

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

_____ )	
UNITED STATES OF AMERICA, )	
)	
Plaintiff, )	
)	
vs. )	Case No.: 8:21-CR-348
)	
JEREMY BROWN, )	
)	
Defendant. )	
_____ )	

VOLUME III of VI (pp. 479-740)

JURY TRIAL PROCEEDINGS  
BEFORE THE HONORABLE SUSAN C. BUCKLEW

December 7, 2022  
9:00 a.m. to 5:07 p.m.

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BRETT LINDSEY, HSI AGENT

(Proceedings recorded by mechanical stenography, transcript  
produced by computer-aided transcription.)

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21	ERT Photographic Log	490
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27	M67 Grenade Trace Record (NSN 1330-001-33-8244, Lot Number MA-11-12F)	552
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41	Picture of hat # 11	510
111	Trace report 10 pages - Bates number DISC-0130085	565
114	Photograph Log 6 pages - Bates number DISC - 09889	510

1 (Call to Order of the Court at 9:00 a.m.)

2 **THE COURT SECURITY OFFICER:** Please be seated.

3 **THE COURT:** Good morning. Okay. Anything we need to  
4 talk about before we bring the jury in?

5 Mr. Futerman, anything for you?

6 **MR. FUTERMAN:** No, Your Honor.

7 **THE COURT:** Anything -- Mr. Marcet or Mr. Goedman,  
8 anything from the government?

9 **MR. GOEDMAN:** No, Your Honor.

10 **THE COURT:** Okay. Mr. Goedman, you have any idea  
11 when we're going to get to the classified documents portion of  
12 the trial?

13 **MR. GOEDMAN:** Yes, Your Honor. We think this  
14 afternoon.

15 **THE COURT:** Okay.

16 **MR. GOEDMAN:** So we have the CISO in court today, and  
17 she'll be able to assist with that. I will -- before we call  
18 that first witness, I'll make sure to alert the Court.

19 **THE COURT:** We'll probably take a break.

20 **MR. GOEDMAN:** Okay.

21 **THE COURT:** Okay. Very good.

22 **THE COURT SECURITY OFFICER:** All rise.

23 (Jury in at 9:02 a.m.)

24 **THE COURT SECURITY OFFICER:** Please be seated.

25 **THE COURT:** Good morning. Ladies and gentlemen,

1 anything happen over the evening hours that any of you feel  
2 could affect your ability to serve on this jury in any way?

3 I'm not sure there was anything, but if there was  
4 anything on the news media or in the newspaper, did any of you  
5 watch it or listen to it? Okay. I just remind you, you  
6 shouldn't do that.

7 Okay. Any questions before we start?

8 Okay. I do anticipate this afternoon, we'll work  
9 till almost five o'clock or about five o'clock. And the  
10 schedule will be similar with that exception, similar to what  
11 we followed yesterday. We'll try to recess mid-morning and  
12 recess at lunch sometime around 12:30, obviously depends on how  
13 the witnesses are going, and then midafternoon, and then again  
14 around five o'clock, no later than five o'clock anyway.

15 All right. You know, I can't remember where we were.

16 Mr. Marcet.

17 **MR. MARCET:** Your Honor, Special Agent Drummer had  
18 just been excused, and we're ready to call our next witness.

19 **THE COURT:** All right.

20 **MR. MARCET:** The United States calls FBI Staff  
21 Operation Specialist Elyssa Gonzalez.

22 **THE COURT:** If you will raise your right hand to be  
23 sworn, please.

24

25

Elyssa Gonzalez - Direct Examination

1 WHEREUPON,

2 **ELYSSA GONZALEZ,**

3 was called as a witness and, after having been first duly  
4 sworn, testified as follows:

5 **DIRECT EXAMINATION**

6 **THE COURTROOM DEPUTY:** Please state your name for the  
7 record and spell your name.

8 **THE WITNESS:** Elyssa Gonzalez, E-l-y-s-s-a,  
9 G-o-n-z-a-l-e-z.

10 **THE COURTROOM DEPUTY:** Thank you, ma'am. Please take  
11 the witness stand.

12 **THE COURT:** Mr. Marcet.

13 **BY MR. MARCET:**

14 **Q.** Good morning.

15 **A.** Good morning.

16 **Q.** Would you please introduce yourself to the jury?

17 **A.** Hi, I'm Elyssa Gonzalez.

18 **Q.** And Ms. Gonzalez, where do you work?

19 **A.** With the FBI.

20 **Q.** And what is your position with the FBI?

21 **A.** I'm a staff operations specialist.

22 **Q.** What does a staff operations specialist do?

23 **A.** I work primarily tactical intelligence.

24 **Q.** And prior to being a staff operations specialist, what  
25 other positions did you hold in the FBI?

UNITED STATES DISTRICT COURT

Elyssa Gonzalez - Direct Examination

1 A. I started as an intern. And then I was hired full-time as  
2 an operational support technician.

3 Q. And what does an operational support technician do?

4 A. It's OST. OSTs helps with squads administratively and  
5 also investigatively.

6 Q. As an OST or SOS, staff operations specialist, are you the  
7 same as an FBI agent? Are you a law enforcement officer?

8 A. No.

9 Q. You're behind the scenes assisting with investigations?

10 A. Yes.

11 Q. Currently what office do you work for?

12 A. Huntsville, Alabama.

13 Q. And, previously, did you work for the Tampa field office?

14 A. Yes.

15 Q. What -- approximately how long had you been an OST with  
16 the Tampa field office at the time of this search,  
17 September 30th, 2021?

18 A. Less than a year.

19 Q. And as an OST, did you receive any training?

20 A. Yes.

21 Q. Can you tell the jury about the training you received?

22 A. We receive a lot of on-the-job training. We go through a  
23 course our first week that teaches us the basics of the FBI.  
24 Also I sit one-on-one with prior OSTs and work with squad  
25 mates, a lot of on-the-job training.

Elyssa Gonzalez - Direct Examination

1 Q. Okay. So let's talk about prior to the search. On  
2 September 30th, what was your role prior to the search?

3 A. I was assigned of helping prep our search kits.

4 Q. What does that mean? What is a search kit?

5 A. A search kit is usually a bag with all the materials  
6 needed to conduct a search.

7 Q. What types of materials do you need to conduct a search?

8 A. Pens, paperwork, gloves, tape, all the little things, bags  
9 that you would need.

10 Q. And so did you do that for this case?

11 A. Yes.

12 Q. Prior -- besides preparing the paperwork, did you have any  
13 involvement in the actual investigation that led to the search?

14 A. No.

15 Q. Okay. So take us to the -- the day of the search. How  
16 did that day unfold?

17 A. So since I'm not an agent and I'm not armed, I have to  
18 stay back on a different scene until the house is cleared.  
19 Once the house is cleared, I'm safe to arrive to the scene.

20 Q. And what is -- what does it mean to clear the house?

21 A. To make sure that everything is safe for us to come in.

22 Q. So at some point, did you learn that the house had been  
23 cleared?

24 A. Yes.

25 Q. And did you arrive at the scene?

Elyssa Gonzalez - Direct Examination

1 A. Yes.

2 Q. When you arrived at the scene, did you observe the  
3 defendant, Jeremy Brown?

4 A. Yes.

5 Q. Where was he?

6 A. He was walking to the police vehicle with agents.

7 Q. Showing you what's already in evidence as Government's  
8 Exhibit 83B.

9 MR. MARCET: Madam Clerk, do we need to do something?

10 THE COURTROOM DEPUTY: You can try again.

11 MR. MARCET: It's not recognizing it. Let me try  
12 unplugging it and plugging it back in.

13 THE COURT: Maybe when unplugging and the plugging  
14 back in does.

15 BY MR. MARCET:

16 Q. Okay. So I'm showing you what's in evidence that's in  
17 evidence as Government's Exhibit 83B. What are we looking at  
18 here?

19 A. A photo of Jeremy Brown.

20 Q. Was this at the time that you arrived at the scene --

21 A. Yes.

22 Q. -- approximately?

23 A. Yes.

24 Q. Okay. So on the day of the search, what was your role?

25 A. I was assigned as the photo logger.

Elyssa Gonzalez - Direct Examination

1 Q. And so once you arrived at the scene, is there some  
2 preparatory work before photographs are taken?

3 A. Yes.

4 Q. What type -- what needs to happen?

5 A. Usually I'll bring out the search kit, and we'll start  
6 taking out materials. We have a log that we take. We also  
7 have a sketcher. So we get our paperwork and everything in  
8 order to start taking photos.

9 Q. And approximately how long was it in this case from when  
10 you arrived at the scene until you started the role of  
11 photographs?

12 A. Probably around 20 minutes.

13 Q. And so what does the photo logger do?

14 A. Basically, I document every photo that's taken.

15 Q. And are you independently searching?

16 A. No.

17 Q. Are you handling evidence?

18 A. No.

19 Q. How do you know what to document on your photo log?

20 A. Our photographer will -- while he's taking pictures will  
21 say, "This is the photo I'm taking," and I'll note exactly the  
22 description of what that photo is.

23 Q. And how does the photographer know what to take pictures  
24 of?

25 A. There's a basic standard of like entry photos, exit photos

Elyssa Gonzalez - Direct Examination

1 of how we take photos.

2 Q. And then are there -- in terms of items of evidence, do  
3 you have to rely on the searching agents to draw those to your  
4 attention?

5 A. Yes.

6 Q. So you mentioned the photo log. Can you just explain to  
7 the jury what a photo log is.

8 A. Yes. So with any search that we take photos, we have a  
9 log to document everything that we do that day.

10 Q. And did you do that in this case?

11 A. Yes.

12 Q. Now, if there's any issues that arise, such as a  
13 photograph getting deleted, do you note that on the log?

14 A. Yes.

15 Q. And you're not supposed to delete photographs. Correct?

16 A. Correct.

17 Q. So why do you note it?

18 A. Just for later purposes and to know, like, hey, this photo  
19 was deleted, I want to note it for the record.

20 MR. MARCET: Your Honor, without objection, I will  
21 offer Government's Exhibit 21.

22 THE COURT: I'll receive into evidence Government's  
23 Exhibit 21.

24 (Government's Exhibit 21 admitted into evidence.)

25 THE COURT: Which is the log. Right?

Elyssa Gonzalez - Direct Examination

1           **MR. MARCET:** Yes, Your Honor.

2           **BY MR. MARCET:**

3           **Q.** Okay. Ms. Gonzalez, can you explain to the jury what this  
4 document is?

5           **A.** So this is the photo log. Going through the photo log, it  
6 starts with the date. This was the date that the search was  
7 conducted. The case ID, so every person and case is associated  
8 with a number, so that's our case number for this. The  
9 location, address of where the search was conducted. Our type  
10 of camera, we like to note that, and also our photographer. If  
11 you can -- you see that it was originally Agent Kakareka. It  
12 changed last minute to Agent Mund. And I put my initials there  
13 to note that change.

14           **Q.** Why wasn't Special Agent Kakareka able to take the  
15 photographs?

16           **A.** When we arrived at scene, the girlfriend was quite  
17 emotional, so she was taken off photographer to tend to the  
18 girlfriend.

19           **Q.** And Special Agent Kakareka is a female agent. Correct?

20           **A.** Yes.

21           **Q.** Is it a common practice if it's a female who's upset, a  
22 female agent will assist with her?

23           **A.** Yes.

24           **Q.** Okay. So let's just look at the beginning of the log, if  
25 you could explain what some of these columns refer to.

Elyssa Gonzalez - Direct Examination

1 **A.** So starting with the left, we'll have the photo number.

2 So it always starts from one and goes down.

3 Then we have our subject. So the way we approach a scene  
4 and how we take photos is with entry photos, which is the first  
5 photos you take.

6 So we kind of walk through the house. We take photos of  
7 the door and just all our first initial entry photos. Then we  
8 have our exit photos, that's when we're leaving. We take a  
9 picture, just like we're walking out, to paint that picture.  
10 "Other" is if we take a picture, let's say, down the street or  
11 something random that's not super related to the sequence that  
12 we're doing.

13 And then an item number. So that's usually our evidence  
14 number. So every piece of evidence gets assigned a number, so  
15 you can circle that.

16 We also have the range. So there's long shots, medium  
17 shots, and close-up shots. That's the shots of the camera.

18 We also have a scale. So we have something called an L  
19 scale. Usually when items are super small, we'll put so it you  
20 can measure it and see the exact size of it.

21 Then we have the description, and it's a basic description  
22 of what that photo is.

23 **Q.** And so the first photo says, "Entry Front  
24 Door-Deleted-misfire." Can you explain what that means?

25 **A.** So that was initially a photo that was deleted. That was

Elyssa Gonzalez - Direct Examination

1 the entry front door.

2 Q. And did you notice that the photographer had deleted  
3 photos?

4 A. Yes.

5 Q. What did you instruct him to do?

6 A. To stop deleting the photos.

7 Q. And, you know, these pictures are misfires, are you still  
8 supposed to not delete them?

9 A. Yeah. You do not delete them.

10 Q. Now, is it possible that there's photos that were deleted  
11 that you don't know about?

12 A. No.

13 Q. And can you explain why that is?

14 A. After -- during the search, I put little tick marks on the  
15 photos that were deleted on the left side. I'm able to go  
16 through them, and I can see if there's obvious skipped number,  
17 so I know which ones for deleted.

18 Q. And the camera itself keeps a sequential number?

19 A. Correct. Yes. We format the camera specifically to make  
20 sure that even if a photo is gone, it still keeps going in the  
21 numerical order.

22 Q. Still haven't learned how to stop doing that --

23 Okay. So let's move a little bit down the log. Okay. So  
24 we're looking now on Page 2. I've just picked items 84 through  
25 102. So, for example, in Line 84, you say, "Room I," and then

Elyssa Gonzalez - Direct Examination

1 you give a description of the item. What does the room refer  
2 to?

3 A. Room I in this situation was RV. But every room is  
4 assigned a letter. It makes it easier just so you don't have  
5 to say master bedroom or bathroom. It's -- every room in the  
6 house gets a letter.

7 Q. Okay. So, here, room I was the RV and there's room H,  
8 there's room A, room B. Correct?

9 A. Yes.

10 Q. And so just some of the examples of items you have here,  
11 you have a plate carrier, you have -- you have hats. Was one  
12 of the things that the agents were searching for items of  
13 clothing?

14 A. Yes.

15 Q. Were the agents moving those items before they were  
16 photographed?

17 A. Yes.

18 Q. Did you instruct them to stop that?

19 A. Yes.

20 Q. Why was that?

21 A. We want to document everything as it was, so we want to  
22 keep things in place so we can take a photo before we bring it  
23 into evidence.

24 Q. And now Item 85 was, "Rifles 2 guns bag." Correct? Am I  
25 reading that correct?

Elyssa Gonzalez - Direct Examination

1 A. Yes.

2 Q. I'm showing you Government's Exhibit 11D. Is that  
3 Exhibit 85?

4 A. Yes.

5 Q. I'm sorry. Is that photo 85?

6 A. Yes.

7 Q. What are we looking at in this photograph?

8 A. The photo is of the two guns and there's some paperwork.

9 Q. And then there's the photograph in the bottom corner.

10 Correct?

11 A. Yes.

12 Q. Do you know who that photograph is of?

13 A. Jeremy Brown.

14 Q. Going back to Exhibit 21. If we look at photograph 86,  
15 you wrote, "Serial number saw off." Do you know what saw off  
16 means?

17 A. No.

18 Q. Why did you write that?

19 A. I was instructed by a photographer.

20 Q. Now, at some point during the search, did you learn that  
21 explosives had been found?

22 A. Yes.

23 Q. Now, did you ever see those yourself?

24 A. No.

25 Q. Do you remember where you were when you learned that they

Elyssa Gonzalez - Direct Examination

1 had been found?

2 A. Not exactly, no.

3 Q. So were special protocols put in place once that notice --  
4 once that alarm was sounded?

5 A. Yes.

6 Q. So what did you do and what did the other agents do once  
7 you heard that there had been explosives discovered?

8 A. So it immediately poses a threat to all of us, so we had  
9 to clear the space that they were found and wait for a bomb  
10 squad to come.

11 Q. And did the bomb squad or the bomb technicians come?

12 A. Yes.

13 Q. And what -- were you able to observe anything that they  
14 were doing?

15 A. No.

16 Q. Do you know if they went into the RV?

17 A. No.

18 Q. Did you provide them with the camera?

19 A. Yes.

20 Q. Do you recall who you provided the camera to?

21 A. Yes.

22 Q. Who was that?

23 A. Charlie George.

24 Q. And approximately how long of a delay did this cause? How  
25 long were you stopped from photo logging?

Elyssa Gonzalez - Direct Examination

1 A. It was quite a while. I remember we were out there for  
2 several hours.

3 Q. Now, at some point, was the camera returned to the  
4 photographer?

5 A. Yes.

6 Q. Were you able to look through it?

7 A. Yes.

8 Q. Can you describe the photos that had been taken since the  
9 bomb technician Charlie George took the camera?

10 A. They were specifically photos of the grenades.

11 Q. Now, did you ever see the grenades yourself?

12 A. No.

13 Q. Did you go into the RV and look at them?

14 A. No.

15 Q. Why not?

16 A. For safety reasons. We didn't know if they were live or  
17 not.

18 Q. And so how did you log the grenade photographs onto the  
19 log?

20 A. Once they brought back the camera, I was able to look  
21 through the photos and note them in the log.

22 Q. I'm looking at Item 114. So, here, there are several  
23 photographs noted, "Grenade, grenade RV, grenade in pouch."  
24 How did you know what the description of these photos were?

25 A. Based off what I saw in the photos, and the bomb tech and

Elyssa Gonzalez - Direct Examination

1 their photographer with us helping me note how to -- how to  
2 note them.

3 Q. So if we look at photograph 11F, for example. Were you  
4 present when this photograph was taken?

5 A. No.

6 Q. Who took this photograph?

7 A. Charlie George.

8 Q. And there's several other similar photographs. We won't  
9 go through all of them, but were all these -- all these photos  
10 you were not present for. Correct?

11 A. Correct.

12 Q. They were on there when the camera was given back to you?

13 A. Yes.

14 Q. All right. Now, at some point during the course of  
15 searching the RV, did you learn that classified information had  
16 been found?

17 A. Yes.

18 Q. And did that pose any difficulties to documenting it as  
19 the photographer and the photo logger?

20 A. Yes.

21 Q. Can you explain that to the jury?

22 A. So when it comes to secret information, it has to be kept  
23 protected. Once you're taking a photo of it or it's exposed to  
24 the outside world, it makes everything complicated.

25 Q. And so when you found the classified information, was

Elyssa Gonzalez - Direct Examination

1 there inadvertently a photograph taken of it?

2 A. Yes.

3 Q. Can you describe what you saw of the classified  
4 information?

5 A. It was a stack of papers on a bench and I saw the one  
6 SECRET//NOFORN paper on top, because there's a red banner that  
7 notes the classification of every document. When it's  
8 SECRET//NOFORN, it is red.

9 Q. Did you see classified CD?

10 A. No.

11 Q. Did you read the document?

12 A. No.

13 Q. Did you -- why not?

14 A. When it comes to SECRET//NOFORN information, everything is  
15 on a need-to-know basis. It wasn't for me to know, so I didn't  
16 read it.

17 Q. Did you independently look through the folder where the  
18 document was found?

19 A. No.

20 Q. Did you independently search any area during the search?

21 A. No.

22 Q. Now, I'm going to show you Government's Exhibit 11M. So  
23 what are we looking at here?

24 A. This is a redacted version of that SECRET//NOFORN  
25 paperwork.

Elyssa Gonzalez - Direct Examination

1 Q. So in the actual picture, that black blob wasn't there?

2 A. Correct.

3 Q. What was there?

4 A. Words.

5 Q. And why is it redacted now?

6 A. Because it's SECRET//NOFORN information, and we don't want  
7 to have any more spillage of that information.

8 Q. So did taking this photograph cause any unanticipated  
9 problems?

10 A. Yes.

11 Q. Can you explain to the jury what taking a photograph of  
12 classified information required you to do?

13 A. So now that we have a photo of SECRET//NOFORN information,  
14 it makes that camera now hold SECRET//NOFORN information, and  
15 now we're walking around with that information.

16 Q. So did you take any precautions to avoid further spillage  
17 of classified information?

18 A. Yes.

19 Q. Showing you Government's Exhibit 11N. So what is this  
20 photograph?

21 A. So this is a photo of that same information, but covered  
22 with an item number.

23 Q. And why did you cover the information with an item number?

24 A. In order to prevent any more spillage, but we're also  
25 noting that that piece of evidence is Item 43.

Elyssa Gonzalez - Direct Examination

1 Q. And now when you got back to the office, what special  
2 steps did you have to take with the camera and the SD card  
3 because of the photograph we were just looking at?

4 A. Now that we're holding SECRET//NOFORN information, we have  
5 to make sure that when we take those photos off of that SD card  
6 that it's not put into an unclassified system. So we have to  
7 use a specific burner to take the photos off, and we'll usually  
8 put them on CDs in order to put them into evidence.

9 Q. Now, I want to show you some additional photographs. Were  
10 you present in the residence with the photographer?

11 A. Yes.

12 Q. And were you present, essentially tied at the hip with the  
13 photographer every minute of the search?

14 A. Yes.

15 Q. So you're able to -- you've seen the photos of the  
16 residence and you saw the residence as it looked on the day of  
17 the search?

18 A. Yes.

19 Q. I'm going to show you what's already in Exhibit 12A. So  
20 what are we looking at here in 12A this?

21 A. This is the front door, looking onto the front door.

22 Q. Moving on to 12C. What are we looking at here?

23 A. So right when you walk through that front door, this is  
24 right on that left side.

25 Q. And so there's a lot of items laid out on the table. Was

Elyssa Gonzalez - Direct Examination

1 this done by the searchers or the clearing team?

2 A. No.

3 Q. When you went into the residence, what did it appear to  
4 you, based on your observations, was going on?

5 A. That there were either reorganizing or moving.

6 Q. So there were a lot of items out like this?

7 A. Yes.

8 Q. Going on to 12E. So, here, we see a door with the letter  
9 B on it. Can you explain what that is?

10 A. Yeah. So every room in the house gets assigned a letter,  
11 and this is room B, the master bedroom.

12 Q. 12E -- oh, sorry, 12F. What are we looking at in 12F?

13 A. So right when you walk through that door, this is the view  
14 of the master bedroom.

15 Q. And here's 12J. What are we looking at here?

16 A. This is the office space.

17 Q. Now, this white board, did the FBI alter this white board  
18 in any way?

19 A. No.

20 Q. Now, the white board starts with "Food." Correct?

21 A. Yes.

22 Q. And "Shoot," correct, below that.

23 A. Yes.

24 Q. And then "Clothing" in the next column.

25 A. Yes.

Elyssa Gonzalez - Direct Examination

1 Q. "Currency."

2 A. Yes.

3 Q. "Move."

4 A. Yes.

5 Q. "Shelter" in the top right.

6 A. Yes.

7 Q. And "Communicate" below that. Right?

8 A. Yes.

9 Q. I apologize. So the bottom, it has a kind of a color  
10 coding, it said, "Good," blue "Better," green "Best," and then  
11 black "On Hand." Correct?

12 A. Yes.

13 Q. Can you read the items in the left column?

14 A. Starting with "2"?

15 Q. Yeah?

16 A. "LF pistol," 4 -- oh, looks like a little times,  
17 "Subcombat .45, 4x SBR, 2x 12ga. shotgun, 1x LR 5.56, 1x SR25,  
18 1x M24, 1x .50-barrel, 1x .50 bolt." I'm not sure what the  
19 next word is. "2x 5.5 can, 2x 7.26 can, 2x .45 can."

20 Q. Do you know what those items are?

21 A. No.

22 Q. Why did you document, you know, every room of the house  
23 like this instead of just the items of evidence you were  
24 looking for?

25 A. In order to keep track of the sequence that we're going

1 through.

2 Q. So looking at Exhibit 12K. Is this just another item that  
3 was found in the house?

4 A. Yes.

5 Q. 12L. What are we looking at in 12L?

6 A. This is a gun.

7 Q. Why do you zoom in like that on the serial number?

8 A. In order -- because the serial number is the -- kind of  
9 like the name of the gun. So in order to go back to it, we can  
10 see the numerical number assigned to it.

11 Q. And we've seen a couple pictures of firearms. Were there  
12 more than just two or three firearms that you observed?

13 A. Yes.

14 Q. And to your knowledge, was there anything legal or illegal  
15 about the firearm? Do you know anything about that?

16 A. No, I do not know.

17 Q. And 12M.

18 A. This is a gun.

19 Q. Do you know anything about this gun?

20 A. No.

21 Q. 12N.

22 A. Another gun.

23 Q. And where was this located within the house?

24 A. The master bedroom.

25 Q. Do you know if there's anything legal or illegal about

Elyssa Gonzalez - Direct Examination

- 1 this gun?
- 2 A. No.
- 3 Q. 12O.
- 4 A. This is a vest.
- 5 Q. Where was this found?
- 6 A. The master bedroom.
- 7 Q. 12P.
- 8 A. Armor plates.
- 9 Q. This also in the master bedroom?
- 10 A. Yes.
- 11 Q. 12Q.
- 12 A. This is a photo of the nightstand with a gun on it.
- 13 Q. Was this also in the master bedroom?
- 14 A. Yes.
- 15 Q. 12R.
- 16 A. This is a photo of a notebook.
- 17 Q. Now, is this -- did the FBI alter this notebook in any
- 18 way?
- 19 A. No.
- 20 Q. This writing was on it when you arrived?
- 21 A. Yes.
- 22 Q. Can you read what's written on this notebook?
- 23 A. Yes. Do you want me to read all of it?
- 24 Q. Yes, please?
- 25 A. "Six week schedule". One week or week one, "Welcome Week.

Elyssa Gonzalez - Direct Examination

1 0 day-travel." Oh, zero. "1Day Inprocess/CIF, 5, 2, 6, 3, 7.  
2 2 WK-food/clothing/shelter/currency. 8-rest, relax, recover.  
3 9-Team Up, 10, 11, 12, 13, 14. 3WK-shoot, move, communicate,  
4 15, 16, 17, 18, 19, 20, 21. 4WK-UW training, 22, 23, 24,  
5 25-Infil, 26, 27, 28. 5WK-UW FMP, 29-link up, 30, 31, 32, 33,  
6 34, 35. 6WK-UW FMP/GRAD/COMM SRV, 36x 3 Op, 37x 3 Op, 38x 2  
7 Op." And in brackets it's "Rolling Thunder." "39-Main  
8 Assault, 40-EPA to GRAD, 41-COMM SRV, 42-travel."

9 Q. Do you know what this document refers to?

10 A. No.

11 Q. And 12S, what are we looking at here?

12 A. A gun.

13 Q. Do you know if there's anything legal or illegal about  
14 this gun?

15 A. No.

16 Q. 12P?

17 A. This is a gun with the evidence -- or the item number with  
18 it.

19 Q. Now, after the search warrant in this case, you mentioned  
20 you had to put the photos on a classified computer. Correct?

21 A. Correct.

22 Q. And after that, did you have any further involvement in  
23 this investigation?

24 A. No.

25 **MR. MARCET:** Thank you, Your Honor. No further

Elyssa Gonzalez - Cross-Examination

1 questions.

2 **THE COURT:** All right. Mr. Futerma.

3 **MR. FUTERMAN:** Thank you, Your Honor.

4 **CROSS-EXAMINATION**

5 **BY MR. FUTERMAN:**

6 **Q.** Good morning, Ms. Gonzalez.

7 **A.** Good morning.

8 **Q.** First question, that notepad, you don't know when it was  
9 written. Right?

10 **A.** No.

11 **Q.** Or what it relates to?

12 **A.** Correct, no.

13 **Q.** Just found it in the house, just like you found that 2003  
14 sniper Special Forces book. Right?

15 **A.** Yes.

16 **Q.** I'm a little confused about the sequencing of events.  
17 Maybe you can help me. I think you said you were tied to the  
18 hip, or words to the effect, of the photographer Mund. Is that  
19 right?

20 **A.** Correct.

21 **Q.** Okay. So when Mund goes through the RV, taking pictures  
22 of stuff, you're tied by the hip, looking at those same things.  
23 Is that right?

24 **A.** Yes.

25 **Q.** Okay. So as an example, if we go through Defense

Elyssa Gonzalez - Cross-Examination

1 Exhibit 83, as Mund is taking the picture of the RV, you're  
2 making an entry into the log. Right?

3 A. Correct.

4 Q. As we go through the RV, 84, Mund is taking a picture,  
5 you're making a log. Right?

6 A. Correct.

7 Q. 85, Mund is taking a picture. This is the briefcase,  
8 apparently, that was searched, and you're taking that picture.  
9 Right?

10 A. I'm logging it, not taking a picture.

11 Q. Excuse me. He's taking pictures; you're logging it.  
12 Correct?

13 A. Correct.

14 Q. We go on, 86, et cetera, through the RV. Correct?

15 A. Correct.

16 Q. So this picture 105, which is a redacted version, as Mund  
17 found these documents, this is also being taken a picture by  
18 Mund and you're logging it. Correct?

19 A. Correct.

20 Q. And you're side-by-side with him at this point. Correct?

21 A. Correct.

22 Q. Just a few feet away. Right?

23 A. Yes.

24 Q. And this is taken in the RV. Right?

25 A. Yes.

Elyssa Gonzalez - Cross-Examination

1 Q. When you're in that RV, Ms. Gonzalez, do you ever recall  
2 seeing a CD?

3 A. No.

4 Q. And certainly a CD that has a big red sticker on it that  
5 says secret, that would have come off that same briefcase where  
6 those documents are is something you would remember seeing.  
7 Right?

8 A. Correct.

9 Q. So as we're sequentially going through this RV, Mr. Mund  
10 is taking photographs, you're standing side-by-side by him,  
11 these items are being photographed and logged, we have this  
12 picture of the classified documents that have now been  
13 redacted, but you never see a CD, and of course there never is  
14 a picture taken on scene of the CD. Right?

15 A. Correct.

16 Q. Because this picture, we learned yesterday, was taken  
17 sometime this year, and all the other pictures have date stamps  
18 and time stamps. Right? And that's because the camera that  
19 you're using is actually deliberately supposed to take date and  
20 time stamps to see the evidence. Correct?

21 A. Yes.

22 Q. But nothing is taken of this CD. Correct?

23 A. Yes.

24 Q. And you don't ever remember seeing a CD?

25 A. No.

Elyssa Gonzalez - Cross-Examination

1 Q. And this is not a scenario where we have like the grenades  
2 where they, for safety, and the -- Mr. George took the pictures  
3 of the grenade. That's a different scenario. But this is  
4 side-by-side, searching the RV, find a document, take a picture  
5 of the documents, log it, and yet no picture, no CD at the  
6 time. Right?

7 A. Correct.

8 MR. FUTERMAN: Your Honor, at this point also, I  
9 would like to admit Defense Exhibit, by stipulation, 41 and  
10 114.

11 THE COURT: I already have 114 in, but maybe that was  
12 my mistake. Ms. Black, was 114 in?

13 THE COURTROOM DEPUTY: No, Your Honor.

14 THE COURT: All right. I'll receive into evidence 41  
15 and 114.

16 (Defendant's Exhibits 41 and 114 admitted into evidence.)

17 MR. FUTERMAN: Thank you.

18 BY MR. FUTERMAN:

19 Q. I just have a couple questions as it relates to the log  
20 and as it relates to the pictures we received.

21 If we look at entry -- I apologize for the delay.

22 Look at entry 160 and 161.

23 THE COURT: All right. The log is actually, that  
24 you're showing, is what exhibit number?

25 MR. FUTERMAN: It is. It's 114 that I just put into

Elyssa Gonzalez - Cross-Examination

1 evidence, Your Honor.

2 **THE COURT:** Thank you.

3 **MR. FUTERMAN:** Page 5 of 6 of that document.

4 **THE COURT:** All right.

5 **BY MR. FUTERMAN:**

6 **Q.** If we look at entry number 160, looks like there's two  
7 separate entries there. One is long and one is close. Right?

8 **A.** Correct.

9 **Q.** And long and close up, is that of the secret documents  
10 that you talked about?

11 **A.** Yes.

12 **Q.** All right. So we have -- should be a sequential pictures,  
13 long-up and close-up of the pictures. Right?

14 **A.** Correct.

15 **Q.** But I've only shown you one picture. Correct?

16 **A.** Yes.

17 **Q.** Okay. And you said there's no deletions on your part, you  
18 don't get rid of pictures.

19 **A.** Correct.

20 **Q.** You log them and you take them. Right?

21 **A.** Correct.

22 **Q.** So the picture that we saw, and we've seen, that was date  
23 stamped and time stamped, would that be a long-up or close-up  
24 picture?

25 **A.** It depends on relevance to the other photo.

Elyssa Gonzalez - Cross-Examination

1 Q. Okay. So we don't know if it's a long-up or close-up, but  
2 you would agree there needs to be two separate pictures of  
3 that. Right?

4 A. Correct.

5 Q. Or they should be. Right? They should be to see?

6 A. Uh-huh.

7 Q. And then on this log that, again, is being logged, as we  
8 examine everything, and I'll start Page 1 through 6, and I'll  
9 just have you look through those. Look at all these entries,  
10 and I'll just go through them with you. And I presume you've  
11 had -- you've obviously gone over your testimony with the  
12 prosecutors before today. Correct?

13 A. Yes.

14 Q. And I think they interviewed you even in September of this  
15 year. Correct?

16 A. Yes.

17 Q. All right. And they've -- you kind of discovered --  
18 discussed what you know and don't know. Correct?

19 A. Yes.

20 Q. All right. And you went over this log. Correct?

21 A. Yes, I did.

22 Q. And I don't know if you've had a chance to review this,  
23 but you would agree, and we can look over it, there is no log  
24 of a CD anywhere on this?

25 A. Correct.

Elyssa Gonzalez - Cross-Examination

1 Q. So we have no picture taken of the CD on scene?

2 A. Correct.

3 Q. You don't remember seeing a CD?

4 A. Correct.

5 Q. The photographer, Mr. Mund, and you are not logging a CD.

6 Correct?

7 A. Correct.

8 Q. But we have a picture that the government, one of two  
9 pictures apparently. There was supposed to be two pictures of  
10 these secret documents. We have one. And the representation  
11 is there's a -- I don't know if you discussed this. Right  
12 under those packages is a little blue piece of cover that they  
13 claim is a CD. Is that correct?

14 A. I'm not sure.

15 Q. Okay. Do you know who -- so -- do you know who allegedly  
16 found the CD?

17 A. No, I do not know.

18 Q. When you walked into the RV, no one told you, hey, look  
19 what we found, you need to picture these classified documents  
20 or the CD?

21 A. When we arrived into the RV, they instructed us to take  
22 pictures of what they were going to be taking into evidence.

23 Q. Okay. And you didn't move anything. Right?

24 A. Correct.

25 Q. In fact, you told Mr. Mund to stop moving things. Right?

Elyssa Gonzalez - Cross-Examination

1 A. Yes.

2 Q. Because on occasions he was moving. "Hey, you got to keep  
3 everything there." Right?

4 A. Correct.

5 Q. So as you go through the RV, take pictures of the  
6 evidence.

7 A. Yes.

8 Q. The evidence of a classified CD, you would agree, is  
9 evidence. Right?

10 A. Correct.

11 Q. It's pretty significant in evidence in this particular  
12 case in some of the counts?

13 A. Yes.

14 Q. And yet you don't see a CD?

15 A. Correct.

16 Q. You don't log a CD?

17 A. Correct.

18 Q. You don't take a picture of a CD?

19 A. Correct.

20 Q. You don't know how many people went into the RV before you  
21 went into it. Correct?

22 A. Correct.

23 Q. You don't know who touched the grenades or how long the  
24 grenades had been there before you came, before Mr. George took  
25 the pictures of the grenades. Correct?

Elyssa Gonzalez - Redirect Examination

1 A. Correct.

2 Q. Thank you, Ms. Gonzalez.

3 MR. FUTERMAN: I have no more questions, Your Honor.

4 THE COURT: Mr. Marcet, redirect?

5 REDIRECT EXAMINATION

6 BY MR. MARCET:

7 Q. Now, you were asked several questions about the  
8 photographs of the classified documents. Correct?

9 A. Correct.

10 Q. And as far as you know, you don't know if a CD was  
11 recovered. Correct?

12 A. Correct.

13 Q. Now, the folder that was searched, was C into evidence.  
14 Correct?

15 A. Correct.

16 Q. Did you ever look through it?

17 A. No.

18 Q. At the time of the search?

19 A. No.

20 Q. Did you look through it once it was put -- bagged into  
21 evidence?

22 A. No.

23 Q. Did you look through it when you were on the way to --  
24 when you were on the way to the FBI with it?

25 A. No.

Elyssa Gonzalez - Redirect Examination

1 Q. Did you even have authorization to transport that  
2 evidence?

3 A. No.

4 Q. What's required to transport that evidence?

5 A. A clearance -- a clearance.

6 Q. Did you participate in providing that information to the  
7 Department of Defense?

8 A. No.

9 Q. Did you communicate with them about their review?

10 A. No.

11 Q. You don't know anything about any of that?

12 A. No.

13 Q. There's other witnesses who know about that?

14 A. I don't know.

15 Q. Now, when you were taking photos of the area where the  
16 classified information was found, you take precautions to avoid  
17 taking photographs of the actual information.

18 A. Yes.

19 Q. And what types of precautions?

20 A. We don't want to have any more spillage, so we'll cover  
21 the information.

22 Q. So you were asked about photographs 160 and 161. So I'm  
23 going to zoom in. All right. We reviewed this as photograph  
24 160. Correct?

25 A. Yes.

Elyssa Gonzalez - Redirect Examination

1 Q. And so what area of the RV is this?

2 A. This is on the bench.

3 Q. And are there images that you used and things you used to  
4 block the actual classified information?

5 A. Yes.

6 Q. What is that in this photograph?

7 A. I believe it's the note --

8 Q. I'll zoom in for you.

9 A. Yeah.

10 Q. So what are we looking at here?

11 A. A notebook and a photo.

12 Q. Do you know who's in that photograph?

13 A. No.

14 Q. And those notes, do you know what they say?

15 A. No.

16 Q. But this is the photograph that you marked SECRET//NOFORN.

17 Correct?

18 A. Correct.

19 Q. And this is the area where your attention was drawn to  
20 classified information.

21 A. Correct.

22 Q. Did you independently look through it?

23 A. No.

24 Q. Did you independently look through the briefcase on the  
25 left of the photograph?

Elyssa Gonzalez - Redirect Examination

1 A. No.

2 Q. And then if we look at photograph 11J, is this the same  
3 area of the RV?

4 A. Yes.

5 Q. And is this photograph 161?

6 A. Yes.

7 Q. Now, when you saw this information, did it mean anything  
8 to you?

9 A. No.

10 Q. Did the classified information mean anything to you?

11 A. No.

12 Q. Now, I want to show you photograph 11M. So in this  
13 photograph, it appears to be darker than it was in the prior  
14 photograph.

15 A. Yes.

16 Q. And, here, did you ever read this document?

17 A. No.

18 Q. Did you ever leaf through this folder?

19 A. No.

20 Q. Why not?

21 A. Because it's secret information and it's on a need-to-know  
22 basis, and I did not need to know.

23 Q. So do you have any idea what other documents are in here?

24 A. No.

25 Q. Do you know if there were personal documents of the

Charles George - Direct Examination

1 defendant?

2 **A.** No.

3 **Q.** And do you know what this blue piece of plastic is here in  
4 the corner of the picture?

5 **A.** No.

6 **MR. MARCET:** Thank you, Your Honor. No further  
7 questions.

8 **THE COURT:** Thank you. You may step down.

9 **THE WITNESS:** Thank you.

10 **THE COURT:** You may call your next witness.

11 **MR. GOEDMAN:** United States calls FBI Task Force  
12 Officer Charles George.

13 **THE COURT:** Sir, if you'll come forward to be sworn.

14 **THE COURTROOM DEPUTY:** Please raise your right hand.

15 WHEREUPON,

16 **CHARLES GEORGE,**

17 was called as a witness and, after having been first duly  
18 sworn, testified as follows:

19 **DIRECT EXAMINATION**

20 **THE COURTROOM DEPUTY:** Please state your name for the  
21 record and spell your name.

22 **THE WITNESS:** Charles George. C-h-a-r-l-e-s,  
23 G-e-o-r-g-e.

24 **THE COURTROOM DEPUTY:** Thank you, sir. Please take  
25 the witness stand.

Charles George - Direct Examination

1                   **THE COURT:** Mr. Goedman.

2                   **BY MR. GOEDMAN:**

3                   **Q.** Good morning.

4                   **A.** Good morning.

5                   **Q.** Please state your name for the jury.

6                   **A.** Yes, Charles George.

7                   **Q.** Mr. George, where are you currently employed?

8                   **A.** I'm employed at Tampa Police Department.

9                   **Q.** Do you work with the FBI in that capacity?

10                  **A.** I do.

11                  **Q.** Did you participate in the search of the defendant's home  
12 on September 2021?

13                  **A.** Yes, I did.

14                  **Q.** Come back to that in a minute.

15                         Let's talk a little about your police career. How long  
16 have you worked in the Tampa Police Department?

17                  **A.** I've worked for Tampa Police Department for 22 years.

18                  **Q.** Do you have any particular specialization within the  
19 police department?

20                  **A.** I do. I am a FBI certified bomb technician. I'm on the  
21 bomb squad.

22                  **Q.** What does a bomb technician do exactly?

23                  **A.** For bomb technicians, we're all trained in one school. We  
24 are essentially -- we're all hazmat technicians. So anytime a  
25 public safety threat presents itself, whether it could be

Charles George - Direct Examination

1 something that's believed to be hazardous, everything from,  
2 say, a powder or a chemical, something along those lines  
3 chemically related to an improvised explosive device, military  
4 ordnance, commercial explosives, when those things present  
5 themselves in the public and law enforcement are involved, then  
6 we come out to those types of incidents and work those.

7 Q. Over your career as a bomb tech, what kind of training  
8 have you received?

9 A. So we're required by the FBI to train minimum two days a  
10 month and one week a year. I got certified at the hazardous  
11 devices school in Huntsville, Alabama, which is a six-week  
12 class. And then after that, I have attended numerous advanced  
13 training from improvised explosives, hand-entry techniques on  
14 how to hand enter improvised explosive devices, ordnance  
15 recognition for military ordnance, and there's a myriad of  
16 training over the last 16 years that I've been on the bomb  
17 squad that I've attended and completed.

18 Q. So during your time as a bomb tech or in the Tampa Police  
19 Department more generally, how many search warrants do you  
20 think you've executed or participated in?

21 A. Conservatively, at least 100.

22 Q. In those searches, have you seen search teams turn off  
23 security cameras that might be present at the search site?

24 A. I have.

25 Q. Why do they do that?

Charles George - Direct Examination

1 A. So the first concern always for law enforcement is officer  
2 safety. So ultimately when you're searching a house or  
3 entering a residence, you don't know who's inside. We plan for  
4 the worst and hope for the best. We hope that there's no one  
5 inside, but conversely we plan for there to be multiple people  
6 that are armed inside the residence. So turning off a camera,  
7 from the officer safety perspective, is the first and foremost  
8 just to enter the house to do a search.

9 Q. And so just so I understand it first, so there's the  
10 search, and is there anything that happens before the search  
11 team goes this the house?

12 A. Yes. We'll clear the residence to make sure there are no  
13 humans inside the residence that could present a threat.

14 Q. Right. So when you're -- when the team goes -- what's the  
15 team that goes in that does the clearing?

16 A. So the entry team or your initial clearing team.

17 Q. And when that entry team is going into the house, do they  
18 know if there's people inside?

19 A. They do not.

20 Q. Do they know if those people are armed?

21 A. They do not.

22 Q. Do they know what those people's intentions might be?

23 A. No.

24 Q. So what's the risk in that situation?

25 A. The risk is that you go into it unknown and someone could

Charles George - Direct Examination

1 have a tactical advantage on you by seeing you on camera,  
2 knowing when you're coming, and plan to essentially assault you  
3 or possibly harm you.

4 Q. Is that the only reason why a clearance team may want to  
5 turn off security cameras on a search site?

6 A. I mean, ultimately looking at tactics, it's not something  
7 that we would want to, say, make a public record. So if that  
8 was recorded and someone released that to the public, you know,  
9 what we do and how we clear things and how we move and clear  
10 through a room, that would be a concern if it, you know, became  
11 a public record.

12 Q. So to make sure I'm understanding you, you mean the  
13 homeowner or the residents of the home might have saved copies  
14 of those --

15 MR. FUTERMAN: Your Honor, I'm just going to object  
16 to any leading nature of this question.

17 THE COURT: Sustained.

18 BY MR. GOEDMAN:

19 Q. Do security cameras at search sites sometimes record  
20 video?

21 A. They do.

22 Q. Who controls that video?

23 A. Typically the homeowner.

24 Q. What could the homeowner do with those copies of those  
25 videos?

Charles George - Direct Examination

1 A. They could take the recording and they could release it to  
2 the public.

3 Q. During the hundreds of searches you've gone on, have you  
4 seen officers or agents wearing masks?

5 A. I have.

6 Q. Have you worn a mask at a search site?

7 A. I have.

8 Q. Did you wear a mask -- sorry. Did you wear a mask when  
9 you were searching the defendant's property?

10 A. I did.

11 Q. What kind of mask was that?

12 A. It was a COVID mask.

13 Q. Have you seen --

14 A. A cloth mask.

15 Q. Sorry. What was that?

16 A. It was like a cloth COVID mask.

17 Q. Have you seen agents or officers wear other types of  
18 masks?

19 A. I have.

20 Q. What do those look like?

21 A. Typically to cover your whole head with the exception of  
22 your eyes exposed.

23 Q. Why would an officer wear a mask like that?

24 A. In most cases, if someone is working undercover, they  
25 wouldn't want their identity to be known to people at the

Charles George - Direct Examination

1 search site or on camera for the purpose of identifying them if  
2 they do undercover work.

3 Q. Why would an undercover officer care if their identity was  
4 known?

5 A. Undercover work can be dangerous in and by itself, but if  
6 you were on or off duty and they knew who you were and you were  
7 doing undercover work, it poses a high safety risk to the  
8 undercover that does that kind of work in the community.

9 Q. Let's talk about the day September 30th. As the search  
10 began, you were on site?

11 A. I was.

12 Q. And what was your initial role at the search?

13 A. Just general search to assist in the searching of the  
14 residence.

15 Q. How long did you do that for?

16 A. Approximately two hours.

17 Q. Were your duties interrupted at some point?

18 A. They were.

19 Q. What happened?

20 A. I was contacted by Task Force Officer Belvin Sanchez, who  
21 advised me he was searching an RV on the property, and he found  
22 something of concern he believed were hand grenades. And  
23 because I'm a bomb tech, he requested my assistance.

24 Q. After Special Agent -- or Task Force Officer Sanchez  
25 called out from the RV, what did you do?

Charles George - Direct Examination

1 A. There was another bomb technician on site that's on the  
2 squad with me. I made contact with him, and we formulated a  
3 plan to enter the RV to determine if there were in fact  
4 possible hand grenades inside the RV.

5 Q. Did you take any safety precautions?

6 A. I did.

7 Q. What were those?

8 A. So we donned some personal protective equipment, tactical  
9 vests, ballistic helmets, eye protection, and then just gloves  
10 for crime-scene integrity.

11 Q. Were any steps taken to protect the other agents on site?

12 A. Yes. So ultimately, you know, anytime you're dealing with  
13 a potential improvised explosive device or anything that could  
14 explode, safety is very important for the people working on  
15 whatever we're doing and the people that are at the scene. So  
16 we wanted to make sure that the other folks that were on site  
17 searching were behind hard cover, meaning we put them in front  
18 of the house so they were not in line of site of the RV, where  
19 we were going to be working, should something happen when we're  
20 doing that. We made sure they were off at a safe distance and  
21 behind the residence so they weren't in line of site of the RV.

22 Q. You mentioned the term "hard cover." What is that?

23 A. Yeah. So hard cover would be -- obviously, I'm sitting  
24 behind this and this is wood. Fragmentation could go through  
25 this. Concrete blocks, engine blocks, super dense material is

Charles George - Direct Examination

1 what we refer to as hard cover. So should something blow up,  
2 that material would hopefully stop it before it hit you.

3 So we made sure we repositioned our search team that was  
4 on site to around the front of the residence so they were in  
5 front of the house and not next to the RV or where they could  
6 see us at the RV.

7 Q. In terms of the gear, the protective gear you put on, you  
8 mentioned a helmet.

9 A. Ballistic helmet and ballistic vest.

10 Q. Anything else?

11 A. Yeah. Eye protection, and then gloves, like I said, for  
12 crime-scene integrity, make sure they were sterile gloves.

13 Q. You had your gear on. What did you do next?

14 A. I obtained the camera from the -- from the photographer on  
15 scene, and myself and Special Agent Nicolussi proceeded inside  
16 the RV.

17 Q. Where did you go in the RV once you entered?

18 A. When we entered, we went towards the rear, Task Officer  
19 Sanchez told me it was on the bed. There was a chest rig or  
20 vest on the bed that had some grenades he believed in the side  
21 pouches of the vest. So we proceeded to the rear of the RV.

22 Q. All right. Showing the witness Government Exhibit 11F.  
23 Do you recognize this picture?

24 A. I do.

25 Q. What are we looking at?

Charles George - Direct Examination

1 A. So this is the photo that I took of the chest rig or vest.  
2 As the wearer would wear this, you can see where there's the  
3 silver magazines on the front. If that is the front, the way  
4 the wearer would wear this vest, the pouch there that has an  
5 open flap, you can see the top of what is a suspected hand  
6 grenade. That would be on the wearer's right side. And that  
7 is essentially what I took a photo of.

8 Q. The item inside of that pouch, what is that?

9 A. So the item inside the pouch believed -- looked like it  
10 was a hand grenade.

11 Q. Showing the witness what has been entered as Exhibit 13A,  
12 if I can get it to work.

13 What are we looking at here?

14 A. This is a top-down photo of the grenade removed from the  
15 pouch, of the top of the grenade looking straight down over it.

16 Q. And who took this photo?

17 A. I took this photo.

18 Q. And whose hands are in this photo?

19 A. Special Agent Nicolussi.

20 Q. Showing the witness Government's Exhibit 13B.

21 What are we looking at here?

22 A. This is a side view of that grenade that was removed from  
23 the right pouch on the vest.

24 Q. And, again, did you take this picture?

25 A. I did.

Charles George - Direct Examination

1 Q. Whose hands?

2 A. Special Agent Nicolussi.

3 Q. Showing the witness Government Exhibit Number 13C.

4 What are we looking at here?

5 A. This would be the pouch that would be on the wearer's left  
6 side of the vest that also had another suspected hand grenade  
7 in it.

8 Q. And you took this picture?

9 A. I did.

10 Q. And whose hands again are shown in this photo?

11 A. Special Agent Nicolussi.

12 Q. All right. Showing the witness Government Exhibit  
13 Number 13E.

14 What are we looking at here?

15 A. This is the photo -- side photo of that grenade that was  
16 removed from the left pouch.

17 Q. And did you take this picture as well?

18 A. I did.

19 Q. After taking these pictures of the grenades inside the RV,  
20 what did you do next?

21 A. We carried them outside so we could conduct x-ray  
22 diagnostics.

23 Q. Showing the witness Government Exhibit Number 13F.

24 What are we looking at here?

25 A. So this is a photo that I took of the grenade that was

Charles George - Direct Examination

1 removed from the right pouch of the vest with a scale, with a  
2 measuring scale in the photo.

3 Q. Why do you measure the grenades at the site?

4 A. A scale in the crime-scene photo will show, you know, its  
5 condition at the time that we were assessing it. So this would  
6 show us now today, since this is, you know, some time ago, what  
7 the size was, so if you were -- know what the size was of the  
8 item that we were taking a photo of.

9 Q. Showing the witness what has been admitted as Government  
10 Exhibit Number 13J.

11 What are we looking at here?

12 A. So this is an x-ray of one of the suspected hand grenades.

13 Q. Why do you x-ray the grenades on site?

14 A. Well, if it was inert, like sometimes we'll go out to  
15 calls in the field of bomb squad operations and a grenade may  
16 not be live. You can buy inert ones that don't -- aren't  
17 dangerous and they're not live. So ultimately we wanted to  
18 assess via an x-ray, much like we take photographs of the  
19 outside, this allows us, as bomb techs, to take photographs of  
20 the inside to determine if there are maybe some components  
21 present that would indicate it was possibly live.

22 Q. And were there components present that would indicate a  
23 live grenade?

24 A. There are.

25 Q. After you finished x-raying the grenades, what did you do

Charles George - Cross-Examination

1 next?

2 **A.** We collected them as evidence, and they got placed into  
3 paper bags and then into a container to transport them.

4 **Q.** And were you involved in transporting them away from the  
5 site?

6 **A.** I was in the vehicle that transported them, yes.

7 **Q.** Where were they taken?

8 **A.** They were taken to the Tampa Police Department bomb  
9 operation center where they were secured.

10 **Q.** And why were they taken to Tampa bomb operations center  
11 rather than the FBI?

12 **A.** The FBI does not have a container suitable to hold  
13 explosives. The bomb squad -- the Tampa bomb squad has an  
14 ATF-approved explosives magazine where this evidence can be  
15 stored, and that's why it was taken there.

16 **MR. GOEDMAN:** Thank you. No further questions.

17 Tender the witness.

18 **THE COURT:** Mr. Futerman.

19 **MR. FUTERMAN:** Thank you, Your Honor.

20 **CROSS-EXAMINATION**

21 **BY MR. FUTERMAN:**

22 **Q.** Good morning, Agent George.

23 **A.** Good morning.

24 **Q.** Talk about September 30th, the search of Mr. Brown's house  
25 as opposed to generalities. In this particular case, when

Charles George - Cross-Examination

1 multiple agents arrived at Mr. Brown's house, he's outside with  
2 his girlfriend, the owner of the house, Tylene Aldridge.

3 Right?

4 **A.** I believe so. I did not have any interaction with  
5 Mr. Brown or his girlfriend.

6 **Q.** Okay. You said a search team goes into the house, which  
7 they did in this case particularly. Correct?

8 **A.** Correct.

9 **Q.** And obviously they want to make sure that there's no one  
10 in there and it's safe and people aren't acting up. Right?

11 **A.** Correct.

12 **Q.** And that's what happened in this case. People went into  
13 the house to make sure there was no one in there and everything  
14 was safe. Right?

15 **A.** Correct.

16 **Q.** There were a couple of friendly dogs in there. Right?

17 **A.** Yes, sir.

18 **Q.** That's about it. But you said, then, for officer safety,  
19 they turn off the cameras.

20 **A.** Correct.

21 **Q.** How -- once you've cleared the house, you see no one is in  
22 there other than a couple friendly dogs, how does turning the  
23 cameras off make it more safe for the team? Because safety is  
24 not an issue at that point. The cameras are either on or off  
25 to see what's going on. It's not more safe at that point.

Charles George - Cross-Examination

1 There's no one in there. Right?

2 A. Correct.

3 Q. So --

4 **THE COURT:** What is the question you're asking?

5 That's a compound question. Are you asking if anyone was in  
6 there, or are you asking what you said before?

7 **BY MR. FUTERMAN:**

8 Q. So is the cameras turned off to preserves officers'  
9 tactics?

10 A. Well, and techniques. As I said on direct was that, you  
11 know, we're in there and we're searching and what methods we're  
12 using to search and how we're prosecuting the scene is  
13 something that, you know, there -- it's law enforcement  
14 training and techniques and tactics and procedures. So that  
15 is -- typically the cameras aren't turned back on. They're  
16 left off so we can conduct our search and do that without  
17 having to worry about it getting distributed as a public  
18 record.

19 Q. What's a secret tactic about searching a house?

20 A. There's no secret tactic.

21 Q. Okay. So you said that you want to make it more safe or  
22 to not show what people are doing, why, if it's so secret -- if  
23 it's not secret, why not just have the cameras, like body cam  
24 or leave the cameras on, to show as you're searching the house  
25 what you're doing?

Charles George - Cross-Examination

1 A. I guess it's possible you could.

2 Q. If you're concerned about the identity of officers in this  
3 case, so were officers -- and it's hot. It's September.

4 Right? There were officers with just their eyes being shown.

5 Correct?

6 A. Yes.

7 Q. All right. So in this particular search, there were  
8 people with like ski masks type of thing with just their eyes  
9 being shown. Correct?

10 A. Possibly.

11 Q. Okay.

12 THE COURT: I'm sorry. That's not an answer.

13 What --

14 THE WITNESS: Sorry, Your Honor. I don't recall if  
15 people were wearing those at this search, that particular style  
16 mask.

17 BY MR. FUTERMAN:

18 Q. Would it refresh your election if I showed you a picture?

19 A. Sure.

20 MR. FUTERMAN: If I may have a second, Your Honor.

21 Your Honor, may I approach the witness?

22 THE COURT: You may.

23 BY MR. FUTERMAN:

24 Q. I want you to look at this picture and first of all ask  
25 you if that might refresh your recollection as of

Charles George - Cross-Examination

1 September 30th of an agent wearing that mask?

2 **A.** Yes. It appears to be an agent from my squad.

3 **Q.** Okay.

4 **MR. FUTERMAN:** And, Your Honor, at this point, I'd  
5 like to admit which will be Defense Exhibit 116. Well,  
6 actually, I'll just reserve. That's fine.

7 **THE COURT:** You'll what?

8 **MR. GOEDMAN:** Your Honor, we --

9 **MR. FUTERMAN:** I'll just reserve on that.

10 **THE COURT:** All right.

11 **BY MR. FUTERMAN:**

12 **Q.** But having seen that picture, you now agree that it was  
13 agents from your squad with a ski mask on with only the eyes  
14 being shown. Right?

15 **A.** Yes, sir.

16 **Q.** You said there's nothing secret about the tactics that the  
17 cameras are switched off. Right?

18 **A.** Yes.

19 **Q.** And even the cameras that are showing of the search of the  
20 RV, because the RV and residence are separate. Correct?

21 **A.** They are separate.

22 **Q.** They were in separate places. Correct?

23 **A.** Yes.

24 **Q.** And you're not the one that found the grenades in the RV.  
25 Correct?

Charles George - Cross-Examination

1 A. I'm not.

2 Q. You don't know who put them there. Right?

3 A. That's correct.

4 Q. You don't know when they were put there. Correct?

5 A. Correct.

6 Q. And you're not the one that found the classified CD in the

7 RV.

8 A. Correct.

9 Q. You don't know when that was put in there.

10 A. Correct.

11 Q. And you don't know why.

12 A. Correct.

13 Q. Now, the -- from the FBI, Agent George, the acting  
14 supervisor special agent was Christopher Franck. Right?

15 A. Yes.

16 Q. And he is the supervisor on scene to supervise to make  
17 sure everything doesn't -- is done properly. Correct?

18 A. Yes.

19 Q. That's the whole -- it sounds simplified, but, hence,  
20 supervising the other agents. Correct?

21 A. Yes.

22 Q. And he would go into the house as a supervisor, clear the  
23 house, and then make sure that everything is done properly.

24 Correct?

25 A. I can't speak to what he did.

Charles George - Cross-Examination

1 Q. I get that.

2 A. But he is responsible for the location, the operation,  
3 yes.

4 Q. And that's what I wanted to make sure. He's responsible  
5 for the location and the operation. Right?

6 A. Yes, sir.

7 Q. And he's responsible to make sure that his -- not his, per  
8 se, but the agents that he's supervising search properly and  
9 follow procedures. Correct?

10 A. Yes, sir.

11 Q. All right. As the supervisor, you would appear on scene,  
12 and you wouldn't leave the scene until, you know, very close to  
13 the whole scene is cleared and pictures are taken and the  
14 evidence is photographed. Correct?

15 A. I can't speak for what a supervisor would do.

16 Q. Okay. Well, you would think he's supervising the whole  
17 operation. Right?

18 A. Yes.

19 Q. Okay. You wouldn't expect him to show up and then run off  
20 and take a trip to Disney or work. Right?

21 A. Would I expect that?

22 Q. Yeah.

23 A. I would not.

24 **MR. FUTERMAN:** All right. I have no more questions,  
25 Your Honor.

Charles George - Redirect Examination

1           **THE COURT:** All right.

2           Redirect.

3   **REDIRECT EXAMINATION**

4           **BY MR. GOEDMAN:**

5           **Q.** Few more, Mr. George.

6           The picture that defense counsel just showed you, do you  
7 have any idea when that was taken?

8           **A.** I do not.

9           **Q.** Have you ever seen it before?

10          **A.** I have not.

11          **Q.** In this -- at the September 30th search, do you have any  
12 idea when the cameras were turned off?

13          **A.** I do not.

14          **Q.** But based on your experience, cameras are typically turned  
15 off when -- when are cameras typically turned off?

16          **A.** As soon as possible. Ideally before you make that initial  
17 entry to search, to clear the house for persons.

18          **Q.** After the safety risk of the clearing team has been  
19 removed or resolved, are there other reasons why the cameras  
20 should be turned off?

21          **A.** Yes.

22          **Q.** Please explain those reasons.

23          **A.** For the purposes of, you know, whatever procedures we're  
24 following, the tactics, techniques, and procedures of the  
25 search, how we're handling the evidence, how it is handled, is

Charles George - Redirect Examination

1 for those reasons.

2 Q. There's a search methodology?

3 A. There is.

4 MR. FUTERMAN: Your Honor, I'm going to object to the  
5 leading.

6 THE COURT: Sustained.

7 BY MR. GOEDMAN:

8 Q. Defense counsel mentioned Special Agent Franck. Was he  
9 the only supervisor on site that day?

10 A. He was not.

11 Q. Was he in fact the arresting supervisor?

12 MR. FUTERMAN: Your Honor, again, leading.

13 THE COURT: Sustained. Rephrase your question.

14 BY MR. GOEDMAN:

15 Q. If Special Agent Franck -- do you know exactly what role  
16 Special Agent Franck had that day?

17 A. He was the acting supervisor on the squad.

18 Q. Was he focused on the arrest or the search?

19 A. Managing essentially both.

20 MR. GOEDMAN: No further questions, Your Honor.

21 THE COURT: All right. Thank you. You may step  
22 down.

23 THE WITNESS: Thank you, Judge.

24 THE COURT: Call your next witness.

25 MR. MARCET: United States calls Jacob Pries.

Jacob Pries - Direct Examination

1           **THE COURT:** Sir, if you'll come forward to be sworn.

2           **THE COURTROOM DEPUTY:** Please raise your right hand.

3 WHEREUPON,

4   **JACOB PRIES,**

5 was called as a witness and, after having been first duly

6 sworn, testified as follows:

7   **DIRECT EXAMINATION**

8           **THE COURTROOM DEPUTY:** Please state your name for the  
9 record and spell your name.

10           **THE WITNESS:** Jacob Pries. J-a-c-o-b, P-r-i-e-s.

11           **THE COURTROOM DEPUTY:** Thank you, sir. Please take  
12 the witness stand.

13           **THE COURT:** Mr. Marcet.

14 **BY MR. MARCET:**

15 **Q.** Good morning.

16 **A.** Morning, sir.

17 **Q.** Could you please introduce yourself to the jury?

18 **A.** My name is Jacob Pries. J-a-c-o-b, P-r-i-e-s. I'm a law  
19 enforcement investigation specialist for the United States Army  
20 Joint Munitions Command. We are located at the Rock Island  
21 Arsenal in Rock Island, Illinois.

22           Prior to that, I was emergency management coordinator for  
23 the United States Army Sustainment Command. Before that, I was  
24 a Davenport Police Officer for approximately 15 years. Spent  
25 some time as a task force officer with an FBI task force as

Jacob Pries - Direct Examination

1 well, and then I have 20 years of experience with the Iowa  
2 National Guard, two deployments overseas.

3 Q. Been practicing that, huh?

4 A. Making sure I didn't mess it up, yes, sir.

5 Q. Okay. So if you could pull the microphone a little closer  
6 to you. Oh, it's there. Just lift it up a little bit and try  
7 to speak slowly. You caught yourself there and slowed yourself  
8 down. So thank you.

9 Okay. So let's walk through that. So your experience,  
10 you said you were a police officer for 15 years. Right?

11 A. Yes, sir.

12 Q. And you served in the Army National Guard for 20 years?

13 A. Yes, sir.

14 Q. And what -- what have you done within the United States  
15 Army?

16 A. I was a combat engineer for the United States military.  
17 Essentially, we deal with explosives. We deal with the combat  
18 application of explosives.

19 Q. And in that capacity, did you deploy overseas?

20 A. Yes, sir.

21 Q. Where did you deploy?

22 A. Afghanistan.

23 Q. And in Afghanistan, what was your role?

24 A. My first deployment I was an engineer team leader. So we  
25 were assigned to an infantry team, infantry company. We were

Jacob Pries - Direct Examination

1 also assigned to support EOD operations.

2 Q. Now, your current position, can you explain to the jury  
3 what your current position is?

4 A. Yes, sir. Currently, I -- like I said, I work for the  
5 United States Army Joint Munitions Command. We have 13  
6 installations that are subordinate to us. In that role, I  
7 operate as the law enforcement senior investigator, also help  
8 program manage for all of the installations across for their  
9 law enforcement and security programs.

10 Q. Okay. So before we talk about specifically your job, can  
11 you explain what the United States Army Joint Munitions  
12 Command.

13 A. In laymen's terms, we control everything for the  
14 Department of Defense that is either shot out of a barrel,  
15 launched from a tube, dropped from an aircraft, or is an  
16 explosive. Everything from .22 caliber rounds all the way up  
17 to what we call MOABs or massive ordnance air burst bombs.

18 Q. And so in your current position, as a law enforcement and  
19 investigation specialist, what do you specifically do?

20 A. Day-to-day, I work with our installations and their law  
21 enforcement programs, making sure that all the training is done  
22 appropriately, making sure that we have proper funding, and  
23 then part of my job is to do trace requests that come in from  
24 other federal law enforcement agencies.

25 Q. And so what types of things do you investigate in your

1 position?

2 A. Everything from timecard fraud to theft to diversion of  
3 military munitions.

4 Q. What does diversion mean?

5 A. Stealing basically.

6 Q. Now, you said trace requests. Are you familiar with those  
7 in your position?

8 A. Yes, sir.

9 Q. And what is a trace request?

10 A. Essentially, it's a way for an investigator to be able to  
11 take a look at -- or anybody that requests it to be able to  
12 take a look at the history and locations of a munition.

13 Q. And approximately how many trace requests do you conduct  
14 every year?

15 A. Anywhere between 30 to 50, depending on the year.

16 Q. Now, in this case, did you have any involvement in the  
17 search warrant of the defendant's residence?

18 A. No, sir.

19 Q. You were just involved to run a trace request. Correct?

20 A. Yes, sir.

21 Q. And so what information is given to you, and what do you  
22 do with it when you're requested to do a trace request?

23 A. So the information that's provided to us is we have a  
24 standardized form that we send out to the agencies, they send  
25 us that form with the lot number, the description of the

Jacob Pries - Direct Examination

1 munition, and then any photographs that they have.

2 And then from there, I send that to my trace team, and  
3 they get into the different databases that we have to be able  
4 to trace that munition.

5 Q. All right. So let's talk about how these databases are  
6 used to trace munitions. So just give the jury an overview.  
7 How many pieces of weaponry and ammunition is the United States  
8 military required to track at any given time?

9 A. Billions.

10 Q. Billions with a B?

11 A. Yes, sir.

12 Q. And can you give us some examples of the types of  
13 munitions that the United States Army has to keep track of.

14 A. For instance, C-4 explosive and 112 block explosives.  
15 Those are usually made, excuse me, in batches of anywhere  
16 between 150,000 to 200,000 just for one contract. That can go  
17 to multiple different locations. Specifically, hand grenades,  
18 those are usually made on lots of 25 to 35,000. So when we  
19 talk about munitions, the Joint Munitions Command does 680 to  
20 700,000 inventory and/or ammunition activities per year.

21 Q. Now, what is the system that the United States Army uses  
22 to keep track of these -- all of these billions of different  
23 items?

24 A. Currently, it's the logistics management program or LMP.  
25 It's a computerized database that allows all of our logistics

Jacob Pries - Direct Examination

1 folks to be able to go into the system and look up a specific  
2 lot number or a specific munition or different locations.

3 Q. And that LMP system, how long has that been in place?

4 A. If memory serves, five, six years.

5 Q. And prior to the LMP system, how was it -- how were these  
6 munitions tracked?

7 A. Approximately the same principle, just different system.  
8 I don't remember the name of the system off the top of my head.

9 Q. Okay. So let's talk about M67 fragmentation grenades.  
10 Are you familiar with those items?

11 A. Yes, sir.

12 Q. Have you encountered those in your current position?

13 A. Yes, sir.

14 Q. And how about in your experience with the United States  
15 Army?

16 A. Yes, sir.

17 Q. Okay. So are -- how are M67 fragmentation grenades  
18 tracked? You mentioned lots before. Can you explain the  
19 difference between a lot number and a serial number?

20 A. Yes, sir. So serial numbers are specific to an actual  
21 item, one specific item. The only munitions that we track by  
22 serial number are Category I missiles and rockets. So if  
23 anybody has been watching the news, Javelins, Stingers, some of  
24 the stuff we've sent to Ukraine, those are very specific  
25 ready-to-go munitions.

Jacob Pries - Direct Examination

1 We don't track anything else outside of those category by  
2 item. We track them by lots. So when they run a contract or  
3 they run a lot of grenades, all the grenades in that lot will  
4 have a specific lot number assigned to it, and they'll all be  
5 tracked by that lot number.

6 Q. And so there's one -- you have a specific grenade that's  
7 part of a lot, I think you said of between 25 and 35,000. Is  
8 the United States Army able to distinguish between any one of  
9 those 25 to 35,000?

10 A. No, sir.

11 Q. Now, let's talk about how grenades are -- any ammunition  
12 is issued in the field. So when are soldiers issued grenades  
13 or other items?

14 A. During training or during operations.

15 Q. So what does training mean?

16 A. If they go to a qualification ranges. If they're going to  
17 familiarization ranges, if they're using them in joint  
18 exercises, things like that.

19 Q. Learning or maintaining proficiency?

20 A. Yes, sir.

21 Q. And then you mentioned missions. So what -- when are  
22 munitions issued for missions?

23 A. In my experience, it's been like with deployments to  
24 Afghanistan, so you'll get your combat load, your operational  
25 load, and that's when they're issued.

Jacob Pries - Direct Examination

1 Q. Now, what's -- where do these munitions come from? Where  
2 does a soldier get them?

3 A. They get them from an Ammunition Supply Point or an ASP.

4 Q. What is an Ammunition Supply Point?

5 A. It's basically just a staging area for all the ammunition  
6 and munitions.

7 Q. Now, what the role of the primary weapons sergeant in this  
8 process?

9 A. If they're on the authorized list, they'll be the one  
10 being issued weapons and ammunition.

11 Q. And are there any certifications -- with respect to M67  
12 fragmentation grenade, are there any certifications needed to  
13 be allowed to receive those from the ammunitions point?

14 A. You have to be able to go through hazmat class to be able  
15 to transport it anywhere off or around the Ammunition Supply  
16 Point.

17 **MR. MARCET:** Your Honor, I would offer into evidence,  
18 without objection, Government's Exhibit 55.

19 **THE COURT:** Received into evidence Government's  
20 Exhibit 55.

21 (Government's Exhibit 55 admitted into evidence.)

22 **BY MR. MARCET:**

23 Q. Okay. So if we look at the left side of the screen, are  
24 you able to read that name?

25 A. Yes, sir.

Jacob Pries - Direct Examination

1 Q. What is that name?

2 A. Jeremy Michael Brown.

3 Q. And can you tell us what we're looking at here at  
4 Exhibit 55?

5 A. It's a certificate from a 80-hour course performed at Fort  
6 Lewis Washington for the transportation of hazardous materials.

7 Q. And is that the course you were just explaining that's  
8 required to transport -- receive and transport grenades?

9 A. Yes, sir.

10 Q. Okay. So the weapons sergeant gets the grenades from the  
11 Ammunition Supply Point. Is there any paperwork generated?

12 A. There's a Form 581. It's a standardized form that we use  
13 for all branches. I believe it's a DD form. It's a Department  
14 of Defense form.

15 Q. What information goes on that form?

16 A. Who's being issued the munition, where it's coming from,  
17 the quantities, date and time that it was issued, and then unit  
18 identification codes.

19 Q. How long are those forms retained for by the U.S. Army?

20 A. Standard six years, three months.

21 Q. Six years and three months did you say?

22 A. Yes, sir.

23 Q. And whose responsibility is it to ensure that that  
24 paperwork is properly filled out?

25 A. Both the issuer and the receiver.

Jacob Pries - Direct Examination

1 Q. All right. So I want to talk about the grenades in this  
2 case. Again, you were not at the search. Correct?

3 A. No, sir.

4 Q. You were just provided photographs by the Department of  
5 Justice?

6 A. Yes, sir.

7 Q. And so let me show you -- look at Government's  
8 Exhibit 13A. Okay. So what are we looking at in Government's  
9 Exhibit 13A?

10 A. That is the top of an M67 fragmentation grenade. The  
11 thing right in your forefront is the fuse. It's an M213  
12 hand-grenade fuse.

13 Q. So what is the role of the fuse in the grenade?

14 A. It initiates the explosive chain and detonates the  
15 grenade.

16 Q. What does someone have to do to initiate that detonation  
17 process?

18 A. They have to pull the pin, the spoon then has to release.  
19 The firing pin has to start the primer, and then the firing  
20 chain has to occur.

21 Q. So is there any information in this photograph that would  
22 help you with your trace?

23 A. Yes, sir. So the nomenclature of the trace -- or of the  
24 fuse and then the lot number of the fuse as well.

25 Q. And so can you -- are you able to read it there or is it

Jacob Pries - Direct Examination

1 too blurry?

2 A. I believe I can read it.

3 Q. Just read for the record what is the -- what is the  
4 relevant information that you needed for your trace?

5 A. So the first line FUZE, F-U-Z-E, M213. That's the  
6 nomenclature of the actual fuse itself. And then the lot  
7 number M, as in Mary, E, as in Edward, I, as in Ida, 86A,  
8 Alpha, 009-001.

9 Q. Here's photograph 13B. What are we looking at here?

10 A. This is a fragmentation, M67 fragmentation grenade with a  
11 delay fuse.

12 Q. What information here was relevant to your trace request,  
13 if any?

14 A. The lot number there, sir.

15 Q. And can you show the jury where the lot number is?

16 A. It's right at the bottom. You'll see the ridge right  
17 along the central equator of the grenade. And then just below  
18 that, M as in Mary, A, as in Alpha, -11-12F, as in Foxtrot.

19 Q. And then looking at 13C. So this is the second grenade.  
20 Correct? You can see the first one had tape and the second one  
21 didn't --

22 A. Yes, sir.

23 Q. -- on the ring. Does this have the same lot number? I'm  
24 not going to make you read it again.

25 A. Yes, sir.

Jacob Pries - Direct Examination

1 Q. And then -- so here we see the end in 13E of the second  
2 grenade, lot number ending in 11F?

3 A. Dash 12 Foxtrot.

4 Q. I apologize.

5 A. Yes, sir.

6 Q. So given that these grenades' fuses had the same lot  
7 number and the bodies had the same lot number, what does that  
8 mean?

9 A. That would tell me that it came from the same lot or the  
10 same issuance.

11 Q. So they're manufactured together?

12 A. Yes, sir.

13 Q. Are you able to go into your system and see when, where,  
14 or how these two grenades last left the military custody, these  
15 two specific grenades?

16 A. I can see the last place they were issued to.

17 Q. The lot?

18 A. Yes, sir.

19 Q. But not these two specific grenades?

20 A. Not these two specific, no. Sorry.

21 Q. So you pulled two trace records in this case. Right?

22 A. Yes, sir.

23 Q. Were those -- was it one for each grenade or why were  
24 there two separate records?

25 A. There was one for the fuse and one for the grenade itself.

Jacob Pries - Direct Examination

1           **MR. MARCET:** Your Honor, I would offer into evidence  
2 Government's Exhibit 26 and 27, without objection.

3           **THE COURT:** I'll receive into evidence Government's  
4 Exhibits 26 and 27.

5           (Government's Exhibits 26 and 27 admitted into evidence.)

6 **BY MR. MARCET:**

7 **Q.** Let's start with Government's Exhibit 26. Let me zoom in.  
8 Okay. So I've zoomed in on Government's Exhibit 26 on Page 1  
9 on the section that starts with findings. So can you just walk  
10 us through starting with that section. So first it says,  
11 "DODIC." What is that?

12 **A.** That is the Department of Defense Identification Code,  
13 specific to M213 hand grenade fuses. The next line there is  
14 the National Stock Number. It speaks to the family of the  
15 fuses. It doesn't speak to one specific fuse.

16           The nomenclature is exactly what we would -- if I was to  
17 ask for something by nomenclature, this is what I would ask  
18 for. So it's the actual name of the item itself.

19           The next thing there is the lot number, which is the same  
20 as the lot number that was on the two fuses you showed earlier.

21 **Q.** So the lot number is what you read before right off the  
22 top of the fuse?

23 **A.** Yes, sir.

24 **Q.** So then the next section says, "This munition is not  
25 tracked by serial number. It is tracked by LOT number,

Jacob Pries - Direct Examination

1 National Stock number, and DODIC."

2 What does that mean it's tracked by lot number and not  
3 serial number?

4 **A.** So, again, the only munitions that are tracked by serial  
5 number are the ones that are Category I missiles and rockets.  
6 These things, because we produce so many of them and there are  
7 so many in a certain lot, the task of tracking each and every  
8 single one by a serial number specifically would be a monstrous  
9 task.

10 **Q.** So if the United States Army had to track every grenade  
11 and bullet by serial number, how many different items are we  
12 talking about?

13 **A.** Billions.

14 **Q.** Okay. So the next section says, "Current assets in the  
15 stockpile," and it says, "None."

16 Does that mean that the United States Army does not have  
17 these fuses in any form right now?

18 **A.** No, sir. It just means that they're not stored by fuse  
19 only at one specific location currently.

20 **Q.** And so can you explain that? A fuse is not something that  
21 functions on its own. Correct?

22 **A.** It's not designed to be issued on its own. When the fuses  
23 are manufactured or called upon for a contract, they're  
24 designed -- developed or built for a specific reason to be  
25 married up with a grenade.

Jacob Pries - Direct Examination

1 Q. And the M213 fuses, are they only used for grenades?

2 A. Yes, sir.

3 Q. So what happens once a fuse is married up with a grenade  
4 body?

5 A. The entire munition is tracked by lot number for the  
6 grenade body.

7 Q. And then so this, "Current assets in the stockpile, none,"  
8 mean there's either no single fuses or there could be fuses but  
9 they've been combined in some form?

10 A. Yes, sir.

11 Q. Once it's combined, how it is tracked?

12 A. By lot number of the grenade that it's attached to.

13 Q. Okay. The next section says, "Previous Storage Sites,"  
14 and lists two locations, "Bluegrass River Army Depot" and "Red  
15 River Army Depot?" What are those locations?

16 A. Those are manufacturing and storage depots. Bluegrass  
17 specifically is a chemical munitions depot as well as a  
18 conventional military depot. They store, they produce, and  
19 they demilitarize or destroy out-of-spec munitions.

20 Q. At the bottom, it says, "Manufacturer: Martin  
21 Electronics." What does that refer to?

22 A. That's the contractor or that's the manufacturer that was  
23 awarded the contract to develop and build the fuses.

24 Q. Continuing down to Page 2. Let me zoom in on even a  
25 smaller part that's hard to see.

Jacob Pries - Direct Examination

1 Okay. Are you able to read that?

2 A. Yes, sir.

3 Q. Okay. So at the top, is that the same -- that's just the  
4 part numbers that you read before. Correct?

5 A. Yes, sir. It's the NSN, National Stock Number and the  
6 DODIC.

7 Q. Those first five lines or four lines look like what we  
8 just talked about. The next line says, "Net Quantity." What  
9 does that mean?

10 A. That means there were 350,120 fuses developed on that  
11 contract by that specific manufacturer.

12 Q. And how were they packed?

13 A. 360 fuses to a box.

14 Q. And if we then look below, so we see, "Date Started, Date  
15 Completed, Date Inspected," three dates in 1986, what do those  
16 dates refer to?

17 A. The date that the manufacturing started, so it would be  
18 the January 6th, 1986 is the day the first fuse was started.  
19 The last fuse came off the line on January 24th, 1986, and it  
20 was inspected the same day.

21 Q. At the bottom, we have a chart, first in the middle there  
22 says "Serials," and then it's blank. What does that section  
23 refer to?

24 A. That's just the serial numbers for the actual munition.

25 Q. And they don't exist for this type of munition?

Jacob Pries - Direct Examination

1 A. No, sir.

2 Q. So then the next chart is called "Components." We don't  
3 need to walk through every line of this. Can you just explain  
4 to the jury what is this information telling you about those  
5 fuses that you were requested to trace?

6 A. So this chart tells me everything and anything that was  
7 involved in either making, packaging, shipping, or developing  
8 this specific thing. Right.

9 So the first there, you have the "Barrier Bag," just as an  
10 example. That's the actual vapor barrier bag that goes around  
11 the box of fuses to make sure they're not compromised by  
12 environmental contaminants.

13 Going down the line, the box, the packaging comes from  
14 Southern -- or Great Southern manufacturer, and that's the  
15 actual box, the cardboard box that all the fuses are put into,  
16 and then put into a greater box as well.

17 Q. Okay. So we looked at Exhibit 26. Now, I'm showing you  
18 Exhibit 27. So what is Exhibit 27 as compared to Exhibit 26?

19 A. Exhibit 27, sir, is the trace around the grenade itself  
20 versus the fuse.

21 Q. And can you just remind the jury, once the two are  
22 combined, are they still tracked separately?

23 A. No, sir.

24 Q. How are they tracked at that point?

25 A. By the grenade body or by the device.

Jacob Pries - Direct Examination

1 Q. Okay. So start with findings again. Okay. Can you just  
2 walk us through this paragraph again?

3 A. Yes, sir. So, again, DODIC, DOD Identification Code or  
4 Department of Defense Identification Code, NSN is the National  
5 Stock Number. That's going to be for all M67 fragmentation  
6 grenades. Nomenclature is the actual name of the item itself,  
7 and then the lot number is the same that was on the grenade  
8 body in the pictures. Again, ammunition is not tracked by  
9 serial number. There's too many to actually track by specific  
10 serial number. It is tracked by the lot number and the  
11 National Stock Number and DODIC.

12 Q. And then below, it talks about "Current assets in the  
13 stockpile." Correct?

14 A. Yes, sir.

15 Q. Can you explain what this section means?

16 A. Essentially, it just means that we have grenades under  
17 this lot number at these two specific locations.

18 Q. And so what are those locations?

19 A. There's an Area Support Group in Kuwait. That's going to  
20 be Ammunition Supply Point on a firebase in Kuwait. And then  
21 the Blue Grass Special Projects Office, which is in Bluegrass,  
22 Kentucky on the Blue Grass Army Depot.

23 Q. And then below this, you see "Previous Storage Sites" and  
24 a number of locations listed. So what does previous storage  
25 sites mean?

Jacob Pries - Direct Examination

1 A. Just means these grenades were around these locations at a  
2 certain time period, and they are no longer at that location.

3 Q. And when you say "these grenades," are you referring to  
4 the two specific ones that I showed you the picture of?

5 A. I'm sorry. I should have clarified. Grenades from this  
6 lot number.

7 Q. Okay. So we see the first one is AMC Blue Grass. The  
8 second one says, "FOB Wilson Afghanis." What does FOB mean?

9 A. Forward operating base.

10 Q. The next one is "Shindand ASA," do you know what that is?

11 A. Shindand is another firebase in Afghanistan.

12 Q. And then going through -- there's another location in  
13 Kuwait. Correct?

14 A. Yes, sir.

15 Q. Below that Iraq?

16 A. Yes, sir.

17 Q. Just multiple locations in Iraq, Afghanistan, and Kuwait.  
18 Correct?

19 A. Yes, sir.

20 Q. Now, in order to determine who was issued grenades at  
21 these locations, what would you have to do?

22 A. We would need to go back to the locations and get the 581  
23 from that location.

24 Q. If it was more than six years and three months ago, what  
25 would that mean?

Jacob Pries - Direct Examination

1 A. There's no expectations those records would be maintained.

2 Q. If those locations were in Afghanistan, would that prove  
3 difficult at this time?

4 A. Yes, sir.

5 Q. Can you explain why?

6 A. Essentially, due to how the United States military left  
7 Afghanistan, servers were destroyed, paperwork was burned, a  
8 lot of things was left behind. So it would be difficult to  
9 find those records.

10 Q. Now, moving on to Page 2.

11 THE COURT: Mr. Marcet, I know this is probably not a  
12 good time, but we need to take a morning recess.

13 MR. MARCET: Yeah. We're moving to the next page.  
14 This is fine.

15 THE COURT: Ladies and gentlemen, we're going to be  
16 in recess until five minutes after 11. You're welcome to walk  
17 around. Please don't discuss the case, and leave your pads on  
18 your chairs.

19 THE COURT SECURITY OFFICER: All rise.

20 (Jury out at 10:45 a.m.)

21 THE COURT: Mr. Pries, you may step down if you would  
22 like. Please don't discuss your testimony and leave our mic.

23 THE WITNESS: Yes, ma'am.

24 THE COURT: All right.

25 THE WITNESS: Thank you, Your Honor.

Jacob Pries - Direct Examination

1           **THE COURT:** We're in recess until five minutes after  
2 11.

3           (Recess from 10:46 a.m. to 11:07 a.m.)

4           **THE COURT SECURITY OFFICER:** Please be seated.

5           **THE COURT:** Okay. Would you get the jurors. Would  
6 you get the jurors.

7           **THE COURT SECURITY OFFICER:** All rise.

8           (Jury in at 11:08 a.m.)

9           **THE COURT SECURITY OFFICER:** Please be seated.

10          **THE COURT:** Mr. Marcet.

11 **BY MR. MARCET:**

12 **Q.** Okay. Mr. Pries, where we left off, we were -- we had  
13 just finished Page 1 of Exhibit 27. So I'm showing you Page 2  
14 of Exhibit 27. So what is Page 2? I'll zoom in on the text.  
15 But if you could explain to the jury, what is Page 2?

16 **A.** Page 2 is where these grenades by lot number were  
17 essentially constructed or manufactured. Miesau Army Depot in  
18 Germany was deactivated in 1989.

19 **Q.** That was like a Cold War facility?

20 **A.** Yes, sir.

21 **Q.** When the facilities deactivated, what happens with the  
22 grenade and other things that was there?

23 **A.** Any property or munitions are moved to other depots or  
24 storage locations.

25 **Q.** Okay. Continuing down to Page 3, so we see that "End item

Jacob Pries - Direct Examination

1 ADC: Ammunition Data Card." I'll zoom in on the top.

2 Okay. So the first four lines, again, we see the  
3 information we already saw, and then tell us about the fifth  
4 line, net quantity?

5 A. Net quantity is 34,828 were developed on this contract or  
6 designated under this lot number.

7 Q. So are those -- how are those 34,828 tracked?

8 A. By lot number.

9 Q. Is there any way to distinguish between any one of those?

10 A. No, sir.

11 Q. Then below, we see "Date Started, Date Completed, and Date  
12 Inspected." Date started is December of 1986, completed and  
13 inspected on February 17th, 1987?

14 A. Yes, sir.

15 Q. So what does that mean?

16 A. It means the first grenade was either started and/or  
17 constructed on the 18th of December 1986. Last one came off  
18 the line the 17th of February, 1987, and they were all  
19 inspected that same day.

20 Q. Below we see "Component." What does that mean?

21 A. So similar to the fuses, sir, these are all the pieces and  
22 parts that would go into this lot of grenades. Sometimes you  
23 see multiples because that specific component is being pulled  
24 from different lots from different manufacturers to be put into  
25 the completed device.

Jacob Pries - Direct Examination

1 Q. And so these grenades were manufactured between 1986 and  
2 1987. Correct?

3 A. Yes, sir.

4 Q. So that's 35 years ago. Is that right?

5 A. Approximately, yes, sir.

6 Q. And at the time you ran this search, there were still  
7 grenades in certain locations in the Army's possession?

8 A. Yes, sir.

9 Q. Is that common to have grenades for 35 years?

10 A. Depending on the munition, yes, sir.

11 Q. And will grenades continue to function?

12 A. As long as they're inspected on a regular basis, which  
13 they are.

14 Q. Can you explain that, when munitions have been stored for  
15 a period of time?

16 A. So each munition, each different type of munition has its  
17 own inspection schedule. So whether it be every year, every  
18 five years, ten years, whatever that schedule may be. We have  
19 ammunition quality control specialists that will go into  
20 certain locations and inspect the munition itself to make sure  
21 that there's no -- hasn't been any degradation, hasn't been any  
22 compromise of the actual munition or device.

23 Q. At times are there recalls of munitions or parts of  
24 munitions?

25 A. Yes.

Jacob Pries - Direct Examination

1 Q. So, for example, if you have grenades that are assembled  
2 and there's a recall for the fuse, what happens?

3 A. Essentially, all the grenades are pulled and then new  
4 fuses are put back on. It becomes a new lot.

5 Q. And is that what happened with these grenades?

6 A. Yes, sir.

7 Q. So if we look at the remarks, see if this is big enough.  
8 I think that's a little too small still. Okay. So that first  
9 line, right now we're on Page 4, and then the top box says  
10 Line 3, and it gives you an original lot data, lot number  
11 ending in D instead of F, and it says July of '69. What does  
12 that mean?

13 A. That means that is when the actual first grenade was  
14 designated, first grenade was developed, date of manufacture.

15 Q. And then where here does it explain that a new fuse was  
16 placed in it?

17 A. So if you look at Line 8 "Required Fix Applied," they took  
18 a previous fuse, I don't remember the nomenclature for that  
19 fuse, but they replaced it with the new at the time 213 fuses.

20 Q. And then if we look at number 11, what does that tell us?

21 A. That based on the fact that they changed out the fuses and  
22 then also added a couple grenades, they redesignated it to a 12  
23 Foxtrot from a 12 Delta lot number.

24 Q. And is that the lot number that was on the fuse that you  
25 were provided pictures of?

Jacob Pries - Cross-Examination

1 A. On the grenade, yes, sir.

2 Q. Sorry. Correct. From the grenade. And then, finally,  
3 the last page says, "This item has not been sold as FMS." Can  
4 you explain to the jury what that means?

5 A. FMS is Foreign Military Sales. Joint Munitions Command  
6 does facilitate sale of ammunitions to allied countries and  
7 allied entities that are foreign to a country.

8 Q. Grenades from this lot were not sold in that manner?

9 A. No, sir.

10 Q. Now, apart from obtaining these records, did you have any  
11 other involvement in this information?

12 A. No, sir.

13 MR. MARCET: Thank you, Your Honor. I have no  
14 further questions.

15 THE COURT: All right. Mr. Futerman.

16 MR. FUTERMAN: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. FUTERMAN:

19 Q. Good morning, Mr. Pries.

20 A. Good morning, sir.

21 Q. Again, we've never met. Correct?

22 A. No, sir.

23 Q. Never been able to take your deposition?

24 A. No, sir.

25 Q. Asking you questions for the first time. Okay.

Jacob Pries - Cross-Examination

1 Mr. Pries, this is a very detailed report. First time I've  
2 ever seen a trace report. So I'm going to try to go through it  
3 simply so I understand it so we can maybe fill in some gaps.

4 A. Yes, sir.

5 **MR. FUTERMAN:** First of all, Your Honor, at this  
6 point, I'd like to admit Defense Exhibit 111, without  
7 objection.

8 **THE COURT:** I'll receive into evidence Defense  
9 Exhibit 111.

10 (Defendant's Exhibit 111 admitted into evidence.)

11 **BY MR. FUTERMAN:**

12 Q. So my first simple question is, the date that this was  
13 actually -- request received was the 22nd of August 2022. Is  
14 that correct?

15 A. Yes, sir.

16 Q. All right. Do you know when Mr. Brown was charged?

17 A. I have no idea, sir.

18 Q. Okay. Do you know if it was Mr. Brown or the government  
19 that actually requested this trace?

20 A. It was sent to us by the government.

21 Q. Okay. And do you know it's by Mr. Brown that asked the  
22 government to do that?

23 A. I do not.

24 Q. Because you would agree, certainly, if that's something  
25 that the defense wanted to do, there may be a reason for that.

1 Correct?

2 A. Most likely.

3 MR. MARCET: Objection, Your Honor. Speculation.

4 THE COURT: Sustained.

5 BY MR. FUTERMAN:

6 Q. I'm going to ask you again in layman's terms, we have this  
7 trace of the grenades. Right? And this is the trace of the  
8 actual grenade. Right?

9 A. Yes, sir.

10 Q. Or grenades. And we have a very detailed trace of the  
11 grenade. Right? I mean, we have specific places detailed,  
12 countries, Iraq, Afghanistan, Kuwait, right, we have different  
13 places on there. Correct?

14 A. Yes, sir.

15 Q. By the way, what is Blue Grass Special Projects Office?

16 A. That's one of the suboffices at the Blue Grass Army Depot.

17 Q. Where is that, Kentucky?

18 A. It's in Richmond, Kentucky, yes, sir.

19 Q. Okay. But on this trace, to trace these grenades, we  
20 actually have such a specific trace, we know to the number, the  
21 lot, you actually gave the exact number of the lot. Correct?

22 A. Overall lot, yes, sir.

23 Q. Okay. To the one, I think you gave the actual numeric  
24 number?

25 A. I believe so.

Jacob Pries - Cross-Examination

1 Q. How come we have no dates on this?

2 A. This is not tracked by date. This is simply tracked by  
3 location information. So the DODAAC is the Activity Address  
4 Code, so that is specific to the location that they were sent.

5 To go into the specific date in which they were sent to  
6 that location, it would require a different database.

7 Q. Okay. Again, so in simple terms, if we wanted to get  
8 dates that correlate to this, we could do it. Right?

9 A. I believe -- if the record was still available, yes, sir.

10 Q. In this case, when an issue for the jury to decide is --

11 MR. MARCET: Objection, Your Honor. Counsel is  
12 testifying.

13 THE COURT: Sustained. Rephrase your question.

14 MR. FUTERMAN: I will.

15 BY MR. FUTERMAN:

16 Q. We could get dates that correlate to this specific  
17 location. Right?

18 A. If the record is still available, yes, sir.

19 Q. And you made -- you or anyone working with you through the  
20 government made no effort to correlate this to dates. Correct?

21 A. I was not asked to.

22 Q. Okay. So if you were asked to, for example, we could  
23 potentially look at all the dates where this lot -- these two  
24 grenades before the jury from this lot dates correlate.

25 Correct?

Jacob Pries - Cross-Examination

1 A. If the record was available.

2 Q. Okay. And if it was. Right? If it was?

3 A. If it was.

4 Q. Okay. So let's hypothetically just presume there was  
5 records that actually showed all these dates, we could then  
6 cross-reference the dates and locations to say where Mr. Brown  
7 was. Right?

8 A. I would assume so.

9 Q. Never asked to do that?

10 A. No, sir.

11 Q. That's not Mr. Brown's fault. Right?

12 MR. MARCET: Objection, Your Honor.

13 THE COURT: Sustained. That's not a question for  
14 this witness.

15 BY MR. FUTERMAN:

16 Q. Again, educate me on this, because I don't understand. It  
17 says document show assets in the stockpile. Right?

18 A. Uh-huh.

19 Q. Does that mean, then, these grenades would be in the  
20 stockpile?

21 A. So physically at these two locations, currently there are  
22 grenades that have this lot number attached to them.

23 Q. Okay. So when grenades go missing or they're use or  
24 they're taken, right, there's supposed to be a form, right,  
25 grenades are tracked. Correct?

Jacob Pries - Cross-Examination

1 A. Yes, sir.

2 Q. All right. So there's supposed to be paperwork that would  
3 show whether the grenades had been used or taken. Right?

4 A. There's a Form 581 that shows issue and turn-in.

5 Q. Okay. And the Form 581 has two parts to it, I think you  
6 told us. Right?

7 A. Yes, sir.

8 Q. Two people have to go through that form. Correct?

9 A. Yes, sir.

10 Q. These grenades that are part of this lot number, if I  
11 understand it now, were in 1985, '86, and then they've traveled  
12 Kuwait, Afghanistan, Iraq, and the United States. Is that  
13 right?

14 A. Based on what I've seen, yes, sir.

15 Q. So they originate there, they travel all these places, and  
16 the grenades the government showed you, the pictures, would be  
17 part of that lot that would have to have been taken Kuwait,  
18 Afghanistan, United States, and then end up in Mr. Brown's RV.  
19 Is that right?

20 A. Yes, sir.

21 Q. Are you familiar with the Form 5692?

22 A. Not off the top of my head, sir.

23 Q. Is it fair to say there are multiple forms that track  
24 grenades?

25 A. There's multiple forms that track munitions, yes, sir.

Jacob Pries - Redirect Examination

1 Q. Okay. Again, in very simple terms, because we don't have  
2 many dates and for a variety of reasons, you cannot say that  
3 the two grenades that you were shown pictures of, that were in  
4 Mr. Brown's alleged possession on September 30th, were ever in  
5 his possession before. Correct?

6 A. I can't say definitively, no, sir.

7 Q. I want to be clear about the word "definitively."

8 A. I cannot, no.

9 Q. Let's be clear on that last word. Words make a  
10 difference. Right? So not even definitively; you can't say  
11 period?

12 A. I cannot.

13 Q. There's nothing that will show in any way on this form  
14 that these grenades were ever in his possession before.  
15 Correct?

16 A. Correct.

17 Q. All right.

18 MR. FUTERMAN: Your Honor, thank you. I have no more  
19 questions.

20 THE COURT: Any redirect, Mr. Marcet?

21 REDIRECT EXAMINATION

22 BY MR. MARCET:

23 Q. All right. So looking back at Exhibit 27, I want to make  
24 sure I understood or didn't understand what you said.

25 So we see several previous storage sites, and you said

Jacob Pries - Redirect Examination

1 before, the lot was like 34,828, I think?

2 A. Something like that, yes, sir.

3 Q. Approximately.

4 A. Yes, sir.

5 Q. Do all 34,828 grenades move together to each of these  
6 places?

7 A. No, sir.

8 Q. So can you -- can you just explain, for example, the two  
9 grenades that were found in this case. Can you say which, if  
10 any, of these they were at?

11 A. I cannot, no, sir.

12 Q. So what do these different locations refer to?

13 A. Looking at this list, outside of AMC Blue Grass, these are  
14 all forward areas that were in support of or in the theater of  
15 operations for Afghanistan and Iraq. Depending on what the  
16 request was from that area would depend on how many grenades  
17 were shipped to that specific location.

18 Q. And then you were asked questions about the paperwork that  
19 is generated. How long are those records retained for?

20 A. Six years and three months, sir.

21 Q. And --

22 A. The issuing documents are six years and three months.

23 Q. And then in order to get the grenades from those forward  
24 supply points, what training would you need?

25 A. You would have to have the hazmat training to be able to

Michael O'Lena - Direct Examination

1 be on the list to receive and transport.

2 Q. Is that what we're looking at in Government's Exhibit 55?

3 A. Yes, sir.

4 Q. And what role would the primary weapons sergeant play in  
5 that process?

6 A. Based on that, he would be able to be issued those  
7 grenades directly from the ASP.

8 MR. MARCET: Thank you, Your Honor. I have no  
9 further questions.

10 THE COURT: Thank you, sir. You may step down.  
11 You may call your next witness.

12 MR. MARCET: United States calls ATF explosives  
13 expert Michael O'Lena.

14 THE COURT: Sir, if you'll be sworn.

15 THE COURTROOM DEPUTY: Please raise your right hand.

16 WHEREUPON,

17 MICHAEL O'LENA,

18 was called as a witness and, after having been first duly  
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 THE COURTROOM DEPUTY: Please state your name for the  
22 record and spell your name.

23 THE WITNESS: Michael O'Lena. M-i-c-h-a-e-l, O,  
24 apostrophe, L-e-n-a.

25 THE COURTROOM DEPUTY: Thank you, sir. Please take

UNITED STATES DISTRICT COURT

Michael O'Lena - Direct Examination

1 the witness stand.

2 **THE COURT:** Mr. Marcet.

3 **BY MR. MARCET:**

4 **Q.** Good morning, sir.

5 **A.** Good morning.

6 **Q.** Could you please introduce yourself to the jury?

7 **A.** Yes, my name is Michael O'Lena. I'm the chief of the  
8 Explosives Industry Programs Branch with the Bureau of Alcohol,  
9 Tobacco, Firearms, and Explosives.

10 **Q.** And how long have you been with ATF?

11 **A.** I've been with ATF since 2001.

12 **Q.** So can you just explain with respect to explosives, what  
13 is the role of ATF?

14 **A.** Our primary goal, we regulate the explosives materials  
15 that are all over the country, storage, licensing,  
16 recordkeeping of those explosives. So we ensure that  
17 industry -- primarily ensure that industry members who  
18 manufacture, import, acquire, use explosive materials comply  
19 with those regulations.

20 **Q.** So I want to talk about some of your experience, and we'll  
21 talk about your current role. So how did you start with ATF?

22 **A.** So like I said, I started in 2001 as an inspector. That  
23 transitioned into what is now known as industry operations  
24 investigator, and I started out in Seattle Washington, I did  
25 that from 2001 to 2008. And during that time, we were -- I was

Michael O'Lena - Direct Examination

1 primarily responsible for inspecting industry members who, like  
2 I said, manufacture, import, use, acquire explosive materials  
3 to ensure they comply with the Federal Firearms Regulations as  
4 well as the federal explosives regulations.

5 In 2005, I went to a position, same position, but I only  
6 inspected people who were involved in the explosives industry.

7 **Q.** So as a inspector or an industry operations investigator,  
8 is that different from an ATF special agent? We've heard  
9 testimony from an ATF special agent before?

10 **A.** That's correct. We are completely different positions.  
11 They have arrest powers. They do the criminal enforcement for  
12 ATF, whereas the industry operations investigators, we're  
13 strictly involved in the regulations with the regulated  
14 commodities, the regulated industry members. So there is a  
15 difference, yes.

16 **Q.** Okay. So after your time as an inspector and industry  
17 operations investigator, what did you do?

18 **A.** So in 2008, I became a explosives enforcement specialist.  
19 And, basically, I had done that position until last year in  
20 2021. And during that time, we were primarily responsible for  
21 managing all of ATF's explosives regulatory programs. So, for  
22 instance, if a determination needed to be made explosives  
23 related to termination or explosives classification, that would  
24 go through the explosives industry programs branch. If a  
25 regulation needs changing or amending a new regulation, then

Michael O'Lena - Direct Examination

1 myself and my coworkers would be the subject-matter experts to  
2 help facilitate that rulemaking process.

3 A big part of what we do is outreach. So getting the  
4 information to the people that need it to help them comply with  
5 the regulations, that's kind of our number one component within  
6 our -- within our branch and division.

7 Education of our own people, so we participate in our  
8 explosives training programs. Our basic program, when our new  
9 people come on, we're involved with that as well as our  
10 advanced explosives training that our industry operations  
11 investigators go through.

12 So a lot of different things. We do a lot of outreach  
13 with industry members, industry associations, again, to help  
14 facilitate that partnership. Obviously, public safety is our  
15 number one goal to help ensure those explosives are safe. So  
16 outreach and education are a vital part of that mission.

17 Q. And your current position, you said, is the chief of the  
18 explosives industry programs branch. Correct?

19 A. Correct, yes. So last year I, for some reason, decided to  
20 oversee the branch that I was part of up until that time. So  
21 now I'm the supervisor of that branch, yeah.

22 Q. And as a supervisor, what do you do?

23 A. Some of the same stuff, as far as the outreach and  
24 education. But instead of writing, researching the  
25 classifications, the determinations, now I make sure -- I

Michael O'Lena - Direct Examination

1 review them to make sure they're accurate, concise, complete,  
2 and then I sign those determinations and classifications. I  
3 help ensure that all the projects are moving forward, the  
4 normal administrative stuff that a supervisor unfortunately has  
5 to do. But I'm still very involved with the classifications  
6 and determinations.

7 Q. And so in the course of your career from 2001 to present,  
8 approximately how many different evaluations of explosive  
9 storage methods have you participated in?

10 A. I don't have a number. It's a lot. Certainly in the  
11 thousands, between the inspections and determinations we make,  
12 our division last year, we had over 8,000 inquiries from the  
13 division. And, again, that's spread out through a number of  
14 people, but it's a lot.

15 Q. Okay. So does ATF promulgate rules that govern the  
16 storage of explosives?

17 A. Yes, we do.

18 Q. Those apply to both normal people who want to possess  
19 explosives as well as industry members. Correct?

20 A. That's correct. Yes.

21 Q. And how are those regulations made public and codified?

22 A. So through the Federal Register, the rulemaking process,  
23 those regulations are -- they go back 50 years at this point, a  
24 lot of our regulations. So through the Federal Register, the  
25 Code of Federal Regulations, 27 CFR, Part 555 is the commerce

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1 and explosives. That's what -- kind of where the storage  
2 regulations are found. And those are made available to anybody  
3 who has the desire to read those regulations. They're on our  
4 website. There's numerous sources to obtain those regulations.

5 **Q.** And so what are the different types of buildings or  
6 facilities that can be used to store explosives?

7 **A.** So we have five types of magazines we call them. And,  
8 again, we -- magazines read, these magazines contain  
9 explosives. So the terminology is a little strange, but  
10 explosive storage magazines. We have five types. A Type 1  
11 magazine is a permanent building used for the storage of high  
12 explosives. A Type 2 is a portable or mobile structure for the  
13 storage of high explosives. Type 3 is for just temporary  
14 storage of explosives. The Type 4 is for low explosives. And  
15 a Type 5 is for blasting agents.

16 **Q.** And so can you explain the difference between high  
17 explosives, low explosives, and blasting agents?

18 **A.** Sure. Yeah. And so our classification system within ATF  
19 is strictly for the storage of explosives. It's a pretty  
20 straightforward, pretty simple system. It's like you said,  
21 high explosives, low explosives, and blasting agent.

22 High explosives are simply explosive materials that  
23 detonate when unconfined by a blasting cap or detonator, as  
24 they're now called. Low explosives, they deflagrate when  
25 confined. And then a blasting agent is simply a mixture of

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1 fuel and oxidizer. It's intended for blasting. So a lot of  
2 commercial-blasting operations, the mining operations, that's  
3 where you see a lot of blasting agent. Very insensitive and  
4 not otherwise classified as a high or low explosive. That's  
5 the classification system.

6 Q. And are you familiar with M67 fragmentation grenades?

7 A. Yes. I'm familiar with the construction and components  
8 that go into them, yeah.

9 Q. If it was a functioning M67 fragmentation grenade, would  
10 that be high explosive or low explosive or blasting agent?

11 A. They could contain high explosives, so they would go under  
12 the high explosive regulations.

13 Q. Can you walk us through the different type of magazines.  
14 We'll stay focused on high explosives.

15 A. Sure.

16 Q. So what is a Type 1 magazine?

17 A. Type 1, as I said, it's a permanent structure building,  
18 something probably usually with a foundation that's not moving  
19 and that's for the storage of high explosives. Other types can  
20 be stored in there as well. But high explosives have to be in  
21 a Type 1 or a Type 2 magazine. There are certain requirements  
22 that go along with each type of magazine.

23 Our regulations are -- I'll expand if that's okay. Our  
24 regulations are to ensure that bad things don't happen to the  
25 explosives while they're stored in the magazine. And then in

Michael O'Lena - Direct Examination

1 turn, if something that does go wrong, there's other  
2 regulations in place to help ensure the public are safe from  
3 whatever accident occurred.

4 So in this case, preventing bad things from happening,  
5 such as an explosion within the magazine, a theft of the  
6 explosives, there's certain construction requirements. So, for  
7 instance, Type 1 magazines, there's a few different options,  
8 but typically, you know, six inches of concrete, six inches of  
9 brick, some masonry combination that would help, you know, with  
10 bullet resistant. They all have to be bullet resistant, theft  
11 resistant, weather and fire resistant. Those are kind of the  
12 general categories. And then the specific requirements help  
13 achieve all of that. So that six inches of concrete block will  
14 help prevent a bullet from entering that if somebody were to  
15 shoot into there.

16 The locking, there's certain locking requirements for all  
17 of the magazines. Generally, it's padlocks that are protected  
18 with quarter-inch steel hoods. So you'd have a padlock on the  
19 magazine with a steel hood protecting it from prying or lever  
20 action. That's pretty typical with all the magazines. And,  
21 yeah, so nonsparking lining on the interior to help if there  
22 were sparks. Metal in the magazine would help prevent it, so  
23 yeah, that's kind of the Type 1 summary.

24 Q. Now, are glass or plastic permitted in the construction of  
25 a Type 1 magazine?

Michael O'Lena - Direct Examination

1 A. No, no. There's -- it's -- primarily it calls for steel,  
2 concrete, some kind of masonry, and wood. Those are -- those  
3 are the options pretty much throughout the regulatory scheme  
4 for magazines.

5 Q. Okay. So then let's talk about the requirements for a  
6 Type 2 storage device. What's the purpose of Type 2 storage?

7 A. The purposes for the portable are mobile storage of high  
8 explosives. So, again, we're not talking buildings now. We're  
9 talking about typically what we see with Type 2 magazines are  
10 boxes. If you would picture maybe an eight-foot high by  
11 eight-foot wide by eight-foot long steel box. Again, very  
12 heavy. Can't move them easily. Can move them with a crane,  
13 but -- and they do a lot of it. Industry members do move them.  
14 But quarter-inch steel and two inches of hardwood. That's kind  
15 of -- that's the regulatory requirement for Type 2 magazines.  
16 Same locking, as I mentioned before, you know, the padlocks  
17 with the steel hoods. There's a couple other options, like  
18 mortice locks or three-point locks. So there's a couple  
19 options for locking, but they're the same for Type 1 and Type 2  
20 magazines.

21 Q. And then as for -- are there any other types of magazines  
22 that Type 1 explosives can be stored in?

23 A. For high explosives.

24 Q. Sorry. For high explosives?

25 A. So the only other option for high explosives would be in a

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1 Type 3, and that is simply for the temporary storage of the  
2 explosives. So if an industry member were using explosives on  
3 a jobsite, a lot of them bring out what we have -- it's a  
4 Type 3 magazine, which is commonly known as a day box, so they  
5 would temporarily store. They have to be occupied. A person  
6 has to kind of oversee that while they're using it. And then  
7 at the end of the day, it has to go back to a Type 1 or Type 2.  
8 So the Type 1 or Type 2 is the only permitted storage of high  
9 explosives for overnight storage. Maybe that's a better way of  
10 putting it.

11 Q. Are there any requirements for how Type 3 magazines are  
12 constructed?

13 A. Yeah. Yeah. It's much less. It doesn't have to be  
14 bullet resistant. So a 12-gauge steel lined with half inch of  
15 plywood would suffice, and the locking -- the requirements for  
16 that are just a one unhooded padlock. And that's because that  
17 particular magazine has to be attended by the industry member.  
18 So the requirements are significantly less, and they're not  
19 being stored overnight.

20 Q. And are glass or plastic permitted in the construction of  
21 a Type 3 storage?

22 A. No, they're not, no.

23 Q. Now, does ATF also publish what's called a table of  
24 distances?

25 A. Correct.

Michael O'Lena - Direct Examination

1 Q. So can you explain what the table of distance is?

2 A. Yeah. So when I mention the regulations are -- kind of,  
3 generally speaking, do two things, try to prevent bad things  
4 from happening, like thefts and explosions through construction  
5 and other things.

6 But if something does go wrong, there's a table of  
7 distances, quantity and distance requirements for each type of  
8 explosive, each class of explosive. And so those quantity and  
9 distances, if -- basically, they tell you if you're storing a  
10 certain amount in that explosive weight in the magazine, then  
11 you have to be a certain distance from having buildings,  
12 highways, passenger railways, other explosive storage  
13 magazines, and that we have different tables for the different  
14 classes of explosives.

15 Q. And so for a barricaded structure with high explosives,  
16 how close can that be to an inhabited building?

17 A. Well, depends on the net explosive weight. So just, for  
18 instance, zero to five pounds -- and I don't have the table  
19 memorized, so I couldn't tell you pick one out, because it's a  
20 long table.

21 But, for instance, zero to five pounds, that -- the  
22 explosive, the distance to the nearest inhabited building would  
23 be 140 unbarricaded feet to an inhabited building. Low-volume  
24 highway would have to be 60 unbarricaded feet. You do get a  
25 credit, if you will, if there is a barricade in place.

Michael O'Lena - Direct Examination

1 Typically cuts the distance in half, not exactly, but generally  
2 speaking.

3 Q. Now, are there also any regulations relating to the  
4 storage of spark-producing devices in the vicinity of high  
5 explosives?

6 A. Actually, for all explosives. So we have a prohibition on  
7 spark-producing devices within any explosive storage magazine,  
8 within any room that contains an indoor explosive storage  
9 magazine or, yeah, with the -- within 50 feet of an outdoor  
10 magazine. So, yes.

11 Q. And what are some examples of spark-producing devices?

12 A. Generally, what we would run into are welders, things that  
13 inherently produce sparks by their normal function. So  
14 welders, grinders, firearms. Those inherently produce sparks  
15 when they normally function, so, again, redundancy in the  
16 regulations trying to prevent a spark from initiating whatever  
17 explosive is in the vicinity. So, yeah, it's just another  
18 redundancy we have built into the regulatory scheme.

19 Q. Okay. So you were not at all involved in the  
20 investigation of this case. Correct?

21 A. That is correct, yep.

22 Q. You were contacted later just as a storage expert.  
23 Correct?

24 A. That's correct, yes.

25 Q. You don't have any firsthand knowledge of what happened at

Michael O'Lena - Direct Examination

1 the search. Correct?

2 A. No, I do not. Correct.

3 Q. You don't know who is sitting at the table next to you.  
4 Correct?

5 A. I do not.

6 Q. Okay. So were you provided back in August or September  
7 some photographs of items found in this case?

8 A. Correct.

9 Q. And were you able to review them?

10 A. I was, yes.

11 Q. And were you able to reach an opinion as to whether the  
12 manner of storage was consistent or inconsistent with ATF  
13 regulations?

14 A. Yes, I was.

15 Q. So I want to start with Government's Exhibit 11Q. All  
16 right. So what are we looking at in this photograph?

17 A. Recreational vehicle.

18 Q. Now, again, you have no personal knowledge of this  
19 vehicle?

20 A. Correct.

21 Q. From your observations, would this vehicle be permissible  
22 as either Type 1, Type 2, or Type 3 storage of high explosives?

23 A. No. Certainly with a Type 1, it's not a permanent  
24 structure, so it wouldn't qualify just on that basis, let alone  
25 the construction. Type 2 magazines, there are options for

Michael O'Lena - Direct Examination

1 mobile magazines, but the construction clearly with the windows  
2 and knowing that RVs don't have quarter-inch steel or  
3 two inches of hardwood. And it's a -- with the mobile  
4 magazines that has to be secured a certain way with a kingpin  
5 locking device for vehicular magazines, so clearly something  
6 like this wouldn't be able to be secured with a kingpin lock.  
7 Yeah, so no. And then a Type 3, it -- yeah, wouldn't -- again,  
8 the glass and the windows, that's just doesn't match up with  
9 the regulatory option for a Type 3 magazine.

10 Q. And then looking at Government's Exhibit 11A. So we're  
11 here looking at the interior of the RV. Does anything about  
12 that change your opinion?

13 A. No, nothing changes my opinion. No.

14 Q. And then Exhibit 11F. Okay. So what are we looking at  
15 here?

16 A. Looks like, yeah, that's a grenade, the M67 grenade, and  
17 then a pouch with a couple of clips, ammunition clips  
18 potentially.

19 Q. And so I'll show you a picture of the grenade standing  
20 alone. Where would this grenade, assuming it was functioning,  
21 again, you don't know what the test results were. Correct?

22 A. Correct. I just read through the reports.

23 Q. Just assuming for the sake of your testimony that this is  
24 a functioning grenade, what category of explosives would this  
25 fall into?

Michael O'Lena - Direct Examination

1 A. So this would be a high explosive. We would require it to  
2 be in a Type 1 or Type 2 magazine for overnight storage, and  
3 then obviously that magazine would have to comply with the  
4 table of distances for high explosives.

5 Q. And then looking at Exhibit 11D, would the storage of the  
6 grenades in the RV along with the firearms, would that be a  
7 problem?

8 A. That would not be allowed. Again, with the prohibition on  
9 spark-producing devices, trying to ensure the explosives don't  
10 prematurely initiate while being stored would not be allowed by  
11 regulation.

12 Q. And we talked about Government's Exhibit 18A. So, again,  
13 you don't know where these grenades were recovered. But if  
14 they were recovered over to the left of the residence over  
15 here, to the right of the residence if you're at the residence,  
16 would that cause you any concerns under the table of distances?

17 A. Sure. Yeah. I mean, clearly, there's a couple houses,  
18 that would -- that would be subject, again, assuming there's  
19 less than five pounds of net explosive weight that we're  
20 talking about, you would need 140 feet, unbarricaded feet.  
21 Again, the trees wouldn't be sufficient -- sufficient  
22 barricading, rather, and then to the 10th Avenue South would  
23 have to be at least 60 feet, unbarricaded feet. So, yeah, that  
24 would be a public-safety issue, how we would classify that.  
25 That would be a -- yeah, a violation of the regulation.

Michael O'Lena - Cross-Examination

1 Q. And so based on what I've shown you, again, accepting that  
2 you don't have personal knowledge of what I just showed you, do  
3 you have any opinion as to whether the RVs in the -- the  
4 grenades in the photograph were stored in conformity with ATF  
5 regulations?

6 A. They were not.

7 MR. MARCET: Thank you, Your Honor. I have no  
8 further questions.

9 THE COURT: All right. Mr. Futerman.

10 MR. FUTERMAN: Very, very briefly.

11 CROSS-EXAMINATION

12 BY MR. FUTERMAN:

13 Q. Good afternoon. I guess I just have one quick question.  
14 I understand the grenades.

15 A. Sure.

16 Q. Are you saying that the guns couldn't be kept in the RV or  
17 the house? Is that what you --

18 A. Well, so from a regulatory perspective, if we're talking  
19 about magazines, storage of explosives in a magazine, the  
20 regulations prohibit spark-producing devices, which we would  
21 include as a firearm, in that they couldn't be stored within a  
22 magazine or within 50 feet of a magazine.

23 Q. I guess I really didn't understand that.

24 A. Sure.

25 Q. I just asked you, those -- the gun.

Michael O'Lena - Cross-Examination

1 A. Yeah, the gun.

2 Q. In that picture.

3 A. Yes.

4 Q. One was apparently a legal gun, and one was illegal  
5 because it was a shorter barrel --

6 A. Okay.

7 Q. -- than the other gun.

8 A. Yeah.

9 Q. All right. So I understand, of course, grenades. But are  
10 you saying that those guns couldn't be kept in a residence?

11 A. No. I'm not saying that at all. No.

12 Q. Okay. So there's nothing wrong about the picture with  
13 those two guns, keeping those in a residence. There's no  
14 violation of that. Right?

15 A. Of keeping it in an RV or a -- yeah. This has nothing --  
16 what I was talking about has nothing to do with that.

17 Q. Nothing to do with those guns. Right?

18 A. Just the explosives with the spark-producing devices.

19 Q. Just want to be clear.

20 A. Yeah.

21 Q. The government showed you a picture of the guns. It's got  
22 nothing to do with what you're talk about. Right?

23 A. The guns being stored --

24 Q. Just about the gun.

25 **THE REPORTER:** Hold on.

Michael O'Lena - Cross-Examination

1           **THE COURT:** You're talking over.

2           **THE WITNESS:** I'm sorry. My apologies.

3 **BY MR. FUTERMAN:**

4 **Q.** Just be clear, just the guns, there's nothing illegal  
5 about possessing those guns. I mean, obviously one is shorter  
6 than the other, right, and that makes it illegal, potentially,  
7 but the actual possession of those guns, nothing wrong with  
8 keeping that in the house. Right?

9 **A.** Yeah, correct.

10 **Q.** The guns.

11 **A.** Correct.

12 **Q.** That's what I wanted to know.

13           **MR. FUTERMAN:** All right. No more questions, Your  
14 Honor.

15           **THE COURT:** Mr. Marcet.

16           **MR. MARCET:** No redirect. Thank you, Your Honor.

17           **THE COURT:** All right. You may step down.  
18 Thank you, sir.

19           **THE WITNESS:** Thank you.

20           **THE COURT:** You may call your next witness.

21           **MR. GOEDMAN:** Thank you, Your Honor. United States  
22 calls FBI Task Officer Corrine Tullos.

23           **THE COURT:** If you'll come forward to be sworn,  
24 please.

25           **THE COURTROOM DEPUTY:** Please raise your right hand.

Corrine Tullos - Direct Examination

1 WHEREUPON,

2 **CORRINE TULLOS,**

3 was called as a witness and, after having been first duly  
4 sworn, testified as follows:

5 **DIRECT EXAMINATION**

6 **THE COURTROOM DEPUTY:** State your name for the record  
7 and spell your name.

8 **THE WITNESS:** Corrine Tullos. C-o-r-r-i-n-e. Last  
9 name T-u-l-l-o-s.

10 **THE COURTROOM DEPUTY:** Thank you, ma'am. Please take  
11 the witness stand.

12 **THE COURT:** Mr. Goedman.

13 **BY MR. GOEDMAN:**

14 **Q.** Good late morning.

15 **A.** Good morning.

16 **Q.** Can you please state your name for the jury?

17 **A.** My name is Corrine Tullos. I'm an Army  
18 counterintelligence special agent detailed to the Tampa FBI  
19 Joint Terrorism Task Force.

20 **Q.** And how long have you been detailed to the task force?

21 **A.** I've been with the task force for four and a half years.

22 **Q.** Do you have a particular role within the task force?

23 **A.** My role on the task force is to provide advice and  
24 assistance for FBI investigations where there might be a DOD  
25 nexus, specifically in this case.

Corrine Tullos - Direct Examination

1           **MR. FUTERMAN:** Your Honor, may we approach?

2           **THE COURT:** What?

3           **MR. FUTERMAN:** Can we approach?

4           **THE COURT:** Sure.

5           (Bench conference begins.)

6           **MR. FUTERMAN:** Your Honor, this morning I had a very  
7 direct conversation with Mr. Marcet about yesterday the word  
8 terrorism came out. It came out international and domestic,  
9 which is something that shouldn't be interjected in the case,  
10 because it gives a sinister discussion.

11           **THE COURT:** I'm sorry. I'm not following you.

12           **MR. FUTERMAN:** The word terrorism was brought out  
13 yesterday by one of the police officers. He says I'm part of  
14 the terrorism force. And, you know, it gives a sinister  
15 connotation that this case is about terrorism, because the word  
16 was domestic and international.

17           I told Mr. Marcet that I was going to bring it to the  
18 Court's attention that there would be a motion in limine that  
19 there would be no use of the word terrorism, because maybe this  
20 guy is some domestic terrorist and there's more to it. So  
21 Mr. Marcet assured me that he would instruct his witnesses not  
22 to use the word terrorist.

23           That word has now been directly brought out by that  
24 witness. And beyond that, there's now an expansion of that  
25 explanation by this nexus of this DOD force. And, you know,

Corrine Tullos - Direct Examination

1 I'm really concerned about, for example, we'll talk about the  
2 board. I did not anticipate the board being blown up and  
3 things on that board being discussed. I'm sitting there  
4 thinking I can't really object because it's a problem now.  
5 It's not about this case. And it's one thing if the door had  
6 been opened, if he the's testifying and they bring that in.

7 But I specifically was assured the word terrorist  
8 would not be used, and now it's being brought out. And I'm  
9 going to ask the Court to -- first of all, Mr. Marcet will  
10 recognize that's the agreement we had. And, second of all, for  
11 the Court to specifically direct the jury to disregard --

12 **THE COURT:** You want me to do that? Seems like it  
13 might be more harmful than not.

14 **MR. FUTERMAN:** I mean, I've got to get some sort of  
15 clear message to the jury that this is not a domestic terrorism  
16 case.

17 **MR. MARCET:** Your Honor, I would at least wait until  
18 Mr. Brown testifies to do that. Because this is going to  
19 become a domestic terrorism case if the defense does what they  
20 say they intend to do. Even if he gets on the stand, it  
21 becomes a domestic terrorism case. I do apologize. I did not  
22 think to tell Ms. Tullos not to say it. That was my fault. We  
23 did tell the first two witnesses today. I have not had an  
24 opportunity to speak with her this morning.

25 **THE COURT:** Are you going to ask her any questions

1 about --

2 **MR. GOEDMAN:** Not about the task force. The DOD  
3 component, ask her what it stands for. And that is her job, a  
4 liaison to DOD. I'm going to ask her does she submit requests  
5 to the DOD in connection with cases for documents.

6 **THE COURT:** Okay.

7 **MR. GOEDMAN:** And then we're going to introduce some  
8 of the documents, which Mr. Futerman and I have discussed.

9 **THE COURT:** Okay.

10 **MR. FUTERMAN:** I would ask you maybe to disregard --  
11 I mean, I know how to get around this.

12 **THE COURT:** I'm not going to do that, because I don't  
13 know what this case is going to be about. And, you know, it's  
14 about possession of weapons. It's about possession of  
15 grenades. It's about possession of classified documents. So  
16 I'm not sure -- and I have no idea what your client is going to  
17 say, so I'm not in a position to give that instruction.

18 **MR. FUTERMAN:** Okay.

19 (Bench conference concluded.)

20 **THE COURT:** You may continue.

21 **BY MR. GOEDMAN:**

22 **Q.** I think I had asked what role do you serve in at the FBI?

23 **A.** I'm on the task force to provide advice and assistance for  
24 FBI investigations where there may be a Department of Defense  
25 nexus, specifically in this case, the Army.

1 Q. What were you doing before you joined the FBI task force?

2 A. I spent approximately two years on an Army  
3 counterespionage team. And prior to that, I was with the FBI  
4 Minneapolis Joint Terrorism Task Force for 12 years.

5 Q. In your role as liaison to the Department of Defense, do  
6 you submit requests to them?

7 A. Yes, I do.

8 Q. What kind of requests do you submit?

9 A. Records requests for an official military personnel file,  
10 records requests for clearance verification and information,  
11 things like that.

12 Q. Did you submit a request in connection with this case to  
13 DOD?

14 A. Yes, I did.

15 Q. Did you receive records in response to that request?

16 A. Yes, we did.

17 Q. Can you describe the files you received?

18 A. We received the defendant's official military personnel  
19 file from the Army Human Resource Center at Fort Knox and  
20 records from the National Archive, the National Personnel  
21 Records Center in St. Louis Missouri. I also requested the  
22 defendant's security clearance information from the defense  
23 counterintelligence and security agency.

24 MR. GOEDMAN: Your Honor, without objection, United  
25 States would offer Government Exhibits 34 through 37, and then

Corrine Tullos - Direct Examination

1 39 through 54 into evidence at this time.

2 **THE COURT:** All right. I'll receive into evidence 34  
3 through 37 and the other exhibits are what.

4 **MR. GOEDMAN:** 39 through 54.

5 **THE COURT:** And I'll receive into evidence 39 through  
6 54.

7 (Government's Exhibits 34 through 37 and 39 through 54  
8 admitted into evidence.)

9 **BY MR. GOEDMAN:**

10 **Q.** Showing the witness what's just been admitted as  
11 Government's Exhibit 34. Ms. Tullos, do you recognize this  
12 document?

13 **A.** Yes, I do.

14 **Q.** What is it?

15 **A.** This is a "Classified Information Nondisclosure  
16 Agreement."

17 **Q.** Can you read the name across the top of that document?

18 **A.** "Brown, Jeremy M."

19 **Q.** And was this one of the documents you received from the  
20 Department of Defense?

21 **A.** Yes, it was.

22 **Q.** Scrolling down to Page 2, can you see who signed this  
23 document?

24 **A.** Yes. Jeremy M. Brown.

25 **Q.** Is there a date on which it was signed there?

Corrine Tullos - Direct Examination

1 A. Yes, "October 17th, 1995."

2 Q. Moving on to Government Exhibit Number 35. Do you  
3 recognize this document, Ms. Tullos?

4 A. Yes, I do.

5 Q. What is it?

6 A. This is a document received from my request from the  
7 defense counterintelligence and security agency which gives  
8 information about the defendant's security clearance.

9 Q. I'm going to highlight part of this. It says, "NDA." Do  
10 you know what that stands for?

11 A. Those are nondisclosure agreements that were signed.

12 Q. And what's the date next to those?

13 A. The first one is dated April 3rd, 2006. The second one,  
14 the NDS signed date is dated June 4th, 2010.

15 Q. Moving on to Government Exhibit Number 36. Let me ask you  
16 one more question on 35. Is there a name across the top of  
17 this?

18 A. Yes. The name is Jeremy Michael Brown.

19 Q. Does this record relate to Mr. Jeremy Michael Brown?

20 A. Yes.

21 Q. Showing the witness Government Exhibit Number 36.

22 What is this document?

23 A. This document is a DD 214. It's a "Certificate Of Release  
24 Or Discharge From Active Duty."

25 Q. Was this received from DOD?

Corrine Tullos - Direct Examination

1 A. Yes, it was.

2 Q. Showing you Government Exhibit Number 37. Do you  
3 recognize this document?

4 A. Yes, I do.

5 Q. Was this received as part of your request to DOD?

6 A. Yes, it was.

7 Q. And what is this document?

8 A. This is the defendant's "Enlisted Record Brief."

9 Q. Are you familiar with enlisted record briefs?

10 A. Yes, I am.

11 Q. What sort of information is contained in that kind of  
12 brief?

13 A. You can find everything from personal family data to the  
14 organization and unit he was assigned, his duty title, his  
15 military occupation specialty, military courses he attended,  
16 certificates he's received, and also awards and decorations.

17 Q. Let's go on to Government Exhibit Number 41. What are we  
18 looking at here?

19 A. This is a report, a "Noncommissioned Officer Evaluation  
20 Report."

21 Q. And whose this report for?

22 A. This report is for Jeremy M. Brown.

23 Q. And can you tell what period of time this report covered?

24 A. This period, trying to see.

25 Q. Let me see if I can blow it up here.

Corrine Tullos - Cross-Examination

1 A. I believe -- yeah. Yes. This period is from  
2 February 2000 to September 2000.

3 Q. And as part of the documents that you received from DOD,  
4 did you receive -- were there numerous of these NCO evaluation  
5 reports?

6 A. Yes, there were.

7 MR. GOEDMAN: No further questions, Your Honor.  
8 Tender the witness.

9 THE COURT: All right. Mr. Futerman.

10 MR. FUTERMAN: Thank you.

11 CROSS-EXAMINATION

12 BY MR. FUTERMAN:

13 Q. Good afternoon, ma'am.

14 A. Good afternoon.

15 Q. The jury will see these documents, but essentially they  
16 were every year, evaluation of Mr. Brown, all in his 20 years  
17 of military career and his 17 years of Special Forces.  
18 Correct? Every year evaluation?

19 A. Yes.

20 Q. It shows everything and explains it. Correct?

21 A. Correct.

22 MR. FUTERMAN: Thank you. I have no more questions.

23 THE COURT: Anything else? All right. You may step  
24 down. Thank you.

25 You have a quick witness or --

Corrine Tullos - Cross-Examination

1           **MR. MARCET:** No. It will get close to an hour, Your  
2 Honor.

3           **THE COURT:** Okay. We'll recess for lunch then.

4           Ladies and gentlemen, it's 10 after 12 or  
5 thereabouts, and so we'll be in recess until about 1:25.  
6 You're welcome to walk around, get lunch. We'll start again at  
7 1:25. Please leave your pads on your chairs.

8           **THE COURT SECURITY OFFICER:** All rise.

9           **THE COURT:** Please don't discuss the case.

10           (Jury out at 12:08 p.m.)

11           **THE COURT:** All right. We're in recess until 1:25.

12           **MR. MARCET:** Your Honor, quickly, Ms. Rodriguez-Feo,  
13 the courtroom CISO is here. She just wanted me to ask you, so  
14 sometime after lunch, likely the classified binders will come  
15 out. She was wondering if you would be willing to give some  
16 sort of instruction to the jury or if you would prefer that she  
17 does it.

18           **THE COURT:** I'm not sure what kind of instruction --  
19 why don't you tell me what kind of instruction you want know  
20 give.

21           **MR. MARCET:** Can she address the Court, Your Honor?

22           **MS. RODRIGUEZ-FEO:** Judge, if it's all right with  
23 you --

24           **THE COURT:** I need you to stand at the podium. I  
25 can't hear you.

Corrine Tullos - Cross-Examination

1           **MS. RODRIGUEZ-FEO:** Judge, if it's all right with  
2 you, Your Honor, can I meet you in chambers just to discuss  
3 further?

4           **THE COURT:** Sure. Absolutely.

5           All right. We're in recess.

6           **MR. GOEDMAN:** Your Honor, there's actually one other  
7 issue I wanted to raise.

8           **THE COURT:** Okay. I -- just have a seat.

9           Mr. Goedman.

10          **MR. GOEDMAN:** After lunch, the government's next  
11 witness is Mr. Ronald Brown. He was the defendant's former  
12 supervisor in the military. We anticipate the defendant or the  
13 defense in cross-examination of Ronald Brown may attempt to  
14 impute some sort of animus from Ronald Brown against the  
15 defendant.

16          **THE COURT:** I'm sorry, he may what?

17          **MR. GOEDMAN:** We think that on cross-examination,  
18 they might try and draw out that Ronald Brown had some sort of  
19 supposed animus against the defendant and that might be  
20 motivating his testimony.

21          **THE COURT:** Okay.

22          **MR. GOEDMAN:** We submit that if they do that, they  
23 are going to be opening the door to having Ronald Brown talk  
24 about the defendant's -- the end of the defendant's military  
25 career, and, you know -- and Ronald Brown's role in that and

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1 steps he may have taken to stand up for the defendant. At this  
2 point, that may implicate what's been marked as Government's  
3 Exhibit 38. This was the subject of some -- of some briefing  
4 before this Court, I believe.

5 **THE COURT:** Is this the reprimand?

6 **MR. GOEDMAN:** Yes.

7 **THE COURT:** Okay.

8 **MR. GOEDMAN:** We wanted to raise that for you. You  
9 know, I think we previously had a discussion about it. And I  
10 think if I'm remembering your ruling correctly, it was that --  
11 not coming in sort of part of the government's case in chief,  
12 but if the door is open, it would potentially be fair game.

13 **THE COURT:** Yeah. I -- and that is essentially how I  
14 ruled. So, I mean, I don't know what Mr. Futerman is going to  
15 ask, and I don't know what the witness is going to say, so I  
16 can't rule now. All right.

17 **MR. MARCET:** Thank you, Your Honor.

18 **THE COURT:** Okay. We're in recess until 1:25.

19 (Recess from 12:11 p.m. to 1:24 p.m.)

20 **THE COURT:** Can I get counsel to approach sidebar for  
21 just a moment?

22 (Bench conference begins.)

23 **THE COURT:** You brought up before we recessed the  
24 exhibit, the number escapes me.

25 **MR. GOEDMAN:** 38.

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1           **THE COURT:** Okay, 38. But at any rate, it's the  
2 General Officer Memorandum of Reprimand. I don't know that  
3 you've fully discussed this, because what happened is, you  
4 filed your notice, you filed a motion in limine saying he --  
5 then you said there's nothing having -- don't have any  
6 objection. So just kind of skip by.

7           **MR. MARCET:** Your Honor, I'm sorry. And one  
8 additional -- so in essence, what we're trying to say is, if  
9 this witness -- so this witness was Mr. Brown's supervisor at  
10 the time that that happened.

11           **THE COURT:** Okay.

12           **MR. MARCET:** If he were to -- if they were to suggest  
13 that this witness has some animus against Mr. Brown, the truth  
14 is that this witness saved Mr. Brown's pension and his  
15 retirement, because when that happened, even though Mr. Brown  
16 lied to this witness, his supervisor, about the nature of the  
17 pornography and the nature of the violation of the computer  
18 systems, this witness still stopped the supervisor, the higher  
19 supervisor, a two-star general from kicking Mr. Brown out of  
20 the military, and put his own reputation on the line, asking  
21 that Mr. Brown be allowed to remain in. In addition, this  
22 witness has provided financial support to Mr. Brown's family  
23 when Mr. Brown was unable.

24           So if they're going to suggest he has some bias on  
25 motive, that's what we were requesting that he be allowed to

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1 rehabilitate himself by saying, I put my career on the line to  
2 help him, and I --

3 **THE COURT:** Could we -- I'd rather not have anything  
4 than have that. Because I can't hear sidebar.

5 Okay. Here's what I think -- I think this is going  
6 come in at some point. You're --

7 **MR. FUTERMAN:** They're not trying to bring it in.  
8 They didn't bring in Exhibit 38. They're not trying to bring  
9 it in now. The only way it brings in is if I bring in  
10 character --

11 **THE COURT:** Well --

12 **MR. FUTERMAN:** -- if I bring in character witnesses.

13 **THE COURT:** Right. Or depending on what Mr. Brown  
14 says.

15 **MR. FUTERMAN:** Depending on what he says.

16 **MR. MARCET:** Your Honor, we're willing to offer.  
17 It's already authenticated. If you think it's admissible, we  
18 certainly would offer it.

19 **THE COURT:** I think it's admissible, and I think  
20 it's -- you suggested in your opening statement and to request  
21 things that the government, either the police or somebody  
22 involved with the FBI, the federal government or local  
23 government, planted these things.

24 And, you know, I think the argument is that Mr. Brown  
25 may have some animus against the government as well. So at

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1 some point, I can't imagine him getting on the stand and this  
2 not eventually coming in. And so, I mean, it makes no  
3 difference to me if you want to wait till Mr. Brown's character  
4 witnesses testify, but --

5 **MR. FUTERMAN:** But just so the Court is aware, this  
6 is -- was Mr. Brown's supervisor in the military. There's a  
7 distinction in the argument between the military, because  
8 Mr. Brown is going to have someone from the military -- his  
9 character. And the government, FBI law enforcement, this is  
10 not a law enforcement. This is his supervisor from 2009 to  
11 2012. And so for him just to say, oh, by the way, there was a  
12 reprimand, which is all bad character, shouldn't come in  
13 through this witness.

14 I agree with the Court if he gets up there and says,  
15 and I have -- I try to control my witnesses, and some are  
16 easier than others. If he says something like I had a flawless  
17 military career, yeah, I get it.

18 **THE COURT:** Okay.

19 **MR. MARCET:** Your Honor, we were offering it in  
20 addition to the reasons stated, it specifically involves the  
21 misuse of sensitive military computer systems, which is the  
22 basis of Counts 6 through 9. It's intent, it's motive, method  
23 of operation.

24 **THE COURT:** Does this witness have knowledge about  
25 this?

Corrine Tullos - Cross-Examination

1           **MR. MARCET:** Absolutely, yes. This is the witness  
2 who supervised him during the -- when this happened.

3           **THE COURT:** I know, but --

4           **MR. MARCET:** Spoke to him about it.

5           **THE COURT:** Can he identify this exhibit?

6           **MR. MARCET:** Absolutely, yes.

7           **MR. FUTERMAN:** Let me be clear. 2000 -- he's a  
8 supervisor 2009, 2010. For him just to throw out, oh, by the  
9 way, Mr. Brown, general reprimand, that is bad character.  
10 Nothing is being offered about his good character in the  
11 military. Has nothing to do with the classified documents.  
12 Has nothing to do with anything. I mean, I don't even know why  
13 this witness is, quite frankly, testifying, because he's  
14 talking about the time in 2008, 2009, 2010.

15           **MR. MARCET:** 2012 until the retirement, the forced  
16 retirement because of this, because of misuse of military  
17 classified systems -- or military computer systems.

18           **THE COURT:** This witness has personal knowledge about  
19 that?

20           **MR. MARCET:** Yes. He confronted the defendant about  
21 it. The defendant lied. The investigation revealed it was far  
22 worse than the defendant said. The defendant initially lied  
23 and said it was pornography of his wife, and it was some of  
24 that, plus many other images.

25           **THE COURT:** Well, even if it doesn't come in as an

Corrine Tullos - Cross-Examination

1 inextricably intertwined, it comes in as 404(b) going to  
2 intent, I think. I mean, I think it's going to come in.

3 **MR. FUTERMAN:** I don't think it will. I don't think  
4 it comes into intent of anything. Because all this is, is he's  
5 in the military, and then he gets an honorable discharge. And  
6 before his honorable discharge, there was circumstances that  
7 allowed him not to retire, but this is bad character. We're  
8 not -- this is not what this case is about. Back in 2011, the  
9 reasons why he had a bad character general reprimand, for this  
10 witness just to bring out there without me opening the door --  
11 I understand it could be opened, but for him to just bring it  
12 out is -- it's -- there should be no reason to bring out a bad  
13 character.

14 **MR. MARCET:** The door is open, it's opened.

15 **THE COURT:** I don't know how Mr. Brown is going to  
16 get on the stand and testify about his time in the military or  
17 anything.

18 **MR. FUTERMAN:** I don't think he will. He's not --  
19 there's a difference between saying I was in the military this  
20 long and saying, I had -- you know, I did nothing wrong. If he  
21 said I have impeccable this, impeccable that, I get it, because  
22 then they can bring in, well, you said this, but isn't it true  
23 you got a general reprimand, and document blah, blah, blah,  
24 blah.

25 But this witness, who is to say a bad character act

Corrine Tullos - Cross-Examination

1 that has nothing do with the charged crime, because he's  
2 military -- again, if I bring in a character military witness,  
3 it would open the door to that, but not with this point.

4 **THE COURT:** I think if you bring any character  
5 witness in --

6 **MR. FUTERMAN:** I don't disagree with the Court. You  
7 suggested that in an earlier hearing. You even said I don't  
8 know, because I was trying to limit to ask a witness just  
9 truthfulness, you said, I don't know, might bring in this. But  
10 this witness, on his own, just to throw out a bad character --

11 **THE COURT:** All right. Well, let's see how it goes.  
12 Just don't ask the question or offer the document until you ask  
13 to approach sidebar.

14 **MR. MARCET:** There's another issue.

15 **MR. FUTERMAN:** Well, I guess you have to see where  
16 the testimony goes. I think the government is going to ask him  
17 about things that he doesn't have personal knowledge about. So  
18 he's just reading documents in evidence. He's not an expert  
19 witness. So I think they want to get into -- I mean, I'll see  
20 where the questions go, so maybe I'm wrong.

21 **MR. GOEDMAN:** Yeah. I mean, the basic setup here is,  
22 with the earlier witness, we introduced number of DOD  
23 documents. These were NCO evaluations for the defendant. They  
24 were annual reports. Ron Brown supervised the defendant toward  
25 the end of his time in the military, but not a -- for the

Corrine Tullos - Cross-Examination

1 initial period. So he doesn't have personal knowledge of those  
2 initial reviews. The later ones he signed. He was the rating  
3 official. But Ron Brown, the upcoming witness, also served in  
4 Special Forces, same group that defendant did. So he is  
5 familiar with the type of role titles that the defendant served  
6 in.

7 **MR. FUTERMAN:** That's fine. Yeah, that's fine.

8 **MR. MARCET:** That's --

9 **MR. GOEDMAN:** So I will use the NCO eval to say, "Do  
10 you see where it says Jeremy Brown was a weapons sergeant?  
11 Based on your experience, do you know what a weapons sergeant  
12 is?"

13 **MR. FUTERMAN:** That's fine.

14 **THE COURT:** All right. One other thing, I just need  
15 to -- it really doesn't need to be at sidebar, but I did talk  
16 Carli over the recess, and so it's my understanding what's  
17 going to happen is they're going pass out notebooks with the  
18 unredacted documents. And they're going to have a notepad, a  
19 fresh notepad inside, and any notes the jurors take about those  
20 documents will be taken on that notepad.

21 And they put their name on the first page of that  
22 notepad and nothing else, just their names, because we're  
23 probably going to span two days with this or we'll take them up  
24 this evening. They'll be stored in the courthouse down  
25 somewhere, I don't know where it is, where they have the safe.

Corrine Tullos - Cross-Examination

1 And then they'll be taken out tomorrow and they'll hand -- be  
2 handed out to that particular juror. And then they will take  
3 their notepad -- notebooks back with them during deliberations.  
4 And then, of course, we will take the notepads and the  
5 notebooks up at the end of the trial, and then I'll instruct  
6 them about their responsibilities.

7 **MR. FUTERMAN:** And when we get our binders, and I get  
8 my notes, does -- do they want me to put my same notes in that  
9 notepad.

10 **THE COURT:** Yeah.

11 **MR. MARCET:** If you write anything classified, if you  
12 don't write anything -- the contents of the documents, you  
13 don't have to worry about it.

14 **MR. GOEDMAN:** Okay. So if you want to be safe, use  
15 the notebook.

16 **MR. FUTERMAN:** This is a first.

17 **THE COURT:** Okay. But Carli will be the one -- or  
18 her -- the other person. I can't remember her name.

19 **MR. GOEDMAN:** Patrice.

20 **THE COURT:** Yeah. That's here that will pick them up  
21 and take them downstairs and store them. And I think it's the  
22 third that floor or somewhere.

23 **MR. FUTERMAN:** Thank you.

24 **MR. GOEDMAN:** Thank you, Your Honor.

25 (Bench conference concluded.)

Ronald Brown - Direct Examination

1 THE COURT: All right. Will you bring the jury in,  
2 please?

3 THE COURT SECURITY OFFICER: All rise.

4 (Jury in at 1:36 p.m.)

5 THE COURT SECURITY OFFICER: Please be seated.

6 THE COURT: Government may call its next witness.  
7 Excuse me.

8 MR. GOEDMAN: Thank you, Your Honor. The United  
9 States calls Mr. Ronald Brown.

10 THE COURT: Sir, if you'll come forward to be sworn.

11 THE COURTROOM DEPUTY: Sir, please raise your right  
12 hand.

13 WHEREUPON,

14 RONALD BROWN,

15 was called as a witness and, after having been first duly  
16 sworn, testified as follows:

17 DIRECT EXAMINATION

18 THE COURTROOM DEPUTY: Please state your name for the  
19 record and spell your name.

20 THE WITNESS: Ronald Brown. R-o-n-a-l-d, B-r-o-w-n.

21 THE COURTROOM DEPUTY: Thank you, sir. Please take  
22 the witness stand.

23 THE COURT: Mr. Goedman.

24 BY MR. GOEDMAN:

25 Q. Good afternoon.

Ronald Brown - Direct Examination

1 A. Good afternoon.

2 Q. Can you please state your name for the jury?

3 A. My name is Ronald V. Brown.

4 Q. Get this out of the way early. Do you have any relation  
5 to the defendant?

6 A. No. Other than he worked for me a long time ago.

7 Q. Yeah. Family relationship I meant?

8 A. Oh, no.

9 Q. Did you serve in the military, Mr. Brown?

10 A. Yes, I did, for the better part of 31 years.

11 Q. And are you currently retired?

12 A. I am.

13 Q. When you retired from the military, what component were  
14 you in?

15 A. Special Operations Command Central, which is a sub unified  
16 combatant command under U.S. Central Command on MacDill.

17 Q. It's sometimes referred to as SOCCENT?

18 A. Yes, it is.

19 Q. And as you just said, did you ever supervise the  
20 defendant?

21 A. Yes.

22 Q. We'll come back to your time at SOCCENT in just a minute.  
23 So how long did you serve in the military for?

24 A. Almost 31 years.

25 Q. And what branch did you serve in?

1 A. Army.

2 Q. Can you talk a little bit about some of the roles you held  
3 while in service?

4 A. Sure. I entered the military, went to basic training at  
5 Jump School, Special Forces qualifications course, and went  
6 straight to 5th Special Forces group, where I served on an  
7 A Team. I held various jobs on the A team and then went on to  
8 become a warrant officer and commanded one. And then moved up  
9 through the headquarters elements, if you will.

10 Q. And during your time in the 5th Group, did you ever  
11 deploy?

12 A. Yes.

13 Q. How many times?

14 A. Oh, numerous -- probably a hundred.

15 Q. Did you ever deploy to Afghanistan?

16 A. I was not assigned to 5th Group when I went to  
17 Afghanistan, but, yes, I went to Afghanistan.

18 Q. While you were deployed to Afghanistan or elsewhere, did  
19 you ever handle classified information?

20 A. All the time.

21 Q. How did you do it? Like how did you handle classified  
22 information when you were out in Afghanistan?

23 A. Well, it's on classified systems. If you have documents  
24 or something and you need to transport them or move them, it's  
25 got to be double wrapped and put in a locked bag and kept on

1 your person.

2 Q. Did you ever have to move classified information from one  
3 classified computer to another?

4 A. Yes.

5 Q. How would you do that?

6 A. With either CDs or thumb drives. In the beginning there,  
7 and then later on, they quit letting us do that. But that's  
8 generally the way you would do it, either floppy drive or a  
9 thumb drive or something like that.

10 Q. You mentioned CD. If you needed to transport a CD, how  
11 would you do that?

12 A. Same as I stated earlier. It would be marked classified,  
13 whatever level it was at, and it would be double wrapped and  
14 locked bag and kept on your person.

15 Q. When you retire from the military, are you authorized to  
16 keep those classified CDs?

17 A. No.

18 Q. So when did you first join SOCCENT?

19 A. Would have been in 2001, April of 2001.

20 Q. And what part of SOCCENT were you in?

21 A. I was in the J3 Directorate working sensitive activities.

22 Q. What are sensitive activities?

23 A. Sensitive activities are compartmented operations or plans  
24 that have additional caveats on them other than just secret or  
25 top secret. They'll have code words associated with them, and

Ronald Brown - Direct Examination

1 what that does is it narrows down who can actually see the  
2 material.

3 Q. And at this time, what was your role within the J3?

4 A. My first tour there, I was the UW plans chief and the  
5 Special Access Program control officer.

6 Q. You said UW. What does UW stand for?

7 A. Unconventional warfare.

8 Q. How long were you in this role for?

9 A. I'm sorry?

10 Q. How long were you in this role for?

11 A. Three years.

12 Q. Did you return to SOCCENT after that initial three-year  
13 stint?

14 A. Yes. I got nominated and pulled over to SOCOM, when I  
15 left SOCCENT the first time, was a family member of the J3X  
16 which is sensitive activities again. And then spent several  
17 years there, and then was pulled back into SOCCENT where I  
18 stood up there J3X, and I was the first division chief of their  
19 J3X.

20 Q. I'd like to show you a few documents. All right. Showing  
21 the witness what has been marked as Government Exhibit  
22 Number 41. Mr. Brown, do you recognize what this document is?

23 A. Yes, I do.

24 Q. What is it?

25 A. An "NCO Evaluation Report."

Ronald Brown - Direct Examination

1 Q. And looking at the area I've enlarged, can you tell us  
2 what time period this evaluation report covers?

3 A. That's not what it -- you don't have it on the right spot  
4 to show me that.

5 Q. So here -- so Section B says, "Period Covered."

6 A. Okay.

7 Q. Can you --

8 A. February through September.

9 Q. And what year?

10 A. 2000.

11 Q. And just to be clear, were you the defendant's supervisor  
12 at this point in time?

13 A. No.

14 Q. Okay. Direct your attention to middle of the page, box C.  
15 I'll try and enlarge it here.

16 A. Okay.

17 Q. Can you just read the first line of that box?

18 A. "Serves as the senior weapons sergeant for the Special  
19 Forces Operational Detachment Alpha."

20 Q. Based on your time in the military, do you know what a  
21 senior weapons sergeant is?

22 A. Yes, I do.

23 Q. What responsibilities would the senior weapons sergeant  
24 have?

25 A. There are two sergeants on each team that are weapons

Ronald Brown - Direct Examination

1 sergeants. The senior weapons sergeant, of course, is the  
2 senior of the two. He would probably be a -- slotted for a  
3 sergeant first class.

4 And he would be in charge of all weapons training and have  
5 a lot of input on tactics, as well as handling ammunition and  
6 everything for ranges when we go shoot.

7 Q. Does the person who was in the senior weapons sergeant  
8 role receive any additional training on weapons used in the  
9 military?

10 A. Well, yes. I mean, a weapons sergeant goes through the  
11 qualification course and is trained on over 40 different  
12 weapons, foreign and domestic.

13 Q. Okay. I'm showing you 41. So it says on here,  
14 "Detachment Ammunition Accountability NCO." Do you know what  
15 that is?

16 A. Yes, I do.

17 Q. What does that mean?

18 A. That means he is the one that's primarily responsible for  
19 accountability of all the ammunition from the time they draw it  
20 out of the bunker to using it on the range, and then, of  
21 course, any turn-in of any dummies or unspent ammunition.

22 Q. Does ammunition here include M67 hand grenades?

23 A. Yes.

24 Q. So the person in this role would have been responsible for  
25 tracking that ammunition?

Ronald Brown - Direct Examination

1 A. Yes.

2 Q. Let's move on to Government Exhibit Number 47. The same  
3 question, do you recognize what type of document this is?

4 A. Yes. It's another "NCO Evaluation Report."

5 Q. And can you tell us what period this covers? I can blow  
6 it up if you need me to.

7 A. Looks like May of 2005 to -- through April of 2006.

8 Q. So were you supervising the defendant at this point in  
9 time?

10 A. No.

11 Q. Going to direct your attention again to box C of this  
12 document. Again, same thing, can you read the first line or  
13 line and a half of that section?

14 A. Sure. "Serves as a Platoon Sergeant for a Signal  
15 Detachment that provides communication support to a Special  
16 Forces Battalion engaged in the Global War on Terror within the  
17 SOUTHCOM and CENTCOM AOR."

18 Q. Let's unpack that because it's a mouthful. What's a  
19 platoon sergeant? Is that a senior role?

20 A. Yes, it is. It's the senior NCO within a platoon.

21 Q. It says platoon sergeant for a signal attachment?

22 A. Signal detachment is a support detachment that terminates  
23 all communications from elements that are out within a country  
24 or in a theater. All the communications come back to them, so  
25 they're the base station. They're receiving everyone's

1 communications back.

2 Q. And it says that the platoon sergeant would provide  
3 communication support. What does communication support entail?

4 A. Radio base stations, high frequency, very high frequency  
5 and also satellite communications back.

6 Q. So a little bit towards the middle of this section, it  
7 says, just to spare you some breath, says, "Plans and  
8 supervises the installation, operation, and employment of the  
9 Tactical Local Area Network (TACLAN), Joint Base Station (JBS),  
10 SOF Deployment Node (SDN) High Frequency, Satellite  
11 Communication radios." Did I read that correctly?

12 A. Yes.

13 Q. What are all those things that are listed there?

14 A. Well, there are several different things there. The  
15 TACLAN, Joint Base Station, and SOF Deployment Node are both  
16 the network that they're working off of wherever they're at.  
17 So it's like the Internet, but it's a closed system or can be a  
18 closed system. If there was any connectivity to the Internet  
19 at large, it would have been through there. The high frequency  
20 satellite communications are what I described earlier. They're  
21 communications from outstations back to their base station, if  
22 you will. And --

23 Q. That's okay. Are any of those the items listed here -- so  
24 are these -- are these communication networks?

25 A. Yes, they are.

Ronald Brown - Direct Examination

1 Q. Are any of the communication networks listed here, would  
2 they be used for classified information?

3 A. Yes, they would.

4 Q. And so would the platoon sergeant of a signals detachment  
5 be in charge of those classified information networks?

6 A. He would -- yes, to a certain degree. He would be in  
7 charge of the soldiers that are running those networks.

8 Q. Right. So in that, directing your attention back to box C  
9 there, I see it says, "responsible for 15 soldiers." Do you  
10 see that?

11 A. Yes.

12 Q. So that would be those 15 soldiers would be reporting to  
13 the platoon sergeant?

14 A. That's correct.

15 Q. And together they would be running these classified  
16 systems?

17 A. Yes.

18 Q. Are you familiar with the term COMSEC?

19 A. Yes, I am.

20 Q. What does it mean?

21 A. Communications Security.

22 Q. Would the platoon sergeant of a signal detachment be  
23 involved with COMSEC?

24 A. Yes, it would. Every one of those systems would have had  
25 its own COMSEC load or fill, if you will, to make it secure.

Ronald Brown - Direct Examination

1 Q. Would there be any classified information relating to  
2 COMSEC?

3 A. Well, COMSEC is classified in and of itself, but yes, that  
4 allows you to pass classified traffic in a secure manner.

5 Q. Okay. Government Exhibit Number 37. Mr. Brown, do you  
6 recognize this document?

7 A. Yes. It is "Enlisted Record Brief."

8 Q. I'd like to direct your attention to this box here. So,  
9 first, can you read the name?

10 A. Jeremy Michael Brown.

11 Q. And then Section 1 is labeled assignment information. Can  
12 you tell us what that information says in this document?

13 A. Sure. The -- the dates are the dates from and to, and  
14 then under the "CT" column is the country that it -- he was in,  
15 and then the "MO" is for months. I'm not sure what the "TS"  
16 and the "TT" are for. I don't remember.

17 Q. So that first line, can you explain what that first line  
18 of information means under the "Start-End Date," and then read  
19 all the way across.

20 A. Sure. From January 19, 2005 to March 10th, 2005, he was  
21 in Afghanistan and for two months total.

22 Q. So he was TS, time served, or something like that?

23 A. He probably got credit for -- if he was there for one day,  
24 you get credit for the whole month. So, you know, might have  
25 covered more than two months.

Ronald Brown - Direct Examination

1 Q. Just so I understand this correctly, based on the  
2 enlistment record, the defendant would have arrived in  
3 Afghanistan, based on this record --

4 MR. FUTERMAN: Your Honor, let me -- can we just not  
5 lead the witness and ask the witness about the questions.

6 THE COURT: Well, I'm going to overrule. I don't  
7 think he's leading. He's asking about the document. Go ahead.

8 BY MR. GOEDMAN:

9 Q. Based on this document, when would the defendant have  
10 arrived in Afghanistan?

11 A. On March -- on January 19th, 2005.

12 Q. And when would we have left?

13 A. March 10th, 2005.

14 Q. Show you Government Exhibit Number 36. Can you read the  
15 title of this document?

16 A. "Certificate Of Release Or Discharge From Active Duty."

17 Q. All right. So right in the middle of this box, it says,  
18 "Service In Afghanistan." Do you see that?

19 A. Yes, I do.

20 Q. Can you read the dates next to that?

21 A. It's January 19, 2005 to March 10th, 2005.

22 Q. Those are the same dates in the prior document?

23 A. Yes.

24 Q. Let's go to Government Exhibit Number 53. What kind of  
25 document is this?

Ronald Brown - Direct Examination

1 A. This is another NCO Evaluation Report.

2 Q. And are you able to read the time period this report  
3 covers?

4 A. April 1st, 2010 to March 31st of 2011.

5 Q. So here, is your name on this document?

6 A. Yes, it is.

7 Q. And why is your name on this evaluation report?

8 A. Because I was his first line supervisor and his rater.

9 Q. And it says there that you at this point were the J3X  
10 division chief?

11 A. That's correct.

12 Q. So that was a supervisory position?

13 A. Yes, it was.

14 Q. How many people reported to you? Do you know?

15 A. At that time, I think there was six people.

16 Q. And that included the defendant?

17 A. Yes.

18 Q. And how long did you supervise the defendant for?

19 A. For this entire rating period, which was 12 months.

20 Q. Was this the only rating period you supervised the  
21 defendant for?

22 A. There should have been another one. He was -- I think he  
23 was there for two years.

24 Q. Showing you the same document. Direct your attention to  
25 block C again, like we did on the other documents. So can you,

Ronald Brown - Direct Examination

1 again, read the first, you know, half line or half line of  
2 this?

3 A. Sure. "Serves as the Special Operations Command Central  
4 (SOCCENT) J3X Special Activities Division, NCOIC."

5 Q. What is an NCOIC?

6 A. Noncommissioned officer in charge.

7 Q. And then a little further on in that box, sort of towards  
8 the end of the second line, it says, "Focal Point and special  
9 category action officer for the planning and coordination of  
10 sensitive operations and activities."

11 Did I read that correctly, Mr. Brown?

12 A. Yes.

13 Q. What is a special category action officer?

14 A. Well, focal point and special category is talking about  
15 both compartmented programs, and then other programs that are  
16 compartmented but may not fall under the normal ACCM caveat, if  
17 you will, which is Alternate Compensatory Control Measures,  
18 which is the same thing that focal point means.

19 Q. And what are sensitive operations and activities, what's  
20 that referencing?

21 A. Compartmented operations and activities.

22 Q. So let's step back here and talk a little bit about what  
23 J3X does. Does J3X's work involve classified information?

24 A. Yes, it does.

25 Q. And given the defendant's role at this time, would the

Ronald Brown - Direct Examination

1 defendant have handled and had access to classified  
2 information?

3 A. Yes, he would.

4 Q. Do you know if the defendant had a security clearance at  
5 this time?

6 A. Yes, I do.

7 Q. Do you know what level that would have been at?

8 A. TS/SCI.

9 Q. Would the defendant -- or did the defendant receive  
10 training on the handling of classified information?

11 A. Yes.

12 Q. Do you remember ever hearing that the defendant skipped or  
13 hadn't completed his training on classified information?

14 A. No.

15 Q. And if he had done so, would you, as his supervisor, have  
16 learned about that?

17 A. Yes.

18 Q. Showing you what's marked as Government Exhibit Number 54.  
19 So is this another NCO Evaluation Report?

20 A. Yes, it is.

21 Q. Again, can you read the period covered?

22 A. April the 1st of 2011 to March 31st of 2012.

23 Q. Again, directing your attention to box C. Actually, focus  
24 towards the end of this paragraph where it says, "Assist in the  
25 development" -- sorry. "Coordinates and advises the command on

1 Personnel Recovery (PR) and Nonconventional Assisted Recovery  
2 (NAR) activities."

3 Did I read that correctly?

4 A. Yes.

5 Q. Let's go down to Page 2. Can you read the first bullet in  
6 that box that I've enlarged?

7 A. "Deployed to Afghanistan in support of the recovery of US  
8 POW for 90 days and enabled forward movement of  
9 operation/intelligence fusion for this effort."

10 Q. Do you remember the defendant deploying on this mission?

11 A. Yes, I do.

12 Q. A little further down -- got to rebring up the same  
13 document.

14 Can you read the second bullet in this box?

15 A. Yes. "Briefed the SOCCENT Commander and the USCENTCOM J3  
16 on recommended solutions for the Sergeant Bergdahl effort upon  
17 redeployment."

18 Q. Was the defendant instructed to go on this mission?

19 A. Yes.

20 Q. Was the defendant instructed to brief the SOCCENT  
21 commander and the USCENTCOM J3 on the findings of his trip?

22 A. Yes. It would have come down from higher that they had  
23 the brief, yes.

24 Q. Do you recall if a PowerPoint presentation was made for  
25 this briefing?

Ronald Brown - Direct Examination

1 A. Vaguely, yes.

2 Q. Do you remember if you reviewed it?

3 A. I would have reviewed it before he briefed the commander,  
4 yes.

5 Q. Do you remember if there would have been multiple drafts  
6 of this PowerPoint?

7 A. There could have been.

8 Q. In your experience, if there was multiple drafts of a  
9 document, would there have been any marking indicating the  
10 document was a draft?

11 A. Yes. I mean, there could have been. Normally, it would  
12 be, but, you know, I'm sure there's an exception in there.

13 Q. So, normally, it would be marked?

14 A. Yes.

15 Q. Okay.

16 A. Mainly because of classification. If you put together a  
17 briefing that's classified in any way, you put draft on it,  
18 okay, really any briefing, doesn't even have to be classified,  
19 but if it's not final and you -- you're still receiving input,  
20 it's a draft. It will have -- it will say draft at the top of  
21 it.

22 Q. You mentioned classified, would this PowerPoint have been  
23 classified?

24 A. Yes.

25 Q. Would that assessment change if the document were in draft

1 form?

2 **A.** No.

3 **Q.** To the extent it was classified, could it be kept as  
4 souvenir?

5 **A.** No.

6 **Q.** Would the author of this document be authorized to keep it  
7 at his or her home?

8 **A.** If it was classified, no.

9 **Q.** Did you supervise the defendant when the defendant retired  
10 from the military?

11 **A.** Yes.

12 **Q.** What happens when an individual retires from J3X?

13 **A.** Well, before they start term to leave, they need to get  
14 read off or debriefed on all the programs that they've been  
15 read on or briefed into. So that's one step of it. And then  
16 before he leaves the command, he'll sign a -- and he'll sign  
17 nondisclosure statements there. And then before he leaves the  
18 command, he will sign another nondisclosure statement as well.

19 **Q.** Let's take those one at a time. You said when he -- let's  
20 focus just on J3X. When he leaves J3X, what would he have  
21 done?

22 **A.** He would have been debriefed from any ACCM or focal point  
23 programs. He would have been written off or written out of any  
24 Special Access Programs. And he would have signed his name  
25 that he was off of all of it, basically signing your life away,

Ronald Brown - Direct Examination

1 saying you'll never talk about it.

2 Q. And the Special Access Programs and the ACCM that you're  
3 talking about, those are classified programs?

4 A. Those are classified compartmented programs.

5 Q. And when the defendant left CENTCOM, what process would he  
6 have gone through?

7 A. When he would have left the command to start his terminal  
8 leave for retirement, he would have signed out of the command,  
9 had his awards and all of his admin stuff updated, and he would  
10 have signed another nondisclosure agreement.

11 Q. And do you remember the defendant being read out of these  
12 programs?

13 A. Yes.

14 Q. How do you remember that?

15 A. I'm the one that did it.

16 Q. When someone retires, are they authorized to retain  
17 classified documents in their personal home?

18 A. No.

19 Q. And with respect to the defendant and his time at SOCCENT,  
20 was he authorized to keep classified material, like the  
21 PowerPoint we were just discussing, at his home if it was  
22 classified?

23 A. No. No one is.

24 MR. GOEDMAN: One second, Your Honor.

25

Ronald Brown - Cross-Examination

1 BY MR. GOEDMAN:

2 Q. Just turning back to that PowerPoint we were talking about  
3 a minute ago, was there any animus towards the defendant for  
4 preparing that PowerPoint?

5 A. No. He would have been directed to do it in order to  
6 brief.

7 Q. So he was following orders?

8 A. Yes.

9 Q. Do you remember if he was retaliated against in any way  
10 based on that PowerPoint?

11 A. No. I mean, there were -- that doesn't make sense.  
12 There's no reason to be retaliated on if you're doing something  
13 you were told to do.

14 MR. GOEDMAN: No further questions, Your Honor.

15 THE COURT: All right.

16 MR. GOEDMAN: Tender the witness for  
17 cross-examination.

18 THE COURT: Mr. Futerman.

19 MR. FUTERMAN: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. FUTERMAN:

22 Q. Good afternoon, Mr. Brown?

23 A. Good afternoon.

24 Q. Thank you for your service to the country?

25 A. Thank you.

Ronald Brown - Cross-Examination

1 Q. We've never met before. I just have a few brief questions  
2 about what you talked about.

3 A. Sure.

4 Q. Thank you. Touches upon that last document that  
5 Mr. Jeremy Brown was involved in, the Bergdahl document here,  
6 that he was involved in the recovery or information about that  
7 prisoner of war, individual, correct, fairly publicized  
8 individual?

9 MR. GOEDMAN: Objection, Your Honor. Is there a  
10 question here?

11 THE COURT: If you'll ask a question.

12 BY MR. FUTERMAN:

13 Q. It's become a fairly publicized individual, Sergeant  
14 Bergdahl. Correct? We're talking about the same sergeant  
15 here. Correct?

16 A. Yes. It was in the media extensively, yes.

17 Q. Mr. Brown was involved in this authoring of this document  
18 that involved Bowe Bergdahl. You mentioned he was involved in  
19 the authoring of that document. Correct?

20 A. If you mean the slides, yes.

21 Q. Okay. You felt -- and he's had some discussions with him  
22 at that time about that -- authoring that document, is that  
23 correct, as a supervisor?

24 A. I would have reviewed it. I wasn't there. He was. So he  
25 would have put together the brief.

Ronald Brown - Cross-Examination

1 Q. Okay. You feel pretty passionate about that work?

2 A. Do I?

3 Q. Did he feel pretty passionate about that work?

4 A. I don't -- I don't know if -- I mean, he was a soldier.

5 He went there. He was passionate about getting him back. We  
6 all were.

7 Q. Right.

8 A. But as far as building slides, I mean, most people I know  
9 aren't passionate about building PowerPoint slides.

10 Q. Right. Not the actual slides itself, but the actual  
11 getting the soldier back?

12 A. Yes.

13 Q. And the circumstances around that. Last questions I just  
14 have about this, the one in 2005. I had some questions about  
15 this -- if we go down into the middle portion, I think we  
16 talked about the places that he was. And you had mentioned  
17 2005, you were not his supervisor then, so -- but you were  
18 reading where he served in Afghanistan. Correct? I think you  
19 read it in 2005, January 19 to March 10. Is that correct?

20 A. That's correct.

21 Q. Part of his overall service that we see here. Right?

22 A. Yes.

23 Q. Just the question. Is those dates when he's actually  
24 deployed, or was it when he physically arrives in Afghanistan?

25 A. It's supposed to be when he physically arrives and leaves,

Ronald Brown - Cross-Examination

1 but they're usually off by a day or two.

2 Q. Okay. So he could have been, like you said, a day or two,  
3 he could have been deployed, not actually physically got there.

4 MR. GOEDMAN: Objection, Your Honor. Speculation.

5 THE COURT: Well, ask your question, and I'll --  
6 finish your question.

7 BY MR. FUTERMAN:

8 Q. You say he could be off by a day or two. So from your  
9 experience, he may not actually arrive to Afghanistan until --

10 MR. GOEDMAN: Objection.

11 THE COURT: Overruled.

12 BY MR. FUTERMAN:

13 Q. Two days after this actual date that says January 19th,  
14 could have been January 21. Correct?

15 A. That -- it's possible.

16 Q. Okay. When you get deployed, and when you arrive in  
17 Afghanistan, for example, in this situation, tell me the things  
18 that he would have to go through before he goes actually to  
19 whatever he's doing. It's a series of things. Right?

20 A. Yes. Well, he would be received from the air terminal or  
21 the airhead, depending on how he got in there. And he would be  
22 taken to the compound where the headquarters is that he would  
23 be working out of.

24 Q. And then during this time, you're not aware of the type of  
25 conditions that he was enduring during that time, whether he

Ronald Brown - Cross-Examination

1 was in desert, whether he was sleeping out in the open, or what  
2 type of conditions he was in, or would you be aware of that?

3 A. Well, the headquarters there was established, so he would  
4 have been staying in either the cubes or a tent city or  
5 whatever they had established for everybody to sleep in.

6 Q. Okay. Multiple soldiers. Correct?

7 A. Yes.

8 Q. And then you wouldn't be aware of what type of things he  
9 was doing in Afghanistan during that time frame?

10 A. Other than going forward to work on the Bergdahl task  
11 force, no.

12 Q. Okay. And this was 2005?

13 A. Right.

14 Q. Okay. Oh, and then after that?

15 A. Oh, okay, right.

16 Q. That wasn't then obviously?

17 A. Yeah. Well, then, let's see what was he? He was an E-8  
18 then. So I don't see -- I don't know exactly what unit, from  
19 what I could see. I could tell you what he would be doing if I  
20 knew what unit he was assigned to and what he was doing. But  
21 if he was in country, he was there to do a job, and whatever it  
22 was, that's what he would have been doing.

23 Q. Right. And then Mr. Brown, when he leaves in Afghanistan,  
24 do you know where he would go then, the next mission where he  
25 would go after that?

Ronald Brown - Cross-Examination

1 A. The next mission?

2 Q. Yeah. Where he would go after that?

3 A. No. The only way to see that would be to go back and look  
4 at his record in sequence of where he went and when.

5 Q. And then when he leaves, there's a procedure to leave.  
6 Right? You just don't go in, get the stuff, and just walk out.  
7 There's a procedure to get cleared through. Correct?

8 A. Sure.

9 Q. And you get checked out. Correct?

10 A. Yeah. After you build -- if you're there with a team or a  
11 platoon or whatever, you build pallets, aircraft pallets with  
12 lots of boxes on them full of equipment and all their gear.  
13 And then that would be loaded onto a plane, and the individuals  
14 would be taking -- taken over to customs and go through customs  
15 and then get on the plane and go.

16 Q. Mr. Brown would actually have to clear customs before he  
17 leaves Afghanistan. Correct?

18 A. Yes.

19 MR. FUTERMAN: Your Honor, I have no more questions.

20 THE COURT: Mr. Goedman, any questions?

21 MR. GOEDMAN: No further questions, Your Honor.

22 THE COURT: All right. Thank you, sir. You may step  
23 down.

24 You may call your next witness.

25 MR. MARCET: The United States calls FBI Special

Michael Klepac - Direct Examination

1 Agent Michael Klepac.

2 **THE COURT:** Sir, if you'll come forward to be sworn.

3 **THE COURTROOM DEPUTY:** Please raise your right hand.

4 WHEREUPON,

5 **MICHAEL KLEPAC,**

6 was called as a witness and, after having been first duly

7 sworn, testified as follows:

8 **DIRECT EXAMINATION**

9 **THE COURTROOM DEPUTY:** Please state your name for the  
10 record and spell your name.

11 **THE WITNESS:** Michael Klepac. K-l-e-p-a-c.

12 **THE COURTROOM DEPUTY:** Thank you, sir. Please take  
13 the witness stand.

14 **THE COURT:** Mr. Marcet.

15 **BY MR. MARCET:**

16 **Q.** Good afternoon.

17 **A.** Good afternoon.

18 **Q.** Special Agent Klepac, would you please introduce yourself  
19 to the jury?

20 **A.** My name is Mike Klepac. I work for the FBI as a special  
21 agent.

22 **Q.** And how long have you been employed with the FBI?

23 **A.** Nineteen years.

24 **Q.** Okay. So let's go back in time. Did you attend college?

25 **A.** I did.

Michael Klepac - Direct Examination

1 Q. Where did you attend college?

2 A. University of Florida.

3 Q. And what did you study at the University of Florida?

4 A. Computer engineering.

5 Q. Now, after you -- what types of things does a computer  
6 engineer study?

7 A. Basically, a little bit of everything about a computer,  
8 how to build it, how to program it, the components of it.

9 Q. Now, after graduating from the University of Florida, what  
10 did you do for work?

11 A. I worked at Lucent Technologies in Raleigh, North  
12 Carolina.

13 Q. What did you do at Lucent Technologies?

14 A. I was a software test engineer.

15 Q. Can you explain to the jury what does a software test  
16 engineer do?

17 A. We follow a test plan where developers will create a  
18 software program. As the test engineer, I would execute that  
19 program against known data and see what the results were to see  
20 if the results matched what we were expecting.

21 Q. And how long did you work as a software test engineer at  
22 Lucent?

23 A. Roughly two years.

24 Q. After your time at Lucent, what did you do?

25 A. I was the hardware engineer at Cisco Systems, also in

Michael Klepac - Direct Examination

1 Raleigh, North Carolina.

2 Q. How long did you do that?

3 A. Roughly two years.

4 Q. And what did you do as a hardware engineer?

5 A. I was responsible for assisting the compute farm, which is  
6 a series of Windows, Mac, and Linux systems, installing the  
7 software, keeping it up to date for the Cisco engineers to  
8 generate and basically build the routers that run the Internet.

9 Q. How long -- and after you were a hardware engineer, what  
10 did you do next?

11 A. I worked as a computer programmer at Kirchman Corporation  
12 in Orlando, Florida.

13 Q. Can you explain, what does a computer programmer do?

14 A. We design or write code that's executed on a computer that  
15 individuals can interact with to produce a result.

16 Q. What is your current job?

17 A. I'm a special agent and a digital forensic examiner.

18 Q. So what does a digital forensic examiner do?

19 A. We take, really, anything that can hold digital media,  
20 such as phones, computers, thumb drives, CDs, DVDs, GPS units.  
21 We can extract that data and then review it to determine what's  
22 on there, documents, music, videos, recover deleted metadata,  
23 things of that nature.

24 Q. Now, can you tell us the training that you get to become a  
25 forensic examiner?

Michael Klepac - Direct Examination

1 A. Once you're entered into the program, it takes roughly 18  
2 to 24 months to go through a series of classes that the FBI  
3 sponsors and you attend. You learn a variety of forensic  
4 tools, which are, for the most part, software programs that we  
5 run against our evidence. It can also be hardware programs or  
6 hardware devices, such as write blockers to prevent us from  
7 overwriting data.

8 Q. So you learned about all the tools you'll need to use to  
9 do your job?

10 A. Correct.

11 Q. Now, after that 18 to 24 months, do you have to take some  
12 sort of examination?

13 A. Yes.

14 Q. And after passing that examination, do you have to undergo  
15 ongoing training and ongoing testing?

16 A. Yearly testing.

17 Q. And what's the nature of that testing?

18 A. Just to verify that we are keeping up with the daily  
19 forensics, because it changes almost daily, and that we can  
20 still complete our exams in a proficient manner.

21 Q. Now, approximately how many forensic exams have you  
22 conducted in your career on digital devices?

23 A. Several hundred exams, covering thousands of devices.

24 Q. Okay. So what does it mean to conduct a forensic  
25 examination of a digital storage media such as a CD or DVD?

1 A. It means that we're going to take the evidence, whether  
2 it's a CD, DVD, hard drive, we'll make a copy of it, and  
3 then -- which is called an image, so it's a bit-for-bit image  
4 of the actual original media. And then we will execute tools  
5 against that image to extract out data.

6 Q. So when you create that copy, what's the purpose of doing  
7 that?

8 A. So we're not working off the original.

9 Q. And why don't you want to work off the original?

10 A. To prevent it from getting damaged.

11 Q. Now, can you talk us through, for example, with a CD, what  
12 type of information can you gather from making that image and  
13 then reviewing it?

14 A. We can review the documents that are on there. We can  
15 review when the CD was created. We can recover some of the  
16 metadata off of the document, such as the creation date.

17 Q. Now you mentioned the term "metadata." Can you explain  
18 what metadata is?

19 A. Metadata is basically data about data. So when you have a  
20 file on your computer, if it's a letter, but there's data  
21 behind that file that has like the creation date, the modified  
22 date. If it's a video, it might have the GPS coordinates of  
23 where it was taken, or photograph. It might have the color  
24 spectrum, if it's a photograph. There's a huge variety of  
25 different hidden data that the general user doesn't see. But

Michael Klepac - Direct Examination

1 it's attached to that file, and you usually need special tools  
2 to see it. Some of the data is readily available, but not all  
3 of it.

4 Q. And now that data, is that data placed there by the user  
5 or is that done automatically by the computer?

6 A. It's done automatically by the computer.

7 Q. And the computer uses the time of system. Correct?

8 A. Correct.

9 Q. All right. So in this case in around August or September,  
10 were you asked to examine a CD?

11 A. Yes.

12 Q. Now, where did you get the CD?

13 A. From evidence control.

14 Q. And can you explain that process?

15 A. In CART, so in the Computer Analysis Response Team, the  
16 group that I work for, we receive a request from the case agent  
17 to perform an examination of a piece of media. In this case,  
18 it was like 1B54, which means that it was the 54th evidence  
19 item for the case. I requested to check out that item from  
20 evidence control, went down to evidence control, signed the  
21 chain of custody, and brought the evidence back to my desk to  
22 begin the exam.

23 Q. Prior to that examination, had you had any involvement in  
24 this case?

25 A. No.

Michael Klepac - Direct Examination

1 Q. Okay. So I want to show you what's already in evidence as  
2 Government's Exhibit 17A. 17B is a little easier to see.

3 Okay. So what are we looking at here?

4 A. This is the bag that I received from evidence control.

5 Q. And at the top and at the bottom, it says,

6 "SECRET//NOFORN." What is that?

7 A. That's the classification.

8 Q. And is this evidence stored in a special manner because  
9 it's classified?

10 A. It's stored within the secret components of the evidence  
11 vault.

12 Q. And then at the top, it says, "Item 43." Correct?

13 A. Yes.

14 Q. Below that it says, "Classified Documents S//NF. RV  
15 Briefcase On Sofa."

16 A. Correct.

17 Q. And then you said the number for your purposes was 1B54.  
18 Correct?

19 A. Correct.

20 Q. That was what's here.

21 A. Yes.

22 Q. So once you got this item, what did you do with it?

23 A. I opened the bag, took out the contents. One of the items  
24 was a CD ROM or actually a CD RW. And I initialed the item,  
25 put the case number on it, the date, and gave it my own name.

Michael Klepac - Direct Examination

1 Q. Just looking at Government's Exhibit 17D, were these items  
2 also in the bag when you removed it?

3 A. Yes.

4 Q. Were there any paper classified documents, if you recall?

5 A. Yes. There were various paper documents.

6 Q. And then show you 17S. What are we looking at in 17S?

7 A. This is the CD that was in that bag that I examined.

8 Q. So there's some handwriting on the CD. What is -- what  
9 does that reflect?

10 A. That's the writing that I put on there, the TP-3439052.  
11 That was the case number. The 9/12/22, that was the date they  
12 started the exam. QTP54, that's my identifier for this piece  
13 of evidence, which stands for questionable item for Tampa field  
14 office 54, meaning that it came from 1B54. And then MK for my  
15 initials.

16 Q. And is that FBI protocol to initial the original evidence?

17 A. Yes.

18 Q. And why do you do that?

19 A. So that we can identify it, if it goes to trial, that we  
20 actually worked on that piece of evidence.

21 Q. All right. So once you took that CD out, what was the  
22 first thing you did with this as part of your analysis?

23 A. First thing I do is try to -- or is to extract an image of  
24 that CD, which is a bit-for-bit copy, again, so that we have a  
25 backup copy.

Michael Klepac - Direct Examination

1 Q. So when you say "bit-for-bit," you mean just an exact  
2 copy?

3 A. An exact copy.

4 Q. Do you use a special software to do that?

5 A. I do.

6 Q. And can you explain how that -- what software you use?

7 A. In this case, it was FTK Imager, so it's a software  
8 program by AccessData. They make forensic software. And we  
9 are able to load in our evidence, whether it's hard drive, a  
10 CD, a thumb drive. And through a series of steps we can create  
11 what's called a forensic image of that device, which is stored  
12 on a file, and then we can put that onto another CD or hard  
13 drive and enter it as evidence.

14 Q. Whenever you're working with an original piece of evidence  
15 like a CD in this case, do you use something called a write  
16 blocker?

17 A. Not so much for a CD, because there aren't write blockers  
18 for CDs. But we have software write blockers that we can  
19 install on the computer.

20 Q. What is a write blocker?

21 A. It presents us from writing to a certain piece of data.  
22 So usually it's a hardware device, so it's between -- if you  
23 consider -- it's a block between a hard drive and the computer  
24 so that we can't send data to it. For a CD, because we're  
25 putting it into a CD reader, we can use software write blocker,

Michael Klepac - Direct Examination

1 so we block certain devices from being written to.

2 Q. And without a write blocker, is there a risk that you  
3 could impact the metadata or the data on the device --

4 A. Yes.

5 Q. -- that you're examining?

6 A. Yes.

7 Q. Okay. So let's look at --

8 MR. MARCET: Your Honor, I would offer, without  
9 objection, Exhibits 32 and 33.

10 THE COURT: I'll receive into evidence 32 and 33,  
11 government's exhibits.

12 (Government's Exhibits 32 and 33 admitted into evidence.)

13 BY MR. MARCET:

14 Q. All right. So in addition to making the exact copy, did  
15 you do some form of analysis of the CD?

16 A. I did. I ran CD/DVD Inspector.

17 Q. And can you explain to the jury what is CD/DVD Inspector?

18 A. CD/DVD Inspector is a software tool that we can use. It's  
19 generally used to review CDs, DVDs, or Blu-ray discs, any type  
20 of optical disc. And it can also create images. And I did  
21 create a separate image with this. But it will also just kind  
22 of review the contents of the -- of the optical disc and  
23 generate a report, which is what you're seeing here.

24 Q. What types of information can CD/DVD Inspector tell you  
25 about the disc?

Michael Klepac - Direct Examination

1 A. It will tell us when the disc was created. It will create  
2 a file listing. It can show you the software that was used to  
3 burn the disc.

4 Q. All right. Okay. So at the top here, it says, "The  
5 following information was collected by CD/DVD Inspector,  
6 Copyright 1997 to 2016, InfinaDyne." That's just referring to  
7 the program you were just telling us about.

8 A. Yes. InfinaDyne is the maker of CD/DVD Inspector.

9 Q. And then here it says, "Image file in InfinaDyne format."  
10 Can you tell us what that is?

11 A. When I use CD/DVD Inspector, the first thing that it does  
12 is, when it's reviewing the CD, is it creates its own image.  
13 In this case, it was the IDIF image. And that's the full path  
14 where I stored it on our forensic network.

15 Q. And then coming down, can you walk the jury through what  
16 are we looking at here. What is a Joliet file system?

17 A. So on CDs and DVDs, you generally will have two separate  
18 file systems. The most common on the Joliet and ISO 9660.  
19 It's limited to eight characters with a three-digit extension.  
20 So it's more old school. It's more of -- if you think of it,  
21 the DOS days of computers. Windows came along, and to assist  
22 the general user, they allow for a longer file name. If I'm  
23 not positive, I think it's 128 characters, roughly, so that you  
24 can give it a full file name, and it's something people can  
25 actually remember and review and know what the document is

1 about.

2 But on the CD, you've got both file systems, one that has  
3 the eight character -- the eight-character file name with a  
4 three-digit extension, which is the ISO 9660, and then the  
5 Joliet, which is the full file name that a user can give.

6 Q. So if we look at the next exhibit, we're going to see two  
7 copies of all the different file names. Is that why, because  
8 the program extracts, essentially does it twice?

9 A. Correct.

10 Q. But on the actual CD, there's just one copy?

11 A. Correct.

12 Q. Okay. Below that, it says, "Volume create date-Not  
13 Applicable." What does that mean?

14 A. On the storage media, such as a hard drive, you might have  
15 a volume name. In this case, there was no volume name  
16 associated with it because it's a CD.

17 Q. Below that it says, "Root directory timestamp," and  
18 there's a date. So, first of all, what is that date?

19 A. This is the date that the CD actually started to burn --  
20 that the data was actually started to burn onto the disc. So  
21 the root directory was originally created on January 22nd, 2005  
22 at 16:52:05 GMT.

23 Q. And below that it says, "Application identifier: Easy CD  
24 Creator 5.3, Copyright 1999 to 2003." What is that talking  
25 about?

Michael Klepac - Direct Examination

1 A. The Easy CD Creator 5.3, that is the software program that  
2 was utilized by the user to actually generate or burn the CD,  
3 put the data onto the CD, the software package.

4 Q. And then below that, it said, "There are 63 accessible  
5 files and 5 directories contained in this file system." What  
6 does that mean?

7 A. CD/DVD Inspector was able to locate on the CD, there's 63  
8 individual files and five separate folders or directories.

9 Q. And then if we go -- sorry -- below, it says, "ISO 9660  
10 file system," and then has a lot of the same information. Why  
11 does it have the information twice?

12 A. Because it's same information, but it's a separate file  
13 system. It's the ISO 9660 versus the Joliet.

14 Q. So based on this information, when was this CD created?

15 A. January 22nd, 2005 at 16:52:05 GMT.

16 Q. Now, that's the time the computer is set to. Correct?

17 A. Correct.

18 Q. So that can be manipulated. Correct?

19 A. Yes.

20 Q. Now, looking at Exhibit 33, what are we looking at in  
21 Exhibit 33?

22 A. This is the file listing of the individual files on the CD  
23 in ISO 9660 format.

24 Q. And let's start over on the left column. So the left  
25 column says, "Filename." What does that refer to?

Michael Klepac - Direct Examination

1 A. So that's the name of the actual file that somebody  
2 assigned to that file.

3 Q. And then -- oh, that's not the right exhibit. And then  
4 over here, we see created and modified dates. I'll just zoom  
5 in on a couple. So all of these dates are created and modified  
6 prior to the disc burning on January 12th, 2005?

7 A. Yes.

8 Q. Now, this data, just like the CD burn data, comes from the  
9 computer. Correct?

10 A. Correct.

11 Q. But anytime you would change the metadata on the computer,  
12 if you were trying to manipulate these results, what would that  
13 risk?

14 A. If you're trying to change it, you're going to overwrite  
15 the creation and modified date. The creation date generally  
16 does not change.

17 Q. And so all of these dates are in essence different from  
18 each other?

19 A. Correct.

20 Q. And what does that represent about these documents?

21 A. That they were created prior to them being burned onto the  
22 CD.

23 Q. And the time frame here, when were they created?

24 A. In 2005, various dates in 2005 -- or -- well, actually  
25 before 2005, 2002, 2004.

Michael Klepac - Direct Examination

1 Q. Did you actually, you know, look at that actual contents  
2 of the documents?

3 A. No.

4 Q. So do you know what they relate to?

5 A. I do not.

6 Q. If we go down, we then see -- we see short names and then  
7 we see longer names. Why are there two different types of  
8 names? Why are the files listed twice with different names?

9 A. Again, it's the same files. It's just this is now the  
10 Joliet file system, so it's got a long name so it's more user  
11 friendly.

12 Q. Let me get you a better snip. So can you read in a couple  
13 of the names here?

14 A. The first one being "I-7TH SFG OEF SOI JAN05.doc." The  
15 next one is "76 fragos," f-r-a-g-o-s.

16 The next one is "ACRONYMS," all in caps.

17 The next one is "Border Scenarios ROE Refresher  
18 Training.ppt."

19 The next one is "cache recovery.doc."

20 The next one is "CJSOTF-A 7th sfg SOI UPDATED JAN 04."

21 Q. That's -- you don't need to read them all. Thank you.  
22 And then if we look further over, the date and time column,  
23 what's the date and time of all of these different file -- of  
24 all these different files, just in general?

25 A. All dates prior to when the CD was burned.

Michael Klepac - Cross-Examination

1 Q. And then, finally, just to look at something, might be  
2 more familiar, I'm showing you what's already in evidence as  
3 31A. What is -- we see these files, and then we see a  
4 number -- a number of documents. How do these files and  
5 documents relate to what we just saw on the list of files?

6 A. So from the CD/DVD Inspector report, it said there were  
7 five directories with 63 files. So you're seeing, this is a  
8 Windows view of the disc as its placed into a system. So if  
9 you were to open up your Windows computer, put the disc in and  
10 go to your file manager and review it, you would see there are  
11 five folders up here, the "76 fragos, ACRONYM, CONOP SOP, IED'S  
12 and SAVE-SER-SUP-6." And then it starts to list out the  
13 individual files underneath that that were in the root  
14 directory of the disc.

15 MR. MARCET: Thank you, Your Honor. I have no  
16 further questions.

17 THE COURT: All right. Mr. Futerman.

18 MR. FUTERMAN: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. FUTERMAN:

21 Q. Good afternoon, Mr. Klepac. Just a few brief questions.

22 A. Sure.

23 Q. This report or this request to find out when the CD was  
24 burned, this was done in August of 2022. Correct?

25 A. Correct.

Michael Klepac - Cross-Examination

1 Q. And your report was generated September of 2022.

2 A. Correct.

3 Q. Okay. About a year or so -- well, after Mr. Brown has  
4 been arrested. Correct?

5 A. I don't know when he was arrested.

6 Q. Okay. The prosecutor asked you about the time being  
7 manipulated, but there's no doubt in your mind that this CD was  
8 created on January 22nd, 2005. Is that right?

9 A. Correct.

10 Q. And you put, I think, 4:52 in your report. Prosecutor  
11 said the time might be off. But we know, according to this,  
12 correct, it was a 17-year-old CD. Correct?

13 A. Yes.

14 Q. The one that you were asked to inspect that was allegedly  
15 in Mr. Brown's possession. Correct?

16 A. Correct.

17 Q. All right. A few brief questions about this little  
18 writing here on the report. Just to clarify, if we can see  
19 some of these dates, you said a variety of dates 2002, 2004,  
20 2005, all kinds of dates on here, all involving things prior to  
21 2005. Correct?

22 A. Correct.

23 Q. And all of these things are then put on the CD. Correct?

24 A. Yes.

25 Q. All right. And, finally, when someone gets this type of

Michael Klepac - Cross-Examination

1 CD -- let me rephrase this. Physical documents, classified  
2 documents, easy to read, right, obviously, you can just read  
3 it. In our case, put our glasses on and read it. Right?

4 **A.** Right.

5 **Q.** But this, a CD like this, a classified CD like this, you  
6 can't read that on a CD player. Right? You need a sensitive  
7 special reader to read a CD like this with classified documents  
8 on it?

9 **A.** You don't need -- you need a computer CD reader, not a  
10 audio CD player.

11 **Q.** Okay. Do you need like with this classified stuff on a  
12 CD, just plug that into a computer at your house and view it  
13 and play it?

14 **A.** Correct. It doesn't matter if it's classified, it's still  
15 going to play.

16 **Q.** Okay. Doesn't require anything specialized, other than  
17 just a regular CD player, like a reader. Right?

18 **A.** Correct.

19 **Q.** Do you know in the search of Mr. Brown's house when they  
20 found his computers if they ever found a CD reader or CD  
21 player?

22 **A.** I'm unfamiliar with what else was found.

23 **Q.** Okay. Thank you.

24 **MR. FUTERMAN:** I have no more questions.

25 **THE COURT:** Any redirect?

**REDIRECT EXAMINATION**

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**BY MR. MARCET:**

**Q.** I just wanted to distinguish two things. So you're saying -- are you saying if you want to put that CD in any computer with a CD reader will work. Correct?

**A.** Yes. That's part of the point of having the Joliet and the ISO 9660 is it makes it compatible against a variety of operating systems, whether it's Mac, Windows or Linux.

**Q.** But in compliance with the rules governing classified documents, are you permitted to put in any computer?

**A.** No. You need -- if you're going to look at classified information, you need a classified system in order to review it.

**Q.** So you could review it with any computer?

**A.** You could.

**Q.** But it would be illegal?

**A.** Correct.

**MR. MARCET:** Thank you, Your Honor. No further questions.

**THE COURT:** Thank you, sir. You may step down.

You may call your next witness.

**MR. GOEDMAN:** United States calls US Central Command Chief of Information Security Doarin Lewis.

**THE COURT:** Sir, if you'll come forward to be sworn.

Ms. Black, would you swear the witness.

Doarin Lewis - Direct Examination

1           **THE COURTROOM DEPUTY:** Yes, Your Honor. Please raise  
2 your right hand.

3 WHEREUPON,

4                           **DOARIN LEWIS,**  
5 was called as a witness and, after having been first duly  
6 sworn, testified as follows:

7                           **DIRECT EXAMINATION**

8           **THE COURTROOM DEPUTY:** Please state your name for the  
9 record and spell your name.

10           **THE WITNESS:** Doarin Lewis. D-o-a-r-i-n, L-e-w-i-s.

11           **THE COURTROOM DEPUTY:** Thank you, sir. Please take  
12 the witness stand.

13           **THE COURT:** Mr. Goedman.

14 **BY MR. GOEDMAN:**

15 **Q.** Good afternoon.

16 **A.** Good afternoon.

17 **Q.** Can you please state your name for the record.

18 **A.** Doarin Lewis.

19 **Q.** Mr. Lewis, where are you currently employed?

20 **A.** Currently, I'm the -- work at the US Central Command,  
21 MacDill Air Force Base.

22 **Q.** And what role do you hold at US Central Command?

23 **A.** Currently serve as the chief of Information Security.

24 **Q.** And did you participate in a classification review of  
25 certain documents in connection with this case?

UNITED STATES DISTRICT COURT

Doarin Lewis - Direct Examination

1 A. Yes, I did.

2 Q. Let's go back to the start of your career. Did you ever  
3 serve in the military, Mr. Lewis?

4 A. Yes, I did. I served in the Marine Corps for 31 years.

5 Q. And can you tell us about your first time coming to US  
6 Central Command?

7 A. Yes. That was in 1995 when I was selected to come here,  
8 and I served in the J47 at the time of the Logistics  
9 Engineering and Security Assistance Directorate.

10 Q. And how long were you in that role for?

11 A. I was there for three years. And during that three-year  
12 period, I served the first two years as a plans officer. And  
13 then last year, I was executive officer for the J4.

14 Q. So after you left that role, did you ever come back to  
15 CENTCOM a second time?

16 A. Yes, I did. I returned in 2007, served as the chief of  
17 staff in the J4.

18 Q. And how long did you stay in the chief of staff role?

19 A. For three years.

20 Q. And after being chief of staff for three years, what  
21 happened next?

22 A. At the end of that, I retired from the Marine Corps.

23 Q. What rank did you hold at retirement?

24 A. Colonel.

25 Q. So during your military career, when you were in active

Doarin Lewis - Direct Examination

1 service, did you ever handle classified information?

2 A. Yes, sir, I did.

3 Q. Frequently?

4 A. Yes.

5 Q. Did you obtain a security clearance while you were in the  
6 military?

7 A. Yes, I did.

8 Q. When was that?

9 A. When I was first entered, I had a basic security  
10 clearance. And then when I was selected to come to Central  
11 Command in 1995, the job required a top secret/SCI clearance.  
12 So that year prior to coming, I was a student at the Naval War  
13 College at Newport Rhode Island. During that period, they had  
14 to do a background investigation to upgrade from clearance from  
15 secret to top secret.

16 Q. Have you received any training on the proper handling of  
17 classified information during your career in the military?

18 A. Yes, sir, I have.

19 Q. What kind -- what was the training about?

20 A. Just various marking, classified, how to handle  
21 classified, courier, and responsibilities when you take it from  
22 point A to point B.

23 Q. Let's talk about your current role at CENTCOM. How long  
24 have you been chief of Information Security?

25 A. For ten years.

Doarin Lewis - Direct Examination

1 Q. And can you describe the primary functions of that role?

2 A. There's basically two primary function, one is called a  
3 SETA program, which is Security Education Training and  
4 Awareness program, which is responsible for providing training  
5 on -- to the command at large. And then there's the piece  
6 where we work with classification reviews.

7 Q. And when you say provide training, what's the subject of  
8 that training?

9 A. It's several. There's marking classified, which is  
10 basically required for everyone. And then there's also basic  
11 security training that we provide for new joins. When a person  
12 initially joins the command, they go through orientation, and  
13 we provide the initial security brief they get.

14 Q. You said as a second function, you're involved in  
15 classification reviews. Correct?

16 A. Yes, sir.

17 Q. And for the benefit of those who may not know, what is a  
18 classification review?

19 A. Classification review, when you take a document and you  
20 make a determination of what -- if the document should be  
21 classified. If it is classified, it should still be  
22 classified, based upon the information there, and it's just  
23 basically review from start to finish.

24 Q. What role does your -- what role do you play in that  
25 process?

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1 A. I basically oversee the process.

2 Q. And over your ten years as the chief information security  
3 officer, how many classification reviews have you taken part  
4 in?

5 A. I'd probably say at least a thousand-plus.

6 Q. And how many pages of classified information have you  
7 reviewed during that -- during those reviews?

8 A. I say thousands, because you can have a document as  
9 simple, short as one page. You can have a document -- series  
10 of documents up to 16,000 pages.

11 Q. Okay. Let's talk a little bit about the rules and  
12 regulations around classified information. Are you familiar  
13 with Executive Order 13526?

14 A. Yes, sir, I am.

15 MR. GOEDMAN: Your Honor, without objection, I'd like  
16 to admit Government Exhibit Number 67.

17 THE COURT: I'll receive into evidence Government's  
18 Exhibit 67.

19 (Government's Exhibit 67 admitted into evidence.)

20 BY MR. GOEDMAN:

21 Q. Do you recognize this document, Mr. Lewis?

22 A. Yes, sir, I do.

23 Q. What is it?

24 A. This is the Executive Order 13526, is the presidential  
25 guidance on how to handle classified material, how it has to be

1 declassified and the safe handling process.

2 Q. In your current role are you required to be familiar with  
3 this document?

4 A. Yes, sir, I am.

5 Q. So can you -- I'd like to direct your attention to  
6 Section 1.2 of this executive order.

7 Let me know when you see it.

8 A. I see it.

9 Q. It's entitled "Classification Levels." Is that correct?

10 A. Yes, sir.

11 Q. What are classification levels?

12 A. Classification level, documents can be classified at one  
13 or three levels. It can be top secret, secret, or  
14 confidential. Top secret -- in descending order, top secret is  
15 any information that if unauthorized disclosed, it can  
16 potentially cause, you know, exceptional grave damage to  
17 national security. Then you have secret, which is second  
18 level, which information, if unauthorized disclosed, could  
19 cause serious damage to national security. And then the basic  
20 one is confidential information, if unauthorized disclosed, can  
21 cause damage to national security.

22 Q. Let's look down at Section 1.4.

23 Can you read that all right?

24 A. Yes, sir.

25 Q. What's this section called?

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1 A. This is "Classification Categories." What it refers to is  
2 when you have national security information, it has to fit into  
3 one of those eight categories. They're listed here, A through  
4 G. Some of those categories deals with military plans, weapons  
5 systems, operations, intelligence, foreign relations,  
6 et cetera.

7 Q. So what is Section 1.4(c) about?

8 A. 1.4(c) is "Intelligence activities (including covert  
9 action), intelligence sources or methods, or cryptology."

10 Q. What about 1.4(g)?

11 A. 1.4(g) says, "Vulnerabilities or capabilities of systems,  
12 installations, infrastructure, projects, plans, or protection  
13 services relating to the national security."

14 Q. If I document relates to one of those topics in this list,  
15 then it's potentially classifiable?

16 A. Correct.

17 Q. Let's look at part two of this executive order.

18 So part two is entitled, "Derivative Classification." Is  
19 that correct?

20 A. Yes, sir.

21 Q. What is derivative classification?

22 A. Well, derivative classification is when you reproduce,  
23 extract, or similar to when a person writes a term paper, they  
24 go to different sources, so they're deriving that information  
25 from those sources. And so with that -- within DOD,

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1 99.9 percent of the stuff we do is derivative classified. It  
2 comes from either another classified source or is pulled from  
3 another document.

4 Q. So in the example you gave in the primary sources, when  
5 the student is writing the term paper, who classifies the  
6 primary sources?

7 A. Primary source is classified by an OCA, Original  
8 Classification Authority, or is coming out of what would be  
9 where they rendered a decision, and it would be what we call an  
10 SCG, Security Classification Guide.

11 Q. Can anyone be a derivative classifier?

12 A. There's three requirements. You've got to have a  
13 appropriate level clearance, you've got to have the need to  
14 know, and then you have to have the NDA, nondisclosure  
15 agreement. And then based on that, those three criteria, then  
16 that person can be a derivative classifier.

17 Q. Do derivative classifiers receive any ongoing training  
18 around the handling of classified information?

19 A. Yes, sir, there's a DOD annual requirement for training.  
20 At CENTCOM, we use the What About Me page, where we list the  
21 training from marking classified, information security, control  
22 unclassified information, and they're required to complete that  
23 on an annual basis.

24 Q. If someone had a security clearance but didn't complete  
25 those trainings, what would happen?

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1 A. They would run the risk of being denied access until they  
2 complete the training. For example, on the computer system, on  
3 that annual date due, if you haven't completed the training,  
4 you lose your accounts until you go back and complete the  
5 training.

6 Q. Let's go down to Section 2.2. So this section is  
7 entitled, "Classification Guides." Are you familiar with what  
8 classification guides are?

9 A. Yes, sir, I am. Classification guides are where it has  
10 the OCA's decisions, what classification decision they made,  
11 and it also has additional information in there that's used by  
12 typically a derivative classifier when they're trying to  
13 determine what's the classification level of a document.

14 Q. Let's go down to part four. Part four is referred to  
15 as -- is entitled safeguarding. Is that correct?

16 A. Yes, sir.

17 Q. Can you talk about some of the -- some of the safeguarding  
18 requirements set forth in this?

19 A. In here, it says -- it's basically explains that a person  
20 has to have -- in order to have access, they've got to have the  
21 eligibility. So there's a piece of the appropriate level  
22 clearance. They have to have signed the nondisclosure  
23 agreement, and then they have to have a need to know that  
24 particular information.

25 Q. I didn't do a good job of capturing this. What is

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1 Section 4.1(c) about?

2 **A.** Well, it speaks to a person that's actually leaving  
3 service or being transferred. Says, a person -- "an official  
4 or employee leaving agency services may not remove classified  
5 information from the agency's control or direct that  
6 information to be declassified in order to remove it from  
7 agency's control."

8 **Q.** So when it says here "leaving agency service," what does  
9 that mean?

10 **A.** It means they're either retiring or transferring to a new  
11 assignment.

12 **Q.** What about Section 4.1(d)?

13 **A.** Says, "Classified information may not be removed from  
14 official premises without proper authorization."

15 **Q.** I'd like to show the witness Government Exhibit Number 34.

16 Mr. Brown, are you able to read the title of this  
17 document? Oh, sorry. Mr. Lewis, are you able to read the  
18 title of this document?

19 **A.** Yes, sir, I am.

20 **Q.** What does it say?

21 **A.** Says, "Classified Information Nondisclosure Agreement."

22 **Q.** And are you able to tell who this form relates to?

23 **A.** It says, "An Agreement Between Brown Jeffrey [sic] M. And  
24 The United States."

25 **Q.** Let's look at Paragraph 2 of this agreement. Can you read

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1 what Paragraph 2 says there?

2 **A.** "I hereby acknowledge that I have received a security  
3 indoctrination concerning the nature and protection of  
4 classified information, including the procedures to be followed  
5 in ascertaining whether other persons to whom I contemplate  
6 disclosing this information have been approved for access to it  
7 and that I understand these procedures."

8 **Q.** What does "security indoctrination" mean in that  
9 paragraph?

10 **A.** Prior to signing that agreement, they will walk through  
11 the procedures and ensure that they're familiar with all the  
12 requirements of handling classified material.

13 **Q.** Let's look at Paragraph 3, and I'm not going to ask you to  
14 read the whole thing, but why don't you read the first  
15 sentence?

16 **A.** "I have been advised that unauthorized disclosure,  
17 unauthorized retention, or negligent handling of classified  
18 information by me could cause damage or irreparable injury to  
19 the United States or could be used to the advantage by a  
20 foreign nation."

21 **Q.** Thank you. Page 2 of this document, Mr. Lewis, are you  
22 able to see who signed this document?

23 **A.** Yes, sir, I am.

24 **Q.** And who signed it?

25 **A.** Jeremy M. Brown.

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1 Q. And is there a date next to that signature?

2 A. Yes, sir. It's 17 October 1995.

3 Q. All right. Showing the witness Government Exhibit  
4 Number 35. Mr. Lewis, do you recognize this document?

5 A. Yes, sir.

6 Q. What is it?

7 A. This is a screenshot of a -- from the -- from the -- it  
8 shows when you pull up a clearance on the screen, this is basic  
9 information that's shown there.

10 Q. In the area I've enlarged in the bottom right-hand side,  
11 do you see where it says "NDA Signed Date"?

12 A. Yes, sir.

13 Q. What does "NDA" mean in this context?

14 A. Again, NDA stands for nondisclosure agreement.

15 Q. Is that one of the documents we just looked at?

16 A. Yes, sir.

17 Q. What's the date there?

18 A. This one has two dates. First one is 2006, fourth month,  
19 third day.

20 Q. And the other date?

21 A. Is 2010, six month, fourth day.

22 Q. Those are the dates where the defendant would have signed  
23 these classified NDAs?

24 A. Yes, sir.

25 Q. Look a little bit further down the document. So this box

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1 called "Adjudication History." What does adjudication history  
2 mean?

3 **A.** Adjudication history is when a person applies for a  
4 clearance, the final stop is -- it goes to what's called a  
5 Central Adjudication Facility where they review all the  
6 information and they make a determination on appropriate level  
7 of clearance for the individual, or first they make a  
8 determination of whether clearance will be granted and then  
9 what's the appropriate level.

10 **Q.** So can you just talk us through what this document says  
11 about the defendant's adjudication history?

12 **A.** This one, it shows adjudication completed, which meant  
13 that the Department of Defense Central Adjudication Facility  
14 gave him a favorable -- gave the individual a favorable  
15 determination on 2002, fourth month, fourth day.

16 **Q.** All right. Let's turn to -- let's turn to some of the  
17 documents that were at issue in the classification review.

18 I'm going to show the witness Government Exhibit Number 6.  
19 Mr. Lewis, do you recognize this document?

20 **A.** Yes, sir.

21 **Q.** Was this one of the documents that was submitted to  
22 CENTCOM as part of the classification review?

23 **A.** Yes, sir, it was.

24 **Q.** Do you see the red letters across the top?

25 **A.** I do.

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1 Q. Can you read those aloud for us.

2 A. Says SECRET//REL USA and GCTF//X1.

3 Q. Let's break those down. What does secret mean in this  
4 context?

5 A. Secret means information there, if unauthorized disclosed  
6 would cause damage to national sure.

7 Q. What about the middle piece. REL USA and GCTF?

8 A. REL mean releasable, and it tells you who you can release  
9 it to, so it says releasable to USA, and then the global  
10 counter task force, and then the X1 means that the information  
11 that's in here is human information.

12 Q. What does that mean if it's human information?

13 A. It's taken from a human source by various means.

14 Q. Let's look at what's marked as Government's Exhibit 10.  
15 Mr. Lewis do you recognize this document?

16 A. Yes, sir, I do.

17 Q. Was it one of the documents that was part of CENTCOM's  
18 classification review?

19 A. Yes, sir, it was.

20 Q. Do you see the red type across the top of the document?

21 A. Yes, sir, I do.

22 Q. Can you read it for us?

23 A. It says, "SECRET//NOFORN."

24 Q. What does secret mean in the context of this document?

25 A. Again, secret, if unauthorized disclosure, could cause

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1 damage to national security. The NOFORN means no foreigners,  
2 which means that -- and it also indicates one of four things  
3 that when you see the NOFORN attached to it, that means  
4 information there can come from either intelligence source or  
5 it could come from Naval Nuclear Propulsion or one of the  
6 nondisclosure -- NDP, nondisclosure policy one. So the NOFORN  
7 tells you it's possible this information fits in one of those  
8 three categories.

9 Q. Let's look at Page 3 of this document. So we've seen this  
10 document a few times. But I want to focus your attention to  
11 the very end of the line, it says TS VoIP, and then it has some  
12 numbers. Do you know what that is?

13 A. Yes. That's top secret voice over Internet protocol,  
14 which means that the conversation on that system will be -- can  
15 be at the top secret level.

16 Q. So it's -- it's a classified phone?

17 A. It's a classified phone.

18 Q. And then that e-mail address, I noticed that towards the  
19 end, it says, "smil." Do you see that?

20 A. Yes, sir, I do.

21 Q. Do you know what "smil" means in an e-mail address like  
22 this?

23 A. Smil, when you add smil to an address, that means it's on  
24 a classified network, typically what we refer to as SIPRNet.

25 Q. What would a person need to do in order to get access to a

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1 top secret phone line and be issued a classified e-mail  
2 address?

3 A. It goes back to when I originally said. They would have  
4 to have the nondisclosure agreement. They'd have to have the  
5 appropriate level security clearance, and then they'd have to  
6 have the valid need-to-know.

7 Q. Let's turn to the classification review in this case. Did  
8 you participate in that review?

9 A. Yes, sir, I did.

10 Q. What was your role?

11 A. I facilitated the process. When it comes in, we make sure  
12 it gets right to the -- what we call subject-matter experts.  
13 We look at the information in there and make a determination  
14 who needs to see this and review it. And then when it all  
15 comes back, we put it together, prepare a final document for  
16 the OCA, Original Classification Authority, with a  
17 recommendation. And then it will go to a legal review and then  
18 lit eventually go to the OCA.

19 Q. So do you at some point after reviewing the document, do  
20 you send it off to different people within US Central Command?

21 A. Correct, because we have to send it to subject-matter  
22 experts for review.

23 Q. What's a subject-matter expert in this context?

24 A. Well, it's going to be -- depends on the section. So if  
25 it -- if it's the Counter-IED, you send to it that section. If

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1 it's intelligence, it will go to the intelligence directorate.

2 If it's COMSEC, it would go to the six or appropriate level.

3 Q. Do you know if CENTCOM reached a final conclusion as to  
4 the classification status of the documents that you reviewed?

5 A. Yes, sir, I do.

6 Q. With a reminder that you're testifying in an unclassified  
7 setting, can you -- do you remember any of the subject matters  
8 of those documents?

9 A. Yes, sir, there was the COMSEC. There was --

10 Q. And what's COMSEC?

11 A. Communication Security.

12 Q. Okay.

13 A. There's the Counter-IED, that information, and then there  
14 was also human intelligence.

15 Q. And did CENTCOM's classification review, said you farmed  
16 it out to the subject-matter experts, did it also involve the  
17 security classification guides that you discussed earlier?

18 A. Yes, sir. Because that's what they -- that's the basis  
19 they used it as a reference.

20 Q. Now, when a classification review begins, how does that  
21 happen? How does CENTCOM start the classification review?

22 A. If there's a request comes in -- typically, there's a  
23 formal process. A request has to come into the command. It  
24 will come in -- we'll get it from the Joint Staff in DC.

25 They'll send it down. They have a protocol CATMS. They put

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1 the request in. It come in to the command deck. We'll put in  
2 what we call the task or management program, and then it's  
3 tasked out to the different directors. We'll review it and  
4 make a determination that we touched base and we identified all  
5 the directorates. And if not, we make sure all the appropriate  
6 directors get a chance to review it. And they put that --  
7 provide the input back into the TMT, or the task management  
8 program. We collect all that and put it together.

9 Q. So you receive an incoming request and you then you review  
10 it?

11 A. Yes, sir.

12 Q. And then you send it on to subject-matter experts with  
13 expertise in those documents?

14 A. Correct.

15 Q. They then do a review and provide information back?

16 A. That's correct.

17 Q. Can this be a long process?

18 A. Yes, sir, it can. Because, again, size of the documents,  
19 the workload. Typical request comes in, we have ten normal  
20 working days to work the package. But typically what will  
21 happen, because of the -- depending on the amount of  
22 information or the need to research additional research, you  
23 may have go back and get a couple of extensions. So it can be  
24 done, you know, a week to ten days or it could take longer.  
25 Oftentimes it does.

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1 Q. Can it take months?

2 A. It can. Like I said, depending on the age of the  
3 material, where you got to go to confirm sources. Because in  
4 many cases, it may be we have to confirm with other commands if  
5 any of that information in there is theirs, because we want to  
6 make sure we -- we're only responsible for what's our portion.

7 Q. So when you say other commands, you mean it might need --  
8 you might need to consult outside of US Central Command?

9 A. Correct.

10 Q. That's an entirely different universe in the military?

11 A. Yes, sir.

12 Q. So based on your training and experience, when a document  
13 is classified top secret or secret, are there limits who can  
14 see that document?

15 A. Yes, sir, it is. Because, again, it goes back to if a  
16 person has a valid need-to-know.

17 Q. And when a document is marked secret, are you authorized  
18 to take that home with you?

19 A. No, sir, you're not.

20 Q. And when you -- when a document is marked secret, are you  
21 authorized to keep it in your possession after you retire from  
22 the military?

23 A. No, sir, you're not.

24 MR. GOEDMAN: No further questions, Your Honor. I  
25 tender the witness for cross-examination.

UNITED STATES DISTRICT COURT

Doarin Lewis - Cross-Examination

1 THE COURT: Mr. Futerman, why don't we take a recess.

2 MR. FUTERMAN: My questions will be two minutes.

3 THE COURT: Okay. Go ahead.

4 MR. FUTERMAN: Thank you.

5 CROSS-EXAMINATION

6 BY MR. FUTERMAN:

7 Q. Good afternoon, Mr. Lewis. Thank you for your service,  
8 sir. Just a quick couple of questions. As it relates to  
9 Count 10, the physical document that was Government Exhibit  
10 Number 10, the one that is dated September 1, 2011 that was  
11 authored by Mr. Brown, that document, the one you've reviewed?  
12 Correct?

13 A. Yes, sir.

14 Q. He authored it. Correct?

15 A. Yes, sir.

16 Q. Is this a actual copy or a draft or what he ordered --  
17 what me authored, Government 10, or is this is document or have  
18 you compared, because -- let me break it up.

19 The actual document was submitted by Mr. Brown. Correct?

20 A. Correct.

21 Q. All right. So the actual classified --

22 MR. GOEDMAN: Objection, Your Honor. Vague as  
23 submitted.

24 THE COURT: Yeah. If you'll clarify. He answered  
25 yes, but I'm not sure anybody understands what he did.

1 BY MR. FUTERMAN:

2 Q. When I said "submitted," I think you understood that the  
3 actual classified document that he authored, he put that  
4 through the secure network in 2000 that he submitted, can you  
5 tell the jury what you understood as my question as submitted?

6 A. You're asking me if he's the one who submitted it for  
7 signature or final approval.

8 Q. Well, when he authored that document in 2011, along with  
9 the trip report, he did something with it. Right?

10 A. (Moving head up and down.)

11 Q. And it goes through a network --

12 MR. GOEDMAN: Objection, Your Honor. Speculation.

13 THE COURT: Yeah. Let me -- he was just shaking his  
14 head. We didn't get anything on the record. You need to  
15 answer out loud. And if you don't know the answer, just say  
16 you don't know. But you -- whatever you do, you need to --  
17 don't just shake your head. You need to answer out loud,  
18 please, sir.

19 BY MR. FUTERMAN:

20 Q. Can you expand upon that, sir?

21 A. Can you repeat it, please.

22 Q. Let me break it back. The actual physical document that  
23 you examined that was in Mr. Brown's possession, okay, that he  
24 authored, the one in 2011, that contained his e-mail and  
25 various trip documents, that is not the actual classified

Doarin Lewis - Cross-Examination

1 document that was submitted in 2011. Correct?

2 **MR. GOEDMAN:** Your Honor, same objection. Vague as  
3 to what submitted means here.

4 **THE COURT:** Sustained. Submitted, what do you mean  
5 by submitted? Maybe you can clarify that.

6 **BY MR. FUTERMAN:**

7 **Q.** Right. That was put under the secure network, the actual  
8 document, the actual classified document itself is not this  
9 document that was found in his possession. Correct?

10 **MR. GOEDMAN:** Objection, Your Honor. Calls for  
11 speculation. Mr. Lewis has no idea what --

12 **THE COURT:** Well, I don't know. Let's ask him. If  
13 you know.

14 Do you understand the question?

15 **THE WITNESS:** I think I do.

16 **THE COURT:** If you know, you can answer the question.  
17 If you don't, say you don't know.

18 **THE WITNESS:** In the sense of what he actually  
19 submitted on the network, I can't speak to that. I can only  
20 speak to what was -- what the document that we -- that we  
21 reviewed.

22 **BY MR. FUTERMAN:**

23 **Q.** Right. So that's a copy. It's not the -- not the  
24 original classified document. Correct?

25 **A.** It would be -- it's the original -- it's a copy of the

Doarin Lewis - Redirect Examination

1 original classified document, you know.

2 Q. Did you ever compare the original document that he  
3 authored to this document that was in his possession?

4 A. No.

5 MR. FUTERMAN: Your Honor, I have no more questions.

6 THE COURT: All right. Mr. Goedman.

7 MR. GOEDMAN: It will be quick, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. GOEDMAN:

10 Q. Mr. Lewis, if I -- if I type up a classified document on a  
11 computer, can I print that out?

12 A. Yes, sir, you can.

13 Q. Would that printout be classified?

14 A. Yes, it would be.

15 Q. If I print it out and put it in a copy machine and make  
16 five copies, would that be classified?

17 A. Yes, it would be.

18 Q. On the -- on the class -- topic of the classification  
19 reviews -- actually, no further questions, Your Honor.

20 THE COURT: All right. Thank you, sir. You may step  
21 down.

22 All right. We're going to take a recess at this  
23 time. We will be in recess until 3:35. You're welcome to walk  
24 around. Please don't discuss the case and leave your pads on  
25 your chairs.

1           **THE COURT SECURITY OFFICER:** All rise.

2           (Jury out at 3:14 p.m.)

3           **THE COURT:** You may be seated for just a minute.

4           Tell me, is your next -- are we going to start -- I'm  
5 sorry, sir. You can step down. Thank you.

6           Who's your next witness.

7           **MR. GOEDMAN:** Our next witness is US Central Command  
8 Program Analyst Michael Land. I think where Your Honor was  
9 going with this, this is one of the first witness where we  
10 would use the classified binders, and we just pass them out  
11 after the witness is called in.

12          **THE COURT:** So with this next witness?

13          **MR. GOEDMAN:** (Moving head up and down.)

14          **THE COURT:** All right. So do you have the classified  
15 binders?

16          **MR. GOEDMAN:** Right here. I was going to get them  
17 out.

18          **THE COURT:** Okay. That's fine. Let me ask one other  
19 question. Who is your witness that you said is unavailable  
20 until Friday morning?

21          **MR. MARCET:** Richard Chorpening. He's the last -- we  
22 have two more witnesses after -- or three more, but I think the  
23 other two will finish today.

24          **THE COURT:** Okay. So you essentially will be  
25 finished today?

1           **MR. MARCET:** Except for Mr. Chorpening. I don't  
2 think he'll take more than 30 or 40 minutes on Friday morning.

3           **THE COURT:** Okay. Is he -- is his testimony  
4 regarding the classified documents?

5           **MR. MARCET:** Correct, Your Honor. He's the  
6 subject-matter expert.

7           **THE COURT:** Okay. So we would need to pass those out  
8 again on Friday morning.

9           **MR. MARCET:** Correct. And candidly we've tried with  
10 Mr. Futerman to figure out a way if he can testify remotely.  
11 Because of the classified documents, he's out of the country,  
12 there's no way for him to get a copy and do that tomorrow. So  
13 it has to be Friday, unfortunately.

14           **THE COURT:** Okay. And there's no way he could --  
15 where is he? He's out of the --

16           **MR. MARCET:** He's in the Caribbean somewhere.

17           **THE COURT:** Okay.

18           **MR. FUTERMAN:** The only way around that -- I guess  
19 I'll speak to Mr. Brown -- is he would be testifying about  
20 Count 10. So Mr. Brown would have to agree that the subject  
21 matter of Count 10 is classified, and if he agrees to that,  
22 then that would negate the need to call that witness, if I  
23 understand the government's position. They would be done  
24 today.

25           **MR. MARCET:** Correct. I think if we could enter into

1 a sufficient stipulation, that would be -- that would not be  
2 necessary to call the witness, but I find --

3 **THE COURT:** Well, yeah, the point is that if -- if  
4 there's no agreement before the end of the day, and you finish  
5 with your two witnesses by the end of the day, then we just  
6 take tomorrow off, because we essentially can't do anything.

7 **MR. MARCET:** That was going to be my suggestion, Your  
8 Honor.

9 **THE COURT:** I hope this witness is not on vacation.

10 **MR. MARCET:** He is on vacation, Your Honor, but it --  
11 remember, we moved the trial, and he was -- it has been  
12 preplanned.

13 **THE COURT:** All right. I still -- well,  
14 nevertheless, it's one day. It does look like that witness  
15 could have come back a day early.

16 All right. It is now 20 after, so we're -- we'll  
17 just -- we won't start again until 20 minutes of four. And  
18 your understanding is the witness takes the stand, and at some  
19 point, then you'll ask the -- for the notebooks to be  
20 distributed. Correct?

21 **MR. GOEDMAN:** Yes, Your Honor. We'll probably ask  
22 him some preliminary questions just for some context. At some  
23 point, I'll say, "Your Honor, permission to distribute the  
24 classified binders," and I think you mentioned you wanted to  
25 give an instruction at that point.

1 THE COURT: Yes.

2 MR. GOEDMAN: Okay.

3 THE COURT: All right. Thank you. We're in recess  
4 until 3:40.

5 (Recess from 3:19 p.m. to 3:38 p.m.)

6 THE COURT SECURITY OFFICER: Please be seated.

7 THE COURT: Who's the next witness.

8 MR. GOEDMAN: Going to be CENTCOM Program Analyst  
9 Michael Land. Let me go check on Mr. Futerman and Dan. There  
10 they are.

11 THE COURT: Okay. I'm going to bring the jury in.  
12 Would you bring the jury in, please.

13 THE COURT SECURITY OFFICER: Yes.

14 MR. FUTERMAN: There was several issues we were  
15 discussing, and one of them I was trying to find a way out with  
16 proposed testimony from the witness to avoid the witness on  
17 Friday without a stipulation, because I probably won't  
18 cross-examine that witness on Friday anyway. We also had  
19 someone just say that that document content was classified.  
20 Mr. Marcet explained to me why he didn't think that would work.  
21 We were trying to work something out around that.

22 THE COURT SECURITY OFFICER: All rise.

23 (Jury in at 3:40 p.m.)

24 THE COURT SECURITY OFFICER: Please be seated.

25 THE COURT: Mr. Goedman, you may call your next

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1 witness.

2 **MR. GOEDMAN:** United States calls US Central Command  
3 Program Analyst Michael Land.

4 **THE COURT:** Sir, if you'll come forward to be sworn.

5 **THE COURTROOM DEPUTY:** Please raise your right hand.

6 WHEREUPON,

7 **MICHAEL LAND,**

8 was called as a witness and, after having been first duly  
9 sworn, testified as follows:

10 **DIRECT EXAMINATION**

11 **THE COURTROOM DEPUTY:** Please state your name for the  
12 record and spell your name.

13 **THE WITNESS:** Michael Land, L-a-n-d.

14 **THE COURTROOM DEPUTY:** Thank you, sir. Please take  
15 the witness stand.

16 **THE COURT:** I'm going to ask the person standing to  
17 sit down. Thank you.

18 Mr. Goedman.

19 **BY MR. GOEDMAN:**

20 **Q.** Good afternoon.

21 **A.** Good afternoon, sir.

22 **Q.** Please state your name for the record.

23 **A.** Michael Land.

24 **Q.** And, Mr. Land, where are you currently employed?

25 **A.** I am a program analyst assigned to Headquarters United

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1 States Central Command.

2 Q. Do you have any particular specialization within the  
3 program analyst role?

4 A. Yes, sir. I am focused primarily on countering improvised  
5 explosive devices and explosive ordnance disposal or EOD.

6 Q. And do you -- in your role as a program analyst for  
7 counter IED, do you participate in classification reviews?

8 A. Yes, sir, I do.

9 Q. Did you participate in one in connection with this case?

10 A. Yes, sir, I did.

11 Q. Come back to that in a minute. Prior to your current role  
12 in CENTCOM, did you serve in the military?

13 A. Yes, sir, I did.

14 Q. For how long?

15 A. I was in the Air Force, United States Air Force for 21  
16 years and a few months.

17 Q. Can you talk us through some of the roles you held during  
18 your service?

19 A. Yes, sir, I can. So I enlisted straight out of high  
20 school, January 1991, went into basic training. From there,  
21 started explosive ordnance disposal training at Eglin Air Force  
22 Base. I graduated from that technical training and went to my  
23 first duty assignment in September, Griffiss Air Force Base,  
24 New York. Again, held multiple assignments, quite a few right  
25 here at MacDill Air Force Base. And I retired out of Tyndall

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1 Air Force Base up in the Panhandle as the US Air Force EOD  
2 operations and training manager.

3 Q. So you said -- you mentioned the phrase "explosive  
4 ordnance disposal," and then I think you said the acronym  
5 "EOD." What is that?

6 A. The EOD mission is to protect personnel and property from  
7 the hazardous effects of explosive ordnance.

8 Q. And when did you retire?

9 A. I retired in May 1st of 2012.

10 Q. And what rank did you have upon retirement?

11 A. I was a senior master sergeant, which is E-8 on the pay  
12 scale.

13 Q. During your military career, did you ever handle  
14 classified information?

15 A. Yes, sir, I did, from -- I was required to have a top  
16 secret security clearance prior to entering explosive ordnance  
17 disposal training.

18 Q. How frequently would you say you handled classified  
19 information?

20 A. It differed. My first assignment, it was quite often,  
21 because it was a Air Force base that had B-52s, and we were  
22 also assigned nuclear weapons. So security was a lot more  
23 stringent, I would say, during my first four years than it was  
24 in the years after that, just a normal assignment where there  
25 were no nuclear weapons.

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1 Q. Have you maintained a security clearance throughout your  
2 time in the military?

3 A. Yes, sir, I have.

4 Q. In order to get that clearance, did you receive any  
5 training on the proper handling of classified information?

6 A. Yes, sir, we do. It's an annual requirement.

7 Q. So you also get ongoing training?

8 A. Yes, sir.

9 Q. What kind of topics are covered in those trainings?

10 A. The usual topics are storage, handling, and especially  
11 safeguarding. So even at Central Command, my current duties,  
12 we're required to follow a checklist prior to going home each  
13 evening. Make sure the classified material is not open on  
14 desk, locked in containers. We also have checklists that we  
15 follow prior to leaving just our office space.

16 Q. Let's talk a little bit about your current role. You said  
17 your focus was counter-IED and explosive ordnance disposal in  
18 your current role. Is that right?

19 A. Yes, sir.

20 Q. With's counter-IED, for those who don't know?

21 A. So countering improvised explosive devices or roadside  
22 bombs is a term we put together during the Afghanistan and the  
23 Iraq wars after our forces were getting damaged quite  
24 significantly by these weapons, and we were in reactionary  
25 mode. And it was an effort that was stood up at Central

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1 Command, I want to say, probably around 2004, 2005 when the  
2 IEDs first became a serious weapon.

3 It was -- at the time, it was a large task force. Since  
4 that time, it is downsized significantly. So at one point we  
5 had, I want to say, in the 30s, the numbers was in the 30s that  
6 was working in a asymmetric warfare team. That number is down  
7 to what is now our branch in the J34 CENTCOM, which is a  
8 three-person team.

9 Q. And you've held this program analyst position with these  
10 areas of focus for ten years?

11 A. Yes, sir. I started at Central Command August 12th, 2012.

12 Q. What's the primary function of a program analyst role like  
13 the one you're in?

14 A. A program analyst or subject-matter expert, I like to call  
15 it or refer to it as, is the leadership is go to point of  
16 contact within the staff when they have issues or there's  
17 ongoing efforts that require knowledge on that particular  
18 topic. In this case, it would be countering the roadside  
19 bombs.

20 Q. Any other functions?

21 A. Yes, sir. So my primary role at CENTCOM, while we're  
22 talking about explosive ordnance disposal, is we have  
23 commanders on the ground in austere environments, like  
24 Afghanistan. Not Afghanistan anymore, because you guys all  
25 witnessed the Afghanistan withdrawal, but Iraq, Syria, to name

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1 a couple places. And when that commander on the ground  
2 requires a niche capability, like EOD forces, that request  
3 would come to my desk, and I would ensure that I would do the  
4 necessary staff work meetings to meet the requirements so the  
5 services would allocate EOD personnel to go deploy and meet  
6 that mission.

7 Q. And does your role require you to be involved in  
8 classification reviews?

9 A. Yes, sir, it does.

10 Q. And how would you describe what a classification review  
11 is?

12 A. So classification review for my specific role in the J34  
13 is we have a tasker tool. And on -- a tasker would come down  
14 from another division within the headquarters, he would come to  
15 us and say, Please review these documents, whether it's under  
16 the Freedom of Information Act or whether it's a mandatory  
17 declassification review, our specific role is to take those  
18 documents and review them for counter-IED equities.

19 There are other offices within the staff that look for  
20 other things like human -- pulling out the human intelligence  
21 sources, protecting people's personal privacy. We skip right  
22 over that, and we focus primarily on EOD issues, counter-IED  
23 issues.

24 And, really, when you talk about those two subjects, we  
25 really try to put it in three buckets. Those three buckets

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1 would be to review the document and look for what we would  
2 consider a vulnerability, a capability, or a TTP. And that  
3 stands for tactics, techniques, and procedures. So we review  
4 these documents, specifically looking for those three areas.

5 Q. In your ten years as a program analyst, how many  
6 classification reviews, ballpark, have you participated in?

7 A. A lot. So I normally average probably around six to  
8 10,000 a year since I started. Since January of 2020, I have  
9 reviewed, according to our tasker tool, 802 documents in just  
10 over 16,000 pages.

11 Q. So describe -- take us through a little bit, the process  
12 of get a tasking request for a classification review, what do  
13 you do?

14 A. So when we get assigned a tasker that requested a  
15 classification review, we take all the documents that they're  
16 wanting. Sometimes it's extensive. There might be relatively  
17 a low amount, three or four or anywhere to 500. We would save  
18 those documents. So we always have the basic -- the basic  
19 documents that came to our section. And then we would just go  
20 line-by-line, again, looking for that information that I just  
21 described.

22 At this point in our career, those areas kind of pop out  
23 at you. We're looking -- we see nomenclatures, which  
24 nomenclatures is how we would describe a vehicle, like an M1  
25 tank, an M2 Bradley. It's also a way that we would describe

1 nomenclatures for certain equipment that we use in the  
2 counter-IED effort to defeat some of these roadside bombs. So  
3 we look for titles of equipment, the names of it, and we always  
4 try to protect that information.

5 Q. In the context of this classification review, the  
6 documents you reviewed, did you ultimately reach a conclusion  
7 as to whether these documents remain classified?

8 A. Yes, sir, we did. And I recalled this tasker was a little  
9 different, because all this tasker required us to do was to  
10 look at the documents and make a determination as to whether  
11 the documents were properly classified.

12 It did not require us to go through line-by-line and try  
13 to withhold information as if we were -- as like we normally do  
14 it, where we would go line-by-line, and we would protect that  
15 information that fell into those three areas that I recently  
16 described prior to us releasing it to the public.

17 Q. So before talking and going into the substance of your  
18 review, I want to talk a little bit more about your counter-IED  
19 specialty. Are you familiar with remote-controlled IEDs?

20 A. Yes, sir, I am.

21 Q. What are they?

22 A. So a remote-controlled IED is one where the triggerman, or  
23 the enemy, we like to call him, is near his explosive device,  
24 so he still -- he has eyes on, but it affords him an  
25 opportunity to get away from the scene after he detonates his

1 bomb.

2 So what he does is he's holding a transmitter, and when he  
3 pushes a button to command, detonate his roadside bomb or IED,  
4 he is sending a signal over the airwaves to a receiver that is  
5 attached to that bomb that could be buried in the road, it  
6 could be along the side of the road in a trash pile. It could  
7 be inside a vehicle. But he is normally nearby, because he  
8 wants to detonate the bomb at his time and choosing. It's  
9 normally to inflict the most casualties possible on our forces.

10 Q. Are these remote control IEDs a threat to US military?

11 A. Yes, sir, they are a threat.

12 Q. Does the US military have any means or methods for  
13 countering that threat?

14 A. Yes, sir, we do. So we use a countermeasure system in  
15 the -- in our business it's known as a CREW system, which is an  
16 acronym. Stands for Counter Radio-Controlled IED Electronic  
17 Warfare, C-R-E-W. All it is, is its basic term is it's a  
18 jammer.

19 Q. But what -- so it tries to jam the -- whatever frequency  
20 that signal is being transmitted on from the triggerman to the  
21 explosive device.

22 A. Correct. It's trying to disrupt that signal.

23 Q. So does the US military also use radio frequencies?

24 A. Yes, sir, we do.

25 Q. So would it be important for the US military and for

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1 soldiers on the ground to know which frequencies are being  
2 jammed?

3 A. Yes, sir.

4 Q. Because if they try to use those frequencies, would they  
5 work?

6 A. No. You would realize real quick that that frequency was  
7 being jammed and inoperable.

8 MR. GOEDMAN: Your Honor, permission to distribute  
9 the classified binders to the jury?

10 THE COURT: Okay. Ladies and gentlemen, let me give  
11 you a little instruction about this. We're going to hear  
12 testimony about the classified documents, which are the subject  
13 matter of Count 6 through 10 of the indictment that I read to  
14 you earlier. And because these documents are classified as  
15 secret, as you know, they are not able to be viewed by the  
16 public. The people in the courtroom, for example, can't view  
17 these documents.

18 And they're not the entire document. The unredacted  
19 document is not going to be introduced into evidence. A  
20 redacted form is going to be introduced into evidence.  
21 However, you have to make a decision in this case. You-all are  
22 going to be the decision makers with regard to Count 6 through  
23 10. So you will be able to view these documents. So we have  
24 crafted a procedure to allow this to happen.

25 In just a few minutes we're going to pass out

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1 notebooks to you. And the notebooks will have the unredacted  
2 classified documents in them. I'll have a copy of the notebook  
3 and will be able to see it. The attorneys will have a copy,  
4 and they will be able to see it. And the witness will have a  
5 copy, and the witness will be able to see it. And the  
6 attorneys are going to ask questions of the witness, and the  
7 witness is going to testify.

8           At the end of the day, I'm going to collect those  
9 notebooks back from you. And if this witness hasn't finished  
10 testifying, then we will, when you come back, I'll pass these  
11 notebooks back out, and you will have them to consider the  
12 testimony. You will also be able to take these notebooks back  
13 with you to the jury room during your deliberations. And when  
14 you get back ready to go back, we, again, will take the  
15 notebooks back and give them to you in the jury room. So you  
16 will have them back during your deliberations.

17           There is a notepad, like the one you have, I assume,  
18 a yellow notepad, like this, in each of the notebooks. And if  
19 you need to take notes about these documents or what the  
20 witness is now going to testify, you need to take those notes  
21 on the notebook in your notebook or on the pad in your  
22 notebook.

23           So right now, I'm going to ask you to take the legal  
24 pad that you have and just sort of put it underneath your  
25 chair. That way, we don't get them confused. And when you get

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1 the notebook, I'm going to ask if, on the first page of the pad  
2 that you have in there, you write your name, so that if we have  
3 to pass them out to you again, we'll see whose notebook this  
4 is. And then you can begin taking any notes that you wish to  
5 take on the second page of that folder -- or that pad, I'm  
6 sorry.

7           So only the redacted documents will actually come  
8 into evidence, but because you're the decision maker in the  
9 case, you get to see the unredacted documents. We just take  
10 them back from you in the evening, and we'll distribute them  
11 again if you need to have them tomorrow for the witness or an  
12 additional witness.

13           Do you have any questions about anything I've said?

14           Okay. I'm going ask you if you would pass out the  
15 notebooks.

16           **MR. GOEDMAN:** Just one more note, Your Honor. They  
17 are numbered, so they're going to correspond to your juror  
18 number.

19           **THE COURT:** Okay. Well, that's helpful too. I  
20 didn't realize that.

21           **MR. GOEDMAN:** And permission to distribute to the  
22 witness?

23           **THE COURT:** Please.

24           **MR. GOEDMAN:** One for Your Honor.

25           **THE COURT:** Okay. Mine doesn't have a legal pad.

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1 Does yours have a legal pad, Mr. Futerman?

2 **MR. FUTERMAN:** It does not. Can we approach real  
3 quickly?

4 **THE COURT:** What?

5 **MR. FUTERMAN:** Can we approach real quickly?

6 **THE COURT:** Let me get the legal pad first. I've got  
7 plenty of legal pads. I'll use my own. Thank you.

8 (Bench conference begins.)

9 **MR. FUTERMAN:** So we have a binder.

10 **THE COURT:** I'm sorry, you have a binder? Yeah.

11 **MR. FUTERMAN:** Is divided into six sections. The  
12 sixth section relates to the witness that's on Friday.

13 **THE COURT:** Okay.

14 **MR. FUTERMAN:** So, you know, it's grouped together in  
15 this way, but now they have -- and I just need to think how we  
16 question it, because if they're going to flip to --

17 **THE COURT:** I'm going to tell them not to. I'm going  
18 to tell them --

19 **MR. FUTERMAN:** To separate because -- unless, like I  
20 said, we use this witness. Because it's now -- now we have one  
21 binder that they may be flipping through.

22 **THE COURT:** No, they won't. I'll tell them not to.

23 **MR. GOEDMAN:** Your Honor, just one more. Is it  
24 possible to give them another admonition not to discuss this  
25 information with anyone else either?

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1           **THE COURT:** I was going to do that. But, yeah. I  
2 will. I promise.

3           (Bench conference concluded.)

4           **THE COURT:** All right. Let me ask -- let me give you  
5 one more admonition. Mr. Goedman will be referring to the  
6 exhibit that he's going to question the witness about, and I  
7 will ask you just simply to look at that exhibit that he is  
8 referring to. In other words, don't skip around and look at  
9 Exhibit 5 or Exhibit 6. Stick to the one that he's talking  
10 about.

11           All right. Mr. Goedman.

12           **MR. GOEDMAN:** Thank you, Your Honor. I'd ask the  
13 jury and the witness to turn to Tab 1 in this binder, which  
14 corresponds with Count 6 in this case.

15 **BY MR. GOEDMAN:**

16 **Q.** Let me know when you're there, Mr. Land.

17 **A.** I'm there, sir.

18 **Q.** Do you recognize this document?

19 **A.** Yes, sir, I do.

20 **Q.** Was it one of the documents you analyzed as part of the  
21 classification review?

22 **A.** Yes, sir, it was.

23 **Q.** With a reminder that you're in an unclassified setting,  
24 can you describe what this document is?

25 **A.** Yes, sir. So this document was produced by one of our

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1 exploitation labs in Afghanistan back in 2004, and the document  
2 describes, if you look at the pie chart, and there's a table on  
3 the next page, but it's basically how we do counter-IED  
4 analysis. So we take those receivers that we talked about or I  
5 talked about earlier, when those receivers are turned into our  
6 exploitation laboratories, there's an electrical engineer in  
7 there. He compiles all this data, and on a monthly basis, they  
8 would provide this report.

9 Q. And is the methodology reflected in this document still in  
10 use today?

11 A. Yes, sir, it is.

12 Q. And were you able to determine whether this document  
13 remains classified?

14 A. Yes, sir.

15 Q. And at what level is it classified?

16 A. It's classified secret, and we base that assessment off of  
17 a security classification guide.

18 Q. Given its secret classification level, is there harm to  
19 national security if this document would -- to be disclosed?

20 A. Yes, and, again, we base that assessment off of the  
21 guidance that's published to us in a security classification  
22 guide. Says if you have this type of information, it is this  
23 classification, and you will hold it for this many years.

24 Q. Can you articulate what that harm would be?

25 A. Well, it's secret. Again, going back to the

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1 classification guide and talking about those areas, this is  
2 information that gives us an advantage over the enemy. So we  
3 would use this data to program our countermeasures against  
4 these radio-controlled IEDs. So, again, looking at secret --  
5 secret materials could cause damage or serious damage to  
6 national security. So, again, we just base that information  
7 off of the guide that's given to us.

8 Q. And given your conclusion that it's classified, would the  
9 government take steps to protect this document from disclosure?

10 A. Yes, sir.

11 Q. All right. Ask the jury and the witness to turn to Tab 2  
12 of the binder. Actually, Tabs 2 and 3 are a cover sheet and  
13 attachment. Corresponds to Count 7 against the defendant. Let  
14 me know when you're there Mr. Land.

15 A. I'm there, sir.

16 Q. Do you recognize this document?

17 A. I do.

18 Q. Was it one of the documents, along with the attachment,  
19 that you reviewed during your -- during the classification  
20 review?

21 A. Yes, sir, it was.

22 Q. At an unclassified level, can you describe what this  
23 document is?

24 A. This is an incident report produced by the same  
25 laboratory, the Explosive Exploitation Cell in Afghanistan, and

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1 it's covering an IED attack on US Special Operations forces  
2 that resulted in three wounded in action and one killed in  
3 action.

4 Q. Were you able to determine whether this document remains  
5 properly classified today?

6 A. Yes, I was.

7 Q. And did you use the security classification guides in  
8 reaching that conclusion?

9 A. Yes, sir, I did.

10 Q. Given that determination, is there a harm, potential harm  
11 to national security if this document is disclosed?

12 A. Yes, sir, there is.

13 Q. And can you articulate that harm?

14 A. Yes, sir, so, again, using the guidance that's published  
15 to me at Central Command, I would look at this document, and  
16 there's certain sections in here that we would just not want  
17 released to the public. And I can define those lines between,  
18 like, Lines 21 through 23 are the areas that I described  
19 earlier as a capability and also a vulnerability right in this  
20 paragraph, because the countermeasure system that we had  
21 fielded to our forces was not effective in this case.

22 Q. Would there be a harm if an adversary were to get ahold of  
23 this information?

24 A. Yes, sir.

25 Q. And given that the document is classified, would the

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1 government take steps to protect it against disclosure?

2 A. Yes, sir, they would.

3 Q. I'd ask the jurors and the witness to move to Tab 4. This  
4 corresponds to Count 8 in the superseding indictment. Let me  
5 know when you're there, Mr. Land.

6 A. I am there, sir.

7 Q. Do you recognize this document?

8 A. I do.

9 Q. Was it one of the documents you reviewed as part of the  
10 classification review?

11 A. Yes, sir, it was.

12 Q. At an unclassified level, can you describe what this  
13 document is?

14 A. Yes, sir. So this document describes the efforts that one  
15 of our defense laboratories, in this case, the United States  
16 naval research laboratory, did to, I want to say, go after one  
17 of the number-one or predominant threats to our forces in the  
18 radio-controlled IED, like counter-IED fight in Afghanistan.

19 So if I could direct your attention back to the previous  
20 document, the SECC, the graph that we talked about, if we look  
21 at that pie chart, it's a good example that the most  
22 predominant receiver at the time was the receiver that's  
23 showing 51 percent. And this document kind of alludes to the  
24 efforts that the Naval Research Laboratory did to counter that  
25 specific receiver.

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1 Q. And that method of analysis, the intake of data and the  
2 method of analysis used and reflected in this document, is that  
3 still in use today?

4 A. Yes, sir, it is.

5 Q. So based on your review, were you able to determine  
6 whether this document is properly marked classified?

7 A. Yes, sir.

8 Q. And at what level was it classified?

9 A. It's classified secret.

10 Q. Given that determination, is there a potential harm to  
11 national security if this document were to be publicly  
12 disclosed?

13 A. Yes, sir, there is.

14 Q. Can you articulate what that harm is?

15 A. Yes, sir, again, so this is a capability of the United  
16 States that provides us a great advantage over the enemy. If  
17 the enemy knew this is how we would counter certain weapon  
18 systems, that would in turn give them the advantage, and it  
19 would become more of a vulnerability for us.

20 Q. Given that this document is classified, would the  
21 government have taken steps to protect it against disclosure?

22 A. Yes, sir.

23 Q. Thank you. Ask the jury and the witness to turn to  
24 page -- to Tab 5 in the binder. This corresponds to Count 9.  
25 Let me know when you're there, Mr. Land.

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1 A. I'm there, sir.

2 Q. Do you recognize this document?

3 A. I do.

4 Q. Was it one of the documents you analyzed during your  
5 classification review?

6 A. Yes, sir, it was.

7 Q. At an unclassified level, can you describe what this  
8 document is about?

9 A. Yes, sir, so this is a fragmentary order published to  
10 Special Operations forces in Afghanistan with guidance telling  
11 those forces how to conduct sensitive site exploitation.

12 Q. Were you able to determine whether this document remains  
13 properly classified?

14 A. Yes, sir. And, again, we -- I based that assessment off  
15 of the guidance that's in the security classification guide.

16 Q. What level was this document classified?

17 A. Secret.

18 Q. Given that, is there a harm or a potential harm to  
19 national security if this document were to be publicly  
20 disclosed?

21 A. Yes, sir, there would be.

22 Q. And can you articulate what that harm is?

23 A. Yes, sir. So this document publishes the guidance, again,  
24 that gives the US an advantage in how we conduct counter-IED  
25 operations. In this particular instance, it would be how we

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1 conduct our sensitive site exploitation at a -- you could call  
2 it a crime scene, but it's really where that roadside bomb or  
3 that bomb detonated. And that's where our forces go in and try  
4 to recover evidence.

5 Q. And given that determination that this document is  
6 classified today, would the government have taken steps to  
7 protect against its disclosure?

8 A. Yes, sir, they would.

9 Q. We can close the binders. So Mr. Land, when a document --  
10 the documents in here are marked secret and classified at the  
11 secret level, are there limits on who can see those documents?

12 A. Yes, sir.

13 Q. When a document is marked secret, like the ones in this  
14 binder, are even clearance orders authorized to take these type  
15 of documents home with you?

16 A. No, sir.

17 Q. When a document is marked secret, like the ones in this  
18 binder, are you authorized to continue to keep it after you've  
19 retired from the military?

20 A. No, sir.

21 Q. All right. Thank you, Mr. Land.

22 MR. GOEDMAN: I tender the witness for  
23 cross-examination.

24 THE COURT: Mr. Futerman.

25

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**CROSS-EXAMINATION**

**MR. FUTERMAN:** Thank you, Your Honor.

**BY MR. FUTERMAN:**

**Q.** Good afternoon, Mr. Land.

**A.** Good afternoon.

**Q.** Thank you for your service, sir. I have a few questions.

So just that there's no confusion over this, Tab 1, Tab 2, Tab 3, Tab 4 that we discussed, that counts -- go to Count 6, Count 7, Count 8, and Count 9 are all related to documents that were found on a CD. Correct?

**A.** Sir, I believe that is the case.

**Q.** Okay. And these documents, I guess, were printed out from this CD in some fashion. Right?

**A.** Sir, the first time I was exposed to this is when this tasker popped onto my tasker tool screen and it was requesting a classification review. So at that point, it was already in electronic format. They were not in hard copies.

**Q.** Okay. So then somehow it was in a format to you, but you're not suggesting that these classified documents were separate to what was found on the CD. Correct? These are based from the CD that was allegedly in Mr. Brown's girlfriend's RV. Correct?

**A.** Yes, sir. And to my best recollection, there was more than just these documents. I believe the amount of documents that I reviewed under that same tasker under this request was

Michael Land - Cross-Examination

1 in the 30s, and I want to say 35 documents were part of that  
2 task every.

3 Q. And I want to be clear, when you say "documents," you're  
4 talking about files on the CD, 35 files on the CD. He's being  
5 charged apparently with four counts of those documents on the  
6 CD, but there are multiple documents on that CD. Correct?

7 A. Again, sir, so all I'm looking at is the tasker that's  
8 assigned to me. So there's a tab that shows the supporting  
9 documents. Under that supporting documents tab, there was more  
10 documents than this. And so there wasn't just five. There was  
11 35 documents that we reviewed line-by-line, made our best  
12 recommendation to the staff.

13 And, again, my section focuses on counter-IED. So there  
14 were documents within that grouping, that group of 35 documents  
15 that had no counter-IED equities.

16 Q. When I want to be clear, so there's no confusion, you use  
17 the word "documents." We're talking about electronic that  
18 you're looking at that relate to this CD, not physical  
19 documents. Right? When you say 35, you're talking about  
20 electronic documents that are on the CD, of which there are  
21 four counts here. Correct? Electronic -- this is not  
22 physical. This is you're looking at these electronic, I guess,  
23 35 documents, and we're discussing these six, seven, eight,  
24 nine as it relates to some of these electronic documents.  
25 Right? Not physical documents.

Michael Land - Cross-Examination

1 A. Correct, sir. I would say, if I didn't use the term  
2 "electronic document," I would use the term "a file."

3 Q. Files on the CD. Right?

4 A. I'm assuming they came from a CD. At my level, all I can  
5 see is the tasker assigned to me. I didn't see a CD. I saw  
6 electronic documents.

7 Q. Your job is to see if they're classified or secret or  
8 whatever?

9 A. My job at that point in time was to review the documents  
10 and make a determination if the security classification  
11 markings were correct.

12 Q. But you have no personal knowledge of who put that CD in  
13 Mr. Brown's girlfriend's RV. Correct?

14 A. Correct, sir.

15 MR. FUTERMAN: Okay. I have no more questions, Your  
16 Honor.

17 THE COURT: All right. Redirect, Mr. Goedman?

18 MR. GOEDMAN: No further questions, Your Honor.

19 THE COURT: Okay. You may step down, sir.

20 Thank you. Could I get counsel to approach sidebar a minute?

21 (Bench conference begins.)

22 THE COURT: Okay. So you have one witness left.

23 Right? You have one witness left. Right?

24 MR. FUTERMAN: Total of two.

25 MR. MARCET: One ready today and one --

1           **THE COURT:** Oh, so you have another one today?

2           **MR. MARCET:** Correct, Your Honor. I think we should  
3 finish today.

4           **THE COURT:** Is he going to talk about the classified  
5 documents or is she?

6           **MR. MARCET:** Yes.

7           **THE COURT:** Okay.

8           **MR. MARCET:** Just the last one.

9           **THE COURT:** All right. Thanks.

10           (Bench conference concluded.)

11           **THE COURT:** You may call your next witness.

12           **MR. MARCET:** Thank you, Your Honor. The United  
13 States calls Air Force Office of Special Investigations Agent  
14 Andrew Koundarakis.

15           **MR. FUTERMAN:** Your Honor, can we approach? I hate  
16 to do this. I apologize. Can we approach?

17           **THE COURT:** Can you approach?

18           **MR. FUTERMAN:** Yes.

19           **THE COURT:** Yes. Let me just check, I anticipate  
20 this next witness they're going to be using the classified  
21 documents with, yes, so leave your notepad on the -- the  
22 original notepad on the floor, and you're going to use the  
23 notebook and the legal pad. Thank you.

24           (Bench conference begins.)

25           **MR. FUTERMAN:** So, Your Honor, I would ask that the

1 binders be collected. This witness has no knowledge of this  
2 documents. He is an individual that came in 2017 or '18.  
3 Apparently, he got some information, which I don't know how  
4 they're going to get around that in terms of hearsay, but that  
5 Mr. Brown at a dead soldier's funeral discussed -- I'm  
6 summarizing -- but something about he had a classified  
7 document. And then they came and interviewed Mr. Brown. I  
8 think it was the notice of 404, the notice I objected to the  
9 Court allowed.

10 **THE COURT:** Right.

11 **MR. FUTERMAN:** So he -- and he was searched, and then  
12 stopped the search, and that's it. So he has no knowledge  
13 about the last document. He has never reviewed the last  
14 document. He's not able to talk about it. And just to leave  
15 the secret binders in is misleading. Because I want them to  
16 take notes on their regular pads. This has nothing to do with  
17 the last document. They have a witness tomorrow that's going  
18 to talk about the document. Not this guy.

19 **MR. MARCET:** Your Honor, so the testimony is quite a  
20 bit more damning than that. So when Mr. Brown was asked did he  
21 have any involvement in this search for the soldier, he told  
22 this agent, yes, and he said that he had drafted a classified  
23 trip report. He admitted the document was classified, and he  
24 stated he did not have a copy of it. This -- based on what  
25 Mr. Brown told him, this agent can look at this document. He's

1 never seen it before, but it's already in evidence. I will  
2 show it to him, and I will say, Based on your review of this  
3 document, is this the document you were discussing? I will  
4 then say, An element we're required to prove is that Mr. Brown  
5 failed to return the document to an authorized government  
6 official. I will then ask this witness, If you had encountered  
7 this document or Mr. Brown had shown it to you, what would you  
8 have done? He would have taken it and returned it to a secure  
9 compartmentalized facility. And he will say that he would have  
10 immediately recognized this as something that needs to be  
11 returned to MacDill Air Force Base.

12 **MR. FUTERMAN:** The difference is that would go to  
13 their redacted Exhibit 10 potentially. He has no personal  
14 knowledge. All he -- he has no knowledge of this document.  
15 All he has is knowledge of the conversation and Mr. Brown's  
16 denial of that.

17 **THE COURT:** Let's see what he says. I don't know if  
18 he does or not.

19 **MR. FUTERMAN:** I don't want them to have the binders  
20 because they need to be able take notes about that witness.  
21 It's nothing do with the secret document.

22 **THE COURT:** They're going to have everything back in  
23 the jury room with them, period, so they'll have the notepads  
24 that were in that binder and they'll have the other, so if they  
25 want to take notes, they can.

Andrew Koundarakis - Direct Examination

1           **MR. FUTERMAN:** I just don't think this witness cannot  
2 opine about, oh, by the way, is this what he talked about --

3           **THE COURT:** Well, I don't know if he can.

4           **MR. FUTERMAN:** Okay.

5           (Bench conference concluded.)

6           **THE COURT:** All right. You may call your next  
7 witness.

8           **MR. MARCET:** United States calls ASOSI Agent Andrew  
9 Koundarakis.

10          **THE COURT:** Sir, if you'll come forward to be sworn.

11          **THE COURTROOM DEPUTY:** Please raise your right hand.

12 WHEREUPON,

13                                   **ANDREW KOUNDARAKIS,**

14 was called as a witness and, after having been first duly  
15 sworn, testified as follows:

16                                   **DIRECT EXAMINATION**

17          **THE COURTROOM DEPUTY:** Please state your name for the  
18 record and spell your name.

19          **THE WITNESS:** Andy Koundarakis,  
20 K-o-u-n-d-a-r-a-k-i-s.

21          **THE COURTROOM DEPUTY:** Thank you, sir. Please take  
22 the witness stand.

23          **THE COURT:** Mr. Marcet.

24 **BY MR. MARCET:**

25 **Q.** Good afternoon.

Andrew Koundarakis - Direct Examination

1 A. Good afternoon, sir.

2 Q. Would you please introduce yourself to the jury.

3 A. Good afternoon. My name is Special Agent Andy  
4 Koundarakis. I'm a federal agent employed by the department of  
5 the Air Force.

6 Q. Now, we'll talk about your current position, but prior to  
7 that, did you serve in the United States military?

8 A. I have. I served initially with the United States Army  
9 and then transitioned to the Air Force Reserves.

10 Q. And in the United States Army, what was your role?

11 A. I was a military police enlisted person.

12 Q. So, currently, you're an Air Force investigator. Correct?

13 A. That's correct.

14 Q. That's a civilian position?

15 A. Yes, sir, that's correct.

16 Q. So how long have you worked for the Air Force as an  
17 investigator?

18 A. Since 2000, so 22 years.

19 Q. And where have you worked, in which different bases?

20 A. So I previously worked at MacDill Air Force Base here in  
21 Florida, in Vogelweh, Germany, in Kaiserslautern, Germany,  
22 Hanscom Air Force Base in Atlanta.

23 Q. And when did you work at MacDill Air Force Base in Tampa?

24 A. Initially, from 2006 till 2011, and then again in 2013 to  
25 roughly February of 2019.

1 Q. And what types of cases have you worked on during your  
2 career?

3 A. I focused exclusively on counterintelligence and  
4 counterespionage operations.

5 Q. So in your investigations, have you encountered situations  
6 where you're required to go investigate whether classified  
7 information has left government control?

8 A. Yes, sir. This is a frequent investigative type within  
9 the career discipline that I have.

10 Q. And so what are the basic -- what's your basic goal when  
11 you're conducting that type of investigation?

12 A. The first goal is to ensure that national defense  
13 information is returned promptly to government control for the  
14 protection of that information, namely trade craft tactics,  
15 techniques. And then subsequent to that, learning the reasons  
16 for why that information was outside of government control.

17 Q. Now, in October of 2017, where were you working?

18 A. I was working at Detachment 340 as part of the Air Force  
19 Office of Special Investigations assigned to United States  
20 Special Operations Command.

21 Q. What was your job at that time?

22 A. I was the assistant for counterintelligence coordination  
23 and the lead counterintelligence investigating agent, the LCA.

24 Q. And what were your duties and responsibilities in that  
25 position?

1 A. My duties included coordinating counterintelligence  
2 efforts across the SOCOM headquarters as well as conducting  
3 what we call functional counterintelligence, which is  
4 investigations, inquiries, matters pertaining to anything of  
5 counterintelligence significance.

6 Q. Now, at that time, in 2017, were you involved in  
7 investigation into Jeremy Brown?

8 A. Yes, sir.

9 Q. And can you explain what caused that investigation to be  
10 initiated?

11 A. The commander of my unit, Special Agent Richard Bude  
12 received information that there was national defense  
13 information outside of government control, namely that it was  
14 in the possession of Mr. Brown and that we were to make  
15 inquiries into that.

16 Q. And on October 17 -- or prior to going to Mr. Brown's  
17 residence, did you contact him by phone?

18 A. Yes, sir. My colleague Special Agent Michael Goodrich  
19 made contact with Mr. Brown to arrange a time we could go and  
20 contact him.

21 Q. And did you arrange a time to go contact him?

22 A. Yes, sir, we did.

23 Q. So where did you meet with Mr. Brown?

24 A. At his residence in Tampa, sir.

25 Q. Was that on October 17th of 2017?

1 A. Yes, sir.

2 Q. I'm showing you what's already in evidence as Exhibit 18B.  
3 What are we looking at here?

4 A. This is the front entrance to Mr. Brown's residence, sir.

5 Q. And was this the same residence you went to in 2017?

6 A. Yes, sir, that's correct.

7 Q. And was Mr. Brown present?

8 A. Yes, sir. He greeted us at the front.

9 Q. And did he agree to speak with you?

10 A. Yes, sir, he did.

11 Q. Did that happen inside the house or outside?

12 A. Outside of the dwelling, sir.

13 Q. So can you explain how that interaction proceeded, once  
14 you began speaking with Mr. Brown on October 17th, 2017?

15 A. Yes, sir. Myself and Mr. Goodrich let Mr. Brown know the  
16 basics, the fundamentals of why we were out there that day, and  
17 that our goal was to retrieve any national defense information  
18 that was outside of government control and that we were seeking  
19 his voluntary cooperation in that effort.

20 Q. When you were speaking with Mr. Brown, was there a  
21 particular subject matter you were asking about?

22 A. Yes, sir, in particular, there was a -- the information  
23 was predicated upon a classified trip report as a result of  
24 some work that Mr. Brown may have been involved with, and we  
25 were seeking to find that document or related documents.

Andrew Koundarakis - Direct Examination

1 Q. And that trip report, what did that trip report relate to?

2 A. It related to the subject of a US soldier who was being  
3 held captive by the Haqqani network in Afghanistan. This was  
4 Private Bowe Bergdahl also.

5 Q. Now, when you spoke to the defendant, was he familiar with  
6 that subject matter?

7 A. Yes, sir.

8 Q. And what did he say about his own involvement in that  
9 subject matter?

10 A. That he had conducted a trip to Afghanistan and been there  
11 for some period of time and had uncovered information, and this  
12 was part of a report that he had prepared, the report was not  
13 in his possession.

14 Q. And so did you specifically discuss whether that report at  
15 issue was classified?

16 A. Yes, sir.

17 Q. And what did Mr. Brown say about that?

18 A. He was aware that it was classified, but it was not in his  
19 possession.

20 Q. Now, did you ask him more generally about other classified  
21 documents?

22 A. Yes, sir. It is one of our fundamental steps in any such  
23 inquiry that regardless of the document in question, are there  
24 anything of national defense information classified in your  
25 possession or you know the whereabouts of it is a standard

1 inquiry.

2 Q. And you're using the term national defense information,  
3 can you explain what that means to the jury?

4 A. National defense information is things that are  
5 categorized to the defense of the United States and it pertains  
6 to the U.S. Code that we would prosecute, so therefore it is  
7 anything related, classified by the government that pertains to  
8 our national defense, and there are classification guidances  
9 that provide us this instruction.

10 Q. Now, when you made the broader question as to any  
11 information, what did defendant say?

12 A. That there was none in his possession, nor was he aware of  
13 any outside of government control.

14 Q. Now, when you asked the defendant -- referring to the  
15 classified trip report. Correct?

16 A. Yes, sir.

17 Q. Did you ask him whether he had discussed that document  
18 with anybody?

19 A. Yes, sir. That was part of the predicate that someone  
20 became aware that he had this in his possession outside of  
21 government control because he had made some comments or remarks  
22 within public hearing of various persons.

23 Q. And with respect to that classified trip report relating  
24 to Sergeant Bergdahl, what did defendant say as to whether he  
25 had discussed it with anybody else?

1 A. He opined generally that he may have made some mention  
2 about it to a colleague, that he was aware of it and he had  
3 participated in it, but not that he had it in his possession.

4 Q. Now, after the defendant denied possessing the classified  
5 trip report or any classified information, did you request  
6 permission to search his residence?

7 A. We made two requests, one to search an outbuilding where  
8 some of his prior military items were stored as well as his  
9 primary residence.

10 Q. And so as that first search request for the military  
11 lockers, did he allow you to do that?

12 A. Yes, sir, he did.

13 Q. That was free and voluntary. Correct?

14 A. That is correct.

15 Q. Did you find any classified information in that area?

16 A. No, sir, we did not.

17 Q. With respect to the residence, what did Mr. Brown say?

18 A. He was not going to provide us voluntarily permission to  
19 search his residence.

20 Q. So after the defendant refused to consent to the search of  
21 his residence, what did you do?

22 A. Kind of a standard procedure, in the event you recall  
23 later time that this information is in a place that you know  
24 about, please contact us. It's most important that we secure  
25 this information, prevent it from falling into the

Andrew Koundarakis - Direct Examination

1 inappropriate hands. Here's our contact information, and then  
2 we depart.

3 Q. And now when you are in -- conducting this sort of  
4 investigation, are you an authorized government person who's  
5 entitled to receive classified information?

6 A. Yes, sir. My position at Special Operations Command,  
7 there's a series of steps that allows me a very wide swath of  
8 information I can secure on my own. There's also a procedure  
9 by which if the information is outside of my classification  
10 authority, I can retain that and secure that and then complete  
11 the next -- necessary accesses later. And we have the means by  
12 which to transport that information securely.

13 Q. And so on this date, if the defendant did have classified  
14 information, and he provided it to you, what could you have  
15 done with it?

16 A. We have, again, the transportation mechanisms that allow  
17 us to return to it government control. We have specially  
18 designated safes within specially designated buildings that  
19 have access control in which we would place that information to  
20 protect it.

21 MR. MARCET: Your Honor, may I approach the witness  
22 with a classified binder?

23 THE COURT: You may.

24 BY MR. MARCET:

25 Q. Okay. Special Agent Koundarakis, you're not involved in

1 this current investigation into the defendant. Correct?

2 A. No, sir, I'm not.

3 Q. But do you still possess a top secret security clearance?

4 A. I have top secret security clearance, yes, sir.

5 Q. Okay. So I'd ask you, we're proceeding under what's  
6 called the silent witness rule. So you're permitted to look at  
7 the document and describe it in general terms, in terms of any  
8 classified information in it. You can, in essence, talk about  
9 it in unclassified terms. So you can look at the markings, you  
10 can look at the header information, but please don't read any  
11 of the content of the document out loud. Okay?

12 A. I understand.

13 Q. Okay. So if you please turn to the last tab, Tab  
14 Number 6. I'll give you a moment to review this.

15 A. I have it at Tab 6, sir.

16 Q. And just take a moment -- I don't -- have you ever seen  
17 this document before?

18 A. No, sir, it doesn't appear familiar.

19 Q. Okay. So I'll give you moment to review it. Looks like  
20 you finished the first page. You can just go to the last page.

21 A. Last page, yes, sir.

22 Q. And I just draw your attention to Paragraph 6. Not the  
23 last page. Sorry. Page 3.

24 A. Page 3, yes, sir, I have it. I've finished.

25 Q. Okay. So based on your review of this document, is this

Andrew Koundarakis - Direct Examination

1 document consistent with the document you discussed with  
2 Mr. Brown on October 17th, 2017?

3 A. Yes, sir.

4 Q. And what did he say about whether he possessed this  
5 document?

6 A. That he did not, sir.

7 Q. Now, if you had been given that document by Mr. Brown or  
8 seen it in the area he permitted you to search, what would you  
9 have done?

10 A. Again, I would have placed it in the secure transport  
11 mechanisms that we have, I would have returned it to the safes  
12 that are located within our secure control access buildings  
13 that protect it at the -- in this case, it would have been a  
14 top secret level that I would have placed it at.

15 Q. Can you explain why would you have placed it at the top  
16 secret level?

17 A. While the document in question is marked SECRET//NOFORN,  
18 there's some inconsistencies with how the document is  
19 classified based on how human intelligence is protected. And  
20 so, therefore, out of an abundance of caution, I would have  
21 secured it as a higher classification levels.

22 Q. Just looking at Page Number 1, without even getting to the  
23 first paragraph, just the subject line and the title of the --  
24 the header in terms of where this document came from, were you  
25 familiar with that Special Operations Command Central Office of

Andrew Koundarakis - Direct Examination

1 the Commander in your role at MacDill Air Force Base?

2 A. Yes, sir.

3 Q. So just this information above the first classified  
4 marking, what does that tell you about this document?

5 A. It tells me the significance of the people involved and  
6 the secret nature of all of those who are participating within  
7 these lines and specifically the reference to the J3X, which  
8 isn't a classified --

9 Q. Correct. Sorry. You mentioned the J3X. Are you  
10 familiar with the J3X in your work at -- or in your former work  
11 at MacDill Air Force Base?

12 A. Yes, sir.

13 Q. So what is the J3X?

14 A. In general, unclassified terms, the nomenclature 3 refers  
15 to operations, and then the X further defines that within our  
16 community.

17 Q. And so if have you had seen this document October 17,  
18 2017, would you have permitted the defendant to retain it?

19 A. No, sir.

20 MR. MARCET: Thank you, Your Honor. No further  
21 questions.

22 THE COURT: Mr. Futerman.

23 MR. FUTERMAN: Thank you, Your Honor.

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**CROSS-EXAMINATION**

**BY MR. FUTERMAN:**

Q. Good afternoon, sir.

A. Good afternoon, sir.

Q. Just to give the context of how you discussed the information was brought to your attention, the reason in 2017 the person that brought to it your attention indirectly was Mr. Brown. Correct? Let me expand on that before you answer that. It was Mr. Brown who brought up Sergeant Bergdahl at a funeral of a soldier. Correct?

A. That's not the information I had, sir.

Q. He was the one that brought it up at a funeral, and then it was reported to your agency. That's how you found out about this in 2017. Right?

A. I found out about it from my supervisor, my commander.

Q. Okay. But did your supervisor tell you that he found out about it because Mr. Brown brought --

**MR. MARCET:** Objection, Your Honor. Calls for hearsay.

**THE COURT:** Sustained.

**BY MR. FUTERMAN:**

Q. Do you know where the supervisor got that actual information from?

A. Yes, sir, from a -- a source of the information who he didn't describe further.

1 Q. Okay. So it could have been someone at the funeral that  
2 was speaking to Mr. Brown. Right?

3 MR. MARCET: Objection, Your Honor. Calls for  
4 speculation.

5 THE COURT: Sustained.

6 BY MR. FUTERMAN:

7 Q. You say a source, but he didn't tell you who that source  
8 was then?

9 A. He did not, no, sir.

10 Q. And then this physical document that Mr. Brown authored,  
11 and is Count 10, that was in his possession, as Tab 6, when you  
12 discussed this Soldier Bergdahl trip report that he authored,  
13 he admitted he authored that. Correct?

14 A. I'm sorry. I didn't hear the last part.

15 Q. He admitted that he authored that trip report. He  
16 discussed that, right, with you?

17 A. Yes, that's correct, sir.

18 Q. And without going into specifics on the record, I just  
19 want to turn your tension to Page 3 of that report, Lines 11  
20 through 12, and I don't want you to read that out loud. I just  
21 want you to look at it and have the jury look at it. Page 3 of  
22 that report, okay, Line 11, looks like it's 11 and 12. It's  
23 really three lines, but it's Tab 11 and 12. Have you had a  
24 chance to look at that?

25 A. Yes, sir, I have.

1 Q. Do you know while the jury reads that, and we don't put  
2 the actual verbiage on the record, do you know if that  
3 paragraph was part of the discussions that Mr. Brown had in  
4 2017 about his opinions about this document, or do you not  
5 know?

6 A. Discussions with us, sir?

7 Q. Discussions with you and discussions -- like specifically  
8 discussions with you, Lines 11 through 12, did you have those  
9 specific discussions with him?

10 A. No, sir, we did not.

11 Q. Okay. So you don't have the rationale or know the  
12 motivation of him keeping that authored document. Correct?

13 A. That is correct, sir.

14 Q. Okay. And then on that last report on that same page, he  
15 actually has his e-mail address and information on that report,  
16 correct, that he authored?

17 A. I see it there, sir, yes, sir.

18 Q. Okay. And then that was in 2017. Correct?

19 A. Yes, sir, that's correct.

20 Q. All right.

21 MR. FUTERMAN: I have no more questions.

22 THE COURT: Any redirect, Mr. Marcet?

23 REDIRECT EXAMINATION

24 BY MR. MARCET:

25 Q. You were asked whether Mr. Brown admitted he authored the

1 document, and he did. Correct?

2 **A.** Yes, sir. That's correct, sir.

3 **Q.** That's what we were just looking at in the unclassified  
4 Paragraph 6 on Page 3. So that's -- that was what that "U"  
5 means, right at the beginning, right, that paragraph is  
6 unclassified?

7 **A.** That whatever follows that marker is unclassified. Yes,  
8 sir.

9 **Q.** And the contact information that he put was a top secret  
10 phone line. Correct?

11 **A.** The -- yes, sir, that number refers to a top secret  
12 communication device.

13 **Q.** And if we look at Page 1, do you see at the top, it says  
14 SECRET//NOFORN?

15 **A.** Yes, sir, I do.

16 **Q.** Is that marking placed there by the author of the  
17 document?

18 **A.** It would have been, yes, sir.

19 **Q.** And is that marking on every page that you've seen?

20 **A.** Yes, sir, at the top and bottom.

21 **MR. MARCET:** Thank you, Your Honor. No further  
22 questions.

23 **THE COURT:** All right. Would you close your book,  
24 sir, and just leave it there. Thank you.

25 **THE WITNESS:** Yes, Your Honor.

Andrew Koundarakis - Redirect Examination

1           **THE COURT:** And you may step down.

2           **THE WITNESS:** Yes, Your Honor.

3           **THE COURT:** I need to speak with you again at sidebar  
4 briefly, Counsel.

5           (Bench conference begins.)

6           **THE COURT:** Okay. So you've got one witness left and  
7 that's it?

8           **MR. MARCET:** Correct.

9           **THE COURT:** And not available till Friday morning?

10          **MR. MARCET:** He gets in tomorrow afternoon. He told  
11 me it was his first vacation in a number of years.

12          **THE COURT:** He's not here. Doesn't matter what I  
13 think about that.

14          **MR. MARCET:** I apologize, Your Honor. I still feel  
15 terrible.

16          **THE COURT:** Okay. So I'm going to tell the jury they  
17 don't have to come tomorrow. And so then I'll tell them to be  
18 here at nine o'clock on Friday morning. I am also going to  
19 tell them that I still anticipate, because we'll have Friday  
20 and then Monday, that the original estimate of trial that I  
21 gave them is correct. Do you still agree with that?

22          **MR. FUTERMAN:** We wanted to discuss that a little bit  
23 with the Court and discuss if I don't call any character  
24 witnesses.

25          **MR. MARCET:** Just to clarify, he means it could be

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1 shorter, not longer. Correct?

2 **MR. FUTERMAN:** Yes. So there would be a question for  
3 the Court. I don't know if we could discuss this now or when  
4 the jury is gone.

5 **THE COURT:** Well, I just didn't want to --

6 **MR. FUTERMAN:** It won't be longer. It might end on  
7 Friday, potentially.

8 (Bench conference concluded.)

9 **THE COURT:** All right. Ladies and gentlemen, I'm  
10 going to ask if you will stick your notepad in your notebook,  
11 please. And I'm going to ask the information security officers  
12 if they would collect the notebooks.

13 Ms. Black, would you hand this --

14 **MR. GOEDMAN:** Thank you.

15 **THE COURT:** Okay. Do we have them all?

16 **MS. RODRIGUEZ-FEO:** Yes, Your Honor.

17 **THE COURT:** What you should have is your original  
18 notepad. All right. Ladies and gentlemen, we're actually  
19 moving faster than we anticipated, which is always a high-class  
20 problem. The government has a witness -- they told me they  
21 have one witness left, and that witness is unavailable until  
22 Friday morning. And so we're going to recess today, and you  
23 don't need to come tomorrow, but you'll need to come back on  
24 Friday. I still think my estimate of trial time is certainly  
25 not going to be longer than what I estimated in the beginning.

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1 So the fact that we're taking this day off is not going to be  
2 tacked onto the end and we're going to be here eight or nine  
3 days. That's just not going to happen.

4 But we don't have any witnesses available tomorrow.  
5 The government doesn't have any witnesses to call. So you can  
6 go about your business tomorrow.

7 But it's important to remember a couple of things.  
8 First of all, the documents that you viewed are secret  
9 documents, and, obviously, you should not discuss those  
10 documents with anyone. And after the trial is over, I'm going  
11 to tell you still not to discuss those documents with anyone.  
12 You're the only ones that have seen them besides me and the  
13 attorneys and the witness. So please don't discuss anything  
14 about the documents, what they are, what the content is, what  
15 their name, anything at all about them.

16 In addition, please don't discuss the case with  
17 anyone else over the -- over the day recess. And if anyone  
18 does attempt to discuss the case with you, you need to call our  
19 office and let us know. I'm not suggesting that will happen,  
20 but since we're taking the day off, that's what you should do.

21 Please don't do any investigation. Please don't read  
22 anything or listen to anything or watch anything, should there  
23 be anything in the news media. Just simply come back on Friday  
24 morning at nine o'clock. So we are in recess until Friday  
25 morning at nine o'clock. Please leave your pads facedown under

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1 your chairs, and nobody will bother them over the recess.

2 All right. Have a good day off.

3 **THE COURT SECURITY OFFICER:** All rise.

4 (Jury out at 4:49 p.m.)

5 **THE COURT:** Okay. If you'll have a seat just a  
6 minute.

7 So on Friday morning, you have one witness left, and  
8 you said you thought that would be a quick witness or not?

9 **MR. MARCET:** Yeah. Oh, yes. I mean, no longer than  
10 the witness we just heard from.

11 **THE COURT:** Okay. We'll take a recess, and you can  
12 make whatever motions you wish to make, and then we'll start  
13 with the defense's case. So we will start on Friday.

14 **MR. FUTERMAN:** I have a couple questions for the  
15 Court's handling.

16 **THE COURT:** Okay.

17 **MR. FUTERMAN:** So let's assume -- and I'd like to  
18 have maybe a little bit of discussion, if we can, about  
19 potential proffered evidence, that -- to prevent any opening of  
20 improper character evidence, so far we've stayed away pretty  
21 much from January 6th and all the stuff around it and all the  
22 potential stuff that Mr. Brown did surrounding January 6th,  
23 going there, and trespassing warrant there, and et cetera,  
24 et cetera.

25 And on the assumption that I don't put any other

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1 character witnesses in that could potentially open up the stuff  
2 we've discussed, I present -- I anticipate we'd have a very  
3 quick witness and then Mr. Brown. And let's assume the  
4 defense's case is an hour and a half and the government doesn't  
5 have any rebuttal, that puts us around 11 o'clock. If -- would  
6 it be the Court's preference to go straight into closing  
7 argument that day, and then if the jury, say, has the case in  
8 its hands 2:30, 3:00, continue deliberations till they come to  
9 a conclusion Friday night, or would the Court end on Friday --  
10 I've tried cases --

11 **THE COURT:** Yeah. Well, let me -- I think we've got  
12 a couple of things.

13 First, jury instructions, and I was going to talk  
14 about that anyway, whether or not there was a -- what I would  
15 like to do is charge the jury before you do the closing  
16 arguments, so I'd have to have the jury instructions in place.

17 So we would have to have some sort of an agreement on  
18 the jury instructions. I think we pretty much do. But there  
19 are a couple of suggestions, for example, I made a suggestion  
20 about the introduction to the counts should be more specific.

21 I think the verdict form should be more specific than  
22 just guilty Count 1, not guilty Count 1. Because I think that  
23 tends to invite a mistake by the jurors if they get the counts  
24 mixed up. So if you are more specific as to what the count  
25 charges, then I think that keeps us from having -- from a

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1 mistake like that. I think the verdict form needs to be more  
2 specific and sort of -- it doesn't have to track the indictment  
3 as far as, you know, everything it says in Count 1.

4 But they should be able, for example, in Count 1 to  
5 relate Count 1 to the possession of the shotgun, less than  
6 18 inches in length. And then they should be able to relate  
7 Count 2 to the possession of the rifle having a barrel of less  
8 than 16 inches in length. I mean, they should -- so that we  
9 don't get a chance that maybe they get the counts confused.

10 But other than that, I don't -- I looked through the  
11 jury instructions. I would have to look through them again  
12 more carefully. You-all seem to have agreed to everything, and  
13 so I don't think there's a lot of an issue regarding jury  
14 instructions.

15 How long of a closing argument, Mr. Marcet and/or  
16 Mr. Goedman, do you think we're looking at?

17 **MR. MARCET:** Your Honor, one -- on the jury  
18 instructions, I think each side had one objection.

19 **THE COURT:** Oh, okay. Well --

20 **MR. MARCET:** Yeah. I think we had requested the -- I  
21 forget. We had requested a nonstandard instruction relating  
22 to --

23 **THE COURT:** Okay. Just hold that thought a minute.  
24 How long about closing arguments?

25 **MR. MARCET:** Can I have a moment, Your Honor?

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1           **THE COURT:** Sure.

2           **MR. MARCET:** Your Honor, we can split an hour if that  
3 would work.

4           **THE COURT:** Okay. An hour. Would you say an hour?

5           **MR. FUTERMAN:** Yes, no more than an hour.

6           **THE COURT:** Okay. And it will take me, say, 45  
7 minutes, 50 minutes to instruct the jury. So we're looking at  
8 maybe three o'clock at the earliest. They would have a short  
9 time to deliberate. I don't know. What are your thoughts on  
10 doing closings on Friday if the testimony -- the defense's  
11 testimony is short?

12           **MR. MARCET:** That would certainly be my preference.

13           **MR. FUTERMAN:** That would be my preference if the  
14 Court lets them go beyond five o'clock. What I really don't  
15 want is them going home for the weekend, the risk of  
16 interference from the media, seeing something, you know, just  
17 gets greater. And so if the Court is prepared to stay a little  
18 longer for them.

19           That's my first -- going back, before I forget, I  
20 would object to the jury form not just saying count, because I  
21 think it's up to the lawyers to educate the jury as to each  
22 count. If we start truncating little portions of it, like  
23 shotgun, like rifle, there's obviously going to be discussions  
24 and arguments about that. So I totally understand the Court's  
25 concern, but I think it's up to the lawyers to educate the jury

1 each count by count.

2 **THE COURT:** Well, I think it's my responsibility to  
3 give the jury a verdict form that is not going to be a verdict  
4 form that's subject to some easy mistake or challenge. So I  
5 disagree with you in that regard.

6 But let me -- let me just go back to the other thing  
7 you were talking about, as far as timing is concerned. You  
8 know, I'm not -- I would be looking at six o'clock, maybe,  
9 or -- but probably -- they close the courthouse, and they don't  
10 like us staying past six o'clock. So I would say, in all  
11 honesty, six o'clock would probably be the latest I'd like the  
12 jury to stay, and then we would be -- we would be over the  
13 weekend. So knowing that, what position do you take?

14 **MR. FUTERMAN:** I guess it's a kind of, you know, play  
15 by feel. If it's 4:30 in the day, no. You know, if we're two  
16 o'clock, then I prefer to do closing arguments on Monday, and  
17 then let them deliberate the whole day. If we're pretty much  
18 done in the early morning by evidence and you've read the  
19 instructions and we have a shorter lunch and we go right into  
20 closing, you know, I would like to do that, and I think the  
21 government shares that. So we may have a play by feel.

22 **THE COURT:** Okay.

23 **MR. FUTERMAN:** I just know with Judge Honeywell, we  
24 were here till 1:30 in morning on a hung jury and then another  
25 verdict at five o'clock, we were out the door. So every court

1 is different.

2           **THE COURT:** I have stayed later than that, but it's  
3 never a popular decision with anyone. Okay. We'll play it by  
4 ear then. Going back to the -- tell me -- well, let me just  
5 ask you. It's five o'clock. So let me ask you, do you want to  
6 stay a few minutes and tell me what your -- what your  
7 objections to the jury instructions -- you said you each had  
8 one, or do you want to maybe have a Zoom charge conference  
9 tomorrow or an in-person charge conference tomorrow?

10           **MR. MARCET:** Your Honor, I have a screaming baby at  
11 home. I got nowhere to be. So I'm happy to do it now and  
12 would stay -- I don't think anything new has happened that  
13 would affect it. I'm happy to discuss it now.

14           **MR. FUTERMAN:** The only -- I think might be a more --  
15 at this -- it's a very important conversation. It might make  
16 more sense to have a Zoom or in-person, whatever the Court  
17 orders.

18           It's about some of the potential proffered evidence.  
19 Because I think I have an idea of my direct. And what I don't  
20 want is, then, in the middle of a cross an objection, question,  
21 the government believes they in good faith can ask, I don't  
22 believe they can ask that, and it opens the door to a fact that  
23 I don't think should be before the Court, and then we have a  
24 problem because the question is out there.

25           I'd rather just lay out what I anticipate where I'm

1 going in direct, which may be narrower than our pretrial  
2 motions, as it relates to the recording of the December case,  
3 whether we put that in, et cetera, et cetera, other things  
4 we've discussed, have a discussion with Mr. Brown about that.

5           And then if we curtail the direct, for example, limit  
6 that recording, limit the discussions in detail about his  
7 repeated interviews to various media outlets, part of the  
8 government's exhibits, then if the Court agrees it doesn't open  
9 to the January 6th stuff, and if we have kind of a pre-proffer,  
10 I think that's an important discussion to have on the record.  
11 And we can have a much clearer guidance as to my direct and the  
12 government's cross as to Mr. Brown.

13           So I think that's worth discussing in some form maybe  
14 at some point tomorrow. And then we can look at the jury  
15 instructions one more time and then have a final, maybe charge  
16 conference on that.

17           **THE COURT:** All right. I'm not opposed to that. Can  
18 you tell me, though, Mr. Marcet said -- I thought the  
19 instructions were agreed to, but maybe they're mostly agreed  
20 to. Can you tell me what instruction that each of you have the  
21 objection to?

22           **MR. MARCET:** Yes, Your Honor. The defense objects to  
23 the instruction on Page 9.

24           **THE COURT:** Hold on just a minute. Let me go to it.  
25 Okay. The instruction is the law does not require

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1 the prosecution to call as witnesses all persons who may have  
2 been present at time or place involved in a case or who may  
3 appear to have some kind of knowledge in the matter, nor does  
4 the law require the prosecution to produce as exhibits all  
5 papers and things mentioned in the evidence.

6 And I've obviously given this. It's like one of my  
7 cases. But I don't give it in every case. I give it in those  
8 cases where the defense suggests, you know, well, where was  
9 this witness or where was that witness or that kind of thing.

10 **MR. MARCET:** I think that -- sorry, Your Honor. I  
11 didn't mean to --

12 **THE COURT:** That was it. I was just trying to  
13 explain when I give it.

14 **MR. MARCET:** Correct. We proposed it and waited to  
15 see. And I think the defense has done that in opening, has  
16 done it on cross-examination through several witnesses. So I  
17 do think it's appropriate in this case, because he repeatedly  
18 asks, I think, kind of rhetorically, two witnesses on  
19 cross-examination, well, we haven't heard from her, where is  
20 that person, maybe we'll hear from them, you know, that sort of  
21 commentary. So I think even without hearing what they say  
22 closing, I think the door is already opened to that.

23 **THE COURT:** Mr. Futerman?

24 **MR. FUTERMAN:** Well --

25 **THE COURT:** If -- and I will say, if you are -- if

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1 that is going to be a part of either the testimony that I'm  
2 going hear or the argument, then I think I'll -- I will give  
3 the -- I would give the instruction. So I just don't know.

4 **MR. FUTERMAN:** No. I think it's -- it's a  
5 reasonable --

6 **THE COURT:** We'll think about it.

7 **MR. FUTERMAN:** -- speculation by the government to  
8 suggest that I'm going to bring out what's come out in the  
9 trial, and that's come out in the trial. And so I'm going to  
10 highlight the fact about certain witnesses not being here.

11 **THE COURT:** Okay. Then I'm probably going to give  
12 it.

13 What's the one that the government objects to?

14 **MR. MARCET:** Your Honor, that's on Page 23.

15 **THE COURT:** Uh-huh.

16 **MR. MARCET:** So that is a -- it's the pattern that  
17 Mr. Futerman modified to -- so this is the -- I don't know if  
18 Your Honor tries tax cases, but there's a heightened  
19 willfulness burden for certain tax charges requiring that we  
20 prove that the person not only, you know, generally knew it was  
21 unlawful, but knew the specific regulation they were violating  
22 in essence. And this is -- this is a good-faith defense to  
23 that heightened willfulness requirement.

24 So the pattern jury instruction is titled "Good Faith  
25 Defense To Willfulness (As Under The Internal Revenue Code)."

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1 That's not -- that is not the burden in this case, which is  
2 just to prove general willfulness. We've included the general  
3 willfulness instruction, but the defense was requesting this.

4 **MR. FUTERMAN:** And I agree. As the testimony has  
5 developed, and we researched something similar to this as it  
6 relates to the classified documents, we're going to withdraw  
7 the request for that special instruction.

8 **THE COURT:** But you do want -- you do want the --

9 **MR. FUTERMAN:** General willfulness.

10 **THE COURT:** General good-faith instruction.

11 **MR. FUTERMAN:** Just not this additional S9 that I  
12 asked to be in prior to the trial.

13 **THE COURT:** Okay. Mr. Marcet, can you prepare a  
14 verdict form which --

15 **MR. MARCET:** Yes.

16 **THE COURT:** -- does something other than Count 1,  
17 Count 2?

18 **MR. MARCET:** Yes. I'll modify these with the more  
19 detailed instructions.

20 **THE COURT:** Right. And then circulate it to me and  
21 to Mr. Futerma before we have -- would you prefer to do this,  
22 and it really makes no difference to me, by Zoom or in person  
23 tomorrow?

24 **MR. MARCET:** I'm at the Court's pleasure, Your Honor.

25 **MR. FUTERMAN:** Whatever the Court wishes.

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1           **THE COURT:** Okay. Well, let's do it in person.

2           What time do you want to do it? I have all day now.

3 I'm free.

4           **MR. MARCET:** Your Honor, obviously, we're all free.  
5 I mean, if Mr. Brown and Mr. Futerman may need to speak first.

6           **THE COURT:** Mr. Brown probably wants to be here, so  
7 he would need to be brought over, so -- which we can do.

8           **MR. FUTERMAN:** Right. Right.

9           **MR. MARCET:** Sorry. I meant if they want to discuss  
10 the testimony first, so that they can tell us what they intend  
11 to do.

12           **THE COURT:** Yeah, I know. So you have to have time  
13 to do that. So give me a suggested time.

14           **MR. FUTERMAN:** Two o'clock.

15           **THE COURT:** Two o'clock is fine. And we'll do it in  
16 person. Can we have Mr. Brown brought over, Ms. Black?

17           **THE COURTROOM DEPUTY:** He's scheduled to be brought  
18 over. I will have to notify the marshals about the later time.

19           **THE COURT:** They don't have to bring him that early.  
20 Mr. Futerman has to have a chance to speak with him. Your  
21 intent would be to go to jail to speak with him?

22           **MR. FUTERMAN:** Either the jail or depends on how long  
23 a block I have the video visitation. The jail is a lot harder.  
24 My goal is to go actually physically see him in the jail in the  
25 cell, get through, so see him in the morning, and then come to

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1 the Court after I've met him.

2 **THE COURT:** Okay. So we would like him brought over  
3 later rather than earlier, if we could. Do the marshals have  
4 any problem with that?

5 **THE U.S. MARSHAL:** Your Honor, we can bring him over  
6 every morning like we have at 7:30, and they can meet --

7 **THE COURT:** Then he can't talk to him.

8 **THE U.S. MARSHAL:** They can meet downstairs in our  
9 interview room.

10 **THE COURT:** Would that be okay?

11 **MR. FUTERMAN:** That's fine. That's fine.

12 **THE COURT:** All right. So we'll do it in this  
13 courtroom at two o'clock tomorrow. We'll be -- we'll discuss  
14 the jury instructions to the extent we need to. We'll talk  
15 about timing and take up whatever else you want to take up.

16 **MR. MARCET:** Your Honor, we're going to file a short,  
17 I think, five-page memo just outlining some of the law  
18 surrounding the 793 classified information charge, because I'm  
19 not sure where the defense is going, and I just want to make  
20 sure we all -- I don't want them to put on a case and then, you  
21 know, Your Honor has to give a special instruction essentially  
22 saying what they said is not a defense, then we have all sorts  
23 of issues.

24 **THE COURT:** Yeah. I can always -- you know, I can  
25 always -- I just think it's better to instruct the jury first,

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1 but I can always instruct them after closing arguments. I  
2 think it's better, because it gives -- they know what they're  
3 going to be asked to decide. So we'll talk about it tomorrow.  
4 I'll do it either way you would like.

5 All right. We're in recess until two o'clock  
6 tomorrow.

7 (Proceedings recessed at 5:07 p.m.)

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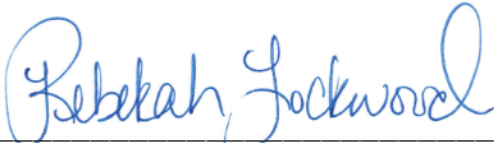
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STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

I, Rebekah M. Lockwood, RDR, CRR, do hereby certify that I was authorized to and did stenographically report the foregoing proceedings; and that the foregoing pages constitute a true and complete computer-aided transcription of my original stenographic notes to the best of my knowledge, skill, and ability.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand at Tampa, Hillsborough County, Florida, this 10th day of February 2023.

  
REBEKAH M. LOCKWOOD, RDR, CRR  
Official Court Reporter  
United States District Court  
Middle District of Florida