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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
vs.)	
)	No. 13-cr-10238-DPW
)	
DIAS KADYRBAYEV (1),)	
AZAMAT TAZHAYAKOV (2))	
AND ROBEL KIDANE PHILLIPOS (3),)	
)	
Defendants.)	

BEFORE: THE HONORABLE DOUGLAS P. WOODLOCK

DAY TWO OF MOTION HEARING

John Joseph Moakley United States Courthouse
Courtroom No. 1
One Courthouse Way
Boston, MA 02210
Wednesday, May 14, 2014
9:05 a.m.

Brenda K. Hancock, RMR, CRR
Official Court Reporter
John Joseph Moakley United States Courthouse
One Courthouse Way
Boston, MA 02210
(617) 439-3214

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I N D E X

WITNESSES: DIRECT CROSS REDIRECT RECROSS

SPECIAL AGENT

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1 P R O C E E D I N G S:

2 THE CLERK: All rise.

3 (The Honorable Court entered the courtroom at 9:05 a.m.)

4 THE CLERK: This Honorable Court is back in session.
5 You may be seated.

6 This is Criminal Action 13-10238, The United States
7 versus Dias Kadyrbayev, Azamat Tazhayakov and Robel Phillipos.

8 THE COURT: Just two housekeeping things.

9 As I understand it, Mr. Tazhayakov is not going to be
10 submitting anything further in connection with the Motion to
11 Suppress; is that correct?

12 MR. MYERS: That's correct.

13 THE COURT: I think about 12:50 I am going to want to
14 take a break, and I want to meet with the Government and
15 counsel for Mr. Phillipos about an *ex parte* matter at that
16 point.

17 But, beyond that, if we could get Agent Walker on the
18 stand, and you may continue to inquire, Mr. Stahl.

19 MR. STAHL: Good morning, your Honor.

20 SPECIAL AGENT JOHN WALKER, PREVIOUSLY DULY SWORN

21 CONTINUING CROSS-EXAMINATION

22 BY MR. STAHL:

23 Q. Good morning, Agent Walker.

24 A. Good morning, Mr. Stahl.

25 Q. I would like to focus your attention and go through in a

1 little greater detail some of the things that were left out on
2 direct about the actual surrounding and the assault on
3 69A Carriage Drive, okay?

4 So, you have your elite Hostage Rescue Team there on
5 scene, correct?

6 A. They arrived on scene, yes.

7 THE COURT: Agent Walker, if you could speak into the
8 microphone, it is easier for the court reporter to pick things
9 up.

10 THE WITNESS: Yes, your Honor.

11 BY MR. STAHL:

12 Q. They were also supplemented by the Massachusetts State
13 Police SWAT Team?

14 A. A portion of the MSP STOP Team, yes, sir.

15 Q. You also had a number of armed FBI Agents, correct?

16 A. In addition to the Hostage Rescue Team Operators?

17 Q. Yes.

18 A. No. I was the only FBI Agent there not part of the HRT.
19 There were two Boston Division Special Agent Bomb Technicians.
20 They were armed, as I was, but they were there as part of the
21 HRT complement.

22 Q. All right. And looking through your emails, I think you
23 also had a number of local police agencies on scene as well,
24 correct?

25 A. There was more than two, yes.

1 Q. And you said yesterday that your best estimate was on
2 scene there were approximately 50 or 60 or even more law
3 enforcement personnel?

4 A. No. My answer specifically regarded Tactical Operators,
5 and that continues to be my answer. There would be, in
6 addition on the periphery, there would inevitably have been and
7 ultimately were some uniformed police officers of the New
8 Bedford Police Department, and the ranking officers that I
9 described yesterday, the two Majors and the ranking officer
10 from the Rhode Island State Police.

11 Q. All right. So, 50 or 60 I will call them "SWAT Team
12 Officers," correct?

13 A. Yes.

14 Q. And those are the ones that we've seen so many pictures in
15 the local papers and in the national papers of the fatigues,
16 the extra-heavy bullet-proof vests, the helmets, the sometimes
17 night-vision goggles, automatic weapons, correct?

18 A. I don't know whether they carried automatic weapons. I am
19 sure they carried semiautomatic weapons. But the rest of your
20 description of their attire is accurate, yes.

21 Q. All right. Well, certainly they carried much more fire
22 power than just the traditional uniformed police officer or FBI
23 Agent, like yourself, correct?

24 A. Yes.

25 Q. All right. And were you actually -- you were present.

1 You were an actual witness to their operation, correct?

2 A. Only a part of their operation. Not initially. I was at
3 least -- I was approximately a block away, and I could not see,
4 for instance, the occupants of the apartment physically exiting
5 the apartment.

6 Q. To prepare for your testimony this week, what did you
7 review?

8 A. I reviewed many portions of our case file associated with
9 these three defendants. I reviewed portions of a broader case
10 file with regard to the overall Boston Marathon bombings
11 investigation. That is, these particular case files as of
12 April 19 and April 20th did not even exist. So, I needed to
13 read the first two cases that were opened. One was a case
14 opened on April 15, when subjects were identified we suspected
15 having committed the bombings. We opened two files with regard
16 to those subjects, and later we opened files here.

17 I also looked at a portion of a SharePoint site that
18 contained all manner of analytical products and looked at
19 email, looked at email that I had gathered sometime earlier for
20 potential production as Jencks material, looked back at
21 materials that we had produced during automatic discovery and
22 in compliance with individual -- specific discovery requests.

23 I looked at everything that I could find and more that
24 would refresh my memory as to what transpired on the 19th and
25 the 20th, but when asked to give some minor narrative of the

1 events of that week from the 15th on to the 19th, I needed to
2 go back and look at things to refresh my memory as to our
3 operations that week as an Agency.

4 Q. And that's because this event, as significant it is for
5 you and others, was over a year ago, correct?

6 A. In part, yes.

7 Q. And it's a necessary and normal procedure to refresh your
8 recollection, correct?

9 A. To prepare to give testimony before a Federal District
10 Judge, yes, I want to be as prepared as possible.

11 Q. And did you read through any of the motions or the
12 exhibits that the defendants submitted in preparation for your
13 testimony?

14 A. I read most of them but not specifically in preparation
15 for my testimony, and, in fact, I chose not to prepare myself
16 with those documents, because I thought it, if nothing more,
17 might confuse the issue.

18 Q. And did you read through the defendants' affidavits that
19 they submitted?

20 A. I read through, yes, all three.

21 Q. And part of what you reviewed, I take it -- obviously,
22 it's many, many more documents than we presently have before
23 us, correct, meaning the defense?

24 A. I don't know what you have.

25 Q. Well, you said case books, the overall investigation. You

1 read things about the HRT activities, correct?

2 A. I did not read anything about the HRT activities. I'm not
3 aware of any document that exists describing -- an FBI document
4 that describes the activities of the HRT in New Bedford that
5 day.

6 Q. Were you able to review any document that showed who was
7 on the scene April 19th in the late afternoon at Carriage
8 Drive?

9 A. I know of no such document.

10 Q. All right. So, we go back to the actual assault on the
11 apartment. You believe that Jahar was inside, correct?

12 A. I don't agree with the premise that it was an assault, but
13 I knew it was a surrounding callout.

14 Q. A tactical operation? Would that be better?

15 A. Yes, sir, that would be fine.

16 Q. All right. We can agree on that. All right. You firmly
17 believed at the time Jahar was inside, correct?

18 A. I personally did, yes.

19 Q. All right. And in your career, I can't imagine that there
20 was many more high-risk situations than the one that faced the
21 Team that day, correct?

22 A. I can think of at least one that I was involved with that
23 equated the level of risk, yes.

24 Q. But this certainly was of the highest order of risk to the
25 individuals, correct?

1 A. Yes.

2 Q. All right. And so, they were proceeding with utmost
3 caution, correct?

4 A. Yes.

5 Q. And did you come to learn that several of the occupants
6 inside had looked out the windows, and that the HRT members saw
7 that?

8 A. Not then.

9 MS. SIEGMANN: Objection.

10 THE COURT: Well, I will let the witness answer.

11 BY MS. STAHL:

12 Q. You have come to learn that, correct?

13 A. Yes.

14 Q. And you have come to learn that when the HRT team saw
15 that, that they focused their laser-scoped rifles, their
16 weapons, long weapons, on the individuals inside, correct?

17 A. I believe that occurred, yes.

18 Q. All right. So, in other words, what that means is that a
19 laser scope is the scope that emits a laser beam, red in these
20 instances, so that the person pointing the weapon can see that
21 the dot is actually on the person so that the gun is aimed
22 correctly, correct?

23 A. I don't think that is the primary purpose of that
24 particular sight.

25 Q. That is one of the purposes, correct?

1 A. I don't know that.

2 Q. In any event, if a person is looking at another person and
3 a red laser dot is on their forehead or their chest, they would
4 be able to see that, correct?

5 A. Yes, and the operators that are employing that tool.
6 Importantly, it will allow other operators to be made readily
7 aware of a potential threat, and that's one of the uses of that
8 particular tool.

9 Q. Correct. And so that when Diaz and Azamat and Bayan
10 looked out the windows to see what was going on, they were able
11 to see on each other that these laser rifles, the dots were on
12 their foreheads and their chests, correct?

13 A. I don't know that.

14 Q. When HRT is there, they're pointing their weapons at the
15 building, they're pointing their weapons at anyone that they
16 can see looking through the windows. That's standard operating
17 procedure, correct?

18 A. No.

19 Q. Well, you know that that's what happened in this case.
20 You just testified that you had read about that.

21 A. No, I did not. I did not read about that, no.

22 Q. All right. You have heard about it?

23 A. I heard that there was a potential, perhaps even a
24 likelihood or a possibility, that so-called laser sights were
25 used that afternoon in that operation.

1 Q. And you have no reason to doubt that, correct, Agent?

2 A. I do not.

3 Q. Now, the next thing that happened was that over a
4 loudspeaker one of the Team members started to command Jahar to
5 come out, correct?

6 A. Yes.

7 Q. And they repeated that a number of times, "Jahar, you're
8 surrounded. Come out." Correct?

9 A. Or words to that effect, yes, sir.

10 Q. Or words to that effect?

11 A. Yes.

12 Q. And that was why all these heavily armed, specially
13 trained SWAT officers are surrounding the apartment and
14 pointing their weapons towards the apartment, correct?

15 A. I don't understand that part of your question.

16 Q. Well, the apartment complex was surrounded, correct?

17 A. That portion of the complex was surrounded. Certainly
18 that building was surrounded, yes.

19 Q. I'm focused on 69 Carriage Drive.

20 A. Yes.

21 Q. And it certainly was surrounded by heavily armed SWAT Team
22 members, correct?

23 A. Yes, they are armed, as I described.

24 Q. And they were pointing their weapons towards 69 Carriage
25 Drive?

1 A. I don't know that to be the case. That is not necessarily
2 normal procedure. We don't typically point weapons at just
3 random places, unless we perceive a potential threat.

4 Q. Agent, you are not telling me that 69A Carriage Drive was
5 a random place, that they wouldn't be pointing their weapons?

6 A. No, I am not.

7 Q. All right. We think Jahar is inside, correct?

8 A. Yes.

9 Q. So, we're going to be pointing our guns towards 69A?

10 THE COURT: Well, part of the problem, I guess, is
11 that this witness was not a percipient observer of what you are
12 talking about now. So, if there is a percipient observer, we
13 will hear from him, but I am not sure that bouncing these
14 observations off this witness is particularly productive,
15 unless you can establish that he perceived or was present
16 during this.

17 MR. STAHL: Well, my understanding is he has been
18 testifying in a number of instances from hearsay, meaning he
19 has read through other agents' reports. He is the case agent
20 on this --

21 THE COURT: I am not receiving that hearsay. It is
22 not going to be sufficient for me. Do it by way of background
23 and context and so on, but if we are focusing on something that
24 is an observation, I want the witness who made the observation
25 to testify about it.

1 BY MR. STAHL:

2 Q. You knew that over a loudspeaker that they were commanding
3 Jahar to come out, correct?

4 A. I heard that, yes.

5 Q. And you knew that individually the three individuals,
6 Bayan, Dias Kadyrbayev, and Azamat Tazhayakov, eventually came
7 out, correct?

8 A. Yes.

9 Q. And they were ordered to come out one at a time, correct?

10 MS. SIEGMANN: Objection.

11 THE COURT: If he knows.

12 Q. I don't specifically know. I would believe so, yes.

13 BY MR. STAHL:

14 Q. All right. And as they were told to come out, they were
15 told to -- the men, Dias Kadyrbayev and Azamat Tazhayakov, were
16 told to take their shirts off, correct?

17 A. I have come to learn that, yes.

18 Q. And they were told to drop their pants, correct?

19 A. I don't know.

20 Q. And they were told to walk backwards towards the voices,
21 correct?

22 A. I don't know. That would also be standard procedure.

23 Q. And they were told to put their hands on top of their
24 head?

25 A. Similar response.

1 Q. And then they were told to kneel down, correct?

2 A. Again, that would be standard procedure, but I don't
3 specifically know.

4 Q. It's standard procedure, then, that as each one came out
5 and the agents were assured that they were not carrying weapons
6 or other dangerous items, that they would then be handcuffed,
7 correct?

8 A. Yes.

9 Q. All right. And the purpose, Agent, of taking their shirts
10 off and pulling their pants down was so that from a distance
11 the agents could visibly see that they were not armed, correct?

12 A. Again, I can't attest to the pants. That would be
13 procedure, not to drop pants to the ground, but to allow
14 officers issuing these commands to visibly ensure that those
15 exiting the apartment did not possess either firearms or
16 explosives.

17 Q. And you have come to learn, of course, that no one in 69A
18 Carriage Drive possessed any firearms or explosives, correct?

19 A. Not on that day, correct.

20 Q. And you told us on direct that they were then each bound
21 with plastic flex cuffs, correct?

22 A. Yes. They were handcuffed with plastic handcuffs.

23 Q. All right. And that's standard procedure for HRT as well,
24 correct?

25 A. I think for any tactical team, yes.

1 Q. And they were handcuffed behind their back, correct?

2 A. Yes.

3 Q. And then the males were kept without their shirts on,
4 correct?

5 A. They did not have their shirts on for hours thereafter.

6 Q. Well, in fact, Agent, when you came back at the early
7 morning hours of the 20th at 3:00 and 4:00 a.m., and you were
8 part of the team that drove them home, in your words, they were
9 still shirtless, correct?

10 A. Yes.

11 Q. So, they were kept for the period of time from 5:00 in the
12 afternoon on the 19th until 4:30 in the morning on the 20th
13 without a shirt, correct?

14 A. They were with us for that period of time even beyond
15 4:00, certainly not 3:00, without their shirts. In fact, when
16 we walked from our cars into their apartment they pointed out
17 their shirts lying on the grass, and we had a quick exchange
18 about that, and that's the first time that I saw their shirts
19 at all.

20 Q. Did you come to learn from the interviewing agents that
21 several times throughout the night that they asked for shirts
22 or something to cover up because it was cold?

23 A. No.

24 Q. Did you come to learn that they were cold and wet?

25 A. No.

1 Q. Is it standard procedure when you invite somebody to
2 assist you as a potential witness and have information to keep
3 them without a shirt for 12 hours?

4 A. No.

5 Q. Now, these three young individuals, you came to learn that
6 they were 19 at the time, correct?

7 A. Yes.

8 Q. So, these 19-year-old college students, foreign college
9 students, were met with a huge force of armed, specially
10 trained, tactical officers pointing rifles at them, correct?

11 A. Again --

12 Q. Is there a part of that that is not correct, Agent?

13 A. Yes.

14 Q. Let's break it down.

15 A. Please.

16 Q. They're 19 years old, correct, at the time?

17 A. I think I recall correctly that Ms. Kumaskali was, in
18 fact, 19. There may have been, when I spoke with her on the
19 scene, a dispute with regard to the year of birth, but I think
20 she may have been older, based on what she told me. But at
21 least the two defendants were 19.

22 Q. All right. So, Dias and Azamat are 19 years old, correct?

23 A. Yes.

24 Q. They are college students, correct?

25 A. No, they weren't college students.

1 Q. They had been attending UMass Dartmouth through the
2 Navitas Program, correct?

3 A. Yes.

4 Q. They were in their sophomore year, correct?

5 A. They were in their sophomore year during that academic
6 year, but on the day that I met them they were not college
7 students here in the United States.

8 Q. Okay. I thought we were taking simple steps. We'll take
9 baby steps.

10 MS. SIEGMANN: Objection, your Honor.

11 THE COURT: Well, yes. Both sides seem to think that
12 they are appearing before a jury unrestrained. I am not a
13 jury, and I am not particularly impressed with either leading
14 questions by the prosecution that were somewhat inflammatory,
15 nor particularly impressed by this. So, the point is I have
16 not sustained the objection, but you get my drift.

17 MR. STAHL: Loud and clear.

18 BY MR. STAHL:

19 Q. Agent, Dias and Azamat were 19 years old, correct?

20 A. They were then, yes.

21 Q. And they had been attending the UMass Dartmouth Navitas
22 Program, correct?

23 A. Yes.

24 Q. They were foreign students, correct?

25 A. They were both foreign nationals, yes.

1 Q. Their primary residence -- they were born and raised in
2 Kazakhstan, correct?

3 A. Yes.

4 Q. Their primary language was Russian and Kazakh, correct?

5 A. Yes.

6 Q. When they came outside their apartment, they were met with
7 an overwhelming force of tactical officers, correct?

8 A. They were met with the tactical force that I've previously
9 described.

10 THE COURT: Just a moment.

11 People are permitted to have various kinds of
12 electronic devices in here to facilitate their work but not to
13 disrupt. If I hear another disruption, the person who has that
14 electronic device will be asked to leave the room.

15 Understood? All right.

16 Go ahead.

17 BY MR. STAHL:

18 Q. They were met by many armed, heavily armed SWAT Team
19 members, correct?

20 A. Yes.

21 Q. Can we agree on that?

22 A. Yes.

23 Q. No doubt a very traumatic moment for these three young
24 individuals, correct?

25 A. I can't render an opinion on that.

1 THE COURT: Let us just get the facts out, and then
2 you will have a chance to make an argument on the basis of it
3 later. But I think we will move more efficiently if we just
4 focus on the factual material.

5 BY MR. STAHL:

6 Q. You said that they were then each separately taken and
7 placed handcuffed in the back of three separate cars, correct?

8 A. Yes.

9 Q. And you said that the men still remained shirtless,
10 correct?

11 A. Yes.

12 Q. It was cold and damp or lightly raining out that day,
13 correct?

14 A. No, it was not cold. Initially, there was a light mist
15 that dissipated. But, no, it was not cold.

16 Q. And you said that you went from car to car to car and
17 spoke to each one, correct?

18 A. Yes.

19 Q. As a matter of fact, you even recalled somehow the times.
20 I think it was 5:15 you speak with Bayan, 5:20 you speak with
21 Azamat and 5:25 when you spoke with Dias?

22 A. Yes. Each approximate times, yes.

23 Q. And you said that your primary questions you were focused
24 on, "Is Jahar inside?" Correct?

25 A. Yes.

1 Q. "Is there anything in there that can hurt anyone if we go
2 inside?" Correct?

3 A. Correct.

4 Q. And you said that, "This was the biggest thing to happen
5 to Massachusetts," correct?

6 A. It was one --

7 Q. Do you remember testifying on direct about that?

8 A. Yes. It was one of the things that I said to each of the
9 defendants.

10 Q. And you said that despite that this was where you firmly
11 believed Jahar was, and that these three individuals came out,
12 your questioning of them was, in your words, you were stern?

13 A. Yes.

14 Q. You were focused?

15 A. Yes.

16 Q. But you were polite?

17 A. Yes.

18 Q. That at this moment, when you think the number one
19 terrorist in the United States is inside, and you are trying to
20 find out whether he is in there and he is armed and dangerous,
21 that you are politely asking these three individuals, "Where is
22 Jahar?"

23 A. Yes.

24 Q. And that you didn't curse. You said you weren't sure,
25 that you didn't believe you cursed, correct?

1 A. I didn't say I wasn't sure. I said I have no recollection
2 of cursing at them. No one has suggested to me that I have
3 cursed at them. Before I read an affidavit that was filed, and
4 that -- I don't think I did curse. I spoke with them sternly.
5 I have good recollection as to what I said to them, and I don't
6 recall that occurring.

7 Q. Agent, even at this moment in time you are tense, correct?

8 A. No.

9 Q. I'm sorry. I'm not talking about now. I'm talking about
10 when you confront these three individuals.

11 (Laughter)

12 A. No, I was not tense then.

13 BY MR. STAHL:

14 Q. You think that you, through your investigation, have
15 located Jahar, correct?

16 A. Yes.

17 Q. And thousands of officers in the Boston area have been
18 looking for Jahar all week, correct?

19 A. All week long.

20 Q. And you said hundreds of agents around the world have been
21 looking for him?

22 A. Yes, all our resources.

23 Q. Every resource you have, correct?

24 A. Yes.

25 Q. And you now think that your investigation has led to the

1 location of this vicious, armed, dangerous individual who you
2 believe has murdered a number of people, correct?

3 A. Yes, sir.

4 Q. And you are not anxious?

5 A. I was anxious that there was a risk to my colleagues about
6 to enter an apartment, but I was not tense.

7 Q. You were anxious?

8 A. Yes. I was concerned.

9 Q. You were concerned. Your adrenaline was flowing?

10 A. No. No, it wasn't.

11 Q. So, your testimony is that you were concerned, you were
12 anxious, correct?

13 A. Yes.

14 Q. And that you calmly and focusedly walked up to these
15 individuals and asked them politely, "Is Jahar inside?"

16 A. No, not at all. It was with all deliberate dispatch. I
17 was focused like a laser on obtaining information with regard
18 to a potential threat yards away, and I talked -- I addressed
19 the defendants sternly and with all deliberate purpose to
20 elicit that information. Once I determined, having spoken with
21 each of them and Ms. Kumaskali, that it was not likely that
22 there was a threat there that I needed to communicate to my HRT
23 colleagues, I didn't need to continue to address them in a such
24 direct, focused manner.

25 Q. So, you believed them right away?

1 A. No, I did not.

2 Q. Well, you just said that after you spoke with them and you
3 concluded that there was not a threat inside and Jahar was not
4 inside you became less focused and stern.

5 A. I didn't lose any focus. The tone of my discussion with
6 them changed.

7 Q. And it became friendly, you said?

8 A. Yes.

9 Q. So, how long, is your approximation, did you talk to Dias
10 Kadyrbayev at the initial scene and -- excuse me, I just want
11 to make it clear -- I am limiting it to before he is called
12 back and the New Bedford Officer brings him back.

13 A. Between 5 to 10 minutes.

14 Q. And then were the three individuals, Bayan, Diaz and
15 Azamat, still at the scene when HRT went in and made a
16 protective sweep?

17 A. Yes.

18 Q. Okay. So, a protective sweep is where they go in and they
19 search to make sure that no one is in the place hiding,
20 correct?

21 A. As well as that there are no obvious hazards, in this
22 case, bombs.

23 Q. So, in that case, then they would have to do a much more
24 thorough search, meaning you could hide a bomb in drawers or
25 different locations, correct?

1 A. No. That more thorough search was conducted by the
2 Special Agent Bomb Technicians, who did their work after HRT
3 determined that Tsarnaev was not inside the apartment.

4 Q. So, if I understand correctly, they went in, they looked
5 where any person could be hiding, and they looked at obvious
6 things out in the open, whether they saw anything that looked
7 dangerous to them, correct?

8 A. Precisely correct, yes.

9 Q. And then at that point -- what time would that have been
10 approximately?

11 A. At what time?

12 Q. When they cleared the 69A Carriage Drive.

13 A. I think they cleared 69A Carriage Drive, the HRT, for
14 Tsarnaev, at or about 6:00 p.m., perhaps slightly after.

15 Q. And then you have New Bedford Police transport the three
16 individuals, Bayan, Azamat and Dias, to the Massachusetts State
17 Police Barracks at New Bedford?

18 A. At North Dartmouth.

19 Q. North Dartmouth. And you testified that you needed the
20 marked, uniformed officers in police cars, because those were
21 the only people available, correct?

22 A. Yes.

23 Q. Now, each of them are still --

24 THE COURT: Can we take a pause for a minute.

25 Mr. Neal, if I could talk to you at the sidebar.

1 (Discussion held off the record at the sidebar)

2 THE COURT: You may proceed.

3 BY MR. STAHL:

4 Q. You testified that you went to each of the three
5 individuals and spoke to them about going to the State Police
6 Barracks, correct?

7 A. Yes.

8 Q. And in your words you asked whether they would be willing
9 to go to a more discreet, comfortable setting, correct?

10 A. Yes.

11 Q. And when you were asking that, focused on Dias, he is
12 sitting in the back of a police car, handcuffed behind his
13 back, correct?

14 A. Yes.

15 Q. He is sitting without his shirt on, correct?

16 A. Yes.

17 Q. And he has just been brought out under the conditions that
18 we've just been describing with the SWAT Team members, correct?

19 A. Yes.

20 Q. And now you are asking him will he voluntarily go to a
21 more comfortable, discreet setting?

22 A. Yes.

23 Q. And to effectuate that, they are then each taken out of
24 their cars, correct?

25 A. Yes.

1 Q. And they are escorted over to a marked police car?

2 A. Yes.

3 Q. And then they are placed in the back of that marked police
4 car, correct?

5 A. I didn't observe that, but that would have been procedure,
6 yes, in the back of the police vehicle.

7 Q. And they were still handcuffed, correct?

8 A. Yes.

9 Q. And those police vehicles had some sort of shield between
10 the front seat and the rear seat, correct? They were in the
11 typical marked police car?

12 A. At least the one that transported Mr. Kadyrbayev. I
13 didn't see the other two, but it likely did. It was a marked
14 patrol unit.

15 Q. You said you saw the one that transported Dias, correct?

16 A. I did.

17 Q. And that one had a shield, correct?

18 A. It did.

19 Q. And that's to protect the officers in front from anybody
20 behind, correct?

21 A. Yes.

22 Q. And in those standard police-issue cars, those rear doors
23 do not open from the inside, correct?

24 A. Correct.

25 Q. They have to be opened from the outside?

1 A. Yes.

2 Q. And those cars left the scene, correct?

3 A. Yes.

4 Q. And you were left at the scene to do what?

5 A. To continue my investigation.

6 Q. And then you said -- well, how long after -- the New
7 Bedford Police cars start transporting them about what time?

8 A. At or about 6:20.

9 Q. 6:20. And approximately when do you realize that you want
10 to have Dias and Azamat come back to talk to them and try to
11 get their consent to search the apartment?

12 A. Within minutes.

13 Q. And how do you get the car to come back?

14 A. I don't recall.

15 Q. In any event, the patrol car comes back that is carrying
16 Dias Kadyrbayev, correct?

17 A. Yes.

18 Q. And when they come back, does it come right back to the
19 front of 69A Carriage Drive?

20 A. I don't know. When I met with Mr. Kadyrbayev at that
21 time, it was roughly in front of 69A Carriage in or about the
22 same place as the other car that I had talked to him in, only
23 this time the police car was facing in the opposite direction.
24 It was pretty much out in front of the apartment.

25 Q. All right. Since we were talking about the apartment and

1 the detaining of the three students, I would like to show you a
2 couple of photographs that have been provided to the
3 Government.

4 THE COURT: Are you going to have them marked?

5 MR. STAHL: I would like to have them marked.

6 THE COURT: How many?

7 MR. STAHL: There are three, but I could have them
8 marked as one exhibit, your Honor.

9 THE COURT: We will call them 2A, B and C.

10 I assume there is no objection.

11 MR. STAHL: Well, there's three pages, two photographs
12 on two pages and one photograph on one.

13 THE COURT: It will be A, B and C, and then we will
14 get into subparts if we have to.

15 (Exhibit Nos. 2A, 2B and 2C received into evidence)

16 THE COURT: Unless there is some other reason, though,
17 I would prefer that you use the document camera to display the
18 materials to the witness and generally.

19 BY MR. STAHL:

20 Q. Now, Agent, can you see that photograph all right?

21 A. I can, yes. Thank you.

22 Q. And the buildings that are the lighter color that are
23 two-story, that's the Carriage Drive complex, correct?

24 A. Yes.

25 Q. And can you make out from there that we have one of the

1 vehicles that you previously described, the armored-up, typical
2 SWAT Team truck? Can you see that to the left?

3 A. I can, yes.

4 Q. And there's a number of SWAT Team members. They are the
5 ones wearing the camouflage outfits and the helmets, correct?

6 A. Yes.

7 Q. And can you recognize the individual without a shirt and
8 just in shorts is Azamat Tazhayakov?

9 A. It appears to me. I have a little bit of glare here, but
10 I have seen this photograph before. Yeah, I think that is him.

11 THE COURT: You can shift the angle of the display, if
12 you want.

13 THE WITNESS: Thank you, your Honor.

14 BY MR. STAHL:

15 Q. And his hands are cuffed behind him, correct?

16 A. Yes.

17 Q. And an officer is holding onto one of his forearms?

18 A. Yes.

19 Q. The next photo, still on Exhibit A, is a close-up of
20 Azamat Tazhayakov, correct?

21 A. Yes.

22 Q. A uniformed officer has him by the arm, and he is
23 handcuffed behind his back, correct?

24 A. Yes.

25 Q. And he is without a shirt and he has shorts on, correct?

1 A. Correct.

2 Q. The next photo is one of the ones from Exhibit B. Do you
3 recognize that that is Bayan Kumaskali being escorted out with
4 her hands handcuffed behind her back?

5 A. I presume it is. I'm certain that it was taken that day.
6 I can't, obviously, see her face.

7 Q. But you do recognize the building behind as Carriage
8 Drive, right?

9 A. I do, yes.

10 Q. And that is, obviously, a law enforcement officer
11 escorting her?

12 A. I would think that's a New Bedford Police Officer, but I
13 can't see any insignia.

14 Q. Do you recognize the next photo as Dias Kadyrbayev?

15 A. I do.

16 Q. And who are the individuals that are holding onto him, the
17 one with the helmet and the camouflage flack jacket?

18 A. I don't know. The operator to the far right wearing the
19 sweatshirt is very likely a member of the HRT, Critical
20 Incidents Response Group. I can't make out the insignia of the
21 operator wearing the camo.

22 Q. It almost looks like "MP." Does that make sense to you?

23 A. MP?

24 Q. NP or MP?

25 A. No, that doesn't make any sense. But they have a rather

1 subdued insignia that they wear, but it will be color-faded
2 with the green. So, I can't determine whether that's HRT or
3 not.

4 Q. I will show you Exhibit C, which is a longer distance
5 shot. Is that Dias Kadyrbayev next to the SUV?

6 A. Yes.

7 Q. And he is being held by one of the operators, as you call
8 them?

9 A. Yes.

10 Q. And can you recognize whether those other operators are
11 FBI HRT or Massachusetts State Police?

12 A. The gear used by the operators on the right, especially
13 the one speaking with the agent in the sweatshirt would
14 appear -- it's fairly sophisticated gear. I would imagine that
15 he is HRT, likely the operator appearing between those two, and
16 I just can't determine from what I am seeing of the one next to
17 Mr. Kadyrbayev whether he is HRT or not. Very likely could be.

18 Q. And what are those operators wearing on their heads?

19 A. They have a ballistic helmet, and they'll have earpieces,
20 they'll have likely a microphone, and on top of the helmet are
21 night-vision goggles.

22 Q. And those three that are in this photo or four that are in
23 this photo, all three appear to have night-vision goggles and
24 ballistic helmets, correct?

25 A. Yes.

1 Q. Can you see it from there that the operator on the far
2 right, slung over his shoulder in front of his body appears to
3 be some type of high-powered rifle with a scope, correct?

4 A. I can't make it out clearly enough from this.

5 MR. STAHL: Your Honor, may I approach and show him
6 the actual photograph?

7 THE COURT: If it is clearer doing it that way than
8 this.

9 MR. STAHL: Yes. Thank you.

10 (Document provided to the witness by Mr. Stahl)

11 A. Yes, that appears to be a long gun with a scope. I don't
12 know what type of long gun it is. It could be a semiautomatic,
13 but I don't think it's a sniper rifle.

14 MR. STAHL: I would offer Defense Exhibits A, B and C
15 into evidence.

16 THE COURT: Yes. They have been received.

17 MS. SIEGMANN: Your Honor, can I just note that there
18 is some verbiage on there that the news agency put on it.
19 That's the only comment I would make. Obviously, it's your
20 decision as to whether they were in custody.

21 THE COURT: I do not think it will distort my
22 understanding.

23 MR. STAHL: Thank you.

24 BY MR. STAHL:

25 Q. So, Agent, those photographs accurately depicted parts of

1 the scene that day on April 19th, correct?

2 A. Yes.

3 Q. And what we are missing is 50 or 60 other individuals that
4 appeared similarly dressed, correct?

5 A. Among other things, yes.

6 Q. Now, when you called the New Bedford Police, or whoever
7 called New Bedford Police, the car came back and Dias Azamat
8 was still in the rear seat, handcuffed, correct?

9 A. Yes.

10 Q. And you said you leaned down through the open door and
11 spoke with him, correct?

12 A. No. I was stooped down on the street with the door open.
13 My head may have been slightly below his, but we were
14 effectively looking at each other eye to eye. He was sitting
15 in the back seat of the car. Frankly, he was probably slightly
16 above my head.

17 Q. And you asked him permission to search the apartment,
18 correct?

19 A. Yes.

20 Q. And you presented him a form, correct?

21 A. I did.

22 Q. And this was while he was still handcuffed, correct?

23 A. Not the presentation of the form. When I initially asked
24 him whether he would be willing to afford consent to search his
25 apartment he was still restrained.

1 Q. And when he indicated that he was willing to let you do
2 that, you then removed the handcuffs, correct?

3 A. Yes.

4 Q. And to remove those handcuffs it took some effort, because
5 they had to be cut off him, correct?

6 A. They had to be cut, and the effort only consisted of
7 neither myself nor the police officer had immediate access to a
8 cutting tool.

9 Q. And once they were cut off of him he then had the ability
10 to hold the form and sign it, correct?

11 A. Yes.

12 Q. Then, after he signed it, he was then handcuffed again,
13 correct?

14 A. Yes.

15 Q. And this time he was handcuffed in front with the typical
16 metal handcuffs that local police officers carry, correct?

17 A. Yes.

18 Q. And he was then placed back in the rear of the same police
19 car, correct?

20 A. He never left the inside of the vehicle.

21 Q. Oh, he was never allowed out of the vehicle?

22 A. From the start to the finish of my obtaining consent he
23 remained in the vehicle. I don't specifically recall. I don't
24 think he needed to leave the vehicle -- in fact, I don't think
25 he did -- to leave the police car for the police officers to

1 restrain him with metal handcuffs. I think he stayed in the
2 car the entire time.

3 Q. So, then he would have had to -- his hands were originally
4 handcuffed behind his back, correct?

5 A. Yes.

6 Q. And you know the back of those police cars are pretty
7 tight, right, they have the shield that takes up room?

8 A. No, I can't speak to that.

9 Q. And you then had him shimmy around so he had his hands out
10 the door so that they could be cut off?

11 A. In some manner, yes. It could have been very well like
12 that, but I don't recall. But I do not believe he left the
13 vehicle in order to have the flex cuffs cut.

14 Q. And then, once he signs the form, the New Bedford Police
15 Officer then puts metal handcuffs on him, correct?

16 A. He did.

17 Q. And they were in the front this time?

18 A. They were in the front of his person, yes.

19 Q. Then you said to him, "Now you are going to the State
20 Police Barracks," correct, was your testimony on direct?

21 A. I don't recall specifically how I answered that question,
22 but it was made clear to him that he would now go on to the
23 State Police Barracks.

24 Q. Handcuffed in the back of the patrol car, still without a
25 shirt on, correct?

1 A. Yes.

2 Q. And now you have come to learn, reviewing for your
3 testimony, that he then -- he, Dias, sat restrained, handcuffed
4 in the back of that locked police car for the next two-some
5 hours, correct?

6 MS. SIEGMANN: Well, objection.

7 THE COURT: Well, I guess this is setting something
8 up, but in order for me to have that testimony, I have to have
9 it from somebody who can testify about it percipiently.

10 It was my understanding he was not there for that time
11 period. But I will permit the answer, just so you understand,
12 if it is going to be disputed, I will have to delve a bit
13 deeper than this.

14 MR. STAHL: I don't think there's any dispute, Judge.

15 THE COURT: Go ahead.

16 MR. STAHL: We have all seen the video.

17 BY MR. STAHL:

18 Q. You came to learn, did you not, Agent Walker, that he was
19 restrained in the back of the locked police car for
20 approximately two hours at the State Police Barracks, correct?

21 A. Yes.

22 Q. And you said that agents were coming in to conduct
23 interviews, correct?

24 A. Yes.

25 Q. There were already agents present at the State Police

1 Barracks before that, correct?

2 A. Before what?

3 Q. Well, from approximately 7:00 p.m. on there were agents,
4 FBI Agents at the State Police Barracks, because they were
5 interviewing Bayan and Azamat, correct?

6 A. Yes.

7 Q. And your testimony, I believe yesterday, was that the
8 person that was in the back of the car, Dias, was held there
9 because there was no agent yet to talk to him, correct?

10 A. I don't know whether I said that.

11 Q. Well, you have come to learn that, correct?

12 A. That would fall into an area where I don't have direct
13 knowledge of that. I know what time he entered the Barracks,
14 because I have looked at the videotape from the Barracks, and I
15 can attest to that. I was not there until 12:30 a.m., so I
16 cannot testify as to the reasons why he was there for that
17 period of time.

18 Q. Well, Agent, you testified that Dias Kadyrbayev was not
19 under arrest, correct?

20 A. Correct.

21 Q. He was not charged at that point, was he?

22 A. No.

23 Q. He was someone that you wanted his cooperation, correct?

24 A. Yes.

25 Q. You wanted to learn information from him, correct?

1 A. Yes.

2 Q. So, he was a witness?

3 A. Yes.

4 Q. So, he was a witness that you kept restrained in
5 handcuffs?

6 MS. SIEGMANN: Objection to him keeping him
7 restrained.

8 THE COURT: Well, I will permit it in a more general
9 sense that he was not the person who was making that decision
10 at that time.

11 BY MR. STAHL:

12 Q. Correct?

13 A. Actually, my answer to your question before Ms. Siegmann
14 would be that I can't testify as to what happened there. He
15 was restrained from the time that he left my presence at
16 Carriage Drive until he entered the State Police Barracks,
17 based on what I have seen in the videotape. I have no reason
18 to believe that during that period of time he was unrestrained
19 or walking around the parking lot or anything like that.

20 Q. If he wasn't under arrest, was he free to leave at any
21 time he wanted?

22 A. Yes. If he had said, "I want to leave, we would have,"
23 and the police officer had alerted the agents to that fact.
24 Yes, he was not in our custody. I had asked him to go there
25 voluntarily. He gave unequivocal consent to do that, and he

1 was not in custody until the following afternoon.

2 Q. Under your definition, he was not in custody, correct?

3 A. He was not under arrest. We had no basis at that point
4 other than -- we had basis, but we did not exercise that basis,
5 because he gave consent to be transported to the State Police.
6 But he was not under arrest until the following afternoon.

7 Q. You had basis to arrest him, you just said?

8 A. Yes.

9 Q. And had he not volunteered you would have arrested him,
10 correct?

11 A. I would have --

12 MS. SIEGMANN: Objection.

13 THE COURT: No. He may answer the question.

14 A. If he had not volunteered to speak with me, I would have
15 immediately spoken to my Command Post and advised them of same.
16 I was keeping them informed as I was intermittently
17 interviewing these individuals, and it is my strong sense that
18 within minutes I would have received instruction to arrest
19 Mr. Kadyrbayev or to have HSI arrest Mr. Kadyrbayev, or the
20 JTTF, because he was unlawfully here in the United States.

21 BY MR. STAHL:

22 Q. So, you would have officially placed handcuffs on him, FBI
23 handcuffs?

24 MS. SIEGMANN: Objection.

25 THE COURT: Well, I am concerned with the loaded

1 character of something like "officially" and so on. I just
2 want to understand what he did and why he did it.

3 BY MR. STAHL:

4 Q. But, Agent Walker, your testimony is clear that, had
5 Mr. Kadyrbayev not, in your terms, volunteered to go to the
6 State Police Barracks, your recommendation to your Agency would
7 have been to immediately arrest him, correct?

8 A. If Mr. Kadyrbayev did not willingly indicate that he was
9 willing to speak with us, I would have, for the period of time
10 that I would have been able to conduct any meaningful
11 intelligent interview or continue to do one in the middle of
12 that street, and I think that would have been a matter of
13 moments when it became wholly untenable. I would have notified
14 my Command Post that he was not willing to accompany us, that
15 he was a person of immediate investigative concern, and I am
16 confident that my Command Post would have put me on hold for a
17 short time and then told me -- come back and said, "He is here
18 unlawfully. Either you will arrest him, or an HSI Agent is
19 dispatched to place him under arrest."

20 I don't think he would have given his status. I don't
21 think that he would have been free, as a practical matter.
22 It's difficult, looking at it in retrospect, but I don't think
23 as a practical matter we would have seen Mr. Kadyrbayev drive
24 off in his BMW there.

25 Q. So, that's a, "Yes"?

1 A. Well, that's my answer.

2 Q. And the reason you would not have allowed Mr. Kadyrbayev
3 to drive off is because he was a suspect in your mind, correct?

4 A. We don't use that term. Either someone is a subject of
5 our investigation, or they are a witness. He would have been
6 someone, without fail, that would have been deemed in the
7 parlance of jurisprudence a material witness. That likely
8 would have eventuated a quick contact by the Department of
9 Justice, the FBI headquarters, the U.S. Attorney's Office
10 seeking application to a Court to seek to arrest him as a
11 material witness.

12 I just don't think at that time -- particularly given
13 what I learned from Mr. Tazhayakov at that scene, it merely
14 heightened by interest, and we needed to rule out, again --
15 Tsarnaev at this point was not in custody. We have come across
16 three people that share a family calling plan with a suspected
17 terrorist who is on the loose; and Mr. Tazhayakov just finished
18 telling me that the suspected terrorist was at their apartment
19 the afternoon before.

20 So, these three needed to be spoken with, and it's my
21 experience that the most expeditious and often preferred method
22 is to seek to ask someone's permission instead of spending the
23 time to seek approval of a Court with regard to a consent to
24 search or, "Would you please speak with me further?"

25 Q. Agent, you suspected them of wrongdoing, correct? Based

1 upon what you have just testified about the apartment, the
2 telephone pings, that he had been there recently, you had
3 strong suspicions; is what you testified on direct? That's why
4 you went to that apartment, correct?

5 A. We went there because we thought Tsarnaev was there, yes.

6 Q. And upon further investigation, you suspected or had a
7 strong belief that there was more to it than just Jahar might
8 have had friends there, correct?

9 A. Yes. There was an absolute need for the FBI to speak with
10 these defendants further.

11 Q. And you wanted to have them in a controlled
12 law-enforcement environment where they were not having access,
13 and the public did not have access, and you would have them to
14 yourselves, correct?

15 A. No, I would much prefer the absolute opposite of that, but
16 what I was confronted with there left me no alternative. I
17 wanted a discreet location where they were not exposed to the
18 spectacle on the street of a growing media presence and all
19 manner of onlookers and people that I didn't recognize, and had
20 no idea whether they might somehow know Tsarnaev.

21 We needed a safe location, and we needed to do it
22 immediately, and that was, in my mind, the absolute best thing
23 to do. I could not speak with them inside their apartment, and
24 I didn't know any other place to accomplish my investigation.

25 Q. And that was the Massachusetts State Police Barracks at

1 North Dartmouth?

2 A. Yes.

3 Q. Approximately how long did you think you talked to Dias
4 Kadyrbayev when he was in the back of the police car when you
5 called him back to talk to him about a search?

6 A. I think we were in each other's presence about ten minutes
7 at that point. I wasn't speaking with him for the entire time,
8 because a portion of that we were -- the police officer and I
9 were seeking a cutting tool.

10 Q. So, a maximum of ten minutes, but not speaking that entire
11 ten minutes, correct?

12 A. Yes, sir.

13 Q. Now, you testified yesterday that you later, hours later,
14 into the early morning hours of April 20th you went to the
15 State Police Barracks, correct?

16 A. Yes.

17 Q. And that was about 4:00 a.m.?

18 A. No, it was about 12:30, perhaps a few minutes after, a.m.
19 when I arrived back at the Barracks.

20 Q. You arrived back at 12:30 a.m.?

21 A. Yes.

22 Q. And had the interviews, the interrogations of Dias and
23 Azamat and Bayan concluded by 12:30 a.m.?

24 A. It appeared that way, yes.

25 Q. And those interviews were done at 12:30 a.m., but the

1 individuals were not allowed to leave until approximately 4:30
2 a.m.?

3 A. They did not leave, but they were not told in any manner
4 that they could not leave at that time. But they did not leave
5 until we drove them back to their apartment.

6 Q. What was the purpose of holding them there for an
7 additional four hours?

8 A. Again, they were not being held there, but they were
9 there, they were sleeping at the time. Shortly after I
10 arrived, we established contact with the Command Post to seek
11 direction, legal direction, as to whether or not we had
12 probable cause to arrest them for activities that they had
13 described. And thereafter we thought it prudent to search the
14 dumpster, as they had described it, and at the conclusion of
15 the dumpster search we all drove from there back to Carriage
16 Drive.

17 Q. So, your testimony is that they were not told they
18 couldn't leave, but you wanted them to be held there, correct?

19 A. No. The first part of that is correct. If they had said
20 to me at 12:30, "I want to go home," I would not have had any
21 reason to hold them. In the course of conversation with our
22 Command Post and lawyers and our headquarters and so fourth, I
23 would have advised that, "They have asked to leave. I have no
24 basis at this point to hold them," I had no probable cause to
25 detain them, and I inevitably would have -- if I had received

1 any instruction to the contrary, I would have pushed back and
2 said, "We're not going to hold them; I have no basis to do it."

3 And at one point later in the morning, because my
4 colleagues that were there conducting the interviews were more
5 junior to me, I made clear to them that if we are asked by
6 anyone at our Headquarters at Boston or by anyone in the
7 U.S. Attorney's Office, "Please detain them, we're still trying
8 to make a decision," or something like that, I told them that
9 we would simply refuse to do that, we had no basis. And I
10 wanted to make sure that they were not -- with my experience, I
11 wanted to make it clear that that was how that was going to
12 work.

13 Q. Was that in any 302 you wrote?

14 A. What portion of it?

15 Q. What you just testified to.

16 A. No.

17 Q. That's what you're testifying to now?

18 A. Yes.

19 Q. And you were still investigating from 12:30 to 4:30 a.m.,
20 correct?

21 A. We were investigating, yes.

22 Q. And you were trying to decide whether you were going to
23 arrest him or not, you just testified, correct?

24 A. I did, but we were investigating things other than --
25 broader. But, yes, we were trying to obtain a decision from

1 the U.S. Attorney's Office as to whether or not there was
2 sufficient probable cause to arrest them. It was decided
3 that -- actually, I don't think we received a decision back
4 before we left, but when we returned from the dumpster, and
5 perhaps that precipitated my comment to my colleagues that we
6 were not going to await any such decision, we were going to
7 drive them back because we had no basis to hold them.

8 Q. Agent, you testified about ten minutes ago that you had
9 immediate basis to arrest them on the scene because they had
10 violated their Student Visas --

11 A. Yes.

12 Q. -- in this country --

13 A. Yes.

14 Q. -- improperly, correct?

15 A. Yes.

16 Q. So, you had immediate basis to arrest, correct?

17 A. Yes.

18 Q. And you chose not to, correct?

19 A. Yes.

20 Q. And by choosing not to, then they would not be brought
21 before a Court on official charges immediately, correct?

22 A. That probably would obtain -- that was not the reason for
23 any decision by me.

24 Q. Did your junior agents tell you that from 12:30 on into
25 the early morning hours, till 4:00 or 4:30 a.m., that Dias

1 Kadyrbayev asked repeatedly to see Bayan?

2 A. My colleagues never told me that, no.

3 Q. They never told you that he repeatedly requested to see
4 Bayan, his girlfriend, to make sure she was okay --

5 A. No.

6 Q. -- because she had been upset and crying at the scene when
7 they were arrested by HRT?

8 A. They never told me that, no.

9 Q. And your testimony is, to your knowledge, that these
10 individuals that have now been held for, approximately, well,
11 from 5:00 p.m. to almost 4:30 a.m., so almost 12 hours, would
12 think to request that they were free to leave?

13 A. I don't agree with your premise that they were being held,
14 and so I can't answer that.

15 Q. Well, Agent, you've been to the Massachusetts State Police
16 Barracks we are talking about, correct?

17 A. Yes.

18 Q. And it's a very standard State Police Barracks, where you
19 walk into a public lobby, correct?

20 A. Yes.

21 Q. And that's where the restrooms are, correct?

22 A. Yes, yes, yes.

23 Q. On the right-hand side as you walk in?

24 A. Exactly, yes.

25 Q. And then there is the Trooper who is working there on his

1 dispatch behind a bullet-proof glass, correct?

2 A. Yes.

3 Q. And the doors, the steel doors to the left of that, are
4 locked, correct?

5 A. I don't know.

6 Q. And you have to be buzzed in, correct?

7 A. I would think so, but I don't know.

8 Q. Well, you remember when you got there you couldn't just
9 walk in yourself, correct?

10 A. I don't recall. It would make sense to me that that's the
11 purpose, controlled access, but I don't know.

12 Q. Well, correct. It makes sense that the public can't just
13 walk in without being escorted in, correct?

14 A. Absolutely, yes.

15 Q. And those doors are locked and have to be buzzed on both
16 sides, correct?

17 A. No, I don't think so. I have been there, including a few
18 months ago, and I don't recall having to be buzzed from the
19 inside of the Police Station into the common lobby you
20 describe, but I don't know.

21 Q. Well, it's fair to say that these three individuals, Dias,
22 Azamat and Bayan, were kept in the secure portion of the State
23 Police Barracks, correct?

24 A. Mr. Tazhayakov was kept in a -- or stayed, stayed in a
25 small conference room adjacent to the public space. I seem to

1 recall that that was not beyond the door that you describe, and
2 Mr. Kadyrbayev and Ms. Kumaskali were inside offices of
3 Troopers or Sergeants there beyond that door.

4 Q. And it's fair to say that at all times there was FBI
5 Agents either in the rooms with them or not far outside the
6 rooms, correct?

7 A. Close by, absolutely.

8 Q. You know the hallways of the State Police Barracks have
9 videotape, correct?

10 A. I do, yes.

11 Q. And have you reviewed the videotapes where you see the FBI
12 Agents walking back and forth and they are outside the rooms,
13 but they are pacing through the hallways, they are talking with
14 each other, they're always in the area? Have you seen those?

15 A. I may have seen literally less than ten seconds of the
16 particular footage I think you describe.

17 Q. But it is certainly something that's standard procedure,
18 correct?

19 A. Having a video camera there?

20 Q. Having agents close by to people that you are still
21 investigating, and interviewing, and interrogating, and looking
22 for evidence, correct?

23 A. I don't agree with all of your question, the premise of
24 your question. I think for people that we interview, when we
25 are hosted by another police agency where there was for, I

1 believe, most of the time a single trooper inside that
2 department, it would be absolute practice, if nothing more than
3 common courtesy, that we would not stray far from people who
4 are interviewees who are situated inside offices of probably
5 detectives there, yes, for just good practice.

6 MR. STAHL: Your Honor, is this a good time to take a
7 break? I have maybe ten more minutes, but I want to organize
8 it so it goes quicker.

9 THE COURT: Well, not a great time, but we will take a
10 break for 10 minutes --

11 MR. STAHL: Thank you.

12 THE CLERK: All rise.

13 THE COURT: -- defined as 10:25.

14 (The Honorable Court exited the courtroom at 10:15 a.m.)

15 (Recess taken)

16 THE CLERK: All rise.

17 (The Honorable Court entered the courtroom at 10:25 a.m.)

18 THE CLERK: This Honorable Court is back in session.
19 You may be seated.

20 THE COURT: You may proceed, Mr. Stahl.

21 MR. STAHL: Thank you, your Honor.

22 BY MR. STAHL:

23 Q. Agent Walker, when you got back to the State Police
24 Barracks at around 12:30 a.m. on April 20th -- that's correct,
25 right?

1 A. Yes.

2 Q. You said that you're the "senior agent," correct?

3 A. Yes.

4 Q. And the less-senior agents -- we won't call them "junior
5 agents --"

6 A. Thank you.

7 Q. -- the less-senior agents, they filled you in? They
8 reported to you, correct?

9 A. They filled me in. They didn't technically report to me,
10 but they would have perceived me to be -- including because I
11 was of the Boston Division, they would have perceived me to be
12 someone they needed to fill in.

13 Q. Because those agents were based out of New York, correct,
14 a number of them?

15 A. That's not the only reason, but it would have been prudent
16 for them to fill me in, because I was returning there, having
17 conducted other investigation, and the first order of business
18 would be for them to tell me what had occurred substantively
19 during their interviews.

20 Q. Yes. And understood we are not talking about Bureau
21 hierarchy. It's just you were the case agent at that time and
22 you were the local agent?

23 A. No. There was no case at that time, but I was a local
24 agent, and they would, naturally, if not defer to me, they
25 would want to fill me in.

1 Q. And those agents that were the interviewing agents, they
2 were experienced agents, correct?

3 A. Yes.

4 Q. A number of them were from New York, correct?

5 A. Each of them was from the New York JTTF.

6 Q. And who was there that night? Who was interviewing who,
7 do you remember?

8 A. Again, I didn't witness the interviews, and I know who was
9 there: Special Agents Farbod Azad, Megan Dolan, Steven
10 Schiliro, Michael Blane and Sara Wood.

11 Q. And all of them were from New York, you testified?

12 A. Yes.

13 Q. And all of them are experienced agents, correct?

14 A. Yes.

15 Q. Do you know what squad they're on? I don't mean the
16 number. What type of squad?

17 A. I think each of them is assigned to a Counterterrorism
18 Squad in comprising the New York Joint Terrorism Task Force.

19 Q. So, they were not random agents pulled in; these were
20 agents selected and experienced in terrorism and
21 counterterrorism, correct?

22 A. I'll agree to the latter. They were, in fact -- I was
23 fortunate that they were randomly called in, as you have
24 suggested, because they were not only counterterrorism agents
25 but, arguably, from our finest JTTF in the FBI.

1 Q. And from the finest JTTF in the FBI of the New York Field
2 Office and being experienced agents, they are experienced at
3 interrogating people, correct?

4 A. And interviewing, yes.

5 Q. And when you arrived, they filled you in or caught you up
6 to speed about what had been happening over the last several
7 hours while you were elsewhere, correct?

8 A. Special Agent Azad did. Ultimately, I may have learned
9 something from the other agents, but he did almost immediately
10 upon my arrival, yes.

11 Q. And did they bring you up to speed that there was a JTTF
12 member of the Massachusetts State Police, Trooper Laliberte
13 there that evening?

14 A. No.

15 Q. Did they fill you in that a Trooper, whether you knew the
16 name or not, received a phone call from an attorney at
17 approximately 9:00 or 9:30 that evening who had been assigned
18 to represent the three individuals --

19 MS. SIEGMANN: Objection.

20 BY MR. STAHL:

21 Q. -- who had been brought to the State Police Barracks under
22 the control of the FBI?

23 THE COURT: I will permit you to answer the question,
24 but I want to address this issue. You can answer the question.

25 Did you know that?

1 THE WITNESS: I did not.

2 THE COURT: The issue, I guess, is this: As far as I
3 can see from the materials, this was not brought to the
4 attention of the defendant here, and so you cannot really, at
5 least as I understand it, enter into the calculus about
6 voluntariness. So, that is the question for purposes of
7 relevance in this case.

8 MR. STAHL: I will move on with this. I would like to
9 be heard about that at some other point.

10 THE COURT: If you do not have anything more for this
11 witness on that issue, but I want to hear you on that because I
12 am not certain that it makes very much difference that somebody
13 made an appointment through CPCS that the defendant was not
14 aware of.

15 BY MR. STAHL:

16 Q. Agent Walker, you said previously that you arrived at
17 approximately 12:30, and you were there for approximately four
18 hours, correct?

19 A. Yes.

20 Q. And did you talk with Dias Kadyrbayev during that
21 four-hour period?

22 A. I need to correct my prior answer. I was there but left
23 to search the dumpster and returned. And your question, did I
24 speak with Mr. Kadyrbayev?

25 Q. Yes.

1 A. When I drove him home, yes.

2 Q. Okay. So, not in the State Police Barracks?

3 A. I don't believe so, no.

4 Q. And at approximately 4:30 in the early morning hours of
5 April 20th, six Agents in three different vehicles drive or
6 escort Dias, Azamat and Bayan back to Carriage Drive, correct?

7 A. Shortly before 4:30, that's correct, yes.

8 Q. And they were not handcuffed at this point, correct?

9 A. Correct.

10 Q. But Dias and Azamat were still without shirts, correct?

11 A. Yes.

12 Q. And you testified on direct that the purpose of six agents
13 in three cars was simply to give them a ride home, correct?

14 A. Six agents is a standard practice when transporting any
15 person who is not an FBI employee, but the purpose of our
16 driving them back was to return them to their apartment.

17 Q. Your testimony is that any time the FBI drives any non-FBI
18 employee there has to be two agents in a car?

19 A. No, that's not my testimony. For instance, if I was
20 driving one of my prosecutorial colleagues, we could drive
21 together. When I was driving it would be absolutely prudent
22 for us under those circumstances -- even though these
23 individuals were not under arrest, it would have been prudent,
24 and was at that time, for us to have two agents in the car for
25 each person we're transporting.

1 Q. So, you would trust one of your AUSA colleagues?

2 A. Yes.

3 MR. STAHL: It took a while looking over there.

4 BY MR. STAHL:

5 Q. You said that that evening you were in contact with the
6 U.S. Attorney's Office, correct?

7 A. We were, yes.

8 Q. "We," meaning?

9 A. Special Agent Azad initiated the contact. I was sitting
10 next to him during portions of his conversation. I very well
11 may have gotten on the phone. But, actually, he was not
12 speaking directly with a prosecutor. He was speaking with our
13 superiors in our Command Post at the time, who were
14 communicating inevitably with the United States Attorney's
15 Office, inevitably with our headquarters, perhaps even with the
16 Department of Justice.

17 Q. And the purpose of those calls was there was a decision to
18 be made about whether you were going to officially arrest these
19 individuals that evening, correct?

20 MS. SIEGMANN: Objection.

21 THE COURT: Grounds?

22 MS. SIEGMANN: Well, "officially," your Honor.

23 THE COURT: "Formally," "officially." What we are
24 dealing with is these elastic terms about "custody" and
25 "holding" and "staying" and, apparently, the use of the

1 Massachusetts State Police Barracks as a rest stop for tired
2 people for four hours. I guess "formally," "officially"
3 arrested would be a useful way to make a demarcation about
4 this, so I will permit it.

5 BY MR. STAHL:

6 Q. Is that correct, Agent?

7 A. No. To be clear, we were contacting our superiors because
8 we needed a determination as to whether there was probable
9 cause to arrest the defendants based on the information that
10 they had given us at the Barracks with regard to what we
11 perceived to be obstructive conduct.

12 Q. That's exactly what I just asked, Agent. So, the
13 universal "you," the FBI, was in contact with the U.S.
14 Attorney's Office to make a determination whether they would be
15 officially arrested that evening, correct?

16 A. On that charge, yes, or potential charge.

17 Q. Who in the U.S. Attorney's Office was being contacted?

18 MS. SIEGMANN: Objection, your Honor.

19 MR. STAHL: I'm not asking what the conversations
20 were.

21 THE COURT: I am not even sure that that is relevant
22 here, and it starts to creep into deliberative privilege and
23 also attorney-client privilege, so I am not going to get into
24 it. But, ultimately, I think it is irrelevant.

25 BY MR. STAHL:

1 Q. In any event, a determination was made not to officially
2 charge them that evening, correct?

3 A. No. As I mentioned, I do not believe that any opinion
4 came back, but certainly by the time we left I had not received
5 instruction or guidance that we had the blessing of the United
6 States Attorney's Office, that is, that they would approve our
7 probable cause arrest of defendants for the conduct they told
8 us that evening.

9 Q. And you testified yesterday that you and your colleagues
10 were giving them a ride home, correct?

11 A. Yes.

12 Q. And that you all got out of the cars together, and that
13 you walked up to the front door of 69A Carriage Drive, correct?

14 A. Yes.

15 Q. And you were just giving them a ride home, correct?

16 A. We gave them a ride home, yes.

17 Q. And now you were going to make sure they got in their
18 apartment safely?

19 A. Frankly, yes.

20 Q. "Frankly, yes"?

21 A. Yes.

22 Q. And six of you walk in and, according to your testimony,
23 you said, "Do you mind if we come in?"

24 A. Yes, or words to that effect. Yes.

25 Q. And your testimony yesterday was that you weren't looking

1 for anything in the apartment, correct?

2 A. Correct.

3 Q. But that one of your agents, and I don't want to get hung
4 up with Bureau -- it's not your agent -- but one of the agents
5 that was assisting you from New York noticed some items in the
6 apartment?

7 A. That's my recollection -- or they noticed the significance
8 of them. I inferred at the time that those items had been
9 meaningful during the course of a previous interview that I was
10 not witness to, and that we had further discussion about them,
11 yes.

12 Q. And your testimony is that you were unaware that the
13 individuals being questioned that evening had told the Agents
14 about these items and that they were still in the apartment?

15 A. As of the time I went to the apartment, the hat and the
16 ashtray had no meaning to me whatever.

17 Q. And so, you are the Senior Agent, and these other Agents
18 caught you up to speed, correct, and they didn't tell you,
19 "Gee, Walker, we want to go back in that apartment, get in
20 there, and be able to take those items"?

21 A. I have no recollection whatever about a conversation. As
22 I mentioned, the hat and the ashtray, when I saw them and there
23 was discussion in the apartment, that was the first time I had
24 heard about a hat or an ashtray, and because it was clear to me
25 then that those items belonged to Tsarnaev, then I knew to ask,

1 "Do you mind if we take those items?"

2 Q. Your testimony is that you met with the interviewing
3 agents before you transported the three back to Carriage Drive,
4 correct?

5 A. Yes.

6 Q. And they caught you up to speed, correct?

7 A. Yes.

8 Q. And your testimony is that they did not discuss with you,
9 "John, there's a couple of things still in the apartment; we
10 should go get them"?

11 MS. SIEGMANN: Objection. Asked and answered.

12 THE COURT: Well, I think it probably has been, but
13 you can answer.

14 A. Correct. I have no recollection whatever of discussion
15 about those two items until I was back in the apartment.

16 BY MR. STAHL:

17 Q. So, you were simply unaware or clueless about that aspect,
18 and your purpose was simply the six of you to walk them into
19 their apartment to drop them off?

20 A. No. I was unaware of that, and the part of the calculus
21 at the time was we are returning to their apartment, their
22 apartment, but when I last left the apartment it was secured by
23 FBI Agents, and I didn't think it prudent that we just drop
24 them off and just drive away, because I didn't know what might
25 be inside the apartment still, who might be inside the

1 apartment, and I thought it potentially negligent that I just
2 drop them, walk away, and then later learn that there had been
3 some threat inside the apartment. So, for that purpose we
4 wanted to make sure that they got inside their apartment, and
5 we left within, perhaps, ten minutes.

6 Q. So, this was just part of the Bureau's white-glove service
7 of being courteous?

8 A. No. It's part of the FBI's practice of, after having
9 arrived at a place and conducted an entry in the manner that we
10 did, and then having conducted a consensual search of the
11 apartment, and then returning these people back hours after the
12 apprehension of a suspected terrorist, that we not drop them
13 off anymore than I would drop a young lady off, daughter's
14 friend, and drive away before that I saw that she got safely
15 inside the apartment.

16 Q. Agent, you now know, though, don't you, that your
17 colleagues wanted to get back into the apartment, because they
18 knew from the people's own words who were interviewed, that
19 there were still items there to retrieve, right?

20 MS. SIEGMANN: Objection.

21 THE COURT: I guess we have exhausted this witness on
22 that issue.

23 BY MR. STAHL:

24 Q. By releasing that evening, they did not have to be brought
25 before a Court for presentment, correct?

1 MS. SIEGMANN: Objection.

2 THE COURT: Well, I guess *I* can take judicial notice
3 of that.

4 MR. STAHL: Thank you, your Honor.

5 BY MR. STAHL:

6 Q. And once they were released, that wasn't the end of it,
7 was it, Agent Walker?

8 A. The end of what?

9 Q. Well, you said your involvement with Dias and Azamat,
10 correct?

11 A. Correct.

12 Q. Because later on that same day, after you dropped them off
13 at 4:30 or 5:00 a.m., you are back the next afternoon with
14 Homeland Security, correct?

15 A. Yes.

16 Q. And that's because you knew from at least the day before,
17 if not earlier, that they had overstayed or were in violation
18 of their Student Visas, correct?

19 A. That was not the reason why I went there that afternoon.
20 I was told that --

21 Q. Which afternoon?

22 A. On the afternoon of the 20th.

23 Q. You went there?

24 A. I was instructed -- I was back at the University
25 conducting investigation, and I was instructed to link up

1 immediately with a complement of HSI Agents. I did so. They
2 were joined by Surveillance Agents of the FBI. We met up, we
3 surveilled a car owned by the defendants, and ultimately I
4 entered the apartment at approximately 3:15 on that Saturday,
5 the 20th.

6 Q. Well, Agent, they were being arrested by Homeland
7 Security, who had jurisdiction over such matters as violating
8 the technical terms or overstaying your Student Visa, correct?

9 A. HSI was arresting them for overstaying their Visas, yes.

10 Q. I mean, that's not the purview of the FBI, Title 18,
11 Title 26 jurisdiction; you don't go around arresting students,
12 college students, who have a technical violation of their
13 Student Visa, correct?

14 A. No, it is not generally within our mission.

15 Q. And you coordinated with HSI, correct?

16 A. Yes, yes.

17 Q. So, if they are being arrested for the Student Visa
18 violation, why are FBI surveillance teams out there, and why
19 are you there?

20 A. I can't answer both of those questions. I can answer --
21 please.

22 Q. Why were FBI surveillance teams deployed?

23 A. FBI surveillance teams, I have come to learn, had been
24 deployed earlier that day to establish physical surveillance on
25 the defendants.

1 Q. Well, this is important enough to the Bureau that you are
2 in communication with your ASAIC, your Assistant Special Agent
3 in Charge, correct?

4 A. Yes.

5 Q. And you are emailing -- I'm sorry. What's the ASAIC's
6 name?

7 A. What's the first name? I'll help you with the last.

8 Q. Lucia (ph)?

9 A. Ziobro (ph) is her last name.

10 Q. You were in email contact with her, correct?

11 A. I was on the 20th, yes, and on the 19th, yes.

12 Q. And you are talking about the surveillance that the FBI is
13 doing, correct?

14 MS. SIEGMANN: Objection on relevance grounds.

15 THE COURT: I will permit it.

16 A. Yes.

17 BY MR. STAHL:

18 Q. And you tell your ASAIC -- that's your boss, correct?

19 A. One of my superiors, yes.

20 Q. -- that, "A car with two males just left, probably ours,
21 not confirmed." You're talking about Dias and Azamat, correct?

22 A. Yes.

23 Q. And that, "MST" -- Massachusetts State Troopers?

24 A. No. That's an acronym for FBI Surveillance.

25 Q. What does it mean?

1 MS. SIEGMANN: Your Honor, objection.

2 THE COURT: Yes.

3 BY MR. STAHL:

4 Q. "MST will put them in place. Looks like they're staying
5 local. Will hook there." What does that mean?

6 A. "Will hook there"?

7 Q. Yeah.

8 A. It means they will be arrested in the region. Once the
9 surveillance -- once there's an opportune time to complete that
10 surveillance, they'll be arrested there.

11 Q. So, you are coordinating with FBI ASAIC and with FBI
12 Surveillance Teams that you are going to hook them up. "Hook
13 them up" is handcuff them, arrest them, right?

14 A. Yes, that's exactly right. That HSI would. But, yes,
15 that's exactly what I meant to impart.

16 Q. And, "Will presume necessary follow-up to earlier contact
17 this a.m., FBI and HSI integrated"?

18 A. Yes.

19 Q. And then later you tell her, "Will advise when hooked"?

20 A. Yes.

21 Q. Meaning arrested, handcuffed. And there was actually a
22 communication where you said, "It will be fine because --"
23 you're speaking about Dias and Azamat -- "they'll probably
24 think that I'm just there for a follow-up from yesterday's
25 interview," correct?

1 A. Yes. I communicated that, yes.

2 Q. So, this was now the FBI's second bite at the apple to get
3 to interrogate these folks, correct?

4 MS. SIEGMANN: Objection.

5 THE COURT: Well, I guess I will start sustaining
6 objections to rhetorical flourishes, bites at apples and that
7 sort of thing. But I will sustain objections when the
8 Government does the same kind of thing, as they did in the
9 direct examination. There were not objections, so I did not
10 sustain anything.

11 But this is more than is the case with juries for me,
12 but it is the case for juries with me. This is a Yankee meal:
13 You serve it cold and you slice it thin. I do not want the
14 flourishes. So, bites at apples are not part of the menu, all
15 right? Let's get right down to asking clean, crisp questions
16 that go to the facts of the case.

17 Although, I will give you a heads-up, both sides. I
18 am not going to permit anything like that in front of the jury,
19 and I will do it independently, irrespective of whether I get
20 objections. This is not writing headlines for the newspapers.
21 This is not exercising rhetorical capacities. This is the
22 search for identifying what a witness has to say and to the
23 degree we should believe it.

24 So, that is a long way of saying "sustained" and a
25 short way of providing instructions. I have a long way of

1 providing instructions about how you do this.

2 So, you may proceed.

3 MR. STAHL: I have got to go back to my page.

4 THE COURT: I think the question was, was this another
5 opportunity to talk with Mr. Kadyrbayev.

6 BY MR. STAHL:

7 Q. This was another opportunity to talk -- to interrogate
8 Mr. Kadyrbayev, correct?

9 A. No.

10 Q. Well, in fact, it occurred, didn't it, Agent?

11 A. It did.

12 Q. So, it was another opportunity?

13 A. That had nothing to do with why I was told to go there.

14 Q. So, following the Judge's instructions, in any event, the
15 FBI got another chance to interview him, correct?

16 A. Yes.

17 Q. Because HSI formally arrested Dias and Azamat on the
18 afternoon of April 20th, correct?

19 A. Yes.

20 Q. And they were handcuffed and transported to Boston,
21 correct?

22 A. Yes.

23 Q. And you know, from reviewing the materials, that the first
24 people to interview them were the FBI, correct?

25 A. Where?

1 Q. In Boston, when they were in HSI custody, the first people
2 to interview them was the FBI.

3 A. I think so, yes.

4 Q. And I appreciate that. I am sure you are thinking about
5 did HSI get some pedigree information?

6 A. Yes.

7 Q. HSI did not do an interview until after the FBI, correct?

8 A. I don't think a substantive interview having anything to
9 do with the Boston Marathon bombings occurred first by the FBI
10 when they were transported to Boston.

11 Q. And what agents happened to go to the HSI -- is it an HSI
12 building?

13 A. It's the Tip O'Neill Building in Boston where they have
14 their offices, yes.

15 Q. And what agents happened to go there and interview them?

16 A. Agent Quinn, and I don't recall immediately who the other
17 agent was.

18 MS. SIEGMANN: Objection. This is beyond the scope of
19 this witness's direct examination, and there are other
20 witnesses.

21 THE COURT: I think it is. I am not sure this witness
22 is the witness to elicit this from.

23 BY MR. STAHL:

24 Q. Just to refresh your recollection, it was Agent Azad?

25 A. I don't immediately recall.

1 Q. He was one of the interviewing agents from New York the
2 evening before, correct?

3 A. Azad was, yes.

4 Q. And the FBI did interrogate each for more than an hour,
5 correct?

6 MS. SIEGMANN: Objection.

7 A. I don't know.

8 THE COURT: Yes, I think we are beyond on this for
9 this witness.

10 BY MR. STAHL:

11 Q. Agent, I just wanted to go back one moment, just to
12 something that I did not get to ask you about, and that is,
13 when you are back at 69A Carriage Drive, when HRT is there and
14 the three individuals, Dias, Azamat and Bayan, are brought out,
15 and you were speaking to each one for about five minutes total
16 each in the cars, correct?

17 A. No. Earlier I testified that it was five to ten minutes.

18 Q. Five to ten minutes?

19 A. Yes.

20 Q. Not hanging up on the time.

21 A. Okay.

22 Q. And you were telling them the purpose was to find out if
23 Jahar is inside or something dangerous is inside, correct?

24 A. That was my immediate purpose, and, yes, I made it clear
25 to them.

1 Q. And you wanted them to be focused and take you seriously,
2 correct?

3 A. Yes.

4 Q. You told them this is the biggest thing to happen in
5 Massachusetts, "You have to tell me the truth," correct?

6 A. Yes.

7 Q. And you said on direct that you told them that, "Jahar's
8 life is over. He's dead one way or the other. Your life
9 doesn't have to be over." Correct?

10 A. Yes, yes.

11 Q. And that was part of getting them to cooperate, correct?

12 A. To furnish me truthful information immediately about a
13 perceived threat across the street, yes.

14 Q. That Jahar was going to be dead one way or another, but
15 they didn't have to be, correct?

16 A. Yes. The words were specifically, "His life is over.
17 Your life does not have to be. You have to tell me the truth
18 right now. Don't make a mistake."

19 And I have used similar language in other
20 circumstances earlier in my career.

21 Q. And I wrote down directly yesterday that, "Jahar's life is
22 over. He's dead one way or the other. Yours doesn't have to
23 be."

24 Does that sound familiar what you testified to
25 yesterday?

1 A. It does, yes.

2 Q. Thank you, Agent.

3 THE COURT: Ms. Siegmann, anything?

4 REDIRECT EXAMINATION

5 BY MS. SIEGMANN:

6 Q. Special Agent Walker, when were the defendants placed
7 under arrest?

8 A. They were arrested by HSI by approximately 3:48 p.m. on
9 Saturday, April 20, 2013.

10 Q. Was that the only time they were arrested?

11 A. Yes.

12 Q. Does the FBI have authority under Title 8 to arrest
13 individuals for immigration violations?

14 A. I believe we do.

15 Q. Now, I want to direct your attention to a conversation you
16 had with the New Bedford Police Officer that was transporting
17 Defendant Kadyrbayev to the Barracks that night. You had a
18 conversation with him, correct --

19 A. Yes.

20 Q. -- after the Defendant Kadyrbayev had signed the consent
21 form?

22 A. Correct.

23 Q. What did you say, and what did he say?

24 A. The police officer began to place handcuffs on
25 Mr. Kadyrbayev. I told the police officer that

1 Mr. Kadyrbayev was not under arrest, and that I would not
2 handcuff him. The police officer responded that he would do so
3 for his safety.

4 Q. Where was the defendant when you said that, how far away
5 from you?

6 A. He was a couple of feet from me. I was in the same
7 position next to the door, but I was standing at the time.

8 Q. So, he was a couple of feet away from you when you said
9 that?

10 A. Yes.

11 Q. Was the door open or closed?

12 A. Open.

13 Q. Special Agent Walker, I want to clarify something you said
14 on cross-examination. About 10, 15 minutes ago you said on the
15 night -- or the morning of April 20th when you arrived at the
16 Barracks, that you didn't believe -- or you said something to
17 the effect that you had no basis to hold them.

18 Do you remember testifying to that?

19 A. Yes.

20 Q. Were you referring to the criminal charges or the
21 immigration charges when you said that?

22 A. Strictly and solely with regard to the activity that the
23 defendants had described, that I believe I used the term
24 "obstructive conduct," and we had no basis to hold them for
25 that, and we would not make a probable cause arrest for those

1 activities unless we had effectively the backing of the United
2 States Attorney's Office.

3 That backing was not forthcoming, and so I furnished
4 guidance to my colleagues that if we were asked to somehow
5 delay so that some decision could be forthcoming, that we would
6 not do so, because we would expose ourselves individually as
7 agents to -- we would expose ourselves, and so we wouldn't do
8 so.

9 Q. Was that because you didn't have a warrant at that time,
10 so it would have been a warrantless arrest?

11 A. Yes, because the alternative was a probable cause arrest,
12 and under those circumstances I would not -- particularly that
13 we had initiated contact with the prosecutor, the last thing
14 that I would have done is execute a probable cause arrest while
15 a decision is pending with the prosecutor.

16 Q. Special Agent Walker, you testified on cross-examination
17 that there were approximately 50 to 60 SWAT Team or HRT members
18 in the area of 69A Carriage Drive.

19 A. Yes.

20 Q. From the vantage point of the defendants, when they are
21 walking out of 69A Carriage Drive, would they have been able to
22 see all 50 to 60 agents?

23 A. No.

24 Q. Why is that?

25 A. Because the Hostage Rescue Team Operators were in front on

1 Carriage Drive, likely visible to both defendants and
2 Ms. Kumaskali. The balance of the integrated Tactical
3 Operators were at both sides and at the rear of that building.

4 Q. Special Agent Walker, when you spoke to the Defendant
5 Kadyrbayev at his apartment prior to him being taken out by HSI
6 agents that afternoon, do you recall that?

7 A. I do.

8 Q. Do you know whether or not they were actually arrested
9 before you entered the apartment that day?

10 A. I know they were not arrested. The arrest occurred a few
11 moments -- a few minutes before 3:48 when they were handcuffed
12 and led away. When I entered the apartment I was a bit
13 perplexed, because they were sitting unrestrained on the couch.
14 HSI had been there for perhaps ten minutes before.

15 I came to learn that the reason they were sitting
16 there in that fashion was that HSI was in the process of
17 determining the immigration status of Ms. Kumaskali. And then
18 they were arrested.

19 Q. So, before you spoke to them and had the conversation when
20 you were next to the couch that day --

21 A. Yes.

22 Q. -- they had not yet been arrested?

23 A. Correct.

24 Q. I'm sorry. Did you say they were sitting unrestrained?

25 A. Yes.

1 Q. What was their demeanor when you talked to them that day?

2 A. They were as friendly and pleasant as on every occasion
3 when I have encountered them.

4 MS. SIEGMANN: Just one moment, your Honor?

5 THE COURT: Sure.

6 (Counsel conferred off the record)

7 MS. SIEGMANN: No further questions.

8 THE COURT: Mr. Stahl, anything?

9 REXCROSS-EXAMINATION

10 BY MR. STAHL:

11 Q. Agent Walker, going back to just the brief points that
12 Ms. Siegmann asked you about, when the New Bedford Police car
13 comes back and then Dias is re-handcuffed, he is sitting in the
14 back of the car, correct?

15 A. Yes.

16 Q. And you and the other officer are standing outside the
17 car, correct?

18 A. Yes.

19 Q. You have no recollection of whether he is looking at you,
20 correct?

21 A. Mr. Kadyrbayev?

22 Q. Yes.

23 A. I don't.

24 Q. You have no idea whether he can discern who is saying what
25 about who should handcuff and whether he should be unrestrained

1 or not, correct?

2 A. I don't have any basis for that, no.

3 Q. And then, moving on to the night at the Massachusetts
4 State Police Barracks, where you were awaiting for
5 authorization whether to formally arrest or not -- do you
6 remember that testimony?

7 A. I do.

8 Q. You were also in contact, you said, with FBI Boston, the
9 ASAIC, SAIC, and you said maybe even Headquarters was involved
10 in those decisions, correct?

11 A. No. I said that Special Agent Azad initiated contact,
12 that I was next to him, literally, while probably on a
13 speakerphone during this period of time. I believe that we
14 would have been in contact with an ASAIC, another ASAIC in the
15 Boston Office. I received maybe one or two communications
16 during the course of it. I don't recall being the percipient
17 witness, for lack of a better term, because I couldn't give the
18 details of the interview like my colleague could. So, I was
19 there, but I was not in a position to be the leader there.

20 Q. And if your FBI supervisors told you, "Formally arrest
21 them right now," you would have effectuated that, correct?

22 A. If I considered it lawful. But, if not, no, I would not
23 have.

24 Q. And the 50 to 60 SWAT Team Operators, it's fairly standard
25 that they record a number of these operations, video and audio.

1 Was this one recorded?

2 A. No.

3 Q. You know that for a fact?

4 A. I do.

5 Q. And you said that when you walked in on April 20th, I'm
6 moving on to the last part of Ms. Siegmann about HSI, and you
7 were a bit, I think you said, surprised or --

8 A. I was perplexed.

9 Q. -- perplexed why they weren't already hooked up, meaning
10 handcuffed, correct?

11 A. Yes.

12 Q. And at that moment in time Mr. Kadyrbayev and
13 Mr. Tazhayakov, their demeanor to you was pleasant and
14 friendly, correct?

15 A. As always, yes.

16 Q. Because at that point in time they were still not
17 handcuffed. They had no real concept of what was going to
18 happen to them in the coming days, correct?

19 A. And perhaps also because they had just been pleasant and
20 friendly during our encounters.

21 MR. STAHL: Thank you.

22 THE COURT: Agent Walker, I have a couple of things
23 that I want to focus on and clarify for myself.

24 THE WITNESS: Yes, sir.

25 THE COURT: They have been touched on, actually, in

1 redirect, but I want to get it clearer in my mind.

2 I want to focus on the Consent to Search that you had
3 Kadyrbayev execute. I take it that later Tazhayakov did as
4 well?

5 THE WITNESS: Yes, your Honor.

6 THE COURT: They both did as both lessees?

7 THE WITNESS: Yes.

8 THE COURT: Now, the time at which the Consent to
9 Search was executed, had the HRT operation been completed at
10 that point?

11 THE WITNESS: Yes.

12 THE COURT: And the area had been more or less
13 cleared; is that it?

14 THE WITNESS: Including for explosive -- the Special
15 Agent Bomb Technicians had concluded their work. In fact, they
16 happened to be the ones who later conducted the search. But,
17 yes, their work as Bomb Technicians had been completed.

18 THE COURT: And at the time that you obtained the
19 Consent to Search, Mr. Kadyrbayev was under flexible
20 restraints?

21 THE WITNESS: When I initiated --

22 THE COURT: When you asked him.

23 THE WITNESS: Right. And then, when he agreed that he
24 would consider that, then he was unrestrained, and we completed
25 the process, signatures and so forth, and then he was

1 handcuffed again.

2 THE COURT: Did you tell him that he would be
3 unrestrained if he was prepared to execute the consent?

4 THE WITNESS: No.

5 THE COURT: So, he indicates he is going to execute
6 the consent. Thereafter, you lift the restraints. Is that
7 right?

8 THE WITNESS: Yes.

9 THE COURT: Now, but for the decision of the New
10 Bedford Police Officer to put metal handcuffs on him, would you
11 have held him under restraint thereafter when taking him to the
12 Mass. State Police Barracks?

13 THE WITNESS: No, your Honor.

14 THE COURT: So, if you had the resources to take him
15 to the Barracks, FBI resources, as opposed to using the New
16 Bedford Police Department, he would not have been kept in
17 restraints? If you had the resources, you would have had at
18 least two FBI Agents to convey him?

19 THE WITNESS: Yes, but unrestrained.

20 THE COURT: So, the restraint that was provided to
21 him, or provided for him, was at the insistence of the New
22 Bedford Police Department and, as expressed, was for purposes
23 of their safety, according to whatever their protocols are, I
24 gather?

25 THE WITNESS: I'm not certain whether we had -- we had

1 discussion about their protocols, your Honor, but it was clear
2 to me, based on, and I perceived what the officer, just
3 witnessed, that if I said, "No, I want you to take" -- and he
4 didn't know from Adam, but -- "take this person who has just
5 been pulled out of this home by HRT, and just drive him over
6 there unrestrained," my clear sense was that he would not do
7 that. And so, I acquiesced with no alternative.

8 THE COURT: Now, at any point did Mr. Kadyrbayev say,
9 "Gee, I was restrained before. Then the restraints were taken
10 off. Now I have been restrained again. I don't want to be
11 restrained anymore"?

12 THE WITNESS: No, your Honor.

13 THE COURT: Did he make any comments about the
14 restraints whatsoever?

15 THE WITNESS: No.

16 THE COURT: And the next you see him is in the car
17 outside of the Mass. State Police Barracks two hours later?

18 THE WITNESS: No, your Honor. I didn't return. I had
19 to return for other -- the minute he left handcuffed after
20 signing the Consent Form and went to the Barracks, Tsarnaev was
21 still not in custody, and there was other critical
22 investigation to conduct at the campus and in the vicinity of
23 the dormitory, and the next time that I saw and was at the
24 State Police at all was 12:30 in the morning.

25 THE COURT: So, six hours or seven hours later?

1 THE WITNESS: Yes.

2 THE COURT: Now, I want to turn to the Police Barracks
3 issue. Not to be too arch about it, but I am not familiar with
4 the use of a State Police Barracks as a place to kind of hang
5 out and perhaps take a nap for civilians. How is it, if you
6 know, that Mr. Kadyrbayev and Mr. Tazhayakov were permitted to
7 stay after there was no longer a need for them to be present?
8 Is it -- and it really has to do with your knowledge or
9 anything that you have learned from your colleagues -- that
10 they just fell asleep, and best leave such things sleeping?

11 THE WITNESS: To some extent, Judge, but they
12 imparted, I am told, at the ends of their interviews
13 information that gave rise to potential charges for obstructive
14 conduct. Based on that information, we initiated contact with
15 our superiors to seek a prosecutorial decision as to whether or
16 not they should be arrested. That decision did not come back
17 immediately. Intervening there during that time, some of us
18 saw a need to immediately go and see if we could secure the
19 evidence that they had described as having been dumped out, and
20 at that point, your Honor, they didn't ask a judge, and we
21 didn't --

22 THE COURT: "They didn't ask a judge"?

23 THE WITNESS: No, I'm sorry, your Honor. They did not
24 ask us, or they did not say, "Can we leave now, or we want to
25 go now," and we didn't, to my knowledge, go back to them and

1 say, "All right. We're reaching out now to the prosecutor.
2 You're free to leave. You can go now."

3 THE COURT: So, the reason that they stayed there,
4 from your perspective, if I have it correctly, is you were
5 happy enough to have them there if they did not want to leave?

6 THE WITNESS: Yes, sir.

7 THE COURT: Because it is somewhat unusual for people
8 to make their own decisions about when they leave Police
9 Barracks or stay there for a rest stop.

10 The final thing I really -- and perhaps this is more
11 detail than you are aware of -- but I want to know a little bit
12 about the laser technology involved with spotting people in,
13 say, the window. Is that laser technology attached to the
14 weapons themselves?

15 THE WITNESS: Yes, your Honor.

16 THE COURT: So, it is part of the sighting process.
17 It serves other purposes, but it is part of the sighting
18 process for targets?

19 THE WITNESS: Yes.

20 THE COURT: Anything further for counsel on the
21 questions I have asked?

22 MS. SIEGMANN: Your Honor, there is just a
23 clarification.

24 THE COURT: Sure.

25 MS. SIEGMANN: Can I do it from here, your Honor?

1 THE COURT: Sure, that is fine.

2 FURTHER REDIRECT EXAMINATION

3 BY MS. SIEGMANN:

4 Q. Special Agent Walker, when you returned from conducting
5 the search of the dumpster, did you have a conversation with
6 one of the defendants?

7 A. As I testified yesterday, I spoke briefly with
8 Mr. Tazhayakov.

9 Q. And what did he say to you at that time?

10 A. He said, "I'm beginning to think we're being held here
11 against our will."

12 Q. How did you respond?

13 A. I said that, "There is a taxicab out front," he's free to
14 leave, and he could make a choice as to whether or not he would
15 take the taxicab. I said we were concluding our business, we
16 were about to leave, and he said that he would go with us.

17 I walked over to the Trooper, asked the Trooper
18 whether it would be -- he was hosting us, effectively, and
19 whether it would put them in a difficult situation if he just
20 told the cab to leave. He said, "Not at all. I'll just tell
21 him to leave. I don't have to give an explanation." I said,
22 "Great, please have him leave." And within a matter of some
23 minutes we all gathered up, and we drove back to Carriage.

24 Q. So, was that the first time that you had heard that they
25 wanted to leave that evening?

1 A. Yes.

2 MS. SIEGMANN: No further questions.

3 THE COURT: Mr. Stahl, anything?

4 FURTHER RECROSS EXAMINATION

5 BY MR. STAHL:

6 Q. Agent, these three individuals have now been in the State
7 Police Barracks, they have been questioned, they have been told
8 that they are staying there, and they have no shirts on --

9 THE COURT: Well --

10 MR. STAHL: A very quick point.

11 THE COURT: I am not so interested in the windup. I
12 would like to see the pitch. I have heard the windup before,
13 so what is the pitch?

14 MR. STAHL: It's a strike.

15 THE COURT: I will decide that. That is what I do as
16 an umpire.

17 (Laughter)

18 MR. STAHL: I know, Judge.

19 BY MR. STAHL:

20 Q. They have no keys, correct?

21 A. I don't know. I don't know how we gained access back into
22 the apartment.

23 Q. They have no cell phones, because you have them?

24 A. No, that's not correct. We didn't take Mr. Tazhayakov's
25 cell phone. He came out of the apartment with his cell phone

1 and kept it and returned to his apartment with it.

2 Q. Mr. Kadyrbayev had no cell phone, correct?

3 A. Correct.

4 Q. No wallet?

5 A. I don't know.

6 Q. No money?

7 A. I don't know.

8 Q. No ability to go anywhere, unless he was released from the
9 State Police Barracks, correct?

10 A. I don't agree with that.

11 Q. Just focusing on Mr. Kadyrbayev.

12 A. Yes.

13 Q. And as far as handcuffing, you had that conversation about
14 Mr. Kadyrbayev with New Bedford. Did you have a similar
15 conversation when Bayan was still in those cuffs and Azamat was
16 still in those cuffs and taken away?

17 MS. SIEGMANN: Objection.

18 THE COURT: No, I will permit this question.

19 A. The only conversation I recall whatever with regard to
20 restraints is the conversation I had with that police officer.
21 I had the strong impression, I don't know the origin of it,
22 that the transport of all three to the State Police Barracks
23 would not be accomplished unless they were in restraints.

24 BY MR. STAHL:

25 Q. But, Agent, that conversation happened after the three New

1 Bedford Police cars left, correct?

2 A. Yes.

3 Q. So, you had no concern or thought at the time that the
4 three of them were still tightly cuffed behind their backs as
5 they were being transported in the New Bedford Police cars.

6 That thought came later, correct?

7 A. I don't believe it did. I had a strong sense that they
8 would not be transported except in restraints, and it was
9 effectively a fait accompli to me at the point, and I
10 acquiesced in that it was not particularly with regard to
11 witnesses, it is not a preferred method, as I have testified
12 earlier. In fact, I would never, ever do so unless left with
13 no alternative.

14 Q. Well, we have mixed, I think, concepts.

15 THE COURT: Well, at the risk of interrupting -- I do
16 not mean to interrupt the flow of your examination -- but I am
17 just a little bit concerned about the chronology.

18 The conversation you had with the New Bedford Police
19 Officers was before they made the transport to -- the transport
20 began to the Mass. State Police Barracks, right?

21 THE WITNESS: No, your Honor.

22 THE COURT: So, let me understand it a little bit
23 better. Why don't you just tell me how it happened, and I will
24 tell you what my confusion is, and you will dispel it.

25 You have a conversation with them. You get Consent to

1 Search. You take off the restraints. Then you ask the Police
2 Officer to convey them to the Mass. State Police Barracks after
3 having some conversation with the defendant. The Police
4 Officer then says, "I'm putting them in restraints." This is
5 before he has started down the road to the Mass. State Police
6 Barracks. Am I right about that?

7 THE WITNESS: Perhaps, Judge, the confusion -- or it
8 can be clearer. It was effectively the second time he started
9 off to the State Police Barracks, because I asked that both
10 defendants return. Within minutes of their having left on the
11 first time, only Kadyrbayev came back, and that is the only
12 conversation I can recall with a Police Officer.

13 THE COURT: That is helpful to me to clarify further
14 questions, which is, when he left it the first time was he
15 under restraints?

16 THE WITNESS: Yes.

17 THE COURT: And you had a conversation with the Police
18 Officer about the fact of restraints and your preference that
19 he not have restraints at that point?

20 THE WITNESS: I don't recall that, no, sir.

21 THE COURT: So, did you see him put in restraints
22 after the flexible restraints were taken off?

23 THE WITNESS: Yes.

24 THE COURT: And when was the first time you saw him
25 put in restraints?

1 THE WITNESS: That time, because --

2 THE COURT: "That time" meaning what time?

3 THE WITNESS: The time after we had a conversation
4 with regard to Consent to Search.

5 THE COURT: But you didn't see him in restraints when
6 he was first taken over to the Mass. State Police Barracks?

7 THE WITNESS: I knew that he was in restraints,
8 because when all three had left the apartment, HRT called them
9 out. They were put in restraints. I first saw them in
10 restraints when I approached each of them in the car. I then
11 asked for the assistance of the New Bedford Police to
12 transport. I knew that they were being transported in cuffs.

13 Mr. Kadyrbayev returned in cuffs still, flex cuffs.
14 We took them off, and then I had a conversation with the Police
15 Officer about him putting handcuffs on, and Mr. Kadyrbayev went
16 to the Barracks.

17 THE COURT: Then, when was it that the consent to
18 search was obtained, before you first sent them off to the
19 Barracks?

20 THE WITNESS: No, upon his return some minutes later.

21 THE COURT: That may be my misunderstanding about it.
22 You sent them off to the Barracks, and then you said, "I would
23 like to see about a Consent to Search"?

24 THE WITNESS: Yes, your Honor.

25 THE COURT: And that is why you called him back. So,

1 when he first went to the Barracks he still had the flexible
2 restraints on him. And you did not have a conversation with
3 the New Bedford Police at that point about conveying someone
4 even with flexible restraints?

5 THE DEFENDANT: Correct.

6 BY MR. STAHL:

7 Q. Agent, when the Court is talking about "flexible
8 restraints," that's a little bit of a misnomer, isn't it?
9 They're called "flex cuffs." They are very thick plastic that
10 are very difficult -- they are simply lighter-weight types of
11 restraints that HRT members carry, because they are
12 lightweight, and they can carry multiple of them, correct?

13 A. They accomplish precisely the same purpose, and you will
14 be as restrained in one as in the other.

15 Q. A person is not able to move around. It's not flexible;
16 it's simply a different type of restraint?

17 A. It's constructed of a different material.

18 Q. And it has to be physically cut off with a sharp knife or
19 a razor, correct?

20 A. It does.

21 MR. STAHL: Thank you.

22 THE COURT: If there is nothing, then you can step
23 down. Thank you.

24 THE WITNESS: Thank you, your Honor.

25 THE COURT: I am sorry, Mr. Wooldridge, I did not get

1 even get you in the first rounds.

2 MR. WOOLDRIDGE: I was not sure what the order was
3 going to be. I was kind of just waiting.

4 THE COURT: But you have questions?

5 MR. WOOLDRIDGE: I do, your Honor. Can I use the
6 restroom for just five minutes?

7 THE COURT: As opposed to the unofficial morning
8 break, we will take the official morning break. It is a little
9 bit like unofficial and official arrests. And we will be back
10 here at 11:35.

11 (Laughter)

12 THE CLERK: All rise.

13 (The Honorable Court exited the courtroom at 11:25 a.m.)

14 THE CLERK: All rise.

15 (The Honorable Court entered the courtroom at 11:35 a.m.)

16 THE COURT: My apologies, Mr. Wooldridge. Ordinarily,
17 I do it in order and --

18 MR. WOOLDRIDGE: That's okay. I don't mind going
19 last. This time, anyway.

20

21

22

CROSS-EXAMINATION

23 BY MR. WOOLDRIDGE:

24 Q. Agent Walker, you testified that you had information from
25 a number of students that Azamat was friends with Jahar?

1 A. Yes.

2 Q. And who were those students?

3 A. One is named Israpele Vekabov (ph), one is named Greg
4 Mazlan (ph), one is named Sigar Rei (ph), and one is named
5 Robel Phillipos.

6 Q. And you received that information on April 18; is that
7 right?

8 A. No.

9 Q. When did you receive that information?

10 A. On April 19th, the FBI and its JTTF did.

11 Q. The information they gave you was that Azamat was friends
12 with Jahar, right?

13 A. Close friends, yes, and that Tsarnaev, Dzhokhar Tsarnaev,
14 was a frequent visitor to that apartment.

15 Q. They didn't tell you that Azamat was an extremist, did
16 they?

17 A. No.

18 Q. They didn't tell you he was a terrorist, did they?

19 A. No.

20 Q. They didn't tell you that he obstructed justice, did they?

21 A. No.

22 Q. They didn't tell you that he was involved in the Boston
23 Marathon bombings, did they?

24 A. No.

25 Q. You also spoke with a person that was Jahar's roommate?

1 A. Yes.

2 Q. And where did you speak with Jahar's roommate?

3 A. I spoke with him initially in the Chief's Office of the
4 University of Massachusetts Dartmouth Police Station. I later
5 spoke with him inside his dormitory room and thereafter in
6 different locations.

7 Q. And when you spoke with him at the Dartmouth Police
8 Barracks, was that on April 19th?

9 A. Yes.

10 Q. What time?

11 A. Approximately 8:45 p.m. until we left that office, and
12 then I continued to speak with him that evening.

13 Q. So, that was April 19th at 8:45 p.m. you spoke with him at
14 the Police Barracks?

15 A. I did, yes.

16 Q. Okay. And at that time Azamat Tazhayakov was also at the
17 Police Barracks?

18 A. No. Perhaps we are confusing places.

19 Q. Okay.

20 A. My answer here is -- perhaps you intend when did I
21 personally speak with the roommate, am I correct?

22 Q. You or the FBI.

23 A. Okay. The FBI or its JTTF partners spoke with the
24 roommate earlier on the 19th in the Police Department of UMass
25 Dartmouth, and later in the evening, approximately 8:45 and

1 after, I personally spoke with the roommate first at that
2 location and elsewhere on campus.

3 Q. At the location -- at the UMass Police Station. Is that
4 what he said?

5 A. Yes. Not at all at any other police station.

6 Q. Okay. And what did the roommate tell you --

7 MS. SIEGMANN: Objection.

8 BY MR. WOOLDRIDGE:

9 Q. -- about Azamat Tazhayakov?

10 THE COURT: Yes, I think this is beyond the scope. We
11 are really concerned with questions of voluntariness by
12 Mr. Tazhayakov on this issue.

13 MR. WOOLDRIDGE: Judge, I don't think I get to ask
14 questions about voluntariness, right?

15 THE COURT: Well, you do up to the point of the
16 question of the completion of the SWAT Team exercise.

17 MR. WOOLDRIDGE: Okay.

18 THE COURT: But limited to that, and not exploration
19 of what people said about your client.

20 MR. WOOLDRIDGE: I understand, Judge. Well, one of
21 the reasons why I wanted to go into that was because part of
22 the basis that the FBI said that they had reasonable suspicion
23 to stop my client. I'm trying to go into some of that now and
24 see what the suspicion was.

25 THE COURT: If there is an exploration of other

1 witnesses who may not have provided the reasonable suspicion, I
2 am not going to permit it. I am concerned with whether or not
3 they had reasonable suspicion or there was anything to undercut
4 it.

5 MR. WOOLDRIDGE: Okay.

6 BY MR. WOOLDRIDGE:

7 Q. I know on direct examination from the Government you
8 discussed -- you were talking about phones?

9 A. Yes, yes. Absolutely.

10 Q. And you said that one of those phones -- there was a phone
11 that was tied to Jahar that had made a phone call to Russia?

12 A. It was subscribed by Tsarnaev, and I was told on the
13 morning of the 19th, while I was at the State Police Barracks,
14 that that phone had transmitted -- had called or transmitted a
15 message to Russia.

16 Q. And do you know who made that phone call?

17 A. I do now.

18 Q. Who was it?

19 A. I don't believe it was a phone call, but your client at
20 10:06 a.m. transmitted a message using the phone in question to
21 his mother in Kazakhstan.

22 Q. Now, on direct examination from the prosecutor, you also
23 testified that you were of the belief that there could possibly
24 be cells, other cells involved in the bombing, right?

25 A. That was our working hypothesis, yes, absolutely.

1 Q. Now, prior to coming to 69A Carriage Drive, you were aware
2 that there was an agent or somebody from the JTTF that had
3 spoken with Azamat on the phone earlier that day. Am I right?

4 A. No.

5 Q. No law enforcement personnel had spoken with Azamat on the
6 phone on April 19th?

7 A. Separate question. I don't know that to be the case,
8 apart from an assertion made in the papers.

9 Q. Just to get the time right, I want to be clear about the
10 time that you arrived at 69A Carriage Drive on April 19th.
11 What time exactly did you arrive?

12 A. At approximately 5:05 p.m.

13 Q. And you were the agent that was on the loudspeaker?

14 A. No. I was a block away or more, in a State Police
15 vehicle.

16 Q. Do you know who was on the loudspeaker that day?

17 A. One of my colleagues from HRT, but I don't know who.

18 Q. And before you went to 69A Carriage Drive, you knew that
19 Azamat would be at that apartment, correct?

20 A. No.

21 Q. Did you believe he would be at that apartment?

22 A. No. I'm not sure I considered that, but, no, I didn't
23 have such belief. I didn't know who would be in the apartment,
24 other than I believed the fugitive Tsarnaev was in the
25 apartment.

1 Q. Did you know that Azamat was a resident of that apartment?

2 A. Yes. I knew that someone named Azamat, also described by
3 the defendant Phillipos, described him as Azamob (ph), perhaps,
4 but several described him using the name "Azamat." So, I did
5 know that two Kazakhstan national students named Dias
6 Kadyrbayev and Azamat were residing in that apartment.

7 Q. Okay. So, you didn't have Azamat's last name when you
8 came to the apartment?

9 A. I did not.

10 Q. And I believe Mr. Stahl asked this question too, but how
11 long does it normally take to get a search warrant?

12 MS. SIEGMANN: Objection.

13 THE COURT: Well, I will sustain the objection and
14 take notice of the fact that sometimes it is long, sometimes it
15 is short.

16 MR. WOOLDRIDGE: Bear with me. I just don't want to
17 go into all the stuff that we've already done.

18 BY MR. WOOLDRIDGE:

19 Q. Now, did you see Azamat come out of the apartment --

20 A. No.

21 Q. -- when he was ordered?

22 A. No, sir.

23 Q. Do you know if there were any agents from the FBI that did
24 see Azamat come out of the apartment?

25 A. Many.

1 Q. Can you name one?

2 MS. SIEGMANN: Objection. The names of the HRT Team,
3 your Honor, is --

4 THE COURT: That objection is not compelling as an
5 ordinary matter, but it is irrelevant, unless there is some
6 question about whether Mr. Tazhayakov actually came out of the
7 apartment. I do not think there is a question about that.

8 BY MR. WOOLDRIDGE:

9 Q. You do know that my client, Azamat, he was ordered to take
10 off his shirt when he came out of the apartment, right?

11 A. I have come to learn that, yes, sir.

12 Q. And you were aware that he complied with that command,
13 right?

14 A. Yes.

15 Q. And you are also aware that he was immediately put in hand
16 restraints?

17 A. Yes.

18 Q. And there came a time when Azamat was shirtless and in
19 hand restraints that you came up to Azamat and began to ask him
20 questions, right?

21 A. Yes.

22 Q. And you asked him questions about where Jahar was, am I
23 right?

24 A. Yes.

25 Q. And at that time he answered that he didn't know?

1 A. Yes, sir.

2 Q. He didn't try and embellish his story and give you a fake
3 story, did he?

4 A. I don't know. I did not immediately perceive with regard
5 to your client and Mr. Kadyrbayev, that they were entirely
6 forthcoming. That, in part, led me to initially address them
7 sternly. He did tell me -- gave me some information with
8 regard to when he had seen Mr. Tsarnaev that week, but I don't
9 know at that time whether he knew more. Frankly, I may not
10 know, as I sit here, whether he knew more than he told me then.

11 Q. You had on an FBI rain jacket that day?

12 A. A raid jacket, yes.

13 Q. Because it was raining?

14 A. No, no, no. An FBI *raid* jacket.

15 Q. Oh, a *raid* jacket?

16 A. Yes, the blue, with big yellow letters, "FBI," so that in
17 a setting we are not mistaken and people know who we are.

18 Q. Now, did you feel let down when you found out Jahar wasn't
19 there?

20 MS. SIEGMANN: Objection.

21 THE COURT: Yes, I sustain the objection. It is a
22 matter of indifference, his emotional feelings at the time.

23 MR. WOOLDRIDGE: You're correct, Judge.

24 BY MR. WOOLDRIDGE:

25 Q. Now, eventually Azamat, when he was on the ground after

1 you got done speaking to him sternly, he was taken to a
2 vehicle, am I right?

3 A. No, no. You are confusing the order of things. I didn't
4 see your client until he was sitting inside an unmarked
5 vehicle. I didn't have any observation whatever of him being
6 on the ground. I don't know whether he was or not. So, no.

7 Q. So, your first contact with Azamat was inside a vehicle?

8 A. Well, he was sitting inside a vehicle, yes.

9 Q. And he was in the back of that vehicle?

10 A. Yes.

11 Q. And that's when you asked him questions?

12 A. Yes.

13 Q. And there came a time when you stopped questioning him and
14 went somewhere else, right?

15 A. Yes.

16 Q. And then you came back to him, am I right?

17 A. Yes.

18 Q. And he was still in handcuffs?

19 A. Yes.

20 Q. He was still shirtless?

21 A. Yes.

22 Q. And then you started to ask him questions about the inside
23 of his apartment, am I right?

24 A. I asked him, yes, who was there and whether there were any
25 threats inside his apartment. Yes.

1 Q. You asked him about a box that was in his apartment?

2 A. I don't a have recollection of asking about a box.

3 Q. You don't remember asking him about a box, and he told you
4 there was a lizard in the box? You were concerned that there
5 was some box in the apartment?

6 A. No, I don't recall that.

7 Q. Do you remember asking him for Jahar's phone number?

8 A. I don't.

9 Q. Do you remember grabbing his cell phone from him?

10 A. No, I don't. No, and I did not grab his cell phone from
11 him.

12 Q. You never grabbed his cell phone from him?

13 A. No, I never grabbed his cell phone.

14 Q. At the time that you were questioning Azamat, you believed
15 that he was a co-conspirator of Jahar, right?

16 A. I hadn't yet developed that -- no, no, no. I was
17 concerned that he could be a co-conspirator. I was concerned
18 that he could possibly have harbored Tsarnaev, but I hadn't yet
19 developed a level of understanding. I had just come upon this
20 person minutes earlier. So, the answer no.

21 Q. So, you didn't think he had any ties -- you thought he may
22 have ties to Jahar?

23 A. Yes.

24 Q. But you weren't certain?

25 A. I was not certain.

1 Q. And didn't you think that he was a little too close to
2 Jahar? Isn't that something that you testified to on direct?

3 A. Close in a relationship kind of way?

4 Q. Yes.

5 A. Yes, absolutely.

6 Q. Now, eventually you had Azamat go back to the Police
7 Barracks, am I right, or go to the Police Barracks.

8 A. Yes, he went to the Police Barracks.

9 Q. And when he left to go to the Police Barracks he didn't
10 have on a shirt, right?

11 A. Correct.

12 Q. You didn't tell any other agents or law enforcement
13 personnel to make sure he got a shirt, am I right?

14 A. I don't believe so, no.

15 Q. And when he left to go to the Police Barracks, he was
16 still in hand restraints?

17 A. Yes.

18 Q. And you didn't tell any law enforcement or personnel to
19 make sure they take off Azamat's hand restraints, right?

20 A. I don't recall any conversation whatever when your client
21 left Carriage with anyone about that topic.

22 Q. It's just a simple "Yes" or "No" answer. You didn't tell
23 any law enforcement personnel to take off Azamat's hand
24 restraints when he went to the Police Barracks, right?

25 A. I don't recall having done that, correct.

1 Q. Now, on direct examination you remember testifying that
2 you came up to Azamat, right, and you looked him straight in
3 the eye?

4 A. I don't know that that was my testimony, but I did look
5 him in the eye, and I, in fact, asked him to look back at me
6 because he was looking away, and we established eye contact,
7 yes.

8 Q. So, you looked at him in the eye, he looked at you in the
9 eye, right?

10 A. Yes.

11 Q. And you told him that Jahar's life was over?

12 A. Yes.

13 Q. But that his life didn't need to be over, and this was his
14 opportunity, right? That's what you said?

15 A. Yeah. He should not make a mistake, that he should not
16 concern himself with his friend, and that he should concern
17 himself solely with regard to his well-being.

18 Q. That's right. And if he didn't take this opportunity, you
19 implied that his life could be over, like Jahar's?

20 A. No, I didn't make any such implication.

21 Q. That's not an implication, what you told him?

22 A. I did not make any such implication. Whatever inference
23 he may have drawn from that I will have to leave it to others.

24 Q. Okay. And later you said that you told Azamat that the
25 FBI wished to question him in a more discreet and comfortable

1 setting, right?

2 A. Yes.

3 Q. And he remained in hand restraints, right?

4 A. Yes.

5 Q. And that you then asked him if he would be willing to go
6 to the Police Barracks?

7 A. Yes, sir.

8 Q. And you testified that Azamat answered in the affirmative?

9 A. Yes.

10 Q. And you also testified that this was an invitation, right?

11 A. Yes. I said that we wanted to talk to him, we wanted to
12 talk to him in much greater detail, and I made clear, I think
13 it was obvious to both of us, that we could not continue that
14 conversation here. I asked him to go with us. I said that he
15 did not have to go with us, and I asked him whether he would go
16 to that particular location. I told him that I had been at
17 that location earlier in the morning, and that it would be a
18 quiet place away from the crowds that were then on Carriage
19 Drive, and he agreed to go.

20 Q. What were you doing there earlier that morning?

21 MS. SIEGMANN: Objection.

22 THE COURT: Well, I guess I will permit the answer. I
23 am perplexed.

24 A. I was effectively shagging a lead that had nothing
25 whatever to do with your clients. I was conducting an

1 interview of a complainant who called in and said to the FBI
2 that he knew Tsarnaev some time ago, and I was there solely for
3 that purpose, until I received notice of the 10:06 phone
4 activity.

5 BY MR. WOOLDRIDGE:

6 Q. And it's your testimony that Azamat answered in the
7 affirmative to accept this opportunity, this invitation that
8 you were giving him, right?

9 A. Yes.

10 Q. What did you mean by "invitation"? I don't understand
11 that. That's an odd word, "invitation." This was an invite?

12 A. I asked him to accompany us, to go with us, to go with law
13 enforcement, so that we could speak to him further. I
14 indicated, or it was self-evident to both of us, that we could
15 not continue this conversation there, and he agreed to
16 accompany law enforcement to that location.

17 Q. And you consider this an invitation?

18 A. Yes.

19 Q. And what would have happened if he didn't take you up on
20 your invitation?

21 A. For some potentially exceedingly short period of time
22 until such time as that environment there became entirely
23 untenable to conduct an interview, I would have unrestrained
24 him, I would have told him he was free to leave, and until he,
25 frankly, invoked a right to counsel I would have continued

1 there talking to him in that car.

2 At some point in time, and I think it would have been
3 rather quickly, the environment there would have been
4 unsuitable, and that could have been the end of it until I
5 spoke with my Command Post, my superiors, and advised that,
6 "He's walking away."

7 Q. So, if he would have declined your invitation, it would
8 have been handcuffs off, "Go ahead, Azamat, see you later"?

9 A. No. As I just said, I would have attempted to continue
10 interviewing him there. If that became unfeasible, and it was
11 fast approaching that, and if he didn't invoke his right to
12 counsel, I would have talked, and then he could have left. But
13 I previously testified that I think as a practical matter a
14 phone call -- I know a phone call would have been made, and, as
15 a practical matter, I don't think he would have been driving
16 away in his BMW.

17 Q. At this point in time did you believe Azamat had violated
18 his -- had overstayed his Visa or hadn't reenrolled in school,
19 and, therefore, was out of status?

20 A. No.

21 Q. You didn't know that?

22 A. Me personally?

23 Q. You, the FBI. You and the FBI. Do you know --

24 THE COURT: Those are two questions, so you can answer
25 with two answers.

1 MR. WOOLDRIDGE: Thank you, your Honor.

2 A. I did not know personally, and I don't know whether the
3 FBI knew that at that particular time.

4 BY MR. WOOLDRIDGE:

5 Q. Now, if I remember correctly -- and I don't have a
6 transcript in front of me, I didn't get dailies yesterday -- or
7 the minutes in front of me, but if I recall yesterday you
8 testified, and that was May 13th, 2014 that you believed that
9 Azamat had obstructed justice based on his statements on
10 April 19th --

11 MR. WOOLDRIDGE: And I will break this down, Judge.
12 I'm sorry.

13 BY MR. WOOLDRIDGE:

14 Q. -- that on April 19th, you believed my client had
15 obstructed justice based on his statements?

16 A. I believe that -- I think probable cause might have been
17 -- for lack of a better word, I think there was sufficient
18 basis, absolutely, for us to confer with the prosecutor to
19 determine whether they would authorize a probable cause arrest
20 of your client for obstructive conduct.

21 Q. You don't normally need a U.S. Attorney's permission to
22 make an arrest if you believe there's probable cause to make
23 that arrest, do you?

24 A. It's ill-advised, and it would have been bordering on
25 malfeasance in this case for me to make a probable cause arrest

1 in this case of these clients without conferring and having the
2 ability to confer with the prosecutor, and I would not have
3 done so.

4 Q. But that's not my question. I'm asking you, if you
5 believe that a subject has committed a crime, and you have
6 probable cause to believe that they have committed a crime, you
7 don't need to confer with the prosecutor to make an arrest, do
8 you?

9 A. I enjoy the authority to conduct probable cause arrests,
10 for instance, of a fleeing bank robber, without the
11 opportunity. But it is our policy, if afforded the
12 opportunity, to consult with a prosecutor before effecting such
13 arrest.

14 Q. That's still not my question.

15 THE COURT: Well, I think you got the answer to
16 anything that is relevant.

17 BY MR. WOOLDRIDGE:

18 Q. And you also testified today, you testified -- and that
19 would be May 14th, 2013 -- that when you were speaking with the
20 Court you informed that at the end of Azamat's interview he
21 made statements that you believe violated obstruction of
22 justice, right?

23 MS. SIEGMANN: Objection. I didn't understand the
24 question, your Honor. "Violated obstruction of justice"?

25 THE COURT: Well, I think it is clear enough.

1 BY MR. WOOLDRIDGE:

2 Q. Rise to the level of obstruction of justice. I will
3 rephrase.

4 A. Respectfully, I actually didn't fully understand. I
5 apologize. Could you, please?

6 Q. Of course. When you were speaking with the Court today,
7 right --

8 A. Yes.

9 Q. -- you informed the Court that at the end of Azamat's
10 interview he made statements that you believed rose to the
11 level -- based on those statements that he had obstructed
12 justice. Do you remember making those statements to the Court
13 earlier today?

14 A. Not specifically. Based on what he told my colleagues, I
15 believe there was sufficient basis to contact the prosecutor,
16 because I thought there was a likely probable cause for an
17 arrest for obstructive conduct.

18 Q. And you also said that he made those statements at the end
19 of his interview, right?

20 A. Yes. My colleagues informed me that each of the witnesses
21 being interviewed at the Barracks that evening, that that
22 portion --

23 MR. STAHL: I'm going to object if we are getting into
24 the statements, your Honor. That's beyond the scope of the
25 suppression hearing.

1 THE COURT: Well, I think it probably is as to the
2 substance.

3 But I have to understand where you are going with it,
4 Mr. Wooldridge.

5 MR. WOOLDRIDGE: Sure, Judge. He informed the Court
6 that it was at the end of an interview that my client had made
7 statements that made the Agent believe that he had obstructed
8 justice. I just want to confirm that that was at the end of
9 the interview, like the Agent said.

10 THE COURT: If it is just chronology, then we do not
11 really have to worry too much about the objection.

12 MR. STAHL: No, I just heard the answer starting down
13 the road of each defendant said something.

14 BY MR. WOOLDRIDGE:

15 Q. And I would like you to isolate it to Mr. Tazhayakov,
16 please, so the record is clear.

17 A. Information about that activity came out toward the end of
18 that interview, according to my colleagues.

19 Q. Toward the end of Azamat's interview?

20 A. Yes.

21 Q. And today you also testified earlier that you had no basis
22 to arrest my client without the permission of the
23 U.S. Attorney's Office other than for immigration violations,
24 right, on April 19th, 2013?

25 A. At the time that I saw them on Carriage Drive?

1 Q. No. At the Police Barracks.

2 A. That would have been on April 20th, but --

3 Q. Sorry. April 20th.

4 A. Okay.

5 Q. April 20th at the Police Barracks you testified that,
6 other than for immigration violations, you had no basis to
7 arrest my client?

8 A. Because I had not obtained a prosecutorial decision.

9 Q. That's correct?

10 A. Yes.

11 Q. So, at the time Azamat was at the Police Barracks, at that
12 point in time you knew that there was a violation of his F1
13 status?

14 A. I did not know that. I don't recall knowing that, and I
15 don't know what my Agency knew at that time. The information
16 is a mouse click away, and I know that during the course of
17 that week and thereafter every single name that came in with
18 regard to someone, especially of this nature, we ran all manner
19 of databases and beyond the FBI's database. But I do not know
20 what knowledge my Agency had while I was at the Barracks.

21 Q. Well, if you didn't know that my client had an F1
22 violation for immigration, how would you have been able to make
23 an arrest? Didn't you testify that you could have arrested him
24 for that?

25 A. I testified that if, effectively, they had not agreed to

1 go with us, that the next thing that would have happened,
2 without fail, is that I would have contacted my Command Post,
3 and I am of the firm belief that my Command Post would within
4 minutes, if not moments, if they had not known, they would have
5 determined the immigration status, because that would have
6 been -- if I didn't recommend it, then they would have
7 immediately undertaken that.

8 But when I confront two, come in contact with two
9 foreign national students on F1 Visas, that would have entered
10 my thought process pretty quickly.

11 Q. But at that point in time you did not know that there was
12 any immigration violation. That's your testimony today, right?

13 A. That I did not know. That is exactly my testimony.

14 Q. Or any other agents that were at the Barracks, right?

15 MS. SIEGMANN: Objection.

16 THE COURT: Sustained. We have kind of gone through
17 this field pretty extensively.

18 BY MR. WOOLDRIDGE:

19 Q. You also testified that, while my client was at the Police
20 Barracks, he told you that he felt he was being held against
21 his will, right?

22 MS. SIEGMANN: Objection.

23 THE COURT: Overruled.

24 A. He said that, "I am beginning to feel that we're being
25 held here against our will," yes.

1 BY MR. WOOLDRIDGE:

2 Q. And you told him that there was a taxicab waiting for him
3 outside?

4 A. Yes.

5 Q. And did you call that taxicab?

6 A. No, he caused the taxicab to be called.

7 Q. And how far away is the Barracks from 69A Carriage Drive?

8 A. As the crow flies, it's probably two miles. It's probably
9 drive time between 10 to 15 minutes, closer to 10 minutes
10 certainly at 4:20 in the morning.

11 Q. And did the FBI offer to pay for a taxi for him?

12 MS. SIEGMANN: Objection. This is beyond the scope, I
13 think, of --

14 THE COURT: Well, it is not beyond the scope. I think
15 I know the answer, but you can provide the answer.

16 A. I don't know. I did not make such an offer. The taxicab
17 was there outside the Barracks when I returned, having searched
18 the dumpster.

19 MR. WOOLDRIDGE: No further questions.

20 MS. SIEGMANN: Your Honor I just have a few questions
21 as follow-up, five or six questions.

22 FURTHER REDIRECT EXAMINATION

23 BY MS. SIEGMANN:

24 Q. When you learned that the defendant, Tazhayakov, had that
25 prior day, the 18th, been in contact with Dzhokhar Tazhayakov,

1 what was your level of suspicion with regards to
2 Mr. Tazhayakov?

3 A. I'm sorry. Would you repeat the question?

4 Q. Sure. Your question about your level of suspicion
5 regarding the Defendant Tazhayakov. When he tells you in the
6 vehicle, "I just saw Tsarnaev the day before," what was your
7 level of suspicion with regards to him?

8 A. It was --

9 MR. WOOLDRIDGE: Object as to what his level of
10 suspicion was. Is there a grade for the level of suspicion? I
11 don't understand how somebody is going to be able to testify to
12 levels.

13 THE COURT: I prefer just an objection, which I will
14 sustain, without the flourishes.

15 MR. WOOLDRIDGE: Of course, Judge.

16 BY MS. SIEGMANN:

17 Q. Did you have any level of suspicion with regards to
18 Mr. Tazhayakov when he told you he had seen Tsarnaev the day
19 before?

20 A. I did.

21 Q. Can you describe what that suspicion was?

22 A. As I testified earlier, it heightened my suspicion based
23 on the different intelligence streams I testified to yesterday
24 and to some extent today. I considered that fact important,
25 especially with regard to his potential knowledge of the

1 fugitive's whereabouts, but I considered that to be a further
2 indicia of their level of friendship beyond that of which I had
3 gained from the different friends on the 19th.

4 Q. And just to follow up on some of the questions that you
5 were asked by Mr. Wooldridge, when you sought the defendants'
6 consent to go to the Barracks, did you tell both of them the
7 same thing, that they didn't have to go with you?

8 A. Not using precisely the same words, but, yes. Yes, they
9 were both informed, and Ms. Kumaskali, that they didn't have to
10 go with us. But it was a -- yes.

11 Q. I'm sorry. You didn't finish. What else did you say?

12 A. Your question asked what *I* said, so I will limit it to
13 what *I* said.

14 Q. Okay. During that conversation did you indicate whether
15 or not the FBI would appreciate if they did go?

16 A. Yes.

17 Q. And how did you inform them of that?

18 A. I said that, "Gee, we'd really like to talk to you more,
19 Tsarnaev is still out of pocket," or words to that effect. I
20 would not have used that particular terminology with them.
21 But, "We are trying to locate him. It's very, very important.
22 We would like to talk to you in greater detail."

23 Again, whether it was self-evident to us both, or
24 whether I needed to articulate the environment that surrounded
25 us -- and at one point I looked over. Mr. Kadyrbayev was

1 seated in the unmarked vehicle, and I turned over to my right
2 shoulder, and not too far away a tripod was being set up for
3 some type of a camera, and it was I think clear to us all that
4 none of us wanted to be there anymore with that crowd.

5 Q. Is HSI, Homeland Security Investigations, part of the
6 Joint Terrorism Task Force?

7 A. Yes.

8 Q. Were they part of this investigation?

9 A. Yes.

10 Q. Do they have access to a database known as SEVIS,
11 S-E-V-I-S?

12 A. They do, as does the FBI. Yes.

13 Q. Tell us what is that database, SEVIS?

14 A. The Student Exchange and Visitor Information System is a
15 system -- it's a repository for data, among other things for --
16 one can go there to search for Visa information.

17 Q. And on direct by Mr. Wooldridge, you talked about the fact
18 that, if you had made a call to your Command Post, they would
19 have done inquiries. Do you remember saying that?

20 A. Yes. In fact -- yes, I do.

21 Q. Is SEVIS a database that would have been checked?

22 A. Yes. Yes, it was. Yes, it would have been checked.

23 Q. And do you know what SEVIS indicated on that date in
24 question, on April 19th, with regard to these defendants?

25 MR. WOOLDRIDGE: Objection, Judge. It calls for

1 speculation as to what Agent Walker would have done.

2 THE COURT: Right, it does, what had been observed
3 there by someone who did not observe it.

4 MS. SIEGMANN: One moment, your Honor?

5 THE COURT: Sure.

6 (Pause)

7 MS. SIEGMANN: No further questions, your Honor.

8 THE COURT: Mr. Wooldridge, anything further that you
9 want to ask?

10 MR. WOOLDRIDGE: No, Judge.

11 THE COURT: One question for me, or one set of
12 questions. The Consent to Search of the apartment by
13 Mr. Tazhayakov, when did that take place, if you know, if you
14 were involved in that aspect of the questioning?

15 THE WITNESS: I know generally, your Honor, but I
16 don't know the specific time that appears on the form.

17 THE COURT: So, maybe generally you can tell me.

18 THE WITNESS: Generally, it was 7:50 p.m., and I know
19 because I was in contact with agents, two agents, the Special
20 Agent Bomb Technicians at Carriage. And I was back at
21 Dartmouth, but I was being all but pestered, for lack of a
22 better word, by them that they needed to have consent, because
23 they had other bomb-related missions, and they were being
24 delayed. And I communicated to my colleague, Special Agent
25 Azad, that when he had contact with Mr. Tazhayakov, that that

1 should be his first order of business; not a lot of
2 rapport-building session in an interview, but please address
3 that among his first orders of business.

4 THE COURT: And it was obtained by Agent Azad, to your
5 knowledge?

6 THE WITNESS: Yes, yes.

7 THE COURT: Nothing further, then?

8 So, you may step down. Thank you.

9 THE WITNESS: Thank you, your Honor.

10 (Witness stepped down)

11 MR. CAPIN: I think this would be the most perfect
12 segue, your Honor, for Agent Azad.

13 I have conferred with Counsel. We have the
14 Government's next five exhibits.

15 THE COURT: Agent Azad can be called, but I am not
16 sure he can answer if he does not hear, so do you have someone
17 who is going to get him?

18 MR. CAPIN: Agent Walker is getting him.

19 THE COURT: And the exhibits?

20 MR. CAPIN: Exhibits 2 through 6 are --

21 THE COURT: 3 through 7.

22 MR. CAPIN: 3 through 7. Thank you.

23 THE COURT: Right.

24 MR. CAPIN: Are --

25 THE COURT: 2 were the photographs.

1 MS. SIEGMANN: Oh, I thought that was A, B and C for
2 the defense, your Honor.

3 THE COURT: No, 2A, 2B and 2C.

4 MS. SIEGMANN: Oh, I'm sorry.

5 MR. CAPIN: So, 3, your Honor, is a CD with two video
6 clips, four video clips, rather -- with several video clips
7 showing the entry of the defendants at the State Barracks.

8 THE COURT: Agent Azad, why don't you go up to the
9 witness stand.

10 MR. CAPIN: The next exhibit is a standard -- it
11 doesn't say "Miranda" on it -- it's a Miranda and Advice of
12 Rights Form executed by Kadyrbayev.

13 The next exhibit is a Consent to Search for an
14 automobile.

15 The next exhibit is a Consent to Search for a MacBook
16 computer and an external drive.

17 And the next is another Miranda form, dated April
18 20th, and is time-stamped under the signature as 19:11 military
19 time.

20 THE COURT: Is that Mr. Kadyrbayev as well?

21 MR. CAPIN: Yes.

22 THE COURT: Go ahead, see if you can clarify.

23 (Counsel conferred off the record)

24 MR. CAPIN: And I wasn't going to offer through Azad,
25 because I wasn't clear what Mr. Tazhayakov's participation

1 would be, but we will, the Consent Form to search Carriage
2 Drive.

3 THE COURT: That would be 8?

4 MR. CAPIN: That would be 8.

5 THE COURT: So, are there going to be any objections
6 to any of these?

7 MR. STAHL: None from me, your Honor.

8 THE COURT: Mr. Wooldridge?

9 MR. WOOLDRIDGE: No, your Honor.

10 THE COURT: So, you will introduce them at the
11 appropriate time.

12 MR. WOOLDRIDGE: Your Honor, am I going to get to ask
13 questions of Agent Azad about the Consent to Search Form?

14 THE COURT: We will see.

15 MR. WOOLDRIDGE: Okay.

16 THE CLERK: Please raise your right hand.

17 SPECIAL AGENT FARBOD AZAD, DULY SWORN BY THE CLERK

18 THE CLERK: Please state your full name, spelling your
19 last.

20 THE WITNESS: It's Farbod Azad. The first name is
21 F-A-R-B-O-D, last name A-Z-A-D.

22 THE COURT: Mr. Capin.

23 DIRECT EXAMINATION

24 BY MR. CAPIN:

25 Q. Sir, how are you employed?

1 A. I'm a Special Agent with the FBI.

2 Q. How long have you been an FBI Agent?

3 A. Just under seven years.

4 Q. Where are you currently assigned?

5 A. The New York Office Joint Terrorism Task Force.

6 Q. How long have you been assigned to the New York Office?

7 A. About seven years, just under seven years the entire time.

8 Q. As a Special Agent on the New York JTTF, just very
9 generally, what are your duties?

10 A. I'm a Case Agent for multiple investigations that I am
11 responsible for, and that will include my investigations and
12 other investigations to do interviews, execute search warrants,
13 serve subpoenas, general Special Agent duties.

14 Q. So, as of April 13th of last year, approximately how many
15 interviews had you conducted? I'm sorry. As of April 19th of
16 last year.

17 A. I would approximate about 50, maybe a little more.

18 Q. I am going to direct your attention to April 19th, 2013.
19 Did you work that day?

20 A. Yes, sir.

21 Q. Where did you start your day that day?

22 A. New York.

23 Q. Did you spend the entire day in New York?

24 A. I did not.

25 Q. At some point did you leave New York?

1 A. Yes. I was part of a list of agents that were prepared to
2 come up to Boston to assist, should we be called. I received
3 an email saying we were being asked to come up here, so I left
4 to come up to Boston.

5 Q. Now, when you came to Boston, where did you go
6 specifically?

7 A. I arrived in the afternoon at the Boston Field Office.

8 Q. Is that at Center Plaza here Downtown?

9 A. Yes.

10 Q. Did you spend the entire day there?

11 A. I did not.

12 Q. Where did you go?

13 A. After some admin issues and checking in, I was asked to go
14 down to the UMass Dartmouth campus to help with some interviews
15 down there.

16 Q. And did you go to UMass Dartmouth all by yourself?

17 A. I did not. I left with three other agents from New York.

18 Q. Can you tell us who they were?

19 A. Yes. All Special Agents: Michael Blane, Megan Dolan and
20 Sara Wood.

21 Q. And when you got to UMass Dartmouth, did you get further
22 instructions?

23 A. We did. On the way down there I reached out to a Special
24 Agent John Walker from the Boston Office, who was going to be
25 our point of contact, to let him know we were about 20 minutes

1 out from the campus, and to ask him further direction on where
2 to go, what to do, what he wanted us to do.

3 Q. And what did he tell you?

4 A. I received an email back a short time later asking us to
5 redirect to the Police Barracks.

6 Q. And did you then go to the Police Barracks, to the State
7 Police Barracks?

8 A. Yes.

9 Q. What time did you get to the Barracks?

10 A. Shortly before 7:00.

11 Q. At some point that day did you meet the defendants, Dias
12 Kadyrbayev and Azamat Tazhayakov?

13 A. Yes.

14 Q. At what time did you meet the first of them, and who was
15 the first you met?

16 A. We first met Azamat when we brought him into the Barracks.
17 It was about 45 minutes later, about 7:45.

18 MR. CAPIN: Your Honor, at this time I would move into
19 evidence Exhibit No. 3, which is a CD with several, I think six
20 video clips on it, and I would like to play the first couple
21 for this witness, if I may.

22 THE COURT: All right. You may. It is received.

23 (Exhibit No. 3 received into evidence)

24 (Video clip played)

25 BY MR. CAPIN:

1 Q. So, Agent, if you look at the screen, tell us what we are
2 looking at. This is Video Clip One on Exhibit 6.

3 A. That is myself, the other agents --

4 MR. CAPIN: Pause it, Stephanie, please.

5 BY MR. CAPIN:

6 Q. So, you are in the green shirt, correct?

7 A. Correct.

8 Q. And who is the shirtless young man?

9 A. That's Azamat.

10 Q. And who's to his left?

11 A. Bayan, and there's two other agents just slightly on
12 camera or off camera there.

13 Q. And I note that the timestamp on this video is 6:39. You
14 said 7:45, so this is about an hour off?

15 A. Yes.

16 MR. CAPIN: Can we please watch the complete clip,
17 Ms. Siegmann.

18 (Video clip played)

19 BY MR. CAPIN:

20 Q. I am not going to dwell at length on your interactions
21 with Mr. Tazhayakov, but I have just a few questions.

22 Where did you go with him after what we just saw on
23 the video screen occurred?

24 A. After we entered the Barracks, we, myself and the other
25 agent, Sara Wood, brought him into an interview room in, it's

1 kind of the foyer area, the check-in area of the Barracks.

2 Q. Was he shortly thereafter offered an opportunity to go to
3 the bathroom?

4 A. Yes.

5 Q. Did he go to the bathroom?

6 A. Yes.

7 MR. CAPIN: Ms. Siegmann, would you show us the next
8 clip, please.

9 (Video clip played.)

10 BY MR. CAPIN:

11 Q. Is this a video clip a few minutes later of Mr. Tazhayakov
12 going to the bathroom?

13 A. Yes, it is.

14 Q. And is that you I see, the person with his foot in the
15 door?

16 A. Yes. I'm up at the top, just holding the door open with
17 the foot.

18 Q. With your back to the door?

19 A. Yes.

20 Q. And why did you put your foot in the door?

21 A. Just general procedures to know what's going on in there,
22 just agent procedures I've had through the years of making sure
23 the person I'm with doesn't do anything in there that we don't
24 want them doing, flushing evidence down or getting ahold of
25 anything, stuff like that.

1 Q. At some point after this video clip did you meet
2 Mr. Kadyrbayev?

3 A. Yes.

4 Q. How long after?

5 A. About an hour afterwards.

6 Q. And where did you first encounter Mr. Kadyrbayev?

7 A. Out in front of the Police Barracks.

8 Q. And tell the Court, please, from the moment you
9 encountered him what you did for the next few minutes.

10 A. Myself and another agent met him out front, brought him
11 in, did the same procedures, went to a different interview
12 room, removed the handcuffs, and brought him out to use the
13 bathroom as well.

14 MR. CAPIN: Ms. Siegmann, could you show us the next
15 two video clips, please.

16 (Video clips played)

17 MR. CAPIN: And if I may lead a little bit, just to
18 move this along, your Honor?

19 THE COURT: Yes.

20 BY MR. CAPIN:

21 Q. So, are we looking at Mr. --

22 Mr. CAPIN: Pause it, if you would, please. That's
23 okay.

24 BY MR. CAPIN:

25 Q. Did we just see Mr. Kadyrbayev walk in with you and

1 another agent?

2 A. Yes.

3 Q. And we see the next video clip --

4 MS. SIEGMANN: Sorry.

5 MR. CAPIN: That's okay.

6 BY MR. CAPIN:

7 Q. The time stamp on this is 8:00, but that's, in fact, 9:00,
8 correct?

9 A. Correct.

10 Q. And the next video clip shows us, I believe -- is this now
11 two minutes later, Mr. Kadyrbayev no longer with cuffs in front
12 of him, going to the bathroom again?

13 A. Yes.

14 Q. Am I correct you are the one in the kaki pants in the
15 corner?

16 A. Yes.

17 Q. Who are you talking to?

18 A. That's Special Agent Schiliro in front of me with his back
19 to the camera.

20 Q. And now it's 8:03. I see Mr. Kadyrbayev walking back.
21 After what we just saw on that clip, what happened?

22 MR. STAHL: Excuse me, your Honor.

23 You said "8:03." It's actually 9:03, correct?

24 MR. CAPIN: Thank you for the correction.

25 BY MR. CAPIN:

1 Q. It's, in fact, 9:03, right?

2 A. Yes.

3 Q. So, after Mr. Kadyrbayev used the bathroom, what happened
4 next, please?

5 A. We brought him back to an interview room, it was actually
6 an office, to conduct the interview, myself and Agent Schiliro.

7 Q. Describe how you started the interview. To the extent
8 possible, tell the Court, please, what you said to the
9 defendant and what he said to you.

10 A. Yes. We explained we wanted to speak to him. It had
11 been, obviously, a crazy week, some bad things had happened.
12 We believed he could help us put some of the information to
13 help figure things out together, and it was completely
14 voluntary. We certainly wanted to speak to him, but it was up
15 to him to speak to us.

16 Q. And what did he say in response?

17 A. He said, "Yes," he would speak to us and help.

18 Q. And what happened next?

19 A. We began -- we sat down for the interview.

20 Q. And did you then provide him with certain information?

21 A. Yes. We explained that we would definitely want to speak
22 to him, but this is voluntary on his part, to help put things
23 together. To begin, we would need his help. He was not under
24 arrest. We explained he was not under arrest, and he would
25 need to sign a form for us.

1 Q. And did you tell him what the form was?

2 A. Yes. We explained it was the Advice of Rights Form, the
3 same rights he has probably seen on TV, but it was his choice
4 to sign for the interview.

5 Q. I'm going to show you another exhibit.

6 MR. CAPIN: Your Honor, I would like to offer Exhibit,
7 I believe it's 4, at this time. It's an Advice of Rights Form.

8 THE COURT: Yes, it is received.

9 (Exhibit No. 4 received into evidence)

10 BY MR. CAPIN:

11 Q. I'm going to put the exhibit on the screen in front of
12 you, Special Agent.

13 MR. CAPIN: Mr. Lovett, may I have the -- thank you.

14 BY MR. CAPIN:

15 Q. Do you recognize this form?

16 A. Yes. That's our standard FD-395, the Advice of Rights
17 Form for the FBI.

18 Q. Do you recognize this specific form?

19 A. -yes. That's the form with my handwriting at the top
20 there we used for Dias.

21 Q. I notice at the top I believe it says "265 --" I can't
22 make out the name of the road in Dartmouth, Mass. It's dated
23 4/19/13, 9:08 p.m. Do you know whose handwriting that is?

24 A. That's actually Agent Schiliro's. Yes. Sorry, there is a
25 glare.

1 Q. Did you show this form to Defendant Kadyrbayev on
2 April 19th?

3 A. Yes, we did.

4 Q. Again, explain to the Court what process you went through
5 in discussing the form with him, to the extent you can
6 remember, what you said to him and what he said in response.

7 A. Yes. Agent Schiliro filled out the top of the form and
8 then read the advice of rights to him line by line. We
9 explained that it was his choice to sign the form or not. We
10 also set some ground rules that would go along with the
11 interview, if he chose to sign it.

12 Q. I would like to ask you about those ground rules, but
13 before I do that, after Agent Schiliro read this form to him
14 line by line, did he ask the defendant if he had any questions?

15 A. Yes.

16 Q. Did the defendant indicate whether he had any questions
17 one way or the other?

18 A. Yes, he did. He asked if he needed an attorney or a
19 lawyer.

20 Q. Describe exactly what he said, and what the response was,
21 and any other conversation on that topic.

22 A. Yes. After reading the form, he asked us, "Do I need a
23 lawyer?" I explained to him that we would not be able to give
24 him any legal advice. We said, "We can't offer you legal
25 advice. That's your choice. We don't know what you know. You

1 have to decide that for yourself."

2 Q. Did he say anything in response to when you told him --
3 was it before or after this you told him that he wasn't under
4 arrest?

5 A. Before.

6 Q. When you told him he wasn't under arrest, how, if at all,
7 did he respond to that?

8 A. Yes. There was a little bit of a misunderstanding there.
9 When he came I said, "You're not under arrest. Has anyone told
10 you you're under arrest?" His response was, "I'm under
11 arrest?" There was a little bit of a misunderstanding there,
12 so we kind of joked and said, "No, no, no, you're not under
13 arrest. No one has told you you're under arrest." And we
14 cleared that up.

15 Q. When you said that to him, how did he respond?

16 A. He understood, and we kind of kidded about it, but we
17 moved on from there.

18 Q. So, after he asked you -- am I correct in understanding
19 that when he asked if he needed a lawyer you told him you
20 couldn't advise him, that that was his decision?

21 A. Yes.

22 Q. At some point thereafter did he sign this form?

23 A. Yes, he did.

24 Q. I'm going to tilt this a bit. Is this his signature I see
25 on the right side here (indicating)?

1 A. Yes.

2 Q. And I note that it's signed below that by two hands that I
3 can't discern. Can you tell me, the one on top, whose
4 signature is that?

5 A. The one on top is not my signature, no.

6 Q. Do you know whose it is?

7 A. That's Special Agent Schiliro's.

8 Q. And the second one that I'm pointing to now (indicating)?

9 A. That's my signature.

10 Q. And it bears a time of "9:14 p.m." Who wrote that time on
11 it?

12 A. That's Special Agent Schiliro's.

13 Q. And was it, in fact, about 9:14 p.m. when you finished
14 this process?

15 A. Yes.

16 Q. A moment ago you said that, in addition to advising him of
17 his rights, of the rights on that form, Exhibit 3, you also
18 covered some ground rules with the Defendant Kadyrbayev?

19 A. Yes.

20 Q. Tell the Court, please, what you meant by that.

21 A. Okay. By "ground rules," I meant we also added on some
22 basic rules for the interview, where we explained that we could
23 stop the interview at any time, we can take breaks whenever he
24 needed to take a break. We could not talk about or skip
25 certain topics, should he not choose to talk about those, you

1 know, either skip them or come back to them later.

2 Q. Did he have any questions about the ground rules?

3 A. No.

4 Q. I'm going to show you the next exhibit --

5 MR. CAPIN: Your Honor, if I may, I would like to
6 offer Exhibit 5 at this time, which is captioned "Department of
7 Justice FBI Consent to Search."

8 THE COURT: Yes. It is received.

9 (Exhibit No. 5 received into evidence)

10 BY MR. CAPIN:

11 Q. Do you see that on the screen in front of you, Special
12 Agent Azad?

13 A. Yes.

14 Q. Do you recognize this document?

15 A. Yes, I do.

16 Q. What is it?

17 A. That is the FBI Consent to Search Form we used for the
18 vehicle, Dias's vehicle.

19 Q. And did you show this to the defendant on April 18th?

20 A. Yes, I did.

21 Q. What, in relation to what we just talked about, the ground
22 rules?

23 A. After the Advice of Rights Form and the ground rules.
24 Sometime during the interview.

25 Q. And to the best of your memory, tell the Court what was

1 said about this form by you, or Agent Schiliro and by the
2 defendant.

3 A. We explained that there were agents back at the car. They
4 would like to search the car. This form was his giving us
5 permission to search that car. I asked him to read it, make
6 sure it was right, and he knew what he was signing, and if he
7 was giving us permission, to sign it.

8 Q. When you asked him to read it, did he appear to read it in
9 your presence?

10 A. Yes.

11 Q. After he read it, did he ask you any questions?

12 A. He did not.

13 Q. Did he sign the form after he read it?

14 A. Yes.

15 Q. Is that his signature I see in the bottom right?

16 A. Yes.

17 Q. Right here (indicating)?

18 A. Yes, the top one.

19 Q. I see it's dated 4/19/13. Who wrote those numbers, if you
20 know?

21 A. I don't know.

22 Q. And is that Agent Schiliro's signature below the
23 defendant's?

24 A. Yes.

25 Q. Is this now still about 9:15 or so when he signed that

1 form, if you remember?

2 A. Yes, yes.

3 Q. How long thereafter did your interview of the defendant
4 last?

5 A. I would say about 3 1/2 hours.

6 Q. And during those 3 1/2 hours -- strike that.

7 Could you describe the defendant's demeanor during
8 that 3 1/2 hours?

9 A. Yes. I would describe his demeanor as calm, engaged,
10 answering questions appropriately, conversive. It wasn't just
11 us asking questions and him answering. It was back-and-forth
12 conversation.

13 Q. Could you describe to the Court the tone of the
14 conversation?

15 A. I would consider it friendly. We built good rapport off
16 the bat and moved on.

17 Q. Where were you talking? Physically where were you?

18 A. We were in an office, an office for what I believe was one
19 of the troopers or detectives. It was an office setup, so that
20 it had work stations in it. We were in the middle with three
21 chairs kind of around the center space, facing each other.

22 Q. How many work stations?

23 A. There was one work station that was in the shape of an L
24 and then another table off to the left that was just
25 rectangular.

1 Q. So, when you say you were in the middle, do you mean you
2 were sitting in the middle of that office between those two
3 work stations?

4 A. Yes. So, in like the smaller rectangular area in the
5 middle.

6 Q. Describe to the Court, please, sort of how far you all
7 were sitting from each other and where you all were in relation
8 to the office door.

9 A. Okay. Within the office we set up three chairs in a
10 triangle. I had the chair that would be deepest in the corner
11 of the office, Agent Schiliro had one closer to the front wall,
12 and Dias had one that was off to the left, kind of from the
13 triangle closer to the front door, the exit door.

14 Q. And when you say "the door," was there more than one door
15 to this office?

16 A. Just one door.

17 Q. And so you said "Dias." Did you know it was Dias that
18 night?

19 A. Yes.

20 Q. Likewise, did you know Mr. Tazhayakov as Azamat?

21 A. Yes.

22 Q. The one door -- and I think you said Kadyrbayev was
23 closest to the door, correct?

24 A. Yes.

25 Q. During the course of that 3 1/2-hour interview or so was

1 the door open or closed?

2 A. It was open.

3 Q. During that period did the defendant appear to you to be
4 physically comfortable?

5 A. Yes.

6 Q. Did he ever complain about physical discomfort?

7 A. No.

8 Q. I am going to show you the next exhibit, if I may. I
9 believe we are up to --

10 THE COURT: 6.

11 MR. CAPIN: 6. Thank you, your Honor. It's
12 captioned, your Honor, for the record, "Consent to Search
13 Computers," and I would offer it at this time.

14 THE COURT: Yes, it is received.

15 (Exhibit No. 6 received into evidence)

16 BY MR. CAPIN:

17 Q. I show you this exhibit, Special Agent. Tell me if you
18 recognize this form in general and this specific form.

19 A. Yes. This is our Consent to Search Computers form. It's
20 also specifically the one we used that night, where we asked
21 Dias to consent to search his computer and hard drive that he
22 told us about.

23 Q. And how far into that interview were you at the point that
24 you showed Kadyrbayev this form?

25 A. Towards the end. I would say about three hours. It was

1 near the end.

2 Q. And I see that under "Consent to Search Computers," it
3 starts with, "I, Dias Kadyrbayev," et cetera. Whose
4 handwriting is that, if you know?

5 A. The middle part that describes the "MacBook Air" and the
6 "Samsung hard drive," that's my handwriting.

7 Q. I'm pointing to "MacBook Air" now to help the Court,
8 because it's hard to read (indicating).

9 A. Yes, that is my handwriting.

10 Q. And that says, "Samsung External Drive? "

11 A. Yes. "640G External Drive."

12 Q. And how about the name "Dias Kadyrbayev"? Whose writing
13 is that?

14 A. I don't know.

15 Q. I note that it appears to be dated and signed. Whose
16 signature am I pointing to now?

17 A. I believe that's Dias's signature.

18 Q. And it's dated above the words "Date of Signature," and
19 the next line says, "Date of Signature of Witness." Who signs
20 here (indicating)? Is that your signature I am pointing to now
21 (indicating)?

22 A. Yes, I am the witness. I have that signature there.

23 Q. And is this indicating that, like the other forms you
24 looked at, this happened at the State Barracks?

25 A. Yes.

1 Q. Explain the process, any conversation with Mr. Kadyrbayev
2 about this form before he signed it, again, saying, to the
3 extent you remember, what you or Agent Schiliro said to him and
4 what he said in response.

5 A. Yes. We explained that we would also like to search this
6 media, the computer and the hard drive, but it was his option,
7 it was his choice to sign the form to give us consent or not.
8 When we presented the form, I said, you know, "Read it. I want
9 to make sure you know what you are signing." He appeared to
10 read it and then sign it.

11 Q. You say, "He appeared to read it and then sign it."
12 Between the time he appeared to read it and then sign it, did
13 he ask you any questions?

14 A. He did not.

15 Q. At some point had you exhausted all the lines of questions
16 you intended to go into with Mr. Kadyrbayev?

17 A. Yes.

18 Q. And what time was that, approximately?

19 A. I would approximate about 12:30.

20 Q. And by that time had he told you everything he said that
21 night about the events of April 18th and going into Dzhokhar's
22 bedroom -- dorm room?

23 A. Yes.

24 Q. At any point before 12:30 or so, when you say the
25 substance of the interview was over, did you leave the

1 interview to go to another interview?

2 A. Yes, I did.

3 Q. And now I am going to switch gears for a moment. We
4 skipped a portion of your experience that night because it
5 wasn't at issue.

6 MR. CAPIN: And if I could lead for just one moment,
7 your Honor?

8 THE COURT: Yes.

9 BY MR. CAPIN:

10 Q. Am I correct that before you met Mr. Kadyrbayev, you had
11 spent an hour or so with Azamat Tazhayakov?

12 A. Yes.

13 Q. And then when Kadyrbayev showed up, am I correct that you
14 then joined that interview and went through what we just
15 discussed?

16 A. Yes.

17 Q. At some point --

18 MR. CAPIN: Is that clear, your Honor?

19 THE COURT: Not yet.

20 BY MR. CAPIN:

21 Q. So, you started the evening at 8:00 p.m. with Tazhayakov?

22 A. Yes.

23 Q. And then at about 9:00 p.m. you learned that Dias had
24 arrived?

25 A. Yes.

1 Q. And at 9:00 p.m., then you and Agent Schiliro interviewed
2 Dias for about 3 1/2 hours?

3 A. Yes.

4 Q. At some point did you leave the Dias Kadyrbayev interview
5 and go back and resume at least a portion -- did you go back to
6 the Tazhayakov interview?

7 A. Yes.

8 Q. And is that because you had learned certain information
9 from Kadyrbayev that you wanted to run by Tazhayakov?

10 A. Yes.

11 Q. After you returned to the Tazhayakov interview, how long
12 did you stay in that interview?

13 A. About 15 minutes.

14 Q. So, I am going to show you Exhibit --

15 MR. CAPIN: I am going to toggle forth to Exhibit 8,
16 your Honor, if I may?

17 THE COURT: You may. Skipping 7?

18 MR. CAPIN: We will come back to 7, because
19 chronologically it's the next exhibit.

20 THE COURT: That is fine.

21 BY MR. CAPIN:

22 Q. Exhibit 8 I am going to put up on the screen in front of
23 you.

24 MR. CAPIN: This, your Honor, is how we ended the
25 questions you had a little earlier.

1 THE COURT: Right.

2 BY MR. CAPIN:

3 Q. I will show you the entire form, starting at the top, and
4 then the signature at the bottom, and ask you if you recognize
5 this form captioned, "Department of Justice FBI Consent to
6 Search."

7 A. Yes. This is the form that we used that night where we
8 asked Azamat for permission or consent to search the address
9 that's on there, 69A Carriage Drive.

10 Q. And was this during the first portion -- your first
11 meeting with Azamat Tazhayakov?

12 A. Yes.

13 Q. So, which started at about 8:00 p.m.?

14 A. Yes.

15 Q. How far into that interview did you discuss this form with
16 Tazhayakov?

17 A. I would estimate about 20 to 30 minutes into that
18 interview.

19 Q. So, at about 8:20 or 8:30 you had some discussion with
20 Tazhayakov about this form?

21 A. Yes.

22 Q. And, again, to the extent you remember, what was said to
23 Tazhayakov and what he said in response with regard to this
24 form, please tell the Court.

25 A. Yes. We established that he was a roommate within this

1 address. We told him that we would like to get his consent to
2 search it. We asked him, if he agreed, that he would sign this
3 form giving us consent, it was his choice to sign or not, and
4 to read it and sign it if he agreed.

5 Q. And after he agreed, did he, in fact, sign it?

6 A. Yes.

7 MR. CAPIN: Sorry. Can I confer with Ms. Siegmann for
8 a moment, your Honor?

9 (Counsel conferred off the record)

10 BY MR. CAPIN:

11 Q. Before I move on, after this conversation with
12 Mr. Tazhayakov, am I correct in noting that he signed this
13 where I am now indicating (indicating)?

14 A. Yes.

15 Q. And the signature below that where I'm indicating is your
16 signature (indicating)?

17 A. Yes.

18 Q. And, again, this has a date stamp in hand of 4/19/2013?

19 A. Yes.

20 Q. So, just to clarify, to the extent necessary, in the
21 record of the timing of all of this, am I correct that
22 Kadyrbayev walked into the State Barracks at about 9:00?

23 A. Yes.

24 Q. And I note that the Advice of Rights Form is time stamped
25 at the beginning -- I'm sorry -- at the top 9:08 p.m.?

1 A. Yes.

2 Q. And by the signatures below, it's time stamped 9:14 p.m.?

3 A. Yes.

4 Q. So, am I correct in understanding that by 9:14 the process
5 of advising Mr. Kadyrbayev of his rights per Miranda had been
6 completed?

7 A. Yes.

8 Q. So, that was the very first thing you did during -- about
9 the first thing you did during your meeting with Kadyrbayev?

10 A. Yes. Soon, right after the bathroom, the un-cuffing and
11 the bathroom.

12 Q. So, similarly, was the advice of rights to Tazhayakov
13 right after he went to the bathroom?

14 A. Yes.

15 Q. I am going to move on to after you --

16 THE COURT: Is this a point to break so we can take up
17 the --

18 MR. CAPIN: We are close to the end, but, yeah, it's a
19 logical point to break.

20 THE COURT: So, let us break. We will be back for the
21 full testimony at 2:00. I do want to take up *in camera* with
22 the Government and with Mr. Phillipos' counsel a couple of
23 matters.

24 MR. CAPIN: Thank you.

25 THE COURT: I will stay here, but everybody else will

1 leave, except those who have been invited.

2 MS. SIEGMANN: Can I confer with counsel?

3 THE COURT: Sure.

4 (The Court conferred with the Clerk off the record)

5 MR. STAHL: Judge, we're excused?

6 THE COURT: Yes, you are excused until 2:00. I just
7 want to take up these other matters.

8 If we could clear the courtroom as quickly as
9 possible. If you need to leave your stuff here, you can. If
10 we can get to it quickly, so that everybody can have lunch.

11 (Sealed *ex parte* hearing held on the record)

12 (Lunch recess taken)

13 THE CLERK: All rise.

14 (The Honorable Court entered the courtroom at 2:05 p.m.)

15 THE CLERK: This Honorable Court is back in session.
16 You may be seated.

17 THE COURT: So, Mr. Capin, you may inquire.

18 MR. CAPIN: Thank you, your Honor.

19 CONTINUING DIRECT EXAMINATION BY MR. CAPIN:

20 Q. Special Agent Azad, when we left off, we were talking
21 about your having returned to the Kadyrbayev interview after
22 spending 15 minutes or so with the Tazhayakov interview. Do
23 you remember that?

24 A. Yes.

25 Q. Before we finish up the events of that evening and briefly

1 talk about the next day, I have two timing issues I want to
2 establish to make them clear to the Court, lest they not be
3 clear.

4 First of all, you have testified that you gave
5 Tazhayakov his Miranda Advice of Rights just a few minutes into
6 the beginning of the interview, correct?

7 A. Yes.

8 Q. As you sit here today, do you remember what time that form
9 was signed, the Miranda form?

10 A. Not the exact time.

11 MR. CAPIN: Your Honor, I'm not going to offer this
12 into evidence, but could I use it refresh his recollection as
13 to that issue?

14 THE COURT: You may use it.

15 BY MR. CAPIN:

16 Q. So, looking at the time stamps on that document, does that
17 refresh your recollection as to when you advised Tazhayakov of
18 his, what we colloquially call his "Miranda rights"?

19 A. Yes.

20 Q. What time?

21 A. 7:40.

22 Q. And how long after 7:40 did Tazhayakov sign the Consent to
23 Search Carriage Drive?

24 A. I would estimate about ten minutes after.

25 Q. So, about ten minutes before 8:00 he had signed that

1 Consent to Search his premises?

2 A. Yes.

3 Q. The other timing issue I want to ask you about is, and,
4 again, this is only with regard to timing, and without any
5 discussion of the substance of what the defendant said, how far
6 into the Kadyrbayev interview were you when he told you that he
7 had removed items from Tsarnaev's bedroom?

8 A. Towards the end of the interview. I would say maybe
9 three-quarters of the way through.

10 Q. So, midnight, give or take?

11 A. Yes.

12 Q. So, you returned to the -- I believe you testified to --
13 if we resume where we left off before taking the break, to the
14 Kadyrbayev interview at about 12:30, after spending 15 minutes
15 with Tazhayakov?

16 A. Yes.

17 Q. And at any point before that had he asked if he could
18 leave?

19 A. No.

20 Q. At any point before that had you told him he could not
21 leave?

22 A. No.

23 MR. STAHL: I'm sorry, Judge. I just didn't hear.
24 Were you asking Tazhayakov or Kadyrbayev?

25 MR. CAPIN: Thank you, you Mr. Stahl. Mr. Stahl

1 caught me. He is correct. I misspoke. I meant some questions
2 -- I think I said Tazhayakov -- as to Kadyrbayev.

3 BY MR. CAPIN:

4 Q. At any point before 12:30 did Kadyrbayev ask you to leave,
5 or did you tell him he couldn't leave?

6 A. No, he did not ask, and, no, I did not tell him he
7 couldn't leave.

8 Q. Thank you. Okay.

9 At some point before that night was over did you ask
10 Kadyrbayev what his plans were for the next day?

11 A. Yes.

12 Q. And what did he tell you?

13 A. We asked what his plans were for the next day in case we
14 needed to get ahold of him or needed to speak to him again. He
15 told us that he would be available, tomorrow would be 4/20, and
16 they just had plans to hang out.

17 Q. What did you understand him to mean by it was "4/20"?

18 A. The 4/20 was told in a way that we understood and kind of
19 joked that 4:20 is a time known for, either the time or the
20 date on the calendar, known where marijuana smokers will smoke
21 marijuana.

22 Q. So, am I correct in understanding --

23 MR. CAPIN: Your Honor, this is simply to establish
24 the rapport between the defendant.

25 BY MR. CAPIN:

1 Q. Am I correct in understanding that "4:20" is sort of a
2 colloquial for the equivalent of the marijuana-smoking cocktail
3 hour?

4 A. Yes, yes. We understand it as, "Tomorrow's 4/20. We're
5 just going to be smoking, and we'll be around."

6 Q. So, the 4:20 time of day is the cocktail hour, and the
7 date, April 20th, 4/20, has a similar significance?

8 A. Yes.

9 Q. Did you then go to Carriage Drive with the defendant?

10 A. Yes.

11 Q. And describe for the Court what happened when you got to
12 Carriage Drive.

13 A. When we arrived, we parked our different vehicles. We
14 walked up to the front door there and then towards the
15 apartment door. As we were walking in, I asked if we could go
16 in, if they minded if we go in, and then we entered the actual
17 apartment.

18 Q. When you said, "We asked," did you personally say to
19 anybody, "Do you mind if we come in"?

20 A. It wasn't directed towards either one of the defendants.
21 It was a general statement.

22 Q. Did either one of them respond?

23 A. Yes.

24 Q. To the best of your memory, who responded, and what did
25 they say?

1 A. I don't recall exactly who it was, but they responded in
2 the affirmative, that, "Yes, come in."

3 Q. Did you then go into the apartment with them?

4 A. Yes.

5 Q. Did you see anything unusual in the apartment?

6 A. The apartment had been searched. It had been searched by
7 the FBI. They had done a thorough job, so things had been
8 taken off shelves and piled in the middle of the room or kind
9 of sorted out by item. But it was clear that they had been
10 gone through.

11 And then as we looked around, there was what looked to
12 be in the corner a small box with a heat lamp or a light lit up
13 in the corner, and I asked, "What is that."

14 Q. When you saw the box with the heat lamp, who did you ask,
15 "What is that?"

16 A. Just to the general room. We were all in the same
17 living-room/dining-room-type area.

18 Q. And did either of the defendants respond?

19 A. Yes. I don't remember which one it was, but someone said
20 that that was their pet lizard or gecko.

21 Q. And when you had this exchange about the pet lizard or
22 gecko, were you all sort of within earshot of each other, just
23 standing around?

24 A. Yes. I don't know if it was everybody, but there was a
25 group of agents, yes, and the defendants.

1 Q. Specifically, were both defendants there in the group
2 within earshot?

3 A. Yes.

4 Q. Did either of the defendants pick up the lizard?

5 A. Yes. One of them picked up the lizard, I don't remember
6 exactly which one, but took it out of the box and let it crawl
7 up his arm and introduced us to the lizard.

8 Q. Did he offer to let anybody else hold the lizard?

9 A. Yes. There was an offer to let us let the lizard crawl on
10 us as well, and I declined. I think we all declined.

11 Q. I want to direct your attention to later that day. We are
12 now on April 20th. Did you see Dias Kadyrbayev at any point
13 that afternoon or evening?

14 A. Yes. That evening.

15 Q. And where did you see him?

16 A. I believe it's the federal building that houses HSI?

17 Q. Does the name "Tip O'Neill" sound familiar?

18 A. Yes.

19 Q. When you saw Mr. Kadyrbayev at this federal building, were
20 you in the company of any other federal agents?

21 A. Yes. I was with Special Agent Tim Quinn from the Boston
22 Office, and during the interview there was another HSI Agent in
23 there as well.

24 Q. Did you have a conversation with Mr. Kadyrbayev at that
25 time?

1 A. Yes.

2 MR. CAPIN: Your Honor, I would like to show the
3 witness and offer into evidence Exhibit 7 at this time.

4 THE COURT: That is received.

5 (Exhibit No. 7 received into evidence)

6 MR. CAPIN: Mr. Lovett, may I have the ELMO, please?

7 BY MR. CAPIN:

8 Q. On the screen do you see Exhibit 7 FBI Advice of Rights?

9 A. Yes.

10 Q. Do you recognize this document?

11 A. Yes. It's the same Advice of Rights that we used, and
12 this specific one is the one we administered at the Tip O'Neill
13 Building.

14 Q. Did either you or Agent Quinn show this to Kadyrbayev at
15 the Tip O'Neill?

16 A. Yes, Agent Quinn did.

17 Q. Again, tell the Court, to the best of your memory, what
18 Agent Quinn or you said to the defendant and what the defendant
19 said in response as involves this particular form.

20 A. Yes. We told him this was the same form with the same
21 Advice of Rights that he had signed the night before; this was
22 a new interview, so we needed him to sign the Advice of Rights
23 Form again, if he was willing to speak to us; again, this was a
24 voluntary interview and his choice. And Agent Quinn made it
25 clear that the only difference here was that they had been

1 arrested by Immigration and wouldn't be leaving, free to leave
2 after the interview.

3 Q. Did Agent Quinn give it to the defendant to read?

4 A. Yes.

5 Q. Did he appear to read it?

6 A. Yes.

7 Q. Did he sign it in your presence?

8 A. Yes.

9 Q. Is that his signature I see on the bottom right?

10 A. Yes.

11 Q. And is that your signature on the first witness line?

12 A. Yes.

13 Q. And Agent Quinn's on the second?

14 A. Yes.

15 Q. I note the military time stamp "19:11." Is 7:11 p.m.
16 approximately when that was signed?

17 A. Yes.

18 MR. CAPIN: May I have a moment, your Honor?

19 THE COURT: You may.

20 MR. CAPIN: I have nothing further, your Honor.

21 THE COURT: All right.

22 Mr. Stahl.

23 CROSS-EXAMINATION

24 BY MR. STAHL:

25 Q. Good afternoon, Agent Azad.

1 A. Good afternoon.

2 Q. My name is Robert Stahl. I represent Dias Kadyrbayev. By
3 the way, do you recognize the two today?

4 A. Yes.

5 Q. Do you remember which one is which?

6 A. I do, yes.

7 Q. Okay. Agent Azad, in preparation for your testimony
8 today, what did you review?

9 A. I reviewed the 302s, the Advice of Rights forms, some
10 video from the Barracks.

11 Q. I have copies of two 302s that you were part of, the 4/19
12 interview and the 4/20 interview. Are those the two 302s
13 you're talking about?

14 A. Yes.

15 Q. So, one was you and Agent Schiliro?

16 A. Correct.

17 Q. Who was the author of the report on that one?

18 A. I want to make sure, if I could take a look, but I believe
19 it's both of us. We've both signed at the bottom.

20 Q. Sure. I did have them out. I'll show you my copy, if you
21 don't mind.

22 MR. STAHL: May I just approach?

23 THE COURT: You may.

24 BY MR. STAHL:

25 Q. Ignore my highlighting.

1 A. Yes, that's both of us.

2 MR. STAHL: Could I just ask a couple of questions
3 right here?

4 THE COURT: Sure, go ahead.

5 BY MR. STAHL:

6 Q. So, when an agent prepares a report and both names are in
7 lower case rather than capital case, that means you both
8 authored it?

9 A. No. I don't believe the upper case or lower case actually
10 has anything to do with that; it's just how our names were
11 entered in the system, and it depends on, I guess, who entered
12 them in there.

13 Q. All right. So, if both your names are on the bottom as
14 opposed to in the text, that means you both sat down and wrote
15 parts of it?

16 A. It means we were both present for the entirety of the
17 interview, and we both agree to the contents of the report,
18 yes.

19 Q. See, the reason I ask is because the one from 4/20, it has
20 "AGENT QUINN, TIMOTHY" in caps and then you in normal case.
21 Does that mean anything to you or it's just the way it's --

22 A. It's no different. It's just the way the name was entered
23 in the different offices, I guess.

24 Q. All right. So, you authored both of those as well?

25 A. Yes.

1 Q. Who was taking notes on the evening of 4/19?

2 A. Special Agent Schiliro.

3 Q. And did you review his handwritten notes in preparation
4 for your testimony?

5 A. No.

6 Q. So, we are going off -- your testimony today on direct was
7 mainly based on these 302s, just to be clear, as far as the
8 Advice of Rights and the consent searches, the basics of the
9 interviews, correct?

10 A. 302 and my memory, yes.

11 Q. And your memory.

12 So, when you got called up from New York to Boston,
13 were you briefed by anyone before you got involved in the
14 actual investigation?

15 A. No.

16 Q. Did you have a chance to talk with Agent Walker?

17 A. Yes. Sorry. Are we talking about on the way up to
18 Boston, or which segment?

19 Q. Well, you tell me when you spoke to him. It's just
20 easier.

21 A. Okay. I spoke to Agent Walker for the first time when we
22 were at the Dartmouth campus before we headed over to the
23 Police Barracks.

24 Q. All right. And approximately, to the best of your
25 recollection, what time was that?

1 A. Sometime after 6:00 p.m.

2 Q. P.m.?

3 A. Correct.

4 Q. And I take it that Agent Walker gave you a brief rundown
5 of what was happening and the significance of the people that
6 you would be interviewing, correct?

7 A. Yes.

8 Q. And from that description, you understood from Agent
9 Walker that Dias Kadyrbayev and Azamat Tazhayakov were somehow
10 -- there were suspicions that they were involved in some way
11 with Jahar, correct?

12 A. The first time I spoke to him I actually wasn't told about
13 Dias. It was just Azamat and a female. He didn't even tell me
14 by name. He just said there were two individuals coming over
15 that potentially knew Jahar, yes.

16 Q. And you first met those two, Bayan and Azamat, at the
17 Massachusetts State Police Barracks. They were brought by
18 patrol car, by the New Bedford Police Department, correct?

19 A. Yes.

20 Q. And you reviewed the videotapes?

21 A. Yes.

22 Q. You said those are the videos from the Massachusetts State
23 Police Barracks that evening?

24 A. Yes.

25 Q. And do you recall that both of the individuals, Bayan and

1 Azamat, were brought in in handcuffs with cuffs behind their
2 back, correct?

3 A. Yes.

4 Q. Now, it was quite some time later, two hours later, in
5 fact, that you met with Dias Kadyrbayev, correct?

6 A. It's about two hours, yes.

7 Q. About 9:00 p.m.? Does that sound fair?

8 A. Yes.

9 Q. And did you come to learn that Mr. Kadyrbayev had been
10 locked in a New Bedford Police car out in the parking lot of
11 the State Police Barracks for more than two-plus hours?

12 A. I didn't learn at the time, but I did learn that he had
13 been out there for some time.

14 Q. And you said you met him out in the parking lot along with
15 another agent, correct?

16 A. Yes.

17 Q. And who was that agent, again?

18 A. Agent Schiliro.

19 Q. And when you met Mr. Kadyrbayev, do you remember what he
20 was wearing?

21 A. Yes. Pants, shorts, kind of longer shorts, shorter than
22 pants, shoes, and I believe that's it.

23 Q. So, no shirt?

24 A. No shirt.

25 Q. And he was handcuffed with standard metal cuffs in front

1 of him, correct?

2 A. Yes.

3 Q. Do you remember when you walked into the -- you recall the
4 Barracks, correct?

5 A. Yes.

6 Q. And when you walk in, is the public reception area where
7 the two bathrooms are on the right, correct?

8 A. Correct.

9 Q. And then there's the standard bullet-resistant glass where
10 the officer sits behind?

11 A. Yes.

12 Q. When you first walked into the public area of the
13 Barracks, do you remember Mr. Kadyrbayev holding his wrists up
14 to you to take the handcuffs off?

15 A. I don't recall that, but it may have happened.

16 Q. And you did not uncuff him right there in the reception
17 area; you took him back into the secure area of the Barracks,
18 correct --

19 A. Yes.

20 Q. -- where you had to get buzzed in by the Trooper behind
21 the glass?

22 A. Yes.

23 Q. And at some point back there you removed his handcuffs,
24 correct?

25 A. Yes.

1 Q. Do you remember where that was?

2 A. My best recollection is that it was in the interview room
3 we were in.

4 Q. All right. And that was, as you described, a work area
5 with several desks in a U-shaped form?

6 A. Yes, an actual office. It wasn't an interview room, but
7 it was an office.

8 Q. And by an "interview room," you mean a room set up for
9 taped interrogations, correct?

10 A. No.

11 Q. Well, an interview room is a room that's normally
12 windowless, correct?

13 A. Yes.

14 Q. And it will have a small table and some chairs, correct?

15 A. Correct.

16 Q. And depending on the jurisdiction, it will be set up for
17 audio and video, correct?

18 A. I don't know. I don't have much experience with different
19 jurisdictions. I know for the FBI -- no, that part is not
20 correct. It will usually be a room, chairs, table, pretty
21 blank, pretty sparse, just set up for an interview.

22 Q. And you said you are not very familiar. Is that because
23 in your almost seven years in the FBI you have not video- or
24 audio-taped an interview?

25 A. That's right.

1 Q. The FBI policy does allow video and audiotapes of
2 interviews, correct?

3 A. I believe so, yes.

4 Q. You're familiar with an FBI memorandum that outlines the
5 appropriate times to audio and videotape interviews?

6 A. I am not, no.

7 MR. CAPIN: Objection as to relevance, your Honor.

8 THE COURT: I think I will sustain that objection. I
9 am not sure where this goes. They did not have a video. Is
10 there some suggestion that it was in violation of some
11 procedure?

12 MR. STAHL: Well, as in our brief in an exhibit, your
13 Honor, there is a policy that allows it. It talks about the
14 circumstances. One of them would be if you are interviewing
15 someone in a high-profile case, someone that's not a natural
16 English speaker, that that would be the best proof to show that
17 the person understands what's going on.

18 THE COURT: All right. I will look at that, but it
19 does not seem to me to be particularly relevant here, unless it
20 is developed more fully.

21 BY MR. STAHL:

22 Q. Were you aware that there were interview rooms in the
23 Massachusetts State Police Barracks that you were in that were
24 equipped with audio and video recording devices?

25 A. I was not aware of that.

1 Q. And for your purposes, you did not want to audio or video
2 record the interview, correct?

3 A. Yes.

4 MR. CAPIN: Objection, your Honor.

5 THE COURT: Well, I will put the question.

6 Why didn't you audio or video record it?

7 THE WITNESS: That's not what we do, and I wasn't
8 aware that it was even an option at the time.

9 THE COURT: Go ahead.

10 BY MR. STAHL:

11 Q. So, after you are back in this room, you at some point
12 take the handcuffs off Mr. Kadyrbayev, correct?

13 A. Yes, sir.

14 Q. Do you recall saying to him, you or Agent Schiliro, that
15 you did not know that he was going to be handcuffed, and that
16 you certainly wanted to remove those handcuffs?

17 A. I believe it was more to the effect that we didn't know he
18 would be handcuffed that long.

19 Q. And that's because, of course, you had some indication he
20 would be handcuffed, because the other two individuals two
21 hours earlier had come in handcuffed, correct?

22 A. Yes.

23 Q. So, after you un-handcuff him, you and Agent Schiliro, you
24 escort him to the Men's Room, correct?

25 A. Yes.

1 Q. And you held open the door while he was using the Men's
2 Room, correct?

3 A. I did not. It was Agent Schiliro.

4 Q. But one of you did, correct?

5 A. Yes.

6 Q. And you had testified that that's for the Agents' safety,
7 number one, correct?

8 A. Yes, that's part of it. Yes.

9 Q. And, two, to make sure that the defendant wasn't doing
10 anything that he shouldn't be doing, correct --

11 A. Correct.

12 Q. -- such as flushing evidence or gaining access to
13 something he shouldn't have, correct?

14 A. Yes.

15 Q. Was Mr. Kadyrbayev a defendant at that moment?

16 A. No.

17 Q. Was he a danger to you?

18 A. Weren't sure of it, but didn't believe so.

19 Q. Well, you knew that he had been thoroughly searched
20 before, correct?

21 A. I was assuming that, but we had not searched him, so I
22 wasn't sure.

23 Q. Well, he wasn't wearing a shirt, correct?

24 A. Yes.

25 Q. And he was wearing what you said was a longer pair of

1 shorts?

2 A. Yes.

3 Q. And a pair of sneakers or shoes, correct?

4 A. Yes.

5 Q. And he had been handcuffed for the last number of hours in
6 the back of a patrol car, correct?

7 A. Yes.

8 Q. And he was there, as you told him, to assist you, correct?

9 A. Yes.

10 Q. But you still perceived that he could potentially -- it
11 warranted you or one of the agents to keep an eye on him when
12 he was in the bathroom, correct?

13 A. Yes.

14 Q. Do you remember one of your first conversations and him
15 understanding or not understanding something was -- do you
16 recall when he was asked whether he has to use the restroom
17 that he said to you, "Well, if it's only going to be 20 or 30
18 minutes, then no"? Do you recall that?

19 A. Yes.

20 Q. And you said, "Well, it could be a little longer than
21 that; you probably should go," correct?

22 A. Yes.

23 Q. And do you remember you asked him, "Do you have to go
24 number one or number two?"

25 A. Yes.

1 Q. And he had no idea what that meant, correct?

2 A. Yes.

3 Q. And you explained what it was -- we don't need to go into
4 detail -- but he then said, "Number one," correct?

5 A. Right.

6 Q. So, after he was done in the bathroom, then both you and
7 Agent Schiliro escorted him back to the secure area of the
8 State Police Barracks, correct?

9 A. Yes.

10 Q. That meant that the Trooper behind the glass had to buzz
11 you in, correct?

12 A. Yes.

13 Q. Even you using the Barracks that night did not have your
14 own keys or key card to get in and out by yourselves, correct?

15 A. I did not. I don't know if that was how you could even
16 get back there, but that's right.

17 Q. But each time you came in and out you had to get buzzed
18 in, correct?

19 A. Yes, sir. If I could add, I'm not sure if you needed that
20 to leave, but certainly to enter. But I'm not sure.

21 Q. Certainly to get in, correct?

22 A. Yes.

23 Q. Now, in the Advice of Rights Form you said that before
24 that you sat Mr. Kadyrbayev down, and you said that you wanted
25 to speak with him, correct?

1 A. Yes.

2 Q. And that you said something about it had been a crazy
3 week, and that maybe he could help you out and the other agents
4 out in understanding what's going on, correct?

5 A. Yes.

6 Q. And so, you wanted him to feel comfortable, correct?

7 A. Yes.

8 Q. And you wanted him to talk with you, correct?

9 A. Yes.

10 Q. And you said, "Dias" -- and quickly you started calling
11 him "Dias," correct?

12 A. Yes.

13 Q. You said, "Dias, we really would like to speak with you.
14 We need your help. You're not under arrest." Correct?

15 A. Yes.

16 Q. "And so, for us to talk to you, you have to sign this
17 form."

18 Do you remember saying that?

19 A. I would rephrase that a little bit. I would say it's,
20 "For us to sit down and speak, we would like you to sign this
21 form, but it's your choice."

22 Q. Okay. So, it's changing it from, "You need to sign this
23 form," to, "We would like you to sign this form," correct?

24 A. Yes.

25 Q. And then you said you showed him the standard form, which

1 has been entered into evidence, correct?

2 A. Yes.

3 Q. And you said Agent Schiliro filled out the top of the
4 form, correct?

5 A. Yes.

6 Q. And that started at 9:08 p.m., according to the form,
7 correct?

8 A. Yes. If that's the time on the form, yes.

9 Q. And, by the way, there's no times as to any of these forms
10 reflected in the 302s, correct?

11 A. Correct. Yeah, the form speaks for itself.

12 Q. It's not a trick question.

13 A. Yeah.

14 Q. And now, from 9:08 till when it was signed, at 9:14,
15 that's a period of six minutes, correct?

16 A. Yes. There's a difference of six minutes, yes. But I
17 wouldn't say that it was signed at 9:14. Is that right?

18 Q. Would you like to see the form again?

19 A. Yes, please.

20 MR. STAHL: Mr. Capin, do you have the exhibits?

21 MR. CAPIN: I believe Mr. Lovett has them.

22 THE COURT: It should be Exhibit 4, I believe.

23 MR. STAHL: Thank you. Is the system on?

24 BY MR. STAHL:

25 Q. So, this is the form we have been talking about,

1 Exhibit 4, Agent?

2 A. Yes.

3 Q. And the 9:08 p.m. on 4/19/13, and the address, that's
4 filled out by Agent Schiliro, correct?

5 A. Yes.

6 Q. And then at the bottom it says, "9:14 p.m.," and that's
7 under the signature of Dias, your signature and Agent Schiliro,
8 correct?

9 A. Yes.

10 Q. Now, you have testified that in between that six-minute
11 period you went over a number of things with Dias, correct?

12 A. Yes.

13 Q. You said that Agent Schiliro read the form out loud, but
14 then you provided some ground rules, correct?

15 A. Yes.

16 Q. And then you said that at that point Dias stopped and
17 said, "I need a lawyer?", correct?

18 A. Yeah. I don't remember those exact words, but, "Do I need
19 a lawyer?"

20 Q. And you testified that you told him that you couldn't
21 offer him legal advice, something to the effect that you don't
22 know what he knows. Do you remember that?

23 A. Yes.

24 Q. And do you also remember telling him that, "You're not
25 under arrest, you're just here to help us"? Do you recall

1 telling him that?

2 A. Not in response to that, but, yes, during that -- during
3 the -- not as a response to the, "Do I need a lawyer,"
4 question.

5 Q. But during that six-minute period we are talking about?

6 A. Yes.

7 Q. So, again, you told him that, "You're just here to help
8 us," right?

9 A. Yes.

10 Q. You said also that he misunderstood and said, "I'm under
11 arrest?" (indicating)?

12 A. Yes.

13 Q. Sort of like that, correct?

14 A. Right, right.

15 Q. And you again told him, "No, you're not under arrest,"
16 correct?

17 A. Correct.

18 Q. And, obviously, I take it, Dias was quite relieved at that
19 point?

20 A. Yes.

21 Q. In fact, you said that you joked about it, about the
22 misunderstanding, correct?

23 A. Yes.

24 Q. And then after that is when Mr. Kadyrbayev signed the
25 form, correct?

1 A. Yes.

2 Q. Now, you talked about the consent forms.

3 By the way, I just want to back up a moment. When he
4 used the restroom did you offer him anything to drink?

5 A. Yes, I believe so. There was a water fountain right
6 there.

7 Q. And did you at any time during the evening offer him
8 anything to eat?

9 A. Yes.

10 Q. If you had done that, would that be reflected in your 302?
11 And let me be more specific, because your 302 does say that you
12 offered him periodically water and periodically a bathroom
13 break, but there is no mention of any food.

14 A. Yes. So, I would say that the 302 covers the time of --
15 the substantive time of the interview, but after that, actually
16 I went out to Dunkin' Donuts later that night and had brought
17 some stuff back.

18 Q. And besides just for you and the Agents and the Troopers,
19 you offered the doughnut run to Dias, Azamat and Bayan as well?
20 Is that your testimony?

21 A. I may not include Bayan in there. I don't think I ever
22 spoke to Bayan in there. Maybe indirectly through another
23 agent.

24 Q. You don't have a clear recollection of this at all, do
25 you?

1 A. Which part?

2 Q. Offering food.

3 A. Oh, I do.

4 Q. And it was the doughnuts late in the night? About what
5 time was that?

6 A. I would estimate about 2:00 a.m.

7 Q. Now, unlike the Advice of Rights Form that we just looked
8 at, on the consent forms there are no times, correct?

9 A. The Consent to Search Forms?

10 Q. Yes.

11 A. Correct.

12 Q. And so, any times that you were talking about, they are
13 not written in your 302 either, correct?

14 A. Correct.

15 Q. And so, you are going by your best recollection,
16 correct --

17 A. Yes, sir.

18 Q. -- of what happened approximately 13, 14 months ago?

19 A. Yes.

20 Q. Did you know that Mr. Kadyrbayev was a foreign student?

21 A. Yes.

22 Q. Did you come to find out where he was from?

23 A. Yes.

24 Q. Did you discuss with him what languages he was comfortable
25 with?

1 A. Yes, I believe so.

2 Q. Did you come to find out that Russian is his primary
3 language, correct?

4 A. Yes.

5 Q. Then Kazakh?

6 A. I don't know about Kazakh.

7 Q. And then last is English?

8 A. Yes.

9 Q. And he spoke with an accent, correct?

10 A. Yes.

11 Q. And we know that there were several times that we have
12 talked about already, in addition to some others we will get
13 to, but that he did not understand what was being said,
14 correct?

15 A. Are you referring to the arrest conversation?

16 Q. Referring to the arrest conversation, one, referring to
17 the bathroom conversation, two. Correct?

18 A. Yes.

19 MR. CAPIN: Objection. I'm not sure I know --

20 THE COURT: Is that withdrawn?

21 MR. CAPIN: Yes, withdrawn.

22 BY MR. STAHL:

23 Q. And did you stop at each point of your questioning
24 throughout the many hours and make sure that Dias understood
25 precisely what was being asked, or was it more just a question

1 and some answers back and forth? Do you understand what I
2 mean?

3 A. Yes, yes. And if we could refer back to both those points
4 you made, both the arrest misunderstanding and the bathroom
5 misunderstanding, it was clear that there was a
6 misunderstanding, and we worked through it, just like in those
7 cases there would be other points where, if it was a crucial
8 point we made sure that we were on the same page on things. If
9 there was a certain point where we were working through
10 something, I would make sure that -- we both made sure to say
11 things like, "Well, we don't want to put words in your mouth,
12 so let's make sure you're saying things."

13 Q. And Dias did a lot of nodding. Did you notice that
14 characteristic of what he does, he nods "Yes" a lot?

15 A. Independent, like -- a nod. We would look for an
16 affirmative answer, verbal as well as a nod.

17 Q. Have you had experience interviewing other people that
18 English is not their first language?

19 A. Yes.

20 Q. How often? How many times?

21 A. Many times. My primary focus -- I work on a Squad that
22 deals with Pakistan and Afghanistan terrorism matters, so a
23 good majority of the time I am speaking with non-English
24 primary language.

25 Q. And of course, then, you are familiar with individuals

1 that English is not their primary language, that in addition to
2 listening to you, they are translating it to the primary
3 language in their head, correct?

4 A. Sure. In most cases, yeah.

5 Q. And that on those occasions there is going to be
6 conversations or words that they cannot translate, but they are
7 trying to put it into a context to think that they understand
8 it. Do you understand what I mean?

9 MR. CAPIN: Objection.

10 THE COURT: Well, I will permit him to respond.

11 A. Yes.

12 BY MR. STAHL:

13 Q. Now, throughout the approximately 7 1/2 hours that Dias
14 was with you, right, from 9:00 p.m. till 4:30 a.m. --

15 A. Yes.

16 Q. -- he remained shirtless, correct?

17 A. Yes.

18 Q. On a number of occasions, or at least one occasion, he
19 asked you or Agent Schiliro if he could have a shirt, or a
20 blanket, or something to put on because he was cold. Do you
21 remember that?

22 A. I do, yes.

23 Q. And your response -- when I say "you," interchangeably you
24 or Agent Schiliro, because you were present -- was that, "We
25 don't have anything for you," correct?

1 A. That's correct.

2 Q. I take it this was an unusual circumstance, where you were
3 interviewing somebody for that long where they were shirtless,
4 correct?

5 A. Yes.

6 Q. That's not FBI procedure, is it?

7 A. It is not.

8 Q. And you saw during the course of this 7 1/2 hours that
9 Dias was tired, correct?

10 A. Yes.

11 Q. And he would nod out at times?

12 A. Not during the interview, but he did nap post-interview.

13 Q. By "nap" do you mean put his head in his hands while he
14 was sitting at the desk, correct?

15 A. Yes, kind of head down on hands.

16 Q. And at one point one of the agents actually told him that
17 he could lie on the floor of the office and take a nap, right?
18 Do you remember that?

19 A. I do not remember that.

20 Q. So, you were not in the room for that comment?

21 A. Yes, correct.

22 Q. You said that your interview went from approximately
23 9:00 p.m. till 12:30 or a little later, correct?

24 A. Yes.

25 Q. And I think you testified on direct that it wasn't until

1 around midnight or so that Dias said some things that were of
2 interest to you about Jahar's dorm room, correct?

3 A. Correct.

4 Q. And you said that Dias had not asked to leave at any point
5 during this 7 1/2 hours, correct?

6 A. Correct.

7 Q. But you also admitted that you had never said to him
8 during that time that he could leave, or that you would take
9 him home, correct?

10 A. Correct.

11 Q. Now, your 302 -- and, again, when I say "yours," yours and
12 Agent Schiliro's -- goes on for six pages. You'll take that
13 representation?

14 A. Yes.

15 Q. And I take it that when you talk to somebody for 3 1/2, 4
16 hours, you're not constantly writing verbatim what they say,
17 correct?

18 A. Are you asking me about my note-taking style or what the
19 FBI does?

20 Q. Well, I guess you didn't take these notes, correct?

21 A. Correct.

22 Q. So, when you are preparing the report, you are going off,
23 since you didn't take notes, your memory, correct?

24 A. Yes.

25 Q. And you are doing the best you can to recollect what was

1 said, correct?

2 A. Yes.

3 Q. And so, you do not have verbatim statements in your
4 report, correct, in this particular case?

5 A. Right. Just so we are clear, it's not like we write it in
6 a vacuum. Both of us are putting statements in there. So,
7 it's Steve's notes but our collective memory.

8 Q. But you are not drafting the report and you are not on a
9 computer when you are interviewing Mr. Kadyrbayev, right?

10 MR. CAPIN: Objection to relevancy. Objection.

11 THE COURT: Overruled.

12 A. Yes, we are not typing it while we're interviewing.

13 BY MR. STAHL:

14 Q. Thank you.

15 Now, you said that towards the end -- well, around
16 4:30 a.m. you were part of the team of six agents that drove
17 Dias, Azamat and Bayan back to Carriage Drive, correct?

18 A. Yes.

19 Q. What was your purpose of driving them back?

20 A. Primarily, to bring them home and build goodwill in case
21 we needed to see them again the next day.

22 Q. So, this was part of the rapport-building, correct?

23 A. Yes.

24 Q. And that was, in case you wanted to interview them again,
25 you wanted to be on good terms, correct?

1 A. Yes.

2 Q. Now, do you remember who drove with who?

3 A. I do not.

4 Q. Do you remember who you drove with?

5 A. I remember I drove with -- no, not clearly.

6 Q. But it's fair to say there was two agents up front in each
7 car, and each of the three individuals were in separate cars in
8 the rear passenger seat?

9 A. Yes.

10 Q. And you all got out of the cars at the same time and
11 walked up to the front of the apartment, correct?

12 A. Yes, within a few moments of each other.

13 Q. And you asked, "Can we come in?"

14 A. Yes.

15 Q. Now, when you did that, did you or any of the agents then
16 go through the apartment to make sure it was secure?

17 A. Yes.

18 Q. And what were you looking for?

19 A. Other people or anything else that might be of concern to
20 us.

21 Q. So, it was for the Agents' safety, correct?

22 A. General safety, yes.

23 Q. You were checking the perimeter?

24 A. The inside, yes, but, yeah.

25 Q. Making sure that no one was hiding in the apartment that

1 could be a danger to you and the other Agents?

2 A. Yes.

3 Q. So, it wasn't for the protection of Dias, Azamat or Bayan;
4 it was for the Agents' protection, correct?

5 A. Well, I would include that in general safety, as we don't
6 know what's in here, let's make sure we know what's in here.

7 Q. And you and the other Agents knew that there was a couple
8 of items, a hat and an ashtray, that you wanted to retrieve,
9 correct?

10 A. That wasn't our objective for going in.

11 Q. But you did retrieve it after you went in, correct?

12 A. Yes.

13 Q. So, it worked out, then?

14 MR. CAPIN: Objection.

15 THE COURT: I am not sure what "worked out" means.

16 BY MR. STAHL:

17 Q. Well, you were able to retrieve the items that you had
18 heard about in the interviews, correct?

19 A. Yes. I'm not entirely sure we took both items, but, yes,
20 I know they were there. We saw them. I'm not sure if we took
21 one of the items.

22 THE COURT: Did you discuss them during the interview?

23 THE WITNESS: Yes.

24 THE COURT: Go ahead.

25 MR. STAHL: May I have a moment?

1 THE COURT: Yes.

2 (Counsel conferred off the record)

3 BY MR. STAHL:

4 Q. Just a few more things, Agent.

5 A. Sure.

6 Q. Before you went into the apartment, and before you took
7 the individuals back, I understand that you and the other
8 agents briefed Agent Walker, correct?

9 A. Yes.

10 Q. And you told them, in sum and substance, what you had
11 collectively learned during the evening of the three
12 interviews, correct?

13 A. Yes.

14 Q. And did you tell him -- and I don't want to go into the
15 substance of those statements; I'm focusing just on these two
16 items, the hat and the ashtray. Did you tell Agent Walker that
17 there were some items that may be of interest back at the
18 apartment, and since he was the senior and the local agent, for
19 him to make a decision whether you should go in and take those
20 items?

21 A. I don't recall that conversation taking place.

22 Q. It may have, it may not have, you just don't recall?

23 A. Correct.

24 Q. One last area, Agent Azad. When talking about certain
25 words and concepts that evening with Dias, do you recall that

1 Dias had trouble with certain words and could not find the
2 words for certain things?

3 A. Yes.

4 Q. And did you at that point offer to bring in a translator
5 or someone that spoke Russian to assist him?

6 A. I don't recall doing that.

7 Q. Did you try to work your way around and suggest words to
8 him?

9 A. At times, yes. But always if we could, where we could, it
10 was letting him speak, and then where we would work together on
11 things it was to the point of, "We don't want to put words in
12 your mouth. Is this right? Is this what you mean? Make sure
13 you're comfortable saying that."

14 Q. So, if I understand you correctly, there were times when
15 you went through and tried to suggest words, but you would try
16 to make sure he understood what you were talking about,
17 correct?

18 A. We would work through words and make sure it was what he
19 meant to convey, yes.

20 Q. Or what you thought he meant to convey, correct?

21 A. Well, that's why we would ask him, yes.

22 Q. And at times even that didn't work, and you asked him to
23 draw what he was talking about, correct?

24 A. I believe he did drawings, yes.

25 MR. STAHL: I have nothing further, your Honor.

1 THE COURT: All right.

2 Mr. Wooldridge, I will permit you to examine so much
3 as dealt with Mr. Tazhayakov, if you wish to. I do not know
4 much time you want to take, but this is a point to break.

5 MR. WOOLDRIDGE: Sure, Judge.

6 MS. SIEGMANN: Is this limited to the scope of the
7 consent, your Honor?

8 THE COURT: This is limited to anything that was
9 brought out by any of the attorneys having to do with
10 Mr. Tazhayakov.

11 MR. WOOLDRIDGE: Thank you, your Honor.

12 CROSS-EXAMINATION

13 BY MR. WOOLDRIDGE:

14 Q. Hi, Agent Azad.

15 A. Hello.

16 Q. It's my understanding that you testified on direct with
17 the U.S. Attorney that you had my client sign a Consent to
18 Search Form?

19 A. Yes.

20 Q. And the time that he signed that form was 7:50?

21 A. That Consent to Search Form?

22 Q. Yes.

23 A. I don't know if I have an exact time for that.

24 Q. Isn't that the time that you testified?

25 A. Oh, I think we approximated about ten minutes or so.

1 Q. Ten minutes of what?

2 A. After the time on the Advice of Rights Form.

3 Q. So, he signed the Advice of Rights Form first, and then he
4 signed the Consent to Search Form?

5 A. Yes.

6 Q. That's your testimony?

7 A. Yes.

8 Q. You also testified that you offered my client some
9 Dunkin' Donuts?

10 A. Yes.

11 Q. And that was about 2:00 a.m., right?

12 A. Yes.

13 Q. And where did you get the Dunkin' Donuts at? I understand
14 you got the Dunkin' Donuts, but which Dunkin' Donuts?

15 A. I don't know the geography too well. The one down the
16 road, closest one.

17 Q. The closest one to the Barracks?

18 A. Yes. Dunkin' Donuts.

19 Q. Did you pay for it with a credit card?

20 A. No. I don't know. No, probably not.

21 Q. Cash?

22 A. Yes.

23 MR. CAPIN: Objection, your Honor.

24 THE COURT: I am not sure that this is going to be a
25 fruitful or nourishing form of examination.

1 MR. WOOLDRIDGE: I understand, Judge. I don't think
2 it's very nourishing at all, but we're curious about where
3 this --

4 THE COURT: I am curious about a lot of things, but I
5 would like to keep control in the courtroom during the relevant
6 time period.

7 MR. WOOLDRIDGE: Okay, your Honor.

8 (Pause)

9 MR. WOOLDRIDGE: No more questions.

10 THE COURT: Mr. Capin, anything?

11 MR. CAPIN: Briefly, if I may.

12 REDIRECT EXAMINATION

13 BY MR. CAPIN:

14 Q. Just three quick lines, I think, of inquiry for you,
15 Special Agent Azad.

16 First of all, Mr. Stahl asked you some questions about
17 your wanting to make Mr. Kadyrbayev comfortable at the
18 beginning of the interview. Do you remember those questions?

19 A. Yes.

20 Q. What was the primary purpose of interviewing Kadyrbayev on
21 the evening of April 19th?

22 A. To get consent for the vehicle, to search the vehicle.

23 Q. By "primary purpose," I don't mean the first thing you
24 did, but what was the overall goal of interviewing him? What
25 information were you trying to get from him?

1 A. Everything he knew. He appeared to be actually associated
2 with Jahar, and we just wanted to learn what we could.

3 Q. And for the first couple of hours of the interview did you
4 have any reason to believe that he, in fact, had gone into
5 Jahar's room and removed items?

6 A. No.

7 Q. So, that came from him during the interview?

8 A. Yes.

9 Q. Second line of questions -- this is actually the only
10 other line of questions -- with regard to language. Mr. Stahl
11 said at times he had to resort to drawing things.

12 MR. CAPIN: May I approach, your Honor?

13 THE COURT: You may.

14 BY MR. CAPIN:

15 Q. Do you recognize the drawing that I'm showing you?

16 A. Yes.

17 Q. Was that drawn by Kadyrbayev?

18 A. Yes.

19 Q. Other than that, did he draw anything else, to your
20 memory?

21 A. I don't believe he drew, but I think he helped with
22 directions, drawing out directions from the apartment to the
23 dumpster.

24 Q. So, again, another graphic depiction of something?

25 A. Yes.

1 Q. And what is the drawing that I have shown you?

2 A. This was a drawing of the fireworks that had been taken.

3 Q. So, had you asked him to describe fireworks inside
4 Tsarnaev's dorm room that night?

5 A. Yes.

6 Q. And this is the drawing he made in response to that?

7 A. Yes.

8 Q. Did he ever draw anything based on an inability to
9 understand words --

10 A. No.

11 Q. -- or language?

12 And the last few questions.

13 MR. CAPIN: I don't feel a need to offer this, your
14 Honor, but I will if --

15 THE COURT: No.

16 BY MR. CAPIN:

17 Q. The last few questions as regards language again, during
18 your -- how long did you say you interviewed Kadyrbayev?

19 A. I believe it was 3 to 3 1/2 hours.

20 Q. And during that interview were you speaking English to
21 him?

22 A. Yes.

23 Q. Was he speaking English to you?

24 A. Yes.

25 Q. Were you understanding the words he was saying to you?

1 A. Yes.

2 Q. Was he doing anything to signal to you that he didn't
3 understand the words you were saying to him?

4 A. No.

5 Q. Were his answers to your questions responsive?

6 A. Yes.

7 Q. That is, if you asked him about, "What color is your car,"
8 he would answer in a manner that reflected he understood your
9 question?

10 A. Yes. The answers were appropriate to the questions we
11 were asking.

12 Q. Mr. Stahl referred to a six-page FBI 302 you prepared. Is
13 it fair to say that that 302 covers much, if not all, of the
14 topics that you discussed with Mr. Kadyrbayev that night?

15 A. Yes.

16 Q. It doesn't cover things like "4:20," though, does it?

17 A. It does not.

18 Q. It doesn't cover others -- did you talk about sports types
19 of things?

20 A. I believe so, yes.

21 Q. That's not in the 302, is it? So, the 302 is a subset of
22 the topics that he was able to convey to you in English?

23 A. Yes.

24 MR. CAPIN: I would offer the 302 at this time, your
25 Honor, on this point only.

1 THE COURT: Any objection?

2 MR. STAHL: You're offering the 302 on what grounds?

3 MR. CAPIN: On the grounds that it reflects his
4 ability to comprehend and communicate in English.

5 MR. STAHL: Objection.

6 THE COURT: Sustained.

7 MR. CAPIN: Nothing further.

8 MR. STAHL: May I, your Honor?

9 THE COURT: Yes, limited to the redirect.

10 MR. STAHL: Of course.

11 RECROSS EXAMINATION

12 BY MR. STAHL:

13 Q. Agent Azad, I think that you got a little confused with
14 Mr. Capin's questions about the drawing. And what I am talking
15 about is you recall clearly, do you not, that Mr. Kadyrbayev
16 did not know the word "fireworks," correct; that that's one of
17 the reasons that there was a drawing?

18 A. I believe he was trying to -- we asked for a drawing so we
19 would know what type of fireworks he was talking about so we
20 could look for them. I don't believe there was a
21 miscommunication over the word or the meaning of what he was
22 taking.

23 Q. All right. Think carefully. Mr. Kadyrbayev did not know
24 the word "fireworks." Do you recall that?

25 MR. CAPIN: Objection. Asked and answered.

1 THE COURT: Well, no. I will permit this question.

2 BY MR. STAHL:

3 Q. Do you recall him describing in other words and with hand
4 gestures and things about what goes on at certain times of the
5 year; he did not know the know "fireworks"? Do you recall
6 that?

7 MR. CAPIN: Objection, your Honor. Mr. Stahl is
8 confusing witnesses -- defendants.

9 THE COURT: There are some witnesses who might be
10 confused. I am not sure this was one of them.

11 So, if you can answer the question. Did he know the
12 word "fireworks" when you first used it?

13 THE WITNESS: I don't recall the specific -- if he
14 remembered the word "fireworks" or not, but I remember the hand
15 gestures and the time of year, and explaining when you see
16 fireworks, referring to the explanation of, "Yes, this is what
17 we're talking about."

18 BY MR. STAHL:

19 Q. And do you also recall that he did not know the word
20 "fuse," that's in your 302?

21 A. I don't recall that. But, yes.

22 THE COURT: What is the answer?

23 THE WITNESS: I don't recall that.

24 BY MR. STAHL:

25 Q. You simply don't recall?

1 A. But, yes, the word "fuse" is in the 302.

2 Q. And that could be your word, correct, or Agent Schiliro's?

3 A. Yes.

4 Q. And, similarly, do you recall that he did not know the
5 word "dumpster"?

6 A. I don't recall that.

7 Q. But, again, that could be a word that you or Agent
8 Schiliro put in after some discussion with Mr. Kadyrbayev,
9 correct?

10 A. Yes.

11 MR. CAPIN: Objection.

12 THE COURT: Overruled.

13 MR. STAHL: I have nothing further.

14 THE COURT: All right. Mr. Wooldridge, anything?

15 MR. WOOLDRIDGE: I don't think there was anything
16 brought up.

17 THE COURT: No more doughnut questions?

18 MR. WOOLDRIDGE: No more doughnut questions, your
19 Honor. I don't think anything was brought up about Azamat.

20 THE COURT: Sure.

21 So, let us take an afternoon break.

22 You can step down.

23 (Witness stepped down)

24 THE COURT: We will be back at 3:15.

25 THE CLERK: All rise.

1 (The Honorable Court exited the courtroom at 3:00 p.m.)

2 (Recess taken)

3 THE CLERK: All rise.

4 (The Honorable Court entered the courtroom at 3:15 p.m.)

5 THE CLERK: This Honorable Court is back in session.

6 You may be seated.

7 THE COURT: You may call your next witness.

8 MR. CAPIN: She's on the stand, your Honor. The
9 Government would call Candice Kelly.

10 THE CLERK: Please raise your right hand.

11 SPECIAL AGENT CANDICE MARIE KELLY, DULY SWORN BY THE CLERK

12 THE CLERK: Please state your full name, spelling your
13 last.

14 THE WITNESS: Candice Marie Kelly. Last name is
15 spelled K-E-L-L-Y.

16 THE COURT: You may be seated.

17 DIRECT EXAMINATION

18 BY MR. CAPIN:

19 Q. How are you employed?

20 A. I am employed as a Special Agent with Homeland Security
21 Investigations.

22 Q. How long have you been a Homeland Security
23 Investigation -- is that commonly referred to as "HSI"?

24 A. Correct.

25 Q. How long have you been an HSI Investigator?

1 A. Since November of 2007.

2 Q. And I am going to direct your attention to April 20th of
3 last year, 2013.

4 A. Okay.

5 Q. Did you work that day?

6 A. I did.

7 Q. Where were you at about 3:00 p.m. that day?

8 A. At 3:00 p.m. on the 20th, I was at 69 Carriage Lane.

9 Q. And what town is that in?

10 A. That's in Dartmouth, Massachusetts.

11 Q. And were you alone?

12 A. I was not alone.

13 Q. Who were you with?

14 A. I was with roughly four to seven other special agents.

15 Q. And what did you do when you got to 69 Carriage?

16 A. When we arrived at 69 Carriage Lane, myself and another
17 Special Agent, Jamie Wiroll, went to the front of the property,
18 other agents had gone to the back of the property, and we went
19 up and we knocked on the door.

20 Q. Did you eventually enter an apartment at that location?

21 A. I did eventually enter the apartment. I entered the
22 apartment after I was let in by other Special Agents that had
23 made entry prior to me. They were allowed in through the back
24 sliding door of the apartment.

25 Q. You say "allowed in." So, the occupants let them in

1 through another door?

2 A. Correct.

3 Q. And who lived in that apartment at the time, to your
4 knowledge?

5 A. To my knowledge, at the time living in that apartment was
6 Azamat and Dias.

7 Q. And can you just describe the interior, briefly, of the
8 apartment?

9 A. When you walked into the apartment there was a main living
10 area, which attached to that was a kitchen and an eating area,
11 and then from there, if you went down the hallway, there was a
12 bathroom and two other bedrooms.

13 Q. What space did you enter when you first entered the
14 apartment?

15 A. I entered in through the front door.

16 Q. And did you arrive into what you described as the living
17 area?

18 A. Yes, the main common living area.

19 Q. And what did you observe when you walked into the living
20 area?

21 A. When I walked into the living area, I encountered that
22 Azamat and Dias, as well as another female friend of theirs,
23 was all there.

24 Q. Were they standing or sitting?

25 A. At that time I can't remember exactly, but some may have

1 been standing and some may have been sitting, but I can't say
2 specifically who.

3 Q. Aside from the Agents and the two defendants, Azamat and
4 Dias and their female friend, was there anybody else in the
5 apartment?

6 A. There was. There was another female that was stated to be
7 one of their mothers.

8 Q. One of the defendants' moms?

9 A. Correct.

10 Q. At some point did that woman join you in the living room?

11 A. She did.

12 Q. At some point did they all sit down on a couch?

13 A. They did.

14 Q. Describe what happened after they sat down.

15 A. Once they sat down, at that point in time we were trying
16 to make a determination of everybody's identity of who
17 everybody was that was there within the residence. So, we had
18 requested that everybody give us identification, in which they
19 willingly provided us with passports and drivers' licenses.

20 Q. Did you make conversation with the occupants, the two
21 women and the two men?

22 A. We did. We were in the apartment for quite some time,
23 based upon the fact that at that time we had to determine what
24 everybody's, as we say, status was within the United States.

25 And so, at that time we were calling into our Law Enforcement

1 Support Center to have what we would say as indices checks run
2 upon all the people that were there, to make determinations of
3 what their status was in the United States. That took roughly
4 20 to 25 minutes to do so.

5 Q. And were you making any sort of conversation or small talk
6 with the occupants?

7 A. We were, because one agent and, at times, two agents were
8 on the phone and dealing with that in terms of calling in to
9 the Support Center. So, the rest of us were just kind of
10 standing around, and so to fill that space and that time we
11 were making conversation.

12 Q. At some point did an agent from another law enforcement
13 agency arrive at 69 Carriage?

14 A. Yes. Special Agent Walker from the FBI came.

15 Q. How long had you been there when Special Agent Walker
16 arrived?

17 A. I can't say specifically, but maybe five, ten minutes. We
18 had been there a little while.

19 Q. And what did Special Agent Walker do when he arrived?

20 A. When he came in, he greeted the individuals that were
21 there. He greeted Azamat and Dias, and it appeared as though
22 he had already previously had had interactions with them and
23 had some sort of a rapport. They knew who he was.

24 He came in, and he sat down. He knelt down, from I
25 what remember, and was behind the couch that they were on and

1 began conversation.

2 Q. So, he sort of crouched down to talk to them?

3 A. Mm-hmm.

4 Q. How long did he talk to them?

5 A. He talked to them for most of the duration of the time
6 that we were there, but maybe 15 minutes. He completed,
7 though, before we left.

8 Q. And when Agent Walker arrived at that apartment, were the
9 defendants Azamat and Dias in custody?

10 A. At that time they were not in custody.

11 Q. When Agent Walker finished speaking with the defendants,
12 were they in custody?

13 A. At the time at which he completed, I don't believe that
14 they were in custody.

15 Q. How much time passed after he finished talking to the
16 defendants that -- strike that.

17 At some point did HSI take the two defendants into
18 custody that day?

19 A. We did.

20 Q. How much time after Agent Walker finished talking to them
21 were they taken into custody?

22 A. Maybe five minutes later.

23 Q. At any point before they were taken into custody, did you
24 or any other agent tell them that they were not free to leave?

25 A. We did not.

1 MR. CAPIN: I have nothing further, your Honor.

2 THE COURT: All right.

3 Mr. Stahl.

4 MR. STAHL: Yes, your Honor.

5 CROSS-EXAMINATION

6 BY MR. STAHL:

7 Q. Good afternoon, Agent Kelly.

8 A. Good afternoon.

9 Q. We met outside briefly. I'm Robert Stahl. I represent
10 Dias Kadyrbayev.

11 A. Yes.

12 Q. Do you recognize the two individuals here today?

13 A. I do.

14 Q. Did you write a report about this arrest?

15 A. I did not.

16 Q. You said that approximately four to seven other agents
17 were with you. Do you know how many?

18 A. I do not know an exact number. At different times, during
19 the first entry, there was four to seven, and later on
20 Agent Walker joined and then left. So, I can't say
21 specifically at the time that he left how many were remaining
22 within the residence.

23 Q. Before you came and testified today, what documents did
24 you review to refresh your recollection?

25 A. The only document that I read was a 213 Report that was

1 written by Jamie Wiroll.

2 Q. And what is a 213 Report?

3 A. A 213 Report is a narrative that's written for the
4 Immigration documents that goes to the Immigration Judge.

5 Q. And what you have testified to about four to seven agents
6 and where people were located and Agent Walker, none of that is
7 in Agent Wiroll's 213, correct?

8 A. It's not.

9 Q. So, did you take notes that day?

10 A. I did not.

11 Q. So, you are basing this on your recollection of some
12 13-or-so months ago, correct?

13 A. Correct.

14 Q. Now, was there a briefing and a meeting in some location
15 before you went to effectuate this arrest?

16 A. We met at a Dunkin' Donuts in Dartmouth.

17 Q. Is that near the State Police Barracks?

18 A. I don't know.

19 Q. And who met there at the Dunkin' Donuts?

20 MR. CAPIN: Objection on relevancy grounds, your
21 Honor.

22 THE COURT: I really do not see the relevance.

23 BY MR. STAHL:

24 Q. Was it just HSI, or was FBI there as well?

25 A. I remember Agent Walker being there.

1 Q. At that briefing what was told? What was discussed during
2 that meet-up with Agent Walker and the HSI Agents?

3 MR. CAPIN: Same objection, your Honor.

4 THE COURT: Overruled.

5 A. I did not have any conversations with Agent Walker at the
6 briefing.

7 BY MR. STAHL:

8 Q. No, I'm sorry. Maybe I wasn't clear. What was discussed
9 at the meeting, not did you talk to Agent Walker? But it was a
10 briefing before you went to effectuate the arrest, correct?

11 A. Correct.

12 Q. So, yourself and four to seven other agents were present?

13 A. Correct.

14 Q. And Agent Walker was present?

15 A. Correct.

16 Q. And who led the meeting?

17 A. The meeting was led by my Supervisor, Erica Petrillo (ph).

18 Q. I'm sorry?

19 A. The meeting was led by my Supervisor, Erica Petrillo, and
20 what we discussed was where the address was, the setup of the
21 address, meaning, we discussed the fact that it was an
22 apartment complex versus a regular free-standing house, and we
23 discussed who would go up to the door and knock to make initial
24 contact.

25 Q. And who was it that was going to go up to the door and

1 make initial contact?

2 A. Myself and Agent Jamie Wiroll.

3 Q. And how were you dressed that day?

4 A. I can't recall exactly, but I would refer to it as I was
5 in street clothes, since on a day-to-day basis we go to work
6 dressed in what we refer to as "street clothes," meaning we're
7 not in a uniform. But I did have on a bullet-proof vest with
8 police markings.

9 Q. And that was visible? You didn't have a jacket over that?

10 A. That was visible, yes.

11 Q. So, I take it your gun and your handcuffs were visible as
12 well, correct?

13 A. Correct.

14 Q. And you knew prior to entering the apartment that these
15 were not just, in law enforcement's view, two students that had
16 some violation of their F1 Student Visas, correct?

17 A. Can you rephrase that?

18 Q. You knew that this HSI action was also related to -- that
19 Dias and Azamat were in some way thought by law enforcement to
20 be involved in the Jahar investigation, correct, the bombing
21 investigation?

22 A. I didn't know them to have been involved. I knew them as
23 being associates, but I did not know of them as having any
24 involvement in that case.

25 Q. Well, I'm not saying they were involved either. I'm

1 simply saying that there was law enforcement activity around
2 that investigation, correct?

3 A. Correct.

4 Q. Did you have some uniformed officers with you as well,
5 local police officers?

6 A. I don't recall there being any local police officers, but
7 I have been told that there was one uniformed police officer
8 from the town.

9 Q. That would be New Bedford?

10 A. I can't recall.

11 Q. And there came a point in time where there was more than
12 one FBI agent, more than Agent Walker?

13 A. I don't recall there being anyone other than Agent Walker.

14 Q. Were you aware that prior to you going to knock on the
15 door that there had been an FBI surveillance team deployed in
16 the area?

17 A. I was aware.

18 Q. And that was part of this operation to go arrest these
19 individuals?

20 A. I was not aware of that as being anything to do with why I
21 was there.

22 Q. When did HSI first become aware that Dias Kadyrbayev's F1
23 Visa status was -- that there was a problem with his status?
24 Do you recall?

25 A. At 10:30 in the morning, when my supervisor called us back

1 from the airport to the Federal Building, we were told that we
2 needed to report down -- to go to a residence regarding two F1
3 students that had been out of status. So, at 10:30 in the
4 morning, roughly, maybe even 11:00, is when I was first told
5 that.

6 Q. And that's on April 20th?

7 A. Correct.

8 Q. You don't know when the first time anyone else from your
9 agency knew that; that's the first time you became aware of it,
10 correct?

11 A. That was the first time I became aware of it.

12 Q. You said that some people named "Dias" and "Azamat," the
13 younger female, "Bayan," correct -- do you remember her name?

14 A. I don't remember her name.

15 Q. And then Dias's mom was there?

16 A. Correct.

17 Q. And when you went into the apartment, did other agents
18 look through the other rooms to see who else was present?

19 A. Yes.

20 Q. And that was standard procedure to secure the residence,
21 correct?

22 A. We call it a "protective sweep."

23 Q. So, you did a protective sweep. You didn't ask any
24 residents, "Could we go look through the bedrooms, or the
25 bathrooms, or the closets"? Correct?

1 A. Correct. We asked if anybody else was present, and they
2 said their mom.

3 Q. And do you remember where their mom was?

4 A. She was in a bedroom.

5 Q. So, she was brought back out to the living area where the
6 couch was, correct?

7 A. Correct.

8 Q. And all four were then told to sit down, correct?

9 A. At what point they were told to sit down, I don't recall.

10 Q. And that was to keep control of the situation, correct?

11 A. Correct.

12 Q. And, Agent, you knew that Dias and Azamat were going to be
13 arrested, correct?

14 A. Presumably, based upon our checks, they were going to be
15 arrested, but we still had to at that point in time confirm
16 whether they were or were not in status.

17 Q. Well, hadn't that been done before you went there?

18 A. You would think that that would be the case, but what ends
19 up happening is, while we run preliminary checks and we know,
20 okay, according to the SEVIS System they are not in status,
21 whenever we encounter individuals, we then have to confirm with
22 them -- their situation may have changed. We then have to
23 confirm, "Have you started to return back to school?" These
24 are examples that I'm giving. Have they started to return back
25 to school? Have they filed for any petitions? Have they filed

1 for refugee status? Have they filed for asylum? Have they
2 married a United States citizen?

3 So, when we first encounter people for immigration
4 violations, it's not a 100 percent that that person is going to
5 be arrested. There then has to be follow-up questions and
6 checks run to determine whether or not they are actually still
7 out of status and arrestable.

8 Q. So, if Dias or Azamat told you that they had done any of
9 those things, that would have been the end of it?

10 A. It may have been.

11 Q. But, in fact, they were arrested, correct?

12 A. They had not filed for any petitions, they had not
13 returned back to classes or done anything that would have
14 changed their status as being -- at that point they were out of
15 status. So, there was nothing that had changed to have put
16 them back into status within the United States, so, therefore,
17 they needed to be arrested.

18 Q. And by "arrested," that means they were handcuffed,
19 correct?

20 A. Correct.

21 Q. Do you remember how they were cuffed? Do you have a clear
22 recollection of that?

23 A. I do. I have a clear recollection for how Azamat was
24 cuffed, because I cuffed him.

25 Q. And how was that?

1 A. I brought him over towards the front of the apartment over
2 by the door. I asked him if he was comfortable in what he was
3 wearing and told him that he would be coming with us to sort of
4 make sure that he was wearing proper attire.

5 We discussed the fact that the media was outside. He
6 was concerned about the media being outside, and that he didn't
7 want them to see him. So, we actually went -- we decided -- we
8 actually came up with a plan amongst ourselves to try to ruse
9 the media, in which we then moved all of our vehicles around to
10 the front of the apartment to make it appear as though we were
11 going to leave the front of the apartment, and then we brought
12 them out the back doors of the apartment.

13 But before we brought them out, I then placed cuffs on
14 him. I asked him if they were comfortable, if they were too
15 loose or too tight.

16 Q. So, we will go back to my question. You handcuffed him
17 front or back?

18 MR. CAPIN: Objection, your Honor.

19 THE COURT: Well, apart from the prelude, overruled.

20 BY MR. STAHL:

21 Q. You handcuffed him in the front or the back, Agent?

22 A. I don't recall.

23 Q. And do you recall that Dias was cuffed in the front but
24 also had a waist chain put around him where the cuffs went
25 through?

1 A. I don't recall that, because I did not handcuff Dias.

2 Q. But that is not something that surprises you, correct?

3 A. That does not surprise me, because the reason for the
4 waist chain and the cuffing in the front is so that it's more
5 comfortable when they are driving in the vehicle than if their
6 hands are cuffed behind them and they have to sit back on their
7 hands. So, we use the waist chain to make it more comfortable.

8 Q. And it keeps him from moving his hands, period. He's
9 attached at the waist?

10 A. That's the point of handcuffs, yes.

11 Q. Was Dias read his rights at the apartment?

12 A. I do not recall. I did not read his rights.

13 Q. Well, you were present the entire time, were you not?

14 A. I was.

15 MR. STAHL: Nothing further.

16 THE COURT: All right.

17 Mr. Wooldridge, I don't think there's anything here.

18 MR. WOOLDRIDGE: I think some questions were asked
19 about Azamat, your Honor. I'm just going to address those
20 questions, or those issues.

21 MR. CAPIN: Not on direct, your Honor, to be clear.

22 THE COURT: I do not see this as an area for
23 exploration by you.

24 MR. WOOLDRIDGE: Okay, your Honor.

25 THE COURT: Anything further, Mr. Capin?

1 MR. CAPIN: No, your Honor.

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

3 THE WITNESS: Thank you.

4 (Witness stepped down)

5 MS. SIEGMANN: The Government calls Special Agent
6 Steve Valentine.

7 SPECIAL AGENT STEVEN VALENTINE, DULY SWORN BY THE CLERK.

8 THE CLERK: Please state your full name, spelling your
9 last.

10 THE WITNESS: Steven Valentine.

11 THE COURT: If you could spell your last name,
12 Mr. Valentine.

13 THE WITNESS: V-A-L-E-N-T-I-N-E.

14 THE COURT: You may proceed.

15 DIRECT EXAMINATION

16 BY MS. SIEGMANN:

17 Q. Sir, could you please tell the Court how you are employed.

18 A. I am currently a Special Agent employed by HSI, and I'm
19 assigned to the Boston Airport/Seaport Group.

20 Q. When you say "HSI," you are referring to Homeland Security
21 Investigations?

22 A. Yep.

23 Q. How long have you been employed as an HSI Agent?

24 A. Approximately five years.

25 Q. Do you have any prior law enforcement experience?

1 A. I do. Approximately for nine years I was a local police
2 officer here in Massachusetts and a Trooper with the Vermont
3 State Police.

4 Q. Sir, now, directing your attention to April 20th, 2013,
5 did you participate in the arrests of Dias Kadyrbayev and
6 Azamat Tazhayakov?

7 A. I did.

8 Q. When did you first hear those individuals' names mentioned
9 by your agency?

10 A. Probably the morning before. I don't remember if I -- I
11 had seen the names. Another agent had called me and mentioned
12 that he believed that these two individuals, Dias and Azamat,
13 could be friends with Jahar and that they could be out of
14 status, and they had potentially come through Logan recently,
15 suggested we might look into that.

16 I then passed the information to my group supervisor
17 and asked her if she wanted us to look into it. Shortly
18 thereafter, she got back to us and said, "No, it's all set,
19 just do what you're doing."

20 Q. So, there was a discussion, though, about these
21 individuals --

22 A. Yes, a brief one.

23 Q. -- the day before?

24 A. Yes.

25 Q. So, on the 20th, how did you first learn that you were

1 going to participate in their arrest?

2 A. Late morning, early afternoon I was called to the JFK
3 Federal Building with some of my co-workers, and they had
4 handed us a packet and said, "We need you to go down to New
5 Bedford and encounter these two individuals." When I saw the
6 packet, I recognized it was the two names from the day before.

7 Q. And what was your understanding as to why they were being
8 arrested?

9 A. Because they were potentially out of status. They had
10 come into the country on Student Visas, and they were
11 potentially no longer enrolled at school and, therefore, could
12 be out of status.

13 Q. Did you, yourself, look at the SEVIS records?

14 A. I did not.

15 Q. So, when you say "potentially," you don't have a
16 recollection today as to whether you looked at it, or you did
17 not look at it?

18 A. I did not look at it. And when I say "potentially," I
19 always say that, because you have to go down, find the
20 individual and talk to them, see if there is a
21 misunderstanding, see if they have derivative status or if they
22 have other pending applications.

23 Q. Where did the arrest occur, do you recall?

24 A. In New Bedford.

25 Q. Do you remember the street address?

1 A. I believe it was 69 Carriage.

2 Q. When you arrived at 69 Carriage, what happened?

3 A. We had a short briefing somewhere in New Bedford and
4 discussed the plan. I was just going to go stand in the back
5 with another agent in case someone had come out the back, and a
6 group of investigators were going to go around the front and
7 knock and see if they could get in.

8 However, when we pulled up the media was there. They
9 started to kind of swarm around. So, when I was standing by
10 the back door someone inside kind of moved the blinds, and we
11 were kind of almost face-to-face. So, I said, "Hey, do you
12 mind if we come in, the media's out here?" He said, "No
13 problem," and let us in.

14 Q. Do you recall who it was that let you in?

15 A. I'm sorry, I don't.

16 Q. Was it one of the two defendants?

17 A. I'm sorry, I don't recall. It was kind of a surprise. I
18 was just supposed to stand back there. I was almost surprised
19 to see someone open the blinds, and shortly thereafter the door
20 was opened.

21 Q. And, again, what was it that you said to gain entry?

22 A. I said, "The media's out here. Do you mind if we come
23 in?"

24 Q. In response, what happened?

25 A. Whoever was at the door had acknowledged, they opened the

1 door. I introduced myself, said, "We're here to just ask you a
2 few questions. Do you mind if we come in? We've got some
3 people around the front."

4 There were some people walking around the apartment.
5 I couldn't tell you exactly where they were.

6 After maybe a few seconds introducing ourselves,
7 explaining, "Hey, we just have some more questions. Thank you
8 for letting us in with the media being out there. Do you mind
9 if I let my counterparts in the front door?" And there was no
10 objections.

11 Q. And, again, do you remember who it was that you spoke to
12 that day?

13 A. I was kind of addressing the room. There were three or
14 four people in the room. It wasn't anyone -- but Azamat and
15 Dias were in the room. They were all in close proximity.

16 Q. Do you recall how many occupants were in the apartment
17 when you entered?

18 A. I believe four.

19 Q. Do you remember how many females and males?

20 A. Two males and two females.

21 Q. After asking for permission to allow your fellow agents
22 into the apartment, who let the other agents in?

23 A. It was either myself or Agent McDonough, because she had
24 come in the back with me. We were both kind of standing --
25 there was a short hallway to the front door, which opened up to

1 the living room, which we were all kind of gathered in. So, it
2 would only be a couple of steps and open the door. I can't
3 remember if it was me who actually twisted the knob or Agent
4 McDonough.

5 Q. What happened after the other agents came into the
6 apartment?

7 A. The other agents came in, and they began to kind of
8 encounter those and figure out who was there and what their
9 status was, and I kind of just took a position -- I think I did
10 a brief walkthrough, just kind of looked to make sure there was
11 no one else in there. And then I kind of stood over by the
12 backdoor in the kitchen, because there was a lot of, like,
13 kitchen utensils, to include knives, in the open. So, I was
14 just kind of standing there, making sure nothing went wrong,
15 anybody didn't go reaching for any knives or anything like
16 that.

17 Q. How long did that take, this time frame? How long had you
18 been in the apartment when the other agents were let in and you
19 were just still all standing around?

20 A. It was a short period of time. A minute. Agent McDonough
21 and I were not in the apartment alone with them very long at
22 all. I would say a minute or less.

23 Q. And what happened after the introductions?

24 A. In terms of my interaction?

25 Q. Interaction between the agents you observed and the

1 defendants.

2 A. It was just a very cordial, consensual,
3 non-confrontational conversation:

4 "Hey, thanks for letting us in. This is who we are."

5 "What's going on? Why are you here?"

6 "Well, we need to talk to you about your status."

7 And it kind of broke up into small subgroups, and I
8 really didn't have -- I had little to no involvement with the
9 determining of their status and their removability.

10 Q. And at some point did individuals sit down?

11 A. Yes.

12 Q. Can you describe how that happened.

13 A. I believe it was Agent McDonough at one point asked if
14 people could have a seat on the couch, just so it was a little
15 bit more of an organized environment. Everyone took a seat on
16 the couch, and then it was kind of just a big working group in
17 there in different areas.

18 Q. At any point did any agents for another agency arrive in
19 the apartment?

20 A. Yes.

21 Q. Who was that?

22 A. Agent Walker.

23 Q. From what agency?

24 A. With the Federal Bureau of Investigation.

25 Q. And when did he arrive in relation to you entering the

1 apartment?

2 A. It wasn't right away. I couldn't give you an exact amount
3 of time, but it was a little while after, shortly thereafter.
4 I would say our total time in there was 30 to 45 minutes. He
5 was in there -- there was a little bit of a delay. I don't
6 know exactly how long it was.

7 But when he came in, he kneeled down by the couch and
8 was speaking with either Azamat or Dias, and I could see that
9 he had rapport with them. They were having a very friendly
10 kind of conversation, "Hey, how are you?" And at that point I
11 walked away.

12 Q. When you said that you could see they were having a
13 friendly conversation, what makes you say that?

14 A. Just demeanor, tone of voice. It didn't seem
15 confrontational at all. I didn't know what to expect when we
16 had got down there, and Azamat and Dias, I found them to be
17 very polite.

18 Q. Did you see any facial reaction when you observed the
19 conversation between Special Agent Walker and the defendants?

20 A. Nothing of concern at all. If I could sense tension in
21 either of them, then I would have paid more attention to it,
22 but it was nothing concerning to me, so I kind of moved back on
23 towards the kitchen.

24 Q. Were they restrained at the time that Special Agent Walker
25 walked into the apartment?

1 A. No.

2 Q. Had the defendants been arrested when Special Agent Walker
3 had walked into the apartment?

4 A. No.

5 Q. Now, were the defendants eventually arrested at this time
6 when you were in the apartment?

7 A. Administratively, eventually they were.

8 Q. And how long had you been in the apartment when that
9 occurred?

10 A. An estimate, 30 to 45 minutes.

11 Q. So, you get into the apartment 30 to 45 minutes before
12 they were arrested?

13 A. Yeah. They weren't placed into shackles until we were
14 just ready to leave.

15 Q. Did you observe that arrest?

16 A. I did. In terms of being handcuffed, yes. At no point
17 did I hear anybody say they were under arrest. What I had
18 heard -- and, again, I was walking in and out of
19 conversations -- was, "Hey, we just need to clear this up, you
20 need to come back with us."

21 And towards the end, when we were getting ready to
22 leave, I believe it was Dias was kind of surprised when he
23 realized that he had to be handcuffed. And Agent Wiroll of
24 Homeland Security Investigations explained, "Well, yeah, it's
25 policy. You have to be handcuffed to get in the car." I

1 wasn't privy to the entire conversation, but the gist of it
2 was, "No, don't worry about it. I'll make it -- I'll put your
3 hands -- I'll put a sweatshirt over it. It's going to look
4 like we're just walking out." Because he was concerned with
5 the media out there, I think.

6 Q. I just want to make sure I understand. How was it that it
7 was communicated that they were under arrest to them? What
8 words were used, to the best of your recollection?

9 A. I never heard anyone tell them that they were under
10 arrest. It was, "Hey, you have to come back and sort this out
11 with us, and we do have to handcuff you in order for you to
12 ride in the Government vehicle."

13 MS. SIEGMANN: Your Honor, can I have just a brief
14 moment?

15 THE COURT: Yes.

16 (Counsel conferred off the record)

17 BY MS. SIEGMANN:

18 Q. Was it a man or a woman who opened the slider door for you
19 that day? Do you recall?

20 A. I believe it was a man, but I'm not certain.

21 MS. SIEGMANN: Thank you. No further questions.

22 THE COURT: All right. Mr. Stahl.

23 CROSS-EXAMINATION

24 BY MR. STAHL:

25 Q. Good afternoon, Agent Valentine.

1 A. Good afternoon.

2 Q. I'm Robert Stahl. I represent Dias Kadyrbayev.

3 Do you recognize them today, or has it been too long?

4 A. Yes, I do.

5 Q. And did you write a report about any of this?

6 A. I did not.

7 Q. What did you review to refresh your recollection in, it
8 has been 13-plus months?

9 A. I have seen their faces on the Internet. I recognize both
10 their faces, even if I hadn't, and I did take a look at some
11 pictures out in the hallway. I couldn't tell you exactly what
12 they were -- I would guess that it might have been maybe a
13 picture from a Visa application, but that's just a guess.

14 Q. I'm sorry. It was my poorly worded question.

15 What did you do to refresh your recollection about the
16 facts you have been testifying to, not their appearances?

17 A. This is it. It's coming from memory, sir.

18 Q. And did you meet with the Assistant U.S. Attorneys before
19 you testified?

20 A. We spoke on the phone, and we met briefly this morning.

21 Q. Did you go over the areas of questions they would be
22 asking you?

23 A. Briefly, yes.

24 Q. And that included the part about Agent Walker kneeling
25 down, and there appeared to be friendly conversation?

1 A. Yes.

2 Q. You said you had a pre-arrest, pre- going to the
3 apartment, I won't call it "raid," whatever term HSI uses, at
4 the JFK Federal Building here in Boston, correct?

5 A. Yes.

6 Q. How many agents were present for that meeting?

7 A. I would say five or six. I know our entire team of who
8 was asked to go down there wasn't there, so we made the
9 decision to drive down in small groups and reconvene at a
10 Dunkin' Donuts in the area.

11 Q. Let's move to the Dunkin' Donuts. How many HSI Agents
12 were present?

13 A. I would say approximately seven.

14 Q. That would include yourself?

15 A. Yes.

16 Q. And how were you all dressed?

17 A. Plainclothes.

18 Q. Did you have bulletproof vests on with markings that say
19 "Police" or "HSI"?

20 A. I had on jeans. I did put on a vest just before I went
21 over and an HSI jacket.

22 Q. So, it was clear you were some type of law enforcement,
23 correct?

24 A. Yes.

25 Q. Anyone else present besides you and the six other HSI

1 Agents at the Dunkin' Donuts?

2 A. Special Agent Walker, and eventually we met up with I
3 believe a Police Sergeant from New Bedford.

4 Q. And you all then proceeded to 69A Carriage Drive?

5 A. Yes.

6 Q. And was Agent Walker part of the group that went there at
7 the same time? I am focusing, just to be clear, driving over
8 and parking somewhere, not entering right then. But he was
9 part of the group that went there, correct?

10 A. Yes. I think he was delayed. And I was around the back,
11 I think he was around the front, so I couldn't tell you exactly
12 when he got there.

13 Q. You said that towards the end -- and you estimated I think
14 you were there no more than 30 or 45 minutes, correct?

15 A. It's an estimate, yes.

16 Q. -- that you went to place shackles on Dias and Azamat,
17 correct?

18 A. Yes.

19 Q. And that, in particular, that Dias was surprised?

20 A. I believe so, yes.

21 Q. And that's because no one had told him that he was under
22 arrest, correct?

23 A. I didn't hear anyone tell him he was under arrest.

24 Q. All you heard was an HSI Agent telling him that, "You need
25 to come to Boston and clear some things up with us," correct?

1 A. Yes.

2 Q. So, that's apparently why he was surprised, in your
3 viewpoint, correct?

4 A. I'm just doing my best to articulate this. My impression
5 of it was it was a very friendly conversation, in and out of
6 it, from what I had seen, and I just think he was surprised
7 that he had to be handcuffed. It's hard to articulate, but
8 that's my impression.

9 Q. I appreciate it. And, again, you had never heard any
10 agent tell him he was under arrest, correct?

11 A. Correct.

12 MR. STAHL: I have nothing further, your Honor.

13 THE COURT: Mr. Capin, anything?

14 MR. CAPIN: No.

15 MS. SIEGMANN: No, your Honor.

16 THE COURT: So, you may step down.

17 THE WITNESS: Thank you, your Honor.

18 (Witness stepped down)

19 THE COURT: What else do we have?

20 MS. SIEGMANN: Do you want me to call another witness?

21 THE COURT: Well, maybe we can talk about what the
22 schedule is going forward now.

23 MS. SIEGMANN: Certainly, your Honor. We have Special
24 Agent Steve Schiliro, who will testify again about the
25 Kadyrbayev interview. We also have Special Agent Jameson

1 Wiroll and Special Agent Sean Rafferty from HSI, who did
2 another interview of Mr. Kadyrbayev, and we have Special Agent
3 Timothy Quinn, who did an interview of Defendant Kadyrbayev on
4 the 20th.

5 Who else do we have?

6 MR. CAPIN: And that last witness, your Honor, is
7 simply to establish the waiver of Miranda on that occasion.

8 Then we have a man named David Earle, who is with
9 another agency on the JTTF, solely to establish the signature
10 on consent forms while they were in custody.

11 And finally there is a local --

12 What's the town?

13 MR. STAHL: Winthrop PD.

14 MR. CAPIN: Thank you.

15 A Winthrop Police Officer simply very briefly to
16 testify to an earlier encounter by Kadyrbayev with law
17 enforcement.

18 MS. SIEGMANN: And there's one other witness, your
19 Honor. If we can't agree to stipulations, there are some
20 prison calls that a linguist is prepared to testify between the
21 defendant and his girlfriend.

22 THE COURT: By "linguist," you mean translator?

23 MS. SIEGMANN: Sorry?

24 THE COURT: Were the conversations in another
25 language?

1 MS. SIEGMANN: Yes.

2 MR. CAPIN: They were, and we are going to take that
3 up with Mr. Stahl to see if we can agree on at least the gist
4 of it.

5 THE COURT: So, that is maybe tomorrow.

6 MS. SIEGMANN: I would think we could finish most of
7 it tomorrow, your Honor.

8 THE COURT: I would think all of it, and then to your
9 case --

10 MR. STAHL: Yes.

11 THE COURT: -- on Friday. Perhaps tomorrow, but on
12 Friday.

13 MR. STAHL: I have a couple of issues to raise with
14 your Honor.

15 First is, we did file a motion, and we believe it's
16 necessary to take this witness out of order that is
17 unavailable.

18 THE COURT: I did not understand the Government to
19 object to it. We will find a time to get that witness.

20 MR. STAHL: Okay. And the other issue is -- may I
21 just have a moment to confer with Mr. Capin?

22 THE COURT: Sure.

23 (Counsel conferred off the record)

24 MR. STAHL: Your Honor, we had the Marshal's Service
25 subpoena -- we subpoenaed Trooper Laliberte. I think I keep

1 mispronouncing his name. But, in any event, this is a Trooper,
2 he is a Massachusetts State Trooper. He is assigned to the
3 JTTF. We received discovery from the Government that he was in
4 the New Bedford Barracks the evening of April 19th. In fact,
5 he was interviewing some other person that law enforcement felt
6 necessary to interview about the bombing case.

7 Trooper Laliberte, as we know from our submission from
8 Attorney Griffin, and we also have the supervisor from --

9 THE COURT: CPCS?

10 MR. STAHL: -- CPCS that made the assignment, who
11 called and spoke with Trooper Laliberte.

12 THE COURT: Is it just focused on this question of the
13 communication and reception of Mr. Griffin at the Barracks?

14 MR. STAHL: That's correct. And what we need the
15 Trooper for is to learn what he did with that information,
16 what, if anything, he did with that information, who he told,
17 whether he told the FBI, whether something was done.

18 THE COURT: What difference does it make? The person
19 whose perceptions we are dealing with are Mr. Kadyrbayev.

20 MR. STAHL: Well, my first issue raising it to you is
21 that the Marshals told us that the Trooper was served, but he
22 has failed to show up, and we needed to discuss that. I just
23 brought that to the attention of the Government.

24 I am not asking for Court intervention at this moment,
25 but we know that there is a Motion to Quash, and now your Honor

1 is questioning what it's for.

2 Excuse me one second.

3 (Counsel conferred off the record)

4 MS. SIEGMANN: Your Honor, I --

5 THE COURT: Well, wait until Mr. Stahl is finished
6 consulting his colleagues.

7 MR. STAHL: Well, your Honor, what we don't know is --
8 we know that an attorney was assigned by CPCS. We know that he
9 made a call directly to a Trooper who was at the same Barracks
10 that evening, who was assigned to the JTTF, who was involved in
11 the investigation, and that the attorney was clear who he was
12 calling about, and that the Trooper said what the attorney has
13 said in a sworn affidavit, that, "How did you get this number?
14 Why -- "

15 THE COURT: Well, all that.

16 MR. STAHL: Well, now we need --

17 THE COURT: Well, let me just sharpen it so that you
18 can respond to it.

19 I do not know the relevance for purposes of
20 voluntariness if Mr. Kadyrbayev was not aware that there was
21 someone out there who was purporting to be his attorney. I am
22 not sure why CPCS was appointing an attorney under those
23 circumstances. I am somewhat familiar with CPCS, because I was
24 the first chairman of CPCS. I suppose it is a prophylactic of
25 some sort to provide, make available counsel, if someone asks

1 for counsel, but I do not understand that Mr. Kadyrbayev asked
2 for counsel here, and so it strikes me as not relevant on any
3 issue in the case.

4 MR. STAHL: If your Honor permits, I would like my
5 colleague, Ms. Gasiorowski, to address those issues.

6 THE COURT: Sure.

7 MS. GASIOROWSKI: Your Honor, you are correct about
8 Moran v. Burbine. This wouldn't be relevant to the defendant's
9 state of mind, unless, of course, A, somebody communicated to
10 him that his attorney was trying to reach him, and that he
11 wouldn't be able to speak to --

12 THE COURT: But he did not know that, and we do not
13 have that evidence in this case.

14 MS. GASIOROWSKI: We don't have that evidence because
15 we haven't gotten discovery. We're entitled to --

16 THE COURT: Well, no, you do not have that evidence.
17 You have the person who can tell you whether or not he was
18 informed of it --

19 MS. GASIOROWSKI: Correct.

20 THE COURT: -- and I know of no evidence that he says
21 he was informed of it.

22 MS. GASIOROWSKI: Well, at this juncture we haven't
23 put our client on the stand. We're here to test whether or not
24 the Government meets its burden.

25 THE COURT: Well, do you have a good-faith basis for

1 saying that he asked for an attorney and he was rejected?

2 MS. GASIOROWSKI: Well, there is allegations,
3 obviously, in the affidavit that he questioned whether or not
4 he needed an attorney, and that the issue of --

5 THE COURT: He did, and he then withdrew it, as far as
6 I understand it.

7 But if I am clear on this, this is part of my larger
8 concern about the use of a Motion to Suppress as a discovery
9 device. It may incidentally become a discovery device, but
10 only if it is relevant to the Motion to Suppress, properly
11 supported. What I have here is a circumstance in which there
12 is some testimony about, "Do I need an attorney?" And him
13 being told, "That is your call, not ours; it is really up to
14 you," and not pursuing it any further. And I have no evidence
15 that he was told that there was outside someone from CPCS who
16 would be available to provide services for him.

17 MS. GASIOROWSKI: Well, obviously, we don't agree with
18 the testimony that he --

19 THE COURT: Well, that may be, but I guess what I am
20 saying is do you have a good-faith basis for saying that there
21 is something here that I missed on this?

22 MS. GASIOROWSKI: I think it goes towards the
23 argument, your Honor, that these agents were intent on
24 detaining and interrogating these defendants as long as
25 possible, and, thus --

1 THE COURT: I am not shocked by that.

2 MS. GASIOROWSKI: No, of course not.

3 THE COURT: That was their intent. I understand that.
4 The question is whether or not they overbore his will in some
5 improper way to get testimony.

6 MS. GASIOROWSKI: As to the voluntariness inquiry but
7 not as to an inquiry as to whether or not their actions were
8 meant to deprive him of his right to prompt presentment or,
9 under Gerstein v. Pugh, to probable cause determination, and
10 certainly the --

11 THE COURT: That is a different issue than the
12 attorney --

13 MS. GASIOROWSKI: Of course it is.

14 THE COURT: -- as someone who is assigned by the
15 regional person at CPCS, to go out there, and, "If they ask for
16 counsel, you are going to be present to respond to it." But it
17 seems to me, not to overstate it, but a little bit like a tree
18 falling in the forest that Mr. Kadyrbayev did not hear and was
19 not looking to find out about.

20 MS. GASIOROWSKI: As to the voluntariness inquiry, you
21 are correct, your Honor. But as to our ability to present our
22 defense with regard to the suppression motion with the idea
23 that we had this presentment issue, or this issue of whether or
24 not they intentionally tried to deprive him of a probable cause
25 determination --

1 THE COURT: What is the presentment issue, the
2 probable cause issue that is different from that? Are you
3 saying that they have an affirmative responsibility to arrest
4 someone as soon as they have probable cause?

5 MS. GASIOROWSKI: No, but if they have arrested
6 somebody, they have an obligation to --

7 THE COURT: And if they have, then they have a whole
8 series of problems, the least of which at this point is
9 presentment. If I make a determination that they made an
10 arrest and they effectively overbore him or did not provide him
11 with the rights that are necessary or attendant upon arrest, I
12 suppress certain kinds of evidence. But the presentment stuff
13 is frosting on the cake, I guess.

14 MS. GASIOROWSKI: I understand, your Honor. But, if I
15 may, and only because you, yourself, brought up the issue that,
16 of course, these attorneys are appointed for a prophylactic
17 purpose, the attorney is the defendant's barrier between
18 himself and interrogation that is conducted in insulation
19 without the ability to seek counsel from somebody else.

20 THE COURT: It is, and it is relevant if he knows
21 about it, but he does not know about it. On the state of the
22 record he does not know about it, and he has not specifically
23 asked, "I want an attorney." He had a communication of some
24 sort about it, but he did not say, "I would like to have an
25 attorney here."

1 MS. GASIOROWSKI: But, your Honor, what if there were
2 evidence before you that in this particular instance these
3 agents were attempting to prevent him from exercising his right
4 to counsel?

5 THE COURT: I suppose that would be a matter of some
6 concern, but I'm not sure Mr. Griffin would have much to offer
7 on that issue. But, of course, there is not that evidence, at
8 least right now.

9 MS. GASIOROWSKI: No, because we haven't had the
10 opportunity to explore it yet.

11 THE COURT: Well, I do not know what the exploration
12 is, except fishing around, and that, frankly, is not the office
13 of a Motion to Suppress.

14 So, in the absence of a good-faith showing that he had
15 asked for an attorney and they impeded one, I cannot see that
16 this is even an area to explore. More specifically, whether
17 Trooper Laliberte, if I pronounce it correctly, was rough in
18 his responses to Mr. Griffin, that is a different set of
19 issues. It is not the issues that are presented in this case.
20 That is my point. So, I am not sure we need to see him.

21 MR. STAHL: May I just add a point to it?

22 THE COURT: Sure.

23 MR. STAHL: We are talking about a brief examination
24 of the Trooper to say, "Who, if anyone, from the Federal
25 Government did you relay this information to?" He is a state

1 actor. He is under an obligation to relate the information.

2 THE COURT: But it is not relevant here. Even if it
3 is brief it is not relevant. It may be more tolerable if it is
4 brief, but it is not relevant, and I prefer to keep irrelevant
5 things out of the case.

6 MR. STAHL: Your Honor, I believe it's relevant to
7 show the actions of the FBI. If they hear that an attorney is
8 calling that he has been assigned to represent, and there was
9 attorneys from CPCS assigned throughout this investigation
10 because many people are being rounded up and being questioned.
11 There was a number of people that were being brought in, a
12 number of people that were considered suspects until the focus
13 went to Jahar. So, CPCS was very active, and we have --

14 THE COURT: But, you see, I am interrupting because I
15 am not hearing anything that makes a difference on this Motion
16 to Suppress. The question on the Motion to Suppress here is
17 whether or not his will was overborne, and that turns on
18 Mr. Kadyrbayev. The rest of it is, perhaps, frosting. I think
19 I am correct about that.

20 And more than that, does anyone really believe that
21 the FBI was profoundly disinterested? They were pursuing what
22 they thought were legal means -- whether they are right or not
23 is another matter -- but pursuing what they thought were legal
24 means to get information from someone else. They understand
25 that there are rules about what you can get and circumstances

1 under which you get it, but the fact that they may not be
2 particularly interested in having him communicate with an
3 attorney is not relevant unless he says he wants to communicate
4 with an attorney.

5 MR. STAHL: Well, I think it is relevant to complete
6 the picture of what was going on on that evening. Your Honor
7 has heard a lot of testimony about the FBI tactics and protocol
8 and how we --

9 THE COURT: A lot of it was irrelevant. Just so it is
10 clear, you are right, I have heard a lot of testimony. I wish
11 that it had been titrated a bit so that we got down to the
12 essence of what is relevant in this case; but, in the absence
13 of objections, although I am getting a little anxious now, I
14 will let the parties put on what they want to put on.

15 But that having been said, you have asked for the
16 opportunity to bring on a couple of witnesses whose relevance I
17 do not see to the case, and so I am resisting it, in the
18 absence, as I say, of some good-faith basis for showing its
19 relevance, and I do not know of any good-faith basis except a
20 desire to find out a little bit more about the circumstances,
21 and that is not relevant in this matter.

22 MR. STAHL: So, if I understand your Honor correctly,
23 it does not matter to your determination at all that if Trooper
24 Laliberte went to the FBI Agents who were interviewing these
25 three individuals and said, "There is an attorney called and

1 says he represents them," and those agents did nothing with
2 that information, did not pass it on, give the opportunity to
3 Mr. Kadyrbayev to make a determination that there was an
4 attorney available, that that's irrelevant?

5 THE COURT: I am not sure those are the facts. You
6 have just created a hypothetical, and my sense, I guess, is
7 what is the good-faith basis for asserting that hypothetical.
8 But the core of it is what Mr. Kadyrbayev wanted. I just do
9 not see this. If we are at a point at which he is entitled to
10 counsel, and we are not until he has been arrested, then the
11 Sixth Amendment issue really is not in the case.

12 MR. STAHL: But, your Honor, we are one chain in the
13 link away. You are saying what's my good-faith basis? I have
14 a very good-faith basis that an attorney called who was
15 assigned and spoke to not just some random road Trooper, but a
16 Trooper at that very Barracks at that very time, who knew about
17 it because he told the attorney they are already done
18 interviewing him.

19 THE COURT: Let me deal with it this way. I just do
20 not see it. That is my broad view. My narrow view, more
21 narrow view, is I will let you talk to him, Laliberte, see what
22 he says, and if he says, "I told the Agents that Mr. Griffin
23 was present out there and he had been requested to provide
24 services by the client," not by an administrative agency, then
25 I will think about it.

1 MS. SIEGMANN: Your Honor, can I make an offer of
2 proof, because we know what Laliberte will say?

3 THE COURT: Yes, I suppose so. But let me just pause,
4 for a moment, on one thing. Why didn't he show up?

5 MS. SIEGMANN: I talked to the counsel for the State
6 Police, your Honor, and I thought -- and this is why I wanted
7 to stand up. I don't think he should get in trouble for
8 something I may have conveyed. I thought the Court was going
9 to take up the Motions to Quash that the Government had filed.
10 And we had talked to defendants' counsel. We said that the
11 lineup of the first witnesses -- they gave us a list, and he
12 was not one of the first witnesses. That's why --

13 THE COURT: So, you told him, "Don't worry about
14 showing up"?

15 MS. SIEGMANN: Yes, exactly.

16 THE COURT: That is all I want to know about that. I
17 will hear your offer of proof on this.

18 MS. SIEGMANN: So, Trooper Laliberte did receive a
19 call from Attorney Robert Griffin, and he did not -- he says
20 that -- there is some accusation that he used some vulgarity.
21 He says he did not. I am just correcting the record.

22 THE COURT: I am beyond that.

23 MS. SIEGMANN: The attorney said that he represented
24 three students. He asked for their names. He couldn't name
25 them. He didn't even know what the names of his clients were.

1 THE COURT: Did he talk to the FBI?

2 MS. SIEGMANN: No, he did not talk to the FBI.

3 THE COURT: So, that is the representation that I
4 have. You have no contrary representation on this. This is
5 not a discovery device. I do not see it as relevant in the
6 case, so we are not going to hear from him.

7 MR. STAHL: I just have one follow-up question,
8 because I was confused.

9 THE COURT: Sure.

10 MR. STAHL: Ms. Siegmann is stating to the Court that
11 the Trooper said he did not then tell the FBI about that phone
12 call, as opposed to -- I was confused whether she was talking
13 about somebody else.

14 MS. SIEGMANN: My understanding is that he did not
15 convey that information to the FBI.

16 THE COURT: Well, you said your "understanding." Did
17 you ask him and did he say that?

18 MS. SIEGMANN: I did not talk to him at first. I
19 talked to the FBI, who talked to Trooper Laliberte, and the
20 indication was that he didn't know what the names of the
21 individuals were.

22 THE COURT: That part I do not want to know or I am
23 less interested in.

24 So, if this is going to be an issue, I want a 302 that
25 says that an Agent talked to him, and that 302 had better

1 include that Laliberte said he never talked to an FBI Agent to
2 pass on the request that was made by Mr. Griffin.

3 MS. SIEGMANN: Yes, your Honor.

4 THE COURT: So, we will get that.

5 MR. STAHL: Thank you, your Honor.

6 THE COURT: It is pretty thin even on that.

7 But, in any event, so we have dealt with that part of
8 it.

9 Anything else? Any other witnesses that we are going
10 to deal with?

11 MR. STAHL: No. So, we have Dr. Aneta Pavlenko.

12 THE COURT: But at a later date.

13 MR. STAHL: Right.

14 THE COURT: But I would like to know when I might see
15 her, if it is a "her." I don't know the name.

16 MR. STAHL: It is a "her." She is back from her
17 business trip at the end of June, your Honor.

18 MS. SIEGMANN: End of June?

19 MR. STAHL: I'm sorry, I'm sorry. End of -- May 26th.
20 I'm confused about my months.

21 THE COURT: Right. Go ahead, I am multitasking.

22 MR. STAHL: The other thing is that I would just like
23 to get an indication from your Honor. I do intend to -- I
24 think it's a fair approach to do some direct with my client.
25 It's much different than just the affidavit --

1 THE COURT: I will let you do that.

2 MR. STAHL: -- the presentation. Okay.

3 THE COURT: Right, just to expand on the remarks.

4 MR. STAHL: Yes, because I would like to walk him
5 through those things. Okay.

6 Will your Honor, as sort of housekeeping at the end,
7 after witnesses are done, when Dr. Pavlenko testifies, give us
8 an opportunity to do some post-hearing briefs once we get the
9 transcripts and submit the argument to you and some transcript
10 cites?

11 THE COURT: We will talk about it. I guess I cannot
12 rule on this until I have heard from Dr. Pavlenko.

13 MS. SIEGMANN: Your Honor, the expert, obviously, is
14 someone that the defense wants to call, but if the defendant,
15 from his testimony you can make that determination, do we have
16 to wait for the expert to testify, or can you make your ruling
17 beforehand?

18 THE COURT: No. They have got a grounds for offering
19 the expert. I will listen to the expert.

20 MS. SIEGMANN: Sorry. Could I make one other point --

21 THE COURT: Sure.

22 MS. SIEGMANN: -- on Trooper Laliberte?

23 I haven't heard -- I haven't checked with co-counsel,
24 because we were just sitting here, and it just occurred to me.
25 I haven't heard any questioning of the FBI Agents about this

1 issue. On cross they could have asked. They could have asked
2 them did --

3 THE COURT: I suppose on direct examination of
4 Agent Walker he could have been asked about whether they were
5 shirtless. He was not.

6 MS. SIEGMANN: I did ask him whether they were
7 shirtless --

8 THE COURT: I do not recall that.

9 But, in any event, I am not holding anybody to that
10 kind of responsibility. They put on their case, you put on
11 your case. They have asked to have me listen to this issue as
12 to Laliberte and Pavlenko. Pavlenko, yes. I do not think it
13 is Laliberte at this point, but maybe lightning will strike.

14 Now, turning to Pavlenko, she is coming back at the
15 end of this month. Can we schedule her now? Now that I have
16 got a schedule, I want to schedule her.

17 MR. STAHL: Your Honor, I believe that we are able to,
18 given a day or so, email her. I would just ask the courtesy
19 that we firm it up so that we are all certain.

20 THE COURT: I just want to fill in my dance card on
21 this.

22 MR. STAHL: Yes. Can we get back to you in the next
23 day or two, and we will propose dates, or do you want to tell
24 us what dates are best for the Court?

25 THE COURT: Well, I am starting a trial on Monday that

1 may be somewhat demanding, a wrongful death case. I cannot be
2 sure it is going to be completed by the end of this month. I
3 could do something that first week in June. So, why don't you
4 see what you can do on that.

5 MR. STAHL: Thank you.

6 THE COURT: Just see what her availability is. I want
7 to do it as promptly as possible.

8 In terms of further briefing, I will permit it. If we
9 are going to take the time, you had better get the transcripts
10 here. That is going to be your responsibility here --

11 MR. STAHL: Yes, sir. Thank you.

12 THE COURT: -- to provide further briefing. But it
13 does not impact on, as far as I am concerned, the trial on the
14 30th.

15 MR. STAHL: Yes, I understand.

16 THE COURT: There is another question that I want to
17 take up now with all counsel on some *ex parte* submissions, so
18 we will clear the courtroom, and then we will see all counsel
19 present for that. But the defendants can leave, I think.

20 We will take a brief recess.

21 THE CLERK: All rise.

22 (The Honorable Court exited the courtroom at 4:25 p.m.)

23 (Sealed *ex parte* hearing held on the record)

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C E R T I F I C A T E

I, Brenda K. Hancock, RMR, CRR and Official Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of *United States v. Kadyrbayev, et al*, No. 1:13-cr-10238-DPW.

Date: May 23, 2014

/s/ Brenda K. Hancock
Brenda K. Hancock, RMR, CRR
Official Court Reporter