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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,

4 v.
5 SULAIMAN ABU GHAYTH,

S13 98 CR 1023 (LAK)

6 Defendant.
7 -----x

8 New York, N.Y.
9 March 6, 2014
10 9:45 a.m.

11 Before:

12 HON. LEWIS A. KAPLAN,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
17 Southern District of New York

18 JOHN P. CRONAN

19 NICHOLAS J. LEWIN

20 MICHAEL FERRARA

21 Assistant United States Attorneys

22 STANLEY L. COHEN

23 GEOFFREY ST. ANDREW STEWART

24 ZOE J. DOLAN

25 Attorneys for Defendant

ALSO PRESENT: MARWAN ABDEL RAHMAN
ANDRE CODOUNI
Interpreters (Arabic)

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(Trial resumed)

(In open court; jury not present)

THE COURT: Good morning, everybody.

COUNSEL: Good morning, your Honor.

THE COURT: I understand somebody has something to raise before we bring the jury out.

MR. LEWIN: Yes, your Honor. Good morning.

Three, I think brief, things.

The first, though I don't see any sketch artists before the witness comes out, I ask you to reiterate your instruction from yesterday.

The second is, your Honor, I would like to point out Mr. Macisso is here in court. Should any issues arise with respect to this witness' testimony that is not caught by the witness, myself, or Ms. Dolan or your Honor, Mr. Macisso will stand up. I do not expect that to happen. We are not even close to the line, but should it happen, I want to make your Honor aware of that.

THE COURT: OK.

MR. LEWIN: Finally, your Honor, the last thing this morning, the government intends to read from a stipulation that is not yet in evidence. That stipulation regards the brevity cards. The stipulation itself, your Honor, explicitly says that each, and I will read paragraph 6, Each paragraph of the stipulation is itself independently admissible as evidence at

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1 trial subject only to objections from the parties to any given
2 paragraph of the stipulation based on Federal Rules of Evidence
3 401 and 403.

4 There is one paragraph that the government intends to
5 object to, and we request that your Honor make a ruling. I can
6 read that paragraph to your Honor now.

7 THE COURT: The stipulation is what exhibit?

8 MR. LEWIN: It is marked for identification as
9 Government Exhibit S-2.

10 THE COURT: It's paragraph what?

11 MR. LEWIN: The paragraph that the government objects
12 to, and, your Honor, I will explain why, is paragraph 4.

13 THE COURT: Do you have a copy for me?

14 MR. LEWIN: Sure.

15 THE COURT: I am sure I have it electronically but it
16 will be a lot faster to just hand it to me.

17 MR. LEWIN: While it is being handed up, I can give
18 you a sense in general terms as to what the stipulation
19 provides. It agrees to -- well, it describes the circumstances
20 of the brevity cards that were captured in two different
21 locations, one in Rawalpindi, Pakistan, and the other in
22 Afghanistan in a town called Takhteh-Pol. So it describes the
23 circumstances of the recoveries. As your Honor knows they have
24 the defendant's name on them.

25 Paragraph 4 reads as follows: "While there were other

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1 raids that were carried out in Afghanistan and Pakistan at or
2 around the time and were directed at Al Qaeda safe houses or
3 locations connected to Al Qaeda, the parties have not
4 identified other materials that are relevant to the case at
5 bar.

6 So, your Honor, the government's objection is, of
7 course, straightforward, which is this is irrelevant. In a
8 drug case your Honor wouldn't permit questioning that some
9 other raid at another place didn't either, on one hand didn't
10 find things connected to the defendant in that trial or found
11 things that were not connected to the defendant. The evidence
12 is what it is.

13 The defense certainly is not deprived of their ability
14 to argue what was or was not found because the government will
15 introduce its proof at trial. This is clearly irrelevant under
16 401 and potentially confusing to the jury under 403.

17 MR. COHEN: Judge, this was an issue that was
18 negotiated between government and the defense for weeks and
19 weeks and weeks. And the government received a valuable
20 benefit in exchange for that and agreed to it.

21 THE COURT: Mr. Cohen, I am sure it was. And I am
22 sure it included the part that said, "It is further stipulated
23 and agreed that each paragraph of this stipulation is itself
24 independently admissible as evidence at trial subject only to
25 objections from the parties to any given paragraph based on

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1 Federal Rules 401 and 403." The government is now objecting
2 under 401 and 403, as it has the clear right to do under this
3 extremely carefully negotiated agreement. Right?

4 MR. COHEN: That is correct, Judge. However, I point
5 out that the agreement itself was a specific requirement of
6 this agreement was that language, which the government agreed
7 to when it signed along with the 401, 402 was the essence of
8 this very agreement.

9 THE COURT: OK. I accept that it was part of the
10 essence of it. So, too, was paragraph 6. Objection sustained.

11 OK. Let's go on.

12 MR. COHEN: May I speak to the government for one
13 second.

14 THE COURT: Yes. You may speak with them.

15 (Counsel conferred)

16 THE COURT: Gentlemen, I suggest that you carry on
17 this discussion at the break.

18 MR. COHEN: Thank you.

19 THE COURT: OK. Anything else?

20 MR. COHEN: There is one other issue, Judge.

21 THE COURT: Yes.

22 MR. COHEN: Just to bring to the Court's attention,
23 the 15-page, for lack of a better word, declaration of Khalid
24 Sheikh Mohammed is being delivered to the identified security
25 clearance team in Washington, D.C. within the hour subject only

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1 to the conditions is he forth in your Honor's order. I
2 received that information from Mr. Mohammed's lawyer about an
3 hour ago.

4 THE COURT: Well, thank you for updating us.

5 All right. Let's bring in the jury.

6 The time difference right now between New York and
7 London is five hours. If we move our clocks ahead does that
8 mean, unless the British move on the same day, which I think
9 they don't, that's four hours?

10 MR. CRONAN: I think so, yes.

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(Jury present)

THE COURT: Good morning, everybody.

JURORS: Good morning.

THE COURT: Juror No. 168, I have your note from yesterday. I need more information from you, and let me tell you why.

We are scheduled to begin hearing on Monday morning by a television connection to Europe testimony of a witness in London. And to delay the start on Monday morning, as you requested, which really would not have been much of a problem any other day than Monday, may be very problematic.

If this is an appointment you can postpone or change to the late afternoon or something, please let me know. If it's not, please let me know why, and we will see what we can do.

Thank you. Next witness.

MR. LEWIN: Your Honor, the government calls David Karnes.

DAVID KARNES,

called as a witness by the Government,

having been duly sworn, testified as follows:

THE COURT: You may proceed.

MR. LEWIN: Thank you, Judge.

DIRECT EXAMINATION

BY MR. LEWIN:

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Karnes - direct

1 Q. How old are you?

2 A. 41 years old.

3 Q. Describe in general terms, please, your civilian education.

4 A. I've completed high school I have an associate's degree and
5 bachelor's degree.

6 Q. Are you in the U.S. military?

7 A. Yes, sir, I am.

8 Q. What branch?

9 A. The United States Army.

10 Q. What is your rank?

11 A. I am command sergeant major.

12 Q. In what year did you enter the U.S. army?

13 A. I entered the army in 1991.

14 Q. Sir, directing your attention to 2001, were you deployed as
15 part of the U.S. response to the attacks of 9/11?

16 A. Yes, sir, I was.

17 Q. When, in approximately what month and year, did the U.S.
18 military begin its campaign in response to 9/11?

19 A. The U.S. military began its campaign in September of 2001.

20 Q. Putting aside any countries you may have passed through, to
21 what country were you ultimately deployed?

22 A. Afghanistan.

23 Q. When did you enter Afghanistan?

24 A. I entered Afghanistan on or about 18 November, 2001.

25 Q. For approximately how long were you in Afghanistan?

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Karnes - direct

1 A. Approximately 60 days.

2 Q. Were you on a U.S. special forces team?

3 A. Yes, sir, I was.

4 Q. Was your special forces team operating alone or with
5 others?

6 A. We were operating with others.

7 Q. Describe with whom your team was operating.

8 A. We were operating with an indigenous Afghanistan force made
9 up of tribal members of the Pashtun tribes in southern
10 Afghanistan.

11 Q. Did you specifically play a role in your special forces
12 team at that time?

13 A. I did.

14 Q. Describe your role, please.

15 A. Besides my normal combat mission duty, I also was in charge
16 of assisting with intelligence collection on the battlefield
17 and dealing with detainees that we may have in our custody.

18 Q. Other than English, do you speak any languages?

19 A. I do.

20 Q. What language or languages?

21 A. I speak Arabic.

22 Q. How would you characterize or describe your Arabic language
23 skills today?

24 A. My Arabic language skills today are a bit rusty. I learned
25 the language about 23 years ago, and most recently I have been

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Karnes - direct

1 more in a command position rather than operational.

2 Q. I am going to ask that Government Exhibit 210 for
3 identification of placed on your screen. Sergeant Major
4 Karnes, what is this?

5 A. It appears to be a map of Afghanistan, Pakistan, and India
6 to the southeast.

7 Q. Is this map, generally speaking, a fair and accurate
8 depiction of that region?

9 A. Yes, I would say that it is a fair and accurate depiction
10 of the region.

11 MR. LEWIN: Your Honor, the government offers
12 Government Exhibit 210.

13 MS. DOLAN: No objection.

14 THE COURT: Received.

15 (Government's Exhibit 210 received in evidence)

16 MR. LEWIN: Your Honor, permission for the witness to
17 step down. I am going to publish with use of a poster board.

18 THE COURT: All right.

19 Q. Sergeant Major, please step down.

20 Sergeant Major, if you would please first identify the
21 country of Afghanistan on the map.

22 A. It is right here.

23 MR. LEWIN: Your Honor, the record should reflect the
24 witness testified that Afghanistan is in the center
25 approximately at the top of the map.

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Karnes - direct

1 Q. Pakistan?

2 A. Pakistan is here.

3 MR. LEWIN: The record should reflect that the witness
4 has identified Pakistan as being on the right side of the map
5 as you are facing it.

6 Q. Where did you enter Afghanistan? What area?

7 A. I entered Afghanistan in the southeast region near the
8 border of Pakistan we entered Afghanistan, in the southeastern
9 region of the country across the Pakistani border in what was
10 then what we called the Shinaray Valley.

11 Q. How did you actually enter Afghanistan?

12 A. We entered Afghanistan via a military rotary wing aircraft.

13 Q. By rotary winged aircraft, what do you mean?

14 A. A helicopter.

15 Q. If you would show on the map where the Shinaray Valley is
16 where you entered Afghanistan in November of 2001?

17 A. The Shinaray valley would be to the southeast of
18 Takhteh-Pol.

19 Q. Now, when your special forces team entered Afghanistan, did
20 you have a geographic objective, a place you ultimately were
21 supposed to reach?

22 A. Yes, we did.

23 Q. Where was that?

24 A. Ultimately we were supposed to reach Kandahar.

25 Q. If you would, please identify Kandahar on GX 210.

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Karnes - direct

1 A. Kandahar is right here.

2 Q. The record should reflect that the witness has identified
3 Kandahar as the dot beneath the word Kandahar.

4 Did you ultimately reach the city of Kandahar?

5 A. Yes, we did.

6 Q. When did you reach Kandahar?

7 A. We reached Kandahar on or about 9 December that was when we
8 entered we entered the city of Kandahar. We entered Kandahar
9 on the 7th of December.

10 Q. Was your team the first team of U.S. forces to actually
11 enter the city of Kandahar or was there someone there before
12 you, a U.S. forces team before you?

13 A. We were there first.

14 Q. Why Kandahar? Why was that your ultimate objective or
15 geographic objective?

16 A. Ultimately we knew Kandahar was a Taliban stronghold. They
17 were in control of the country. Our job was to render Taliban
18 from controlling Kandahar with the Afghan forces. We also knew
19 that Al Qaeda was using Kandahar as a major training ground for
20 Al Qaeda operations.

21 Q. If you would, Sergeant Major, briefly walk us through in
22 very general terms how your team traveled between your entry in
23 the Shinaray Valley in mid-November to the time in the
24 beginning of December when you reached the city of Kandahar.

25 A. We traveled over land, large vehicular convoy, made up of

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Karnes - direct

1 indigenous vehicles. We didn't have military vehicles at the
2 time. We were very low signature at the time. So we used a
3 combination of big, large cargo trucks, Afghani, Pakistani
4 cargo trucks, tractors with trailers in the back of them, small
5 sedans and pickup trucks.

6 Q. Track, if you would, just in general terms, the route you
7 took?

8 A. We took an overland route from the Shinaray Valley up the
9 Nalvi Valley to Takhteh-Pol, to the valley that is right
10 outside Takhteh-Pol into Takhteh-Pol, and then we took the
11 highway towards Kandahar eventually.

12 Q. Is it fair to say that the red line depicted in the middle
13 of the map reflects part of a road?

14 A. Yes.

15 Q. And what road is that?

16 A. It would be what we call Route 4.

17 Q. Thank you. You may resume your seat.

18 Sergeant Major, once your team reached Kandahar city,
19 did you have a follow-on objective?

20 A. We did.

21 Q. What was that?

22 A. We were to find and capture any Al Qaeda or Taliban senior
23 leadership or Al Qaeda operatives that were in the region.

24 Q. Did you have priority targets at the time?

25 A. We did.

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Karnes - direct

1 Q. Sitting here today, do you remember all of the targets you
2 had during your time in Afghanistan in 2001?

3 A. Absolutely not. The targets during that time were very
4 nebulous, with the exception of the very senior leadership, the
5 top three really. We didn't have a list that we were carrying
6 around in our pocket, and we were really the first on the
7 ground to try and figure out who was in that general area.

8 Q. Sitting here today, are there people you, in fact, do
9 recall being sort of on your priority targeting list?

10 A. Absolutely.

11 Q. Give us the names. Who do you recall being on your sort of
12 your priority targeting list?

13 A. Of course, there was, Usama Bin Laden was our number one
14 priority target. Mullah Omar, who was the leader of the
15 Taliban at the time, and then Ayman al-Zawahiri as I recall.

16 THE INTERPRETER: Your Honor, the interpreter has a
17 hard time hearing the witness.

18 THE COURT: Maybe you could get a little closer to the
19 microphone, Sergeant.

20 THE WITNESS: Yes, sir.

21 Q. Sergeant, maybe you can pull the microphone towards you a
22 little bit as well if that's helpful.

23 A. Right.

24 MR. LEWIN: Your Honor, the government requests
25 permission to publish what is in evidence as Government Exhibit

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Karnes - direct

1 1-P.

2 THE COURT: Yes.

3 Q. Sergeant Major, do you see Government Exhibit 1-P in front
4 of you.

5 A. Yes, sir, I do.

6 Q. As you are looking at the screen, on the far right there is
7 a man who appears to be wearing a green colored robe. Do you
8 know who that is?

9 A. That would be Abu-Hafs.

10 Q. And sitting here today, do you have a sense of what
11 Abu-Hafs' role was in al-Qaeda?

12 A. My recollection was Abu-Hafs was within the inner circle of
13 Usama Bin Laden's leadership of Al Qaeda and an adviser.

14 Q. During your time in Afghanistan, at any time did you have
15 occasion to go to a location that was affiliated with Abu-Hafs?

16 A. I did.

17 Q. When approximately was that?

18 A. That was sometime after December the 9th, within a few
19 days, 2001.

20 Q. Describe the circumstances of your being at that location
21 affiliated with Abu-Hafs, the man on the right-hand side of the
22 screen.

23 A. At that time what we were doing was we were actually
24 conducting raids throughout Kandahar of known or likely Al
25 Qaeda training facilities and residences. We were told by our

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Karnes - direct

1 higher headquarters that Abu-Hafs' residence had been bombed
2 and that we were to go there to search for any sort of
3 intelligence or anything that was left in that facility that
4 could be of value to both our operations or the strategic
5 operations of the government.

6 Q. You mentioned Abu-Hafs' house or residence being bombed.
7 What happened to Abu-Hafs?

8 A. He was killed in that air raid.

9 Q. Who is sitting next to Abu-Hafs as you are looking at the
10 screen to his left?

11 A. That is Ayman Zawahiri.

12 Q. Did Ayman Zawahiri have any nicknames or aliases?

13 A. The alias that I knew him by as El Doctor.

14 Q. You said El Doctor, is that correct?

15 A. That would be Arabic. "Doctor" would be another term you
16 could use.

17 Q. Is it fair to say that "doctor" in Arabic means doctor in
18 English?

19 A. It's fair to say that, yes.

20 Q. Who is sitting next to Zawahiri?

21 A. That would be Bin Laden.

22 Q. Do you know any nicknames or honorifics used by or for
23 Usama Bin Laden?

24 A. Sheikh.

25 Q. I would like to place on your screen only what's been

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Karnes - direct

1 marked for identification as Government Exhibit 1-PA.

2 Sergeant Major Karnes, what is this? What is 1-PA?

3 A. It's the same photo we just saw with names underneath them.

4 Q. With the exception of the name on the man to the far left,
5 do these names accurately describe the people they refer to?

6 A. Yes.

7 MR. LEWIN: Your Honor, the government offers
8 Government Exhibit 1-PA?

9 MS. DOLAN: No objection subject to the identification
10 that the witness just described --

11 THE COURT: I can't hear you, ma'am.

12 MS. DOLAN: No objection, subject to the
13 identification that the witness just set forth with respect to
14 the name on the far left.

15 MR. LEWIN: Your Honor, the name on the far left has
16 been identified by multiple witnesses and stipulated by the
17 parties.

18 THE COURT: It's received.

19 (Government's Exhibit 1-PA received in evidence)

20 MR. LEWIN: May I publish Government Exhibit 1-PA.

21 THE COURT: You may.

22 MR. LEWIN: Thank you, Ms. Delsener. You can take
23 that down. Actually, Ms. Delsener, please put up 1-PA for one
24 moment.

25 Q. Sergeant Major, did you meet with the government prior to

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Karnes - direct

1 testifying here today?

2 A. Yes, I did.

3 Q. With respect to the man on the far left of the screen who
4 appears to be wearing red or brown robes, prior to your
5 meetings with the government, would you have known who that man
6 is?

7 A. I wouldn't necessarily have known who he was.

8 Q. Prior to your meetings with the government, would you have
9 known his name?

10 A. Not necessarily, not that I recall.

11 Q. Now, sitting here today, do you recollect whether or not a
12 man by the name of Sulaiman Abu Ghayth or Salman Abu Ghayth was
13 one of your priority targets back in 2001, sitting here today,
14 do you recollect whether or not?

15 A. Sitting here today, I don't recollect that, but I don't
16 recollect a lot of the targets that could have been on that
17 list.

18 MR. LEWIN: Ms. Delsener, you can now take that down.

19 Q. I want to turn back now to your entry into Afghanistan,
20 specifically, to your first week there in Afghanistan.

21 Again, on approximately what date did your team land
22 in the Shinaray Valley?

23 A. Approximately November the 18th, 2001.

24 MS. DOLAN: Could you repeat the date, please. Could
25 the date be repeated, please.

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Karnes - direct

1 THE WITNESS: November 18, 2001.

2 Q. What was your first task upon entering Afghanistan that
3 time?

4 A. Our first task was really to evaluate the Afghan insurgent
5 force -- or excuse me the Afghanistan surrogate force that we
6 were going to potentially operate.

7 Q. What was the purpose of your inspection? What are you
8 looking for?

9 A. We were, first of all, determining whether or not they had
10 the will and desire to actually retake their country from the
11 Taliban. Then we had to determine whether or not they had
12 enough men to do so, whether they had the appropriate
13 equipment, both vehicles, weapons, and ammunition.

14 Q. Fast forward a bit. What did your team conclude?

15 A. We concluded that they had the requisite will and they had
16 an appropriate amount of vehicles, weapons, ammunition to
17 complete the task.

18 Q. What language did these men speak?

19 A. They spoke Pashto.

20 Q. In general terms did they speak Arabic?

21 A. No.

22 Q. What languages also are native to Afghanistan?

23 A. From my recollection native Afghanistan languages are
24 Pashto, a little bit of Dari, some Urdu and a little bit of
25 Tajik in the north.

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Karnes - direct

1 Q. Sir, do you speak any of those languages?

2 A. No, I do not.

3 Q. Now, other than your translators during your time in
4 Afghanistan, do you recall speaking to any Afghanistan or
5 Afghanistan nationals who spoke Arabic?

6 A. Other than my translators, no, I don't recall speaking to
7 any Afghanistan nationals that spoke fluent Arabic.

8 Q. Approximately how long was your inspection of this Afghan
9 force that you were going to fight with?

10 A. It took us about three days because they were spread out
11 through the valley pretty well, so we had to actually go and do
12 some traveling to inspect them and check their weapons and
13 vehicles and things like that.

14 Q. If you would, sir, maybe pull that microphone a little bit
15 closer.

16 A. My apologies.

17 Q. Where did you go after you completed that inspection?

18 A. After we completed that inspection, we made our way out of
19 the valley on a vehicle convoy towards Takhteh-Pol.

20 Q. You mentioned Takhteh-Pol and you identified it before on
21 the map. Is Takhteh-Pol a city or a village? How would you
22 characterize it?

23 A. It would be more characterized as a village or very, very
24 small town.

25 Q. I would like to put on your screen only what's been marked

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Karnes - direct

1 for identification as Government Exhibit 213.

2 Sergeant major, what is this?

3 A. That is a photo of Takhteh-Pol, Afghanistan.

4 Q. Who took this photo?

5 A. I took it.

6 Q. Approximately when did you take it?

7 A. I took it approximately on the 25th of November 2001.

8 Q. Is this photo a fair and accurate depiction of the village
9 of Takhteh-Pol at the time you took it?

10 A. It is.

11 MR. LEWIN: Your Honor, the government offers
12 Government Exhibit 213.

13 MS. DOLAN: No objection.

14 THE COURT: Received.

15 (Government's Exhibit 213 received in evidence)

16 MR. LEWIN: May I publish this to the jury, your
17 Honor?

18 THE COURT: You may.

19 MR. LEWIN: Thank you.

20 Q. Sir, in almost the exact middle of the screen do you see a
21 line that cuts across the middle of the photograph?

22 A. Yes. That is a road.

23 Q. What road is that?

24 A. That would be what we've referred to as Route 4, or Highway
25 4.

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1 Q. Is that the same road that's depicted on the map in red
2 that you identified before?

3 A. Yes, it is.

4 Q. On approximately what day did you arrive outside
5 Takhteh-Pol?

6 A. We arrived outside Takhteh-Pol really late night the 23rd
7 early morning the 24th of November, 2001.

8 Q. Describe, if you would, in general terms briefly what
9 happened over the next 12 hours after you arrived outside this
10 village.

11 A. Initially, after we established we would call an objective
12 rally point, where we would try and get our forces into a
13 defensive perimeter for taking an objective, we received an
14 ambush. After repelling that ambush that evening and calling
15 in close air support to help us out, we then established a plan
16 for potentially moving down to the town of Takhteh-Pol.

17 The next morning, after discussing with our Afghan
18 partners there, we decided on send a negotiating party down to
19 Takhteh-Pol to see if we could just have them give us the town
20 without any kind of conflict or hostilities.

21 At that point the negotiation party went down there,
22 and they weren't well received. And then we called in more
23 close air support to the town to get the people that were
24 holding the town know that our intent was to take the town
25 back. We then eventually infiltrated Takhteh-Pol and secured

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1 it.

2 Q. You mentioned the people that were holding Takhteh-Pol.
3 Who were you fighting against?

4 A. Taliban and Al Qaeda that were in the area.

5 Q. When, on what date did you ultimately take Takhteh-Pol?

6 A. Ultimately on the 24th of November, 2001.

7 Q. How long overall did you spend in Takhteh-Pol?

8 A. We spent on or about two weeks in Takhteh-Pol.

9 Q. I want to focus very briefly for now, because we are going
10 to get back to it later, on your first day in Takhteh-Pol. On
11 your first day, did you or your team take any prisoners?

12 A. We did.

13 Q. How many?

14 A. We took two.

15 Q. Men or women?

16 A. They were men.

17 Q. With respect to the first prisoner, did you recover
18 anything from him?

19 A. Yes, sir, we did.

20 Q. Describe in general terms what you recovered, what kind of
21 things you recovered?

22 A. Generally we recovered weapons, SA-7 missiles, we recovered
23 a radio, we recovered money, code cards, letters that were
24 being sent back and forth from Arabs that were in Afghanistan
25 to the family outside or vice versa. We also found Al Qaeda

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Karnes - direct

1 paraphernalia and books inside the vehicle and passports,
2 passport photos, airline tickets, weapons, cards.

3 MS. DOLAN: Objection to the identification of Al
4 Qaeda materials. Foundation.

5 MR. LEWIN: Judge, I'm happy to lay a foundation.

6 Q. How do you know they were Al Qaeda?

7 A. Because a couple of books, one of the books in particular
8 was written by Usama Bin Laden. It was like on the bottom of
9 the book, it said written by Usama Bin Laden. The second book
10 was a mortar manual. That was a softcover book that on the
11 very front of the cover it was printed and typed, it said Al
12 Qaeda, and then it said mortar manual on the bottom of it.

13 Q. What language was that written in?

14 A. It was written in Arabic.

15 Q. What is a mortar?

16 A. A mortar is a manpack mobile weapon system that allows you
17 to launch a bomb over a short distance and arc to hit an area
18 target.

19 Q. During your time in Afghanistan were you ever targeted by
20 mortars?

21 A. We were mortared. We were targeted by mortars and by
22 artillery, yes.

23 Q. Did you recover any communications devices from that man on
24 November 24?

25 A. Yes, we absolutely did.

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Karnes - direct

1 Q. What did you recover?

2 A. We recovered what is known as an Icom 2SAT radio
3 transceiver.

4 Q. Describe what that is.

5 A. It's really, you could equate it to a walkie-talkie. It
6 has a little bit more power than a walkie-talkie a kid would
7 use in the backyard, but really it is a way for people to
8 communicate over a distance in the open.

9 Q. On your screen only I would like to show for identification
10 what's been marked as Government Exhibit 21-P12.

11 Do you see that, Sergeant major Karnes?

12 A. I do.

13 Q. What does this picture depict?

14 A. Three individuals. One of the individuals has a SA-7, full
15 SA-7 rocket system on his shoulder, and the other individual
16 has a radio in his hand.

17 Q. The rocket that's depicted and the radio that's depicted,
18 are those similar to the ones that you recovered on November
19 24, 2001?

20 A. The rocket is similar. The difference in the rocket was we
21 only recovered the tubes with the rocket in it. We didn't have
22 the actual launching system trigger mechanism or battery with
23 the rockets. The radio is, appears to be very similar to the
24 one we recovered.

25 MR. LEWIN: Your Honor, the government offers

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1 Government Exhibit 21-P12?

2 MS. DOLAN: Objection. 403.

3 THE COURT: Overruled. Received.

4 (Government's Exhibit 21-P12 received in evidence)

5 MR. LEWIN: Your Honor, may I publish this?

6 THE COURT: Yes.

7 MR. LEWIN: Thank you.

8 Q. Sergeant Major, while in Takhteh-Pol, did you begin
9 planning to move from Takhteh-Pol to another objective?

10 A. Yes, we did.

11 Q. What was your next objective after Takhteh-Pol?

12 A. Our next objective after Takhteh-Pol was to take the
13 Kandahar Airport.

14 Q. How far from the village of Takhteh-Pol is the Kandahar
15 Airport?

16 A. As the crow flies, from Takhteh-Pol it's about five
17 kilometers by land.

18 MR. LEWIN: Ms. Delsener, if you would please take
19 down Government Exhibit 21-P12 and put up Government Exhibit
20 210, which is in evidence. If you would, please, zoom in on
21 the portion with Afghanistan at the top left to Pakistan on the
22 bottom right.

23 Q. Sergeant Major, the screen in front of you is, I believe, a
24 touch screen. If you would first identify Takhteh-Pol.

25 A. Takhteh-Pol is right here.

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1 Q. The record should reflect the witness identified a spot
2 almost in the center of the screen.

3 And the Kandahar Airport?

4 A. The Kandahar Airport is located right there.

5 MR. LEWIN: Thank you. Ms. Delsener, you can take
6 that down.

7 Q. Was Kandahar airfield an important objective?

8 A. It absolutely was.

9 Q. Why?

10 A. Really two reasons. The first one was there was
11 potentially going to be a staging base for follow-on U.S.
12 forces as they came into Afghanistan. We were the first ones
13 on the ground. That was one of the things we were supposed to
14 achieve for follow-on U.S. forces. Secondly, we knew that
15 there were Al Qaeda on the airfield, so we knew that we had to
16 clear the airfield of Al Qaeda and potential Taliban.

17 Q. Did there come a time when you and your team actually
18 assaulted the Kandahar airfield?

19 A. Yes, there was.

20 Q. Approximately when was that?

21 A. December 7, 2001.

22 Q. I am going to focus my questions now on the approximately
23 week or so leading up to December 7 when you actually took the
24 airfield.

25 While in Takhteh-Pol, did you conduct surveillance of

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1 the Kandahar airfield?

2 A. Yes, we did.

3 Q. Describe your surveillance on the airfield. What did you
4 see? What did you hear?

5 A. We conducted surveillance, what would really be called
6 reconnaissance on the airfield to determine enemy movements,
7 where the defensive positions were, things like that. So we
8 basically would during all hours of the day and night have
9 individuals up conducting visual observation of the airfield.

10 Q. Did you hear anything?

11 A. We did.

12 Q. How?

13 A. We also used or I used the radio that we recovered, and we
14 turned it on. There was communications on the radio.

15 Q. What language were those communications in?

16 A. They were in Arabic.

17 Q. Was that the radio you testified about recovering earlier?

18 A. Yes, it was.

19 Q. What, if anything, did you conclude about the speakers
20 given -- let me ask you this first. What language were the
21 speakers on the radio speaking in?

22 A. They were speaking in Arabic in total.

23 Q. Did you hear any other languages on that radio?

24 A. No.

25 Q. Did you draw a conclusion from the fact that the people on

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1 that radio were speaking Arabic?

2 MS. DOLAN: Objection.

3 THE COURT: Sustained.

4 Q. Sergeant Major, describe the kinds of communications you
5 heard in Arabic over the radio while you were surveilling the
6 airfield?

7 A. Most of the communications were, you know, a lot of
8 excitement on the radio, especially when we were conducting
9 bombing.

10 MS. DOLAN: Objection to that.

11 THE COURT: Overruled.

12 A. Especially when we were conducting bombing. Really it was
13 a matter of enemy movement, troop movements, questions about
14 whether or not they could move to and from Kandahar city
15 proper, discussing wounded personnel; also heard a lot of
16 religious rhetoric, and they made references to a couple of
17 individuals they were looking for, someone by the name of
18 Abdella and they referenced the Sheikh numerous times on the
19 radio.

20 Q. The defendant in this case is named Sulaiman Abu Ghayth or
21 Salman Abu Ghayth. At any time do you remember hearing his
22 name over the radio?

23 A. No, sir, I don't recall hearing his name on the radio.

24 Q. You described hearing religious -- I don't know the term
25 you used, but religious things on the radio. Describe in more

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1 detail what you heard.

2 A. What I would call maybe motivational speeches. I don't --
3 you know, I'm not Muslim so, you know, as soon as it started
4 going into religious rhetoric, and they speak very fast, it was
5 very difficult for me to understand exactly what they were
6 saying, but it appeared to be potentially religious rhetoric
7 and motivation to help them through what was going on down on
8 the battlefield.

9 Q. To be clear, do you know who was speaking those words?

10 A. I have no idea who was speaking them.

11 Q. Now, were the conversations or the communications you heard
12 on the radio out in the open or was code used?

13 A. It was open communications, but they used code in their
14 communications.

15 Q. All right. What kind of code did you hear used in the
16 communications over the radio you were monitoring in and around
17 November and December 2001.

18 A. There was on occasion a simple kind of substitution code
19 used on the radio.

20 Q. What do you mean by that? What's a simple substitution
21 code?

22 A. Simple substitution would be, you know, you substitute a
23 letter, number, or a different word for something that you
24 really intended to say so that someone else doesn't understand
25 exactly what you are saying in an open communications

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1 environment.

2 MS. DOLAN: Objection. Foundation.

3 THE COURT: Lay a foundation.

4 Q. Sergeant Major, during your time in the military, have you
5 yourself been trained in communications practices?

6 A. I have.

7 Q. Have you yourself personally learned about ways to disguise
8 communications so that people listening don't know what you are
9 talking about?

10 A. Yes, sir.

11 Q. Have you learned of different ways to do it?

12 A. Yes.

13 Q. Have you learned about ways of using numbers?

14 A. Yes.

15 Q. Have you yourself created and your team created cards that
16 use numbers to substitute for names?

17 A. Yeah, it would be used like an execution checklist, yes.

18 Q. If you would give an example of how a numerical
19 substitution would work.

20 A. So what I would do is maybe take a number and use my name.
21 For instance, if I was talking on an open radio, I would equate
22 my name to a number or a letter. And if I didn't want anybody
23 to know that name over the radio, I would substitute that
24 letter in the conversation. So and so alpha is going to the
25 market. Or I would take a place and use a number and say the

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1 market was No. 1. So I would say, Alpha is going to No. 1.

2 And whoever is on the other end of the radio who has the same
3 card knows that I was at the market, but anyone in between who
4 may have been monitoring or had the ability to monitor wouldn't
5 know what I was talking about.

6 Q. Now, when you were using this radio you recovered in
7 Takhteh-Pol to monitor the communications that were being
8 spoken in Arabic on the airfield, did you, in fact, hear
9 numerical substitution code being used?

10 A. We did.

11 Q. Sitting here today do you remember any of the specific
12 numbers you heard being used?

13 A. No.

14 Q. You testified earlier that on December 7 you were involved
15 in the assault on the Kandahar airfield. Very briefly describe
16 what happened during that assault?

17 A. Initially, our team and the indigenous force entered
18 through the front gate. There's really only one way to get to
19 the airfield, and we didn't have a very military educated
20 force, so we really had to kind of go at it as a convey. So as
21 we entered the front gate we immediately received enemy fire,
22 and really a gun battle happened after that.

23 Q. Approximately how long did that gun battle last?

24 A. It was about an hour before I actually had to leave that
25 particular area, but it was still ongoing when I left.

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1 Q. At the end of the gun battle, did your team ultimately take
2 control of the airfield?

3 A. Yes, we did.

4 Q. During that firefight or at any time during your 60 days or
5 so in Afghanistan, did you have occasion to see personally what
6 kind of weapons were being used by the men you were fighting?

7 A. Yes, we did.

8 Q. What did you see?

9 A. We saw AK-47s, RPKs. On one account we did recover a
10 vehicle that had an artillery rocket launcher system on it.

11 Q. What is an AK-47?

12 A. It is a man portable assault rifle.

13 Q. Have you been trained on the AK-47?

14 A. Yes, I have.

15 Q. Have you fired an AK-47?

16 A. Yes, sir, I have.

17 Q. Is it fair to say that in that region of the world an AK-47
18 is used by many groups, many people, not just one group?

19 MS. DOLAN: Objection.

20 THE COURT: What is the objection?

21 MS. DOLAN: Personal knowledge and foundation.

22 THE COURT: Overruled.

23 Q. Did you understand the question?

24 A. Could you repeat it for me.

25 Q. I will. Is it fair to say that many groups and people use

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1 AK-47s in that region of the world; it's not limited to sort of
2 one group?

3 A. That is fair to say.

4 MR. LEWIN: May I approach, your Honor?

5 THE COURT: Yes.

6 Q. Sergeant Major, I've placed before you what's been marked
7 for identification as Government Exhibit 5.

8 What is that?

9 A. It is a CD with my initials on it.

10 Q. Did you view portions of what's contained on that CD?

11 A. Yes, there is a video on the CD that I watched.

12 MR. LEWIN: Ms. Delsener would you please publish for
13 the witness only what's been marked for identification purposes
14 as Government Exhibit 5-P.

15 Q. Sergeant Major, what is that?

16 A. A picture of a guy with an AK-47 right next to him.

17 Q. Is that picture a fair and accurate depiction or screen
18 shot of what's on the CD that's marked as Government Exhibit 5?

19 A. It appears to be a fair and accurate -- what I saw earlier
20 on the video, yes.

21 Q. Thank you.

22 MR. LEWIN: Your Honor, I am reading now from a
23 stipulation between the parties that is in evidence. It's
24 Government Exhibit S-3, and I am going to read one paragraph.

25 Ms. Delsener, if you would bring up S-3, paragraph 5.

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1 Sorry. Hold on one moment, please. S-1, your Honor,
2 correction. S-1, paragraph 5. It is in evidence.
3 Ms. Delsener, please put up paragraph 5 of S-1.

4 "Government Exhibit 5 is a video filmed on or about
5 October 13, 2001. This video depicts the defendant Sulaiman
6 Abu Ghayth."

7 Ms. Delsener, you can take that down. Now, please put
8 up what is in evidence as Government Exhibit S-4, paragraph 5.

9 It reads as follows: "Government Exhibit 5-T is a
10 fair and accurate Arabic-to-English translation of the video
11 that is Government Exhibit 5. Government Exhibit 5-S is a copy
12 of Government Exhibit 5 with fair and accurate English-language
13 subtitles."

14
15 MR. LEWIN: Your Honor, at this time the government
16 offers Government Exhibits 5, 5-P, 5-S and 5-T.

17 MS. DOLAN: No objection.

18 THE COURT: They are received.

19 (Government's Exhibits 5, 5-P, 5-S and 5-T received in
20 evidence)

21 MR. LEWIN: Ms. Delsener, would you please display --
22 and your Honor permission to publish Government Exhibit 5-P?

23 THE COURT: 5-P?

24 MR. LEWIN: Yes, your Honor.

25 THE COURT: Yes.

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1 Q. Sergeant Major, do you see a weapon depicted on the right
2 of the defendant?

3 A. Yes, sir, I do.

4 Q. All of the weapon or part of one?

5 A. Just the upper receiver of the weapon.

6 Q. Based on what you can see, what do you believe that weapon
7 is?

8 A. I believe that weapon is an AK-47.

9 MR. LEWIN: Thank you. Ms. Delsener, you may take
10 that down. Now, Ms. Delsener, can you publish to the jury,
11 with your Honor's permission, Government Exhibit 1-P4 in
12 evidence. Do you see a portion of a weapon to the left of the
13 defendant?

14 A. Yes, sir, I do.

15 Q. Based on what you can see, what kind of weapon is that?

16 A. Based on what I can see, I would assess that to be an AK-47
17 as well.

18 MR. LEWIN: You can take that down, Ms. Delsener, and
19 please publish what is in evidence as Government Exhibit 4-P4.

20 Q. Sergeant Major, this one is a bit harder to see, but have
21 you watched the video this is taken from prior to testifying?

22 A. Yes, sir, I have seen the video.

23 Q. Based on watching the video and what's in this picture, can
24 you identify the weapon on the left of the individual as you
25 are looking at the screen, on the left of the individual

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1 depicted in that photo?

2 A. Basically what I saw on the video and the blurry picture
3 here I would assess that would be an AK-47 as well.

4 MR. LEWIN: Ms. Delsener, you can take that down.

5 Q. Now, Sergeant Major, did there come a point in time when
6 your team took control of the city of Kandahar, not just the
7 airport, but the city?

8 A. Yes, sir, we did.

9 Q. On approximately what day was that?

10 A. We took control on approximately the 9th of December.

11 Q. And across the rest of approximately December, did you
12 remain in and around Kandahar, or did you go somewhere else?

13 A. We remained in and around Kandahar.

14 Q. Describe in very general terms what you did during that
15 approximately one month in December 2001.

16 A. Initially, once we entered Kandahar, we established a small
17 force that we trained to help us conduct operations in Kandahar
18 of the Afghans that we had with us and then we proceeded to
19 raid facilities that were either potentially or known Al Qaeda
20 training facilities, residences, lodging, those kinds of things
21 in Kandahar.

22 Q. What were you looking for?

23 A. We were looking for potentially the senior leaders that
24 were we were told to look for. We didn't know if they were in
25 area or not. We were looking for other Al Qaeda operatives,

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1 Taliban that may be in the area. We were looking for anything
2 of intelligence value at a tactical level, which really means
3 something we can use to point us in the right direction on the
4 ground as well as anything that may be of more value to someone
5 else outside of our small team that we could send to someone to
6 analyze.

7 Q. Did you recover any items from these places?

8 A. We recovered a whole lot of items.

9 Q. Describe in general terms what you recovered.

10 A. Generally we recovered a lot of documents and papers, a lot
11 of manuals and things that appeared as though it was a pretty
12 robust training ground going on in Kandahar. We recovered
13 Korans. We ended up not recovering a lot of them, we left them
14 because there were so many of them in these facilities. We
15 also recovered documents written by Usama Bin Laden and Ayman
16 Zawahiri while we were there as well as videos, CDs, passport
17 photos, passports, all kinds of paraphernalia.

18 Q. You described Korans. In addition to Korans, did you
19 recover any other religious-type material?

20 A. Yes, we did.

21 Q. With respect to that religious material or in fact anything
22 you recovered from these locations inside Kandahar, did you
23 ever see anything with the name Sulaiman Abu Ghayth from those
24 materials?

25 A. I do not recall seeing that name on any of the materials I

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1 saw.

2 Q. Describe some of the other religious materials you
3 recovered from these Al Qaeda locations in and around the city
4 of Kandahar.

5 A. There was religious rhetoric, there was written,
6 handwritten, you know, books and notes and letters to and from
7 individuals in Afghanistan to family and back and forth. The
8 particular document we found that Usama Bin Laden had written,
9 there was quite a bit of religious rhetoric in there as well to
10 incite support for the cause.

11 Q. During December 2001 did you have occasion to go to any Al
12 Qaeda training camps?

13 A. Yes, I did.

14 Q. One or more than one?

15 A. Just one.

16 Q. Where was that located?

17 A. That camp was located to the southwest of the Kandahar
18 Airport.

19 Q. Was it near the airport or far from the airport?

20 A. It was near the airport, within a kilometer and a half as
21 the crow flies.

22 Q. Did this camp have a name?

23 A. We knew it and referred to it as Tarnak Farms.

24 Q. You testified that it was close to the airport. What is
25 the Arabic word for airport.

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1 A. Mtar.

2 Q. Spell that please?

3 A. M-t-a-r.

4 Q. Describe this facility called Tarnak Farms, what it looked
5 like.

6 A. It really looked like more or less a military compound. It
7 had lodging facilities or residences where you could definitely
8 tell people were living. It also had a range, what looked like
9 a small arms range, had bunkers, had an obstacle course. It
10 also had what appeared to be a weapons maintenance facility and
11 multiple storage facilities.

12 Q. Describe the obstacle course in a little more detail. What
13 did you see?

14 A. The obstacle course had, you know, monkey bars on it, it
15 had things to climb over and crawl under, similar to what we
16 would use in the U.S. military.

17 Q. I would like to place before the witness' screen only
18 what's been marked for identification as Government Exhibits
19 21-P5 first, 21-P6. Can I have 21-P7. Sergeant Major, have
20 you had a chance to look at these three pictures?

21 A. Yes, I have.

22 Q. What do they depict?

23 A. They depict what I would say is Tarnak Farms what I saw
24 while I was there.

25 MR. LEWIN: Your Honor, the government offers

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1 Government Exhibits 21-P5, P6 and P7.

2 MS. DOLAN: No objection.

3 THE COURT: Received.

4 (Government's Exhibits 21-P5, P6 and P7 received in
5 evidence)

6 MR. LEWIN: Ms. Delsener, first please publish
7 Government Exhibit 21-P5 a picture of Tarnak Farms. Thank you.

8 Government Exhibit 21-P6, Ms. Delsener. Thank you.

9 Government Exhibit 21-P7. Thank you.

10 THE COURT: Sergeant Major, I assume, but I want you
11 to tell me whether I'm right in doing so, that by the time you
12 got there these people depicted in the photographs we just saw
13 were not there, is that right?

14 THE WITNESS: Yes, sir. That is correct.

15 THE COURT: Thank you.

16 Q. Sergeant Major Karnes, let's return now to the day,
17 November 24, 2001, you testified earlier that was your first
18 full day inside the village of Takhteh-Pol.

19 Was Takhteh-Pol a significant objective for your team?

20 A. It was a significant objective.

21 Q. What about it made it significant?

22 A. Really initially it was our initial staging point to start
23 to work our way up to the Kandahar Airport. It allowed us to
24 cut a major what we would call a line of communication or a
25 supply route for enemy forces to and from Pakistan and

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1 Afghanistan. So it really was a major point for us to start
2 our movement north.

3 Q. You described cutting a line of communication. What
4 actually were you cutting, and how did you do that?

5 A. The Route 4 highway corridor which was the main line,
6 without having to go across country, which really was a feat in
7 itself, to get to Pakistan, which was a major supply route.

8 MR. LEWIN: Ms. Delsener, would you publish for the
9 jury what is in evidence as Government Exhibit 213.

10 Q. Sergeant Major, does that picture reflect that supply
11 route?

12 A. It does.

13 Q. If you would, using your finger on the touch screen,
14 identify it. So, describe what you did on November 24 to cut
15 that supply route.

16 MR. LEWIN: Ms. Delsener, you can take that down.
17 Thank you.

18 A. So initially, as we started our entry into Takhteh-Pol, we
19 fanned our force out along the entire line of where the village
20 was and created a security perimeter around the village,
21 because we had no idea if there were still enemy combatants in
22 the village. We had watched some leave, but we weren't sure of
23 what was remaining.

24 Some we secured the perimeter around the village, and
25 our commander established checkpoints at the north end of Route

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1 4, what we call Route 4, and the south end of Route 4 with our
2 Afghan indigenous force to stop any vehicular traffic moving to
3 and from or through that town.

4 Q. Did you, in fact, stop any vehicles on that route?

5 A. We did.

6 Q. How many?

7 A. We stopped three.

8 Q. I want to focus now on the second of those three vehicles.

9 First, who actually stopped that vehicle?

10 A. The Afghan forces stopped it.

11 Q. Were you yourself physically present at the moment the
12 vehicle stopped?

13 A. I was not.

14 Q. Where were you and what were you doing?

15 A. I was clearing my security area, we were clearing
16 buildings, and ensuring there was no enemy combatants,
17 searching for intelligence, looking for booby traps, those
18 kinds of things.

19 Q. At some point after that second car was stopped, did you
20 see the car?

21 A. Yes, I did.

22 Q. Did you see the occupant?

23 A. Yes, I did.

24 Q. About how long after the stop did you see the vehicle?

25 A. To my recollection within an hour, but it was sometime that

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1 afternoon.

2 Q. Describe the vehicle you saw.

3 A. The vehicle I say was a Toyota Corolla wagon with a
4 hatchback, light in color.

5 Q. How many people were in the vehicle?

6 A. Just one.

7 Q. Man or a woman?

8 A. A man.

9 Q. Did you ultimately speak with that man?

10 A. Yes, I did.

11 Q. In what language?

12 A. I spoke to him in Arabic.

13 Q. Without saying what he said to you after your conversation,
14 did you conclude that the Toyota hatchback was his?

15 A. Yes, I did.

16 Q. Did you find anything inside the Toyota hatchback that
17 actually tied the man to the vehicle?

18 A. Yes, I did.

19 Q. What did you find?

20 A. We found weapons card that had his name on it. We also
21 found letters between him and his family, and various other
22 paraphernalia in there, airline tickets and things like that.

23 Q. What is a weapons card?

24 A. In this context it was a piece of paper that was issued by
25 the Taliban to -- it was written in Pashto, but also had a

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1 little bit of Arabic on it, and it really allowed whoever was
2 holding it to carry a weapon in Taliban controlled areas.

3 Q. Why was that necessary?

4 A. The Taliban had strict control over the citizens in
5 Afghanistan. They didn't want any opposition. So citizens in
6 Afghanistan, normal citizens weren't allowed to just carry
7 weapons or own them in the open. And Arabs in particular were
8 foreigners, so the Arabs had to have a weapons card in their
9 native language of Pashto in order to get around the city of
10 Kandahar, because they didn't speak Pashto.

11 So it allowed them to move freely with their weapons.

12 Q. What else was taken from the vehicle?

13 A. Two SA-7 missiles were taken from the back of the vehicle,
14 the Al Qaeda material that I talked about earlier, mortar
15 manuals, the Usama Bin Laden book, numerous passport photos,
16 airline tickets to and from Pakistan to countries around the
17 world, letters with money in them, a pistol, pink code cards,
18 passports, and just a whole bunch of handwritten documents and
19 notes that were just kind of strewn about in the vehicle and a
20 radio.

21 Q. Let's start with SA-7s. Describe what those are.

22 A. Those are surface-to-air missiles.

23 Q. What are they used for?

24 A. Used to shoot down aircraft.

25 Q. You testified there was a radio. Was that the same radio

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1 you testified about earlier?

2 A. Yes, sir.

3 Q. You testified that you recovered what you described as pink
4 code cards. Describe the cards. What did they look like?

5 A. They were small cards, maybe about two or two and a half
6 inches long, something you would fit in your wallet. They were
7 pink. They were double sided, with Arabic writing on them, and
8 they were laminated.

9 Q. Was there writing on the cards?

10 A. Yes, there was.

11 Q. What language was the writing in?

12 A. Arabic.

13 Q. Describe in general terms what you remember being written
14 on these pink code cards?

15 A. Generally, there were numbers, personality names, some of
16 them that we knew as, or knew as Al Qaeda places, and general
17 terminology, some of which was military terminology.

18 Q. When you found these pink code cards on November 24, 2001,
19 did you have an understanding of what they would be used for?

20 A. Yes, sir, I did.

21 Q. What was that understanding?

22 A. My immediate understanding of it was that they were being
23 used in conjunction with the radio to communicate with
24 personnel that had another card on the other side to disguise
25 whatever they were talking about.

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1 Q. Remind the jury how that would happen, how would one use
2 these cards to disguise a communication?

3 A. Again, they would initiate a conversation, look on the code
4 card, identify the number that correlated with the word that
5 they wanted to not say over the radio in the open. As they
6 were stating their intended statement, they would substitute
7 that number for the word in their conversation. The individual
8 on the other side of the conversation at a different location
9 with the radio would hear the number, then look at the card,
10 find the number and know what the word was that was supposed to
11 be in that spot in the sentence.

12 MR. LEWIN: Your Honor, may I have just one minute.

13 THE COURT: Yes.

14 (Counsel conferred)

15 MR. LEWIN: Your Honor, may we have a brief sidebar?

16 THE COURT: Yes.

17 (Continued on next page)

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1 (At sidebar)

2 MR. LEWIN: Your Honor, I will just set the scene, and
3 then I am going to allow -- I believe Ms. Dolan is going to
4 have an objection and Mr. Ferrara is going to handle this. At
5 this point the government plans to read from the stipulation
6 that we discussed earlier, which is the stipulation marked S-2
7 for identification.

8 It is not yet in evidence. It regards the brevity
9 cards. It contains both the paragraphs that describe the
10 circumstances of the recovery of this brevity card that I am
11 about to ask about in addition to other brevity cards. In
12 addition, it has the paragraph your Honor ruled on this morning
13 regarding other raids carried out in affirming. Before we
14 started this, I know Ms. Dolan had an objection, and I wanted
15 to allow this to play out.

16 MS. DOLAN: I think this witness's direct has now made
17 paragraph 4, which is the paragraph that your Honor previously
18 excluded, relevant. This witness has testified about a number
19 of different raids. First, the government --

20 THE COURT: And that's why the brevity card shouldn't
21 come in? Is that the point?

22 MS. DOLAN: No.

23 THE COURT: Could we deal with what they have just
24 raised.

25 MS. DOLAN: That is the issue that I am addressing,

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1 your Honor.

2 THE COURT: You are not addressing the brevity cart.

3 MS. DOLAN: We have no objection to those. We have
4 stipulated to their admissibility. I am talking about
5 paragraph 4 right now.

6 THE COURT: If, as, and when this question arises, it
7 will arise on cross. Is that right?

8 MS. DOLAN: No, your Honor. It is arising now insofar
9 as the government is seeking to admit Government Exhibit S-2.

10 THE COURT: What is Exhibit S-2?

11 MS. DOLAN: Exhibit S-2 is the stipulation which
12 includes the paragraph at issue, paragraph 4.

13 THE COURT: But the government is not proposing to
14 offer paragraph 4, is that correct?

15 MR. LEWIN: We are not, but I believe Ms. Dolan, and
16 correct me if I am wrong, you are proposing to renew your
17 objection to the ruling from this morning.

18 MS. DOLAN: Yes, if I could get to it. Based on the
19 witness' testimony in court that the government elicited,
20 paragraph 4 is now relevant for several different reasons.

21 THE COURT: Excuse me. I don't want to interrupt you,
22 but I think you are way out in front of yourself. The question
23 right now is, the government wants to admit part of S-2, is
24 that correct?

25 MR. LEWIN: Yes, your Honor. But if I might add one

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1 thing. If your Honor is going to change in any way your
2 Honor's ruling with respect to paragraph 4, we will now read
3 S-4 as opposed to not reading it to the jury and then allowing
4 the defense on reconsideration to read it at some point later.

5 THE COURT: I see.

6 MR. LEWIN: We will read it if your Honor is going to
7 change your Honor's ruling.

8 THE COURT: Why don't we give the jury its break and
9 we will talk about it. Can I keep this?

10 MR. LEWIN: Yes, your Honor. May I give you a copy,
11 your Honor.

12 THE COURT: Yes, sure.

13 (In open court)

14 THE COURT: Members of the jury, there is a little
15 legal point we have to discuss with the lawyers. We are about
16 10 or 15 minutes from the break anyway, so take a break. We
17 will deal with this and then I will give the lawyers a short
18 break and then we will be back here. Sergeant Major, you can
19 take a break, too.

20 THE WITNESS: All right, sir. Thank you.

21 (Witness not present)

22 THE COURT: Be seated, folks.

23 Mr. Lewin, do you have a copy for me?

24 MR. LEWIN: Yes.

25 THE COURT: OK. Ms. Dolan.

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1 MS. DOLAN: Your Honor, at the outset of the
2 government's direct examination, the government elicited that
3 this witness was deployed to Afghanistan in response to
4 September 11. The bulk of the testimony related to that
5 deployment. One of the main objectives of this witness's
6 deployment was to find and capture Al Qaeda leaders or
7 operatives and also to assist in the resistance against the
8 Taliban.

9 The witness also described taking control of Kandahar
10 in December of 2001, which involved numerous raids on Al Qaeda
11 houses or safe houses. During the course of those raids this
12 witness testified that he was looking for Taliban and Al Qaeda
13 intelligence and that he recovered a whole lot of items. The
14 witness did mention that he does not recall the defendant's
15 name on any of those items.

16 Because of all that testimony, it is our position that
17 the government has now brought paragraph 4 of the proposed
18 Exhibit, Government Exhibit S-2 into evidence. Just for the
19 record that reads: While there were other --

20 THE COURT: I have it right in front of me, ma'am. I
21 don't think they offered it in evidence. You just said that
22 the government has just brought paragraph 4 into evidence. I
23 don't think that it is accurate.

24 MS. DOLAN: I misspoke. I meant to say the government
25 has now brought paragraph 4 into relevance.

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1 THE COURT: OK. Mr. Lewin.

2 MR. LEWIN: I won't remake the arguments that I have
3 already made before the Court. I will add one thing. I
4 intentionally elicited from this witness in response to back
5 and forth this morning that he was on multiple raids and didn't
6 recover anything else. None of that should change your Honor's
7 ruling of this morning, but there is no there there in this
8 case. That's why that was elicited, in order to make the
9 record clear that this witness, other than these cards, has not
10 recovered anything with the defendant's name on it.

11 THE COURT: Paragraph 4 is somewhat broader than this
12 witness's personal knowledge.

13 MR. LEWIN: Certainly, your Honor. But I can only
14 bring out with this particular witness that aspect of it. But,
15 again, nothing that he said or testified to this morning or
16 didn't say or testified to this morning should change your
17 ruling with regard to paragraph 4 which simply says that either
18 that stuff was recovered elsewhere that didn't relate to the
19 defendant or that nothing was recovered elsewhere that did
20 relate to the defendant.

21 THE COURT: Ms. Dolan, what fact at issue in this case
22 does paragraph 4 make more or less probable?

23 MS. DOLAN: The government has described religious
24 materials that were recovered. I think we are going to hear
25 more about that or perhaps we've already heard everything that

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1 has to be said from this witness. Mr. Sulaiman Abu Ghayth's
2 alleged role with respect to Al Qaeda, was that role in
3 particular as a religious adviser or a spokesman on behalf of
4 Al Qaeda.

5 THE COURT: I believe there's never been any
6 suggestion that he was the only person who did that.

7 MS. DOLAN: Yes. But because there was evidence
8 recovered from this individual's car, for example, that
9 represented Al Qaeda religious material, and because
10 Mr. Sulaiman Abu Ghayth is alleged to have participated in Al
11 Qaeda through that role, it is now highly relevant. To the
12 extent that no other materials, no other documents recovered
13 anywhere else in any, all of the raids conducted by the United
14 States Army and affiliated forces is highly relevant to the
15 question of whether Mr. Abu Ghayth participated in the role in
16 which the government said he did.

17 THE COURT: What is the harm, Mr. Lewin.

18 MR. LEWIN: Judge, the harm is the same harm it one in
19 any case. The jury reads this and it suggests, ladies and
20 gentlemen, there was nowhere in the Bronx, New York, that there
21 was something picked up here, or it is the same kind of
22 argument. We don't prove the negative. We are not required to
23 prove the negative. Your Honor is familiar with your Honor's
24 instructions on this point. But it suggests that we have some
25 burden to do something.

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1 With that said, your Honor, I believe we have elicited
2 from this witness intentionally these kinds of facts. He
3 doesn't know who was making the religious incantations, he did
4 recover religious materials and doesn't remember that there was
5 the name on it. But, again, your Honor, this is --

6 THE COURT: Not exactly the point on which the case
7 turns is what you didn't want to say. But it's true. Right?

8 MR. LEWIN: Yes, your Honor. It's certainly true.

9 THE COURT: I am going to allow it. OK. Let's take
10 our morning break.

11 (Recess)

12 (Continued on next page)

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Karnes - direct

1 (In open court; jury not present)

2 THE COURT: Good morning, again. Ms. Dolan, where is
3 Mr. Cohen?

4 MS. DOLAN: That's a good question, your Honor. I
5 don't know.

6 THE COURT: I'll take a wild guess and keep it to
7 myself. But I imagine he'll be right back.

8 MR. LEWIN: Should we get the witness?

9 THE COURT: Yes.

10 MR. COHEN: I apologize.

11 THE COURT: Let's get the jury.

12 (Jury present)

13 THE COURT: The defendant and the jurors are all
14 present.

15 Juror 168, thank you very much for being helpful on
16 that. We will continue.

17 MR. LEWIN: Thank you, your Honor.

18 Your Honor, at this time the government offers
19 Government Exhibit S2 which is a stipulation between the
20 parties.

21 MS. DOLAN: No objection.

22 THE COURT: Received.

23 (Government's Exhibit S2 received in evidence)

24 MR. LEWIN: Permission to read relevant paragraphs of
25 the stipulation.

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Karnes - direct

1 THE COURT: Yes.

2 MR. LEWIN: Ms. Delsener, would you put up Government
3 Exhibit S2 and let's start with paragraph one.

4 On November 24, 2001, two members of Al Qaeda were
5 apprehended by U.S. forces in Takhteh-Pol, Afghanistan, while
6 driving in separate vehicles toward Kandahar, then a
7 Taliban-controlled region of Afghanistan. Other suspected
8 extremists were killed. Searches were conducted of the
9 vehicles and persons. Government Exhibits 206-1 through 206-3
10 are cards, and Government Exhibits 207-1 through 207-3 are fair
11 and accurate copies of cards that were recovered on that day.

12 Ms. Delsener, paragraph two, please. The top page.
13 This paragraph continues, your Honor.

14 Other items recovered from one of those vehicles
15 include, among other things, two surface-to-air missiles,
16 handwritten notes about using boats and divers to transport
17 explosives, Al Qaeda propaganda, multiple passports, airplane
18 tickets, and a letter requesting military equipment. Fair and
19 accurate Arabic-to-English translations of the content of
20 Government Exhibits 206-1 through 206-3, and 207-1 through
21 207-3 are marked as Government Exhibits 206-1R through 206-3R,
22 and 207-1R through 207-3R respectively.

23 Let's go to paragraph two, please, Ms. Delsener.

24 In March 2003, Khalid Sheikh Mohammed, Al Qaeda's
25 chief operational planner from at least 1999 up to the time of

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Karnes - direct

1 his capture, and Mustafa al-Hawsawi, also a member of Al Qaeda,
2 were captured at an Al Qaeda safe house in Rawalpindi,
3 Pakistan. Government Exhibit 208 is a card that was recovered
4 from that safe house. Other items recovered from that safe
5 house include, among other things, a letter from Usama Bin
6 Laden to his children, documents related to the September 11,
7 2001, hijackers such as passport photos, a map of the United
8 States, and a piece of paper reading "poisons easy to prepare."
9 A fair and accurate Arabic-to-English translation of Government
10 Exhibit 208 is marked as Government Exhibit 208-R.

11 Ms. Delsener, now paragraph three which starts on page
12 two.

13 3. After the search of the Al Qaeda safe house in
14 Rawalpindi -- it says Afghanistan -- some of the items seized
15 from the safe house were submitted for fingerprint examination.

16 If you go to the top of page three, which continues
17 this paragraph.

18 Fingerprint examinations conducted by the Federal
19 Bureau of Investigation reveal that numerous items seized from
20 the Al Qaeda safe houses contained the fingerprints of Khalid
21 Sheikh Mohammed.

22 Now if you go down to paragraph four, which is the
23 next paragraph on page three.

24 4. While there were other raids that were carried out
25 in Afghanistan and Pakistan at or around the time and were

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Karnes - direct

1 directed at Al Qaeda safe houses or locations connected to Al
2 Qaeda, the parties have not identified other materials that are
3 relevant to the prosecution at bar.

4 5. It is further stipulated and agreed that
5 Government Exhibits 206-1 through 206-3, 206-1R through 206-3R,
6 207-1 through 207-3, 207-1R through 207-3R, 208 and 208-R are
7 admissible as evidence at trial, subject only to objections
8 from the parties based on Federal Rules of Evidence 401 and
9 403.

10 The government offers 206-1 through 206-3, 206-1R
11 through 206-3R, 207-1 through 207-3, 207-1R through 207-3R, 208
12 and 208-R.

13 THE COURT: They are received.

14 (Government's Exhibit 206-1 through 206-3, 206-1R
15 through 206-3R received in evidence)

16 (Government's Exhibit 207-1 through 207-3, 207-1R
17 through 207-3R, 208, 208-R received in evidence)

18 MR. LEWIN: Your Honor, may I have one moment?

19 THE COURT: You may.

20 MR. LEWIN: Your Honor, paragraph three of this
21 stipulation, it doesn't need to be displayed, read that the
22 search of the Al Qaeda safe house --

23 THE COURT: Mr. Lewin, before we go on. I've had a
24 letter from the court's chief interpreter. And I don't know
25 that this commentary is on you. This is addressed to all

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Karnes - direct

1 counsel.

2 MR. LEWIN: I'll try not to take it personally.

3 THE COURT: It may not even be relevant to you. But
4 the fact is I'm informed that the rapidity of speech among
5 counsel and its occasional, and maybe more than occasional,
6 inaudibility, is making it very difficult for the interpreters
7 to do their job. So everybody's got to slow down, and speak
8 into the microphones, or we're going to have problems.

9 MR. LEWIN: Will do, Judge. Thanks.

10 Judge, paragraph three of the stipulation mistakenly
11 reads that the Al Qaeda safe house was in Rawalpindi,
12 Afghanistan. The word "Afghanistan" by stipulation of the
13 parties should be "Pakistan."

14 After the search of the Al Qaeda safe house in
15 Rawalpindi, Pakistan, some of the items seized from the safe
16 house were submitted for fingerprint examination, period.

17 MR. COHEN: No objection to that correction, judge.

18
19 THE COURT: So stipulated.

20 MR. LEWIN: Your Honor, may I publish some of the
21 exhibits that were just admitted to the jury?

22 THE COURT: You may.

23 MR. LEWIN: Judge, for the record I'm handing around
24 the hard copies of Government Exhibits 206-1 through 206-3
25 only. The rest are of course available, but I will not hand

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Karnes - direct

1 out at this point.

2 THE COURT: All right.

3 (Pause)

4 THE COURT: Whenever you're ready. If you want to
5 wait until the jury finishes, it's fine.

6 MR. LEWIN: I will do that with your Honor's
7 permission. Thank you.

8 THE COURT: All right.

9 MR. LEWIN: Ms. Delsener, if you would, please put on
10 the screen first Government Exhibit 1-PA which is in evidence.
11 Now if you would, let's put up Government Exhibit 206-1R also
12 in evidence.

13 Government Exhibit 206-R was a translation pursuant to
14 the stipulation.

15 THE COURT: All right.

16 MR. LEWIN: First on the translation, which is on the
17 right side of the screen, please zoom in on the second entry in
18 the left column. It reads "the doctor" and then has the number
19 145.

20 Now, Ms. Delsener, if you would please zoom in as
21 you're looking at the screen the second man from the right. Go
22 on Government Exhibit 206-R, again the translation, about
23 halfway down, there is a name that's to the number 155 on the
24 left column. It reads Sheikh Abu Hafs. Please zoom in on
25 that. And now please zoom in on the man on the far right of

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Karnes - direct

1 Government Exhibit 1-PA. It has the name Abu Hafs written
2 under it.

3 Ms. Delsener, if you can leave those two up. And now
4 go to the bottom of the page, the very last entry. It reads
5 Sheikh Usama and has the number 95 next to it. If you would
6 please zoom in on the man to the right hand as you're facing
7 the defendant. The name under there reads Usama Bin Laden and
8 then has quotation marks Sheikh, end quotation marks. Thank
9 you, Ms. Delsener.

10 If you would, in terms of the translations, bring up
11 Government Exhibit 206-1R, page two. And your Honor, this is
12 the backside of the same card, so it is the same card but the
13 flip side of it. If you would, focus on the last name in the
14 left column with the number 40 next to it. Now zoom in on the
15 man on the left as you're looking at the picture. Thank you,
16 Ms. Delsener. You can take those down.

17 If you would, please, display what's in evidence as
18 Government Exhibit 206-1. And let's go to the second page of
19 this exhibit. That is Government Exhibit 206-1.

20 Q. Sergeant Major Karnes, do you see the exhibit that's in
21 front of you marked 206-1?

22 A. I do.

23 Q. Do you see the one side has handwriting and one side does
24 not?

25 A. Yes, I do.

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Karnes - direct

1 Q. Draw your attention to the side without the handwriting.

2 Do you see the Arabic number 40 on the card?

3 A. Yes, I do.

4 Q. Please read the name next to that number.

5 A. Sulaiman Abu Ghayth.

6 Q. Sitting here today, do you recall whether you knew that
7 name back in 2001?

8 A. I don't recall whether I knew that name back in 2001.

9 MR. LEWIN: Please flip that card over. And
10 Ms. Delsener, let's go to the first page. It is the same card.
11 Government Exhibit 206-1.

12 Q. Do you see the Arabic number 145 on the card?

13 A. I do.

14 Q. Please read the name next to that number.

15 A. El doctor.

16 Q. Who is that?

17 A. The doctor.

18 Q. Who do you understand that to refer to?

19 A. Ayman Zawahiri.

20 Q. Finally, do you see the Arabic number 115 on the card?

21 A. I do.

22 Q. Please read the name next to that number.

23 A. Sheikh Abu Hafs.

24 Q. Who does that refer to?

25 A. Abu Hafs. He was killed in the bombing.

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Karnes - direct

1 Q. Do you see the Arabic number 95 on the card?

2 A. Yes, sir, I do.

3 Q. Please read the name next to the number 95.

4 A. Al Sheikh Osama.

5 Q. Who do you assess that to be?

6 A. I would assess that to be Usama Bin Laden.

7 MR. LEWIN: Judge, may I have one minute?

8 THE COURT: Yes.

9 MR. LEWIN: Thank you. No further questions.

10 THE COURT: Thank you. Ms. Dolan.

11 CROSS-EXAMINATION

12 BY MS. DOLAN:

13 Q. Good afternoon, Sergeant Major.

14 A. Good afternoon, ma'am.

15 Q. Have you and I ever met?

16 A. No, ma'am, we have not.

17 Q. Have we ever discussed the subject of your testimony?

18 A. No, ma'am, we have not had the opportunity to discuss my
19 testimony.

20 Q. Did you discuss the subject of your testimony with the
21 government before you testified here today?

22 A. Yes, ma'am, I did discuss with the government.

23 Q. Now, on direct, you testified that you played an
24 intelligence role on the field?

25 A. I played the role of being in charge of gathering the

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Karnes - cross

1 intelligence, but we all did that; yes, ma'am.

2 Q. Could you describe generally, without getting into any
3 specifics, what that role entailed?

4 A. Generally, most of it was translation, because I spoke
5 Arabic. Also, kind of categorizing what we had and identifying
6 if anything was of value to us tactically, because really that
7 was the most important thing to us at the time, because we were
8 in the middle of combat. Then basically getting everything
9 packaged in a way it could go out to someone else to look at.

10 Q. When you were evaluating materials, where were those
11 materials from?

12 A. They were from buildings that we had seized, vehicles that
13 we had stopped at checkpoints, different facilities that we had
14 raided, individuals who were deceased on the battle fields.
15 Those are the types of places.

16 Q. Through the course of conducting these evaluations, if you
17 will, of these materials, did you develop an expertise in
18 identifying what was helpful to you?

19 A. I probably wouldn't categorize it as expertise, but I would
20 say I started to get a little bit of a rhythm to identify what
21 may be of some value. But in the middle of combat, I was
22 triaging the amount of information we were getting.

23 Q. You mentioned on your direct that you entered Afghanistan
24 in November of 2001, correct?

25 A. Yes, ma'am.

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Karnes - cross

1 Q. Your overall goal at that time, and correct me if I'm
2 wrong, was essentially to determine whether the Afghan
3 resistance had sufficient will to retake the country from the
4 Taliban, correct?

5 A. Initially, what we were there to do was to determine
6 whether or not they had the desire, the will, and the ability
7 to do that. Or whether or not U.S. forces would have to do
8 that for them.

9 Q. In that struggle, what was the ultimate result of that
10 determination?

11 A. The result was that they had adequate will and desire, and
12 that they had adequate means to accomplish the mission with a
13 bit of our assistance and advice.

14 Q. Did in fact the U.S. provide that assistance?

15 A. Yes, ma'am.

16 Q. In providing that assistance, it is correct to say that the
17 object or the enemy was the Taliban, correct?

18 A. There was a two-fold enemy. The enemy was the Taliban, but
19 in their eyes and our eyes, Al Qaeda was an enemy as well.

20 Q. How closely were those two groups affiliated?

21 A. They were mutually supportive, from what we could kind of
22 tell. So they were -- they were affiliated.

23 Q. Did you determine any overlap between the two groups?

24 A. Not sure. Could you maybe clarify the question?

25 Q. Earlier in your testimony, you discussed a seizure from a

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Karnes - cross

1 car that was stopped at Takhteh-Pol, correct?

2 A. Yes, ma'am.

3 Q. And you recovered certain materials that you identified
4 were associated with Al Qaeda, correct?

5 A. Yes, ma'am.

6 Q. You also identified a weapons card that was signed by
7 Mullah Omar, correct?

8 A. That is correct.

9 Q. Mullah Omar was the leader of the Taliban, correct?

10 A. Yes, that is correct.

11 Q. It's fair to say from this vehicle you recovered items
12 associated with both Al Qaeda and the Taliban, correct?

13 A. Yeah, I appreciate the clarification. Yes, ma'am, that is
14 absolutely fair to say.

15 Q. I believe you testified about the term mujahideen on your
16 direct testimony. Is that correct?

17 A. No, ma'am, I didn't use the word --

18 Q. Are you familiar with that term?

19 A. Yes, ma'am.

20 Q. Did that term come into play in your operations in
21 Afghanistan?

22 A. I'd say fair to say, yes, it did.

23 Q. Did you develop an understanding of what or whom that term
24 referred to?

25 A. Yes, ma'am.

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Karnes - cross

1 Q. Could you describe that term for the jury, please.

2 A. Mujahideen generally was a term used for freedom fighter
3 type individuals. Originally in the early '80s it was used as
4 a term to describe the Afghanis that were fighting against the
5 Russians. And so, the mujahideen would be freedom fighters and
6 different groups would be called mujahideen.

7 THE COURT: Excuse me. In 2001?

8 THE WITNESS: In 2001, we didn't call the Taliban
9 mujahideen. We called them Taliban. And in some cases, you
10 know, we would call our indigenous force, they were the freedom
11 forces against now Al Qaeda and Taliban. So that's what they
12 kind of sometimes referred to themselves as.

13 THE COURT: Go ahead, Ms. Dolan.

14 MS. DOLAN: If I could have just one moment, your
15 Honor. If the government's assistant could be so kind as to
16 bring up Government Exhibit 206-1R, please. Which is in
17 evidence.

18 Q. Sergeant Major, if I could direct your attention to the
19 second line from the bottom on the right-side column. Could
20 you identify what that item refers to?

21 A. That says in English mujahideen affairs O.

22 Q. Thank you.

23 MS. DOLAN: The exhibit can go down now, thank you.

24 Q. You testified on your direct that you did not encounter any
25 Afghanis who spoke Arabic, is that correct?

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Karnes - cross

1 A. Clarification. I said that I don't recollect any that
2 fluently spoke Arabic besides my translators.

3 Q. Is it fair to say that you encountered some Afghanis who
4 did speak Arabic?

5 A. It's fair to say that I could have encountered some
6 Afghanis that spoke some Arabic. But not that I recall that
7 spoke fluent Arabic.

8 Q. Did you develop a familiarity with the script of the
9 languages of Afghanistan? Not the languages themselves, but
10 with the script?

11 A. From a familiarity, I would say that might be fair to say,
12 yes.

13 Q. What script is it?

14 A. Similar to the script of Arabic language. Similar in
15 nature.

16 Q. So when you were in Afghanistan, you saw signs, for
17 example, on storefronts and things of that nature, correct?

18 A. Yes, I did.

19 Q. You were able to read those signs, correct? At least, you
20 could read what they sounded like, maybe not what they meant,
21 correct?

22 A. In some cases, yes. There is some dissimilar pieces of
23 language. But in some cases, I might be able to read that,
24 yes.

25 THE COURT: Just to be clear, when you say in some

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Karnes - cross

1 cases, yes, but there are dissimilar pieces of language. Are
2 you saying that in some cases when you saw signs, the
3 characters for signs in Pashto were often similar to the
4 characters in written Arabic? Is that one of the things you're
5 saying, at least?

6 THE WITNESS: Yes, sir. I would probably equate it to
7 maybe English and French in some ways.

8 THE COURT: That was my next question. Thank you. Go
9 ahead, ma'am.

10 Q. So, it is fair to say that someone who could read and write
11 Arabic would be able to sound out something written in Pashto
12 or Dari in that script, correct?

13 A. I would say that it would be difficult at times. I would
14 not be able to say that in all cases that could be done.
15 Because I was unable to do that.

16 Q. For example, the name Osama. If it were written in Pashto
17 or Dari, would you be able to read it?

18 A. If I had it in front of me, I could tell you. I don't know
19 necessarily know the characters they use for it. But
20 potentially I could.

21 Q. Are you familiar with the phrase "*bismillahi rahmani*
22 *rahiim*"?

23 THE COURT: You'll have to write that down, counselor,
24 because I think the reporters are not going to get it.

25 Q. Are you familiar -- I can write that down for the reporter

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Karnes - cross

1 afterward or I can spell it now if you wish.

2 THE COURT: You'll have to write it down now and make
3 it an exhibit. We're going to conduct this trial in English
4 entirely.

5 Let's mark it Defendant's Exhibit A-1 for
6 identification.

7 MS. DOLAN: It is so marked.

8 THE COURT: Okay. It should be displayed only to the
9 witness for the moment.

10 It should be A-1, unless you're content with it being
11 A, Ms. Dolan.

12 MS. DOLAN: I'm fine either way. I'll put A-1.

13 THE COURT: Okay.

14 Q. Sergeant Major, are you able to see what's been premarked
15 for identification as Defendant's Exhibit A-1?

16 A. Yes, ma'am.

17 Q. Are you able to read both lines of text there?

18 THE COURT: Well, just one second. Just answer yes or
19 no, please.

20 THE WITNESS: Yes.

21 Q. Are you able to understand what it says?

22 A. I understand the general meaning of what it says. Your
23 pronunciation was much better than mine.

24 Q. I appreciate it. It took many years. What does it say?

25 THE COURT: This is not in evidence.

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Karnes - cross

1 MS. DOLAN: I move it into evidence.

2 THE COURT: Any objection?

3 MR. LEWIN: Relevance.

4 THE COURT: What is the relevance of it?

5 MS. DOLAN: I would be happy to do it at the side bar.

6 THE COURT: Come to the side bar.

7 (Continued on next page)

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Karnes - cross

1 (At the side bar)

2 MS. DOLAN: A portion of this witness's direct was
3 focused in on establishing the differences between Arabic and
4 the indigenous languages of Afghanistan, I think to suggest
5 that Afghanis would not necessarily be able to read the brevity
6 cards because they're in Arabic. But what I'm endeavoring to
7 establish is that the Afghanis would in fact be able to read
8 those names.

9 The phrase that I've put on Defendant's Exhibit A-1,
10 which I will provide later, it means "In the name of God. The
11 beneficent and the merciful." And I anticipate this witness
12 will testify that this phrase was written throughout in various
13 locations in Afghanistan, because it is written in that country
14 in that language.

15 MR. LEWIN: Judge, that exhibit is completely
16 irrelevant. And if Ms. Dolan wants to ask about whether an
17 Afghani could read the brevity cards, then Ms. Dolan can ask
18 that question. But this exhibit is not relevant to this
19 purpose. There are many questions available to her. This is
20 just a distraction for the jury under 403 and irrelevant under
21 401.

22 THE COURT: Why aren't your purposes adequately served
23 by asking the question Mr. Lewin suggests?

24 MS. DOLAN: I'm happy to try that.

25 THE COURT: Let's try that.

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Karnes - cross

(In open court)

Q. You testified about the small pink cards you recovered from a car at Takhteh-Pol?

A. Yes, ma'am.

Q. You testified that they were written in Arabic, correct?

A. Yes, I did.

Q. Would a literate Pashto or Dari speaker be able to read those names in that text?

A. I would be guessing. I couldn't tell you. I don't know whether they are or not. I would have to make an assumption. I would guess possibly, but I just don't know. Because the characters are similar and I would imagine that somethings do transliterate back and forth, much like other languages.

Q. You testified on your direct that you do speak Arabic, but it's gotten a little rusty with the years?

A. Yes, ma'am, absolutely.

Q. When did you study Arabic?

A. Early '90s.

Q. Did you study modern standard Arabic?

A. Yes, I did.

Q. That's known as Fusha, correct?

A. You are absolutely correct.

Q. What is Fusha, or modern standard Arabic?

A. To give a general definition, it's the more educated version of Arabic. There is dialectical Arabic, which would

E363ABU2

Karnes - cross

1 mean different countries have different tones and different
2 ways that they -- I'd equate it to in Southern American, in
3 Alabama and Georgia, maybe compared to New England in some
4 cases. But more the Arabic that they might use in the media.

5 Q. Let's focus in on those dialects for a moment. Are the
6 differences between Southern and Northern United States as
7 distinct as the distinctions between Arabic dialects?

8 MR. LEWIN: Objection.

9 THE COURT: Sustained.

10 Q. How distinct are the Arabic dialects?

11 MR. LEWIN: Objection.

12 THE COURT: Sustained, at least as to form.

13 Q. Isn't it true that some Arabic dialects have words that do
14 not exist in modern standard Arabic?

15 MR. LEWIN: Objection.

16 THE COURT: I'll allow it, but if you know. Answer to
17 the extent you know, not guessing.

18 A. That's a tough one. I am fairly certain that there are
19 some words that may not be in the modern standard Arabic
20 without guessing, your Honor. I would say --

21 THE COURT: No apologies necessary. Thank you.

22 Q. When Arabs speak with one another, Arabs whose native
23 tongue I should say is Arabic. To your knowledge, do they
24 speak in Fusha or do they speak in dialect?

25 A. To my knowledge, it would depend on the two individuals

E363ABU2

Karnes - cross

1 speaking. If they were of the same tribe, same country, they
2 would potentially speak in their dialect. If they were not,
3 they may refer to the Fusha. I think it really depends on
4 education level, and whether or not they were educated in Fusha
5 and not grew up in a village where they only spoke their
6 dialect.

7 Q. You testified on direct about an assault on Kandahar in
8 which you had a radio that you had retrieved that you were
9 listening to, correct?

10 A. Yes, I did.

11 Q. You testified that it was difficult for you to understand
12 everything that was being said on that radio, correct?

13 A. I did say that, yes. Mostly because it was quick and I was
14 in the midst of combat.

15 Q. During the course of your deployment in Afghanistan, did
16 you become familiar with something called the Northern
17 Alliance?

18 A. I was not in that particular location of Afghanistan.

19 Q. Did you become familiar with something called the Northern
20 Alliance?

21 THE COURT: What is really the question? I think most
22 people in America heard it mentioned on television at one point
23 or another at that time. Is that what you mean by "familiar"
24 or do you mean something else?

25 MS. DOLAN: I'm intending to go into some further

E363ABU2

Karnes - cross

1 detail, your Honor. I'm just introducing the line of
2 questioning.

3 THE COURT: Let's introduce it in a way that will not
4 be entirely ambiguous and therefore meaningless.

5 Q. Could you describe what the Northern Alliance is.

6 MR. LEWIN: Objection.

7 THE COURT: Sustained.

8 Q. What is the Northern Alliance?

9 MR. LEWIN: Objection.

10 THE COURT: Sustained.

11 Q. During your deployment in Afghanistan, did you come into
12 contact with one or more camps?

13 A. Could you --

14 MR. LEWIN: Objection, your Honor. Form.

15 THE COURT: I don't understand the question.
16 Sustained.

17 Q. During your deployment in Afghanistan, did you encounter
18 camps that were geared toward training for the Taliban or Al
19 Qaeda?

20 MR. LEWIN: Objection to form.

21 THE COURT: Sustained. I think you need to rephrase
22 it, counselor.

23 MS. DOLAN: If I could have ask for Government Exhibit
24 21-P5 to be displayed, please.

25 Q. Sergeant Major, you identified this photograph on your

E363ABU2

Karnes - cross

1 direct, correct?

2 A. Yes, ma'am.

3 Q. Where was it taken?

4 A. It appears to be taken in a camp that was in Afghanistan,
5 south of the airport.

6 Q. Was there one such camp in Afghanistan?

7 MR. LEWIN: Objection, your Honor.

8 THE COURT: What is the objection?

9 MR. LEWIN: The witness testified he had only
10 personally been to one training camp in Afghanistan.

11 THE COURT: Sustained.

12 Q. You testified that your role was intelligence, correct?

13 A. I was in charge of making sure we gathered intelligence
14 properly documented; yes, ma'am.

15 Q. Through those activities, did you develop an understanding
16 of whether there was more than one camp in Afghanistan?

17 A. Generally, I knew there was more than one camp in
18 Afghanistan, but I only was able to enter one camp.

19 Q. Where were those camps?

20 MR. LEWIN: Objection, your Honor.

21 THE COURT: Sustained.

22 Q. Where was this camp?

23 THE COURT: One-and-a-half miles as the crow flies
24 southwest of the airport. That's what he said.

25 Q. Did you develop an understanding of who attended these

E363ABU2

Karnes - cross

1 camps?

2 A. Yes, ma'am.

3 Q. Who attended them?

4 MR. LEWIN: Objection to form, your Honor. "These
5 camps."

6 THE COURT: Sustained.

7 Q. This camp.

8 A. Yes, ma'am.

9 Q. Who attended them to your understanding?

10 MR. LEWIN: Objection, your Honor.

11 THE COURT: What is the objection?

12 MR. LEWIN: "Them." The witness has testified he's
13 aware of one camp.

14 THE COURT: Sustained.

15 Q. Who attended it, to your understanding?

16 A. To my understanding, and what we knew at the time, this
17 training camp was used by Al Qaeda to train Al Qaeda
18 operatives.

19 Q. Did you develop an understanding of how old the individuals
20 at this camp were?

21 A. No, ma'am, I did not.

22 Q. Could you describe what the individuals in 21-P5 are doing?

23 THE COURT: Excuse me, counselor. Look, the picture's
24 in, right? The witness testified these people weren't there
25 when he was there. So what you'd like him to do is interpret

E363ABU2

Karnes - cross

1 the photo, is that right?

2 MS. DOLAN: For the record, yes, your Honor.

3 THE COURT: Sustained. The jury can see the photo
4 just as well as he can.

5 MS. DOLAN: Could I ask for Government Exhibit 21-P6
6 to be published, please. And Government Exhibit 21-P7, please.
7 And finally Government Exhibit 1-PA, please. If the photo
8 could be cropped to show the individual on the left above the
9 name Sulaiman Abu Ghayth.

10 Q. Sergeant Major, could you describe what the individual in
11 this picture is doing?

12 THE COURT: Sustained.

13 MS. DOLAN: Thank you. The exhibit can go down.
14 Thank you.

15 Q. On your direct, Sergeant Major, you testified again about
16 the weapons card, the authorization for weapons that was
17 recovered from the car, the individual whom you stopped at
18 Takhteh-Pol, correct?

19 A. Yes, ma'am.

20 Q. Who signed that card?

21 A. Mullah Omar signed those cards.

22 Q. Who is Mullah Omar, to remind the jury?

23 A. He was the major of the Taliban.

24 Q. You identified during your direct three individuals who
25 were your main targets when you were first deployed to

E363ABU2

Karnes - cross

1 Afghanistan, correct?

2 A. I had identified -- just to clarify, ma'am. Two of the
3 individuals who were main targets. Abu Hafs became a target
4 later just by virtue of the fact that he was killed.

5 Q. I stand corrected. Mullah Omar was one of your main
6 targets, wasn't he?

7 A. Yes, ma'am, he was. Thank you.

8 Q. After September 11, and the U.S. deployment in Afghanistan,
9 were people flocking to the country?

10 MR. LEWIN: Objection.

11 THE COURT: Sustained.

12 Q. During your deployment, did you notice an influx of
13 individuals who were moving into Afghanistan?

14 MR. LEWIN: Objection. Form.

15 THE COURT: Sustained.

16 Q. Is it fair to say that after the U.S. deployment in
17 Afghanistan, large numbers of people were actually fleeing
18 Afghanistan?

19 A. I wouldn't be able to speak to whether people were not
20 fleeing. I didn't actually see anybody fleeing Afghanistan.

21 Q. Turning back to the individual whose car you stopped. Was
22 that a routine operation, stopping cars in that vicinity?

23 A. Yes, ma'am. We had initially entered the town, so to
24 secure the town and keep ourselves safe and our force safe, we
25 established checkpoints on the road for a couple of reasons.

E363ABU2

Karnes - cross

1 Number one, security. Number two, we didn't know who those
2 individuals were, so we had to figure out who they were and
3 determine whether or not they were enemy combatants or
4 civilians.

5 Q. Did you stop other people during the course of your
6 deployment?

7 A. Yes, ma'am, we did.

8 Q. Do you have an approximate number of maybe how many people
9 you stopped?

10 A. I don't have an approximate number. A lot during that
11 time. On that day I can tell you who we stopped at that time.
12 But over the course of my deployment, I couldn't give you a
13 number.

14 Q. Would it be in the dozens or more?

15 A. To help you out, ma'am, I probably would think it would be
16 more. But I couldn't give you an accurate number. I would be
17 failing if I tried to give you an accurate account.

18 Q. Did you recover any materials from other individuals during
19 those stops?

20 A. Yes, we did.

21 Q. You testified about at least one raid that you conducted on
22 a house in Kandahar, correct?

23 A. Yes, I testified, yes, ma'am, that I raided houses in
24 Kandahar, yes.

25 Q. Approximately how many houses did you raid?

E363ABU2

Karnes - cross

1 A. I would like to answer that question, ma'am, but I'm really
2 not sure that I am allowed to discuss the amount of operations
3 I conducted in the city.

4 It was a fair amount of operations, I can tell you,
5 that we conducted while we were there. To -- not to give you
6 an exact number, it was in the double digits.

7 Q. Without going into any of the specific items that were
8 recovered or the specifics of any of those operations, did you
9 actually recover materials and items during those operations?

10 A. Yes, ma'am, we did.

11 (Continued on next page)
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E36nabu3

Karnes - cross

1 MS. DOLAN: If I could have Government Exhibit S-2,
2 paragraph 4.

3 With your Honor's permission, I will read it.

4 "While there were other raids that were carried out in
5 Afghanistan" --

6 THE COURT: Excuse me, counselor. What was the part
7 about "with your Honor's permission"? You don't have it. It
8 is already in. It will be in the jury room. It has already
9 been read. Let's move along.

10 MS. DOLAN: I would like to give the jury an
11 opportunity to read it, just as they read the pink cards that
12 the government passed out.

13 THE COURT: I believe they have had that.

14 MS. DOLAN: Thank you.

15 Q. Now, you also testified on your direct that among the items
16 that were recovered from the car that you stopped in
17 Takhteh-Pol were tickets to and from Pakistan, correct?

18 A. That is correct, ma'am.

19 Q. Did you develop an understanding why those tickets might be
20 in there?

21 MR. LEWIN: Objection.

22 THE COURT: Sustained.

23 Q. There were other written documents that were seized from
24 that car, correct?

25 A. That is correct, ma'am.

E36nabu3

Karnes - cross

1 Q. We have not seen those in evidence here today, have we?

2 A. No, we have not, ma'am.

3 Q. You also recovered money from that card, correct?

4 A. Yes, ma'am. We recovered money from both the vehicle and
5 the individual that was driving it, yes, ma'am.

6 Q. Could you describe what you did with that money.

7 A. We first seized the money, we held it in our possession,
8 and then we used the money as we were able to to support the
9 Afghans that we were working with in Afghanistan.

10 Q. When you say you recovered documents and materials from
11 that car, do you mean to say that you did personally?

12 A. Both.

13 Q. Could you explain?

14 A. I personally did do a search of the vehicle, but there was
15 other things that were brought to me upon initial seizure of
16 the vehicle because I wasn't actually there. The people we
17 were supervising and leading actually conducted the stop. They
18 brought materials that were located on the individual that was
19 driving the vehicle.

20 Q. There were also other cars stopped that day, correct?

21 A. That is correct.

22 Q. Do you have any knowledge as you sit here today about what
23 was in those other cars?

24 A. I did not search those vehicles, but there was nothing in
25 those vehicles that we needed that was of value.

E36nabu3

Karnes - cross

1 Q. Turning back to the little pink cards, we'll call them
2 brevity cards just for ease of reference.

3 A. Yes, ma'am.

4 Q. Do you have any knowledge how those cards were made?

5 A. No, ma'am.

6 Q. Do you have any personal knowledge why they were made?

7 A. I would only be assuming. What my analysis of the
8 situation was and what I heard on the radio is that they were
9 made to have secure communications over an open radio.

10 Q. Did you conduct any further investigation, without going
11 into what it might have been, as to those brevity cards?

12 A. We attempted to find out what those cards were about, but I
13 wasn't able to determine exactly who made them.

14 MS. DOLAN: If I could ask for government 206-1 to be
15 published to the jury.

16 Q. Sergeant Major, do you see Arabic number 95 on here?

17 A. Yes, ma'am, I do.

18 Q. Which name does that number correspond to -- which name or
19 place. Pardon me.

20 A. Sheikh Usama.

21 Q. Do you see Mr. Abu Ghayth's or the name -- do you see the
22 name Salman Abu Ghayth on this page?

23 A. Not on this page, ma'am.

24 MS. DOLAN: Could I ask for 206-2, please.

25 Q. Do you see the name Suleiman Abu Ghayth or Salman Abu

E36nabu3

Karnes - cross

1 Ghayth on this page?

2 A. Yes, ma'am, I do.

3 Q. Which Arabic number does it correspond to?

4 A. It would be 40.

5 MS. DOLAN: If I could ask for Government Exhibit 208,
6 please.

7 Q. Do you see the name Sheikh Usama or Usama anywhere on this
8 document?

9 A. The top of the document, the top of the document says
10 places, so I'm sure. You are going to have to give me a minute
11 to figure out whether or not I see that name on that. It says
12 places in Arabic. If you can indulge me for a minute to look.

13 Q. Take your time.

14 A. I don't see Sheikh. You asked for Sheikh Usama?

15 Q. Or Usama, correct.

16 A. Or Usama? Sorry.

17 MR. LEWIN: Your Honor, the government will stipulate
18 that the name Usama is not listed on this, just for brevity's
19 sake.

20 THE WITNESS: Just making sure.

21 THE COURT: You have the consent.

22 A. I don't see it on there.

23 MS. DOLAN: No objection. If we could have the second
24 page of this exhibit, please.

25 Q. Do you see the name Sheikh Usama or Usama here?

E36nabu3

Karnes - cross

1 A. As I quickly scan I don't see it, but if you give me a
2 little time, I will make sure, since my Arabic is a little
3 rusty.

4 MR. LEWIN: Your Honor, again for brevity's sake, the
5 government will stipulate that the word Osama or Usama is not
6 written on this page.

7 THE COURT: All right. Move on.

8 Q. If I could direct your attention to No. 58 on this page.

9 A. Yes, ma'am.

10 Q. What does that say?

11 A. Suleiman Abu Ghayth.

12 Q. Could you say that first name one more time.

13 A. I understand it to be Sulaiman or Salman. In the Arabic
14 language, the vowels are not always there for you to understand
15 necessarily the pronunciation, and again I'm an American trying
16 to speak Arabic.

17 Q. Would that be a short vowel? How would you spell that name
18 in Arabic?

19 A. Could be S-u-l --

20 Q. If you could use the Arabic terms and then transliterate it
21 into English.

22 THE COURT: Ms. Dolan, let's just be absolutely clear.
23 No one is speaking Arabic in this courtroom on the record. It
24 goes through an interpreter. That's the way it's going to be.

25 Q. If you could, that first name, Sergeant Major?

E36nabu3

Karnes - cross

1 A. Salman. It is a -- like you said, it's a short vowel. It
2 could be an alif or aman there. For me it's hard to --

3 Q. I understand. But I think we're limited by --

4 THE COURT: If you want something written out in
5 another language, that's a perfectly acceptable. But we are
6 not trying to create a trial with a verbatim English record
7 with people speaking foreign languages on the record. We are
8 just not doing it.

9 MS. DOLAN: I am showing for the witness only what's
10 premarked as defendant Exhibit A-2.

11 Q. Can you identify the writing on this piece of paper,
12 Sergeant Major?

13 A. It is Arabic, ma'am.

14 Q. Are you able to read it?

15 A. I can try and pronounce it correctly.

16 Q. Are the names Sulaiman and Salman spelled the same in
17 Arabic, or are they spelled differently?

18 A. In this case they are spelled differently.

19 THE COURT: She is asking you a different question.

20 THE WITNESS: OK.

21 THE COURT: She is not asking about in this case.
22 She's asking generally.

23 THE WITNESS: I wouldn't be able to tell you. I don't
24 have an expertise in Arabic names. I apologize.

25 Q. Well, Arabic is spelled phonetically, correct?

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Karnes - cross

1 A. It can be spelled phonetically, yes.

2 Q. Are you aware of a single instance in the Arabic language
3 where it's not spelled phonetically?

4 MR. LEWIN: Objection, Judge.

5 THE COURT: Sustained. You do not have here a
6 qualified expert in Arabic.

7 Q. Is the name Sulaiman and the name Salman spelled the same
8 in Arabic?

9 MR. CRONAN: Objection.

10 THE COURT: Shut it down, Ms. Dolan.

11 MS. DOLAN: I would ask that Government's Exhibit 206
12 be published, please. 206 I believe -- whichever has No. 35 on
13 it?

14 THE COURT: I'm sorry. I couldn't hear you.

15 MS. DOLAN: The page of that exhibit which has No. 35,
16 your Honor.

17 THE COURT: Are you talking about 206-1, 206-2, 206-3?
18 What are you talking about?

19 MS. DOLAN: Let me clarify.

20 MR. LEWIN: Judge, you believe it's 206-1, page 2,
21 that Ms. Dolan is looking for.

22 THE COURT: I'm sorry, Mr. Lewin.

23 MR. LEWIN: I believe she's looking for 206-1, page 2.
24 The second page of 206-1.

25 THE COURT: All right. You may put it up on the

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Karnes - cross

1 screen.

2 MS. DOLAN: I'm sorry, your Honor. I need to just
3 check my notes. Pardon me, 206-3R, page 1.

4 Q. If I could direct your attention to -- this is in evidence.
5 If I could direct your attention to No. 35, Sergeant Major.
6 What does that say?

7 MR. LEWIN: Judge, objection. She's just asking the
8 witness to read from the English-language document.

9 Q. Are you familiar with a location --

10 THE COURT: Look, folks, here's the way it works. An
11 objection is made. You do not, Ms. Dolan, ignore it and just
12 keep going. My job is to rule on the objection, and you know
13 that. Now, could I hear the objection again, please. And
14 then, if necessary, I will hear a response.

15 MR. LEWIN: Your Honor, the objection is just that
16 Ms. Dolan --

17 THE COURT: Could you speak up.

18 MR. LEWIN: Ms. Dolan is asking the witness to read
19 from an English-language document which is in evidence.

20 THE COURT: Do you have a response to that, Ms. Dolan?

21 MS. DOLAN: I withdraw the question.

22 THE COURT: Thank you.

23 Q. Sergeant major, did you become familiar with a location
24 known as the quiet village while you were deployed in
25 Afghanistan?

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Karnes - cross

1 A. To my recollection, I don't know anything that was called
2 the quiet village.

3 Q. Did you become familiar with a location that was used as a
4 staging area for fighters to make final preparations for
5 battles on behalf of the Taliban or Al Qaeda?

6 A. I am not exactly sure of the question, but could you
7 clarify that. Because that whole area was a combat theater.
8 So, to me, identifying the exact location they were doing final
9 staging was almost impossible at that point. So I am not
10 really sure what your question is, ma'am.

11 Q. Was there a recreational area in Afghanistan near a lake
12 approximately 20 kilometers north of Kandahar that was used as
13 a staging area for preparations, for final preparations for
14 battles on behalf of the Taliban or Al Qaeda?

15 A. I don't know.

16 MS. DOLAN: If I could request Government Exhibit
17 206-1.

18 Q. Sergeant Major, do you see the name -- I will just do it by
19 the numbers. Do you see the Arabic number 115 on here.

20 A. Yes, ma'am, I do.

21 Q. Who does that relate to?

22 A. Sheikh Abu-Hafs, if I pronounced it correctly.

23 Q. If I could have the next page of this exhibit, please.

24 Do you see Arabic number 18?

25 A. Yes, I do, ma'am.

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Karnes - cross

1 Q. What name corresponds to that?

2 A. Again, it appears to be Sheikh Abu-Hafs.

3 Q. If I could have Government Exhibit 207-1R, please.

4 If I could draw your attention to No. 6. Is that the
5 individual whose name you just translated?

6 A. I don't know, ma'am.

7 Q. If I could draw your attention to No. 24. Is that the
8 individual whose name you just translated?

9 A. That's the term that I just spoke, yes, ma'am, Sheikh
10 Abu-Hafs.

11 Q. And returning to No. 6, that also has Abu-Hafs in it,
12 doesn't it?

13 A. Yes, ma'am. But typically in the Arabic language they may
14 further identify people.

15 Q. If I could ask you to confine your response to my question,
16 please.

17 A. Yes, ma'am. My apologies.

18 Q. In other words, the name Abu-Hafs appears twice on this
19 document, doesn't it?

20 A. On this document here, or on the -- the one in front of me
21 has Abu-Hafs twice, yes.

22 MR. CRONAN: Judge, the government will stipulate that
23 the name Abu-Hafs appears twice on this document.

24 THE COURT: All right.

25 MS. DOLAN: If I could have Government Exhibit 207-1R,

E36nabu3

Karnes - cross

1 please.

2 Q. Sergeant Major, the name Salman Abu Ghayth appears on this
3 particular card at No. 25, doesn't it?

4 THE COURT: Everybody can read, please. Could we save
5 the time by not reading English documents to the jury. That
6 goes for all the lawyers.

7 Q. Sergeant Major, did you develop a familiarity with the
8 individual referred to at No. 12 on this document?

9 A. I don't recall.

10 Q. Did you develop a familiarity with an individual named Abdu
11 Abdel Rahman Abu Ghayth Sulaiman, in other words, a combination
12 of No. 12 and No. 25?

13 A. Not to my knowledge, no, I did not develop any relationship
14 with that individual or anyone with that name.

15 THE COURT: If there is such an individual.

16 Let's move on.

17 Q. Did you ever receive intelligence that an individual by
18 that name crossed into Afghanistan at Spin Boldak?

19 MR. LEWIN: Objection.

20 THE COURT: Sustained.

21 MS. DOLAN: If I could have just a moment, your Honor.

22 Your Honor, if I could ask for the Court's indulgence
23 for 60 seconds.

24 Q. Sergeant Major, are you familiar with the term Arabic term
25 cunya?

E36nabu3

Karnes - cross

1 A. No, not right off the top of my head. Sorry.

2 Q. Through your intelligence, did you develop an understanding
3 of whether fighters used nicknames in Afghanistan?

4 MR. LEWIN: Objection.

5 THE COURT: Sustained.

6 Q. Did you ever hear the name Sulaiman Abu Ghayth broadcast
7 over the radio that you recovered at any time?

8 A. I don't recall that I heard it. I could have heard it, but
9 I don't recall that I did, as I testified earlier, ma'am.

10 MS. DOLAN: Nothing further.

11 THE COURT: Thank you. Redirect.

12 MR. LEWIN: Yes, Judge.

13 REDIRECT EXAMINATION

14 BY MR. LEWIN:

15 Q. Sergeant Major, do you recall Ms. Dolan asking you about
16 Government Exhibit 206-1 during her cross-examination?

17 A. Yes, sir.

18 Q. Do you recall that she initially --

19 THE COURT: Mr. Lewin, back to the microphone, please.

20 Q. -- drew your attention to only one side of the card.

21 Do you recall that?

22 A. Yes, sir.

23 Q. Do you recall she asked you whether or not Sulaiman Abu
24 Ghayth's name appeared on just that side of the card. Do you
25 recall that?

e36nabu3

Karnes - redirect

1 A. Yes, sir, I believe so, yes.

2 MR. LEWIN: May I approach, your Honor.

3 THE COURT: You may.

4 MR. LEWIN: 206-1.

5 Q. Sergeant Major, how many sides of that card is there
6 writing on?

7 A. Two sides, sir.

8 Q. I would like you to flip to the back side of that card.

9 Does defendant's name appear anywhere on the back side
10 of that card, Sergeant Major, the side she did not refer you
11 to? It's the side without the handwriting?

12 A. Yes.

13 Q. Where?

14 A. At the bottom.

15 Q. What's the number next to it?

16 A. 40.

17 Q. Ms. Dolan asked you about a weapons card you recovered from
18 the vehicle you stopped on November 24. What is your
19 understanding of the purpose of that weapons card? What was it
20 used for?

21 A. The purpose of that weapons card was to allow in particular
22 the Arabs that were in Kandahar area to move freely with
23 weapons in that area. They did not speak a common language, so
24 it was impossible for them to talk to each other. They were
25 able to use that weapons card to pass through certain areas of

e36nabu3

Karnes - redirect

1 the city without any problem. The Taliban had strict control.

2 Q. Who issued that weapons card based on what you saw yourself
3 written on it?

4 A. Based on what we saw and what I saw it was Mullah Omar and
5 the Taliban.

6 Q. You testified earlier, remind the jury, what is Mullah
7 Omar's responsibility with respect to the Taliban?

8 A. He was the leader of the Taliban.

9 Q. At the time, let's say prior to September 11, 2001, what
10 was the ruling government in Afghanistan?

11 A. The Taliban were the ruling entity. You can't really call
12 them a government, but they were the ruling entity in
13 Afghanistan.

14 Q. Is it fair to characterize that weapons card as a card
15 issued by the ruling government to the Arabs who were then
16 located there to allow those Arabs to carry weapons?

17 A. That is fair to say, yes, sir.

18 Q. Is there a difference between the Taliban and Al Qaeda, or
19 are they all one big group that was always together?

20 A. There was absolutely a difference.

21 Q. Describe it.

22 A. The Taliban were basically the hosts of Al Qaeda. They
23 allowed Al Qaeda to utilize their, you know, their country for
24 training purposes, but there was a strict, distinct difference
25 between Al Qaeda and Taliban, and that was told us to by all

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Karnes - redirect

1 the locals.

2 MR. LEWIN: May I have one moment, your Honor.

3 THE COURT: Yes.

4 MR. LEWIN: Nothing further, your Honor.

5 THE COURT: Thank you. Ms. Dolan.

6 RECROSS EXAMINATION

7 BY MS. DOLAN:

8 MS. DOLAN: If I could request Government Exhibit
9 206-2 on the screen, please. If I could request the second
10 page of that. Pardon me. This is the Arabic. If I could
11 request the English, 206-2R, please, the second page.

12 Q. Sergeant Major, the name Salman Abu Ghayth at No. 40 is the
13 name on the flip side of the card that the government just had
14 you identify, correct?

15 A. Yes, ma'am.

16 MR. LEWIN: Judge, move to strike.

17 THE COURT: Stricken. It is beyond the scope and was
18 not the subject of the government's examination.

19 THE COURT: The jury will disregard that.

20 MS. DOLAN: May I see the card that is in front of the
21 witness, please.

22 THE COURT: Sure. Step right up.

23 MS. DOLAN: Thank you.

24 If I could have just one moment, your Honor.

25 Q. Sergeant Major, the Arabic cards that you had, had various

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Karnes - recross

1 words for weaponry, chemicals and firearms and things of that
2 nature, didn't they?

3 A. Yes, they did.

4 Q. I direct your attention to Nos. 12, 13, 16 and 18 on this
5 document. They don't reflect any of those particular types of
6 weaponry or items related to warfare, do they?

7 A. Not on this document that is in front of me.

8 Q. This particular page is the document where Salman Abu
9 Ghayth's name appears at No. 40, correct?

10 A. That's correct.

11 MS. DOLAN: Nothing further.

12 MR. LEWIN: Yes, Judge.

13 REDIRECT EXAMINATION

14 BY MR. LEWIN:

15 MR. LEWIN: Ms. Delsener, if you would please put up
16 the stipulation regarding the brevity cards. I believe it's
17 S-2, but I could be mistaken.

18 Please highlight for a moment the bottom three lines.
19 It begins with the partial sentence "and persons."

20 I won't read it, Judge, but I would like to leave that
21 up for a moment.

22 May I approach?

23 THE COURT: You may.

24 MR. LEWIN: Your Honor, I have placed before the
25 witness the two other cards that were recovered together with

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Karnes - redirect

1 the card that Ms. Dolan has shown the witness. Ms. Delsener,
2 if you would, please pull up Government Exhibit 206-3 -- sorry,
3 206-3R, which is the translation of 206.

4 Q. Sergeant Major, I would like you to look at the Arabic
5 language card in front of you. It's 206-3. It's the page that
6 has the No. 33 at the top. Do you remember Ms. Dolan asked you
7 some questions about whether another card had military terms on
8 it. Do you remember that question?

9 A. Yes, sir.

10 Q. I am going to direct you are your attention about
11 two-thirds of the way down next to 166, what is written there?

12 THE COURT: You can all read it.

13 MR. LEWIN: I am asking the witness to read paragraph.

14 Q. What is a SAM-7, Sergeant Major Karnes.

15 A. SAM-7 is the same as -- it's a shoulder-fired antiaircraft
16 rocket.

17 Q. What is a Stinger, which is listed just under that?

18 A. That is also a manpackable surface-to-air missile to take
19 down aircraft.

20 Q. What's a cannon that is listed just under that?

21 A. In this case it's metva, so it's something that shoots a
22 bomb over a short distance to another location to kill the
23 enemy.

24 Q. Based on your 20-plus years in the military, do you believe
25 these are military terms, Sergeant Major?

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Karnes - redirect

1 A. They are absolutely military terms, correct.

2 MR. LEWIN: No further questions.

3 THE COURT: Shelling I suppose doesn't refer to
4 peanuts, right, in your view?

5 THE WITNESS: No, sir, it does not.

6 THE COURT: OK.

7 RECROSS EXAMINATION

8 BY MS. DOLAN:

9 MS. DOLAN: If I could request that same exhibit,
10 Government's Exhibit 206-3R, please. If I could request the
11 second page.

12 Q. Sergeant Major at 107, ambulance, at 109, water, 153 --

13 THE COURT: Don't you think that is enough of this,
14 Ms. Dolan.

15 Q. Sergeant Major, are you aware of other so-called pink
16 brevity cards that were recovered that did not have any name
17 associated with the defendant on them?

18 MR. LEWIN: Objection.

19 THE COURT: Sustained.

20 MS. DOLAN: Nothing further.

21 THE COURT: All right.

22 MR. LEWIN: Nothing further.

23 THE COURT: All right. Lunchtime, members of the
24 jury. I am sure by now you are quite hungry.

25 Counsel remain.

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Karnes - recross

1 THE COURT: The witness is excused. Thank you.

2 THE WITNESS: Thank you, sir.

3 (Witness excused)

4 (Continued on next page)

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Karnes - recross

1 (Jury not present)

2 THE COURT: Please be seated, folks.

3 I trust that the last ten or 20 minutes is the last
4 time anything like that is going to happen in this trial. We
5 have 18 people here who are disrupting their lives for three or
6 four weeks to sit in this case.

7 To have the kind of nonsense that has been going on
8 here, reading from English-language documents as if they were
9 illiterate, taking lists that include terms like shelling,
10 artillery and one side reads out ambulance and the other side
11 reads out surface-to-air missiles, it's silly. They can all
12 read it, you can all make your arguments at the end of the
13 case, and it is quite frankly, a waste of everybody's time.
14 It's done for.

15 There is also a provision in the federal rules which I
16 am sure you are all very aware of. The scope of the
17 cross-examination, except in rare circumstances, is limited to
18 the scope of the direct. And it applies as you go down the
19 line. If there is a redirect examination, the scope of the
20 recross is limited to the redirect. These rules have been
21 ignored all morning. They are not going to be ignored anymore.
22 This case is going to be tried efficiently and fairly to both
23 sides, and we're going to stop this sort of behavior.

24 Thank you, folks.

25 (Luncheon recess)

E363ABU4

1 AFTERNOON SESSION

2 2:00 p.m.

3 THE COURT: The jurors and the defendant are all
4 present. Next witness?

5 MR. CRONAN: Your Honor, the government calls Sahim
6 Alwan.

7 (Witness sworn)

8 THE DEPUTY CLERK: Please be seated. Please state
9 your name for the record.

10 THE WITNESS: Sahim Alwan.

11 THE COURT: Mr. Cronan.

12 MR. CRONAN: Thank you, your Honor.

13 SAHIM ALWAN,

14 called as a witness by the Government,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. CRONAN:

18 Q. How old are you, Mr. Alwan?

19 A. 41.

20 Q. Where were you born?

21 A. Buffalo, New York.

22 Q. Where did you grow up?

23 A. Lackawanna, New York.

24 Q. Can you tell us where Lackawanna is located?

25 A. Five minutes west of Buffalo.

E363ABU4

Alwan - direct

1 Q. Did you attend high school in Lackawanna as well?

2 A. Yes, sir.

3 Q. Have you received any education after high school?

4 A. Yes.

5 Q. What else have you received?

6 A. An associate's degree in criminal justice.

7 Q. Where did you get that from?

8 A. Erie Community College.

9 Q. When did you graduate from Erie Community College?

10 A. 2000.

11 Q. Can you briefly tell us what sort of jobs you've held in
12 your life.

13 A. I've worked for a roadway package system. I worked as a
14 security guard. I've worked as a counselor for job corps. And
15 I currently work in the wireless business, cell phone.

16 Q. Mr. Alwan, have you ever been convicted of a crime?

17 A. Yes, sir.

18 Q. What were you convicted of?

19 A. Providing material support to a foreign terrorist
20 organization.

21 Q. What organization was that?

22 A. Al Qaeda.

23 Q. When were you arrested on these charges?

24 A. September 13, 2002.

25 Q. Can you tell us very generally what you did that led to

E363ABU4

Alwan - direct

1 your conviction.

2 A. I attended a training camp in Afghanistan.

3 Q. When you say a training camp, what do you mean by that?

4 A. It was an Al Qaeda training camp.

5 Q. What type of training was given at this camp?

6 A. Military, weapons, explosives.

7 Q. Were you arrested on any terrorism charges that arose from
8 conduct you committed in the United States?

9 A. No.

10 Q. Where were you prosecuted for this conduct?

11 A. In the Western District of New York.

12 Q. Where is the Western District of New York located?

13 A. Buffalo.

14 Q. How was your case resolved in the Western District of New
15 York?

16 A. I pled guilty.

17 Q. Do you recall when you pled guilty?

18 A. About April or December of 2003.

19 Q. What specific crime did you plead guilty to committing?

20 A. Providing material support to a foreign terrorist
21 organization.

22 Q. At the time of your guilty plea, did you enter into any
23 sort of agreement with the United States Attorney's Office in
24 the Western District of New York?

25 A. Yes, sir.

E363ABU4

Alwan - direct

1 Q. What did that agreement entail?

2 A. That if I plead guilty to -- there was two charges. One
3 was providing material support to a foreign terrorist
4 organization. And count two was conspiracy to providing
5 material support to a foreign terrorist organization.

6 If I plead guilty to providing material support to a
7 foreign terrorist organization, they will drop the conspiracy
8 charge. And I also have to cooperate with the government.

9 Q. What was your understanding of what that meant when you say
10 you had to cooperate with the government?

11 A. Be truthful about anything they ask me, testify if I have
12 to, and meet with them whenever they needed me to.

13 Q. In addition to dropping one of the two counts you were
14 charged with, did the government agree to do anything else at
15 your sentencing?

16 A. Present the judge with a 5K1 letter which would reduce my
17 sentence.

18 THE COURT: Mr. Alwan, could you get about an inch
19 farther away from the microphone, please.

20 THE WITNESS: Yes, sir.

21 THE COURT: Thank you.

22 THE WITNESS: You're welcome.

23 Q. I believe you just said a 5K1 letter, is that right?

24 A. Yes, sir.

25 Q. What is your understanding of what a 5K1 letter is?

E363ABU4

Alwan - direct

1 A. It is a -- from what I understand, it allows the judge to
2 reduce the sentence from the mandatory.

3 Q. What was the maximum sentence that you understood you faced
4 for the one count that you pled guilty to committing?

5 A. 10 years.

6 Q. Does that reflect a lower maximum sentence than you
7 otherwise would have been facing?

8 A. Yes, sir.

9 Q. Have you been sentenced for that offense yet?

10 A. Yes, I have.

11 Q. Do you recall when you were sentenced?

12 A. About -- it was either December or April of 2003.

13 Q. Do you recall if the government in fact submitted a 5K1
14 letter as you described at your sentencing?

15 A. Yes, sir.

16 Q. What sentence did you originally receive in 2003?

17 A. Nine and a half years.

18 Q. Did you understand that reflected a reduction for your
19 cooperation?

20 A. Yes, sir.

21 Q. Did there ever come a time when your sentence was reduced
22 even further, lower than nine and a half years?

23 A. Yes.

24 Q. When was that?

25 A. In 2010.

E363ABU4

Alwan - direct

1 Q. What is your understanding of why your sentence was reduced
2 even further?

3 A. It was reduced six months more for my testimony I gave in a
4 Guantanamo Bay case.

5 Q. After you received that six-month reduction in your
6 sentence, did you have any time left on your prison term?

7 A. Not on the prison term, no.

8 Q. So when were you released from prison?

9 A. July 16, 2010.

10 Q. After your release from prison, were you placed on what is
11 called supervised release?

12 A. Yes, sir.

13 Q. How long were you on supervised release?

14 A. Three years.

15 Q. What is your understanding of what supervised release is?

16 A. Probation.

17 Q. Were there any special conditions that were imposed on your
18 supervised release?

19 A. Yes.

20 Q. What were some of them?

21 A. That I had to -- if I incurred any loan or credit, I had to
22 let my supervisory officer know. Also, I must continue to
23 cooperate with the government.

24 Q. Did you comply with those conditions?

25 A. Yes.

E363ABU4

Alwan - direct

1 Q. When did your period of supervised release end?

2 A. July 16, 2013.

3 Q. Mr. Alwan, as you sit here today, do you have any time
4 remaining on your sentence?

5 A. No.

6 Q. Are you currently on any sort of probation or supervised
7 release?

8 A. No.

9 Q. Do you understand yourself to be under any obligation under
10 the cooperation agreement you entered into with the government
11 to testify here today?

12 A. No.

13 Q. Then why are you testifying today?

14 A. Because I was subpoenaed.

15 Q. Have you met with the government in connection with your
16 testimony before today?

17 A. Yes.

18 Q. Let's say over the past four months, approximately how many
19 times have you met with the government?

20 A. Three, four times maybe.

21 Q. Now that you are no longer on supervised release, do you
22 believe that you're still required to meet with the government?

23 A. No.

24 Q. Why then have you continued to meet with the government?

25 A. Because I'm atoning for my mistakes that I made, and I want

E363ABU4

Alwan - direct

1 to help my government.

2 Q. Have you received any money from the federal government
3 since you were released in prison in 2010?

4 A. Yes.

5 Q. What have you received?

6 A. I received \$400 from the FBI.

7 Q. Do you recall when you received \$400 from the FBI?

8 A. About 2011.

9 Q. Did you ask for that payment?

10 A. No.

11 Q. What is your understanding of why you received that money?

12 A. I really don't know. I wasn't told.

13 Q. Do you expect to receive any money today for your
14 testimony?

15 A. Other than my expenses for having to fly here, no.

16 Q. Mr. Alwan, I want to change subjects and talk briefly about
17 your travel to Afghanistan. Approximately when did you travel
18 to Afghanistan?

19 A. Approximately about April, May of 2001.

20 Q. Do you think sitting here today you would still recognize
21 people that you encountered in Afghanistan in mid 2001?

22 A. Maybe.

23 Q. I am going to ask you to stand up and look around this
24 courtroom, and let us know if you recognize anyone you
25 encountered during your time in Afghanistan.

E363ABU4

Alwan - direct

1 You may sit down. Do you recognize anyone?

2 A. I can't say 100 percent for sure.

3 Q. Let me ask you this. If you saw a photograph of people as
4 they appeared in 2001, do you think you would still recognize
5 them today?

6 A. Yes.

7 Q. If we can put on the screen in front you what has been
8 marked for identification as Government Exhibit 100. Do you
9 recognize that individual?

10 A. Yes.

11 Q. Who is it?

12 A. Sulaiman Abu Ghayth.

13 Q. Did you ever meet this individual in person?

14 A. Yes.

15 Q. Briefly when and where did that occur?

16 A. When I was in Afghanistan, in what was known as incoming
17 guest house in 2001.

18 Q. When you say incoming guest house, what do you mean by
19 that?

20 A. It was a guest house that they used, the Arabic term was --
21 can I say it in Arabic?

22 THE COURT: Give him a piece of paper.

23 A. It was -- can I answer? It was known as the new guest
24 house or the incoming guest house.

25 Q. Thank you, sir. And did the photograph that's in front of

E363ABU4

Alwan - direct

1 you, Exhibit 100, fairly and accurately depict the individual
2 you met in the guest house in mid 2001?

3 A. With the short beard.

4 MR. CRONAN: The government offers Exhibit 100.

5 MR. STEWART: No objection.

6 THE COURT: Received.

7 (Government's Exhibit 100 received in evidence)

8 MR. CRONAN: If we can please publish that.

9 Q. Now if we can put in front of you on your screen what has
10 been marked for identification as Government Exhibit 100-A.
11 What is depicted on 100-A?

12 A. Same picture I just seen.

13 Q. Any difference?

14 A. With the name.

15 MR. CRONAN: Government offers 100-A, your Honor.

16 MR. STEWART: No objection.

17 THE COURT: Received.

18 (Government's Exhibit 100-A received in evidence)

19 MR. CRONAN: May I use the board with faceplates?

20 Thank you.

21 Q. Mr. Alwan, is that 100-A?

22 A. Yes, sir.

23 Q. If we can please put on the screen in front of you what has
24 been marked for identification as Government Exhibit 101. Do
25 you recognize this person?

E363ABU4

Alwan - direct

1 A. Yes, sir.

2 Q. Who is it?

3 A. Usama Bin Laden.

4 Q. Have you ever met Usama Bin Laden in person?

5 A. Yes.

6 Q. When and where was that?

7 A. In Afghanistan, in 2001.

8 Q. We'll get into more details of how you met Usama Bin Laden
9 in person later. Can you briefly explain the circumstances
10 under which you met him in 2001.

11 A. Well, I was at the incoming guest house or the new guest
12 house. He came there. And the second time while I was in one
13 of the -- in the camp, the training camp, he appeared there.
14 And the third time was when I was leaving, I was taken to him.

15 Q. You mentioned the first time was in the incoming guest
16 house. Is that the same incoming guest house where you
17 encountered Sulaiman Abu Ghayth?

18 A. Yes, sir.

19 MR. CRONAN: The government offers 101, your Honor.

20 MR. STEWART: No objection.

21 THE COURT: Received.

22 (Government's Exhibit 101 received in evidence)

23 MR. CRONAN: If we can also put in front of the
24 witness what has been marked for identification as 101-A.

25 Q. What is on this photograph?

E363ABU4

Alwan - direct

1 A. The same picture with the name now.

2 Q. Did you know Usama Bin Laden to go by any aliases when you
3 were in Afghanistan?

4 A. Yes.

5 MR. STEWART: I'm going to object to the procedure of
6 presenting the witness with the answer in the format flashed on
7 the screen before him. If the government was going to ask
8 aliases, it should have been done before the witness was
9 prompted. It is in essence a leading question is my objection.
10 Sorry to editorialize.

11 THE COURT: Overruled.

12 Q. What alias did you know him to go by?

13 A. Mullah Abdullah, and Sheikh.

14 MR. CRONAN: Offer 101-A, your Honor.

15 MR. STEWART: Objection.

16 THE COURT: What is the objection?

17 MR. STEWART: That this witness was led to that answer
18 by the photograph being put on a screen in front of him.

19 THE COURT: Overruled.

20 (Government's Exhibit 101-A received in evidence)

21 Q. Is this 101-A?

22 A. Yes, sir.

23 MR. CRONAN: If we can put up in front of the witness
24 what has been marked for identification as 102, please.

25 Q. Do you recognize this individual, Mr. Alwan?

E363ABU4

Alwan - direct

1 A. Yes, sir.

2 Q. Who is he?

3 A. Ayman al-Zawahiri.

4 Q. Have you ever been seen Ayman al-Zawahiri in person?

5 A. Yes.

6 Q. When and where was that?

7 A. When I was at the training camp he appeared also with Usama
8 Bin Laden.

9 THE COURT: Just pause for one moment. Mr. Stewart,
10 not 90 seconds ago, maybe 120 seconds ago, the government
11 showed him 101 and asked him who was it. And he identified it
12 as Usama Bin Laden.

13 MR. STEWART: Correct.

14 THE COURT: Let's not take time unnecessarily.

15 MR. STEWART: Just the additional names. That was the
16 nature of my objection.

17 THE COURT: Okay. Let's go on.

18 MR. CRONAN: Government offers 102, your Honor.

19 MR. STEWART: Without objection.

20 THE COURT: Received.

21 (Government's Exhibit 102 received in evidence)

22 MR. CRONAN: If we can publish 102.

23 Q. Let me show you 102-A.

24 THE COURT: Maybe you want to do the nicknames first.

25 MR. CRONAN: We don't have any others.

E363ABU4

Alwan - direct

1 Q. What is this front of you now?

2 A. Same picture with the name.

3 MR. CRONAN: Government offers 102-A, your Honor.

4 MR. STEWART: No objection.

5 THE COURT: Received.

6 (Government's Exhibit 102-A1 received in evidence)

7 Q. Is that 102-A?

8 A. Yes, sir.

9 Q. Lastly, Mr. Alwan, we are going to put in front of you what
10 has been marked for identification as 103.

11 MR. CRONAN: Just to be clear, the last exhibit was
12 marked 102-A1. There are multiple 102-As.

13 THE COURT: Very convenient.

14 Q. Exhibit 103. Do you recognize that individual?

15 A. Yes, sir.

16 Q. Who is he?

17 A. Abu Hafs.

18 Q. Did you ever encounter Abu Hafs in Afghanistan?

19 A. I seen him.

20 Q. Do you know if Abu Hafs is from -- what, if any, country
21 Abu Hafs is from?

22 A. I don't know.

23 Q. Do you know if he went by a longer name than just Abu Hafs?

24 A. No.

25 MR. CRONAN: The government offers 103 into evidence,

E363ABU4

Alwan - direct

1 your Honor.

2 THE COURT: Received.

3 MR. STEWART: Voir dire, Judge?

4 THE COURT: All right.

5 BY MR. STEWART:

6 Q. Good afternoon, Mr. Alwan.

7 A. Good afternoon, sir.

8 Q. When you looked at Government's 103, you stated that you've
9 seen this individual.

10 A. Yes.

11 Q. That was in your time when you were in Afghanistan?

12 A. Yes, sir.

13 Q. Do you know how many times you saw that individual?

14 A. In person? One time.

15 Q. What was the circumstance?

16 A. The third time I was taken to see bin Laden, in that
17 compound if you will, that's where I seen him.

18 Q. What distance was he from you at the time?

19 A. About, I would say the same distance as you are.

20 Q. Did you have any particular reason to study his face and
21 his features?

22 A. No. I was just sitting -- sitting there waiting, and he
23 came out of an area right in front of me, like I'm looking
24 right at you.

25 Q. He didn't introduce himself, did he?

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Alwan - direct

1 A. No.

2 Q. You really don't know his name, right?

3 A. I know his name.

4 Q. You know his name from other sources?

5 A. Yes.

6 Q. Not from him having presented himself to you?

7 A. Correct.

8 MR. STEWART: I have an objection.

9 THE COURT: You have no objection?

10 MR. STEWART: I have an objection.

11 MR. CRONAN: He identified the photograph as someone
12 he saw at the same compound as Usama Bin Laden. The government
13 offers it.

14 THE COURT: How do you know his name?

15 THE WITNESS: I know his name from the news, that
16 afterwards when I've seen him on the news, and they've
17 mentioned his name.

18 THE COURT: I am going to receive it. There are other
19 photographs that have been identified and that are in evidence,
20 and the jury can ultimately decide whether the Abu Hafs in the
21 other photographs matches this individual.

22 (Government's Exhibit 103 received in evidence)

23 Q. Mr. Alwan, let's talk a little bit about what led to your
24 travel to Afghanistan in 2001. What religion are you?

25 A. Muslim.

E363ABU4

Alwan - direct

1 Q. Have you been Muslim your entire life?

2 A. Yes.

3 Q. Have you attended religious services in the Lackawanna
4 area?

5 A. Yes.

6 Q. Where was that?

7 A. The Lackawanna Mosque.

8 Q. When did you start attending the Lackawanna Mosque?

9 A. Around '95, '96.

10 Q. Are you familiar with the concept of jihad?

11 A. Yes.

12 Q. What does jihad mean?

13 A. Linguistically is to struggle. Religiously it can take
14 various meanings.

15 Q. What are some of those?

16 A. To struggle with oneself, ego, and to fight in holy wars.

17 Q. Did there come a time when you were introduced to a more
18 violent concept of jihad?

19 A. Yes.

20 Q. When was that?

21 A. Around '98.

22 Q. Who introduced you to this more violent concept of jihad?

23 A. Kamal Derwish.

24 Q. Who is Kamal Derwish?

25 A. He is an individual I met in the community in the end of

E363ABU4

Alwan - direct

1 1997.

2 Q. Did he also worship at the Lackawanna Mosque?

3 A. Yes.

4 Q. What were Kamal Derwish's views with respect to the violent
5 aspect of jihad?

6 A. That it was obligatory, and he talked about the Bosnian
7 jihad, the Afghan jihad with Russia, the Taliban jihad with the
8 Northern Alliance. Well, he never mentioned Northern Alliance.
9 But the Afghan that was going on at the time.

10 Q. How was Kamal Derwish able to influence your understanding
11 of jihad?

12 A. I was amongst others in a community that was just learning
13 religion. We really did not have an imam or a religious leader
14 that kind of taught us. When he came to the community, he was
15 the most knowledgeable of everyone there. So, we kind of
16 learned a lot of aspects of religion from him.

17 Q. How did Kamal Derwish teach aspects of religion?

18 A. We'd have lectures at the mosque, or we would get together
19 at one of the guy's house, and he'd talk about it there.

20 Q. Did he also show you videos?

21 A. He showed videos.

22 Q. What type of videos?

23 A. I remember seeing a few videos. One was -- I believe it
24 was a training camp and it was Bosnia, he mentioned Bosnia. He
25 showed like news clippings of other, like the Kosovo war and

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Alwan - direct

1 stuff like that.

2 Q. Did there come a time when you learned that some of the
3 other men from the Lackawanna Mosque would be traveling
4 overseas?

5 A. Yes.

6 Q. When was that?

7 A. Around April of 2001.

8 Q. Where did you understand that they were going?

9 A. Well, they said -- the rumor was they were going to
10 Pakistan.

11 Q. Did you believe they were in fact going to Pakistan?

12 A. No.

13 Q. Where did you believe they were in fact going?

14 A. To Afghanistan.

15 Q. Had you ever been to Afghanistan at this point in your
16 life?

17 A. No.

18 Q. What did you understand to be the reason why these men were
19 going to Afghanistan?

20 A. To attend training camps.

21 Q. Did you understand this training to be affiliated with any
22 particular organization at the time?

23 A. No.

24 Q. Did this idea of going to Afghanistan for training interest
25 you?

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Alwan - direct

1 A. Yes.

2 Q. Why did it interest you?

3 A. Like I said, I was learning a lot about the religion, I've
4 seen many aspects of the religion, the different sects and
5 different groups. And Kamal introduced this sect which was the
6 jihadist sect or part. I'd heard many controversies listening
7 to the scholars and reading books and listen to tapes, so it
8 interested me very much to see it.

9 Q. Was anyone in particular from your mosque organizing this
10 trip to Afghanistan?

11 A. Yes.

12 Q. Who was that?

13 A. Yahya Goba.

14 Q. Who is that?

15 A. He is an individual also from the community that I knew
16 from the community and the mosque.

17 Q. Did Yahya Goba also know the man you mentioned earlier,
18 Kamal Derwish?

19 A. Yes.

20 Q. How many other men planned to travel with Yahya Goba to
21 Afghanistan?

22 A. At the time I knew of one, and later out I found out there
23 was another.

24 Q. Who were these two men?

25 A. Jaber Elbaneh and Mukhtar Al-Bakri.

E363ABU4

Alwan - direct

1 Q. Did you also know them already?

2 A. Yes.

3 Q. How so?

4 A. From the community.

5 Q. Did you end up traveling to Afghanistan with Yahya Goba,
6 Jaber Elbaneh, and Mukhtar Al-Bakri?

7 A. Yes, sir.

8 Q. When was that approximately?

9 A. Approximately April, April, May 2001.

10 Q. Did you tell others in your community that you were
11 traveling to Afghanistan to receive training?

12 A. No.

13 Q. Why not?

14 A. Well, the story was, and that's what we were told to tell
15 them, was that we were going to Pakistan for Tablighi Jamaat.

16 Q. You said the story we were told to tell. Who told you to
17 tell that?

18 A. Yahya.

19 Q. Yahya Goba?

20 A. And that's the story, when I heard they were going to
21 travel, that's what they were saying. They were going to
22 Pakistan to do Tablighi Jamaat.

23 Q. Tablighi Jamaat, what is that?

24 A. That's one of the sects that, basically, what they do is
25 they'll go maybe for three days, four days, to different

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Alwan - direct

1 communities just preaching the religion. They do sometimes go
2 for four months to Pakistan, and they learn how to basically
3 convey or preach the religion. And that's basically what the
4 Tablighi Jamaat is.

5 Q. How long did you remain overseas during your trip to
6 Afghanistan?

7 A. About a month. Maybe a month and a week.

8 Q. Did you travel together with Yahya Goba and the other two
9 men you mentioned?

10 A. Yes.

11 Q. Did the four of you fly straight to Afghanistan?

12 A. Well, no.

13 Q. Where did you fly to first?

14 A. We drove to Toronto. We flew from Toronto to London.
15 London, Dubai. Dubai, Karachi, Pakistan.

16 Q. If we can please put up what's been entered into evidence
17 as Government Exhibit 210. Can you indicate on Exhibit 210
18 where Karachi, Pakistan is located?

19 A. Just touch the screen?

20 Q. Just touch the screen.

21 A. Karachi is right there.

22 Q. Where did you stay while you were in Karachi?

23 A. The Faran Hotel.

24 Q. How long did you stay at that hotel?

25 A. About a week and a half.

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Alwan - direct

1 Q. Did the other three men who traveled with you also stay at
2 the Faran Hotel for that week and a half?

3 A. No, just Jaber Elbaneh.

4 Q. What happened to the other two men?

5 A. They left to Afghanistan.

6 Q. Did you ever end up seeing those other two men again?

7 A. Yes.

8 Q. When was that?

9 A. When I arrived in Afghanistan in the training camp.

10 Q. Did you meet up with anyone you knew from Lackawanna while
11 you were in Karachi at this time?

12 A. Yes.

13 Q. Who did you meet up with?

14 A. Kamal Derwish.

15 Q. Do you recall how you ended up meeting with Kamal Derwish
16 while you were in Karachi?

17 A. Yes. When we arrived in Karachi, then we went to the
18 hotel, Yahya Goba had a phone number for him. He called him,
19 and Kamal Derwish came to the hotel.

20 Q. What did you discuss with Kamal Derwish when you saw him in
21 Karachi?

22 A. I mean, there is many things. But one of the things he
23 discussed with myself and Jaber Elbaneh was that he wanted us
24 to go to Dubai to max out credit cards, buy gold, basically
25 credit card fraud.

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Alwan - direct

1 Q. Did you agree to do that?

2 A. No.

3 Q. Did Kamal Derwish discuss anything regarding the training
4 you were going to be receiving?

5 A. No. When he did talk about going to Dubai to do this
6 credit card fraud, there is another individual that came to the
7 hotel with him. His name was Muhajin. I remember him saying
8 well, they have to go to Tassessy. That's the word he used.
9 Tassessy was the training camp.

10 Q. "Tassessy," do you know what that means?

11 A. Basic or foundation.

12 Q. Did Kamal Derwish give you any advice for how to behave
13 while you were in Afghanistan?

14 A. Yes. He would tell us that we are not to use our real
15 names. Not say that we're from America.

16 Q. Did you follow this advice not to use your real name while
17 in Afghanistan?

18 A. Yes.

19 Q. What name did you use?

20 A. Sohaib.

21 Q. Do you know if the other men from Lackawanna also used
22 aliases?

23 A. Yes.

24 Q. After your week and a half or so in Karachi, where did you
25 go next?

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Alwan - direct

1 A. To Quetta, Pakistan.

2 Q. If you can indicate on Exhibit 210 where Quetta, Pakistan
3 is.

4 How did you get from Karachi to Quetta?

5 A. We flew there.

6 Q. Where is Quetta in relation to the Afghan border?

7 A. It's right near the border.

8 Q. Where did you go upon arriving in Quetta?

9 A. To a guest house.

10 Q. How long did you stay at this guest house in Quetta?

11 A. Just the day we arrived and overnight, and we left the next
12 day.

13 Q. What happened that next day?

14 A. Kamal, myself, and Jaber Elbaneh were taken from the guest
15 house to I believe it was like, right before the border there
16 was like a taxi area where there was a bunch of taxicabs.
17 Actually, yeah, they drove us to the border.

18 We were told, Kamal told myself and Jaber to put our
19 personal belongings while we were at the guest house in
20 envelopes and seal it. Because the cab driver or whoever was
21 taking to us into Afghanistan was going to cross the border.
22 We weren't going to go with them. Then we were told to just
23 get out. There was like motorcycles that went around the
24 checkpoint, if you will, into Afghanistan.

25 Q. Where in Afghanistan did you go to?

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Alwan - direct

1 A. To Kandahar.

2 Q. On Exhibit 210, can you indicate where Kandahar is.

3 What happened when you arrived in Kandahar?

4 A. We went to this guest house. They called it the old guest
5 house or the outgoing guest house. Kamal was dropped off there
6 and some other individuals. Then myself and Jaber Elbaneh were
7 taken to the other guest house, which is called the new guest
8 house or the incoming guest house.

9 Q. What did you understand the reason that you were brought to
10 this incoming guest house, this new guest house?

11 A. Because we were new. First time there.

12 Q. How long did you stay at this guest house?

13 A. About 10 days, give or take.

14 Q. Were you originally scheduled to stay this long at the
15 guest house?

16 A. I -- no. We were told that we're only staying here this
17 long. It's only supposed to be two, three days. But because
18 the group was too small, they were waiting for more individuals
19 to come. That's why we were staying there longer, I guess.

20 Q. What was the purpose of you staying at this particular
21 guest house?

22 A. You have to get there first, you know, you have to give
23 your personal belongings there before you go into the camp.

24 Q. Can you describe the exterior of this guest house for us.

25 A. Surrounded by a wall, maybe 10 feet wall. There is a gate,

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Alwan - direct

1 a door, it is a solid gate. As you enter it, there is like a
2 courtyard. To the left, as soon as you enter there is a -- it
3 was like the kitchen area, bathroom, shower area. Then there
4 is a staff area, and then there is a building that had rooms.
5 The doors were like on the outside and there was a prayer area.

6 Q. Were there bedrooms at the guest house?

7 A. These rooms were where you slept, basically. Stayed,
8 slept.

9 Q. Was anyone else staying overnight at the guest house as
10 well?

11 A. Anyone who was first time there. And there were staff
12 members there.

13 Q. When you say "anyone who is first time there," what do you
14 mean by that?

15 A. Like myself. First time in Afghanistan, first time I guess
16 in the training camp.

17 Q. Were these men who also were going to receive training?

18 A. Yes.

19 Q. About how many men were at this guest house that were also
20 waiting to receive training?

21 A. When I got there, I don't know, maybe three or four. By
22 the time we left, there was about 10 or 12.

23 Q. Who ran this guest house?

24 A. I can't remember their names, but the staff that ran the
25 guest house were Arab descent. There were Afghan also staff,

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Alwan - direct

1 but they weren't -- this were just like the cooks and stuff
2 like that.

3 Q. What happened to your personal items when you arrived at
4 the guest house?

5 A. We were told put them in an envelope, seal it. Passport,
6 basically wallet, any identification, money, and then the
7 person that they refer to as a treasurer, and he took them.
8 And then you were supposed to get them back once you left or
9 when you're done.

10 Q. Were you told why the items were taken from you upon your
11 arrival at the guest house?

12 A. Yes. So no one can -- well, Kamal told us so no one can
13 tell who you really are. They can't use your identities, for
14 your own protection.

15 Q. Do you know if you were able to leave the guest house if
16 you wanted to?

17 A. No, you couldn't leave that guest house.

18 Q. Why not?

19 A. That was the rule. You can't leave.

20 Q. Did there come a time when you realized this guest house
21 was associated with any particular group?

22 A. Yes.

23 Q. What group was that?

24 A. Al Qaeda.

25 Q. How did you come to learn that the guest house was

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Alwan - direct

1 associated with Al Qaeda?

2 A. First time I learned that, there was books out in some of
3 these rooms. And basically the book, the title of the book was
4 "Al Qaeda."

5 Q. Did the book indicate an author?

6 A. Yes.

7 Q. Who was the author?

8 A. Usama Bin Laden.

9 Q. Did you read this book at all?

10 A. I glanced through it.

11 Q. From glancing through it, were you able to get a general
12 sense of the topic in the book?

13 A. Somewhat, yes.

14 Q. Very generally, what were some of the topics?

15 A. What I remember is I know he was talking about -- he was
16 bashing a lot of Muslim governments calling them hypocrites or
17 infidels, especially the Saudi government. I remember him
18 talking in there about that -- something about a snake, and
19 that the U.S. was the head of the snake. If you cut the head,
20 the rest will slither in that sense.

21 Q. What did you do during your days while you were staying at
22 the guest house?

23 A. You did your prayers, you know, together. You ate, played
24 volleyball, and you just stayed in the room. You read or --

25 Q. Were there any debates or discussions that took place among

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Alwan - direct

1 the men at the guest house?

2 A. I've seen a couple of debates, yes.

3 Q. What were the subjects of some of those debates that you
4 recall?

5 A. Well, one of them was -- there's an individual, he was like
6 myself a newcomer, first time. He was Saudi. And he was
7 discussing with one of -- he was -- I don't know if -- he
8 wasn't there all the time as a staff member, but he used to
9 come and go a few times. And they were discussing the topic of
10 suicide missions. And the staff member was condoning it. The
11 Saudi kid was, you know, saying it wasn't religiously
12 justified. And they were going back and forth. And he would
13 mention scholars that mentioned it, that it is not justified
14 and they would bash some of these scholars.

15 Another time the debate was about they weren't doing
16 Friday prayers there, and he was telling them how can you just
17 drop the obligation of prayers. And those are some of the
18 debates I've --

19 Q. Were you shown any videos while you were staying at this
20 guest house?

21 A. Yes.

22 Q. What were you shown?

23 A. It was twice we were shown a video. First one I really
24 can't remember. The one that stood out was the -- because it
25 was new, they made everyone gather in the room and they said

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Alwan - direct

1 there is a new tape and they referred to it as the U.S. Cole
2 tape.

3 Q. Do you recall how this tape arrived at the guest house?

4 A. That same individual that I mentioned had the debate with
5 the Saudi kid is the one that brought it.

6 Q. Do you recall what was said about the tape when he brought
7 it over to the guest house?

8 A. That it was the new tape, and it was -- they called -- they
9 referred to it as the Cole tape.

10 Q. Did you watch this tape?

11 A. Yes.

12 Q. How many other men watched it as well?

13 A. All -- everyone that was in the guest house as far as new.
14 Some staff I remember. I believe everyone that was new like
15 myself, we had to. They told us you have to go in there and
16 watch it.

17 Q. You're referring to other men who were also going on to
18 receive training?

19 A. Yes.

20 Q. Where in the guest house did you watch the video?

21 A. In one of the rooms.

22 Q. Was the television already in this room?

23 A. No. They -- it was wheeled in on a cart, like with a VCR
24 and a TV.

25 Q. Were people seated while they watched the video?

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Alwan - direct

1 A. Yes.

2 Q. About how long was the video?

3 A. A little over an hour. It was over an hour. I don't know.
4 Hour and a half, hour.

5 Q. Did you and the other men watch it straight through?

6 A. Yes.

7 Q. You mentioned that you were told that the video was about
8 the U.S.S. Cole bombing. Did you know anything about the
9 U.S.S. Cole bombing before you watched this video?

10 A. Yes. They referred to the tape as the Cole tape. But yes,
11 from the papers here when it happened.

12 Q. What did you know at that point?

13 A. That a U.S. military ship was attacked in south of Yemen.

14 Q. Handing what you has been marked for identification as
15 Government Exhibit 21. Have you reviewed the content of the
16 DVD I just handed you?

17 A. Yes.

18 Q. How do you know that's the same DVD that you in fact
19 reviewed?

20 A. I initialed it.

21 Q. What is contained on this DVD?

22 A. The full version of the same tape that I referred to as the
23 Cole tape.

24 Q. How many files are on this DVD?

25 A. I believe two.

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Alwan - direct

1 Q. Now, are there English subtitles on points in this DVD?

2 A. In this one, yes.

3 Q. Were those English subtitles contained in the version that
4 was shown at the incoming guest house?

5 A. I don't believe so, no.

6 Q. Other than those changes, the addition of English subtitles
7 and any English spoken words, is Exhibits 21 the same tape that
8 you recall seeing at the incoming guest house in Kandahar?

9 A. Yes.

10 Q. Do you speak Arabic?

11 A. Yes.

12 Q. For how long have you spoken Arabic?

13 A. My whole life.

14 Q. Are the English translations that appear on Exhibit 21
15 generally accurate translations?

16 A. Yes.

17 MR. CRONAN: The government offers Exhibit 21, your
18 Honor.

19 MR. STEWART: Judge, just a brief voir dire on that
20 last point, if I might.

21 THE COURT: Let me review the last point.

22 On the question of whether the translations are
23 generally accurate?

24 MR. STEWART: Correct.

25 THE COURT: You can cross on it. Received.

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Alwan - direct

1 (Government's Exhibit 21 received in evidence)

2 MR. CRONAN: Your Honor, may I have one second.

3 THE COURT: Yes.

4 MR. CRONAN: Your Honor, if I may, the parties have
5 stipulated that the English subtitles and translations on
6 Exhibit 21 are fair and accurate translations of the Arabic
7 words that are on the video.

8 MR. STEWART: I withdraw the objection.

9 THE COURT: Ladies and gentlemen, it is agreed that
10 the translations are accurate. Let's go ahead.

11 MR. CRONAN: If we may play some portions of Exhibit
12 21.

13 THE COURT: Give me an idea of the duration of the
14 parts you are going to play.

15 MR. CRONAN: Yes, your Honor. Multiple clips ranging
16 in length from 30 seconds to about two minutes probably the
17 longest.

18 THE COURT: Over all 10 to 15 minutes?

19 MR. CRONAN: Over all? Probably with questions, yes,
20 your Honor.

21 THE COURT: Okay.

22 MR. CRONAN: Let's play the first file on Exhibit 21
23 from minute 1:15 to minute 2:20.

24 (Video played)

25 Q. Mr. Alwan, let me ask you a few questions about what we

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Alwan - direct

1 just saw. First, do you recognize the person who was shown
2 speaking at the podium?

3 A. Yes.

4 Q. Who is that?

5 A. Usama Bin Laden.

6 Q. Earlier you mentioned that you encountered Bin Laden on a
7 few occasions in Afghanistan, is that right?

8 A. Yes, sir.

9 Q. How did the outfit he was wearing compare to the outfit he
10 was wearing when you met him?

11 A. It was the same outfit.

12 Q. At one point there was a mention of Salahuddin carrying his
13 sword dripping infidels' bloods in the memory of Hitteen after
14 long being lost.

15 Do you know what those are references to?

16 A. Yes. It is referenced to when the crusade war back in --
17 when the Muslims took back Jerusalems.

18 Q. What about the reference to memories of Badr and Khaybar.
19 Do you know what those are references to?

20 A. Those are battles in the time of the prophet, Mohammed.

21 Q. There was a mention that the youth sprung for jihad and in
22 Aden they rose and set to destroy a destroyer.

23 What is Aden?

24 A. It is a city in south of Yemen.

25 Q. Do you know what this mention of Aden was in this context?

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Alwan - direct

1 A. To destroy the U.S. Cole.

2 MR. CRONAN: Let's move ahead to minute 24:30 and play
3 from 24:30 to 24:57.

4 (Video played)

5 Q. The individual who is depicted speaking here. Did you ever
6 encounter him in Afghanistan?

7 A. Yes.

8 Q. When was that?

9 A. When I was taken the third time to see Bin Laden.

10 Q. Is he the individual in the photograph you identified
11 earlier?

12 A. Yes.

13 Q. You mentioned the nations of Kufr. What does Kufr mean?

14 A. Infidels or non-believers.

15 Q. This individual also used the term Muslim Ummah. Do you
16 know what that term means?

17 A. The Muslim nation.

18 Q. And lastly, he mentioned the sacred house, the prophet's
19 masjid, and the Al-Aqsa masjid.

20 Do you know what those were references to?

21 A. Yes.

22 Q. What are they?

23 A. The sacred house is the holy mosque in Mecca. The
24 prophet's mosque is the one in Medina in Saudi Arabia, and Aqsa
25 masjid is in Jerusalem.

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Alwan - direct

1 Q. What is the significance of these locations?

2 A. They are the holiest places in Islam.

3 MR. CRONAN: Now let's play from 41:30 to 41:55,
4 please.

5 (Video played)

6 Q. Do you recognize who is speaking in that clip?

7 A. Yes.

8 Q. Who was that?

9 A. Ayman Zawahiri.

10 MR. CRONAN: Let's move on to the second file on
11 Exhibit 21 and play from zero to 1:30, please.

12 (Video played)

13 Q. Mr. Alwan, how would you describe the terrain of the Al
14 Qaeda training camp that you in fact attended?

15 A. Mountainous.

16 Q. Did you see trainees marching during this clip?

17 A. Yes.

18 Q. Did you ever march like that when you were receiving
19 training?

20 A. Somewhat, yes.

21 Q. At the end of the clip, were you able to identify the
22 person who appeared to arrive to greet U.S. military?

23 A. Yes.

24 Q. Who was that?

25 A. George Bush. The President George Bush, the father.

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Alwan - direct

1 MR. CRONAN: Let's now play on Exhibit 21 from 3:30 to
2 4:20 on the second file.

3 (Video played)

4 Q. Mr. Alwan, what did you wear while you were receiving
5 training at the Al Qaeda military training camp that you went
6 to?

7 A. It was an Afghan outfit, but camouflaged.

8 Q. Was that outfit more or less similar to the outfits we just
9 observed on the clip?

10 A. Yes.

11 MR. CRONAN: Let's now please play 6:35 to 7:03.

12 (Video played)

13 (Continued on next page)

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Alwan - direct

1 MR. CRONAN: Now, Ms. Delsener if we can play from
2 7:40 to 8:40, please.

3 (Video played)

4 Q. Just so we are clear, do the scenes we have watched in the
5 past couple of clips appear to show the type of training you in
6 fact received?

7 A. No. That was some --

8 Q. I couldn't hear that.

9 A. No.

10 Q. How was your training different?

11 A. I didn't get into all -- I only did like the first week,
12 which was really just the first weapon.

13 MR. CRONAN: Let's now please play 9:20 to 9:50.

14 (Video played)

15 Q. Mr. Alwan, during your time with Al Qaeda in Afghanistan,
16 were you ever told that it was required to participate in
17 jihad?

18 A. Yes.

19 Q. Do you recall any of the occasions when that happened?

20 A. In a guesthouse while you are at the camp.

21 MR. CRONAN: Now, Ms. Delsener, could we please play
22 11:45 to 12:20.

23 (Video played)

24 MR. CRONAN: Now, if we could please play 13:00 to
25 13:20.

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Alwan - direct

1 (Video played)

2 MR. CRONAN: If we could next play from 13:22 to
3 14:20, please.

4 (Video played)

5 MR. CRONAN: Ms. Delsener, please, the next clip from
6 18:20 to 18:45.

7 (Video played)

8 Q. Mr. Alwan, were you able to tell whose image appeared on
9 the screen at the very end of that clip?

10 A. Yes.

11 Q. Who was that?

12 A. President Clinton.

13 MR. CRONAN: Ms. Delsener, the next clip we could play
14 from would be from 22:15 to 23:30, please.

15 (Video played)

16 Q. Mr. Alwan, were you familiar with what a SAM-7 is?

17 A. No.

18 MR. CRONAN: Now, if we could next play from 2 4:55 to
19 2 6:00.

20 (Video played)

21 MR. CRONAN: Our next clip, if we could play from
22 27:55 to 28:15, about 20 seconds.

23 (Video played)

24 BY MR. CRONAN:

25 Q. Mr. Alwan, what do you understand martyrdom operations to

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Alwan - direct

1 mean in this context?

2 A. Suicide missions.

3 Q. Were they discussed while you were in Afghanistan?

4 A. The one debate I told you was in the guesthouse, the
5 incoming guesthouse.

6 MR. CRONAN: We just have two more clips. Let's now
7 play 33:56 to 34:30, please.

8 (Video played)

9 Q. Mr. Alwan, do you have an understanding as to what Usama
10 Bin Laden was referring to when he mentioned the bombing in
11 East Africa?

12 A. The embassy bombings.

13 MR. CRONAN: Finally, Ms. Delsener, if we could please
14 play from 37:20 to 39:05.

15 (Video played)

16 Q. Mr. Alwan we just played a number of clips from Exhibit 21.
17 Can you give us a general sense of what else you recall being
18 on this video?

19 A. Yes. There was also, they were showing news clippings from
20 stuff that was happening in one of the Asian countries, I don't
21 remember exactly which one, Palestine. There are some more
22 clips of the training.

23 Q. Did the men at the Al Qaeda guesthouse where you watched
24 this video seem to be paying attention while they were watching
25 it?

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Alwan - direct

1 A. Yes. Everyone was quiet in the room listening and
2 watching.

3 Q. Were these men who watched the tape later brought to a
4 training camp with you?

5 A. Yes.

6 Q. What effect did this tape have on you?

7 A. It made me realize a lot of the questions I had, who was
8 behind the embassy bombings, the U.S.S. Cole, so I know by that
9 time I was way in over my head.

10 Q. Why didn't you leave at that point?

11 A. I actually at one point, after Bin Laden showed up and
12 after these tapes and all this, I asked one of the staff
13 members if someone wanted to leave what does he do. And he
14 basically said you came with Abu Hamad, which was Kamal's
15 nickname, Kamal Derwish's nickname. You have to talk to him.
16 When you get to the camp you will see him, and just talk to
17 him. So I left it at that.

18 Q. Do you recall any visitors coming to the Al Qaeda
19 guesthouse that you were staying at in Kandahar?

20 A. Yes.

21 Q. Which visitors, and who were the visitors?

22 A. Usama Bin Laden and Sulaiman Abu Ghayth.

23 Q. Let's start with Usama Bin Laden. Did you already know who
24 Usama Bin Laden was when he arrived at the guesthouse you were
25 staying at in Kandahar?

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Alwan - direct

1 A. Yes, I knew of him.

2 Q. Who did you understand him to be?

3 A. The most wanted guy in the FBI.

4 Q. Do you recall around what time of day Bin Laden arrived at
5 the guesthouse?

6 A. Late morning.

7 Q. Did you expect him to come that day?

8 A. I didn't know he was coming, no, not until moments before.

9 Q. What happened in those moments leading up to Bin Laden's
10 arrival at the guesthouse?

11 A. Kamal Derwish showed up to the other guesthouse, I guess,
12 Jaber Elbaneh and myself were in a room, there was this other
13 Saudi kid there. Kamal Derwish came and he was very excited
14 and he just said there is a visitor that's going to come.

15 Q. It's been a few minutes since we spoke about Kamal Derwich
16 and Jaber Elbaneh. Just very briefly, were these other men
17 from Lackawanna as well?

18 A. Yes.

19 Q. Where were you when Bin Laden arrived at the guesthouse?

20 A. I was in this room that I was talking about.

21 Q. Did you, in fact, meet Bin Laden that day?

22 A. Yes.

23 Q. Was it in the room you just described?

24 A. No.

25 Q. Where was it?

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Alwan - direct

1 A. It was in the staff area.

2 Q. Can you describe the staff area for us.

3 A. Like I said, as you walk into the courtyard, it was towards
4 your left. It was off limits of course. No one could go in
5 unless you were staff.

6 Q. Had you ever been in the staff area previously?

7 A. One time, yes.

8 Q. What was that for?

9 A. When we were told to put our belongings in the envelope and
10 give it to the treasurer.

11 Q. On the occasion when Bin Laden arrived, how did you know to
12 go to that staff area?

13 A. If I can go back, before he arrived, staff members that
14 were in the guesthouse basically told us all, you know, stay in
15 the rooms. Don't go out.

16 Then a bunch of trucks come in, people come out,
17 weapons. Some of them had their faces covered. And we just
18 waited there. We were told by a staff member who came and got
19 us out of that room, myself, Kamal Derwish, Jaber Elbaneh, and
20 that other Saudi kid that was there, I can't remember his name.

21 Q. Then where were you brought?

22 A. To the staff area where Bin Laden was.

23 Q. You mentioned I believe some people being armed. Who was
24 armed?

25 A. The staff that were in the guesthouse and people that came

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Alwan - direct

1 off these trucks that pulled in.

2 Q. Had you ever seen the staff at the guesthouse armed before?

3 A. No.

4 Q. How were they armed on this occasion?

5 A. They had AK-47 rifles, they had a vest that had a bunch of
6 clips in it, I guess for the AK.

7 Q. Could you please explain to us how you met Bin Laden.

8 A. While we were in that room, like I said, the staff member
9 came and basically told us to follow him. He led us into the
10 staff area. We were led into this room where Bin Laden was
11 there, he was standing, and you just went in and everyone shook
12 his hand and we just sat down.

13 Q. How many men in total were brought into this room where
14 Usama Bin Laden was waiting?

15 A. It was myself, Jaber Elbaneh, Kamal Derwish, and this other
16 Saudi kid. Everyone that was in the room with me.

17 Q. Do you recall what Bin Laden was wearing that day?

18 A. The same outfit he was wearing in this without -- you
19 notice in the videotape there, in the last one he had the
20 headgear, but he had like -- it's somewhat like a knife here.
21 He didn't have that, but the headgear, the cloak, and the white
22 gown.

23 Q. And as you entered this room, were you able to tell if Bin
24 Laden had security?

25 A. Oh, yes. Everyone that came out of those trucks I believe

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Alwan - direct

1 was his security, and then in the room also, there was a few
2 guys with the weapons at the doorway.

3 Q. Where was everyone situated in the room when you met with
4 Usama Bin Laden?

5 A. After everyone shook his hand, they sat down. I don't know
6 if everybody can see me. He was basically, from what I
7 remember, he was sitting here. I believe Jaber Elbaneh was
8 here, I was here, the Saudi kid was here, Kamal was here.

9 MR. STEWART: Can you put that on the record.

10 Q. Maybe we ask try to explain that more with words.

11 Were you in a circle?

12 A. It was a circle.

13 Q. OK.

14 A. I'll just go, it was Bin Laden, I believe, if I remember
15 correctly, Jaber Elbaneh, myself, the Saudi kid and Kamal
16 Derwish.

17 Q. Was Bin Laden in the middle of the circle or was he part of
18 the circle?

19 A. He was just part of the circle.

20 Q. Were you standing or were you sitting?

21 A. Sitting.

22 Q. I believe you mentioned you introduced yourself to Usama
23 Bin Laden. How did you introduce yourself?

24 A. As Sahim from Yemen.

25 Q. Did the other men in the room also introduce themselves to

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Alwan - direct

1 Usama Bin Laden?

2 A. Yes.

3 Q. Did it seem to you that Bin Laden, whether Bin Laden knew
4 any of the other men who were in the room?

5 A. Yes.

6 Q. Why do you say that?

7 A. When we were introducing ourselves, for example, when it
8 was me, Sahim from Yemen. OK, the next person, when it was
9 Kamal, Kamal was like Abu Hamed, he was like, he just looked at
10 him like, you know, like, oh, I -- it is hard to say the
11 gesture that I seen, you know, like, oh, like, hi, you know,
12 like I know you.

13 Q. It appeared that they already knew each other?

14 A. Yes.

15 Q. It appeared that they already knew each other?

16 A. Yes.

17 Q. When you say Kamal, you mean Kamal Derwish?

18 A. Yes.

19 Q. What name did Kamal Derwish use?

20 A. Abu Hamad.

21 Q. How long did your meeting with Usama Bin Laden last?

22 A. A couple minutes, two minutes, a few minutes.

23 Q. What happened during these few minutes?

24 A. After the introduction, from what I can remember, I
25 remember distinctly the Saudi kid just came out, or I don't

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Alwan - direct

1 know if they were talking, but he asked a question like we hear
2 things something is going to happen something to that effect.
3 I just remember Bin Laden saying, Just know you have brothers
4 willing to carry their souls in their hands, and he did that
5 with his hand.

6 Q. What did you understand Usama Bin Laden to mean when he
7 said we have brothers willing to carry their souls in their
8 hands?

9 A. Die.

10 Q. How did your meeting with Bin Laden conclude?

11 A. I believe it was one of his guards came said something in
12 his ear, and the staff told us to get up and they took us to
13 the room and told us to just sit there and wait.

14 Q. Did any other visitors come to the guest house, the Al
15 Qaeda guest house in Kandahar while you were there?

16 A. Besides the staff member that I told you who brought the
17 videotapes, Sulaiman Abu Ghayth.

18 MR. CRONAN: If we can put Exhibit 100 on the screen.
19 That has been entered into evidence.

20 Q. Who is that individual?

21 A. I'm sorry. Say that again?

22 Q. Who is on the screen?

23 A. Sulaiman Abu Ghayth.

24 Q. What were you told about this individual, if anything, when
25 he arrived at the guesthouse?

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Alwan - direct

1 MR. STEWART: Objection.

2 THE COURT: For what purpose is it offered?

3 MR. CRONAN: Your Honor, I believe it would be a
4 coconspirator statement. Also -- it would be a coconspirator
5 statement, your Honor.

6 THE COURT: I will take it subject to connection.

7 MR. CRONAN: Just to be clear, your Honor, may the
8 witness answer?

9 THE COURT: I think you better identify the declarant
10 first.

11 MR. CRONAN: Sure.

12 Q. Do you recall who told you about this individual at the
13 guesthouse?

14 A. Not exactly which person it was.

15 Q. If not which person in particular, what, if any, role did
16 this person have at the guesthouse?

17 A. It was a staff member.

18 Q. A staff member. Was this an individual, when you say staff
19 member, who was working at the Al Qaeda guesthouse?

20 A. Yes.

21 Q. In what context did that individual tell you about this
22 individual?

23 A. I just remember them mentioning that he was Sulaiman and
24 Kuwaiti.

25 MR. STEWART: Objection. Can we have a sidebar,

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Alwan - direct

1 Judge.

2 THE COURT: I can't hear you, Mr. Stewart.

3 MR. STEWART: Can we have a sidebar, your Honor?

4 THE COURT: Give me a moment.

5 All right. Come to the sidebar.

6 (Continued on next page)

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Alwan - direct

1 (At sidebar)

2 MR. STEWART: I just got a sense that the witness was
3 getting a little bit ahead of himself, and the question it
4 sounded like he was going to blurt out the hearsay that I am
5 objecting to. So I just thought it would be better, to avoid
6 any prejudice inadvertently, that we find out where this is
7 going. This is news to us, not in the discovery.

8 MR. CRONAN: Your Honor, I believe it is in this
9 witness's 3500 that that Sulaiman, someone named Sulaiman who
10 was --

11 THE COURT: Slow down.

12 MR. CRONAN: Sorry. An individual named Sulaiman, who
13 was a Kuwaiti, came by the guesthouse who the witness later
14 identified on television as Sulaiman presenting himself as a
15 spokesperson for Al Qaeda.

16 We have laid a foundation that this is an Al Qaeda
17 guesthouse that is affiliated with Al Qaeda, and the staff of
18 the guesthouse were naturally affiliated with Al Qaeda as well.
19 I believe the witness testified that he was told that this
20 individual was Sulaiman, a Kuwaiti, from staff at the
21 guesthouse.

22 THE COURT: He's identified the photo.

23 MR. CRONAN: And he's identified the photo.

24 MR. STEWART: So the expected answer is that he was
25 told that Sulaiman was a Kuwaiti. I am just concerned that he

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Alwan - direct

1 is going to say he is a Kuwaiti who is Bin Laden's number-one
2 guy. That would be inadmissible hearsay, Judge. They haven't
3 established a per se conspiracy so far. They may toss around
4 the name that everybody is Al Qaeda. The witness is not Al
5 Qaeda. I don't know if the staff was from Al Qaeda, and in the
6 discovery it says a lot of Afghans, who may have been Taliban
7 who may have been anything.

8 THE COURT: I understand that is your closing
9 argument. But it is different from what the evidence is.

10 MR. STEWART: We have no evidence about the staff
11 member being particularly Al Qaeda, that he pledged bayat.
12 What did he do to establish --

13 THE COURT: Standing around with a machine gun to
14 protect Bin Laden. It works for me.

15 MR. STEWART: That is not the evidence.

16 THE COURT: That is exactly the evidence.

17 MR. STEWART: The staff member --

18 MR. CRONAN: Your Honor, we have established that this
19 guesthouse was affiliated with Al Qaeda, that it was part of Al
20 Qaeda's conspiracy to kill Americans, as demonstrated by a
21 wealth of evidence from this witness. He testified that this
22 information regarding Sulaiman came from one of the staff
23 members at the guesthouse. I believe, what I expect the
24 testimony to be is that he learned that the individual whose
25 photograph -- I'm sorry, your Honor.

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Alwan - direct

1 THE COURT: What is he going to say that the staff
2 member said?

3 MR. CRONAN: He learned that this individual, whose
4 photograph he has identified, was named Sulaiman and was a
5 Kuwaiti. He may or may not say he was a Kuwaiti imam, but I
6 think he will just say Sulaiman a Kuwaiti.

7 THE COURT: All right. That comes in.

8 MR. STEWART: OK.

9 (Continued on next page)

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Alwan - direct

(In open court)

Q. Mr. Alwan, what, if anything, did the staff members at the guesthouse say about the individual whose photograph is in front of you?

A. I just remember it being said that he was referred to as Sulaiman Kuwaiti, a name from Kuwaiti.

Q. Do you recall whether this individual came to the Al Qaeda guesthouse in Kandahar before or after Usama Bin Laden's visit?

A. I would have to say after.

Q. Why do you say that?

A. Because by that time I was trying to leave already, and I was told that I had to wait to see Kamal. And Kamal at that time they told me was already at the camp. So when Bin Laden showed up, Kamal was still there because he showed up he was there with him.

Q. Could you explain to us how you ended --

THE COURT: Mr. Cronan.

MR. CRONAN: Sorry, your Honor.

THE COURT: Are you telling us that this second person you were talking about came later on the same day or at some other time?

THE WITNESS: Kamal Derwish?

THE COURT: No.

THE WITNESS: This person, yes, later.

THE COURT: Later could mean three minutes later,

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Alwan - direct

1 could mean four years.

2 THE WITNESS: No. A few days later I should say.
3 Yes, I'm sorry.

4 THE COURT: Go ahead.

5 MR. CRONAN: Thank you.

6 Q. How did you end up encountering Sulaiman the Kuwaiti at
7 this guesthouse?

8 A. It was at night, if I remember. I was -- I don't know if I
9 was coming out of the bathroom, but I was coming from that
10 direction. They were sitting down in the courtyard, if you
11 will, and he was talking. I just came into, you know, listen
12 to the conversation or the talk, if you will.

13 Q. Where in the guesthouse was this courtyard located?

14 A. In the middle.

15 Q. Do you recall why you came to the courthouse at this point?

16 THE COURT: No, I don't think it was the courthouse.

17 MR. CRONAN: I'm sorry.

18 THE COURT: I'm pretty sure of that.

19 MR. CRONAN: Fair point, your Honor.

20 Q. Do you recall why you came to this courtyard at this point
21 that evening?

22 A. No, I must have been walking, coming out of the bathroom.
23 I really don't know.

24 Q. Was the individual in Exhibit 100 already talking to the
25 group when you walked into the courtyard?

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Alwan - direct

1 A. Yes.

2 Q. How many men was he speaking to?

3 A. I can't remember exactly. Five, six, maybe more. I don't
4 know.

5 Q. Do you recall if the individual in Exhibit 100 was sitting
6 or standing at the time?

7 A. Everyone was sitting.

8 Q. Do you recall if anyone else other than the individual in
9 Exhibit 100 was speaking during this gathering?

10 A. I don't recall, no.

11 Q. Now, as Sulaiman was talking to the group, did he appear to
12 be reading from any notes?

13 A. Not that I can recall, no.

14 Q. Do you recall what he was talking about to the group?

15 A. Yes.

16 Q. What was he talking about?

17 A. About pledge, bayat.

18 Q. When you say bayat, what do you mean by that term?

19 A. The pledge to give pledge.

20 Q. Did is that a concept in Islam?

21 A. Yes.

22 Q. How serious of a pledge is bayat?

23 A. Very serious.

24 Q. What, if anything, did Sulaiman say about the pledge of
25 bayat to the men he was talking to?

E36nabu5

Alwan - direct

1 A. From what I recall -- I remember what I took out of it is
2 he was trying to make everyone -- or make them understand that
3 what your bayat, if you gave bayat to Bin Laden meant.

4 MR. STEWART: Objection, Judge, to as to what he made
5 others understand.

6 THE COURT: Let's stick to what he said.

7 Q. To the best of your recollection, please tell us --

8 A. Right.

9 Q. -- what Sulaiman the Kuwaiti said to the men regarding the
10 concept of bayat?

11 A. To the best of my recollection, it was basically if you
12 gave bayat, understanding that if you gave bayat to Bin
13 Laden -- pledge, I will use the English term -- if you gave
14 pledge to Bin Laden, it also fell under the pledge of Mullah
15 Omar, because Bin Laden gave the pledge to Mullah Omar. By
16 giving the pledge basically to Bin Laden you are also giving it
17 to Mullah Omar.

18 Q. To be clear, do you know who Mullah Omar is?

19 A. Yes.

20 Q. Who was he?

21 A. He was at that time the leader of the Taliban.

22 Q. Did you ever see this individual Sulaiman the Kuwaiti again
23 during your time in Afghanistan?

24 A. No.

25 Q. Did you eventually leave that guesthouse in Kandahar?

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Alwan - direct

1 A. Yes.

2 Q. Where did you go next?

3 THE COURT: Is this a good place to break?

4 MR. CRONAN: It would be a very good place, your
5 Honor.

6 THE COURT: OK. Afternoon break, folks.

7 (Recess)

8 THE COURT: All right. The defendant and the jurors
9 all are present. Let's continue.

10 MR. CRONAN: Thank you, your Honor.

11 Q. Mr. Alwan, before we move on I just want to ask you a
12 couple of follow-up questions about stuff you testified about
13 earlier. The incoming guesthouse in Kandahar that you stayed
14 at, was this place open to the public?

15 A. No.

16 Q. Could anyone get into the guesthouse?

17 A. I don't believe, no, no.

18 Q. Why do you say that?

19 A. Because it was locked. We couldn't get out, and the only
20 members that I seen come in were like staff and people that
21 knew the staff.

22 Q. When Usama Bin Laden came, were you armed?

23 A. No.

24 Q. What about the other men who were waiting to be sent to
25 training?

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Alwan - direct

1 A. No.

2 Q. My other question on your earlier testimony is this: Do
3 you recall talking towards the end about the occasion when
4 Sulaiman Abu Ghayth came to the guesthouse?

5 A. Yes.

6 Q. Can you explain to us what it means to pledge the oath that
7 you mentioned, bayat, to another individual?

8 A. In Islam to pledge bayat means you would obey, take their
9 orders and obey it, as long as they are not ordering you to do
10 something that goes against the Islamic teachings.

11 Q. Where did you go after the days you spent at this
12 guesthouse in Kandahar?

13 A. Tassessy, the training camp.

14 Q. You mentioned it before, but the word tassessy, what does
15 that mean?

16 A. Basic.

17 Q. How did you get from the guesthouse in Kandahar to the
18 Tassessy camp, to the training camp?

19 A. We were taken by a minibus, if you will.

20 Q. Were other men also transported in the same minibus that
21 you were transported?

22 A. Yes, all the new trainees that were in the guesthouse with
23 me.

24 Q. Approximately how many men was it, was that?

25 A. Ten to twelve.

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Alwan - direct

1 Q. Do you recall about approximately how far of a drive it was
2 from the guesthouse in Kandahar to the Tassessy training camp
3 that you went to?

4 A. A few hours, two, three, maybe.

5 Q. What happened when you arrived at the training camp?

6 A. We were told we couldn't enter the exact camp area, so we
7 had to sit outside it, there was like a couple tents set up
8 right outside, like 50 yards from the main gate to the camp.

9 Q. What happened when you went to this tent area?

10 A. We waited there. A staff member from the camp came there.
11 We were only allowed to take just one duffel bag from with us
12 from the guesthouse. They went through your duffel bag, said
13 what you could have what you can't have. Basically they said
14 you would have to wait here a couple of days because they're
15 waiting for a group that finished to leave, and then we can go
16 in. They kind of basically just said what the rules are, what
17 you can and cannot have in the camp.

18 Q. What were you able to have or not have in the camp?

19 A. Just your uniform, maybe a couple of change of clothes. I
20 remember, for example, I had two packs of Hall's. They said
21 that was too many. They asked me what it was? I said it's for
22 a, you know, a cold. They said you can have one pack and they
23 took the other pack.

24 Q. Did you, in fact, stay in the tent for a number of days?

25 A. About two days, two or three days.

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Alwan - direct

1 Q. Where did you go after these two or three days in the tent
2 outside of the Tassessy camp?

3 A. Into the Tassessy camp.

4 Q. When you arrived in the Tassessy camp, did you see anyone
5 that you recognized?

6 A. Yes.

7 Q. Who did you recognize?

8 A. The other gentlemen from Lackawanna.

9 Q. Did it appear that these other men from Lackawanna were
10 already in the process of receiving training at the camp when
11 you saw them?

12 A. Yes.

13 Q. Now, can you describe the layout of the Tassessy training
14 camp for the jury.

15 A. As you enter there's like a guard check, if you will. Then
16 there's a bunch of tents. There's a building that was for
17 staff, and then there's another building that was for like the
18 mosque. And then they had another building for like a clinic.
19 And then it was mountains.

20 Q. Where did the training at the camp take place?

21 A. Right in the area.

22 Q. Were there any signs at the entrance to the Tassessy camp?

23 A. I remember there was like a small billboard that had a
24 verse of the Koran on it.

25 Q. I apologize. This is obvious, but the Koran, what is the

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Alwan - direct

1 Koran?

2 A. The holy book for Muslims.

3 Q. Do you recall what that verse of the Koran translates to in
4 English?

5 A. And prepare for them what you can of strength so that you
6 may cast fear in the enemies and God and your enemy, something
7 like that.

8 Q. Were there any other parts of this training facility in
9 addition to the Tassessy part of the camp?

10 A. Say that again. I'm sorry.

11 Q. Were there you any other parts of the training facility in
12 addition to the Tassessy part of the camp?

13 A. There was advanced training camps on the other side of the
14 Tassessy divided by a trench between them.

15 Q. What type of advanced training took place in those other
16 parts of the camp?

17 A. There was antiaircraft, and there's one that they called
18 mountain tactics.

19 Q. What did you mean by mountain tactics?

20 A. That's what they called it. I'm translating the Arabic
21 term.

22 Q. What happened after you entered the Tassessy training camp?

23 A. We were told which tents to go to, and you started your
24 training.

25 Q. What did trainees like yourself wear while you were

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Alwan - direct

1 receiving training at the Tassessy camp?

2 A. It was the Afghan outfit which is a long shirt, the one
3 with the cut in the side, and the pants, but it was camouflage.

4 Q. Earlier we watched some clips from a video you saw at the
5 incoming guesthouse. Was your attire similar to the some of
6 the attire of the trainees on that clip?

7 A. Yes.

8 Q. How did you obtain the attire that you wore while you were
9 receiving training?

10 A. It was given to me at the guesthouse, the incoming
11 guesthouse.

12 Q. Now, what types of training was offered at the Tassessy
13 training camp?

14 A. The first three weeks was supposed to be weapons. Then it
15 was, then there was explosives, tactics, and topography.

16 Q. Do you what the topography training entailed?

17 A. No, I never got that far.

18 Q. Were all the trainees supposed to receive instructions in
19 each of these disciplines that you described in order to
20 graduate from the Tassessy camp?

21 A. Yes.

22 Q. What was the extent of the training that you received?

23 A. Just the first week, which was the first weapon, the AK-47.

24 Q. What would occur on a typical day of your weapons training?

25 A. First it was instructions on the parts, the different parts

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Alwan - direct

1 of the rifle, how to assemble, disassemble, dry shoot and live
2 shoot.

3 Q. Was all of this training on the AK-47 rifle?

4 A. That I attended, yes.

5 Q. In addition to the training you received, what would happen
6 on a typical day at the camp?

7 A. You wake up in the morning for the dawn prayer. After that
8 you just stayed in the mosque area, read Koran until breakfast,
9 ate breakfast. Then they broke you up into groups, and you
10 went out with one of the trainers for the morning run or
11 exercises, if you will. Came back at noon, had lunch, prayed.
12 They gave you like a rest time. Then after that it was you go
13 to whichever training class you have.

14 Q. Do you recall if any visitors came to the training camp
15 while you were there?

16 A. Yes.

17 Q. Who came?

18 A. Usama Bin Laden and Ayman al-Zawahiri.

19 Q. Do you recall what if anything happened to prior to Usama
20 Bin Laden and Ayman al-Zawahiri arriving at the camp?

21 A. Yes. We were told by the trainers and the staff there that
22 there's going to be some videotaping, and if you didn't want to
23 be seen or if you didn't want to appear in it you could cover
24 yourself, basically cover your face, they said cover your face.
25 And then they made everyone assemble in the courtyard or the

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Alwan - direct

1 main area of the camp.

2 Of course, all the staff members were shooting weapons
3 before the cars arrived. Two vehicles arrived, people came
4 out. They were covered also, had weapons. And then another
5 vehicle came, and that's when Bin Laden came out and Ayman
6 Zawahiri.

7 (Continued on next page)

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E363ABU6

Alwan - direct

1 BY MR. CRONAN:

2 Q. Did you cover your face when Usama Bin Laden arrived?

3 A. Yes.

4 Q. I'm sorry?

5 A. Yes.

6 Q. What happened after Bin Laden and Zawahiri arrived at the
7 camp?

8 A. I remember a visual when I was reading a poem. Then there
9 was some other people reading poems. Then we were told to go
10 into the mosque or the prayer area. Then he came in or he
11 might have been there already. I can't remember if he was
12 there already.

13 But, we were sitting there. He read the -- he was
14 standing in the front, him and al-Zawahiri. He was reading
15 from a paper, what I recall is just the Islamic Jihad of Egypt
16 and Al Qaeda were united or becoming allies.

17 Q. When you say he was reading from a paper who is "he"?

18 A. Usama Bin Laden.

19 Q. You mentioned the Egyptian Islamic Jihad. Were you
20 familiar with that at the time?

21 A. No.

22 Q. What, if anything, did Bin Laden have to say about the
23 Egyptian Islamic Jihad and Al Qaeda?

24 A. That they were uniting or becoming allies.

25 Q. I just handed you a DVD that has been marked for

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Alwan - direct

1 identification as Government's Exhibit 22. Have you reviewed
2 the contents of that DVD?

3 A. Yes.

4 Q. How do you know that what is in front of you is the same
5 thing that you in fact reviewed?

6 A. I initialed it.

7 Q. What is contained on this DVD?

8 A. The clippings of the arrival when Bin Laden showed up to
9 the camp.

10 Q. Photographs or a video?

11 A. It was a video.

12 Q. Are you depicted on the video that's Exhibit 22?

13 A. I know I was there. I -- I don't know which one I was.

14 But I'm sure I was there because I remember the contents of the
15 video.

16 MR. CRONAN: The government offers Exhibit 22 into
17 evidence.

18 THE COURT: Received.

19 MR. STEWART: No objection.

20 (Government's Exhibit 22 received in evidence)

21 MR. CRONAN: It is a very short clip if we can please
22 play Exhibit 22.

23 (Video played)

24 Q. What part of the training camp is depicted on the video we
25 just saw?

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Alwan - direct

1 A. The Tassessy.

2 Q. You mentioned that a few movements ago that someone read a
3 poem when Bin Laden arrived. Were you able to see that person
4 in this clip?

5 A. Yes.

6 MR. CRONAN: If we could show the witness for
7 identification what has been marked Government Exhibit 22-P4.

8 Q. What is shown on Exhibit 22-P4?

9 A. Are you asking me, sir?

10 Q. Yes, please.

11 A. Usama Bin Laden, and Ayman al-Zawahiri.

12 Q. Do you know where this photograph is from?

13 A. From the clip, the video we just saw.

14 MR. CRONAN: Offer 22-P4 into evidence.

15 MR. STEWART: No objection.

16 THE COURT: Received.

17 (Government's Exhibit 22-P4 received in evidence)

18 MR. CRONAN: If we may please publish it.

19 If we can please show the witness what has been marked
20 for identification as Government Exhibit 22-P.

21 Q. What is shown on 22-P?

22 A. The individual I told that was reading the poem.

23 Q. Exhibit 22-P, what is that from?

24 A. From the same video that we just saw.

25 MR. CRONAN: Offer Exhibit 22-P, your Honor.

E363ABU6

Alwan - direct

1 THE COURT: Received.

2 (Government's Exhibit 22-P received in evidence)

3 Q. Using the touch screen, can you indicate who you're
4 referring to by the individual reading the poem.

5 Are you visible in this photograph?

6 A. No.

7 Q. Do you know whether you were present at this point?

8 A. Yes.

9 Q. Do you know approximately where you were standing?

10 A. Yes.

11 Q. Can you indicate that, please.

12 A. In this area here. I'm either him or him.

13 MR. CRONAN: The witness is indicating, your Honor,
14 may the record reflect the witness is indicating toward the
15 back of the individuals depicted in the photo in the center.

16 THE COURT: Yes.

17 Q. Was your face covered?

18 A. Yes.

19 MR. CRONAN: Lastly if we can show the witness what
20 has been marked for identification as Government Exhibit 22-P2.

21 Q. Mr. Alwan, what is depicted in this photograph?

22 A. A clipping from this DVD that we just saw.

23 MR. CRONAN: We offer Exhibit 22-P2 into evidence.

24 THE COURT: Received.

25 MR. STEWART: No objection.

E363ABU6

Alwan - direct

(Government's Exhibit 22-P2 received in evidence)

Q. Mr. Alwan, let me ask you this. In this photograph, are we able to see approximately where the tents you initially stayed at upon arriving at the Tassessy facility?

A. Before I went into the camp? I can give you the approximate location. It might be covered by a little mountain. I believe it was behind this area here. Behind that mountain.

MR. CRONAN: May the record reflect that the witness is indicating toward the top of the photograph, slightly to the right of the center if you're facing the photograph.

Q. Mr. Alwan, you mentioned that Bin Laden spoke at a mosque. Where in relation to what we can see in the photograph was that mosque located?

A. Do you want me to point?

Q. Yes, please.

A. You can't see it, but it is in this direction.

THE COURT: Off to the right of the photo as you face it.

MR. CRONAN: Thank you, your Honor.

THE COURT: That is, off beyond the right border of the photo.

THE WITNESS: Yes.

Q. Mr. Alwan, how long was your basic training supposed to last?

E363ABU6

Alwan - direct

1 A. About six weeks.

2 Q. Did you complete your training?

3 A. No.

4 Q. Why did you not complete your training?

5 A. Because I left.

6 Q. Did you leave the camp early, the training camp early by
7 your own choosing?

8 A. Yes.

9 Q. Why did you decide to leave early?

10 A. I was -- well, I decided to get out of there when I was
11 still at the guest house. They told me I had to wait to see
12 Kamal Derwish when I got to the camp.

13 When I got to the camp, when I saw all the Lackawanna
14 guys, I said where is Kamal. They said he was in the advanced
15 area where the antiaircraft was. And we are not allowed there.
16 But on Friday, it's like a day off. They are allowed to come
17 to the Tassessy, and then I can see him then.

18 So I had to wait to see him. And it took me two,
19 three times to see him to finally --

20 Q. What happened when you finally saw Kamal Derwish at the
21 training camp?

22 A. I told him that I wanted to get out. He told me you just
23 got to stay. You know, they'll get suspicious. You've only
24 finished your basic. And then if you don't want to move on,
25 you know, to any advanced training, we can meet in Kabul and --

E363ABU6

Alwan - direct

1 basically he want us to move there, like families.

2 Q. After this conversation with Kamal Derwish about wanting to
3 leave the camp, did you take any other steps to leave the
4 training camp early?

5 A. Yes.

6 Q. What else did you do?

7 A. I faked an ankle injury.

8 Q. What did that entail you doing?

9 A. Well, I came to learn that the only way you can get out of
10 camp into Kandahar is if you had like a serious medical issue
11 or if you basically finish. So, and one of the mornings that
12 we were supposed to go out to march or walk, I faked an ankle
13 injury to try to get them to send me to Kandahar.

14 Q. Did that work?

15 A. No.

16 Q. How were you finally able to leave the training camp?

17 A. I finally just went on my own across the trench to Kamal,
18 where Kamal was. And basically told him that if you don't have
19 me leave, I'm just going to leave. And he told me don't do
20 that. You know. I'll work it out for you. But just don't
21 tell the rest of the Lackawanna guys that you're leaving,
22 because then they'll want to leave too.

23 Q. Was Kamal able to work it out for you?

24 A. Yes.

25 Q. How were you transported out of the training camp?

E363ABU6

Alwan - direct

1 A. There was a vehicle that came to the camp once every week,
2 once every other week, to take anyone who needed to go to
3 Kandahar for whatever reason it was or if they finished. And I
4 learned that there was one coming that Friday. And that's when
5 I went to Kamal and told me I have to be on that one.

6 When I finally was -- the head of the camp told me I
7 could go, I got into that pickup and they drove us from the
8 camp to the old guest house.

9 Q. Was anyone else in that pickup truck with you?

10 A. There was a few individuals. I don't remember who they
11 were exactly though.

12 Q. Were these also men who had received training in the camp
13 as far as you know?

14 A. As far as I know, yes.

15 Q. Where did this pickup truck take you to?

16 A. To the outgoing guest house.

17 Q. Had you ever been to this outgoing guest house before or
18 seen it?

19 A. From the outside when we dropped off Kamal, when we first
20 got to Kandahar.

21 Q. This was the same guest house that Kamal Derwish went to?

22 A. Yes.

23 Q. Can you describe this old guest house?

24 A. When you went into the front door it kind of like -- all
25 the buildings had a wall, so it did have a wall around it.

E363ABU6

Alwan - direct

1 When you walked in, it was a small little corridor, if you
2 will, with a guard there. Then when you walked in, there is a
3 small courtyard. A prayer hall to your right. Bathrooms,
4 shower areas, and then staff areas. And then there was just a
5 building or like a bunch of rooms.

6 Q. How long did you stay at this outgoing guest house?

7 A. About two, three days.

8 Q. Did you receive your personal items back at this guest
9 house?

10 A. Not that same day.

11 Q. What happened?

12 A. When I arrived at the guest house, I went to see one of the
13 staff members there. I told him, you know, I needed my
14 personal belongings. He said that the treasurer, he comes
15 every night so I'll see him that night.

16 Q. Did you get your items that night?

17 A. Not that night, no. He never showed up.

18 Q. What happened while you were at the guest house, in the
19 outgoing guest house in Kandahar?

20 A. When I arrived there, I ran into the gentleman that I told
21 you I met with Kamal in Karachi, Muhajin, and he knew that I
22 was from America. He asked me, did you finish your training?
23 I was like, no -- the story I was giving everybody there was I
24 left sudden, I had to get back to my family, get things
25 situated, and then I would come back. So that's what I told

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Alwan - direct

1 him. He said do you want to meet the Sheikh.

2 Q. Do you have an understanding of what the Sheikh was?

3 A. The Sheikh they referred to was always Usama Bin Laden. I
4 was like no. My understanding from what I heard there is when
5 you wanted to meet him, you wanted to give him a pledge.

6 Q. Is that the concept of bayat you were talking about
7 earlier?

8 A. Yes. I said, no, I'm not giving him no pledge. He said,
9 no, he knows who you are. Something to that effect. I can set
10 it up. I don't know if he was bragging or what he was doing.
11 I told him, no, I don't, and we left it at that.

12 Q. Did there come a time when you in fact met with Bin Laden
13 again?

14 A. Yes.

15 Q. How did that come about happening?

16 A. That same night when -- the same night that the treasurer
17 was supposed to come to with my stuff, when he didn't arrive,
18 another gentleman arrived. His name was Haled. And he told me
19 that he talked to Muhajin or something to the effect he's got
20 it set up for tomorrow that they're going to take me to meet
21 Bin Laden. I told him, I said, I basically said, I told
22 Muhajin I didn't want to. I'm not giving no pledge. He said
23 you don't have to give a pledge, don't worry.

24 Q. If you can slow down a little bit for the reporter and the
25 interpreter. Thank you.

E363ABU6

Alwan - direct

1 So, what happened next?

2 A. The next morning, or midmorning, my name was called,
3 Sohaib, I went to the front. And they told me the guys are
4 waiting for me. There was two gentlemen out there. They had
5 weapons, they had a pickup truck. They told me let's go, you
6 know, we're going to meet the Sheikh.

7 So, there was another gentleman that came with me from
8 the guest house, I didn't know him. But he came also, and we
9 were taken maybe about 10, 15 minute drive to this other place.

10 Q. Can you describe the location that you were brought to.

11 A. Same thing. Had a wall around it. There was a gate, a
12 solid gate. When I say solid gate, it means you can't see
13 through it.

14 The vehicle entered there, it was a huge courtyard.
15 After we got out of the car, the two gentlemen that had the
16 weapons just told me and this other kid that came with me from
17 the guest house, to go sit -- there was an area that had like a
18 canopy made from like straw. And we were told to just sit
19 there and wait.

20 Q. Without naming the names of any people you saw while you
21 were waiting, what happened while you were waiting?

22 A. I was sitting, me and this young man. There's two guards,
23 maybe more. And we can see in front of us, there was like two
24 buildings, but only like an alley, kind of little small alley
25 that separated them.

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Alwan - direct

1 And as we were waiting, there was a gentleman that
2 came out of a room, got into a pickup truck and left. And then
3 moments later, I can't remember if it was me or the gentleman
4 that came with me went first. But I was told then to go into
5 this room.

6 MR. CRONAN: If we can put what has been entered as
7 Government Exhibit 103 on the screen, please.

8 Q. Do you recognize the individual in Exhibit 103?

9 A. Yes.

10 Q. How do you recognize him?

11 A. He was the gentleman I just mentioned that came out of the
12 one room. He had a grayer beard.

13 Q. What happened next at this location?

14 A. Once he left, like I said, I was told to go into this room.
15 When I entered the room, Bin Laden was there.

16 Q. Did you enter the same room that the individual in Exhibit
17 103 came out of?

18 A. Yes.

19 MR. CRONAN: We can take down 103 now.

20 Q. Did you enter the room alone?

21 A. Yes.

22 Q. Was anyone else in the room?

23 A. Usama Bin Laden.

24 Q. Was there any guards in the room?

25 A. Yes. They didn't come -- just they stood by the door when

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Alwan - direct

1 they told me to go in.

2 Q. How big was this room?

3 A. It was rectangular. Pretty big. I don't know.

4 Q. Do you recall what Usama Bin Laden was wearing in this
5 occasion?

6 A. The same head -- white head gear, white gown, and like the
7 yellowish or tan cloak.

8 Q. Was he sitting or standing when you entered?

9 A. He was standing.

10 Q. Did he have a weapon at the time?

11 A. Next to him. Not with him. Not holding it, but it was
12 next to him.

13 Q. Were you able to tell what type of weapon that was?

14 A. It looked like a smaller version of an AK-47.

15 Q. Did you ever see Usama Bin Laden with that weapon on other
16 occasions?

17 A. On TV.

18 Q. What happened when you entered this room with Usama Bin
19 Laden?

20 A. I walked in. He was standing, he shook my hand, motioned
21 for me to sit down. I sat down. He said did you finish -- did
22 you finish your training. I said no. I have to -- same story,
23 I have to get back. I left my family sudden, I have to go
24 back, take care of stuff, and I'll come back.

25 He asked me how are your brothers or did -- are the

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Alwan - direct

1 other guys finished or something in that term. I assumed he
2 was referring to the Lackawanna guys. I said no, they're still
3 in training.

4 Then, he asked me something like how -- how are
5 Muslims there. When he said "there," I assumed he meant
6 America. I said, oh, good. We can practice our religion more
7 free than some Muslim countries, and he kind of smiled. He
8 asked me how are the youth there or something to that effect.
9 And do they think of -- what do they think of the missions.
10 Operations.

11 Q. Did you have an understanding as to what Usama Bin Laden
12 meant by missions or operations?

13 A. Since I been there, when they mentioned operations, the
14 Arabic term, it meant suicide operations.

15 Q. How did you respond when you were asked that question?

16 A. I was surprised. I said, oh, we don't think about it.

17 Q. Did you ask any questions of Usama Bin Laden during this
18 meeting?

19 A. Yeah, I then asked him, I heard there is something that's
20 going to happen or something's going on. He said there's been
21 threats made back and forth. And then --

22 Q. If I could stop you there. When you asked Bin Laden about
23 whether something was going to happen, what had you heard was
24 going to happen?

25 MR. STEWART: Objection.

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Alwan - direct

1 THE COURT: Pardon?

2 MR. STEWART: Objection, Judge.

3 THE COURT: Sustained.

4 Q. When had you heard that something was going to happen?

5 A. When?

6 Q. When.

7 A. There was rumors when we were at the camp. It was
8 something's happening, something's going to happen.

9 Q. Did you ever hear any specifics as to what, if anything,
10 was going to happen?

11 A. No.

12 THE COURT: Yes or no answer, please.

13 MR. STEWART: Objection.

14 A. No.

15 Q. How did your meeting with Usama Bin Laden conclude?

16 A. He asked me if I came through Pakistan. I said yes. He
17 said do you need us to clean your passport. I said no, I'm
18 good. And then he stood up and told me God be with you. And
19 the guard motioned for me to come out.

20 Q. In total, how long did your meeting with Usama Bin Laden
21 last on this last occasion?

22 A. A few minutes. I don't know exactly how many. But few
23 minutes.

24 Q. After that meeting, where did you go next?

25 A. I was taken back to the old guest house.

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Alwan - direct

1 Q. What happened when you returned to the old guest house?

2 A. That same night the treasurer did arrive and I was given my
3 envelope. I opened it. It was my stuff that I gave them to
4 begin with. And the next morning, I left.

5 Q. What stuff were you given back?

6 A. In the envelope my passport, my wallet, they had all my
7 identification, and my money.

8 Q. Where did you go the next morning?

9 A. I was taken from the old guest house to the border, same
10 thing, the taxi thing. And then from there, into Pakistan.

11 Q. Earlier you described how you were brought from Pakistan
12 into Afghanistan. Were you brought from Afghanistan into
13 Pakistan in the same manner?

14 A. Yeah. With the -- we had to give the taxi cab the
15 envelope, same thing, sealed, so he can cross it over the
16 border. And I went around the border.

17 Q. Were you on a motorcycle as well?

18 A. Yes.

19 Q. What did you do after you crossed the border into Pakistan?

20 A. That cab driver then drove me to the Quetta guest house
21 that I went --

22 Q. The same guest house you had been at previously?

23 A. Yes.

24 Q. How long did you stay in Quetta?

25 A. Just a couple hours, until I told them I need my ticket as

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Alwan - direct

1 soon as possible. So they got me my ticket to fly from Quetta
2 to Karachi.

3 Q. How long did you stay in Karachi?

4 A. About four, three, four days.

5 Q. Where did you go after those three or four days in Karachi?

6 A. I flew back to Toronto, then came back to America.

7 Q. Do you recall approximately when you arrived back in
8 America?

9 A. Sometime in June of 2001.

10 Q. Did you return to the Buffalo area?

11 A. Yes.

12 Q. I believe you testified before that you were arrested on
13 September 13, 2002. Is that right?

14 A. Correct.

15 Q. Did you talk to the FBI before you were arrested?

16 A. Yes.

17 Q. When was the first time you were approached by the FBI?

18 A. I was told by my family -- this is after I got back from
19 Afghanistan, maybe a couple weeks after that. My family told
20 me that somebody keeps calling me from a certain insurance
21 company, Allstate, and he gave me a phone number to call. When
22 I called it, it was the FBI. He said I would like to meet with
23 you. And I met with him, I think it was the next day or couple
24 days after that.

25 MR. CRONAN: Just to give the Court a sense, I

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Alwan - direct

1 probably have about 15 minutes left or so. I don't know if the
2 Court thinks this is a good time for a break or if I should
3 just continue going.

4 THE COURT: If you really are 15 minutes, let's finish
5 it up.

6 MR. CRONAN: Certainly, your Honor. I'll try to go
7 under.

8 Q. So when you were first approached by the FBI in 2001, were
9 you entirely truthful?

10 A. No.

11 Q. What were you not truthful about?

12 A. About my trip to Afghanistan.

13 Q. Where did you tell the FBI that you had traveled to?

14 A. To Pakistan.

15 Q. Did you tell the FBI why you went to Pakistan?

16 A. I told them for Tablighi Jamaat.

17 Q. Can you briefly explain what Tablighi Jamaat is.

18 A. It is a sect of the Islam, part where you go and learn how
19 to convey the message and based out of Pakistan.

20 Q. Is it like a missionary?

21 A. Yes, yes.

22 Q. Why weren't you honest with the FBI about where you
23 actually went?

24 A. Well, I knew I did wrong, so I didn't want to get in
25 trouble.

E363ABU6

Alwan - direct

1 Q. Did you continue to speak with the FBI over the next year
2 or so?

3 A. Yes.

4 Q. When was the first time that you told the FBI about your
5 time with Al Qaeda and Bin Laden in Afghanistan?

6 A. September 12, 2002, a day before I was arrested.

7 Q. What caused you to come around on that day?

8 A. Every time -- the times I did meet with the FBI, they would
9 just call me and ask me to meet them. I would meet them
10 wherever they asked me to.

11 This day they showed up at my job site. And basically
12 they told me, listen, we know the truth. We know you faked --
13 faked an ankle injury. We know about Al Farouq camp. So they
14 knew stuff that only the six guys knew. So I just said that's
15 it. It's over. So I told them.

16 Q. Even on this date, on September 12, 2002, were you
17 completely truthful about all aspects of your travel to
18 Afghanistan?

19 A. No.

20 Q. What parts of your trip to Afghanistan were you not
21 truthful about on September 12, 2002, when you spoke to the
22 FBI?

23 A. I -- I lied that I -- that I knew that I was going to a
24 training camp from Lackawanna. I told them I found out when I
25 got to Pakistan.

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Alwan - direct

1 Q. Did you continue to maintain your story that you thought
2 you were going for Tablighi Jamaat?

3 A. Not that day, no.

4 Q. Did you tell the FBI all of your meetings with Usama Bin
5 Laden on September 12, 2002?

6 A. No, we didn't get that far.

7 Q. When were you arrested?

8 A. September 13, 2002.

9 Q. After you were arrested, did you continue to meet with the
10 government?

11 A. Yes.

12 Q. At your first meeting with the government following your
13 arrest, did you then tell the government about all your
14 meetings with Usama Bin Laden and Al Qaeda?

15 A. I told them about the first two meetings. The third one we
16 didn't get that far.

17 Q. What do you mean "we didn't get that far"?

18 A. When we went, when we met, this was already after our
19 arrest, and we were meeting with our attorneys. It was a
20 proffer we were going in for. And basically we started from
21 the beginning. Your first -- the whole thing when you left to
22 travel. And I got to the part where, when I was at the
23 incoming guest house, then when he came to the camp. When I
24 saw him the third time it was when I was leaving. We didn't
25 get that far in the proffer. The prosecutor said we'll stop

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Alwan - direct

1 there, and we'll pick it up.

2 Q. You ran out of time that day?

3 A. Yes.

4 Q. You used the term "proffer." What do you mean by proffer?

5 What is a proffer?

6 A. That's what my attorney was telling me, when you go in and
7 cooperate. That's the term that my attorney told me it was.

8 So I don't know exactly what it means.

9 Q. Was it a meeting with the government and your attorney?

10 A. Yes.

11 Q. At these initial meetings following your arrest, was there
12 anything you were not truthful about?

13 A. Yes. At this first meeting they asked me about where I got
14 my money for the travel. And I lied to them. I told them it
15 was all from me.

16 Q. Why did you lie about this?

17 A. Because I borrowed money from someone, and that individual
18 was going through another trial for another case. And I just
19 didn't want him -- I didn't want to get him into trouble and
20 get him in our case.

21 Q. Have you since told the government about this individual?

22 A. Yes.

23 Q. Have you since been completely truthful with the
24 government?

25 A. Yes.

E363ABU6

Alwan - direct

1 Q. Have you left anything out in your meetings with the
2 government?

3 A. No.

4 Q. If you were not to be truthful today while testifying,
5 what, if anything, do you understand could happen?

6 A. I would be charged with perjury, obstruction.

7 Q. Let me just ask you a couple of final questions. You
8 testified a few minutes ago that you met with Bin Laden for a
9 third time at a compound near Kandahar shortly before you left
10 Afghanistan, is that right?

11 A. Correct.

12 Q. Did you ever encounter Usama Bin Laden in person again
13 since then?

14 A. No.

15 Q. You also testified about seeing Sulaiman Abu Ghayth at an
16 Al Qaeda guest house in Kandahar during the same trip to
17 Afghanistan, is that right?

18 A. Correct.

19 Q. Did you ever see Sulaiman Abu Ghayth again while you were
20 in Afghanistan?

21 A. No.

22 Q. What about after you returned to the United States?

23 A. Did I see him?

24 Q. Correct.

25 A. In person? No.

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Alwan - direct

1 Q. You said in person. Did you see him under any
2 circumstances after you returned to the United States?

3 A. On TV, on the news.

4 Q. Please describe the context of when you saw Sulaiman Abu
5 Ghayth on television after you returned to the United States.

6 MR. STEWART: Objection.

7 THE COURT: Ground?

8 MR. STEWART: Relevance. Seen him on TV?

9 THE COURT: I'll allow it.

10 Q. I'll repeat the question. Can you please describe the
11 context of when you saw Sulaiman Abu Ghayth on television after
12 you returned to the United States?

13 A. After 9/11, he -- when Bin Laden was speaking on the news,
14 he was sitting next to him.

15 Q. When you saw Sulaiman Abu Ghayth on television, who did you
16 recognize him to be?

17 THE COURT: If anybody.

18 Q. If anything.

19 A. The same Kuwaiti guy that I saw in the guest house.

20 Q. Do you recall what Sulaiman Abu Ghayth was doing when you
21 saw him on television?

22 A. At that time he was just sitting. But another news
23 clipping he was speaking.

24 Q. Do you recall what Sulaiman Abu Ghayth was speaking about
25 on that occasion?

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Alwan - direct

1 A. I don't remember everything. I just -- I remember
2 statements that warning America --

3 THE COURT: Let's just stop it right there. There is
4 a better way to prove it than this.

5 MR. CRONAN: Certainly, your Honor. Just have
6 one second, your Honor.

7 THE COURT: The jury will disregard the witness's very
8 last answer.

9 MR. CRONAN: Your Honor, I have just a couple of final
10 questions.

11 Q. I want to go back to Usama Bin Laden and al-Zawahiri's
12 arrival at the training camp that you spoke about some time
13 ago.

14 A. Yes.

15 Q. Was anyone armed when they arrived?

16 A. All the staff members, and I believe they were his guards.

17 Q. I'm talking about at the training camp.

18 A. At the training camp.

19 Q. What about you, were you armed?

20 A. No.

21 Q. Do you recall how many bodyguards came with him?

22 A. A dozen maybe.

23 Q. Your last meeting with Usama Bin Laden. Were you armed
24 during that meeting?

25 A. No.

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Alwan - direct

1 Q. What about the guard in the room with Bin Laden?

2 A. Yes.

3 MR. CRONAN: Nothing further, your Honor.

4 THE COURT: Thank you. We'll break here for the day.
5 Counsel remain, please. Members of the jury, 9:30 Monday
6 morning, please.

7 (Jury excused)

8 THE COURT: The witness can go back to the witness
9 room right now, please. We'll see you at 9:30 also.

10 (Continued on next page)

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1 THE COURT: What is the proposal for how to proceed on
2 Monday morning?

3 MR. CRONAN: Your Honor, the government's proposal
4 would be to start Monday morning at the normal time with
5 Mr. Alwan's cross-examination. At the conclusion of the
6 cross-examination, I think we would then cut to the CCTV feed
7 from London for our next witness Saajid Badat.

8 THE COURT: Okay. I would really urge you to make
9 arrangements with Andy to retest the CCTV so we don't find
10 ourselves Monday with a mess.

11 MR. CRONAN: We'll do that, your Honor.

12 THE COURT: This is exercise or you're anxious to
13 leave?

14 MR. COHEN: Just on that point, I wanted to bring
15 something up that Mr. Lewin and I have discussed. We're
16 cautiously optimistic or hopeful that we understand in London
17 they have the ability to do a double screen. So that if there
18 is a video I wanted to get into evidence by showing it to the
19 witness, it can also be shown once it's in evidence to the jury
20 here.

21 In the off-chance it does not work, double screen,
22 what Mr. Lewin and I had talked about was the possibility of
23 providing a copy of the video to the witness over the weekend,
24 let him identify it, let him say this is a fair and accurate
25 video, he participated, he saw it. Provide one to the court

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1 before we leave so that we could then show him a video on a
2 laptop, for example, while one is being shown here separately.
3 So that the jury and he could both see it at the same time.

4 THE COURT: Mr. Lewin?

5 MR. LEWIN: As your Honor knows, the government has
6 gone out of its way to use the screenshots instead of videos
7 for just this reason.

8 With that said, we absolutely will attempt to discern
9 whether in London they can feed a video such that the jury
10 sitting here will also see it. And if not, I think we need to
11 talk more about how simultaneous videos can be played.

12 That said, I don't think there is anything per se
13 objectionable about the way Mr. Cohen proposes to do it.

14 THE COURT: I raised this a month or more ago, and I
15 was told that you had worked it out. And indeed, I signed off
16 on a complete protocol for how this was to be done.

17 This is a variation. If you all agree on it, and if
18 the technology handles the variation, I'm not going to have a
19 problem with it in all likelihood. If you don't agree on it,
20 we're going to do it the way you agreed quite some time ago,
21 whatever that is. Okay?

22 MR. LEWIN: Understood, Judge.

23 THE COURT: Okay.

24 MR. CRONAN: May I just raise two issues with the
25 witness who just took the stand. At the end of the direct

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1 there was an objection sustained with respect to answers he was
2 about to give concerning him seeing the defendant on television
3 after he returned to the United States.

4 Probably it wasn't an artful question by me. It
5 wasn't clear as to the relevance. We think it is very
6 relevant. Part of the charges here is the defendant provided
7 material support in the form of personnel, which is him acting
8 as a spokesperson for Al Qaeda.

9 Therefore, the fact that someone in the United States
10 saw him speaking as a representative of Al Qaeda is directly
11 relevant to that charge.

12 THE COURT: The reason that I sustained the objection
13 is because the question that was asked was along the lines of
14 what were the circumstances in which you saw this broadcast.
15 Now for all I knew, what I was about to hear about was whatever
16 some news commentator said or somebody else on television,
17 which would be rank hearsay about how it is the video came to
18 be, what the contents of the video were, and therefore, it
19 seemed to me to stop right there.

20 If what you're going to elicit is simply what he heard
21 the defendant say on the broadcast, that doesn't have the same
22 problems.

23 MR. CRONAN: I apologize. That's what I meant in my
24 last question. That's certainly the testimony that we were
25 looking to elicit from the witness.

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1 THE COURT: I said that quickly. Maybe Mr. Cohen is
2 going to persuade me I am taking too simplistic a view.

3 MR. COHEN: I agree with your Honor.

4 THE COURT: Okay. Well, there you go. Mr. Cohen,
5 wonders are just happening all the time.

6 MR. COHEN: They are, Judge.

7 MR. STEWART: I may not, Judge. He'll be in London.

8 THE COURT: You can sink your teeth into his ankle
9 later.

10 MR. CRONAN: Your Honor, in light of that, may we
11 reopen direct just for that last question or two before we
12 begin cross on Monday?

13 THE COURT: You can reopen direct to ask a proper
14 question on that point.

15 MR. CRONAN: Thank you.

16 MR. COHEN: Mr. Lewin and I also had a discussion. I
17 don't quite know how far the cross-examination is going to
18 happen. We're five hours ahead of time.

19 THE COURT: I think Britain is about 30 days behind us
20 or three weeks behind us on moving to British summertime, so I
21 think if we jump ahead this weekend it will be for a short time
22 that New York and London will be four hours apart.

23 MR. COHEN: Judge, one of the issues we talked about
24 was we think it's increasingly unlikely that we will be able to
25 deal with Mr. Badat on Monday and conclude everything with

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1 Mr. Badat on Monday. Thus likely leading it to some
2 examination on Tuesday. And what, your Honor, Mr. Lewin and I
3 kicked around was the possibility of being down on Wednesday.
4 Allowing us to do Badat on Monday, finish whatever we have to
5 do on Badat on Tuesday, get on a plane and come back and be off
6 on Wednesday. Given the schedule.

7 MR. LEWIN: Your Honor, the government joins in that
8 request.

9 THE COURT: Let me think about it. I'll have Andy
10 notify you tomorrow.

11 MR. COHEN: Thank you.

12 THE COURT: Thank you. Good night, all.

13 (Adjourned until March 10, 2014, at 9:30 a.m.)
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1	101-A	228
2	102	229
3	102-A1	230
4	103	232
5	21	250
6	22	283
7	22-P4	284
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