

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA,	.	Criminal No. 1:01cr455
	.	
vs.	.	Alexandria, Virginia
	.	March 23, 2006
ZACARIAS MOUSSAOUI,	.	9:30 a.m.
a/k/a Shaqil, a/k/a	.	
Abu Khalid al Sahrawi,	.	
	.	
Defendant.	.	
	.	
.	

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

VOLUME IX

APPEARANCES:

FOR THE GOVERNMENT:	ROBERT A. SPENCER, AUSA
	DAVID J. NOVAK, AUSA
	DAVID RASKIN, AUSA
	United States Attorney's Office
	2100 Jamieson Avenue
	Alexandria, VA 22314

FOR THE DEFENDANT:	GERALD THOMAS ZERKIN
	KENNETH P. TROCCOLI
	ANNE M. CHAPMAN
	Assistant Federal Public Defenders
	Office of the Federal Public
	Defender
	1650 King Street
	Alexandria, VA 22314

(APPEARANCES CONT'D. ON FOLLOWING PAGE)

1 APPEARANCES: (Cont'd.)

2 FOR THE DEFENDANT:

EDWARD B. MAC MAHON, JR., ESQ.
P.O. Box 903
107 East Washington Street
Middleburg, VA 20118
and
ALAN H. YAMAMOTO, ESQ.
643 South Washington Street
Alexandria, VA 22314-3032

6 ALSO PRESENT:

GERARD FRANCISCO
PAMELA BISHOP

8 COURT REPORTERS:

ANNELEISE J. THOMSON, RDR, CRR
U.S. District Court, Fifth Floor
401 Courthouse Square
Alexandria, VA 22314
(703)299-8595
and
KAREN BRYNTESON, FAPR, RMR, CRR
Brynteson Reporting, Inc.
2404 Belle Haven Meadows Court
Alexandria, VA 22306
(703)768-8122

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(3:53 p.m.)

(Defendant and Jury in.)

THE COURT: All right. We are ready to go. Counsel, do you want me to read the instruction now about substitutions or later? I don't know what the order of your proof is going to be.

MR. TROCCOLI: Later would be preferable, Your Honor.

THE COURT: Alert me when you want me to do it.

MR. TROCCOLI: Thank you, Your Honor.

THE COURT: All right. We're beginning now the defense portion of the case. That means defense counsel will ask the first questions and then the government will get to cross-examine the witnesses. All right? Mr. Troccoli?

MR. TROCCOLI: Thank you, Your Honor. Our first witness is a summary witness by the name of Erik Rigler.

THE COURT: All right.

MR. TROCCOLI: And he has a laptop set up, Your Honor. It may take him just a moment to turn it on.

THE COURT: Is somebody getting him, or do we need to get him?

MR. TROCCOLI: Your Honor, Mr. Rigler, while he is coming into the courtroom, has a number of PowerPoint slides that are going to be used in his summary, and those have been marked as Defense Exhibit 950.

THE COURT: Just one second. Wait until the witness is sworn.

1 ERIK RIGLER, DEFENDANT'S WITNESS, AFFIRMED

2 THE COURT: Now, do you want the PowerPoint visible at
3 the off-site locations?

4 MR. TROCCOLI: Yes, please.

5 THE COURT: All right. We will follow the same
6 procedure we have done before. Once that begins, we will switch
7 the camera.

8 MR. TROCCOLI: Thank you, Your Honor.

9 THE COURT: Now, what were the exhibit numbers that you
10 wanted?

11 MR. TROCCOLI: It's Defense Exhibit 950.

12 THE COURT: 950.

13 MR. TROCCOLI: I understand there is no objection to
14 that.

15 THE COURT: Is that correct?

16 MR. NOVAK: We have no objection to this PowerPoint
17 coming in as long as the other PowerPoints that the government put
18 in -- I think you have been going equal footing on each of those.

19 THE COURT: Either we're putting both PowerPoints in or
20 neither.

21 MR. TROCCOLI: We would prefer to have just the hard
22 copy slides go to the jury, Your Honor. We don't need to give
23 them an electronic copy.

24 THE COURT: No, no. But the point is, is the defense
25 agreeing to having the hard copy of the government's PowerPoints

1 going in as an exhibit?

2 MR. TROCCOLI: The Court's indulgence.

3 MR. MAC MAHON: The Court's indulgence, Your Honor.

4 THE COURT: I'm a very indulgent Court. All right, it
5 will be about two more minutes.

6 (Laughter.)

7 THE COURT: My normal practice would not be to allow a
8 PowerPoint hard copy to go in because it is basically the
9 testimony of a witness sitting there in the jury box, but we're
10 making all sorts of exceptions to normal practice in this case.
11 So if you are both in agreement, we're going to treat you both the
12 same way.

13 MR. NOVAK: You have already ruled on Agent Fitzgerald,
14 you admitted that already, Your Honor, as I recall. This is Agent
15 Zebley's, so -- so if they are going to do this, we would --

16 MR. TROCCOLI: Since they have one, Your Honor, this
17 will be our one, if that's, that's what we would prefer.

18 MR. NOVAK: So Agent Zebley is coming in then.

19 MR. TROCCOLI: No, no. My understanding is that Agent
20 Anticev has already come in.

21 THE COURT: Was it Anticev --

22 MR. TROCCOLI: Agent Fitzgerald has already come in?

23 THE COURT: I will revisit that issue. I don't frankly
24 think it is such a good idea because you start having selective
25 witnesses basically sitting in the witness box, in the jury room

1 testifying. But, look, at this point let's get the testimony in,
2 and we can address this issue of exhibits down the road.

3 MR. NOVAK: We have no objection to the PowerPoint
4 except for the last page, which they have done in a separate
5 exhibit and which we will deal with at the end.

6 THE COURT: All right.

7 MR. TROCCOLI: That is correct. That is marked, Your
8 Honor, as Defense Exhibit 950A. And Mr. Rigler will not display
9 that to the jury until we get a ruling from the Court.

10 THE COURT: All right.

11 MR. TROCCOLI: We can address that at that time.

12 THE COURT: Sir, for the record, would you please state
13 your full name and spell your last name.

14 THE WITNESS: I am Erik Rigler, last name is spelled
15 R-i-g-l-e-r.

16 THE COURT: Thank you. Go ahead.

17 MR. TROCCOLI: Thank you, Mr. Rigler.

18 DIRECT EXAMINATION

19 BY MR. TROCCOLI:

20 Q. Is your computer on? Thank you, Mr. Rigler. Can you please
21 tell the jury a little bit about your education?

22 A. Wait just a second here. I'm sorry. We need to kill that
23 just a second so I can get it back to the start, Ms. Bishop.

24 I am ready now, please.

25 Q. Very good.

1 A. I apologize.

2 Q. That's fine, Mr. Rigler. Thank you.

3 Can you please tell the jury briefly what your
4 educational level is?

5 A. I have a Bachelor's degree from North Texas State in Denton,
6 Texas. I have a Master's degree in criminal justice from Sam
7 Houston State, that's in Huntsville, Texas.

8 Q. And what has been your employment since you graduated from
9 college, briefly?

10 A. During the Vietnam era, I was a pilot in the United States
11 Navy and flew both carrier and land-based aircraft.

12 Q. And after that?

13 A. I was recruited from the Navy by the Federal Bureau of
14 Investigation, where I served 23 years as a special agent. Most
15 of my duties were in aviation. I hold an airline transport pilot
16 rating. I have about 5,000 hours flying FBI aircraft.

17 Q. When you said special agent, is that special agent for the
18 FBI?

19 A. Yes.

20 Q. And are you currently retired from the FBI?

21 A. I am. Yes, I am.

22 Q. What is your current employment?

23 A. I have a small business called G Force. G Force does
24 aviation accident and security investigations.

25 Q. Are you also available for hire, like, by the Public

1 Defender's Office to act as a summary witness?

2 A. Yes.

3 Q. And are you being paid, in fact, by the public defender to
4 testify here as part of your summary witness responsibilities?

5 A. Yes.

6 Q. And approximately how much have you been paid by the Public
7 Defender's Office for your role as a summary witness in this case?

8 A. I have billed 132 hours, just a little over \$16,000 since the
9 first of the year.

10 Q. Now, you are here to summarize a chapter in a report prepared
11 by the Department of Justice's Office of Inspector General; is
12 that correct?

13 A. That's correct.

14 Q. And that is what chapter of that report?

15 A. Chapter 5.

16 Q. And what does that chapter, just very briefly, deal with?

17 A. It deals with the FBI's handling of the investigation
18 regarding two individuals involved in 9/11.

19 Q. And who are those two individuals?

20 A. Hazmi and Midhar.

21 Q. And who are Hazmi and Midhar?

22 A. These are two of the men that were aboard the aircraft that
23 crashed into the Pentagon.

24 Q. Can you explain to the jury, please, why it was that the
25 Office of Inspector General was tasked with looking into the FBI's

1 handling of the information regarding Hazmi and Midhar?

2 A. Yes. In the days following 9/11, the Senate and the House of
3 Representatives had a select committee, it was a committee that
4 joined from both those elected bodies, they were
5 intelligence-related, to study 9/11.

6 At the conclusion of that, that committee is called the
7 Joint Investigative -- Joint Inquiry Investigative Committee or
8 the JIICI. At the conclusion of that investigation, that
9 committee made a recommendation to various inspectors general that
10 they conduct further investigation of their respective
11 departments. That would be the Department of Justice, Department
12 of State, the Central Intelligence Agency, and a review of items
13 at the FBI.

14 Q. And did the -- you said JIICI recommended that the FBI --
15 that the Department of Justice Inspector General look into that?

16 A. That's correct.

17 Q. Did the FBI Director as well request a review?

18 A. That's correct also.

19 Q. What did the FBI Director request?

20 A. He requested that the Inspector General from the Department
21 of Justice conduct an investigation of his agency, the FBI, with
22 regards to items stemming from 9/11 with the Phoenix memo, the
23 Moussaoui incident in Minnesota, and Hazmi and Midhar.

24 Q. Now, before you summarize what the Inspector General found,
25 can you tell the jury, please, who was the Department of Justice

1 Inspector General?

2 A. The Department of Justice Inspector General was a man at this
3 time by the name of Glenn Fine. He was the overall director of
4 that agency or that department of about 450 personnel.

5 Q. Can you tell the jury what is, not necessarily with respect
6 to Mr. Fine, but just what is the Office of Inspector General
7 within the Department of Justice?

8 A. Following the Inspector General Act, several departments in
9 the government came underneath for investigative purposes in such
10 areas as fraud, waste, mismanagement, corruption, and Inspector
11 General is like an independent watchdog. It is appointed by the
12 President. The Inspector General responds to both, for the
13 Department of Justice, will respond by writing a letter or report
14 to the Attorney General and also to Congress. And he reports to
15 two places.

16 Q. And is the Office of Inspector General independent of the
17 Department of Justice itself? Although it is a part of it, is it
18 independent, an independent body?

19 A. Yes.

20 Q. And does it exist pursuant to an act of Congress?

21 A. That's correct.

22 Q. Do you know if the -- the Inspector General is appointed by
23 the President; is that correct?

24 A. Yes, sir.

25 Q. Mr. Fine conducted an investigation concerning the FBI's

1 handling of the information that the FBI had prior to 9/11
2 concerning Khalid al-Midhar and Nawaf al-Hazmi. That was the
3 scope of the investigation that he conducted in this case?

4 A. That was a portion of it. That is the chapter 5 portion.

5 Q. There were other, other matters that the Inspector General
6 looked at as well?

7 A. That's correct.

8 Q. You are not here to talk about those?

9 A. No.

10 Q. Now, how did the Inspector General, Glenn Fine, go about
11 conducting his investigation generally?

12 A. Well, there was a large document review, I think just over
13 14,000 pages of materials were reviewed, approximately 225
14 interviews of personnel associated mostly with the FBI and Central
15 Intelligence Agency.

16 Q. Does the Inspector General have a staff or team of
17 individuals that he can call upon to help him with his
18 investigation?

19 A. That's correct. He has attorneys, he has investigators from
20 each agency that's assigned to him, he has support personnel,
21 other computer personnel, things like that.

22 Q. And with respect to his investigators, what agencies can he
23 or did he draw from in this case, with this investigation?

24 A. He had agents on his staff from the FBI detailed to the
25 Inspector General.

1 Q. Do you know how many interviews, approximately, the Inspector
2 General conducted?

3 A. 225 interviews overall, 70 with regard to Hazmi and Midhar.

4 Q. And you mentioned that he reviewed documents as well. Do you
5 know how many, approximately?

6 A. 14,000 documents were reviewed.

7 Q. And this is according to what's in his own report; is that
8 correct?

9 A. That's correct.

10 Q. You mentioned that the Inspector General's Office is
11 independent of the Department of Justice. Is the Inspector
12 General also completely independent from the prosecution team
13 sitting here today?

14 A. That's correct. There's no way that he participates in this
15 prosecution, didn't authorize the indictment, doesn't follow or
16 pursue the investigation.

17 Q. Not involved in the prosecution of Mr. Moussaoui at all?

18 A. No.

19 Q. Now, the chapter that you are summarizing, how long is that
20 chapter?

21 A. I think about 140 pages.

22 Q. And how was it that you -- can you give the jury a snapshot
23 on how it is that you are going to go about summarizing those 140
24 pages to them?

25 A. The chapter 5, the Inspector General identified five areas of

1 opportunity, he called it, for the FBI to discover that Hazmi and
2 Midhar were in the United States and were associated with al Qaeda
3 and terrorism. What I did was reviewed the book, the chapter,
4 reread the chapter 5, and then asked for and received the
5 underlying documents, those documents that were prepared by the
6 Inspector General's staff themselves and the various communications
7 sometimes, and I prepared a PowerPoint slide that parallels the
8 Inspector General's report on chapter 5.

9 Q. And you are going to first provide an overview of his
10 findings and then get into the details of each of those, you call
11 them -- the Inspector General referred to them as five
12 opportunities?

13 A. That's what I will do. And it starts from 1999 up to
14 September 2001.

15 Q. Very good, Mr. Rigler. Why don't you go ahead and start with
16 the first -- with the summary of the findings of the Inspector
17 General.

18 A. Well, the report itself was published in November 2004.

19 Q. Can I stop you there? Do you have that with you?

20 A. Yes, I do.

21 Q. Can you just hold it up so the jury can see? That's the
22 entire report, that includes chapter 5 and the other chapters as
23 well?

24 A. That's correct.

25 Q. Thank you. You may continue.

1 A. Among the findings that the Inspector found was that the FBI
2 had at least five opportunities to learn about the presence of
3 Hazmi and Midhar in the United States and to seek to find them
4 before September 11th, 2001. I will be talking about the five
5 missed opportunities that comes from this report.

6 The first one the Inspector General places early in
7 September 2000. That indicates Midhar travels to Kuala Lumpur,
8 Malaysia, where he meets with other al Qaeda operatives and
9 surveillance photographs --

10 MR. NOVAK: I object. Are we going to get question and
11 answer here or is it just going to be a speech?

12 THE COURT: Well, the way it is presented, it is going
13 to be apparently a PowerPoint presentation.

14 MR. NOVAK: That's what we did as well, and I remember
15 Mr. MacMahon screaming and yelling about the fact that we're not
16 asking questions and getting answers. I think Mr. Troccoli should
17 ask questions and the witness should answer questions.

18 THE COURT: I think that is appropriate as well.

19 MR. TROCCOLI: I will ask questions, Your Honor.

20 BY MR. TROCCOLI:

21 Q. What was the first missed opportunity, Mr. Rigler?

22 A. The first one occurred early, January 2005. It relates to
23 Midhar's travel to Kuala Lumpur, Malaysia, where he met with other
24 al Qaeda operatives and that surveillance photographs were taken.
25 We refer to these as the Malaysia photographs. Sometimes we call

1 it the Malaysia meetings.

2 Q. When you say "we," you mean the Inspector General?

3 A. I'm sorry, the Inspector General does. And when I reviewed
4 the book, I picked up his language, I apologize.

5 Q. What else with respect to the first lost opportunity?

6 A. The next point also in early January was Midhar was suspected
7 to be an al Qaeda operative and CIA learns that he had a multiple
8 entry U.S. visa. And in March 2000, that Hazmi had traveled to
9 Los Angeles earlier that year, in January 2000.

10 Q. Mr. Rigler, you mentioned here that Hazmi had traveled to Los
11 Angeles in January 2000. Referring back to the first bullet on
12 this page, he came with Midhar. Is that what the Inspector
13 General concluded?

14 A. Yes.

15 Q. In early January 2000?

16 A. Yes.

17 Q. And this is information according to the Inspector General
18 that the U.S. government had at that time?

19 A. Let me clarify that, Mr. Troccoli. I believe they only knew
20 that for sure one of them at the time had traveled. Later on they
21 found out both of them had traveled.

22 Q. Thank you. What was -- is there anything else with respect
23 to the first opportunity?

24 A. Yes, that the CIA did not disclose to the FBI the existence
25 of the visa held by Midhar and the surveillance photographs were

1 also not disclosed to the FBI.

2 Q. You mentioned, Mr. Rigler, that Midhar's U.S. visa was a
3 multiple entry, multiple reentry or multiple entry U.S. visa?

4 A. That's what it was, yes.

5 Q. What is that?

6 A. Well, it is a visa that's issued on his passport. He held a
7 Saudi Arabian passport, and it granted him the opportunity to come
8 into this country with greater ease and more frequently.

9 Q. Multiple means he can come on multiple occasions?

10 A. Yes.

11 Q. And what else with respect to the first lost opportunity?

12 A. The CIA also did not share information that Hazmi had
13 traveled to the United States in January 2000.

14 Q. And I think you indicated on a previous slide that the CIA
15 learned that in March of 2000?

16 A. Yes, that was when they became aware of the January 2000
17 events.

18 Q. And what was the second lost opportunity?

19 A. In February 2000 Midhar and Hazmi came to San Diego, they
20 first went to Los Angeles, then moved to San Diego, where they
21 lived with a long-time FBI informant or asset.

22 Q. And what is an FBI asset?

23 A. It is a phrase within the FBI, principally on the
24 intelligence or terrorist side, it is another word for informant,
25 a person that is contacted regularly by the FBI and gives

1 information.

2 Q. Now, did the FBI learn about that, that Midhar and Hazmi
3 were, had moved in with an FBI asset?

4 A. Yes. The agent who controls this asset in San Diego, in
5 visiting with his source, his asset, found out that the two men
6 were there but only learned their first names.

7 Q. No, my question is, did the FBI -- and I guess I am referring
8 to your next bullet, trying to keep Mr. Novak happy.

9 A. Yes, sir.

10 MR. NOVAK: I would be happier if they weren't leading
11 questions, though.

12 THE COURT: Well, I let you-all lead a little bit, too.
13 So let's just keep this moving, unless it is a bad leading
14 question, then you can object. Go ahead.

15 MR. TROCCOLI: Thank you, Your Honor.

16 BY MR. TROCCOLI:

17 Q. It says here the FBI does not learn until after 9/11 that
18 Midhar and Hazmi had lived with one of the assets. Is that
19 correct?

20 A. That's correct.

21 Q. And why -- what does the Inspector General say about why they
22 did not learn about that?

23 A. I think that's what I had answered previously, is that the
24 agent didn't inquire and get the last names. He only got first
25 names.

1 Q. The FBI wasn't even informed, correct?

2 A. That's correct.

3 Q. That they had come into the country at that time?

4 A. Yes. It was a coincidence that the agent in San Diego had
5 visited his source while Hazmi and Midhar were living there.

6 Q. And what was the third lost opportunity?

7 A. The third one is identified by the Inspector General in late
8 2000, early 2001, and it deals with a source that's in a reliable
9 position to provide information to the FBI and the CIA. He
10 provides information related to the FBI investigation of the USS
11 Cole attack.

12 Q. What is a source?

13 A. Again, it is a method to identify an informant. It does not
14 identify it, whether it could be an electrical source or a human
15 intelligence source. It is just identified as a source.

16 Q. And when was the USS Cole attack?

17 A. I believe that was October 12th, 2000.

18 Q. What was that attack, very briefly?

19 A. The attack was a suicide boat that rammed into the USS Cole,
20 killing 17 sailors and injuring 39 others in the Gulf of Aden.

21 Q. Now, did the source provide information with respect to
22 Midhar and Hazmi?

23 A. Yes, that's correct. The source linked Midhar and Hazmi with
24 the mastermind of the attack, a man they called then as Khallad.

25 Q. And turning to your next slide, was the FBI informed about

1 that?

2 A. The FBI was not informed that Khallad had been identified in
3 the Malaysia photographs, the ones take at Kuala Lumpur.

4 Q. And what did the Inspector General conclude with respect to
5 what the identification could have led the FBI to do?

6 A. The Inspector General's report says that the identification
7 could have led the FBI to focus on who else was at the meeting
8 with Khallad in Malaysia, who could have led the FBI to identify
9 and locate al-Midhar and Hazmi.

10 Q. Prior to 9/11?

11 A. Yes, sir.

12 Q. And Mr. Rigler, what was the fourth lost opportunity?

13 A. The fourth picks up in the summer of 2001. The Inspector
14 General identifies CIA and FBI as having interactions with each
15 other, which touch on the participants in the Malaysia meeting of
16 July of 2000.

17 THE COURT: I think that's January.

18 THE WITNESS: I'm sorry, it is January 2000. Thank you.

19 The meetings and information developed by CIA regarding
20 these meetings.

21 BY MR. TROCCOLI:

22 Q. And what did the Inspector General find with respect to these
23 interactions?

24 A. Despite these interactions, in e-mails and in a June 11th
25 meeting at the New York FBI office, the New York field office, the

1 FBI is never informed of critical intelligence information that
2 Khallad is identified in Malaysia photographs with Midhar and
3 Hazmi, with Midhar, and that Hazmi has traveled to the United
4 States.

5 Q. And did the Inspector General conclude anything with respect
6 to this lost opportunity?

7 A. Again, in the summer of 2001, it was the Inspector General's
8 conclusion that in the summer of 2001, the information could have
9 led the FBI to initiate a search for Hazmi earlier than it did.

10 Q. And you have just Hazmi here. Did the Inspector General
11 conclude the same thing with respect to Khalid al-Midhar?

12 A. I'm not certain on that as far as the source of this
13 information at this point, based upon the information that they
14 had.

15 Q. Well, maybe that will come out further when we provide the
16 details --

17 A. I think so.

18 Q. -- of that opportunity.

19 And go on, please, to the fifth lost opportunity.

20 A. The fifth one picks up in August 2001. And it is when the
21 FBI learns Hazmi met with Khallad in Malaysia in 2000 and that
22 Midhar had reentered the United States on July 4th, 2001.

23 Q. This is what the FBI learned at that time?

24 A. That came up in August 2000.

25 Q. And what happened next?

1 A. In early September 2001, the FBI starts searching for Midhar
2 and Hazmi. The Inspector General said it was without high
3 priority and the agency failed to locate them before the attacks
4 of 9/11.

5 Q. Did it say, did the Inspector General give a reason?

6 A. It said that the FBI assigned few resources and there was
7 little urgency placed on the investigation by the FBI.

8 Q. What else did the Inspector General conclude with respect to
9 that lost opportunity?

10 A. It said that the separation between the intelligence and the
11 criminal information within the FBI, what is known as the wall,
12 affects who can receive access to the information about them.

13 Q. And what about this interpretation hampered, or did it hamper
14 the ability of the FBI to locate Midhar and Hazmi?

15 A. The interpretation of the wall hampered the investigation,
16 the ability of the New York agent working the USS Cole
17 investigation to participate in the search for Midhar and Hazmi.

18 Q. Did the Inspector General conclude anything else with respect
19 to the fifth lost opportunity?

20 A. The Inspector General identified a clear predicate for a
21 criminal investigation that no one appeared to notice at the time.

22 Q. A criminal predicate for who?

23 A. For the FBI.

24 Q. With respect to Midhar and Hazmi?

25 A. Yes, that's correct.

1 Q. What is a criminal predicate?

2 A. In the FBI, we -- I'm sorry, the FBI, when I was in the FBI,
3 you had to have some evidence that a crime had occurred or was
4 about to occur in order to open a case or conduct an
5 investigation, so it would be referred to as the predicate, how
6 you open the case, how you start the case for a criminal case.

7 Q. And what else did the Inspector General conclude?

8 A. That neither the CIA nor the FBI watchlisted Midhar or Hazmi
9 until August 24, 2001.

10 Q. And what is watchlisting?

11 A. Watchlist is a system in this country where we place
12 individuals' names on various computer databases to prevent them
13 from entering the United States. Ports of entries, airport
14 customs, places where people would be coming into the United
15 States or perhaps applying in advance for visas or other
16 documentation to enter the U.S.

17 Q. Did the Inspector General conclude anything else with respect
18 to this opportunity?

19 A. The fifth conclusion by the Inspector General was that the
20 FBI was not close to locating Midhar and Hazmi before the 9/11
21 attacks.

22 Q. Mr. Rigler, can you please go to the next two slides. Can
23 you just tell the jury and the Court what the next two slides are?

24 A. These look similar as I look across the room here, but they
25 are different.

1 This one starts in late 1999. It is a timeline that
2 runs across the page from left to right. And it has bulleted
3 events.

4 This is from page 227 of the Inspector General's report.
5 The next one is part 2 of this, and it continues across to the
6 right to the September 11 attack. This is page 228 from his
7 report.

8 MR. TROCCOLI: Your Honor, these are hard to read. We
9 would ask the Court for permission to pass out to the jury these
10 two pages so that they can use them to follow along with
11 Mr. Rigler's PowerPoint.

12 We also have, before Mr. Novak either agrees or objects,
13 we have the next three slides, slides which Mr. Rigler can also
14 turn to in a moment, provide a list of some of the names that will
15 come up during his summary of the report, and we would like to
16 give those three pages as well to the jury.

17 MR. NOVAK: That's fine with us.

18 THE COURT: That's fine. Do you have those all set to
19 go?

20 MR. TROCCOLI: Yes, Your Honor.

21 THE COURT: All right.

22 MR. TROCCOLI: May I proceed, Your Honor?

23 THE COURT: Yes, sir.

24 MR. TROCCOLI: Thank you.

25 BY MR. TROCCOLI:

1 Q. Just so the jury can know what they have just received, the
2 timeline is in two parts, Mr. Rigler?

3 A. That's correct; it is part 1 and part 2.

4 Q. And it spans the time period, if you go back to part 1, it
5 spans the time period from late 1999, correct?

6 A. That's correct.

7 Q. All the way up to, if you can go to part 2, please, although
8 it doesn't come out here, on the hard copy it is September 15,
9 2001. Correct?

10 A. That's correct. That's the final date at the bottom right.

11 Q. Very good. And who are some of the names that come up in
12 chapter 5 of the Inspector General's report that the jury should
13 be aware of?

14 A. Are you referring to FBI and CIA personnel?

15 Q. Yes.

16 A. Okay. There are nine individuals that were involved in this
17 chapter 5 that were identified by the Inspector General, Dina
18 Corsi at the FBI is an analyst here in Washington, D.C. at the
19 Usama Bin Laden Unit. Rod Middleton is her supervisor. At that
20 time he was the acting supervisor of that unit.

21 Doug Miller is an FBI agent who is a detailee to the
22 Central Intelligence Agency, Alec Station.

23 Q. What is the Alec Station?

24 A. It is apparently a squad or a unit at Central Intelligence
25 that dealt with a specific issue related to Usama Bin Laden.

1 Q. And what is, you say he was a detailee. Can you tell the
2 jury what a detailee is, please?

3 A. Starting in about 1996, the FBI and the CIA began to exchange
4 employees. That would be where a CIA employee would actually go
5 to work every day at FBI headquarters or at one of the FBI
6 offices. And the same thing goes where an FBI employee would
7 report to Central Intelligence for an 8-to-5 job at CIA, although
8 they are an FBI employee.

9 Q. And what other names will come up in your summary?

10 A. We identify "Mary" as an FBI analyst. Robert Fuller is the
11 special agent in New York who was on the Usama Bin Laden squad
12 there at the New York field office. Steve Bongardt is also an FBI
13 agent in New York City on that same squad.

14 Q. Anyone else?

15 A. The last of the nine are "John," who is a CIA detailee to the
16 FBI's Terrorism Operations Section; "Patrick," who is an
17 Immigration agent assigned to the FBI office in New York; and
18 "Peter," who is a CIA agent assigned to the Counterterrorism
19 Center at CIA.

20 Q. Now, Mr. Rigler, I notice some of these names are in first
21 names and they are in quotes. Can you tell -- does the Inspector
22 General -- let me ask it in a leading question, leading way. The
23 Inspector General did not want to reveal in his report some of the
24 names, the real names of some of the individuals that were
25 discussed in the report; is that correct?

1 A. That's correct.

2 Q. And that's why some of the names are given these first names
3 in quotes?

4 A. Yes, sir.

5 Q. All right. Mr. Rigler, please turn to the timeline and
6 explain to the jury what the Inspector General found with respect
7 to the first lost opportunity starting in late 1999.

8 A. This timeline has got three dates on it, late 1999 and early
9 2000. The first one just is placed in by the Inspector General to
10 identify that there was a heightened concern by the intelligence
11 committee -- correction, intelligence community due to concerns
12 over the Millennium, the celebration of the new century.

13 Q. And does the intelligence community include various agencies,
14 including the CIA?

15 A. Yes. It would be the FBI, NSA, some military intelligence
16 agencies, items such as that.

17 Q. All right. And what happened in late 1999?

18 A. The National Security Agency or NSA obtains information that
19 persons named Khalid and Nawaf were planning to travel to
20 Malaysia. And then in early 2000, the CIA determines links
21 between these two individuals and al Qaeda, and it further
22 identifies Khalid as Khalid al-Midhar.

23 Q. What happened next?

24 A. In January 5, 2000, the events are that Midhar arrives in
25 Kuala Lumpur, Malaysia. His passport is presented at the airport

1 and it is copied. And at that point, they realize that it
2 contains a United States endorsement visa, the multi-entry visa.
3 Several CIA cables discuss Midhar's travel and discuss also the
4 discovery of the visa on his Saudi passport.

5 Q. And you say several CIA cables. These are cables generated
6 at or around that time?

7 A. That's correct. A CIA cable is like what we might call an
8 e-mail or a teletype. It is just their language for a
9 communication.

10 Q. And what else happens on January 5?

11 A. Midhar met with Hazmi and other Usama Bin Laden operatives in
12 Kuala Lumpur. The meeting was surveilled. Photographs were
13 obtained at the request of the U.S. government.

14 Q. Is that what the Inspector General referred to in a prior
15 slide as the Malaysia photographs?

16 A. Yes, sir.

17 Q. What happens next?

18 A. Again, on January 5, contemporaneously with that meeting, an
19 FBI agent or FBI employee who is detailed to the CIA
20 Counterterrorism Center, Doug Miller, reads the relevant CIA
21 cables and drafts a Central Intelligence Report or a CIR.

22 Q. What is a CIR?

23 A. It is just a communication. Miller was preparing this
24 communication to travel that distance from CIA to FBI to provide
25 official notification of the events that were taking place in

1 Malaysia.

2 Q. Does the Inspector General say whether Doug Miller, even
3 though an FBI employee, could just pass information to the FBI, or
4 did Doug Miller have to receive the approval of the CIA?

5 A. By arrangements, our understanding between the two agencies,
6 only a CIA employee can release information from CIA files on an
7 official basis. In other words, it is prepared by the FBI
8 employee because of the need for the FBI to get that information,
9 but it still has to be released by CIA.

10 Q. And what did the Central Intelligence Report prepared by Doug
11 Miller include?

12 A. It included that NSA information that Midhar had planned
13 travel to Kuala Lumpur, that photos of Midhar would be sent via
14 separate cover, and that details of Midhar's passport, multi-entry
15 visa, including New York as an intended destination on the visa,
16 with a planned three-month stay.

17 Q. Does the Inspector General find that this Central
18 Intelligence Report with this information was ever passed to the
19 FBI?

20 A. The report was not sent to the FBI per direction of CIA.

21 Q. What was the next event, please, Mr. Rigler, that happened?

22 A. Still on opportunity one, the timeline starts again at
23 January 8th, 2000. Hazmi departs Malaysia for Bangkok, Thailand,
24 and on January 15, he traveled to and arrived at Los Angeles,
25 California.

1 Q. Can I stop you there? You just went to the next slide and
2 answered my question.

3 Go ahead, put up the next bullet. I was going to ask
4 when did the CIA learn that Hazmi had, in fact, traveled to Los
5 Angeles?

6 A. That would be March 5th, 2000.

7 Q. And what else did the, what else did the CIA do at or around
8 March 5th, 2000?

9 A. Well, it did not pass this information to the FBI until
10 August 2001.

11 Q. Anything else?

12 A. CIA also did not place either Midhar or Hazmi on anybody's
13 watchlist. And Midhar and Hazmi, meanwhile, were placed on
14 watchlists of other countries, including the watchlist of
15 Thailand.

16 Q. Mr. Rigler, what did the Inspector General conclude with
17 respect to the facts that you just presented?

18 A. It was his conclusion that Hazmi was with al Qaeda operatives
19 who had traveled to Malaysia and were photographed with other
20 suspected operatives, that Hazmi traveled to Bangkok with a third
21 person, that Midhar had this multi-entry U.S. visa, Hazmi traveled
22 to Los Angeles in January 2000.

23 Q. And did the Inspector General conclude whether any of this
24 information was passed to the FBI?

25 A. It is indicated that significant pieces of information not

1 provided to the FBI were Midhar's U.S. multiple-entry visa,
2 Hazmi's travel to the United States, Khallad's identification in
3 Malaysia, and the fact that CIA did not watchlist Midhar or Hazmi
4 until August 24, 2001.

5 Q. And, again, Khallad was the person that you -- the Inspector
6 General noted in a previous slide was the mastermind of the Cole
7 bomb?

8 A. That's correct.

9 Q. All right, Mr. Rigler. Can you please go to the second lost
10 opportunity.

11 A. This one goes back to the timeline, the second opportunity
12 identified by the Inspector General in January 15th, 2000, Midhar
13 and Hazmi travel to Los Angeles. The visa entitled him to stay
14 until July 14, 2000.

15 On February 8th, 2000, Midhar and Hazmi moved from Los
16 Angeles to San Diego, where they live in an apartment complex.

17 Q. What happens next?

18 A. In March 2000 the CIA learns now that Hazmi had traveled to
19 Los Angeles on January 15, but that fact was not shared with the
20 FBI until more than a year later, August 2001.

21 Q. That's what was just discussed in the first lost opportunity?

22 A. That's correct.

23 Q. And what happens next?

24 A. On May 31, 2000, Midhar and Hazmi were in a room in the
25 residence of an FBI asset, a man they had met at a local mosque.

1 Q. How long did the Inspector General find that Midhar and Hazmi
2 lived with the FBI informant?

3 A. Well, in June 2000 Midhar moved from the asset's residence
4 and departed the United States. Hazmi continued to live there
5 until December 10th, at which time he moved from San Diego, from
6 the asset's residence, traveled to Phoenix, where he lived with
7 Hani Hanjour, also a terrorist aboard American Airlines 77, and he
8 lived there three months.

9 Q. And you say Midhar departed the United States. He flew out
10 of the United States; is that correct?

11 A. That's correct.

12 Q. Very well. What did the FBI -- what did the Inspector
13 General find next?

14 A. With regard to opportunity two, the findings of the Inspector
15 General were that the FBI did not obtain information about Midhar
16 and Hazmi in San Diego from their own source, who had been an
17 asset since 1994. While living in San Diego, Midhar and Hazmi did
18 not hide their identities.

19 Q. Mr. Rigler, again, with respect to the FBI did not obtain the
20 information, that was because they were not informed?

21 A. Yes, they didn't get the lead-in information from CIA that
22 the men were in the country.

23 Q. And what did the Inspector General say with respect to the
24 use of the real names of Midhar and Hazmi?

25 A. He said with the real names, they rented an apartment,

1 obtained drivers' licenses in California, they opened bank
2 accounts under the real name, received credit cards with real
3 names, purchased a used car, obtained automobile insurance, they
4 took flight lessons at a local flying school, and they obtained
5 phone service which listed Midhar's name in the telephone
6 directory.

7 Q. All right, Mr. Rigler, please go on to the third lost
8 opportunity.

9 A. This is back on the timeline, and it is footnoted by the
10 Inspector General as starting in August 7th, 1998. That's the
11 date that the East Africa bombings occurred on U.S. embassies in
12 Tanzania and Kenya. The New York office of the FBI is assigned or
13 tasked with the duty to conduct the criminal investigation on
14 those two crimes.

15 Q. What happens next?

16 A. On May 1st, the CIA and the FBI begin interviewing or
17 questioning their source, the one they shared. He provided
18 significant information about al Qaeda operations at the time.
19 The source gave them information about Khallad. And the source
20 said Khallad was the person involved in the bombings of the
21 embassy and that Khallad was a trusted senior Usama Bin Laden
22 operative.

23 Q. Mr. Rigler, what does it mean that it was a joint source?

24 A. The two agencies shared the source. It is sometimes they
25 interview them together, sometimes one or the other will interview

1 him.

2 Q. And what happened next?

3 A. October 12th, 2000, that's the attack on the USS Cole in
4 Yemen. The New York field office is assigned to lead that
5 investigation.

6 Q. The same, same office leading the investigation in the
7 embassy bombings?

8 A. That's correct. On December 16th, the source again
9 identifies Khallad as the mastermind on this event, this attack,
10 also, so the embassy bombings and the attack on the USS Cole are
11 both done by Khallad.

12 Q. Or with his involvement?

13 A. That's correct.

14 Q. Does the source make any other identification?

15 A. January 4th, the source identifies Khallad as being in those
16 photographs from Malaysia.

17 Q. And those were the photographs -- those are the photographs
18 of the meetings in Malaysia attended by Khalid al-Midhar and Nawaf
19 al-Hazmi?

20 A. That's correct.

21 Q. What does the Inspector General say with respect to that?

22 A. The Inspector General says that the source's identification
23 of Khallad in the photos in Malaysia raises question of whether
24 Midhar and Hazmi were also linked to the attack on the USS Cole.

25 Q. And does the Inspector General make conclusions with respect

1 to these, these facts?

2 A. These are the conclusions or the findings and the findings
3 that the FBI was not aware of the identification by this source of
4 Khallad in the meeting photographs, that the New York FBI office
5 was not aware even of the existence of the photographs from the
6 Malaysia meeting.

7 Q. What does the Inspector General say with respect to that?

8 A. Had the FBI known about identification of Khallad in the
9 Malaysia photographs, agents would have likely sought information
10 about other participants at the meeting, including Midhar and
11 Hazmi, which would have increased the FBI's chance to locate them
12 prior to the events of September 11th.

13 Q. All right, Mr. Rigler. Can you please go to the fourth lost
14 opportunity?

15 A. Opportunity 4, again, is footnoted with the October 12, 2000
16 attack on the USS Cole, and, again, it identifies agents who lead
17 that investigation. Steve Bongardt, a New York FBI agent, is
18 assisted by Dina Corsi, again, an analyst from the FBI office in
19 New York -- correction, in Washington, D.C.

20 Q. She is the intelligence research specialist or intelligence
21 operations specialist, I think?

22 A. That's correct, ITOS. She is from the Usama Bin Laden Unit
23 at FBI headquarters.

24 Q. And what happens next?

25 A. In May 2001, "John," who is identified as a CIA deputy chief

1 of the Usama Bin Laden Unit, he is detailed to the FBI Terrorism
2 Operations Section. He becomes interested in the Malaysia meeting
3 photographs and the relationship to the bombing of the USS Cole.

4 Q. What does "John" do?

5 A. "John" asks another CIA employee, "Peter," about the Malaysia
6 meeting. "John" becomes aware at that time that Hazmi had
7 traveled to the United States in January 2000 and that Khallad was
8 at the meeting identified in the photographs at Kuala Lumpur,
9 Malaysia.

10 Q. And again, "John" and "Peter" are FBI employees?

11 A. No. I believe, I believe they are both CIA employees.

12 Q. CIA, I'm sorry, CIA employees?

13 A. Right.

14 Q. But "John" is detailed to the FBI?

15 A. That's correct.

16 Q. And what happens next?

17 A. Near the end of May of 2001, Dina Corsi, who is the FBI
18 analyst, learns of the January 2000 Malaysia meeting photographs
19 when "John" gives some of them to her. She knew Midhar was in the
20 photographs, but neither "John" nor "Peter" told Dina Corsi that
21 Khallad was in the photographs, that Midhar held a multiple-entry
22 visa, or of Hazmi's travel to the United States in January 2000.

23 Q. She is given some information but not all?

24 A. That's correct.

25 Q. And what happens also at the end of May?

1 A. Also at the end of May, Corsi plans at that time a meeting in
2 New York with the FBI agents there to discuss the USS Cole
3 investigation. And the planned participants were New York agents
4 who were working the Cole, including Steve Bongardt; "Mary," who
5 is an FBI detailee to the CIA Counterterrorism Center, who had
6 recently been assigned and told to get up to speed about the
7 Malaysia meetings; and "Peter," the CIA employee.

8 Q. What was the purpose of the meeting, generally? Was it an
9 information-sharing meeting?

10 A. Yes, it was to share information between CIA, FBI
11 headquarters, to assist the New York agents working the USS Cole
12 attack.

13 Q. And what happened at that June 11 meeting?

14 A. The June 11 meeting occurred. Corsi meets with the New York
15 Agent Bongardt and others who were working the investigation.
16 CIA's "Peter" and "Mary" attend the meeting. Corsi displays three
17 of the Malaysia photographs but does not tell the New York agents
18 their relationship to al Qaeda due to the restrictions of the
19 wall, as she understood them.

20 Q. And the three, the three Malaysia photos, those were the ones
21 referenced in the other slides that "John" had given to her?

22 A. That's correct.

23 Q. And we have heard a lot about what the wall means, but that
24 was the reason that the Inspector General found that Ms. Corsi did
25 not pass all the information to the New York agents?

1 A. That's correct.

2 Q. What else were the New York agents not informed about?

3 A. They also were not informed about Midhar's visa to the United
4 States or the fact that Khallad was in the Malaysia photographs.

5 Q. And what else about that event?

6 A. Corsi also did not leave the photographs with the New York
7 agents because she did not believe she was permitted to do so.

8 Q. What happened next, Mr. Rigler?

9 A. June to August 2001, the Inspector General found that there
10 was some limited follow-up by Corsi about the Malaysia photographs
11 or permission from NSA to pass Midhar intelligence to the New York
12 field office.

13 Q. And that's because the Inspector General said the NSA, some
14 of the information came from the NSA?

15 A. That's correct.

16 Q. And what did the Inspector General conclude with respect to
17 the facts you have just summarized?

18 A. In his findings with regard to opportunity four, he noted
19 that while there were several interactions between the FBI and CIA
20 in May and June that could have resulted in the FBI learning about
21 the Malaysia photographs and Midhar, the FBI personnel did not
22 become aware of significant intelligence about the Midhar
23 connection to Khallad. What he is referring to is informal
24 intelligence that could be passed.

25 Q. What was it that was not disclosed to the New York agents?

1 A. Well, not disclosed to Corsi or FBI New York agents in May
2 and June, again, the visa, the multiple-entry visa on Midhar,
3 Hazmi's presence at that al Qaeda meeting in Malaysia, Hazmi's
4 travel to Los Angeles, Khallad's identification in Malaysia.

5 Q. And Hazmi's travel to Los Angeles was on January 15th, 2000?

6 A. I believe that's correct.

7 Q. Does the Inspector General make any other findings?

8 A. He noted that the June 11th meeting became very contentious
9 when agents in New York wanted more information about the Malaysia
10 meeting, and Corsi refused to provide that information because of
11 restrictions she felt about the wall.

12 Q. What else did the Inspector General find?

13 A. The Inspector General found that there was little follow-up
14 by either Corsi or the New York field agents regarding the
15 Malaysia photographs and that CIA and FBI interaction, again,
16 failed an opportunity for the FBI to obtain critical information.

17 Q. Very good, Mr. Rigler. Can you please turn to the fifth lost
18 opportunity?

19 A. The fifth one starts on July 13th, 2001. This is where
20 "John," the CIA employee, writes a communication back to his
21 agency from the FBI in which he starts the lead sentence by
22 saying: "Okay, this is important." It is a cable and he is
23 asking information about the identification of Khallad in the
24 Malaysia photographs and wants to know if he can hand that over to
25 the FBI.

1 Q. And the "this is important" is referring to the information?

2 A. I'm sorry, say that again?

3 Q. When he says "this is important," it is in reference to the
4 information referenced down here (indicating)?

5 A. That's correct.

6 Q. I am having a little bit of a problem clearing -- there we
7 go. Thank you.

8 And what did the Inspector General conclude with respect
9 to or find with respect to the cable?

10 A. In the cable "John" indicated that he called Khallad a
11 major-league killer who orchestrated the USS Cole attack and
12 possibly the Africa bombings.

13 Q. Was there any evidence at all that the CIA acted on that
14 request?

15 A. No evidence that CIA managers responded to John's "okay, this
16 is important" communication until August 30, 2001.

17 Q. And what did "John" do after writing this cable?

18 A. On July 23, having seen no action, "John," again,
19 communicated with CIA by writing them, inquiring about the status
20 of his request to pass this information on to the FBI.

21 Q. And what did the Inspector General say about that e-mail?

22 A. Well, in that e-mail "John" noted that when the next big op
23 is carried out by UBL or Usama Bin Laden hardcore cadre, Khallad
24 will be at or near the top of the command food chain -- and
25 probably nowhere near either the attack site or Afghanistan. That

1 makes people who are available and people who have direct access
2 to him of very high interest. Khalid al-Midhar should be of very
3 high interest anyway, given his connection.

4 Q. And two individuals, according to previous slides, two
5 individuals who did have, were available and who had direct access
6 to Khallad were Khalid al-Midhar and Nawaf al-Hazmi?

7 A. That's correct.

8 Q. What happened next, Mr. Rigler?

9 A. August 21, 2001, "Mary" locates a CIA communication regarding
10 Hazmi's travel to the United States on January 15, 2000. She
11 checks with the U.S. Customs representative about Hazmi and
12 Midhar's travel and discovers that Hazmi -- correction, Midhar had
13 entered the United States on July 4, at JFK Airport in New York
14 but has not departed.

15 Q. Now, "Mary" is at the CIA, but she is an FBI detailee?

16 A. Yes, that's correct.

17 Q. And what did "Mary" do with this information?

18 A. "Mary" immediately leaves a voice mail message for Dina Corsi
19 at FBI headquarters. Dina Corsi is on annual leave that day.

20 Q. What happens the next day?

21 A. There is a meeting that takes place on August 22nd in which
22 "Mary" met with Dina Corsi at the FBI headquarters and tells her
23 of information that she learned the prior day. This information
24 Corsi confirms, that Midhar and Hazmi had entered the United
25 States on January 15th, 2000, stating their destination was a

1 Sheraton Hotel in Los Angeles, that Midhar departed the United
2 States on June 10, 2000; there was no departure record, however,
3 for Hazmi. There was a record that Midhar had reentered the
4 United States July 4th, 2001, at JFK Airport in New York and
5 listed destination as the Marriott in New York City.

6 There was no record Midhar departed the United States.

7 Q. Mr. Rigler, this is information that Ms. Corsi confirms once
8 she has her meeting with "Mary" and "Mary" passes the information
9 to her?

10 A. That's correct.

11 Q. And what did -- what did Ms. Corsi conclude with respect to
12 Hazmi?

13 A. She incorrectly assumed that Hazmi had also left the United
14 States July 10, 2000, when Midhar left.

15 Q. In fact, had he left?

16 A. In fact, he remained in the United States.

17 Q. What happened next, please?

18 A. On August 22, 2001, "Mary" asks another CIA officer in the
19 Terrorism Center to draft notice to the Department of State,
20 Immigration, U.S. Customs, and the FBI requesting that Midhar and
21 Hazmi be placed on various agencies' respective watchlists.

22 Q. And when was it that they were actually placed on a
23 watchlist?

24 A. They were actually placed on the watchlist for the first time
25 August 24, 2001.

1 Q. And can you please tell the jury what the Inspector
2 General -- how the Inspector General describes the various
3 watchlists that existed back then?

4 A. The watchlist system in effect in 2001, according to the
5 Inspector General, was along the lines of department and state
6 that had a system that they called VISA/VIPER, also one called
7 TIPOFF. These are computer databases for persons who are seeking
8 entry into the United States. Immigration also made a system,
9 maintained a system called LOOKOUT, and Customs had one that they
10 called TECS, which is Treasury Enforcement Computer System.

11 Q. And, again, these are primarily border searches, border
12 systems?

13 A. Yes. So if a person is entering this country or making
14 application in this country for entry, the name, date of birth,
15 passport number, and other identifying features are compared with
16 names in these database.

17 Q. Mr. Rigler, what happened next with -- what did Ms. Corsi do
18 next?

19 A. On August 23, Corsi contacted her supervisor, Rod Middleton,
20 regarding Midhar's travel to the United States, and tells him
21 Midhar entered the U.S. on July 4, 2001, and that there was no
22 indication that he had departed the country.

23 Q. And what was Mr. Middleton's reaction?

24 A. He recalled his reaction to the Inspector General as an "oh,
25 shit" moment.

1 Q. And what did they agree to do?

2 A. Middleton and Corsi agreed that an investigation should be
3 opened to locate Midhar.

4 Q. What action does Ms. Corsi take next?

5 A. On August 27 she requests permission through the NSA
6 representative at the FBI to pass to the FBI agents in New York
7 information about the USS Cole investigation that would assist
8 them in associating Midhar with a terrorist facility in the Middle
9 East that's linked to al Qaeda activities.

10 Q. This is -- is this the same information that she did not pass
11 to the FBI New York office at the June 11 meeting?

12 A. Yes, it is a portion of that information not passed.

13 Q. What happens next, please?

14 A. On August 28th, Corsi sent the New York field office an
15 electronic communication, in the FBI we call it an EC, it is like
16 an e-mail, it is a computer-generated communication, requesting
17 that a full field investigation be made to open, to locate Midhar.

18 Q. Was it a full field criminal investigation or a full field
19 intelligence investigation?

20 A. It is an intelligence investigation is what she has asked New
21 York to open.

22 Q. And how does she mark her EC?

23 A. Despite the urgency, the Inspector General noted that Corsi
24 marked her EC as routine, which is the lowest level of precedence
25 in the three levels within the FBI.

1 Q. What are the three levels of precedence for an FBI EC at that
2 time?

3 A. Routine, priority, and immediate.

4 Q. And what does routine mean?

5 A. Routine in the FBI is described as being within the normal
6 course of business.

7 Q. What happens next, please.

8 A. Still on the timeline for opportunity five, the day of August
9 28th, her EC is provided to various criminal agents in New York on
10 the Usama Bin Laden Squad, including Steve Bongardt. Bongardt
11 argues that Midhar investigation should be opened as a 265 rather
12 than an intelligence, a criminal case rather than an intelligence
13 case.

14 Q. What is a 265, and what is a 199?

15 A. Well, the FBI categorizes things such as 91 would be a bank
16 robbery or 15 would be theft from interstate shipment. It is a
17 method to file records. A 199 is an intelligence investigation of
18 international terrorism, whereas a 265 is a criminal investigation
19 of international terrorism.

20 Q. What happens next, please.

21 A. Also on August 28th, Corsi asks Bongardt to delete the
22 communication in his computer because it contains NSA information
23 that he shouldn't have, since he is a criminal agent.

24 Q. Was that information sent to him by mistake?

25 A. It was shared among agents in New York. In other words, it

1 went into the intelligence side of the house but was shared with
2 the agents working the criminal investigation on the USS Cole.

3 Q. What happens next, please.

4 A. On August 29, 2000, Corsi e-mails Bongardt telling him about
5 the decision of the National Security Law Unit, that's a unit here
6 in FBI headquarters, stating that no criminal agent should attend
7 any interview of Midhar if he is located.

8 Q. What is the National Security Law Unit?

9 A. It is a small unit in the FBI headquarters that receives and
10 evaluates policy and particularly with regards to legal issues
11 regarding intelligence matters.

12 Q. Does the Inspector General say why Ms. Corsi sought a
13 decision from the NSLU?

14 A. Because Bongardt had sought a secondary opinion. When Corsi
15 said that he had to delete the information and that New York had
16 to work the case as an intelligence case, not a criminal case, he
17 asked her to get a second opinion from the National Security Law
18 Unit.

19 Q. And after Ms. Corsi e-mails Mr. Bongardt of the NSLU's
20 decision, what happens next?

21 A. Bongardt responded in an e-mail back to Corsi in which he
22 says, "Some day, someone will die, and wall or not, the public
23 will not understand why we were not more effective and throwing
24 every resource we had at certain problems. Let's hope the
25 National Security Law Unit will stand by their decisions then,

1 especially since the biggest threat to us now, Usama Bin Laden, is
2 getting the most protection."

3 Q. Does the New York field office open an intelligence
4 investigation?

5 A. They do, yes.

6 Q. That happens -- when did that happen?

7 A. August 29th the investigation was an opened as a full field
8 intelligence, 199 case, to locate Midhar.

9 Q. And who was the case assigned to?

10 A. It was assigned to Robert Fuller, who the Inspector General
11 identified as a fairly new agent, relatively inexperienced.

12 Q. And I see you have here Fuller is also working another matter
13 at the time.

14 A. That's correct. So he did not turn to this immediately. He
15 was working another case, and it was a few days before he turned
16 to this.

17 Q. And was this Mr. Fuller's first intelligence investigation?

18 A. That's correct.

19 Q. Do you know, did the Inspector General say when he had joined
20 the Intelligence Squad there?

21 A. He had just recently arrived. He had had prior duties on
22 narcotics work and surveillance squad work in the New York office.

23 Q. What happens next, please.

24 A. Corsi e-mails Fuller, introducing herself and attaching
25 Midhar's U.S. visa application which she had received from the

1 consulate in Jeddah, Saudi Arabia. On the application Midhar
2 falsely stated that he had never applied for a prior visa. Corsi
3 and Fuller did not notice this discrepancy.

4 Q. Is providing a false statement a crime?

5 A. Yes, it could have been opened as a criminal case.

6 Q. What else happens on August 30?

7 A. The CIA sends the Central Intelligence report to the FBI
8 finally outlining the identification of Khallad at this Malaysia
9 meeting. This is the first record showing information from the
10 January 2000 meeting was fully provided by CIA to FBI.

11 Q. And when does Mr. Fuller actually begin work to locate Khalid
12 al-Midhar?

13 A. On September 4, Fuller started working to locate Midhar. It
14 doesn't start sooner due to his other assignment, and he completes
15 LOOKOUT form for Immigration and Naturalization.

16 Q. Does he need any help with completing that form?

17 A. He sought the assistance of "Patrick," the immigration agent
18 assigned to the FBI office in New York.

19 Q. Why did he need the assistance of "Patrick"?

20 A. He was new and was uncertain as to how to complete the form.

21 Q. And how was the form ultimately completed?

22 A. He checks a box on there identifying Midhar as a potential
23 witness, rather than a terrorist, to prevent overreaction.

24 Q. Overreaction by who?

25 A. By overzealous border checkpoint agent, customs agent, or

1 other person that is screening people entering the country.

2 Q. What else does Fuller do?

3 A. He requests local criminal history checks on Midhar through
4 the New York Police Department and performs checks for Hazmi after
5 going back and rereading Corsi's communication several times.

6 Q. And let me stop you there and go back to this one here. He
7 confirms that TECS LOOKOUT was, in fact, had been placed by that
8 time for Mr. Midhar?

9 A. That's correct.

10 Q. Now, what does the Inspector General say with respect to --
11 oops. There you go.

12 A. All right.

13 Q. Explain this, after reading Corsi's EC several times.

14 A. In FBI communications, generally the last of the
15 communication sets forth a lead, such as New York will do the
16 following investigation. It identified information with regards
17 to Midhar but didn't set a lead for Hazmi. Fuller after rereading
18 it several times realized the FBI should also conduct a similar
19 investigation on Hazmi.

20 Q. That related back to a previous slide in which the IG
21 concluded that Ms. Corsi had erroneously assumed that Hazmi had
22 left the country?

23 A. That's correct.

24 Q. And what happens on September 5, 2001?

25 A. On September 5 the investigation by Fuller on Midhar and

1 Hazmi included NCIC criminal history checks, credit checks, motor
2 vehicle checks, an inquiry at the Security Department of the
3 Marriott Hotel chain, and ChoicePoint searches with assistance.

4 Q. What is a ChoicePoint search?

5 A. ChoicePoint is a private company in Atlanta. They are known
6 as data miners. They track applications for credit cards,
7 driver's license applications, new home purchases. Anything that
8 results in a public record, this company will data mine it, and
9 then they sell it to the government or other investigative
10 agencies.

11 Q. And why was it done with assistance?

12 A. The Inspector General found that it was something new to
13 Fuller, so he sought assistance on how to do this check.

14 Q. And what were the results of the ChoicePoint search?

15 A. Negative. They came up with no information on these
16 individuals.

17 Q. And what did the Inspector General conclude with respect to
18 that?

19 A. Well, they found after September 11, records on Hazmi were
20 actually located in the ChoicePoint files, database system.

21 Q. What else happened on or about September 5?

22 A. Fuller contacted Corsi concerning a request to have him
23 locate Khalid al-Midhar. Fuller and Corsi discussed the potential
24 for obtaining additional information on Midhar, such as credit
25 card number from Saudi Arabian airlines. That's the airline he

1 had flown into the country on.

2 And according to Fuller, Corsi told him that that would
3 not be prudent to do so.

4 Q. And at this point Mr. Fuller had Khalid al-Midhar's visa
5 application?

6 A. Yes.

7 Q. That had been sent to him by Ms. Corsi?

8 A. That's correct.

9 Q. And what happens next, please?

10 A. On September 10, 2000, Fuller began to prepare a request to
11 go out to the FBI office in Los Angeles to check various Sheraton
12 Hotel records concerning Midhar and Hazmi. This relates back to
13 the original entry at Los Angeles where they stated they were
14 going to stay at a Sheraton Hotel.

15 Q. When was that request transmitted?

16 A. Oops. The request actually left the New York office on the
17 morning of September 11.

18 Q. Mr. Rigler, can you please summarize for the jury what the
19 FBI concluded with respect to the facts you have summarized with
20 respect to the fifth lost opportunity.

21 A. That would be the Inspector General's findings and
22 conclusions here. He said that although the FBI and the CIA
23 personnel had many discussions throughout July and August 2001,
24 regarding the USS Cole attacks and the Malaysia meeting, the CIA
25 did not provide nor did the FBI become aware of significant

1 intelligence information regarding Midhar's U.S. visa, the
2 Malaysia meetings, and the identification of Khallad in the
3 photographs.

4 Q. What else did the Inspector General conclude?

5 A. He said that the CIA also did not provide to the FBI
6 information regarding Hazmi's travel in January 2000 to Los
7 Angeles, to the United States, they didn't provide this until
8 August 22nd, 2001.

9 Q. And when the FBI received that information on August 22, what
10 did they do with it?

11 A. The Inspector General said that when the FBI became aware of
12 this information on August 22 about Midhar, that he was in the
13 United States, the bureau took steps to open an intelligence
14 investigation to locate him but failed to pursue it as an urgent
15 matter or assign many resources to it.

16 Q. I think you had said the EC was marked "routine"?

17 A. That's correct.

18 Q. And what else did the Inspector General conclude?

19 A. I'm sorry. It was, the Inspector General found that it was
20 given to a single inexperienced agent with no priority.

21 Q. That was Agent Robert Fuller?

22 A. Yes, sir.

23 Q. Go on, please.

24 A. It was also the Inspector General's finding that a dispute
25 existed in the FBI as to whether to open the case as a criminal or

1 an intelligence case and that demonstrated the wall between the
2 criminal and intelligence divisions.

3 Q. And what did the Inspector General conclude with respect to
4 how close the FBI was to locating Midhar and Hazmi?

5 A. On September 11th, the Inspector General said the FBI was not
6 close to locating Midhar and Hazmi when they participated in the
7 attacks on the Pentagon.

8 Q. And what were the reasons the Inspector General found?

9 A. He identified five areas here: the criminal predicate, the
10 experience level of that agent in New York, the LOOKOUT forms,
11 ChoicePoint searches, and Saudi Arabian Airlines contacts.

12 Q. The criminal predicate had to do with whether a criminal
13 predicate existed to open the case as a criminal case?

14 A. Yes.

15 Q. That Mr. Bongardt wanted?

16 A. Yes.

17 Q. The experience level of the agent is the agent of Mr. Fuller,
18 experience of Mr. Fuller?

19 A. That's correct.

20 Q. The LOOKOUT form is the assistance that Mr. Fuller needed to
21 prepare the LOOKOUT form and his indication on the form of Midhar
22 as a potential witness, correct?

23 A. That's correct, a witness as opposed to a check in the box
24 for terrorist.

25 Q. And the ChoicePoint search, I think you have indicated they

1 found no operation prior to 9/11 but some after 9/11?

2 A. That's correct, on Hazmi.

3 Q. And the Saudi Arabian contact concerned the conversation
4 between Agent Fuller and Ms. Corsi about whether to contact them
5 for additional information?

6 A. Yes. That was the one where the agent, Fuller, wanted to go
7 to the airline to get more information such as address, phone
8 number, credit card number that was used, items such as that that
9 would enhance the ability to do a full field investigation. Corsi
10 turned him down due to it not being prudent.

11 Q. And what was the -- can you summarize for the jury now the
12 items that the FBI missed?

13 A. Well, in sum --

14 Q. According to the Inspector General?

15 A. In sum, according to the Inspector General, the FBI failed to
16 receive from the CIA the three critical pieces of information
17 about Midhar and Hazmi in a timely manner: again, the possession
18 of the valid multiple-entry U.S. visa, Hazmi's travel to the
19 United States, identification of Khallad in the surveillance
20 photographs from Malaysia, attended by Midhar and Hazmi and other
21 al Qaeda operatives back in January of 2000.

22 Q. And when did the CIA become aware of these items of
23 information?

24 A. The CIA was aware of these pieces, three pieces of
25 intelligence in January 2000, March 2000, and January 2001, but

1 none of it was passed to the FBI until August 2001.

2 Q. And were Hazmi and al-Midhar watchlisted before September 11?

3 A. Yes. They were not watchlisted, however, August 24, 2001, by
4 CIA.

5 Q. And what else did the Inspector General conclude?

6 A. The Inspector General said, moreover, there were several
7 opportunities for the FBI to have obtained this information in
8 other ways, but it failed to do so.

9 Q. And what else?

10 A. Some significant systemic problems hindered the flow of
11 information between the CIA and the FBI.

12 Q. Any other reason?

13 A. Employees at both FBI and CIA failed to provide or seek
14 important information about Midhar and Hazmi, despite numerous
15 interactions between them as these issues related to Hazmi from
16 January 2000 through August 2001.

17 Q. Thank you, Mr. Rigler.

18 MR. TROCCOLI: Your Honor, we are now at the point where
19 he has a final slide that the government has an objection to. We
20 believe that it is an admissible slide because it is part of the
21 report.

22 THE COURT: I think only if there is cross-examination
23 that might open the door to it would it be appropriate, so I am
24 going to sustain the objection at this point, Mr. Novak.

25 MR. TROCCOLI: Thank you, Your Honor, that's all I have

1 of Mr. Rigler.

2 CROSS-EXAMINATION

3 BY MR. NOVAK:

4 Q. Mr. Rigler, how are you?

5 A. Fine, sir. I think I am a little bit red. I take a blood
6 pressure medication, and shirt collars, I probably disappear into
7 the background here.

8 Q. Well, I hope I don't make you any redder. I will do my best
9 here; how does that sound?

10 A. Thank you.

11 Q. Mr. Rigler, just to be clear, you were not part of the
12 investigation team with the Inspector General; is that right?

13 A. That's correct.

14 Q. You did not interview any of the FBI agents that were at
15 issue in the report; is that right?

16 A. No. I reviewed their work product but did not interview
17 them.

18 Q. You have never met Dina Corsi, have you?

19 A. No, sir.

20 Q. Steve Bongardt or any of those people, is that right?

21 A. That's correct.

22 Q. And you didn't -- did you interview any of the CIA folks?

23 A. No, sir.

24 Q. Have you ever met any of them?

25 A. I have met CIA agents all my life, but I didn't meet the ones

1 in this case.

2 Q. The ones in this report?

3 A. No, sir.

4 Q. Have you ever been to the CIA?

5 A. Not to my knowledge, no.

6 Q. Now, you talked about, you know, "we" in the beginning of
7 this, of this examination. Did you speak to Glenn Fine, the
8 Inspector General himself?

9 A. No, sir.

10 Q. Did you speak to any of his investigators?

11 A. No, sir.

12 Q. Did you speak to any of the agents that helped conduct the
13 investigation -- I'm sorry, strike that -- any of the attorneys
14 that helped write the report?

15 A. No.

16 Q. So as I understand it, your sole knowledge of this case is
17 reading chapter 5 in that book that you held up for all of us; is
18 that right?

19 A. No, that's not correct.

20 Q. All right. What else have you done? Have you done an
21 independent investigation at all?

22 A. No. While reading the book, I asked for and received
23 permission to review the underlying documents. Those are the
24 reports prepared by the Inspector General. Many of the
25 communications, much of this case rested in paper because many of

1 the witnesses either refused to talk to the Inspector General or
2 could not recall sufficient details, so the Inspector General's
3 report actually rested very heavily on the 14,000 pages that they
4 did.

5 Q. Okay. And so his report was based upon the paperwork of
6 whatever reports that the agents wrote, is that right, in large
7 part?

8 A. Both the communications to and from the CIA and the New York
9 office, as well as the interviews prepared by the Inspector
10 General's investigators, when they were interviewing FBI
11 personnel.

12 Q. That's the 70 witnesses that were interviewed; is that right?

13 A. There were 225 total. There were 70 with regard to chapter
14 5, and that's where I spent most of my time reviewing those
15 documents.

16 Q. Okay. Just, I mean, your presentation had nothing to do with
17 any other chapter, other than chapter 5; is that right?

18 A. Well, some portion of it may be. For instance, the
19 14,000-document quote and the 225 witness interviews comes from
20 chapter 1.

21 Q. Well, let me ask you this, Mr. Rigler. You were presented
22 here as a summary witness to summarize what is in chapter 5 of the
23 I G report. Are you now saying that your PowerPoint presentation
24 deals with something other than what's in chapter 5?

25 A. I'm saying those two items were the participation of the

1 agency necessary to understand what the Inspector General's total
2 report was and that my part was to summarize chapter 5.

3 Q. Okay. So you summarized chapter 5 of a report that the
4 Inspector General for the Department of Justice wrote based upon
5 written documents and interviews of 70 witnesses; is that right?

6 A. That's correct.

7 Q. And you didn't participate in any of the 70 interviews; is
8 that right?

9 A. No, sir.

10 Q. All right. So now what you did was then you took the, that
11 chapter that you read and you turned it into a PowerPoint
12 presentation; is that right?

13 A. That's correct.

14 Q. And that's the item that you said you have been paid \$16,000
15 since January; is that right?

16 A. Well, I did other things besides that, as you know.

17 Q. In addition to doing other things, you have been a little bit
18 modest about how much money you have been paid by these folks
19 sitting over here, haven't you?

20 A. The question that he asked was with regard to the summary
21 work that I have done. I have been on this case since four years
22 ago this month, March 11th, 2002.

23 Q. And why don't you tell the folks how much money you have been
24 paid by Mr. Troccoli and his colleagues over here during the time
25 that you have been on this case?

1 MR. TROCCOLI: Objection, Your Honor.

2 THE COURT: To the form of the question?

3 MR. TROCCOLI: Yes.

4 THE COURT: Mr. Novak, rephrase that question.

5 Mr. Troccoli is not himself personally paying.

6 MR. NOVAK: I'm sorry, excuse me.

7 BY MR. NOVAK:

8 Q. Mr. Rigler, how much have you been paid during the time that
9 you have worked on this case then?

10 A. Sure.

11 Q. In terms of fees.

12 A. To explain that, initially I was employed as the field
13 investigator to assist in the aviation interviews. This case had
14 a lot of aviation database witnesses to interview. So I traveled
15 the country for several weeks and several months over a four-year
16 period, and it averaged about, I think, a total of \$82,000 in four
17 years.

18 Q. Well, if your lawyers told us you received 86,000 plus in
19 fees, would that be appropriate?

20 A. It probably would be, yes.

21 Q. In addition to that you have received another almost \$17,000
22 in expenses; is that right?

23 A. I thought it would be closer to 13,000. You mean the
24 airlines and hotels and rental cars?

25 Q. I don't know. They are your expenses. What did you get the

1 17,000 for?

2 A. Well, I'm sure that's what it is. I don't know if it is
3 \$17,000, but it is expenses relating to that, which would include
4 hotel, airline, coach class airlines, car rentals, gasoline
5 purchase. We don't charge for meals. It would be customary
6 business expenses associated with a government investigation.

7 Q. Well, let me ask you this then: I mean, would you accept the
8 fact that your lawyers told us as part of the discovery -- you
9 know what discovery is, right?

10 A. I'm aware of that.

11 Q. And what is discovery?

12 A. It is a probing of the case by the two parties, in this case
13 the defense and the prosecution, where they exchange so that each
14 side can understand a little bit more about the case before we
15 come to court.

16 Q. So if your lawyers told us in discovery that you have
17 received a total of \$103,606.88, would that be accurate, do you
18 think?

19 A. I could get the accurate number. I'd say that's correct if
20 you want to talk four years of work and the travel expenses
21 involved.

22 Q. All right. Now, so getting down to exactly what the
23 Inspector General's report was about, that report was about the
24 sharing of or the lack of sharing of information between the CIA,
25 the FBI, and various branches within the FBI. Is that right?

1 A. On chapter 5?

2 Q. On chapter 5.

3 A. You are correct. Much of chapter 5 dealt with sharing of
4 information between the two agencies.

5 Q. And just to be clear, all my questions are going to be about
6 chapter 5. Okay?

7 A. Yes, sir.

8 Q. Now, let's talk about exactly what the information was. And
9 if you want, you can even turn to, I guess, your slide 15, which
10 is part of the timeline here if that will help you out there.

11 Now, what exactly happened here, Mr. Rigler, in terms of
12 the information, consisted of the CIA conducting a surveillance in
13 Malaysia in January of 2000. Is that right?

14 A. Just a second, please. Would you give me the question again,
15 Mr. Novak?

16 Q. I want to take you through what the actual information is
17 that wasn't shared here, okay? It starts with the fact that the
18 CIA is conducting an investigation in January of 2000 in Malaysia.
19 Is that right?

20 THE COURT: Hold on just one second. Do we have a
21 problem?

22 MR. SPENCER: We might, Your Honor. Let me talk to
23 Mr. Novak. I don't know that we need to approach.

24 MR. NOVAK: I am going to withdraw the question and ask
25 it differently if I might, okay?

1 THE COURT: Yes.

2 BY MR. NOVAK:

3 Q. Mr. Rigler, there was a surveillance that occurred in
4 Malaysia in January of 2000. Is that right?

5 A. That's correct.

6 Q. And during the surveillance there were pictures taken of
7 individuals. Is that right?

8 A. Yes, sir.

9 Q. In the picture was Mr. al-Midhar and Mr. al-Hazmi; is that
10 correct?

11 A. That's correct.

12 Q. Also in some of these pictures were some people believed to
13 be al Qaeda members. Is that right?

14 A. That's correct.

15 Q. And in the early part of 2000 the intelligence community made
16 a belief that there was perhaps some connection between
17 Mr. al-Midhar and Mr. Al-Hazmi to al Qaeda just because they are
18 at this meeting in Malaysia; is that right?

19 A. I think that's correct, yes.

20 Q. I am accurately summarizing it; is that right? I want you to
21 correct me if I'm wrong about what I'm summarizing.

22 A. I don't have the book memorized. If you want to quote me a
23 page, and I'll -

24 Q. You look any time you want, if you think I'm wrong about
25 something, but essentially what occurred was there was a

1 surveillance, pictures were taken, al-Hazmi, al-Midhar, and a
2 couple al Qaeda guys are in the picture. Is that right?

3 A. I don't know the total number. I don't believe CIA released
4 the number total.

5 Q. Okay. Forget the couple. Some al Qaeda guys in a picture
6 with al-Midhar and al-Hazmi; is that right?

7 A. To my understanding, that's correct.

8 Q. And a reasonable investigator -- and you were an investigator
9 for 20 some years; is that right?

10 A. 23 years, yes.

11 Q. 23 years at the FBI. You have done surveillances, I guess;
12 is that right?

13 MR. TROCCOLI: Your Honor, I object to any inquiry
14 involving his personal interest in this case. He is here as a
15 summary witness summarizing Inspector General findings. He has no
16 independent knowledge, as the Court is well aware, of those
17 findings. He is here merely to summarize an independent body who
18 made findings.

19 MR. NOVAK: Judge, he can explain what a surveillance
20 is. Mr. Troccoli asked him things that -- based upon his
21 experience.

22 THE COURT: I will allow a few questions to help define
23 terms that he might have used in his report. But, ladies and
24 gentlemen, a summary witness is just what the English words mean.
25 He is summarizing a large body of documents. The defense could

1 just as easily have moved in chapter 5 of the Inspector General's
2 report.

3 You would all have to sit there and read the whole
4 thing. We have allowed this man instead to come in and present
5 you with a summary of the report. And the proper
6 cross-examination would be whether the summary is inaccurate. And
7 that's the scope, really, for a summary witness and to explain, to
8 the extent that he can, terms that are used in the summary so the
9 jury will understand it.

10 MR. NOVAK: But I think, Your Honor, respectfully, I
11 believe it is also appropriate for me to point out exactly what
12 the facts are that are being summarized. And there is two
13 components to this.

14 Component 1 is what is the information. And component
15 number 2 is whether it was shared. And that's what he has talked
16 about. And I want to explore what is in the IG report about those
17 two components. And I think that's appropriate.

18 THE COURT: As long as the questions are just geared to
19 what you read in chapter 5 or the surrounding parts of the IG's
20 report, that's it. All right?

21 THE WITNESS: Yes, Your Honor.

22 BY MR. NOVAK:

23 Q. You understand what a surveillance is; is that right?

24 A. That's correct.

25 Q. And a surveillance is people take pictures of people that are

1 meeting; is that right?

2 A. Well, there are other things too that go on.

3 Q. Okay. But in this particular instance in chapter 5, there
4 were pictures taken of al-Hazmi and al-Midhar as well as these
5 other al Qaeda folks; is that right?

6 A. And Khallad and others, yes.

7 Q. Okay. But at the time in the early part of 2000, nobody knew
8 who Khallad was. Is that right?

9 A. That's correct partially, yes.

10 Q. Well, at the time, at the time -- why don't you tell us,
11 based upon your timeline in the book there that you are reading
12 when it was that al-Hazmi and al-Midhar entered the United States
13 for the first time?

14 A. That would be January 15th, 2000. Hazmi and Midhar traveled
15 to Los Angeles. Let me clarify that. I don't know that there was
16 not another occurrence, say, 1998 or '97, something outside of the
17 scope of this investigation.

18 Q. Another occurrence of what?

19 A. You said what was the first time these two men entered the
20 United States.

21 Q. All right. According to the report, the report references
22 them entering the United States in January, the date you said,
23 January of 2000; is that right?

24 A. January 15th, yes, sir.

25 Q. January 15. And at the time that Mr. al-Midhar entered the

1 United States, he was legally -- the visa that he entered in was
2 legal; is that right?

3 A. No, I have questions about that.

4 Q. Well, the IG says the visa that he entered in was legal;
5 isn't that right?

6 A. I believe he said it was a multi-entry visa. And there has
7 been some other questions that some people maybe had missed that
8 some of the visas had been previously applied for.

9 Q. Does not that report say that at the time that the Mr.
10 al-Midhar and Mr. al-Hazmi entered the United States on that visa,
11 that it was appropriate, legal visas, the issue about visas did
12 not come up until the year 2001; isn't that correct?

13 MR. TROCCOLI: Your Honor, I would ask as a courtesy at
14 least, if he has got a specific page in a report that he would
15 like Mr. Rigler to summarize, that he refer him to it so that this
16 man does not have to be, what I see it as trying to embarrass him,
17 trying to memorize hundreds of pages. If he has a page --

18 THE COURT: You can lead on cross-examination,
19 Mr. Novak, so I think the proper thing would be, since I'm sure
20 you have got the report there, is to go to a page or a paragraph,
21 and the witness has access to the book and see if there is some
22 misinformation in the summary that is not accurate, in that it
23 doesn't accurately reflect what's in the report.

24 MR. NOVAK: Judge, this is going to take me sometime.
25 We're obviously not going to finish here by 5:30. May I look for

1 the page cites then so when we pick this back up on Monday -- I
2 don't want to delay it. I will move on to something else.

3 THE COURT: That's fine.

4 BY MR. NOVAK:

5 Q. Let me ask you this then, Mr. Rigler. At the time that Mr.
6 al-Midhar and Mr. al-Hazmi entered the United States in January of
7 2000, the only link that, according to the Inspector General, to
8 criminal activity was this photograph of these men with other
9 al Qaeda officials, is that right, or other al Qaeda members?

10 A. There were other links, yes. NSA had picked up that the two
11 men were going to this meeting in Malaysia, so it actually started
12 prior to January 5th, 2000 meeting in Malaysia.

13 Q. Right. NSA gave them information that there was going to be
14 a meeting in Malaysia, right?

15 A. Yes.

16 Q. The meeting occurred; is that right?

17 A. That's correct.

18 Q. There is a photograph of the meeting, of which these two are
19 in the photograph; is that right?

20 A. Yes. There were several photographs and other investigative
21 work product too.

22 Q. They entered the United States January the 15th, as you
23 indicate; is that right?

24 A. Yes, sir.

25 Q. Now, while they are in the United States they engage -- from

1 January to June of 2000, they did not engage in any criminal
2 conduct; is that right?

3 A. June of 2000?

4 Q. Right. From January of 2000 to June of 2000, they did not
5 engage in any criminal conduct; is that right?

6 MR. TROCCOLI: Your Honor, again, if there is a page in
7 which --

8 THE COURT: I will sustain the objection. I am going to
9 sustain the objection.

10 BY MR. NOVAK:

11 Q. Well, let me ask you this: You read the section about the
12 FBI asset; is that right?

13 A. Yes.

14 Q. And in this section about the FBI asset, the Inspector
15 General interviewed the asset as well as the FBI agent; is that
16 right?

17 A. I'm not certain, again. You might want to refer me to the
18 page cite on that. I don't know if it was the Inspector General
19 or a representative or an FBI agent that did the interview and
20 provided that information to the Inspector General.

21 Q. Okay. Somebody interviewed the agent and the asset; is that
22 right?

23 A. The agent who controlled the asset retired and refused
24 further interviews.

25 Q. But he was originally interviewed by FBI agents before he

1 retired; isn't that correct?

2 A. Again, I would like to refer to the report for that, please.

3 Q. All right, Judge. May I get the report, Judge? It is going
4 to take me a couple minutes to go through the reports.

5 THE COURT: Since it is 5:30 and we're not going to
6 finish this cross-examination tonight, I think the time has come
7 to end for today. And now you are on your three-day weekend,
8 ladies and gentlemen, so, again, be very cautious to avoid any
9 media coverage about this case and obviously not discuss it with
10 anyone, and let me know if you feel that in any respect you had a
11 problem complying with that.

12 Leave your notebooks here with the handouts that you
13 have gotten and we will get it all back on Monday. And we will
14 see you back here 9:30 on Monday morning.

15 Unless there is anything with counsel, we will recess
16 court for the day, and I will see you back at 9:00 o'clock Monday
17 morning for an auxiliary hearing, correct? We have not heard
18 anything about that?

19 MR. SPENCER: Yes, Your Honor.

20 THE COURT: We will recess court.

21 (Recess at 5:30.)

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CERTIFICATE OF THE REPORTERS

We certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter.

/s/

Anneliese J. Thomson

/s/

Karen Brynteson

