[The R.M.C. 803 session was called to order at 0832, 29 July 2008. All parties who were present when the commission recessed were present again; the members were absent.]

MJ [CAPT ALLRED]: Court's called to order.

Before we call the members into the courtroom this morning, I would like to announce my decision on the defense motion for sanctions, which was argued a week ago last Friday as a result of the discovery--the late discovery of documents relating to the accused's confinement.

I'm going to grant that motion. And the sanction that I'm going to impose is a rebuttable presumption**--[defense interpreter indicating to the military judge that he is not hearing the Arabic translation in the headsets.]**

You're not hearing? The interpreters maybe aren't in their box yet this morning **[defense interpreter indicating that he is hearing the translation]**.

Good morning. Are the interpreters on the job? Okay.

CT INT: Your Honor, we're here.

MJ [CAPT ALLRED]: At the microphone? Okay.

The sanction I'm going to impose is a rebuttable presumption that the 23 May 2003 statement of the accused was obtained under coercive conditions, and the government may rebut that presumption with clear and convincing evidence; in other words, an

elevated standard of proof to rebut the presumption. And I will issue a written decision to that effect later this morning.

Are you hearing okay, Mr. Hamdan? **[No response.]** Can you hear the Arabic this morning? **[Positive response.]** Okay. I thought I saw some looks of consternation.

DEF INT [MR. [redacted]]: Well, we don't understand what all this means. We'll have to ask the lawyers.

MJ [CAPT ALLRED]: Oh, okay. That's lawyer talk.

CDC [MR. SCHNEIDER]: That assumes something, that's----

ATC [MAJ ASHMAWY]: Sir, if----

CDC [MR. SCHNEIDER]: I just have a question.

MJ [CAPT ALLRED]: Yes.

CDC [MR. SCHNEIDER]: Perhaps it's premature. But, would the instruction include the fact that if it was obtained under coercive conditions, that it is inadmissible and should not be considered?

MJ [CAPT ALLRED]: Well, there's a two-part test that the government can meet under which it can be admissible even if it's obtained under coercive conditions; and that is, that it's reliable, and the interests of justice are advanced by having it admitted. So I am going to put the onus on the government to show, by clear and convincing evidence, that it meets that test. Okay?

DC [LCDR MIZER]: And, Your Honor, that's the 17 May 2003 statement?

MJ [CAPT ALLRED]: Yes. That's the only one that's still pending, as I recall.

TC [LCDR STONE]: You said 23. I think we're just clarifying that, it's the 17th.

MJ [CAPT ALLRED]: Oh. Well, maybe that's why everyone's confused. 17 May.

DC [LCDR MIZER]: Your Honor, there's one other issue that we would like to bring up so that we don't have to interrupt the testimony of the next witness.

We would ask that the Court preclude any questioning or testimony from the next witness which would suggest that Mr. Hamdan was one of the drivers of the next witness to a press conference in 1998.

The basis of that is Ms. Prasow and I went to Yemen in January of 2003, and Nasser Al-Bahri identified several journalists--that may have taken this individual and didn't even identify this individual as one of the journalists that Mr. Hamdan may have driven, and that Mr. Al-Bahri, as a member of the security detail, did in fact escort to see Mr. bin Laden.

We, through our own investigative efforts, identified Mr. Miller as someone who potentially could've been one of the journalists that was escorted. I went and met with Mr. Miller at FBI Headquarters, showed him photos of both Mr. Al-Bahri and Mr. Hamdan.

He was unable to identify either one of them. I asked him questions.

And the reason that we were--we were wanting to ask these journalists questions is because there's an incredibly mitigating set of circumstances that one of these journalists would have witnessed. He was unable to recall any of the details after my questioning, and we concluded that he was not relevant and was not in fact the journalist that was involved.

At the conclusion of the interview, I felt that I owed the man some explanation as to why we had taken an hour of his time, and I said that we had suspected that potentially Mr. Hamdan was a driver that had gone up there. Mr. Al-Bahri was certainly there and had related--Mr. Al-Bahri had suggested that they believed that this man was a member of the FBI when he conducted this interview.

I don't know why the government is going to call its next witness, but I want to make sure that there's no hearsay, in fact double hearsay, out of my mouth that there may have been an issue of Mr. Hamdan driving Mr. Miller to this interview.

MJ [CAPT ALLRED]: You don't want this witness to report that he heard from another journalist that that journalist heard from you the possibility that Mr. Hamdan was a driver?

DC [LCDR MIZER]: Your Honor, I don't want this witness to say that he heard from the defense counsel who heard it from someone else that he was possibly a journalist that was escorted by Mr. Hamdan.

I think there's two problems here. Not only is it double hearsay, and he has positively identified Mr. Hamdan as not being one of the drivers prior to our conversation, but I also don't want there to be an inference that the defense counsel is the source of this information and is identifying Mr. Hamdan as a driver.

While, I don't believe that being a driver for Usama bin Laden is a crime, certainly the government does. And I don't want that piece of hearsay and also information based on lack of personal knowledge in accordance with MRE 602 to somehow come before the members. I didn't want to have a 39(A) or an 803 session, and have to toss out the members. I would like to address this now before the witness testifies.

MJ [CAPT ALLRED]: Okay. Well, who is examining this witness for the government? **[Civilian counsel, Mr. Trivett acknowledges responsibility]** Mr. Trivett. Good morning. How are you?

CTC [MR. TRIVETT]: Good morning. I'm well, sir. Yourself?

MJ [CAPT ALLRED]: Excellent.

CTC [MR. TRIVETT]: Good.

MJ [CAPT ALLRED]: Are we going to have a problem with this particular potential objection, or can you say that we won't?

CTC [MR. TRIVETT]: Well, sir, the prosecution believes that his testimony and the fact that he had to go through a tremendous amount of security precautions before he got to Usama bin Laden is

definitely relevant regardless of the ultimate identity of the driver.

It's true that Mr. Miller through the pictures that were shown by defense counsel was unable to identify Mr. Hamdan. We're not certain if he's going to be able to identify Mr. Hamdan once he sits ten feet from him and sees him live. We don't know.

MJ [CAPT ALLRED]: Well, it's not like if he looks at Mr. Hamdan here in the courtroom and says, yes, I recognize him, that won't be a problem. What the defense doesn't want is you to elicit from the witness that the defense counsel somehow suggested that he was or something along those lines.

CTC [MR. TRIVETT]: Yes, sir. And here's the government's position on this. Based on knowledge and belief from talking to Mr. Miller was that he was told specifically from the defense counsel that both the accused and Mr. Jandal were in fact the drivers for the last stretch up to Usama bin Laden. This is consistent with what Lieutenant Commander Mizer said on the record here on 28 April 2008. He made the same representation that--and I think the quote is, "I would note that my client also drove ABC news journalist John Miller to a '98 interview with Usama bin Laden."

So the prosecution's position is, is that you can't identify him--and there may be good reasons why he can't identify them. Mostly the fact that it was very dark when they were driving,

he was watching the back of their heads for hours going and hours coming, but that he has a reason to believe it was Hamdan based on those representations from the defense counsel and the representations the defense counsel made on the record.

So that's the government's position in regard to if he can't identify him while he's looking at him, he should be able to reference that.

MJ [CAPT ALLRED]: Okay. Then we have a hearsay problem. Right?

CTC [MR. TRIVETT]: I think it's just a reason--I think it's a reason to believe. I mean, I don't know that he is going to say certainly, but I think he is going to say that he has a reason to believe that, "These are the individuals who drove me," if he's not able to point his finger and identify Mr. Hamdan in court today.

DC [LCDR MIZER]: We have both a lack of personal knowledge----

MJ [CAPT ALLRED]: Well, a reason to believe. That's the problem, a reason to believe. Why would we care if he has a reason to believe it? Is that the question you plan to ask him, if he has a reason to believe it?

CTC [MR. TRIVETT]: Yes, sir. If he's unable to identify him by himself, I mean, there's plenty of indicia of reliability that it was Hamdan based on the representations of counsel on record and the representations that were given by counsel to him.

MJ [CAPT ALLRED]: Is Mr. Miller going to rely on those representations by counsel for his reason to believe?

CTC [MR. TRIVETT]: I don't think there's any reason to believe that it's an unreliable statement----

DC [LCDR MIZER]: Your Honor----

CTC [MR. TRIVETT]: Hearsay is clearly admissible unless it's inherently unreliable.

DC [LCDR MIZER]: And now, having spoken with Mr. Miller, I have plenty of reason to believe that that is an inaccurate statement, a statement that was made in a motion session, not in front of members. Mr. Miller was not only, not able to identify Mr. Hamdan; he was not able to describe any of the factors that led to the interview in the first place. And, importantly, Mr. Miller's putting me in a position where I am testifying against my client.

Again, I don't believe that it's a crime to drive Usama bin Laden, but certainly the government does. And that's the central purpose of Mr. Miller's presence here today. I said good-bye to the man because I don't believe that any of the security details, any of the arrangements--we've already seen portions of the ABC news tape yesterday over and over and over again cut in and out of the Al Qaeda Plan. I don't really believe that this witness has really any other relevance than this point.

If the government still wants to come in and say that it

was very hard to get to bin Laden, that there were security measures that it took to get to bin Laden, certainly the defense will question the relevance of that testimony. I think that's accepted-- universally accepted that he was highly protected. But really, the focus of this is getting at hearsay and testimony from counsel. And if the Court is going to allow that, we can't possibly conduct pretrial investigations where we're discussing facts like this without it coming back to be used against us, and specifically used against Mr. Hamdan.

MJ [CAPT ALLRED]: Okay. Well, I don't know what the questions will be or what the answers will be, but I'm inclined to sustain the hearsay objection, if you ask him to rely on representations made by the defense counsel to now identify Mr. Hamdan as having participated in something.

CTC [MR. TRIVETT]: Yes, sir.

MJ [CAPT ALLRED]: Okay? But if he can identify him or if he can describe the guy who drove him, that sounds like it's good evidence and he can be cross-examined on that.

CTC [MR. TRIVETT]: Yes, sir.

MJ [CAPT ALLRED]: Is that where we're at?

CTC [MR. TRIVETT]: That's where we're at, sir.

MJ [CAPT ALLRED]: If we need to take a 39(A) or whatever they call it here, 803--interruption, we can do that. Okay?

CDC [MR. SCHNEIDER]: Do I understand correctly that this showing of clear and convincing proof will be made outside the presence of the jury before a witness is called--before the jury?

MJ [CAPT ALLRED]: That's my anticipation.

CDC [MR. SCHNEIDER]: Thank you.

MJ [CAPT ALLRED]: Okay. Are we ready to call the next witness then?

CTC [MR. TRIVETT]: Yes, sir. The government calls Mr. John Miller.

MJ [CAPT ALLRED]: Very good. Let's call Mr. Miller in the courtroom.

CTC [MR. TRIVETT]: Should we wait for the member or?

MJ [CAPT ALLRED]: Oh. I would've figured that out.

DC [LCDR MIZER]: Your Honor, could we have the witness instructed as to this discussion before the members come in?

CDC [MR. SWIFT]: Otherwise, we run the risk here, Your Honor, of just simply running over it.

[The witness, Mr. Miller, entered the courtroom.]

MJ [CAPT ALLRED]: Okay. Come in Mr. Miller; come in and sit down if you would, please.

Members of the gallery, you can sit down **[did as directed]**. This is the witness stand over here. It's kind of in an unusual place.

Would you swear the witness in, please?

CTC [MR. TRIVETT]: Would you stand and raise your right hand?

JOHN MILLER, Civilian, was called as a witness for the prosecution, was sworn, and testified as follows:

MJ [CAPT ALLRED]: Thank you, Mr. Miller.

We've had an objection this morning from the defense that has to do with whether or not part of the basis for your ability to recognize the defendant, if you can, might be an admission or statement made to you by the defense counsel. That's very sensitive ground.

When we get to that point in the testimony, if it turns out that you are relying on any such statement, there will be an objection and I'll have to probably excuse the members while we litigate it. So please pause before relating any admissions or statements made by the defense counsel if those form the basis for your ability to recognize Mr. Hamdan.

WIT [MR. MILLER]: Yes, sir.

MJ [CAPT ALLRED]: Fair enough? Thank you.

TC [LCDR STONE]: Sir, if I might, we can probably avoid all of this. Since the two of them are together outside the presence of the jury, if he recognizes him we can do it now and then we can dispose of whether we ever ask the question since, I mean, they're right there.

MJ [CAPT ALLRED]: Do you want to do that?

CTC [MR. TRIVETT]: Yes, sir.

MJ [CAPT ALLRED]: Why don't you go ahead then and conduct that portion of your examination and we will see what we have?

DIRECT EXAMINATION

Questions by the civilian trial counsel:

Q [MR. TRIVETT]: Just very preliminarily, Mr. Miller, do you recognize an individual who drove you to the interview with Usama bin Laden today in the court now that you have seen him live as opposed to any photographs?

A [MR. MILLER]: No.

CTC [MR. TRIVETT]: We can avoid that whole line of inquiry, sir.

MJ [CAPT ALLRED]: That was so easy. Wasn't it?

CTC [MR. TRIVETT]: Yes, sir.

MJ [CAPT ALLRED]: All right. Let's call the members into the courtroom.

[The R.M.C. 803 session terminated and the military commission was in session at 0846, 29 July 2008.]

BAILIFF: All rise **[all persons did as directed and the members entered the courtroom]**.

MJ [CAPT ALLRED]: Good morning, members. Please be seated **[did as directed]**.

Counsel, members of the gallery, please be seated **[did as directed]**.

The witness has already been sworn this morning. I'll let counsel introduce him and begin his testimony now.

I know yesterday we were in the middle of the examination of Evan Kohlmann; and, as a matter of fact, I believe I interrupted Mr. Trivett's examination because we had reached the end of the day. Mr. Kohlmann will be calling back, but this witness has a time constraint that we wanted to accommodate, so he will be testifying in the middle of Mr. Kohlmann's direct testimony.

So just turn to the next page in your notebooks, and you can come back to this page in a few minutes.

Okay. Mr. Trivett, please go ahead.

CTC [MR. TRIVETT]: Thank you, sir.

DIRECT EXAMINATION

Questions by the civilian trial counsel:

Q [MR. TRIVETT]: Sir, can you please state your name for the record, spelling your last?

A [MR. MILLER]: John Miller. M-I-L-L-E-R.

Q [MR. TRIVETT]: And, sir, who are you currently employed by?

A [MR. MILLER]: The Federal Bureau of Investigation.

Q [MR. TRIVETT]: Prior to working with the FBI, what jobs did you hold?

A [MR. MILLER]: From about April of 1973 to December of 1984, I was a reporter for Channel 5 television news in New York. In 1994 and part of 1995, I was Deputy Police Commissioner of the New York City Police Department in charge of their Office of Public Affairs. From 1997 to 2002, I was a correspondent at ABC News. From-- following that in 2003 to August of 2005, I was Deputy Chief of the Los Angeles Police Department in charge of the Counterterrorism and Criminal Intelligence Bureau. And following that, from September of 2005 to date, I've been with the FBI.

Q [MR. TRIVETT]: Let me take you back to your time at ABC News. What was your main job at ABC News?

A [MR. MILLER]: I was a correspondent in a special unit called the Law and Justice Unit, and our job was to cover major stories involving organized crime, narcotics, cartels, terrorism.

Q [MR. TRIVETT]: Did you perform a role as an investigative reporter?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: Would you explain to the members what an investigative reporter is?

A [MR. MILLER]: I think the basic definition of an investigative reporter is someone who is not involved in covering

necessarily the story of the day, but spends more time digging in depth into stories that take more time to develop.

Q [MR. TRIVETT]: In 1998, did you attempt to arrange an interview with Usama bin Laden?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: What was your main purpose for seeking that interview with Usama bin Laden?

A [MR. MILLER]: Usama bin Laden's name was emerging more in connection with different plots and information about prior plots, and some of the things that had come up involved plots against airplanes, plots to assassinate the President and other things. And it seemed that the--this individual was emerging as someone that not many people knew about. So the idea was to do a story on bin Laden, but before doing the story, to attempt to secure an interview and see what he could tell us.

Q [MR. TRIVETT]: In 1998, how did one even go about trying to arrange an interview with Usama bin Laden?

A [MR. MILLER]: We had a consultant at ABC News named Vince Cannistraro who was a former CIA officer. We contacted Vince and asked him to put out feelers within the community to see what would be the best way to make contact with bin Laden's organization. And he came back with a couple of names, and we had a number of meetings.

Q [MR. TRIVETT]: And what resulted from that?

A [MR. MILLER]: We were directed to an individual in London named Khalid Fawwaz, who we were told could broker the interview with bin Laden, and we traveled there to see him.

CTC [MR. TRIVETT]: I'm going to ask that a demonstrative aid be shown to the Military Judge and, with his permission, to the witness.

MJ [CAPT ALLRED]: There you go. You may show that to the witness, and to the members, actually. It's a map of the world.

Q [MR. TRIVETT]: Does that first line represent the trip that you took in order to go see Khalid Fawwaz?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: From New York to London?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: Please explain what happens in London when you meet Khalid Fawwaz.

A [MR. MILLER]: We met with Khalid Fawwaz at his residence. He asked a number of questions about the bin Laden interview. Where would it be aired? How long would it be? How large an audience would see it? He discussed a number of logistical items, including how many people would go, be it the cameraman, the soundman, a producer, a translator. And there was a lot of discussion about that. And then, he asked us to go see another individual.

Q [MR. TRIVETT]: Okay. When meeting with Khalid Fawwaz, what was your impression of the purpose of the meeting?

A [MR. MILLER]: It was that we were being vetted to determine, A, if we were who we said we were; B, what the logistics in terms of getting us in and out to whatever location we would see Mr. bin Laden would be; and, thirdly, the public relations value of it to bin Laden and his organization.

Q [MR. TRIVETT]: And you said you met with a second individual while in London?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: Can you please explain to the members who that individual was?

A [MR. MILLER]: We were directed from Khalid Fawwaz's residence to meet with Dr. Saad al-Faqih at his residence. And his questions went down a similar lines in terms of where the story would air, what the focus of it would be. And we in fact conducted an interview with him also.

Q [MR. TRIVETT]: And did you have to make your pitch as to how you were going to present the interview?

A [MR. MILLER]: Dr. Faqih wanted to know why it was that bin Laden should do this interview. And I explained to him that Mr. bin Laden's issues as they had been framed by Dr. Faqih, which was the plight of the Palestinian people, and end to the no fly zone in Iraq,

removal of U.S. bases from Saudi Arabia, that if explained, they could sound like very reasonable issues.

Q [MR. TRIVETT]: And how did he respond?

A [MR. MILLER]: He said, we don't want Mr. bin Laden to sound too reasonable.

Q [MR. TRIVETT]: On your screen, does that second arrow represent the trip you then took after meeting with these individuals?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: Now, these individuals in London, Khalid Fawwaz and Dr. Al-Faqih, did you understand them to be Usama bin Laden's people?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: Please explain to the members the next step of your trip to interview Usama bin Laden.

A [MR. MILLER]: We were directed to go to Islamabad and wait to be contacted. And we did so.

Q [MR. TRIVETT]: And where were you contacted?

A [MR. MILLER]: We were contacted at the Islamabad Marriott Hotel by two individuals who came to my room, conducted a brief search. We had a discussion again about logistics, how many people would or could travel. And then we were given instructions where to be the next day.

Q [MR. TRIVETT]: And can you explain in more detail the nature of the search they conducted on your room?

A [MR. MILLER]: It was a bit of a surprise visit. There was a knock at the door. They had apparently been meeting with my translator. And they came in, they looked in the bathroom, they looked behind the shower curtain, they looked in the closet, they looked at my luggage and things. They did a cursory search of the room.

Q [MR. TRIVETT]: So how many people are in your party at this point, when you're in Islamabad?

A [MR. MILLER]: There's a producer, a soundman, a cameraman, and a translator.

Q [MR. TRIVETT]: And do you know the nationality of the translator?

A [MR. MILLER]: He was Iraqi.

Q [MR. TRIVETT]: Did you ever complain of not being able to communicate with these individuals at any point in time?

A [MR. MILLER]: No.

Q [MR. TRIVETT]: So after they searched your room, what happened?

A [MR. MILLER]: We had the logistical discussion. They were intent that it should just be myself and the cameraman. We wanted to bring the soundman and the translator. We haggled over this for some

time, until we brokered a deal to be able to travel with three. And that would be myself, the cameraman, and the translator.

Q [MR. TRIVETT]: And what was your understanding as to why the other two people could not come?

A [MR. MILLER]: They said for security reasons, it would be hard to move them, to move such a large group.

Q [MR. TRIVETT]: So what happens after the negotiations?

A [MR. MILLER]: We were told to be ready at 0700, and to be dressed in the traditional clothing of the region, salwar kameez, sandals, and so on.

Q [MR. TRIVETT]: Did they meet with you the next morning?

A [MR. MILLER]: They did. Later than the appointed time, but at some point we were directed to go to the airport and wait for them.

CTC [MR. TRIVETT]: I'm going to ask the next demonstrative aid be shown to the Military Judge and, with his permission, to the witness and to the members. It's another map.

DC [LCDR MIZER]: No objection, Your Honor.

MJ [CAPT ALLRED]: I think you can show this to everyone if it's just a map.

[END OF PAGE]

Q [MR. TRIVETT]: Does the demonstrative aid on your screen, Mr. Miller, represent the trips that you took within Pakistan prior to the interview?

A [MR. MILLER]: Yes, it does.

Q [MR. TRIVETT]: So please explain what happens after you meet with the individuals in Islamabad.

A [MR. MILLER]: Two individuals met us at the airport, the same two from the hotel room. They escorted us to a gate. They paid cash for some plane tickets, and handed them to us at the gate. And at that point we learned we were going to Peshawar.

We proceeded to Peshawar. One of the individuals escorted us. This would be one of the individuals from bin Laden's organization. And he followed us to a hotel that we checked into, the Hotel Grand. Then he went his separate way, and we were told to wait for instructions again. And then the following morning we were told to go to the airport again, and it was the same process: They produced tickets. We were taken to a gate, and put on a flight to Banu.

Q [MR. TRIVETT]: And were you told where you were going prior to you arriving there?

A [MR. MILLER]: No. We never actually knew where we were going until they purchased the tickets, brought us to the gate, and then handed us the tickets and directed us to which gate within the

complex we were going to. So we generally learned where we were going in the waiting room outside the flight.

Q [MR. TRIVETT]: What was your understanding as to why that was happening?

A [MR. MILLER]: Well, we offered to obviously pay for the tickets, to handle the travel arrangements. But they explained that they wanted to do all this, and it was--it was clear during the process that this was so that we would not know where we were going or to be able to communicate where we were going until we were already going there.

Q [MR. TRIVETT]: How would you describe the demeanor of your escorts at this point?

A [MR. MILLER]: Serious. Really, they only communicated when communication was necessary. There was no small talk.

Q [MR. TRIVETT]: Please describe your arrival at Banu.

A [MR. MILLER]: We flew in on a prop plane and landed on an airfield. The airport in Banu is not much more than a cinder block building. It opens for the flight that comes in, and then closes shortly thereafter. So we arrived, we retrieved our equipment, the camera gear and so on, our personal bags, and then waited by the roadside.

Q [MR. TRIVETT]: Did someone arrive at the roadside at some point?

A [MR. MILLER]: After a long time, perhaps an hour, after all the other passengers were gone, a bus pulled up and--a crowded bus. And out of the bus, a man with a long white beard emerged and greeted the person who had been carrying us through this trip.

Q [MR. TRIVETT]: What happens next?

A [MR. MILLER]: The bus waited. The old man got on the bus with our al Qaeda guide, and essentially rearranged people's seating to place us at different places in the middle of the crowd at about the center of the bus. And then the bus continued on its way.

Q [MR. TRIVETT]: And how long was the bus ride that you took?

A [MR. MILLER]: This might have been a couple or three hours. It was a long ride.

Q [MR. TRIVETT]: Did you encounter any checkpoints on the ride when you were on the bus?

A [MR. MILLER]: Yes. The bus went through several checkpoints in the tribal areas.

Q [MR. TRIVETT]: By the time you get on the bus, do you have any idea where you're going?

A [MR. MILLER]: No.

Q [MR. TRIVETT]: At this point, are you still even aware of what country you're in?

A [MR. MILLER]: I believed we were still in Pakistan, but I wasn't very familiar with the area. I knew where Islamabad was. I was familiar with Peshawar. I had never heard of Banu until I read it on the sign at the airport. But my assumption was we were in Pakistan.

Q [MR. TRIVETT]: And how did Banu differ from Peshawar?

A [MR. MILLER]: It was in the middle of nowhere. It was not a city more than it was an airport.

Q [MR. TRIVETT]: Can you please describe the checkpoints that you went through on the bus?

A [MR. MILLER]: These were areas separated by many miles of-- you know, you would go through one, and maybe 45 minutes later or an hour you would go through another. They had armed men who would stop individual vehicles, vans, cars, and take the people out, look inside, Western people.

Q [MR. TRIVETT]: Did they stop the buses?

A [MR. MILLER]: No.

Q [MR. TRIVETT]: What happens at the end of this ride on the bus?

A [MR. MILLER]: At some point, we are directed to get off the bus. And we're accompanied by the old man with the long white beard

and our guide, and we were put into the back of a small mini van.

Q [MR. TRIVETT]: Where did you go from there?

A [MR. MILLER]: We drove a short distance through a town; and then behind--at the end of the town, made a couple of quick left turns down an alleyway and then into the back of a house. When the van pulled up, there were people waiting to open the gates. The gates opened, the van drove in, the gates closed, and we went inside.

Q [MR. TRIVETT]: Can you please describe, generally, what this house was like?

A [MR. MILLER]: It was a small house in a row of similar houses in a--with a rear courtyard that was walled in. You couldn't see inside from the outside. Inside, there were rugs and--or, blankets and pillows on the floor. There were AK-47s with magazines hanging from the walls, a jerry rigged walkie-talkie that had been hooked up to a plug in the wall as part of some communications system, pictures that appeared to be from the Afghan war with the Soviet Union, and a phone. It had a phone.

Q [MR. TRIVETT]: How long did you stay at this house?

A [MR. MILLER]: We were there probably three or four hours, at the most.

[END OF PAGE]

Q [MR. TRIVETT]: As your journey continued from New York to London to Islamabad, and then eventually to Banu and up, is it fair to describe it as getting further and further away from civilization?

A [MR. MILLER]: We were almost literally driving back into time. We went from cities that had big hotels, phones, faxes, and computers, to small towns in the frontiers, to smaller towns in the tribal areas.

I note that the last location we discussed had a phone because our communications were being steadily cut off, to the point that we had no contact with the outside world and no ready way to make contact. It's not like you could hop out of the car and jump on a cell phone or a pay phone or something like that.

Q [MR. TRIVETT]: At some point, do you cross the border between Pakistan and Afghanistan?

A [MR. MILLER]: After we left that house, we were loaded into the back of a small pickup truck. We sat on sacks of flour that were in the back, and were driven for a distance to the point that there were no more towns and not much of a road left. We drove in riverbeds and across wilderness.

And at some point the truck stopped, and there was discussion about how to cross into Afghanistan. The discussion was that we could put on burkas, stay in the back of the truck, and be driven through the Taliban checkpoint; or, we could dismount from the

truck and walk over the hills across the border in the cover of darkness.

Q [MR. TRIVETT]: What did you choose?

A [MR. MILLER]: I went for the walk.

Q [MR. TRIVETT]: And who is with your party at this point? Who walks across the border into Afghanistan?

A [MR. MILLER]: The two drivers of the truck, the cameraman, Rick Bennett, myself, the translator, and I believe our al Qaeda guide was still with us.

Q [MR. TRIVETT]: Did you have to carry your stuff with you?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: Did that include the TV camera?

A [MR. MILLER]: Yes. It included the camera, the gear, our personal bags, everything we had with us.

Q [MR. TRIVETT]: And briefly describe the camera that your cameraman had.

A [MR. MILLER]: It's a--about maybe a foot and a half, two feet long at the most, maybe 10 inches high, probably weighs 15 pounds, was a Japanese-made Ikegami professional television camera.

Q [MR. TRIVETT]: And do you know what this camera was valued at?

A [MR. MILLER]: I believe it was about $50,000.

Q [MR. TRIVETT]: How long were you told that the walk was going to take across the Afghanistan border?

A [MR. MILLER]: They said about half an hour.

Q [MR. TRIVETT]: How long did it take?

A [MR. MILLER]: That might have been our fault, but it took at least an hour and a half.

Q [MR. TRIVETT]: Eventually, did you cross over the border?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: And what happens once you crossed over the border?

A [MR. MILLER]: The truck was at the bottom of the hill waiting for us on the other side.

Q [MR. TRIVETT]: Now, was there any concerns that you had when you were in Afghanistan about even having a camera with you?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: And what was that concern based on?

A [MR. MILLER]: Some of our discussions with the people who were moving us through this trip were that the camera shouldn't be detected. The Taliban was--had outlawed cameras and the photographing of human beings, and certainly did not have an open media policy in terms of the movement of the press. So it was determined that we should try and keep an extraordinarily low profile, and keep the camera out of sight.

Q [MR. TRIVETT]: So how far do you drive once you're picked up after the Afghanistan border?

A [MR. MILLER]: I don't know in terms of distance, but we drove through the night. We got to the other side of the border in darkness, and drove for several hours.

Q [MR. TRIVETT]: And at some point, do you meet any of the individuals that you were looking to get in touch with?

A [MR. MILLER]: At some point, we came to kind of a fork in the road, and there was a couple of vehicles and a number of men staged there and I met a couple of them. One of them greeted us very nicely, welcomed us to their camp, told us about the accommodations. The other one sequestered our luggage and equipment, and went through everything, and gave some back and kept some.

Q [MR. TRIVETT]: What's some of the stuff that he kept?

A [MR. MILLER]: They kept the camera and some of the gear. And they gave us back our personal things, clothing, deodorant, shaving stuff.

Q [MR. TRIVETT]: Did they introduce themselves to you?

A [MR. MILLER]: No. Not formally.

Q [MR. TRIVETT]: Who did you believe them to be?

A [MR. MILLER]: Dr. Ayman al-Zawahiri and Muhammed Atta.

CTC [MR. TRIVETT]: Sir, I would now like to show the witness what is already in evidence as Prosecution Exhibit 42.

MJ [CAPT ALLRED]: Very well.

[PE 42 shown to and examined by the witness.]

Q [MR. TRIVETT]: Do you recognize the individual in this picture as one of the men you met at the fork in the road?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: Who do you now know him to be?

A [MR. MILLER]: Mohammed Atta.

Q [MR. TRIVETT]: And you just described a person who was very friendly and accommodating and spoke to you about what your accommodations would be.

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: And an individual who handled the security piece in regard to taking your other items.

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: Which one was Mohammed Atta?

A [MR. MILLER]: He would be the one that was focused on security.

Q [MR. TRIVETT]: What was his general demeanor?

A [MR. MILLER]: Strictly business. Not very friendly.

CTC [MR. TRIVETT]: I would now also like to show the witness what is already in evidence as Prosecution Exhibit 39.

MJ [CAPT ALLRED]: Okay.

[PE 39 shown to and examined by the witness.]

Q [MR. TRIVETT]: Do you recognize the individual depicted in this picture as the other individual you met at the fork in the road?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: And who do you know him to be?

A [MR. MILLER]: Dr. Zawahiri.

Q [MR. TRIVETT]: Is that how he looked when you met him?

A [MR. MILLER]: He had glasses.

Q [MR. TRIVETT]: Have you ever done an interview before where they actually took your camera equipment prior to the interview?

A [MR. MILLER]: No.

Q [MR. TRIVETT]: Did you guys object when they asked to take it?

A [MR. MILLER]: We wanted to know where it was going and when we would get it back. It's not something you want to part with.

Q [MR. TRIVETT]: Now, at some point later on before the interview, do you actually get the camera back?

A [MR. MILLER]: Immediately before the interview. Yes.

Q [MR. TRIVETT]: Was the camera in the same shape that you sent it in?

A [MR. MILLER]: The cameraman, Rick Bennett, informed me that he thought it had been taken apart and put back together.

Q [MR. TRIVETT]: Very briefly, describe your accommodations right after you meet these two individuals.

A [MR. MILLER]: After we met in the fork in the road, we were taken to a small hut on top of another hill after a short drive, or a shorter drive. We were told that--Dr. Zawahiri said, "This is probably not what you are used to in terms of accommodations, but around here it is *the Ritz*." And he opened the door and showed us a room with blankets on the floor, pillows, and said, "You'll be comfortable here. You are not prisoners here, you are our guests." He directed our attention to a number of armed men in camouflaged fatigues, said, "They are here to ensure your safety, and that we ask you not to go outside."

Q [MR. TRIVETT]: what was your understanding as to why you couldn't go outside?

A [MR. MILLER]: They said they did not want to advertise our presence there.

Q [MR. TRIVETT]: Did you believe that was the only reason?

A [MR. MILLER]: I also was told not to go outside, not to take any pictures. It was clear that they didn't want us seeing the activity around the camp.

Q [MR. TRIVETT]: Now, you mentioned that there were guards in fatigues. Were they wearing rank insignia?

A [MR. MILLER]: No.

Q [MR. TRIVETT]: And at some point, does Dr. Zawahiri come back and let you know that Usama bin Laden is going to grant the interview?

A [MR. MILLER]: Yes. Dr. Zawahiri probably visited once a day over the three or four days we were there, and each day we asked, would the interview be that day? And we handled other logistical details in terms of questions, translation of questions. And at some point he came and told us the interview would be that day, that evening.

Q [MR. TRIVETT]: Did you have to inform him what questions you were going to ask of Usama bin Laden?

A [MR. MILLER]: Yes. Dr. Zawahiri asked for the questions. I explained to him that's not how it's usually done because the interview was usually a little more free flowing than that. He explained the translation difficulties, which was that they would use their translator, not ours, and that he wanted the questions in writing so that his translator could copy them over in Arabic and read them exactly as they were asked. His argument was that if the translator had to translate it in real-time, he might not ask the questions with precision, and I might get different answers from those I was seeking. So, I jotted down about 16 questions on a yellow pad, tore off the two pages, and gave it to him.

Q [MR. TRIVETT]: What was the day that you left New York? Do you remember the date?

A [MR. MILLER]: No. It would have been in mid May. I believe, to the best of my recollection, we probably got to Islamabad on or about May 17th.

Q [MR. TRIVETT]: At some point, did they finally agree to grant you the interview?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: And on what day did they grant you the interview?

A [MR. MILLER]: On or about May 28th.

Q [MR. TRIVETT]: Approximately 11 days from the time that you got into Pakistan?

A [MR. MILLER]: Approximately.

Q [MR. TRIVETT]: Was the interview held at the place where you were staying?

A [MR. MILLER]: No.

Q [MR. TRIVETT]: At *the Ritz*?

A [MR. MILLER]: No.

Q [MR. TRIVETT]: Please describe how you finally get to the interview.

A [MR. MILLER]: On the night that the interview was going to take place, at approximately 9:00, a number of individuals showed up

at the huts where we and the security people from al Qaeda who were guarding us were present. We were directed to the next building over, which was the place where the people who were guarding us stayed, and we were searched.

Q [MR. TRIVETT]: Please describe the nature of the search.

A [MR. MILLER]: It was a head to toe search, a pat down front and back, inside the legs. It was--and the clothing we were wearing, which was the salwar kameez, is a kind of baggy soft clothing, so it was easy to--it wasn't hard to determine if you were carrying something underneath it. Whatever items we had were taken away, pen, pencil, any physical item.

Q [MR. TRIVETT]: Is it fair to characterize the search as thorough?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: Professional?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: And the people who searched you, are those the same people who drove you to the ultimate place?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: Please describe that journey.

A [MR. MILLER]: We were--the translator, the cameraman, Mr. Bennett, and myself, were loaded into the back seat of a blue four-by-four pickup truck, larger pickup truck, and of SUV size. And

we set off and left that camp, drove a great distance through the night over a couple of hours, probably departing around 9:30, and----

Q [MR. TRIVETT]: At night, sir, or in the morning?

A [MR. MILLER]: At night. It was dark. And driven to, again, through riverbeds, over rocks and hills, to another camp.

Q [MR. TRIVETT]: Did you encounter any checkpoints on your way to this final interview site?

A [MR. MILLER]: There was a gate and guard post at the base of that camp where we were checked, and then a series of checkpoints as we drove through the camp, which was also a good distance.

Q [MR. TRIVETT]: Can you describe the interactions of the checkpoint that your drivers had with the security?

A [MR. MILLER]: The drivers were supposed to have a letter that granted them passage or authorization to travel, and at each checkpoint they had to explain that they did not have the letter and that they were working for the organization and that they were transporting the people who were supposed to see the boss.

Q [MR. TRIVETT]: Did that work at every checkpoint?

A [MR. MILLER]: It was a bit of an ordeal at every checkpoint, because they were stopped, they were questioned. We were--guns were pointed at us, poked into our faces, flashlights. Questions were yelled at us that we didn't really understand. And they had to

explain their way through each checkpoint, each time as if it were the first time almost.

Q [MR. TRIVETT]: At any point, was your vehicle fired upon?

A [MR. MILLER]: At some point, the second to last checkpoint. The way this worked, Mr. Trivett, was it's not a checkpoint like you would see here on the island where you roll up to a set checkpoint. The one at the base of the camp was that way; but as we drove up this mountain, what I refer to as checkpoints actually were men would jump out from the side of the road and confront the vehicle at gunpoint.

At the second to last one, rather than jumping out, they opened fire from both sides of the road. The vehicle we were in had very dark tinted windows and it was night, so we could see almost no details except what we could see out the front window. But in this case, I was able to see muzzle flash from the weapons coming from both sides, and myself and Mr. Bennett and the translator both ducked down because we believed the vehicle was being fired on. And after a while, not hearing impact on metal or breaking glass, I peeked out to see that our two drivers were sitting up not very impressed with this event. And at that checkpoint, we went through kind of the same drill as before: They surrounded the vehicle with the weapons, they demanded identification; and the same explanation about not having the documents came through, as well as they said they hadn't gotten the radio call from the previous checkpoint.

Q [MR. TRIVETT]: So as you're getting closer to the camp, would you describe the security as getting tighter or more relaxed?

A [MR. MILLER]: Well, I asked through the translator what was going on. And they explained that when Mr. bin Laden is going to be present, security is always increased.

Q [MR. TRIVETT]: So please describe your arrival at the final base camp where you interviewed Usama bin Laden.

A [MR. MILLER]: Well, we got to the top of this mountain or hill. And when we arrived there, there were generators set up, lights set up, and a large number of people gathered there, including some of the people who had transported us over the border, one of the individuals that we had met in Islamabad. It seemed that everybody who was around was up there and staged there with weapons.

Q [MR. TRIVETT]: When you say a large number of people, can you give an estimate?

A [MR. MILLER]: Perhaps a couple of hundred.

Q [MR. TRIVETT]: Were any women there?

A [MR. MILLER]: No.

Q [MR. TRIVETT]: Any little children?

A [MR. MILLER]: There were boys that I would estimate to be teenaged boys among them.

Q [MR. TRIVETT]: Were they all armed?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: What's your understanding as to who these people were when you finally got to this base?

A [MR. MILLER]: That they were members of al Qaeda.

Q [MR. TRIVETT]: And did you note even that the name of this organization at this point was al Qaeda?

A [MR. MILLER]: Not at that point.

Q [MR. TRIVETT]: Do you--go ahead.

A [MR. MILLER]: I understood it to be bin Laden's organization. I had done an awful lot of research. I knew there was an organization, I knew it had a number of people in it, I knew it operated a number of camps. And it was clear that these were people from that camp.

Q [MR. TRIVETT]: What type of organization did it appear to be to you?

A [MR. MILLER]: It was a terrorist organization.

Q [MR. TRIVETT]: Do you meet again with Dr. Zawahiri when you are at the camp?

A [MR. MILLER]: Yes. He is waiting for us at the top of the hill. And we had a discussion about the interview.

Q [MR. TRIVETT]: What did that discussion entail?

A [MR. MILLER]: He said, "I have very good news. Mr. bin Laden has agreed to answer each one of your questions," referring to the written list. He said, "There is one other item that we need to

cover, which is we will not be able to translate his answers to you." I said, "It's going to be a problem, because how am I going to ask the follow-up questions?" And he said, "There won't be a problem. There will be no follow-up questions."

Q [MR. TRIVETT]: Did you ask to take footage of Usama bin Laden when he arrived and around the camp?

A [MR. MILLER]: We had had that discussion with Dr. Zawahiri earlier.

Q [MR. TRIVETT]: Were you allowed to do that?

A [MR. MILLER]: No.

Q [MR. TRIVETT]: Why not?

A [MR. MILLER]: Dr. Zawahiri explained that, "This is not like your Sam Donaldson walking through the Rose Garden of the White House with the President. Mr. bin Laden is a very important man, and there would be no such footage."

Q [MR. TRIVETT]: And what is this footage commonly known as in the media?

A [MR. MILLER]: It's referred to as B-roll. It's the background footage that you use for an interview or another story to give you something to cover the narration with, basically to help tell the story.

Q [MR. TRIVETT]: Did you get your camera back at this time?

A [MR. MILLER]: Not immediately. We asked where it was. Al Qaeda had provided us a--kind of an inexpensive Panasonic VHS home video camera to film the interview on. And the cameraman objected very strongly, I thought at the moment, too strongly, because I thought we might be in danger of losing the interview. But he put his foot down, and his camera reappeared.

Q [MR. TRIVETT]: At some point, does Usama bin Laden arrive at camp?

A [MR. MILLER]: After a short while, a motorcade of two or three SUVs rolls up on top of the hill, and he arrives.

Q [MR. TRIVETT]: And what's the reaction amongst the people once he arrives?

A [MR. MILLER]: All of the people that were staged kind of in a semi-circle around the hill when he arrives started firing their guns in the air with tracer rounds, firing guns, launching rockets. And Dr. Zawahiri smiled and informed me that whenever Mr. bin Laden arrives, there's always a great celebration.

Q [MR. TRIVETT]: When he arrives to begin the interview, are you able to film him going into the interview itself?

A [MR. MILLER]: They had not returned our camera at that point. The camera that they were using filmed it, and I gave a small hand-held camera that I had brought with me to the cameraman who got

a shot of it. But we didn't get it on ours, on our professional camera.

Q [MR. TRIVETT]: Were they aware that you had that smaller camera?

A [MR. MILLER]: I don't know. They had looked through that bag. But they had returned the bag to me with the camera still in it at that point, although they would later take it away.

Q [MR. TRIVETT]: I'm going to show you some clips in a second. I wanted to ask you some quick questions to--so we can understand the context of those clips.

When Usama bin Laden arrives, how would you describe the security measure?

A [MR. MILLER]: He was surrounded by a phalanx of bodyguards who piled out of the car with him. They walked with him as he moved through the crowd and escorted him to the building.

Q [MR. TRIVETT]: Were they masked?

A [MR. MILLER]: Their faces were covered. Yes.

Q [MR. TRIVETT]: How about the other individuals, the other people, the other hundreds of people at the camp? Were they all masked?

A [MR. MILLER]: Most of them were.

Q [MR. TRIVETT]: Were the bodyguards armed?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: How tightly circled? How tightly did they circle Usama bin Laden?

A [MR. MILLER]: Pretty tightly. They moved through the crowd of other people, which kind of closed in as he arrived. And they moved with him the way a security detail would move with a protectee, in front of him, behind him.

CTC [MR. TRIVETT]: With the Judge's permission, I would like to show the Military Judge one of the clips from the ABC News interview, and ask that Mr. Miller view it.

MJ [CAPT ALLRED]: It is already in evidence?

CTC [MR. TRIVETT]: It is not. And we only have clips. We don't have the entire interview.

MJ [CAPT ALLRED]: Okay. Well, why don't you show it to the witness, and let him see if he can identify it.

[PE 130 for ID played for military judge and witness.]

MJ [CAPT ALLRED]: I'm sorry. Can you stop this, please?

[PE 130 for ID stopped.]

MJ [CAPT ALLRED]: Okay. That should be enough for witness to authenticate the exhibit. You can show it to the members, and just play it once.

CTC [MR. TRIVETT]: That will be fine.

MJ [CAPT ALLRED]: Okay.

Q [MR. TRIVETT]: Do you recognize the clip that you just saw?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: What do you recognize that as?

A [MR. MILLER]: That is the interview I conducted with Usama bin Laden on or about May 28th, 1998.

CTC [MR. TRIVETT]: I would ask that that clip be put into evidence as the next prosecution exhibit in order, shown to the members, and I'll follow up with some questions after the members view it.

DC [LCDR MIZER]: No objection, Your Honor.

MJ [CAPT ALLRED]: Prosecution Exhibit 130, admitted without objection. You may show it to the members and the gallery.

[PE 130 was shown to all persons.]

Q [MR. TRIVETT]: Can you describe at what point in the interview that was?

A [MR. MILLER]: That's the beginning.

Q [MR. TRIVETT]: And is that your voice?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: On the tape?

And just generally describe the building that you were in when you were giving this interview.

A [MR. MILLER]: It was kind of a tent that had been dug into the ground. So you would enter this tent and go maybe two steps down

into this trench. It had a rug with a design on it, kind of a modern design, benches lining both sides. The room might have been 30 feet or so. And then, a wider bench in the front with a map tacked up to the wall.

Q [MR. TRIVETT]: Was it your perception that this was set up just for the interview?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: And what is that perception based on?

A [MR. MILLER]: Based on the staging of it, which is the seating at the end, the map on the wall, it was staged the way you would stage an interview if you wanted a certain background.

CTC [MR. TRIVETT]: May the witness be allowed to see the second clip?

[PE 131 for ID was offered.]

MJ [CAPT ALLRED]: Has the defense seen all these clips?

CTC [MR. TRIVETT]: They were discovered within the larger context of the interview. We just clipped out sections from within that interview.

MJ [CAPT ALLRED]: Do you have any objection to this or authentication?

DC [LCDR MIZER]: We have seen this tape, Your Honor, and no objections. As I said, we've already seen portions of this yesterday.

MJ [CAPT ALLRED]: Okay. Without objection, this will be Prosecution Exhibit 131. You can show it--it's admitted without objection. You can show it to the witness and have him describe it, and to the members as well.

[PE 131 was shown to all persons.]

Q [MR. TRIVETT]: Can you describe--was that question actually part of your interview?

A [MR. MILLER]: No. This is--because we didn't have the opportunity to film bin Laden moving through the camps, we didn't have any B-roll, so to speak, this was what we call setup shots. The cameraman would take different angles, the angle you saw from behind the gun, a wide shot from the back of the room, the shot of me talking to bin Laden, so we would have material to narrate over. The purpose of the question was, A, so that we could actually keep people sitting still and engaged while Rick Bennett got his shots. But also, I was interested in determining if bin Laden had a sense of American culture and history. The Teddy Roosevelt example was--the correlation between people of wealth and privilege who fought on the frontline, I really wanted to see if he, A, recognized the name, had an answer to that and so on. But mostly it was just to keep some semblance of conversation going so that people would stay still while Bennett shot his film.

Q [MR. TRIVETT]: And at some point in that clip, the camera pans to the right, and there's an individual who is sitting on the wall. Do you recognize that individual?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: And who did you recognize that individual to be?

A [MR. MILLER]: Mohammed Atta.

Q [MR. TRIVETT]: Is that the same individual that you met at the fork in the road?

A [MR. MILLER]: Yes.

CTC [MR. TRIVETT]: I would now show the third clip, sir, and ask that it be published to the witness **[PE 132 for ID was offered]**.

MJ [CAPT ALLRED]: Okay. This will be Prosecution Exhibit 132. **[PE 132 was shown to all persons.]**

Q [MR. TRIVETT]: Is that taken from Mr. Bennett's camera?

A [MR. MILLER]: I believe so. Yes.

Q [MR. TRIVETT]: Are you aware of who put their hand over the lens?

A [MR. MILLER]: There were a couple of people keeping an eye on Bennett and what he was shooting. That happened a couple of times.

Q [MR. TRIVETT]: And who did you understand those people to be lining that tent?

A [MR. MILLER]: Security people.

CTC [MR. TRIVETT]: With the Judge's permission, the last tape.

[PE 133 for ID was offered.]

MJ [CAPT ALLRED]: Very well.

[PE 133, admitted and shown to all persons.]

Q [MR. TRIVETT]: I had a couple questions for you on that clip, sir.

When the color bars came up, can you describe--can you generally describe what color bars are?

A [MR. MILLER]: Color bars are something that cameramen use to test the camera on monitors and for color. You have to flick a switch to make the color bars come up. If you flick that switch while tape is rolling, you'll record color bars. That's how tapes often begin.

Q [MR. TRIVETT]: And this is from Mr. Bennett's $50,000 camera?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: Can you explain why those color bars were on that, sir?

A [MR. MILLER]: Yes. After our camera was returned to us and we were able to shoot the interview with it, we were able to shoot bin Laden's departure with it. We had missed the arrival on our camera because it was still in their custody at the time. So after we shot the departure of Mr. bin Laden leaving the interview, getting into the vehicles, going away, and the celebratory gunfire that

followed, Mohammed Atta and some others took us back into the tent, sat down, and wanted to go over the tape. And we showed them the tape, and they said that they would have to take the tape or we would have to erase portions of it.

Q [MR. TRIVETT]: And did they tell you why?

A [MR. MILLER]: Yes. They said anywhere where somebody's face covering or mask had slipped or where they were exposed or identifiable was not acceptable to them, and they wanted to take the tape. They said they would send it to us. We argued that we didn't want to give up the tape and weren't going to give up the tape. And they said we would have to erase it here in front of us and we'll have to see it.

So we went through a process of rolling color bars over the places where they said there was an identifiable person seen without a mask, and then we had to rewind it, play it back to them so they could see it was in fact covered over. And that was the only way we were allowed to leave with that tape.

Q [MR. TRIVETT]: It seemed like you were hundreds of miles from civilization. Why would they be concerned about someone's face on a tape?

A [MR. MILLER]: I raised this very objection. And they said, these people travel, and we can't have them identified.

Q [MR. TRIVETT]: Did they identify who they traveled for when they're traveling?

A [MR. MILLER]: No.

Q [MR. TRIVETT]: So after the interview’s over, do you get to talk to Dr. Zawahiri again?

A [MR. MILLER]: Briefly. They brought out some tea and some small pastry, which they offered us. And that was about it.

Q [MR. TRIVETT]: What was the subject of the conversation?

A [MR. MILLER]: After the vetting and erasing of the videotape, there wasn't much conversation.

Q [MR. TRIVETT]: Were you aware, in general, of what Usama bin Laden had answered your questions?

A [MR. MILLER]: His answers were not translated to me. But at the end, I went to my translator who was kept at the back of the room, and I asked him how much he had heard, and he said most of it. And I asked him, what was the sum and substance of it? And he said he had declared war on America, said that civilians would be targets and that this war would begin soon.

I asked Dr. Zawahiri about that, what it meant. And he said, "You will see the results of this fatwa in the next several weeks. Watch the media."

Q [MR. TRIVETT]: Remind us of the date, again, of your interview.

A [MR. MILLER]: May 28th, on or about, 1998.

Q [MR. TRIVETT]: Now, the same two individuals who drove you up to the mountain, did they drive you back to your base camp before you leave?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: Were they making any statements regarding al Qaeda's war against America?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: What were they saying?

A [MR. MILLER]: They exchanged the stories between them about having been in Somalia and having slit the throats of American soldiers.

Q [MR. TRIVETT]: Are you aware of anything that hit the media several weeks after that Zawahiri was referencing?

A [MR. MILLER]: Yes. On August 7, 1998, two U.S. embassies were destroyed simultaneously by truck bombs.

Q [MR. TRIVETT]: Do you know if the United States retaliated?

A [MR. MILLER]: Yes. There was a time several weeks later when a number of cruise missiles were sent into the camps that were identified as al Qaeda camps, and they were destroyed.

Q [MR. TRIVETT]: Do you know if it's the same camp that you took the interview at?

A [MR. MILLER]: I don't know.

CTC [MR. TRIVETT]: Sir, there's one last exhibit. I was just informed that we don't have it electronically, but we do have a hard copy. So if I could have the bailiff retrieve it so the witness can identify it.

MJ [CAPT ALLRED]: Um-hmm.

CTC [MR. TRIVETT]: Handing to the bailiff so he may hand it to the witness what has been marked as the next prosecution exhibit number in order, which is 134.

[PE 134 for ID offered.]

Q [MR. TRIVETT]: I would ask you, Mr. Miller, if you recognize that document?

A [MR. MILLER]: **[Examining PE 134 for ID.]** Yes.

Q [MR. TRIVETT]: What do you recognize it to be?

A [MR. MILLER]: This is the ABC News translation of the bin Laden interview.

Q [MR. TRIVETT]: And was that used in any other court proceedings that you're aware of?

A [MR. MILLER]: It was used in the embassy bombing trial.

CTC [MR. TRIVETT]: I ask that that be entered into evidence with the military judge's approval.

DC [LCDR MIZER]: The defense would object as the document being cumulative. And we've seen the tape, the witness has testified as to the interview. I don't think that the members need a transcript of the tape as well.

MJ [CAPT ALLRED]: The objection as to cumulative is overruled, because we have not heard yet Mr. bin Laden's answers to the questions.

DC [LCDR MIZER]: Very well, Your Honor.

MJ [CAPT ALLRED]: So Prosecution Exhibit 134 is admitted over objection. And it may be shown to the members at your convenience.

Q [MR. TRIVETT]: Without going over the entire interview, did you ask him specifically regarding whether or not civilians were distinguished from soldiers in his declarations?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: What was his answer?

A [MR. MILLER]: He said that, "It does not matter whether these people are in the military uniform or civilians. They are all targets of this fatwa."

Q [MR. TRIVETT]: Now, after the missile strikes to retaliate against the bombings of the East African embassies, did Ayman al-Zawahiri get a message back to you?

A [MR. MILLER]: Yes.

Q [MR. TRIVETT]: And what was that message?

A [MR. MILLER]: We reached out through a number of channels after the embassy bombings to try and get another interview with bin Laden to discuss the embassy bombings and other things. And one of the channels we used was an ABC stringer in Peshawar who, after the missile strikes, received a call from Ayman al-Zawahiri who said that he was fine----

DC [LCDR MIZER]: Objection, hearsay, Your Honor.

MJ [CAPT ALLRED]: Hearsay?

DC [LCDR MIZER]: Yes, Your Honor. I think he's going to testify as to a phone call between individuals.

MJ [CAPT ALLRED]: Okay.

CTC [MR. TRIVETT]: It's not offered for the truth of the matter asserted. It's just offered for the fact that Zawahiri said it.

DC [LCDR MIZER]: Which I think is the truth of the matter asserted, Your Honor.

MJ [CAPT ALLRED]: And why is that relevant?

CTC [MR. TRIVETT]: It goes to the state of the mind of al Qaeda, sir.

DC [LCDR MIZER]: Your Honor, why is al Qaeda's state of mind relevant, Mr. Zawahiri's state of mind relevant?

MJ [CAPT ALLRED]: I don't know.

Members, why don't you step into the deliberation room for

a moment, and let me resolve this objection? Then we will call you back in.

BAILIFF: All rise **[all persons did as directed and the members withdrew from the courtroom]**.

[The military commission terminated and the R.M.C. 803 session commenced at 0950, 29 July 2008.]

MJ [CAPT ALLRED]: Okay. Please be seated **[all persons did as directed]**. The members have withdrawn from the courtroom.

Okay. The testimony so far is that an ABC stringer in Peshawar received a call from Dr. Zawahiri, and that Dr. Zawahiri said something to the stringer. Okay? So what's the--and the objection is hearsay.

CTC [MR. TRIVETT]: Yes, sir.

MJ [CAPT ALLRED]: What's the statement that was made to the stringer?

CTC [MR. TRIVETT]: That the war had just begun, and that America should wait the answer.

MJ [CAPT ALLRED]: Okay. What is it being offered to show?

CTC [MR. TRIVETT]: Al Qaeda's state of mind that they were in an armed conflict with the United States.

MJ [CAPT ALLRED]: In other words, that the war had just begun.

CTC [MR. TRIVETT]: Correct.

MJ [CAPT ALLRED]: So it's being offered to prove the truth of the matter asserted.

CTC [MR. TRIVETT]: In their view, they believed that they were in an armed conflict. Ultimately, the decision as to whether or not they were in an armed conflict is one for the members to decide. But clearly, this is no different than Usama bin Laden's declaration of war. It is in response from the organization to which Mr. Miller just interviewed in response to our retaliating with Tomahawk missiles against their facilities. So we think it's completely relevant to establish the armed conflict.

DC [LCDR MIZER]: Your Honor, it's being offered for the truth of the matter asserted. It's hearsay. There's no hearsay exception.

CTC [MR. TRIVETT]: They are statements against interest as well as statements made in the course of furtherance of a conspiracy. They are offered as hearsay exception.

DC [LCDR MIZER]: Your Honor, and we point out as well that it's double hearsay. This is what Zawahiri told a journalist who told the witness.

CTC [MR. TRIVETT]: It was communicated directly back to Mr. Miller who had just interviewed them. It was a message that Zawahiri had for him. While there may have been an intermediary, there's no reason to believe that that intermediary was an unreliable source. It was someone that Mr. Miller works with in a professional capacity

as a journalist, and needs to report the truth of what the statements were.

DC [LCDR MIZER]: Your Honor, as the Supreme Court said in Crawford v. Washington, reliability is determined in the crucible of cross-examination. And if the government wishes to get this statement in, they should bring in the ABC intermediary, who then may be able to lay the foundation for a state of mind or exception to the hearsay.

MJ [CAPT ALLRED]: Is Dr. Zawahiri listed as an identified co-conspirator in charge one?

CTC [MR. TRIVETT]: He is.

MJ [CAPT ALLRED]: Okay. Well, I will overrule the objection as to the first part of the hearsay, then, as a statement of a co-conspirator made in the furtherance of a conspiracy.

How do we get the stringer's comment to Mr. Miller into evidence?

CTC [MR. TRIVETT]: Again, it was done in the context of a professional relationship. And while there may not be a business record, the policy behind a business record exception and the fact that something was reported back to Mr. Miller at a time close to when it was made have at least is an indicia of reliability to the statement.

And, again, hearsay is specifically admissible under the Military Commissions Act, unless the defense can somehow show that it's unreliable. There's no indication that any of this is unreliable. This was a colleague of Mr. Miller, and it was directly reported as a message back to him. This wasn't hearsay that he had overheard it; it was to a specific question that was given back to Mr. Miller so that he can report.

DC [LCDR MIZER]: Your Honor, I would note for the record that we were given no notice as to this statement being admissible hearsay, as required. I think Mr. Trivett correctly notes that the Military Commission rules of evidence do allow for the admission of hearsay, but we are to be given notice. And this would not even come close to a business record exception to the hearsay, a telephone conversation.

MJ [CAPT ALLRED]: That's the question. The rule does say that evidence not admissible under section A, which is the traditional rules of evidence, may be admitted if the proponent makes known to the adverse party their intention to offer the evidence. Was that done?

CTC [MR. TRIVETT]: That was not done in advance of trial, because the government believed that it fell under one of the readily accepted hearsay exceptions.

MJ [CAPT ALLRED]: Okay.

CTC [MR. TRIVETT]: Either a co-conspirator or statement against his interest.

MJ [CAPT ALLRED]: Okay. I will sustain the objection then.

Call the members back into the courtroom, please.

[The R.M.C. 803 session terminated and the military commission commenced at 0955, 29 July 2008.]

BAILIFF: All rise **[all persons did as directed and the members returned to the courtroom]**.

MJ [CAPT ALLRED]: Please be seated **[all persons did as directed]**. Thank you.

Mr. Trivett, you may continue your examination.

CTC [MR. TRIVETT]: Thank you, sir.

DIRECT EXAMINATION CONTINUED

Questions by the civilian trial counsel:

Q [MR. TRIVETT]: Mr. Miller, how many years did you work as a journalist?

A [MR. MILLER]: A little more than 20.

Q [MR. TRIVETT]: In your opinion, why did al Qaeda agree to give this interview?

A [MR. MILLER]: I believe they wanted to introduce Usama bin Laden to America. They had a media committee and a media strategy, but their stories weren't getting outside of Pakistan or Afghanistan. And I think at the time we were looking for this interview they were

looking for that introduction. It was also clear they had events coming up, including the embassy bombings, and that this would be a way to foreshadow those.

Q [MR. TRIVETT]: Did they strike you as being media savvy?

A [MR. MILLER]: Yes. Very much.

Q [MR. TRIVETT]: Why?

A [MR. MILLER]: The vetting process we went through. The questions they asked about, where will it be aired? Will it be on local or national television? Which show? What audience? What time, prime time or other time? The way the interview was staged, the way they elicited the questions. Even the way Mr. bin Laden formulated his responses.

Q [MR. TRIVETT]: And overall, from the point in time where you left London into Pakistan, went up to the interview and back, how would you describe the professionalism of the security?

A [MR. MILLER]: I would say their operational security was pretty good.

CTC [MR. TRIVETT]: Okay. We would tender the witness, sir.

MJ [CAPT ALLRED]: Very good. Thank you, sir.

Let's see. Mr. Mizer.

DC [LCDR MIZER]: Your Honor.

MJ [CAPT ALLRED]: We've been in court about an hour and a half. Would you like to take a recess before we begin your

cross-examination?

DC [LCDR MIZER]: Yes, Your Honor.

MJ [CAPT ALLRED]: Why don't we take a 10- or 15-minute recess for a comfort break?

[The military commission recessed at 0958, 29 July 2008.]

[The military commission was called to order at 1013, 29 July 2008. All parties who were present when the commission recessed were once again present.]

MJ [CAPT ALLRED]: Court's called to order.

Commander Mizer.

CROSS-EXAMINATION

Questions by the defense counsel:

Q [LCDR MIZER]: Good morning, sir.

A [MR. MILLER]: Good morning, Mr. Mizer.

Q [LCDR MIZER]: Were you aware that two days before your arrival at bin Laden's camp, that he had had a similar meeting with a Pakistani journalist?

A [MR. MILLER]: I became aware after our interview.

Q [LCDR MIZER]: Okay. Are you aware that the recording of that press conference is now referred to as the CNN video?

A [MR. MILLER]: No.

Q [LCDR MIZER]: Okay. Sir, in The Looming Tower, Lawrence Wright described that Pakistani press conference as----

CTC [MR. TRIVETT]: Objection. He's referencing a book.

MJ [CAPT ALLRED]: What's the objection?

CTC [MR. TRIVETT]: It's hearsay.

MJ [CAPT ALLRED]: Well, let's let him ask the question and see if it calls for hearsay or not.

Q [LCDR MIZER]: Sir, he described the press conference as staged and cartoonish. Does that accurately describe the press conference that you saw on Usama bin Laden's arrival?

A [MR. MILLER]: Staged, yes.

Q [LCDR MIZER]: Okay. It was done at night, the arrival?

A [MR. MILLER]: Yes.

Q [LCDR MIZER]: They had prepared tracer rounds?

A [MR. MILLER]: Yes.

Q [LCDR MIZER]: To light up the sky?

A [MR. MILLER]: Yes.

Q [LCDR MIZER]: Mr. Miller, when we have spoken before, you described two filmings of the entrance. Is that correct?

A [MR. MILLER]: Yes.

Q [LCDR MIZER]: And can you describe for the members why there were two tapes of the entrance?

A [MR. MILLER]: There was bin Laden's arrival for which we did not actually have our camera, so there was an al Qaeda tape of it. And there was a tape that we made of it from my small hand-held

camera, but that tape was taken from us. So it was many weeks, actually a number of months before we actually got those tapes back after some brokering.

Q [LCDR MIZER]: And they gave you the entrance that had been filmed with the camera that had been taken from you?

A [MR. MILLER]: Yes.

Q [LCDR MIZER]: Okay. And was that a better filming of the entrance that they turned over to you?

A [MR. MILLER]: Well, it was a better filming of the entrance because it was the entrance. Up until then, our footage of him was him leaving the interview.

Q [LCDR MIZER]: It showed you what al Qaeda wanted you to see, the gunfire and the dramatic entrance?

A [MR. MILLER]: Well, I think that was staged for our benefit to some degree.

Q [LCDR MIZER]: Is it your belief that Ayman al-Zawahiri is media savvy?

A [MR. MILLER]: Yes.

Q [LCDR MIZER]: And, in fact, during one of your encounters with him, he brought up B-roll. Correct?

A [MR. MILLER]: I don't know if he was keying off of my reference to it or that was his reference to it. But, yes, he did. He said there will be no B-roll.

Q [LCDR MIZER]: Okay. And did that surprise you that he is talking in journalist lingo?

A [MR. MILLER]: It surprised me that he was talking in technical lingo, that he was referencing Sam Donaldson, that he was referencing the President's walking shots through the Rose Garden with network correspondents. It surprised me that he had that--and remember, Mr. Mizer, at the time, I didn't know who he was or what his background was. So in the context of the people I dealt with, it was surprising to me to encounter somebody in this camp who had that level of depth and knowledge of American television and news.

Q [LCDR MIZER]: As you said, you traveled back in time pretty much to get to the camp?

A [MR. MILLER]: Exactly.

Q [LCDR MIZER]: And you had someone there talking with you about in-depth knowledge of the media?

A [MR. MILLER]: Yes.

Q [LCDR MIZER]: Okay. What did you mean when you told him--and I understand that this was for background shots, but what did you mean when you told him that he was the Middle Eastern version of Teddy Roosevelt, sir?

A [MR. MILLER]: I was trying to engage him to see if he--the first question I asked bin Laden was: As a man of wealth and privilege, you fought on the frontlines in Afghanistan. After the

interview was done and when we were doing the setup shots, I was trying to, A, see if I could engage him on that question where he could compare himself to another figure, and coming up with a point of reference to see if, A, he recognized the name; and, B, whether he would engage in that discussion. And then secondarily was small talk just so that--it's very uncomfortable when the cameraman is walking around and filming and nobody is saying anything, because the tendency is to want to get up and leave or move around. And we needed these shots because the only footage we had--well, we didn't have any footage at that point.

Q [LCDR MIZER]: Did you think that that was a fair characterization or a fair comparison of what you knew of bin Laden at the time?

A [MR. MILLER]: Oh, I mean, on one level it's an absurd comparison, Usama bin Laden to Teddy Roosevelt. On another level, sometimes as a reporter when you ask the most provocative question, you can elicit the most interesting response. He might have responded by making a reference to Roosevelt, which actually would have shown some knowledge of American history and culture, which would have been interesting in and of itself. He might have said why he thought, as someone of wealth and privilege; it was not unusual to be on the frontlines. It was, again, mostly idle chatter, but I was interested to see how he would compare himself or to whom he would

alternatively compare himself.

Q [LCDR MIZER]: And what was his response, or did he have one?

A [MR. MILLER]: There wasn't much of a response, 'cause this--one thing I noted was that Mr. Zawahiri, Dr. Zawahiri's concern that the questions be written out so that the translator could write them out precisely and read them precisely as asked had some validity, because whenever we went off script, as it were, the responses coming back were not always either complete or appropriate to the question as they went through the translator.

Q [LCDR MIZER]: So it's your perception that this event was not only staged, but also scripted?

A [MR. MILLER]: I wouldn't say scripted. I think that Dr. Zawahiri took care to make sure that whatever questions we wanted to ask were asked precisely.

Q [LCDR MIZER]: And there was no simultaneous translation?

A [MR. MILLER]: No.

Q [LCDR MIZER]: And so you had no way to ask alternate questions?

A [MR. MILLER]: No. I didn't know what the answers were.

Q [LCDR MIZER]: It was just the questions that Ayman al-Zawahiri had--had approved. Right?

A [MR. MILLER]: That's correct.

Q [LCDR MIZER]: Now, you said at the beginning of your testimony that no one knew who Usama bin Laden was in May of 1998. What did you mean by that?

A [MR. MILLER]: I mean, if you stopped a hundred people on the street of the United States and said, "Who is Usama bin Laden?" A hundred of them would have said, "I have no idea," in the context of the time.

Nothing had happened yet that his name was associated with in a large public way. There had been no embassy bombings, there had been no COLE attack, and there probably had been no concept of something on the level of a 9/11. So he was not a household name.

Q [LCDR MIZER]: When we spoke earlier this spring, you said that you had a hard time convincing ABC to even spend the money on this project. Is that correct?

A [MR. MILLER]: Yes. For the same reasons.

Q [LCDR MIZER]: Okay. How much did the trip cost, if you know?

A [MR. MILLER]: The budget for it was approximately $70,000 to move a full crew and producer and translator through London to Islamabad to Afghanistan. That was our projection.

Q [LCDR MIZER]: So you didn't get a network to spend or it was difficult to get a network to spend $70,000 to introduce him?

A [MR. MILLER]: That's correct. When we spoke to the different broadcast shows and they saw the budget for the shoot, the question

was, well, who is this guy and why would people want to know about him?

Ultimately, though, they did commit to the money. We just had to go back a couple of times and lay out more information.

Q [LCDR MIZER]: Did anyone tell you at the time that the United States had been at war with Mr. bin Laden since, say, 1989?

A [MR. MILLER]: I had done extensive research before the interview and had read the fatwas and so on.

Q [LCDR MIZER]: Okay. But, again, you had a hard time getting a major broadcasting corporation to pony up $70,000?

A [MR. MILLER]: Yes.

Q [LCDR MIZER]: And you said during your direct testimony that bin Laden told you, quote, "The war would begin soon," end quote?

A [MR. MILLER]: In the interview, he said things like that. But it was Dr. Zawahiri who after the interview said, "You will see the results of this fatwa in the next several weeks."

Q [LCDR MIZER]: Okay.

A [MR. MILLER]: In response to my question, "What did he mean by declaring war on America? What will happen?"

Q [LCDR MIZER]: He didn't say that the war had begun in 1991, 1989?

A [MR. MILLER]: No. But to be clear, I think he was speaking in the context of what bin Laden was saying in the interview as

opposed to prior history.

Q [LCDR MIZER]: Yes, sir. Now, you said that al Qaeda, in your opinion, agreed to this interview because they were having trouble getting their message out of Afghanistan or Pakistan. Is that correct?

A [MR. MILLER]: Yes.

Q [LCDR MIZER]: Would you agree that your interview assisted them, provided support, if you will, in getting that message out of Afghanistan and Pakistan?

A [MR. MILLER]: I think, if their intention was to get bin Laden introduced to an American audience, that it did that.

Q [LCDR MIZER]: Do you know if, at the time, al Qaeda had the ability to disseminate its message to the western world without interviews such as yours?

A [MR. MILLER]: Well, they certainly had the technical ability. But their message was not getting out.

DC [LCDR MIZER]: Thank you for your time, sir.

CTC [MR. TRIVETT]: No further questions, sir.

MJ [CAPT ALLRED]: Very good.

Members of the court, do you have any questions for Mr. Miller? **[Negative response]** apparently not.

Thank you, sir, for your testimony. You are excused as a witness.

Bailiff, would you collect that exhibit from the witness table and give it to the court reporter **[bailiff did as directed]**.

Thank you.

[The witness, Mr. Miller, was excused and withdrew from the courtroom.]

CTC [MR. TRIVETT]: Sir, the government would recall Evan Kohlmann to finish his direct examination.

MJ [CAPT ALLRED]: Very good. Do you know where he is?

CTC [MR. TRIVETT]: He should be upstairs.

MJ [CAPT ALLRED]: Bailiff, would you go get Mr. Kohlmann, please **[did as directed]**.

[The witness, Mr. Kohlmann, entered the courtroom.]

CTC [MR. TRIVETT]: Mr. Kohlmann, if you would take the witness stand. I would remind you, you are still under oath from yesterday.

WIT [MR. KOHLMANN]: Yes, sir.

EVAN KOHLMANN, Civilian, was previously called as a witness for the prosecution, was previously sworn, and testified as follows:

CONTINUED DIRECT EXAMINATION

Questions by the civilian trial counsel:

Q [MR. TRIVETT]: Good morning, Mr. Kohlmann.

A [MR. KOHLMANN]: Good morning.

Q [MR. TRIVETT]: When we last broke from court, we were discussing the September 11th attacks.

In your opinion, did al Qaeda consider the attacks on September 11th to be part of the ongoing armed conflict between the United States and al Qaeda?

A [MR. KOHLMANN]: I think you could call it the culmination of their armed conflict against the United States.

Q [MR. TRIVETT]: Why is that?

A [MR. KOHLMANN]: Because it represented their ultimate dream, which was attacking the United States in our homeland, inside the borders of the United States, rather than a foreign country.

Q [MR. TRIVETT]: Were civilians specifically targeted in the attacks on the World Trade Center?

A [MR. KOHLMANN]: Yes, they were.

Q [MR. TRIVETT]: Were civilians specifically targeted in the attacks on the Pentagon?

A [MR. KOHLMANN]: Yes.

Q [MR. TRIVETT]: Were soldiers and other members of the Department of Defense also targeted in the Pentagon?

A [MR. KOHLMANN]: Yes.

[END OF PAGE]

Q [MR. TRIVETT]: How is it that civilians could have been a legitimate target--let me back up for a second?

How is it that civilians were intentionally targeted in the attack on the Pentagon?

A [MR. KOHLMANN]: Well, because the Pentagon was attacked with a civilian airliner packed with civilians.

Q [MR. TRIVETT]: Are you aware of any of the 9/11 hijackers wearing military uniforms during the attack?

A [MR. KOHLMANN]: They were not.

Q [MR. TRIVETT]: Were they carrying their arms openly?

A [MR. KOHLMANN]: No, they were not.

Q [MR. TRIVETT]: What kind of arms did they use?

A [MR. KOHLMANN]: They used knives and box cutters, and they claimed to have explosives.

Q [MR. TRIVETT]: Now, in part seven of the presentation, we saw something referenced as the Blessed Tuesday Attack. Do you know what the reference to the Blessed Tuesday Attack is?

A [MR. KOHLMANN]: Yes. September 11th occurred on a Tuesday, and they have referred to this attack as the Blessed Tuesday Attack.

[END OF PAGE]

Q [MR. TRIVETT]: I want to turn your attention now away from the September 11th attacks, and focus it more on the war in Afghanistan that followed. Now, you have been qualified as an expert in the relationship between al Qaeda and the Taliban?

A [MR. KOHLMANN]: Yes.

Q [MR. TRIVETT]: During the war in Afghanistan, did al Qaeda and the Taliban function within well organized command structures?

A [MR. KOHLMANN]: No.

Q [MR. TRIVETT]: Did they wear military uniforms?

A [MR. KOHLMANN]: No. They did not wear military uniforms.

Q [MR. TRIVETT]: Did they ever integrate in battle?

A [MR. KOHLMANN]: No. Generally speaking, when fighting inside of Afghanistan you had separate units. You had Arab units, you had Pakistani units----

CDC [MR. SWIFT]: Your Honor, I had like a 39(A).

MJ [CAPT ALLRED]: Okay. Members of the court, would you step outside for a moment, please, while we resolve an issue.

BAILIFF: All rise **[all persons did as directed and the members withdrew from the courtroom]**.

[The military commission terminated and the R.M.C. 803 session commenced at 1030, 29 July 2008.]

MJ [CAPT ALLRED]: Okay. The members have withdrawn from the courtroom. Please be seated **[all persons did as directed]**.

CDC [MR. SWIFT]: I believe this is beyond the scope of the expertise that this witness was qualified for. As I understand it, he was qualified and, as I remember, on the history, the organization, the leadership, and tradecraft of al Qaeda. He also was on terrorist groups' use of the Internet.

Mr. Kohlmann's expertise does not extend to the military. He is not a PhD historian. He has not conducted any interviews inside Afghanistan or inside of Pakistan. And his expertise, in my belief, does not extend to the area of how operations in Afghanistan were conducted. And if we're going to try and qualify him here, I do want more voir dire on his qualifications now to give opinions regarding the Afghan war and military operations in 2001.

MJ [CAPT ALLRED]: Okay. I will overrule that objection. I think Mr. Kohlmann's qualifications as an expert in al Qaeda and as an expert in the Arab Afghan movement are adequate for him to express opinions about these operations. I mean, he obviously knows the answers.

CDC [MR. SWIFT]: Well, he has opinions.

MJ [CAPT ALLRED]: Okay.

CDC [MR. SWIFT]: I understand, Your Honor. Yes, sir.

MJ [CAPT ALLRED]: All right. Please call the members back in the courtroom. I appreciate that objection outside the presence of the members.

BAILIFF: All rise **[all persons did as directed and the members returned to the courtroom]**.

[The R.M.C. 803 session was terminated and the military commission commenced at 1032, 29 July 2008.]

MJ [CAPT ALLRED]: Please be seated **[all persons did as directed]**.

The members have returned to the courtroom.

Trial counsel, please continue.

CTC [MR. TRIVETT]: Thank you, sir.

DIRECT EXAMINATION CONTINUED

Questions by the civilian trial counsel:

Q [MR. TRIVETT]: Did al Qaeda and the Taliban fight in integrated units in the war in Afghanistan after the United States retaliated after the September 11th attack?

A [MR. KOHLMANN]: No. From my study of the accounts of Arab fighters who fought in Afghanistan from the period of approximately 1999 to 2001, it is clear that fighters fought--the Arab fighters fought in individual units. You had Pakistani fighters fighting in their individual units, and you had Afghan fighters fighting in their individual units.

The reason for this is because of the fact that Afghans in general speak--at least the ones fighting for the Taliban in general speak Pashto because they're from the Pashtun regions of Afghanistan.

Pakistanis in general speak Urdu, which is the national language of Pakistan, whereas Arabs speak Arabic. It happens that very few Afghans speak Arabic, not so many Pakistanis speak Arabic, and very few Arabs speak Pashto or Urdu.

The languages have some similarities, but because of the cultural, linguistic, and political differences between these groups, it is clear that these groups fought in separate units. Sometimes they fought alongside of each other, but they were separate and distinct.

Q [MR. TRIVETT]: Are you familiar with any formal al Qaeda training manuals that instruct on counterintelligence techniques?

A [MR. KOHLMANN]: Yes.

Q [MR. TRIVETT]: In general, what are al Qaeda members instructed to do if captured by the enemy?

A [MR. KOHLMANN]: Al Qaeda members are instructed to divulge as few operational details as possible during interrogations. In other words, to give as few details as possible that would lead to the capture of other active al Qaeda members; in other words, al Qaeda members who are still free. And also, to divulge as few details as possible about ongoing al Qaeda military operations or other operations in which al Qaeda would suffer significant losses should those details be divulged.

Q [MR. TRIVETT]: How many publicly released al-Sahab videos are you aware of that show members of the security committee, especially their faces?

A [MR. KOHLMANN]: Their faces? None.

Q [MR. TRIVETT]: Are you familiar with the head of the security committee?

A [MR. KOHLMANN]: Yes.

Q [MR. TRIVETT]: And can you remind him--remind us again who he is?

A [MR. KOHLMANN]: The head of al Qaeda security committee is an Egyptian who goes by the name Saif Al-Adel, which means sword of justice. His real name is Muhammed al-Makkawi.

Q [MR. TRIVETT]: Are you aware of any publicly released videos of his identity?

A [MR. KOHLMANN]: No.

Q [MR. TRIVETT]: Are there many pictures known to the United States of him at all?

A [MR. KOHLMANN]: The only public image which I'm aware of is an image that I believe was taken of him in Egypt prior to him leaving for Afghanistan. I believe it's actually his passport photo.

[END OF PAGE]

Q [MR. TRIVETT]: Would you agree that, of all the members of the Shura Council, he's the least photographed?

A [MR. KOHLMANN]: One of the least photographed, if not the least photographed, yes.

Q [MR. TRIVETT]: Why would there not be any security committee members or bodyguards specifically identified by face in these films?

A [MR. KOHLMANN]: These are extremely sensitive positions. To serve as a bodyguard for Usama bin Laden, this is not necessarily a position that al Qaeda wants to advertise the identities of these individuals. If al Qaeda were to identify the security guards, guarding bin Laden, it would put bin Laden in obviously a position of some danger.

In fact, of all the positions in al Qaeda, I would say probably the finance committee and the security committee are two committees where you really don't want to divulge the identities of these individuals, because it would lead to significant problems, security problems, for both Usama bin Laden and al Qaeda in general.

Q [MR. TRIVETT]: What is the earliest attack that you're aware of, that al Qaeda members committed against United States personnel?

A [MR. KOHLMANN]: Well, the first--I would say the first official attack carried out by al Qaeda would probably be the 1998 East Africa embassy bombings. However, Arab Afghans, in other words, Arab mujahideen, who confessed to training at camps in Afghanistan

run by Usama bin Laden, had carried out attacks as early as February of 1993 in New York, the World Trade Center bombing. Also in November of 1995 there was a bombing in Riyadh outside of a joint Saudi-U.S. National Guard complex that was again carried out by Arab mujahideen who had trained at al Qaeda camps in Afghanistan. There was a suicide bombing carried out in Croatia in 1995.

There were a variety of attacks that were carried out by individuals who had trained at al Qaeda camps. But I would say the first official attack that al Qaeda claimed responsibility for would be the '98 embassy bombings.

Q [MR. TRIVETT]: And are you using the word "official" synonymous with that which they've publicly acknowledged?

A [MR. KOHLMANN]: Yes. Synonymous with Usama bin Laden officially acknowledging. Although bin Laden has directly celebrated in his videos the two individuals who carried out the November 1995 bombing in Riyadh as well.

Q [MR. TRIVETT]: In your opinion, did al Qaeda view its attacks on the U.S. embassies in Nairobi and Tanzania, the USS COLE, and the attacks of September 11th as separate battles in its armed conflict against the United States?

A [MR. KOHLMANN]: Yeah. They were part of a single campaign, but they were individual battles. Yeah.

CTC [MR. TRIVETT]: We would tender the witness.

MJ [CAPT ALLRED]: Very good. Thank you.

CROSS-EXAMINATION

Questions by the civilian defense counsel:

Q [MR. SWIFT]: Good morning, Mr. Kohlmann.

A [MR. KOHLMANN]: Good morning.

Q [MR. SWIFT]: If we could have your----

[LN1 Lindee, defense paralegal, set up the equipment].

CDC [MR. SWIFT]: If we could have shown to the witness and to the Military Judge what I would like to have marked as the next appellate exhibit into order as demonstrative evidence.

[AE 305 was offered.]

MJ [CAPT ALLRED]: Is this going to have subsequent bullets?

CDC [MR. SWIFT]: No, it will not.

MJ [CAPT ALLRED]: Just one bullet?

CDC [MR. SWIFT]: One bullet, Your Honor.

MJ [CAPT ALLRED]: Okay. This will be the next appellate exhibit. You may show it to the witness.

CDC [MR. SWIFT]: And as demonstrative evidence, I would like to publish it to the court.

MJ [CAPT ALLRED]: Very well. You may.

Q [MR. SWIFT]: We spoke on; I believe it was, Saturday. Wasn’t it?

A [MR. KOHLMANN]: That’s correct.

Q [MR. SWIFT]: And in your video, you gave a lot of definitions that helped explain what some of the words you used and some of the terms that you've used testifying today.

A [MR. KOHLMANN]: That's correct.

Q [MR. SWIFT]: The one word that you've used an awful lot, terrorism, I didn't keep count, but a lot of times, we didn't get a definition for. Do you recognize this definition? **[Referring to AE 305.]**

A [MR. KOHLMANN]: I would add the word conventional in front of military, attacks outside of conventional military combat, usually against civilians or noncombatants. However, I believe on Saturday I also added that terrorism can also be directed against members of military forces who are not on an active battlefield.

Q [MR. SWIFT]: Not on an active battlefield. I agree with that. You didn't say conventional on Saturday. Did you?

A [MR. KOHLMANN]: If I didn't, I should have.

Q [MR. SWIFT]: Okay.

A [MR. KOHLMANN]: Because it should be attacks outside of I mean, we had a fairly casual conversation. I would say it would be attacks outside of conventional military combat.

[END OF PAGE]

Q [MR. SWIFT]: And you began - you can go ahead and take that one down, because I want to go through the films so that we can understand the differences in the little bit of nuance in all of this.

You began with the Soviet conflict and the invasion of Afghanistan in 1979, and the mujahideen?

A [MR. KOHLMANN]: The mujahideen.

Q [MR. SWIFT]: The mujahideen. The mujahideen's response to that. Parts of the video in fact showed armed troops engaged - or, armed Arabs engaged in combat against the Soviet forces during that period of time.

A [MR. KOHLMANN]: I don't know if the specific video sections you watched, whether they had attacks on Afghan communist soldiers or Soviet army, or they were simply shots of Arab mujahideen fighting in Afghanistan. I don't know that I could specifically identify who they were shooting at.

Q [MR. SWIFT]: Fair enough. But they were shooting in the battles, those battles or footage of it, purported to be footage of that. Correct?

A [MR. KOHLMANN]: Yes. This is what they purported this to be. Yes.

Q [MR. SWIFT]: And within the definition, you said that--you told me that mujahideen can get confused, because it's not clear when one is referring to an attack in the vernacular, as someone being of the mujahideen or attacks by the mujahideen, whether it was a terrorist attack, or an attack in the conventional setting. The sources that you cited, the jihadi magazines, et cetera, didn't often--make the distinction between the two. Is that true?

A [MR. KOHLMANN]: Between battlefield operations? I think there was a distinction. Yes, I think this was.

Q [MR. SWIFT]: You think there was a distinction. Did the--when they referred to someone as the mujahideen, would they make the distinction between attacking a civilian or attacking----

A [MR. KOHLMANN]: It depends on what context.

Q [MR. SWIFT]: It depends on the context. Were the videos that we were watching in the Afghan war, were those--was that video, in your opinion, of terrorism?

A [MR. KOHLMANN]: No. That was of jihad, or holy war. I don't know--again, I don't know exactly who they were shooting at in those particular videos. It didn't show who they were shooting at. Several of those videos, I believe, were actually them training on various weapons. That's why the cameramen were allowed to get so close.

Q [MR. SWIFT]: One video in particular I remember, because I had to dig into my brains, in my head, I believe it showed what appeared to be a surface-to-air missile striking a HIND helicopter. Do you recall that?

A [MR. KOHLMANN]: Yes, I do. Yes.

Q [MR. SWIFT]: Was that terrorism?

A [MR. KOHLMANN]: That was military combat. However, that again was--that was from a Discovery Channel documentary, which had been hijacked by mujahideen or jihadi media groups and had been inserted--they hadn't filmed that. And I don't know who fired that missile. I believe it was actually Afghans who fired that missile.

Q [MR. SWIFT]: Well, if the Afghans fired it, was it terrorism?

A [MR. KOHLMANN]: Again, it was jihad. It was holy war.

Q [MR. SWIFT]: Jihad can be terrorism. Can't it?

A [MR. KOHLMANN]: Again, it depends on the context.

Q [MR. SWIFT]: So, do you not have an opinion as to whether it's terrorism or not?

A [MR. KOHLMANN]: Unless I could see clearly who was firing the missile, unless I knew exactly what year the missile was fired, it would be difficult.

Now, I believe the missile was fired in the context of the first Afghan Jihad and it was an Afghan firing at a Russian helicopter, in which case I would say it is paramilitary conflict.

But I--again, this is--you know, this is hypothesis.

Q [MR. SWIFT]: Is paramilitary conflict terrorism?

A [MR. KOHLMANN]: In that context? I don't believe so. But, again, I really--I don't know the exact context of who was firing the missile or in what--again, I believe it was in Afghanistan in the late '80s. It could have also been from 1995 in Chechnya. Without knowing those specific details--this was part of a mujahideen propaganda video and, again, it was stolen from a Discovery Channel documentary.

Q [MR. SWIFT]: Okay. So you can't say whether it's terrorism or not?

A [MR. KOHLMANN]: I don't believe that specific act was a terrorist act, because I believe it was on a battlefield. However, I--honestly, I can't say, because I don't know exactly which conflict the mujahideen purported that to come from. Again, it came from a Discovery Channel documentary.

Q [MR. SWIFT]: Okay. So when the United States provided surface-to-air missiles to the battlefields of Afghanistan in the '80s, late '80s, I believe is when that occurred, that wasn't material support of terrorism?

A [MR. KOHLMANN]: I believe that was support for a paramilitary conflict.

Q [MR. SWIFT]: Now, that paramilitary conflict after the Russian withdrawal, it continued. Didn't it?

A [MR. KOHLMANN]: It continued until approximately 1992.

Q [MR. SWIFT]: And then we had a period of time without major hostilities. Is that correct?

A [MR. KOHLMANN]: Well, no. At that point you had the hostilities continuing, but it wasn't the same conflict. At that point--from approximately 1988 to 1992, you have--after the Soviet withdrawal, you have the Afghan mujahideen fighting the remaining factions of the communist government based in Kabul, the remaining factions of the Afghan communist government. Then, when the Afghan communist government falls, in approximately 1992, then you have a new conflict which is the mujahideen fighting against each other.

Q [MR. SWIFT]: Where we have a continuation of the paramilitary conflict----

A [MR. KOHLMANN]: No, no. I didn't say that. I said it was a different conflict. It involved different actors.

Q [MR. SWIFT]: Who entered the conflict who had not been on the battlefield before.

A [MR. KOHLMANN]: No. It wasn't a matter of someone entering the conflict. It was a matter of the people that were involved in the conflict choosing different sides fighting over different things.

The conflict between 1988 and 1992 was in order to evict

the remaining communist forces from Kabul in order to depose the communist government led by someone named Najibullah. Once the communist government fell, then it was a different conflict now pitting individuals who had fought alongside each other against each other.

Q [MR. SWIFT]: So----

A [MR. KOHLMANN]: It was a fundamentally different conflict. I don't think you can confuse those two.

Q [MR. SWIFT]: And I am not trying to. I'm not trying to say that----

A [MR. KOHLMANN]: No. I'm just trying to be clear. I don't think you should confuse those two.

Q [MR. SWIFT]: Well, let's be clear. The conflict continued with the same actors--with many of the same actors who had fought previously against the communist government, only now they were fighting themselves?

A [MR. KOHLMANN]: Again, I wouldn't say continued. It's two separate conflicts. The mujahideen in the 1980's and the early--at least for the first couple years of the 1990s were fighting mostly together against the communist opponents. Then, the mujahideen themselves split and began fighting each other.

If you say that your--if you say that this is a continuation, this is like saying that the Cold War is a continuation

of World War II, and for the same reasons it's a separate conflict. Just because it involves the same actors doesn't mean it's the same conflict--or similar actors doesn't mean it's the same conflict.

Q [MR. SWIFT]: Okay. Now, that conflict changed; it involved a new set of actors, the conflict that arose after?

A [MR. KOHLMANN]: It wasn't a new set of actors. Again, it was a similar set of actors, it was just in a different way. They were arranged in a different way. It was a different kind of frontline. It was a different--it was also a different kind of conflict. The communist government in Kabul in 1992 or 1991, they had air power, they had a regular military. It wasn't necessarily a good military, but they had one.

When the Afghan mujahideen were fighting against each other, this was primarily a much--unfortunately, much more basic war involving ground forces, involving rockets. There wasn't the component of an organized military anymore. The Afghan communist government essentially fell, and you had remnants of it that even broke off and began fighting as mujahideen factions.

Q [MR. SWIFT]: Okay. If I had been able to finish my question before you answered it----

A [MR. KOHLMANN]: I apologize.

Q [MR. SWIFT]: ----I would have told you that what I was going to reference was, in 1995, 1996 a new paramilitary or faction called the Taliban entered into this conflict that had been ongoing after '92. And I'm not trying to say that it was a continuation; I'm saying that the new conflict that had arisen after '92. In 1996, a new group entered that conflict?

A [MR. KOHLMANN]: That's correct. Yes.

Q [MR. SWIFT]: And it was with this group, I believe you testified on direct, that al Qaeda's military leader, Abu Hafs, initially approached and formed an alliance?

A [MR. KOHLMANN]: Well, no. What happened was that Abu Hafs essentially wrote a thesis in which he examined the Taliban as a, I guess you would call it, a scholarly concept.

He went through the various different aspects of the Taliban that would be beneficial to al Qaeda, that would be beneficial to bin Laden, that these people seemed to have respect for what al Qaeda was into.

However, when al Qaeda first traveled back from the Sudan into Afghanistan, they didn't immediately just join the Taliban. In fact, initially when they traveled back to Afghanistan, they initially went under the protection of Abdul Rasul Sayyaf, who was a mujahid leader, a very famous mujahid leader from the 1980s, who was not necessarily someone who had great relations with the Taliban. I

think you might call it a stalemate between the two of them.

Eventually, after bin Laden and al Qaeda had a chance to reintegrate themselves, I guess you could say, into the Afghan milieu, they then made contact with the Taliban, they arranged with the Taliban, and they formed a relationship with the Taliban.

Q [MR. SWIFT]: Okay. Now, in 1996, et cetera, the Taliban began. I believe they initially took Kandahar, against almost no resistance?

A [MR. KOHLMANN]: That's correct.

Q [MR. SWIFT]: And then from Kandahar, they sought to continue their efforts to win the war and obtain domination over the country. Is that correct?

A [MR. KOHLMANN]: That's correct.

Q [MR. SWIFT]: And they headed next toward Kabul. Is that correct?

A [MR. KOHLMANN]: No. That's not correct.

Q [MR. SWIFT]: Where did they head next?

A [MR. KOHLMANN]: They first headed towards Herat and the cities of Herat, which is in western Afghanistan, which is a largely Shiite region, as opposed to the rest of Afghanistan which is mostly Sunni, Sunni Muslims. And eventually from Herat, they headed towards the city of Mazar-e-Sharif. Kabul--although I believe Kabul fell before Mazar-e-Sharif, it wasn't a direct drive towards Kabul.

Q [MR. SWIFT]: As they got closer to Kabul in all of this, they began to meet resistance, more significant resistance. Didn't they?

A [MR. KOHLMANN]: They began to meet significant resistance when they approached Herat, when they approached Mazar-e-Sharif. Herat was controlled by a Shiite warlord called Ismail Khan. Mazar-e-Sharif was controlled by a warlord known as General Dostum who was Uzbek. That portion of Afghanistan is primarily Uzbek in ethnicity. And as they approached Kabul, they also encountered resistance from Gulbuddin Hekmatyar, who was a Pashto or Pashtun mujahid faction leader, and also Ahmed Shah Massoud, who I think I referenced before.

Q [MR. SWIFT]: And the people that you referenced, those people that they met the resistance against, those individual leaders, would eventually become what's called the Northern Alliance. Would they not? As they were not united, in fact, they had been fighting each other, but a new force had arrived on the scene.

A [MR. KOHLMANN]: They continued to fight each other up until almost the very last minute. But, yes, eventually they did unify together.

[END OF PAGE]

Q [MR. SWIFT]: Now, in the battles that would rage from 1996 to 2001, the Arab fighters participated in those battles on behalf of the Taliban. Did they not?

A [MR. KOHLMANN]: They participated in individual units, as rear guards sometimes, in order to lead a charge, but they were separate units. They were not integrated into the Taliban military.

Q [MR. SWIFT]: I don't think that's what I asked. I asked whether they participated in the battle.

A [MR. KOHLMANN]: No, I just want to be clear. Because when you say participate, you could give the idea that they were all one body, and that was not the case. Because of the fact that they spoke different languages, they came from different backgrounds, they had maybe even different priorities, they were kept fairly separate from each other. But, yes, Arab fighters did participate in the battles between 1996 and 2001.

Q [MR. SWIFT]: And this would be fighting along a front that I believe you referred to as World War I-ish type battles?

A [MR. KOHLMANN]: That's correct. Yes.

Q [MR. SWIFT]: Now, after 9/11, this battlefield swung decisively. Didn't it?

A [MR. KOHLMANN]: Approximately about a month after 9/11, yes, it did swing quite dramatically.

Q [MR. SWIFT]: And that was because of the introduction of the United States on the side of the Northern Alliance. Is that correct?

A [MR. KOHLMANN]: Yes. I believe U.S. air strikes played a large role in changing the balance of power. Since the Northern Alliance had no air power of their own, the introduction of American air power dramatically shifted the nature of conflict.

Q [MR. SWIFT]: And, really, by December of 2001, the Taliban had lost all of the territory that it had gained over the last six or so years?

A [MR. KOHLMANN]: They had lost a significant portion if not most of the territory they had gained. Yes.

Q [MR. SWIFT]: Now, is it fair to say that Arab fighters and the al Qaeda from the period of 1996 to 2001 provided not only some troops, in separate units, as you point out, they were largely separate, communication and command and control issues being what they were, they also provided supplies, military supplies and other support to these units?

A [MR. KOHLMANN]: Yeah. Specifically, they were looking to provide support that the Taliban couldn't get on their own, gas masks, things like--things that the Taliban wouldn't have had access to otherwise.

Q [MR. SWIFT]: Now, and in your use of the word "terrorism," would you characterize any of what we just talked about, the battles, et cetera, here as terrorism?

A [MR. KOHLMANN]: One act in particular, yes.

Q [MR. SWIFT]: Certainly.

A [MR. KOHLMANN]: Do you want me to explain what that act was?

Q [MR. SWIFT]: The Taliban--I'm presuming you're going to talk about the Taliban's taking of al-Mar-Sharif?

A [MR. KOHLMANN]: Mazar-e-Sharif. No. That was--the taking--when the Taliban took over the city of Mazar-e-Sharif, it had occurred after numerous battles. And the Taliban were quite enthusiastic upon taking Mazar-e-Sharif and murdered many, many, many innocent people in very terrible ways. But that's not what I was referring to.

Q [MR. SWIFT]: What were you going to refer to?

A [MR. KOHLMANN]: I was referring to the assassination of Ahmed Shah Massoud on September 9, 2001.

Q [MR. SWIFT]: I think that's an excellent example. And that was different than the regular combat. Wasn't it?

A [MR. KOHLMANN]: That was not a tactic that the Taliban were able to do on their own.

Q [MR. SWIFT]: And to refresh the members' recollection, that was a team posing as journalists. Is that correct?

A [MR. KOHLMANN]: They were Arab fighters recruited from Europe who had been dispatched apparently by al Qaeda in order to support the Taliban by murdering Ahmed Shah Massoud. Yes.

Q [MR. SWIFT]: And they posed as journalists?

A [MR. KOHLMANN]: They posed as journalists. They had a bomb hidden in their camera. And when they approached Ahmed Shah Massoud and began filming the interview, again, posing as journalists, they--the suicide bombers detonated their bomb hidden in the camera, killing Massoud, themselves, and others.

Q [MR. SWIFT]: So we have conventional war, largely, but some acts--at least one act of terrorism that occurs in the context of that war?

A [MR. KOHLMANN]: Again, there was--it was an extraordinarily brutal war, extraordinarily brutal tactics. But that incident in particular I think I would point to as clearly a terrorist incident: Individuals without uniforms, posing as journalists, not declaring their intentions, not carrying their weapons openly, and with the deliberate intent of assassinating the political leader of the opposition. That's, I think, a very clear incident of terrorism.

Q [MR. SWIFT]: Okay. Now, also in the movie and in your testimony--and if I could have the next slide up, please. You testified about what al Qaeda believed these attacks were. They put it in the context of jihad, a holy war. They call it jihad?

A [MR. KOHLMANN]: Which attacks?

Q [MR. SWIFT]: The attacks of the COLE, the attacks of the embassy bombings, and the attacks of 9/11.

A [MR. KOHLMANN]: Yes, they did.

Q [MR. SWIFT]: As an expert in terrorism, and particularly in al Qaeda, I'm sure you've carefully reviewed the 9/11 Report?

A [MR. KOHLMANN]: Among other documents. Yeah.

Q [MR. SWIFT]: Are you familiar in the 9/11 Report as to how the United States viewed those attacks?

A [MR. KOHLMANN]: They viewed them as terrorist acts.

Q [MR. SWIFT]: Did they view them as acts of war?

A [MR. KOHLMANN]: They viewed them as terrorist acts.

Q [MR. SWIFT]: In fact----

A [MR. KOHLMANN]: You know, to be honest with you, I'm not really an expert on U.S. government policy, so I would prefer not to comment on how the U.S. views--I don't speak for the U.S. government and I don't represent U.S. policy.

Q [MR. SWIFT]: Well, in the context, sir--well, we're going to look at your statements regarding whether there's a--the prosecution introduced your statements to further the proposition that we were at war with al Qaeda from some period.

A [MR. KOHLMANN]: Again, I'm not an expert in the Law of War. That's not something I study. I study the conflict between al Qaeda and its adversaries. I study al Qaeda as an organization. I don't study the Law of War. That's not something I focus on. So I would prefer not having to talk about that, because it's not something I can really give expert testimony on.

Q [MR. SWIFT]: So in the context of what al Qaeda's statements are, Holy Jihad, et cetera, you're not a Law of War expert. So you certainly didn't mean to suggest when you testified earlier that any of those statements made by al Qaeda or any of the attacks constituted a state of armed conflict?

A [MR. KOHLMANN]: I can speak as to al Qaeda's mindset. Al Qaeda's mindset was that there was a war with the United States. That each--they called these attacks gazwa, raids. Right? Each individual raid was part of a larger conflict which they saw as a war. I can speak as to al Qaeda's view of this conflict as in terms of their context. I can't speak as to the United States' response to this or the United States' government's view on this, because I don't represent the United States Government and I'm not an expert on the

Law of War.

Q [MR. SWIFT]: Now, your areas of expertise, they didn't change between the time that you got on the stand and now. Right?

A [MR. KOHLMANN]: Certainly not. No.

Q [MR. SWIFT]: Okay. Now, you also testified regarding the bodyguards, and I believe you testified that, A--and you offered some opinions regarding bodyguards as well. You testified that, A, bodyguards qualified from one of two ways. That they----

A [MR. KOHLMANN]: Sure. Generally speaking.

Q [MR. SWIFT]: Generally speaking. There might be exceptions to that rule.

A [MR. KOHLMANN]: Occasionally. But these are the main ways. Yes.

Q [MR. SWIFT]: The main bodyguards were one of two groups. They were either someone who had been with Usama bin Laden for such a long time, dating back to the Afghan conflict, that the trust was absolute at that point. Is that correct?

A [MR. KOHLMANN]: And also, the sense that bin Laden looked upon these individuals almost as equals; that had circumstances been different, the roles might have been switched, and that it was just because of bin Laden's political influence, his wealth, his personality that things happened the way that they did. But, yes, that this was one way. Yeah.

Q [MR. SWIFT]: And then the other way was that they came from areas that were particularly trusted?

A [MR. KOHLMANN]: Well, they came from a background. A family, a tribal background which bin Laden felt very comfortable with. He felt that this Bedouin culture was part of his own culture. He felt he understood what motivated these people. And he felt, by understanding their motivations, by understanding their background, that he would have a better feel for which ones were loyal, which ones were not.

Q [MR. SWIFT]: Now, that's certainly not a secret in this trial, my client Salim Hamdan comes from the Hadramout?

A [MR. KOHLMANN]: I believe that's the case. Yes, sir.

Q [MR. SWIFT]: And so, that's the ancestral realm of Usama bin Laden?

A [MR. KOHLMANN]: Among others. But, yes.

Q [MR. SWIFT]: And so there would be, in your opinion as an expert, an instant trust there?

A [MR. KOHLMANN]: Not instantaneous. But, again, it's--you know, you don't just look upon someone from being as the Hadramout, and bin Laden doesn't automatically say, "Come join me." But, again, it's the understanding that bin Laden feels comfortable with those who come from a similar tribal and family background as him, especially the Bedouin background. And he feels he's able to see

these people, he's able to understand them, he's able to understand what motivates them, and, thus, he feels a trust with them. And especially because of the fact that should these people violate that trust, it's not just that they are going to bear the consequences of violating that trust; their family, their tribe--there's a connection back in the Bedouin culture. So it's a certain sense of, well, don't--you can't cross me, because the consequences go far beyond just you personally.

Q [MR. SWIFT]: You also testified that in the bodyguard role, in your opinion, and based on all of your reading and research, that bodyguards would put bin Laden first, first above themselves?

A [MR. KOHLMANN]: They had to. Yes.

Q [MR. SWIFT]: First above their families?

A [MR. KOHLMANN]: Above--again, above wealth, above family, above everything. Bin Laden was the priority.

Q [MR. SWIFT]: So if bin Laden was in danger, it would be your opinion that no bodyguard would leave bin Laden to take care of his family instead?

A [MR. KOHLMANN]: No active bodyguard who is assigned to protect bin Laden. There was a series of different bodyguards. I don't know that all the bodyguards traveled with bin Laden at any given point in time. But if you were assigned the duties specifically actively of protecting bin Laden at a given point in

time, you probably wouldn't abandon him.

However, again, there's a group of bodyguards. There's an entire security committee. I don't presume that the entire security committee follows bin Laden around at all times. Certainly Saif Al-Adel, the head of the security committee, spent a great deal of time not with bin Laden.

Q [MR. SWIFT]: So, actually, you can leave bin Laden, in your opinion, you can put your family first if you get permission?

A [MR. KOHLMANN]: No, no. Again, if you are not in an active role protecting bin Laden. If you are--if you are actively assigned, say, okay, today is Tuesday at 11:00, you know, it's your time to be watching him, it's your time to be eyeing him, you can't just roll out of there. But if--again, there's a body of bodyguards. I don't presume that all the bodyguards are with bin Laden at all times. I think it's a shifting responsibility. I think there's, like, shifts. There's like work shifts.

Q [MR. SWIFT]: I do have a question. Because we've had, "I think," "I presume," "I suppose," in this last set of testimony. Did you get the al Qaeda bodyguard manual to testify to all of this?

A [MR. KOHLMANN]: No. I have studied the interviews of former al Qaeda bodyguards, such as Abu Jandal who was a Yemeni bodyguard for Usama bin Laden, one of his senior bodyguards. I'm giving you my expert opinion. However, since I've never personally served as a

bodyguard for Usama bin Laden, I can't tell you 100 percent certain. But these are based upon the recollections, the retelling, and the narration of other al Qaeda bodyguards, again, including Abu Jandal who was, I guess you could call him, a senior member of that bodyguard unit.

Q [MR. SWIFT]: Now, would it also be fair to say that bodyguards would need to be particularly brave in the field when facing fire? I mean, they might be loyal, but they wouldn't be much good if they weren't ready to lay down their lives, ready to fight to the death. Right?

A [MR. KOHLMANN]: They have to be willing to take a bullet. Yes.

Q [MR. SWIFT]: Not the type of people who would flee when confronted with force?

A [MR. KOHLMANN]: I'd have to see the circumstance. But, in general, if you're directly assigned to protect bin Laden and you're in front of bin Laden and a bullet is fired at you, you're not supposed to duck.

Q [MR. SWIFT]: You're not supposed to duck. And you're supposed to--and that would require some personal courage. Wouldn't it?

A [MR. KOHLMANN]: Certainly.

Q [MR. SWIFT]: Now, with regards to the movie that you made, in--you said that the movie was produced in concert with the prosecution. Is that correct?

A [MR. KOHLMANN]: No. What I said was, is that I came up with the script. I then submitted the script. Certain parts were excised out because they simply were either irrelevant or they were deemed to be not helpful in the case. I think the prosecution specifically mentioned initially it was considered whether or not to put in other aspects of the 9/11 attacks, and it was decided that that would simply be irrelevant. So those were cut. And eventually, my script--I took my script and I developed it into a movie. I then submitted the movie to the Office of Military Commissions. It was approved. I believe the only real change--there were a few subtle changes, but I believe the major change was simply changing the title of the movie, which initially was titled *The Rise of Al Qaeda*, and was then just changed to *The Al Qaeda Plan*.

Q [MR. SWIFT]: I'll come back to that. Who in the prosecution's office did you work with?

A [MR. KOHLMANN]: Generally speaking, I worked with Prosecutor Clay Trivett.

Q [MR. SWIFT]: How much were you paid for the movie?

A [MR. KOHLMANN]: I was paid for the movie. I was paid $20,000 to make the movie.

Q [MR. SWIFT]: Are you being paid for your testimony?

A [MR. KOHLMANN]: Today?

Q [MR. SWIFT]: Yes.

A [MR. KOHLMANN]: Certainly. Yes.

Q [MR. SWIFT]: Was the movie made for the Hamdan case?

A [MR. KOHLMANN]: The movie was made for legal cases in Guantanamo Bay. I don't believe the movie was made specifically for this case.

Q [MR. SWIFT]: Now, the change in the title from *The Rise of Al Qaeda* to *The Al Qaeda Plan*, it was mentioned at the beginning that there's a very famous movie called *The Nazi Plan*. It was meant to-- well, did you know why the title was changed?

A [MR. KOHLMANN]: I was asked, as much as possible in creating this movie, to adhere to the standards that had been laid down with the original movie, *The Nazi Plan* presented in the Nuremburg trials because of the fact that these trials, it was my understanding, were supposed to be patterned as much as possible off the Nuremburg trials. So upon discussing this with the Office of Military Commissions, it was agreed that it would be prudent to change the title. It really wasn't much of a change, to be honest. I mean, it was three words. It was changed to three words. It's substantially the same. But the idea, again, was to follow as much as possible with previously laid down legal precedent.

Q [MR. SWIFT]: And I think you would agree, we would all agree, that having the precedent of Nuremberg would be--the equivalent of Nuremberg would be excellent?

A [MR. KOHLMANN]: I don't know if excellent is the word I would choose. I think it would be appropriate, is the word I would choose.

Q [MR. SWIFT]: Okay. Now, at Nuremburg, they charged the Nazi leadership. Is that correct?

A [MR. KOHLMANN]: I believe so. But I hope you're not going to ask me detailed questions about the Nuremburg war crimes case. I mean, I studied it in terms of *The Nazi Plan*, but that's not my area of expertise.

Q [MR. SWIFT]: So you don't know whether Hitler's driver was one of the people sitting at the bench at Nuremberg?

A [MR. KOHLMANN]: Actually, I don't, to be honest.

Q [MR. SWIFT]: Would it surprise you to learn that he was never charged with anything?

A [MR. KOHLMANN]: I--again, that's not my area of research.

Q [MR. SWIFT]: Would it surprise you, though?

A [MR. KOHLMANN]: I have no idea. It really would depend on what that person did individually. You know, it really would depend on his individual acts.

Q [MR. SWIFT]: To be clear, you have no opinion as to when an armed conflict with al Qaeda began. Do you?

CTC [MR. TRIVETT]: Objection. This calls for a legal conclusion of a witness. He doesn't have the competency to do this. The prosecution's position is that ultimately this is a decision to be made by the jury after a legal standard from the Military Judge. Continuing to ask specifically from a legal definition as to when an armed conflict is just--it's impermissible, sir.

MJ [CAPT ALLRED]: Well, no, I'm going to let the defense ask this question. You asked similar questions and allowed the witness to characterize attacks as various portions of armed conflicts. So that objection is overruled.

CTC [MR. TRIVETT]: Thank you, sir.

A [MR. KOHLMANN]: I can speak as to al Qaeda's view of this conflict. And al Qaeda viewed this as a holy war, as a jihad, as a long-running conflict between itself and the United States, which started in approximately 1995, 1996, and ran through today. As per the U.S. government's position, it's not something that I specifically studied.

Q [MR. SWIFT]: So you don't have an ultimate opinion?

A [MR. KOHLMANN]: Again, it's not something that--I went to law school, but that's--the Law of War and specifically the U.S. government policy with regards to the Law of War, the way that the U.S. government characterizes its conflict with al Qaeda, that's not something that I focus on. I focus on studying al Qaeda.

Q [MR. SWIFT]: In your study of al Qaeda, can you give me a rough estimate as to how large al Qaeda is?

A [MR. KOHLMANN]: It varies over time. But I think a fair estimate would be several hundred people.

Q [MR. SWIFT]: Several hundred people?

A [MR. KOHLMANN]: Again, over time--and there is a question about how--you know, where these people are and exactly what roles they played. But I would say the world over, you're talking about Afghanistan, you're talking about East Africa, you're talking about Europe, even North America, I think you're talking about several hundred people. Maybe--it's not an entirely huge organization, but it's--and it's spread over a vast distances. But I think several hundred, maybe 1,000, 2,000 at most.

CDC [MR. SWIFT]: No further questions, sir.

REDIRECT EXAMINATION

Questions by the civilian trial counsel:

Q [MR. TRIVETT]: Did the Soviet Union go into Afghanistan in 1979?

A [MR. KOHLMANN]: Yes, they did.

Q [MR. TRIVETT]: Did they do this because an armed group that existed within Afghanistan bombed their embassies?

A [MR. KOHLMANN]: No, they didn't.

Q [MR. TRIVETT]: Did they fly airplanes into buildings?

A [MR. KOHLMANN]: No, they didn't. You're talking about the Afghans. Right?

Q [MR. TRIVETT]: I'm talking about the Afghans.

A [MR. KOHLMANN]: No. The Afghans did not crash planes into their buildings.

Q [MR. TRIVETT]: Did they attack any of their warships?

A [MR. KOHLMANN]: No.

CTC [MR. TRIVETT]: No further questions.

CDC [MR. SWIFT]: No questions in light of that, recross?

MJ [CAPT ALLRED]: Fair enough.

Members of the court, do you have any questions for Mr. Kohlmann? **[Negative response.]** Apparently not. Oh, yes? Did you say yes?

MEMBERS: No, sir.

MJ [CAPT ALLRED]: Okay. I thought you gave me the high sign.

Okay, Mr. Kohlmann, thank you for your testimony. You are excused as a witness.

WIT [MR. KOHLMANN]: Thank you, Your Honor.

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

MJ [CAPT ALLRED]: I guess, it's the government's turn to call the next witness. Do you want to take a recess before we do that?

TC [LCDR STONE]: Sir, I think we're going to need a recess. And we're going to have to discuss your ruling this morning and a 39(A) will have to take place in terms of dealing with that ruling.

MJ [CAPT ALLRED]: Do you have some other witnesses standing by?

TC [LCDR STONE]: No, sir.

MJ [CAPT ALLRED]: Okay. Well, I think it's a good time for a recess then. Why don't we stretch our legs for a bit and see what will be next. We will try to come back about 11:30 or so to continue.

BAILIFF: All rise **[all persons did as directed and the members withdrew from the courtroom]**.

[The military commission recessed and the R.M.C. 803 session commenced at 1118, 29 July 2008.]

MJ [CAPT ALLRED]: Okay. Please be seated **[all persons did as directed]**.

I gather that the government has come to the end of its case in chief, then, with the exception of----

TC [LCDR STONE]: Yes, sir. Except for the----

MJ [CAPT ALLRED]: Witness M.

TC [LCDR STONE]: Yes, sir. And we need to deal with the rebuttable presumption standard that----

MJ [CAPT ALLRED]: Well, here's what I'm thinking. In deciding to resolve the motion for sanctions as I did, I thought that it would

be appropriate for the government to show that the statement is admissible. Oh.

CDC [MR. SCHNEIDER]: Apparently the translators are on recess.

MJ [CAPT ALLRED]: The translators went on recess?

CDC [MR. SCHNEIDER]: They follow orders.

MJ [CAPT ALLRED]: Would you run up and see if you can get a translator to come back to the microphone. Maybe they didn't catch the clue that we were going to continue.

[Waiting for court interpreters to get back in session.]

MJ [CAPT ALLRED]: Okay. Somebody's back? Okay. Anyway, I thought it was appropriate to put the burden on the government showing that the statement was not in fact obtained by means of coercion or that it was otherwise admissible.

Now, I'm prepared to tell the members that you've rested your case in chief but that there's another witness whose testimony you are trying to obtain, and that we might present that witness out of order. And then we can take up the matter of the statement and the conditions under which it was made at some 39(A) session outside the presence of the members when you're ready to do that.

TC [LCDR STONE]: Sir, what I would anticipate is that we probably have testimony of Agent M to do that as well as probably some documentary evidence that would--related to the camp SOPs and things that were associated with that information. We could do that

now. We could do that--or we could start now with Agent M or, we could wait, break for lunch, and do it all sort of after lunch. But--and we're ready to put Agent M on the stand at this time.

MJ [CAPT ALLRED]: Well, we've already heard Agent M's testimony. I don't see what more he can add. What I found in the declaration of Commander Mizer were some circumstances from the people at the camp that suggested there were some conditions around, surrounding the making of the statement that Agent M wasn't aware of, [redacted], that is. And that that's what the defense wants me to consider. So that's the kind of thing I would expect the government to explain; that the techniques that the interrogators were allowed to use, levels of discipline, being moved up and down, touching, sleep deprivation. All those allegations that are out there floating, you need to nail those down so that it's clear the circumstances under which the statement was taken.

So we can do it tonight, we can do it Saturday afternoon. I don't know what your schedule is. But let's assume for the present that the government has rested its case. As of now, is the defense prepared to proceed with the witness before lunch?

CDC [MR. SCHNEIDER]: Before lunch? Before lunch we didn't anticipate.

CDC [MR. SWIFT]: The first thing after lunch.

MJ [CAPT ALLRED]: Okay. That's fine. Now, we scheduled our

lunch break to accommodate the noon prayers. And those, as I recall, go from 1:00 to 1:30.

[Discussion at defense table.]

CDC [MR. SCHNEIDER]: It would--I am told that he is escorted into this location.

[Discussion at defense table.]

CDC [MR. SCHNEIDER]: I'm told that if we come back before 2:00, it does interfere with the prayer when the guards go get him. But if we take an early lunch and then resume early, Mr. Hamdan would be able to forego the noon hour prayer if he could be excused from court at 4:00, he would do his noon prayer at the 4:00-5:00 time frame. How about that? So we adjourn at 4:00 instead of 5:00?

MJ [CAPT ALLRED]: That sounds good to me. I want him to be able to pray in accordance with his religious traditions and his faith.

CDC [MR. SCHNEIDER]: That's agreeable.

MJ [CAPT ALLRED]: So what time would you like to come back? It's now 11:20. 1:00?

CDC [MR. SCHNEIDER]: 1:00. That's 1300. I'd better sit down now, Your Honor.

TC [LCDR STONE]: We have no more live witnesses.

MJ [CAPT ALLRED]: Okay.

TC [LCDR STONE]: We do have some more documentary stuff that we

need kind of talked about with the defense, and there wasn't going to be any objections. Affidavits and prior testimony from individuals.

MJ [CAPT ALLRED]: Why don't we go take a recess, we will reassemble in the courtroom at 11:30, or 11:35, let everyone stretch their legs. I will tell the members where we're at, that we're going to potentially have some more government witnesses out of order, but that the defense will be ready to begin its case at 1:00 this afternoon. And we will break for lunch. Okay? All right. Court's in recess.

[The R.M.C. 803 session recessed at 1124, 29 July 2008.]

[The military commission was called to order at 1139, 29 July 2008.]

MJ [CAPT ALLRED]: Court's called to order.

Members of the court, the government is prepared to rest, in other words, this completes the presentation of the government's case in chief, with the exception of one witness whose presence they're still trying to procure. So there may yet be one government witness taken out of order.

The defense has not quite got its witnesses standing by to begin immediately, so we will recess now for lunch, and ask you to return to the courtroom at 1300. At that point, the defense will have some witnesses here. This afternoon we'll go from 1300 to 1600, and we will recess for the day at 1600.

Fair enough? Did I get that right?

CTC [MR. MURPHY]: Your Honor, if I may interject. So the record is clear.

MJ [CAPT ALLRED]: Oh, I'm sorry; there might also be some----

CTC [MR. MURPHY]: Right. I think the position of the government is we are not resting at this time. We are continuing our case with a witness to be called out of order. But I don't want the record to reflect that we've actually rested.

MJ [CAPT ALLRED]: Okay. The government never rests. Does it?

CTC [MR. MURPHY]: The government never rests. Right. And one matter that came up with defense before we reassembled is we've talked about the possibility for both sides requesting that we start at 2:00, at 1400 keep to our normal schedule to accommodate some issues that both sides are dealing with. I think they can----

MJ [CAPT ALLRED]: Tell us now if that's what you want to do.

CDC [MR. SCHNEIDER]: We don't object. We don't care.

MJ [CAPT ALLRED]: Okay.

CDC [MR. SCHNEIDER]: But it is our position that the government will be resting today.

MJ [CAPT ALLRED]: Well, I guess it's up to the government whether they're resting today or not.

CTC [MR. MURPHY]: The record should be clear we're not resting.

MJ [CAPT ALLRED]: Okay. The government is not resting. But we're going to begin the defense's case while the government works

out its final issues.

So do we still want to conclude at 1600 then? Okay. We will have two hours in the courtroom this afternoon from 1400 to 1600.

CDC [MR. SWIFT]: We would like to address, Your Honor, outside the presence of the members. After we----

MJ [CAPT ALLRED]: Well, I want to tell the members what time to come back.

CDC [MR. SWIFT]: I have no objection against counsel's 1400.

MJ [CAPT ALLRED]: Fair enough. 1400, we will see you here.

BAILIFF: All rise **[all persons did as directed and the members withdrew from the courtroom]**.

[The military commission recessed and the R.M.C. 803 session commenced at 1141, 29 July 2008.]

MJ [CAPT ALLRED]: Okay. Do we still have an interpreter in the booth? **[Positive response from defense table.]** Okay.

Please have a seat **[all persons did as directed]**.

Do we need to discuss something before we recess for lunch, or do you want to come back early?

CDC [MR. SWIFT]: Your Honor, we have a difficulty on this. I understand the Court's difficulty--in accommodation, but we have prepared and will make a 917 motion. We should make that before the presentation of our case. They've taken one witness out of order.

But this really becomes--you know, depending on how long this goes out, the defense puts on its case and then the government finishes its case. And that puts us in a disadvantage. And we don't want to rush things, but we--and we're willing to allow the government to recall a witness or call a witness later. But for the purposes of the record, we would like to know when it rests, and we're making a motion at that time. And it's difficult to say, you know, inside our case what elements pertain and also what witnesses we're going to call.

In particular, Dr. Carapico, who's going to testify, is totally dependent on Agent [redacted]. And, unfortunately, Dr. Carapico is one of those expert witnesses who is not present on the island. She's present through VTC. VTC has taken us days to arrange. We've changed it once to try and move it faster up in the order, but we risk very much losing her. But if we haven't resolved the issue by tomorrow afternoon, we're not going to call Dr. Carapico because she's not relevant yet.

TC [LCDR STONE]: Sir, what I would propose is we have a VTC locked on tomorrow morning with Dr. Williams, which is also--I mean, that's a particularly difficult one to reschedule; that is, I mean, he's in Incirlik, Turkey.

So what we would ask to do is if we can take that one out of order, to take that person out of order, litigate the last part of

the last statement based on your ruling, and then they would then--if the answer is government can present, then he would then take the stand; we would then rest, which would then make Dr. Carapico relevant or not relevant, depending on whether it was. If not, then we would want to litigate the rebuttal presumption, you know, this evening. We do want to litigate that before we rest.

MJ [CAPT ALLRED]: Okay. Have you got your evidence lined up?

TC [LCDR STONE]: Well, I haven't had a chance to get it lined up. Basically we just got your ruling on what it would be right now. So----

CDC [MR. SCHNEIDER]: But one ruling we had on Friday the 18th was that those witnesses should be made available to us and discovery provided to us, so that we can see what those records were and what those witnesses said. We've got nothing.

MJ [CAPT ALLRED]: Okay. Well, that's something to argue when we argue the testimony of the statement given to Mr. [redacted]. Well, I can't tell the government when to rest, but I understand the defense's--who is the witness you propose to call this afternoon at 1400?

CDC [MR. SWIFT]: Well, if we were starting our case, we would then start with Agent B. We would also call [redacted], and we would call--that's probably it. But if we had a little more time before things ran out, we would call [redacted]. And at that point-

-and so we're at a point where we're going to have folks--we're putting on our case that's three witnesses--four witnesses into our case before we decide whether [redacted] comes in.

I would also point out, Your Honor, that our other difficulty is--I believe we have a secured VTC setup for [redacted]--well, we don't have a difficulty with him. So we have a--so, but those witnesses are the witnesses that we would be calling if the government has rested and we're starting into our case.

MJ [CAPT ALLRED]: Well, does the government need to know whether [redacted] is coming in--or, the statement to Agent [redacted] is coming in before it rests? Is that the holdup?

TC [LCDR STONE]: Yes, sir.

MJ [CAPT ALLRED]: Well, maybe we need to call it a day, then, and give the parties the afternoon to do their research and litigate that motion, and start with the defense's case in the morning.

CDC [MR. SWIFT]: Well, we will need to have Dr.--the one VTC that we discussed, Williams. And I agree, he's an expert unrelated to any of this; he will not testify about it. But he is in Incrilik, Turkey. There's been a lot of money and a lot of time on all parties spent to get him to a location where he can testify.

MJ [CAPT ALLRED]: Tomorrow morning.

CDC [MR. SWIFT]: Tomorrow morning. Him first thing to the members, and then litigate.

MJ [CAPT ALLRED]: I don't know. Are you asking me to make a decision, or are you just telling me what the problems are that you have?

CDC [MR. SWIFT]: I guess I'm making--we're agreeing with the prosecution that we rest this afternoon--that we adjourn for the day today; that we put on Dr. Williams tomorrow morning from 8:30 to whenever he is done, and then litigate the [redacted] issue.

MJ [CAPT ALLRED]: This afternoon. Oh, tomorrow after Dr. Williams testifies?

CDC [MR. SWIFT]: Yes. Because I understand the prosecution----

MJ [CAPT ALLRED]: Fair enough. I will have the bailiff contact the members and tell them to come back in the morning. Is that what we want do?

CDC [MR. SWIFT]: Yes, Your Honor.

MJ [CAPT ALLRED]: And that will be the first defense witness, after which we will litigate the statement of Agent [redacted]. If it comes in, we will hear him then. If it doesn't come in, the government rests. Is that where we're at?

TC [LCDR STONE]: Yes, sir.

MJ [CAPT ALLRED]: All right. That is fine, I will ask the bailiff to contact the members, then, and tell them they're done for the day.

TC [LCDR STONE]: And separate and apart from that, the documents.

MJ [CAPT ALLRED]: When will we litigate the 917 motion then?

CDC [MR. SWIFT]: Immediately upon the resting, sir.

MJ [CAPT ALLRED]: Which will be tomorrow after you've presented Mr. William, Professor William's testimony.

CDC [MR. SWIFT]: Yes. And I would presume that Your Honor, in doing it, would exclude Mr. William's testimony from the 917.

MJ [CAPT ALLRED]: Of course. Let it be done. Okay. Why don't you come chat with me in my office about the rest of the case, when the high-value detainees or what the status is with respect to those and we need to share the courtroom, I think, tomorrow with another judge in another case and do some shuffling.

Okay. Court's in recess, then, for the day.

[The R.M.C. 803 session recessed at 1148, 29 July 2008.]

[END OF PAGE]

[The military commission is called to order at 0855, 30 July 2008.]

MJ [CAPT ALLRED]: Good morning. Please be seated **[all persons did as directed]**. Court is called to order. All parties present when the court recessed are once again present. Members of the court, it turns out that the government has not yet finished its case, but this witness is a defense witness being called out of order from Turkey. Good morning.

DC [MR. MCMILLAN]: Before we swear the witness, the defense just needs to mention that Charles Swift, defense counsel, is upstairs and is not present.

MJ [CAPT ALLRED]: I beg your pardon.

TC [LCDR STONE]: Professor Williams, will you please rise? The prosecutor is now going to swear you as a witness.

BRIAN G. WILLIAMS, Civilian, was called as a witness for the defense, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the trial counsel:

Q [MR. STONE]: Please take a seat. State your name, spelling your last name. Thank you.

A [MR. WILLIAMS]: My name is Brian Glyn Williams, spelled B-R-I-A-N G-L-Y-N W-I-L-L-I-A-M-S.

[END OF PAGE]

Questions by the defense counsel:

Q [MR. MCMILLIAN]: Good morning, Professor Williams. I'm Joe McMillan, counsel for Salim Hamdan. We have a video feed of you here at Guantanamo Bay courtroom. Court is in session and the members of the commission are present and can see your image and hear your testimony. Professor Williams, can you state your current employment position?

A [PROF. WILLIAMS]: Can you repeat that? I'm losing you. It seems to come and go.

Q [MR. MCMILLIAN]: Professor, can you state your current employment position?

A [PROF. WILLIAMS]: Yes. I'm currently a tenured professor of history at the University of Massachusetts at Dartmouth.

Q [MR. MCMILLIAN]: And can you tell the members your present location?

A [PROF. WILLIAMS]: I'm currently in Southeastern Turkey, at Incirlik Air Base.

Q [MR. MCMILLIAN]: Professor, thank you very much for making yourself available to testify during your travels. You have testified before this Commission previously. Correct?

A [PROF. WILLIAMS]: That's correct. I was there in December to testify in person.

Q [MR. MCMILLIAN]: And did the Commission hear your testimony as an expert witness at that time?

A [PROF. WILLIAMS]: Yes, they did.

Q [MR. MCMILLIAN]: Professor, you have been asked by the defense to provide expert testimony on a number of topics. Is that correct?

A [PROF. WILLIAMS]: Yes. I've been asked to discuss my research in Afghanistan as well as my research on jihadi fighting units in the greater area of Central Asia.

Q [MR. MCMILLIAN]: I'd like to begin with a brief review of your qualifications. You have a Bachelor of Arts degree from Stetson University in Florida. Is that right?

A [PROF. WILLIAMS]: That's correct. I have a BA from Stetson University in history with a minor in Russian studies, and a master's degree in Central Eurasian studies from Indiana University and a master's in Russian history also from Indiana University, and a Ph.D. in Central Asian studies from the University of Wisconsin.

Q [MR. MCMILLIAN]: Do you speak any languages in addition to English?

A [PROF. WILLIAMS]: Yes. I speak Russian and Turkish. And I'm also trained to use Turkish to interact with people who speak other dialects of Turkish, such as Uzbek or Turkmen. Both languages are found in Northern Afghanistan.

Q [MR. MCMILLIAN]: Can you briefly describe the teaching positions you've held since the mid 1990s?

A [PROF. WILLIAMS]: I taught as a lecturer at the University of Wisconsin from 1996 until 1999, teaching classes on Islam and Central Asia. After that, from 1999 until 2001, I taught courses including graduate courses at the University of London.

After 2001, I returned to the U.S., and since then I've been teaching at the University of Massachusetts Dartmouth. My courses deal with topics ranging from terrorism to ethnic conflict to the history of Central Asia.

Q [MR. MCMILLIAN]: And the position specifically that you held in London was assistant professor of Middle Eastern history at the University of London. Is that right?

A [PROF. WILLIAMS]: That is correct.

Q [MR. MCMILLIAN]: And now at the University of Massachusetts Dartmouth, you hold the position Associate Professor of Islamic history. Is that right?

A [PROF. WILLIAMS]: That's correct.

[END OF PAGE]

Q [MR. MCMILLIAN]: Professor, before going into your field research and experience, I understand that you have prepared a power point slide presentation that will illustrate not only your experience but also your opinions on the topics we have asked you to investigate. Is that true?

A [PROF. WILLIAMS]: Yes. I prepared a power point that sort of provides some missing historical, cultural, ethnic context to the case we're involved in.

Q [MR. MCMILLIAN]: And you prepared that on your own?

A [PROF. WILLIAMS]: Yes, I did.

Q [MR. MCMILLAN]: Your Honor, the defense requests that the power point slide presentation be published to the members and the gallery as a demonstrative exhibit. We have previously provided a copy to the prosecution, and it is substantially identical to the power point that was seen in this courtroom in December.

MJ [CAPT ALLRED]: That sounds fair to me. I don't remember what I saw in December, but we'll let the professor testify about his power point.

Q [MR. MCMILLIAN]: Professor, as we proceed through the power point----

MJ [CAPT ALLRED]: Can you see, members, the power point? I don't think it's up yet. There we go.

Q [MR. MCMILLIAN]: Professor, as we move through this power point, I would invite you to ask me to advance the slides as you deem appropriate since I will be in control of the power point in this room. And I will also ask you about them if I think they pertain to a question we're addressing. Is that clear?

A [PROF. WILLIAMS]: Yes, it is.

Q [MR. MCMILLIAN]: The first slide addresses or summarizes some of the field work that you've done outside the United States. And I would ask you to describe some of this for the Commission members.

A [PROF. WILLIAMS]: Okay. One of my areas of interest is tracing the movements of jihadi warriors from various zones of jihad as they're known across Eurasia. In pursuit of this interest I have lived a year in Kazakhstan, I have traveled to Afghanistan on three separate occasions moving from the Iranian border to Turkmenistan, Uzbekistan, down to the Pakistani border. I've also spent time in Bosnia, Kosovo, Macedonia, and the Soviet Union back in the 1980s, essentially analyzing ethnic conflict in these regions and seeing how foreign fighters come into these zones of jihad and sort of graft the concept of jihad on to preexisting conflicts.

I believe as a researcher that I owe it to my students and to my colleagues when I'm publishing work to be on the ground there and see these places for myself, whether it be the Taliban in Afghanistan or the Kosovo Liberation Army in Kosovo, to sort of

enhance my work and make it more credible.

Q [MR. MCMILLIAN]: Okay. The next several slides deal with your field work in Afghanistan specifically. Correct? So I'll move this to slide two, and I will ask that you describe this.

A [PROF. WILLIAMS]: Okay. Slide two comes from my 2003 expeditions to Afghanistan. I flew into Kabul, and from Kabul made my way over the Hindu Kush Mountains down to the plains of the north to an area known as Turkistan. This was the area where the Taliban were destroyed, for the most part, in 2001 and 2002.

I traveled across this region, living with Northern Alliance warlords, interviewing dozens and dozens of Taliban prisoners of war, and retracing the terrain where some of the combat operations took place during late 2001 and early 2002. During the time period, I interviewed Pakistani prisoners of war as well as Afghan prisoners of war, and lived with the Northern Alliance warlord General Dostum.

Q [MR. MCMILLIAN]: Professor, this slide depicts you carrying a weapon. Can you explain why you felt it necessary to be armed?

A [PROF. WILLIAMS]: Well, I was traveling far from any coalition forces. The north was very unstable at this time period. Dostum was in combat operations with another warlord named Atta, and I was moving freely across what was very dangerous territory. My Uzbek escorts strongly encouraged me to acquire an AK-47, in fact,

essentially for demonstrative purposes if nothing else, just to make sure that someone didn't kidnap me or take a pot shot at me. So I carried it with me for my own protection.

Q [MR. MCMILLIAN]: Is carrying an AK-47 a relatively unusual thing to be doing in Afghanistan at that time?

A [PROF. WILLIAMS]: No, it wasn't. The coalition forces hadn't been disarming the warlords during that time period, so Afghanistan and in particular the north was awash with weapons. So it wasn't unusual for me as a history professor to be roaming around the north carrying a Kalashnikov. There was a lot of instability during the time period, and it was a very wise precautionary thing to do at the time.

Q [MR. MCMILLIAN]: Professor, the next slide, slide three, depicts you with General Dostum. Can you explain to the members who he is and what you were doing with him?

A [PROF. WILLIAMS]: General Dostum has a lot of pertinence to this case at hand. He is actually the Northern Alliance warlord. He's an ethnic Uzbek. He is the one who rode out of the mountains in early November of 2001 with a sort of semi-nomadic force of about 2,000 horsemen. They rode alongside a Special Force Green Beret team known as ODA 595. They are the ones responsible for destroying the Taliban army in the north at Mazar-e-Sharif and also at Kunduz. They're also the ones who captured the vast majority of Taliban

prisoners of war that were captured in November and December in 2001.

Thousands and thousands of foreign fighters, Arabs, Pakistanis, and others as well as Taliban fighters fell into Dostum's hands. Among them was, of course, Johnny Walker Lindh, the American Taliban. So it is for this reason that I was living with them, to learn more about the nature of the enemy who is fighting, to learn more about the Taliban tactics, and to see what sort of role that these foreign fighters, these Arab fighters played in the Taliban's conflict against Northern Alliance.

Q [MR. MCMILLIAN]: Thank you. The next slide, slide four, carries the heading, Interviews with Taliban and 055 Fighters. Can you tell us what that is about?

A [PROF. WILLIAMS]: These interviews took place in General Dostum's castle compound located far in the north in the deserts, a town called Sheberghan. There, he held a couple thousand Taliban prisoners of war, including many foreign fighters predominantly coming from Pakistan.

I did several days of interviews with these prisoners of war, asking them what was their motivation, what sort of role did they play in offensive and defensive operations, what led Pakistanis to leave their homeland to go fight in Afghanistan on behalf of the Taliban; and, were there any sort of insights I could learn about how the Arab fighters, the so-called 055 International Brigade, how this

foreign force was integrated into Taliban's frontal fighting units.

Q [MR. MCMILLIAN]: Thank you. Have you also been engaged as a consultant or analyst on jihadist or terrorist related matters?

A [PROF. WILLIAMS]: Yes, I have. This is a subject of interest for me ever since about 1997, when I was living in Uzbekistan. At that time period, the Taliban conquered Northern Afghanistan, and I began interviewing refugees coming across the borders from Afghanistan into Uzbekistan. Many of these refugees gave me stories about a very, very effective, very fierce fighting unit made up of Arabs in Afghanistan. So I became interested at that time period.

Since then, starting in 1999, while still teaching at the University of London, I advised Scotland Yard on the role of these foreign fighters, their links to Chechens, et cetera. When I moved back to the United States the week before 9/11, there wasn't a whole lot of interest in these foreign jihadi fighting forces, but obviously after 9/11 the world changed, and my sort of arcane interest was mainstream. I found more of a need in the intelligence community for my information.

Since then, I've worked for the Jamestown Foundation, which is a think tank in Washington, D.C. I've worked for their terrorism monitor, and I've done multiple publications with them on terrorists and jihadi activities across Eurasia. I've also worked as a subcontractor for the CIA's Counter Terrorism Center.

In 2007, I went to Afghanistan undercover and traveled across the country tracking suicide bombers coming from Iraq. I went from Herat in the west to the Pashto tribal territories in the west trying to see what role Iraqis were doing in training the Afghans in how to use suicide bombing.

I've also worked for the U.S. military's Joint Information Operations Warfare Center at Lackland Air Base. Most recently, I wrote a field manual for them on Afghanistan, and I've trained various units, including special force units being deployed to Afghanistan on the ethnicity, geography, terrain, et cetera, in Afghanistan. I've also written for West Point's Combating Terrorism Center. And, most recently, I did some work last month for the Department of National Intelligence.

Q [MR. MCMILLIAN]: Thank you. That is summarized on slide five, which has been published to the members. Have you also published books and articles based on your research in Afghanistan and elsewhere in Central Asia?

A [PROF. WILLIAMS]: Yes, I have. I have one book based on my research with Muslim Tatars migrating from Uzbekistan to the Crimea, and I have almost 100 articles published in various sources ranging from Time Magazine to various academic journals dealing with ethnic conflict, jihadi terrorism, et cetera. I've also given scholarly papers at conferences, at universities ranging from Harvard to

Columbia University, to London School of Economics.

Q [MR. MCMILLIAN]: And among the topics you've addressed are al Qaeda, Operation Enduring Freedom, the Taliban, the conflict in Afghanistan in many respects. Is that correct?

A [PROF. WILLIAMS]: That is correct. I have done a lot of work and have published a lot of work analyzing the roles of various foreign fighting units in Afghanistan, the transfer of technologies to Afghanistan, the way the Arabs and others have come to Afghanistan and integrated themselves with indigenous fighting units, most importantly, the Taliban.

Q [MR. MCMILLIAN]: And these papers and publications are summarized in the 12-page CV that you've provided to me. Is that fair?

A [PROF. WILLIAMS]: That is correct.

Q [MR. MCMILLAN]: Your Honor, the defense would request that Professor Brian Williams be qualified as an expert in the area of jihadist movements in Central Asia, including the conflict in Afghanistan and the activities of al Qaeda.

TC [MR. STONE]: I thought we already had.

MJ [CAPT ALLRED]: Yes. Okay. We recognized this gentleman as an expert in December. And, without objection, he will be recognized as an expert in these same areas today.

Questions by the defense counsel:

Q [MR. MCMILIAN]: Professor Williams, I would now like to turn to the substance of the topics we asked you to testify about today, beginning with the Taliban. On a big picture level, can you describe for us who the Taliban are in terms of personnel and ideology?

A [PROF. WILLIAMS]: In a nutshell, the Taliban are an ethnic and religious movement that has its origins in the Madrassas, that is, the religious seminaries in neighboring Pakistan. They're referred to as The Lost Boys. These are the orphans and children who fled the anti-Soviet Jihad in Afghanistan during the 1980s. They grew up in orphanages in the tribal areas of Western Pakistan. There, they were indoctrinated in a very austere, fundamentalist school of Islam known as Deobandi Islam. This school of Islam is of course very close to Wahhabism, which is found in Saudi Arabia.

They emerged as a political and military unit only in about 1994, when they began to move from Pakistan into the Pashto tribal areas of Southern Afghanistan. This movement was natural, because the vast majority of the Taliban were in fact themselves ethnic Pashtu’s. They moved into a very unstable war-like territory in the south around Kandahar by 1995. They came in response to a lot of chaos.

Following the Soviet withdrawal from Afghanistan in 1989, the southern areas of Afghanistan in particular were consumed with

warlordism, with banditry. And in some ways, the Taliban acted as a cleansing unit, as a vigilante militia. They moved to the south, killing all the mujahedeen or overwhelming them. These are the former freedom fighters.

By 1996, they had conquered not only the Pashto heartlands of the south; they began to range beyond the Pashto territories and even conquer Kabul, the capital, and Herat, a territory in the far west near Iran.

By 1997, 1998, they conquered the north and expelled General Dostum, leaving only a small element of resistance in the far northeastern corners of the country. This was the so-called Northern Alliance, which is led by a Tajik commander named General Masood.

So, in essence, they were a response to banditry, violence, plundering, chaos, and they brought order. But, of course, the order came at a cost. When the Taliban came to town they ended raiding, they ended checkpoints, and they ended banditry, but enforced a very austere foreign version of Islam on the Afghan people. And the vast majority of Afghans which I myself interviewed, including Pashtuns in the south, came to hate them. The indigenous Afghans for the most part were Sufis, very moderate, very easygoing people. The Taliban were very strict enforcing their policies, and this made them highly unpopular. This is in part why they were so easy to destroy in 2001.

Q [MR. MCMILLIAN]: By the late 1990s, or perhaps 2000, had the Taliban emerged as a de facto government of Afghan?

A [PROF. WILLIAMS]: Yes, they had. By 1996, as I mentioned, they had gone on to take the capital of Kabul, and by 1998, 1999, they had about 90 percent of the country under their control. The Northern Alliance opposition was squeezed even further in the year 2000, when their fallback capital of Talakan fell to Taliban and al Qaeda 055 forces. So by 2000, the opposition held perhaps 5 to 10 percent of the country at most.

So at this time period, de facto, the Taliban ran ministries, they controlled an army. They were recognized by several countries in the region, including Pakistan, Saudi Arabia, and United Arab Emirates. So in history, it's very unique that a government controls over 90 percent of its territory and is not recognized as the official government running that country, de facto and de jour in the case of three countries at least, the Taliban were the government of Afghanistan.

Q [MR. MCMILLIAN]: Did the Taliban receive material support from those countries that recognized them as the government of Afghanistan?

A [PROF. WILLIAMS]: That is correct. The Taliban received considerable support in particular from the neighboring Pakistanis. The Pakistanis were allies of the Taliban, and Pakistani

Inter-Services Intelligence, their ISI provided them with all sorts of Intel. The Pakistani Army provided them with noncommissioned officers who actually fought in the ranks of the Taliban. The Pakistani military provided them with weapons, communication equipment, ammunition, et cetera. They also received diplomatic and financial support from various Arab Gulf states, including Saudi Arabia and the UAE.

Q [MR. MCMILLIAN]: What kind of government did the Taliban establish in Afghanistan?

A [PROF. WILLIAMS]: It was known as the Islamic Emirates of Afghanistan. In essence, that means it was a theocracy. They tried to enforce Islamic law. Sharia law, of course, it was not a democracy by any stretch of the imagination. It was a government based upon the principles of Islam as the Taliban defined them. It was more than just of course a tribal mob, as many people in the West are prone to see it. I've interviewed various Taliban commanders and leaders who served in various roles. There were ministers of education, ministers of transport. They had a functioning army that was modeled on the previous Soviet Afghan forces. So it was a functioning government; certainly by Afghan standards, it was.

[END OF PAGE]

Q [MR. MCMILLIAN]: Okay. Let me ask you to focus a little more closely on the nature of the conflict between the Taliban and the Northern Alliance in Afghanistan in the period prior to 9/11.

My first question would be, wasn't there a front during that conflict in the sense of a line across which opposing forces confronted one another?

A [PROF. WILLIAMS]: Yes, there was. There was a very clearly defined frontline between these two opposing forces. I myself have traveled down the length and breadth of this line. It stretched from north near the Tajikistan border near a town called Konibodom, hundreds of miles south over the Hindu Kush mountains and down south to the Shomali Plain just north of Kabul. There, the front sort of shift and went to the east toward the Pakistani border.

My own research on this frontier indicates that it was a very sort of static frontier or static line. I compared it in many ways to the trench warfare or the trench lines that separated the forces fighting in Europe during World War I. The Northern Alliance had rows of heavy artillery and tanks; opposite them were Taliban tanks and artillery. Both sides were dug in and engaged in trench warfare, sort of a give and take, with some small movements from 1998 to 2001, but for the most part it was a very, very, as I mentioned, very stagnant line that didn't see a lot of fluctuations.

Q [MR. MCMILLIAN]: Professor, do you know if Ahmed Shah Masood had any helicopters at his disposal during this time period?

A [PROF. WILLIAMS]: Yes, he had. I actually spent time up with Ahmed Shah Masood's people in the Panjshir Valley, and saw some of those helicopters. He had what's known as Mil 8s. This is the Soviet version as opposed to the Mil 13. It is essentially just an old Soviet-era transport helicopter.

Q [MR. MCMILLIAN]: During this conflict between the Taliban and the Northern Alliance, did the Taliban carry their arms openly?

A [PROF. WILLIAMS]: Yes, they did. From all the interviews I carried out with Northern Alliance opposition fighters, as well as Taliban fighters themselves, everything led me to believe that they did fight openly in what we call rather frontal fighting units.

The Taliban units consisted of infantry. They had light mobile artillery. They had T-55 main battle tanks, T-62 tanks. They even had a rather small but nonetheless functioning and effective air force made up mainly of MiG-21 Fishbed fighter bombers and SU-22 Sukhoi fighter bombers, as well as several helicopters, some of those used by Masood. So it was in many ways an excellent fighting force, once again, by Afghan standards.

In my interviews with the Northern Alliance commanders, that are the opposition, they stressed in particular the efficiency of the Taliban's artillery. The Taliban artillery units have been

trained by the Pakistani frontier constabulary and were very effective in Afghanistan's combat.

They also had a very interesting unit called the AJUs. AJUs were a mobile unit of basically Toyota pickup trucks. They mount a Dashka, anti-aircraft guns in the back, they'd weld them to the back of these trucks and put a small unit of infantry in the back, and hundreds of these would proceed as sort of skirmishers before Taliban offensive. So they had their own unique battle tactics and standards, but at the same time they did try to integrate them into frontal formations that would be recognizable to western military officials.

Q [MR. MCMILLIAN]: Professor, I'm now displaying slide number seven to the Commission members, which includes a point on the order of battle that you've just described. But it also includes a point on command structure. Can you address the command structure of the Taliban military?

A [PROF. WILLIAMS]: Yes, I can. As with all their ministries, the Taliban had a war ministry which was modeled on previous ministries that they took over when they seized control of the government in 1996. The minister of war followed the blueprints of the previous Afghan governments.

For example, they had various ranks; they had Kanaks, which are battalion-sized fighting units. They had headquarters, they had

barracks. They tried to duplicate the military structure of the Afghan communists by units. They weren't quite effective as they would have liked to have been at duplicating the models, but nonetheless this gave them the blueprint, the template that they used to construct their own armies. Their armies often borrowed the nomenclature and fighting names of various units from the communist time period.

So as with all things the Taliban, they are much more organized and much more structured than we in the west who have this notion of the Taliban as being this unruly mob of medieval tribesmen. It was much more orchestrated and organized. They had district units, they had artillery units, they had infantry units, and it was very effective. It didn't conquer over 90 percent of Afghanistan without being organized. It was successful in part because they had been trained by the Pakistanis, and they followed the model of the previous armies in Afghanistan.

Q [MR. MCMILLIAN]: So there was an internal discipline within the ranks. Is that fair to say?

A [PROF. WILLIAMS]: There was indeed. I wouldn't compare it to the sort of discipline we find in a western army. This is of course Afghanistan. But, once again, by Afghan standards, it was a very disciplined fighting unit. And I would have to say that, in my own experience interviewing Northern Alliance opposition commanders who

Americans fought alongside in 2001, the Taliban had better organization and better command structure than the Northern Alliance, who are our allies in 2001.

Q [MR. MCMILLIAN]: Were Taliban military personnel housed in barracks, and did they maintain bases in Afghanistan?

A [PROF. WILLIAMS]: Yes, they did. I visited several of these bases in and around Kabul and also in the north. And, once again, these were old bases. Many of the bases went back decades. Some of them had been taken over from the Northern Alliance; the Northern Alliance had taken these bases over from the mujahedeen; the mujahedeen had taken these bases over from the Afghan communists. So they assumed control of the bases when they took control of the government.

Q [MR. MCMILLIAN]: Were the Taliban military commanders subordinate to the political leadership of the Taliban government?

A [PROF. WILLIAMS]: Yes, they were. The various commanders reported to the Taliban shura. The shura were the high council of the land, made up of various mullahs. So they were definitely under the command of the mullahs who had total, total control of everything in Afghanistan, including the military.

[END OF PAGE]

Q [MR. MCMILLIAN]: Professor, slide eight depicts two photographs of you standing next to what appears to be destroyed military equipment. Can you explain for the members what is shown here?

A [PROF. WILLIAMS]: Yes, I can. The tanks on the picture on the right are Taliban tanks. I believe they're T-62s. Those were positioned on the *Shomali* front as north of Kabul, and they were used by the Taliban to wage war with Masood. They were taken out by precision guided bombs in November of 2001.

The picture on the right features a Sukhoi 22 Russian-made fighter bomber, which was also destroyed by coalition forces. This one was located near Mazar-e-Sharif in northern Afghanistan. I believe it was hit by some sort of cluster bombs, and there's still unexploded cluster bombs in and around the vicinity.

Q [MR. MCMILLIAN]: Professor, did the Taliban use a particular battle flag in battle?

A [PROF. WILLIAMS]: Yes, they did. They used a white banner, sometimes with Arabic inscriptions on it, other times not, with al-Fatiha are often known as al-Liwa, al-Liwa simply means the battle standard. I've interviewed several Taliban commanders and Northern Alliance commanders, and they all told me that the Taliban fought under this banner when they went to war. When the Northern Alliance was shelling Taliban lines they aimed for the flags. And the Taliban

attached these flags to their ahis, to their pickup trucks, to their tanks, and I've even seen it painted on the side of tanks and other military equipment in Afghanistan.

Q [MR. MCMILLIAN]: Does slide nine depict this Taliban battle standard?

A [PROF. WILLIAMS]: Let's see. Yes, it does.

Q [MR. MCMILLIAN]: It has the heading al-Liwa, Taliban battle standard?

A [PROF. WILLIAMS]: That is correct.

Q [MR. MCMILLIAN]: Professor you've described----

A [PROF. WILLIAMS]: It's essentially just----

Q [MR. MCMILLIAN]: Go ahead.

A [PROF. WILLIAMS]: Essentially, the flag just is a simple prayer. There's no God but Allah, and Mohammed is his prophet. It's a very standard and generic prayer, which is put on battle flags across the Middle East.

Q [MR. MCMILLIAN]: Professor, based on your research, you've described a fairly conventional type conflict between the Taliban and the Northern Alliance. My question is, did the Taliban systemically attack or murder civilians or noncombatants in this conflict?

A [PROF. WILLIAMS]: No, they did not. The Taliban are criticized for a lot of things. They were misogynistic, they enforced a very harsh puritanical, and I would suggest, alien form of

Islam upon the Afghan people. But they weren't involved in the sort of genocidal warfare that I had experienced and seen in, say, Kosovo or in Bosnia. They weren't trying to annihilate their enemies; they were trying to enforce God's law on earth.

There were atrocities. I visited some mass graves outside of Mazar-e-Sharif outside of northern Afghanistan. There were two atrocities in particular, one in 1997 and one in 1998, the one 1998 carried out by the Taliban. It was a slaughter of Hazar Shiites and Uzbeks who had fought against the Taliban. But this slaughter was sort of a response to a previous slaughter of Taliban troops by these Northern Alliance fighters. It was unique. The Taliban were no saints. They did do public executions, often brutal. They did enforce laws that were medieval. But they didn't engage in the sort of genocidal combat, once again, that I've found in other parts of the world.

Q [MR. MCMILLIAN]: When the Taliban went into battle, Professor, were they distinguishable from civilians, or was there any confusion about who they were going into battle?

A [PROF. WILLIAMS]: There was no confusion when the Taliban came in town. One of my most powerful memories is standing on a hill at a place called Hojudoku, way in the desert in the north Afghan several hundred kilometers to the west of Mazar-e-Sharif. I stood on that hill with General Dostum, this Uzbek cavalry commander and some

of his commanders, and they told me what it was like to see a Taliban army sweeping across the plains toward them, thousands and thousands of these UJA pickup trucks with artillery in the back, Orkan multiple rocket launcher systems, a vast movement of troops flying the white banner of the Taliban.

And Dostum and Atul told me that the most frightening aspect of this approaching storm of Taliban was not so much the white banners of the approaching Taliban mechanized infantry, these light Toyota pickup trucks; it was the fact that right in front was a group of Arab fighters. They called them Araban for Arabs or Ekwan they called them often in the north as well, that these 055 fighters were leading the charge. They knew it was them because they had the black banners waving over their trucks.

So the banners of course were the most obvious indicator. The Taliban also wore black turbans, often had the long beards. If you were a Northern Alliance fighter, you might wear a round woolen hat known as a pawkul. You dressed differently, you looked different, you spoke a different language, you fought with different weapons, and you wore different style Afghan uniforms from what they wore.

So there's no way a Taliban fighting unit could be described as an undercover insurgent guerilla unit. They were proud of what they were doing. They fought openly. They fought frontal

combat. And certainly, this is what my opposition sources told me and this is what the Taliban prisoners of war that I interviewed told me. They were proud of what they were doing, and they fought under the banners of Islam with their heads held high. This wasn't a terrorist insurgency like we see perhaps in Iraq today.

Q [MR. MCMILLIAN]: Okay. Let's move on to address the reference you made to the 055 Brigade, and I will ask you to describe some of the characteristics of that unit.

I am now showing slide 10, which contains a group of soldiers marching under a banner of black flags. And I would like to ask you to generally describe who the Ansars or 055 Brigade were in terms of their personnel and their ideology.

A [PROF. WILLIAMS]: Okay. Now, this is a fighting unit that interested me long before 9/11. In fact, I was interested in this sort of jihadi fighting forces across the planet more than just these small terrorist cells like the Hamburg cell which attacked America on 9/11. There are many of these large fighting forces that I've encountered across Eurasia from, say, Kashmir to Chechnya and Afghanistan. And the 055 is probably the first one and the most famous of all these frontline, frontal combat units.

The 055 Brigade was something that Osama bin Laden had dreamed about. Remember that Osama bin Laden came from Saudi Arabia to fight and volunteer alongside the indigenous Afghan mujahedeen

during the 1980s struggle against the Soviets. Right about 1986, he organized his first Tanzim, his first brigade up in the mountains on the border of Afghanistan and Pakistan. It fought at a place called Jaji in 1986; he also fought in 1987, and also fought at the battle of Jalalabad in 1989. So Osama bin Laden was really the first Arab to come into Afghanistan and dream of creating an all-Arab fighting unit to fight on behalf of someone else.

Now, this went against the grain of the larger sort of jihad volunteer movement at that time period. Abdul Azzam, the founder of this larger movement, wanted Arabs to go to Afghanistan and fight as individuals in the ranks of the indigenous local Afghan mujahedeen. So Osama bin Laden had his own dream of fighting just with Arabs. He was driven in part by his belief in an ancient *Hadith*. *Hadith* is a saying of the prophet Mohammed.

Now, Osama bin Laden believed in the Hadith which said that the black banners of the Imam, the new Caliph but especially Imam would come from Afghanistan and would conquer the Middle East, a sort of messianic prophecy that said that one day a holy warrior will march out of Afghanistan or Khorasan, as he called it, and spread the jihad revolution.

So this was something that always drove Osama bin Laden. Not so much terrorist activities; this is something completely different, something that the mainstream media for the most part has

overlooked. The fact that Osama bin Laden prided himself on frontal combat and wanted a fighting unit in Afghanistan to spread frontal jihad.

Of course, he was expelled from Afghanistan by Masood, Dostum, and these other warlords in the 1990s; but when Osama bin Laden returned from Afghanistan to his old jihad grounds in 1996, he once again began to rebuild an Arab fighting unit. This fighting unit was going to be his contribution to the Taliban. The Taliban had given him sanctuary. They allowed him to rebuild his al Qaeda al-Jihad, or his al Qaeda al subah. And, in return, he was going to give them an all Arab fighting unit, sort of an Arab Foreign Legion.

By 1997, this legion was in action and, according to the Uzbeks and Tajiks who I interviewed, it was very, very effective and used, for instance, in the conquest of Mazar-e-Sharif in 1997 and in the conquest of Talakan in 2000. So it was becoming increasingly vital to the Taliban. According to the British military analysis group called JANES, as much as one-fourth of the Taliban army in many of these battles was made up of Osama bin Laden's Arabians’, or they called them Ansars. These Ansars is a word that means companions or supporters. The 055 Ansars were vital in many ways to many of the Taliban's successes against the Northern Alliance.

So here we have a foreign fighting unit made up of Saudis, Yemenis, Egyptians, Sudanese, Algerians, et cetera, often speaking

Arabic, dressing differently than the actual indigenous Taliban on some level, but fighting as integrated units inside of Taliban armies in their what we call a civil war or internal wars against the Northern Alliance opposition up in those fronts I described previously.

Q [MR. MCMILLIAN]: And did this Ansar unit fight under the battle flag that is depicted in this photograph on slide ten?

A [PROF. WILLIAMS]: Yes, it did. Once again, this was the battle standard that Osama bin Laden had chosen, the black banner. It had mystical Islamic connotations to him. In fact, you could also trace it all the way back to the Abbasid caliphate period.

The Abbasids were the first ones in Baghdad to use this black banner, and bin Laden revived it and used it as the banner for his fighting units. Which is strange, because usually Islamic fighting units fight under a green banner, a green being the holiest color of Islam. But here in this case, we see that Osama bin Laden has really believed this Hadith, this prophecy. And he believed that if his men fight under this black banner, the Al-Raya black battle standard, they will be victorious in Afghanistan, the ancient land of Khorasan, and they will spread the jihad revolution into Central Asia, across the Middle East, and of course, in theory, eventually expel the U.S. and its allies from Saudi Arabia.

Q [MR. MCMILLIAN]: Professor, I have now displayed slide number 11 to the members which bears the heading Organization. Can I ask you to talk us through the bullets describing the organization of the Ansars or the 055 Brigade?

A [PROF. WILLIAMS]: Yes. The 055 Brigade had its regimental headquarters as a place called *Rish Kvor*. This is just south, just outside of Kabul. This was an old Afghan communist army barracks. This is where they did their drills, this is where they did artillery practice, this is where they did their maneuvers in advance. They had several training camps there. They also had other camps scattered across the Pashto lands of the southeast.

The leaders of this 055 foreign legion for the most part were Egyptians, often Egyptians with previous military experience having fought in the Egyptian army. But they were also foreigners from Algeria, from Libya, Saudi Arabia, et cetera, that served as amirs, that is, commanders. They had a very formal regimented structure based upon, once again, a previous model they had found in their homelands such as Egypt, A very effective fighting unit, strict discipline.

In fact, I would suggest that the 055 foreign fighters were more disciplined, more regimented, and more structured in many ways than were the Taliban, and certainly much more so than were the Northern Alliance, perhaps excluding Masood's elite unit, the

Zarbautis. But they were a very organized and militarily capable group. They were used as shock troops. As America has the Green Berets or the Marines or airborne troops, the Taliban relied upon these very, very dedicated foreign fighters to act as the advanced guard, the shock troops in their various offenses.

So they're disciplined. Their training and often their military equipment was better than the Taliban. I've heard accounts of these Arab fighters having excellent communications systems. They often had night vision goggles, laser scopes, sniper scopes on their rifles. They were better equipped with jackets. They often wore sneakers where the Taliban wore flip flops or sandals. You know, they come from places like Kuwait or the Saudi Gulf states. They're much more advanced in many ways than were the Taliban who were essentially in many cases illiterate and tribesmen who had been integrated into an army.

So by 2001, these foreign fighters were key to almost every single Taliban military success they had in Afghanistan. They held the lines, they drove the troops. And when the Taliban army was stuck or facing hard resistance from, say, Dasum or Masood, they brought in the big guns. And the big guns were these Arab fighters who would storm across landmine fields; they would charge enemy lines in almost suicidal assaults.

Q [MR. MCMILLIAN]: Professor----

A [PROF. WILLIAMS]: Et cetera.

Q [MR. MCMILLIAN]: I would just ask you to speak a little more slowly for our Arabic translation.

A [PROF. WILLIAMS]: My apologies. Just to summarize, the foreign fighting component, the 055 Brigade were far and--are by far the most effective fighting unit in all of Afghanistan. They are the ones the Taliban called upon when they faced counterattacks by the Northern Alliance; they were the one the Taliban called in to act as an advanced guard for any and all military offenses; and they were the ones who, according to both the Taliban and the Northern Alliance, were the most effective in combat.

Northern Alliance officials told me that they weren't afraid even to charge across landmine fields. So, they were something to be seen in combat. And they couldn't have been this effective if they didn't have some sort of regimented, strict discipline.

Q [MR. MCMILLIAN]: Professor, were they integrated as a unit into the larger Taliban military command structure?

A [PROF. WILLIAMS]: Yes, they were. And this is key. It's important to note that at all times the Taliban were very, very sensitive to issues of territorial sovereignty. This was their country. They didn't want random groups of Arabs roaming around the

country doing things on their own, whether it be running terrorist camps, which are one sort of al Qaeda business, or creating a fighting unit which engaged in frontal combat. This unit had strict orders to operate under Taliban generals. It was part of the command chain going all the way up to Mullah Omar.

At the end of the day, it was the Taliban that controlled this unit, it was the Taliban that chose where it was to be used or deployed in combat, and it was the Taliban that had ultimate orders. While bin Laden was the figurehead, while bin Laden was the one who often recruited these fighters, and while bin Laden funded them or inspired them, the Taliban were very sensitive to the fact that these foreign fighters had to operate under their command.

Q [MR. MCMILLIAN]: Professor, I've displayed slide 12 to the members, which shows an image of two crossed flags. Let me ask you where you obtained this image.

A [PROF. WILLIAMS]: This image I found on several sites. It came off of one jihad site related to Afghanistan. It's also available on West Point's site. They have the Combating Terrorism Center. These are the two flags of the Taliban in white and the al Qaeda in black crossed, a sort of symbolic indicator that they are in some ways unified. I've seen this image on several web sites now. It seems to have made its way across the internet. But its symbolism is obvious; that is, that there's this sense of symbiosis between the

055 fighters and the Taliban as symbolized by the crossing of the two flags.

Q [MR. MCMILLIAN]: Professor, I've moved forward to slide 13, which is a publicly available Combatant Status Review Board Summary of Evidence. And I would like you to explain the significance of this document in connection with the integration of forces between the Ansars and the Taliban.

A [PROF. WILLIAMS]: I'm going to increase the size of it real quick here. I can't quite read it. Let's see.

Q [MR. MCMILLIAN]: This identifies itself as the summary of evidence for an individual named Abdulsalam Saif.

A [PROF. WILLIAMS]: Yes. This is a slide I included in part because Saif is somebody who would know about these issues that I've mentioned as a member of the Taliban Shura, as a minister, somebody who is involved intimately on all levels with the Taliban's relations with these foreign Ataban, these Ansars.

He is somebody who is known to have personal experience on how the Taliban really sought jurisdiction and command over these various groups that came into their country. He would be someone who could tell you how these foreigners were registered, how they had to have documents to travel in Afghanistan, how they were checked on occasion by Taliban ministries. He's somebody that would really provide insights also into how the Taliban government organized its

command structure over these foreign units and utilized them or deployed them in their combat and in their warfare against the Northern Alliance opposition up in the north.

Q [MR. MCMILLIAN]: Professor, slide 14 contains a quote from Jane's World Armies. And it relates to----

A [PROF. WILLIAMS]: Yes. I will read it.

Q [MR. MCMILLIAN]: Go ahead, please.

A [PROF. WILLIAMS]: If you'd like, I can read it now for you. I've actually done some work for Jane's myself for several of their various journals dealing with terrorism and warfare, and I find them to be perhaps one of the most insightful sources for military structures of various combatant units and armies across the world.

Prior to the U.S. invasion of Afghanistan, I was reading Jane's World Armies as part of my research on these transnational jihadis that I've been tracing, and I found some very interesting accounts of the Taliban army and how it interacted with these foreign fighters, and I included this one quote right here. There's many more where this came from, of course, but I will read it for you just to emphasize the point.

According to Jane's--and this is an article entitled Foreign Pro-Taliban Fighters Inside of Afghanistan Pre-Hostilities. So this was written in reference to the Taliban units and how they interacted with the foreigners prior to 9/11.

The foreigners--quote, unquote. The foreigners are better integrated into the military machine of their Afghanistan host than was ever the case before, concentrating between a fifth and a quarter of total Taliban combat strength; and, in recent times, frequently spearheading offensive operations foreign units have become an indispensable element of a Taliban order of battle.

I think that this is a very, very important quote that references not small terrorist cells like, say, the Hamburg cell, which attacked America on 9/11, but references the units that I'm studying myself, that is, these foreign fighters that had boots on the ground in Afghanistan. And it tells us something, that these foreign fighters were quote/unquote an indispensable element of the Taliban order of battle.

Q [MR. MCMILLIAN]: Professor, was the 055 Brigade a uniformed fighting force?

A [PROF. WILLIAMS]: It certainly was, and especially--especially by Afghan standard. Remember, we have to water everything down to a certain extent because we are dealing with a country that essentially is still living in the Middle Ages. But by Afghan standards, they were much more organized; they had a much more noticeable insignia. They had their banner proudly displayed above their units. There was no hiding the fact that these were the dreaded 055 Brigade. And when they went into combat, half of the

reason they advertised themselves was for psychological warfare purposes.

As I mentioned, when I stood on that hill with General Dostum and watched these--it's always weird, these foreign fighters coming across these plains. They wanted the Northern Alliance opposition to know that it was them coming. They used this as psychological warfare, and they proudly displayed this banner and other insignia for their enemies to see.

Q [MR. MCMILLIAN]: Professor, the next five slides relate to the issue of a uniformed fighting force, and I would just ask you to walk us through those, if you would, and make whatever points you think are relevant for each. And I will advance them at your request.

A [PROF. WILLIAMS]: Okay. I will go through these one at a time. I will read another quote here. Once again, this comes from Jane's World Armies. As I said--I will skip that one goes to uniforms, actually.

Here, we have a picture of Al-Libi. This is, as the name indicates, a Libyan member of al Qaeda wearing what I would suggest is a very typical al Qaeda 055 style uniform, camouflage, black turban. I would assume that he is wearing very distinguishable sneakers. Nobody in Afghanistan wears sneakers. You really stand out in Afghanistan if you're not wearing sandals. But there was one

group running around Afghanistan using very, very elaborate American-style running shoes and sneakers, and that was these 055 fighters. This is of course taken from al Sahab al Qaeda Web site.

Here, we see another picture of--if you go to the next slide, you will see another picture of Arabs once again in Afghanistan, wearing these distinctive camos, khakis. This is not usual for Afghanistan. This is not the sort of attire that someone who is trying to wage hidden combat would wear an insurgent, et cetera. This is the distinctive fighting colors of the 055 Brigade. This once again comes from a BBC source entitled Afghanistan's Arab Fighters.

Q [MR. MCMILLIAN]: During the pendency of Operation Enduring Freedom?

A [PROF. WILLIAMS]: That's correct. That picture is taken I believe in October of 2001. Let me just check that again. But it was taken during the beginning days of Operation Enduring Freedom. And if you go down to the next slide, you will see I've included a slide from Christian Science Monitor with a quote that I think is typical of many of the quotes that came out of Afghanistan at this time period. Once again, I will read it to you to get the point across. “The Arab fighters in fresh new uniforms scrambled through the doors of civilian homes and small shops of Kabul as U.S. jets scream overhead.”

So this is, once again, a western reporter on the ground there in Afghanistan with no sort of ulterior agenda or motive stating, listen, here on the ground we see Arabs maneuvering, driving through town, preparing to go to the front to fight, and they are dressed and we have seen the photographs, wearing these distinctive camouflaged uniforms.

So I think this is--once again, this has nothing to do with an 055--I'm sorry. The 055 Brigade has nothing to do with the sort of sleeper cells that we see on 9/11. This is a unit that was so obvious and so recognizable that foreign correspondents from the Christian Science Monitor observed them on the streets of Kabul and recognized them for who they were.

Q [MR. MCMILLIAN]: And the next slide is a likewise quote from a Christian Science Monitor article?

A [PROF. WILLIAMS]: Yes, it is. And, once again, I will read it for you. This is October 2001: In Kabul, Arab fighters are more visible than ever. They have switched from wearing traditional Afghan clothing to new green and black commando uniforms. They sport caps instead of turbans. These foreign fighters, estimated at from 5,000 to 15,000 in total, form what western military experts call the sharp end of the Taliban fighting forces.

Once again, this is the Christian Science Monitor, not a source that would try to subvert the truth or downplay these

uniforms. They've seen them visible, plainly observable on the streets of Afghanistan.

And you go down to the next slide--once again, there's dozens of slides like this. You can Google them on the Internet and find images of Arab fighters in Afghanistan. If you've been on the ground in Afghanistan, you know one thing; Afghan men don't wear pants. For the most part, they wear a salwar kameez, a long flowing robe, and sandals. They don't wear sneakers or running shoes; they wear sandals on their mission.

And only the Taliban--and this is almost a rule of thumb. Only the Taliban wear the long black turban where you see the long piece going down the back here. Here, we see a picture before you of men with sneakers on, pants, oftentimes western-style clothing that you wouldn't find in Afghanistan. Remember, when they're coming from the Arab states where they are more prone to wearing western-style clothing, and distinctive black turbans. And their weapons are probably even better as well. The foreign fighters brought weapons with them on many occasions.

So this image depicts foreign fighters in Afghanistan during the 2001 hostilities. Once again, nobody would confuse these for civilians. Nobody would confuse them for the Northern Alliance.

Q [MR. MCMILLIAN]: And then the last image is a point--underscores the point you've already made.

A [PROF. WILLIAMS]: Yes, it does. This is an image taken of a foreign fighter who was killed up at an uprising in a castle in northern Afghanistan by Dostum's troops, a castle known as Qala-i-Jangi. And you see once again, you look at his footwear, this is the distinctive foot wear of the foreign fighters who wore these prized sneakers which you don't usually see in the Afghan theater of operations.

Q [MR. MCMILLIAN]: Professor, can you tell us now a little bit about the relationship between the Ansars and training camps that existed inside Afghanistan?

A [PROF. WILLIAMS]: Yes, I can. There was a--I've been to several of these camps located in a broad swath of territory stretching from, say, Jalalabad up near the Pakistani border all the way down to Kandahar in the south. There's a variety of these camps. These camps were established in the 1980s, ironically enough, many times with U.S. support. The camps were built by the Afghan mujahedeen, that is, the Afghan freedom fighters who were fighting against the Soviets during the 1980s. Some of the great camps like, for example, Zawar Kili, which was built very close to the Pakistani border, were built with Pakistani help, Pakistani equipment, and U.S. dollars.

Now, when the Soviets withdrew from Afghan, these camps continued to operate. They operated right through the 1990s, often as training camps for Kashmiri and Pakistani Jihadis going to wage war in Kashmir. The Pakistani ISI ran these camps from, say, 1990 up until about 1996, 1997. They trained all sorts of jihadis to go and infiltrate Kashmir to wage jihad.

By 1996, many of these camps began to be used by al Qaeda. The Taliban took control of these various camps when they conquered the country, and they gave them in many cases to Osama bin Laden.

Now, not all of these camps were given to Osama bin Laden. Some of them continued to operate on an independent or a semi-independent basis, but nonetheless, they operated throughout the late 1990s and into 2001. Some of these camps trained operatives for covert terrorist operations. We know, for example, that many members of the Hamburg cell, the 9/11 team, had training in Afghanistan. Other people who carried out similar other terrorist activities went there as well. But that, once again, confuses the issue. The vast majority of people that train in these camps trained not for terrorism but for jihad.

What did they train in? The use of small arms, how to fire an AK-47, how to fire a PK-40 machine gun, how to fire an RPG rocket-propelled grenade, how to use mortars, how to use light artillery, how to use multiple rocket launcher systems. I read in an

al Qaeda manual on how to use tanks.

So some of the individuals in these camps, in fact I would argue the majority of people training in these camps, were doing things like learning how to drive tanks, how to use artillery. So the camps were in many ways a training ground or a recruitment ground for al Qaeda, and the people that were training these camps for the most part trained to engage in frontal combat. Many of them trained for a few months in the camps, and then they were deployed by bin Laden or, more importantly, by Mullah Omar in the Northern Alliance front year, in the Shomali Plain.

So the vast number of the people there went to wage war against the Northern Alliance, or they were trained to wage war in, say, Chechnya, although there's evidence of Chechyans in the camps. Or, they were waging jihad in China, ethnic Uighurs coming from the Najaf province, et cetera. But there was a small group, the elite that were sort of filtered out. If you were incredibly bright, if you were incredibly talented, if you had a gift, for instance, you spoke English, or you had a degree in some sort of science, you spoke German; if you were unique, if you were among the elite training in these camps, then you came to the attention of someone like Abu Zubaydah, one of the men who was like a gatekeeper at the camps.

And you were selected, you were pulled out of the ranks, and sent to bin Laden, and there, perhaps you might be trained as an

elite terrorist. But the vast majority of the people didn't actually encounter bin Laden, and they certainly weren't picked from the ranks to engage in terrorism. There was only this small, small elite that had some sort of gift or skill set that al Qaeda could use.

Q [MR. MCMILLIAN]: So were all the recruits at the camps provided to the Ansars members of al Qaeda?

A [PROF. WILLIAMS]: Well, the term "al Qaeda" has been watered down to huge extent of course since 9/11. Everybody from Chechen insurgents to the KLA in Kosovo to Uighurs in China are called al Qaeda.

You know, I guess if you use al Qaeda in that large sense, then perhaps they all were al Qaeda. But, once again, in my mind, if you were al Qaeda, it probably means that you were engaged in some sort of elite unit. But in a larger watered-down sense, yeah, perhaps they all were al Qaeda. But I wouldn't agree that all members of these camps were members of an al Qaeda sleeper cell, nor were all members of these camps engaged in terrorism.

And, in fact, on the contrary, I in my own personal experience, in my own tracking of these foreign fighters over the last decade, I have encountered many, many jihadis who engage in training in these camps who came out adamantly and loudly against 9/11 and against terrorism.

I myself personally filmed and interviewed foreign fighters

who trained in these camps, and I asked them, "What do you think about terrorism? What do you think about 9/11?" One would suspect that they would of course instantly reflexively agree that it was a great blow for Islam that it was a magnificent moment in the history of jihad, but I was stunned. Over and over again, I heard captured foreign fighter tell me, "We're fighters. We are warriors. We are the lions of Islam. We are the new *Saladins*. Terrorism is not jihad. Terrorism is killing innocent women and children. There's nothing glorious in killing innocents, in killing babies. It's unmanly. What happened on 9/11 was a disgrace to the jihad movement."

This is me hearing it from the word of the jihadis. Many of the people who trained in the camps, including some who I interviewed myself, others who were as I read on jihad web sites, adamantly rejected 9/11 and rejected terrorism.

So to answer your question, do I think that anybody and everybody that trained in these camps from, say, 1990 up until 2001 was a terrorist? No. I don't think anybody who knows Afghanistan, who has been on the ground there, who interviewed foreign fighters, would agree with that sort of broad brushstroke assumption.

[END OF PAGE]

Q [MR. MCMILLIAN]: Okay, Professor. I've moved forward to the slide with the heading Tactics. Now, this slide and the four or five which follow it summarize testimony you've already provided. So I would ask you to go through them very quickly for us, because I believe they're repetitive of points you've already made.

A [PROF. WILLIAMS]: Yeah. I will go through them very quickly because, as you've mentioned, I've already stated these points. But, yes, you know, you have seen the slide here. They did have mechanized infantry that means troops that moved around the battlefield, often around in pickup trucks or Soviet era transport trucks. They had a very effective artillery. Taliban even had tanks and, of course al Qaeda had their own tanks as well.

Q [MR. MCMILLIAN]: Professor, just to be clear here.

A [PROF. WILLIAMS]: But if we move to the next slide here.

Q [MR. MCMILLIAN]: If I could interrupt you. This slide relates to the Ansar tactics. Correct?

A [PROF. WILLIAMS]: That's correct. Yes. The Ansars had their own tanks, their own artillery. They were very skilled, I am told, with Katyusha rockets and Uragan rockets, 120 milliliter, et cetera.

And here we see another quote. Now, I find this quote interesting because of course it comes from an unimpeachable source. This is from the Department of Defense, a DOD statement made in October of 2001 that once again reinforces and reemphasizes this

notion that I'm trying to make here. We're moving beyond sort of the generic Wikipedia version of al Qaeda as you hear anywhere on Google. This is much more nuanced.

What I'm saying here, and this quote defines it and I will read it for you, is that the Afghans had this fighting unit that was very, very professional, very organized, and very structured. Quote/unquote, this is the Department of Defense: The Afghan-Arabs are more motivated. They had recent training. They consider themselves professionals, not just part-time. So that's a big difference. So I think that statement speaks volumes and it speaks for itself.

I will move along here to this *Al-Raya* standard. La Ghullah Muhammed Masoud Mullah. This is of course a very well-known fatiha prayer used by Muslims. And once again, this is the mystic flag that Usama bin Laden felt was appropriate if he was going to spread his jihad across the planet. But, once again, this is a battle standard that anyone in Afghanistan, particularly Northern Alliance, their main enemy, would have recognized as the battle standard of the 055 Ansar Brigade.

Q [MR. MCMILLIAN]: Okay. The next slide then depicts a photograph we've already seen of troops marching under the *Al-Raya*.

A [PROF. WILLIAMS]: Yes, it does. Once again, if you can use your mind's eye and imagine what it's like to have thousands of these

Arab fighters storming across a battlefield towards you firing truck-mounted artillery or anti-aircraft guns, engaging in very complex tactical maneuvers, this is a bona fide frontal fighting force, not insurgent terrorists.

Q [MR. MCMILLIAN]: Okay. I now have a final slide on this topic with the heading Fixed Distinctive Sign Recognizable at a Distance. If you could just touch on these very briefly.

A [PROF. WILLIAMS]: Here, once again, as the 055 Brigade name indicates, this is a nomenclature. This is a name that this fighting unit got from a previous Afghan communist fighting unit. It's sort of an irony here that the 055 International Brigades lived in the barracks and borrowed the actual name of a previous Afghan communist fighting unit, the black banner, readily recognizable by anybody in Afghanistan.

There were certain other indicators that you're dealing with Arabs when they came at you. Many Arabs chose not to wear the black turban of the Taliban, and some of them instead wore the kafiyah, the very famous Arab head scarf that you might see on various tribal Arab sheiks. That really stood out in Afghanistan, because Afghans don't wear that scarf. It is distinct, once again, of these foreign fighters, the Arabs. They carry their weapons blatantly, openly.

Afghans who I interviewed, Pashtuns, Hazaras, Uzbeks, Tajiks,

they mentioned seeing Arabs swaggering around town, strutting with their weapons, boldly proclaiming to everybody that they were the Lions of Islam. So, you know, they flaunted their power, their prestige. Some of the Arabs were arrogant, very brash and full of themselves. Of course, it cost them a lot of lives when these Arab fighters tried on the U.S. conventional warfare in 2001. And the last note there of course, the sneakers I mentioned before, very noticeable in Afghanistan.

Q [MR. MCMILLIAN]: Professor, I've moved to the next slide. And my question in connection with it is, did the Northern Alliance leadership regard the Ansars as unlawful combatants?

A [PROF. WILLIAMS]: No, they didn't.

TC [MR. STONE]: Objection. Relevance.

A [PROF. WILLIAMS]: In fact, they had strict orders. They had strict orders----

DC [MR. MCMILLAN]: Stand by, Professor. There's been an objection.

MJ [CAPT ALLRED]: What is the relevance of this?

DC [MR. MCMILLAN]: This goes to the question of whether this fighting force generally complied with the laws of warfare or, instead, was engaged in indiscriminate attacks on civilians.

MJ [CAPT ALLRED]: Why is that relevant?

DC [MR. MCMILLAN]: Well, Your Honor, the defense will be

offering an affirmative defense relating to the combatant - whether or not the accused falls within one of the protected categories under the Geneva conventions. And to do so, it needs to establish that this fighting force generally complied with the laws of war.

MJ [CAPT ALLRED]: Okay.

TC [MR. STONE]: Well, the accused was captured wearing a sweater 700 miles away from this incident or these people. I mean, I have no idea why any of this is relevant.

MJ [CAPT ALLRED]: We've had a lot of evidence this morning about the Ansars and the 055. I don't mind going one more question down this road. I will overrule the objection.

DC [MR. MCMILLAN]: Thank you.

Questions by civilian defense counsel:

Q [MR. MCMILLIAN]: You may proceed, Professor.

A [PROF. WILLIAMS]: Once again, these foreigners wore distinct strange outfits and then uniforms that wouldn't have been typical in Afghanistan. And when the Northern Alliance captured them wearing pants, jackets, sweaters, sneakers, et cetera, they had a readily identifiable foreign fighter.

And the Northern Alliance government, which was headed by President Rabbani, gave Northern Alliance commanders very strict orders: We must respect Geneva conventions. We must treat these foreign fighters who we capture in combat as bona fide prisoners of

war. This is how they've treated our captives when they captured them; this is how we must treat them when we capture them.

This is a quote by Rabbani, the Tajik who at the time was president of the Northern Alliance, the government in the northeast. And I will read it once again for emphasis. Afghan Taliban fighters----

TC [MR. STONE]: I don't think he needs to reread it. I mean, they see.

A [PROF. WILLIAMS]: ----who surrendered would be allowed to return to their homes, and foreigners will be treated as prisoners of war under the Geneva Convention.

MJ [CAPT ALLRED]: Professor Williams.

Questions by the civilian defense counsel:

Q [MR. MCMILLIAN]: The members can see it, so we will move on.

I would like to move on then to the final topic of your testimony today, which relates to Osama bin Laden's ties to the Ansars on the one hand as compared to his ties to what you've referred to as al Qaeda al Subah on the other hand. And I would like you to briefly draw the comparison between those distinct projects, if you would, sir.

A [PROF. WILLIAMS]: Okay. Osama bin Laden was a man of many interests and many pursuits. Certainly we Americans who suffered from his terrorism on 9/11 and also in August of 1998, also the COLE

bombing, et cetera; we have borne the brunt of his terrorist assaults.

And it’s natural as his victims, you know, thousands of our countrymen have been killed in his terrorist activities, it’s only natural that we focus exclusively on his terrorist operations, having been the victims of them. But this moves us away from a more objective analysis and a wider perspective, and the wider perspective is that bin Laden wasn’t just a terrorist. No one would dispute the fact that he was a terrorist that he carried out these atrocities but he also involved himself in the military pursuits. He was actively involved in trying to shape the battlefield of Afghanistan with this massive fighting unit.

Some of the quotes I’ve given earlier on reference the fact that his fighting unit may have had some 5- and 10- and maybe as many as 15,000 men in it. Now, that’s a lot of fighting men, even 5,000.

By contrast, these terrorist cells, the 19 hijackers on 9/11, this is a much smaller activity running these terrorist operations, these undercover sleeper cells in the West, where there was a much larger component of al Qaeda. And bin Laden’s role in this is interesting.

He was the amir. This is of course an Arabic word that means commander. But this is sort of a symbolic title. Bin Laden wasn’t really a very effective military man himself. When he fought

in this legendary battle of Jaji in 1987 against the Soviets, he was paralyzed by fear. He fell on the floor and cried and screamed, according to Arabs who fought with him.

So he was no military mastermind, which means that he was something of a figure head when it came to the fighting forces. He was the one who was the Lion of Islam, in his own mind at least, and also in jihad journals. He was very effective as a recruiting icon, as a recruiting symbol. And, of course he is wealthy. He provided money for these fighting units, he provided them with camps. He often encouraged them, met them, and gave talks or sermons about the glorious nature of their combat against the Northern Alliance.

So while he wasn't a hands-on commander, per se, he wasn't a man who fought in the ranks, he didn't lead on the front like say Dostum or Masood, he was nonetheless vitally involved in the logistics, in providing weapons for these men, providing them with petrol, fuel, ammunition, and recruits. So it was something that was very near and dear to his heart. I mean, as I said, right from the very beginning Osama bin Laden wanted an Arab foreign legion for Afghanistan, and this is one of his main pet projects.

[END OF PAGE]

Q [MR. MCMILLIAN]: Professor, did Osama bin Laden have around himself individuals who served him personally that were not necessarily involved in jihadist activities, much less terrorist activities?

A [PROF. WILLIAMS]: Oh, yeah. There are many cases of people being hired by bin Laden. Remember, he ran a vast enterprise. Some of the most important cases, one was Essam al-Ridi. This was bin Laden's pilot who was hired to fly a plane for bin Laden, but told him, "Listen, I don't like terrorism, I don't like combat. I'll be a pilot for you. You pay me good money." But in the day, Essam went to the CIA and said, "Listen, I have a lot of information on this guy, bin Laden. I don't like him. He paid a good salary, but I'm not a terrorist and I don't like terrorism."

Bin Laden had all sorts of enterprises in Sudan. He ran farms, he ran road constructions, and he had agricultural productions. He had thousands of people working for him in Sudan and also even in agricultural pursuits in Afghanistan. So it's not unusual that many of the people were hired, given salaries, and knew nothing about the inner workings of al Qaeda. Or, if they did, perhaps they weren't members of the very, very elite group that got together and did things like plan 9/11.

Q [MR. MCMILLIAN]: Professor, there's two final slides I would like to call your attention to. The first carries a quote from a book by Fawaz Gerges, and I would like you to just comment on that, and then one final slide after that.

A [PROF. WILLIAMS]: Okay. Fawaz Gerges is one of the great jihad analysts in the business, and he's done a lot of work of analyzing the way that the jihadi movement, the larger jihad movement, not just al Qaeda, but this global movement, many of them foreign fighters, not terrorists, how they perceived 9/11. And what's fascinating about his book, The Far Enemy, Why Jihad Went Global, is that he has traced the discourse inside the jihad movement and he found something very interesting.

Many, many taught jihad warriors and some terrorists even, but the vast majority of them are jihad fighters with frontline combat experience, many of them turned against bin Laden after 9/11. They saw this as a step too far. They were horrified by what happened on 9/11. They thought it gave the U.S. a pretext to invade Afghanistan and destroy the Taliban regime, the world's only pure Sharia-based fundamentalist Islamic dynasty or government.

So you found a lot of discord, a lot of dissident voices, and people in the jihad movement and in fact people inside al Qaeda itself who loudly and very definitively came out against 9/11 and against terrorism.

These quotes come from that book, referring to Tanzim as an Egyptian group. I read a quote here: We all function in the banner of the Taliban whether we are members of al Qaeda or not.

There's Arabs who fought in Afghanistan who said, listen; we are all Taliban, essentially. That is the followers of what they assumed was the government of Afghanistan de facto.

And the next quote: Many Tanzim brigade members who opposed joining al Qaeda hoped to stay with their families in Afghanistan. They did not want to be associated with al Qaeda's assault on America.

So instead of having this very black and white image of all members of the 055 Brigade or even the larger al Qaeda in the larger sense being terrorists, here we have a much more finessed nuanced perspective, which tells us that there's more ways on than just this 19-member Hamburg cell which attacked America on 9/11.

Q [MR. MCMILLIAN]: Professor, the last slide that I would like you to address----

A [PROF. WILLIAMS]: And this is work that I've done----

[END OF PAGE]

Q [MR. MCMILLIAN]: ----relates to the hard-core center of the al Qaeda conspiracy. And I would ask you to identify the characteristics, as far as they're known, of the personnel who were within that conspiracy.

A [PROF. WILLIAMS]: Yeah. This once again goes back to the point I made earlier on. If you profiled al Qaeda terrorists as, for example, the works of Mark Sageman, who I would submit is probably the best al Qaeda profiler alive today, you will find something very interesting, very interesting patterns. Those who engage in al Qaeda sleeper cell activity, that is, the terrorists, the terrorist wing or the terrorist operations of al Qaeda, they are the elite. I call them the Harvard of terrorist movements.

They oftentimes are multi-lingual, very adept at infiltrating a society like America or Germany or Spain or London. We've seen that al Qaeda in all these instances have very, very talented operatives, oftentimes with master's degrees. People like Zawahiri who even had a doctorate. Mohammed Atta, the team commander for the 9/11 attack, had a master's from Germany, spoke German. Many members of his team spoke English.

So we see these people aren't run of the mill riffraff. They weren't the sort of cannon fodder that al Qaeda would have used in military operations against the Northern Alliance north of Kabul. They weren't the masses, that is, the thousands and thousands who

fought with tanks and Kalashnikovs in the north. These were the elite, the Special Forces, the geniuses of the movement.

How did this sort of play upon the case at hand here? I don't see Salim Hamdan by any stretch of the imagination fitting this profile. The work Mark Sageman did is very clear, that if you're going to engage in sleeper cell activity, if you're going to be a bona fide terrorist, you'd better have something to offer. You'd better be good. And I don't see in him that quality of material. I don't think he could infiltrate the U.S. and engage in a suicide bombing.

CDC [MR. MCMILLIAN]: Okay, Professor, I have no further questions, although the prosecution will want to cross-examine you.

It occurs to me, Your Honor; it may make sense to take a break prior to beginning the cross-examination.

MJ [CAPT ALLRED]: I think so. Why don't we recess for about 15 minutes, and come back at a quarter to 11:00?

[The military commission recessed at 1029, 30 July 2008.]

[The R.M.C. 803 session was called to order at 1051, 30 July 2008.]

MJ [CAPT ALLRED]: Please call the members. Wait just a moment. Court is called to order. I see that Mr. Hamdan is not in the courtroom, and I believe we did have a conversation during the break in which counsel related to me that he has a headache. He has been given some Tylenol or something, and he doesn't want to come back in

the courtroom just now. Does the defense waive his presence then for this cross-examination of Professor Williams?

CDC [MR. SCHNEIDER]: Yes, we do. And we've communicated with the client that that is his wish as well as our representation that he voluntarily waives his attendance for the testimony that is about to occur, and any other proceedings until he comes back in the courtroom, which could occur while we're still in session.

MJ [CAPT ALLRED]: Okay. I will be happy to let him enter the courtroom whenever he is ready. Is there some procedure by which he can just signal that he is ready to come back, and people will help him through the barricades?

CDC [MR. SCHNEIDER]: I expect there is, but I'm not familiar with it.

MJ [CAPT ALLRED]: Okay.

CDC [MR. SCHNEIDER]: I think that the personnel----

MJ [CAPT ALLRED]: The bailiff will make sure that that's ready to go then. Thank you. And what would you like me to say to the members? Just that he is not feeling well and that he is resting?

CDC [MR. SCHNEIDER]: I think whatever you say is going to be fine with the defense. I'll script it for you, if you want, but I think you will say it better than whatever we could say.

MJ [CAPT ALLRED]: I will do the best I can. Let's ask the members to come back in.

[Members returned to the courtroom.]

[The R.M.C. 803 session terminated and the military commission commenced at 1052, 30 July 2008.]

MJ [CAPT ALLRED]: Please be seated **[all persons did as directed]**. The members have returned to the courtroom. Members, Mr. Hamdan has a headache, and he has been given some Tylenol or some aspirin. He is resting for a few minutes; he will be coming in a few minutes. But he has consented to our continuing in his absence and waived his right to be present. Please don't hold this against him if he comes in a few minutes and sits down to rejoin us.

Okay. Prosecution.

TC [LCDR STONE]: Thank you, sir.

CROSS-EXAMINATION

Questions by the trial counsel:

Q [LCDR STONE]: Good afternoon, Dr. Williams. I think its afternoon where you are.

A [PROF. WILLIAMS]: Good evening to you.

Q [LCDR STONE]: Okay, good evening. Did you really say that there's a good al Qaeda and a bad al Qaeda?

A [PROF. WILLIAMS]: If I did, it was a poor choice of words. I think that, in my own experience dealing with al Qaeda fighters in Afghanistan and how they have influenced the people there as a fighting unit, that they were a negative influence on the civilians

of Afghanistan. And certainly the terrorist component is evil in the real definition of the word. So if I did say that, I would submit that it was a very poor choice of words.

Q [LCDR STONE]: Okay. So we agree al Qaeda equals bad. Yes?

A [PROF. WILLIAMS]: Al Qaeda equals bad as a fighting unit and as a terrorist unit. Yes, we do.

Q [LCDR STONE]: Okay. And you testified that Osama bin Laden is not just a terrorist. Is that correct?

A [PROF. WILLIAMS]: That is absolutely correct.

Q [LCDR STONE]: How come the only messages from al Qaeda web sites and propaganda since the attacks of 9/11 praise the 9/11 attacks, the martyrs of 9/11, and mention nothing about an 055 Brigade, the Ansar fighting units, or what would otherwise be called the legal al Qaeda?

A [PROF. WILLIAMS]: I would take issue with the fact that that's all they mention on their web sites. Their web sites have issued fatwa’s and decrees about American politics, about politics in Afghanistan. They've called for the killing of Musharraf. They've praised the insurgents in Afghanistan and Iraq. So they've had a much more diverse array of pronouncements on the web sites than that.

But to answer your question, why haven't they mentioned the Ansars, why wouldn't they mention the 055 Brigade. It was a defeat. According to most U.S. governments and most of their estimates, the

vast majority of 055 fighters were killed in the north, thousands of them were captured fleeing into Pakistan in late October, November, December of 2001. This frontal fighting force was effectively dismantled and destroyed or captured. It isn't something I think bin Laden is proud of. Now, he references it as his fighting forces like Taliban, they've morphed, and they are now waging insurgency and not frontal combat.

Q [LCDR STONE]: So to the degree that this frontal fighting force exists or existed, as you just said, it was completely in the north?

A [PROF. WILLIAMS]: It was also in Kandahar and Kabul. And perhaps the most famous battle was at Tora Bora, where they fought frontal combat against the U.S., and also down at Shahi Khot, Operation Anaconda down in the south, which sort of began in December and ended in February of 2002. So they fought from the north all the way down to the south near Kandahar.

Q [LCDR STONE]: And your testimony is that Osama bin Laden is merely a figurehead of the organization, is what I have written down?

A [PROF. WILLIAMS]: My testimony is that when it came to the fighting force, the 055, that is, the Ansars, that Osama bin Laden didn't have a lot of hands-on military experience. So when it came to the day-to-day runnings of this fighting unit, he was, yes, more of a figurehead than an actual general.

Q [LCDR STONE]: Osama bin Laden is the Amir of al Qaeda. Correct?

A [PROF. WILLIAMS]: That is correct.

Q [LCDR STONE]: And al-Zawahiri, Mohammed Atta were members of the Shura Council?

A [PROF. WILLIAMS]: That's correct.

Q [LCDR STONE]: Saif Al-Adel, a member of the Shura Council?

A [PROF. WILLIAMS]: Yes. As far as I know, yes.

Q [LCDR STONE]: Okay. All terrorists?

A [PROF. WILLIAMS]: Yes. I would say so.

Q [LCDR STONE]: Okay. What does Saif Al-Adel's name mean, do you know?

A [PROF. WILLIAMS]: Saif means sword, and Adel usually means some sort of justice. So a sword of justice, I am assuming Adel, the root's Adelet, and Saif of course means sword in Islam. So I'm assuming if you translate it, it would be some sort of reference to a sword of perhaps Muhammad.

Q [LCDR STONE]: So you would agree that driving and protecting and supporting Osama bin Laden would be supporting a terrorist?

A [PROF. WILLIAMS]: Absolutely.

Q [LCDR STONE]: Okay.

A [PROF. WILLIAMS]: Essentially----

Q [LCDR STONE]: Did you also agree with me.

DC [MR. MCMILLAN]: Objection, Your Honor. Could he let the witness finish his answer?

TC [LCDR STONE]: It's a yes or no answer.

MJ [CAPT ALLRED]: Overruled.

Questions by the trial counsel:

Q [LCDR STONE]: And if an individual were to harbor him and help him escape from his terrorist activities, that would also be supporting him in his terrorist goals. Would you not agree?

A [PROF. WILLIAMS]: I would disagree strongly. Many people who served with bin Laden and all those who were involved in defending Kandahar and other places and also in logistic work weren't actually supporting terrorist activities. By this stage, al Qaeda was fighting a fighting retreat.

Q [LCDR STONE]: Well, let me be more specific. If an individual is told to prepare to move because an operation is going to happen, and he knows that it is a terrorist operation, and he harbors him and drives him around for seven weeks going to various locations to avoid him being killed, you would agree with me that that is support of a terrorist?

A [PROF. WILLIAMS]: Absolutely. If this person knew that terrorist activity was going to take place and he was furthering and abetting the activities and continuing to serve in that role, especially if he knew that an attack was going to take place, I would

certainly agree with your assessment.

Q [LCDR STONE]: And if he did it twice, that would even be worse.

A [PROF. WILLIAMS]: Right.

Q [LCDR STONE]: Once again, this is all based upon the fact that he was involved and knew the terrorist activity was to take place.

A [PROF. WILLIAMS]: Sure.

Q [LCDR STONE]: Yes.

A [PROF. WILLIAMS]: Yes.

Q [LCDR STONE]: Now, you've previously testified that the goals of al Qaeda were to fight the Zionist crusaders. That means the United States and Israel. Right?

A [PROF. WILLIAMS]: That was the goal of the terrorist operation that fought The Far Enemy. This is a nomenclature in al Qaeda. The Far Enemy being the U.S.----

Q [LCDR STONE]: We're going to go through all of them. Okay?

A [PROF. WILLIAMS]: ----and Israel.

Q [LCDR STONE]: Okay. Expel the infidels from the Arabian Peninsula. That's the United States. Would you agree?

A [PROF. WILLIAMS]: Yes, I would indeed.

Q [LCDR STONE]: Reestablish the Caliphate?

A [PROF. WILLIAMS]: Yes. Once again, that's a theoretical desire. But, yes.

Q [LCDR STONE]: And to establish Sharia law in this Caliphate?

A [PROF. WILLIAMS]: Correct.

Q [LCDR STONE]: To create a base of operations in order to train terrorists to overthrow apostate rulers. Correct?

A [PROF. WILLIAMS]: That's correct. As the name al Qaeda means, The Base, al Qaeda Jihad and al Qaeda al-Subah would mean a base for jihad and terrorist operations, both of them.

Q [LCDR STONE]: Okay. Now, when you and I talked in December, I asked you the question: There is no other purpose for al Qaeda. And your answer was: That is correct. Do you remember that conversation?

A [PROF. WILLIAMS]: No. I remember most of the conversations, but if I did say that, I misspoke. As I mentioned, al Qaeda had many other purposes besides just terrorism. Al Qaeda, as we've seen in this testimony, has a vast majority of forces engaged in frontal combat, so obviously there's more to al Qaeda than just terrorism.

Q [LCDR STONE]: So your testimony in December of the transcript on page 420 is wrong if it is as I proffered it?

A [PROF. WILLIAMS]: Say that again.

Q [LCDR STONE]: Your testimony on page 420, in December, is

wrong.

CDC [MR. MCMILLAN]: Objection, Your Honor. Could the prosecution review that with the witness so that he's in a position to answer that question? He can't be expected to remember what's on page 420 of the transcript.

TC [LCDR STONE]: He just said that----

MJ [CAPT ALLRED]: He's already answered that question. He said that, if I said that in December, I misspoke. So any further clarification?

TC [LCDR STONE]: No. I just wanted to----

MJ [CAPT ALLRED]: You wanted to go from misspoke to wrong? All right. Why don't you move on?

TC [LCDR STONE]: Okay.

Questions by trial counsel:

Q [LCDR STONE]: Not all al Qaeda are lawful combatants. Are they?

A [PROF. WILLIAMS]: Absolutely not.

Q [LCDR STONE]: In fact, a great deal of them are terrorists. Aren't they?

A [PROF. WILLIAMS]: In fact, the sleeper cell like the ones I mentioned, the 9/11 team, the teams that hit Madrid, the teams that hit London, I gave you a whole litany and a whole list of sleeper cells that I would define very clearly in black and white terms as

bona fide terrorists. So to answer your question, an emphatic I agree with everything you say.

Q [LCDR STONE]: Okay. Now, I was going to move on. We're going to deal with the sleeper cells in a minute, but it's a good time to deal with them now. You said that the sleeper cells in Hamburg and those that carried out the 9/11 attacks were the elite. Correct?

A [PROF. WILLIAMS]: That is correct.

Q [LCDR STONE]: They had something to offer, like they could speak English. Correct?

A [PROF. WILLIAMS]: I mentioned also German or skills in flying airplanes, which came in handy in 9/11.

Q [LCDR STONE]: Right. Why did 14 of the 19 hijackers only speak Arabic and could not speak English?

A [PROF. WILLIAMS]: No idea.

Q [LCDR STONE]: Okay. Now, you testified that these Ansars were always in uniform. Is that correct?

A [PROF. WILLIAMS]: I can't say that. The Ansars had very distinctive uniforms camouflage black turbans, western styled garb, sweaters, pants, and clothes et cetera, things you wouldn't find in an Afghanistan----

Q [LCDR STONE]: Okay. Do you remember testifying in December when asked the question whether they were in uniform you would say--you said: Well, it varied quite a bit from camouflage to other things less formal? Do you remember that?

A [PROF. WILLIAMS]: Yes. In fact, I demonstrated that in one of the slides we just saw. Some of the Taliban and some of the al Qaeda 055 fighters didn't have the black turban; some had something less formal called a keffiyeh, which is an Arab head scarf.

Q [LCDR STONE]: So they didn't have a consistent uniform?

A [PROF. WILLIAMS]: They had a very, very consistent uniform by Afghan standards. Did they always have a black turban? No. In fact, I've seen them fighting with various degrees of camouflage. Some wore the kufiya head scarf and some wore the black turbans. So there definitely was an inconsistency amongst some fought with one head garb and some who fought with another head garb.

Q [LCDR STONE]: Okay. So some fought with a head garb. Some didn't fight with a head garb. Right?

A [PROF. WILLIAMS]: In my slides and in my research on the ground of Afghanistan, they all fought with head garb. Yes.

[END OF PAGE]

Q [LCDR STONE]: Okay. So some fought with head garbs? All of them fought with head garbs? Sometimes they didn't fight with head garbs, but it was all their choice, whichever one the individual tried to do or wanted to do?

A [PROF. WILLIAMS]: No. Depending on which regiment they served in.

Q [LCDR STONE]: Okay.

A [PROF. WILLIAMS]: I think it would be similar to a U.S. regiment, some fight in green berets, some fight in helmets, et cetera. There are certain varieties in various fighting forces, including the Taliban and al Qaeda 055.

Q [LCDR STONE]: So your testimony is that the Green Berets fight with a green beret?

A [PROF. WILLIAMS]: No. But I've seen images of Green Berets and al Qaeda killers in Afghanistan, that is, ODA 595 and others that were dressed in keffiyeh, Arab head scarves, pawkuls that is Tajik woolen hats, and various other elements of Afghan garb.

Q [LCDR STONE]: So I think what we've discovered here is that a lot of them wore camouflage. It was mixed. Their head scarves were mixed. I mean, kind of like people walking into a Wal-Mart in Kansas. Isn't it?

A [PROF. WILLIAMS]: Actually, it's more reflective of a mirror image of the U.S. forces fighting in Afghanistan at that time. Some

wore camouflage, some wore head scarves, and some wore Afghan pawkul hats. I would say they fought with the same criterion of uniforms and standards that the U.S. forces did in Afghanistan.

Q [LCDR STONE]: You are being paid for your testimony today. Aren't you?

A [PROF. WILLIAMS]: Yes, I am; $125 per hour.

Q [LCDR STONE]: And the government would have made you available to travel to Cuba and testify in person, had you been able to do so. Correct?

A [PROF. WILLIAMS]: That's correct.

Q [LCDR STONE]: Now, your experience, you said your first time in Afghanistan was in August of 2003?

A [PROF. WILLIAMS]: Correct.

Q [LCDR STONE]: That's about a year and a half after the fall of the Taliban?

A [PROF. WILLIAMS]: Correct.

Q [LCDR STONE]: And you said, in 2003 you interviewed a Pakistani caught and held by General Dostum. Correct?

A [PROF. WILLIAMS]: That is correct.

Q [LCDR STONE]: Okay.

A [PROF. WILLIAMS]: Correct.

Q [LCDR STONE]: These are the same people that you said on your direct were the foreign fighters that you interviewed that said they rejected 9/11?

A [PROF. WILLIAMS]: That's correct.

Q [LCDR STONE]: So these weren't Arabs?

A [PROF. WILLIAMS]: No. These were Pakistanis.

Q [LCDR STONE]: In fact, most of these Pakistanis came across the border after 9/11, and did not train in al Qaeda training camps. Correct?

A [PROF. WILLIAMS]: No. In fact, some of them have been fighting Kunduz for two years. I interviewed some that came over afterwards, but their commanders and some of their higher personnel had been there in some cases for up to four years.

Q [LCDR STONE]: But nonetheless, these are the individuals that were held in jail?

A [PROF. WILLIAMS]: Yes. These were held in a medieval sort of fortress prison in the north.

Q [LCDR STONE]: Because the Arabs that were captured at that time were moved to Qala-i-Jangi prison. Correct? Shortly after 9/11?

A [PROF. WILLIAMS]: Some of the Arabs were moved there. Others also went to Subragon prison where I interviewed the Pakistanis.

Q [LCDR STONE]: And these are the Arabs that rioted under--in Qala-i-Jangi prison. Right?

A [PROF. WILLIAMS]: Yes, they are.

Q [LCDR STONE]: Okay.

A [PROF. WILLIAMS]: Yes.

Q [LCDR STONE]: And that riot was started when one of them faked surrender, pulled a hand grenade and killed one of the commanders inside the prison. Correct?

A [PROF. WILLIAMS]: Yes. I actually went to the spot where that grenade was set off. It was a volunteer who had a hand grenade under his garments. And when he approached someone who he thought was Costume, he set off the grenade.

Q [LCDR STONE]: And that's what started the riot?

A [PROF. WILLIAMS]: Yes, it did.

Q [LCDR STONE]: Now, your testimony is that the fighting wing of al Qaeda and the terrorist wing of al Qaeda are separate and distinct entities. Right?

A [PROF. WILLIAMS]: That's correct.

Q [LCDR STONE]: Their two lines never crossed?

A [PROF. WILLIAMS]: Well, in my own research, I found that several times people that fought in the fighting units that were members of the Ansars, if they had particular skills or some sort of skill set that could be used for a terrorist activity, they were on

occasion plucked from the masses that I mentioned in my previous testimony, and these people on a couple of occasions were in fact used for terrorist activities. But this was rare.

Q [LCDR STONE]: Tell me who Khallad is.

A [PROF. WILLIAMS]: Can you say the name again? I can't hear you.

Q [LCDR STONE]: Khallad.

A [PROF. WILLIAMS]: Khallad?

Q [LCDR STONE]: Yes.

A [PROF. WILLIAMS]: I've never heard the name Khallad before.

Q [LCDR STONE]: Have you ever heard the name Silver before?

A [PROF. WILLIAMS]: No, I haven't heard Silver, either.

Q [LCDR STONE]: Have you heard the name Walid bin Attash before?

A [PROF. WILLIAMS]: Yes, I have.

Q [LCDR STONE]: Would it surprise you to know that that's all the same person?

A [PROF. WILLIAMS]: Yes, it would. I never heard the name Silver or the first one, Khalid, before.

Q [LCDR STONE]: Okay.

A [PROF. WILLIAMS]: I'm assuming it's a kunya.

Q [LCDR STONE]: Do you realize that this person fought at the front, lost a leg in a mine attack, and then has been accused of participation in both the COLE and the 9/11 attacks?

A [PROF. WILLIAMS]: No. In fact, I wrote about him and this incident in one of my pieces--I wrote a piece about how several people who fought in the 055 and other jihad units in various other zones of jihad, including Chechnya, after having fought in these zones of combat subsequently were recruited by al Qaeda's terrorist wing and then went on to engage in terrorism. If you look at my list of publications, you'll see I've written about this particular case.

Q [LCDR STONE]: You wrote about Khalid, but you don't know who he was?

A [PROF. WILLIAMS]: No. I wrote about him and mentioned this case in my piece on the COLE bombing and the links to Chechnya. I've never heard the name Silver, though.

Q [LCDR STONE]: Okay. Do you know the name Allawi? We've talked about him before?

A [PROF. WILLIAMS]: Yes--what was your question?

Q [LCDR STONE]: Allawi. Who is he?

A [PROF. WILLIAMS]: I don't know who Allawi is. I remember hearing about him in the last discussion we had. Perhaps you can refresh my memory.

Q [LCDR STONE]: He is the individual that fought in the front, left, and then was one of the suicide bombers that survived after the 1998 embassy bombings and is now serving a life sentence. Do you remember him now?

A [PROF. WILLIAMS]: Yes, I do. Thank you.

Q [LCDR STONE]: Okay. How about the name al-Dari?

A [PROF. WILLIAMS]: Yes.

Q [LCDR STONE]: He's an individual that is accused of having fought at the front, and then fought and is accused of, although not yet tried, of participating in a terrorist attack. Are you aware of that?

A [PROF. WILLIAMS]: Yes, I am.

Q [LCDR STONE]: Should we go on, or should we stop?

A [PROF. WILLIAMS]: Either way. I think this reinforces the point I made earlier on, that the 055 Brigade was the prime recruitment pool for these elite sleeper cells that on occasion could take the elite, those who had a particular skill set, and use them for terrorist activity. Mohammed Atta, the head of the 9/11 team, tried to get into 055 and was diverted to a terrorist activity. So this fits the pattern that I have studied in my own research. But you can go on, if you'd like to.

Q [LCDR STONE]: I think your point on direct was that they were separate and distinct organizations, but we'll quibble with that later.

A [PROF. WILLIAMS]: I would still say that they are separate and distinct organizations.

Q [LCDR STONE]: Now, amongst those individuals trained at the Al-Farouq camp--now, I want to turn your attention to Al-Farouq. Okay? Now, the purpose of this training was violent jihad. Correct?

A [PROF. WILLIAMS]: I've heard of apologists that say jihad can be un-violent. But in my experience, jihad is warfare. So that's absolutely correct. Yes.

Q [LCDR STONE]: Okay. Where was the Al-Farouq training camp located?

A [PROF. WILLIAMS]: In the Pashtu tribal areas, south of Jalalabad.

Q [LCDR STONE]: No. That's stopped in around 1997. Where was it located between 1998 and 2001?

A [PROF. WILLIAMS]: If they moved it, I didn't follow the movement. The original Al-Farouq camp was established with the ISI. And if it was moved, that's news to me.

[END OF PAGE]

Q [LCDR STONE]: Well, isn't it true it was bombed in 1998 and then moved south of Kandahar, where the accused is said to have trained at? Are you aware of that?

A [PROF. WILLIAMS]: No, I'm not. I'm aware that it was bombed by the cruise missiles in 1998. But I didn't know that they changed the name and shifted one to the south of Kandahar. No.

Q [LCDR STONE]: Let's talk a little bit about al Qaeda propaganda. You and I agree I believe that it's important to al Qaeda to produce propaganda. Right?

A [PROF. WILLIAMS]: Absolutely.

Q [LCDR STONE]: I mean this is the way they get their message across?

A [PROF. WILLIAMS]: Correct.

Q [LCDR STONE]: How they recruit.

A [PROF. WILLIAMS]: Yes.

Q [LCDR STONE]: And it's a fundamental way that al Qaeda projects power in the Muslim world. Right?

A [PROF. WILLIAMS]: I don't know about power, but certainly that's how they project their message. Yes.

Q [LCDR STONE]: Now, would you also agree with me that one of the ways that al Qaeda tries to legitimize itself is by adopting Muslim or Islamic symbols? Would you agree with me?

A [PROF. WILLIAMS]: Absolutely.

Q [LCDR STONE]: I want to talk about the flag, the alria. Okay?

A [PROF. WILLIAMS]: Okay.

Q [LCDR STONE]: That is an ancient symbol of Islam. Isn't it?

A [PROF. WILLIAMS]: As I stated in my previous testimony, the origins of this flag can be traced all the way back to the Abbasid caliphate in Baghdad, which was destroyed in 1258. The Abbasids were the first ones to use the black flag. This was the banner they used when they spread their Abbasid revolution, which destroyed the Alamut. So it traces all the way back to about 750 AD. Yes, it is an ancient standard.

Q [LCDR STONE]: Al Qaeda stole this flag from Islam. Didn't they?

A [PROF. WILLIAMS]: I would say they appropriated a flag that has origins to the Abbasid revolution, but also has applications, as I stated in my previous testimony, to this Haditha. The Hadit references the black flags of the Imam coming out of Khorasan. Stealing it or appropriating it, you choose the term.

Q [LCDR STONE]: You've talked to Muslims that have been outraged by the idea of al Qaeda adopting and using this flag for terrorism. Haven't you?

A [PROF. WILLIAMS]: Yes, I have. I've interviewed many Muslims who are offended by al Qaeda's use of terrorism and symbols that they

adhere to that they find to be historic or having cultural relevance beyond al Qaeda and its sort of warped version of jihad.

Q [LCDR STONE]: So would you agree with me when I say that is not an al Qaeda flag?

A [PROF. WILLIAMS]: I would say that if al Qaeda flies a black flag and everybody in the world recognizes it as the al Qaeda alria and the troops fight under it, then it is most definitely the black flag of al Qaeda. Black flags, as I mentioned in my previous testimony, weren't used since the destruction of the Caliphate. Green flags have been used by Muslim forces since then. Al Qaeda resurrected the symbol, and they're the ones who began to disseminate it as a means of modern jihad movement.

Other groups have borrowed it and tried using it, Chechnya, Philippines, Kashmir, et cetera. But certainly this is the banner that they fight under, this is the banner on their web sites, this is the banner that they acknowledge as their flag. Then I wouldn't say it is not their flag; I would say it actually is their flag.

Q [LCDR STONE]: Okay. That's your position. Do you remember the photos that you put up of--I have them here, but of the group marching out what seems to be in the desert with the mountain? Do you remember that?

A [PROF. WILLIAMS]: Yes, I do.

Q [LCDR STONE]: Okay. Are you aware that that's a staged photo?

A [PROF. WILLIAMS]: Yes. And it actually comes from a video. I've seen the entire video. The whole thing was a staged training exercise with various sort of gymnastic activities, shootings, marched parades on the parade ground, et cetera. Yes, I'm aware of it, and I have the video in my collection.

Q [LCDR STONE]: What's the name of the video?

A [PROF. WILLIAMS]: I have no idea at the moment. It's part of a ten-part series of videos, all of them al Qaeda videos from 1998 to 2003.

Q [LCDR STONE]: If I told you it was called The Destruction of the USS COLE, or the State of the Ummah," would that ring a bell?

A [PROF. WILLIAMS]: Yes, it would.

Q [LCDR STONE]: Okay. Did you know that the accused was involved in discussions with Osama bin Laden and parts of the media committee when it was decided to actually make that video?

A [PROF. WILLIAMS]: I haven't followed the transcripts and followed all the details of Hamdan's interrogations; so if this took place, that's not part of my background.

TC [LCDR STONE]: Okay. Just a quick second, sir. Actually, I need a little point of technical clarification. I don't know how you do this. I want to put this picture up.

MJ [CAPT ALLRED]: This is one of the slides from the presentation that has already been----

TC [LCDR STONE]: Yes, sir.

MJ [CAPT ALLRED]: Okay. Maybe you could describe it to the witness so he will remember it.

TC [LCDR STONE]: Can you----

CDC [MR. MCMILLAN]: Lieutenant Commander, it's slide 15. If you ask the witness to look at slide 15.

Questions by the trial counsel:

Q [LCDR STONE]: Professor, I don't think you can see this, but its slide 15, the picture of Abu Yahya Al-Libi.

A [PROF. WILLIAMS]: I actually recognize it when you brought it by the camera. I can see it from here. If you hold it up, I can see it.

Q [LCDR STONE]: Okay. You recognize this photograph. Right?

A [PROF. WILLIAMS]: Yes, I do.

Q [LCDR STONE]: Okay. In December, you identified him as a commander of the Ansars. Do you remember that?

A [PROF. WILLIAMS]: No, I don't. But, yes, he was a Libyan--not a high commander, but a lower commander. Now, of course, he's probably number three in al Qaeda.

Q [LCDR STONE]: Actually, you said in December, did you not, that he commanded both bases and training camps, and individuals.

A [PROF. WILLIAMS]: He definitely commanded individuals and training camps. Yes.

Q [LCDR STONE]: Would it surprise you to know that this individual in 2002 was working as a computer operator in Karachi, and had not been nor was ever part of the al Qaeda Ansar structure, all the way up until 2002?

A [PROF. WILLIAMS]: It wouldn't surprise me. No.

Q [LCDR STONE]: It does not surprise you.

A [PROF. WILLIAMS]: No.

Q [LCDR STONE]: So your testimony is now that he was not a member of the Ansar fighting unit when the World Trade Center attacks occurred?

A [PROF. WILLIAMS]: My communications with Afghan intelligence tells me that when the Afghan Ansars and the Arab Ansars retreated from Shahi-Khot over towards Waziristan, Abu Yahya al-Libi was one of the chief leaders in helping them shift from frontal combat to insurgent activities.

He was very involved as a commander in helping them retrain and reequip from frontal combat to insurgent combat. So he was very involved in that whole transformation as a leader, I will call it, in the transition stage, when the Ansars went from being involved in

artillery frontal combat to shifting to what is now the insurgent stage. So his activities were vital in taking the Ansars from a frontal capacity to what we call today in the guerilla asymmetric capacity.

Q [LCDR STONE]: So if we put up or presented evidence coming directly from Abu Yahya Al-Libi's mouth that he was not involved in any of that that would surprise you. Correct?

A [PROF. WILLIAMS]: If he said he was uninvolved in any insurgent activities, in any training----

Q [LCDR STONE]: Prior to 2002?

A [PROF. WILLIAMS]: In any sort of insurgent activities--if he said prior to 2002, it would surprise me. But it wouldn't refute the fact that he was vitally involved in training the people for the new round of conflict, which is from Ansar frontal combat to insurgent combat. If he said that he wasn't involved in that, then that would surprise me. Yes.

Q [LCDR STONE]: How did he become famous?

A [PROF. WILLIAMS]: He became famous as a dynamic charismatic leader who was involved in part in helping to run As-Sahab, The Clouds, this sort of media wing of al Qaeda that is involved in propaganda. His name became more and more popular after his escape, but certainly around 2005 he became the most vocal and dynamic and charismatic of the new generation of al Qaeda in Waziristan.

Q [LCDR STONE]: So he is the new generation of al Qaeda who escaped from Bagram after 2005, and wasn't even involved in the Shura Council or anything regarding al Qaeda before 9/11. Correct?

A [PROF. WILLIAMS]: That's correct. He's considered possibly the new leader should Zawahiri or al Qaeda chief leader bin Laden die. He is probably slated to take control of the organization if they die.

Q [LCDR STONE]: Now, do you remember, you remember testifying in December when we talked about this photograph?

A [PROF. WILLIAMS]: Yes, I do.

Q [LCDR STONE]: Okay. I don't know any other way--you can't see the photograph where you are. Can you?

CDC [MR. MCMILLAN]: If you hold it up.

A [PROF. WILLIAMS]: If you hold it up, I can see it pretty clearly.

Q [LCDR STONE]: Can you see this?

A [PROF. WILLIAMS]: I remember seeing the slide.

Q [LCDR STONE]: I don't think there's any way you can see this. Can you?

A [PROF. WILLIAMS]: No. I can't see that. No.

[END OF PAGE]

Q [LCDR STONE]: Well, we're going to have to kind of improvise a little bit. In December, you testified--I'm going to read this--that this was an Al-Jazeera photo. Do you remember that?

A [PROF. WILLIAMS]: Yes, I do.

Q [LCDR STONE]: In fact, I said in cross-examination: Now, that picture that you showed, that's actually a media production of As-Sahab. Is it not? And your response----

A [PROF. WILLIAMS]: Yes, it is. If you look at the bottom, you will see the As-Sahab logo there.

Q [LCDR STONE]: That's my point. That's what I said in December. Your response was: Actually, that is an Al-Jazeera logo you see in the bottom left. Do you remember that?

A [PROF. WILLIAMS]: Yeah.

Q [LCDR STONE]: So you made a mistake?

A [PROF. WILLIAMS]: That was a case of me taking the----

Q [LCDR STONE]: Is that right?

A [PROF. WILLIAMS]: I took this slide off of an Al-Jazeera page and looked at the logo and confused the two very close logo, but when I went back and looked at it again, and it does say As-Sahab, as in The Clouds.

[END OF PAGE]

Q [LCDR STONE]: Now, if you look at the picture again,--okay. So your testimony is that, I mean, the As-Sahab, Al-Jazeera logos are a little bit alike. So you made a mistake. Right?

A [PROF. WILLIAMS]: Correct.

Q [LCDR STONE]: Okay. And you actually got this from an Al-Jazeera video?

A [PROF. WILLIAMS]: Yes.

Q [LCDR STONE]: Why is the English subtitled when Al-Jazeera speaks in Arabic?

A [PROF. WILLIAMS]: So Arabs can translate the message to English audiences, I'm assuming.

Q [LCDR STONE]: Wouldn't it just make sense that this is a media production by al Qaeda under As-Sahab, translated so Americans can see it?

A [PROF. WILLIAMS]: Absolutely.

Q [LCDR STONE]: And it had nothing to do with Al-Jazeera, and you just made a mistake and covered up for it?

A [PROF. WILLIAMS]: That is absolutely possible. But I know one thing. When I looked at that logo again, I realized that the logo is exactly like the Al-Jazeera logo; hence the fact that I now have stated that it is As-Sahab, not Al-Jazeera.

Q [LCDR STONE]: Okay. Does As-Sahab work for both separate and distinct branches of al Qaeda?

A [PROF. WILLIAMS]: As-Sahab is known as the media wing of al Qaeda. It involves a lot of technicians who have really advanced these videos to new levels. They have green backboards; they have a tremendous Internet capacity. I would say that it's what we call--and this is what the CIA calls it--the media wing of al Qaeda.

Q [LCDR STONE]: I don't think that anybody disputes that most everybody calls it the media wing of al Qaeda. But my question was, does the media wing work for both the good al Qaeda that you testified about as well as the bad al Qaeda.

CDC [MR. MCMILLAN]: Objection, Your Honor. Mischaracterizes the witness's testimony.

MJ [CAPT ALLRED]: Sustained.

Questions by the trial counsel:

Q [LCDR STONE]: The lawful al Qaeda versus the terrorist al Qaeda?

A [PROF. WILLIAMS]: Are you hinting that there's a lawful al Qaeda?

Q [LCDR STONE]: Actually, that was your testimony.

CDC [MR. MCMILLAN]: Objection again, Your Honor.

A [PROF. WILLIAMS]: You're putting words in my mouth. I never used the word lawful.

Q [LCDR STONE]: Let's move to the Taliban-al Qaeda relationship. Okay?

A [PROF. WILLIAMS]: Yes.

Q [LCDR STONE]: Okay. Would you be surprised if an expert testified that Taliban and al Qaeda had an inverse relationship, in which al Qaeda was in charge? Would you be surprised?

CDC [MR. MCMILLAN]: Objection, Your Honor. It mischaracterizes his testimony previously introduced in this case.

MJ [CAPT ALLRED]: I don't think he's--I think he can pose that question, and see if the witness agrees with it or not. He's an expert witness.

A [PROF. WILLIAMS]: So, an expert witness testified that al Qaeda is in charge of the Taliban?

Questions by trial counsel:

Q [LCDR STONE]: Yes.

A [PROF. WILLIAMS]: Am I understanding you correctly?

Q [LCDR STONE]: Yes.

A [PROF. WILLIAMS]: It wouldn't surprise me, no. There are all sorts of explanations. But that doesn't go with what my own research tells me.

Q [LCDR STONE]: Would you be surprised if that was actually a defense law of war expert that said that?

CDC [MR. MCMILLAN]: Objection, Your Honor. There are

misrepresentations about what's in evidence.

MJ [CAPT ALLRED]: He's already said that it doesn't agree with his research. So you can argue the testimony of the other witness separately.

Q [LCDR STONE]: Do you remember writing--okay. So you disagree with that statement?

A [PROF. WILLIAMS]: I would suggest that, in Afghanistan, the Taliban had the final say, not al Qaeda.

Q [LCDR STONE]: So you disagree with the statement. Yes?

A [PROF. WILLIAMS]: That al Qaeda controls the Taliban? Yes.

Q [LCDR STONE]: Do you remember writing an article called The Failure of Al Qaeda Basing Projects from Soviet Afghanistan to the Sunni Triangle?

A [PROF. WILLIAMS]: Yes, I do.

Q [LCDR STONE]: Is it also not true in that article you state that: Al Qaeda, the parasite, that it began controlling the actions of its host?

A [PROF. WILLIAMS]: Yes, I did.

Q [LCDR STONE]: Okay. You testified that al Qaeda and Taliban forces were integrated. Correct?

A [PROF. WILLIAMS]: Correct.

Q [LCDR STONE]: Do integrated forces slaughter from the same side?

A [PROF. WILLIAMS]: Are you asking a general question?

Q [LCDR STONE]: Yeah.

A [PROF. WILLIAMS]: In my experience----

Q [LCDR STONE]: Integrated?

A [PROF. WILLIAMS]: Do individuals----

Q [LCDR STONE]: I'm sorry. Go ahead.

A [PROF. WILLIAMS]: I don't understand the question.

Q [LCDR STONE]: Okay. You testified that the Taliban and al Qaeda were integrated forces. Right?

A [PROF. WILLIAMS]: Yes. We've established that.

Q [LCDR STONE]: Okay. My question is it your understanding that integrated forces of two units, that one will slaughter the other one in combat? Is that your testimony?

A [PROF. WILLIAMS]: No.

Q [LCDR STONE]: Then how do you explain al Qaeda forces slaughtering 300 Taliban fighters in November of 2001 when they tried to surrender?

A [PROF. WILLIAMS]: This is a very famous case. I actually interviewed Northern Alliance commanders who handled it. It took place in Kunduz and a small one took place in Kandahar.

The Taliban were surrendering. The Taliban are Afghans,

the Taliban are indigenous Pashtuns. They expect to be treated better than the foreign fighters who didn't have the same protections by Afghan Pashtun culture. As the alliance frayed and these Afghans returned to other Afghans and were embraced by them, the foreign fighters decided to keep up the fight.

When the local Taliban turned against them and tried disarming them, the foreign fighters of Kunduz, also in Kandahar, turned against the Taliban and actively fought them. Was it a slaughter? No. It was a red on red combat, to use military jargon. Many Arabs died, too.

Q [LCDR STONE]: So you admit and you understand that Taliban fighters were killed by Arabs while trying to surrender in November near Kunduz?

A [PROF. WILLIAMS]: Yes. That's the--in Kunduz, yes.

Q [LCDR STONE]: Okay. And then it happened in another place near Kunduz in Muskhan, where another 125 foreign fighters were killed trying to retreat, trying to surrender?

A [PROF. WILLIAMS]: In that case, the local Arab fighters----

Q [LCDR STONE]: It happened, first. Right?

A [PROF. WILLIAMS]: ----were attacked not only by--oh, it definitely happened. I actually visited the battlefront where that took place. The local Taliban surrendered to a Northern Alliance commander. They were then bribed, and together they attacked the

Arabs and killed them. I think the number of 125 was inflated in that case, however.

Q [LCDR STONE]: It's also been reported that when the Taliban surrendered, that these glorious foreign fighters hung their bodies from lamp posts to keep the Taliban from surrendering. Isn't that also true?

A [PROF. WILLIAMS]: It is. I've also heard that they stuffed Afghani notes into the mouths of foreign fighters. These were primarily Northern Alliance people that were desecrating and defiling the bodies of foreigners, not the Taliban.

Q [LCDR STONE]: So your testimony is that the foreign fighters--your testimony contradicts that reporting of CBS that the foreign fighters were the ones that killed the surrendering Taliban?

A [PROF. WILLIAMS]: My testimony is that the foreign fighters were killed in large numbers by the Taliban, but that they also were killed. It's a vice versa thing. Yes, my contradiction is that it wasn't just one sided. Both sides did killing.

Q [LCDR STONE]: Do you remember testifying in December when you were asked about how they imposed discipline, and your response was: We have lots of stories of how the Arabs executed people for retreating from battle, mainly the Taliban. Do you remember that?

A [PROF. WILLIAMS]: This is the incident at Kunduz they're referring to. When the Taliban tried retreating from the Northern

Alliance attack, in other words, surrendering, the Arabs were cornered and they killed them.

Q [LCDR STONE]: So that's not unit discipline. You only have one example, then. That's not unit discipline. Would you agree with me?

A [PROF. WILLIAMS]: I would call it red on red indiscipline. Absolutely.

Q [LCDR STONE]: You testified as an expert in Taliban and al Qaeda, that the Taliban did not engage in massive retribution or killings of the local population. Correct? Absent Herat.

A [PROF. WILLIAMS]: Actually, I gave a long discussion about an hour ago about the massacres of Mazar-e-Sharif. I mentioned that I actually visited the killing fields, where the mass graves where, were Hazaras in particular were killed by Taliban fighters when they took that city in 1998.

During my previous testimony in December down there in Guantanamo, I also referenced a small massacre of Hazaras in a place called Yakaolang up in the Hindu Kush Mountains that I visited. These were, I suggested, the exceptions not the rule.

[END OF PAGE]

Q [LCDR STONE]: Right. Well, the State Department confirms the Mazar-e-Sharif massacre, would you agree with me, included frenzied killings of shop owners, civilians, cart pullers, women, and children, and up to 5,000 people were massacred by Taliban and al Qaeda forces in Mazar-e-Sharif in 1998? Would you agree with that?

A [PROF. WILLIAMS]: I visited--I've visited the scene of that massacre, interviewed people that survived it, have filmed it, and discussed it. And you're missing one thing. This massacre was retaliation for the first massacre in the war one year before, when several thousand Taliban were massacred by the same people, Hazaras and Mazar-e-Sharif.

Q [LCDR STONE]: Okay.

A [PROF. WILLIAMS]: It was a tit for tat killing, and that was unique. It was the only example in the entire history of the war, that is, the Taliban's conquest, where there was this sort of mass, I think, cleansing. As I stated about an hour ago, this was in retaliation for the killing of their own troops at the hands of Northern Alliance fighters the previous year in 1997.

[END OF PAGE]

Q [LCDR STONE]: Right. In 1997, the Northern Alliance attacked, did a counterattack against Taliban army personnel, and slaughtered them. And then in 1998, the Taliban and al Qaeda forces butchered 5,000 civilian women and children in retaliation. Correct?

A [PROF. WILLIAMS]: Incorrect. It wasn't 5,000 men, women, and children. The vast majority of those who were slaughtered, including a 2,000 man Hazar unit, were military. They were lined up without their weapons and killed just as the Taliban had done before.

Q [LCDR STONE]: And in Herat in 1997 and 2000, Taliban executed--Taliban and al Qaeda executed prisoners. Correct?

A [PROF. WILLIAMS]: There is a much lesser case that I'm aware of. But, yes, in Herat, I do remember this case.

Q [LCDR STONE]: You testified that there were 15 to 20 people died in Yakaolang before. Isn't it true that the State Department lists that number at greater than 300 women and children?

A [PROF. WILLIAMS]: And Human Rights Watch puts it at about 200.

Q [LCDR STONE]: Okay. That's a far cry from the 15 or 20 that you testified to in December. Isn't it?

A [PROF. WILLIAMS]: If I said 15 or 20, I apologize. It's definitely at least 200.

Q [LCDR STONE]: Amnesty International mentions that, in 1999, the Taliban and al Qaeda forces, when they took Banyan, multiple summary executions of women and children and hundreds were killed. That's reported by Amnesty International. Are you aware of that?

A [PROF. WILLIAMS]: No, I'm not aware of that report.

Q [LCDR STONE]: Are you also aware that in July of 1999 in the Shamali Plain, the United Nations stated that the Taliban and these foreign fighters made no distinction between civilians and combatants, burning homes, cutting them down, and killing people. Are you aware of that?

A [PROF. WILLIAMS]: Yes. I've actually lived in the Shamali Plain and interviewed Tajiks who experienced this combat. It was part of a surge. Masood cleansed the plain of Pashtuns, then the Pashtun Taliban reacted and cleansed it of Tajiks.

Q [LCDR STONE]: Let's talk about Essam al Ridi for a second. Okay?

A [PROF. WILLIAMS]: Okay.

Q [LCDR STONE]: He was a pilot with specialized training. Correct?

A [PROF. WILLIAMS]: Correct.

[END OF PAGE]

Q [LCDR STONE]: This is the individual that you used as an example to show that Osama bin Laden could have people that weren't really committed to him be around him. Right?

A [PROF. WILLIAMS]: Incorrect. I think he was more about money, but he wasn't committed to terrorism.

Q [LCDR STONE]: Okay.

A [PROF. WILLIAMS]: That's the context I used him in.

Q [LCDR STONE]: Okay. He was a pilot with specialized training. Is that right?

A [PROF. WILLIAMS]: Yes, he was.

Q [LCDR STONE]: Osama bin Laden told him that this would be a temporary arrangement. Right?

A [PROF. WILLIAMS]: Yes.

Q [LCDR STONE]: Osama bin Laden also told him to train a cab driver named Ihab Ali to pilot the jet. Didn't he?

A [PROF. WILLIAMS]: I don't remember the name and I don't remember the specifics of that character. It sounds plausible to me.

Q [LCDR STONE]: And that's because this individual would swear bayat to Osama bin Laden. Correct?

A [PROF. WILLIAMS]: The second individual that you just mentioned?

Q [LCDR STONE]: Right. He was trained because he was loyal to Usama bin Laden.

A [PROF. WILLIAMS]: The second individual I'm unaware of. So I'm going to have to take your word at it.

Q [LCDR STONE]: Okay. It sounds plausible, though.

A [PROF. WILLIAMS]: That he was trained to--re-ask me again. I didn't quite catch the details.

Q [LCDR STONE]: We can move on. Ali and Ridi crashed in this plane in 1995 when Osama bin Laden was in the Sudan. Correct?

A [PROF. WILLIAMS]: That's correct.

Q [LCDR STONE]: So, thus, this was before Osama bin Laden returned to Afghanistan?

A [PROF. WILLIAMS]: Correct.

Q [LCDR STONE]: It was prior to the assassination attempts in the Sudan against Osama bin Laden?

A [PROF. WILLIAMS]: Correct.

Q [LCDR STONE]: It was prior to his declaration of war against the United States?

A [PROF. WILLIAMS]: Correct.

Q [LCDR STONE]: You would also agree with me, it was before he was influential in the world. Correct?

A [PROF. WILLIAMS]: Correct.

Q [LCDR STONE]: It was a time when Osama bin Laden had a tiny organization and had to rely on other people. Correct?

A [PROF. WILLIAMS]: Actually, at this stage he probably had more money than he's ever had, and I think the organization as we've seen in Sudan was larger than a tiny organization. He was running massive projects; he was building roads, running agriculture, providing jobs to hundreds of ex-jihad fighters, Arab volunteers from Afghanistan. He was a very important man even in 1995. And even then, he let it be known that he hated America. He was hating America ever since, of course, the first Gulf War in 1991, and making it very loud that he was against American quote/unquote occupation of the holy soil of Saudi Arabia.

TC [LCDR STONE]: No further questions. Thank you for your time.

[END OF PAGE]

REDIRECT EXAMINATION

Questions by the defense counsel:

Q [MR. MCMILLIAN]: Professor, just three areas on redirect. The prosecutor has suggested that providing personal services to Osama bin Laden without war is the equivalent of supporting terrorism.

My question to you is can you address whether those who were involved in al Qaeda al Sulbah outside activities, the terrorist strikes, made efforts to maintain operational security and secrecy in connection with those outside operations?

A [PROF. WILLIAMS]: Absolutely. I mean, there's no way you can pull off an operation on the scale of 9/11 had thousands of foot soldiers operating in the battlefront against the Northern Alliance been part of the plot. You had to have strict firewalls. There's some who have suggested that even Ayman al-Zawahiri didn't know about 9/11. It was kept to a very small circle of people. Many who were inside al Qaeda's top organization didn't know about this plot, which was hatched by Khalid Sheikh Muhammad, who is almost an independent actor. So certainly you had operational security and people down the food chain, down the ranks, which had no clue, that 9/11 was coming.

[END OF PAGE]

Q [MR. MCMILLIAN]: And is that true in connection with other outside operations, terrorist strikes beyond 9/11?

A [PROF. WILLIAMS]: Absolutely. The COLE bombing, the bombings in Kenya, Tanzania, all of these operations were very, very tightly strictly controlled. A small group of operators were sent off on a mission often a year or two at a time undercover. The vast majority of people operating in Afghanistan, for example, had no idea that they had the bombings in Dar es Salaam or Nairobi.

Q [MR. MCMILLIAN]: Okay. The second topic area, Professor. You've testified about how, after the American intervention in Afghanistan in the fall of 2001, U.S. firepower destroyed the 055 Brigade. Correct?

A [PROF. WILLIAMS]: That's correct. The vast majority of Ansars were killed in the north in Kunduz or Tora Bora or at Shahi-Khot.

Q [MR. MCMILLIAN]: Did remnants of that brigade fall back to the last Taliban stronghold in the south around Kandahar?

A [PROF. WILLIAMS]: Yes, they did. That's where they were finally tracked down and attacked by U.S. forces in February of 2002, Operation Anaconda.

[END OF PAGE]

Q [MR. MCMILLIAN]: The third and final area for questions, Professor. The prosecutor brought to your attention that 14 of the 19 terrorists connected with the 9/11 attacks in the United States did not speak English. Do you recall that?

A [PROF. WILLIAMS]: I wasn't aware that it was that many that didn't speak English, but I do remember him bringing that point up, yes.

Q [MR. MCMILLIAN]: My question is, are you aware of whether these individuals may have had other qualifications that allowed them to move easily in the west or set them apart in some other way to qualify them for these outside operations?

A [PROF. WILLIAMS]: Yes. Some of them spoke other western languages; others had technical capacity, pilot skills. They were all chosen for their having lived in the West, for having some sort of ability to integrate with the West, or some sort of technical qualifications. So speaking English wasn't the only skills required for the 9/11 operation, obviously.

CDC [MR. MCMILLIAN]: Thank you. No further questions.

[END OF PAGE]

RECROSS-EXAMINATION

Questions by the trial counsel:

Q [LCDR STONE]: So your testimony is that if an individual was told of a terrorist operation days before the attack that an operation would happen and he knew that to be a terrorist operation, and he took steps and actions to protect Osama bin Laden, that he would be part of this small circle of people that's involved in what you call al Qaeda al Sulbah. Right?

A [PROF. WILLIAMS]: Can you state that question again? I didn't quite follow it.

Q [LCDR STONE]: Okay. If an individual is--if a person learns of a terrorist attack days before it occurs and then is told to take specific steps to protect Osama bin Laden because of an impending operation, you would admit then that this individual was in that small circle of people that Osama bin Laden could trust with at least the broader bands of the operational security necessary to do an attack. You would agree with me?

A [PROF. WILLIAMS]: Yes. If he--I would say that if he knew about an operation, knew the details, and then, you know, just continued to work, then perhaps what you're suggesting is correct.

[END OF PAGE]

Q [LCDR STONE]: Your testimony just on redirect was that you believed some of these Ansar fighters went from the Shamali Plain near Kunduz and Herat, migrated--well, those fronts fell on November 21st, 2001. Isn't that correct?

A [PROF. WILLIAMS]: The date sounds good to me. Yes.

Q [LCDR STONE]: Give or take a couple days.

A [PROF. WILLIAMS]: Right.

Q [LCDR STONE]: We agree on that?

A [PROF. WILLIAMS]: Yeah. I think Kunduz fell about a week earlier, though.

Q [LCDR STONE]: Okay. Those that were alive were rounded up--the Arab Ansar fighters that you say, were rounded up, and those that were captured were moved away. We established that before. Right? Were moved to Qala-i-Jangi prison and Sheberghan?

A [PROF. WILLIAMS]: Yeah. The ones that were captured fighting in Kunduz, only in Kunduz, were taken to Sheberghan or Mazar-e-Sharif and Qala-i-Jangi. Thus, only the ones north of Shamali Plain. Don't confuse Shamali Plain with Kunduz, which is on the other side of the Hindu Kush Mountains.

Q [LCDR STONE]: So then it's your testimony that when these fell, these Ansar fighters--well, are you aware of when the accused was captured?

A [PROF. WILLIAMS]: Yes, I am.

Q [LCDR STONE]: November 24, 2001. Correct?

A [PROF. WILLIAMS]: Correct.

Q [LCDR STONE]: So it's your testimony, then, that what's left of this Ansar brigade traveled single on foot, because they didn't have any cars because they were destroyed, through the Shamali Plain, past Kabul, down Highway 1, through all of Highway 1, was not targeted, then took up defensive positions in Kandahar, so that the accused could potentially deliver stuff to them? Is that your position? In the course of three days?

A [PROF. WILLIAMS]: I think that's preposterous.

Q [LCDR STONE]: Okay.

A [PROF. WILLIAMS]: That's preposterous.

Q [LCDR STONE]: Okay.

A [PROF. WILLIAMS]: The Ansars held Kandahar and defended Kandahar in the south. Then, those who were in Kandahar moved about 75 miles to the east, and there they were targeted at Anaconda's Shahi-Khot operation. The Ansars weren't all in Kunduz. The Ansars were in Tora Bora, the Ansars were in Shahi-Khot, the Ansars were in Kabul, the Ansars were in Kandahar. But there was, as I suggested, a large element of the Ansar unit trapped and captured and killed way in the north in Kunduz prior to the capture of Hamdan.

TC [LCDR STONE]: Thank you. No further questions, sir.

MJ [CAPT ALLRED]: Members of the court do you have any

questions for Professor Williams? Apparently not.

Thank you, Professor, for your testimony. We wish you a safe summer of research in Central Asia.

WIT [PROF. WILLIAMS]: Thank you.

[The witness, Prof. Williams, withdrew from the courtroom.]

MJ [CAPT ALLRED]: Okay. I don't know how to turn off the video conference feed, but we'll ask the technical people to do that.

That concludes the only defense witness who was scheduled to testify this morning. Trial counsel, what do you have for us?

CTC [MR. MURPHY]: Your Honor, we have a matter to be taken up outside the presence of the jury.

MJ [CAPT ALLRED]: Okay. How long do you think? What time should we ask the members to return?

CTC [MR. MURPHY]: Your Honor, I think this could take an hour.

MJ [CAPT ALLRED]: Well, it's lunchtime. Why don't we ask them to come back at something like 1500? And we'll try to resolve all these issues that you're discussing in the meantime.

Okay. Members, we will excuse you for a prolonged lunch this afternoon, and try to be ready to continue at 1500.

[Members withdrew from the courtroom.]

[The military commission terminated and the R.M.C. 803 session commenced at 1202, 30 July 2008.]

MJ [CAPT ALLRED]: Okay. The members have withdrawn from the

courtroom. Please have a seat **[all persons did as directed]**. Okay. You want to litigate now the admissibility of a statement made in 2003.

CTC [MR. MURPHY]: That's correct, Your Honor. We have a total of three witnesses, two of which will be relatively short. With the permission of the Court, we're going to identify the first two as Witnesses Two and Three. They are standing by. And then we will call Special Agent [redacted] as well, with the Court's permission.

MJ [CAPT ALLRED]: Okay. Let's call Witness Number Two.

CTC [MR. MURPHY]: If I may. They're up in their spaces, and since we're not identifying them by name, maybe I'm the best person to----

MJ [CAPT ALLRED]: It looks like we found a better person to go get them.

CTC [MR. MURPHY]: Your Honor, if I may identify which of the two will be first. Sir, if you could approach the witness area to be sworn. Sir, by agreement of the parties and with the permission of the Commission, we've agreed to identify you as Number Two.

WIT [NUMBER TWO]: Yes, sir.

CTC [MR. MURPHY]: Your Honor, may I either approach or hand the bailiff certain classified documents?

MJ [CAPT ALLRED]: You may.

WITNESS NUMBER TWO, civilian, was called as a witness for the prosecution, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the trial counsel:

Q [MR. MURPHY]: Sir, I would ask you to look at this document once you've received it, and then I would ask you if you are familiar with it once you've reviewed it?

A [WITNESS NUMBER TWO]: Yes, sir.

Q [MR. MURPHY]: You are familiar with that?

A [WITNESS NUMBER TWO]: Yes, sir.

Q [MR. MURPHY]: And you reviewed that as early as yesterday?

A [WITNESS NUMBER TWO]: Yes, sir.

Q [MR. MURPHY]: Is that correct? And it is a classified document. Correct?

A [WITNESS NUMBER TWO]: It is.

Q [MR. MUPHY]: Because of that and because we're in open session, I'm not going to ask you any questions about the content of the document. But I am going to ask you, is that document prepared during the regular course of your command's business?

A [WITNESS NUMBER TWO]: That type of document is, yes, sir.

Q [MR. MUPHY]: And what command does it come from?

A [WITNESS NUMBER TWO]: The Joint Intelligence Group.

Q [MR. MURPHY]: And are those----

A [WITNESS NUMBER TWO]: JTF GTMO.

Q [MR. MURPHY]: And are those records that are made by people that are a part of that command and record information pursuant to your duties of that command?

A [WITNESS NUMBER TWO]: Yes, sir.

Q [MR. MURPHY]: And are those reports prepared near in time to the events of which they report on?

A [WITNESS NUMBER TWO]: Yes, sir.

Q [MR. MURPHY]: And are those reports kept and prepared following a set procedure and in a consistent manner?

A [WITNESS NUMBER TWO]: Yes, sir.

CTC [MR. MURPHY]: Your Honor, I would offer this document which is marked as Appellate Exhibit 306, the next appellate exhibit in order, into the record at this time.

CDC [MR. SWIFT]: I have no objection to the entry of the document, Your Honor.

MJ [CAPT ALLRED]: Very well. Without objection, Appellate Exhibit 306 will be admitted. And I will consider it with respect to this motion.

CTC [MR. MURPHY]: Right. The government does not believe it is necessary to go into closed session to talk about the details. We believe that, when the Commission reviews it, it will be helpful in

resolution of this issue.

MJ [CAPT ALLRED]: Okay. Bailiff, would you retrieve that document from the witness, please.

CTC [MR. MURPHY]: Your Honor, we would tender this witness.

CROSS EXAMINATION

Questions by the civilian defense counsel:

Q [MR. SWIFT]: Witness Two, what is your current position, sir?

A [WITNESS NUMBER TWO]: I'm the Deputy Commander of the Joint Intelligence Group, sir.

Q [MR. SWIFT]: How long have you held that position?

A [WITNESS NUMBER TWO]: About a week. Well, actually several days now, for official turnover, I've been here a week and a half.

Q [MR. SWIFT]: Were you here in 2003?

A [WITNESS NUMBER TWO]: No, sir, I wasn't.

Q [MR. SWIFT]: Are you familiar with the activities of the Behavioral Science Consulting Team in 2003?

A [WITNESS NUMBER TWO]: No, sir, I'm not.

Q [MR. SWIFT]: Are you aware of the activities of interrogators in 2003?

A [WITNESS NUMBER TWO]: No, sir, I'm not. I was not here.

Q [MR. SWIFT]: Are you aware of who the interrogators were in 2003?

A [WITNESS NUMBER TWO]: No more than what is in the documentation, sir.

Q [MR. SWIFT]: Did you make a thorough search, personally, of the records regarding to Mr. Hamdan?

A [WITNESS NUMBER TWO]: Did I look through the JDIMS, the Joint Detainee Intelligence Maintenance System, and the database on Mr. Hamdan?

Q [MR. SWIFT]: Yes.

A [WITNESS NUMBER TWO]: Not thoroughly. No, sir, but I did scan it.

Q [MR. SWIFT]: You scanned it. Are you sure that all documents relating to Mr. Hamdan had been turned over to the defense?

A [WITNESS NUMBER TWO]: No, sir, I'm not.

Q [MR. SWIFT]: Can you swear to that today? Thank you very much.

CDC [MR. SWIFT]: I have nothing further, Your Honor.

CTC [MR. MURPHY]: Your Honor, the government has no further questions of the witness.

MJ [CAPT ALLRED]: Let me take a look at these documents and see if I have any. I think this first document has previously been attached to the Declaration of Lieutenant Commander Mizer.

CTC [MR. MURPHY]: That's correct. I didn't see the point in objecting to it. The document was already put in, Your Honor.

MJ [CAPT ALLRED]: Okay. Thank you, Captain. I guess the parties have excused you as a witness.

CTC [MR. MURPHY]: Your Honor, we have no further questions or need to retain Witness Two.

MJ [CAPT ALLRED]: Very good. Thank you.

CTC [MR. MURPHY]: At this time we would call the witness, who we are identifying as Witness Three, and if I may be excused, I believe he is in right in the hallway, and I can ask him to come up.

MJ [CAPT ALLRED]: You may.

CTC [MR. MURPHY]: Sir, if you could approach the witness area to be sworn, and raise your right hand.

WITNESS NUMBER THREE, Civilian, was called as a witness for the prosecution, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the trial counsel:

Q [MR. MURPHY]: And with the consent of the parties and with the permission of the commission, we have agreed to refer to you as Witness Three during these proceedings.

A [WITNESS NUMBER THREE]: Yes, sir.

CTC [MR. MURPHY]: Your Honor, I have an unclassified document that is now marked as the next one in order, which is 307, Appellate

Exhibit 307, and would ask that we provide this to the witness. Because it's unclassified, I feel that I can hand out copies, and we'd like to provide this for the Military Judge.

MJ [CAPT ALLRED]: Okay. So the witness has the original for the record of trial, and this is my copy?

CTC [MR. MURPHY]: I would also note, so we may all follow along, that the pages have been numbered in the lower right-hand corner.

Questions by the civilian trial counsel:

Q [MR. MURPHY]: Number Three, are you familiar with the document that I've placed in front of you?

A [WITNESS NUMBER THREE]: Yes, sir. It looks like a document prepared by the Joint Detention Group for processing.

Q [MR. MURPHY]: All right. And is it fair to say that these were prepared before you were part of that command? Is that right?

A [WITNESS NUMBER THREE]: Yes, sir.

Q [MR. MURPHY]: Nevertheless, are you able to recognize these documents and the information contained therein?

A [WITNESS NUMBER THREE]: Yes, sir, I do.

Q [MR. MURPHY]: Does it appear to you to be a record that is kept during the normal course of business at the Joint Task Force?

A [WITNESS NUMBER THREE]: Yes, sir, it does.

Q [MR. MURPHY]: And does it report entries by individuals that were attached to or working with that command?

A [WITNESS NUMBER THREE]: Yes, it appears.

Q [MR. MURPHY]: And does it appear to reflect--that it reflects their knowledge of certain activities that they report in the documents?

A [WITNESS NUMBER THREE]: Yes, sir.

Q [MR. MURPHY]: And does it also appear that these records were prepared at or near the time the entries were made reflecting what they observed?

A [WITNESS NUMBER THREE]: Yes, sir.

Q [MR. MURPHY]: And, finally, are these records kept in a consistent manner and according to a set procedure at the command?

A [WITNESS NUMBER THREE]: Yes, sir.

CTC [MR. MURPHY]: Your Honor, I would also offer this in as a business record identified as Appellate Exhibit 307.

CDC [MR. SWIFT]: I have no objection on the business records, although a portion of the documents, Your Honor, appear to me to be irrelevant since they're disciplinary records of another detainee, unless somehow we're going to tie up that detainee's discipline records.

CTC [MR. MURPHY]: What I can say, Your Honor is we're not going to be talking about other detainees, but we wanted to keep these in

chronological fashion, and the testimony that we elicit is going to be only in regard to Salim Hamdan, Number 149.

MJ [CAPT ALLRED]: Very well.

CTC [MR. MURPHY]: So some of these documents we will be moving through quickly.

MJ [CAPT ALLRED]: Appellate Exhibit 307 then is admitted without objection from the defense.

Questions by the civilian trial counsel:

Q [MR. MURPHY]: Sir, are you able to discuss, based on your experience of this command--and why don't we just identify that. What is your experience at the command that allows you to talk about these documents?

A [WITNESS NUMBER THREE]: I reported for duty on board August 7, 2007.

Q [MR. MURPHY]: All right. And you're familiar with the entries related to the discipline and movement of detainees?

A [WITNESS NUMBER THREE]: Yes, sir, I am, somewhat.

Q [MR. MURPHY]: And how are you familiar with that?

A [WITNESS NUMBER THREE]: I am assigned to the Detention Operations Center, and we monitor and supervise all movements and all reports that come through any of the camps for all detainees.

Q [MR. MURPHY]: All right. And in relation to Appellate Exhibit 307, did I ask you to go through and highlight issues related to Salim Hamdan, Detainee 149, and be prepared to discuss these in this document? Is that right; you're prepared to do that?

A [WITNESS NUMBER THREE]: Yes, sir. I can talk about this document.

Q [MR. MURPHY]: All right. And I'd like, so we can all follow along with you, and I realize we're going to go through some of these pages quickly, identify the page number in the lower right as I've marked it, and tell us what, if anything, of significance is reported related to Salim Hamdan?

A [WITNESS NUMBER THREE]: On page 1 of these documents, sir, on 4 September 2002, it was reported that he had spit on one of the block NCOs in the guard staff. And, additionally, that he refused to comply with actions and directions of the guard staff.

Q [MR. MURPHY]: All right. And if you'll keep guiding us by identifying page numbers.

A [WITNESS NUMBER THREE]: Yes, sir.

Q [MR. MURPHY]: So we can go through the complete document. So now you're turning to?

A [WITNESS NUMBER THREE]: Page 2, sir.

Q [MR. MURPHY]: Tell us what, if anything, of significance is there?

A [WITNESS NUMBER THREE]: This is a military police desk blotter. This is a record that was kept on events throughout the day, which on line entry number 17 shows detainee Hamdan being moved to reservation at 0816.

Q [MR. MURPHY]: All right. Are you familiar with what that phrase means?

A [WITNESS NUMBER THREE]: To reservation, sir?

Q [MR. MURPHY]: Right.

A [WITNESS NUMBER THREE]: That would be an appointment.

Q [MR. MURPHY]: All right. Please continue.

MJ [CAPT ALLRED]: An appointment?

WIT [WITNESS NUMBER THREE]: An appointment, a reservation, which--not being sure of what type of reservation, he was being moved to another location.

MJ [CAPT ALLRED]: A medical appointment? A legal appointment?

WIT [WITNESS NUMBER THREE]: It could be a legal or medical.

MJ [CAPT ALLRED]: An interview appointment?

WIT [WITNESS NUMBER THREE]: Interview.

Questions by the civilian trial counsel:

Q [MR. MURPHY]: That's your understanding of----

A [WITNESS NUMBER THREE]: That's my understanding, sir.

Q [MR. MURPHY]: ----a reservation? Okay. Please continue.

A [WITNESS NUMBER THREE]: Page 3, the same form of the document. Line number entry 21, at 0945 it shows Hamdan being moved to reservation.

Q [MR. MURPHY]: All right. And the date for each of these is in the upper right-hand portion of the document. Correct?

A [WITNESS NUMBER THREE]: Yes, sir.

Q [MR. MURPHY]: All right. Please continue.

A [WITNESS NUMBER THREE]: Page 4 is a statement dated 2003, October, it looks like--or, March 14th.

Q [MR. MURPHY]: And can you summarize the information there for us?

A [WITNESS NUMBER THREE]: A summary of the statement is that Hamdan had asked for a soccer ball and he could not have it, and he became aggressive and outraged.

Q [MR. MURPHY]: All right. And there’s a notation----

A [WITNESS NUMBER THREE]: And then, additionally, he had used derogatory language and comments toward guard staff.

Q [MR. MURPHY]: All right. Please continue.

A [WITNESS NUMBER THREE]: Page 6 is a report of an offense and discipline dated 14 March 2003. And this is a document that would be submitted for the previously mentioned conduct.

Q [MR. MURPHY]: Okay. Please continue.

A [WITNESS NUMBER THREE]: Excuse me. That was page 5 that I discussed. Now, on page 6, which is a statement made by the guard force on 2003 March 14. And the summary of the content of the statement is, during a search of Hamdan's cell he was found in possession of contraband.

Q [MR. MURPHY]: All right. Please continue.

A [WITNESS NUMBER THREE]: Page 7 is a report, Recommendation for Disciplinary Action and reporting the preceding summary of contraband.

Q [MR. MURPHY]: Please highlight the date again on this.

A [WITNESS NUMBER THREE]: The date is 14 March 2003.

Q [MR. MURPHY]: Okay. Please continue.

A [WITNESS NUMBER THREE]: Page 8 is another statement provided by guard staff on 2003 March 14. And the summary of this statement is that he refused to follow guard instructions.

Q [MR. MURPHY]: All right. Please continue.

A [WITNESS NUMBER THREE]: Page 9 is the Recommendation for Disciplinary Action reporting the preceding.

Q [MR. MURPHY]: All right. And all related to 14 March. Right?

A [WITNESS NUMBER THREE]: Yes, sir. 14 March 2003.

Q [MR. MURPHY]: Please continue.

A [WITNESS NUMBER THREE]: Page 9 is a medical record entry. This is not within my specific scope of duty, but it looks like a medical evaluation report of some sort.

Q [MR. MURPHY]: And that is actually identified as 9-A, is that right?

A [WITNESS NUMBER THREE]: 9-A. Yes, sir.

Q [MR. MURPHY]: All right. Please continue.

A [WITNESS NUMBER THREE]: Page 10 is another log entry. Entry number 28 at 0924 reflects Hamdan being moved out to reservation.

Q [MR. MURPHY]: The same definition of that term as before. Is that right?

A [WITNESS NUMBER THREE]: Yes, sir.

Q [MR. MURPHY]: Okay.

A [WITNESS NUMBER THREE]: And this is on March 18, 2003.

Q [MR. MURPHY]: All right. Please continue.

A [WITNESS NUMBER THREE]: Page 11, another log entry. Number 103 reflects Hamdan being moved out to reservation at 1537 on March 20, 2003.

Q [MR. MURPHY]: All right. Please continue.

A [WITNESS NUMBER THREE]: Page 11-A is a staff general or duty officer's log entry. Entry number 8 at 0955 reflects Hamdan changing level two to level three.

Q [MR. MURPHY]: All right. And after we go through this, you're aware of some standard operating procedures that can provide some kind of information on level changes that you reviewed, is that right?

A [WITNESS NUMBER THREE]: Yes, sir.

Q [MR. MURPHY]: We're going to get to that once we go through all of these.

A [WITNESS NUMBER THREE]: Yes, sir.

Q [MR. MURPHY]: But I want to note that you will have more to say about that when we get to the standard operating procedures, correct?

A [WITNESS NUMBER THREE]: Yes, sir.

Q [MR. MURPHY]: All right. Please continue.

A [WITNESS NUMBER THREE]: Page 11-B is a Detainee Behavioral Tracking Sheet. And it looks like it covers detainees assigned to a block, which, on line number 29, reflects Mr. Hamdan.

Q [MR. MURPHY]: All right. Please continue.

A [WITNESS NUMBER THREE]: Page 11-C is another medical report dated, looks like, March 24th.

Q [MR. MURPHY]: All right. Please continue.

A [WITNESS NUMBER THREE]: Page 11-D is a Detainee Behavioral Tracking Sheet. Line 29 again reflects Hamdan, with no rec 29 March. The date of this document is 25 March, 2003.

Q [MR. MURPHY]: All right. Please continue.

A [WITNESS NUMBER THREE]: Page 12 is a Military Police Desk Blotter, which log entry number 25 at 1035 reflects Mr. Hamdan returning from reservation.

Q [MR. MURPHY]: What's the date on that again?

A [WITNESS NUMBER THREE]: April 2, 2003.

Q [MR. MURPHY]: Please continue.

A [WITNESS NUMBER THREE]: Page 13 is another Military Police Desk Blotter. Log entry 97 at 2235 reflects Mr. Hamdan moving from R8 to T9 level change.

Q [MR. MURPHY]: All right. And do those entries have any particular meaning for you?

A [WITNESS NUMBER THREE]: It just looks like a--to me, looks like a reassignment or move.

Q [MR. MURPHY]: Is the T significant to you?

A [WITNESS NUMBER THREE]: The T is just another block.

Q [MR. MURPHY]: Okay.

A [WITNESS NUMBER THREE]: So he moved from Romeo block to Tango block.

Q [MR. MURPHY]: Okay. And date or, rather, the time of that particular move was what time?

A [WITNESS NUMBER THREE]: 2235.

Q [MR. MURPHY]: All right. On 16 May 2003?

A [WITNESS NUMBER THREE]: Yes, sir.

Q [MR. MURPHY]: All right. The next page?

A [WITNESS NUMBER THREE]: Page 13-A. It says daily staff journal or duty officer log.

Q [MR. MURPHY]: Okay. Reflecting?

A [WITNESS NUMBER THREE]: Item number 8 reflects Mr. Hamdan, R8 permanent move to Tango 9 by G-1.

Q [MR. MURPHY]: And while we're talking about Tango right now, is it your understanding that, that was any kind of disciplinary location?

A [WITNESS NUMBER THREE]: Not to my knowledge.

Q [MR. MURPHY]: In fact, is it to the best of your knowledge that it's not a disciplinary location?

A [WITNESS NUMBER THREE]: Yes, sir. That is right.

Q [MR. MURPHY]: All right. Please continue.

A [WITNESS NUMBER THREE]: Page 14, Military Police Desk Blotter.

Q [MR. MURPHY]: All right.

A [WITNESS NUMBER THREE]: The entry number is cut off, but it reflects at 0924, Mr. Hamdan at Tango 9, moved out for reservation.

Q [MR. MURPHY]: All right.

A [WITNESS NUMBER THREE]: The date of that document is 2003 May 17.

Q [MR. MURPHY]: All right. Please continue.

A [WITNESS NUMBER THREE]: Page 15, another Military Police Desk Blotter. Log entry number 46 at 1856 reflects that Mr. Hamdan in Tango 9 returning from reservation on May 17, 2003.

Q [MR. MURPHY]: All right. Please continue.

A [WITNESS NUMBER THREE]: Page 15-A looks like a Notification of Status Positive Behavior Reward Program, with remarks.

Q [MR. MURPHY]: All right. Indicating a photo was provided to the detainee?

A [WITNESS NUMBER THREE]: Yes, sir. Being allowed two colored three-by-five photos and a one ten-by-eight photo of the family.

Q [MR. MURPHY]: All right. Please continue.

A [WITNESS NUMBER THREE]: Page 16 is a Recommendation of Disciplinary Action report.

Q [MR. MURPHY]: For what reason?

A [WITNESS NUMBER THREE]: Using provoking words and gestures towards guard’s staff.

Q [MR. MURPHY]: What's the date of this?

A [WITNESS NUMBER THREE]: 13 August 2003.

Q [MR. MURPHY]: All right. Please continue.

A [WITNESS NUMBER THREE]: Page 17 is another recommendation for disciplinary action. And this is for hitting or kicking an MP guard staff, for an assault.

Q [MR. MURPHY]: All right.

A [WITNESS NUMBER THREE]: The date on this is 23 August 2003.

Q [MR. MURPHY]: All right. Please continue.

A [WITNESS NUMBER THREE]: Page 18 is a sworn statement given by guard staff on 2003.

Q [MR. MURPHY]: Regarding?

A [WITNESS NUMBER THREE]: Contraband. He was found in possession of contraband.

Q [MR. MURPHY]: All right. Please continue.

A [WITNESS NUMBER THREE]: Page 19 is the Recommendation for Disciplinary Action dated 4 September 2003. Further proceeding report in the statement is possession of contraband.

Q [MR. MURPHY]: All right. Please continue.

A [WITNESS NUMBER THREE]: Page 20 is a Recommendation for Disciplinary Action for throwing water, food at MP, assault.

Q [MR. MURPHY]: All right. Please continue.

A [WITNESS NUMBER THREE]: Page 21 is a sworn statement.

Q [MR. MURPHY]: Relating to?

A [WITNESS NUMBER THREE]: It's dated 20 November 2003 for violation of camp rules, it looks like.

Q [MR. MURPHY]: Okay. And you have two final pages. Why don't you explain what those two are?

A [WITNESS NUMBER THREE]: Page 22 is the second part of--page 21 is a statement where the guard staff swears to their statement.

Q [MR. MURPHY]: All right.

A [WITNESS NUMBER THREE]: And then page----

Q [MR. MURPHY]: Before we leave this document, I do want to return to page 12--I'm sorry, to page 13, rather. That reflects documentation on 16 May 2003, correct?

A [WITNESS NUMBER THREE]: Yes, sir.

Q [MR. MURPHY]: Is there anything about this that suggests that there was any punishment involved in reporting this information?

A [WITNESS NUMBER THREE]: Not as I see it, or as it appears on this document.

Q [MR. MURPHY]: Does it appear to you that it does not involve any kind of punishment?

A [WITNESS NUMBER THREE]: It does not appear so.

Q [MR. MURPHY]: Did I also ask you to look at some standard operating procedures that were in effect in the year 2003?

CDC [MR. SWIFT]: I'm going to object to the witness's ability

to testify to a document the government can put in. But he is now going to have someone who was here in 2007 testifies about something that he said, please read the document from 2007. I think the Court is capable of reading it. If he can testify to what he has personal knowledge to----

MJ [CAPT ALLRED]: Okay. Let's see what he can say. I haven't seen the document. Is this going to be offered to me as well?

CTC [MR. MURPHY]: It's the next appellate exhibit in order, which I believe is 308. Is that correct? 308. And why don't I first lay a foundation for the business record exception.

MJ [CAPT ALLRED]: Why don't we.

CTC [MR. MURPHY]: And go from there. I do have a copy----

MJ [CAPT ALLRED]: Does the defense want a foundation for business record exception?

CDC [MR. SWIFT]: No.

MJ [CAPT ALLRED]: Okay.

CDC [MR. SWIFT]: He can enter the document. If he is going to ask the witness about the document, then I would want him to lay the foundation for that.

MJ [CAPT ALLRED]: Okay. Without objection, then, Appellate Exhibit 308 is admitted.

CTC [MR. MURPHY]: Your Honor, I would offer it under the business record exception. And I have a copy for the Military Judge

and the witness.

Questions by the civilian trial counsel:

Q [MR. MURPHY]: All right, sir. Have you reviewed what is marked now as Appellate Exhibit 308?

A [WITNESS NUMBER THREE]: Yes, sir.

Q [MR. MURPHY]: And is now admitted as 308 as well. Are you familiar with instructions of this nature?

A [WITNESS NUMBER THREE]: Yes, sir, I am.

Q [MR. MURPHY]: And how are you familiar with instructions of this nature?

A [WITNESS NUMBER THREE]: This is the Standard Operating Procedure for Camp Delta, and this is dated 28 March 2003.

Q [MR. MURPHY]: And it was in effect in March 28, 2003. Is that correct?

A [WITNESS NUMBER THREE]: Yes, sir.

Q [MR. MURPHY]: That was the time you were not at this command. Is that right?

A [WITNESS NUMBER THREE]: That is right, sir.

Q [MR. MURPHY]: Based on your training, are you familiar with standard operating procedures as it relates to detainees?

A [WITNESS NUMBER THREE]: Yes, sir, I am, sir.

Q [MR. MURPHY]: Do you understand the material in Appellate Exhibit 308?

A [WITNESS NUMBER THREE]: Yes, sir.

Q [MR. MURPHY]: Based on your training and experience, can you identify certain relevant portions in this exhibit, and explain the general nature of the information provided?

CDC [MR. SWIFT]: Are we offering this witness as an expert?

CTC [MR. MURPHY]: Well, I'm waiting for the answer on this question.

Questions by the civilian trial counsel:

Q [MR. MURPHY]: Are you able, based on your training and experience, to identify the type of information contained in this record?

A [WITNESS NUMBER THREE]: Yes, sir. This would be, it looks like, part of Chapter 8, which would be block operations.

CTC [MR. MURPHY]: All right. Your Honor, I'm certainly not going to track through this entire document, but I would ask this witness next if he could identify the type of material that is contained in this exhibit.

MJ [CAPT ALLRED]: Okay.

[END OF PAGE]

Q [MR. MURPHY]: And with the permission of the Court, I ask you that question: Can you identify and refer us to the type of information which is contained in this exhibit?

A [WITNESS NUMBER THREE]: Yes, sir. Page 8.2 would be--it looks like an action process for discipline for loss of recreation, loss of hot meals, and comfort items.

Q [MR. MURPHY]: All right. And if you could just quickly--I don't need you to spend a lot of time because the Judge obviously can read this. But just highlight for us the various sections and the type of information that's contained in there.

A [WITNESS NUMBER THREE]: On page 8.3 is a discussion on the classifications of levels, levels one through five.

Q [MR. MURPHY]: Okay.

A [WITNESS NUMBER THREE]: And this appears as disciplinary levels one through five.

Q [MR. MURPHY]: All right. And then if you could just quickly go through and highlight the remaining portions and the type of information it contains.

A [WITNESS NUMBER THREE]: Page 8.4. It looks like the recommendation for disciplinary action report as discussed in the previous documents with the form 508.1.

Q [MR. MURPHY]: Okay.

A [WITNESS NUMBER THREE]: The last two pages of this document is your basic issue items and your comfort items categorized by the five different levels of discipline.

Q [MR. MURPHY]: All right. Now, you mentioned when we were looking at Appellate Exhibit 307 that there was a change in the level for 149. Do you recall that?

A [WITNESS NUMBER THREE]: Yes, sir.

Q [MR. MURPHY]: And does this table contain--starting on table 824 and 8.5, reflect differences between level two and level three?

A [WITNESS NUMBER THREE]: Yes, sir, it does.

Q [MR. MURPHY]: Based on your experience, would that be the difference in conditions between those two levels, as reflected in this case?

A [WITNESS NUMBER THREE]: Yes, sir.

CTC [MR. MURPHY]: All right. Your Honor, if I could have just a moment.

MJ [CAPT ALLRED]: Um-hmm.

CTC [MR. MURPHY]: Your Honor, we would tender the witness at this time.

CDC [MR. SWIFT]: It's 12:30, Your Honor. Can we take lunch and come back?

MJ [CAPT ALLRED]: Well, do you want a ruling on this motion

early or late? Because I'm happy to give everybody lunch, but I understand that there's a VTC potentially in the works and one more witness to hear. And I'm prepared to work through lunch so that you can have a decision before, but I will be happy to take lunch.

CTC [MR. MURPHY]: It's not critical, Your Honor, for the government to seek a ruling immediately upon the return from lunch.

MJ [CAPT ALLRED]: Well, we have the members coming back at 1500. I will need time to look through this material.

CTC [MR. MURPHY]: We also have, I don't know how long the witness may take on cross, between 35 and 45 minutes, I would expect.

CDC [MR. SWIFT]: I would presume we would be calling Agent [redacted] to testify to what he testified to.

MJ [CAPT ALLRED]: Maybe. Maybe not.

CTC [MR. MURPHY]: There's additional material. There's additional material, and we want a full record on this.

MJ [CAPT ALLRED]: Okay. Well, let's take lunch then. I'll work on this over lunch, and we'll return. Why don't we return at 1400 and we'll see if we can get it done before the members return.

CTC [MR. MURPHY]: And we do have important additional information that will be presented, and also I have just been handed an affidavit that I will also be offering at that time as well.

MJ [CAPT ALLRED]: Okay.

CTC [MR. MURPHY]: Thank you, Your Honor.

MJ [CAPT ALLRED]: Well, why don't you give me the affidavit now, if the defense doesn't have an objection to that, and I can----

CDC [MR. SWIFT]: We've never seen it.

CTC [MR. MURPHY]: It literally just came in.

MJ [CAPT ALLRED]: Okay. Let's come back at 1400, then, and I will be prepared to continue then. Bailiff, if you will get those exhibits and make sure they're delivered to the court reporter until we return to court. We will stand in recess until 1400.

[The R.M.C. 803 session recessed at 1239, on 30 July 2008.]

[The R.M.C. 803 session was called to order at 1405, on 30 July 2008.]

MJ [CAPT ALLRED]: Okay. Court is called to order. Members are absent. The witness is on the stand.

CTC [MR. MURPHY]: Your Honor, I just conferred--before we turn over to cross. Both Mr. Swift and I have agreed to offer documents at this time.

MJ [CAPT ALLRED]: Okay.

CTC [MR. MURPHY]: I will just identify them. They've been marked by the court reporter.

Appellate Exhibit 309 is an affidavit from [redacted]. 310 is an affidavit by [redacted]. 311 is an affidavit by [redacted]. 312 is an affidavit by [redacted]. 313 is a classified document referred to in these proceedings as Operation

Sandman. And 314 is a statement of the accused. I believe that none of those are objected the by the defense.

CDC [MR. SWIFT]: They are.

CTC [MR. MURPHY]: They are objected to?

CDC [MR. SWIFT]: Yes. As I've told you several times.

CTC [MR. MURPHY]: Okay.

CDC [MR. SWIFT]: I object to the affidavit of [redacted], and would ask that he be called as a witness so that we may have an opportunity to cross-examine him rather than his testimony be considered in an affidavit form. He is present and available in the courtroom.

MJ [CAPT ALLRED]: Which one is [redacted]?

CTC [MR. MURPHY]: He's the case agent, Your Honor.

CDC [MR. SWIFT]: He's the case agent and available here.

MJ [CAPT ALLRED]: What number?

CTC [MR. MURPHY]: 109.

MJ [CAPT ALLRED]: 309.

CTC [MR. MURPHY]: 309, I'm sorry.

MJ [CAPT ALLRED]: Okay. What's the substance?

CTC [MR. MURPHY]: It was my understanding you were requesting witnesses but not objecting to the affidavits.

CDC [MR. SWIFT]: Well, I apologize for the misunderstanding, but I object to the affidavit.

MJ [CAPT ALLRED]: Is [redacted] here in the building?

CTC [MR. MURPHY]: He is, Your Honor.

MJ [CAPT ALLRED]: Is there any reason why he couldn't be called?

CTC [MR. MURPHY]: No. He could be called.

MJ [CAPT ALLRED]: Okay. It's just a matter of how long we want to be here in court today.

CTC [MR. MURPHY]: Right.

MJ [CAPT ALLRED]: Well, it sounds like it's going to be a hotly contested motion.

CTC [MR. MURPHY]: Right.

MJ [CAPT ALLRED]: And maybe the defense should have the ability to cross-examine Mr. [redacted].

CTC [MR. MURPHY]: Okay.

MJ [CAPT ALLRED]: Okay? What about the rest?

CTC [MR. MURPHY]: Well, some of these--you object to [redacted] as well?

CDC [MR. SWIFT]: No. I object to [redacted]. I would like him called as a witness.

CTC [MR. MURPHY]: What about the accused's statement?

CDC [MR. SWIFT]: I do not.

CTC [MR. MURPHY]: So at this point we would offer then--

CDC [MR. SWIFT]: I would object and ask that she be called as a

witness.

CTC [MR. MURPHY]: I don't know if she is available. Why don't we put in what we don't have objections for at this point, Your Honor, and deal with the rest later.

MJ [CAPT ALLRED]: Okay.

CTC [MR. MURPHY]: That should be marked as 313 and 314.

MJ [CAPT ALLRED]: [redacted] and the statement by the accused. You don't object to those. And all the other affidavits, then, we're going to call the witnesses instead?

CDC [MR. SWIFT]: I have asked that if the government is going to introduce evidence of a hearing and like [redacted] where I have no opportunity to get a counter-affidavit, that I at least have the opportunity to cross those witnesses, rather than it be admitted for the truth of the matter asserted without any opportunity.

MJ [CAPT ALLRED]: That sounds fair enough. If the witnesses are here, then we should give the defense some latitude. So where are we? Are we going to go look for witnesses now?

CTC [MR. MURPHY]: Your Honor, I believe we're at the point where Mr. Swift is going to do cross.

MJ [CAPT ALLRED]: We can cross-examine this witness now. Can't we? Witness number two, I think. Number three?

CTC [MR. MURPHY]: [redacted] is here and was not otherwise going to be a witness. He may need to step out if he's going to

testify.

MJ [CAPT ALLRED]: Okay. So we will continue with the cross-examination of Witness Number Three.

CROSS EXAMINATION

Questions by civilian defense counsel:

Q [MR. SWIFT]: Witness Number Three, you were--I believe you testified that you reported here in 2007. Is that correct?

A [WITNESS NUMBER THREE]: Yes, sir.

Q [MR. SWIFT]: And your position was as one of the camp commanders. Is that correct?

A [WITNESS NUMBER THREE]: Previously, I was one of the camp commanders. Currently, I'm assigned to Detention Operation Center.

Q [MR. SWIFT]: Now, when you reported, was Block Tango in Camp Three operational?

A [WITNESS NUMBER THREE]: When I reported?

Q [MR. SWIFT]: Yes, when you reported.

A [WITNESS NUMBER THREE]: Sir, I was assigned to Camp Six.

Q [MR. SWIFT]: I know, but I'm asking whether it was operational at that time. Do you know?

A [WITNESS NUMBER THREE]: To my knowledge, no.

Q [MR. SWIFT]: Have you ever been assigned to Camp Three?

A [WITNESS NUMBER THREE]: No, sir.

Q [MR. SWIFT]: Then it would go without saying that you've never actually been assigned to Block Tango or had it under your supervision. Is that correct?

A [WITNESS NUMBER THREE]: That's correct, sir.

Q [MR. SWIFT]: And, in fact, you don't even know whether it was operational when you were assigned to the island. Is that correct?

A [WITNESS NUMBER THREE]: When I was assigned to the island? No, sir.

Q [MR. SWIFT]: Now, you testified, as far as you knew, it was just a regular block.

A [WITNESS NUMBER THREE]: Yes, sir.

Q [MR. SWIFT]: Is that correct?

A [WITNESS NUMBER THREE]: Yes, sir.

Q [MR. SWIFT]: And that's based on any particular knowledge?

A [WITNESS NUMBER THREE]: Just general knowledge, seeing the block, sir.

Q [MR. SWIFT]: Was it running when you saw it?

A [WITNESS NUMBER THREE]: No, sir.

Q [MR. SWIFT]: So there was no one there?

A [WITNESS NUMBER THREE]: No, sir.

Q [MR. SWIFT]: Did you know any of the guard staff that was assigned to the Block Tango in 2003?

A [WITNESS NUMBER THREE]: No, sir.

Q [MR. SWIFT]: Now, you've testified regarding the SOP and the procedures that were put in place.

If I might have the bailiff show it to the witness, Tango 8-4 from that. This is part of the larger exhibit that's already been applied, Your Honor.

On that table, that reflects a series of privileges that you have or do not have. Correct?

A [WITNESS NUMBER THREE]: Yes, sir.

Q [MR. SWIFT]: And they go one through five. Is that correct?

A [WITNESS NUMBER THREE]: Yes, sir.

Q [MR. SWIFT]: Now, five is marked Intel as well as the discipline level. Isn't it?

A [WITNESS NUMBER THREE]: Yes, sir.

Q [MR. SWIFT]: So that is it your understanding that intel could take you to the lowest level regardless of whether you'd had any disciplinary infraction?

A [WITNESS NUMBER THREE]: What do you mean by the lowest level, sir?

Q [MR. SWIFT]: That a detainee could be put in level five by Intel.

A [WITNESS NUMBER THREE]: I would not know that, sir.

Q [MR. SWIFT]: You don't know anything about how Intel interacted with the guard force in 2003?

A [WITNESS NUMBER THREE]: I did not say that, sir. I said I don't know how Intel was assigned to level five.

Q [MR. SWIFT]: What do you know about how Intel reacted--how Intel and the guard force interacted in May of 2003 at Guantanamo Bay?

A [WITNESS NUMBER THREE]: I do not.

Q [MR. SWIFT]: So you don't know anything?

A [WITNESS NUMBER THREE]: No, sir.

Q [MR. SWIFT]: You would agree that Intel is listed on the table?

A [WITNESS NUMBER THREE]: It is.

Q [MR. SWIFT]: But beyond that, you can't expand?

A [WITNESS NUMBER THREE]: No, sir.

Q [MR. SWIFT]: You certainly can't provide any evidence that Intel had no input into Mr. Hamdan's level. Could you?

A [WITNESS NUMBER THREE]: No, sir.

CDC [MR. SWIFT]: If you would retrieve the exhibit, please, bailiff. And if you would take it to the--I used that for

demonstrative purposes. I ask that the next exhibit be marked as the next appellate exhibit in order.

MJ [CAPT ALLRED]: Okay. Let's get a number. 315. Appellate Exhibit 315.

CDC [MR. SWIFT]: And showing it to the witness. This was provided to the defense by the prosecution in discovery I believe last week. And it is staffed general for 23 January--23 January 2003.

Questions by the civilian defense counsel:

Q [MR. SWIFT]: When you're done.

A [WITNESS NUMBER THREE]: Yes, sir.

Q [MR. SWIFT]: Now, you testified earlier to the prosecution that reservations could mean anything, including going to medical.

A [WITNESS NUMBER THREE]: Yes, sir.

Q [MR. SWIFT]: And based on that log, looking down, are medical appointments individually annotated for detainees?

A [WITNESS NUMBER THREE]: On this document, they are, sir.

Q [MR. SWIFT]: And reservations are annotated separately?

A [WITNESS NUMBER THREE]: Yes, sir.

Q [MR. SWIFT]: So when you said reservations meant anything that was basically speculation?

A [WITNESS NUMBER THREE]: To my knowledge, sir, that's the way I've seen it on the document.

Q [MR. SWIFT]: So you've just looked at the document and said, well, that's what I think it means?

A [WITNESS NUMBER THREE]: No, sir.

Q [MR. SWIFT]: What did you do?

A [WITNESS NUMBER THREE]: There is nothing indicating that anything would have been logged differently.

Q [MR. SWIFT]: Now that you've seen the document in front of you, do you believe that reservations means medical?

A [WITNESS NUMBER THREE]: No, sir.

Q [MR. SWIFT]: Okay. One other thing. Do you see Mr. Hamdan's number on that document?

A [WITNESS NUMBER THREE]: Yes, sir.

Q [MR. SWIFT]: What does it indicate with him?

A [WITNESS NUMBER THREE]: Log entry number 88, at 1908 hours, he was moved from TLO 13--or, from TLO 35 to TLO 13 for intel.

Q [MR. SWIFT]: What does that indicate to you? Or are you unable to decipher?

A [WITNESS NUMBER THREE]: Just that it was a move.

Q [MR. SWIFT]: Just that it was a move?

A [WITNESS NUMBER THREE]: Yes, sir.

[END OF PAGE]

Q [MR. SWIFT]: Okay. Now, you did testify earlier that Block Tango, you were unable to have any connotation that it was ever used for a disciplinary purpose?

A [WITNESS NUMBER THREE]: Yes, sir.

CDC [MR. SWIFT]: I would like to have shown the next two documents marked as the next appellate exhibit in order, for housekeeping--these will go together. I'd like them marked as just one appellate exhibit, if that's okay, Your Honor.

MJ [CAPT ALLRED]: 315?

CDC [MR. SWIFT]: 315, Your Honor.

MJ [CAPT ALLRED]: The one we just entered? You're adding another----

CDC [MR. SWIFT]: 316. Noting that they are two documents rather than having them broken apart.

MJ [CAPT ALLRED]: Okay.

CDC [MR. SWIFT]: [redacted]

If you take a moment to look at those two. My understanding and I was just reminded that those are classified documents that we're trying to handle everything. In these records what is and isn't classified is, sometimes I'm told its marked

secret. But those are, as I understand, still classified.

Questions by the civilian defense counsel:

Q [MR. SWIFT]: Looking through that, would it make any sense to you that someone would be moved from Tango block at the end of their disciplinary purpose if Tango was not a disciplinary block?

A [WITNESS NUMBER THREE]: Well, one page, sir, we have cell movement by day, and one is a document handwritten on 7 April 2003 day shift, it looks like some sort of handwritten guard logbook, and it says time served.

Q [MR. SWIFT]: And that would be consistent if he's being moved off of Tango 3, he just finished his discipline. Would that not be consistent?

A [WITNESS NUMBER THREE]: By the appearance of this document.

MJ [CAPT ALLRED]: I'm sorry?

A [WITNESS NUMBER THREE]: By the appearance of this document.

CDC [MR. SWIFT]: If I could have the document retained. I'd like handed to the next appellate exhibit in order, which I believe is 317, which is a military police desk blotter from 230516, and handed to the witness. That is the 23rd of May--excuse me. That's May 16, 2003.

[END OF PAGE]

Questions by the civilian defense counsel:

Q [MR. SWIFT]: Now, in reviewing that document, it shows that Mr. Hamdan was moved back to block Tango. Does it not?

A [WITNESS NUMBER THREE]: It shows moved from R-8 to Tango 9, a level change.

Q [MR. SWIFT]: A level change. That would mean that he had a change in his disciplinary status. Would it not?

A [WITNESS NUMBER THREE]: By this document?

Q [MR. SWIFT]: Now, I believe you testified earlier that you didn't see, at the time that Mr. Hamdan was moved on May 16, any disciplinary infraction that he might have occurred?

A [WITNESS NUMBER THREE]: No, sir.

Q [MR. SWIFT]: So would you agree with me that it would be logical to conclude that intelligence had changed his level to a disciplinary one?

A [WITNESS NUMBER THREE]: I cannot say that.

Q [MR. SWIFT]: It was changed for no reason whatsoever?

CTC [MR. MURPHY]: Objection, Your Honor. I think we're argumentative now. He's provided the answers to that question.

CDC [MR. SWIFT]: He was tendered as an expert on the record, Your Honor.

CTC [MR. MURPHY]: No. He was never offered as an expert.

MJ [CAPT ALLRED]: No, I don't think he was offered as an

expert.

CDC [MR. SWIFT]: Oh, that's right.

MJ [CAPT ALLRED]: You're asking him to construe documents that he had no hand in preparing that are five years old. So----

Questions by the civilian defense counsel:

Q [MR. SWIFT]: It would help, wouldn't it, if you had been the one--if instead of sitting there in the witness seat where you're sitting, the camp commander for Camp Three in 2003, he could explain these documents a lot better than you could. Couldn't he?

A [WITNESS NUMBER THREE]: He should be able to.

Q [MR. SWIFT]: Thank you. I have no further questions for this witness.

MJ [CAPT ALLRED]: Okay.

CTC [MR. MURPHY]: Your Honor, just a couple quick follow-ups.

MJ [CAPT ALLRED]: Okay.

REDIRECT EXAMINATION

Questions by the civilian trial counsel:

Q [MR. MURPHY]: Sir, it's still your testimony that there's no evidence that the move to Tango on May 16th was related to any disciplinary at all. Is that your continued understanding?

A [WITNESS NUMBER THREE]: That is correct.

Q [MR. MURPHY]: That is correct?

A [WITNESS NUMBER THREE]: That is correct.

Q [MR. MURPHY]: And that it's your understanding that Tango block is not used as a disciplinary holding facility?

A [WITNESS NUMBER THREE]: Yes, sir. To my understanding.

Q [MR. MURPHY]: And is it common, based on your experience, that detainees are moved in some fashion before they're interviewed? Is that a common practice?

A [WITNESS NUMBER THREE]: Looking at the way the operations would have been in 2003 to how they are now? I would say that to look at Tango block, the way I've seen it is that that would have been like a holding block for next day moves, depending on the way escort control made the moves the following day.

Q [MR. MURPHY]: Done for the convenience of the guards and the movement of detainees?

A [WITNESS NUMBER THREE]: I would say that's so, sir.

Q [MR. MURPHY]: Now, you don't look at that and say there's harsh treatment here. That doesn't jump out at you as a reason?

A [WITNESS NUMBER THREE]: Not that I see, sir.

CTC [MR. MURPHY]: Thank you. I have nothing further. And I don't believe we have any reason to hold the witness, Your Honor.

[END OF PAGE]

RECROSS-EXAMINTION

Questions by the civilian defense counsel:

Q [MR. SWIFT]: You know that on the prosecution document, what was handed to you, that, in Mr. Hamdan's case, it was a permanent move to Block Tango. Do you remember that?

A [WITNESS NUMBER THREE]: No, sir.

Q [MR. SWIFT]: If I could retrieve the prosecution's appellate exhibits.

Page 13 of Appellate Exhibit 307. If the bailiff would-- it's page 19. If the bailiff would furnish this to the witness, I'd like you to go ahead and look down at the area that the prosecution highlighted.

A [WITNESS NUMBER THREE]: Yes, sir.

Q [MR. SWIFT]: Now, doesn't that indicate that it's a permanent move?

A [WITNESS NUMBER THREE]: This document indicates that log entry, item number 8, at 2300 to 2306 hours, Mr. Hamdan was moved from R-8 to Tango 9, by G-1, permanent move to T-1.

Q [MR. SWIFT]: Now, does that sound like he's going for a day move just to be available for an interrogator and convenience? He's going to be permanently interrogated?

A [WITNESS NUMBER THREE]: By the writing on this document, no.

Q [MR. SWIFT]: The truth is you really don't know what was happening back then. Do you?

A [WITNESS NUMBER THREE]: I would not be able to say if that was a permanent move or if that was a temporary move.

Q [MR. SWIFT]: The writings indicate it was permanent?

A [WITNESS NUMBER THREE]: Yes, sir.

CDC [MR. SWIFT]: Thank you. I have no further questions for the witness, Your Honor.

CTC [MR. MURPHY]: Nothing further, Your Honor.

EXAMINATION BY THE MILITARY COMMISSION

Questions by the military judge:

Q [CAPT ALLRED]: Have you looked at the balance of the SOP from 2003, other than these excerpts that were provided?

A [WITNESS NUMBER THREE]: Yes, sir.

Q [CAPT ALLRED]: Is there a provision in there for intel to move a detainee from one level to another independent of his disciplinary infractions?

A [WITNESS NUMBER THREE]: I did see, there was a section disciplinary area. To say if intel actually assigns different levels, I can't say that, sir. But it is articulated in the SOP, from what I see.

Q [CAPT ALLRED]: And is it articulated that intel can move a detainee to a different level independent of their disciplinary history?

A [WITNESS NUMBER THREE]: I would say so, sir.

Q [CAPT ALLRED]: Okay. Now, this is the Camp Delta SOP. Is Tango block part of Camp Delta?

A [WITNESS NUMBER THREE]: Yes, sir.

Q [CAPT ALLRED]: When you arrived, it was apparently just a normal block of rooms or cells. Is that right?

A [WITNESS NUMBER THREE]: Yes, sir.

Q [CAPT ALLRED]: Now, when this--I'm holding up page 11-B, the Detainee Behavioral Tracking Form. When this form says no recreation, does that mean that his recreation was declined? That the detainee chose not to go out? Or does it mean that he was deprived of recreation as a punishment?

A [WITNESS NUMBER THREE]: It could either be that he either declined his recreation time, or it was imposed, a form of order that suspends recreation time on that document would indicate that, which it was.

Q [CAPT ALLRED]: I guess that's in the column that says Privilege Gained or Lost. So that probably means that he lost a privilege to recreate.

A [WITNESS NUMBER THREE]: Yes, sir.

Q [CAPT ALLRED]: Is that what you would gather? Is it common to move detainees at 2300, between cells, I guess?

A [WITNESS NUMBER THREE]: At that time, I cannot say, sir.

MJ [CAPT ALLRED]: Okay. Okay. I guess that's all the questions I have. Any final questions from counsel before we release the witness?

CTC [MR. MURPHY]: None from the government, Your Honor.

CDC [MR. SWIFT]: None from the defense.

MJ [CAPT ALLRED]: Thank you, Lieutenant, for your testimony. You can return to your duties.

CTC [MR. MURPHY]: Your Honor, we would call Special Agent [redacted].

MJ [CAPT ALLRED]: Wait a minute. Agent [redacted] has already been sworn numerous times I think in this proceeding. Go ahead and have a seat.

CTC [MR. MURPHY]: All right. Your Honor, I am going to skip through all the preliminary educational background.

MJ [CAPT ALLRED]: Thank you.

CTC [MR. MURPHY]: Although the Court will remember that Agent [redacted] is an Arabic speaker and has extensive experience in that area.

MJ [CAPT ALLRED]: Um-hmm.

[redacted], Civilian, was called as a witness for the prosecution, was previously sworn and testified as follows:

DIRECT EXAMINATION

Questions by the trial counsel:

Q [MR. MURPHY]: I'm going to cut right to the conditions of the confinement, and also ask some additional areas that have not gone into previously. Just so we're clear on the record on this motion, at what period of time did you interview Salim Hamdan?

A [MR. [redacted]]: May of 2003.

Q [MR. MURPHY]: And where did you interview him?

A [MR. [redacted]]: Here at Naval Station Guantanamo, in Camp Delta.

Q [MR. MURPHY]: And how many separate meetings did you have with him?

A [MR. [redacted]]: Two. Two.

Q [MR. MURPHY]: Do you recall the dates on those two?

A [MR. [redacted]]: Yes. The first was 17 May 2003, and the next was the 25th of May.

Q [MR. MURPHY]: And describe the conditions under which these interviews were taken. Describe the room and the atmosphere for us.

A [MR. [redacted]]: The interview was conducted--both interviews were conducted in Camp Delta in the standard interview facility.

MJ [CAPT ALLRED]: I remember the answer to this question. I

think we just went over this a few days ago.

Q [MR. MURPHY]: All right. Was he restrained when you were with him?

A [MR. [redacted]]: Only upon arrival and exit when the interview was finished and in accordance with how the camp conducts business, but not during the interview.

Q [MR. MURPHY]: Describe how you were arranged in the room. The seating arrangements.

A [MR. [redacted]]: Right. Myself and my partner at the time, former Special Agent [redacted] of FBI, and Mr. Salim Hamdan in the room. We sat on the floor per his request.

Q [MR. MURPHY]: All right. And because that's a little bit of an unusual arrangement, can you just tell us what it looked like. If you were to go in there and look at you all on the floor, what would you see?

A [MR. [redacted]]: For almost the entire interview, or interviews, it would have been kind of like a triangle, the three of us sitting close together.

Q [MR. MURPHY]: Okay. And how would you describe the tone of your interaction with him?

A [MR. [redacted]]: Friendly. Cordial. Conversational.

Q [MR. MURPHY]: All right. Now, in your rough notes, do you record certain creature comforts that you provided to him during your interviews?

A [MR. [redacted]]: Yes, as per my training and custom, when I conduct interviews.

CTC [MR. MURPHY]: Your Honor, I would ask that this be marked as the next appellate exhibit in order. I think we're up to----

MJ [CAPT ALLRED]: What is it?

CTC [MR. MURPHY]: It's the first two pages of his rough notes.

MJ [CAPT ALLRED]: Those are already in evidence.

CTC [MR. MURPHY]: All right. I would like to hand it to him so he can comment.

MJ [CAPT ALLRED]: You may.

CTC [MR. MURPHY]: And I have an extra copy for the Military Judge.

MJ [CAPT ALLRED]: Very good.

Questions by the civilian trial counsel:

Q [MR. MURPHY]: What is the purpose of making these recordings in your rough notes?

A [MR. [redacted]]: To record, in addition to keeping a record of what was discussed, the particulars. For example, when I or the interviewee enter the room, when things are offered such as food, snacks, breaks. And the purpose of that, according to the training,

is to keep a good record as to--it speaks to the conduct and tone of an interview.

Q [MR. MURPHY]: Does that indicate how you attended to his needs while you were with him?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: And what does it reflect in the way you attended to his needs?

A [MR. [redacted]]: Such things as the salutations, the greetings, when specifics--or, specifically speaking to differences offered, food items, in this case prayer break time, bathroom breaks, if that answers the question.

Q [MR. MURPHY]: And you put it into some detail there. Is that correct?

A [MR. [redacted]]: Yes. I have, it looks like, a full page for the 17th of May and three quarters of a page for the 25th of May.

Q [MR. MURPHY]: In addition to providing all these things for him, did you ask him how he was doing?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: Tell us, why do you ask him that? And, as best you recall, how did you ask him that?

A [MR. [redacted]]: Well, for this interview, again, going by how I conduct interviews, I always want to start off with greetings and determining or engaging rapport. And part of that almost always is,

how are you feeling? Are there any complaints? Is there anything that would preclude us from conducting this interview?

Q [MR. MURPHY]: And what did he say?

A [MR. [redacted]]: Mr. Hamdan had no complaints related to physical, mental, or other complaints that would have caused the interview, in the way I conduct an interview, to be terminated.

Q [MR. MURPHY]: So he had no complaints to you about his situation?

A [MR. [redacted]]: No. The only thing that I have some vague recollection, Mr. Hamdan mentioned something about personal effects. And it appeared to be along the lines of more of a mix-up within the camp, within the camp administration, about some personal effects. But I don't remember anything more than a couple of minutes talking about that, and there were no other complaints.

Q [MR. MURPHY]: All right. And was that comment about his personal effects in any way related to any mistreatment or abuse that he related to you in any way?

A [MR. [redacted]]: Not that was conveyed to me.

Q [MR. MURPHY]: Did you ever at any point learn about any mistreatment of him from any source?

A [MR. [redacted]]: Not prior to that interview.

Q [MR. MURPHY]: All right. And what you're referring to is some testimony later that we had in our motion session from Agent [redacted], I believe. Is that correct?

A [MR. [redacted]]: Yes, sir. I mean, really hearing about some of the natures of the complaint while I've been here at Guantanamo for the Commissions.

Q [MR. MURPHY]: But when you were with him, he mentioned no complaints at all?

A [MR. [redacted]]: No, sir.

Q [MR. MURPHY]: And when you were with him, you learned of no complaints, or no complaints or allegations of mistreatment?

A [MR. [redacted]]: That's correct. And during the course of that interview, which, according to my notes, began at 0935 and terminated at 1855--excuse me, or 6:55 p.m., I would suggest that there would be ample time for discussion and introduction of anything that was of that nature; because, again, how I do business, if an interviewee has a situation like that, it's probably going to have a chilling effect on my interview and the results of the interview. So to the extent that I can look into it and convey any complaints like that to the chain of command, I would. It's just it did not happen here. I have no recollection of anything like that here.

Q [MR. MURPHY]: And if it did, you're confident you would report it?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: Could you tell us a little bit about the end of that interview, and the feelings that the accused expressed with you of wanting to stay and continue to talk with you?

A [MR. [redacted]]: That's correct. I recall Mr. Hamdan had requested to continue the interview. He had no reason or no suggestion to end. But because of camp administration rules at the time, I and my partner were up against the clock, so we had to end the interview at that time.

Q [MR. MURPHY]: Did you come away with an understanding of why he wanted to continue to talk to you?

A [MR. [redacted]]: Well, I would say the overall tone of the interview; my impression was that Mr. Hamdan enjoyed our company.

Q [MR. MURPHY]: All right. Did he appear at any point during the interview to be sleepy?

A [MR. [redacted]]: No, sir.

Q [MR. MURPHY]: Did he appear to be fearful of anything?

A [MR. [redacted]]: No.

Q [MR. MURPHY]: Did he appear to be ill or not feeling well?

A [MR. [redacted]]: No.

Q [MR. MURPHY]: Did he say anything to you about abuse of any kind?

A [MR. [redacted]]: No. Other than what I mentioned about the apparent mix-up about the comfort items or personal items.

Q [MR. MURPHY]: All right. And that was stated not in the context of abuse allegations. Right?

A [MR. [redacted]]: That's correct. It was not.

Q [MR. MURPHY]: Some sort of mix-up I think is the word you used?

A [MR. [redacted]]: From what I recall, that's what I remember about it, it was more of a mix-up.

Q [MR. MURPHY]: Did you coordinate your interview with any guard force member or any JTF personnel to change his living conditions to have any impact on your interview?

A [MR. [redacted]]: No, sir.

Q [MR. MURPHY]: Do you believe he was coerced in any manner during your interview?

A [MR. [redacted]]: Not at all.

Q [MR. MURPHY]: Would you tolerate any coercive technique used during your interview with Salim Hamdan?

A [MR. [redacted]]: No, I would not.

Q [MR. MURPHY]: Based on your contact with him and getting to know him, does he seem like the type of personality that would talk to you about a concern he had?

A [MR. [redacted]]: Well, with the amount of time and with the degree of rapport--the amount of time applied to that interview and the solid rapport, I'm confident that were there issues like that such as coercion, such as abuse happening outside of the interview room that he would have brought it to our attention.

Q [MR. MURPHY]: Did you act completely professionally and ethically during your interviews with this detainee and with all detainees?

A [MR. [redacted]]: Yes.

Q [MR. MURPHY]: What's your reaction if you're accused of participating in a coercive interview process with this detainee or any other detainee?

A [MR. [redacted]]: I would be professionally, not personally, taken aback. And, in fact, I would say I feel so strongly about it, I would request some kind of inquiry be made so that the matter is thoroughly looked at.

Q [MR. MURPHY]: All right. When you talked to him, did he speak to you about something we have not heard from the witnesses, agent witnesses, here today, which is the concept of bayat?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: Did he talk to you about that?

CDC [MR. SCHNEIDER]: Objection to the scope, given the purpose of this hearing, on direct examination.

CTC [MR. MURPHY]: Your Honor, I think it goes to his voluntariness and to the ease with which he talked with this particular agent and opened up to him in ways that he didn't with others.

MJ [CAPT ALLRED]: I've heard this testimony in December.

CTC [MR. MURPHY]: I'm not going to go into great detail. I'm just going to hit two points.

MJ [CAPT ALLRED]: To the extent it's relevant to the voluntariness of the statement, I will hear it.

Questions by the civilian trial counsel:

Q [MR. MURPHY]: All right. You're the only agent that we've had who has been able to speak to this issue at all. What, if anything, did he say about bayat?

A [MR. [redacted]]: Mr. Hamdan said that he pledged bayat to Osama bin Laden.

Q [MR. MURPHY]: And did he talk about that in some detail with you?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: What did he say about that?

A [MR. [redacted]]: He said it was a bayat, pledging the oath of allegiance to bin Laden and the cause, the cause being expelling the Jews and the Christians from the Arabian Peninsula. But he had a provision there.

Mr. Hamdan said to Sheikh UBL, that that had to be the focus of his jihad work in making that pledge of bayat; and that if it was, for example--or used an example. If it was Muslim-on-Muslim violence, that is, political violence, that he reserved the right to withdraw from that type of jihad.

Q [MR. MURPHY]: Is the nature and the detail that you got from him reflective of the rapport that you had with him, as you saw it?

A [MR. [redacted]]: I believe so.

Q [MR. MURPHY]: Did he also talk to you about his reaction, his personal feelings about working with Usama bin Laden and al Qaeda?

A [MR. [redacted]]: Yes.

Q [MR. MURPHY]: What did he say about that?

A [MR. [redacted]]: Well, he was very enthusiastic about the cause. In fact, he used a specific term.

Q [MR. MURPHY]: Why don't you tell us that specific term?

A [MR. [redacted]]: The translation would be uncontrollable enthusiasm or zeal, in Arabic its hamas ludluk.

Q [MR. MURPHY]: In giving you that very specific important detail, do you believe that's reflective of the rapport that you had with him?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: Agent [redacted], this commission will make a decision as to whether or not your interview with Salim Hamdan was in any way coercive. What would you say as a witness in this proceeding to Judge Allred about whether you participated in anything that was coercive?

A [MR. [redacted]]: I would respectfully say, Your Honor, nothing during the interview at any time was in any way coercive. And I had no indications that there might even be the hint of abuse that would negatively impact the interview in any way.

CTC [MR. MURPHY]: Thank you, Your Honor. I tender the witness.

CROSS EXAMINATION

Questions by the civilian defense counsel:

Q [MR. SCHNEIDER]: Agent [redacted], good to see you again.

A [MR. [redacted]]: Sir.

Q [MR. SCHNEIDER]: You testified in December and you testified the week of July 14th. Correct?

A [MR. [redacted]]: Yes, sir.

Q [MR. SCHNEIDER]: We went over much of this. Didn't we?

A [MR. [redacted]]: Yes, you did.

Q [MR. SCHNEIDER]: On both of those occasions. Didn't we?

A [MR. [redacted]]: The last few topics in particular, but not so much about the issue of coercion; but, yes, generally.

Q [MR. SCHNEIDER]: The circumstances of what you observed during the time you were with Mr. Hamdan?

A [MR. [redacted]]: Yes, sir.

Q [MR. SCHNEIDER]: And you testified truthfully and accurately on those occasions. Didn't you?

A [MR. [redacted]]: To the best of my ability. Yes, sir.

Q [MR. SCHNEIDER]: I've got another fancy exhibit that drives my assistant nuts, but here's the question I want to ask you, if we could have that up?

MJ [CAPT ALLRED]: Yes. You can show this to the witness.

Q [MR. SCHNEIDER]: What's changed between the week of July 14, 2008 and two days ago regarding your personal knowledge of the events in May 2003? Anything?

A [MR. [redacted]]: Two days ago?

Q [MR. SCHNEIDER]: Yeah.

A [MR. [redacted]]: I don't know. Nothing that I'm--between July 26th and July 28th?

Q [MR. SCHNEIDER]: Yeah. Let's change. Between when you testified the week of July 14th----

A [MR. [redacted]]: Okay. Two weeks ago.

Q [MR. SCHNEIDER]: ----and the 28th of July with regard to what occurred back in May of 2003. Anything?

A [MR. [redacted]]: Well, yes, about the talking in the court about the issue of coercion or not.

Q [MR. SCHNEIDER]: You mean you've become aware of the issue coming up. But it didn't change what you knew about May of 2003. Did it?

A [MR. [redacted]]: I don't think it did. But I'm not sure I really understand the nature of the question.

Q [MR. SCHNEIDER]: Well, the Court entered an order; I believe it was dated July 28th, 2008. Has anything happened with regard to your recollection of May 2003 in the last two days?

A [MR. [redacted]]: Not that I'm aware of.

Q [MR. SCHNEIDER]: Let me ask you a few specific questions. Where on your report, the ten-page, single-spaced report, does it indicate that you interviewed Mr. Hamdan on May 25th?

A [MR. [redacted]]: It wasn't included in that. That was a separate stand-alone document. Based on the results of the interview on the 25th, there was a decision that there was no real requirement for a Form 40 or a 302.

[END OF PAGE]

Q [MR. SCHNEIDER]: You mean you have absolutely no form for the interview on the 25th, just for the 17th?

A [MR. [redacted]]: Right. Other than my notes of the 25th. That's correct.

Q [MR. SCHNEIDER]: How much time did you spend with him?

A [MR. [redacted]]: If it's okay, you don't mind if I refer to---

Q [MR. SCHNEIDER]: Not at all.

A [MR. [redacted]]: According to my notes, we entered the room at 1445, 2:45 p.m., and completed at 1620, 4:20 p.m. But the nature of that follow-up interview was primarily to bring back to Mr. Hamdan some items that he had requested, such as copies of Al-Hayat newspaper and other Arabic media articles and some magazines. And the one reason, if I recall, why there was from the 19th to the 25th, because there were some new rules administratively for bringing items in to the individuals in the camp.

CDC [MR. SCHNEIDER]: Could we project the image also on the other screens?

MJ [CAPT ALLRED]: What other screen? For the witness?

CDC [MR. SCHNEIDER]: For the witness.

MJ [CAPT ALLRED]: Yes, you can show it to the witness.

Q [MR. SCHNEIDER]: So we have a written report of the May 17 interview; no written report for the May 25th interview?

A [MR. [redacted]]: Right. And, again, that's because there was really no substantive items from the 25 May interview.

Q [MR. SCHNEIDER]: Have you ever seen any FBI 302s where somebody says, "Met with the accused. He had nothing to say." End of the report? We saw a few last week. Have you ever seen these before?

A [MR. [redacted]]: Yes, sir, I have.

Q [MR. SCHNEIDER]: Now, what I'd like to do is--I don't know if you need the written report in front of you. But can you tell me where in the written report you indicated any of these things you've mentioned today about providing food or water, or what time the interview occurred, the fact that there was another meeting on the 25th? Where is it in here?

A [MR. [redacted]]: It wouldn't have been in here, sir. Because, again, as mentioned before, I should say, in December, that was the first time for me and I would say for probably Mr. [redacted] as well, that we were using the Form 40 that the Criminal Investigation Task Force was using. So I know for me as a Special Agent with the Naval Criminal Investigative Service, we use a form called the IA, an Investigative Action. And that's a statement or a written depiction of the facts of the interview.

So I would--as best I can recall, I used the same basis for going by that for the 25th of May interview, and don't recall anyone in the chain of command saying, hey, you need to make some documentation on that in a formal form.

Q [MR. SCHNEIDER]: The question, simply, is that anywhere in this ten-paged, single-spaced report that you gave him food, you gave him sweets, and you gave him tea?

A [MR. [redacted]]: No, sir. But, again, it's because in this type of report I wouldn't have included that.

Q [MR. SCHNEIDER]: It wouldn't have been important?

A [MR. [redacted]]: Not for the statement of facts and the issues at hand.

Q [MR. SCHNEIDER]: Just to be clear, is there some other report? Or is this the only report that you have of ever interviewing Salim Hamdan at any time in your career?

A [MR. [redacted]]: Yes, sir, the only official report.

Q [MR. SCHNEIDER]: This is it?

A [MR. [redacted]]: Yes.

Q [MR. SCHNEIDER]: The only report?

A [MR. [redacted]]: Yes.

Q [MR. SCHNEIDER]: Official or otherwise?

A [MR. [redacted]]: No, other than the notes.

Q [MR. SCHNEIDER]: Let's talk about the notes. Do you remember talking about the notes in December?

A [MR. [redacted]]: Umm.

Q [MR. SCHNEIDER]: Umm.

A [MR. [redacted]]: Vaguely.

Q [MR. SCHNEIDER]: Do you remember being asked at page 353: Did you take any notes of your interview? This is the December 5th or 6th of 2007 testimony.

Answer: "There were notes taken? Yes, sir."

"Were they taken by you?"

"Not exclusively. In fact, what I recall, I think, primarily by Mr. [redacted]."

A [MR. [redacted]]: Yes, sir.

Q [MR. SCHNEIDER]: I asked you those. Didn't I?

A [MR. [redacted]]: Yes, sir.

Q [MR. SCHNEIDER]: Did you produce them in December?

A [MR. [redacted]]: I think I answered that a little too quickly. Are you asking in December did you ask for them?

Q [MR. SCHNEIDER]: Let me just take you through it.

Did you produce them in December after you got off the stand?

A [MR. [redacted]]: No.

Q [MR. SCHNEIDER]: January of 2008?

A [MR. [redacted]]: No. I don't recall being asked for them.

Q [MR. SCHNEIDER]: February of 2008?

A [MR. [redacted]]: No.

Q [MR. SCHNEIDER]: March, April, May, or June of 2008?

A [MR. [redacted]]: Again, not applicable.

Q [MR. SCHNEIDER]: Pardon me?

A [MR. [redacted]]: Not applicable. I mean, if I didn't refer to--during the motions two weeks ago, I was not aware there was an issue with the notes until the weekend that we traveled down here.

Q [MR. SCHNEIDER]: No one told you?

A [MR. [redacted]]: No, sir.

Q [MR. SCHNEIDER]: Isn't it true you produced 50 pages of notes the day before you testified the week of July 14th?

A [MR. [redacted]]: Well, yes. I mean, in good faith I wanted to rule out every place where there might be something available, and trying to pitch in.

Q [MR. SCHNEIDER]: With regard to Mr. [redacted]'s notes, who took most of the notes, have you ever looked at his extensive notes?

A [MR. [redacted]]: The only notes that I found from two weeks ago that you just referred to was more along the lines of a rough draft for the Form 40. I don't--I'm not sure. I'm just uncertain at this time if there are other notes.

Q [MR. SCHNEIDER]: Were you--you weren't by chance watching the testimony of Agent [redacted], were you?

A [MR. [redacted]]: No, sir.

Q [MR. SCHNEIDER]: Are you aware that he took his notes in Arabic?

A [MR. [redacted]]: I would know that, generally, because we've done many interviews together, so most of the time it's in Arabic.

Q [MR. SCHNEIDER]: Do you know that his notes of the interview with Mr. Hamdan were in fact in Arabic?

A [MR. [redacted]]: Yeah. But, again, I'm just not sure if they were all the notes from the interview.

Q [MR. SCHNEIDER]: Well, that's all we have from Agent [redacted]. Those were produced on time, three pages. And what you produced the day before your testimony in July was 50 pages. Correct?

A [MR. [redacted]]: Fifty pages, including the rough draft that I referred to. So, again, my point is that the rough draft, I wouldn't consider notes.

Q [MR. SCHNEIDER]: I'm sorry, I didn't quite hear you.

A [MR. [redacted]]: The rough draft, I would not consider notes of the interview. I mean, notes are something produced right there for my purposes.

Q [MR. SCHNEIDER]: Produced July 16. Well, I'm not sure of that, faxed to you down here at Guantanamo on July 16. Right?

A [MR. [redacted]]: Right. Correct.

Q [MR. SCHNEIDER]: Are these the notes you're referring to?

A [MR. [redacted]]: I believe you were referring to them more as the notes.

Q [MR. SCHNEIDER]: What did you understand was being transmitted to you by fax on July 16, just before you took the stand?

A [MR. [redacted]]: Doing this over the phone with subordinates back in Crystal City, I tried to step them through anything they could find in my holdings. And by holdings, I refer to--I just transferred from the counter intelligence field activity to Naval Criminal Investigative Service, so my things were still packed and wrapped for mailing.

I asked them to open anything they have. And over the course of maybe an hour and a half phone call, I had them--and, again, I'm just trying to demonstrate the good-faith attempt to find anything that there might be of relevance to this very important proceeding. I stepped them through each page. And instead of them trying to figure out what was on the page, because there may have been some things in Arabic, I said just fax the whole kit and caboodle down here.

Q [MR. SCHNEIDER]: And you understand, they were turned over to me the day before you testified as your notes of your interview with Salim Hamdan?

A [MR. [redacted]]: I wasn't aware of the details of that.

Q [MR. SCHNEIDER]: Let's talk for a minute about the circumstances of the interview. He was laying down on occasion?

A [MR. [redacted]]: On occasion, yes, sir. We all were.

Q [MR. SCHNEIDER]: Okay. Do you know, if he had experienced any fatigue, is there anything you could have given him to try to keep him awake or his energy level up even if he was feeling like he had not had enough sleep?

A [MR. [redacted]]: Speaking hypothetically?

Q [MR. SCHNEIDER]: Yeah, hypothetically.

A [MR. [redacted]]: I suppose I would offer tea, coffee.

Q [MR. SCHNEIDER]: Tea or coffee. How about any sweets? How about some sugar?

A [MR. [redacted]]: I wouldn't suggest that. It's not good.

Q [MR. SCHNEIDER]: Not good for him. So you wouldn't give him sweets or sugar?

A [MR. [redacted]]: Well, I mean, just generally, for--you know, knowing what impact it can have on people. It's bad for the health.

Q [MR. SCHNEIDER]: Where in your report do you indicate what you gave him to eat or drink? Anywhere?

A [MR. [redacted]]: It wouldn't have been indicated in there, sir. Not in the Form 40.

Q [MR. SCHNEIDER]: What was he given at 9:35--excuse me, 11:15?

A [MR. [redacted]]: Tea, some--you said, sorry, at 11:15?

Q [MR. SCHNEIDER]: 11:15.

A [MR. [redacted]]: Tea, green and red, according to my notes. As well as cakes, Fig Newtons, raisins and dates. And I have a notation that all were accepted.

Q [MR. SCHNEIDER]: How about 1700 that day?

A [MR. [redacted]]: Prayer break ended. Hot water.

Q [MR. SCHNEIDER]: I got ahead of you. I'm sorry. 1345?

A [MR. [redacted]]: Tea and Fig Newtons.

Q [MR. SCHNEIDER]: Cookies? Fig Newton cookies.

A [MR. [redacted]]: Fig Newton cookies. Yes.

Q [MR. SCHNEIDER]: 1700, tea?

A [MR. [redacted]]: Tea, water, tea. Um-hmm.

Q [MR. SCHNEIDER]: And how was he doing then? Was he reclining?

A [MR. [redacted]]: Probably, according to my notes. We were all alternately reclining at times during the interview. But, again, that's more in accordance with customs with men, with other men.

Q [MR. SCHNEIDER]: Is that word reclining?

A [MR. [redacted]]: Reclining during brief breaks. Um-hmm.

Q [MR. SCHNEIDER]: So you were all reclining during the break, not necessarily during the talk?

A [MR. [redacted]]: I wouldn't rule that out, during the talk.

Q [MR. SCHNEIDER]: 1:49. Is that Mr. Hamdan?

A [MR. [redacted]]: Yes.

Q [MR. SCHNEIDER]: Gave him more dates on, what's that, the 25th?

A [MR. [redacted]]: Accepts dates. Yeah. I mean, doing interviews with folks from the Near and Middle East Arab world, we like dates, I mean, they like dates. So I try to bring something that accommodates that.

Q [MR. SCHNEIDER]: So you took notes on the 25th; you just didn't turn it into a report. Is that right?

A [MR. [redacted]]: That's correct.

Q [MR. SCHNEIDER]: Well, is there anything helpful that he said on the 25th with regard to the criminal prosecution of him for the charges he faces?

A [MR. [redacted]]: Not--no, sir.

Q [MR. SCHNEIDER]: Nothing helpful?

A [MR. [redacted]]: Nothing of substance for that or for an IIR, an Intelligence Information Report.

Q [MR. SCHNEIDER]: Any more fruit later in the day?

A [MR. [redacted]]: According to the notes: Accepts, eats peach, and water, 1510, if that's what you're referring to.

Q [MR. SCHNEIDER]: I'm looking at; I think it's the sixth page of the fax that day, 1010, dates. What does that refer to?

A [MR. [redacted]]: I don't have that in front of me. I don't know. If--may I see the whole page?

Q [MR. SCHNEIDER]: Sorry. How about that? Can you see that on the screen?

A [MR. [redacted]]: 19 May. As best I can tell, because that looks like it cuts in somewhere that would have been for another interviewee, another subject of an interview.

Q [MR. SCHNEIDER]: A different detainee?

A [MR. [redacted]]: Yes. As I mentioned a few weeks ago, some were the previously attorney-client work products. They were definitely not related to Mr. Hamdan.

Q [MR. SCHNEIDER]: Things like this?

A [MR. [redacted]]: Yes, sir.

Q [MR. SCHNEIDER]: Why were those given to us as your notes of your interview with Mr. Hamdan? Do you have any knowledge why?

A [MR. [redacted]]: I have some knowledge. Yes.

Q [MR. SCHNEIDER]: Is it because those people talked about Mr. Hamdan?

A [MR. [redacted]]: No, sir. Not at all.

Q [MR. SCHNEIDER]: Is it because there was any information in those interviews about Mr. Hamdan?

A [MR. [redacted]]: No, sir.

Q [MR. SCHNEIDER]: Was it because it had anything to do with this case in any way whatsoever?

A [MR. [redacted]]: No. The reason I was given is because the fax obviously would have had a sequence of numbers; and the prosecutors made the decision that, again, demonstrating best-faith effort, to provide everything to the court.

Q [MR. SCHNEIDER]: Without telling us that it pertained to a different detainee?

A [MR. [redacted]]: With all respect, things were moving so fast and furious that morning, I'm not sure if we even had a chance for me to convey squarely that, hey, this is not for Mr. Salim Hamdan.

Q [MR. SCHNEIDER]: It's quite sure you didn't. What's this?

A [MR. [redacted]]: This is--if this was among the papers that you received, it pertains to another individual in the camp.

Q [MR. SCHNEIDER]: Page 11 of your notes, a different individual?

A [MR. [redacted]]: Yes, sir.

Q [MR. SCHNEIDER]: Okay. What's this about two daughters, ages 3 and 5? Is that Salim?

A [MR. [redacted]]: If you would, please--if you would pull the page down just a little bit.

Q [MR. SCHNEIDER]: We'll get there.

A [MR. [redacted]]: Okay. There's nothing----

Q [MR. SCHNEIDER]: Salim or not Salim?

A [MR. [redacted]]: No, that's not Salim.

Q [MR. SCHNEIDER]: Okay. Whose handwriting is this?

A [MR. [redacted]]: That, I believe it’s Mr. [redacted]'s.

Q [MR. SCHNEIDER]: You mentioned yourself, you mentioned Mr. [redacted]. Did you forget to mention somebody else who was there?

A [MR. [redacted]]: No, sir.

Q [MR. SCHNEIDER]: Do you know an Agent [redacted]?

A [MR. [redacted]]: Yes, I do.

Q [MR. SCHNEIDER]: Did he participate in the May 17 interview?

A [MR. [redacted]]: No, sir.

Q [MR. SCHNEIDER]: No?

A [MR. [redacted]]: Not that--I would be absolutely and utterly amazed if--no, he was not there.

Q [MR. SCHNEIDER]: Okay. Have you ever gone through and sorted out with what relates to Mr. Hamdan and what doesn't?

A [MR. [redacted]]: Just a little bit more context, if you will?

Q [MR. SCHNEIDER]: I can't tell what's about Mr. Hamdan and what's not. Have you ever segregated these notes for us?

A [MR. [redacted]]: For defense or for the Court? No, sir.

Q [MR. SCHNEIDER]: Isn't it true, that within the context of what Mr. Hamdan said about enthusiasm was that he was talking about the impact and the impression that Mr. bin Laden has on people? Not himself, individually, but people. Isn't that true?

A [MR. [redacted]]: I took it to mean his personal feelings about Usama bin Laden.

Q [MR. SCHNEIDER]: What's the paragraph above that reference?

A [MR. [redacted]]: I'm sorry?

Q [MR. SCHNEIDER]: The reference in your report, uncontrollable enthusiasm. Doesn't it have to do with the Al-Jazeera interview?

A [MR. [redacted]]: I'd have to take a look at the report.

Q [MR. SCHNEIDER]: Whose handwriting?

A [MR. [redacted]]: I believe that's Mr. [redacted]'s.

Q [MR. SCHNEIDER]: What did he say?

CTC [MR. MURPHY]: Objection, Your Honor. He's questioning him on another person's report. It's not his writing.

MJ [CAPT ALLRED]: What does this have to do with the circumstances under which the statement was made?

CDC [MR. SCHNEIDER]: The reliability of the information. I think I can show that it's different in the report than what Mr.

[redacted] reported in the interview.

CTC [MR. MURPHY]: He's trying to impeach this witness with another person's handwriting. That's not proper impeachment.

MJ [CAPT ALLRED]: Well, it's just me. I will hear the evidence, and you can argue how I should understand it later.

Questions by the civilian defense counsel:

Q [MR. SCHNEIDER]: No big deal; but didn't Mr. [redacted] write down "uncontrolled passions among us," not "among me"? Isn't that what he wrote?

A [MR. [redacted]]: That's what in the page in front of me is what is written.

Q [MR. SCHNEIDER]: It's not meant to be a trick question. Who is a better Arab linguist, you or Mr. [redacted]?

A [MR. [redacted]]: That's an easy one. Mr. [redacted].

Q [MR. SCHNEIDER]: Okay, the purpose of your visit in May. We talked two weeks ago about the fact that most of the information for interrogations are pretty much dried up before May of 2003. Right?

A [MR. [redacted]]: Did you say for most of the interrogations?

Q [MR. SCHNEIDER]: Right.

A [MR. [redacted]]: I do not know that.

[END OF PAGE]

Q [MR. SCHNEIDER]: Did you know that the week of July 14th? Didn't you tell us that it had pretty much trickled out that it had slowed down?

A [MR. [redacted]]: I may have said it slowed down. But I wouldn't--I was not in a position then or even now to talk about overall.

Q [MR. SCHNEIDER]: Isn't it true that part of your assignment--you understood your assignment was in part because you were sent down to kind of review everything that had come before you so you were in a position to be a fact witness at trial, because you make a pretty good witness. True?

A [MR. [redacted]]: Two-part question. The first part, yes; the second part, to be determined.

Q [MR. SCHNEIDER]: This doesn't happen very often, but I am speechless. “You can tell us that, at the risk of being red-faced and boastful: Yes, Mr. Schneider, it's true. That was part of the reason I was sent down here in May of 2003.”

A [MR. [redacted]]: About the witness part, I really don't know. I thought it was speaking more toward subject matter specialty and expertise and the matters at hand.

[END OF PAGE]

Q [MR. SCHNEIDER]: Let me try to wrap this up. What can you tell us about the BSCT team that was in place when you interviewed Mr. Hamdan?

A [MR. [redacted]]: If that's referring to the CITF, Criminal Investigation Task Force, BSCT, I would have to start out by saying, in place, would be a misrepresentation of the role that it played. But in terms of speaking to the Behavioral Science Consultation Team that was a CITF initiative, the initial purpose of that team was for training purposes.

Q [MR. SCHNEIDER]: To train the interrogators?

A [MR. [redacted]]: To train the interviewers and analysts, right, who would be working in places like Guantanamo and Bagram and other places? Then it transitioned, for the best I can tell--because I was never assigned to the CITF--toward a threat matrix.

Q [MR. SCHNEIDER]: We heard a little bit earlier about a 28 March 2003 issuance of SOP for interrogation, [redacted] Who was on the plane with you when you came down to interview Mr. Hamdan?

A [MR. [redacted]]: I can't recall. I can't recall if I came commercial, or if it was a C-1 or how--what, the transportation down here.

Q [MR. SCHNEIDER]: Does the word “psychiatrist” ring a bell?

A [MR. [redacted]]: In the context of the BSCT?

Q [MR. SCHNEIDER]: In any context. Were you accompanied by anyone----

A [MR. [redacted]]: Psychiatrist.

Q [MR. SCHNEIDER]: ----with regard to your assignment to interview Mr. Hamdan?

A [MR. [redacted]]: Not a psychiatrist.

Q [MR. SCHNEIDER]: Any prosecutors?

A [MR. [redacted]]: I believe a prosecutor was. I know at least one prosecutor was with us.

Q [MR. SCHNEIDER]: Any analysts?

A [MR. [redacted]]: Again, I thought--knowing the composition of the BSCT at the time, I--and I want to emphasize the CITF BT, which I had no awareness that it had any linkage to that SOP that you just mentioned, sir. But, yeah, there could have been analysts. But if I had to name a face or say for 100 percent, I just simply am unable to.

Q [MR. SCHNEIDER]: A mirror? One-way mirror, two-way mirror? I'm not sure which is which.

A [MR. [redacted]]: Right.

Q [MR. SCHNEIDER]: In the room in which you interviewed him?

A [MR. [redacted]]: Right. In the standard interview rooms there's an observation mirror.

Q [MR. SCHNEIDER]: Did anyone step outside and watch?

A [MR. [redacted]]: Quite possibly could have been. But in understanding the composition of the rooms in Camp Delta, when I'm in the room, I have no control or any awareness as to who goes in and who goes out, because at the time, the doors were unlocked. So if one had access to the camp, virtually anyone with a badge to get inside the camp could walk into the room.

Q [MR. SCHNEIDER]: Nothing untoward happened while you were with him. Correct?

A [MR. [redacted]]: That's correct.

Q [MR. SCHNEIDER]: Now, understand, what happened the night before. Can you just shed any personal knowledge? Can you tell us who went to him at 11:00 at night and moved him and why? Can you tell us that?

A [MR. [redacted]]: No, sir.

Q [MR. SCHNEIDER]: Can you tell us what preceded that?

A [MR. [redacted]]: I can't, because I don't know. I have no idea.

Q [MR. SCHNEIDER]: Can you tell us who that person was?

A [MR. [redacted]]: No, sir.

Q [MR. SCHNEIDER]: Can you put us in touch with him or her so we can find out?

A [MR. [redacted]]: I really don't--have no idea.

Q [MR. SCHNEIDER]: Can you tell us whether he was sleep deprived at all in the weeks prior to your arrival?

A [MR. [redacted]]: It was not mentioned during the interviews with Mr. Hamdan; so I had no awareness if that was the case.

Q [MR. SCHNEIDER]: Can you tell us whether he was ever interrogated by a female interrogator in the weeks before you arrived?

A [MR. [redacted]]: I couldn't tell you that. I only heard about that subsequent to the proceedings here.

Q [MR. SCHNEIDER]: What did you hear?

A [MR. [redacted]]: Just that there were--on the so-called intelligence side, that there may have been female military interrogators, interviewers involved, but not with our particular project.

Q [MR. SCHNEIDER]: Without giving me the names of any individuals or agencies, what do you mean by "on the intelligence side"? I've looked through every interview report we've ever received, and I don't know what you're talking about.

A [MR. [redacted]]: Well, yeah. I beg the Court's pardon on that. That's [redacted]'s term of convenience.

Having been a part of the process from the earliest days after 9/11, and planning meetings with SOUTHCOM and what became the CITF, there was a--and there's plenty written about this now in the media, about kind of a natural tension between the law enforcement side and the intelligence side, or the side of the house in Department of Defense and other agencies that are classic intelligence agencies.

Now, for me, though, as a Federal law enforcement officer, with my training and background and, quite frankly, the way Naval Criminal Investigative Service does business, I think that both are mutually compatible. So that's by way of my explanation of the intelligence side.

Q [MR. SCHNEIDER]: But have you overseen their reports as opposed to the criminal investigation reports?

A [MR. [redacted]]: The only reports I would have seen produced from the task force folks would have been IIR's, published, Intelligence Information Reports. But I've never seen anything else, notes, anything at all.

Q [MR. SCHNEIDER]: So you can't tell us what those folks were doing with regard to Mr. Hamdan, if anything. Right?

A [MR. [redacted]]: I had no awareness of that, sir.

Q [MR. SCHNEIDER]: Do you think it's likely, based on your knowledge, experience, and training, and what you know about Mr. Hamdan, that he was ever interviewed by intelligence people as opposed to criminal law enforcement investigators?

A [MR. [redacted]]: I believe so.

Q [MR. SCHNEIDER]: But you don't know who?

A [MR. [redacted]]: No. That's correct.

Q [MR. SCHNEIDER]: Okay. Well, I'm actually getting close to being finished here.

Can you tell us anything about the programs in place just before you arrived that are described in the Inspector General's report?

A [MR. [redacted]]: No, sir. I'm not aware of the programs or the report.

Q [MR. SCHNEIDER]: Can you tell us anything, based on the hours you spent with Mr. Hamdan, about how Secretary Rumsfeld's authorization dated 16 April 2003 impacted his interrogation by others, besides you?

A [MR. [redacted]]: You're trying to get me fired. Aren't you?

Q [MR. SCHNEIDER]: No, sir.

A [MR. [redacted]]: With all----

Q [MR. SCHNEIDER]: I'm liking you more and more.

A [MR. [redacted]]: No, absolutely not.

Q [MR. SCHNEIDER]: And----

A [MR. [redacted]]: I mean, no awareness, no knowledge of.

Q [MR. SCHNEIDER]: What can you tell us about why he was in isolation just before Agent [redacted] interviewed him?

A [MR. [redacted]]: I have no awareness of any of the details there.

Q [MR. SCHNEIDER]: And no idea why he may have been in isolation just before you interviewed him?

A [MR. [redacted]]: No. And, again, during the course of that interview, and with the nature of our relationship and how solid it was, I'm confident that Mr. Hamdan would have raised those complaints.

Q [MR. SCHNEIDER]: Well, what did he tell you about the female interrogator if he was troubled by that?

A [MR. [redacted]]: Nothing was mentioned about a female interrogator, that I recall, by Mr. Hamdan.

Q [MR. SCHNEIDER]: Based on your knowledge and experience, would that indicate to you, in general, that maybe nothing like that ever happened if he didn't mention it, didn't bring it up? Is it possible he just--it never happened and he sort of made it up?

A [MR. [redacted]]: Made what up?

Q [MR. SCHNEIDER]: An allegation that there was an inappropriate touching by a female interrogator.

A [MR. [redacted]]: If--you're asking me if it's possible that someone might make that up?

Q [MR. SCHNEIDER]: Right?

A [MR. [redacted]]: I would say it's possible, definitely, going by some of the things we've read and know about in training.

Q [MR. SCHNEIDER]: So you've never read a 21 March 2003 document which describes that interrogation. Have you?

A [MR. [redacted]]: No, sir.

Q [MR. SCHNEIDER]: What is IIR’s?

A [MR. [redacted]]: IIR’s? I'm not sure. I mean, it could be Intelligence Information Report, plural.

Q [MR. SCHNEIDER]: You've never seen one for 21 March 2003 involving a female interrogator who admitted she intentionally--

CTC [MR. MURPHY]: Objection. That mischaracterizes the facts.

MJ [CAPT ALLRED]: I believe it does.

Q [MR. SCHNEIDER]: The Court will read the report. You've never seen a report involving a female interrogator?

A [MR. [redacted]]: No. Just for clarification. I--an IIR just wouldn't contain information about a female interrogator. I mean, the sex or--of the individual. No, not that I've ever read or composed myself but to answer your question, I don't----

MJ [CAPT ALLRED]: I've seen the document. I know what you're talking about.

CDC [MR. SCHNEIDER]: I won't go----

MJ [CAPT ALLRED]: You don't need to go.

Questions by the civilian defense counsel:

Q [MR. SCHNEIDER]: I will ask one more question about the subject but not about that event. In the Arab culture, is touching by a woman of a man when they're not related by marriage or otherwise considered inappropriate?

A [MR. [redacted]]: To put some context--or, to answer your question straight to the point, generally, yes. But when you talk about Arab culture, though--and this is, unfortunately, sometimes in our hemisphere of the world, when you talk about Arab culture, you're talking about things that stretch from Mauritania clear over, thousands of thousands of kilometers away to Yemen and Omen. But, generally speaking, unrelated persons, to be avoided.

Q [MR. SCHNEIDER]: Off limits?

A [MR. [redacted]]: It can be in some societies. Yes, sir.

Q [MR. SCHNEIDER]: Isn't it true you're not able to tell us anything about Appendix F that we've been looking through?

A [MR. [redacted]]: Appendix F, I have no idea.

Q [MR. SCHNEIDER]: [redacted]?

A [MR. [redacted]]: No awareness, sir.

Q [MR. SCHNEIDER]: [redacted]?

A [MR. [redacted]]: I only heard of that term since, again, the first weekend when we all arrived.

Q [MR. SCHNEIDER]: Is there any reason why Mr. Hamdan would be interviewed by the JTF, Joint Task Force, personnel just the day before the FBI or you interviewed him?

A [MR. [redacted]]: I don't know. I can't answer that question because, again, that was administered from another entity in the Department. But I will say, though, if I had indications from any interview where there was a debilitating or negative effect on my interview, I would certainly follow that up right away.

Q [MR. SCHNEIDER]: I understand. But you don't know what happened to him in the weeks prior to your arrival?

A [MR. [redacted]]: No. Nothing was mentioned by Mr. Hamdan.

Q [MR. SCHNEIDER]: You just know what happened when you were in the room with him?

A [MR. [redacted]]: Yes, sir.

Q [MR. SCHNEIDER]: Thank you.

CTC [MR. MURPHY]: Your Honor, if I could just do a few quick follow-ups.

[END OF PAGE]

REDIRECT EXAMINATION

Questions by the civilian trial counsel:

Q [MR. MURPHY]: Mr. Schneider went through lots of your rough notations on the food and drink that you provided during the course of your interview session. Is there anything sinister about his many notations of dates and Fig Newtons and tea in terms of why you gave it and how you gave it to him during the interviews?

A [MR. [redacted]]: From my notes, or from Mr. Schneider?

Q [MR. MURPHY]: From your rough notes on the food you provided. Is there anything sinister about any of that?

A [MR. [redacted]]: No. Just the opposite, actually.

Q [MR. MURPHY]: And when you say just the opposite, help us understand.

A [MR. [redacted]]: Well, again, this is our vehicle for--and by "our," I'm referring to my organization, NCIS. From the early stage of training, we're trained to tone and the sum of the events other than the substance of what was talked about during an interview. From many mentors of mine that I trust, it's described as a good business practice.

[END OF PAGE]

Q [MR. MURPHY]: Okay. Reclining on the floor, did that have anything to do with you observing sleepiness or drowsiness on the part of Mr. Hamdan?

A [MR. [redacted]]: Not--no, sir. It was a comfortable reclining during a long interview.

Q [MR. MURPHY]: And that is particularly appropriate when you're talking about someone from the origin in Yemen. Is that right?

A [MR. [redacted]]: Within the culture. Yes, sir. Exactly.

Q [MR. MURPHY]: And why is that?

A [MR. [redacted]]: Well, for example, after the workday is done and men gather with other men in a country like Yemen and a few other Arab countries I've been to, men are with men talking. And tea in a country like Yemen, although I know like for the more religiously strict, the chewing of khat, sometimes smoking a cigarette. And when men are together in those situations, if the room is right and--you know, provided you're in a private place, recline with each other while talking.

Q [MR. MURPHY]: It's culturally appropriate?

A [MR. [redacted]]: Yes, sir, from my experience.

Q [MR. MURPHY]: And has origins and centuries of practice. Right?

A [MR. [redacted]]: From my experience. Yes, sir.

Q [MR. MURPHY]: In terms of the reference to the BSCT team members and also what the prosecutor went through with you, none of those other people were in the room with you at any point during the interview. Is that right?

A [MR. [redacted]]: That's correct.

Q [MR. MURPHY]: It was just--just so we're clear on the record. The people--only the people in the room with you were who?

A [MR. [redacted]]: Myself, Mr. [redacted], Mr. Hamdan, and only when the guards for escort purposes for very brief periods, of course. That was it.

Q [MR. MURPHY]: And no one else?

A [MR. [redacted]]: No one else.

Q [MR. MURPHY]: And the questions you were asking, were they directed by you and [redacted]? Was it your interview?

A [MR. [redacted]]: Yes, it was.

Q [MR. MURPHY]: You weren't acting under instructions to do or not do things from other people?

A [MR. [redacted]]: That's correct.

Q [MR. MURPHY]: So the prosecutor and the so-called BSCT team members there were present, but they weren't controlling this interview in any sense. Is that right?

A [MR. [redacted]]: That's correct. And at the risk of sounding bold, it was my interview and Mr. [redacted]'s interview.

Q [MR. MURPHY]: Mr. Schneider asked you questions about, can you provide us information about the night before your interview. And you obviously weren't there. Are you confident that if Salim Hamdan had a concern about the night before, he would be saying something to you?

A [MR. [redacted]]: I am confident of that. Yes.

Q [MR. MURPHY]: And why are you confident?

A [MR. [redacted]]: It speaks toward the tone of the entire interview and the degree of rapport that had been established and firmed up throughout the interview.

Q [MR. MURPHY]: Mr. Schneider also asked you about the follow-up meeting you had with him. I believe that was the 23rd of May?

A [MR. [redacted]]: According to the note, it was 25 May.

Q [MR. MURPHY]: 25 May. What was the purpose of that follow-up meeting with Mr. Hamdan?

A [MR. [redacted]]: The primary purpose was to provide the items that Mr. Hamdan had requested, and also to stop in and check with him and see how he was doing. And, again, in accordance with the way I conduct interviews, I always want the keep the door open, figuratively speaking, with rapport in the event that I revisit someone for an interview. So that was also the purpose. But if anything of substance would surface during an interview like that,

the primary purpose would still be in a more classic term of an interview with notes and then transcribed to either a Form 40, 302 or an NCIS IA.

Q [MR. MURPHY]: No substantive admissions by Mr. Hamdan on the second meeting?

A [MR. [redacted]]: That's correct.

Q [MR. MURPHY]: And that explains why you didn't find it necessary to do a report of any kind?

A [MR. [redacted]]: Yes, sir. And, again, if the chain of command in this case, whether CITF or NCIS, or even FBI, saw otherwise, I'm confident we would have been--received a tap on the shoulder to put it on paper.

Q [MR. MURPHY]: And on this second meeting on 25 May, you did have a chance to engage him with questions like, how are you doing, generally?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: Any report on this second meeting at all of any complaints or problems with him?

A [MR. [redacted]]: No, sir.

Q [MR. MURPHY]: So you've really had two chances to get a response from him; the first one on the 17th, and the second one on the 24th?

A [MR. [redacted]]: That's correct.

Q [MR. MURPHY]: Or 25th, rather.

A [MR. [redacted]]: Yes.

Q [MR. MURPHY]: And he's not complaining to you about being kept up, being put in cells he's unhappy with, or anything like that?

A [MR. [redacted]]: No. Not that I can recall of any measure during those two meetings.

Q [MR. MURPHY]: And your practice would be, if he would have raised something like that, you would make some sort of notation of that. Is that right?

A [MR. [redacted]]: Well, depending on the level of detail and the nature of complaint, I most likely would.

Q [MR. MURPHY]: Was he subject to any coercion when you dealt with him?

A [MR. [redacted]]: Not by me or Mr. [redacted].

Q [MR. MURPHY]: Or any influence, that you're aware of?

A [MR. [redacted]]: I have no awareness whatsoever of anything that might be considered coercion before or after the--

Q [MR. MURPHY]: Did you have a full, fair, open, unrestrained, candid, free-flowing interview with the accused?

A [MR. [redacted]]: Without a doubt.

CTC [MR. MURPHY]: Thank you.

RECROSS-EXAMINATION

Questions by the defense counsel:

Q [MR. SCHNEIDER]: Fifty pages of notes, a few of them having to do with other detainees we've learned just now, but the bulk of them having to do with Mr. Hamdan. Right?

A [MR. [redacted]]: Correct, the bulk, the rough draft.

Q [MR. SCHNEIDER]: Fifty pages. What page does your notes of the 25th begin? Is that toward the end?

A [MR. [redacted]]: I'm not sure what you're asking there.

Q [MR. SCHNEIDER]: The first page of your notes is a cover sheet. Right?

MJ [CAPT ALLRED]: He only has the first two pages up here. Do you really need him to look at the notes?

CDC [MR. SCHNEIDER]: No.

Q [MR. SCHNEIDER]: I will show you the page out of mine. First, do you recall that the first page is the cover sheet, the second page is a----

A [MR. [redacted]]: Yes, sir.

Q [MR. SCHNEIDER]: Notes, starting the 17th?

A [MR. [redacted]]: The fax cover sheet?

Q [MR. SCHNEIDER]: Yes.

A [MR. [redacted]]: Yes, sir.

Q [MR. SCHNEIDER]: How deeply do we have to go into your notes until we get to the 25th?

A [MR. [redacted]]: According to the sequence on the fax, that was page 3.

Q [MR. SCHNEIDER]: Page 3 of 50?

A [MR. [redacted]]: Right, page 3 of 50 for the package that was sent to me via fax.

CDC [MR. SCHNEIDER]: No further questions.

MJ [CAPT ALLRED]: Thank you, Agent [redacted].

WIT [MR. [redacted]]: Yes, sir.

MJ [CAPT ALLRED]: You are excused as a witness.

CTC [MR. MURPHY]: Your Honor, could we have a brief recess just to determine amongst ourselves where we want to go to next, in light of the defense not wanting to accept the stipulations?

MJ [CAPT ALLRED]: Certainly. Let me know when you're ready to continue.

[The R.M.C. 803 session recessed at 1523, on 30 July 2008.]

[The R.M.C. 803 session was called to order at 1605, 30 July 2008. All parties present when the commission recessed were once again present.]

MJ [CAPT ALLRED]: Court is called to order.

CTC [MR. MURPHY]: Your Honor, the government is prepared to have a rest on this motion.

MJ [CAPT ALLRED]: Okay.

CTC [MR. MURPHY]: And is prepared to argue that we have met the rebuttable presumption.

MJ [CAPT ALLRED]: Okay. Thank you.

CDC [MR. SWIFT]: Your Honor, we would briefly, since the Government recalled Agent [redacted], we would briefly recall Mr. Hamdan and briefly recall Dr. Keram on the issues before the Court.

MJ [CAPT ALLRED]: Recall, who was the second person?

CDC [MR. SWIFT]: Mr. Hamdan and Dr. Keram.

CTC [MR. MURPHY]: Your Honor, there would be no recall in this case since they have not testified on this particular motion. The Court has set forth the presumption that coercion exists. It's the burden of the government to overcome that presumption. We believe we have and are ready to argue. We don't believe that that calls for evidence from the defense. The issue is, has the government met its burden to overcome the presumption, and that would be answered yes or no by Your Honor.

MJ [CAPT ALLRED]: I will hear from Mr. Hamdan. I don't think Dr. Keram can add anything that he can't add. So why don't you recall your client.

CDC [MR. SWIFT]: If the government is not going to argue the reliability prong, then I don't need to recall Dr. Keram. But if they're going to argue the reliability prong, I was only going to

have her testify as to--and proffer briefly whether the effects of sleep deprivation would have been readily apparent to Agent [redacted] or if he could have seen that, what they are, how they manifest themselves, and then the reliability of statements maintained in a sleep deprivation state.

That was the only area that I was going to go into, because there seemed to be a suggestion that things were okay in that room that--regardless of what had went on outside the room. And we were going to have Dr. Keram address that implication, and that implication alone.

CTC [MR. MURPHY]: Your Honor, I think the only issue is, has the government met its rebuttable presumption or answered it. I think continuing this on with defense calling witnesses who have not testified in this motion really goes beyond the strict question that the Court is asking of the government, which is, can you provide to the Court proof that we have overcome the rebuttable presumption? There is a presumption that coercion exists in this case.

MJ [CAPT ALLRED]: Okay. I will hear Mr. Hamdan again. It's his trial, and I want to make sure that he has every opportunity to be heard.

CDC [MR. SWIFT]: I would disagree with counsel on one part. As I understand it, discovery motion was litigated, which created a rebuttable presumption, and that shifted us back to the coercion

motion that we are now taking a look at with that rebuttable presumption. And I would point out that Dr. Keram did testify in that hearing; so, in summary, recalling the witness that had previously testified. But if the Court--I will be guided by the Court. If the Court tells me they don't need to hear from Dr. Keram, I'm not going to call Dr. Keram.

MJ [CAPT ALLRED]: Well, it's your case to try, by the same token.

CDC [MR. SWIFT]: But----

MJ [CAPT ALLRED]: I don't know the answer whether you should be prohibited from calling witnesses. I want Mr. Hamdan to be able to testify in his own trial, so I will let him be called.

CDC [MR. SWIFT]: So I'm recalling Mr. Hamdan, who is still under oath and still for the limited purpose of coercion.

MJ [CAPT ALLRED]: Very good.

CDC [MR. SWIFT]: I'm going to switch chairs, Your Honor.

MJ [CAPT ALLRED]: Okay.

[END OF PAGE]

SALIM AHMED HAMDAN, Accused, was called as a witness for the defense, was previously sworn and testified as follows through interpreter:

DIRECT EXAMINATION

Questions by the civilian defense counsel:

Q [MR. SWIFT]: Mr. Hamdan, do you remember the interview with Agent [redacted], who just testified?

A [MR. HAMDAN]: I remember it was [redacted].

Q [MR. SWIFT]: How long was that interview?

A [MR. HAMDAN]: It was approximately from the early morning until the afternoon, sunset.

Q [MR. SWIFT]: Who did most of the talking in the interview?

A [MR. HAMDAN]: [redacted].

Q [MR. SWIFT]: Did Agent [redacted] ask you any questions?

A [MR. HAMDAN]: No.

Q [MR. SWIFT]: What did [redacted] want to know from that interview?

A [MR. HAMDAN]: There were too many things.

Q [MR. SWIFT]: Was there anything in particular that he asked about?

A [MR. HAMDAN]: Yes.

Q [MR. SWIFT]: What was that?

A [MR. HAMDAN]: He focused on the issue of bayat.

Q [MR. SWIFT]: How long did he talk to you about that?

A [MR. HAMDAN]: For almost the entire period of the interview. From the morning until the sunset.

Q [MR. SWIFT]: When he was talking to you, was he yelling at you?

A [MR. HAMDAN]: No.

Q [MR. SWIFT]: How was he talking to you?

A [MR. HAMDAN]: He was just regular, just regular type of speech. He insisted, though.

Q [MR. SWIFT]: How close was he sitting to you?

A [MR. HAMDAN]: Sometimes he was so close where his hand or his body touched mine or his leg touched my leg, or sometimes he was a little bit far away.

Q [MR. SWIFT]: Did it upset you to have him touch your legs?

A [MR. HAMDAN]: No. Not at all.

Q [MR. SWIFT]: Were you tired that day?

A [MR. HAMDAN]: Yes. I recall that when I entered into the interview, I was very tired.

Q [MR. SWIFT]: Why were you tired?

A [MR. HAMDAN]: I don't recall exactly. It could have been the sleep or something else. I don't really recall. But I recall that I was tired at that time.

Q [MR. SWIFT]: Did you complain to [redacted] or Agent [redacted] about your treatment before they came down to interview you?

A [MR. HAMDAN]: No.

Q [MR. SWIFT]: Why not?

A [MR. HAMDAN]: Because I'm used that the investigators, when I complain to them, they don't actually help me. They--to the contrary, they become worse.

Q [MR. SWIFT]: Agent [redacted] had helped you.

A [MR. HAMDAN]: Yes. That was after I told him that I was in solitary confinement and I'm not going to talk to you in that interview.

Q [MR. SWIFT]: Well, why didn't you do the same thing this time?

A [MR. HAMDAN]: I don't know. But it's been a long time between the first the interview and that other interview.

Q [MR. SWIFT]: Had complaining helped after Agent [redacted]?

A [MR. HAMDAN]: Yes.

MJ [CAPT ALLRED]: I'm sorry. What was that last question?

CDC [MR. SWIFT]: Had complaining helped after Agent [redacted].

MJ [CAPT ALLRED]: Okay.

Q [MR. SWIFT]: Did you try complaining to other agents?

A [MR. HAMDAN]: Yes, I did. But I don't really recall what I told them.

Q [MR. SWIFT]: Were they able to help you?

CT INT: The interpreter did not hear the answer.

Q [MR. SWIFT]: Were the other agents able to help you?

A [MR. HAMDAN]: Mainly, they did not really help me in that matter.

Q [MR. SWIFT]: So, how long was Agent [redacted] in the interrogation room that day?

A [MR. HAMDAN]: For the most part, it was like about three hours they sat down with me.

Q [MR. SWIFT]: Did they come and go?

A [MR. HAMDAN]: Yes. [redacted] used to stay, and the other one would leave.

Q [MR. SWIFT]: Salim, do you remember whether you ever told Agent [redacted] or Agent [redacted] that you had sworn a bayat to Usama bin Laden?

A [MR. HAMDAN]: I never talked to them about this issue.

Q [MR. SWIFT]: Yes. But did you tell them that you had sworn a bayat?

A [MR. HAMDAN]: I never pledged allegiance. It was [redacted] who said that. [redacted] told me that he met with Nasser, and Nasser had told him that he pledged allegiance to Usama. It was a condition on the allegiance. And [redacted] told me this.

Q [MR. SWIFT]: Do you remember if you ever told [redacted] that you had done the same thing as Nasser?

A [MR. HAMDAN]: No.

CDC [MR. SWIFT]: I have no further questions.

DC [LCDR MIZER]: Your Honor, the translator informs me that there was a mistranslation. I think the question was how long was Agent [redacted] in the room, and the translation was "they" were in there for three hours. The answer actually was "he" was in there; Special Agent [redacted] was in the room for three hours.

MJ [CAPT ALLRED]: That's what I copied in my notes. I heard it that way.

DC [LCDR MIZER]: Okay.

CROSS-EXAMINATION

Questions by the civilian trial counsel:

Q [MR. MURPHY]: Good afternoon Mr. Hamdan, I'm John Murphy. You testified that you did not complain to Agent [redacted] or Agent [redacted] who was with him at the time about anything. Is that right?

A [MR. HAMDAN]: Can you please repeat the question?

Q [MR. MURPHY]: Certainly. Is it your testimony here today that you did not complain to Agent [redacted] or Agent [redacted] about anything when you met with them?

A [MR. HAMDAN]: You mean I did not complain to him at that day?

Q [MR. MURPHY]: That's my question. Isn't it true that your testimony, what you're telling us today----

MJ [CAPT ALLRED]: Wait. Wait. Just----

CTC [MR. MURPHY]: I will simplify it.

MJ [CAPT ALLRED]: He asked you--he stated the question correctly. You just have to say yes and he will answer it. All right? I mean, it's hard to lead someone via translator.

CTC [MR. MURPHY]: Okay. Let me try and simplify.

Questions by the civilian trial counsel:

Q [MR. MURPHY]: You didn't complain to Agent [redacted]?

A [MR. HAMDAN]: Yes, that's true.

Q [MR. MURPHY]: And when you had a complaint, you let people know?

A [MR. HAMDAN]: That used to be before.

Q [MR. MURPHY]: Even recently, when you have a complaint, you let people know.

A [MR. HAMDAN]: I never complained to him about anything during that interview.

Q [MR. MURPHY]: But when you're unhappy about something, you let people know about it. Right?

A [MR. HAMDAN]: Whom are you referring to?

Q [MR. MURPHY]: Well, even in these court proceedings, you have told the Judge, Judge Allred, about complaints that you've had. Right?

A [MR. HAMDAN]: I express what's inside of me. That's just natural.

Q [MR. MURPHY]: In fact, you've gotten up and have left these proceedings a few times. Right?

A [MR. HAMDAN]: I did not understand what you mean.

Q [MR. MURPHY]: You have left these proceedings when you have been unhappy. Isn't that right?

A [MR. HAMDAN]: Excuse me. I did not understand what you mean that I left the proceedings.

MJ [CAPT ALLRED]: I know the answer to that question. I think you can move on.

Q [MR. MURPHY]: All right. You've told your lawyers while you've been here that you don't want them to represent you when you're gone?

A [MR. HAMDAN]: This is between me and my attorney.

Q [MR. MURPHY]: It's something all of us watched. Right?

A [MR. HAMDAN]: That's between me, the lawyer, and the judge.

[END OF PAGE]

Q [MR. MURPHY]: When you were unhappy when [redacted] was interviewing you, you told him. Didn't you?

A [MR. HAMDAN]: I was very upset, because they put me in the solitary confinement.

Q [MR. MURPHY]: And you told [redacted] about that. Right?

A [MR. HAMDAN]: Yes. True. I told him.

Q [MR. MURPHY]: So you can tell people when you're unhappy about a situation?

A [MR. HAMDAN]: I told you, this used to be at the very beginning. That's not the case right now. There is a difference.

Q [MR. MURPHY]: There's a difference. Explain that to me. What does that mean?

A [MR. HAMDAN]: When was that when I asked that investigator? What was the time?

Q [MR. MURPHY]: When you met with Agent [redacted]? That was in May.

A [MR. HAMDAN]: No, no, no. I'm not talking about this. I'm talking about the person that I asked him to take me out of the solitary confinement.

Q [MR. MURPHY]: [redacted]?

A [MR. HAMDAN]: I don't know his name. Don't tell me that.

Q [MR. MURPHY]: You saw him testify here a couple of days ago. Right?

A [MR. HAMDAN]: Yeah, I saw him. But if you mention his name again, I really don't remember the name.

Q [MR. MURPHY]: The bottom line is, when you have a complaint you let people know. Right?

A [MR. HAMDAN]: If I am sure that he is going to actually help me.

Q [MR. MURPHY]: And you said nothing, no complaints to Agent [redacted]. Right?

A [MR. HAMDAN]: I did not talk to [redacted]. I talked to [redacted]. Because when [redacted] came the other day and he had the other guy with him, "he told me, “This is my colleague. He is an interrogator and he is learning Arabic. And that's why I have him here with me." When he spoke to me in Arabic, he did not really even not say it easily. It was kind of hard for him to say that word in Arabic.

Q [MR. MURPHY]: Let me move on to the next topic. That's bayat. You heard Agent [redacted] testify just a few minutes ago that you admitted that you pledged bayat to Usama bin Laden. You heard that testimony. Correct?

A [MR. HAMDAN]: I told you, I never talked to [redacted]. [redacted] never talked to me. And I talked to [redacted] only.

Q [MR. MURPHY]: But you heard Agent [redacted] just now say that he heard you admit to pledging bayat. Isn't that right?

A [MR. HAMDAN]: He's saying this, but I didn't say it.

Q [MR. MURPHY]: So when Agent [redacted] comes in here and says under oath that you admitted pledging bayat to Usama bin Laden, he's lying. Is that what you're saying?

A [MR. HAMDAN]: I have sworn earlier and you asked me the same thing. Is that right?

Q [MR. MURPHY]: I'm asking you the question. Is Mr.--or, Agent [redacted] not telling the truth when he says he heard you say you pledged bayat?

A [MR. HAMDAN]: Do you want me to say that I'm a liar or he's a liar? What do you mean?

Q [MR. MURPHY]: I'm asking you.

A [MR. HAMDAN]: You're telling me that he swore over here and I also swore over here. So I'm telling you, I'm telling the truth, and you're saying that he said the truth. Is that right? You really want to prove [redacted]'s statement in any way possible. He can say whatever he wants. He is lying, anything he says.

CDC [MR. SWIFT]: He didn't say lying.

Q [MR. MURPHY]: Let me ask my question.

A [MR. HAMDAN]: Hold on. Hold on.

DEF INT [MR. [redacted]]: She said "lie." He never said "lie."

MJ [CAPT ALLRED]: What word did he use?

DEF INT [MR. [redacted]]: He can write anything. He can write anything he wants.

MJ [CAPT ALLRED]: Okay.

CT INT: The interpreter heard the word "lie."

MJ [CAPT ALLRED]: Okay.

Questions by the civilian trial counsel:

Q [MR. MURPHY]: Let me try this again.

CT INT: He can write whatever he wants. That's what he said.

Q [MR. MURPHY]: I'm going to say this simply. When Agent [redacted] says he heard you say you pledged bayat to Usama bin Laden--

MJ [CAPT ALLRED]: Mr. Murphy, let me interrupt this. This really isn't the day to make----

A [MR. HAMDAN]: Your Honor, please allow me. I insist--he wants me to say that he is a liar, and he is insisting. [redacted] did that same thing to me during the interview. Ever since the early morning until the sunset, he was using the same procedure, the same style. What does that mean?

MJ [CAPT ALLRED]: Well, I don't know what it means. I am telling Mr. Murphy to move on to another topic.

CTC [MR. MURPHY]: All right.

MJ [CAPT ALLRED]: Because you have answered the question today.

Questions by the civilian trial counsel:

Q [MR. MURPHY]: I will move on to another topic. My questions would deal with credibility, and I think I asked that in as many ways as I possibly could. Let me turn to another topic. When you were talking with Agent [redacted] and Agent [redacted], you didn't want the interview to end. You wanted to keep talking to them. Right?

A [MR. HAMDAN]: That's not true.

Q [MR. MURPHY]: I'm sorry; I did not hear the answer.

MJ [CAPT ALLRED]: That's not true.

Q [MR. MURPHY]: That's not true. So if someone were to say you wanted to keep talking during your meeting with Agent [redacted], that would not be a true statement?

A [MR. HAMDAN]: I told you earlier and you keep repeating the word. I told you, I have never talked to [redacted]. I have talked to [redacted]. I talked to [redacted] all the time. Why do you keep repeating [redacted], [redacted], [redacted]? I talked to [redacted] all the time. I told you earlier that he had introduced him as someone who was learning Arabic, and I told you that he still didn't speak Arabic. Someone who is starting to learn Arabic will never understand the words directly. If two people are speaking Arabic to each other, someone who is trying to learn, it's impossible that he will understand the words. You can ask any Arab person or any educated person about this.

Q [MR. MURPHY]: All right. And you had no complaints of any kind for Agent [redacted] or Agent [redacted] when you met with them. That's your testimony?

A [MR. HAMDAN]: Yes. This is what I remember.

Q [MR. MURPHY]: And that's because there were no complaints to be had. Right?

A [MR. HAMDAN]: I did not understand.

Q [MR. MURPHY]: You had no complaints.

A [MR. HAMDAN]: I just remembered, I complained about one thing.

Q [MR. MURPHY]: Okay. What was that?

A [MR. HAMDAN]: Why did they place me in solitary confinement?

Q [MR. MURPHY]: That's what you told [redacted]. Right?

A [MR. HAMDAN]: No. This was to [redacted].

Q [MR. MURPHY]: And you told that with [redacted] there as well. He was listening. Right?

A [MR. HAMDAN]: I don't remember. My whole speech was with [redacted].

Q [MR. MURPHY]: All right.

CTC [MR. MURPHY]: Your Honor, I don't think I have any other questions.

MJ [CAPT ALLRED]: All right. Thank you.

CDC [MR. SWIFT]: I have no further questions.

MJ [CAPT ALLRED]: You do?

CDC [MR. SWIFT]: I don't. Unless Your Honor has some questions.

MJ [CAPT ALLRED]: No. I can't think of any questions. Thank you for your testimony, Mr. Hamdan.

WIT [MR. HAMDAN]: Your Honor, I apologize, because I interrupted you while you were talking.

MJ [CAPT ALLRED]: No problem.

CDC [MR. SWIFT]: If you would, briefly--and I'm trying to understand the Court's ruling. You said you would hear from Mr. Hamdan. I would briefly recall, if I'm able, Dr. Keram to simply address one of the issues before the Court in making the determination of clear and convincing evidence of coercion, is whether the type of coercion that was being played out would be readily apparent.

MJ [CAPT ALLRED]: And can you proffer that she will testify that it would not have been?

CDC [MR. SWIFT]: That's correct, Your Honor.

MJ [CAPT ALLRED]: Okay. Have you interviewed Dr. Keram?

CTC [MR. MURPHY]: I have. And I actually have it in her notes from the last hearing that she already said that.

MJ [CAPT ALLRED]: So you don't contest it? I will consider that to be Dr. Keram's testimony before this commission, then, on

that motion. Okay. I don't feel like I need a lot of argument on this. I will give you each a couple minutes to hit the highlights. But this isn't a complex issue where I need to----

CTC [MR. MURPHY]: It is, Your Honor. The government does appreciate the opportunity to argue this, and does have a few important things to say.

Obviously, the government has really what we consider an extraordinary presumption placed on it. We have the utmost respect for the Court. We know you're going to decide this within the framework of all the evidence here. But we think that the evidence is absolutely apparent that there's no coercion. And, moreover, the defendant himself shows there's no credibility to the allegation of coercion.

As best as I could determine his answers--and I realize we're dealing with translation, and although I think we're also dealing with a very manipulative accused. He's not claiming--he initially said he had no complaints, no complaints at all, asked many, many times. Only at the very end did he say, "Oh, yeah. I raised this issue of solitary confinement." That flies right in the face of the testimony of Agent [redacted]. And I think you can take Agent [redacted]'s word and take it to the bank. He is a witness who has testified actually more in this trial than any other witness, at the jurisdictional hearing, of the motions, and now at this motion.

So you've seen him quite a bit. He's solid. You can take his word and absolutely rely on it. When he says there's no coercion, there's no coercion.

There's nothing in the DIMS records to suggest that there is coercion. At most, he was moved. We showed an expansive period of time in those records to show that he was subject to some disciplinary proceedings, disciplinary sanctions over times, but nothing that could be called coercive, and certainly nothing prior to the night before his interview that could be suggestive of coercion, only that he was moved. And here, the defendant or the accused takes the stand himself. He's not here to tell you that: The night before this interview they did all these things to me. And he had every opportunity on my cross-examination over many, many questions to say he did. He said he had no complaints.

He had ample opportunity with Agent [redacted] over what was, what, a nine-hour interview, never mentioned it. And then Agent [redacted] came back a few days later, really, just to check on him, give him a few things, say: How are you doing? The issue has never surfaced. And the reason the issue has never surfaced is because it does not exist. There is no coercion.

And, I might add, the whole allegation of coercion is a charge, a serious allegation; it's one that has really followed the whole commission process, we are all aware of that, in the media

reports and other reports. It casts sort of a black cloud over the agents and those that work with detainees, and what has been put forth doesn't show it. In fact, it shows the opposite; that no one coerced Mr. Hamdan. And so the stain or the black cloud or allegation hanging over Agent [redacted], hanging over JTF should be removed. And the best way to remove that is to say that the government has met its presumption, that there is--and it's met its presumption beyond clear and convincing evidence. I would argue that it's met it by beyond a reasonable doubt. Even if that was the standard, I think we could meet it.

And the commission can rest assured that by calling Agent [redacted] as our next witness, every bit of evidence in this case is not the subject of coercion. The accused doesn't support it, the records don't support it, no other evidence supports it. The accused's credibility is seriously in doubt, and I think the Court sees that when they listen to his answers.

Rest assured that you heard the truth from Agent [redacted] and the records. There is no reason to suppress this statement.

Thank you.

MJ [CAPT ALLRED]: Okay. Well, thank you.

CTC [MR. MURPHY]: Is there a question, Your Honor?

MJ [CAPT ALLRED]: Well, I just want to make sure you understand that you are on the hot seat.

CTC [MR. MURPHY]: Understood.

MJ [CAPT ALLRED]: Because of unsatisfactory performance of discovery.

CTC [MR. MURPHY]: Right.

MJ [CAPT ALLRED]: And I put the burden on the government because that's the right word for discovery. 1,200 pages the week before trial? Unsatisfactory. And you, therefore, have to step up to the plate and take this burden off the defense to investigate. You have to investigate. That's what I wanted you to do.

CTC [MR. MURPHY]: We accept that, and we agree with the Court and we believe we have done that. The Court has pointed out; this is not a counsel issue. I think it would be very different if it were a counsel allegation.

MJ [CAPT ALLRED]: I think it's fair to say that.

CTC [MR. MURPHY]: It's none of that. We have worked diligently. I think the Court has seen us working diligently on this. We don't want this situation to exist. We are unhappy with it. It is corrected. And we believe, now that you've had that opportunity to look at this evidence and hear from JTF personnel, see their records, hear from the intel side of this, read that report that clarifies important issues that stay here, and the Court can competently say that the burden you have properly set forth before us has been met.

MJ [CAPT ALLRED]: Okay. Thank you. I appreciate your argument. For the defense? Mr. Hamdan, would you like to argue this motion, or would you like one of your attorneys to handle this for you?

CT INT: If you want me to talk, I will talk. But I would rather have the lawyers speak for me.

MJ [CAPT ALLRED]: Okay. Mr. Schneider, it looks like you're up.

CDC [MR. SCHNEIDER]: I'm going to try to be brief. I'm not sure I will succeed as well as you would prefer.

Nothing has changed in the last two days. We know about the Inspector General's report. We know about the circumstances in the spring of 2003. We know about the prior year where moving him into those locations was counterproductive, affected the reliability of the information, and caused [redacted] to flip out. You know, even though I'm not going to talk about and we're not going to put it on the screen what happened in March of 2003; you know when he was moved. You could properly ask the question, why was he moved at 11:00 p.m. the night before Mr. [redacted] and Mr. [redacted] arrived? Let's go over what the explanation was. That's it. I didn't hear one.

Nothing's changed. Witnesses, I think they were Two and Three, witnesses next in order, weren't even around. Mr. [redacted],

bless his heart, couldn't provide any information. Who knows what happened in the room? What we know is that he was moved the night before, and we know what preceded that and we know what kind of effect that had on him.

We also know why that interview occurred. Mr. [redacted] told us. There's really no doubt about it. There was an attempt during this environment to try to go back over all the previous interviews, 40 different agents plus those we'll never hear from, a dozen different agencies, and put it in a package for trial.

I thought it was revealing when Mr. [redacted] told me, you know what? You're right. Intelligence investigations, we never saw anything about him. Criminal investigations, we got the reports. Absolutely contrary to everything we heard the week before. I think that's what has happened. And I don't see anything that's changed in the last two days which would cause you to even consider finding that the presumption in place has been overcome. And if you do, there will be no remedy, because we will be right back where we were before.

Salim Hamdan testified the week of July 14th. He testified about one interrogation involving a female was met with skepticism by some, if not contempt. It turns out he was right. He was right on the money.

He talked about sleep interruption when Mr. [redacted] was

visiting him. I don't know if you can place a date. It turns out from the information we've seen, moving him that night, that kind of thing, a program that Rumsfeld approved on April 16, the standard operating procedures, that all came in late, Mr. Hamdan was right on the money. Nothing's changed from the last two days.

The fact of the matter is the circumstances are such that the statements shouldn't come in. You know the history of the discovery, and the affidavits that are before you. I'm not going to go through what happened. I would say that the last bulk of that information didn't come in a week before trial; it came in nine days before trial. Mr. Hamdan was testifying in a forthright manner. It's not a happy day when I say that his testimony is believable, perhaps more credible than others. It's my country, too. The United States has not been responsive. I don't implicate trial counsel. The discovery in this case, it's impacted us, and there needs to be a consequence.

CTC [MR. MURPHY]: Your Honor, since the burden is ours, can I make just a final comment?

MJ [CAPT ALLRED]: No, thanks. It's not the guilt phase, it's just a motion. So let's talk about tomorrow. We'll start at 8:30. I think the members have been asked to come back at 8:30. Mr. [redacted] will be standing by. If I let him testify, I guess he will be the next witness?

CTC [MR. MURPHY]: That's correct, Your Honor.

MJ [CAPT ALLRED]: If I don't, are you done?

TC [MR. STONE]: Well, yes, sir. With a couple, few documents that we'll put in. But if Agent [redacted] does not testify, the government will call no more witnesses.

MJ [CAPT ALLRED]: Okay. So will the defense be ready with its first witness if you're on at 8:30?

DC [LCDR MIZER]: Yes, sir, Your Honor. And in the event that Special Agent [redacted] does testify, we may need to take one of them out of order because he needs to get on a plane at 10:30, I believe.

MJ [CAPT ALLRED]: Even if [redacted] is allowed to testify, you want your witness to testify first?

DC [LCDR MIZER]: Yes, Your Honor.

MJ [CAPT ALLRED]: Okay. And what's the status of our high valued detainee program? For some reason, I got another letter or note from the attorney of someone asking me to respond to them. I don't know whether I'm expected to make some decision or they're just asking me to tell you to talk to them.

CDC [MR. SCHNEIDER]: I think the status quo is the same as it was. There have been counsel who have voiced objections to contact. We provided that, of course. That would apply to their testimony as well. Lieutenant Commander Mizer was able to give the access we first sought many months ago on Saturday--Sunday, last week. KSM

refused--declined to meet with him, and sent word through his detailed defense counsel whose status is a little uncertain that he was not inclined to come to court. I think it's highly likely that his answers will be submitted in light of that. I see no value to try to bring him forcibly to testify under the equivalent of----

MJ [CAPT ALLRED]: Will any of them be coming to testify?

CDC [MR. SCHNEIDER]: Most likely, maybe Mr. Al-Iraqi. But I think bin Attash and KSM will be written answers. I still haven't seen the written answers from al-Iraqi. I still haven't been cleared to ask any of the three questions. I still haven't been permitted to sit in front of the glass if they testify. If I see al-Iraqi's answers, I can be more specific about him. My guess is written answers on the first two, maybe, maybe not on al-Iraqi.

MJ [CAPT ALLRED]: So should we set that for Friday morning?

DC [LCDR MIZER]: Yes, Your Honor.

MJ [CAPT ALLRED]: Okay. And then you can--now, when you say you haven't seen the answers.

CDC [MR. SCHNEIDER]: Right.

MJ [CAPT ALLRED]: Has Commander Mizer seen them?

CDC [MR. SCHNEIDER]: Yes.

MJ [CAPT ALLRED]: Oh, he's seen them.

CDC [MR. SCHNEIDER]: He's seen them. He's got a special clearance that I don't have.

MJ [CAPT ALLRED]: Dispensation.

CDC [MR. SCHNEIDER]: So he's seen them, but he can't tell me about them.

MJ [CAPT ALLRED]: And I understand that the----

DC [LCDR MIZER]: The bulk of the team has not been able to make a decision.

CDC [MR. SCHNEIDER]: It may be that Lieutenant Commander Mizer makes a decision for the team and the client without the rest of the team or the client ever knowing the basis on which the decision was made. That's the circumstance in which we find ourselves. I don't know that, as much as you might want to have a solution, I'm not sure you can come up with one.

MJ [CAPT ALLRED]: I think it's beyond my power to speed up the process of getting your clearance reviewed, or whatever it's called there. It looks like there are two members of the defense team who are cleared and read in and accessed. Okay. Well, did you see the government's proposed protective order?

CDC [MR. SCHNEIDER]: I read it far enough to see that I wouldn't be permitted to be in front of the glass or ask questions, and then I put it aside.

MJ [CAPT ALLRED]: Okay. Well, it looks like that might be the way it shakes out.

DC [LCDR MIZER]: Your Honor, I don't know that the questions

for Mr. Al-Iraqi can be cleared by the end of the defense case. So it may be necessary for us to submit a top secret--those top secret answers.

MJ [CAPT ALLRED]: Have they been translated into English?

DC [LCDR MIZER]: They have, Your Honor. I can tell you that there's nothing in there that I understand to be top secret, but I understand the equity holders, to use the government's jargon, would like to double check that.

MJ [CAPT ALLRED]: Okay. Well, we've got a few days. And hopefully the equity holders are in at the burner to get that done. Okay. Well, I will work on this ruling tonight. I will either send it out by e-mail or whatever. I want to get it finished, or tell you in the morning if it takes longer than I think. Okay. We will recess then until 8:30 in the morning.

[The R.M.C. 803 session recessed at 1650, 30 July 2008.]

[END OF PAGE]

[The R.M.C. 803 session was called to order at 0844, 31 July 2008.]

MJ [CAPT ALLRED]: Okay. Court is called to order. I have completed my research and thinking about the issue we litigated yesterday afternoon, and I have decided that I will allow Special Agent [redacted] testify about the statement made by the accused on the 17th of May 2003. My written ruling was delivered to the clerk of the court this morning and it's in the process of being promulgated; but, for the record, the defense motion to suppress that statement is denied.

I understand we're ready to call the members into the courtroom, then, and continue with the government's case in chief?

CTC [MR. MURPHY]: That's correct, Your Honor.

MJ [CAPT ALLRED]: Okay. Bailiff.

[Members entered the courtroom.]

[The R.M.C. 803 session terminated and the military commission commenced at 0845, 31 July 2008.]

MJ [CAPT ALLRED]: Good morning. Please be seated **[members did as directed]**.

The members have returned to the courtroom. Please be seated, counsel **[all persons did as directed]**. Thank you.

Members, I apologize for having to give you yesterday afternoon off on short notice. We were busy working and preparing to

continue the case, and there is a lot of work that goes on behind the scenes. So now we are ready to continue.

We are in a new courtroom this morning in part because another case needed our courtroom to use the video teleconferencing equipment up there. In spite of the wonderful facilities we have here, we don't have the ability to take testimony in this courtroom by video teleconference. So we will be here for the morning, and I think we will be in the other courtroom this afternoon. Okay?

Trial counsel, you may call your next witness.

CTC [MR. MURPHY]: Thank you, Your Honor. The government calls NCIS Special Agent [redacted].

[redacted], Civilian, was called as a witness for the government, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the civilian trial counsel:

Q [MR. MURPHY]: Good morning. Would you state your full name and spell your last name for the record?

A [MR. [redacted]]: [redacted].

Q [MR. MURPHY]: And how are you employed?

A [MR. [redacted]]: Spell my last name?

Q [MR. MURPHY]: I'm sorry. Go right ahead.

A [MR. [redacted]]: [redacted]. I'm a special agent with the Naval Criminal Investigative Service.

Q [MR. MURPHY]: Tell us a little bit about your law enforcement background, including any special language and law enforcement training that you have received.

A [MR. [redacted]]: I've been a federal law enforcement officer, civilian, on the order of approximately 17 years, a little over 17 years. My initial training was at the Federal Law Enforcement Training Center for initial advanced criminal investigative training. Subsequent to that, in positions where I've been in foreign counter intelligence and counterterrorism, I also had training in collection operations and other operational activity.

I attended the Defense Language Institute, 1984, for basic modern standard Arabic, with following advanced Arabic language training at DLI, as well as Brigham Young University for Arabic dialect training and Arab culture.

Some of my positions during my career: I've been a supervisory special agent for criminal investigations. I've been a division chief in counterterrorism, as well as assistant special agent in charge for counterterrorism. Currently, I'm assigned to the Pentagon, detailed to the Deputy Under Secretary of the Navy staff.

And in the course of my work with NCIS, among other larger cases that I've worked on include the code case agent for the USS COLE investigation as well as follow-on 9/11 investigative and operational matters pursuant to that event.

Q [MR. MURPHY]: How would you characterize your Arabic language skills?

A [MR. [redacted]]: Well, conversational ability. At times much better, particularly in my work in the Near and Middle East, where I've had a good part of my working life either in the Middle East or working directly with those issues. But working away from those issues, like now, for example, it's a bit rusty.

Q [MR. MURPHY]: All right. Do you use your language skills as part of your law enforcement work?

A [MR. [redacted]]: I have extensively in the past; currently, as needed.

Q [MR. MURPHY]: Did the Department of Defense assign you to interview Salim Hamdan?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: I'd like you to look around the courtroom today, see if you can recognize Salim Hamdan; and, if so, point to him, and identify an article of clothing he is wearing.

A [MR. [redacted]]: Yes, sir. Mr. Salim Hamdan is seated to my far right. He is wearing a sport coat and has a white headdress known as a ghutra or shemagh.

CTC [MR. MURPHY]: Your Honor, may the record reflect that the witness has properly identified the accused?

MJ [CAPT ALLRED]: Very well.

Q [MR. MURPHY]: During what time period did you interview Salim Hamdan?

A [MR. [redacted]]: May of 2003.

Q [MR. MURPHY]: And where did you interview him?

A [MR. [redacted]]: The interview was conducted here in Guantanamo Bay Naval Station in Camp Delta.

Q [MR. MURPHY]: How many times did you interview him?

A [MR. [redacted]]: Two sessions.

Q [MR. MURPHY]: And could you describe the room or rooms where these interviews took place?

A [MR. [redacted]]: Yes, sir. The interview was conducted in the standard Camp Delta interview room at that time. The interview room was approximately 10 by 12 feet, carpeting on the floor. Typically, the room contained a folding table and folding chairs or plastic chairs. There was an air conditioner in that room, with our ability to control the climate.

Q [MR. MURPHY]: All right. Were there other people in the room with you?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: And who were they?

A [MR. [redacted]]: My long-time working partner at the time, in addition to Mr. Hamdan, was former Special Agent [redacted].

Q [MR. MURPHY]: What language was the interview conducted in?

A [MR. [redacted]]: It was conducted almost entirely--or, I should say, entirely in Arabic. The only English that would have been spoken at the time was if I needed clarification or amplification. And Mr. [redacted], being a native speaker of the Arabic language, would provide that clarification.

Q [MR. MURPHY]: Were you able to understand these interviews in Arabic?

A [MR. [redacted]]: Overall, yes. Except for, again, where I needed some translation and clarification, and Mr. [redacted] would provide that.

Q [MR. MURPHY]: And with your own knowledge and with the translation by Mr. [redacted], were you then able to understand the interviews?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: Was a report prepared in this case that summarized your interview with the accused?

A [MR. [redacted]]: Yes.

Q [MR. MURPHY]: And how was that report prepared?

A [MR. [redacted]]: The form that we used for that particular interview with Mr. Hamdan is known as a Form 40. It's a form that's used by the criminal investigation task force.

The way it was prepared, the same way as many of the

previous interviews I conducted with Mr. [redacted], where notes were taken during the interview. And in this case, though, because we had a specific request to complete the--and be ready to publish the Form 40 prior to leaving the island, while we were also conducting interviews with two other individuals here at Guantanamo.

So following the interview on the 17th of May, we immediately went to debrief with each other, transcribed from the notes to a rough draft for the Form 40, which we both reviewed, and then I typed in that rough draft into a computer, provided it to Mr. [redacted] for his review. Any changes that were made, he would do. Then I would take a look at the same, see if there were any other changes required, and then go for the final Form 40, which was compiled sometime shortly after the 17th of May.

Q [MR. MURPHY]: During your interview, was Salim Hamdan restrained in any manner?

MJ [CAPT ALLRED]: I'm sorry, just a moment. We're having a problem with the translation?

DEF INT [MR. [redacted]]: If the witness could speak more clearly. The interpreters were saying they can't understand him.

MJ [CAPT ALLRED]: Mr. [redacted], please pull the microphone a little closer to your mouth. I think it takes a moment for it--okay.

WIT [MR. [redacted]]: **[Moving the microphone.]** How is this?

MJ [CAPT ALLRED]: Let's give that a shot.

Q [MR. MURPHY]: All right. Was Salim Hamdan restrained during the interviews?

A [MR. [redacted]]: The only time that Mr. Hamdan was restrained was upon entering the interview room, as customary for the guard force here at Guantanamo. And when he entered the room, I requested that the restraints were removed immediately. So he remained unrestrained throughout the interview. And then, of course, the restraints as required by rules upon the end of the interview.

Q [MR. MURPHY]: During the interviews itself, there were no restraints?

A [MR. [redacted]]: No, sir.

Q [MR. MURPHY]: What were the seating arrangements in the interview room?

A [MR. [redacted]]: Well, we asked Mr. Hamdan upon greeting him in the interview room if he preferred to sit in the chairs or sit on the floor. And in accordance with customs, quite typically where he's from in Yemen, he requested to sit on the floor. So the three of us conducted the entire session seated on the floor.

Q [MR. MURPHY]: How close were you and the other agent to Mr. Hamdan during these interviews? And if you could elaborate also more on the arrangements, seating arrangements.

WIT [MR. [redacted]]: Is there a request to slow or--slow down?

DEF INT [MR. [redacted]]: Slow and clear. It's not clear.

WIT [MR. [redacted]]: Okay. It might be my Philadelphia accent, perhaps.

CDC [MR. SCHNEIDER]: Speak in Arabic.

DEF INT [MR. [redacted]]: Somehow he's not coming through clear. They can't understand your words.

CDC [MR. SCHNEIDER]: Feel free to speak in Arabic.

Q [MR. MURPHY]: All right. Well, why don't we just try a little louder and a little slower. That may help.

Tell us how close you and the other agents were with Mr. Hamdan during these interviews and in relation to the configuration on the floor.

A [MR. [redacted]]: Throughout the session, anywhere from one to two feet. Or, again, in accordance with local customs, as close as a few inches elbow to elbow, a few inches away knee to knee.

Q [MR. MURPHY]: How would you describe the tone of the interview with Mr. Hamdan?

A [MR. [redacted]]: Overall, the tone I would describe as cordial, conversational in nature, friendly.

Q [MR. MURPHY]: Did you or anyone else during the interviews ever yell at Salim Hamdan or act in any manner that you would consider threatening?

A [MR. [redacted]]: No.

Q [MR. MURPHY]: Did you provide him with food and drink or water during these interviews?

A [MR. [redacted]]: Yes. During the interview, water, tea, coffee were available as well as light snacks and refreshments. And at one point approximately midway in the interview, we had lunch.

Q [MR. MURPHY]: Did you permit him opportunities to pray during the interviews?

A [MR. [redacted]]: Yes. There was opportunity for prayer.

Q [MR. MURPHY]: Did you provide any rights advisement to Salim Hamdan, such as Article 31 warnings under the Uniform Code of Military Justice, or Miranda type warnings?

A [MR. [redacted]]: No, sir.

Q [MR. MURPHY]: And why was that?

A [MR. [redacted]]: Policy at the time for conducting interviews here at Guantanamo, there was no provision for 31(B) or counsel rights or Miranda warnings as established by the chain of command.

Q [MR. MURPHY]: During your interviews with Salim Hamdan, did he appear sleepy during the interviews?

A [MR. [redacted]]: No, he did not.

Q [MR. MURPHY]: Did he appear fearful in any way?

A [MR. [redacted]]: He did not appear fearful.

Q [MR. MURPHY]: Did he tell you he was ill or appeared to be ill or not feeling well?

A [MR. [redacted]]: No, sir.

Q [MR. MURPHY]: Did he state to you that he was abused or mistreated in any manner?

A [MR. [redacted]]: No. There was no mention of any abuse or mistreatment. The only thing that I do recall, there was a brief conversation about personal articles of Mr. Hamdan's. And--but it was more in the context of an apparent mix-up within the administration of the guard force.

Q [MR. MURPHY]: With him not having access to all of his comfort items. Is that the general tone of it?

A [MR. [redacted]]: That would characterize it, as best as I recall.

Q [MR. MURPHY]: As you understood it, was that any evidence to you of abuse or mistreatment?

A [MR. [redacted]]: No, sir.

Q [MR. MURPHY]: Did you coordinate your interview with the guard force or anyone at JTF Guantanamo Bay to change his living conditions to have any impact on your interviews?

A [MR. [redacted]]: No, sir.

Q [MR. MURPHY]: Did Mr. Hamdan want to stop talking with you during the interviews?

A [MR. [redacted]]: No. At no time was there a request to stop. In fact, from what I recall of the interview, at the time where we were ready to conclude because we were up against the clock due to camp rules--according to my notes of the time of the interview, was approximately nine and a half hours, we were getting the signal that it was close to termination. Mr. Hamdan requested that we continue talking.

Q [MR. MURPHY]: All right. And that was even beyond the allotted time where you could stay to do your work. Is that right?

A [MR. [redacted]]: Yes.

Q [MR. MURPHY]: Do you have an impression as to why he wanted to do that?

A [MR. [redacted]]: Well, my impression was that the report was so solid and the conversation was of such quality, if you will, that he enjoyed being with us.

Q [MR. MURPHY]: Do you believe he was coerced in any manner during your interview with him?

A [MR. [redacted]]: Not during our interview with him.

Q [MR. MURPHY]: Would you tolerate any coercive techniques used during your interviews?

A [MR. [redacted]]: No, I would not.

Q [MR. MURPHY]: Have you acted professionally and ethically in all of your interviews with this detainee, and all other detainees?

A [MR. [redacted]]: Yes, sir.

CTC [MR. MURPHY]: Your Honor, we have a series of documents that have previously been provided to the defense, and they have been translated. The defense has agreed that the translation that appears after the documents are fair and accurate translations of the Arabic. There's a total of eight documents with translations.

With the permission of the Court, I would propose showing it to the Military Judge and the witness.

MJ [CAPT ALLRED]: Please do.

CTC [MR. MURPHY]: Lay the foundation, and then offer it into evidence.

The first exhibit is generally identified as a weapons radio permit. I would ask that it be shown to the Military Judge--it consists of one page--as well as our witness, Agent [redacted].

Q [MR. MURPHY]: Agent [redacted] do you recognize that exhibit.

A [MR. [redacted]]: Yes, sir.

CTC [MR. MURPHY]: And I will mark it as the next exhibit in order, which I believe is 135.

Q [MR. MURPHY]: How do you recognize that?

A [MR. [redacted]]: This is one of the articles that Mr. Hamdan said was on his person at the time of capture by Afghan forces.

Q [MR. MURPHY]: Did you show that specifically and personally to Mr. Hamdan?

A [MR. [redacted]]: Yes.

Q [MR. MURPHY]: And did he recognize it?

A [MR. [redacted]]: He did. He explained that this was issued by the Afghan Taliban foreign ministry as a two-way radio weapons permit.

Q [MR. MURPHY]: All right. And I'll get into that in a little more detail in a moment.

CTC [MR. MURPHY]: Your Honor, I would offer Government Exhibit 135 into evidence at this time.

CDC [MR. SCHNEIDER]: No objection.

MJ [CAPT ALLRED]: Very well. Without objection.

CTC [MR. MURPHY]: And I would ask that it be published.

MJ [CAPT ALLRED]: You may.

CDC [MR. SCHNEIDER]: No objection.

Q [MR. MURPHY]: Now that everybody can see it, can you tell us, now that we're looking at it, what it is and how you presented it to the accused?

A [MR. [redacted]]: At that point in the interview, with Mr. Hamdan's concurrence, we wanted to discuss and review some of the items that were found on him, with him, at the time of his detention by the Afghan forces. This particular item was issued by the foreign

ministry of Afghanistan, which Mr. Hamdan explained was one of the means used in Afghanistan.

Q [MR. MURPHY]: I will ask you to speak up a little bit, if you could. Just a little.

A [MR. [redacted]]: Abdullah--this was issued in the name of Abdullah, one of the names he used in Afghanistan. And he said he actually received this permit from Saif Al-Adel, who, within the hierarchy of al Qaeda, of course, is the top tier and, in military parlance, a rough equivalent is a J-3. And it was for use for--a permit for allowance to carry two-way radio and weapons in view, as part of his bodyguard duties.

Q [MR. MURPHY]: And this permits both a weapon and a radio. Is that right?

A [MR. [redacted]]: Yes, sir. According to Mr. Hamdan.

Q [MR. MURPHY]: All right.

CTC [MR. MURPHY]: I'm ready to move to the next exhibit to show to the military judge and the witness. It consists of ten pages, as well as three pages of translation. And I would ask that we scroll through each of the ten pages so the witness and the Military Judge can view them.

All right. I believe that all ten pages have been shown.

Q [MR. MURPHY]: Do you recognize that exhibit, Agent [redacted]?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: And did you show this exhibit to the accused?

A [MR. [redacted]]: Yes, we did.

Q [MR. MURPHY]: Did he recognize it?

A [MR. [redacted]]: Yes, he did.

Q [MR. MURPHY]: And we'll get into the details. But did he talk to you about what his understanding of that document is?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: And did he admit that it was present on him at the time of his capture?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: All right.

CTC [MR. MURPHY]: Your Honor, I would offer Government Exhibit 136 into evidence at this time.

CDC [MR. SCHNEIDER]: Could we roll back and just take a look at the Afghan passport? Those were going pretty quickly.

CTC [MR. MURPHY]: We would offer it into evidence at this time, Your Honor.

CDC [MR. SCHNEIDER]: We've never seen the original of this in the last seven and a half years.

CTC [MR. MURPHY]: Well, a copy has been provided.

CDC [MR. SCHNEIDER]: Do you have the original today?

CTC [MR. MURPHY]: Let me just check with counsel.

All we have is this copy, this photocopy. We do not have

the original.

CDC [MR. SCHNEIDER]: One question of the witness----

MJ [CAPT ALLRED]: Yes.

CDC [MR. SCHNEIDER]: ----and counsel? Where is the original?

WIT [MR. [redacted]]: I do not know, sir.

CTC [MR. MURPHY]: We do not know. We do not have it. But he was shown the copy and did comment and identify it.

CDC [MR. SCHNEIDER]: I guess I have another question, but with regard to this offer of evidence. From what was this copied? Who copied it? When and where?

WIT [MR. [redacted]]: **[Inaudible.]**

CDC [MR. SCHNEIDER]: Is it your understanding that he was carrying a copy of the card or an original?

WIT [MR. [redacted]]: Oh, no. It was the passport.

CDC [MR. SCHNEIDER]: The one that we don't know where it is?

WIT [MR. [redacted]]: Apparently.

CDC [MR. SCHNEIDER]: I suppose it goes to the weight. I'm just baffled.

MJ [CAPT ALLRED]: All right. Apparently without objection, then, Prosecution Exhibit 136 is admitted into evidence.

Q [MR. MURPHY]: But this image was shown to the accused, Salim Hamdan, while you were present. Is that correct?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: And what, if anything, did he say about what's now marked and offered into evidence as 136?

A [MR. [redacted]]: Mr. Hamdan explained that it was his passport issued--an Afghan passport, with the name he was using for that passport was Khalid Walid, which means the Son of Abdullah.

He explained that after the events of the USS COLE attack, he was returning from the Hajj. He had informed that his name had been exposed and he might be detained in Yemen, so Mr. Hamdan explained that he was looking for an Afghan passport that would be issued prior to 1996, 1994, for the reason that if he was using that passport, it wouldn't expose him, and hide his connection to his activities or work with al Qaeda in Afghanistan.

Q [MR. MURPHY]: And these were all things he told you during his interview?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: All right. There's three pages of translation following the passport. If we could proceed to that section.

Page one. Why don't we go through all three pages--two and three.

CTC [MR. MURPHY]: Those are the three pages, Your Honor, the defense has stipulated with the government is a fair and accurate translation.

Let's go to the next exhibit, a Yemeni ID card.

MJ [CAPT ALLRED]: What are we going to do with this translation? Is this considered----

CTC [MR. MURPHY]: We're going to offer it into evidence and make it available to the jurors during their deliberation. This particular witness was not involved in the preparation of the translation.

MJ [CAPT ALLRED]: Okay. So this will be attached to Prosecution Exhibit 136?

CTC [MR. MURPHY]: I propose it all be one exhibit, which would be the ten pages of the passport and the three pages of translation, all as 136.

MJ [CAPT ALLRED]: Very well.

Q [MR. MURPHY]: All right. Let's turn to what's marked now as 137 for ID, showing it to the Military Judge and the witness. It consists of two pages plus one page of translation. If we could scroll through those pages.

Agent [redacted], do you recognize this Yemeni ID card?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: And was this shown to the accused during your interview with him?

A [MR. [redacted]]: Yes, it was.

Q [MR. MURPHY]: And did he recognize it?

A [MR. [redacted]]: Yes.

Q [MR. MURPHY]: And did he admit that it was on his person or in his presence at the time of his capture?

A [MR. [redacted]]: Yes.

CTC [MR. MURPHY]: Your Honor, I would offer Government Exhibit 137 into evidence at this time.

CDC [MR. SCHNEIDER]: No objection.

MJ [CAPT ALLRED]: Very well.

CTC [MR. MURPHY]: And ask it that be published to the members.

MJ [CAPT ALLRED]: You may.

Q [MR. MURPHY]: And let's go to the first page of it. Let's take a look at the first page.

And now let's take a look at the second page. What, if anything, did the accused say about this document?

A [MR. [redacted]]: That's an actual Republic of Yemen issued ID card with his given name, true name, Salim Ahmed Hamdan.

Q [MR. MURPHY]: All right. And he admitted that it was with him at the time of his capture?

A [MR. [redacted]]: Yes.

Q [MR. MURPHY]: And that's the sum and substance of what he said regarding this document?

A [MR. [redacted]]: As best I can remember. Yes.

Q [MR. MURPHY]: All right. And let's turn to the one page of translation following this.

CTC [MR. MURPHY]: Your Honor, this is the stipulated translation. We would offer all of this, including the translation, as 137.

MJ [CAPT ALLRED]: Very well. It's admitted.

Q [MR. MURPHY]: Let's turn now to the next exhibit marked as 138. This consists of 42 pages of airline tickets.

I think we can move fairly quickly through the 42 pages, so if we can scroll through them from beginning to end so the Military Judge and the witness can see.

MJ [CAPT ALLRED]: I think if you show him the first few pages, he will recognize it.

Q [MR. MURPHY]: Okay. Agent [redacted], do you recognize this, based on these pages?

A [MR. [redacted]: I believe so.

Q [MR. MURPHY]: Okay. Did you show these pages to Salim Hamdan?

A [MR. [redacted]]: There--the Yemen Airlines or Yemeni Airline tickets that were on him?

Q [MR. MURPHY]: Yes.

A [MR. [redacted]]: In his possession?

Q [MR. MURPHY]: Yes.

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: And did you show this to him during your interview with him?

A [MR. [redacted]]: We did.

Q [MR. MURPHY]: And did he admit that these were in his possession at the time of his capture?

A [MR. [redacted]]: Yes.

Q [MR. MURPHY]: All right.

CTC [MR. MURPHY]: I would offer this into evidence at this time, Your Honor.

CDC [MR. SCHNEIDER]: No objection.

CTC [MR. MURPHY]: And ask that it be published.

MJ [CAPT ALLRED]: Very well.

Q [MR. MURPHY]: We don't need to spend a lot of time showing each image, but I would ask if we could just go through all 42 pages from the top, quickly; I think we can do that in a minute or two.

MJ [CAPT ALLRED]: What is it that you want the members to see? This looks like a bunch of fine print that will be illegible, in any event.

CTC [MR. MURPHY]: It will be much more visible when we print it out. It does not appear as clear on the screen as it does when you print it.

I'm happy to just have the agent discuss it.

MJ [CAPT ALLRED]: Why don't we do that? We'll give the members

a hard copy, and they can examine it.

CTC [MR. MURPHY]: We will provide a hard copy for them to have at their deliberations.

Q [MR. MURPHY]: When you showed this to Salim Hamdan, what, if anything, did he say about it?

A [MR. [redacted]]: He just said that they were airline ticket stubs for his wife, his young daughter, and himself.

Q [MR. MURPHY]: All right. And it was present with him at the time of his capture?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: All right. Let's turn to----

CTC [MR. MURPHY]: And there's no translation, I should add, to this particular document.

Let's turn to the next document marked as Number 139, and show it to the Military Judge and the witness. It consists of a single page as well as two pages of translation.

Q [MR. MURPHY]: Agent [redacted], do you recognize Exhibit 139?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: And did you show that to the accused at the time of your interview with him?

A [MR. [redacted]]: We did.

Q [MR. MURPHY]: And did he recognize it?

A [MR. [redacted]]: Yes.

Q [MR. MURPHY]: And did he say that it was present with him at the time of his capture?

A [MR. [redacted]]: He said it was present. Yes.

Q [MR. MURPHY]: All right.

CTC [MR. MURPHY]: Your Honor, I would offer 139 into evidence at this time.

MJ [CAPT ALLRED]: Is there a translation associated with it?

CTC [MR. MURPHY]: There is. I was going to get to that at the end, because this agent really can't speak to the translation. There is a stipulation that it is an accurate translation.

MJ [CAPT ALLRED]: Very well.

CTC [MR. MURPHY]: I certainly can show it, if the Court wants.

CDC [MR. SCHNEIDER]: We'll object until either this witness translates it or we know what it is.

CTC [MR. MURPHY]: All right. If we could then turn to the two pages of translation following this first page. That's the first page of translation. And the second.

We have a stipulation that this is a fair and accurate translation of this document, and I would offer it into evidence at this time.

CDC [MR. SCHNEIDER]: Objection: Relevance, authentication, foundation, identification.

CTC [MR. MURPHY]: Your Honor, the witness has identified----

CDC [MR. SCHNEIDER]: Hearsay.

CTC [MR. MURPHY]: ----the document. He has said that he showed it to the accused, and the accused made comments about it and the accused admitted it was on his person at the time of capture. It certainly is relevant, and the agent can testify as to what was said during the interviews with it.

MJ [CAPT ALLRED]: How is it relevant?

CTC [MR. MURPHY]: Your Honor, it's a letter to the head bodyguard, and the agent is prepared to provide testimony as to what Salim Hamdan said about it.

MJ [CAPT ALLRED]: Okay. So the relevance is still an issue, as far as I'm concerned. Why are you offering it?

CTC [MR. MURPHY]: Your Honor, this relates to bodyguard activities. One of the charged specifications is that he worked as a bodyguard. This relates to his work as a bodyguard.

MJ [CAPT ALLRED]: Is it written by him or to him?

CTC [MR. MURPHY]: I don't know the answer to that.

MJ [CAPT ALLRED]: Just a letter found in his possession when he was captured?

CDC [MR. SCHNEIDER]: Let's be clear. It's written by someone else other than Mr. Hamdan. It's written to someone else other than Mr. Hamdan. That came out already.

MJ [CAPT ALLRED]: I didn't hear the testimony about who it was written by. It's written by Al-Bijazi. I don't see who it's addressed to.

CTC [MR. MURPHY]: He will testify that this was being brought to bodyguards, in relation to his bodyguard work. We think that has relevance.

MJ [CAPT ALLRED]: He was a courier.

CTC [MR. MURPHY]: That's our assertion, Your Honor.

MJ [CAPT ALLRED]: You think of--okay. Well, I'm satisfied with the foundation, if it was found on his person when he was captured.

CTC [MR. MURPHY]: That's correct.

MJ [CAPT ALLRED]: I'm satisfied with the relevance if he was couriering at--what was the other objection, Mr. Schneider?

CDC [MR. SCHNEIDER]: Let's see. I think we went identification, authentication, foundation, hearsay, and relevance.

MJ [CAPT ALLRED]: Hearsay.

CDC [MR. SCHNEIDER]: It was hearsay.

MJ [CAPT ALLRED]: Okay. Let's talk about hearsay.

CTC [MR. MURPHY]: Well, Your Honor, it's not offered for the truth of the matter asserted, although I think it really shows why he was acting. He was heading to the front with missiles to al Qaeda cells, and that he is doing that really as part of his overall work as a bodyguard.

MJ [CAPT ALLRED]: Do I need to read the letter? I haven't really read the text of the letter yet.

CDC [MR. SCHNEIDER]: I think it's the same unique exception to the hearsay rule that we've heard the government advocate before, and that is, it's not offered for the truth of the matter asserted but we'd like to prove what's asserted in the letter. That's why it's offered.

MJ [CAPT ALLRED]: No. Well, they didn't get away with that last time.

CDC [MR. SCHNEIDER]: No, no. I'm not suggesting----

MJ [CAPT ALLRED]: I sustained that objection on exactly that basis last time.

CDC [MR. SCHNEIDER]: That's what I'm in favor of here, too, Your Honor. I didn't mean to suggest otherwise.

MJ [CAPT ALLRED]: Well, let me read the letter then. I apologize for this delay. Here's page one.

Okay. Can I see the next page, please?

All right. I'm going to sustain the objection on the basis of relevance. If you've got another witness that can explain its relevance, I will reconsider that. But I don't see what this does for anyone.

CTC [MR. MURPHY]: All right. I would only just say for the record that the testimony would be that----

CDC [MR. SCHNEIDER]: Excuse me. Objection. I think we know the basis for the objection and the ruling, and any further discussion of what's in the document is inappropriate at this time while the members are present.

CTC [MR. MURPHY]: All right. I'll move on then.

The next exhibit--we'll skip the previously marked exhibit, then, and go to the next marked exhibit of 140.

Q [MR. MURPHY]: Do you recognize that?

A [MR. [redacted]]: Yes.

Q [MR. MURPHY]: And what is it?

A [MR. [redacted]]: This is a letter written--I think the next page.

Q [MR. MURPHY]: All right. Then if we can go to the next page. It's a two-page exhibit. And if we can go to the next page.

A [MR. [redacted]]: Is there a following page?

Q [MR. MURPHY]: This is a two-page exhibit, with three pages of translation. Why don't we scroll through all three.

This is the first page? Okay. Let's go to the top and just scroll through all three, and plus the--let's scroll through all two pages, plus the three pages of translation.

Okay.

CDC [MR. SCHNEIDER]: The same objection, based on what I've seen of the Arabic so far with my ability----

MJ [CAPT ALLRED]: You can read Arabic?

CDC [MR. SCHNEIDER]: Well, a person in my vicinity reads Arabic. That doesn't mean I read Arabic, Your Honor. I'm just proximately located.

MJ [CAPT ALLRED]: Okay. Well, I'd like to see the English translation.

CTC [MR. MURPHY]: We can go to the English translation, which follows in two pages.

MJ [CAPT ALLRED]: Okay. And the next page?

Okay.

Q [MR. MURPHY]: Agent [redacted], did you show this to the accused?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: And did he recognize it?

A [MR. [redacted]]: Yes, he did.

Q [MR. MURPHY]: And did he admit that it was in his possession at the time of his capture?

A [MR. [redacted]]: He said it was amongst the items with him at that time.

Q [MR. MURPHY]: And did he tell you his understanding of this document?

A [MR. [redacted]]: Mr. Hamdan made a few comments about it.

Q [MR. MURPHY]: And what did he say?

CDC [MR. SCHNEIDER]: Objection. The same situation. It's a letter written from somebody else to somebody else. It's the exact same situation.

CTC [MR. MURPHY]: Your Honor, he has an understanding of the document. It relates to al Qaeda activities, and he can--the accused said he recognized it and commented on it.

CDC [MR. SCHNEIDER]: I have the same objection to counsel announcing his interpretation of what the document shows while we're discussing an objection which has not yet been ruled upon. It's inappropriate.

MJ [CAPT ALLRED]: I don't see the relevance of this document. Can you address that?

CTC [MR. MURPHY]: Well, the relevance of it is that he understood it; he was able to identify it. It relates to al Qaeda activity----

CDC [MR. SCHNEIDER]: Objection, Your Honor. That is the fourth time.

CTC [MR. MURPHY]: Well, I'm trying to answer the Court's questions. And I'm not getting into the content of the document.

MJ [CAPT ALLRED]: This is a letter from one person to another person.

CTC [MR. MURPHY]: Correct.

MJ [CAPT ALLRED]: That apparently Mr. Hamdan was carrying.

CTC [MR. MURPHY]: Correct. And he had something to say about it and could identify it.

MJ [CAPT ALLRED]: How is that relevant?

CTC [MR. MURPHY]: It shows his knowledge of the participation in the conspiracy.

Your Honor, if I could offer a suggestion on these objected to, the matters. There's other portions of the testimony I can proceed to, and then maybe we can take that up outside the presence of the members.

MJ [CAPT ALLRED]: Okay.

CTC [MR. MURPHY]: I offer that as a solution.

MJ [CAPT ALLRED]: Is this one--what's the number of this one? 141?

CTC [MR. MURPHY]: This is 141, and there are two others. But I propose, since this does appear to be a point of contention, that we proceed to the other matters now and return to this issue outside the presence of the members.

MJ [CAPT ALLRED]: Okay.

Q [MR. MURPHY]: All right. Let me get into the substance of what you discussed with Salim Hamdan. Did you talk to him about jihad?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: And what did he say about jihad?

A [MR. [redacted]]: Mr. Hamdan said that he was convinced of the need for seeking jihad and at the time, in 1996, the jihad front Tajikistan. And he would transit through Afghanistan in order to go to jihad at that front.

Q [MR. MURPHY]: All right. Did he give you a beginning timeframe of his jihad?

A [MR. [redacted]]: That was 1996.

Q [MR. MURPHY]: Did Salim Hamdan talk to you about Usama bin Laden?

A [MR. [redacted]]: Yes, he did.

Q [MR. MURPHY]: Did he know about Usama bin Laden before he met him?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: What did the accused say about his initial encounter with UBL?

A [MR. [redacted]]: Well, he said that prior to traveling to Afghanistan for his jihad, that he was aware of Usama bin Laden's pronouncements and communiqués. And he said he met him in--at that time, in 1996, after Mr. Hamdan and others going to Tajikistan, that front was actually closed due to some sort of political settlement. And then the leader of the group sometimes referred to as the northern battalion or the northern group, seeking to go to

Tajikistan--his name was Muhammed bin Attash, he is now deceased--he suggested that the group, including Mr. Hamdan, meet Usama bin Laden.

Q [MR. MURPHY]: When they met, when Usama bin Laden and Hamdan met, did Usama bin Laden give Mr. Hamdan an assignment?

A [MR. [redacted]]: Yes, he did.

Q [MR. MURPHY]: And when was that?

A [MR. [redacted]]: Well, in his meeting with--this was in 1996. In his meeting--first meeting with Usama bin Laden, there was discussion about Mr. Salim's background, where he was from in Yemen, and his special talents and abilities. And so the assignment initially was to be hired as a driver, which Mr. Hamdan had mentioned that he had a particular interest and talent with driving cars. Although he was hired at that time as a driver by Usama bin Laden, his initial assignment was to the farms under his control.

Q [MR. MURPHY]: Did Mr. Hamdan talk about being paid by UBL for this position?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: And how much was that?

A [MR. [redacted]]: He said it was somewhere between $200 to $300 a month, with a stipend of a little under $100 for a housing allowance.

Q [MR. MURPHY]: Approximately eight months after Hamdan met UBL, did Mr. Hamdan get a specific assignment from UBL?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: And what was that?

A [MR. [redacted]]: That was to be Usama bin Laden's personal driver and as well as a bodyguard.

Q [MR. MURPHY]: Did Mr. Hamdan admit how long he held this position?

A [MR. [redacted]]: Yes, he did. He said that position was roughly, going by the time frame, probably the later part of 1996 through 2001, at the time of his capture in Afghanistan.

Q [MR. MURPHY]: Did you talk to Mr. Hamdan about bayat?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: What does the term “bayat” mean?

A [MR. [redacted]]: Bayat comes from the Arabic term which in-- one translation is literally extending the hand for a sacred oath. It actually goes back to a tradition of the Prophet Mohammed himself, where he provided an opportunity to his closest companions to extend his hand; and, upon touching of the hand, it shows a covenant with God that one who does pledge the bayat is willing to carry out God's will.

Q [MR. MURPHY]: Did Salim Hamdan tell you he pledged bayat to a specific person?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: And who was that?

A [MR. [redacted]]: He said he pledged bayat to Usama bin Laden.

Q [MR. MURPHY]: Did Mr. Hamdan talk about a certain type of bayat that Mr. Hamdan claimed he pledged to UBL?

A [MR. [redacted]]: Yes. In talking about that bayat, he said he asked bin Laden about a condition or a proviso that he could place on that bayat. And the proviso being that the jihad must remain expelling the Jewish and Christians or killing Jews and Christians, expelling them from the Arabian Peninsula; however, if the jihad became Muslim-on-Muslim or political-type violence, he reserved the right to reserve from that bayat. And Mr. Hamdan said Usama bin Laden agreed to that.

Q [MR. MURPHY]: All right. And is bayat important within the al Qaeda organization?

A [MR. [redacted]]: In my experience, yes, sir.

Q [MR. MURPHY]: And why is that?

A [MR. [redacted]]: Well, first of all, it's not often talked about, and the way it's described is more or less a secret or confidential type arrangement, like to the leader. So if we have an individual that either says other brothers pledged bayat, that's an

important piece of information in intelligence. If an individual actually talks about his bayat, it's quite significant.

Q [MR. MURPHY]: Are you familiar with the term “fatwa”?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: As part of your work as an investigating agent in this case, did you learn about two fatwas, one in 1996, and one in 1998?

A [MR. [redacted]]: Yes, I did.

Q [MR. MURPHY]: And what did you find relevant as an investigator in this case to those two fatwas?

A [MR. [redacted]]: Well, with this particular case, Mr. Hamdan said that he was familiar with those fatwas and found that significant.

Q [MR. MURPHY]: And what does the term mean?

A [MR. [redacted]]: Well, fatwa is a pronouncement of— traditionally, historically based on coming from the Koran itself or Islam jurisprudence. But there's been an evolution over time where currently it can be either issued by a recognized religious authority or the leader of a cause who may not have religious credentials. Now, Usama bin Laden falls into that later category for the 1996 declaration of war in the 1998 fatwa.

Q [MR. MURPHY]: Did Mr. Hamdan talk to you personally about his knowledge of these two fatwas?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: And what did he say?

A [MR. [redacted]]: Well, he said that he was familiar with the declaration of war, and that he believed in what the 1998 pronouncement, which was--the title of it was the Formation of the World Islamic Front for Jihad Against Jews and Crusaders, Christians. And he talked about how that was his jihad. And he said in that context, it wasn't Usama bin Laden who had convinced him of the jihad. He said that the jihad comes from the Prophet Mohammed himself, and he believed even before he even met Usama bin Laden.

But the 1998 fatwa is particularly important, because for us as a criminal investigator or in the intelligence community, the language of the fatwa specified--taken forward from the declaration of war in 1996, that it was a commandment from God to kill Americans, regardless of civilian or military, anywhere in the world, along with their allies, and as well as to steal their wealth. This was part of the strategy that those who buy into that believe in, that, yes, it's expelling the infidels from the Arabian Peninsula. But that strategy is well provided where he specified to kill Americans anywhere.

Q [MR. MURPHY]: All right. And Mr. Hamdan indicated that he knew about both of these fatwas?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: And both of these fatwas were issued by who?

A [MR. [redacted]]: Usama bin Laden, for the 1998 formation of the front. That actually had four other signatories, including Ayman Zawahiri, who at the time was the head of the Egyptian Islamic Jihad.

Q [MR. MURPHY]: In addition to being Usama bin Laden's driver, did he admit other duties that he performed for UBL?

A [MR. [redacted]]: Yes.

Q [MR. MURPHY]: And what were those?

A [MR. [redacted]]: Well, as mentioned before, bodyguard. And then, also at times tasked to transport weapons for al Qaeda, al Qaeda--to change vehicles upon tasking by Saif Al-Adel, who was the head of the bodyguard unit, meaning the security committee for al Qaeda.

Q [MR. MURPHY]: Did Mr. Hamdan talk to you about any standard rotation of the bodyguards that UBL used?

A [MR. [redacted]]: Yes, sir. Mr. Hamdan described how Usama bin Laden himself would call for frequent rotation of the bodyguards for security purposes. And he further detailed that sometimes those bodyguards would go, for example, to being nearer the guesthouse or to go to training camps, or to fight in the frontlines against the

forces of Ahmad Shah Masood.

Q [MR. MURPHY]: Did Mr. Hamdan talk to you about security measures that he, meaning Mr. Hamdan, used when acting as UBL's driver and bodyguard?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: And what did he say about that?

A [MR. [redacted]]: Well, he described the formation of a convoy for movement of Usama bin Laden, typically composed of five vehicles, often Toyota Hilux pickup trucks, where the guards would carry variations of PK machine gun, Kalashnikov rifles, rocket-propelled grenade launchers. And Mr. Hamdan said he himself preferred a Russian 90 factored Makarov handgun. And he also said two-way radio communications were an important part of the convoy movement. Now, from my experience, that's the description of a professional, professionalized protective service operation.

Q [MR. MURPHY]: In the event that UBL was attacked, did Mr. Hamdan tell you what his main role would be?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: And what was that?

A [MR. [redacted]]: That would be to drive Usama bin Laden to safety.

Q [MR. MURPHY]: Did Hamdan state to you the role of the other drivers and bodyguards in the convoy should UBL come under attack?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: And what was that?

A [MR. [redacted]]: The other guards in the convoy were to engage the attackers. But Mr. Hamdan did add that during this time, from 1999 to 2001, the convoy never came under attack. So he wasn't quite sure, you know how the others would engage.

Q [MR. MURPHY]: What did Mr. Hamdan tell you about the need for Usama bin Laden to routinely change vehicles?

A [MR. [redacted]]: He said that was a part of the tasking from Usama bin Laden and sometimes Saif Al-Adel as well; to frequently change out the vehicles. And he gave an example of once where there was a convoy movement from Kandahar to Kabul in Afghanistan. And he said Sheikh Usama tasked him to go to one of the al Qaeda locations and obtain the swapped-out vehicle.

Q [MR. MURPHY]: All right. Did Mr. Hamdan talk to you about obtaining weapons and ammunition for Usama bin Laden?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: What did he say about that?

A [MR. [redacted]]: Well, he said typically, when tasked to do that, it would come from Saif Al-Adel. And he would receive some paperwork, forms from Saif Al-Adel, and then go to a Taliban

warehouse, obtain the weapons and ammunitions in one of the al Qaeda vehicles, and then transport those weapons and ammunition to an al Qaeda type storage facility. Again, that was usually tasking directly from Saif Al-Adel.

Q [MR. MURPHY]: Did Mr. Hamdan talk to you about training he received at the Al-Farouq training camp?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: And what did he say about that?

A [MR. [redacted]]: Mr. Hamdan explained that from his growing up in Yemen he was with familiar with weapons and, thus, he didn't require the basic training that a lot of those going to the camps would obtain at a place such as Al-Farouq. But he said he took opportunities as often as he could to go for various small arms training, usually a two- to three-day type course. And he also explained that with Usama bin Laden's frequent visits to a place like Al-Farouq training camp, that he would have pressed the Sheikh's permission to take advantage of that opportunity and do some weapons proficiency.

Q [MR. MURPHY]: All right.

CTC [MR. MURPHY]: Your Honor, with the permission of the Court, I'd like to show the witness an image that's already been admitted that's Exhibit 26.

MJ [CAPT ALLRED]: You may show it to the Court and to the

members. It's been admitted.

CTC [MR. MURPHY]: And I would ask, since it is admitted, that it be published to all.

MJ [CAPT ALLRED]: You may.

Q [MR. MURPHY]: Can you see that?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: All right. Do you recognize what has previously been admitted as Exhibit 26?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: Can you identify, based on your own knowledge and investigations, certain people in this image?

A [MR. [redacted]]: Yes, I can.

Q [MR. MURPHY]: Who is that? Can you tell us who you can identify? And you can mark on the screen.

MJ [CAPT ALLRED]: He says you can mark on the screen. Why don't you try putting your finger there and see what happens.

A [MR. [redacted]]: Off a little bit. That's Mr. Salim Hamdan.

Q [MR. MURPHY]: All right. Are you aware, based on your work in this case, of certain conditions under which this video is made?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: And what is that?

A [MR. [redacted]]: From working on this case as well as others, case agents in the Criminal Investigation Task Force at Fort Belvoir

explained that this was seized by U.S. Special Operations forces in Afghanistan. And this is a still shot from what's referred to as an Eid Al-Fitr videotape, which was seized, again, by those forces. And this would have been the end of Ramadan, which is a significant time which would have been on or about the 5th of January 2000, which is just a few days after the attempt on the USS THE SULLIVANS. I know that from my casework on the USS COLE attack.

This is in another way, significant, too, because as far as we know it's not published before that time like other al Qaeda productions for propaganda. So this appeared to be more internal or archival footage showing Usama bin Laden, who is also depicted in this photograph, as well as another well-known bodyguard, a senior level bodyguard when he was making an Eid Al-Fitr, end of Ramadan, speech.

Also significant, too, because Mr. Hamdan is seen carrying some form of a long gun or assault rifle as well as what appears to be a two-way radio. And as you can see, he is in quite close proximity to Usama bin Laden.

Q [MR. MURPHY]: All right. We can take the image down.

Several weeks before the 9/11 attack, did Usama bin Laden say something of significance to Salim Hamdan?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: What was that?

A [MR. [redacted]]: He told, as Salim related to us, that he said to prepare for a long trip.

Q [MR. MURPHY]: What, if any, preparations were taken when Usama bin Laden talked about a long trip shortly before the 9/11 attack?

A [MR. [redacted]]: Mr. Hamdan explained that it was sometime between the week and two weeks before the 9/11 attack itself, and they were to--as tasked by Usama bin Laden, to form up a convoy with the vehicles, the two-way radio, and the communications--or, the weapons, I should say, and then prepare for movement.

However, as was the custom, as explained by Salim Hamdan, for security purposes bin Laden would not inform the convoy where the movement was to be until actually he would either take a front seat or rear seat in the vehicle that Salim was driving. In this case, as they left the location he stopped the convoy and then said, “We're going to head in the direction of Kabul.”

Q [MR. MURPHY]: Did Salim Hamdan describe his travels with UBL during this period of time?

A [MR. [redacted]]: Yes, sir, he did.

Q [MR. MURPHY]: And what did he say?

A [MR. [redacted]]: Well, he said that there was a period of frequent movements of the bodyguard and the security details. And he

said at times Usama bin Laden would stay at the home, for example, of Muhammed Salah, who is one of the original Shura Council members for al Qaeda. And he said at other times they would camp in what was roughly called the middle of nowhere.

Q [MR. MURPHY]: All right. Did Salim Hamdan talk to you about UBL's plans regarding the United States of America?

A [MR. [redacted]]: Yes, sir, he did.

Q [MR. MURPHY]: And what did he say?

A [MR. [redacted]]: He said that such operations as that, as whether it's East Africa or the USS COLE and, in particular, 9/11, was designed to strike fear in the heart of the enemy and, in particular, to show the United States that al Qaeda--that Usama bin Laden could hit it in the home-front.

Q [MR. MURPHY]: And these are things that Salim Hamdan said to you?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: Correct? That he personally heard UBL say?

A [MR. [redacted]]: That's correct.

Q [MR. MURPHY]: Did Salim Hamdan use a phrase to describe how he felt about working with Usama bin Laden and how he felt regarding such operations as the East Africa attack, the USS COLE attack, and the attack of September 11th? Did he use an Arabic phrase?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: What is that?

A [MR. [redacted]]: Hamas muthluk.

Q [MR. MURPHY]: And how is that translated?

A [MR. [redacted]]: Uncontrollable passion or zeal.

Q [MR. MURPHY]: That was the emotion that this accused told you he felt about working with UBL. Is that right?

A [MR. [redacted]]: That he personally felt. Yes, sir.

Q [MR. MURPHY]: And that he felt about the three attacks that I just mentioned?

A [MR. [redacted]]: Yes, sir. And he also explained in a broader sense that amongst the brothers or the al Qaeda members, that it instilled passion in them in carrying out--using the example of--the East Africa attack, the USS COLE attack, and the 9/11 attacks.

Q [MR. MURPHY]: All right.

CTC [MR. MURPHY]: Your Honor, there's four pieces of evidence that are at issue. May I request that we go into a 39(A) session? I don't think this will take long. And deal with that issue at this time.

MJ [CAPT ALLRED]: Have you finished your direct examination of this witness?

CTC [MR. MURPHY]: Except for those remaining portions.

MJ [CAPT ALLRED]: Okay.

Members, if you will excuse us, and withdraw to the

deliberation room while I resolve this issue with counsel, and then we will call you back.

[Members withdrew from the courtroom.]

[The military commission terminated and the R.M.C. 803 session commenced at 0942, 31 July 2008.]

MJ [CAPT ALLRED]: Okay. Please be seated **[all persons did as directed]**. The members have withdrawn from the courtroom.

CTC [MR. MURPHY]: Your Honor, this is fairly short testimony. If I could be permitted for the record just to go through these four pieces, I think I can do it in ten minutes and then we will have established a record of what the relevancy is, what the testimony the government would like to elicit, and then the Court can make a full ruling on the admissibility of it.

MJ [CAPT ALLRED]: That sounds good.

[END OF PAGE]

TESTIMONY OUTSIDE THE PRESENCE OF THE MEMBERS

DIRECT EXAMINATION

Questions by the civilian trial counsel:

Q [MR. MURPHY]: All right. Why don't we go back to where we stopped, with some difficulty, which was Exhibit 139, the letter that we've referred to or piece of document that we've referred to generally as the letter to the head bodyguard. If we could show that exhibit, which is one page, to the defense, the Military Judge, and the witness. And then why don't we also look at the two pages of translation that followed that, very briefly. It's the first page. And why don't we go to the second page.

All right. Agent [redacted], did you show--and let's go back to the first page, the exhibit itself.

Did you show this document to the accused during your interview with him?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: And did he recognize it?

A [MR. [redacted]]: He did.

Q [MR. MURPHY]: And did he state that it was with him at the time of his capture?

A [MR. [redacted]]: Amongst his possessions at the time.

Q [MR. MURPHY]: Amongst other things, this was with him. But he specifically identified this as being with him----

A [MR. [redacted]]: Yes.

Q [MR. MURPHY]: ----at the time of his capture. Did you ask him to comment about it?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: And what did he say?

A [MR. [redacted]]: Well, he talked about this in the context of a letter pertaining to Usama bin Laden and bodyguard issues. It's addressed to--at the very top after the greetings, it's to Abu Assim. And he said--and we knew this, but he said that that refers to Abu Assim Al-Maghribi who was sometimes was called the leader of the bodyguards, but actually he's the most senior member as described by Mr. Hamdan who held a special place of significance with the bodyguards. So--and there were many more comments that I remember after this, other than the recognition that was to address Abu Ubaida al-Hadrami. It’s a nice term. It means literally uncle, but he's not really uncle. So it's addressed to Abu Assim Al-Maghribi about bodyguard issues.

Q [MR. MURPHY]: All right. And these are comments that the accused made to you?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: All right. Now, let's look at next Exhibit, 140. It consists of four pages of evidence and two pages of translation. Why don't you take a look at each of the four pages?

All right. Do you recognize that piece of evidence?

A [MR. [redacted]]: **[Examining the PE 140 for ID]** Yes, sir.

Q [MR. MURPHY]: And was that shown to the accused?

A [MR. [redacted]]: Yes, it was.

Q [MR. MURPHY]: And did he admit that it was in his possession at the time he was captured?

A [MR. [redacted]]: Yes.

Q [MR. MURPHY]: And did you question him about it?

A [MR. [redacted]]: Yes, sir. For his comments.

Q [MR. MURPHY]: And what did he say about this?

A [MR. [redacted]]: This letter pertained to issues going on in Afghanistan at the time, like, for example, of the shelling of the Al-Wafa. This is the--because I haven't seen the whole letter here.

Q [MR. MURPHY]: All right. Did he comment on it?

A [MR. [redacted]]: Yes.

Q [MR. MURPHY]: And what you just said is what he reported. Is that right?

A [MR. [redacted]]: Yes.

Q [MR. MURPHY]: All right. Let's take a look at the next piece of evidence, consisting of two pages, the first page and the second page.

Did you show this evidence to Mr. Hamdan?

A [MR. [redacted]]: Although, on my screen I can't really see this one all that clearly. So.

Q [MR. MURPHY]: All right. Can we go back to the first page?

CDC [MR. SCHNEIDER]: Perhaps I can help. Do you speak Arabic?

WIT [MR. [redacted]]: Yes.

CDC [MR. SCHNEIDER]: Isn't that upside down rather than right side up?

WIT [MR. [redacted]]: That, the next page? That page? No, sir.

CDC [MR. SCHNEIDER]: The page that's on the screen now?

WIT [MR. [redacted]]: This is right side up.

CDC [MR. SCHNEIDER]: And the next one? Upside down?

WIT [MR. [redacted]]: Yes. That's what I said, I can't--I forgot my glasses, actually, as well, sir.

MJ [CAPT ALLRED]: I think we're trying to turn it around. I think we have it right side up now?

CDC [MR. SCHNEIDER]: Well, it would be appropriate to have the witness stand on his head, but we can turn the document around.

MJ [CAPT ALLRED]: All right?

A [MR. [redacted]: Yes. This again, the comments that pertains to media matters for al Qaeda as commented by Mr. Hamdan. One of the purpose--one of the names depicted is Abu Ayman, who was associated with media matters. And, again, there really weren't that many comments beyond that other than they were meeting.

Q [MR. MURPHY]: But he did state that it was on his--within his possession at the time of his capture?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: All right. Let's turn to the last piece of evidence, 142. It consists of two pages as well as two pages of translation. Did you show this to Salim Hamdan?

A [MR. [redacted]]: Yes, sir.

Q [MR. MURPHY]: And did he admit that it was on his possession at the time of his capture?

A [MR. [redacted]]: Yes.

Q [MR. MURPHY]: And what, if anything, did he say about this?

A [MR. [redacted]]: This one is quite significant, because he pointed out this was written by Mukhtar and also it says Al-Mukh, which are the names associated with KSM, Khalid Sheikh Muhammed. And it was written to someone using the kunya or nickname Abu Adel Al-Hadri. Now, Mr. Hamdan, the only other comment he made, he said, “I know many Abu Hadi Al-Hadris, Yemenis,” that's sort of an area of Yemen. But Mr. [redacted] and myself, we knew that name was a kunya

associated with Ramzi bin Al-Shibh. But Mr. Hamdan did not say that he knew that to be Ramzi bin Al-Shibh.

Q [MR. MURPHY]: All right. Did he make any other comments about it?

A [MR. [redacted]]: Not that I recall.

CTC [MR. MURPHY]: All right. Your Honor, we would offer this evidence and the comments that Salim Hamdan made about each of these pieces of evidence through the testimony of Agent [redacted]. It's significant that he admitted that it was in his possession; he could provide some brief comments about his understanding of the material; and it is relevant to al Qaeda activity. I think particularly the fact that he admits that this was with him at the time of his capture does make it relevant.

MJ [CAPT ALLRED]: Okay. Let's hear the defense. So to make sure I understand the government's position, it's that the mere fact that he had these letters and that they have something to do with other members of al Qaeda is what makes the documents relevant?

CTC [MR. MURPHY]: I'm sorry, I was talking to counsel. I didn't hear the Court's comment.

MJ [CAPT ALLRED]: I should have let you talk to counsel.

CTC [MR. MURPHY]: I'm sorry.

MJ [CAPT ALLRED]: You're offering this merely because he had them on his person or in his vehicle.

CTC [MR. MURPHY]: Correct.

MJ [CAPT ALLRED]: And because they have the names of other al Qaeda players.

CTC [MR. MURPHY]: That's right. And, of course, this fits into the context of the prior testimony, that he was heading towards al Qaeda cells defending Kandahar. He was bringing a missile to them, and he had this material with him. We think that makes it relevant.

MJ [CAPT ALLRED]: Are you not hearing the translation?

Okay. It looks like we're good again. Okay. Let's hear from the defense.

CROSS-EXAMINATION

Questions by the civilian defense counsel:

Q [MR. SCHNEIDER]: Agent [redacted], you just heard how significant it is that he admitted that it was on his person. Right?

A [MR. [redacted]]: Yes, sir.

Q [MR. SCHNEIDER]: Let's go to your report. Do you have it in front of you?

A [MR. [redacted]]: I do not.

Q [MR. SCHNEIDER]: Could your counsel get you a copy.

WIT [MR. [redacted]]: The Form 40? Is that available?

CDC [MR. SCHNEIDER]: The ten page, single-spaced, May 17, 2003.

CTC [MR. MURPHY]: I do have the Form 40, Your Honor.

CDC [MR. SCHNEIDER]: I can ask a few questions while your counsel----

MJ [CAPT ALLRED]: Are your reading glasses what you need?

WIT [MR. [redacted]]: With print that size, I'm good.

CDC [MR. SCHNEIDER]: We can enlarge it as much as you'd like.

WIT [MR. [redacted]]: That's fine.

MJ [CAPT ALLRED]: Are you going to ask him to look at the documents somehow and ask him questions about the document?

CDC [MR. SCHNEIDER]: I am.

CTC [MR. MURPHY]: I have a copy of the agent's Form 40.

MJ [CAPT ALLRED]: Okay. I will have the bailiff bring it up to the witness, then.

CDC [MR. SCHNEIDER]: It's more important that you look at it than me--than I look at it. Excuse me.

Q [MR. SCHNEIDER]: That is the report that you prepared?

A [MR. [redacted]]: Yes, sir.

Q [MR. SCHNEIDER]: Given what we just heard, can you take me to the description of--let's take the first item. The first exhibit that's been offered, 136, perhaps?

MJ [CAPT ALLRED]: 139 is what I'm looking at.

CDC [MR. SCHNEIDER]: 139.

Q [MR. SCHNEIDER]: And once you've found it, just let us know how you described it by exhibit number in your report. The same exhibit.

A [MR. [redacted]]: And which exhibit are we referring to?

Q [MR. SCHNEIDER]: 139.

A [MR. [redacted]]: But--did.

MJ [CAPT ALLRED]: You've given him a copy of his report. But you're asking him about the one-page letter to the head bodyguard?

CDC [MR. SCHNEIDER]: Right. I'll----

Q [MR. SCHNEIDER]: When is the last time you read this report?

A [MR. [redacted]]: Parts of it, this morning.

Q [MR. SCHNEIDER]: And yesterday?

A [MR. [redacted]]: Not yesterday.

Q [MR. SCHNEIDER]: Last week?

A [MR. [redacted]]: Probably.

Q [MR. SCHNEIDER]: Try Exhibit N. Page 9 of 10. Is that the same document, A Massim?

MJ [CAPT ALLRED]: Page 9 of your report. Do you see that?

Q [MR. SCHNEIDER]: It's three sentences, four sentences. Perhaps we could go to the Elmo momentarily. Would that be okay with the court clerk?

MJ [CAPT ALLRED]: I see it on my screen up here. Do you see it there?

A [MR. [redacted]]: Page 9. If we're referring to the letter addressed to Abu Assim Al-Maghribi?

Q [MR. SCHNEIDER]: Yes. Abu Assim. Given the significance that's been attached to what you've described as his admission that it was his or was on his person or was somehow in his possession as opposed to being in somebody else's car--what were your words? How did you describe his admission that it was his?

A [MR. [redacted]]: Actually, it's on page 10 of the copy I'm looking at. I'm sorry for the confusion, it's in two different formats.

MJ [CAPT ALLRED]: Okay. Why don't you step up and show the witness exactly what you--find it on his copy of the document, if you would, so he's not looking.

CDC [MR. SCHNEIDER]: I think I can do it this way, if it's okay with the Court.

Q [MR. SCHNEIDER]: Page 9, Exhibit N.

A [MR. [redacted]]: Yes, sir.

Q [MR. SCHNEIDER]: Do you see the following words: Hamdan reviewed a photo copy of a document marked as Exhibit N?

A [MR. [redacted]]: Yes, sir.

[END OF PAGE]

Q [MR. SCHNEIDER]: Does the description that followed look like what's been marked for identification in this trial as Exhibit 139 for identification?

A [MR. [redacted]]: Well, 139 was the copy of the Abu Assim. Yes, sir.

Q [MR. SCHNEIDER]: And isn't it true that nowhere in this description of what he told you did you note that he said it was his?

A [MR. [redacted]]: That's correct.

Q [MR. SCHNEIDER]: And you didn't note that he said it was on his person.

A [MR. [redacted]]: I recall in the context of the conversation that these were items found either on him or in the vehicle.

Q [MR. SCHNEIDER]: Or in the vehicle.

A [MR. [redacted]]: Yes, sir.

Q [MR. SCHNEIDER]: As opposed to what we just heard about, on his person?

A [MR. [redacted]]: Well, I don't know, in looking at the Form 40 or any notes or trying to recall from the interview whether it was established whether they're items--except for the ID card and the passport, items that were actually on his person or in the vehicle.

Q [MR. SCHNEIDER]: So what you're telling us is that the truth of the matter asserted is that you don't know. You didn't note and

you can't tell us today that he said it was on his person as we heard it described by someone other than you.

CTC [MR. MURPHY]: Objection, Your Honor. The question was, was it in his possession.

MJ [CAPT ALLRED]: Well, I think Mr. Schneider is trying to find out whether this was something Mr. Hamdan actually knew that he had and knew the contents of, or whether it was simply found in the vehicle; and, when shown it, he recognized the names and could explain something about its context.

Q [MR. SCHNEIDER]: Agent [redacted] I see you nodding your head and looking at me. Am I right or am I wrong?

A [MR. [redacted]]: Yes and no, actually, Mr. Schneider. In the context in the interview, Hamdan is describing his bodyguard duty, describing how he dropped his wife off at the border with Pakistan. And, in returning he said to the Sheikh--he's in a car with all these items, items that pertain to bodyguard issues, circumstantially and plausibility, courier----

Q [MR. SCHNEIDER]: You just don't know that he said it was on his person or that it was his?

A [MR. [redacted]]: That's correct.

[END OF PAGE]

Q [MR. SCHNEIDER]: Okay. That's fair enough. And I didn't mean to be abrupt with you, but I was trying to make a point.

Isn't it true that what he did the day you saw him and what you noted in your report was: I showed him the document, and he explained to me who the person was, who was named in the document.

He provided helpful information in that regard. Didn't he?

A [MR. [redacted]]: Yes, he did.

Q [MR. SCHNEIDER]: I mean, he wasn't saying it's his letter. He was saying, “I'll tell you who that person is whose name is in the letter you've shown me”?

A [MR. [redacted]]: But, again, these were items with him at the time of his capture.

Q [MR. SCHNEIDER]: Or in the car. Right?

A [MR. [redacted]]: Correct.

Q [MR. SCHNEIDER]: And you don't know which, whether it was on his person or in the car. Do you?

A [MR. [redacted]]: Other than the ID card and the passport, I cannot recall if it was established.

Q [MR. SCHNEIDER]: Fair enough. And if I asked you the same questions, perhaps a little less excitedly, about those other exhibits that you were shown to which there was an objection, the same thing is true. Right?

A [MR. [redacted]]: Well----

Q [MR. SCHNEIDER]: You can't tell us?

A [MR. [redacted]]: Yeah. If you're asking if that's the way I would answer it any time asked, yes, sir.

Q [MR. SCHNEIDER]: And you and I see eye to eye on that. Don't we?

A [MR. [redacted]]: I would answer--keeping on the right track, but answer in the same way.

CDC [MR. SCHNEIDER]: Thank you.

MJ [CAPT ALLRED]: Okay. I will sustain the objection of the defense to these four documents. There's been no showing that Mr. Hamdan was aware at the time that he was captured that these documents were in his possession or that he knew the contents of them. So they may well have been simply in the car belonging to the owner of the car. So that brings that to a conclusion.

Have you completed your direct examination of Mr. [redacted], then?

CTC [MR. MURPHY]: If we may just have a moment, Your Honor.

CDC [MR. SCHNEIDER]: While conferring, I would suggest an instruction to that effect when the members return.

CTC [MR. MURPHY]: Your Honor, in regard to that, I think there is a final question we would ask on direct. And that is, did----

MJ [CAPT ALLRED]: Did you want to ask this in front of the members?

CTC [MR. MURPHY]: Yes. But just so there's no concern about it. Just one question.

MJ [CAPT ALLRED]: Okay.

REDIRECT EXAMINATION

Questions by the civilian trial counsel:

Q [MR. MURPHY]: During your interviews, did Mr. Hamdan tell you where he was headed at the time he was captured?

A [MR. [redacted]]: Yes.

Q [MR. MURPHY]: And where was that?

A [MR. [redacted]]: He said he specifically was returning to link up with the Sheikh, Usama bin Laden.

CTC [MR. MURPHY]: That's the final question we would like to ask in front of the members.

MJ [CAPT ALLRED]: Absolutely. Please call the members back into the courtroom. I will give the instruction that the defense objection has been sustained.

CDC [MR. SCHNEIDER]: Your Honor, they heard a lot about it prior to the objection. I will----

MJ [CAPT ALLRED]: I will elucidate.

CDC [MR. SCHNEIDER]: Very good.

MJ [CAPT ALLRED]: And if you think my elucidation is inadequate----

CDC [MR. SCHNEIDER]: I will overrule you.

MJ [CAPT ALLRED]: Let it be done.

CDC [MR. SCHNEIDER]: Okay.

[Members returned to the courtroom.]

[The R.M.C. 803 session terminated and the military commission commenced at 1001, 31 July 2008.]

MJ [CAPT ALLRED]: Please be seated **[all persons did as directed]**. Thank you, members, for returning to the courtroom.

Members of the court, during your absence I sustained the defense's objection to the four documents that the witness was testifying about because the government was unable to show that Mr. Hamdan knew that those were in his possession or knew of the contents when he was apprehended. They were just in the vehicle, and that's all they were able to show. So, please disregard any discussion about those documents that you may have heard before I ask you to withdraw.

Trial Counsel, you may continue your examination.

CTC [MR. MURPHY]: Yes, Your Honor. I'm really down to the last question.

DIRECT EXAMINATION CONTINUED

Questions by the civilian trial counsel:

Q [MR. MURPHY]: At the point of Mr. Hamdan's capture, did he admit to you where he was headed?

A [MR. [redacted]]: Yes.

Q [MR. MURPHY]: And where was that?

A [MR. [redacted]]: He explained that after he had dropped--taken his wife, daughter, and other family members up to the border--or, down to the border of Pakistan, he was returning specifically to rejoin with Sheikh Usama bin Laden.

Q [MR. MURPHY]: Thank you.

CTC [MR. MURPHY]: Your Honor, we have no further questions.

MJ [CAPT ALLRED]: Very good. Thank you.

Mr. Schneider.

CDC [MR. SCHNEIDER]: Your Honor.

MJ [CAPT ALLRED]: I see you marching forward with a purpose, but I wonder if this might be a good time for a recess.

CDC [MR. SCHNEIDER]: I know this is a bit unconventional. I would like to ask the witness one question before the recess so maybe he can help me do my homework during the recess.

MJ [CAPT ALLRED]: Please do.

[END OF PAGE]

CROSS-EXAMINATION

Questions by the civilian defense counsel:

Q [MR. SCHNEIDER]: With regard to the last question you were asked, can you refer to your written report where you indicated what you just told Mr. Murphy?

Check the first page. The second page.

A [MR. [redacted]]: On the copy I have, on page 5 of 11, about the top portion.

Q [MR. SCHNEIDER]: Your copy says 5 of 11?

A [MR. [redacted]]: Yes, sir.

MJ [CAPT ALLRED]: It appears that this document has been produced in two different fonts and the pagination is a little bit off.

CDC [MR. SCHNEIDER]: I'm looking at a different report than you are. We'll take it up after the recess.

MJ [CAPT ALLRED]: Okay. Members of the court, we've been on the record for an hour and a half. You may have had a break, but I think the rest of the participants would appreciate a chance to stretch their legs. It's a little bit after 1000. Why don't we come back in 15 minutes.

We'll be in recess.

[The military commission recessed at 1004, 31 July 2008.]

[The military commission was called to order at 1025, 31 July 2008. All parties present when the commission recessed were once again present.]

MJ [CAPT ALLRED]: Court is called to order. All right. You may continue.

CDC [MR. SCHNEIDER]: May I hand the witness a copy of his May 17, 2003 report that was marked as an appellate exhibit when he testified in December?

MJ [CAPT ALLRED]: May you have it?

CDC [MR. SCHNEIDER]: May I hand it to the witness?

MJ [CAPT ALLRED]: Oh, you may. Yes.

Do you know what appellate number has been assigned to that?

CDC [MR. SCHNEIDER]: We're trying to figure it out; but because that computer data base isn't accessible in this courtroom, I can't tell you.

MJ [CAPT ALLRED]: Okay. Well, this is a copy of his statement then.

CROSS-EXAMINATION CONTINUED

Questions by the civilian defense counsel:

Q [MR. SCHNEIDER]: You recognize that 11-page statement from December, when you testified that it was your final report. Right?

A [MR. [redacted]]: Yes, sir.

Q [MR. SCHNEIDER]: But it's not 11 pages. Is it?

A [MR. [redacted]]: This is--the copy you've handed to me? Ten pages.

Q [MR. SCHNEIDER]: Okay. Ten pages. This is the one you testified in December was your final report which reflected the information you thought was relevant. Correct?

A [MR. [redacted]]: Correct.

Q [MR. SCHNEIDER]: Okay. And I think you were showing me a paragraph when we left that begins, “Hamdan received permission.” Do you see that paragraph?

Well, first of all, isn't that the paragraph that you were referencing before the recess? “Hamdan received permission to leave Kabul.”

A [MR. [redacted]]: I believe it started that way.

Q [MR. SCHNEIDER]: Okay. Let's take a look at that.

A [MR. [redacted]]: Since this is a different document than I had before the recess, I'm trying to find that now.

Q [MR. SCHNEIDER]: Sure. Take your time.

A [MR. [redacted]]: I found it. I've located it.

Q [MR. SCHNEIDER]: Hamdan received permission from bin Laden to leave Kabul. What page is that on?

A [MR. [redacted]]: That's, on the copy I have, page 4.

Q [MR. SCHNEIDER]: Okay. And that's the paragraph which had the reference before the recess to your notion that he was returning to bin Laden. Right?

A [MR. [redacted]]: Yes.

Q [MR. SCHNEIDER]: Could you read the entire paragraph to members, please.

A [MR. [redacted]]: But all I had--I'm uncertain if there are references to this topic in other places of the Form 40. But I'll read that paragraph.

Q [MR. SCHNEIDER]: Isn't it fair to say it's in a different place in the report you had before the recess, as opposed to the report that was admitted into evidence as an appellate exhibit in December? Fair enough?

A [MR. [redacted]]: I believe so. But I'm uncertain, because I don't know which documents were actually delivered at that time.

Q [MR. SCHNEIDER]: Do you have a recollection as to how many pages of the 50 of your handwritten notes were actually in your handwriting?

A [MR. [redacted]]: Well, the--referring to the documents delivered last week?

Q [MR. SCHNEIDER]: Yeah.

A [MR. [redacted]]: Again, in my context, some of those were notes but others were not notes. But of the 50 pages, at least two

of those were my handwriting.

Q [MR. SCHNEIDER]: At least two. Could be as many as three?

A [MR. [redacted]]: Maybe a few more. Yes.

Q [MR. SCHNEIDER]: I would ask you be handed a copy of your notes that you took contemporaneously with what you've described as your conversation and the conversation you heard with Mr. Hamdan on May 17. Do you have that in front of you?

A [MR. [redacted]]: No, sir.

Q [MR. SCHNEIDER]: Let me see if I can grab one. If I may hand the witness a copy, or if someone else better equipped than me.

Do you recognize that 50-page document as what was provided to us a couple weeks ago as your handwritten--well, of your notes of the interview?

A [MR. [redacted]]: Yes. Some are the notes, my notes, of the interview. Yes, sir. I recognize them.

Q [MR. SCHNEIDER]: As it turns out, I think we learned yesterday outside the members of the jury that only two of the 50 pages are your notes. Right? Your notes.

A [MR. [redacted]]: I won't refer to all these notes if we have an understanding that there are two pages of my notes that pertain to Mr. Hamdan's two interviews on the 17th of May and the 25th of May. Most but not all of the other pages are----

Q [MR. SCHNEIDER]: Somebody else?

A [MR. [redacted]]: ----a rough draft. Right.

Q [MR. SCHNEIDER]: What I'm interested in, Mr. [redacted]--Agent [redacted], is your notes taken contemporaneously with what you heard in that interview room as you spoke with Mr. Hamdan on May 17th, 2003 and May 25th, 2003.

Can you take us to your note where you wrote down--where you wrote down--what you heard him say or Mr. [redacted] translate regarding returning to bin Laden?

A [MR. [redacted]]: I wouldn't have made that notation. I did not write that down.

Q [MR. [redacted]]: Did you write down things that you thought were important?

A [MR. [redacted]]: Yes.

Q [MR. SCHNEIDER]: Show us where you wrote down that Mr. Hamdan was convinced of the need for jihad.

A [MR. [redacted]]: That wasn't in my notes.

Q [MR. SCHNEIDER]: Show us where you wrote down that he had read statements from the Sudan about what bin Laden's philosophy was. Take us to that note that you wrote that day.

A [MR. [redacted]]: I don't have that note, whoever might have--if it was [redacted] or myself. But, more than likely, it would have been Mr. [redacted].

Q [MR. SCHNEIDER]: I'm just asking you about--Mr. [redacted] is not on the witness stand right now, so you'll have to bear with me. Did you write it down?

A [MR. [redacted]]: No, sir.

Q [MR. SCHNEIDER]: In your notes?

A [MR. [redacted]]: No, I did not.

Q [MR. SCHNEIDER]: Show me where you wrote down that he was paid by Usama bin Laden.

A [MR. [redacted]]: That portion was not in my notes.

Q [MR. SCHNEIDER]: You didn't write it down?

A [MR. [redacted]]: No, sir.

Q [MR. SCHNEIDER]: By the way, are you aware that Khalid Sheikh Muhammed has also said that Mr. Hamdan was paid by Usama bin Laden? Did you know that?

A [MR. [redacted]]: I did not know that.

Q [MR. SCHNEIDER]: Well, when you read his written answers, what was your reaction when you first saw what KSM said about who paid Mr. Hamdan?

A [MR. [redacted]]: When I read his written answers? I'm not sure I know what you're referring to.

Q [MR. SCHNEIDER]: No one's shown you his written answers?

A [MR. [redacted]]: Whose written answers?

Q [MR. SCHNEIDER]: KSM's.

A [MR. [redacted]]: No, sir.

Q [MR. SCHNEIDER]: Bin Attash?

A [MR. [redacted]]: Negative.

Q [MR. SCHNEIDER]: Would you be interested to see them?

A [MR. [redacted]]: Well, one of the individuals you mentioned, I'm actually assigned to the case.

Q [MR. SCHNEIDER]: You're assigned to his case, and they haven't shown you his written answers?

A [MR. [redacted]]: Assigned as an adjunct case member.

Q [MR. SCHNEIDER]: Can you take us to that portion of your notes where you wrote down the business about Tajikistan?

A [MR. [redacted]]: Again, that wouldn't have been in my notes, that part.

Q [MR. SCHNEIDER]: Can you take us to your notes where you wrote down anything about 1996?

A [MR. [redacted]]: Not contained in my notes that I have here.

Q [MR. SCHNEIDER]: Can you take us to the notes you took--and take as much time as you need to, to look at them--and tell us what you wrote down about what Mr. Hamdan said that you thought was important about what he was doing in 1997.

A [MR. [redacted]]: Yeah. That wasn't my role during the course of the interviews.

Q [MR. SCHNEIDER]: That wasn't your role?

A [MR. [redacted]]: No, sir.

Q [MR. SCHNEIDER]: But you wrote down what you thought was important?

A [MR. [redacted]]: Pertaining to the mood or the conditions of the interview. Yes, sir.

Q [MR. SCHNEIDER]: Who was actually speaking to Mr. Hamdan in Arabic?

A [MR. [redacted]]: Most of the time it was Mr. [redacted]. But it was myself also at times.

Q [MR. SCHNEIDER]: Primarily [redacted]? Would that be fair? I don't want to put words in your mouth.

A [MR. [redacted]]: No, that's fair. I mean, he's an extraordinarily fluent and extraordinary Arabic speaker.

Q [MR. SCHNEIDER]: Is it fair to say that he also--well, I think the word was primarily conducted the interview. That was his role. Right?

A [MR. [redacted]]: In a sense, yes. With us conferring during the interview.

[END OF PAGE]

Q [MR. SCHNEIDER]: Can you take us to the portion of your notes, if there's anything in your notes, about what Mr. Hamdan told you he was doing in 1998?

A [MR. [redacted]]: That wasn't in my notes, not in my role in the----

Q [MR. SCHNEIDER]: You didn't take anything down?

A [MR. [redacted]]: Not pertaining to that.

Q [MR. SCHNEIDER]: Okay.

A [MR. [redacted]]: Yes.

Q [MR. SCHNEIDER]: What about 1999? What did you write down that he told you about what he was doing in Afghanistan in 1999?

A [MR. [redacted]]: The same answer, sir. It just wasn't my role.

Q [MR. SCHNEIDER]: 2000?

A [MR. [redacted]]: The same answer.

Q [MR. SCHNEIDER]: 2001?

A [MR. [redacted]]: The same answer.

Q [MR. SCHNEIDER]: You don't need any more time to look over your notes to refresh your recollection. Do you?

A [MR. [redacted]]: No, sir. Because, again, how we conduct our interviews, one note-taker for the substance is the way I and Mr. [redacted] conduct our interviews.

Q [MR. SCHNEIDER]: He's doing most of the talking?

A [MR. [redacted]]: Primarily. Yes.

Q [MR. SCHNEIDER]: His Arabic is better than yours?

A [MR. [redacted]]: Much better.

Q [MR. SCHNEIDER]: I won't say he's doing most of the listening. You're listening as best you could. Right?

A [MR. [redacted]]: Yes, sir.

Q [MR. SCHNEIDER]: You understood what was going on?

A [MR. [redacted]]: Completely.

Q [MR. SCHNEIDER]: Anything that would have prevented you from jotting down what you heard if you chose to write it down?

A [MR. [redacted]]: Yes.

Q [MR. SCHNEIDER]: No pen?

A [MR. [redacted]]: No.

Q [MR. SCHNEIDER]: No paper?

A [MR. [redacted]]: No. Actually, it would be coordination with Mr. [redacted]. Because, again, we want to keep one set of notes about the substantive items.

Q [MR. SCHNEIDER]: Were you in the room the entire nine and a half hours?

A [MR. [redacted]]: Yes, sir, I was.

Q [MR. SCHNEIDER]: Okay.

A [MR. [redacted]]: Except for breaks, when we all took breaks.

Q [MR. SCHNEIDER]: When did you become an intelligence officer?

A [MR. [redacted]]: I'm not an intelligence officer. I've been assigned to counter-intelligence billets.

Q [MR. SCHNEIDER]: Sure. But you're a criminal investigator. Right?

A [MR. [redacted]]: That's the--yes, sir--the job title for what's known as an 1811 series, Federal law enforcement. We're all referred to as criminal investigators.

Q [MR. SCHNEIDER]: Assigned to investigate crimes?

A [MR. [redacted]]: Yes.

Q [MR. SCHNEIDER]: And when you first got on the plane to come down to Guantanamo in May of 1993, was it your understanding that a crime had been committed?

A [MR. [redacted]]: Yes, sir.

Q [MR. SCHNEIDER]: Was it your understanding that there was an ongoing investigation of that crime?

A [MR. [redacted]]: Yes.

Q [MR. SCHNEIDER]: And was it your understanding that Mr. Hamdan might be a suspect in that crime?

A [MR. [redacted]]: Yes.

[END OF PAGE]

Q [MR. SCHNEIDER]: We'll get back to the circumstances of how he gave you whatever information he did, whether or not you wrote it down. But let me ask you first, were you aware before you ever got on the plane that he had been questioned by others and elsewhere?

A [MR. [redacted]]: Yes. I was aware.

Q [MR. SCHNEIDER]: You knew that he had been questioned in Afghanistan. Right?

A [MR. [redacted]]: I believe so.

Q [MR. SCHNEIDER]: And you knew that he had been questioned both at Kandahar and Bagram Air Base?

A [MR. [redacted]]: I can't recall if I had those details at my disposal.

Q [MR. SCHNEIDER]: Can you tell us anything, anything at all, about what Mr. Hamdan was asked and what information he provided when he was questioned in the month of December 2001?

A [MR. [redacted]]: The only information that I recall was watching for the----

Q [MR. SCHNEIDER]: That's November. Right? I'm talking December.

A [MR. [redacted]]: Okay. Not the capture video, the so-called capture video.

Q [MR. SCHNEIDER]: Right.

A [MR. [redacted]]: No, sir. I can't recall what my awareness, or if I was aware, of what was gained at that time.

Q [MR. SCHNEIDER]: Do you know in whose custody he was in December of 2001?

A [MR. [redacted]]: I would have to guess.

Q [MR. SCHNEIDER]: Go ahead.

A [MR. [redacted]]: I would think Department of Defense.

Q [MR. SCHNEIDER]: Do you know who, individuals?

A [MR. [redacted] No, sir.

Q [MR. SCHNEIDER]: Have you seen any records of what they did with him?

A [MR. [redacted] I have not.

Q [MR. SCHNEIDER]: Could it be anybody other than the Department of Defense?

CTC [MR. MURPHY]: Objection, Your Honor. This is just speculative. He has no personal knowledge.

MJ [CAPT ALLRED]: Sustained.

Q [MR. SCHNEIDER]: Are you aware that he was questioned by the FBI before you ever met him?

A [MR. [redacted] Yes, sir.

Q [MR. SCHNEIDER]: Are you aware that he was questioned by the United States Secret Service before you ever met him?

A [MR. [redacted] That, I was not aware of, if it happened.

Q [MR. SCHNEIDER]: Agency NCIS, Naval Criminal Investigation Service?

A [MR. [redacted] Naval Criminal Investigative Service. Yes, sir.

Q [MR. SCHNEIDER]: Were you aware that they had questioned him before you had ever met him?

A [MR. [redacted] I'm not--I can't--at this point, I can't recall if my organization was involved previously. But, again, it's plausible U.S. Secret Service as well, being Federal law enforcement agencies sometimes working on a task force, that interviews could be conducted by virtually anyone.

Q [MR. SCHNEIDER]: Did you know that he had been questioned by maybe nine agencies other than yours?

A [MR. [redacted] That's the first time I'd heard that, sir.

Q [MR. SCHNEIDER]: By 39 or 40 individuals before you ever set foot on Guantanamo, they questioned him?

A [MR. [redacted] I've heard a number in that range. Yes, sir.

[END OF PAGE]

Q [MR. SCHNEIDER]: Was there anything that you understood those folks had failed to try to extract from Mr. Hamdan before you arrived?

A [MR. [redacted] There was a request for me and my partner at the time to try to complete as--conduct as complete an interview as possible. I do not know what it was specifically that was or was not obtained that might have been needed.

Q [MR. SCHNEIDER]: I don't think we can use the Power Point here that has--the data base is at the other courthouse, but I'm going to show you a demonstrative exhibit that was shown the other day about the interviews that preceded yours. Right?

CDC [MR. SCHNEIDER]: May we show this to the witness?

MJ [CAPT ALLRED]: You may. Sure.

CDC [MR. SCHNEIDER]: And whoever else wants to look at it? Members? Gallery?

MJ [CAPT ALLRED]: Yes.

CDC [MR. SCHNEIDER]: I don't know what to do about the red marks there. Those aren't mine. Bottom left.

Thank you. Thank you very much.

Q [MR. SCHNEIDER]: I'm going to try not to touch the screen because--but if you were going to fill in gaps in the previous investigations--I'm going to go through those with you. Okay?

January 30, 2002, investigation by FBI Agent [redacted] What gaps were there--are we okay? I'm sorry. What gaps were there in his reports?

TC [LCDR STONE]: Excuse me. Could I have just one quick second?

CDC [MR. SCHNEIDER]: Sure.

TC [LCDR STONE]: Sir, we just had to deal with one issue.

Q [MR. SCHNEIDER]: If you see the words “Witness One,” I don't want you to tell me that person's real name. Okay?

A [MR. [redacted] Yes, sir.

Q [MR. SCHNEIDER]: If your job was to fill in the gaps in the previous investigations and--in the previous reports, I think that was your phrase. Wasn't it? Fill in the gaps?

A [MR. [redacted] That was my presumption as to why we were called in and specifically teamed up for this part of the mission.

Q [MR. SCHNEIDER]: Okay. Tell me about--I mean, Agent [redacted] has about a nine-page, single-spaced report from his interrogation on 30 January 2002, conducted along with Special Agent [redacted] And I'm just going to use last names. Okay?

So what was the gap in their investigation or interrogation that you were assigned to come down and fill in?

A [MR. [redacted] I can't recall any specific--or, any discussion about what the gap may have been from that or any other

interviews.

Q [MR. SCHNEIDER]: Well, what did you--I mean, regardless of what someone told you, what did you think the gap was based on looking at that report?

A [MR. [redacted] I'm not sure if I saw the report you're referring to.

Q [MR. SCHNEIDER]: So you came down here to fill in the gaps of previous interrogations; but you didn't see the January 30, 2002, nine-page report by Agent [redacted]

A [MR. [redacted] I wouldn't be able to discern at this time whether I did. At that time, in May of 2003 was extraordinarily busy and fast-paced. And I just had been traveling and was getting ready to travel, again, I think to Yemen. So it was a very fast-paced tempo.

Q [MR. SCHNEIDER]: Isn't it more likely that you were never shown the report?

A [MR. [redacted] No. I think that was more unlikely, because I would have most likely--although I can't five years later point remember if I stopped at the CITF headquarters in Belvoir or the Office of Military Commission prior to coming down; but if time was available, I would have tried to take a look at what was available.

Q [MR. SCHNEIDER]: Well, your materials, your notes, your final report were all produced to us. [redacted] report wasn't among the things that was a part of your file. Was it?

A [MR. [redacted] I can't speak to that.

Q [MR. SCHNEIDER]: Well, then let's go to the next one.

12 February 2002, what was the gap that [redacted] and [redacted] needed to have filled in?

A [MR. [redacted] That, or any other date, sir, I wouldn't be able to fill in the gap. I don't know if there was a gap or, if there was, what that gap entailed.

Q [MR. SCHNEIDER]: Well, what was the basis for your information about the gaps that you were being asked to fill in? Did somebody tell you what to try to come down here and get?

A [MR. [redacted] Repeat the last part.

Q [MR. SCHNEIDER]: Did someone tell you what it was that they would like you to come down here and try to extract from Mr. Hamdan?

A [MR. [redacted] Specifically, I can't recall. But knowing the context for Mr. Hamdan as well as the other two individuals, I can recall that I and my partner were told to make best a effort for a complete interview for all three individuals. Now, the specifics about if there were gaps, what the gaps were, I cannot recall if that was discussed.

Q [MR. SCHNEIDER]: Well, correct me if I'm wrong, but I think it was your words--your words were, you were going to fill in the gaps of the previous investigations, previous interrogations, previous interviews. Right?

A [MR. [redacted] Probably. But, again, to be determined not by me or my partner, but by the consumers of the product.

Q [MR. SCHNEIDER]: The consumers of the product. And who were the consumers of the product?

A [MR. [redacted] In this case, it wound up being the CITF and the Office of Military Commission.

Q [MR. SCHNEIDER]: So if we go through all of those and I tell you how many pages each one comprised and how many hours were spent, you couldn't tell me what gaps were left when those gentlemen finished. Right?

A [MR. [redacted] That's correct.

Q [MR. SCHNEIDER]: I think they all are gentlemen.

A [MR. [redacted] I believe so.

Q [MR. SCHNEIDER]: And if I showed you each of their reports, do you think you'd recognize each one and it would refresh your recollection about what gaps were in the reports?

A [MR. [redacted] Perhaps.

Q [MR. SCHNEIDER]: Well, you're not even sure you saw them. Right?

A [MR. [redacted] That's correct.

Q [MR. SCHNEIDER]: Well, with particular attention to the June--and, again, because of the technology not being available here, I am going to show you something that has a little handwriting on it in red. You can ignore the handwriting.

CDC [MR. SCHNEIDER]: The same request, Your Honor, that we show this to the witness and anyone else who wants to look at it?

MJ [CAPT ALLRED]: You may.

Q [MR. SCHNEIDER]: The same deal here. You could not tell us what gaps you were intending to fill in with respect to the interrogations that all of these folks had done before you had ever met Mr. Hamdan. Can you?

A [MR. [redacted] That's correct.

Q [MR. SCHNEIDER]: And then that handwritten information--and, I confess, that's my handwriting. Is it your understanding that [redacted] [redacted] and your colleague, your professional colleague, Agent [redacted] and a couple other people conducted interviews that lasted 13 or 14 days in 2002? Did you know that?

A [MR. [redacted] No, I did not.

Q [MR. SCHNEIDER]: I'm thinking 13 days, I don't know, eight hours a day, maybe? You spent nine and a half. Right?

A [MR. [redacted] All I can speak to is the way I conduct an interview. And even without the issue of the rights advisement, with policy, if an interviewee, Mr. Hamdan or anyone else says, "I don't want to talk anymore," I may try to establish if there's anything bothering, but I terminate the interview. So, again, I'm speaking to how I was trained and how I conduct interviews.

Q [MR. SCHNEIDER]: We'll get to that. I wasn't intending to ask you about his condition during the interview; I was just asking, if those gentlemen spent eight hours a day, that's about 100 hours on interrogation. Right?

CTC [MR. MURPHY]: Objection, Your Honor. This is all speculative. He has no personal knowledge about other interviews.

MJ [CAPT ALLRED]: It's clearly asking him to check Mr. Schneider's math. Overruled.

CDC [MR. SCHNEIDER]: Overruled?

MJ [CAPT ALLRED]: The objection is overruled.

Q [MR. SCHNEIDER]: You may answer.

A [MR. [redacted] To check your math, sir?

Q [MR. SCHNEIDER]: If you don't mind.

A [MR. [redacted] It appears to be accurate. But, again, I don't know any specifics of that. But, you know, I wouldn't doubt

what you say.

Q [MR. SCHNEIDER]: I mean, you don't have any recollection of what they accomplished in their interview. Do you have any recollection today?

A [MR. [redacted] Just a vague recollection. And I know most of the special agents there. They are all terrific professionals, so I know they would have done a good job.

Q [MR. SCHNEIDER]: They would have done a complete interview. Right? As best they could.

A [MR. [redacted] I think, in an effort of brevity, it just wasn't the [redacted]-[redacted] team.

Q [MR. SCHNEIDER]: I understand. We'll get to that and we'll get to why. But as you sit here today, can you tell us anything about what gaps in the [redacted] interview, the 13-day interview you had to fill in or somebody wanted you to fill in?

A [MR. [redacted] I believe I answered that, sir. I don't have any specifics on that.

Q [MR. SCHNEIDER]: What did Mr. Hamdan say to Agent [redacted]-excuse me, Agent [redacted] He testified, so I think it's okay if I use his name --but Agent [redacted] on 19 August or 24 August, what did he say about bayat?

A [MR. [redacted] I have--I don't know. His interview, I do not know.

Q [MR. SCHNEIDER]: You don't know that Agent [redacted] reported both in his report and in his testimony in this case, that Hamdan did not pledge any bayat? You didn't know that?

A [MR. [redacted] That's correct. I did not know he said that.

Q [MR. SCHNEIDER]: Do you know whether the information that Mr. Hamdan had provided previously became exhausted over this 18-month period before you ever met him? Did things slow down as far as the information that was new information that was coming out of him?

A [MR. [redacted] I don't know. I really can't--other than guessing, I do not know.

Q [MR. SCHNEIDER]: Well, didn't you testify two weeks ago that it was your understanding that, yeah, the frequency of his interrogations and the ability of him to give any new information dissipated over time?

A [MR. [redacted] Yeah. I believe I was asked to, if I could, answer that or speculate on that. And I said that would be plausible.

Q [MR. SCHNEIDER]: And based on what you understood, you testified that that sounded right to you. Right?

A [MR. [redacted] Right. Knowing the way or about interviews and the interview pace at Guantanamo and other places in the world, yes, sir.

Q [MR. SCHNEIDER]: Do you know if any other agency----

CDC [MR. SCHNEIDER]: Well, my understanding is the protective order covers a country other than the United States. I'd like to ask a question about an agency in the United States.

CTC [MR. MURPHY]: Your Honor, that's such a general assertion, I'm not sure where counsel is going. I certainly would expect that he would fully comply with the protective orders and not get anywhere close to material he can't. What he said does not tell me where he going.

MJ [CAPT ALLRED]: I don't know where you're going, either.

CDC [MR. SCHNEIDER]: You also assume I know where I'm going. But I want to----

[Brief pause.]

CTC [MR. MURPHY]: Your Honor, I'm not comfortable with the general category. I think we should have a 39(a) and maybe even an 802 to make sure that we're not treading into areas where counsel is prohibited.

MJ [CAPT ALLRED]: Do you want to come up and talk to Mr. Powell about it?

CDC [MR. SCHNEIDER]: Sure.

[Brief pause.]

Q [MR. SCHNEIDER]: Agent [redacted] the 9/11 Commission Report.

A [MR. [redacted] Yes, sir.

Q [MR. SCHNEIDER]: Published by the United States Government, commercially available. I was going to show you a page and ask you if you know anything about the statement that's published. I'm not even going to give you the page number. But I'm told it's classified so I can't ask you, so I'm going to move on to something else.

CTC [MR. MURPHY]: Your Honor, the government's only position is that counsel--all counsel should be advised to comply by the protective orders.

MJ [CAPT ALLRED]: Agreed. I don't know what the question would have been. And--because Mr. Powell feels like it's classified.

Q [MR. SCHNEIDER]: Okay. Typically when there's an ongoing criminal investigation, you advise anyone who is detained and a possible suspect of his or her rights. Don't you?

A [MR. [redacted] Outside of the Guantanamo rules. Yes, sir.

Q [MR. SCHNEIDER]: And those rules weren't your rules. Were they?

A [MR. [redacted] That's correct.

Q [MR. SCHNEIDER]: And they weren't your agency's rules?

A [MR. [redacted] That's correct.

Q [MR. SCHNEIDER]: And they weren't the FBI's rules, as far as you know?

A [MR. [redacted] As far as I know, that's correct.

Q [MR. SCHNEIDER]: So, for instance, if you interview--let's say you interview somebody that you know is a terrorist--let's just take an example of in Yemen--outside the United States, after 9/11, you read him his rights. Don't you?

A [MR. [redacted] It depends on the situation. In the post-9/11 environment, we have some unique circumstances working, for example, in the tasking from the U.S. Attorneys Office. That would have required a rights advisement, typically.

Q [MR. SCHNEIDER]: The U.S. Attorneys Office, where Mr. Murphy used to work?

A [MR. [redacted] Well, for example, for the Southern District of New York.

Q [MR. SCHNEIDER]: Well, let's just take an example. September 18, 2001, a week after the attacks. Did you interview somebody?

A [MR. [redacted] Yes, sir.

Q [MR. SCHNEIDER]: Terrorists?

A [MR. [redacted] In my opinion? Yes.

Q [MR. SCHNEIDER]: Did you read him his rights?

A [MR. [redacted] If--I would have to know which individual we're talking about. But most, if not all, at that time we were, myself and Mr. [redacted] answering directly to the Southern District of New York and the New York Joint Terrorism Task Force as well as my headquarters. And our guidance at that time was to use the FBI form

that we had discussed for rights advisement--a tailored rights advisement for outside the U.S. for a non-U.S. person.

Q [MR. SCHNEIDER]: In fact, that particular person, Mr. [redacted] was in your presence as well. Right?

A [MR. [redacted] We conducted all interviews together. Yes, sir.

Q [MR. SCHNEIDER]: And the rights advisement was given to him in Arabic. Right?

A [MR. [redacted] If I--I don't know which individual you might be referring to, because we conducted----

Q [MR. SCHNEIDER]: Nasser?

A [MR. [redacted] Nasser Ahmed Al-Bahri? Yes.

Q [MR. SCHNEIDER]: Rights advisement?

A [MR. [redacted] That's correct.

Q [MR. SCHNEIDER]: In Yemen?

A [MR. [redacted] In Yemen.

Q [MR. SCHNEIDER]: Greater rights that you were permitted to advise anyone you interviewed at Guantanamo on a United States Naval Base. Right?

A [MR. [redacted] And in accordance with policy.

CDC [MR. SCHNEIDER]: Okay. Exhibit 26, could we pull that up? I think that it's been admitted. We don't have it here?

Q [MR. SCHNEIDER]: While we're looking for the exhibit, let me ask you another question.

Do you remember testifying a couple weeks ago that, as far as you knew, all major interviews with Mr. Hamdan had been done by December of 2002? Do you remember identifying that date as about when you thought the major interviews had been done?

A [MR. [redacted] By December of 2002?

Q [MR. SCHNEIDER]: Right.

A [MR. [redacted] I sincerely cannot recall phrasing it that way.

Q [MR. SCHNEIDER]: Do you remember discussing this photo?

A [MR. [redacted] Yes, sir.

CDC [MR. SCHNEIDER]: That's admitted. I would ask it be shown throughout.

MJ [CAPT ALLRED]: You may.

Q [MR. SCHNEIDER]: And the questions I asked you were, to your knowledge: Was anybody in this photo shooting at Americans that day? And your answer was?

A [MR. [redacted] It should have been: Not shooting at Americans.

Q [MR. SCHNEIDER]: Well, that's exactly what it was. Right?

A [MR. [redacted] I----

Q [MR. SCHNEIDER]: That's what you said on July 17th?

A [MR. [redacted] It would have been something along those lines. That's right.

Q [MR. SCHNEIDER]: Do you remember me asking you if the child in the photo was engaged in any criminal activity or terrorist acts? Do you remember that?

A [MR. [redacted] Yes.

Q [MR. SCHNEIDER]: And the first question I asked you was, how old did he or she appear to be?

A [MR. [redacted] Um-hmm.

Q [MR. SCHNEIDER]: I think you said two?

A [MR. [redacted] Two to three, maybe.

Q [MR. SCHNEIDER]: Do you remember what you told me when I asked about whether he or she was engaged in any criminal activity?

A [MR. [redacted] I hope I said, “Apparently not.”

Q [MR. SCHNEIDER]: No. What you said was, “It would depend upon the statute of limitations. Could be.”

Do you remember that?

A [MR. [redacted] No, sir.

Q [MR. SCHNEIDER]: That doesn't sound familiar to you?

A [MR. [redacted] If I said that, if I--it was a quip, and I apologize.

Q [MR. SCHNEIDER]: Okay. Let's----

A [MR. [redacted] But at this time, Usama bin Laden was under indictment at the time this photograph was taken. So----

Q [MR. SCHNEIDER]: Right. And I guess one way to look at it is, as you sit here today, on reflection, the fact that--I have to slow down.

CDC [MR. SCHNEIDER]: Is there a light on this podium? I'm trying to comply.

MJ [CAPT ALLRED]: I don't have one, either.

CDC [MR. SCHNEIDER]: Then we'd better both slow down. But let me--thank you.

Q [MR. SCHNEIDER]: Okay. On reflection, isn't it fair to say that although this might be an extreme example, just being in the vicinity of someone committing a crime doesn't make the other person guilty. Correct?

A [MR. [redacted] Not in this case, upon reflection.

Q [MR. SCHNEIDER]: Okay. And just being in proximity to people who may be engaged in crime doesn't make a person, just by that, a criminal?

A [MR. [redacted] It would depend on the circumstances, such as the photograph depicted.

Q [MR. SCHNEIDER]: What he or she did, and what their intent was?

A [MR. [redacted] And what they appear to be doing. Yes.

Q [MR. SCHNEIDER]: And intent would be important. Wouldn't it?

A [MR. [redacted] Intent----

Q [MR. SCHNEIDER]: In determining the criminality?

A [MR. [redacted] Yes, sir.

Q [MR. SCHNEIDER]: Whether they intended that certain things happen? For instance, if somebody's alleged to be in a conspiracy to murder, it's really important, isn't it, to establish as an element of the crime intent that that murder occur. Right?

A [MR. [redacted] I agree with that. Yes, sir.

Q [MR. SCHNEIDER]: Okay. And as an extreme example, admittedly--for instance, in this photo, you wouldn't attribute that kind of intent to the child?

A [MR. [redacted] Not to the child.

Q [MR. SCHNEIDER]: Okay. Have you interviewed other people that you think were involved in the 9/11 attacks?

A [MR. [redacted] Yes.

Q [MR. SCHNEIDER]: Can you give me an example?

A [MR. [redacted] Of?

Q [MR. SCHNEIDER]: A person you've interviewed that you think--another person you've interviewed that you think was involved in the 9/11 attacks.

A [MR. [redacted] One example, Waleed bin Attash aka Khallad.

Q [MR. SCHNEIDER]: Tell me, was Mr. bin Attash extremely cooperative in providing you information and identifying photographs?

A [MR. [redacted] In the continuum of all the individuals I've conducted interviews in both before 9/11 and going back to 1993 with the first World Trade Center and Sheikh Omar Abdul-Rahman case, I would place Waleed bin Attash in a more relatively cooperative category.

Q [MR. SCHNEIDER]: Was he as forthcoming as Mr. Hamdan was with information?

A [MR. [redacted] I don't know if it would be a valid comparison.

Q [MR. SCHNEIDER]: Fair enough. And at the other end of the spectrum, have you met folks who are not cooperative at all?

A [MR. [redacted] Yes, sir.

Q [MR. SCHNEIDER]: People who are defiant and tell you basically, “Forget it, I'm not talking”?

A [MR. [redacted] Yeah. That's correct.

Q [MR. SCHNEIDER]: More than one?

A [MR. [redacted] I can think of a few. Yes, sir.

Q [MR. SCHNEIDER]: Hard-core al Qaeda people?

A [MR. [redacted] One individual in particular, I would definitely put him in that category.

Q [MR. SCHNEIDER]: Can you give us his name or her name?

A [MR. [redacted] Yeah. The example I'm thinking of is an individual named Ahmed al-Hada.

Q [MR. SCHNEIDER]: Al-Hada?

A [MR. [redacted] Al-Hada. A-L-H-A-D-A.

Q [MR. SCHNEIDER]: Just generally speaking--I'm not looking for any sensitive information. But just generally speaking, how did he exhibit his hostility to cooperating?

A [MR. [redacted] Well, he--the unique category kind of in the grandfather class of the mujahadeen, very famous throughout Yemen and fighting against the Russians in Afghanistan with the mujahadeen and afterwards. In Mr. Al-Hada's case, he just simply refused to talk, to say anything other than sometimes mostly monosyllabic answers and then not speaking at all. So, again, I was--with Mr. [redacted] we would simply terminate the interview if he wasn't willing to talk.

Q [MR. SCHNEIDER]: You were unable to talk to him on, say, 40 occasions, some up to two weeks long. Right?

A [MR. [redacted] We didn't have that opportunity, actually. This was right after 9/11.

Q [MR. SCHNEIDER]: Fair to say that his behavior was sort of at the other end of the spectrum from Mr. Hamdan's behavior in your presence?

A [MR. [redacted] I don't know if all the way to the other end of the spectrum would be accurate. But it was on the other side of the spectrum.

Q [MR. SCHNEIDER]: Okay. And what did that fellow tell you what you thought would incriminate other people that he considered to be co-conspirators?

A [MR. [redacted] He actually in a later interview before we were leaving the country, as Ramadan approached in November 2001, at the request of the host, he provided terrific information, we think it was unwitting, that helped identify a son-in-law of his who was previously unknown. And that information actually led to the thread that brought down the Red Sea and Arabian Gulf cell of al Qaeda.

Q [MR. SCHNEIDER]: But how about your--before you met Mr. Hamdan, did you realize that he was a driver?

A [MR. [redacted] Yes. I'm sure I was aware of that.

Q [MR. SCHNEIDER]: And did you realize that he had been in custody since November 24, 2001?

A [MR. [redacted] And if I could just correct. Before, I was absolutely aware that he was a well-known driver and bodyguard. But then your follow-on question, sir? Sorry.

Q [MR. SCHNEIDER]: Did you understand that he might be a source of potentially valuable information?

A [MR. [redacted] I would have understood that. Yes.

Q [MR. SCHNEIDER]: In your view, was he helpful to you when you were with him?

A [MR. [redacted] Characterized overall as helpful? I would say yes.

Q [MR. SCHNEIDER]: Cooperative?

A [MR. [redacted] To a degree. To an extent.

Q [MR. SCHNEIDER]: Friendly?

A [MR. [redacted] Friendly.

Q [MR. SCHNEIDER]: Polite?

A [MR. [redacted] Polite.

Q [MR. SCHNEIDER]: Respectful?

A [MR. [redacted] I would say absolutely. And based on the--speaking to the rapport, obvious--or I hope was obvious to Mr. Hamdan--our respect for him.

Q [MR. SCHNEIDER]: You didn't have to lean on him in any way to get him to identify photographs. He did that willingly. Didn't he?

A [MR. [redacted] That's correct. I wouldn't lean on anyone.

[END OF PAGE]

Q [MR. SCHNEIDER]: I'm not suggesting you would. I'm just saying in this instance, to be clear, the information he provided to you was entirely by willing participation in the conversation. Right?

A [MR. [redacted] Referring to the identifying of the exhibits?

Q [MR. SCHNEIDER]: Anything. Exhibits, documents, people. Information.

A [MR. [redacted] Generally.

Q [MR. SCHNEIDER]: Were you aware that Agent [redacted] testified that Mr. Hamdan was quite open to the idea of testifying?

A [MR. [redacted] No, sir.

Q [MR. SCHNEIDER]: Against Abdul a-Rahim al Nasiri?

A [MR. [redacted] Abdul Rahim al Nashiri, did you say?

Q [MR. SCHNEIDER]: Yes, sir.

A [MR. [redacted] I was not aware of that.

Q [MR. SCHNEIDER]: And if you knew that, you would consider that pretty significant. Wouldn't you?

A [MR. [redacted] I would.

Q [MR. SCHNEIDER]: Based on everything you know, based on your knowledge, experience, training, and your involvement in this investigation?

A [MR. [redacted] Yes, sir. Witnesses are important.

Q [MR. SCHNEIDER]: And witnesses are few and far between. Are they not?

A [MR. [redacted] I don't know if I would characterize it that way. But I certainly know that is a work in progress, as we speak.

Q [MR. SCHNEIDER]: How many witnesses are you aware of in this particular case who were with Mr. Hamdan from 1996 until November 24, 2001, who have come in here and testified? Any?

A [MR. [redacted] I'm not the case agent, but I'm not aware of any witnesses up to this point.

Q [MR. SCHNEIDER]: So you would consider that a significant development if he had made that statement that Agent [redacted] described. Correct?

A [MR. [redacted] If it was testimony against Abdul Rahim Nashiri, yes, sir.

Q [MR. SCHNEIDER]: And you understand, he overheard some conversations that he related. Right? Let me back up.

It's your understanding that Mr. Hamdan talked to you and others about conversations he overheard in which Mr. Nashiri was a participant. Right?

A [MR. [redacted] Up until your mentioning that, I had not heard that. But, again, I would consider that significant, because he's one of the most lethal al Qaeda operators in the history, Abdul Rahim Nashiri.

Q [MR. SCHNEIDER]: No one's ever told you that?

A [MR. [redacted] No.

Q [MR. SCHNEIDER]: That Mr. Hamdan related to various agents that he had overheard that individual being, quote, boastful about what he had done?

A [MR. [redacted] Yes. I had heard that.

Q [MR. SCHNEIDER]: Is that something that you knew before you came down in May of 2003, or something that you've heard recently?

A [MR. [redacted] I believe so, in my work recently with the prosecution task force for the high-valued detainees.

Q [MR. SCHNEIDER]: And did you understand that Mr. Hamdan had testified--not testified--had spoken with you, Mr. [redacted] and others, willingly about what he overheard Usama bin Laden say?

A [MR. [redacted] Please, one more time?

Q [MR. SCHNEIDER]: He told you about what he overheard Usama bin Laden say. Didn't he?

A [MR. [redacted] Mr. Hamdan told me?

Q [MR. SCHNEIDER]: Yes.

A [MR. [redacted] About overheard----

Q [MR. SCHNEIDER]: About anything?

A [MR. [redacted] I don't recall in our interview if that was the part of the Form 40.

Q [MR. SCHNEIDER]: Do you recall, independent of your form?

A [MR. [redacted] I have heard, independent.

Q [MR. SCHNEIDER]: In fact, you know that he told Agent [redacted] what he overheard?

A [MR. [redacted] I had heard of that. Yes, sir.

Q [MR. SCHNEIDER]: You understood that the Taliban and Arab fighters were engaged in a battle against the Northern Alliance in November 2001. Didn't you?

A [MR. [redacted] Yes. As to how engaged or coordinated with each other, that's a debatable topic. But engaged in combat at that time, an awareness.

Q [MR. SCHNEIDER]: And did you understand that--did you ask Mr. Hamdan questions about whether he ever had any contact with Taliban forces?

A [MR. [redacted] I would have more than likely talked about that, particularly in the context of transporting the weapons for al Qaeda from Taliban facilities.

Q [MR. SCHNEIDER]: Precisely. When he talked to you, he talked to you in terms of dealing with the Taliban with regard to those weapons. Right?

A [MR. [redacted] That's correct.

Q [MR. SCHNEIDER]: A Taliban warehouse?

A [MR. [redacted] Yes.

Q [MR. SCHNEIDER]: Taliban soldiers?

A [MR. [redacted] I don't remember if Taliban soldiers was a discussion point.

Q [MR. SCHNEIDER]: Would you agree with me that there's an inner circle of people who were responsible for the planning, organizing, implementation, and execution of the terrorist attacks?

A [MR. [redacted] Of the al Qaeda terrorist attacks? Yes.

Q [MR. SCHNEIDER]: And that would include, for instance, the 1998 embassy bombings, the 2000 COLE bombing, and the terrible events of 9/11?

A [MR. [redacted] Yes, sir. And that's a good point, because there were different segments of the inner circle of al Qaeda involved in those.

Q [MR. SCHNEIDER]: To your knowledge, who was in the inner circle? Well, have you ever seen Agent [redacted] power point of the inner circle?

A [MR. [redacted] I was at a presentation with Mr. [redacted] a number of months ago at Georgetown where he talked. It was essentially an overview of al Qaeda. That's the only one I've ever seen.

Q [MR. SCHNEIDER]: Do you know who he considers to be that inner circle who are responsible for those attacks?

A [MR. [redacted] I believe so.

Q [MR. SCHNEIDER]: And you're aware that he doesn't include Mr. Hamdan in the inner circle. Right?

A [MR. [redacted] It wouldn't be in the--termed the inner circle. That's right. But infrastructure and structure.

Q [MR. SCHNEIDER]: Infrastructure. You don't, either. Right? You don't consider him in the inner circle of those people who were involved in the attacks?

A [MR. [redacted] For the planning and the operational part of the attacks?

Q [MR. SCHNEIDER]: Planning?

A [MR. [redacted] Planning? No.

Q [MR. SCHNEIDER]: Execution?

A [MR. [redacted] No. He's involved in the structure part, the headquarters, if you will, element of al Qaeda.

Q [MR. SCHNEIDER]: Infrastructure was your word?

A [MR. [redacted] Infrastructure, structure, whichever would be grammatically correct.

Q [MR. SCHNEIDER]: You haven't seen his chart of who was in charge of the bodyguards. Have you?

A [MR. [redacted] I've probably seen many versions of that. Yes.

Q [MR. SCHNEIDER]: Do you remember a fellow named Tabarek?

A [MR. [redacted] Tabarek?

Q [MR. SCHNEIDER]: Tabarek.

A [MR. [redacted] If it's Abdullah Tabarek.

Q [MR. SCHNEIDER]: Tabarek?

A [MR. [redacted] I know that name. I certainly know that name. That's the Abu Assim that we were referring to.

Q [MR. SCHNEIDER]: The letter that you talked about for a while this morning?

A [MR. [redacted] Yes, sir.

Q [MR. SCHNEIDER]: But is not in evidence?

A [MR. [redacted] That's correct.

Q [MR. SCHNEIDER]: What was that gentleman's role in the hierarchy?

A [MR. [redacted] He--and if you want to take it in line and block chart fashion, which makes it easier to understand and consume the structure, and say roughly the period leading up to 9/11, Tabarek had a place in that line of block chart under Saif Al-Adel Al-Masri, one of the Egyptians who has been with bin Laden amongst the longest.

Saif Al-Adel was on a line roughly akin to the--well, it's called the Shura Council. And these are the top leaders under bin Laden himself. Saif Al-Adel heads up the security committee. And then, if you had a rough order based on seniority, age, and respect, then Tabarek would come next. But it was Saif Al-Adel, and--according to Mr. Hamdan, who ran the security element for Usama bin

Laden.

Q [MR. SCHNEIDER]: And you're aware that Tabarek was apprehended. Right?

A [MR. [redacted] Yes, sir.

Q [MR. SCHNEIDER]: And you're aware that he was brought here to Guantanamo Bay?

A [MR. [redacted] Yes, sir.

Q [MR. SCHNEIDER]: And you're aware that he was either interrogated, or there was an attempt to interrogate him?

A [MR. [redacted] Yes.

Q [MR. SCHNEIDER]: Right?

A [MR. [redacted] Yes, sir. I know he would have been interviewed--attempts to interview him, undoubtedly.

Q [MR. SCHNEIDER]: Did you ever try to interview him?

A [MR. [redacted] No, sir. It wasn't in my tasking during the time.

[END OF PAGE]

Q [MR. SCHNEIDER]: Do you have any indication from anyone, anywhere, any time, how helpful Mr. Tabarek was in providing information helpful to the United States Government? Yes or no. And then we'll have apparently two objections from two different people.

But yes or no, do you know how helpful Tabarek was when the United States Government went to him and said: Can you please identify individuals? Can you please tell us what happened? Can you please pick out photographs?

What did he do?

A [MR. [redacted] I have some awareness. But at the time of my awareness, it was--I beg the Court's pardon here, but I'd have to term--a sensitive project, a very sensitive project.

Q [MR. SCHNEIDER]: Let me guess. It's classified. You can't tell me.

CTC [MR. MURPHY]: Objection, Your Honor. I think that he has gone as far as he can without crossing the line. I'm concerned about additional questions.

MJ [CAPT ALLRED]: I think if he says it's classified, then that will be the answer.

[END OF PAGE]

Q [MR. SCHNEIDER]: Is it classified and you can't share it with me? If that's the case, just say so, and then I'm done with that line.

A [MR. [redacted] My awareness of that series of interviews, let's say, the time was from classified channels. However, there's been open-press reporting that--and, again, not trying to overdramatize this--that I wouldn't be able to confirm or deny.

Q [MR. SCHNEIDER]: Well, let's then move to what's publicly available information, like you could buy in a book or see in a newspaper.

A [MR. [redacted] Um-hmm.

Q [MR. SCHNEIDER]: To your knowledge, was Mr. Tabarek ever charged with a crime?

A [MR. [redacted] To my knowledge, he was not.

Q [MR. SCHNEIDER]: To your knowledge----

A [MR. [redacted] But I could be wrong about that, though.

Q [MR. SCHNEIDER]: Of course.

A [MR. [redacted] I didn't work that case.

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Q [MR. SCHNEIDER]: Right. To your knowledge, was he ever alleged in any criminal proceeding in Federal court, in state court, in the United States, at Guantanamo Bay before the Military Commissions with any crime based on what his role was? To your knowledge?

A [MR. [redacted] To my knowledge. I don't know if Tabarek was under indictment somewhere, for example, in the U.S. Attorneys Office at DOJ. But to the best I can tell, to my knowledge, I'm not aware that he was charged in the U.S.

Q [MR. SCHNEIDER]: He's not in that photo. Is he?

A [MR. [redacted] In this photo here?

Q [MR. SCHNEIDER]: Right.

A [MR. [redacted] I can't see all the faces, so I don't know. But there could be a very good chance, knowing his place within the bodyguard detail.

Q [MR. SCHNEIDER]: Have you ever seen the film from which this still photograph is taken?

A [MR. [redacted] Yes, sir.

Q [MR. SCHNEIDER]: He's in the film. Isn't he?

A [MR. [redacted] I believe so. I believe so. Because there are other shots of the bodyguard detachment with bin Laden.

Q [MR. SCHNEIDER]: And when you said earlier that there are others besides the child who you think probably are engaged in criminal activity----

A [MR. [redacted] Yes, sir.

Q [MR. SCHNEIDER]: ----when this photo was taken or the film was taken, would that include Mr. Tabarek?

A [MR. [redacted] If he was in this photograph?

Q [MR. SCHNEIDER]: Yes.

A [MR. [redacted] Yes, sir.

Q [MR. SCHNEIDER]: Okay. Criminal activity?

A [MR. [redacted] Yes, sir.

Q [MR. SCHNEIDER]: Against the United States?

A [MR. [redacted] Yes.

Q [MR. SCHNEIDER]: Against the American people?

A [MR. [redacted] That's correct.

Q [MR. SCHNEIDER]: Related to terrorism?

A [MR. [redacted] Yes.

Q [MR. SCHNEIDER]: Absolutely?

A [MR. [redacted] In my opinion, yes, sir.

Q [MR. SCHNEIDER]: Where is he today?

A [MR. [redacted] From open press reporting? In his native country. But, again, I don't know that to be 100 percent fact. I did receive a request a few months ago pursuant to a court--or, per

your request to try the make contact through a third party, and then that was the number in Morocco.

Q [MR. SCHNEIDER]: And in the course of trying to facilitate our ability to speak with him or bring him to this case to testify before the members, you learned that he was released by the United States. Right?

A [MR. [redacted] From, again, the open press reporting before that--I had read that.

Q [MR. SCHNEIDER]: We've had other testimony from people who have indicated they did know his whereabouts.

A [MR. [redacted] They did?

Q [MR. SCHNEIDER]: And they said Morocco. Does that sound right to you?

A [MR. [redacted] That they said it would be Morocco? If they're citing press reports that I read, yes, it wouldn't surprise me.

Q [MR. SCHNEIDER]: In fact, you are under the impression that he is back home on the streets of Morocco. Right?

A [MR. [redacted] That's a good way to term it, under my impression. Yes, sir.

Q [MR. SCHNEIDER]: Okay. When you say that Usama bin Laden paid Mr. Hamdan, is that based on your investigation?

A [MR. [redacted] Based on what Mr. Hamdan related.

Q [MR. SCHNEIDER]: And do you know that some of the other FBI agents reported in their written reports that he was paid personally as opposed to by al Qaeda?

A [MR. [redacted] I have an awareness of it, that it was essentially direct payment from bin Laden himself.

Q [MR. SCHNEIDER]: Not from al Qaeda or its--whatever organization you want to call it?

A [MR. [redacted] You have to understand, though, Usama bin Laden is al Qaeda; Al Qaeda, bin Laden.

Q [MR. SCHNEIDER]: So you know--okay. But you know there's a distinction as far as who paid him. But you don't think there's a distinction as far as what they're all about?

A [MR. [redacted] I would say yes. Because--based on my lack of awareness if Usama bin Laden had paid directly or if that's routine practice.

Q [MR. SCHNEIDER]: Well, are you aware that Mr. bin Laden went out of his way to make sure that he paid for his personal needs out of his own pocket as opposed to out of al Qaeda's budget?

A [MR. [redacted] I can't say I was aware of that. But it would not surprise me, because I do know from my work that he had, say, took extra care of those from Yemen and that part of the Arabian peninsula.

Q [MR. SCHNEIDER]: And you didn't see that in the KSM--you didn't see the KSM answers. Right?

A [MR. [redacted] That's correct.

Q [MR. SCHNEIDER]: Okay. So you don't know whether that's in there or not?

A [MR. [redacted] I do not.

Q [MR. SCHNEIDER]: All right. Were the people who did the interview with you, were they intelligence-gathering people or criminal law enforcement investigators?

A [MR. [redacted] Which interview, sir?

Q [MR. SCHNEIDER]: Any.

A [MR. [redacted] A time frame, for the sake of discussion?

Q [MR. SCHNEIDER]: Let's choose May of 2003.

A [MR. [redacted] May of 2003, Federal law enforcement officers. However, with that time and through the current time, if there's reportable information to decisionmakers', actionable intelligence often is the term, we endeavor to get that--we, as Federal agents, to get that into the intelligence stream.

Q [MR. SCHNEIDER]: And you would then provide it to the intelligence people. Right?

A [MR. [redacted] Well, you mean as far as processing? Or----

Q [MR. SCHNEIDER]: Were the intelligence people conducting their own interviews; do you know?

A [MR. [redacted] Intelligence people. I'm not sure what you would----

Q [MR. SCHNEIDER]: DOD? Department of Justice?

A [MR. [redacted] I wouldn't----

Q [MR. SCHNEIDER]: Any other agencies?

A [MR. [redacted] I don't know about the Department of Justice. But the task force, the SOUTHCOM Joint Task Force, I believe you could reasonably say that's the individuals in billets and job descriptions that have intelligence in there.

Q [MR. SCHNEIDER]: Do you know what the interrogation plan was for Mr. Hamdan?

A [MR. [redacted] Which interrogation plan? I know of no interrogation plan, I should say.

Q [MR. SCHNEIDER]: Okay.

A [MR. [redacted] Other than what the things that have surfaced subsequent to our trip down here two and a half weeks ago.

[END OF PAGE]

Q [MR. SCHNEIDER]: Now, when you came down here--and I want to turn to the subject I think you alluded to earlier, about the circumstances of why you were sent down here.

I don't think I said anything inappropriate, but I do hear an alarm. I mean, let's--I'm not sure how to put this. But let's be honest. You were sent down here, in part, in May of 2003 because you were going to fill in some gaps in prior investigations, and because you needed to talk to him in order to be a fact witness at trial. Right?

A [MR. [redacted] I wouldn't characterize it this way. As I started to reference before, we were teamed up, myself and Mr. [redacted] primarily based on our results working from October of 2000 up to that time and the quality of the results. That's the way I would characterize it. But I would really honestly not say it was about gaps, though, because the individuals that you showed, I know they are quality special agents, too. So I wouldn't really presume there are gaps. But at that time, the Office of Military Commissions said, complete as possible, interview.

Q [MR. SCHNEIDER]: Okay. Do you recall me asking you a little bit about the circumstances of why you were chosen when you were on the stand during the week of July 14th?

A [MR. [redacted] Previously, yes sir.

Q [MR. SCHNEIDER]: Right. And I asked you again yesterday. Right?

A [MR. [redacted] Correct.

Q [MR. SCHNEIDER]: And I don't want to embarrass you, but what did you tell me then?

A [MR. [redacted] At which instance?

Q [MR. SCHNEIDER]: Both.

A [MR. [redacted] Well.

Q [MR. SCHNEIDER]: Didn't you tell me, “At the risk of becoming red-faced and sounding boastful, it's true that in part I was sent down here because I make a pretty good witness”?

A [MR. [redacted] From----

Q [MR. SCHNEIDER]: Right?

A [MR. [redacted] On the first time. But then that wasn't my answer yesterday.

Q [MR. SCHNEIDER]: Well, let's talk about the first time. Was that your answer the first time you were asked the question under oath?

A [MR. [redacted] To the best of my recollection.

[END OF PAGE]

Q [MR. SCHNEIDER]: And without actually meeting him, you wouldn't be able to come in and talk about your interview. Would you? I mean, you had to go meet him in order to be able to come in as a fact witness and say, "I talked with him"?

A [MR. [redacted] Sure.

Q [MR. SCHNEIDER]: Right?

A [MR. [redacted] For any interviewee. Yes.

Q [MR. SCHNEIDER]: Fair enough. And I agree, you're a very good witness. There's nothing wrong with that, even if it's a little bit awkward for you to say so. But you also had some help. Didn't you?

A [MR. [redacted] Some help?

Q [MR. SCHNEIDER]: Well, who came down for the same interview with you?

A [MR. [redacted] Oh. Help in the form of Mr. [redacted]?

Q [MR. SCHNEIDER]: Well, I'm thinking more of the psychologist.

A [MR. [redacted] Oh.

Q [MR. SCHNEIDER]: Psychologist.

A [MR. [redacted] Psychologist. Yes.

Q [MR. SCHNEIDER]: Who is that?

A [MR. [redacted] I believe--but, again, as we've discussed before, I wasn't sure if it was--it would have been an NCIS psychologist.

Q [MR. SCHNEIDER]: And the analysts? I don't need their names. I don't need to put that in the record. But it was a psychologist who came down to assist in some way with your criminal investigative interview. Correct?

A [MR. [redacted] Well, again, from my recollection, based on the initiative that the Criminal Investigation Task Force was trying to get some traction with a team that supports an interview. I would say that the psychologists, analysts were probably there. And, now, the psychologist, I'm sure, as well. I am sure of that. The analysts, I'm not sure 100 percent.

Q [MR. SCHNEIDER]: You mean there are analysts in addition to the psychologist?

A [MR. [redacted] Well, again, in that team concept--again, it was really a seminal forming, from what I recall at that time, of the support team. You have the interviewer--or interviewers, of course--assigned or tasked. Then if you have some behavioral support, which, again in that context was designed more for training, particularly for the uninitiated. Then analysts, if they were available, who had a good awareness and cognizance of the case would come.

Q [MR. SCHNEIDER]: Let's round out the team. Who else?

A [MR. [redacted] In talking about May of 2003?

Q [MR. SCHNEIDER]: Right.

A [MR. [redacted] I know at least one attorney detailed to the Office of Military Commissions was with us for a part of the trip.

Q [MR. SCHNEIDER]: An attorney for Mr. Hamdan?

A [MR. [redacted] From the Office of Military Commissions.

Q [MR. SCHNEIDER]: From the defense?

A [MR. [redacted] Office of Military Commissions.

Q [MR. SCHNEIDER]: You're talking about a prosecutor. Right?

A [MR. [redacted] But at the time, I wasn't aware--unless an individual had been charged-- if he was assigned an attorney. But it would have been from the prosecution, or what was hoped to be the prosecution side. Yes.

Q [MR. SCHNEIDER]: It was Scott Lang, the guy who was assigned to prosecute Mr. Hamdan. Right?

A [MR. [redacted] If you know that, I won't argue. But I really cannot--I don't know if Mr. Lang was there. I know one other attorney for part of the trip was with us.

Q [MR. SCHNEIDER]: You know he's a prosecutor, not a defense lawyer?

A [MR. [redacted] At that time.

Q [MR. SCHNEIDER]: Fair enough.

A mirror in the room?

A [MR. [redacted] A one-way observation mirror, if you will.

Q [MR. SCHNEIDER]: Meaning, people on the outside could observe?

A [MR. [redacted] That's correct.

Q [MR. SCHNEIDER]: Did the prosecutor have any input for you and Mr. [redacted] with regard to what you should try to have in your report when you finished up, a subject that you would like to try to cover with him that they needed to prosecute?

A [MR. [redacted] I did not speak with attorneys from the Office of Military Commission about the compiling of the FD 40 prior to leaving the island.

Q [MR. SCHNEIDER]: Well, I understand. But what did they tell you before you started the interview? They gave you some questions. Didn't they?

A [MR. [redacted] Questions. But the only questions in going through the materials that are on file anywhere at this point--there were questions for two of the other detainees at that time, but I don't know if any questions for Mr. Hamdan.

Q [MR. SCHNEIDER]: You got typewritten questions from the prosecutors what to try to obtain. Right?

A [MR. [redacted] For--I know for at least, according to the 50 pages from the other day, for two other individuals.

Q [MR. SCHNEIDER]: Among the notes that you understand were given to me as notes of your interview with Mr. Hamdan. Right?

A [MR. [redacted] The package pertaining to the interview. Yes, sir.

Q [MR. SCHNEIDER]: You're aware I was given 50 pages of notes of your interview with Mr. Hamdan without being told that it involved some notes of another interview. Right?

A [MR. [redacted] And no attempt----

Q [MR. SCHNEIDER]: And I know it wasn't your fault.

A [MR. [redacted] And no attempt to be argumentative, but I wouldn't refer to the entire 50 pages as notes.

Q [MR. SCHNEIDER]: Some of it's typed.

A [MR. [redacted] Some of it's typed. That's correct. That would not be notes, for example, in my vernacular.

Q [MR. SCHNEIDER]: All right. And some of it is drafts of what you wanted to put in the final report?

A [MR. [redacted] For Mr. Hamdan.

Q [MR. SCHNEIDER]: Right.

A [MR. [redacted] Yes, sir.

Q [MR. SCHNEIDER]: Okay. So, the subject of bayat. Did it just kind of come up spontaneously during the interview, or did you ask about it?

A [MR. [redacted] It would have been asked about.

Q [MR. SCHNEIDER]: And the reason it was something you wanted to ask about is because you understood it was something that was real important to the prosecutors. Right?

A [MR. [redacted] I can't say with 100 percent certainty. I know it's important to me. It was at that time and would be for any interview in this context. Absolutely.

Q [MR. SCHNEIDER]: And you knew that for almost two years, a year and a half, Mr. Hamdan, cooperative, forthcoming, helpful, information right on the money, he had said “no bayat.” Right? You knew that.

A [MR. [redacted] I didn't.

Q [MR. SCHNEIDER]: Until I told you today?

A [MR. [redacted] That's correct.

Q [MR. SCHNEIDER]: You didn't know about what he said to Mr. [redacted]

A [MR. [redacted] To?

Q [MR. SCHNEIDER]: Mr. [redacted]

A [MR. [redacted] No, I wasn't aware.

Q [MR. SCHNEIDER]: But it was something that was important to you to try to pin down, if you could. Right?

A [MR. [redacted] Again, for Mr. Hamdan or any other person from al Qaeda, yes, sir.

Q [MR. SCHNEIDER]: And you mentioned the word "behavioral," that there was some behavioral consultants on your team?

A [MR. [redacted]]: The term that the Criminal Investigation Task Force used for that initiative project was Behavioral Science Consultation Team. In fact, I think Dr. Michael Gellis actually coined that term.

Q [MR. SCHNEIDER]: From the Behavioral Science Unit?

A [MR. [redacted] Of NCIS?

Q [MR. SCHNEIDER]: FBI.

A [MR. [redacted] I don't----that would have been behind the scenes. I have no awareness of the Behavioral Science Unit at Quantico working with that Behavioral Science Consultation Team at the CITF.

Q [MR. SCHNEIDER]: Do you remember talking to me about the BSCT team, Behavioral----

A [MR. [redacted] The same--actually, that acronym is the same purpose. But as we discussed before, it's clearly there are two separate and distinct BSCTs. And that's a term I think, again, Mike Gelles came up with when he referred to the Criminal Investigation Task Force.

Q [MR. SCHNEIDER]: What does BSCT stand for, B-S-C-T?

A [MR. [redacted] B-S-C-T. Right. Behavioral Science Consultation Team.

Q [MR. SCHNEIDER]: And you knew the BSCT team was in operation in May of 2003. Right? Even if there was nobody in the room with you.

A [MR. [redacted] Okay. Are we talking about the SOUTHCOM JTF BSCT team that I've since heard about, or the CITF?

Q [MR. SCHNEIDER]: Take them one at a time.

A [MR. [redacted] Well, as I mentioned before, the Fort Belvoir CITF, that was an initiative and a project that was under way at that time. That's correct.

Q [MR. SCHNEIDER]: And did you know the other one was under way as well?

A [MR. [redacted] At that time, no, sir.

Q [MR. SCHNEIDER]: Do you know that today?

A [MR. [redacted] I do.

Q [MR. SCHNEIDER]: In May of 2003.

A [MR. [redacted] Knowing about the other BSCT in May of 2003? I was unaware of it.

Q [MR. SCHNEIDER]: But you know today that it was in operation as of 2003?

A [MR. [redacted] I've heard, again, since the proceedings started. Yes, sir.

Q [MR. SCHNEIDER]: And you know that, just less than two months before you arrived, the standard operating procedures for Guantanamo interrogation of detainees had been issued. Right?

A [MR. [redacted] No. I was not aware of that until just a few days ago.

Q [MR. SCHNEIDER]: You didn't know that that standard operating procedure included something called behavior management plan?

A [MR. [redacted] I think that's the first time I've heard that term. But, again, that would not have pertained in any way to my interview at that time, unless there was something surfaced that was causing a really negative impact or a chilling effect on me conducting the interview.

Q [MR. SCHNEIDER]: Yeah. And you don't know what happened before you got there, and you don't know what happened after. Right?

A [MR. [redacted] Right. There are no complaints from Mr. Hamdan or any of the two other individuals that I was conducting interviews with.

[END OF PAGE]

Q [MR. SCHNEIDER]: Right. So let me just see if I can refresh your recollection. If not, just tell me.

Were you aware of a behavior management plan at the time, authorized March 28, 2003, within a couple months of your arrival, the purpose of which was to enhance and exploit the disorientation and disorganization felt by detainees in the interrogation process? That it was concentrated on isolating the detainee and fostering dependence on his interrogator? You didn't know that?

A [MR. [redacted] I did not know that.

Q [MR. SCHNEIDER]: Did you know that within a month of your interview--I guess it would be a month to the day, April 16, 2003, Secretary of Defense Rumsfeld had authorized the use of sleep deprivation techniques for interrogations of Guantanamo detainees? Did you know that?

A [MR. [redacted] From open source reading about it, periodicals and books.

Q [MR. SCHNEIDER]: And did you know in----

A [MR. [redacted] But I wasn't aware of that, that precise date, though, or time frame.

Q [MR. SCHNEIDER]: So you didn't have on your mind, as you met Mr. Hamdan, "Gee, I wonder what happened to him last night"?

A [MR. [redacted] Yes, sir. I would like, for Mr. Hamdan as any other person, things that would impact my interview, whether not

able mentally or physically, to conduct an interview, I'm very much concerned with.

Q [MR. SCHNEIDER]: Did you ask him during the interview if he had been moved within the previous 24 hours from his normal accommodations or cell to an isolation or punishment block?

A [MR. [redacted] In conducting interviews, for my standard procedures, start out with general: How are you feeling? Are you okay? Ill? Any problems, any complaints? So I would have asked that to Mr. Hamdan. But in the absence of an answer with any details, I wouldn't have asked something, specific, for example, as, “Mr. Schneider, did you say ‘moved last night?’” Again, in the absence of any indication of that, I wouldn't know to even ask something like that.

Q [MR. SCHNEIDER]: Right. So you don't know that he was awakened at 11:00 p.m. the night before you met him----

A [MR. [redacted] From----

Q [MR. SCHNEIDER]: ----and moved for no apparent reason to an isolation or punishment cell, do you?

A [MR. [redacted] Are you asking at that time, or subsequent to that time?

Q [MR. SCHNEIDER]: You know it today. Right?

A [MR. [redacted] Today I've heard that. Yes, sir.

Q [MR. SCHNEIDER]: But you didn't know it when you had started the interview?

A [MR. [redacted] That would be correct.

Q [MR. SCHNEIDER]: And if you had known it, you would have done something different. Wouldn't you? You would have asked him about it.

A [MR. [redacted] I would have asked for specifics if it was a complaint, and do my best to look into it. Again, if it's going to have a negative impact on the interview, I would look into it.

Q [MR. SCHNEIDER]: Right. Because you would want to assess that information with regard to the reliability of what you were going to hear. Right?

A [MR. [redacted] If it was present. Yes.

Q [MR. SCHNEIDER]: But you didn't know.

A [MR. [redacted] I did not know.

Q [MR. SCHNEIDER]: And I don't doubt that. But that's because no one told you. Right?

A [MR. [redacted] About the move at the previous night?

Q [MR. SCHNEIDER]: Right.

A [MR. [redacted] No. That was not discussed in any way with myself.

Q [MR. SCHNEIDER]: But you know it today?

A [MR. [redacted] Yes, sir.

Q [MR. SCHNEIDER]: Did anyone tell you about an interrogation that had occurred in March of 2003?

A [MR. [redacted] I don't recall anything up to or preceding my interview. But it was mentioned yesterday.

Q [MR. SCHNEIDER]: Okay. We'll get to it in a minute. Tell me a little bit about the BSCT team that you do know about, the CITF BSCT team.

A [MR. [redacted] Yes, sir.

Q [MR. SCHNEIDER]: What was involved there?

A [MR. [redacted] I'm not sure if there is still--because I was never actually assigned to the CITF, but tasked for special projects, if you will.

The initial plan, as devised by Dr. Mike Gelles and the first two leaders, the commander and deputy commander at the CITF, it was squarely for training purposes in a crash-course fashion, if you will, for what was largely overwhelmingly an uninitiated interview analyst corps, working persons--working on persons who are from the Near and Middle East.

Q [MR. SCHNEIDER]: To train the interviewers. Correct?

A [MR. [redacted] To train the interviewers prior to going to a place like Guantanamo or like to Bagram.

CDC [MR. SCHNEIDER]: Your Honor, I've forgotten if we typically take another recess before we go right to 1230?

MJ [CAPT ALLRED]: Well.

CDC [MR. SCHNEIDER]: How long have we been going?

MJ [CAPT ALLRED]: An hour and a half. It's been so enjoyable, I've lost track of time.

CDC [MR. SCHNEIDER]: Thank you, Your Honor.

MJ [CAPT ALLRED]: Do you anticipate needing substantially more time with this witness?

CDC [MR. SCHNEIDER]: Yes. But I think I could be more efficient if we do take a recess and then resume for some more questions before the lunch break, if that's okay.

MJ [CAPT ALLRED]: Sure. It sounds like it's a good time. Why don't we take a recess.

[The military commission recessed at 1004, 31 July 2008.]

[The military commission was called to order at 1025, 31 July 2008.]

MJ [CAPT ALLRED]: Court is called to order. All parties have returned, and we continue with your examination.

Q [MR. SCHNEIDER]: Agent [redacted] I will try to wrap this up by the lunch break. Would that be okay with you if you don't have to come back this afternoon?

A [MR. [redacted] I'm at your disposal, sir.

Q [MR. SCHNEIDER]: Generally speaking, would you agree with Agent [redacted]-former Agent [redacted] that Hamdan's information provided to the United States----

MJ [CAPT ALLRED]: The interpreters haven't made it back? Are they up in the other building?

TC [LCDR STONE]: We can see on the monitor, and there's not a soul.

MJ [CAPT ALLRED]: Could you make a phone call up there and rustle up some interpreters.

CDC [MR. SCHNEIDER]: I may have to withdraw my last statement.

MJ [CAPT ALLRED]: No, you won't.

TC [LCDR STONE]: They're moving, sir.

They are running to the trailer, sir.

MJ [CAPT ALLRED]: Oh, they are down here in this compound.

TC [LCDR STONE]: Yes, sir.

MJ [CAPT ALLRED]: Okay.

CDC [MR. SCHNEIDER]: Are the translators present? Thank you.

Q [MR. SCHNEIDER]: Let's see if I can re-ask the same question.

Would you agree with Agent [redacted], former Agent [redacted] that the information that Hamdan provided to the United States Government, generally speaking, was accurate, it checked out, it was corroborated, it was right on the money?

A [MR. [redacted] Generally speaking, accurate and corroborated. Yes, sir.

Q [MR. SCHNEIDER]: Let me ask you a little bit more about the BSCT team that you knew about, the CITF BSCT team.

CDC [MR. SCHNEIDER]: Mr. Powell?

Q [MR. SCHNEIDER]: Go ahead.

A [MR. [redacted] Sir?

Q [MR. SCHNEIDER]: What was its purpose?

A [MR. [redacted] Did you----

Q [MR. SCHNEIDER]: What was--let me ask you a specific question. I think you told me yesterday from the witness stand outside the presence of the members that it was a training device which then became a threat matrix. Does that sound familiar?

A [MR. [redacted] That's my understanding of it. Yes.

Q [MR. SCHNEIDER]: What does that mean? What did you mean?

A [MR. [redacted] Well, the training aspect designed, again, because there's such large numbers of federal agents and other professionals, analysts, who conduct interviews of a target, if you will, that after--following 9/11 where we didn't have a deep cadre of people. So with the mission moving out so quickly and responding to a huge tragic event like 9/11, leadership at the CITF devised the BSCT to help in crash-course fashion train those folks in things like a basic understanding of Arab and Central Asian culture, nuances of language, history, a background on Islam, and those types of things.

[END OF PAGE]

Q [MR. SCHNEIDER]: All of which could be used to the advantage of getting information?

A [MR. [redacted] Well, for an individual that conducts an interview. For example, knowing as much about the background of the individual, the culture he or she grew up in I find is very important.

Q [MR. SCHNEIDER]: Did you know that Mr. Hamdan was under the impression that he had been awakened regularly throughout the night during the time you were interviewing him?

A [MR. [redacted] That----

Q [MR. SCHNEIDER]: Did you know that? You didn't know that at the time?

A [MR. [redacted] That's correct, sir.

Q [MR. SCHNEIDER]: You've heard it since then?

A [MR. [redacted] Yes.

Q [MR. SCHNEIDER]: Right?

A [MR. [redacted] That's correct.

Q [MR. SCHNEIDER]: Guards knocking on the bars; and as soon as he woke up saying, "Oh, never mind"; coming back some period of time later, and doing the same thing?

A [MR. [redacted] That detail, I had not heard before.

Q [MR. SCHNEIDER]: Have you ever heard of [redacted]?

A [MR. [redacted] Subsequent to our trip down here two and a half weeks ago. But I believe the little that I did hear, it happened sometime in June--approximately June of 2003, or whatever the operation, it commenced at that time after our interviews.

Q [MR. SCHNEIDER]: Are you aware that the Inspector General's report issued just two months ago indicated that 70, 7-0, FBI agents testified that they had information about sleep deprivation techniques used at Guantanamo on detainees in 2003?

A [MR. [redacted] If you are asking me if I was aware of that?

Q [MR. SCHNEIDER]: Yes.

A [MR. [redacted] No, sir.

Q [MR. SCHNEIDER]: You've never taken a look at the report?

A [MR. [redacted] I had not, up until this point.

CTC [MR. MURPHY]: Your Honor, I'm going to object. If he's not aware of it, further questioning on the report should not be allowed.

MJ [CAPT ALLRED]: Sustained.

Q [MR. SCHNEIDER]: Were you aware of an interview technique that had been used on March 21, 2003 by some other unidentified female interrogator?

A [MR. [redacted] Prior to? No, sir. Just what was referenced yesterday. That was my first hearing or awareness of whatever that was.

Q [MR. SCHNEIDER]: That would have been within a couple of months of your arrival, if such a thing happened. Right?

A [MR. [redacted] March 2003?

Q [MR. SCHNEIDER]: March 21.

A [MR. [redacted] March 21. Within a few months. That's correct.

Q [MR. SCHNEIDER]: And what did you learn since you've completed your interrogation of Mr. Hamdan about that event?

CTC [MR. MURPHY]: Objection, Your Honor. He said he had no knowledge at the time, and he's also touching on what is a secret document.

MJ [CAPT ALLRED]: Well, I think the problem is that this is hearsay that he's being asked to relate. He has no personal knowledge of this.

Q [MR. SCHNEIDER]: Do you have any----

CDC [MR. SCHNEIDER]: May I ask him?

MJ [CAPT ALLRED]: You may ask him, sure.

Q [MR. SCHNEIDER]: Do you have any personal knowledge that you've obtained up until today?

A [MR. [redacted] Up until yesterday.

Q [MR. SCHNEIDER]: Okay. So let's take yesterday.

A [MR. [redacted] Yeah. Up until yesterday, no awareness, or had not heard about whatever that was that occurred involving a

female interrogator. But I have to say again, though, I take as great of pains as I can in the first ample part of any interview to try to determine with the interviewee how he is feeling, are there any problems, things that I might be able to help with.

Q [MR. SCHNEIDER]: Sure. But you had no occasion or any reason when you met Mr. Hamdan to ask him if he had experienced any sexual humiliation in an interrogation. Did you? Yes or no.

A [MR. [redacted] No.

Q [MR. SCHNEIDER]: No reason to ask him. And whatever you've learned about that, you've learned since you completed your interview?

A [MR. [redacted] That's correct.

CTC [MR. MURPHY]: Objection, Your Honor. That would be hearsay. He says he has no personal knowledge.

MJ [CAPT ALLRED]: Sustained.

Q [MR. SCHNEIDER]: Is there anything you can tell us about the circumstances of Mr. Hamdan's confinement or condition prior to when he came into the room to meet you on May 17, 2003?

A [MR. [redacted] No specifics, other than everything seemed to be okay. He was in good health.

[END OF PAGE]

Q [MR. SCHNEIDER]: When did you first learn that Agent [redacted] a year prior had become very concerned, maybe even flipped out, when he heard that Hamdan had been put in an isolation cell before he began his interview?

A [MR. [redacted] The first time I had heard about that was a few weeks ago during the motions hearings.

Q [MR. SCHNEIDER]: So you had no reason in May of 2003 to know that that had been something Mr. [redacted] attempted to correct the prior year?

A [MR. [redacted] No. I was not aware of that.

Q [MR. SCHNEIDER]: Okay. I'm going to skip a lot of things that you've told us you're not able to tell us about. Is that okay with you?

A [MR. [redacted] Yes, sir.

Q [MR. SCHNEIDER]: All right. Do you know a Detective [redacted] New York City Police Department?

A [MR. [redacted] I don't know. But I'm familiar with the name.

Q [MR. SCHNEIDER]: Do you know what Mr. Hamdan told him about bayat in an interview conducted in August of 2002? Yes or no, do you know what he told him?

CTC [MR. MURPHY]: Your Honor, this would all be hearsay. Objection.

MJ [CAPT ALLRED]: He can answer this question, which is a yes or no.

A [MR. [redacted] No.

Q [MR. SCHNEIDER]: And you've never seen the written report of the [redacted] interview on August 19, 2002, much less that particular topic. Right?

A [MR. [redacted] Again, sir, I'm really uncertain as to what material I had access to or was able to review prior to coming to Guantanamo for that----

Q [MR. SCHNEIDER]: It's fair to say you don't recall seeing that one?

A [MR. [redacted] I don't recall.

Q [MR. SCHNEIDER]: Okay.

CTC [MR. MURPHY]: Your Honor, I'm going to object to continuing questioning about a report after an agent says he's not familiar with it.

MJ [CAPT ALLRED]: Sustained. I think he can ask about individual reports, if he wants to. In other words, he can ask if the agent is familiar with the reports.

CDC [MR. SCHNEIDER]: I think I just did, and I think the answer was just “no.” And if that's the case, I will move on.

Q [MR. SCHNEIDER]: When did you first obtain your understanding of what bayat means?

A [MR. [redacted] I would say sometime during the mid 1990s, or maybe earlier, with my involvement with the Omar Abdel-Rahman case in both an operation and a source, I should say, the investigation, where that was a pertinent issue. I believe that's the first time I would have become familiar with that term and the concept.

Q [MR. SCHNEIDER]: Did Mr. Hamdan ever lie down or recline during the nine and a half hours you interviewed him?

A [MR. [redacted] Yes. As well as myself and Mr. [redacted] at times.

Q [MR. SCHNEIDER]: If he was tired, was there anything you could give him which might keep him energized even if he was--well, if he was experiencing any sleepiness, is there anything you could have given him that might have kept him going?

A [MR. [redacted] Hypothetical? Because----

Q [MR. SCHNEIDER]: Yeah, hypothetical.

A [MR. [redacted] Because there’s nothing that indicated he was too tired and did not want to continue.

If someone--if an interviewee said that he was feeling a little drowsy, and provided that he was willing voluntarily to continue the interview, I would ask if he wanted coffee or tea.

Q [MR. SCHNEIDER]: You might provide him with some tea or coffee? Caffeine.

A [MR. [redacted] Whatever he would want, as long as I was able to get my hands on that. Yes, sir.

Q [MR. SCHNEIDER]: Would you consider providing him any sweets or sugar items?

A [MR. [redacted] To help him if he said he was drowsy?

Q [MR. SCHNEIDER]: Yeah.

A [MR. [redacted] Only if he said he would like that if it would help him.

Q [MR. SCHNEIDER]: Okay. Let's turn for a moment to the two pages out of 50 that I understand you wrote in what I understood were the [redacted] notes. Okay? Is that--you have them in front of you. Don't you?

A [MR. [redacted] I have the two pages. There is another page or some other pages in there, but they don't pertain to Mr. Hamdan's interview. I think we've discussed that.

Q [MR. SCHNEIDER]: They pertain to people I've never met. Right?

A [MR. [redacted] You, personally?

Q [MR. SCHNEIDER]: Right.

MJ [CAPT ALLRED]: We've covered this. Let's go on to the note.

CDC [MR. SCHNEIDER]: All right. Let's get on to the notes. What can you tell us about what you wrote down that you thought--I think you told me--was important? What time did the interview start?

Your Honor, I would ask that this be shown to anyone who wants to look at it.

MJ [CAPT ALLRED]: You can show this to the witness.

Q [MR. SCHNEIDER]: Do you recognize these notes?

A [MR. [redacted] Referring to the--okay. Yes, sir.

Q [MR. SCHNEIDER]: Is the image on the screen the same as the hard copy in your hand?

A [MR. [redacted] It is.

Q [MR. SCHNEIDER]: Your handwriting?

A [MR. [redacted] That's my handwriting.

Q [MR. SCHNEIDER]: No one else's?

A [MR. [redacted] Not that--I don't think anyone else wrote on that page. It has my initials at the bottom of the page.

Q [MR. SCHNEIDER]: Did you take the notes contemporaneous with the interview that you conducted on May 17, 2003?

A [MR. [redacted] I did.

[END OF PAGE]

Q [MR. SCHNEIDER]: Did you try to write down information that you thought was important, and to write it down accurately as you understood it at that time?

A [MR. [redacted] Yes. In capturing the atmosphere of the flavor of the interview.

Q [MR. SCHNEIDER]: To your recollection, having reviewed the notes--which you've done recently. Right?

A [MR. [redacted] Yes.

Q [MR. SCHNEIDER]: And based on your recollection of the event itself, the interview, are the notes accurate?

A [MR. [redacted] Yes. I would say yes.

Q [MR. SCHNEIDER]: You don't see anything inaccurate in it. Do you?

A [MR. [redacted] I pride myself on accuracy, sir.

CDC [MR. SCHNEIDER]: I would ask that the hard copy be marked as an exhibit next in order.

CTC [MR. MURPHY]: Your Honor----

MJ [CAPT ALLRED]: Are you refreshing this witness's recollection?

CDC [MR. SCHNEIDER]: Well, I will.

MJ [CAPT ALLRED]: Okay. Well, I think this document is already in evidence. It doesn't need to be marked again. Does it?

CDC [MR. SCHNEIDER]: It's already in?

CTC [MR. MURPHY]: Your Honor, he has not indicated that he needs to have his memory refreshed. He has testified about these matters already. And he hasn't been impeached. Therefore, it should not be coming in as evidence.

Q [MR. SCHNEIDER]: Let me ask a foundation question.

When was the time you testified before these members about this subject? When did that happen? Never?

A [MR. [redacted] About?

Q [MR. SCHNEIDER]: These notes.

A [MR. [redacted] Well, we had referred to them earlier today.

Q [MR. SCHNEIDER]: Okay. Let me just ask you a few questions. You don't want to--well, what did you write down with regard to what happened at 1115?

A [MR. [redacted] 1115? The notation that is "T" with, parenthetically, green and red, and it says: At 1115. And then under that, cakes, Fig Newtons, raisins, and dates. And then the notation, accepted. Which, in my notes, means offered, and the interviewee accepted the items for consumption.

Q [MR. SCHNEIDER]: Okay. What of importance did you write down at 1345 to 1430?

A [MR. [redacted]]: Written at that point farther down in the notes by four or five lines, it says: Tea and Fig Newtons, 1345, 1430.

Q [MR. SCHNEIDER]: 1700? 5:00 p.m.?

A [MR. [redacted] It says H20--of course, I won't insult anyone's intelligence--slash, tea, 1700. But no notation whether it was accepted or not. So usually, from my notes, that means offered but declined.

Q [MR. SCHNEIDER]: And did you also write down what his position was?

A [MR. [redacted] Yes. Underneath that, parenthetically, relating to a different time I have a notation about that.

Q And on the 25 May interview, did you also give him dates?

A [MR. [redacted] Yes.

Q [MR. SCHNEIDER]: By the way, you testified on direct about the various fatwas and four signatories to the fatwas, what it meant, what it meant to Mr. Hamdan?

A [MR. [redacted] Yes.

Q [MR. SCHNEIDER]: Where in the notes that you took did you mention any of those things?

A [MR. [redacted] It was related to a previous testimony. That part of the substantive part for our--the way we conducted business would not likely have been in my notes.

[END OF PAGE]

Q [MR. SCHNEIDER]: Let's just be specific. It's not in the notes. Is it?

A [MR. [redacted] It's not in the notes that I have in front of me. Yes, sir.

Q [MR. SCHNEIDER]: Okay. And what did you write down about--I don't think I asked you this earlier. What did you write down in your notes about bayat?

MJ [CAPT ALLRED]: Mr. Schneider, I think we've covered this. He's already indicated that Agent [redacted] was taking the substantive notes; that he was taking the notes about the conditions surrounding the interview.

Q [MR. SCHNEIDER]: I'd like to ask you about your testimony regarding uncontrollable enthusiasm. I believe you were asked if Mr. Hamdan said to you what it meant to him, personally, to be hearing bin Laden or be in his presence. Is that your testimony?

A [MR. [redacted] As best I can recall, asked him personally what it meant to him as well as the shavab or the guys of al Qaeda.

Q [MR. SCHNEIDER]: Isn't it true that, in your report, you wrote it down a little differently? True?

A [MR. [redacted] I'm not sure which part you're referring to.

[END OF PAGE]

Q [MR. SCHNEIDER]: Well, do you remember writing in your report about the speeches and the press conferences that bin Laden conducted?

A [MR. [redacted] Yes.

Q [MR. SCHNEIDER]: And do you remember writing that Hamdan related that operations such as East Africa, the USS COLE, and 9/11 generated uncontrolled passions? Correct?

A [MR. [redacted] Yes, sir.

Q [MR. SCHNEIDER]: Among who?

A [MR. [redacted] Among--I believe it was the plural, us, “among us,” meaning al Qaeda. But then there's a separate section, I believe, in the report where he talked specifically about himself personally, the effect that Usama bin Laden had on Mr. Hamdan.

Q [MR. SCHNEIDER]: What did Mr. [redacted] write down in his notes in Arabic on that subject?

A [MR. [redacted] Presumably capturing an important part of the interview, what was related to.

Q [MR. SCHNEIDER]: What words did he use?

A [MR. [redacted] Sir? Which, Mr. [redacted] or Mr. Hamdan?

Q [MR. SCHNEIDER]: Mr. [redacted] in his Arabic notes, of what Mr. Hamdan said.

A [MR. [redacted] I don't know if I've seen his Arabic language notes since--that related specifically to the overall interview since

the night of the 17th and the night of the 25th of May.

Q [MR. SCHNEIDER]: Even though it may seem unlikely, I'm going to ask you if this refreshes your recollection of what you heard then.

CTC [MR. MURPHY]: Objection. Counsel is trying to refresh his recollection on notes he never produced himself. This is another person. He can be questioned on his notes.

MJ [CAPT ALLRED]: His recollection can be refreshed by something other than his own notes. That objection is overruled.

Q [MR. SCHNEIDER]: Mr. [redacted] was taking notes in Arabic, right?

A [MR. [redacted] Yes.

Q [MR. SCHNEIDER]: You read them at the time, roughly?

A [MR. [redacted] At the time. Because, again, the way we conduct business, and with our tasking to have the report completed absolutely as soon as possible, following the interview we went to our quarters and then went over all of our notes and then commenced to starting the draft of the Form 40.

[END OF PAGE]

Q [MR. SCHNEIDER]: Isn't it true that--if you recall, that Mr. [redacted] wrote down: Uncontrollable enthusiasm to encourage and to enthuse those that feel there is no--and then there's an undecipherable word.

A [MR. [redacted] Yeah. I mean, that doesn't refresh my memory.

Q [MR. SCHNEIDER]: Might it refresh your memory if you saw them right now, the notes that Mr. [redacted] took?

A [MR. [redacted] It might. But the accurate portrayal of what occurred from the results of the interview, the Form 40--like a Form 302 or an NCIS investigative action, is essentially a manuscript of what happened.

Q [MR. SCHNEIDER]: Right. I understand that. But I'm interested in what you read of Mr. [redacted] notes that he took at the time contemporaneous with the event, hearing the words, in Arabic, and transcribed by him in Arabic. Could you take a look at what's on the monitor?

A [MR. [redacted] Sir, just to be clear, though, when we say contemporaneous notes, if I gave the impression that it's a verbatim transcript during the interview, I misspoke. Because it just does not happen that way.

Q [MR. SCHNEIDER]: I'm just asking if you'll take a look at what he wrote.

CTC [MR. MURPHY]: Your Honor, I object, because there's no need to refresh this witness's memory.

MJ [CAPT ALLRED]: Okay. Then he's being impeached.

CTC [MR. MURPHY]: He's being impeached by a statement that he never produced himself.

MJ [CAPT ALLRED]: I'll let the defense ask him about this statement.

Q [MR. SCHNEIDER]: What's it say?

A [MR. [redacted] On which line?

Q [MR. SCHNEIDER]: On this subject, uncontrollable passion.

A [MR. [redacted] With regard to the Sheikh?

Q [MR. SCHNEIDER]: Yes.

A [MR. [redacted] Um-hmm.

Q [MR. SCHNEIDER]: What did [redacted] write?

A [MR. [redacted] In our--the Form 40?

Q [MR. SCHNEIDER]: No. In the document on the screen. The Arabic notes he took.

A [MR. [redacted] That's, you know, open to interpretation, as well as my sometimes difficulty reading--if that's his handwriting, reading his handwriting.

[END OF PAGE]

Q [MR. SCHNEIDER]: Well, let's just give it your best shot. Based on whatever working knowledge you have of Arabic, what did he write?

A [MR. [redacted] This says, paraphrasing, essentially stirred enthusiasm for the Sheikh amongst us.

Q [MR. SCHNEIDER]: Amongst us. To encourage and to enthuse those who feel that there is no--can you fill in the last word?

A [MR. [redacted] I can't. It's illegible to me.

Q [MR. SCHNEIDER]: Illegible? Okay. Let me ask you this. I think you told us today that the words are hamas muthluk?

A [MR. [redacted] Hamas muthluk.

Q [MR. SCHNEIDER]: I think you told us last week it was hamas jidan. Right?

A [MR. [redacted] I probably said jidan, but I would have misspoke, though.

Q [MR. SCHNEIDER]: Jidan?

A [MR. [redacted] Jidan.

Q [MR. SCHNEIDER]: How would you spell that in English?

A [MR. [redacted] I would translate it to J-I-D-A-N.

Q [MR. SCHNEIDER]: Okay.

A [MR. [redacted] But, again, I misspoke, though. Because as a non-native speaker, what Mr. Hamdan said at that time was very memorable. I just misspoke at that time.

Q [MR. SCHNEIDER]: You misspoke when you were under oath ten days ago?

A [MR. [redacted] If I said hamas jidan, I did.

Q [MR. SCHNEIDER]: Do you recall saying hamas jidan?

A [MR. [redacted] I don't. I remember the hamas part; but the qualifier, I'm not--I don't remember.

Q [MR. SCHNEIDER]: Today, hamas muthluk?

A [MR. [redacted] Yes, sir.

Q [MR. SCHNEIDER]: What did Mr. [redacted] write? Hamas muthluk?

A [MR. [redacted] Yeah.

Q [MR. SCHNEIDER]: Or jidan?

A [MR. [redacted] If I had to again speculate on this--I believe this refers to a separate section of the Form 40, not referring to Mr. Hamdan's personal feelings about bin Laden but about the overall.

Q [MR. SCHNEIDER]: Among the people?

A [MR. [redacted] Right. The passion that those operations, 9/11, East Africa, COLE, instilled in al Qaeda.

Q [MR. SCHNEIDER]: The last question. He wrote neither of the two versions you stated, but he wrote hamas tish. Right?

A [MR. [redacted] That.

Q [MR. SCHNEIDER]: That's what he wrote.

A [MR. [redacted] That's what appears there. But, again, I can't really emphasize enough that whether this part of the complete notes or not, I would be speculating on. But I don't want to mistake that for a verbatim transcript of what is completed in the Form 40 or a 302.

Q [MR. SCHNEIDER]: We agree on that. You can't emphasize it enough.

Do you need to look at the Arabic any more to see that that's yet a third version of what you've described in your testimony?

A [MR. [redacted] No, sir.

Q [MR. SCHNEIDER]: Okay. And does he mention enthusiasm in any other notes on these two pages of notes in Arabic?

A [MR. [redacted] He may, but I'm not sure. Again, I haven't reviewed those notes. I have not seen those notes.

Q [MR. SCHNEIDER]: Could you take a quick look if I gave it to you?

A [MR. [redacted] They're not my notes.

Q [MR. SCHNEIDER]: Are you willing to take a quick look? Just tell us if you see it anywhere else other than the one portion that we've discussed.

CTC [MR. MURPHY]: Your Honor, the government would object.

There's been no impeachment of this that he has been shown. The testimony has shown to be consistent, and he's not said that this would refresh his recollection. And, it was produced by another person.

MJ [CAPT ALLRED]: Well, you don't have that other person here to be cross-examined, but you've offered this witness as the source for----

CTC [MR. MURPHY]: Well, he was here----

MJ [CAPT ALLRED]: I'm going to let the defense counsel do this. This is a very important part of both side's case, what was said on that occasion. And apparently the word or words, there might be a couple of versions. So I think it's fair to let him take a look at these notes.

A [MR. [redacted] Just getting through someone else's handwriting for a non-native may take some time.

I don't believe, in my first go-through, that any of these notations pertain to that topic.

Q [MR. SCHNEIDER]: Just the one that I discussed with you before I handed it to you.

A [MR. [redacted] Yes.

Q [MR. SCHNEIDER]: The one you read from those notes on the screen. Fair enough?

A [MR. [redacted] Fair enough.

Q [MR. SCHNEIDER]: Then we'll move on. Thank you.

Did you take any notes in Arabic? The reason I ask is there are some other pages in Arabic besides those two, but they look to me like they're with regard to other detainees, not Mr. Hamdan.

A [MR. [redacted] I may have made some notations in Arabic script. But as best I can recall from that series of three interviews, unless we had coordination with each other right there to ensure there's just one set of notes for the substantive matters, I wouldn't have.

Q [MR. SCHNEIDER]: When I asked you earlier about the specifics that weren't in your notes, do you see those in Mr. [redacted] with regard to any of those subjects?

A [MR. [redacted] I take it on a presumption that these are his notes.

Q [MR. SCHNEIDER]: Sure.

A [MR. [redacted] I don't know that they are his notes.

Q [MR. SCHNEIDER]: Well, let's clear that up and then we will be done. Have you ever seen the cover sheet to those two pages?

A [MR. [redacted] I'm not sure.

Q [MR. SCHNEIDER]: Do you have any doubt that they're his notes?

A [MR. [redacted] I couldn't say one way or the other, because I wouldn't recognize his script in the Arabic language.

Q [MR. SCHNEIDER]: One moment.

Did I show you these notes within the last couple of weeks?

A [MR. [redacted] I don't believe so, but I'm not certain.

Q [MR. SCHNEIDER]: I don't seem to have the cover sheet at the podium. I'm going to try to look for it while you're asked some questions by--if you're asked some questions by Mr. Murphy. Would that be okay with you?

A [MR. [redacted] Yes, sir.

CDC [MR. SCHNEIDER]: Okay.

CTC [MR. MURPHY]: Your Honor, I have about 20, 30 minutes on redirect. I don't know if you want to stop now or start it now.

MJ [CAPT ALLRED]: Why don't we stop now? Why don't we take up your redirect after lunch? If we just come back at 1400--is that what we've been doing? That gives everyone time for lunch and Mr. Hamdan time for noon prayers. I think we should be able to reassemble in the courtroom at the top of the hill, too. If not, we'll all just wander back down here.

[The military commission recessed at 1221, 31 July 2008.]

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