Let me start with the defendant, because
5 that decision could impact how counsel wants to proceed.

6 MR. DRATEL: Yes. Thank you.

7 THE COURT: All right. I know that Mr. Harun is
8 listening and has video if he wants to watch this proceeding.
9 The interpreter is interpreting what I say.

10 Hang on one second.

11 Am I right about that?

12 (Brief pause.)

13 THE COURT: I've been told the video has just gone
14 down. They're trying to restore it. Notwithstanding that, I
15 know that Mr. Harun can hear me. There's no question about
16 that. What I say is being interpreted for him.

17 So, Mr. Harun, I wanted to advise you that the time
18 has come in the trial for the defense to put on a case, if the
19 defense wants to put on a case. That could include your
20 testimony if you want to testify. You are in no way obligated
21 to testify if you don't want to, but if you want to, now is
22 the time to tell us.

23 I know that you have chosen to absent yourself from
24 the trial, but if you change your mind about that, now's the
25 time to do it and we will pause so that we can get you here to

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1 court and your lawyers can ask you questions.

2 Again, I'm not expressing a view on whether you
3 should do that or want to do that or shouldn't do that, but
4 you have that right. That decision is entirely up to you.
5 It's not your lawyers' decision. It's not my decision. It's
6 entirely your decision as to whether you want to testify or
7 not. I would suggest that you confer with your lawyers and
8 make that decision jointly once you have their advice, but it
9 remains your decision if you want to testify or not.

10 And I would ask you, Mr. Harun, if you want us to
11 pause the trial so we can get you here to court and you can
12 testify; or do you want to talk to your lawyers about that
13 first? And then you can tell me whether you want to testify.

14 MR. DRATEL: The audio?

15 MR. STERN: How do we hear his response, Your Honor.

16 THE COURT: Can we get the audio, Melonie?

17 (Brief pause.)

18 (Audio for Defendant Harun begins.)

19 THE COURT: Mr. Harun, is there any response to my
20 question?

21 THE DEFENDANT: (Unintelligible.)

22 THE COURT: I heard Mr. Harun say something.

23 Can the interpreter make it out? Can you hear what
24 he said, sir?

25 Don't translate me. I'm asking you. I'm asking

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1 you. Did you hear the defendant's response?

2 THE INTERPRETER: No.

3 THE COURT: Mr. Harun, is there any response?

4 MR. STERN: I think it's breaking up or something.

5 THE INTERPRETER: I don't know what he's saying.

6 MR. STERN: Go ahead on call Johnson, so we know
7 what's going on?

8 THE CLERK: I'm communicating with him.

9 (Clerk communicates with MCC.)

10 THE COURT: All right. I understand that someone is
11 with Mr. Harun, and I'd like that person to tell me who he is.
12 Is there some --

13 (Brief pause.)

14 (Phone call is placed to MCC.)

15 THE COURT: All right. This is Judge Cogan. Who is
16 in the MCC with Mr. Harun?

17 (No response.)

18 THE COURT: Here's what I think is happening. I
19 think there is background noise in the area. As a result,
20 when someone tries to talk into that microphone, the
21 background noise causes them to break up, but I can't hear the
22 person who is trying to talk to me other than Mr. Harun.

23 Sir, can you get closer to the telephone or the
24 microphone or whatever the setup is there?

25 MCC UNIT OFFICER: Hello.

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1 THE COURT: Yes. Good. Okay. This is Judge Cogan.
2 Who am I speaking to?

3 MCC UNIT OFFICER: You're being overwritten by the
4 translator.

5 THE COURT: All right. I'm going to ask the
6 interpreter to wait a few seconds after I speak before he
7 interprets because there is apparently an echo delay.

8 MCC UNIT OFFICER: Okay.

9 THE COURT: All right. It's Judge Cogan again.
10 Who is there with Mr. Harun?

11 MCC UNIT OFFICER: At this particular time, it's the
12 two unit officers.

13 THE COURT: I'm sorry. Say it one more time?

14 MCC UNIT OFFICER: At this particular time, it's the
15 two unit officers.

16 THE COURT: Please identify yourselves.

17 MCC UNIT OFFICER RAMIREZ: My name is Officer
18 Ramirez and Officer Williams.

19 THE COURT: All right. I'm asking Mr. Harun a
20 question.

21 Mr. Harun, I have given you the opportunity to come
22 to court or to confer with your lawyer or both, and testify in
23 this case if you want to.

24 Do you want to do that? Do you want to take any of
25 those options?

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1 (Brief pause.)

2 THE COURT: All right. Let me ask the officers who
3 are there.

4 Is Mr. Harun responding to me at all?

5 MCC UNIT OFFICER RAMIREZ: Negative.

6 MCC UNIT OFFICER WILLIAMS: Negative.

7 THE COURT: Okay. Anyone think there's anything
8 further we can do?

9 MS. KELLMAN: Perhaps, Judge, just confirm with the
10 officer that they're hearing you, what you're saying to the
11 defendant.

12 THE COURT: Okay. Are you hearing me speaking to
13 the defendant? I'm asking the officers.

14 MCC UNIT OFFICER: Yes, sir.

15 THE COURT: Anything further?

16 Okay. Thank you, officers.

17 MR. ARIAIL: And, Your Honor, just for purpose of
18 the record, I note that the translators who were translating
19 were previously sworn by the Court.

20 THE COURT: That's been the case throughout the
21 trial.

22 Okay. Okay. Melonie, let's mute the sound, please.

23 THE CLERK: (Complies.)

24 Okay. The Government has rested.

25 How does the defense want to proceed?

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1 MR. DRATEL: We would like to admit the four
2 documents or even two of the documents.

3 THE COURT: Well, before we get to your case, the
4 way I think this ought to work is if you've got a motion
5 against the Government's case, you should make it first.

6 MR. DRATEL: Oh, yes. Yes. We have -- we have a
7 Rule 29 as to all elements, all counts. It's also written,
8 which we're filing now, which has to do principally with two
9 aspects of Count 1, and then there's also a separate motion
10 with respect to Count 2 which is also being filed right now.

11 With respect to -- one minute, Your Honor. (Confers
12 with co-counsel.)

13 It may be easier, Your Honor, if we take an early
14 lunch and then the Government will have a chance to look at
15 the motion and the Court will have a chance to look at the
16 motion, so that we can come back and everybody -- and also
17 we'll submit our charges as well in that timeframe as well.

18 THE COURT: Okay.

19 MR. ARIAIL: Your Honor, if I may briefly bring one
20 point to the Court's attention? Obviously, we don't have any
21 papers here for you to review. We're looking eagerly to
22 seeing the defense papers.

23 But I do want to bring to the Court's attention one
24 case which is *United States versus Ulbricht*, and it's a
25 Southern District case. It's an opinion and order that have

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1 been raised at least I think once previously in this case, and
2 it addresses specifically the tactics of Mr. Dratel in
3 connection with another case. I'm just passing it up to the
4 Court.

5 THE COURT: You know you don't need to do that
6 because I'm very familiar with I think it was Judge Forrest's
7 decision in that case.

8 MR. ARIAIL: Thank you, Your Honor.

9 THE COURT: And I'm well aware of what the
10 Government is saying. I must say, as I suggested before, for
11 me to get a Rule 29 brief now, I mean I --

12 MR. DRATEL: Why didn't we file it before, Your
13 Honor, so that they can correct it? I've never filed a
14 Rule 29 brief before the Government rested.

15 THE COURT: I understand.

16 But you are raising an issue that has been
17 extensively briefed previously.

18 MR. DRATEL: Not necessarily in that motion. There
19 are two separate motions. They do not raise the issue that
20 you're talking about now, Your Honor.

21 THE COURT: Okay.

22 MR. DRATEL: Yeah, but be sure to review the motion
23 and then --

24 THE COURT: That's fine. Okay.

25 MS. KELLMAN: I will say, Judge, just with respect

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1 to Count Two, that we addressed the Court's initial decision
2 and explained why it is that we are not re-litigating and what
3 it is that we believe the Court needs to look at.

4 THE COURT: Okay. I will look at it. So will the
5 Government. Let's come back here at 1:00. Is that enough
6 time? We have all afternoon. So we can do 1:30 if everyone
7 would rather.

8 MR. ARIAIL: Yeah, I think, Your Honor, we frankly
9 need some time to see whatever it is they've written and come
10 up with a written response obviously.

11 THE COURT: Okay. Let's say -- well, let me ask
12 this, is the defense now ready to give me the proposed charge?

13 MR. DRATEL: Yes. We just need to do it
14 electronically, Your Honor. We can do that as well.

15 THE COURT: Okay. So let's come back at 2:00, and
16 hopefully we can do our charging conference shortly
17 thereafter.

18 MR. DRATEL: And the charging will just be our
19 specific additions, as I said on the Government's, without
20 getting a Word, which is, by the way, the first time in
21 probably the last 12 years I have not gotten a Word version.

22 THE COURT: Look, for what it's worth, the
23 Government hasn't been as responsive to me in this case as I
24 might have liked either but people in glass houses,
25 Mr. Dratel. So just file what you've got, and we'll try to do

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1 it.

2 MR. ARIAIL: And, Your Honor, I apologize if we have
3 not been responsive to you. We have been working our hardest
4 to accommodate every --

5 THE COURT: I don't question the amount of effort
6 the Government has put in this case, but there have been a
7 couple of times when I've asked for things by certain dates.
8 In fact, I think there's still something the Government is
9 supposed to get me that it hasn't, but I don't recall what it
10 is.

11 MR. ARIAIL: I don't know what it is, Your Honor.
12 I apologize.

13 THE COURT: It doesn't matter. It really don't
14 matter. Let's try to convene at 2:00 and see where we are
15 then.

16 Thank you.

17 (Recess.)

18 (Continued on the next page.)
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1 A F T E R N O O N S E S S I O N

2 THE CLERK: All rise.

3 THE COURT: All right. Be seated, please.

4 Okay. First, with regard to the Rule 29 motions, I
5 have read both motions that the defendant has filed. Those
6 were filed about 12:15. It's now five after two. I haven't
7 studied them as much as I would like, but my inclination is to
8 reserve decision on them, so that the Government has a chance
9 to respond to the briefing.

10 I -- nevertheless, if anybody wants to be heard on
11 them further now, I will do that. I will also note that as to
12 one of them, it seems to me I have got to make some decisions
13 on what can be put to the jury, both in terms of the documents
14 the defendant wants to put in front of the jury and the
15 instructions that we'll go over hopefully this afternoon.

16 And to the extent that's necessary, having reviewed
17 preliminarily the arguments, you should consider the motion
18 denied. Okay? Both motions denied. So to the extent that's
19 necessary to move the case along into the next phase, that's
20 fine, but I'm not going to rule on the motion now. I'm going
21 to reserve. That's where I am, subject to hearing from the
22 parties.

23 MR. ARIAIL: I think, Your Honor, with respect to
24 the -- most of the Rule 29 issues, I think we can resolve
25 those pretty easily. If you want to, we're prepared to do

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1 argument on it and we may reserve on some aspects, but I think
2 we're pretty well squared in terms of the law. We have
3 actually thought about this for a long time in terms of our
4 case, obviously. So if you want me to --

5 THE COURT: Is there any point that you do want to
6 brief or are you prepared to address them all now?

7 MR. ARIAIL: (Confers with the co-counsel.)

8 I think -- Your Honor, I think we can put something
9 in writing on other issue, but I think we have to decide the
10 2332(f) issues now.

11 THE COURT: Well, that's why I said you should
12 consider the motion denied for those purposes, but I didn't
13 want to finally deny it until you had a chance to brief it.
14 If you think we need to go forward with it now, I'll hear from
15 you now.

16 MR. KASTER: Your Honor, I think that we would
17 appreciate the opportunity put to something in writing for the
18 Court's consideration. When would you like it by, tomorrow
19 morning? Tonight?

20 THE COURT: If I'm reserving decision and I'm
21 excluding the evidence, then I don't think there's any
22 urgency.

23 MR. KASTER: Okay.

24 THE COURT: Probably the defendant will renew his
25 motion at the close of the defense case, I assume.

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1 MR. KASTER: Okay.

2 THE COURT: And if there's an adverse verdict to the
3 defendant, they'll renew it again.

4 MR. KASTER: Understood.

5 THE COURT: So I think we'll set a full briefing
6 schedule.

7 I will say since these are threshold issues that
8 could have been raised the day the indictment came down or
9 anytime thereafter, it does strike me as little bit of sharp
10 practice to hit the government with 120 pages at the close of
11 their case.

12 MS. KELLMAN: We don't have that much to do, Judge.
13 So we're making the best out of a lousy situation.

14 THE COURT: Look, I do appreciate that and I want to
15 commend defense counsel for having what really is the most
16 difficult kind of case to handle.

17 But the fact of the matter is, it is, as I said
18 before, an ambush to do this now, when it could have been done
19 at any time earlier. It's not fact-dependent. The facts on
20 which it's based, you know, were never disputed. So there's
21 no reason to do it now.

22 MR. DRATEL: Well, Your Honor, it's our obligation
23 to put our client in the best position possible, regardless of
24 any accommodation to our adversary.

25 THE COURT: It's not a question of accommodation.

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1 What do you lose by making it a month ago?

2 MR. DRATEL: They'd supersede the indictment.

3 THE COURT: Sorry?

4 MR. DRATEL: They'd supercede the indictment.

5 They'd find something factually in the course of their case
6 that resolves it.

7 THE COURT: I see what you're saying. Okay. I
8 just -- I'm not sure what you think they could do if the
9 statute is not extraterritorial. And if, in fact, there's
10 this defense that you say there is, but I guess it's
11 theoretically possible that they could see your motion and
12 restructure their case because of it. I guess so.

13 MR. DRATEL: You know, in my experience with things
14 that are not jurisdictional, it happens all the time. So, you
15 know --

16 THE COURT: Yes. But this is jurisdictional.

17 MR. DRATEL: Right. So we don't have -- I'm saying
18 we don't have to make it.

19 THE COURT: I understand, but when you haven't done
20 it before, then you have to think about the ramifications of
21 it, and you could have concluded earlier in the case. Let's
22 make the motion now because they can't fix this. It's fatal.
23 Then we save much CJA fees on top of that.

24 MR. DRATEL: Your Honor, I'd be happy to share in
25 some other context rather than this one, in terms of strategic

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1 considerations that went into it.

2 THE COURT: Okay.

3 MR. DRATEL: Thank you.

4 THE COURT: I acknowledge that I'm not privy to
5 those and so it's entirely possible that I'm missing
6 something --

7 -- which reminds me, I did miss something else
8 before, which is, I owe the government an apology when I said
9 you missed a few deadlines. Not this case, another case.
10 Your colleagues, not you guys. I'm sure you have spent the
11 last two hours driving yourself nuts thinking what was it that
12 we missed and it was me, not you.

13 So maybe I'm doing the same thing here and I'm not
14 seeing the strategy calls. I don't know. But it sure looks
15 to me in the brief time I had to read this Rule 29 motion,
16 that this could have been done without any prejudice to the
17 defendant at a much earlier time.

18 But be that as it may, so the question is, does the
19 Government want to go forward on the whole thing, part of it
20 or what does it want to do?

21 MR. KASTER: With the Court's indulgence just one
22 moment. (Confers with co-counsel.)

23 MR. ARIAIL: Assuming the evidence is excluded, Your
24 Honor, and the issues are reserved for later briefing, we can
25 go right ahead with the charge conference.

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1 THE COURT: Okay. So I am reserving on the motion.

2 Now, what's effectively happened here -- well, I
3 should give you the opportunity if you want to orally argue it
4 now, you can.

5 MR. DRATEL: Oh, no, Your Honor.

6 MS. KELLMAN: No, Your Honor.

7 THE COURT: Okay. What's effective --

8 MS. KELLMAN: We took our time, so it would be very
9 explanative, very clear.

10 THE COURT: Say that again?

11 MS. KELLMAN: We took our time, so that it would be
12 very clear.

13 THE COURT: It looked like a well-written motion
14 from the brief time I had to review I. Although, like I said,
15 my preliminary view is, I'll probably find against you when I
16 get to studying it, but we'll see.

17 Okay. In the meantime, we have jury charges we need
18 to do. We will have hand those out to you shortly, any
19 minute. They should be ready in a minute. And I think that's
20 all I have got before we do the jury charges.

21 MR. DRATEL: With respect to what we submitted, Your
22 Honor, I'm gathering that the last one on 1111(b), so we
23 just -- we'll just file it for the record, but we're not going
24 to discuss that, obviously, and I guess the first one, as
25 well?

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1 THE COURT: Well, I thought all of them were
2 effectively out --

3 MR. DRATEL: Okay.

4 THE COURT: -- based on a presumed denial of the
5 Rule 29 motion.

6 MR. DRATEL: Right. I'm just going through them in
7 sequence, but there are two that we had proposed to substitute
8 for the Government's. I'm sure the Court has its own, because
9 they're more generalized charges.

10 THE COURT: I don't think I noticed those. I have to
11 look.

12 MR. DRATEL: Aiding and abetting and circumstantial
13 evidence.

14 THE COURT: Okay. I'll look at those again. That's
15 fine. We should have those to you in a few minutes. I'll
16 give you a half an hour to review, less if you tell Ms. Clarke
17 you're ready to talk sooner and we'll go through that.

18 With regard to the documents that the defendant
19 wanted to introduce, I still haven't seen them.

20 MR. DRATEL: Oh, we --

21 THE COURT: Somebody has them but me?

22 LAW CLERK: We have them.

23 THE COURT: I haven't seen them. I understand they
24 have been provided to chambers on time, the way I requested
25 they be provided.

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1 But in any event, even putting aside the issues
2 raised on the Rule 29 motion, it seems to me that those are
3 legal documents, not factually dispute documents that the
4 defendant wants to put before the jury. So that even if I
5 were to see the motion in defendant's favor, I don't think I'd
6 give the jury those documents, in any event.

7 MR. DRATEL: Your Honor, just for purposes of -- we
8 haven't filed those yet, but I will later today just file
9 them. So I didn't think we're renewing it, but we're just
10 filing to make them part of the record.

11 THE COURT: Got it.

12 MR. DRATEL: That's all. And the same thing with
13 the full range of instructions. I think we just emailed that
14 to everybody.

15 THE COURT: Yes.

16 MR. DRATEL: We didn't file them ECF, but we'll do
17 that with the letter.

18 THE COURT: They're on the docket. It's part of the
19 record, as far as I'm concerned.

20 MR. KASTER: Your Honor, just so the Government's
21 clear then. Those exhibits are only exhibits to their motion
22 to dismiss for lack of jurisdiction. They are not, based on
23 the Court's ruling, exhibits received in evidence and they
24 cannot be argued to the jury.

25 THE COURT: I would modify what you said. They are

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1 proffered as part of the defendant's case. The defendant may
2 want me to reject them in front of the jury. I'm going to
3 deny -- I'm going to sustain the government's objection to
4 their admission. All right? But they're not just part of the
5 Rule 29 motion because the defendant wants to put them in the
6 record before the jury. I'm just not allowing it, both
7 because of my preliminary view of the Rule 29 motion and also
8 because those, it seems to me, are legal matters, not matters
9 of fact for the jury to determine.

10 MR. ARIAIL: Additionally, Your Honor, we proffer --
11 and Mr. Kaster can probably articulate better than I can, but
12 they're thoroughly confusing. If they were to go back and the
13 jury would sift through them, they literally would be baffled.
14 I'm baffled by them when I read them myself and from a 401
15 perspective and a 403 perspective, I think they're
16 inadmissible.

17 And I think also it just needs to be clear because
18 Mr. Dratel indicated he only intended to offer two documents,
19 and I think he should specify which of those two documents he
20 intended to offer, just so we have a clear record on that.

21 THE COURT: Well, he'll file the two.

22 You're going to file the two that you intended --

23 MR. DRATEL: Yes. It may be three, because I have
24 to go back and look to see whether everything is in that
25 habeas document. It would be AUMF and the habeas, but I'm

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1 sure -- I think I put the evidence in, but I think that there
2 is a citation, so it might be a third. But two would
3 certainly be duplicative.

4 THE COURT: The AUMF, we know about. We know what
5 that is. The others from the habeas petition relate to the
6 same point.

7 MR. DRATEL: Correct. That's right.

8 THE COURT: So there may be three, but it's the
9 same. I will expand my ruling to say it is also based on the
10 fact that the documents -- because in my view they're legal in
11 nature, are so confusing that the jury would just not be able
12 to use them, even with the benefit of argument from counsel.
13 Okay?

14 MR. DRATEL: Your Honor?

15 THE COURT: Yes?

16 MR. DRATEL: Just with respect to the either/or that
17 you posed, your denial here is sufficient for us. You don't
18 have to do it in the front of the jury.

19 THE COURT: It's sufficient. First of all, it's
20 sufficient as far as I'm concerned.

21 MR. DRATEL: No, no. I meant in terms of we don't
22 want you to do it in front of the jury.

23 THE COURT: Yes. I understand. I'm giving you a
24 choice.

25 MR. DRATEL: Yes.

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1 THE COURT: Because I'm going to turn to you
2 tomorrow and I'm going to say, "How does the defense intend to
3 proceed?" You may strategically want to say, "We've offered
4 two documents, Your Honor. We understand that you have
5 sustained an objection and therefore, they're not coming in."
6 You may want to do that.

7 If you don't want to the that, then I'm fine with
8 the record as it is, that you would have done that but you
9 know how I'm going to rule. I've ruled that way now, so
10 you're not going to go through the idle gesture.

11 MR. DRATEL: We're going to do the latter, Your
12 Honor.

13 THE COURT: Thank you.

14 MR. ARIAIL: Your Honor, sorry. Just one last
15 issue --

16 THE COURT: Yes?

17 MR. ARIAIL: -- to be clear, I believe there was one
18 quasi-answer that was solicited from Evan Kohlmann, and I
19 presume, based on the Court's ruling, that defense counsel is
20 not going to argue from that in its summation.

21 THE COURT: Well, that was the next thing I was
22 thinking about, which is, does the government have a motion in
23 limine with regard to closing argument, based on the Rule 29
24 motion and the unsuccessful proffer of the two to three
25 documents?

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1 MR. ARIAIL: Essentially, that they should not be
2 able to argue these issues in front of the jury. That would
3 be our motion.

4 THE COURT: I think consistent with my ruling, I'm
5 going to grant that motion, unless the defendant wants to try
6 to talk me out of it.

7 MR. STERN: Judge, we have said on other occasions,
8 we're aware of our obligations and we understand your ruling.

9 THE COURT: Okay. Thank you very much.

10 Okay. Let me get you copy of the proposed charge,
11 and you'll call me when you're ready to discuss it. Thanks.

12 (Recess.)

13 THE COURT: Okay. Be seated.

14 This is the charging conference in the case. The
15 way I propose to do it is since the first section is mostly
16 boilerplate -- and that's up through the top of page 19 -- I'm
17 going to ask you first if anybody has any problems with one
18 through the top of page 19. Then when I get to the
19 substantive part, we'll go through it page-by-page and see if
20 there is anything you want to change and then when we're done,
21 if there's any additional instructions that you want to put
22 in, I'll hear from you on that.

23 I will say at the outset just to make things a
24 little easier, Mr. Dratel, with respect to the two
25 instructions that you gave me from before, the direct and

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1 circumstantial evidence and I think it was the aiding and
2 abetting --

3 MR. DRATEL: Correct.

4 THE COURT: -- I didn't use the Government's either.
5 I have my own on both of those.

6 MR. DRATEL: I saw yours on aiding and abetting.
7 It's very similar to the one I proposed, so we'll withdraw
8 that.

9 THE COURT: Okay.

10 MR. DRATEL: I think with respect to the inference
11 one, the one that is drawn from a charge that Judge Preska
12 gave in a trial a couple months ago -- we'll get to it when we
13 get to it at that point.

14 THE COURT: So is there anything on pages four
15 through the top of 19?

16 MR. ARIAIL: We have a few things, Your Honor.

17 THE COURT: Okay. What's the earliest?

18 MR. ARIAIL: Page four.

19 THE COURT: Okay.

20 MR. ARIAIL: The paragraph would be second.

21 THE COURT: Yes?

22 MR. ARIAIL: Legal elements of the crime. There
23 should be an "S" after --

24 THE COURT: Yes.

25 MR. ARIAIL: -- "crime."

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1 THE COURT: Okay. Anything after four?

2 MR. ARIAIL: We do have a few more things. Page 14

3 --

4 MR. DRATEL: But we have 11, Your Honor.

5 THE COURT: Okay. Eleven?

6 MR. DRATEL: We would object to repetition of the
7 absence from court description.

8 THE COURT: Oh, the Government didn't ask for that.
9 I thought you'd want that.

10 MR. DRATEL: No, Your Honor.

11 MR. ARIAIL: We did ask for it, Your Honor.

12 THE COURT: Okay. If the defendant doesn't want it,
13 why should I have it?

14 MR. ARIAIL: I think for the same reasons that we
15 articulated earlier. We don't want them to speculate any more
16 than the defense does as to where the defendant is.

17 MR. STERN: Judge, the best way to get them to
18 speculate is to remind them of it, his status throughout this
19 trial.

20 THE COURT: I -- generally, juries listen to me when
21 I give them instructions. I'll think about that.

22 Okay, 14?

23 MR. DRATEL: Your Honor, first with respect to --
24 just looking -- with respect to 11 and 12 is about the
25 inferences at the end of the circumstantial evidence charge.

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1 THE COURT: Right.

2 MR. DRATEL: At the bottom of 12, as well.

3 Actually, before we get there, just one
4 clarification. I don't know if that is -- this is not
5 earth-shaking, but with respect to the use of recording the
6 transcripts with respect to them being admitted into evidence,
7 I think there was one which is actually the major one, which
8 is the defendant's statement because it didn't match. What
9 was on the screen did not match the tape. I think that was
10 only admitted as an aid, but my recollection may be wrong.

11 THE COURT: So what change are you proposing?

12 MR. DRATEL: Just that we -- some of the
13 translations have been admitted into evidence. That would be
14 I think --

15 THE COURT: Okay.

16 Any problem with that?

17 MR. ARIAIL: I think it actually was admitted and
18 Your Honor directed the jury to listen to the audio if there
19 were any discrepancies, but as Your Honor said, they listened
20 to it and the instructions. We don't have any real issues
21 with it.

22 THE COURT: I just don't remember if we let those
23 transcripts in or not.

24 MR. DRATEL: My first inclination is to say we
25 didn't, but I'm not firm on that. That's why I'll go and

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1 look.

2 THE COURT: We'll check. If we didn't we'll change
3 it a little.

4 MR. DRATEL: With respect to the inference one, the
5 reason I put in the part from Judge Preska's charge and if we
6 look at in the context -- it's the part where she begins to
7 speak about the subway platform, a couple pages in. It -- the
8 reason is because in terms of inferences, when -- the
9 customary one which is in Your Honor's charge now, which is
10 about the rain and the umbrella, there is sort of a one-stop
11 inference. It doesn't yield to more than one inference, which
12 is that it's raining outside. The subway platform one has
13 more variables and that's why we would ask for that, as far as
14 the way that -- Judge Preska's instruction when she talks
15 about inferences.

16 THE COURT: I'm going to leave it like this. I
17 think it's simple. It gives both sides. It says you can draw
18 an inference one way or the other based on that, so it doesn't
19 favor drawing an affirmative inference as opposed to a
20 negative inference. So I think it's balanced enough. I'll
21 overrule that objection.

22 Okay. Now 14?

23 MR. ARIAIL: Fourteen in the witness credibility
24 section.

25 THE COURT: Yes.

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1 MR. ARIAIL: After the word "discrepancies" in the
2 second paragraph, we propose striking between "the picture
3 painted by the Government and by the defendant." That I just
4 don't want any suggestion that there's some sort of burden
5 shifting going on.

6 THE COURT: Okay.

7 MR. DRATEL: Fine, Your Honor.

8 THE COURT: Okay. Fourteen to 19?

9 MR. ARIAIL: Sixteen, we have a comment.

10 THE COURT: Okay.

11 MR. ARIAIL: I'm not sure that there was any
12 impeachment by prior inconsistent statements, so I'm not sure
13 whether that is necessary.

14 MR. DRATEL: Your Honor, I think the Italian
15 witnesses may have had some, so I do think it's an
16 appropriate instruction in the context.

17 MR. ARIAIL: I think Your Honor ruled that the
18 statements were consistent and that you conceded a point
19 defense was making.

20 THE COURT: The question is whether the defendant
21 has the right to argue the inconsistency, even if I ruled they
22 were consistent enough to let them in.

23 MR. ARIAIL: We don't feel strongly about it, Your
24 Honor, so --

25 THE COURT: If the defendant wants it in, I'll leave

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1 it in.

2 MR. DRATEL: Yes, Your Honor. Thank you.

3 THE COURT: All right. Anything, 16 to 19?

4 MR. DRATEL: Eighteen, Your Honor.

5 THE COURT: Okay.

6 MR. DRATEL: We would prefer to omit any instruction
7 about the defendant's right to testify on top of 18.

8 THE COURT: I see. I'm trying to think what you're
9 thinking.

10 What's the Government's feeling on it?

11 MR. ARIAIL: I think we need that in, Judge. I
12 think that would be a problematic absence.

13 THE COURT: I have never had a case where I haven't
14 given it. This is not the one where I want to break new
15 ground. I'm going to leave it in. Objection is overruled.

16 Okay. Now, we'll go page-by-page through the legal
17 elements, and I'll just call out the page number and I'll wait
18 a second to see if anybody has anything to say. If you don't
19 have anything to say, just don't say anything and we'll pass
20 it.

21 All right. Page 19?

22 MR. DRATEL: Your Honor, we would concede venue. I
23 don't want an instruction that starts out, you know, with a
24 different standard of proof and all that. So venue is already
25 established by stipulation. So we don't think it's necessary

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1 for the charge. Just leaving it on the record.

2 MR. ARIAIL: The jury needs to find it by a
3 preponderance, Your Honor. If it's about the placement, we're
4 happy to move it to the back. If that's --

5 THE COURT: Do they have to find it by a
6 preponderance if there is a stipulation?

7 MR. ARIAIL: Yes, Your Honor. They have to -- the
8 jury needs to find it by a preponderance. They can certainly
9 consider the stipulation by the parties, but they actually
10 need to make the finding.

11 MR. DRATEL: Your Honor, I've done it in other
12 cases, but --

13 MR. ARIAIL: And I guess the other follow-up point
14 is that they didn't stipulate to venue. They stipulated to
15 the facts that support an argument that there was a
16 preponderance.

17 THE COURT: Yes. But now, they're stipulating that
18 there's venue. Can they possibly prevail on appeal by saying
19 well, yes, we stipulated to that, but nevertheless, the jury
20 had to find it?

21 MS. KELLMAN: And I have actually seen a verdict
22 form that the jury had to find it.

23 THE COURT: It was never on the verdict form.

24 MS. KELLMAN: Well, how do we know that they found
25 it?

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1 THE COURT: Well, how do you know if the found
2 anything? If they convict, they have to find everything.

3 MS. KELLMAN: If it's something they have to find,
4 we're willing to stipulate to it. I don't see what the
5 problem is.

6 THE COURT: You want to be very cautious?

7 MR. ARIAIL: Yes. Correct, Your Honor. If defense
8 counsel wants us to move it down in the instructions, that's
9 fine.

10 THE COURT: Why don't we try to cut it down a little
11 bit?

12 MR. STERN: Why don't you treat it the way you treat
13 al Qaeda being a foreign terrorist organization and say,
14 "Venue has been conceded by the defense. You need not
15 consider it."

16 MR. ARIAIL: That's contrary to the law.

17 MR. STERN: How is it contrary to the law?

18 MR. ARIAIL: The jury needs to find venue in its
19 decision. We can instruct -- we can instruct them as to the
20 law, such as the designation of a foreign terrorist
21 organization.

22 MR. STERN: Do you mean there's a case --

23 THE COURT: Wait, wait. Please. I was going to
24 say, can you send me a case saying that because it strikes me
25 as strange. It strikes me as so form over substance that it's

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1 unlikely to be that way.

2 MR. ARIAIL: My legal scholar right here, I'll defer
3 to.

4 MR. KASTER: With the Court's indulgence, just one
5 moment. (Confers with co-counsel.)

6 THE COURT: Okay.

7 MR. ARIAIL: Judge, sorry. And I may or may not be
8 able to find a case on point for you, but I mean, the context
9 is, they specifically refused to stipulate to venue.

10 THE COURT: They're doing it now.

11 MR. ARIAIL: And so then we read into the record a
12 stipulation about the facts and then -- well, look. I'll take
13 a look. I'm happy to take a look at it a little further, but
14 --

15 THE COURT: Take a look at it. What I may do is cut
16 it down and cut out the second sentence in the first paragraph
17 and just start with, "American law provides," and then not
18 repeat how you -- it's new here, preponderance.

19 I might try to cut it down, but it seems to me, we
20 have all the time, we have elements of crimes that are taken
21 out by stipulation. The parties agree that this element is
22 satisfied and therefore, you need not determine it. Why can't
23 we do that with venue?

24 MR. ARIAIL: That's not my understanding generally,
25 in terms of stipulations that we stipulate to facts and then

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1 --

2 THE COURT: You're not listening to me.

3 MR. ARIAIL: I'm sorry.

4 THE COURT: The defendant is not just stipulating to
5 facts. They're stipulating to venue. I'm going to get them
6 to say that again in a minute, so I confirm that that's right.

7 But they are stipulating that venue is proper. They
8 are waiving the defense of improper venue. Defenses of
9 improper venue are waived all the time because someone wants
10 to be convicted in one district and doesn't want to bother
11 going to another district. Why can't they do that?

12 MR. ARIAIL: Well, the other issue, Your Honor, in
13 terms of jurisdiction, obviously, is the stipulation is
14 certainly relevant for the purposes of our jurisdictional
15 issues, as well. So that's obviously something we're
16 concerned about.

17 THE COURT: Well, the stipulation's in the record as
18 a fact. That's a fact. The question is, do we need the jury
19 to make the mixed fact and law question based on that
20 stipulation that there's venue here when the defendant says,
21 we stipulate there's venue here.

22 MR. ARIAIL: I'll certainly check, Your Honor, just
23 to --

24 THE COURT: Okay. I'm inclined to either take it
25 out or cut it down, so we'll see what we do with that.

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1 MR. DRATEL: Your Honor, just not to try to
2 complicate it, just because of the burden of proof part that
3 concerns me is that if it stays in, it should say that this is
4 the one aspect of the case that is different burden of proof.

5 MR. ARIAIL: And we're totally fine with that,
6 obviously, Your Honor. And it might make sense to put it
7 somewhere else just because beyond a reasonable doubt is
8 defined just right before it.

9 THE COURT: That's true. Okay. Maybe we'll move
10 it. Maybe we'll cut it down. I'll make a decision.

11 Okay. Anything on 20, 21, 22, 23?

12 MR. DRATEL: Your Honor, 22. I'm not sure if this
13 is the right spot. Usually, it does go in membership or
14 whether -- yes. Which is, it charged that mere association
15 with persons who are -- mere association is not -- and also
16 that you can be associated with persons that know a crime is
17 underway and still not be a conspirator.

18 THE COURT: Right. We don't have that here?

19 MR. DRATEL: I don't think so, Your Honor.

20 THE COURT: I think we do.

21 MR. DRATEL: It's in part of the -- Government has a
22 part -- Government has mere presence language in its proposed
23 charge. It's not association, so I think, you know, they both
24 apply here.

25 THE COURT: Yes. I agree with that. Okay. We will

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1 put in some place mere association or -- mere presence or mere
2 association is not sufficient.

3 MR. ARIAIL: I'm sorry, Mr. Dratel. Where is the
4 presence?

5 MR. DRATEL: In yours.

6 MR. ARIAIL: Okay.

7 MR. KASTER: Your Honor, sorry. Are we on page 20
8 or 21?

9 THE COURT: We were on page 20, but -- we're on page
10 21, because we're narrowing the definition, but we're getting
11 over to 22.

12 MR. DRATEL: That's where I would put it. It's
13 about knowing membership in this conspiracy, and that's
14 usually where, in my experience, a mere presence charge --

15 THE COURT: I think that's right. Okay. I'm going
16 to add that in.

17 MR. KASTER: Then I guess, Your Honor, for
18 consistency purposes, top of page 21, where the second element
19 is listed with the underscore second, it reads in this
20 version, "Defendant knowingly and intentionally became a
21 member of conspiracy," then on page 22, we define the second
22 element as the one in which the defendant knowingly and
23 willfully became a member of a conspiracy.

24 THE COURT: Okay.

25 MR. KASTER: So we should conform those two.

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1 THE COURT: Yes. We'll conform them. We'll use the
2 first one.

3 MR. ARIAIL: And Your Honor, sorry for the add-in.
4 On the conspiracy, I'm not sure -- there's also language that
5 we proposed on major and minor roles and that a defendant's
6 participation in a conspiracy has no bearing on the issue of
7 the appeal. So we'd ask that that language be included, as
8 well, in the other --

9 THE COURT: Any problem?

10 MR. DRATEL: It's an accurate statement, so --

11 THE COURT: Okay. Anything else on 22?

12 On 23, while I have quoted as to each count the
13 language in the indictment, what I propose to do is to
14 summarize it instead, and send a copy of the indictment -- and
15 I know it's been changed, so you would have to do a -- what do
16 you call it? Redacted indictment, because we no longer have a
17 sixth count -- and send that the jury and just summarize each
18 count rather than reading it verbatim. I just find that very
19 tedious and the jurors, because it's formal language, I don't
20 think really process it well. They do when they look at it in
21 writing, but I think the idea is to give them the gist.
22 Nevertheless, if anyone feels strongly, I will read it
23 verbatim.

24 MR. KASTER: The only point on that, Your Honor, I
25 think when you say redact, just to make sure that we're clear,

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1 I think there's circuit law as to not to literally block out.
2 We would retype the indictment, so that there would be no gaps
3 that the jury would speculate about.

4 THE COURT: That's why God invented word processors.

5 MR. KASTER: That's what we'll do.

6 THE COURT: Any problem with that?

7 MR. DRATEL: No, Your Honor. Thank you.

8 THE COURT: Okay. Anything else on 23?

9 MR. ARIAIL: Sorry, Your Honor. Can we hold up just
10 for two seconds?

11 THE COURT: Sure.

12 MR. ARIAIL: (Confers with Mr. Jacobs.)

13 On 23, Your Honor, I think this just in terms of the
14 defendant's name.

15 THE COURT: Yes.

16 MR. ARIAIL: You know, he added or Judge Korman
17 added the name of the defendant at his request after he
18 arrived in the United States. Just being consistent. I think
19 that might be confusing. It might be worthwhile to add a
20 brackets after the Government's alleged name and "Adnan Hausa"
21 in brackets there, and to spell out Adam and in the actual
22 language that's above there.

23 MS. KELLMAN: Then it wouldn't just conform at all
24 as to the indictment.

25 THE COURT: I have a feeling I'm going to read the

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1 indictment. Yes.

2 MR. ARIAIL: Conforming to the indictment, we're
3 fine.

4 THE COURT: Okay. We'll do that.

5 Okay. Anything on 24?

6 MR. ARIAIL: Twenty-four, I think this is a bit of a
7 global. In the first element, we somewhat redefine conspired
8 in some way or manner, came to a mutual understanding. I
9 think that given that conspired is defined already, it's
10 probably best just to use the word "conspire."

11 THE COURT: I agree.

12 Any reason why not?

13 MR. DRATEL: No.

14 THE COURT: Okay. All right. Anything else on 24?

15 MR. ARIAIL: No, Your Honor.

16 THE COURT: Twenty-five?

17 MR. DRATEL: (Shakes head negatively.)

18 MR. ARIAIL: No, Your Honor.

19 THE COURT: Twenty-six?

20 MR. ARIAIL: Twenty-six, I have the same comment to
21 the first element.

22 THE COURT: Right.

23 MR. ARIAIL: And then --

24 THE COURT: Wait. You don't mean the first element?
25 Oh, yes. First element. Got it.

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1 MR. ARIAIL: And then just this terms of form, in
2 the previous count, you had spelled out the statute underneath
3 it and then just in terms of conformity, if I --

4 THE COURT: Right. You mean either put in all the
5 citations or leave them all out?

6 MR. ARIAIL: Yeah.

7 THE COURT: The same places?

8 MR. ARIAIL: Yes.

9 THE COURT: Okay. Anything else on 24 or 25?

10 (No Response.)

11 THE COURT: Okay. Twenty-six, we've done -- 27?

12 MR. ARIAIL: On 27, in the paragraph that begins
13 after the third element, there seems to be extra language in
14 there, "Including an embassy or other diplomatic or consulate
15 premises of the United States." I think you defined
16 Government facility later and I think that language needs to
17 come from the indictment.

18 THE COURT: Okay. We'll --

19 MR. ARIAIL: It probably was in our instructions by
20 accident, but we should take it out.

21 THE COURT: Okay. Anything else on 27?

22 MR. ARIAIL: The one thing I would ask is that in
23 the part where we talk about the substantive violation --

24 THE COURT: Yes?

25 MR. ARIAIL: If we could just say the word

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1 "substantive," because I think when I read it quickly, I just
2 got a little confused.

3 THE COURT: Where would you insert the word
4 "substantive"?

5 MR. ARIAIL: "To prove a substantive violation."

6 THE COURT: Where.

7 MR. ARIAIL: Sorry. In the paragraph that begins,
8 "In order for you to determine." It's the third sentence, and
9 so to prove a substantive violation of Section 2332(f).

10 THE COURT: I see. Okay.

11 Twenty-eight? Twenty-nine?

12 MR. DRATEL: Your Honor, I apologize that this was
13 not part of our package that we submitted, but it has to do
14 with the motion that the Court has denied, the one on Count 2
15 with respect to the exemption. We believe that that should be
16 a charge. That's an element of defense.

17 THE COURT: Okay. I reserved on the motion --

18 MR. DRATEL: Right.

19 THE COURT: -- but I said I'm inclined to deny it
20 and on that same basis, I'm going to deny the request for the
21 instruction.

22 MR. DRATEL: Thank you, Your Honor.

23 MR. ARIAIL: Twenty-nine, Your Honor, the part just
24 above the header for Count 3, it makes reference to conspiring
25 to murder United States nationals. I think it should be "Bomb

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1 Government facilities."

2 THE COURT: Yes. Okay.

3 Thirty?

4 MR. ARIAIL: Thirty, the conspired language in the
5 first element.

6 THE COURT: Right. Anything else on 30?

7 MR. ARIAIL: In the substantive violation area.

8 THE COURT: Right.

9 MR. ARIAIL: Down at the bottom of the page, I would
10 just add, "To prove a substantive violation of 2339(b)."

11 THE COURT: Right.

12 MR. ARIAIL: And then also, throughout this section,
13 there's references to attempt. And it should be that the
14 defendant provided material support. So it's actually
15 substantive, so --

16 THE COURT: Right.

17 MR. ARIAIL: And --

18 THE COURT: Anything else? So you're talking about
19 the first and second elements?

20 MR. ARIAIL: That's correct, Your Honor.

21 THE COURT: Okay. Anything else on 30? Thirty-one?

22 MR. ARIAIL: Thirty-one at the top the first
23 sentence, same issue with respect to attempt.

24 THE COURT: Right.

25 MR. ARIAIL: And you might want to do a global,

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1 because I think there are about four or five other spots
2 throughout this action.

3 THE COURT: We will change attempted to provide or
4 attempt to provide with provide or provided.

5 MR. ARIAIL: And then a separate comment with
6 respect to the first element.

7 THE COURT: Yes.

8 MR. ARIAIL: The last sentence, which is predicated
9 off of 2339(b)(H) about independently working from al Qaeda.
10 It should be work entirely independently of al Qaeda. That's
11 the statutory language.

12 THE COURT: I understand. Okay. We'll add it.

13 Anything else on 31? Thirty-two? Thirty-three?

14 MR. ARIAIL: Top of 33, Your Honor. After the 2, it
15 looks like there's some extra words, "The offense of the
16 offense."

17 THE COURT: We should take out the offense, right?
18 The first offense?

19 MR. ARIAIL: Yes.

20 THE COURT: All right. Okay. Anything else on 33?
21 Thirty-four? Thirty-five?

22 You have the name again, conform?

23 MR. ARIAIL: Yes.

24 THE COURT: Anything on else on 35?

25 Let me ask the Government this, when I'm summarizing

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1 each count, do I have to include all the aliases?

2 MR. ARIAIL: No, your Honor.

3 THE COURT: Okay. Maybe I'll do it the first time.

4 MR. ARIAIL: I think that's fine.

5 THE COURT: Okay. Thirty-six?

6 MR. DRATEL: Yes, Your Honor. Two things. One is I
7 think there should be a declarative statement that if, well,
8 that if -- that they have not acquitted -- I mean. I'm sorry.
9 If they have acquitted or not convicted Mr. Harun on the
10 predicate Counts 1, 3 and 4, that they must acquit him of
11 Count 5. It's in there, but it's not just declarative in the
12 sense that it gives them that direction.

13 THE COURT: I'm not sure it's in there.

14 MR. ARIAIL: It's also not the law. I don't think
15 Your Honor, a defendant can be convicted of or acquitted of
16 the prior acts and convicted of a subsequent one. Juries do
17 funny things.

18 THE COURT: Well, the question is, would it be
19 consistent for the jury to do that? Is it logically possible?

20 MR. ARIAIL: It is, Your Honor. Just in terms of
21 the jury and the way that they operate, I think it is
22 logically possible. They make compromises, just like
23 everybody else.

24 MR. DRATEL: It's not legally possible. The
25 predicate offense conviction on the underlying count, that's

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1 the crime of violence or that's the act that he's pegged to.

2 THE COURT: If there was an acquittal on Count 1 --I
3 understand that juries compromise, but they compromise in ways
4 that are not logically impossible. That they're logically
5 impossible, doesn't the defendant have a motion to set aside
6 the verdict?

7 MR. ARIAIL: They have a motion. I think it's one
8 that they would be likely to lose.

9 MR. DRATEL: Your Honor --

10 THE COURT: That's what I'm asking.

11 MR. ARIAIL: Yes.

12 THE COURT: When I say, do they have a motion, I
13 mean do they have a motion that will prevail? We have lots of
14 motions. I understand.

15 MR. ARIAIL: Sorry.

16 MR. KASTER: Your Honor, I think with regard to the
17 844, there is law, 924(c) that's very similar, where the
18 predicate crime is not -- there has not been a conviction on
19 that, yet the pile-on crime, there is a conviction and those
20 have been upheld. We could look into that, but I believe 844
21 sort of mirrors 924(c), and that has happened. I agree it is
22 rare, but it has happened.

23 THE COURT: Okay. I'll think about it some more.
24 Okay.

25 MR. DRATEL: And one more with respect to that. I

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1 think there should be an instruction that the jury has to
2 agree unanimously as to which count serves as the predicate
3 for Count 5.

4 THE COURT: Well, if the Government's right, then
5 they don't, right?

6 MR. ARIAIL: That's correct, Your Honor.

7 MR. DRATEL: I would still think they would either
8 way. They can't, for them --

9 THE COURT: If they can acquit -- if they can acquit
10 all of the preceding counts and still convict on this count,
11 then why do they have to all agree on which proceeding counts
12 they're going to use?

13 MR. DRATEL: Because I don't think they -- I don't
14 think they can decide as to the specific basis for Count 5,
15 regardless of whether it is the evidence on Count 1, the
16 evidence on Count 3 or the evidence on Count 4. Even assuming
17 the Government is right, that they can convict on Count 5
18 without convicting on the other counts, they would still have
19 to be unanimous with respect to -- like for example, you know,
20 in a conspiracy, they can sell cocaine and import heroin.

21 THE COURT: I understand where that's appropriate.
22 I'm just not sure it's here if the Government is right, that
23 they need not convict on the underlying act.

24 I mean, ultimately, on a RICO conspiracy or
25 something, you have to agree on the predicate act because that

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1 must be done. You must have two predicate acts for the RICO
2 conviction. If the Government's right here and you don't need
3 any predicate acts, then I don't see why they would have to
4 agree on which predicate acting serves for this.

5 I also think if I gave the instruction you're asking
6 for, I've effectively resolved the last issue we discussed in
7 your favor, because the jury would say, oh, we all have to
8 agree on one of the proceeding counts. Well, we all couldn't
9 agree on one of the preceding counts, so we have acquitted him
10 on those counts, and that means we cannot convict on this
11 count. So I think it rises or falls with how I'm going to
12 resolve the last issue.

13 MR. DRATEL: I think they could be separated, but I
14 understand the Court's instruction. Thank you.

15 THE COURT: Anything else on 35? Thirty-six?
16 Thirty-seven? Thirty-eight? Thirty-nine? And then anything
17 on the last few pages?

18 MR. ARIAIL: Just a couple things, Your Honor. On
19 40, on the top of the page, "You must not find him guilty of
20 Count 5," I think if you can just clarify that it's on this
21 basis or that it's related to aiding and abetting, as opposed
22 to --

23 THE COURT: "You must not find him guilty of Count 5
24 on an aiding and abetting," period?

25 MR. ARIAIL: That's correct.

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1 And then, on the bottom of 40, four lines from the
2 bottom, you make a reference to the charges, and you indicate
3 four and it should be five.

4 THE COURT: Yes. Okay. Anything on 41 or 42?

5 MR. DRATEL: No, Your Honor.

6 THE COURT: All right. To the extent that I have
7 not adopted the proposals of the parties -- either one of
8 them -- they are deeming rejected and as far as I'm concerned,
9 they have been tendered and that objection to my doing that is
10 preserved.

11 Okay. Verdict form, I didn't give you a verdict
12 form, right?

13 MR. ARIAIL: No, Your Honor.

14 THE COURT: Okay. It's going to be very
15 straightforward. It's going to say Count 1, guilty or not
16 guilty; Count 2, guilty or not guilty.

17 MR. ARIAIL: That's fine with the Government.

18 THE COURT: We don't need a finding of an overt act
19 here or anything for this conspiracy, right? We don't need a
20 separate finding?

21 MR. ARIAIL: I don't think so. No, Your Honor.

22 THE COURT: Okay. Order of closing: As usual,
23 Government, defendant, true rebuttal from the Government, not
24 things you left out and put in the rebuttal -- not that I
25 think you're going to do that, but just to tell you --

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1 MR. ARIAIL: Presuming that I would do the wrong
2 thing, Your Honor.

3 THE COURT: Okay. So real rebuttal.

4 Any estimate from the Government how long?

5 MR. ARIAIL: Ms. Wells is doing summation. I'll let
6 her estimate.

7 MS. WELLS: Summation is about two hours.

8 THE COURT: Two hours? Okay. I'm not going to ask
9 the defense to estimate.

10 Okay. I will say, two hours? Don't overkill.
11 This, really -- but you'll use your best judgment.

12 Okay. Anything else?

13 MR. ARIAIL: Concerning Ms. Wells, Your Honor, I've
14 seen far less complicated cases take much longer time in
15 summation.

16 MR. STERN: I've seen much more complicated cases
17 take less time in summation.

18 THE COURT: Me, too.

19 Okay. Anything else we need to cover?

20 MR. STERN: No.

21 THE COURT: We'll email you my decision on the final
22 instructions tonight, so you'll have them if you want to use
23 them during closing. I'll resolve the points that I left
24 open. The way I send them to you, that reflects the
25 resolution of the things.

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1 MR. ARIAIL: And we'll propose a redacted
2 indictment.

3 THE COURT: Yes.

4 MS. KELLMAN: With respect to the exemption, will
5 Your Honor rule on it? I know you preliminarily did, but once
6 you study the papers, you may take a different view. Is that
7 something that you expect to address before summations or --

8 THE COURT: Are you asking me to rule on the motion
9 before summation?

10 MS. KELLMAN: No, no. I was just asking.

11 THE COURT: There was one other thing -- oh, yes.
12 Alternates. Anyone have a preference as to what I do with the
13 alternates?

14 MR. ARIAIL: I think we should hang onto them for a
15 bit, Your Honor.

16 THE COURT: Not let them go home on call?

17 MR. ARIAIL: I think at least for the afternoon.

18 THE COURT: Okay. We'll talk about it again at the
19 end of the day. I mean, with a two-hour closing and
20 instructions, it will probably take an hour. Well, we still
21 should get it to them sometime. Okay.

22 We have that the one juror that said they have to
23 leave on the 23rd, but that sounds like that's okay.

24 All right. Anything else?

25 MR. ARIAIL: No, Your Honor.

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1 THE COURT: Thank you all for your hard work. See
2 you tomorrow.

3 (Trial adjourned to March 16th, 2017, at 9:30 a. m.)
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1 UNITED STATES DISTRICT COURT
 2 EASTERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA

12 CR 134(BMC)

4 versus

5 IBRAHIM SULEIMAN ADNAN
 6 ADAM HARUN HAUSA

U. S. Courthouse
 225 Cadman Plaza East
 Brooklyn, NY 11201

Defendant.

March 15, 2017

9:30 a. m.

7 TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL

8 BEFORE THE HONORABLE BRIAN COGAN

9 UNITED STATES DISTRICT JUDGE

11 APPEARANCES

12
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 Brooklyn, New York 11201
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Also present: SPECIAL AGENT RAYMOND PACIOREK
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Proceedings recorded by mechanical stenography. Transcript
produced by computer-aided transcription.

1 (In open court, outside the presence of the jury.)

2 THE COURT: Good morning.

3 Just three fast things before we bring in the jury.

4 First, we made an effort to get the defendant here
5 again, is that correct?

6 MR. ARIAIL: Yes, Your Honor. The marshals
7 confirmed that he refused to come to court today.

8 THE COURT: Okay. Second, I wanted to confirm that
9 the defendant is, in fact, waiving venue because I'm not going
10 to instruct them on venue.

11 MR. STERN: He is, in fact, waiving venue.

12 THE COURT: Okay. And third --

13 MS. KELLMAN: You're granting our motion?

14 THE COURT: I'm still reserving on the motion.

15 But with regard to the 844 question, I'm adhering to
16 my ruling yesterday, accepting the Government's position.

17 Okay. Let's bring in the jury, please.

18 (Jury enters.)

19 THE COURT: All right. Everyone be seated.

20 Good morning, ladies and gentlemen.

21 JURORS: Good morning.

22 THE COURT: The Government, having rested, how does
23 the defendant want to proceed?

24 MS. KELLMAN: We rest, Your Honor.

25 THE COURT: All right. We will, therefore, proceed

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1 to closing arguments.

2 The Government may go first.

3 MS. WELLS: Thank you, Your Honor.

4 I also have the screens. (Publishes exhibit.)

5 "I want to give you a history of how I entered into
6 terrorism." Those are the defendant's words, and this is the
7 defendant, Adnan Ibrahim Harun. For three days in a courtroom
8 in Italy in front of a judge and with his lawyers, the
9 defendant proudly confessed his terrorist life story.

10 As you heard, the defendant is a man who made
11 terrorism his life's work, who made a career of violent jihad,
12 and who dedicated himself to the destruction and bloodshed
13 that al Qaeda champions, including his April 25th, 2003 attack
14 on American soldiers that left two young men, Airman Raymond
15 Losano and Private Jerod Dennis, dead decades before their
16 time.

17 But the defendant wasn't satisfied. Two young dead
18 Americans weren't enough for his terrorist ambitions. Neither
19 were the other soldiers who were seriously injured. The
20 defendant dreamed of death on a massive scale. He wanted to
21 carry out attacks like the embassy bombings in Kenya and
22 Tanzania, hundreds killed, more injured.

23 As he calmly and confidently explained, he began
24 preparing an attack of that magnitude. He plotted to blow up
25 the American Embassy in Nigeria with the goal of killing every

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1 single person inside.

2 He took several steps to execute this plan. He
3 recruited accomplices and, along with those accomplices, he
4 scouted out U.S. buildings and he searched for a source of
5 explosives. Fortunately, his plan failed.

6 At the beginning of this trial, the Government said
7 that the evidence would show beyond a reasonable doubt that
8 the defendant conspired or agreed to murder Americans, plotted
9 to bomb a U.S. building and conspired and provided or
10 attempted to provide material support to al Qaeda, and that he
11 used explosives in connection with some of those crimes. That
12 is exactly what the evidence has shown, and as the defendant
13 himself admitted without regret and without remorse, he is
14 guilty of every single crime charged.

15 This morning, we're going to review that evidence,
16 including the defendant's detailed confession, that terrorist
17 autobiography, and you will find that his statements are
18 supported by all of the independent evidence in this case,
19 including the testimony of the soldiers who survived the
20 April 25th attack, and physical evidence like the Qur'an with
21 the defendant's fingerprints in it and the journal of the al
22 Qaeda fighter who was killed that contains the defendant's
23 name, as well as other items that show how the defendant
24 worked with other jihadists to make al-Qaeda's violent and
25 dangerous ideology a reality.

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1 We'll look at all of the ways that the defendant's
2 description of his plot to blow up the embassy in Nigeria is
3 supported by the testimony and the documentary evidence in
4 this case, including the letter from the defendant's al Qaeda
5 boss, Hamza Rabia, a man he called "Tom," that contains
6 detailed instructions on carrying out that deadly plan.

7 Let's first look at how and when the defendant
8 joined al Qaeda. As he stated, just weeks before September
9 11th, 2001, he traveled to Afghanistan because he wanted to
10 fight jihad and when he got there, the defendant ended up at
11 an al Qaeda guesthouse. The name of that place was Anibras.
12 Guesthouses like Anibras were essentially terrorist
13 registration centers and you heard from Evan Kohlmann -- he
14 was the al Qaeda expert -- and he told you that Anibras was
15 the name of a guesthouse near Kandahar in Afghanistan, named
16 for a suicide bomber who carried out an attack against U.S.
17 interests.

18 And the defendant told you that he stayed there on
19 September 11th, and while he was there, he heard the people
20 around him, celebrating that we -- that we, al Qaeda -- had
21 attacked America with airplanes. The defendant's reaction to
22 this, it wasn't disgust. It wasn't sadness. It wasn't
23 mourning. It wasn't horror. It was the opposite. It
24 solidified his commitment to jihad and as he said, within
25 days, he and other al Qaeda recruits went off to training,

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1 training that he said was to conduct an attack like the one on
2 the U.S.S. Cole that had taken place just a year earlier.

3 And so the defendant then explained the next phase
4 of his work for al Qaeda, his training. He said, "We went to
5 a place in Kandahar, and the name of the place was al-Farouq,
6 Maskar al-Farouq." That means "Camp al-Farouq."

7 And, again, you heard from Evan Kohlmann that
8 al-Farouq was a terrorist training camp where the recruits
9 there learned about firearms, explosives, and urban warfare.
10 And you know what the defendant said the same thing. He said
11 that when he was at al-Farouq, we were taught about how to use
12 Kalashnikovs and RPGs. They showed us how to use small arms,
13 Uzis, M-60s. They showed us grenades and blew some up in
14 front of us.

15 And you know that the defendant put this training to
16 use because you heard from the soldiers who testified in this
17 courtroom that they saw the same weapons used against them
18 during the April 25th attack, the same Kalashnikovs, the same
19 grenades.

20 You also heard from Tony Graziano. He was the
21 investigator who personally went to al-Farouq to conduct an
22 investigation to determine whether that location that they
23 believed had been the site of the training camp was the real
24 thing. And when he got there, he said he found rounds,
25 hundreds, maybe thousands of rounds of used ammunition. He

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1 found containers for antitank mines. There was a physical
2 training course for the al Qaeda recruits.

3 And he did something else. He compared the terrain
4 or the topography of the area that he visited with what was
5 contained in al Qaeda propaganda videos showing al-Farooq and
6 what he found when he looked at the videos and the photos that
7 he and his team took is that they matched. This is an example
8 of that. The beginning of this is an al Qaeda propaganda
9 video, followed by one of the photos that Tony Graziano took.

10 (Video played in open court.)

11 MS. WELLS: Same mountain peak in the video and in
12 the photo, the same camp, the same place where the defendant
13 began his terrorist education but his training didn't end at
14 al-Farooq.

15 The defendant moved on to a new, more advanced round
16 of training at a place called Malek; and there he learned
17 about even more deadly weapons than before. He learned about
18 weapons that could be used to strike airplanes like missiles
19 and how to use mines and mortars. And you don't only have to
20 take the defendant's word for it. The other reason that you
21 know that Malek was a real al Qaeda training center is because
22 of this. This is Government Exhibit 16-A.

23 (Government Exhibit 16-A published to the jury.)

24 MS. WELLS: And you heard from Special Agent
25 Jennifer Keenan, who was working at the American Embassy in

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1 Islamabad, Pakistan, in December of 2001, just weeks after
2 September 11th, and she told you that at that point in time,
3 they were receiving documents and information that was pouring
4 in from Afghanistan and other places. This notebook
5 (indicating) was inside of that big trunk that she got in
6 Islamabad and it was sent back to Washington, DC to be
7 translated and the translation is what's on your screen,
8 Government's 16-T.

9 (Government Exhibit 16-T published to the jury.)

10 MS. WELLS: And the translation has the daily
11 schedule for Camp Malek.

12 And in case you're wondering what al Qaeda recruits
13 did on a daily basis at Camp Malek, well, this is it. They
14 got up early because their day was busy. They had a training
15 assembly at 5:30 and the first of their military classes after
16 breakfast. They went to their second of those military
17 classes in the afternoon, and that was followed by a Shari'a
18 program and a night assembly. And it was during those
19 military classes that people like the defendant learned about
20 mines and mortars and missiles that could take down airplanes.

21 But he still wasn't done. The defendant went onto
22 yet another training location, this time to learn about
23 geology, terrain, TNT, other explosives; and it was at this
24 place called Camp 9 that the defendant received his kunya --
25 that's his al Qaeda combat name -- "Spin Ghul." He took that

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1 name from a Somali martyr, from someone who died fighting the
2 Soviets in Afghanistan, and he carried that name with him
3 throughout all of the terrorist acts that he committed for al
4 Qaeda.

5 Another thing we know about the defendant is that
6 when he was in Afghanistan and Pakistan working for al Qaeda,
7 he told us about a number of the different people he met,
8 worked with, or became familiar with; and that list of people
9 was a "Who's Who" of al Qaeda leaders, operatives, and other
10 terrorists. Remember Government Exhibit 400? That was the
11 list of all of the different names and places and terms that
12 the defendant identified during his confession.

13 If you're wondering who those people are, well, you
14 heard about many of them from Evan Kohlmann. He went through
15 those names and explained how many of them were connected to
16 al Qaeda or were otherwise involved in the jihadist movement.
17 I'm not going to go through all of those names here again this
18 morning, but I'll highlight a few because the defendant was
19 guided directly or indirectly in his acts by a number of these
20 people. They were his mentors, his bosses, his associates,
21 his inspirations.

22 One of those people was a man named Abdul Hadi
23 al-Iraqi, and he's up there. As you heard, Hadi al-Iraqi was
24 an important al Qaeda military leader in charge of frontline
25 operations for the group, and that is exactly the same thing

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1 that the defendant said. He knew Hadi al-Iraqi as his
2 military commander in Afghanistan and Pakistan.

3 You also heard about Abdul Wakil al-Masri. He's up
4 there, too. And as Evan Kohlmann told you, Abdul Wakil
5 al-Masri was one the key planners of that 1998 East Africa
6 Embassy bombing, the very same bombing that the defendant
7 described as his model for his bombing plot in Nigeria.

8 This is another person the defendant knew, Abu
9 Khabab al-Masri. You heard from Evan Kohlmann that this
10 person had a particular speciality. He was responsible for
11 training al Qaeda recruits about advanced explosives, advanced
12 warfare techniques, how to make bombs out of household
13 ingredients like fertilizer, chemical weapons.

14 And, again, what did the defendant tell you about
15 this person? The same thing. He said, "Abu Khabab al-Masri
16 trained me, and he taught us how to use components, chemicals,
17 how to put together chemical components for a bomb like
18 hydrogen peroxide." He said, "He gave us poisons, the
19 poisons, you know, the poisons that kill, ricin, cyanide,
20 potassium."

21 Here's someone else the defendant knew. He said he
22 met with Abu Zubaydah. They also call him "Abu Tariq." And,
23 again, you heard from Evan Kohlmann. Abu Zubaydah was a
24 jihadi organizer. He provided financing to training camps and
25 was in charge of several of those training camps.

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1 The defendant told us something else about Abu
2 Zubaydah. He said the FBI guys know him very well. And you
3 know what? They sure do. You heard from Chris Reimann and
4 Dave Franco. They were the FBI agents who were involved in
5 the raid in March of 2002 in Faisalabad, Pakistan, where
6 Abu Zubaydah was captured. Dave Franco told you that
7 photograph is the same photograph he had with him so that he
8 knew who to look for, so that he could identify Abu Zubaydah
9 if they found them, and they did. Then after he was arrested,
10 the FBI went in and Dave Franco searched that house where
11 Abu Zubaydah was found and inside, there was an address book.

12 (Government Exhibit 7 published to the jury.)

13 MS. WELLS: That's this, Government Exhibit 7.

14 And what's interesting about this address book is
15 what's inside. And so you're wondering, is it true that the
16 defendant met this high-ranking jihadist, Abu Zubaydah? Well,
17 take a look at the translation, Government's 17.

18 (Government Exhibit 17 published to the jury.)

19 MS. WELLS: What's on the top of your screen is a
20 color photocopy of the original and on the bottom is the
21 English translation and the telephone number that appears in
22 both, this number, 0274-25777 -- remember the 777? That
23 number has an inscription below it in Arabic and that reads,
24 "Harun," the defendants name, "on behalf of Adnan," the
25 defendant's name. But it's not just numbers associated with

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1 the defendant's name. It's that the defendant said this was
2 his family's telephone number back in Saudi Arabia.

3 Remember during the confession in Italy the
4 defendant wrote a bunch of notes. One set of those notes is
5 contained in Government's 34. That's the defendant's
6 handwriting.

7 (Government Exhibit 34 published to the jury.)

8 MS. WELLS: And what do you see there? It's the
9 same telephone number, that 777 number. He wrote it down
10 because he was explaining how the 777 number was supposed to
11 be his emergency contact. Hamza Rabia, "Tom," his handler for
12 the Nigeria bombing plot, that was the number Hamza Rabia was
13 supposed to call in an emergency.

14 And the defendant also wrote something else. It's
15 not in the red box. It's just to the left, "966." The
16 parties have stipulated "966" is the country code you use to
17 call Saudi Arabia, the same place the defendant said the
18 number was for, his parents' home in Saudi Arabia where he
19 grew up.

20 But the defendant's association with al Qaeda, it
21 didn't end with his training, and it didn't end with his
22 association with some of the top-ranking members of al Qaeda.
23 After receiving that training, the defendant set out to wage
24 violent jihad against Americans and Western interests. That
25 began, or continued when he arrived in the area near Firebase

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1 Shkin, an American military base in Afghanistan. The
2 defendant said a lot about the location of where he went. He
3 said during his first operation in Bermel, they went to a
4 barracks or base, and we found a place where there were
5 American forces.

6 (Government Exhibit 201 published to the jury.)

7 MS. WELLS: Well, that's Government 201 on the left.
8 The Bermel Valley is in Afghanistan. This is just below the
9 border. To the left is Afghanistan, to the right is Pakistan.
10 So the defendant was in the Bermel Valley.

11 And he said something else. He said at that point
12 in time, there was small town that we lived in called Angur
13 Ada and it's between Afghanistan and Waziristan and remember
14 Waziristan is that area of Pakistan just across the border.
15 And the defendant said in that area was a base, American.

16 Well, you know that, once again, what the defendant
17 said was correct. Captain Trahan, the first soldier who
18 testified here, he said that the village of Shkin was right
19 near the base. The base was just outside of that small town.
20 And the nearest town across the Pakistani border was a place
21 called Angur Ada, the same place the defendant said that he
22 lived, the same place the defendant said that was near the
23 American base.

24 This is Firebase Shkin (indicating). This is the
25 American base the defendant described. This is another view.

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1 You can see the inside. There wasn't much to it. It was
2 small. Remember Captain Trahan said you could probably throw
3 a football across it if you tried. It was remote. To get
4 there by helicopter would take them 45 minutes, at least. It
5 had mud walls around it, and beyond the mud walls, the only
6 other thing that the soldiers had was that coiled Concertina
7 wire and what they called hesco barriers, which were
8 essentially giant containers of dirt.

9 And in 2003, when the soldiers were stationed there,
10 there were only about 80 to a hundred U.S. troops at the base,
11 but in 2003, those 80 to 100 soldiers were on the front lines
12 of the U.S. fight against al Qaeda and the remains of the
13 Taliban.

14 And when the defendant arrived in the area near
15 Shkin, he and other fighters he was with began a campaign of
16 rocket attacks aimed on that base, and the rocket attacks
17 weren't a one-time event. During his confession, the
18 defendant described on several different occasions all of the
19 various rocket attacks that he and the other al Qaeda fighters
20 were involved in.

21 He said, "There were brothers who got there before
22 us and threw missiles." And then he said, "This was
23 Wednesday. On Thursday, we returned to also throw more
24 missiles." And then he talked about returning to that area
25 again, and on that occasion he said, "We also threw four

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1 missiles, and that was the second time that we returned to the
2 area."

3 Again, this is completely consistent with the
4 testimony that you heard from the soldiers. When they were
5 stationed at Shkin, they remembered multiple rocket attacks
6 targeting the base in the days and weeks leading up to the
7 April 25th attack. Captain Trahan remembered one in
8 particular. It was less than a week before April 25th and he
9 remembered between seven and ten rockets being fired at the
10 base in quick succession and he told you what it was like. He
11 said it sounded like two large trains just crashing together,
12 head on; and then the force of it would knock you back a
13 little bit.

14 You heard the same thing from Sergeant Reed. He
15 remembered that the firebase was targeted by rockets three to
16 four times a week during that period, and First Sergeant
17 Severino remembered the same thing. And Reed and Severino
18 told you something else that was important. They told you
19 what those rockets were called. The soldiers, they called
20 them 107-millimeter rockets. That was literally the size.
21 But they were also known by the name "katyusha," which is the
22 name the defendant used over and over and over to describe the
23 rockets that he was responsible for firing. He even said it
24 was the name for his group. He was in the katyusha group and
25 that he was in control of the katyusha mechanisms.

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1 The soldiers also told you that on April 25th, when
2 that report first came in, the report about suspicious
3 activity about these people coming across the border from
4 Pakistan, they knew the area that the report was describing.
5 That area was familiar to them because it was the site where
6 many of these rockets had been fired at the base, and the
7 reason they knew that is because they would go out and do
8 these things call crater analyses.

9 (Government Exhibit 128 published to the jury.)

10 MS. WELLS: That's on the left. That's
11 Government 128.

12 And that's Sergeant Reed and what he would do is he
13 would go out and then analyze the spot where the rockets
14 impacted or where they were fired from and they'd measure the
15 trajectory of an angle so that they could reverse-engineer and
16 figure out where they'd come from. He said they'd been out to
17 that hilltop location, the spot of the April 25th attack,
18 before.

19 That's the photo on the right, Government 109.

20 (Government Exhibit 109 published to the jury.)

21 MS. WELLS: That's a photo of two Afghani militia
22 soldiers -- those are American allies -- carrying two katyusha
23 rockets, plus the site of the April 25th attack, not too long
24 before it happened.

25 But, again, you already know that the defendant and

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1 the other al Qaeda fighters didn't stop at firing missiles at
2 the base. On April 25th, 2003, they attacked a group of
3 American soldiers and Afghan militia members with assault
4 rifles, hands grenades, and other deadly weapons.

5 During his confession, the defendant described that
6 attack in chilling detail, and his description included a
7 precise location of the attack. He was asked, "Where
8 specifically were you in relation to the base, or Angur
9 Ada?" And he said, "We were south of it. It was north of us,
10 and we were south of it." Once again, the defendant's
11 description is confirmed by the independent evidence that you
12 saw and heard in this case.

13 (Government Exhibit 5 published to the jury.)

14 MS. WELLS: This is Government Exhibit 5, and
15 remember this was the laminated map that had all of the patrol
16 routes that the soldiers used to use back in 2003. It
17 belonged to Dwayne McKnight. He called it his "Bug Out Map,"
18 and he said that's because he used to keep it with him in his
19 body armor all the time in case he ever got lost. He wanted
20 to make sure he had a way to get back to the base.

21 And so the soldiers told you that on the morning of
22 April 25th when the patrol first went out, they described the
23 route that they took, and it's right here. So they began at
24 the base, a little square of Shkin, and they drove north and
25 they took a right on what was called Route Corvette. All the

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1 routes were named for cars. They drove all the way down
2 Route Corvette until they got to the border checkpoint as they
3 were approaching the Pakistan border. They took another
4 right, this time down Route Chevy. It was somewhere off of
5 Route Chevy that the attack happened, somewhere off of
6 Route Chevy that was south of Firebase Shkin, south of Angur
7 Ada, just like the defendant described.

8 The defendant remembered something else about the
9 timing of the attack. It was a Friday, he said. So he was
10 asked, "Well, how do you know it was a Friday?" There was a
11 reason. He said that, "The town that's nearby has a mosque
12 and everybody in that area is Muslim, and I can hear the
13 microphone because the mosque also had a microphone and
14 speakers, and I could hear the imam's sermon and the people
15 getting ready for Friday prayer." And, again, there's no
16 dispute about these facts. The parties have stipulated April
17 25th, 2003, was a Friday, exactly like the defendant
18 remembered.

19 Something else the defendant remembered about the
20 timing was that the attack took place just around the time or
21 just prior to the time that then-Secretary of Defense Donald
22 Rumsfeld was scheduled to visit Afghanistan, and this is a
23 memorable part of the defendant's interview. Remember
24 Muhammad Ag? He was the Hausa interpreter who translated for
25 the defendant in Italy. Well, he testified here; and he told

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1 you that when the defendant first mentioned Rumsfeld's name,
2 he had trouble understanding what he was saying. So he
3 translated it first as Francis V and then it was translated as
4 Rameses V and eventually it was clarified that what the
5 defendant was actually saying was Donald Rumsfeld. But the
6 point here is the defendant said, "It was before that visit,
7 before Rumsfeld's visit. That's when we met up with the
8 American forces, and we went to throw missiles at them." Once
9 again, independent testimony and evidence corroborates the
10 defendant's accounts.

11 Colonel Player, who testified in court -- remember
12 he was the Public Affairs Officer for Donald Rumsfeld in
13 2003 -- he went on the trip with Rumsfeld to the Middle East
14 around that time. This photo on the right (indicating) ran in
15 the *New York Times* on April 30th, 2003, five days after the
16 attack, and it shows Rumsfeld -- he's in the front of the
17 photo towards the right -- and you can see Colonel Player,
18 too. He's all the way on the far right in the front. And as
19 Colonel Player told you, they did go on that trip to
20 Afghanistan. They arrived there on May 1st, again, exactly as
21 the defendant described.

22 In Italy, the defendant then began to describe the
23 stages of the attack in detail. He remembered the timeline
24 pretty clearly and one of the things he said is that early on,
25 he remembers seeing these helicopters coming in and he said

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1 they were from a northerly direction of the American base. So
2 the helicopters are important here.

3 As you heard from First Sergeant Severino, all the
4 supplies that went to Firebase Shkin had to come in via
5 helicopter. They couldn't just drive it in; and on that
6 morning, on April 25th, when the patrol went out and Captain
7 Trahan took that first group of soldiers, Sergeant Severino
8 stayed behind. He was in charge of that resupply. There were
9 helicopters coming into the base to deliver food and equipment
10 and other supplies, and he told you about the particular
11 helicopters that they used.

12 (Government Exhibit 254 published to the jury.)

13 MS. WELLS: The resupply helicopters were called
14 Chinooks. That's the photo on the right, Government Exhibit
15 254. These are cargo helicopters. They carried all of the
16 food, the supplies, the stuff that had to be brought to the
17 base, and they were accompanied by a different kind of
18 helicopter, Apache gunships. And as he told you, the resupply
19 routes came in from only two ways. One of the resupplies came
20 in from the northwest. The other resupply came in from the
21 north. And in either event, it was just what the defendant
22 said, from a northerly direction.

23 And, ladies and gentlemen, the defendant even knew
24 why these helicopters were there. At a different point during
25 the interview, he said the helicopters were coming in to bring

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1 the Americans their food and their equipment. It's on page 50
2 of the transcript. You can hear in the audio, too.

3 And so the defendant remembered specifically what
4 happened. He said, "Well, I saw the Chinook helicopters." He
5 mentioned those by name. "They came in, and they parked,"
6 which is right. Severino said, "I was there, helping to
7 unload the helicopters."

8 And while the Chinooks were parked, the Apache
9 gunships -- those are the armed escorts there to protect
10 them -- the defendant remembered seeing the Apaches come in,
11 flying to the area where he and the other al Qaeda fighters
12 were. Once again, that is exactly what you heard this
13 soldiers testify to.

14 Captain Trahan and First Sergeant Severino, when
15 they realized that they had these Apache helicopters
16 available, they said let's send them out and have the pilots
17 go do a search of the area where the patrol is headed to find
18 out if they see anything. The defendant remembered when those
19 Apaches were circling near him, he said, "The captain who was
20 in the helicopter was not able to see us because he didn't get
21 low enough." And he's right. The defendant and the other
22 fighters who were hiding there in the scrubby brush and the
23 trees and the mounds of dirt and rocks. They got lucky
24 because the pilots didn't see them.

25 Remember, Captain Trahan said he got a report back

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1 that nothing had come from the search, and so with that
2 information in mind, he decided to push forward, to bring the
3 patrol to the location where that suspicion activity had been
4 reported and to see what was there.

5 After the Apaches left, the defendant described
6 something else. He said, "I heard the sound of engines of
7 vehicles coming from the American base." What the defendant
8 heard was the sound of Captain Trahan and the other members of
9 the patrol driving up onto the hilltop.

10 And when they arrived, Captain Trahan got out of the
11 truck and the members of the patrol spread out and
12 Captain Trahan walked forward. And what he saw was an enemy
13 encampment, canteens with water, burlap sacks for concealment,
14 and rockets, all the tools that the defendant and the other al
15 Qaeda members needed for another attack on the base.

16 And as Captain Trahan turned to report what he'd
17 seen to the other soldiers, that's when the attack began. As
18 he turned around to make this report, all of a sudden, the
19 ground erupted around him. He said it was like being in a
20 rain shower where the water jumps up from the ground as the
21 raindrops hit, except it wasn't water. It was sand. And it
22 wasn't rain. It was bullets.

23 As this happened, Captain Trahan immediately got
24 down. He began running back towards the vehicles, and as he
25 did so, he saw that one of his soldiers, Sergeant Brown, had

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1 been injured. He'd been shot in the knee. Sergeant Brown
2 plays an important role here. One of the reasons is that he
3 was the first -- although not the last -- American soldier to
4 be injured that day, but another reason that he's important is
5 because of something the defendant said. The defendant
6 remembered seeing someone specific on the hilltop that day.

7 The person the defendant saw he described like this.
8 "The other individuals with him were white, but like I said,
9 he was a black individual and his body type is the body type
10 of a commando. He's very thick, thick-built."

11 And during the trial, Captain Trahan, who knew
12 Sergeant Brown, described him. And what did Captain Trahan
13 say? He said, "Brown is a large man. Looks like a middle
14 linebacker, black, bald."

15 And there on the right is a photograph of
16 Sergeant Brown, big guy, tall guy, built like a commando,
17 built like a linebacker, the same person the defendant saw on
18 the hilltop that day, but that wasn't the only thing the
19 defendant remembered about Sergeant Brown.

20 He said, "I don't know whether he was hurt or
21 whether he was injured or what, but I heard him yelling out to
22 his friends." Now, remember Sergeant Brown's been shot in the
23 knee. So the defendant says, "Well, I remember seeing this
24 big, black man, and he starts yelling out to his friends."
25 And then the defendant says, "Well, I heard him yelling and I

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1 don't know what his name was but then one of his friends came
2 to his position so he can come and help him. I heard him
3 running. He was running."

4 Once again, what the defendant saw and what the
5 defendant remembered is exactly what the soldiers told you.
6 Sergeant Brown gets shot in the knee, and so he does start
7 screaming. He starts screaming for a medic. And remember
8 Sergeant Cyr? He said he hears Sergeant Brown calling out for
9 a medic and Cyr starts yelling for a medic, too, and at that
10 point David Simmons, Doc Simmons, he comes running to where
11 Cyr is.

12 And this is what Cyr said at trial. He said,
13 "Simmons came, and he took a knee beside me. He asked me
14 where Sergeant Brown is located. I directed him to Sergeant
15 Brown's position and then he picked up and ran the rest of the
16 way across the enemy fire, the rest of the fire line to
17 Sergeant Brown's position, to render aid." In other words,
18 Doc Simmons was that same man the defendant saw running,
19 running to go and help his friend, Sergeant Brown.

20 And Simmons remembered the same thing. He testified
21 that he heard someone yelling, "Medic"; and some other people
22 were yelling, "Doc." And this is how he described it. He
23 said, "I guess I forgot that we were in a firefight and I went
24 towards that sound."

25 So he was asked, "When you say you've forgotten you

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1 were in a firefight, what did you do?" He said, "I stood up
2 and ran towards that direction." He didn't crawl. He didn't
3 crouch. He didn't go carefully. He ran, fully visible on
4 that hilltop, fully visible to the defendant, exactly what the
5 defendant saw.

6 And Simmons told you what happened. When he got to
7 Brown, he started performing first aid, and he couldn't stop
8 the bleeding with just bandages, so he put on a tourniquet.
9 And then he and two other soldiers -- he needed help because
10 Brown was a big guy, right? -- they loaded him into the back
11 of a vehicle, which is something else the defendant said. He
12 remembered seeing injured soldiers being taken away from the
13 attack site in a vehicle. That's on page 58 of the
14 transcript. You can hear it in the audio.

15 Now, the reason that this ambush, this attack on
16 U.S. soldiers worked so well, well, there's a couple of
17 reasons. One, the defendant said they could hear the soldiers
18 driving up as they were coming up on the vehicle. So they
19 knew in advance that the soldiers were on their way, but there
20 was something else. The defendant said, "We were at lower
21 position and they were at the higher position, and because we
22 were at a lower position, they couldn't see us."

23 And so remember what Captain Trahan said. He
24 described the area, this hilltop, right? And there's a steep
25 dropoff. And he said what happened is, as you went up to the

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1 hill, if you look out this way, you could see forever, but it
2 wasn't until you got right up into the edge of the hill that
3 you could see what was just on the other side. So that
4 downslope was completely obscured from the soldiers' view.
5 Their vision was limited, not to mention the terrain.
6 Captain Trahan told you there was those small, scrubby trees
7 and the brush. There were mounds of rocks and dirt
8 everywhere. He said sometimes you couldn't see what was 10
9 meters in front of you because of the landscape.

10 So the defendant and the other al Qaeda fighters,
11 they took advantage of their position, and when the soldiers
12 got there, they began firing their Kalashnikovs and throwing
13 their grenades. These are the defendant's words. "Because we
14 were face-to-face and I had a direct shot, that's when I
15 opened my Kalashnikov and started firing at them."

16 But the Kalashnikov, that assault rifle, that AK-47,
17 it wasn't the defendant's only weapon. He had grenades and he
18 described during the confession that calmly and
19 matter-of-factly how he started shooting at the soldiers and
20 yelling, God is great. God is great. "Allahu Akhbar." And
21 then he started throwing the eight grenades that he had with
22 him, one after the other.

23 And this was possible because, as the defendant
24 said, there were only about 10 meters between him and the
25 soldiers; and that's what Captain Trahan remembered, too.

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1 Trahan told you that at some point early in the attack he
2 remembered two men just popping up and one of them was firing
3 a Kalashnikov and the other was throwing grenades and he said
4 those two men were only about 10 or 15 meters away.

5 And Trahan wasn't the only one who remembered the
6 grenades. This was Sergeant Cyr. He remembered this moment
7 where he was looking, and he said, "I saw the sunlight reflect
8 off a metal object in the air coming toward me. I didn't see
9 exactly what the item was, but I knew instinctively it was a
10 hand grenade." He was right. The grenades kept coming.

11 And the grenades are important because the defendant
12 remembered something else. He said at one point when he was
13 throwing the grenades, when he was hurling those one after the
14 other, he saw one land close enough to a couple of soldiers,
15 so close that when he saw it explode, he was certain that they
16 were injured. And there were a number of soldiers who had
17 grenades detonate right next to them during the battle.

18 One time, one of those grenades, it hit Sergeant
19 Reed. This is the first one. Sergeant Reed remembered that
20 hit his weapon. Then it hit his body. And he thought to
21 himself, I needed to get away from this as fast as I can. So
22 he rolled onto his stomach and he began crawling away as
23 quickly as he could, but then that grenade exploded and it
24 sent shrapnel into his left foot.

25 Now, for a lot of people that would have been enough

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1 to take them out of commission, but Sergeant Reed still had a
2 job to do. His responsibility was to call in artillery.
3 That's the indirect fire, remember, the rounds that are fired
4 back from the firebase, not from the location of the soldiers.
5 And the way that that works is someone out on front has to be
6 able to give the location back to the base so they know where
7 to fire. That's Reed's job. So he goes back, and he's
8 rushing towards Captain Trahan and Lieutenant Dolan so that he
9 can begin calling in that artillery.

10 At that point, Sergeant Reed sees Captain Trahan
11 who's walking back out to the edge of that hilltop right to
12 that point where you can actually see. And he looks and he
13 says a spray of red mist from Trahan's leg and Trahan goes
14 straight to the ground. Sergeant Cyr saw the same thing. He
15 saw Trahan walk out in this low crouch, he said, and as he got
16 close to the edge, his legs just came right out from under
17 him. And Trahan told you what happened to him is that as he
18 was walking out, he gets shot multiple times in both legs. He
19 takes another round through his helmet.

20 So after Trahan is shot, Cyr rushes out, and he's
21 going to help him because remember Doc Simmons is gone. He's
22 already left with Sergeant Brown. So Cyr is there, and he's
23 trying to help bandage up Captain Trahan's legs. And the only
24 cover that they have, these two grown men, full gear, is a
25 rock and the rock is 12 inches high and Cyr remembers a

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1 grenade. He just sees it coming right up over the hill and it
2 lands so close to them in front of that twelve-inch rock that
3 he couldn't even see the grenade and it explodes. And Cyr
4 said it was a miracle that they weren't injured.

5 But that wasn't the end of grenades. The attackers
6 weren't done. Cyr saw at least four grenades that came up
7 over the hilltop, and another one of those grenades landed
8 next to Sergeant Reed. This is the second grenade, and this
9 time, Reed wasn't as lucky.

10 He said that he saw a grenade, but then the next
11 thing he knew, he was waking up. He'd been knocked
12 unconscious. He'd been thrown 15 feet from where he had been
13 before. When he looked down, his arms and his legs are
14 covered in blood; and his body armor is mangled in the front.
15 But Reed still had a job to do. This is the artillery guy,
16 right? And so we're going to come back to Reed in a second.

17 But this is something else the defendant said. You
18 remembered radios. He said that the soldiers were about 20
19 meters away from him and the other al Qaeda fighters, and they
20 weren't the ones firing those mortars. "The mortars were far
21 away from us." Again the defendant's right. The artillery's
22 coming back from the base, not from the location of the
23 soldiers. Defendant said, "They were also holding a radio. I
24 heard one of the American soldiers talking possibly on a
25 radio. I think he was talking to some of the individuals at

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1 the base that's close to us, the place where we shot two
2 mortars." In other words, he understood what was happening.
3 He understood that artillery was being called in. He
4 understood that he could hear the soldiers on the radio,
5 making the calls.

6 And, again, that's exactly what you heard from the
7 soldiers. Reed told you, after the second grenade hit him,
8 after he gets injured, he still has to call in artillery.
9 He's still doing his job. And so what he does is he needs GPS
10 data. He needs a location to instruct where to fire the
11 rounds and the only thing he has is a broken GPS that got
12 blown up by one of the grenades and the screen's frozen. It's
13 got the old data on it. So he works from that to reconstruct
14 it, and he makes the call.

15 And he told you what he did when he called in the
16 artillery. He said, "I got on the radio." And here are his
17 words. "I tried to be as clear and loud and monotone as I
18 possibly could. I didn't want there to be any confusion."

19 And so it makes sense, ladies and gentlemen, that
20 when Reed is on the radio -- and by the way, he said he was
21 about 20 feet from the edge of the hilltop, so close -- it
22 makes sense that the defendant was able to hear that clear,
23 loud, monotone voice calling for artillery, calling for help.

24 The defendant also remembered the actual artillery
25 strikes. He said, "They threw two mortars toward us, but they

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1 didn't hit our position. They were about 200 meters away from
2 us."

3 And again, this is exactly what you heard from Reed.
4 They did call the artillery, it did get called in, but the
5 strikes went out too far. So, Reed told us that, "The
6 artillery strikes did not land exactly where we wanted them
7 to; and because we were still receiving pretty heavy fire, at
8 that point myself and Lieutenant Dolan decided we wanted to
9 bring the rounds about a hundred meters closer to our
10 location." They knew that they'd overshot their goal, and so
11 they called in some more.

12 Now, towards the end of the attack, you heard from
13 Lee Blackwell. Lee Blackwell was one of the two Air Force
14 members who were embedded with the Army company at the base.
15 And he and Ray Losano had the job of calling in air support,
16 Air Force resources, jets and helicopters. So towards the end
17 of the attack, Blackwell managed to do that. He managed to
18 get jets and helicopters into the area, which is something
19 else the defendant remembered. The defendant said, "The
20 Apaches didn't strike at us, but there were two jets
21 approaching." The Apaches are the helicopters. And the
22 defendant said, "As we were fighting, I could see the jets
23 with my own eyes, and I could see them playing around, making,
24 doing maneuvers."

25 And he was right. There were jets and helicopters

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1 in the area and they were doing maneuvers, except the
2 defendant didn't really know what that meant, but Blackwell
3 told you. He brought in all of that air support, and they
4 were doing what Blackwell called a "show of force." It was
5 flying low, close to the ground, and the goal was hopefully to
6 scare or help to scatter the enemy fighters. And the reason
7 that they were doing a "show of force" and not firing was for
8 two reasons: One, Blackwell told you, because of the location
9 of the enemy fighters, they were danger-close. That meant
10 that they were too close to the American soldiers to fire
11 without risking lives; and there was a second reason, which is
12 at this point in time, there was a soldier missing, Jerod
13 Dennis; and they couldn't risk firing if they didn't know
14 where one of their own was.

15 And so you heard in the defendant's own words how he
16 and the other al Qaeda fighters he was with on April 25th used
17 heavy, deadly firepower -- assault rifles, grenades -- to
18 attack U.S. soldiers and, ladies and gentlemen, the efforts of
19 the defendant and those other fighters to kill and injure
20 Americans worked.

21 (Exhibit published.) This is a photograph of Airman
22 Raymond Losano. He worked with Lee Blackwell. They were the
23 two Air Force men out on the patrol on April 25th, and you
24 heard from Lee Blackwell that they got up to the hilltop with
25 that patrol, and as soon as they got out of their vehicle,

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1 Blackwell told you they were getting shot at from all
2 directions. Remember what he said. He said, "I told Ray
3 we're going to run for cover."

4 So they did. They booked it over to this Humvee
5 that wasn't too far from where they were, and they just hit
6 the ground next to tire on the passenger's side, hoping to get
7 some shielding from the chaos that was around them. And while
8 they're doing this, they're still doing their jobs. Right?
9 They're there to call in the Air Force air support.

10 And Losano reported back to Blackwell that those
11 jets that they were calling in, that they were on the way.
12 Blackwell said, "The last thing that Ray told me was, 'we have
13 blue-zero-three, five minutes, blue-zero-three, five
14 minutes.'" In other words, help is on the way.

15 And at that point, Blackwell realizes, we're down
16 next to the tire of this truck and the driver doesn't know
17 that we're here and I need to get up and tell the driver so
18 that he doesn't leave or so that he doesn't hit us. So
19 Blackwell crawls back and he opens the rear passenger door and
20 goes to talk to the driver. At this point, another soldier
21 nearby gets shot and Blackwell goes to check on him, thinking
22 surely, he's dead. And he goes and he looks at the soldier
23 and he's not. He's alive.

24 But at that point, the door of the Humvee, that big,
25 heavy, armored door, it starts slamming against Blackwell and

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1 Blackwell looks and he sees Ray. Ray is holding his face.
2 There's blood. He's been shot. And so Lee Blackwell did what
3 he could do for his friend, which was to offer comfort. He
4 said, "I love you." He said, "I'm proud of you." He said,
5 "Your family loves you."

6 Ray Losano died on April 25th, but he wasn't the
7 only soldier who was killed by an al Qaeda bullet that day.
8 And the al Qaeda attack on the hilltop that you heard so much
9 about, that wasn't the only attack. There was a second one,
10 an ambush later the same day.

11 And during his confession in Italy, the defendant
12 talked about that second attack, too. He said, "The mortar
13 group." Remember the defendant was part of the katyusha
14 group. This is another one of the al Qaeda fighting groups
15 out there that day. "The mortar group also had an encounter
16 with the Americans. There was a pickup that arrived, and I
17 think there were four individuals." And the defendant was
18 right. There was an encounter and four soldiers in a pickup
19 truck.

20 So remember back in the middle of the attack on the
21 hilltop the reports start coming in that someone's lost, MIA,
22 missing in action. Doc Simmons remembers hearing on the radio
23 that someone was lost, and they were searching for Code Name
24 Dennis. And Simmons was confused because he knew that Jerod
25 Dennis was the real name of a soldier and he was confused,

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1 too, because he had seen him not too long before. So he
2 called in Dennis' location.

3 And Sergeant Reed had also seen Dennis.
4 Sergeant Reed remembers that as they were leaving the hilltop,
5 we met a vehicle, a Toyota Hilux. In that vehicle was
6 Sergeant First Class Setzer, an Afghan AMS soldier, Specialist
7 Camacho, and Private Dennis. Four soldiers and a Toyota
8 Hilux. And what's a Toyota Hilux? It's a pickup truck.

9 Reed told you that that back part of that vehicle
10 would be open. It would be just like cargo space like a
11 pickup truck, and that photograph on the right is a picture of
12 a Toyota Hilux. The angle's a little tough, but you can see
13 in the back it's open. That's a pickup.

14 So Reed saw this vehicle with Dennis and the other
15 three soldiers and after they passed and after they went their
16 separate ways, only about 30 seconds elapsed and then Reed
17 hears this. "As we were driving away, we heard what I would,
18 I guess, describe as an explosion of gunfire and different
19 weapons systems. It was very loud and seemed to come from
20 directly behind us. There was what sounded like RPGs, as well
21 as machine gunfire." Over at the casualty collection point
22 First Sergeant Severino, he heard the same thing. He said,
23 "Off to our south, a couple hundred meters away there was a
24 long burst."

25 And I asked him, "When you say a long burst, a long

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1 burst of what?"

2 Answer: "Automatic weapons fired."

3 Shortly after hearing this, Sergeant Severino
4 learned that Jerod Dennis was missing; and so he sent
5 Sergeant Graf, who testified here at trial, to go and look for
6 Dennis. You heard from Sergeant Graf that, as he was driving,
7 he saw what he described as a rather large cloud of dust just
8 out of the blue, out of nowhere. "I knew there was one of our
9 vehicles over there. So, the thought crossed my mind there's
10 possibly an attack of some sort over in that area."

11 And after that, Graf says that he saw the other
12 three soldiers who Dennis had been with before -- Setzer,
13 Camacho, the Afghan militia member, but no Dennis. So Graf
14 kept going and he was yelling out Dennis' name and at some
15 point, he thought he heard a response. And so he goes further
16 up the hill, and then he sees something white in the distance.
17 As he gets closer, he realizes it's the Hilux. It's the
18 pickup truck. And he looked around in the area near the
19 pickup truck, and what he saw were hundreds of shell casings.
20 There had been a fight.

21 So, he goes a little further. This time he's going
22 down the other side of the hill and he's walking and he sees
23 what looked to him as first like a pair of red sweatpants.
24 Then he looks; and he recognizes boots, the same boots issued
25 in basic training, and a brown T-shirt that looks familiar.

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1 And then he sees. It's Jerod Dennis. And Graf's worried that
2 Dennis has already lost too much blood. Remember those red
3 sweatpants? And so he and another soldier, they picked Dennis
4 up; they put him in a vehicle; and they rush him back to the
5 CCP so that he can get medical treatment. When the defendant
6 talked about this encounter with the mortar group, the other
7 al Qaeda fighters, and the soldiers in pickup truck, what the
8 defendant said was that no one among them, meaning the al
9 Qaeda fighters, was hurt.

10 Jerod Dennis wasn't so lucky. Later, he and
11 Sergeant Reed were evacuated from Shkin and they were taken to
12 Bagram, Afghanistan, where there was a hospital. And
13 Sergeant Reed said that he saw that Dennis was being brought
14 into surgery while Reed was being taken for additional
15 treatment, and Sergeant Reed didn't see Jerod Dennis again.

16 So ladies and gentlemen, that is the testimony of
17 the soldiers who survived the attack and you have seen and
18 you've heard all the ways that what they described completely
19 confirms the defendant's account of the attack that he
20 participated in. They're describing the same events, the same
21 day, the same place.

22 But in addition to testimony of the soldiers,
23 there's physical evidence, objects, books that prove that the
24 defendant was one of those al Qaeda fighters trying to murder
25 U.S. soldiers during the April 25th attack. So we'll take a

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1 look at those items.

2 We have to start here. The defendant during his
3 confession remembered that one of the members of his team was
4 killed during the attack, and this is the description that the
5 defendant gave. He said, "When I looked at the injury, I saw
6 that his foot was broken. The skin and muscle on his foot had
7 all separated from the bone."

8 And so here are the words that the defendant used
9 that are important. Once again, do you remember Muhammad Ag,
10 the translator from Italy? He told us something important
11 about the Hausa language, the language that the defendant was
12 speaking. He said there's a word in Hausa. It's called
13 "kafa," and it mean two things. It can mean "foot" or it can
14 make "leg" and it all depends on the context.

15 During the interview in Italy, the translator said,
16 "I used the word 'foot' when I translated it, but it could
17 equally have meant 'leg.'" And that makes sense when you look
18 at the other things that the defendant described about the
19 person he knew who had been killed which is that his legs were
20 moving -- his leg and foot were moving in opposite directions.

21 (Government Exhibit 280 published to the jury.)

22 THE COURT: And so take a look at Government Exhibit
23 280. That's a photograph of the fighter who was killed on
24 April 25th, and that person's leg and foot are moving in the
25 wrong directions. And as you heard from Medic Simmons and

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1 from First Sergeant Severino, they both saw this, and they
2 both remember that that fighter who had been killed had
3 sustained very serious injuries to his leg. And so the reason
4 that the defendant's description of the fighter who he knew to
5 be killed, the reason that matches with the photograph and
6 what Severino and Simmons remember is because they're
7 describing the same person.

8 But there's another reason that we know that the
9 defendant knew this dead enemy fighter and that we know that
10 the defendant was there on April 25th. After they found this
11 person, Sergeant Severino instructed some of the soldiers to
12 search the enemy fighter's body to figure out if he had any
13 weapon or anything dangerous but also to find out if there
14 were any items of intelligence value, if there was any
15 information they could learn about the enemy. So they did
16 that search.

17 (Government Exhibits 101 and 102 published to the
18 jury.)

19 MS. WELLS: And Severino took both of these photos,
20 101 and 102, right about the same time after the search was
21 completed. On the left is the enemy fighter, and on the right
22 are all of the items that they found during the search. So
23 look at what those items are.

24 There's an AK-47 in the upper left-hand corner.
25 There are a bunch of different magazines. Each of those holds

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1 30 bullets. There's a pocketknife. That little round, round
2 thing is a hat. And then nestled into the hat is a book.

3 (Government Exhibit 8 published to the jury.)

4 MS. WELLS: That's this, Government Exhibit 8. This
5 is the same book in that photograph that Severino took on
6 April 25th, and that book was translated. And do you know
7 what it said? It has the defendant's name. When you actually
8 look through the book, what it has are a series of dated
9 entries, basically a diary or a journal. This entry was from
10 April 18th, 2003. Remember the connection is day, month,
11 year. So 18, April, 2003.

12 And under that is a list of names. One of those
13 names is "Abu Tamim." "Abu Tamim" should sound familiar to
14 you because that is one of the aliases that the defendant said
15 he used during his Italian confession, and he didn't say just
16 say it. He wrote it down.

17 (Government Exhibit 32 published to the jury.)

18 MS. WELLS: That's Government 32. That's the
19 defendant's handwriting. The sticker's upside down because
20 the defendant wrote it upside down on the page. "Abu Tamim"
21 is the defendant's name, written in the journal, taken from
22 the al Qaeda fighter who was killed on April 25th.

23 And there's something else here. There's other
24 names that are highlighted: "Khalid," "Walid." If you go
25 back to the defendant's confession, he talks about the names

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1 of other al Qaeda fighters in his group; and their names were
2 Abu Khalid and Abu Walid.

3 That's another significant name in that same journal
4 entry. The journal says "Hamza" and then in parentheses
5 "Australi." If you go back to Government's 400 -- again,
6 that's the list of people, places, things that the defendant
7 listed during his interview -- one of those names listed under
8 "Individuals in Angur Ada," right, the town that the defendant
9 lived in near the base during the April 25th attack, one those
10 individual was Abu Hamza al Australi. "Al Australi" just
11 means "the Australian." Same person the defendant mentioned,
12 listed in the book pulled off of the fighter who was killed on
13 April 25th.

14 And you may also remember that Evan Kohlmann talked
15 about Abu Hamza al Australi. He's up on the board, too. That
16 was the name of an Australian citizen named Matthew Stewart
17 who went to Afghanistan and joined al Qaeda. Abu Hamza was
18 his kunya just like "Spin Ghul" was the defendant's kunya.

19 This is another entry from the journal. This one is
20 from April 22nd, just three days before the attack; and it
21 says: "Fired 12 BM missiles." Again, exactly what you heard
22 from the defendant, missile attacks on the base in the days
23 leading up to April 25th, the same thing you heard from the
24 soldiers: Missile attacks on the base in the days leading up
25 to April 25th. But that's not all. Let's talk about the

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1 defendant's fingerprints. We'll start with the confession.

2 Twice in Italy the defendant talked about how he had
3 a Qur'an with him before the attack. He said, "When we
4 finished talking, I reduced the volume on the radio; and I sat
5 down, reading the Qur'an." And then later separately said,
6 "They were sitting, and we finished eating. I was reading my
7 Qur'an. Then I heard a helicopter noise." Now this is at the
8 beginning. This is the Chinook and Apache helicopters coming
9 in to do a resupply. So the defendant talks about reading his
10 Qur'an. Let's fast-forward to the end of April 25th.

11 First Sergeant Severino, after he took the
12 photographs outside of the enemy who had been killed and the
13 items collected from that enemy, he went back to the base to
14 the Tactical Operations Center, TOC, and there, they'd spread
15 out a bunch of items that had been collected from the attack
16 site that day on those tables and so he took photographs as a
17 way to track what they'd found. And so we're going to talk
18 about the Qur'an, but I want to point out a couple of things
19 really quickly in these photos.

20 Some of the items they picked up are those tools,
21 the pliers, the wrench. They also picked up batteries. You
22 can see they look like Duracells or coppertops. Then the
23 other little container has what Severino identified as
24 waterproof matches -- and the reason that I'm pointing these
25 things out is because during his confession the defendant

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1 explained what he would do to launch those katyusha rockets
2 and he said the way that they worked is with a battery and a
3 wire. And the defendant said you needed to use pliers to
4 tighten up the wire, and then you lit it with a match. That
5 is the toolkit that you need to launch the rockets that the
6 defendant and the other al Qaeda fighters used against the
7 soldiers.

8 But this is the other thing that was on the table.

9 (Government Exhibit 1 published to the jury.)

10 MS. WELLS: You see the photo of that little book?
11 That's Government Exhibit 1. That's this. It's a
12 pocket-sized Qur'an, leather-bound, with a zipper, with a gold
13 emblem on the front, the same item in the photo, the same item
14 found on April 25th.

15 And what happened to this Qur'an after the attack?
16 You heard from Dwayne McKnight. He was one of the soldiers
17 stationed at Shkin from March until August or so of that year.
18 And he said right before they were going to get sent home, he
19 went into the supply room at the base; and in the supply room
20 there was a cardboard box. And he looked in the cardboard
21 box, and he took some things home. He took this Qur'an, and
22 he took some beads. The beads are in the photo, too. They're
23 in the lower left or the lower right-hand corner. You can see
24 the little green tassels.

25 So he took these things home with him, and he kept

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1 them. He moved around, whatever. They were his for years
2 until one day, in 2012, the FBI knocks on his door. They want
3 to talk to him about this, this case; and he gives them the
4 Qur'an. And the FBI sends it to Nicole Bagley, to the
5 fingerprint laboratory at Quantico and, ladies and gentlemen,
6 when Nicole Bagley does her examination of this Qur'an, what
7 she finds is not one, not two, not even three or four, but
8 five of the defendant's fingerprints in that book. After all
9 of those years and all of those miles, the defendant's
10 fingerprints are in the Qur'an that Dwayne McKnight dug out of
11 that cardboard box that Sergeant Severino photographed in the
12 TOC and that the defendant was reading in the moments before
13 the attack.

14 The defendant wasn't done after the attack and his
15 involvement on April 25th only solidified his commitment to al
16 Qaeda and he said, after this, he pledged bayat. That's an
17 oath of allegiance. He pledged bayat to Osama bin Laden, the
18 leader of al Qaeda, and the defendant then set out to join
19 al-Qaeda's deadly external operations and that is a group that
20 sought to conduct terrorist attacks outside of Afghanistan and
21 Pakistan including attacks on the United States and on U.S.
22 citizens or facilities. And as the evidence in this case has
23 shown, the defendant's next plot was to try to blow up the
24 United States Embassy in Nigeria.

25 During this confession, he talked about this. He

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1 was asked, "Well, what do you mean when you say you want to do
2 American operations outside of Pakistan?" And his answer was
3 specific. He said similar to the attacks that were done on
4 the embassies of the U.S. in Kenya and Tanzania.

5 And so with those goals in mind, the defendant went
6 to a high-level al Qaeda official, Abu Faraj al-Libi. He's up
7 there, too, second row. And Faraj al-Libi was a senior
8 commander for Al-Qaeda in Afghanistan; and he was a key player
9 with the group's external operations group, the group that the
10 defendant wanted to be a part of.

11 And so after this meeting, Faraj al-Libi put the
12 defendant in touch with the man who would become his boss, his
13 al Qaeda handler for the Nigeria plot, a man named
14 Hamza Rabia; and it was Hamza Rabia who ultimately facilitated
15 the defendant's travel to Nigeria so that he could continue
16 working on his plan.

17 And the defendant's relationship with Hamza Rabia is
18 important because during his confession he said, "We used to
19 communicate via email. That's how we stayed in touch once I
20 went to Nigeria." And he said, "When we used those emails, I
21 wouldn't call him Hamza. I would call him 'Tom.'" It was
22 Pseudo. And he said that they used two different email
23 addresses to communicate; and defendant remembered,
24 specifically, what one of those e-mails addresses was. It was
25 USUSTS. Again, this is the defendant's handwriting. Those

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1 are his notes. He gave us the email address. He gave us the
2 password. And so the FBI got records from Yahoo because this
3 was ususts@yahoo.com, or yahoo.co.uk.

4 And the records tell us interesting information
5 about this account. One, it gives an account creation date,
6 Saturday, August 9th, 2003, and it gives a time, 10:42. The
7 records tell us something else which is the registration IP
8 address. Just keep this in mind for a second: 210.56.9.254.
9 This is a second Yahoo email address. I'm just going to call
10 this the SLS account. There's a lot of letters there. Let's
11 look at the account creation date for this one: Saturday,
12 August 9th, 2003. This time it's 11:11. Account creation,
13 account creation, about 30 minutes apart, same IP address
14 ending in "254."

15 And the IP address matters for this reason. The IP
16 address tells us about the location that the account was
17 registered. That's what a registration IP address is. And go
18 to the records in Government 75, and it tells you what that
19 location was. Internet Access Provider, Pakistan chapter.
20 Country: PK, Pakistan.

21 We have got two accounts created 30 minutes apart
22 from the same IP address in Pakistan. These are the two
23 accounts the defendant used to coordinate with his handler,
24 Hamza Rabia, a man he called "Tom"; and those account creation
25 dates sync up with everything else that we learned from the

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1 defendant which is that, when he left Pakistan to go to
2 Nigeria to continue working on this plot, he remembered when
3 that took place. He left Pakistan around the time that the
4 country celebrates the day that it gained its independence.
5 The parties have stipulated, Government 302, that in 2003,
6 Pakistan Independence Day was observed on Thursday, August
7 14th. Go back to those creation dates. August 9th, the
8 accounts are created. Five days later is Pakistani
9 Independence Day. The accounts are set up. The defendant's
10 ready to travel. That's when he heads for Nigeria.

11 And he told us what he did. He said he left
12 Pakistan from the Islamabad airport, and he said when he
13 landed in Nigeria, it was in Lagos. Lagos was a big city on
14 the coast of Nigeria. Remember Jerry Barnes? He was the
15 person who was the RSO at the embassy in Nigeria. He said he
16 flew out of that airport a number of times while he was there.

17 And so having set up a channel to communicate with
18 his boss and having traveled to Nigeria, the defendant
19 continued, and his plan was nothing if not straightforward.
20 As he said, "In Nigeria, I focused on my attacking an embassy,
21 the American Embassy in Nigeria." And as you heard from
22 Barnes, around that point in time there were upwards of a
23 hundred people who worked there, all targets of the
24 defendant's plan.

25 (Exhibit published.) This was the embassy. One the

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1 steps the defendant took in his bombing plot was to scout out
2 the U.S. Embassy location. So he recruited an assistant, a
3 messenger, a man named Mohammed Ashafa; and remember Ashafa's
4 name because we'll talk about him again. He and Ashafa went,
5 and they drove around the neighborhoods where the embassies
6 were located. And the defendant said, "We weren't able to
7 find it. We saw some other Western embassies."

8 And that makes sense because Jerry Barnes told you
9 that around that time the embassy had only recently moved.
10 Previously, it had been in Lagos. They were operating out of
11 this temporary location. It was pretty nondescript in a
12 residential neighborhood.

13 So the defendant moved on to another necessary
14 component of his plan which was to look for explosives because
15 he needed to make a bomb. So he found another accomplice,
16 someone else to involve in the plot, a man that he called
17 Maradone. And he said, "I spoke with him, Maradone; and told
18 him I wanted explosives."

19 And Maradone told the defendant, well, there's a
20 place where they break up stones that they use to build homes;
21 and at that place they sell explosives. So the defendant has
22 a lead. There's a place that he can go to look for explosives
23 that he has to collect.

24 And he talked about the location of this company.
25 He said, "I sent Maradone, one of the accomplices, to the

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1 headquarters of that company located on Zaria Road, Zaria Road
2 in the city of Kano."

3 This is what you know about Kano. This is a map on
4 the right. The defendant talked about Zaria Road. That's in
5 the large rectangle. And he said the location of this company
6 where he tried to buy explosives, there's a very tall
7 building. I think it's the only tall building in Kano.
8 Behind that building there's a roundabout, and that roundabout
9 area is called Hausawa.

10 Well, there's Zaria Road; and those two little
11 squares, those are roundabouts. And you heard from Micah
12 Childers who went out and took all those photographs in Kano.
13 This big, tall building was located right off of Zaria Road in
14 that same area where the roundabouts were just as the
15 defendant described.

16 And Jerry Barnes remembered this building. Remember
17 he worked in Nigeria from 2003 to 2006, and he said he would
18 go up to Kano, which was in the north of the country, about
19 every three months. And he recognized this because, as you
20 drove in, you could see it. It was one of the tallest, if not
21 the tallest, buildings in Kano. It was really distinctive
22 because Kano is an old city and this, relatively speaking, was
23 a pretty modern building. So it stood out to Barnes the same
24 way it stood out to the defendant.

25 But while the defendant was in Nigeria, he was doing

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1 a few other things. In addition to his embassy bombing plot,
2 he also began to form relationships with other jihadist
3 leaders in West Africa. This was essentially terrorist
4 networking. And one of the people that he developed a
5 relationship was the leader of a particular group; and the
6 defendant called that group the "Group that Preaches, Gives
7 Religious Advice, and Kills." And he was pretty close.
8 Evan Kohlmann told you the name of that group; and it's the
9 "Salafist Group for Prayer and Combat" which later merged
10 under the al Qaeda brand name as "al Qaeda in the Islamic
11 Maghreb," or AQIM. And the defendant's relationship with the
12 leader of that Preaching and Combat group was important
13 because he said that he received messages from that leader
14 that needed to be delivered back to Pakistan, back to his al
15 Qaeda bosses there.

16 And so he collected those messages and then he sent
17 Mohammed Ashafa -- remember that name from earlier -- he sent
18 his messenger with those items to Pakistan. In Pakistan, the
19 defendant said that Mohammed Ashafa met up with Hamza Rabia,
20 the defendant's handler, his al Qaeda boss. And there, he
21 gave them the messages, and they gave him messages.

22 So Ashafa goes to Pakistan. He drops off the
23 information. He collects other information that he's supposed
24 to bring back to Nigeria. And once again, independent
25 evidence confirms that the defendant was right. Ashafa did

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1 travel to Pakistan.

2 (Government Exhibit 14 published to the jury.)

3 MS. WELLS: This on the right is Government 14.
4 That's the photo page from Mohammed Ashafa's passport. Inside
5 was this. This is a visa page. On the left it's handwritten.
6 Look closely. It says, "Mr. Mohammed Ashafa." There's that
7 photograph. It's grainy, but it's the same face. This is a
8 visa that is good for the Islamic Republic of Pakistan. It's
9 a ninety-day travel document, and there are dates. Mohammed
10 Ashafa's travel was good from April 22nd, 2004, through July
11 21st, 2004.

12 But that's where things went wrong for the
13 defendant. On his way back to Nigeria from Pakistan, he was
14 arrested. Ashafa was arrested. And the defendant talked
15 about what he remembered about the timing of Ashafa's arrest
16 and he said, "I think it was the latter end of 2004. I think
17 it would be to sixth month or the seventh month, but it's the
18 latter half of the year."

19 And, again, that makes sense because remember the
20 visa was good. It was good from April to July. So he would
21 have traveled within that period; and the defendant remembers
22 him getting arrested sometime thereafter, sixth, seventh month
23 of the year or the latter half of the year.

24 And the defendant remembered something else that
25 syncs up our timelines. He says, "Again, that arrest was the

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1 latter half of 2004, and thereafter, I," this is the
2 defendant, Harun, "I traveled to Niger, a neighboring West
3 African country right next door to Nigeria. When I got to
4 Niger, it was the beginning of Ramadan." Ramadan in 2004 was
5 observed between October 15th and November 13th.

6 So that's the timeline. Between April and July,
7 Ashafa traveled to Pakistan. He gets arrested sometime
8 thereafter, as the defendant says, sixth, seventh month,
9 latter half of the year. The defendant flees Nigeria. He
10 goes to Niger and arrives sometime in October. And it makes
11 sense that Ashafa was arrested because one thing we know from
12 the documents is that he was deported from Pakistan back to
13 Nigeria.

14 (Government Exhibit 14 published to the jury.)

15 MS. WELLS: This on the right is from Government 14.
16 It's an emergency travel certificate issued in Mohammed
17 Ashafa's name. It's good for a single journey within the
18 period of one week to Nigeria -- that's in the middle -- and
19 it's dated December 9th, 2004. And it's not highlighted, but
20 if you look at the bottom, it also says that Ashafa's passport
21 was confiscated in Pakistan, which makes sense if someone has
22 been arrested. That's why an emergency travel document was
23 necessary in the first place.

24 And we know that he was deported because this page
25 of Government 14 confirms, Mohammed Ashafa Suleiman, Nigerian

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1 National, deported from Pakistan.

2 So I want to turn back to Hamza Rabia. Remember the
3 defendant said when Ashafa went to Pakistan, he met with
4 Hamza Rabia. They exchanged information. There were messages
5 that were supposed to get delivered back except that Ashafa
6 got arrested. And what kinds of messages were they?

7 Well, remember those hard -- the hard drive that we
8 talked about? Ladi Carballosa testified. He worked for the
9 FBI and he was detailed somewhere else and he remembers that
10 this hard drive came in and he had to go in on a Sunday and it
11 was just an unusual occurrence. But he had learned that there
12 were raids taking place in Pakistan. So he wanted to get this
13 evidence so he could pass it to his colleagues at the FBI.

14 And then you heard from two forensic FBI employees,
15 Jason Abramowitz, who repaired the hard drive because at first
16 it wasn't working, and then Craig Roth, who took a couple of
17 couple of documents from that hard drive. Those are the
18 documents I want to talk about. All right.

19 So one of the documents that comes off of this hard
20 drive is this. This is what Craig Roth called the printer
21 spool file. It's an image of any file that you send to a
22 printer. And this document contains a list of telephone
23 numbers and names, a list of email addresses, passwords, and
24 names, and those two email addresses should look familiar. It
25 the USUSTS account, the same one the defendant wrote down in

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1 Italy; and it's the SLS account, that account that was created
2 30 minutes after the USUSTS account, both in Pakistan. The
3 passwords for the emails are listed in the document; and next
4 to each one is the defendant's name, "Esbin Gol, Spin Ghul."
5 And this document would be interesting in and of itself, but
6 look at the other document that came off of the same hard
7 drive.

8 (Government Exhibit 23 published to the jury.)

9 MS. WELLS: This is Government 23. This is a letter
10 written in Arabic and remember, the defendant said
11 Hamza Rabia, "I called him 'Tom,'" when they would
12 communicate. This is the translation of the letter. It
13 addressed my dear or -- excuse me -- "My beloved and dear
14 brother, Spin." And it is signed, "Your brother and friend,
15 Tom." Now, we don't know how many letters have ever been
16 written that were addressed to someone named "Spin" and signed
17 by someone named "Tom," but I submit to you that the answer is
18 probably one.

19 And if there's any doubt beyond the "to" and "from"
20 line as to who this letter was intended for, take a look at
21 the contents. In this letter, Hamza Rabia gives the defendant
22 detailed instructions on how to conduct his terrorist
23 operations in Nigeria. He tells the defendant to go and scout
24 out places where quote, Americans congregate, like embassies,
25 some military basis, as well as hotels and amusement centers.

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1 He talks about targeting. "Tom" writes, Hamza Rabia, writes
2 to the defendant, "You know very well the importance of
3 targeting the Jews and Americans during this stage. They
4 represent the head of the snake." And then "Tom,"
5 Hamza Rabia, focuses in on a key point for their plans, the
6 bomb. He said, "Materials are extremely important." And just
7 to avoid any confusion, he explained what he meant. "The
8 exact materials I mean are basically explosives."

9 And he talked more about the importance of
10 explosives and what types of explosives to get. He said, "I
11 hope from Allah that you immediately start searching to
12 purchase genuine explosives in the country that you are in and
13 also in Niger. In regards to the quantity that we need, we
14 are in need for at least one ton." Two thousand pounds of
15 explosives were what they needed to blow up an embassy, ladies
16 and gentlemen.

17 And this particular excerpt from the letter -- by
18 the way, this letter is worth reading in its entirety. This
19 contains a vague reference to the defendant's location. It
20 talks about "the country that you are in." But there are
21 multiple references to Nigeria throughout the letter. "Tom"
22 writes, "The Americans are utilizing Nigeria as their own base
23 to control the West Africa region." And he talks to the -- he
24 says to the defendant, "We need to stay in Abuja or Lagos for
25 a period of time." You know Abuja was the capital or is the

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1 capital of Nigeria. Lagos is one the largest cities in the
2 country. The letter, in other words, describes the same
3 mission that the defendant talked about -- the mission to blow
4 up an American Embassy, the steps that they needed to take --
5 in detail.

6 Fortunately, that mission failed. The defendant
7 never got the explosives. Mohammed Ashafa got arrested, and
8 so the defendant fled. He left Nigeria on Hamza Rabia's
9 instructions. "After Mohammed Ashafa was arrested,
10 Hamza Rabia called me and said, told me to get out of where I
11 am, to leave my location."

12 And so the defendant went north. He traveled up to
13 Libya. His goal was to go across into Europe where he hoped
14 to meet up against with Hamza Rabia and start formulating new
15 plans, but that wasn't to be because as the defendant said, he
16 was arrested in Libya and he was detained there until 2011
17 when he was released and he was put on a boat filled with
18 immigrants all bound for Italy.

19 And that brings us back to the beginning of the
20 trial. You heard from three Italian law enforcement officers
21 who were on that boat, that boat filled with immigrants,
22 people who were fleeing civil wars and when they encountered
23 the defendant, what they saw when they encountered the
24 defendant tells you everything that you already learned about
25 him throughout this trial. He proudly confessed his continued

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1 allegiance to al Qaeda. He violently attacked the officers,
2 screaming, "Allahu Akhbar," "Osama bin Laden, Akhbar." He
3 told them he was an important person who had been in jail and
4 that he was a fighter, a combatant which, as you know from all
5 of the evidence in this trial, is true. He fought American
6 soldiers in Afghanistan. He attended training for al Qaeda.

7 And remember the Italian officers, they noticed
8 scars on the defendant. Morgese, he was the first witness in
9 the trial. He remembered a scar on the defendant's arm that
10 had an entry wound and an exit wound, completely consistent
11 with the firearms wounds that he'd seen throughout the course
12 of his career. And the defendant told Battisti -- he was the
13 second witness -- how he got those scars, that he got them
14 from fighting and from training camps, which is exactly what
15 the evidence throughout the trial has shown.

16 And on the boat the defendant wrote a statement.
17 This is his handwriting. You can make out his kunya, "Spin
18 Ghul," his battle name, his combat name, and when you look at
19 the translated version of that document, you see everything
20 you need to know about the defendant, what his priorities
21 were. Three lines, the first line is his name. Second line,
22 his kunya, "Esbin Gol," "Spin Ghul." Third line: "I am a
23 member of al Qaeda."

24 Ladies and gentlemen, later today, the judge is
25 going to instruct you on the law; and what the judge says

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1 governs the case. You must follow his instructions. Before
2 that, I want to briefly discuss the charges and highlight a
3 few things for you to consider when you deliberate later
4 today.

5 Here are the counts: Conspiracy to murder United
6 States nationals. What I expect is that the judge will tell
7 you that a conspiracy is simply an agreement and that United
8 States nationals simply means U.S. citizens. So the defendant
9 is charged with agreeing with others to murder U.S. citizens,
10 and in order for you to find that, you have to find that the
11 defendant acted with malice aforethought. And, ladies and
12 gentlemen, make no mistake. Shooting Kalashnikovs and
13 throwing grenades at U.S. soldiers is malice. Plotting to
14 blow up an embassy with the goal of killing everyone inside is
15 malice.

16 In addition, the Government must prove at least one
17 overt act in connection with this conspiracy, and I expect
18 that the judge will tell you that an overt act is simply an
19 action to advance the goals of the conspiracy. There are some
20 that are specified in the indictment, but any of the actions
21 taken to advance the goals of the conspiracy will suffice and
22 there are many including the defendant's attack on April 25th,
23 his travel to Nigeria, his training, his plotting to blow up
24 the embassy, all of which he did with the help and assistance
25 of other members of al Qaeda, fellow trainees and his

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1 trainers, the other fighters on the hilltop, the katyusha
2 group, the mortar group, his coconspirators in Nigeria,
3 Hamza Rabia, Mohammed Ashafa, and others.

4 The next count is conspiracy to bomb a United States
5 Government facility. Again, I expect that you'll learn that
6 this simply means an agreement to blow up a Government
7 facility with the intent to cause death or serious injury. I
8 submit that the evidence has shown beyond a reasonable doubt
9 that that is exactly what the defendant's intent was.

10 Remember his model for this attack? It was the 1998 embassy
11 bombings. And the evidence has shown that he worked with
12 others to try to accomplish this goal.

13 He's also charged with conspiracy to provide
14 material support to al Qaeda. In order to prove this charge,
15 the Government must show that al Qaeda is a designated foreign
16 terrorist organization, a fact that the parties have
17 stipulated to. The Government also has to prove that the
18 defendant knew that al Qaeda engaged in terrorism or terrorist
19 activity which I submit the evidence has shown.

20 You've heard all about the acts that the defendant
21 himself committed for al Qaeda, but you also heard about the
22 acts that he knew al Qaeda had committed at the point that he
23 joined, the attack on the U.S.S. Cole; the '98 embassy
24 bombings and, of course, September 11th.

25 In addition, I expect that the judge will instruct

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1 you on the definition of material support. There are a number
2 of different ways that someone can provide material support,
3 but one of those is by providing personnel including yourself.
4 Here, the evidence has shown that that's what the defendant
5 did. He became a member of al Qaeda and committed and planned
6 to commit various terrorist acts as a member of the
7 organization.

8 He's also charged with providing or attempting to
9 provide material support to al Qaeda, and for the same reasons
10 that the Government has proven beyond a reasonable doubt that
11 he conspired to provide material support, I submit there's
12 evidence that shows that he either provided or attempted to
13 provide material support.

14 And, finally, he's charged with using or carrying an
15 explosive to commit a federal felony. Here, I expect that the
16 judge will instruct you that explosives can include grenades
17 and missiles, as well as other devices, and I submit that the
18 evidence has shown beyond a reasonable doubt that the
19 defendant used and carried those devices during the attack on
20 April 25th and during his training on behalf of al Qaeda.

21 Over the last two weeks, we have provided you with
22 an immense amount of information and evidence, and we have
23 appreciated your patience and your attention and your
24 diligence throughout the trial. Later today when you go back
25 to deliberate, consider all of the evidence, the confession,

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1 the testimony, the documents, the Qur'an, the al Qaeda
2 journal, the letters.

3 And I submit the evidence has shown beyond a
4 reasonable doubt that the defendant and other al Qaeda
5 fighters attacked American soldiers, murdering Ray Losano and
6 Jerod Dennis, injured Captain Trahan, Sergeant Reed, and
7 others, and that after that, the defendant conspired to blow
8 up an American Embassy with the goal of killing everyone
9 inside. The evidence has shown beyond a reasonable doubt that
10 the defendant is guilty of all of the crimes charged. We ask
11 that you convict him.

12 THE COURT: All right. Thank you, Ms. Wells.

13 Ladies and gentlemen, we'll take our morning break
14 now for 15 minutes until 11:30. Please remember do not start
15 talking about the case amongst yourselves yet. Keep an open
16 mind. We'll see you in 15 minutes. Thank you.

17 (Jury exits.)

18 THE COURT: All right. 11:30.

19 MR. STERN: Judge, just one thing before we go. We
20 are not going to make a closing statement. We want to go
21 directly to charge.

22 THE COURT: Okay. That's fine.

23 (Whereupon a recess is taken.)

24 THE COURT: All right. Be seated, please.

25 What's up?

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1 MR. ARIAIL: Your Honor, in light of the defense
2 counsel's indication that it does not intend to sum up in the
3 case, we think that raises a couple issues we want to address,
4 as you might imagine.

5 THE COURT: I really can't imagine. Why do you
6 think they don't have the right to waive closing if they want?

7 MR. ARIAIL: I'm not suggesting that they don't have
8 the right to waive closing, but I think we probably should
9 take the moment to advise the defendant that they are waiving
10 closing, as a first matter.

11 As a second matter, I think the defense needs to
12 proffer a basis for their decision.

13 THE COURT: The defense needs to disclose their
14 strategy to the Court and the government?

15 MR. ARIAIL: I think if it's ex parte. It sounds
16 like the defense is willing to proffer ex parte to the Court
17 about that strategy and that decision-making process.

18 THE COURT: Well --

19 MR. ARIAIL: And the third thing, is just in terms
20 of the -- in terms of speaking with our appellate guidance
21 from our office, this is something we haven't seen before, and
22 we would just like to take the opportunity over a lunch break,
23 maybe an early lunch, to look at the issues, make sure we're
24 not missing anything else. But those are our three general
25 requests.

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1 THE COURT: Well, if the defendant wants to tell me
2 the -- if the defense counsel want to tell me the strategy on
3 an ex parte basis to which the Government is consenting, I
4 will hear that.

5 I will tell you, first of all, I have no problem
6 with the constitutionality of counsel making a tactical
7 decision not to close. I think the Supreme Court's decision
8 in *Bell v. Cone*, 2002, plainly allows them to do that for
9 strategic reasons.

10 And I also think on the facts of this case, I
11 understand exactly why they're doing it. It seems to me -- I
12 have not yet heard in this case what the factual defense might
13 be that they could argue to the jury. They have legal points,
14 which I understand they're going to pursue. But I don't see
15 the factual basis for it.

16 And if they were to stand up now and argue, well,
17 the Government has the burden of proving everything beyond a
18 reasonable doubt and stress the Government's burden on that,
19 as sometimes happens in cases -- first of all, I'm about to
20 tell the jury that and secondly, that would just give the
21 Government another chance to stand up and say, "You didn't
22 hear one word about how this defendant is innocent, did you?"

23 And so, I think the strategy here is clear and
24 frankly, sound. But I'll take a proffer from defense at
25 sidebar.

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1 MR. ARIAIL: And also, Your Honor, I'm disagreeing
2 with you under the circumstances -- and to be clear about the
3 defense's litigation in this case, it has been extraordinarily
4 aggressive, comprehensive litigation on the legal issues,
5 which they have fought with us tooth and nail on over the
6 course of this case. They have done an admirable and solid
7 job on those issues -- but it's we just want a little bit more
8 time to think about the issues before we press forward.

9 THE COURT: I really -- I don't want to keep this
10 jury longer than necessary. If I have the slightest doubt
11 that this was proper, I'd let you do it. I want to get the
12 jury going on this.

13 I mean, can you be ready in half an hour?

14 MR. ARIAIL: I think a half-hour -- the other issue
15 is with respect to instructions, whether there are any
16 modifications of the instructions.

17 THE COURT: Why would there be?

18 MR. ARIAIL: They have been instructed specifically
19 that they didn't have to give an opening statement, but I'm
20 just concerned about --

21 THE COURT: I'll ad lib it. When I tell them and I
22 make a reference to closing statements or the burden of proof,
23 somewhere I will say the defendant chose not to close and that
24 is absolutely his right. You half an hour? I'll give you
25 half an hour. I'm not giving you more.

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1 MR. ARIAIL: I appreciate.

2 THE COURT: Anything from defendant?

3 MR. STERN: No. Only that we weren't eager to give
4 an explanation of our strategy. If we were directed to do so,
5 we would do so and would seek an ex parte -- but we would
6 rather not tell anyone. It's between us. We made our
7 decision.

8 THE COURT: Yes. I see no reason to force the
9 defendant to disclose strategy even to me, when I can conceive
10 of -- I gave one. I think there are several other reasons why
11 they might not want to close in a case like this.

12 Frankly, I thought from the beginning this is a case
13 that might well have been tried on stipulated facts, but you
14 don't have a defendant who's consenting to that and that's the
15 problem.

16 So take a half-hour. We'll reconvene at 12:15.
17 We'll tell the jury that's what we're doing.

18 MR. STERN: Yes, Judge. As to the instruction, I
19 know you have said you think jurors listen to you when you
20 tell them not to speculate, but we seek no instruction. They
21 shouldn't be -- it shouldn't be brought to their attention
22 what we did not do, so we seek no instruction on our failure
23 to close.

24 THE COURT: I'll think about that. I think I can
25 say it in a way that really doesn't highlight the fact that

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1 you chose not to close. But think I'll think if I can do that
2 enough.

3 MR. ARIAIL: And one other thing, Your Honor, if
4 it's possible if we could just have -- communicate the fact
5 that this is happening to the defendant.

6 MR. STERN: Judge, we oppose that, too. This is
7 not -- we didn't tell him every single time we didn't
8 cross-examine. We have made a strategic decision. It's not
9 one of those decisions reserved to a defendant, specifically.

10 And to highlight this to him -- as to all the other
11 things we have or haven't done -- is inappropriate.

12 THE COURT: Well, he's listening now. He's heard
13 the discussion. And we're going to take half-an-hour and if
14 he has anything to say about it for the first time through the
15 interpreters, they will tell defense counsel what it is he has
16 to say about it.

17 But again, it's a fundamental strategic decision for
18 counsel that I think has a sound basis here.

19 So you're very careful about everything, Mr. Ariail.
20 And I understand that. I appreciate that. But this to me
21 does not seem like an issue. Take a half-hour and confirm
22 that I'm right.

23 MR. ARIAIL: Thank you, Your Honor.

24 (Recess.)

25 (In open court, outside the presence of the jury.)

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1 THE CLERK: All rise.

2 THE COURT: Okay. Be seated, please.

3 So what's the Government's position now?

4 MR. ARIAIL: Your Honor, I think we have looked at
5 the law a little closer and I think they're in pretty good
6 standing in terms of their strategic decision not to sum up in
7 this case. There are cases in the Tenth Circuit as well as
8 the Supreme Court case that you referenced and various other
9 circuits that suggest that it's a strategic decision that's
10 appropriate for defense counsel.

11 THE COURT: With regard to telling -- saying
12 anything about it to the jury, because I did say in the
13 opening that the -- in my preliminary instructions that the
14 parties can waive opening statements, but I didn't say they
15 can waive closing, what I'm going to do is this. On the
16 section on presumption of innocence and burden of proof,
17 there's a sentence that says, "This burden never shifts" --

18 MR. STERN: Judge, could you tell me what page
19 you're on?

20 THE COURT: Yes, seven.

21 MR. STERN: Thank you.

22 THE COURT: Page seven at the bottom, last sentence.
23 See the sentence that starts, "this burden"?

24 MR. STERN: Yes.

25 THE COURT: Okay. I'm going to add in there,

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1 "Burden of duty or duty of calling any witnesses or producing
2 any evidence or opening or closing or even cross-examining
3 witnesses."

4 MR. ARIAIL: That's fine for the Government.

5 MR. STERN: We have no problem.

6 MS. KELLMAN: That's fine.

7 THE COURT: All right. Let's have the jury,
8 please -- if I remember to do that.

9 (Jury enters.)

10 THE COURT: All right. Everyone be seated, please.

11 All right. The Government having closed, does the
12 defendant wish to proceed with closing or waive it?

13 MR. STERN: Pardon me?

14 THE COURT: Do you wish to proceed with closing or
15 waive closing?

16 MR. STERN: Waive.

17 THE COURT: Okay. All right, ladies and gentlemen.
18 You're now about to enter your final duty, which is to decide
19 the fact issues in this case. You have to pay close attention
20 to me now.

21 It's been very obvious to me and I'm sure to counsel
22 as well that you have faithfully discharged your duty to
23 listen carefully observe each witness who testified. I want
24 to express my gratitude to you for doing that. I also want to
25 express my gratitude to the attorneys for their conscientious

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1 efforts on behalf of their clients. Please give me now the
2 same careful attention that you gave the witnesses at trial as
3 I instruct you on what the law is.

4 It's your duty to accept these instructions and
5 apply them to the facts as you determine them. Don't single
6 out any single instruction as alone stating the law. You have
7 to consider my instructions as a whole when you retire to
8 deliberate in the jury room.

9 On these legal matters, you have to take the law as
10 I give it to you, regardless of any opinion that you may have
11 as to what the law may be or what you think it should be. It
12 would violate your sworn duty as jurors to base a verdict upon
13 any other view of the law than that which I'm about to give
14 you. If any attorney has stated a different local principle
15 than I'm about to tell you now, whether in openings or at any
16 time during trial, it's my instructions that you have to
17 follow.

18 As members of the jury, you're going to be the sole
19 and exclusive judges of the facts. You could be wearing black
20 robes for the job that you're about to do. You determine the
21 credibility of the witnesses and resolve any conflicts that
22 there may be in the testimony. You draw whatever reasonable
23 inferences you decide to draw from the facts as you have
24 determined them and you determine the weight of the evidence.

25 Now, in carrying out your duty, remember that you

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1 took an oath to render judgment impartially and fairly,
2 without prejudice or sympathy and without fear, solely based
3 on the evidence in the case and the applicable law. I know
4 that you're going to do this and reach a just and true
5 verdict.

6 Now, as I told you at the beginning of case, I don't
7 have any opinion as to the verdict you should render. If I
8 made any kind of facial expression or any question or ruling
9 or gesture that I made that you thought that meant that I have
10 some opinion about this case, please disregard it. You are
11 incorrect. Similarly, you should not concern yourselves with
12 or speculate about the contents of any discussion that I might
13 have had with counsel at sidebar or when you were outside of
14 the courtroom.

15 In reaching your verdict, you have to remember that
16 all parties stand equal before a jury in the courts of the
17 United States. The fact that the government is a party and
18 the prosecution is brought in the name of the United States
19 does not entitle the Government or its witnesses to any
20 greater or lesser consideration than that accorded to the
21 defendant or any other witnesses that were not affiliated with
22 the Government. The parties -- the United States Government
23 and the defendant -- are all equal before this Court, and
24 they're entitled to equal consideration.

25 Now, your verdict has to be based solely on the

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1 evidence or lack of evidence developed at this trial. You are
2 not to be swayed by sympathy for any of the parties or what
3 the reaction of the parties or the public may be to your
4 verdict. It would be equally improper for you to allow any
5 feelings you have about the nature of the crimes charged
6 against the defendant to influence you in any way.

7 You must not consider any personal feelings that you
8 might have about the race, religion, national origin, sex or
9 age of any of the parties or witnesses. Your verdict will be
10 determined by the conclusion you reach no matter who it helps
11 or hurts.

12 You must also not bear any prejudice against any
13 attorney or that attorney's client because the attorney
14 objected to the admissibility of evidence or asked for a
15 sidebar outside of your hearing or asked me for ruling on a
16 point of law. If you formed any kind of reactions to the
17 lawyers in this case, favorable or unfavorable, whether you
18 approved or disapproved of their behavior as advocates, those
19 reactions must not enter into your deliberations. The
20 personalities and conduct of counsel in the courtroom are not
21 in anyway the issue here.

22 Also, you must not concern yourself with possible
23 punishment of the defendant. The duty of imposing a sentence
24 rests exclusively on me if there is a conviction, and you must
25 not let it influence your deliberations or the verdict that

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1 you reach.

2 Now, let me tell you about the burden of proof by
3 which you must judge the defendant. Although he has been
4 charged in an indictment -- we call it a charging
5 instrument -- that's only an accusation in writing. It is
6 entitled in no weight in your determination of the facts. The
7 defendant has pled not guilty to the charging instrument and
8 as a result, the burden is on the prosecution to prove guilt
9 beyond a reasonable doubt.

10 That burden never shifts to the defendant for the
11 simple reason that the law never imposes upon a defendant in a
12 criminal case the burden or duty of calling any witnesses or
13 giving opening or closing statements or producing any evidence
14 or even cross-examining witnesses.

15 The law presumes the defendant to be innocent of the
16 charges against him. I therefore instruct you that the
17 defendant is to be considered innocent. He's presumed
18 innocent by you throughout your deliberations, until such
19 times -- if ever -- that you as a jury are satisfied that the
20 Government has proven the defendant guilty beyond a reasonable
21 doubt.

22 This presumption of innocence alone is sufficient to
23 acquit the defendant, unless you as jurors are unanimously
24 convinced beyond a reasonable doubt of the defendant's guilt
25 after a careful and impartial consideration of all the

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1 evidence in the case.

2 That presumption was with the defendant when the
3 case began. It remains with the defendant even now, as I
4 speak to you. And it will continue with the defendant into
5 your deliberations -- again, unless and until you are
6 convinced that the Government has proven his guilt beyond a
7 reasonable doubt. If the Government fails to sustain that
8 burden, you must find the defendant not guilty.

9 Now, you just heard me say more than a few times
10 that the Government has to prove the defendant guilty beyond a
11 reasonable doubt and your question naturally is, well, what
12 does reasonable doubt mean?

13 The words almost define themselves. It's a doubt
14 based on reason and common sense. It's a doubt that a
15 reasonable person has after carefully weighing all the
16 evidence. It's a doubt that would cause a reasonable person
17 to hesitate to act in a matter of importance in their own
18 personal life.

19 A reasonable doubt can arise from the evidence or
20 from the lack of evidence. Proof beyond a reasonable doubt,
21 therefore, has to be proof of such a convincing character that
22 a reasonable person would not hesitate to rely and act upon it
23 in the most important of their own affairs. A reasonable
24 doubt is not a caprice or a whim. It's not speculation or
25 suspicion. It's not an excuse to avoid the performance of an

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1 unpleasant duty, and it is not sympathy.

2 As I have told you, in a criminal case, the burden
3 is at all times on the Government to prove guilt beyond a
4 reasonable doubt. Law doesn't require that the Government
5 prove guilt beyond all possible doubt. Proof beyond a
6 reasonable doubt is sufficient to convict. But it's the
7 Government's burden to prove each and every element of the
8 crimes charged beyond a reasonable doubt.

9 If after a fair and impartial consideration of all
10 the evidence you have a reasonable doubt, it's your duty to
11 acquit the defendant. On the other hand, if after fair and
12 impartial consideration of all of the evidence you are
13 satisfied of the defendant's guilt beyond a reasonable doubt,
14 then you should vote to convict.

15 Now, let me talk to you about what kinds of evidence
16 there are. The evidence that we've had in this case has come
17 in three forms: First, the sworn testimony of witnesses, both
18 on direct and cross-examination; second, exhibits that I have
19 received in evidence. You remember I kept saying received?
20 That means the exhibits were received. Some things were not
21 received. You may only consider exhibits that I admitted into
22 evidence, not any that might have been shown to witnesses, but
23 not admitted.

24 And then the third kind of evidence that you have is
25 stipulations between the parties. As I mentioned during the

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1 trial, a stipulation is an agreement between the parties that
2 certain facts are true, and you must regard such agreed-upon
3 matters as true.

4 Now, let me tell you about certain things that are
5 not evidence and have to be disregarded by you in deciding
6 what the facts are. Arguments, questions, objections or
7 statements by the lawyers are not evidence. Anything I may
8 have said or done is not evidence. Anything you may have seen
9 or heard outside the courtroom is not evidence. Furthermore,
10 when I sustained an objection or ordered that certain
11 testimony be stricken, you have to disregard that question or
12 answer in its entirety.

13 Now, the government gave -- has some exhibits in the
14 form of -- I don't know if they were charts, but they were
15 summaries, summary evidence. Those were shown to you in order
16 to make other evidence more meaningful and to aid you in
17 considering the evidence.

18 They are no better than testimony or the documents
19 upon which they are based and they are not themselves
20 independent evidence. Therefore, you are to give no greater
21 consideration to these schedules or summaries than you would
22 give to the evidence upon which they are based.

23 It's for you to decide whether the charts, schedules
24 or summaries correctly present the information contained in
25 the testimony and in the exhibits on which they are based.

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1 You're entitled to consider those things if you find that
2 they're of assistance to you and analyzing and understanding
3 the evidence.

4 Remember that if you elected to take notes during
5 the trial, your notes only should be used as memory aids. You
6 should not give your notes any greater weight than your
7 independent recollection of the evidence.

8 Also, I don't want you to worry about writing down
9 these instructions because I'm going to give you a copy of
10 what I'm saying to take into the jury room with you. It's not
11 to say you can't make notes. If you want to, feel free, but
12 you will have a copy of these instructions with you.

13 Now, the defendant was not present in court during
14 the trial. As I told you at the commencement of the case, you
15 are not to speculate about the reason for his absence or draw
16 any inferences therefrom. In your deliberations in the jury
17 room, you may not consider the defendant's absence against him
18 in any way.

19 Now, the evidence breaks down into two types. One
20 type is called direct evidence. Direct evidence is where a
21 witness testifies to what is known by virtue of the witness'
22 own senses, that is, what the witness saw, heard or observed.

23 The other type of evidence, circumstantial evidence,
24 is evidence that tends to prove a fact by proof of other
25 facts. Here's a simple example of circumstantial evidence.

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1 As we're sitting inside this courtroom, you don't know if it's
2 raining out or not. There's no windows open here, so you
3 can't tell.

4 But if someone were to walk into the courtroom
5 carrying a dripping wet umbrella and having a raincoat that
6 was dripping wet, could you draw the inference that it's
7 raining outside. The wet raincoat and the dripping umbrella
8 would be circumstantial evidence that it's raining outside.
9 By the same taken, if somebody came in and they're not wearing
10 a raincoat, nobody has a raincoat and there is no sign of
11 water, you could conclude, you could infer that, in fact, it's
12 not raining out. That's all there is to circumstantial
13 evidence.

14 It's entirely permissible for you to conclude that a
15 fact or of set of circumstances exists based on an absence of
16 evidence. You infer on the basis of reason, experience and
17 common sense from an established fact -- like the wet raincoat
18 or the wet umbrella -- or the lack of an established fact --
19 like the lack of a wet raincoat or umbrella -- the existence
20 or nonexistence of some other fact, that is, whether it's
21 raining outside or not.

22 The law doesn't make any distinction between direct
23 and circumstantial evidence. It simply requires that you
24 can't convict the defendant unless you are satisfied of his
25 guilt beyond a reasonable doubt, based on all the evidence in

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1 the case.

2 Now, during the course of the trial, you heard audio
3 taped foreign language recordings and you saw documents that
4 contained foreign writings. At times, you heard from the
5 recordings themselves which had been translated for you. You
6 also heard from other witnesses that recounted some portions
7 of documents and recordings that were presented in foreign
8 languages. For that reason, it was necessary to obtain
9 translations of these materials into English. The
10 translations of those portions of the documents and recordings
11 embody the testimony of interpreters. Because of that, those
12 portions of the material reflecting the foreign language to
13 English translation have been admitted into evidence.

14 You can evaluate translators and interpreters as you
15 do any other witness, and you may accept or reject the
16 testimony of any interpreter or translator. You may also
17 accept or reject the accuracy of the transcript or the
18 translation itself. If there's any discrepancy between the
19 audio that you heard that was received into evidence and any
20 transcription or translation that you got in written form, you
21 have to rely on what you heard -- the audio -- as the best
22 evidence of the original speech.

23 Now, you've heard me use the term "inference." And
24 in the lawyers' arguments, they may have asked you to infer on
25 the basis of your reason, experience and common sense from one

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1 or more established facts the existence or nonexistence of
2 some other fact. It's for you and you alone to decide what
3 inferences you're going to draw.

4 An inference is not a suspicion or a guess. It is a
5 reasoned logical decision to conclude that a fact exists on
6 the basis of another fact that you know exists. It's a
7 deduction or conclusion that you are permitted but not
8 required to draw from the facts that have been proven by
9 direct or circumstantial evidence.

10 You are not to engage in speculation based on
11 matters that are not in evidence. As I told you I think every
12 day, everything you decide this case on needs to have been
13 presented to you in this courtroom.

14 Now, although the Government bears the burden of
15 proof beyond a reasonable doubt and although a reasonable
16 doubt can arise from a lack of evidence, there is no legal
17 requirement that the Government use any specific investigative
18 techniques to prove its case. Law enforcement techniques are
19 not your concern. Your concern is to determine whether or not
20 based on all the evidence in the case the Government has
21 proven that the defendant is guilty beyond a reasonable doubt
22 as to each count charged against him.

23 Now, you may not draw any inference favorable or
24 unfavorable towards the Government or the defendant from the
25 fact that certain persons were not charged as defendants in

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1 the charging instrument. You should draw no inference from
2 the fact that any other person is not present at this trial,
3 and you should not speculate as to the reasons these
4 individuals are not on trial before you. Your concern is
5 solely the defendant who is on trial before you.

6 Now, in alleging dates when you review the charging
7 instrument, you'll see that it refers to on or about or
8 between certain dates. The proof doesn't need to establish
9 with certainty, however, the exact date of an alleged offense.
10 The law only requires a substantial similarity between the
11 dates alleged in the charging instrument and the dates
12 established by the evidence. I also instruct you that the
13 evidence that was admitted into this case was properly
14 admitted, and you should not concern yourself with about the
15 methodology used to obtain that evidence.

16 Now, let me talk to you a little bit about witness
17 credibility. You're going to have to decide how believable
18 each witness was in their testimony. As jurors, you are the
19 sole judges of the credibility of each witness and the
20 importance of their testimony.

21 As I am sure is clear to you by now, you're being
22 called upon to resolve factual discrepancies. You'll have to
23 decide where the truth lies, and an important part of that
24 decision will involve making judgments about the testimony of
25 the witnesses you have listened to and observed. In making

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1 those judgments, you should carefully scrutinize all of the
2 testimony of each witness, the circumstances under which each
3 witness testified, and any other matter in evidence that may
4 help you to decide the truth and the importance of each
5 witness' testimony.

6 Your decision whether or not to believe a witness
7 may depend on how the witness impressed you. Was the witness
8 candid, frank and forthright or did the witness seem like the
9 witness was hiding something, being evasive or suspect in some
10 way? How did the way the witness testified on direct
11 examination compare with the way the witness testified on
12 cross-examination? Was the witness' testimony consistent or
13 inconsistent? Did the witness appear to know what that
14 witness was talking about and strike you as someone who is
15 trying to report their knowledge accurately?

16 How much you choose to believe a witness may also be
17 influenced by the witness' bias. Does the witness have a
18 relationship with the Government or the defendant that may
19 affect how the witness testified? Does the witness have some
20 incentive, loyalty or motive that might cause the witness to
21 shade the truth or does the witness have some bias, prejudice
22 or hostility that may have caused the witness, whether
23 consciously or not, to give you some something other than a
24 completely accurate account of the facts?

25 Evidence that a witness may be biased towards one of

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1 the parties requires you to view that witness' testimony with
2 caution, to weigh it with great care and subject it to close
3 scrutiny.

4 How much you believe a witness may also be
5 influenced by any interest that the witness may have in the
6 outcome of the case. If a witness may benefit in some way
7 from the outcome of the case, that interest may create a
8 motive to testify falsely in order to advance that witness'
9 own interests, whether those interests are personal or
10 professional. That's not to suggest that every witness who
11 may have an interest in the outcome of the case is going to
12 testify falsely. It's for you to decide to what extent, if at
13 all, the witness' interest has affected or colored the
14 witness' testimony.

15 Even if you think that a particular witness was
16 impartial, you have to consider whether the witness had an
17 opportunity to, in fact, observe the facts that the witness is
18 testifying about and the witness' ability to communicate those
19 observations effectively.

20 Ask yourself whether a witness' recollection of the
21 facts stands up in light of all the other evidence. In other
22 words, what you have to try to do in deciding credibility is
23 to size a person up, in light of that person's demeanor, the
24 explanations given and in light of all the other evidence in
25 the case, just as you would in any important matter where

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1 you're trying to decide if a person is truthful,
2 straightforward and has an accurate recollection. You need to
3 be guided by your common sense, your good judgment and your
4 experience.

5 Now, you may have heard evidence that a witness made
6 a state on an earlier occasion before the witness got to
7 court, which counsel argues is inconsistent with the witness'
8 trial testimony. If you find that a witness made an earlier
9 statement that conflicts or contradicts another statement of
10 that witness, you may consider that fact in deciding how much
11 of that witness' trial testimony, if any, to believe.

12 In making that determination, you may consider
13 whether the witness purposely made a false statement or
14 whether it was an innocent mistake, whether the inconsistency
15 concerns an important fact or whether it had to do with a
16 small detail, whether the witness had an explanation for the
17 inconsistency and whether that explanation appealed to your
18 common sense.

19 Now, the fact that the Government called witnesses
20 and the defendant did not does not mean that you should find
21 the facts in favor of one side or the other. By the same
22 token, you don't have to accept the testimony of any witness
23 even if that witness was not contradicted or impeached, if you
24 find the witness not to be credible. You do have to decide
25 which witnesses to believe and which facts are true. To do

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1 this, you have to look at all the evidence, drawing upon your
2 own common sense and personal experience.

3 Now, the law doesn't require the Government to
4 produce all available evidence or call as witnesses all
5 persons involved in the case who may have been present at any
6 relevant time or place or who may appear to have some
7 knowledge of a matter at issue in the trial, nor does the law
8 require any party to produce as exhibits all papers and
9 objects that may have been mentioned during the course of the
10 trial. You are always entitled, however, to consider any lack
11 of evidence in determining whether the Government has met its
12 burden of proof beyond a reasonable doubt.

13 If you find that any witness has willfully testified
14 falsely as to any material fact that is an important matter,
15 the law permits you to disregard the entire testimony of that
16 witness upon the idea that one who testifies falsely about one
17 material fact is likely to testify falsely about everything.

18 However, you are not required to consider such a
19 witness as totally unbelievable. You can still accept so much
20 of the witness' testimony as you deem true and disregard what
21 you feel is false. By the processes that I've just described
22 to you, you as the sole judges of the facts decide which of
23 the witnesses you will believe, what portion of their
24 testimony you accept, and what weight you will give to it.

25 You also heard a lot of testimony from law

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1 enforcement and military witnesses. As I told you at the
2 beginning of the case, the testimony of these witnesses should
3 be evaluated in the same manner as the testimony of any other
4 witness. The fact that a witness is employed as a law
5 enforcement agent or as member of the armed forces doesn't
6 mean that you may accord that witness' testimony any more or
7 less credence than you'd accord that of any other person.

8 Now, you've also heard testimony of identification.
9 Identification testimony is an expression of belief or
10 impression by the witness. You should consider whether or to
11 what extent the witness had the ability and the opportunity to
12 observe the person being identified at the time of the offense
13 and to make a reliable identification later. You should also
14 consider the circumstances under which the witness later made
15 the identification. The Government has the burden of proving
16 beyond a reasonable doubt that the defendant was the person
17 who committed the crimes charged.

18 Now, the defendant didn't testify in this case.
19 Under our Constitution, he has no obligation to testify or to
20 present any other evidence because it is the Government's
21 burden to prove their guilt beyond a reasonable doubt. You
22 may not attach any significance to the fact that the defendant
23 did not testify, nor may you draw any adverse inference
24 against the defendant because he did not take the witness
25 stand. In your deliberations in the jury room, you may not

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1 consider this decision against the defendant in any way. In
2 fact, you should not even mention that the defendant did not
3 testify.

4 Let me talk to you for a minute about expert
5 witnesses. You heard a few witnesses who were allowed to give
6 their opinions about matters in this case. Generally,
7 witnesses aren't allowed to give opinions, but a witness may
8 be permitted to testify to an opinion on those matters about
9 which the witness has special knowledge, skill, experience or
10 training. Such testimony is presented to you on the theory
11 that someone who is experienced and knowledgeable in the field
12 can assist you in understanding the evidence or in reaching an
13 independent decision on the facts.

14 In weighing this opinion testimony, you may consider
15 the witness' qualifications, his opinions, the reasons for
16 testifying, as well as all of the other considerations that I
17 just went over with you that ordinarily apply when you are
18 deciding whether or not to believe a witness' testimony and
19 what weight, if any, you think that testimony deserves.

20 You should not accept opinion testimony merely
21 because I said the witness can testify as to his opinions, nor
22 should you substitute that opinion testimony for your own
23 reason, judgment and common sense. Again, the determination
24 of the facts in this case is entirely up to you.

25 All right. That completes the longest section of

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1 the instructions, ladies and gentlemen. That's the
2 preliminary part. I'm now going to turn to the substantive
3 elements of the charges that the Government has to prove
4 beyond a reasonable doubt.

5 Now, the defendant is formally charged in a charging
6 instrument. We're going to give you a copy of that, the
7 indictment, to take into the jury room with you. You'll see
8 in there that each count refers to the defendant by his
9 complete name: Ibrahim Suleiman Adnan Adam Harun, and also
10 references his alleged aliases: Spin Ghul, Esbin Gol,
11 Isbungoul, Abu Tamim, Joseph Johnson and Mortala Mohamed Adam.

12 As I've instructed you, the charging instrument is
13 just a charge or an accusation. It is not evidence. The
14 charging instrument in this case contains five counts or
15 charges on which you will be called upon to render a verdict.

16 Whether you find the defendant guilty or not guilty
17 as to one count, however, should not affect your verdict as to
18 any other count. You must consider each count separately and
19 return a separate verdict of guilty or not guilty for each
20 count. I will now instruct you on the specific elements that
21 the Government must prove beyond a reasonable doubt to warrant
22 a finding of guilt in this case.

23 Each of the five charges you're getting implicates
24 the concepts of knowledge and intent. As a general rule, the
25 law holds individuals accountable only for conduct in which

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1 they intentionally engage. A person acts knowingly if he acts
2 intentionally and voluntarily, and not because of ignorance,
3 mistake accident or carelessness.

4 Whether a defendant acted knowingly may be proven by
5 his or her conduct and by all of the facts and circumstances
6 surrounding the case. A person acts intentionally when he
7 acts deliberately and purposefully, that is, the defendant's
8 acts must have been the product of his conscious objective
9 rather than the product of a mistake or accident. It is
10 sufficient that a defendant intentionally engages in conduct
11 which the law forbids. The Government is not required to
12 prove that a defendant is aware of the law that actually
13 forbids his conduct.

14 Now let me now instruct you on the law of conspiracy
15 which applies to Counts 1, 2 and 3 of the charging instrument.

16 The crime of conspiracy is an independent crime, an
17 entirely separate and different offense from the underlying
18 crimes that the defendant is alleged to have agreed to commit.

19 Before you make may convict is the defendant of
20 conspiracy, the following two essential elements must be
21 established beyond a reasonable doubt: First, that the
22 conspiracy existed, that is, that there was a conspiracy; and
23 second, that the defendant knowingly and intentionally became
24 a member of that conspiracy. Let me go over each of those
25 elements with you in a little more detail.

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1 The first element is that a conspiracy existed.
2 What's a conspiracy? A conspiracy is an agreement between two
3 or more people to accomplish some unlawful purpose. The gist
4 or essence of the conspiracy is the unlawful agreement to
5 violate the law. A conspiracy is sometimes referred to as a
6 partnership in criminal purposes in which each member of the
7 conspiracy becomes the agent of every other member of the
8 conspiracy.

9 To establish a conspiracy, the Government is not
10 required to prove that the co-conspirators entered into a
11 solemn contract orally or in writing, stating that they have
12 formed a conspiracy to violate the law, but only that two or
13 more persons either explicitly or implicitly came to an
14 understanding to achieve the specified unlawful object.

15 Of course, you could find that the existence of an
16 agreement between two or more persons to commit a crime has
17 been established by direct proof. But since a conspiracy is
18 by its very nature characterized by secrecy, direct proof may
19 not be available. Therefore, you may infer the existence of a
20 conspiracy from the circumstances of the case and the conduct
21 of the parties involved. In the context of conspiracy cases,
22 actions may speak louder than words.

23 In determining whether or not the Government has
24 proven beyond a reasonable doubt that the charged agreement
25 existed here, you may consider the actions and statements of

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1 all of those who you find to be participants. Ask yourselves
2 whether they were acting together for the accomplishment of
3 the charged criminal purpose. If they were, the first element
4 is satisfied. If, however, they were acting together for some
5 purpose unrelated to the underlying crime, even a criminal
6 purpose, the Government would not have satisfied this first
7 element.

8 It is not necessary for the Government to prove that
9 the ultimate objectives of the conspiracy were successfully
10 accomplished. It is enough if the Government has proved that
11 two or more persons, one of whom is the defendant, in any way
12 expressly or impliedly came to a common understanding to
13 violate the law.

14 If upon all the evidence, direct and circumstantial,
15 you are satisfied beyond a reasonable doubt that the minds of
16 at least two of the alleged conspirators met and that they
17 agreed to work together to accomplish the object of the
18 conspiracy charged in each count of the charging instrument,
19 then the first element, the existence of the conspiracy, has
20 been established.

21 Now, the second element is that the defendant
22 knowingly and willfully became a member of the charged
23 conspiracy. The Government has to prove that beyond a
24 reasonable doubt, as well. An individual can become a member
25 of a conspiracy without full knowledge of all the details of

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1 the conspiracy. On the other hand, a person who has no
2 knowledge of a conspiracy but happens to act in a way which
3 furthers some objective or purpose of the conspiracy does not,
4 thereby, become a co-conspirator.

5 Moreover, mere association by the defendant with a
6 conspirator does not itself make the defendant a member of a
7 conspiracy, even if he knows of the conspiracy. In other
8 words, knowledge of the conspiracy is not enough. The
9 defendant himself must intentionally participate in the
10 conspiracy with the purpose of helping to achieve at least one
11 of its unlawful objects; however, the extent of a defendant's
12 participation in a conspiracy has no bearing on the issue of
13 guilt. Some conspirators might play major roles. Others may
14 play minor roles. The question is, did the defendant
15 knowingly play in a role in a conspiracy that you have found
16 to exist beyond a reasonable doubt?

17 Before you find that the defendant was a member of
18 the conspiracy, the evidence in the case must show beyond a
19 reasonable doubt that the conspiracy was knowingly formed and
20 that the defendant willfully participated in the unlawful plan
21 with the intent to advance or further some objective or
22 purpose of the conspiracy. As you'll see, sometimes there are
23 additional elements as well, but all the conspiracy charges
24 have these two elements in common: The existence of a
25 conspiracy and the defendant's knowing joinder.

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1 Now that I've given you the overview of those counts
2 that have a conspiracy charge as part of them, I'm going to
3 turn to charging instrument itself. I emphasize again, you
4 have to consider the evidence separately with regards to the
5 defendant as to each count. You'll be asked to render
6 separate verdicts on each count that he faces.

7 One moment. (Pause.)

8 Count 1 of the charging instrument charges the
9 defendant with, quote, conspiracy to commit murder of United
10 States nationals, closed quote. Specifically, Count 1 alleges
11 in relevant part that between August 2001 and September 2011,
12 the defendant, together with others, conspired to kill one or
13 more United States nationals, which killings would have
14 constituted murder.

15 This count also alleges that defendant, together
16 with others, undertook the following overt acts to further the
17 conspiracy: A, attempting to kill U. S. military personnel in
18 Afghanistan, 2002 or 2003; B, traveling from Pakistan to
19 Nigeria in August 2003; And C, traveling within Nigeria and
20 other African countries between August 2003 and January 2005.

21 Now, the relevant statute, the law that Congress
22 passed that encompasses this count is Section 2332(b) of Title
23 18 of the U. S. Code. It states as follows, in part:
24 "Whoever outside the United States engages in a conspiracy to
25 kill a national of the United States, in the case of a

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1 conspiracy by two or more persons to commit a killing that is
2 murder, and if one or more of such persons do any overt act to
3 affect the object of the conspiracy, that person is guilty of
4 a crime."

5 In order to prove that the defendant committed the
6 crime charged in Count 1, the government has to prove each of
7 the elements beyond a reasonable doubt. There are four
8 elements: First, that there was a conspiracy to murder one or
9 more United States nationals, that such a conspiracy existed;
10 second, that the defendant knowingly and intentionally became
11 a member of that conspiracy; third, that an overt act
12 occurred, that is, someone within the conspiracy took some
13 action that advanced the goals of the conspiracy; and fourth,
14 that the defendant engaged in the charged conspiracy while
15 outside the United States.

16 Now, I just told you about the first and second
17 elements. Those apply to all conspiracy charges. This one
18 has two more elements, so they have to meet the ones that I
19 described to you before, plus these two additional ones.

20 The third element is that an overt act occurred,
21 that is, someone within the conspiracy took some action that
22 advanced the goals of the conspiracy, that is, the Government
23 has to prove beyond a reasonable doubt that at least one of
24 the conspirators -- not necessarily the defendant -- committed
25 at least one overt act in furtherance of the conspiracy.

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1 In other words, there must have been something more
2 than an agreement. That's generally enough with the
3 defendant's knowing participation for there to be a
4 conspiracy, but under this count, there has to be something
5 more than those two steps. Some overt step or action must
6 have been taken by the defendant or one of the conspirators in
7 furtherance of the conspiracy. The overt act element, to put
8 it another way, is a requirement that the agreement went
9 beyond the mere talking in agreement stage.

10 The Government may satisfy this element by proving
11 one of the overt acts alleged in the charging instrument, but
12 it's not required to prove any of those particular overt acts.
13 It is enough that the Government proves that at least one
14 overt act was committed in furtherance of the conspiracy,
15 whether or not that overt act is alleged in the indictment.

16 Similarly, it's not necessary for the Government to
17 prove that each member of the conspiracy committed or
18 participated in the overt act. It's sufficient if you find
19 that at least one overt act was, in fact, performed by at
20 least one conspirator, whether the defendant or another
21 co-conspirator to further the conspiracy within the time frame
22 of the conspiracy. Remember, the act of any one of the
23 members of a conspiracy that's done to further the conspiracy
24 becomes the act of all the other members. To be a member of a
25 conspiracy, it's not necessary for the defendant to commit an

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1 overt act, as long as someone in the conspiracy did.

2 The fourth and final element of this charge is that
3 the defendant engaged in the charged conspiracy while outside
4 the United States. Thus, you must find that if there was an
5 illegal agreement to kill United States nationals, it existed
6 outside of the United States, and that the defendant knowingly
7 and willfully engaged in that conspiracy while outside of the
8 United States.

9 In order for to you determine whether the Government
10 has proven the charged conspiracy, I need to explain the
11 meaning of two terms that are referenced in the statute:
12 United States national and murder.

13 A national of the United States is simply a citizen
14 of the United States. Murder is the unlawful killing of a
15 human being with what is called malice aforethought. To act
16 with malice aforethought means to act willfully, with the
17 intent to kill another person. Willfully means to act with
18 knowledge that one's conduct is unlawful, and with the intent
19 to do something that the law forbids, that is to say with the
20 bad purpose either to disobey or disregard the law.

21 A defendant's conduct was not willful if it was due
22 to negligence, inadvertence, or mistake; however, the
23 Government doesn't have to prove spite, malevolence, hatred or
24 ill will.

25 I remind you again that this count does not allege

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1 that the murder of a United States national was actually
2 committed, and the Government does not need to prove that the
3 murder of a United States national was attempted or committed,
4 rather, Count 1 charges the defendant with conspiring,
5 conspiracy to murder United States nationals. All right.
6 That's Count 1.

7 Counts 2 of the charging instrument charges the
8 defendant with, quote, conspiracy to bomb a government
9 facility, closed quote. Specifically, Count 2 says in part
10 that between August 2003 and 2005, the defendant and others
11 conspired to unlawfully use explosives against one or more
12 U. S. diplomatic or consular facilities in Nigeria with the
13 intent to cause death, serious bodily injury and extensive
14 destruction of such facilities.

15 The relevant statute to this crime is Section 2332f
16 of Title 18 of the U. S. Code, and the statute states in part,
17 "Whoever unlawfully delivers, places, discharges or detonates
18 an explosive or other lethal device in, into or against a
19 place of public use or a state or government facility shall be
20 punished."

21 To find the defendant guilt of conspiracy to bomb a
22 U. S. Government facility, you must find that the Government
23 has proven each of the following elements beyond a reasonable
24 doubt: First, that there was a conspiracy to deliver, place,
25 discharge or detonate an explosive against a U. S. Government

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1 facility, specifically, the U. S. diplomatic and consular
2 facilities in Nigeria; second, that the defendant knowingly
3 and intentionally became a member of that conspiracy; and
4 third, that there was federal jurisdiction over this offense.

5 Again, as to the first and second elements, I've
6 already explained what it means to conspire to commit an
7 offense. Those same instructions apply to this count.

8 As to this third element, there's federal
9 jurisdiction over an offense that occurred outside the United
10 States if the target of the offense was a government facility
11 of the United States. There's also federal jurisdiction if
12 the intended victim or victims are nationals of the United
13 States.

14 Finally, there's also a federal jurisdiction if the
15 offense was an attempt to compel the United States to do
16 abstain from doing anything, any act.

17 In order for you to determine whether the Government
18 has proven the charged conspiracy, I need to explain what it
19 means to bomb a government facility.

20 To prove a substantive violation of Section 2332f,
21 the Government would need to establish each of the following
22 elements beyond a reasonable doubt: First, that the defendant
23 unlawfully delivered, placed, discharged or detonated an
24 explosive into or against a place of public use or a state or
25 government facility; and two, that the defendant had the

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1 intent to cause either death or serious bodily injury or
2 extensive destruction of such a place or facility, where that
3 destruction would result or would be likely to result in major
4 economic loss.

5 Now, as to the first element, a government facility
6 includes any permanent or temporary facility that is used or
7 occupied by representatives of the United States Government.

8 The statute defines "explosive" as something that is
9 designed or has the capacity to cause death, serious bodily
10 injury or substantial material damage. It includes
11 gunpowders, powders used for blasting, all forms of high
12 explosives, blasting materials, fuses other than electric
13 circuit breakers, detonators and other detonating agents,
14 smokeless powders and any chemical compounds, mechanical
15 mixture or device that contains any oxidizing and combustible
16 units or other ingredients in such quantities or packing that
17 ignition by fire, by friction, by concussion, by detonation of
18 the compound mixture or device or any part of that may cause
19 an explosion. That's largely a quote from the statute.

20 The statute also defines explosives as other
21 explosive or incendiary devices, such as dynamite and all
22 other forms of high explosives, any explosive bomb, grenade,
23 missile or similar device and any incendiary bomb or grenade,
24 firebomb or similar device, including any device which
25 consists of or includes a breakable container, including a

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1 flammable liquid or compound, and a wick composed of any
2 material, which when ignited, is capable of igniting that
3 flammable liquid or compound, and can be carried or thrown by
4 one individual acting alone. That, again, is a nearly direct
5 quote from the statute.

6 Now, the second element is intent to cause serious
7 bodily injury or death or extensive destruction. That element
8 will be satisfied if the Government has proven beyond a
9 reasonable doubt that the defendant had the intent to cause
10 either death or serious bodily injury or extensive destruction
11 of such a place or facility. The Government doesn't have to
12 prove both of those. It's either death or serious bodily
13 injury or extensive destruction of such a place or facility.
14 It can be both, but it doesn't have to be both.

15 The term "death" requires no definition. Use the
16 common meaning of the word "death."

17 The term "serious bodily injury" means bodily injury
18 which involves a substantial risk of death or extreme physical
19 pain, protracted and obvious disfigurement or protected loss
20 or impairment of the function of a bodily member or organ or
21 mental faculty.

22 Hang on one second.

23 (Confers with the law clerk.)

24 THE COURT: Let me read that to you again, ladies
25 and gentlemen.

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1 Serious bodily injury means bodily injury which
2 involves a substantial risk of death, extreme physical pain,
3 protracted and obvious disfigurement or projected loss or
4 impairment of the function of a bodily member, organ or
5 mentality facility.

6 With respect to the intent to cause extensive
7 destruction requirement, it's sufficient if the defendant's
8 intent was to significantly damage a place of public use or
9 government facility.

10 When determining the act resulted in or was likely
11 to result in major economic loss, you may consider the likely
12 physical damage to the place of public use or government
13 facility, as well as other types of economic loss including
14 the monetary loss or other adverse effects resulting from the
15 interruption of the facility' activities. You may also
16 consider the adverse effects on the economy and the
17 government.

18 As I previously explained to you in Count 1, Count 2
19 does not allege that a bombing of a government facility was
20 actually committed, and the Government doesn't need to prove
21 that a government facility was, in fact, bombed or attempted
22 to be bombed, rather, Count 2 charges the defendant with
23 conspiring to bomb a government facility. All right. That's
24 Count 2.

25 Count 3 charges him with conspiracy to provide

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1 material support to a foreign terrorist organization,
2 specifically, Count 3 alleges in part that between August 2001
3 and September 2011, the defendant, together with others,
4 conspired to provide material support and resources, including
5 false documentation and identification explosives and
6 personnel, including himself, to al Qaeda.

7 To prove the defendant conspired to provide material
8 support to a foreign terrorist organization, the Government
9 has to establish the following elements beyond a reasonable
10 doubt: First, that there was a conspiracy to provide material
11 support or resources to a foreign terrorist organization,
12 specifically, al Qaeda; second, that the defendant knowingly
13 and intentionally became a member of the conspiracy. Now,
14 I've already explained what it means to conspire to commit an
15 offense. Those same instructions apply to this Count 3.

16 In order for you to determine whether the Government
17 has proven the charged conspiracy, I need to explain the
18 meaning of "provision of material support to a foreign
19 terrorist organization." That's under Section 2339B(a)(1) of
20 Title 18 of the U. S. Code. It says simply, "Whoever
21 knowingly provides material support or resources to a foreign
22 terrorist organization or attempts to do so shall be guilty of
23 a crime."

24 To prove a substantive violation of Section
25 2339B(a)(1), the Government would have to prove each of the

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1 following elements beyond a reasonable doubt: First, that the
2 defendant provided material support or resources; second, that
3 the defendant provided the support or these resources to a
4 foreign terrorist organization, specifically, al Qaeda; and
5 third, that the defendant did so knowingly and intentionally,
6 and there is a fourth element, that there was federal
7 jurisdiction over the offense.

8 Now, the first element is that the defendant
9 provided material support or resources. Material support or
10 resources can take the form of personnel, supplying people.
11 The term "personnel" means one or more persons, which can
12 include a defendant's own person. The defendant can be
13 convicted for a violation of this statute in connection with
14 providing personnel if you find that he has knowingly provided
15 one or more individuals, which may include himself, to work
16 under al Qaeda's direction or control; however, the defendant
17 can't be convicted if he worked entirely independent of al
18 Qaeda to advance its goals and objectives.

19 The second element that you have to find beyond a
20 reasonable doubt is that the defendant provided these
21 resources to a foreign terrorist organization, here, al Qaeda.
22 I instruct you as a matter of law that al Qaeda has been
23 designated as a foreign terrorist organization by the United
24 States Secretary of State and was so designated on October
25 8th, 1999.

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1 Consequently, if you find beyond a reasonable doubt
2 that the defendant provided material support or resources, as
3 I have just defined the term for you to al Qaeda during the
4 period charged in the charging instrument, then the
5 Government's burden with respect to the element of foreign
6 terrorist organization has been met.

7 The third element that you have to find beyond a
8 reasonable doubt is that in providing material support or
9 resources to al Qaeda, the defendant did so knowingly and
10 intentionally. Now, I advised you how to define those terms
11 knowingly and intentionally, so I'm not going to repeat that.

12 For this element to be satisfied, the Government has
13 to prove that the defendant knew one of the following things:
14 Either that al Qaeda had been designated by the Secretary of
15 State as a foreign terrorist organization, or that al Qaeda
16 engaged in terrorist activity, which I'll define for you in a
17 minute, or that al Qaeda engaged in terrorism.

18 For these purposes, the term "terrorist activity"
19 includes any of the following actions: Hijacking or sabotage
20 of an aircraft, vessel, vehicle, train or other conveyance;
21 seizing, detaining or threatening to kill, injury or further
22 detain another person or compel or coerce some third party,
23 including a government, to do or not do some act.

24 Terrorist activity also would include a violent
25 attack upon an internationally-protected person, including

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1 employees and officials of governments or international
2 organizations. It also includes assassination. It also
3 includes the use of any chemical, biological or nuclear
4 weapon or device when done with the intent to endanger
5 directly or indirectly the safety of one or more individuals
6 or to cause substantial damage to property.

7 It also includes the use of any explosive, firearm
8 or other weapon or dangerous device other than for monetary
9 gain and with intent to endanger directly or indirectly the
10 safety of one or more individuals or to cause substantial
11 damage to property, or a threat, attempt or conspiracy to do
12 any of the things that I just ran through.

13 For these purposes, the term "terrorism" -- I just
14 defined for you "terrorist activity," as to what that
15 includes. The word "terrorism" separately means premeditated
16 politically-motivated violence perpetrated against
17 non-combatant targets by subnational groups or clandestine
18 agents.

19 And then the fourth element of this count is that
20 there was federal jurisdiction over the offense. There's
21 federal jurisdiction over the offense if the conduct required
22 for the offense occurred or that the defendant was brought
23 into or found in the United States, even if the conduct
24 required for the offense occurred outside the United States or
25 the offense occurs in or affects interstate or foreign

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1 commerce.

2 In regards to this last part, affecting interstate
3 or foreign commerce, that's satisfied if the Government has
4 proven beyond a reasonable doubt that there was even a minimal
5 effect on such commerce. Any effect, even an indirect or
6 slight one, is sufficient, and the effect may be harmful or
7 beneficial to interstate or foreign commerce.

8 Additionally, as I've told you previously, the
9 parties have stipulated that the defendant was first brought
10 to the United States to a location within the Eastern District
11 of New York. That's this district.

12 Okay. We're getting there.

13 Now, Count 4 of the charging instrument charges the
14 defendant with provision and attempted provision of material
15 support to a foreign terrorist organization between August
16 2001 and September 2011. To sustain its burden of proving the
17 defendant guilty of Count 4, the Government has to prove
18 beyond a reasonable doubt each of the four elements of the
19 crime of provision of material support to a foreign terrorist
20 organization that I just explained to you. Those are on
21 pages -- you'll see -- 30 to 32 in the instructions.

22 In Count 4, you may be thinking how is it different?
23 Well, in Count 4, the Government has charged the defendant in
24 the alternative, with either providing or attempting to
25 provide material support to a foreign terrorist organization.

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1 Therefore, you can find the defendant guilty of
2 Count 4 if the Government has proven that the defendant either
3 provided material support to the foreign terrorist
4 organization or attempted to do so. The Government doesn't
5 have to prove both.

6 In order to prove the charge of attempted provision
7 of material support to a foreign terrorist organization, the
8 Government has to prove the following two elements beyond a
9 reasonable doubt: First, that the defendant intended to
10 commit the crime of providing material support to a foreign
11 terrorist organization; and second, that the defendant did
12 some act that was a substantial step in an effort to bring
13 about or accomplish the crime.

14 Mere intention to commit a specific crime does not
15 amount to an attempt. In order to convict the defendant of an
16 attempt, you must find beyond a reasonable doubt that he
17 intended to commit the crime charged, and that he took some
18 action which was a substantial step toward the commission of
19 that crime.

20 In determining whether the defendant's actions
21 amounted to a substantial step toward the commission of the
22 crime, it's necessary to distinguish between mere preparation
23 on the one hand and the actual doing of the criminal deed on
24 the other. Mere preparation, which may consist of planning
25 the offense or of devising, obtaining or arranging a means for

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1 its commission, is not an attempt, although some preparations
2 may amount to an attempt. The acts of a person who intends to
3 commit a crime will constitute an attempt when the acts
4 themselves clearly indicate an intent to commit the crime, and
5 the acts are a substantial step in a course of conduct planned
6 to culminate in the commission of a crime. The defendant may
7 be convicted of attempt even where significant steps necessary
8 to carry out the substantive crime have not been completed.

9 All right. That's Count 4.

10 The last count is Count 5. It charges the defendant
11 with the use of explosives. Specifically, Count 5 alleges in
12 relevant part that between August 2001 and September 2011, the
13 defendant, together with others, used explosives, including
14 gunpowder, explosive bombs, grenades and missiles to commit
15 the crimes charged in Counts 1, 3 and 4, and intentionally
16 carried such explosives during the commission of those
17 felonies.

18 As I explained to you before, Counts 1, 3 and 4 of
19 the charging instrument charge the defendant with committing
20 the crimes of conspiracy to murder one or more U.S. nationals,
21 conspiracy to provide material support to a foreign terrorist
22 organization, and provision and attempted provision of
23 material support to a foreign terrorist organization.

24 The statute relevant to Count 5 is Section 844(h)(1)
25 and (h)(2) of Title 18 of the U. S. Code. That statute states

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1 that, "Whoever uses fire or an explosive to commit any felony
2 which may be prosecuted in a court of the United States or
3 carries an explosive during the commission of such a felony,
4 may be -- which may be prosecuted in a court of the United
5 States is guilty of a crime.

6 The Government has to prove the following two
7 elements beyond a reasonable doubt to sustain its burden of
8 proving the defendant guilty of this charge: First, that the
9 defendant committed a felony for which he may be prosecuted in
10 a court of the United States; and second, that the defendant
11 used an explosive to commit that felony or carried an
12 explosive during the commission of that felony.

13 Now, the first element is that the defendant
14 committed a felony for which he may be prosecuted in a court
15 of the United States. The defendant is charged in Counts 1, 3
16 and 4 of the charging instrument with committing the crimes of
17 conspiring to murder one or more U. S. nationals, conspiring
18 to provide material support to a foreign terrorist
19 organization, and provision and attempted provision of
20 material support to a foreign terrorist organization.

21 I instruct you that these crimes are felonies for
22 which the defendant might be prosecuted in a court of the
23 United States; however, it's for you to determine that the
24 Government has proven -- whether the Government has proven
25 beyond a reasonable doubt that the defendant committed the

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1 crimes charged in Counts 1, 3 and 4.

2 In reaching your verdict as to this Count 5, you may
3 consider the evidence of Counts 1, 3 and 4 for the purpose of
4 determining whether the first element of this count has been
5 satisfied.

6 The second element is that the defendant used an
7 explosive to commit the crimes charged in Counts 1, 3 and 4 or
8 carried an explosive during the commission of those crimes.
9 To use an explosive to commit a crime means to use it in such
10 a way that it was an integral part of the commission of the
11 crime, and not something incidental or independent or that
12 merely happened to facilitate or assist in the commission of
13 the crime.

14 To carry an explosive means to have it within your
15 control at the time of the commission of the crime. The
16 defendant did not necessarily have to hold the explosive
17 physically, that is, have actual possession of it on his
18 person if you find that he had dominion and control over the
19 explosive and had the power and intention to exercise that
20 control over the explosive, you may find that the defendant
21 carried the explosive.

22 Under the statute, explosive means gunpowders,
23 powders used for blasting, all form of high explosives,
24 blasting materials, fuses other than electric circuit
25 breakers, detonators and other detonating agents, smokeless

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1 powders, other explosive or incendiary devices and any
2 chemical compounds, mechanical mixture or device that
3 contained any oxidizing or combustible unit or other
4 ingredients in such proportions, quantities or packing that
5 ignition by friction, by concussion, by percussion or by
6 detonation of the compound mixture or device or any part
7 thereof may cause an explosion.

8 Hang on a second.

9 (Confers with the law clerk.)

10 THE COURT: I've already defined for you explosive.
11 You can refer back to the instructions to get that.

12 To satisfy this element, you also have to find that
13 the defendant knowingly carried or used the explosive. I
14 previously told you what the definition of "knowingly" is.
15 You should use that here.

16 Now, the second alternative basis on which the
17 Government may prove the defendant guilty of Count 5 is called
18 aiding and abetting. Count 5 alleges that the defendant was
19 using and carrying explosives to commit the crimes charged in
20 Counts 1, 3 and 4 or alternatively, that others were carrying
21 explosives to commit those crimes and the defendant aided and
22 abetted those others. It's perfectly acceptable for the
23 Government to charge this crime under either alternative.

24 Aiding and abetting is another legal theory, in
25 addition to the theory of primary liability, on which I've

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1 just instructed you. Primary liability is when the defendant
2 does it himself. Aiding and abetting liability is when, as
3 I'm defining in these instructions, he helped somebody else do
4 it.

5 Again, the Government has to prove this theory just
6 as primary liability beyond a reasonable doubt. The aiding
7 and abetting statute is Title 18 of the United States Code,
8 Section 2, and that states, "Whoever commits an offense
9 against the United States or aids or abets or counsels,
10 commands or induces or procures its commission is punishable
11 as a principal, that is, as if he did it himself."

12 It's not necessary to find that the defendant
13 personally committed the crime charged in Count 5, as long as
14 the Government proves that he aided and abetted another person
15 to doing so. This is so because under the law, a person who
16 aids or abets another to commit an offense is just as guilty
17 of that offense as if he committed it himself. Therefore, you
18 may find the defendant guilty of the offense charged if you
19 find beyond a reasonable doubt that the Government has proven
20 that another person actually committed the offense with which
21 the defendant is charged, and that the defendant knowingly
22 aided or abetted that person in the commission of the offense.

23 In order to find a defendant guilty of aiding and
24 abetting a crime, you have to first find that some person did
25 actually commit the crime charged. Unlike a conspiracy,

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1 which, you know, the agreement is a crime itself, no one can
2 be convicted of aiding or abetting the criminal acts of
3 another, if no crime has commit about I the other person in
4 the first place. But new find that the crime was committed,
5 then you have to consider whether the defendant aided or
6 abetted the commission of that crime.

7 In order to aid or abet another, another person to
8 commit a crime, it's necessary that the defendant knowingly
9 associate himself in some way with the crime, and that he
10 participated in the crime by doing some act to help the crime
11 succeed.

12 To establish that the defendant knowingly and
13 associated himself with the crime, the Government has to
14 establish that the defendant knew and intended that the crime
15 charged in Count 5 would be committed.

16 To establish that the defendant participated in the
17 commission of the crime, the Government must prove that the
18 defendant engaged in some affirmative conduct or overt act for
19 the specific purpose of bringing about the crime. The mere
20 presence of a defendant where a crime is being committed, even
21 coupled with knowledge by a defendant that that crime is being
22 committed or merely associating with others who are committing
23 a crime is not sufficient to establish aiding and abetting.
24 One who has no knowledge that a crime is being committed or is
25 about to be committed, but inadvertently does something that

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1 aids in the commission of that crime is not an aider and
2 abettor. An aider and abettor must know that the crime is
3 being committed and act in a way that is intended by him to
4 bring about the success of the criminal venture.

5 To determine whether the defendant aided and abetted
6 the commission of the crime charged in Count 5 or caused the
7 commission of the crime, ask yourselves these questions:
8 first, did he participate in the crime charged as something he
9 wished to bring about? Second, did he associate himself with
10 the criminal venture knowingly and willfully? Third, did he
11 seek by his actions to make the criminal venture succeed? If
12 he did, then the defendant is an aider and abettor and is,
13 therefore, guilty of Count 5. If on the other hand, your
14 answer to any of these questions is no, then the defendant is
15 not an aider and abettor and you must find him not guilty on
16 Count 5 on the aiding and abetting theory.

17 All right. That concludes the substantive
18 instructions. I hope that was long enough for you. I'm now
19 going to proceed to the last part which is quite short. These
20 are just a few remarks to help you with the process of
21 deliberation and how that works.

22 You're about to go into the jury room and begin your
23 deliberations. Your function, to reach a fair conclusion from
24 the law and the evidence, is a vital one. If the Government
25 succeeds in meeting its burden of proof, your verdict should

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1 be guilty. If it fails, it should be not guilty.

2 Each of you has to decide the case for yourself,
3 after consideration of the evidence in this case with your
4 fellow jurors. You shouldn't hesitate to change an opinion
5 that after discussion with your fellow jurors, appears
6 erroneous. That's the very purpose of jury deliberation, to
7 discuss and consider the evidence, to listen to the arguments
8 of your fellow jurors, and to present your individual views,
9 to consult with one another and to reach an agreement based
10 solely and wholly on the evidence, if you can do so without
11 violence to your own individual judgment.

12 Your verdict has to be unanimous, that is, all of
13 you have to ultimately reach the same conclusion as to each of
14 the five charges, although you can reach a unanimous verdict
15 of not guilty on one or more charge and guilty on other
16 charges; however, if after carefully considering all the
17 evidence and arguments of your fellow jurors, you entertain a
18 conscientious view that differs from the others, you're not to
19 yield your conviction simply because you're outnumbered. Your
20 final vote has to reflect your conscientious conviction as to
21 how the issues should be decided.

22 No member of the jury should attempt to communicate
23 with me or with any court personnel except by means of a
24 signed writing. I'm appointing Juror Number 1, who -- because
25 you're sitting in first seat. It's not because I like your

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1 shirt. I'm afraid there is no more money in this appointment,
2 and indeed, there is no special power. You just serve as a
3 point of communication with the Court.

4 If there's anything you need to ask or tell me, you
5 should have the foreperson send out a note. Just sign it
6 "Juror Number 1" when you sign it, and they'll be a marshal
7 standing outside your door. You can just give it to the
8 marshal.

9 I will respond to any request you have as promptly
10 as I can, probably by having you return to the courtroom and
11 speaking to you in person. Sometimes I may just send some
12 response back. I'm not going to communicate with any member of
13 the jury on any matter that has to do with the merits of this
14 case other than when we're here in open court.

15 In any event, if you have to send out any notes,
16 don't tell me or anyone else how the jury stands numerically
17 on the issue of defendant's guilt. You know, there's this
18 many for and this many against. Don't tell me if there's a
19 split. You can tell me if there is a split, but I don't want
20 to know numbers. In fact, even if I bring you into open court
21 here, do not tell me what the numbers are. I shouldn't hear
22 you from you on where you are in the deliberations until a
23 unanimous verdict is reached as to each count.

24 Now, most of the exhibits are going to be sent in
25 the jury room with you. You're going to get those. You're

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1 going to get these instructions. You're going to get a copy
2 of the charging instrument, the indictment.

3 If during your deliberations you want to see any of
4 the exhibits that are not sent back to you, then send me a
5 note and we'll see if we can give it, give you what you're
6 looking for.

7 If you find you need a portion of the testimony read
8 back to you, that can also be done; however, please be as
9 specific as possible in making that request. Tell us what
10 witness, what topic within that witness, if there's a limited
11 topic, because each time we need to go through the whole
12 transcript to try to find what you're looking for, and I think
13 we have had six, seven trial days, so that could take a little
14 time. The more specific you are, the shorter a period you'll
15 have to wait for it.

16 Once you have reached a unanimous verdict, please
17 send a note signed by your foreperson that simply says, "We
18 have reached a unanimous verdict. Signed Juror Number 1."
19 Don't indicate in that note what the verdict is. Here's how
20 you indicate the verdict. I'm going to be giving to you --
21 sending back in the jury room, as well -- what we call a
22 verdict sheet, and basically it just -- it has five questions.
23 Each question says, as to Count 1, says what the count's
24 about, how do you find the defendant, guilty or not guilty?
25 And it goes through that as to each of the five counts.

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1 So the way it will work is this. You complete the
2 verdict sheet in there when you've reached a unanimous verdict
3 as to each count. Then you send out just a note -- not the
4 verdict form -- that says, "We have reached a unanimous
5 verdict, signed Juror Number 1." And then I'll bring you in
6 here with Juror Number 1 holding the verdict form. He will
7 then give the verdict form to Ms. Clarke. Will give it to me,
8 and then I'll take it from there.

9 Again, I remind you that your final vote has to
10 reflect your conscientious conviction as to how the issues
11 should be decided, that your vote has to be unanimous as to
12 each count.

13 Remember that the parties and I are relying on you
14 to give full and conscious deliberation and consideration to
15 the issues and evidence before you. The oath you took sums up
16 your duty and that is, without fear or favor, you will truly
17 try the issues between these parties, according to the
18 evidence given to you in court and the laws of the United
19 States.

20 Now, here's what happens. First, we are going to
21 have the court officer come up, and he's going to escort you
22 to the jury room. I need to split off the top row of jurors
23 for that. You're not -- you can go with the rest of the
24 jurors to get lunch and then Ms. Clarke is going to move you
25 into a separate room.

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1 Those of you in the back row, you're still under the
2 same admonitions. Don't talk about the case amongst
3 yourselves at all. I know that will be really hard, but don't
4 talk about the case. You're kind of on standby in case we
5 need you, but we do need you. Don't think you're not serving
6 an essential role in this. You are.

7 You're free to walk around the courthouse, again, as
8 long as you stay away from news media and discussion and don't
9 talk about the case. But make sure that Ms. Clarke knows
10 where you are at all times, so we can get you back here
11 quickly if we need you. All right?

12 All right. Let me see the parties at sidebar for
13 just a minute. It's the last time you have to hear this
14 noise.

15 (Sidebar.)
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PROCEEDINGS

1 (Sidebar.)

2 THE COURT: Okay. I just want to know if I
3 committed any material error in my rendition of the
4 instructions, contrary to what I said I would do.

5 MS. KELLMAN: No, Your Honor.

6 MR. ARIAIL: No.

7 MR. DRATEL: No.

8 THE COURT: All right.

9 (Sidebar concluded.)

10 THE COURT: The court officer will come forward.
11 Let's have him sworn.

12 (Court officer sworn.)

13 THE COURT: All right, ladies and gentlemen. You
14 may begin your deliberations, the front two rows. All of you
15 are going to go into the one jury room and get lunch, which we
16 have waiting for you. So, you know, the ones in back row,
17 you'll get your lunch and Ms. Clarke will take you to a
18 separate room.

19 They're taking the notebooks. Anyone care? I think
20 we're sending back there. They're in evidence.

21 (Jury exits at 1:40 p. m.)

22 THE COURT: All right. Thank you, everyone. I know
23 that the lawyers worked incredibly hard on this case. As I
24 said to defense counsel before, it's like the hardest kind of
25 representation to have, where you've got to sit on your hands

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1 a lot of the time because your client won't give you
2 directions. But I want to thank you all. You really -- it
3 was a very professionally done case. I'm not just talking
4 about the trial. I'm talking about from beginning to end. So
5 thank you. Stand by.

6 MR. STERN: Thank you.

7 THE COURT: The law clerk tells me there's one more
8 thing. (Confers with the law clerk.)

9 THE COURT: Okay. What I'd like you all to do is
10 just work with my clerks to put together the exhibits that
11 should go back in the jury room, and then we'll combine that
12 with the indictment and the copy of the charge and the verdict
13 form. Okay. Thanks very much.

14 (Recess.)

15 (Time noted: 4:05 p. m.)

16 THE CLERK: All rise.

17 THE COURT: Be seated, please.

18 We have received a note from the jury which we've
19 marked as Court Exhibit 1. It says, "We have reached a
20 unanimous decision." It's signed by Juror 1.

21 Any reason we should not bring in the jury and
22 receive the verdict?

23 MR. STERN: No.

24 MR. ARIAIL: No, Your Honor.

25 MS. KELLMAN: No, Your Honor.

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1 THE COURT: All right. Let's have the jury.

2 Does anybody mind if we bring in the alternates,
3 too?

4 MR. STERN: (Shakes head negatively.)

5 THE COURT: Okay. Bring in the alternates.

6 MR. STERN: And Judge, we're going want the jury
7 polled. Josh told me to say that.

8 COURT OFFICER: All rise.

9 (Jury enters.)

10 THE COURT: All right. Be seated, please.

11 Ladies and gentlemen, we have your note that says,
12 "We have reached a unanimous decision," signed by Juror Number
13 1.

14 Juror Number 1, is it correct that you have reached
15 a unanimous decision?

16 JUROR NUMBER 1: Yes, it is.

17 THE COURT: Would you please hand the verdict form
18 to Ms. Clarke?

19 JUROR NUMBER 1: (Complies.)

20 THE COURT: Ladies and gentlemen, what I'm going to
21 do now is read the verdict sheet aloud. It's very important
22 that you listen carefully because I'm then going to ask each
23 one of you if it represents your true and accurate verdict.
24 All right?

25 On the verdict sheet, on Count 1, the jury found the

PROCEEDINGS

1 defendant guilty. On Count 2, the jury found the defendant
2 guilty. On Count 3, the jury found the defendant guilty. On
3 Count 4, the jury found the defendant guilty. And on Count 5,
4 the jury found the defendant guilty.

5 Juror Number 1, does this represent your true and
6 accurate verdict?

7 JUROR NUMBER 1: It does.

8 THE COURT: Number 2?

9 JUROR: Yes.

10 THE COURT: Number 3?

11 JUROR: Yes.

12 THE COURT: Number 4?

13 JUROR: Yes.

14 THE COURT: I'm sorry. I didn't hear you.

15 JUROR: Yes.

16 THE COURT: Number 5?

17 JUROR: Yes.

18 THE COURT: Number 6?

19 JUROR: Yes.

20 THE COURT: Number 7?

21 JUROR: Yes.

22 THE COURT: Number 8?

23 JUROR: Yes.

24 THE COURT: Number 9?

25 JUROR: Yes.

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1 THE COURT: Number 10?

2 JUROR: Yes.

3 THE COURT: Number 11?

4 JUROR: Yes.

5 THE COURT: Number 12.

6 JUROR: Yes.

7 THE COURT: All right. Ladies and gentlemen, I want
8 to thank you for your service. Rather interesting case, I'm
9 sure most of you found. I found it to be an interesting case.
10 I mean, they say that serving on a jury is the purest form of
11 democratic expression because it brings you closers to our
12 government than anything else you do, even voting. So we hope
13 you got something out of the experience. You put in more than
14 week doing it, and we really do appreciate the sacrifice
15 you've made.

16 I want to say to the alternates, as I mentioned to
17 you before, don't think it was all for nothing. Having you
18 here gives us tremendous security in case somebody goes wrong
19 and that's an important part of the process. So I want to
20 thank you specifically, as well, for being here throughout
21 this.

22 Thank you, ladies and gentlemen. You are all
23 dismissed.

24 JUROR: Thank you.

25 (Jury exits.)

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1 THE COURT: Okay. Be seated.

2 What does the defense want to do about motions?

3 MR. STERN: We made a Rule 29 motion. We renew them
4 at this time, and I think we await the Government's response.

5 THE COURT: Okay.

6 When does the Government want to put in a response?

7 MR. ARIAIL: Your Honor, we can put in a response in
8 the next two weeks, if that's sufficient.

9 THE COURT: Okay. Any reply if you want to within
10 say ten days after that?

11 MS. KELLMAN: That's fine, Judge.

12 THE COURT: In terms of sentencing, let's set a date
13 ninety nine days out.

14 MR. ARIAIL: Fine with the Government.

15 MR. STERN: You know, Judge, we have been talking
16 among ourselves about how this is going to go, how a PSR will
17 be done in this case.

18 And I think we're going to try and find an Arabic or
19 Hausa speaker who might have at least a possibility of talking
20 to him, because I am as sure as I can be that if someone from
21 Probation shows up, they may not well get a warm reception.

22 THE COURT: Yes.

23 MR. STERN: I'm not saying we can do, but at this
24 time, we don't a mental health professional. Anyone who
25 speaks the language well, so we'll try to do that.

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1 THE COURT: Okay. I'll set the date ninety days.
2 If it turns out you need more, obviously, we'll adjourn it, so
3 you can keep trying.

4 MR. ARIAIL: And Your Honor, obviously, we would
5 like to keep the ninety days and move forward as expeditiously
6 as possible with sentence.

7 THE COURT: Well, we've always moved --

8 MS. KELLMAN: We have no PSR. We just won't have a
9 PSR?

10 THE COURT: Is anybody moving to waive the PSR?

11 MS. KELLMAN: No.

12 MR. STERN: No.

13 THE COURT: So we have to try.

14 MR. ARIAIL: Understood.

15 THE COURT: We have a give a reasonable time to let
16 them get a translator, and we have to give them a reasonable
17 time to let them talk. I think it can be done in ninety days,
18 but if it can't, I -- we're not going to sitting here in six
19 months, I can tell you that. Okay.

20 MR. STERN: Judge, they also will have to assign
21 SAMS, unless it's someone who's already assigned.

22 THE COURT: That's true. That's true.

23 Okay. Anything else we have to cover?

24 MR. ARIAIL: No, Your Honor.

25 THE COURT: Okay. Thank you all again for your hard

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1 work.

2 MS. KELLMAN: Thank you, Judge.

3 MR. KASTER: Thank you, Judge.

4 THE COURT: Oh, the date ninety days from now?

5 THE CLERK: June 22nd at 10:00 a.m.

6 (Trial concluded.)

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