

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

UNITED STATES OF AMERICA . Criminal No. 1:10cr485
 .
 vs. . Alexandria, Virginia
 . January 15, 2015
 JEFFREY ALEXANDER STERLING, . 9:30 a.m.
 .
 Defendant. .
 .

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

VOLUME III

APPEARANCES:

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(APPEARANCES CONT'D. ON FOLLOWING PAGE)

(Pages 536 - 767)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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I N D E X

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WITNESSES ON BEHALF OF
THE GOVERNMENT:

| | | | | |
|-------------------------|-----|-----|-----|-----|
| Robert S. (Resumed) | | 543 | 616 | 627 |
| Stephen Y. | 627 | 640 | 646 | 647 |
| William Harlow | 650 | 675 | | |
| Condoleezza Rice, Ph.D. | 688 | 708 | | |
| Denis M. | 720 | 727 | 730 | |
| Thomas H. | 731 | 741 | | |
| Mark L. | 746 | 755 | 760 | 760 |

EXHIBITS

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GOVERNMENT'S:

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| No. 59 | | | | 736 |
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EXHIBITS (Cont'd.)

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DEFENDANT'S :

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P R O C E E D I N G S

(Defendant and Jury present.)

THE CLERK: Criminal Case 10-485, United States of America v. Jeffrey Alexander Sterling. Would counsel please note their appearances for the record.

MR. TRUMP: Jim Trump on behalf of the United States, Your Honor.

MR. OLSHAN: Eric Olshan on behalf of the United States. Good morning, Your Honor.

THE COURT: Good morning.

MR. FITZPATRICK: Dennis Fitzpatrick on behalf of the United States.

THE COURT: Good morning.

MR. POLLACK: Good morning, Your Honor. Barry Pollack on behalf of Mr. Sterling.

MR. MAC MAHON: Good morning, Your Honor. Edward MacMahon on behalf of Mr. Sterling.

MS. HAESSLY: Good morning, Your Honor. Mia Haessly.

THE COURT: Good morning.

And good morning, ladies and gentlemen. Again, thank you very much for being here on time. You're a superb jury. You may get the prize because we usually have at least one juror who runs late, and you-all are being great.

I'm sorry it's a bit cold this morning. Hopefully, it will warm up a bit. Do the best you can. If you're really

1 uncomfortable and you want to bring coats in until it warms up
2 a bit, let me know, all right?

3 Are we ready to proceed?

4 MR. TRUMP: There's one very brief matter we have to
5 take up at the bench, Your Honor.

6 THE COURT: All right. We want to keep these to a
7 minimum. Regular machine?

8 MR. TRUMP: Yes, Your Honor.

9 (Bench conference on the record.)

10 THE COURT: Yes, Mr. Trump?

11 MR. TRUMP: Last night, the witness was very upset
12 about the use of his name.

13 THE COURT: I heard about that.

14 MR. TRUMP: I conferred with Mr. MacMahon and asked
15 if the agency attorney would be able to speak with him about
16 the fact that you had stricken it from the record, and he was
17 still very upset later and spoke with the agency attorney and
18 the case agent, Ms. Hunt, who assured him that his name had
19 been stricken from the record.

20 They did not discuss his testimony at all and advised
21 him that no one from the prosecution would be able to speak
22 with him until the conclusion of the trial.

23 THE COURT: Do you want me to bring him up here right
24 now and tell him it's stricken?

25 MR. TRUMP: No, I don't believe that's necessary.

1 THE COURT: All right. If it makes him feel any
2 better, I didn't hear it, and I've got pretty good hearing.

3 MR. TRUMP: I think what's --

4 THE COURT: Ms. Gunning didn't hear it. Only because
5 Ms. Thomson has the earphones on did she pick it up. None of
6 you heard it. So it was done in such passing at the end of the
7 day, when folks are tired, and I'm told because of the screens,
8 it's a little harder to hear back there.

9 MR. TRUMP: And he was told that because the agency
10 attorney was sitting back there as well.

11 THE COURT: And also did not hear it.

12 MR. TRUMP: And also did not hear it.

13 THE COURT: Yeah.

14 MR. TRUMP: So I think everything's fine. I just
15 wanted to put it on the record that there was contact with the
16 witness by an agency counsel with the case agent, but nothing
17 concerning his testimony was discussed.

18 MR. POLLACK: Your Honor, we have no objection to
19 that contact.

20 THE COURT: All right. You need to be very, very
21 careful. The whole point for having these signs is as a
22 reminder, you know, that that's the person's name, all right?
23 Very good.

24 MR. TRUMP: Thank you.

25 (End of bench conference.)

Robert S. - Cross

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1 THE COURT: Go ahead.

2 MR. POLLACK: Thank you, Your Honor.

3 ROBERT S., GOVERNMENT'S WITNESS, PREVIOUSLY AFFIRMED, RESUMED

4 CROSS-EXAMINATION (Cont'd.)

5 BY MR. POLLACK:

6 Q. Good morning, Mr. S.

7 A. Good morning.

8 Q. We spoke yesterday a little bit about your role in
9 assessing the suitability of Merlin to play the part in the
10 legend that you were creating for Classified Program No. 1,
11 right?

12 A. Yes, we did.

13 Q. And you said that based on your assessment, you found that
14 Merlin was suitable for that role.

15 A. Yes.

16 Q. In fact, you said that you assessed that he had chutzpah,
17 right?

18 A. Yes.

19 Q. Now, I don't believe that's a technical CIA term, but can
20 you tell me what you meant by that?

21 A. He had the self-assurance that was necessary to perform
22 the mission that we'd set for him, that is to say, entering the
23 Iranian mission with allegedly Russian nuclear weapons plans.

24 Q. And I think you said something to the effect of that you
25 judged that he was a person who would be willing to take risks

Robert S. - Cross

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1 on behalf of the CIA, correct?

2 A. Yes.

3 Q. And that's important for a human asset to be willing and
4 able to do, correct?

5 A. Correct.

6 Q. And to be willing and able to do it in a way that their
7 affiliation with the CIA is not known, correct?

8 A. Yes. We're looking for a balanced risk taker, not either
9 a reckless person or someone who will take no risk at all.

10 Q. Right. So somebody who can engage in conduct under legend
11 in a way that can't be traced back to the CIA?

12 A. That's the hope. It's not always the result.

13 Q. Understood. And we also talked a little bit about the
14 reference on page 200 of the book about a case officer coaching
15 Merlin as to the best way to make contact with the Iranians,
16 including sending messages to Iranian scientists and scholars.
17 Do you remember that?

18 A. Yes.

19 MR. POLLACK: And if I can have Mr. Francisco pull up
20 Exhibit 16, please?

21 Q. And Exhibit 16 is a cable that was written on December 18,
22 1998, correct?

23 A. Um-hum.

24 THE COURT: I'm sorry --

25 THE WITNESS: Yes, it is.

Robert S. - Cross

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1 MR. POLLACK: Oh, I apologize, Mr. Olshan is pointing
2 out that I guess the jury does not have their notebooks that
3 contain the cables. I don't know if Mr. Wood could pass those
4 back out to them.

5 THE COURT: All right. We have them up here?

6 MR. POLLACK: Yes, they're up there, Your Honor.

7 Q. Okay. So, Mr. S., Exhibit 16 is a cable that was written
8 December 18, 1998, correct?

9 A. Yes.

10 Q. And the meeting in San Francisco that was the transition
11 from Case Officer Zach W. to Mr. Sterling had occurred in
12 November of '98, correct?

13 A. Yes.

14 Q. And this cable 16 is authored by you, correct?

15 A. Correct.

16 Q. And at the end of paragraph 3 -- if we can enlarge
17 that? -- it says, "M has raised his profile with Iranian
18 nuclear-related individuals and institutions by mail, Internet,
19 and conference attendance for the past year . . ."

20 And so the majority of that activity, if not all of
21 it, would have been when Zach W. was the case officer, correct?

22 A. The activity as of this point, but it continued for
23 another year.

24 Q. Correct. My question is as of this point, Zach W. has
25 been doing that for a year, correct?

Robert S. - Cross

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1 A. Correct.

2 Q. Now, in order to work on Classified Program No. 1,
3 Mr. Sterling physically relocated from the Washington, D.C.,
4 area to the New York office; is that correct?

5 A. Correct. That was not the only reason that he relocated,
6 but yes, he relocated.

7 Q. Okay. And in the New York office, there were a number of
8 managers above Mr. Sterling, correct?

9 A. Correct.

10 Q. There was a Mark L., correct?

11 A. Yes.

12 Q. A Thomas H.?

13 A. Yes.

14 Q. A Mary G.?

15 A. Yes.

16 Q. And a David C.?

17 A. Yes.

18 Q. And when Mr. Sterling would draft a cable, it would be
19 reviewed by at least some of those managers before it would be
20 sent on back to Langley, correct?

21 A. Correct.

22 Q. And at least Mr. L. and Mr. H. would have reviewed that
23 cable traffic, correct?

24 A. I don't know if they reviewed every single cable, but
25 someone in that chain of command above Mr. Sterling would have

Robert S. - Cross

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1 reviewed each cable.

2 Q. And that's before it was even sent on to Langley?

3 A. Right.

4 Q. And then when it was sent on, you would review the cables,
5 correct?

6 A. I was probably the recipient intended by Mr. Sterling. I
7 would be the first one to read it in most cases but not the
8 only one.

9 Q. And in addition to being the recipient and reviewing
10 cables that came from New York pertaining to Classified Program
11 No. 1, you also would sometimes write cables to your superiors
12 about the program, correct?

13 A. I wouldn't write cables to my superiors. They were in the
14 same building, and the cable would go to another office, but I
15 would consult with my superiors, and they would review cables
16 that I wrote.

17 Q. Okay. Let me make sure I understand that because I think
18 you're telling us two different things. First of all, for
19 people in the same office or same building, they would see the
20 cables, and you would also have oral conversations?

21 A. Right. They would see the cables in review before they
22 went out --

23 Q. I see.

24 A. -- but I would not write the cable to them.

25 Q. I understand. So the sequence would be, for example, if

Robert S. - Cross

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1 we're talking about a cable written by Mr. Sterling, first it
2 would get reviewed by New York management, right?

3 A. Yes.

4 Q. Then it would get reviewed by you?

5 A. Yes.

6 Q. Then it would get reviewed by others in your office or
7 your building, correct?

8 A. Those who had access to this particular program, yes.

9 Q. Right. And then it would get sent out to other offices?

10 A. No. If Mr. Sterling from New York wrote the cable, then
11 it would not have to come to headquarters before, for example,
12 it went to another field office.

13 Q. Okay.

14 A. New York sent them independently to other field offices.

15 Q. Okay. So New York might send it to other field offices
16 before it even went through that review process -- that entire
17 review process we just discussed?

18 A. Well, it would go out of New York after New York's
19 internal review process, but it didn't have to come to
20 headquarters for someone there to approve that cable going off
21 to another field office.

22 Q. Okay.

23 A. New York could do that on its own after its own review
24 process.

25 Q. Okay. So Mr. Sterling could write a cable, it would be

Robert S. - Cross

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1 reviewed by the New York office, it could then go to other
2 offices, and it could go to the D.C. area office, correct?

3 A. Yes.

4 Q. Your office?

5 A. Yes.

6 Q. And there you would review it, and others would review it,
7 correct?

8 A. Correct.

9 Q. And then might it get further disseminated from there?

10 A. No.

11 Q. Okay. Would there be other cables about Classified
12 Program No. 1 that would be disseminated from there?

13 A. I don't understand your question.

14 Q. Sure. Would there be cables that originated in Langley
15 about Classified Program No. 1 that were, that were then sent
16 out, or did all of the cables about Classified Program No. 1
17 originate in New York?

18 A. No, we originated them ourselves, and they went to other
19 agency overseas offices.

20 Q. Okay. And cables that you originated also all went to
21 superiors of yours?

22 A. Correct.

23 Q. And, in fact, you had indicated that while you might have
24 been a colonel, there were an awful lot of generals, right?

25 A. That's correct.

Robert S. - Cross

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1 Q. And in 2003, after the CIA learned that Mr. Risen was
2 working on a story about Classified Program No. 1, you were
3 shown a list by the FBI of people that at that point the FBI
4 was aware of who were aware of the program, correct?

5 A. Correct.

6 Q. And that list had about 90 people on it, correct?

7 A. Correct.

8 Q. And you, you reviewed that list, and you said that that
9 list was likely incomplete, correct?

10 A. Correct.

11 Q. Meaning there were probably more people that had an
12 awareness of the program, correct?

13 A. Correct.

14 Q. You described yesterday that in the early stages of the
15 program, there were essentially separate and parallel tracks
16 that were taking place, correct?

17 A. Throughout the program.

18 Q. And so, for example, there was the operational phase
19 assessing Merlin, preparing Merlin, and then there was the
20 technical phase, the development of the plans, correct?

21 A. Correct.

22 Q. And in the planning stages of the operation, there were
23 some people within the CIA who were concerned that the
24 deployment of the technology in question might allow the
25 recipient nation to modify the technology and use it in some

Robert S. - Cross

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1 fashion, correct?

2 A. That's correct.

3 Q. Now, ultimately, they satisfied themselves that that was
4 only a very remote possibility, correct?

5 A. Correct.

6 Q. And the -- part of the technological development was to
7 have a, a team of scientists at a national lab who were not
8 involved in the creation of the plans to review the plans to
9 see if they would spot the flaws, correct?

10 A. Correct.

11 Q. And they worked on it for about five months?

12 A. I don't know the exact time, but that sounds about right.

13 Q. And they were able to detect about 25 percent of the
14 flaws?

15 A. I have not heard that percentage before.

16 Q. You were aware that they were able to detect some of the
17 flaws?

18 A. Some of the flaws, yes.

19 Q. And while they worked on it for five months, you expected
20 that the Iranians might spend three to five years examining
21 these plans, correct?

22 A. Correct.

23 Q. And the Iranians at that point had 1950s nuclear
24 technology?

25 A. As far as we knew.

Robert S. - Cross

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1 Q. And what you were planning to give them, these fire set
2 plans were essentially 1980s technology, correct?

3 A. Correct.

4 Q. Now, you didn't know whether the Iranians had access to
5 any Russian former nuclear scientists, correct?

6 A. We assumed that they might.

7 Q. But any one scientist wouldn't have a complete picture
8 even of a single component like a fire set, correct?

9 A. Correct.

10 Q. And so there would be holes in the Iranians' knowledge,
11 correct?

12 A. Correct.

13 Q. And presumably, the Iranians would be looking for
14 information that came from other sources that might fill in
15 some of those blanks for them?

16 A. Yes.

17 Q. During the time that Zach W. was the case officer for
18 Merlin, you met with Merlin about once a month?

19 A. Probably less than that because we were still some
20 distance away from the operation, but I won't argue it. If you
21 have cables that show that, then that's what happened. I think
22 it was probably every other month, but it's 15 years ago, so
23 you may be right.

24 Q. It is 15 years ago, but do you recall that you met with
25 Merlin about once a month to minimize the handling case

Robert S. - Cross

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1 officer's burden?

2 A. Yes.

3 Q. Now, in that meeting in San Francisco, when Merlin first
4 saw the plans, he said something to the effect of: This won't
5 work. It's a fake. It will not work?

6 A. He didn't say it's a fake. He said it won't work.

7 Q. He did not say it's a fake?

8 A. Not to my recollection.

9 Q. But it is 15 years ago.

10 A. Yes.

11 Q. And you testified yesterday that when -- whatever the
12 precise words were that Mr. Merlin used, when he made his
13 comments, Mr. Sterling seemed taken aback?

14 A. I don't know whether you'd call it taken aback. He
15 certainly wanted to know whether we were going to have a
16 problem.

17 Q. Well --

18 A. But I guess that was more about the Merlin reaction than
19 about the technology.

20 Q. Okay. My question is your observations of Mr. Sterling's
21 reaction when Merlin made the comments that he made about it
22 not working, okay? And did you not testify yesterday that it
23 was your observation that Mr. Sterling seemed taken aback?

24 A. I guess if that's what I said, that's what I said. To be
25 honest, I was focusing more on Merlin than Mr. Sterling at that

Robert S. - Cross

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1 time, but Mr. Sterling did approach me, as I have testified.

2 Q. Okay. And, in fact, he asked you if there was a problem,
3 correct?

4 A. Yes.

5 Q. And you told him that there wasn't, correct?

6 A. I told him I didn't think so, and we would triple-check
7 with the designer and the laboratory.

8 Q. Do you recall when interviewed by the FBI in 2006, saying
9 that Mr. Sterling asked, "Is this a problem?" and that you
10 replied that it was not?

11 A. Yes. And I elaborated.

12 Q. When -- you testified yesterday that when you disagreed
13 with a subordinate, you would politely and correctly --
14 politely and tactfully correct them.

15 A. If there were a significant issue, yes.

16 Q. And were there ever occasions, Mr. S., where you were
17 maybe less than polite and tactful?

18 A. Of course. I'm human.

19 Q. And on this particular occasion, would you characterize
20 your response to Mr. Sterling as essentially telling him to
21 shut up?

22 A. Not at all.

23 Q. Not at all?

24 A. Not at all. He was very much aware of the additional
25 steps we were going to take to address Merlin's questions.

Robert S. - Cross

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1 Q. And, in fact, there was further consultation with the lab,
2 correct?

3 A. Yes.

4 Q. To see if what Merlin had spotted was precisely what they
5 intended, correct?

6 A. Correct.

7 Q. And you confirmed that it was, correct?

8 A. The lab confirmed that it was.

9 Q. That's what I mean. You confirmed with the lab that it
10 was?

11 A. Yes.

12 Q. And if we could have Exhibit 14, paragraph 4, the
13 conclusion, the last sentence is, "We will make no changes to
14 the plans and lists unless a serious discrepancy arises."
15 Correct?

16 A. Correct.

17 Q. And so no changes were made, correct?

18 A. No serious discrepancy arose, and no changes were made.

19 Q. Following that meeting in San Francisco in November of
20 1998, for the next several months, say, through the spring of
21 1999, Mr. Sterling had a number of meetings with Merlin,
22 correct?

23 A. Correct.

24 Q. And those meetings are reflected in cable traffic,
25 correct?

Robert S. - Cross

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1 A. They are.

2 Q. But as the operational details developed, you met with
3 Merlin to describe the details of the operation to him,
4 correct?

5 A. When there was a major new development, I would go to New
6 York and meet with Merlin and Mr. Sterling to convey the new
7 information in person.

8 Q. Let's go ahead and look at Government Exhibit 24. This is
9 a cable dated May 13, 1999, correct?

10 A. Correct.

11 Q. And on the second page, paragraph 4, the partial paragraph
12 at the top of the page, it says, ". . . as the project
13 develops, M" -- which is Merlin, right?

14 A. Um-hum.

15 Q. ". . . should expect a visit from Mr. S." -- you, correct?

16 A. Correct.

17 Q. ". . . who will provide an update on the definite
18 direction of the project. M understands that there are aspects
19 of the project that require certain approvals beyond the
20 purview of C/O."

21 And that's the case officer, correct?

22 A. Correct.

23 Q. And, in fact, you did meet with Merlin to describe the
24 details of the operation with him, correct?

25 A. Yes, many times.

Robert S. - Cross

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1 Q. Okay. For example, Exhibit 25 -- do you want to pull that
2 up? -- this is a May 25 meeting that you attended with
3 Mr. Sterling and Merlin, correct?

4 A. Right.

5 Q. And in this meeting, in paragraph 3, you were the one who
6 explained to Merlin that the project had progressed such that
7 the next steps will entail Merlin making direct contact with an
8 Iranian official who would be interested in the Classified
9 Program No. 1 device, and you were the one who told him that he
10 would be directed to make contact with Iranian Subject No. 1,
11 correct?

12 A. Yes.

13 Q. And you are the one who told him that he would need to
14 travel to Vienna for this purpose?

15 A. Yes.

16 Q. And then -- I'm sorry, if we can just keep that up?

17 On the next page, paragraph 5, in this same meeting,
18 Merlin was given and signed an agreement that talked about what
19 his salary was going to be, correct?

20 A. Correct.

21 Q. And that was done in your presence?

22 A. Yes.

23 Q. And you had described yesterday that arrangement as being
24 a business arrangement, correct?

25 A. Yes.

Robert S. - Cross

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1 Q. The CIA made certain monetary promises to Merlin, correct?

2 A. Not just monetary. Also protecting his identity as
3 cooperating with us.

4 Q. Yes. And Merlin made promises to you, right?

5 A. Yes.

6 Q. And you believed that other than a few hiccups, I believe
7 you said, you thought that Merlin did his job well?

8 A. Yes.

9 Q. But you would agree and -- you would, you would agree that
10 Merlin was no one's idea of a clandestine operative, correct?

11 A. Correct.

12 Q. And, in fact, that's something that you noted in a cable,
13 correct?

14 A. Yes.

15 Q. And, in fact, you have described Merlin as having been a
16 difficult agent.

17 A. That's correct.

18 Q. If we can go ahead and pull up Exhibit 31, please?

19 And again, this is a cable that you drafted, Mr. S.?

20 A. Yes.

21 Q. And at the second page, when we look at paragraph 6 -- and
22 I should have noted this is November 24, 1999, right?

23 A. Yes.

24 Q. In paragraph 6, you say that he is also redrafting his
25 cover letter while retaining his wonderfully cracked English

Robert S. - Cross

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1 diction, correct? And when you say "cover letter" there, I
2 want to make sure we know what you're talking about. This was
3 a draft of the letter that was going to be put in the envelope
4 with the plans to go to the Iranian subject, correct?

5 A. Yes.

6 Q. The Iranians -- to be, hopefully to be delivered to the
7 Iranian subject back in Iran?

8 A. To be delivered in Vienna and hopefully transited back to
9 Iran.

10 Q. Right. So that cover letter was intended for the person
11 back in Iran, if it ever made it that far?

12 A. It was intended for any Iranian official who might read
13 this and care about the subject.

14 Q. Okay. But it was going to go with the package?

15 A. Yes.

16 Q. And your hope was that the package would get delivered to
17 Iran and read by somebody in Iran?

18 A. Correct.

19 Q. And I don't want to skip ahead too much, but just that so
20 we're all on the same page on the words that we're using,
21 ultimately, there was a decision made that there would also be
22 a, what I'll call a cover note, which was going to be a
23 handwritten note that would be on the outside of the package,
24 correct?

25 A. Yes. There were two different recipients. One was the

Robert S. - Cross

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1 person in Iran who whom Mr. -- not Mr. Sterling -- Merlin had
2 been in contact, and the other was an Iran official who we knew
3 to be in Vienna.

4 Q. And so the cover note, if you will, the handwritten note,
5 that would be intended for the person in Vienna?

6 A. Correct.

7 Q. And the interior cover letter would be intended for
8 somebody in Iran?

9 A. Correct, although we hoped that the person in Vienna, who
10 was also involved in nuclear things, would read it, too.

11 Q. Okay. But just so that we're all on the same page, you'll
12 understand if I'm talking about a cover note, I'm talking about
13 that handwritten note that was intended for the person in
14 Vienna, correct?

15 A. If that's the language you're using, yes.

16 Q. And if we're talking about a cover letter, we're talking
17 about the letter that was going to go inside the package,
18 correct?

19 A. Okay.

20 Q. Which was to be typed, correct?

21 A. Yes.

22 Q. Okay. And so here in paragraph 6 -- this is before the
23 idea of the cover note even arises, right?

24 A. Yes.

25 Q. And so here we're clear that what we're talking about in

Robert S. - Cross

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1 paragraph 6 is the cover letter.

2 A. Correct.

3 Q. The interior letter.

4 And that was going to be typed?

5 A. It was going to be printed off in a business center in a
6 hotel in Vienna.

7 Q. But regardless of where it was going to be printed, it was
8 going to be a typed, computer-generated document, not a
9 handwritten note, correct?

10 A. Correct.

11 Q. Okay. And when you say he is also redrafting his cover
12 letter, you wanted Merlin's input on the verbiage that was
13 going to be used in that cover letter because you wanted it to
14 be authentic. You wanted it to be in his wonderfully cracked
15 English diction, correct?

16 A. Correct.

17 Q. And you understood that when he was drafting and
18 redrafting the drafts of this cover letter, that he was doing
19 it on a home computer, correct?

20 A. Correct.

21 Q. And he would bring in a printout of whatever the current
22 iteration was?

23 A. Right.

24 Q. And the CIA would review that draft, maybe have some
25 comments for him, and then he would go back to his home

Robert S. - Cross

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1 computer and create a new version, correct?

2 A. Correct.

3 Q. If we can look at Exhibit 32, this is a cable about a
4 November 18, 1999 meeting, correct?

5 A. Correct.

6 Q. And again, this is a meeting with Mr. Sterling and Merlin
7 and you, correct?

8 A. Correct.

9 Q. And during that meeting, you talked about some more
10 details about the forthcoming approach, correct?

11 A. Yes.

12 Q. Meaning the travel to Vienna, correct?

13 A. Yes.

14 Q. And in paragraph 3, you then provided Merlin with
15 additional information that should be included in the letter,
16 which will be included in the package being prepared for
17 Iranian Subject No. 1 in Vienna, correct?

18 A. Yes.

19 Q. Okay. So you're giving Merlin some suggested changes to
20 the draft, again, the cover letter, correct?

21 A. Yes. We went through numerous drafts.

22 Q. And he agreed to make those changes on his home computer,
23 correct?

24 A. Yes.

25 Q. And then in Exhibit 33, this is a December 16, 1999, cable

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1 about a December 14 meeting, right?

2 A. Yes.

3 Q. And again, this was a meeting with Merlin and Mr. Sterling
4 that you attended, correct?

5 A. Correct.

6 Q. And as it says at the beginning of paragraph 3, "Part of
7 the meeting was spent reviewing/revising the letter that is to
8 be included within the package of materials for passage,"
9 correct?

10 A. Correct.

11 Q. "M is to take revisions and formulate the letter in his
12 own particular prose for the sake of authenticity. M was also
13 provided with maps and directions as to the location of the
14 Iranian mission as well as a general layout of the building,"
15 right?

16 A. Yes.

17 Q. So when you say you spent it reviewing and revising the
18 letter -- part of the meeting reviewing and revising the
19 letter, you're discussing with him revisions, right?

20 A. Correct.

21 Q. But he is going to actually go home and make those
22 revisions and do it in his own particular prose on his
23 computer, correct?

24 A. Correct.

25 Q. Now, let's go ahead to Exhibit 35. Exhibit 35 is a cable

Robert S. - Cross

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1 about a January 10, 2000, meeting, correct?

2 A. Correct.

3 Q. Now, this is a meeting just between Mr. Sterling and
4 Merlin. You don't attend this meeting, correct?

5 A. Correct.

6 Q. And in this meeting, in paragraph No. 2, Merlin discusses
7 his dissatisfaction with the status of his salary
8 discrepancies, which culminated in him expressing an
9 unwillingness to continue with the project unless these issues
10 were resolved to his satisfaction, correct?

11 A. Correct.

12 Q. And so he's communicating that he's not going to do this
13 unless you resolve his salary dispute to his satisfaction,
14 correct?

15 A. That's what he said.

16 Q. And you had testified yesterday that it was not atypical
17 of Merlin, in fact, it was very common that Merlin would raise
18 disputes or what he believed to be discrepancies over the
19 amount of money that he was owed, correct?

20 A. Yes, he did that repeatedly.

21 Q. Now, on the second page of this cable, at paragraph 5,
22 Mr. Sterling sets out the present iteration of the draft cover
23 letter, correct?

24 A. Correct.

25 Q. And so he's quoting verbatim the latest version that

Robert S. - Cross

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1 Merlin has brought in on paper to, to show to Mr. Sterling,
2 correct?

3 A. Right.

4 Q. The computer version of this letter resides on Merlin's
5 home computer?

6 A. Correct.

7 Q. And in paragraph 6, Mr. Sterling says that it's his
8 suggestion this letter can be pared down a bit, correct?

9 A. Correct.

10 Q. And he then says that he defers to headquarters on the
11 final version of the letter, correct?

12 A. Correct.

13 Q. And that would be deferring to you, correct?

14 A. Me and my superiors.

15 Q. And then in paragraph 9 of the same exhibit, 35, Merlin
16 again reiterates that he's not going to proceed with the
17 project unless his salary demand is met, correct?

18 A. Correct.

19 Q. And specifically what he's asking for is \$66,000 that he
20 believes is due to him, correct?

21 A. Yes. And our figure was 60.

22 Q. Sixty would be \$5,000 a month?

23 A. Yes.

24 Q. And that's what you recall even today in 2015, you recall
25 that that's what Merlin was receiving at that time, \$5,000 a

Robert S. - Cross

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1 month?

2 A. Well, he'd gotten a raise by this point, and I think we're
3 talking about the dispute was always how many months he was
4 being paid for. He would always assert that we hadn't paid him
5 for a month, where our records showed that we had, and that's
6 where the difference comes out here, I think.

7 Q. So you -- but you recall at some earlier time, he was
8 receiving \$5,000 a month?

9 A. Yes, he was.

10 Q. Now, again -- well, let's go -- let's move on to Exhibit
11 36. 36 is a cable from you, correct?

12 A. Yes.

13 Q. Back to New York, correct?

14 A. Correct.

15 Q. This is basically a response, is it not, to the cable that
16 we just looked at?

17 A. It is.

18 Q. So Mr. Sterling reports on this meeting that he had with
19 Merlin, and you're now responding back to him?

20 A. Correct.

21 Q. And when you say in paragraph 2 "headquarters," is that
22 you, you and your superiors?

23 A. Yes.

24 Q. ". . . regrets that Sterling was a victim of the murdered
25 messenger syndrome after bringing (not very) bad news to

Robert S. - Cross

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1 Merlin."

2 And so what you're saying here is basically Merlin
3 was, was quite rude to Mr. Sterling?

4 A. Yes.

5 Q. And you felt it was a case of murdered messenger syndrome?

6 A. Right. He shot the messenger.

7 Q. He shot the messenger.

8 So he was blaming Mr. Sterling for something that
9 wasn't Mr. Sterling's fault.

10 A. Exactly.

11 Q. In fact, later in that paragraph, it says, "Mr. S. will
12 also tell him" -- and that's a reference to Merlin, correct?
13 "Mr. S. will also tell [Merlin] to stop blaming Sterling for
14 things which occurred before his watch, and to avoid the
15 temptation to try to play one CIA officer against another,"
16 correct?

17 THE WITNESS: (Nodding head.)

18 THE COURT: I'm sorry, you have to say yes or no.
19 Nodding your head won't do it.

20 THE WITNESS: Yes. Sorry.

21 THE COURT: That's all right.

22 BY MR. POLLACK:

23 Q. Now, in fact, it had been your observation, had it not,
24 that Merlin didn't like Mr. Sterling?

25 A. I'm not sure that's a fair assessment. Merlin blamed

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1 Sterling towards the end of this relationship for things that
2 weren't Sterling's fault. By that point, I don't think
3 Mr. Sterling liked Merlin much, either.

4 Q. Okay. My question was whether Merlin disliked Sterling.

5 A. He never said so to me.

6 Q. Was it your belief that he disliked Sterling?

7 A. No.

8 Q. And you didn't believe that he disliked Sterling in part
9 because Sterling is black?

10 A. I did not believe that.

11 Q. Okay.

12 A. I believe he was frustrated, and Sterling was the person
13 in front of him.

14 Q. Do you recall being interviewed by the FBI on April 12,
15 2003?

16 A. I was interviewed many times. I don't know that specific
17 one.

18 Q. Do you recall in an interview by the FBI telling the FBI
19 that the asset, as a reference to Merlin, the asset's dislike
20 for Sterling was at least in part due to the fact that Sterling
21 is black?

22 A. If I said that at the time, then I did.

23 Q. And I take it you wouldn't have said it if you didn't
24 believe it?

25 A. At the time, I believed it, yes.

Robert S. - Cross

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1 Q. And 2003 was a lot closer to the events of 1998 than 2015
2 is, correct?

3 A. Correct.

4 Q. And, in fact, you believed, did you not, that Merlin was,
5 in fact, racist to a certain degree?

6 A. When he first arrived in the United States, he had very
7 typical Russian attitudes on racial matters.

8 Q. In fact, in 1997, just a year before Mr. Sterling became
9 Merlin's case officer, Merlin was in the process of buying a
10 house, and he commented to you that he was concerned about
11 purchasing that house because he saw a black man in the
12 neighborhood.

13 A. Yes, he did.

14 Q. Your view was that Mr. Sterling had done fine work in
15 winning the trust of Merlin, correct?

16 A. Yes.

17 Q. And Merlin was somebody that you described as a somewhat
18 touchy asset, correct?

19 A. Right.

20 Q. Now, you testified yesterday, I believe, that you knew
21 Mr. Sterling even prior to the time that he became the case
22 officer for Merlin, correct?

23 A. For a few months.

24 Q. Okay. And then you worked with him during the time that
25 he was the case officer for Merlin?

Robert S. - Cross

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1 A. Correct.

2 Q. You were aware, were you not, that Mr. Sterling had a
3 difficult upbringing in Missouri?

4 A. He told me that.

5 Q. And you were aware that he was the first in his family to
6 go to college?

7 MR. TRUMP: I think we're getting far afield. This
8 is all hearsay. These are statements apparently made by
9 Mr. Sterling to the witness, and that's --

10 THE COURT: They can't come in for the truth of their
11 contents, so what is the purpose of having those questions?
12 Mr. Pollack, what is the purpose?

13 MR. POLLACK: I think that there have been various
14 characterizations of Mr. Sterling's conduct with respect to
15 this program and afterwards, and I think that --

16 THE COURT: I don't think -- those questions don't
17 relate to that, so I'll sustain the government's objection.
18 Move on.

19 BY MR. POLLACK:

20 Q. Mr. S., you knew that while Mr. Sterling was in New York
21 working on Classified Program No. 1, he was also pursuing a law
22 degree, correct?

23 A. I knew that.

24 Q. And studying for the bar exam, correct?

25 A. Yes.

Robert S. - Cross

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1 Q. And you knew that he passed the bar exam, became a
2 licensed lawyer?

3 A. That's what he told me.

4 MR. TRUMP: Again, objection.

5 THE COURT: What's the relevance of that line,
6 Mr. Pollack?

7 MR. TRUMP: And the basis of his knowledge again is
8 only hearsay.

9 THE COURT: I'll sustain the objection.

10 BY MR. POLLACK:

11 Q. You believed that Mr. Sterling believed that he had been
12 treated unfairly by the CIA?

13 A. Mr. Sterling stated that he had been treated unfairly.

14 Q. And --

15 THE COURT: Wait, wait. To make that -- in what
16 frame, if you can recall, did he make that statement to you or
17 those statements?

18 THE WITNESS: During 1999.

19 THE COURT: So while he was working on the project?

20 THE WITNESS: Yes.

21 THE COURT: And approximately how many times, if you
22 can recall, did he make such statements to you?

23 THE WITNESS: A handful.

24 THE COURT: Did you do anything in response to those
25 statements?

Robert S. - Cross

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1 THE WITNESS: No. I was not in his chain of command.
2 I expressed to him that I often felt frustrations with the
3 management, too, and that he needed to do his job well and not
4 worry about it.

5 THE COURT: Thank you. Go ahead.

6 BY MR. POLLACK:

7 Q. And you felt that he did do his job well?

8 A. He did.

9 Q. But he also brought a discrimination claim against the
10 CIA, correct?

11 A. I did not know that at the time.

12 Q. Okay. Mr. Trump asked you yesterday about a document
13 called a PAR?

14 A. Yes.

15 Q. And that stands for?

16 A. Performance appraisal report.

17 Q. And a PAR, or performance appraisal report, is a
18 performance evaluation of an employee, correct?

19 A. Right.

20 Q. And Mr. Trump asked you whether such documents, PARs, are
21 initially marked as Secret. Do you recall that question?

22 A. I do.

23 Q. Are you aware, Mr. S., that when an employee is in a
24 discrimination suit against the agency, that an unclassified
25 version of the PAR is prepared and provided to the employee?

Robert S. - Cross

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1 MR. TRUMP: Objection. Well beyond the scope.

2 THE COURT: It's way beyond the scope of the direct,
3 so I'm sustaining the objection. There was nothing about this
4 at all raised in Mr. Trump's direct.

5 MR. POLLACK: Well, Mr. Trump asked if PARs are
6 initially marked as Secret. I'm exploring if he knows whether
7 there are later un-Secret versions of the PAR.

8 THE COURT: Do you know one way or the other?

9 THE WITNESS: I do not know.

10 THE COURT: That's the answer.

11 MR. POLLACK: Okay. Thank you, Your Honor.

12 THE COURT: And I do at this point want to alert the
13 jury to something that I omitted to tell you at the beginning,
14 and that is, the only evidence you have in the case are
15 stipulations, exhibits I've admitted, or the testimony of
16 witnesses. What lawyers say to you is not evidence, so whether
17 it's in their opening statements, their closing arguments, or
18 in the form of a question, so if a lawyer makes a statement in
19 a question but the witness says, "I don't know," or "No,"
20 obviously, the lawyer's statement is not any evidence you
21 should consider.

22 Now, lawyers are allowed to do in cross-examination
23 what are called leading questions; that is, the lawyer almost
24 states a statement, makes a statement and then asks the
25 question, "Is that true or not?" But if the witness says,

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1 "It's not true," or "I don't know," you have to disregard that
2 question of the lawyer because it is not evidence.

3 All right, let's move on.

4 MR. POLLACK: Thank you, Your Honor.

5 Q. Let's look at Government Exhibit 36. This is the document
6 we were looking at a moment ago, the one in which you said that
7 you regretted that Mr. Sterling was the victim of murdered
8 messenger syndrome or shoot the messenger. If you'd go down to
9 paragraph 3 of that same cable from you, it says, "That
10 unpleasantness aside, his" -- meaning Merlin's -- "proposed
11 letter, now in its fifth iteration, shows real progress,"
12 correct?

13 A. Correct.

14 Q. And that's what you were discussing before, that there
15 were a number of different versions or iterations of this
16 letter, correct?

17 A. Yes.

18 Q. And the fifth iteration that you're referencing here that
19 you think is a great progress from the prior iterations is the
20 one that was set forth in the cable that you're responding to,
21 correct?

22 A. Correct.

23 Q. The one set forth in Exhibit 35, correct?

24 A. Correct.

25 Q. And then you make a suggestion as to even though you think

Robert S. - Cross

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1 it's made great progress, there's an additional suggestion that
2 you make, correct?

3 A. There is.

4 Q. You say that he -- meaning Merlin?

5 A. Correct.

6 Q. -- should say explicitly that he is offering the schematic
7 and associated parts list free, correct?

8 A. Correct.

9 Q. And so your anticipation in making that suggestion is that
10 it would be conveyed to Merlin, correct?

11 A. Correct.

12 Q. And then Merlin on his home computer would edit the fifth
13 iteration, correct?

14 A. Correct.

15 Q. The one, the one that appeared in Exhibit 35?

16 A. Correct.

17 Q. And add to it something that explicitly says that he's
18 offering the schematic and associated parts list for free,
19 correct?

20 A. Correct.

21 Q. And that would -- well, I'll stop there. So -- let me
22 strike that.

23 So you would anticipate for Merlin to make that edit
24 on his home computer?

25 A. Correct.

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1 Q. Now, in all of this editing of the drafts back and forth,
2 it's fair to say that the editing of the drafts was done
3 mostly, not the physical editing but the ideas for the edits
4 mostly came from you, correct?

5 A. No, it was a partnership. Mr. Sterling had some excellent
6 ideas as well, as did Merlin.

7 Q. Okay. But as between you and Mr. Sterling, it was not a
8 50/50 partnership?

9 A. I was the senior officer, but he had the hands-on
10 responsibility, so --

11 Q. Is it fair to say --

12 A. -- I don't know where you would parse out the percentage.

13 Q. I'm sorry?

14 A. I don't know where you would put the percentage.

15 Q. You don't?

16 A. He deferred to me on the overall program management
17 issues.

18 Q. Okay. Well, specifically with respect to revisions to the
19 cover letter, is it fair to say that you were the one doing
20 most of the thinking and that you would parse it 70 percent
21 you, 30 percent Sterling?

22 A. I don't know that that's accurate. I credit Mr. Sterling
23 with an awful lot of the thinking as well.

24 Q. Do you recall being interviewed by the FBI on February 28,
25 2006?

Robert S. - Cross

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1 A. I recall being interviewed. The specific date, no.

2 Q. Do you recall at any interview by the FBI the interviewing
3 agents asking whether it was you or Sterling that was
4 responsible for the editing of these drafts during the
5 preparation for the operation? And you stated, "I was doing
6 most of the thinking. I would give it 70 to 30 me to
7 Sterling."

8 A. Okay. I think I was being rather ungenerous there.

9 Q. Today you'd like to give more of the credit to
10 Mr. Sterling?

11 A. This was shortly after the publication of a book that
12 revealed the whole operation. I was being ungenerous.

13 Q. Let's go to Exhibit No. 37. This is a cable on February
14 17, 2000, and this one's written by you, correct?

15 A. Yes.

16 Q. And this is describing a meeting that had taken place a
17 few days earlier, on February 14, correct?

18 A. Correct.

19 Q. And if we look at paragraph 2, this was again a meeting
20 with Merlin and Mr. Sterling that you attended, correct?

21 A. Correct.

22 Q. And you say that Merlin continued to object to minor
23 proposed changes in his agreement, and when you say
24 "agreement," the salary agreement, correct?

25 A. Yes.

Robert S. - Cross

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1 Q. And, in fact, Merlin walked out of the meeting, correct?

2 A. Yes.

3 Q. And the next day, he called you, not Mr. Sterling,
4 correct?

5 A. Correct.

6 Q. His storming out of the meeting over a minor dispute,
7 would that be another one of the hiccups in the relationship
8 with Merlin?

9 A. Yes.

10 Q. And when he called you the next day, that was to apologize
11 for his behavior the day before?

12 A. Yes.

13 Q. The behavior that occurred in front of Mr. Sterling?

14 A. Yes.

15 Q. But yet he called you to apologize, not Mr. Sterling,
16 correct?

17 A. He did.

18 Q. And let's go to Exhibit 37 -- no, I'm sorry -- yeah, 37.
19 I think it's the one we just had up.

20 Still in that second paragraph, this discusses that
21 he called you the next morning to say it was all a
22 misunderstanding, correct?

23 A. Yes.

24 Q. And you then set up a meeting with him for February 21,
25 correct?

Robert S. - Cross

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1 A. Correct.

2 Q. And that was going to be an opportunity for you to make a
3 final assessment as to whether Merlin really was in the right
4 frame of mind to go forward with the trip to Vienna, correct?

5 A. Correct.

6 Q. And you have -- well, in some -- in this time frame, this
7 meeting, the time leading up to that meeting on February 21,
8 it's fair to say that in your mind, Merlin to some degree or
9 another had developed cold feet?

10 A. Yes.

11 Q. And you had to convince him to move forward?

12 A. I had to assess whether he had convinced himself or his
13 wife had convinced him to move forward.

14 Q. You wouldn't characterize it as saying that you had to
15 convince him to move forward?

16 A. No, I would not, because I was not going to try to twist
17 his arm to do this unless I sensed that he was completely
18 ready.

19 Q. Do you recall -- and again, I appreciate you may not
20 recall specific dates, but you were interviewed by the FBI on
21 May 26, 2003 -- do you recall telling the FBI in an interview,
22 even if you can't pinpoint the date, that at some point prior
23 to the operation, you concluded that Merlin had developed "cold
24 feet" and you had to convince him to move forward?

25 A. Over a series of meetings, yes. Not at the last one.

Robert S. - Cross

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1 Q. So over a series of meetings, you had to convince him to
2 move forward?

3 A. Yes.

4 Q. Let's look at 38, and this is that meeting that you had
5 set up with Merlin in your phone call with him, correct?

6 A. Yes.

7 Q. The meeting of February 21?

8 A. Yes.

9 Q. And this is a meeting that is attended just by you and
10 Merlin?

11 A. Correct.

12 Q. Mr. Sterling is not there?

13 A. Correct.

14 Q. And you wrote this cable?

15 A. Correct.

16 Q. And this is -- well, ultimately, you determined that in
17 your view, Merlin is ready to proceed, correct?

18 A. He told me he was, and all of the signs were that that was
19 correct.

20 Q. So you concluded that he was?

21 A. Yes.

22 Q. And so this ends up being the final meeting with him
23 between anybody at the CIA before he goes to Vienna, correct?

24 A. Correct.

25 Q. And it's just with you?

Robert S. - Cross

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1 A. Correct.

2 Q. And in paragraph 2, it says you met with him and made
3 final preparations for his delivery of the CP 1. The counter-
4 proliferation 1 is it?

5 A. Classified program.

6 Q. Classified Program 1, I'm sorry, Classified Program 1,
7 disinformation package to the Iranian mission in Vienna,
8 correct?

9 A. Correct.

10 Q. And in paragraph 3 -- I'm sorry, let's stay on paragraph
11 2. In this meeting, you paid him the amount that he had said
12 that he wanted or he wasn't willing to proceed, correct?

13 A. Correct.

14 Q. And you're the one who paid him. You're the only other
15 person at the meeting, right?

16 A. Correct.

17 Q. So when it says, "C/O paid him \$66,000," the C/O that's
18 being referenced there is you, correct?

19 A. Right.

20 Q. And similarly, in paragraph 3, where it says, "Once the
21 financial part of the meeting was over, M and C/O went over his
22 travel plans, compartment in Vienna, and approach to the
23 Iranian mission in great detail" -- correct?

24 A. Correct.

25 Q. And you are the -- is "C/O" case officer?

Robert S. - Cross

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1 A. Yes.

2 Q. You are the case officer that went over his travel plans,
3 compartment in Vienna, and approach to the mission in great
4 detail, correct?

5 A. Correct.

6 Q. And you were very familiar with the City of Vienna?

7 A. I was.

8 Q. You had been there several times?

9 A. Correct.

10 Q. And specifically, you had been there several times for the
11 purpose of casing the city for purposes of this operation,
12 correct?

13 A. Correct.

14 Q. In other words, kind of doing a dress rehearsal of the
15 routes that, that Merlin might take, how to approach the
16 building, correct?

17 A. I did not do that.

18 Q. Okay.

19 A. I approached the building myself and stayed a reasonable
20 distance and observed it --

21 Q. Okay.

22 A. -- so that I could provide to him explicit directions on
23 how to do it.

24 I did not do an elaborate route as to how he would
25 get there.

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1 Q. You were familiar with the city generally?

2 A. Correct.

3 Q. But the purpose of -- was it a single trip or multiple
4 trips?

5 A. Multiple trips.

6 Q. The purpose of these multiple trips specifically was to
7 figure out the layout of the IAEA mission in Vienna, correct?

8 A. Correct.

9 Q. Now, as far as you know, Mr. Sterling has never been to
10 Vienna, correct?

11 A. As far as I know.

12 Q. And your briefing to Merlin was very detailed, correct?

13 A. Correct.

14 Q. Specifically, you briefed him on street names, correct?

15 A. Yes.

16 Q. Now, in this final meeting, in paragraph 4, we're still on
17 Exhibit 38, "Case officer again provided details of the
18 location and directions to the Iranian IAEA mission and went
19 over M's role in dropping off the packet," correct?

20 A. Correct.

21 Q. And again, C/O, case officer, that's you?

22 A. That's me.

23 Q. Okay. And in paragraph 5, it discusses the fact that
24 Merlin asked for an emergency contact number that he could use
25 while he was in Vienna, correct?

Robert S. - Cross

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1 A. Correct.

2 Q. And you gave him your cell phone number, correct?

3 A. Correct.

4 Q. So it says, "C/O" -- case officer -- "provided his cell
5 phone number . . ." That's you, correct?

6 A. Correct.

7 Q. But you gave him very explicit instructions to use that
8 only in the case of emergency, correct?

9 A. A life-threatening emergency or he had been arrested or
10 something along those lines.

11 Q. Okay. And, in fact, you warned him very explicitly that
12 potential problems -- potentially serious problems could result
13 if he were to use it for anything other than that kind of an
14 emergency, correct?

15 A. I did.

16 Q. And it was your assessment that it was unlikely that he
17 would make use of this lifeline in anything short of a
18 life-threatening situation, correct?

19 A. That was my assessment, which, of course, turned out to be
20 wrong.

21 Q. And the plan was for Merlin to carry with him a sanitized
22 version of the cover letter, correct?

23 A. Yes.

24 Q. And that's reflected in paragraph 3, right?

25 A. Right.

Robert S. - Cross

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1 Q. Now, was there a plan in terms of how he was to do that,
2 whether he was to carry a piece of paper that had a sanitized
3 version of the letter with him or whether he was going to carry
4 a diskette that had it on there?

5 A. It was the latter, a diskette.

6 Q. Okay. And when you say "sanitized," he was going to take
7 out some of the information that was in there that would reveal
8 what this was about in case somebody got ahold of that letter
9 before he was able to deliver it, correct?

10 A. Yes. And also specific references to the target country.

11 Q. But the template for the letter he would have, and then he
12 could add back in the stuff that he had sanitized when he got
13 to Vienna, correct?

14 A. Correct.

15 Q. And so the expectation at least on your part would be that
16 the version of that cover letter that he would deliver in
17 Vienna would match the version that he has on his home
18 computer, correct?

19 A. It would certainly be close.

20 Q. And it was also the plan, was it not, that Merlin would
21 leave contact information so that the Iranians could get back
22 to him if they were interested?

23 A. Correct.

24 Q. And specifically, he was going to leave a post office box
25 in the United States, correct?

Robert S. - Cross

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1 A. Correct.

2 Q. In fact, an important part of his legend was that he lived
3 in the United States, correct?

4 A. It would have been impossible to deny that.

5 Q. And you -- not only could he not deny it, but
6 specifically, he was going to leave them a post office box in
7 the United States where they could reply to him?

8 A. Correct.

9 Q. And the way that you conclude this cable in paragraph 6,
10 you say everything is all ready to go. The C/O, that's you,
11 case officer, was satisfied with Merlin's degree of preparation
12 and commitment, correct?

13 A. Correct.

14 Q. And you say, ". . . and now it is up to luck," correct?

15 A. Yes.

16 Q. And you scheduled with Merlin a meeting for March 9, which
17 would be after he returned from Vienna, for him to debrief you
18 as to what happened in Vienna, correct?

19 A. Correct.

20 Q. And you did, in fact, meet with Merlin on March 9 as
21 planned, correct?

22 A. Along with Mr. Sterling, yes.

23 Q. Right. And let's look at Government's Exhibit 44. This
24 is a cable that reflects the meeting between you, Mr. Sterling,
25 and Merlin after he returned from Vienna, correct?

Robert S. - Cross

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1 A. Correct.

2 Q. And in paragraph 3, Merlin told you that he had difficulty
3 finding the Iranian mission despite the explicit directions
4 that he had received from you.

5 A. Correct.

6 Q. And, in fact, you already knew that, correct?

7 A. Because he had called me.

8 Q. While in Vienna, he called you on your cell phone,
9 correct?

10 A. Correct.

11 Q. Not because his life was being threatened or because he
12 was arrested, correct?

13 A. Correct.

14 Q. Because he was having trouble finding the building despite
15 the explicit directions you had given him, correct?

16 A. Correct.

17 Q. And he had been instructed not only he should only use the
18 cell phone number in an emergency; he had also been instructed
19 that if he did use the cell phone number, he should do it from
20 a pay phone, correct?

21 A. Correct.

22 Q. But, in fact, he used it in clearly a not life-threatening
23 situation.

24 A. Yes.

25 Q. And he made the phone call from the hotel that he was

Robert S. - Cross

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1 staying at, correct?

2 A. That's what he told us.

3 Q. Now, let's go to page 205 of the book, so Exhibit 132, and
4 look at the second-to-last paragraph on that page. It
5 says, "After his day of floundering around Vienna, the Russian
6 returned to his hotel near the city's large" -- is it
7 "Stadtpark"? How do you pronounce it?

8 A. "Stadtpark," yeah. It means city park.

9 Q. Okay. And was that, in fact, was the hotel he stayed at
10 near that park?

11 A. Yes.

12 Q. And he did a computer search and found the right street
13 address for the mission, correct?

14 A. That's what the book says.

15 Q. Understood that's what the book says. In fact, you had
16 already informed him of the right street address?

17 A. Many times.

18 Q. Right. And he was supposed to use the hotel business
19 center, the hotel's computer to fill back in the portions of
20 his cover letter that he had sanitized, correct?

21 A. He was.

22 Q. You don't know one way or another whether he used that
23 hotel business center to get on the Internet to also look for
24 directions to the mission, do you?

25 A. I don't know.

Robert S. - Cross

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1 Q. What you do know is that he was having trouble finding the
2 mission despite having explicit directions?

3 A. So he told me.

4 Q. And then in paragraph 4 of Exhibit 44, it says at the very
5 end of that page that finally, he left the package very clearly
6 addressed to Iranian Subject No. 1 in the locked mailbox right
7 outside the mission door, right?

8 A. Correct.

9 Q. And that's what he told you in that meeting?

10 A. He did.

11 Q. Now, it was your assessment that -- let's look at
12 paragraph 6 -- that Merlin demonstrated once again that he was
13 unable to follow even the simplest and most explicit direction,
14 correct?

15 A. That was my assessment.

16 Q. Did Merlin tell you that he did not leave a post office
17 box as contact information?

18 A. No, he did not tell me that.

19 Q. Did he tell you that the diskette that he took with him to
20 Vienna with the sanitized version of the letter, that he
21 destroyed that diskette in Vienna?

22 A. I believe he did.

23 Q. And you never saw a final version of the letter, correct?

24 A. No, I didn't.

25 Q. But that final version would continue to reside on

Robert S. - Cross

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1 Merlin's home computer, correct?

2 A. Yes. Well, perhaps not. I don't know.

3 Q. Depending on what Merlin did with it, correct?

4 A. Well, also depending on what changes he made in Vienna
5 with the sanitized version, but fundamentally, it would -- it
6 should reside on his home computer unless he removed it. I
7 don't know.

8 Q. Fair enough. In other words, Merlin's the only person
9 other than possibly an Iranian who read it, Merlin's the only
10 person who knows for sure what was in that final version,
11 correct?

12 A. Correct.

13 Q. He did not bring a copy of the letter, the as-delivered
14 letter back with him?

15 A. No, he didn't.

16 Q. Now, he had not been instructed to take photographs of the
17 mission, correct?

18 A. Correct.

19 Q. In fact, he was instructed not to, wasn't he?

20 A. Correct.

21 Q. But he did.

22 A. Yes, he did.

23 Q. And he showed them to you in New York during this
24 debriefing session, correct?

25 A. Correct.

Robert S. - Cross

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1 Q. And I think you testified on direct that the last you saw
2 of them, they were still in New York, right?

3 A. That's my recollection.

4 Q. Okay. Do you know whether Merlin, in fact, took those
5 photos back with him and says that he destroyed them?

6 A. I don't know.

7 Q. Now, who wrote Government Exhibit 44, the one detailing
8 this debriefing meeting?

9 A. It looks like it was a joint product between Mr. Sterling
10 and me.

11 Q. When you say "joint product," would there have been a
12 primary drafter, somebody who drafted it first, and then --

13 A. I probably was the primary drafter, although I suspect
14 Mr. Sterling was sitting at the next terminal.

15 Q. And then -- Mr. Francisco, do you have Defendant's Exhibit
16 3 loaded?

17 MR. FRANCISCO: I do.

18 MR. POLLACK: Your Honor, I'd like to call up what
19 would be Defendant's Exhibit 3, which was handed up to the
20 Court yesterday. It's the document that has C00115, and my
21 understanding is the government has no objection to its
22 admission.

23 THE COURT: Is that correct?

24 MR. TRUMP: Correct, Your Honor.

25 THE COURT: All right, then it's in.

Robert S. - Cross

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1 (Defendant's Exhibit No. 3 was received in evidence.)

2 MR. POLLACK: Now, Your Honor, these exhibits are not
3 in the cable book that the jury has. I have copies --

4 THE COURT: Let's just put it on the screen.

5 MR. POLLACK: Okay. That's fine, Your Honor.

6 Q. Defense Exhibit 3 -- would it be easier for you, Mr. S.,
7 if you have a hard copy in front of you, or is the screen fine?

8 A. I would prefer a hard copy.

9 MR. POLLACK: Mr. Wood, do you mind? Thank you.

10 THE WITNESS: Thank you.

11 BY MR. POLLACK:

12 Q. Defendant's Exhibit 3 is a cable that you authored on
13 March 13 of 2000, correct?

14 A. Yes.

15 Q. So this is four days after the debriefing?

16 A. Yes.

17 Q. And in paragraph 1, it has the address of the Iranian
18 mission in Vienna?

19 A. I don't see the address.

20 Q. At the end of paragraph 1.

21 A. Oh, yes. There it is.

22 Q. And that address is?

23 A. 19 Heinestrasse.

24 Q. So it's got the, not just the street name but the street
25 number?

Robert S. - Cross

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1 A. Correct.

2 Q. And that's in the cable that you wrote, correct?

3 A. Correct.

4 Q. Now, in the cable of the debriefing meeting that was
5 authored at least in part by Mr. Sterling, 44, the address of
6 the mission does not appear, correct?

7 A. That had a different purpose. This is a notification to
8 cooperating services, who had not previously been told that he
9 was directed to deliver it to that address. That's why it's
10 included here.

11 Q. Okay. Understanding that the cables have a different
12 purpose, I am correct, am I not, that that address does not
13 appear in the cable that was coauthored by Mr. Sterling?

14 A. Correct.

15 Q. And in paragraph 2 of Defendant's Exhibit 3, which is a
16 cable authored by you -- correct?

17 A. Correct.

18 Q. You talk about the plans that were delivered, correct?

19 A. Correct.

20 Q. And you refer to them as the firing set plans, correct?

21 A. Correct.

22 Q. Now, you had testified earlier that there is no technical
23 difference between a "firing set" and "fire set." They're two
24 ways to refer to the same thing, correct?

25 A. That's my impression of it. If you were to ask a

Robert S. - Cross

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1 technical person, they might be more explicit, but my degree is
2 in history, not in physics or electronics.

3 Q. I understand. And I'm only asking you about your
4 understanding. Your understanding is that those terms are
5 interchangeable?

6 A. The terms are interchangeable, yes.

7 Q. Okay. But the term that you use here in a cable you
8 author is "firing set," correct?

9 A. Yes.

10 Q. Okay. And Merlin on the other hand did not use either the
11 term "firing set" or "fire set," right?

12 A. Correct.

13 Q. Because the Russians refer to this same item as a
14 high-voltage block, correct?

15 A. Or an automatics block.

16 Q. Okay. And again --

17 A. High-voltage switch he sometimes called it. So --

18 Q. And again, to your understanding, those three terms are
19 all interchangeable, correct?

20 A. Correct.

21 Q. And they're also interchangeable with "firing set" and
22 "fire set." All five of the terms essentially mean the same
23 thing, correct?

24 A. Yes.

25 Q. Okay. But the term that Merlin used was "high-voltage

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1 block," correct?

2 A. Not always. Sometimes he called it the automatics block
3 or the high-voltage switch.

4 Q. Okay. So one of the terms that Merlin would use is
5 "high-voltage block"?

6 A. Correct.

7 Q. And would not use "firing set" or "fire set"?

8 A. Well, I never saw anything that he wrote. I think
9 occasionally in our discussions, I would call it a high-voltage
10 block, and he would call it a fire set, you know, in oral
11 discussions.

12 THE COURT: We can take the picture off the screen.

13 BY MR. POLLACK:

14 Q. Again, understanding you don't recall precise dates, you
15 were interviewed by the FBI on February 28 of 2006. Do you
16 recall telling the FBI interviewing agents that the
17 term "high-voltage block" is a Russian term and the term used
18 by Merlin; "fire set" was not a term used by Merlin?

19 A. Okay. Not regularly. Certainly not in anything he wrote.
20 In all of his drafts, he called it a high-voltage block or
21 something along those lines. He didn't call it a fire set in
22 any of his draft messages, that's correct, but I cannot state
23 that he never said "fire set" to me or I didn't say
24 "high-voltage block" to him in an oral discussion.

25 Q. Let's look at page 195 of chapter 9. And if we can look

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1 at the last full paragraph that begins, "To be precise"?

2 A. Um-hum.

3 Q. "To be precise, he" -- meaning Merlin -- "was carrying the
4 technical designs for a TBA 480 high-voltage block, otherwise
5 known as a 'firing set' . . ."

6 So the term Mr. Risen uses, "high-voltage block," is
7 the precise term that you told the FBI was the term that was
8 used by Merlin, correct?

9 A. That is the Russian name for the device.

10 Q. And the term that Mr. Risen puts in quotation
11 marks, "firing set," is the term that you use in the cable
12 that's Defendant's Exhibit 3, correct?

13 A. I along with many other English speakers.

14 Q. During the time that Mr. Sterling was involved in
15 Classified Program No. 1, you would agree with me, would you
16 not, that the term that was typically used in all of the cable
17 traffic was "fire set," not "firing set"?

18 A. I haven't reviewed every cable to see what one or the
19 other of us called it, but again, cables and draft letters to
20 Iranians are far more formal than oral discussion.

21 Q. Now, in the far-more-formal-than-oral-discussions cables,
22 can you think of a single cable that was authored by
23 Mr. Sterling that used the term "firing set"?

24 A. I have not conducted that review. I presume you have.

25 Q. And in -- you're not suggesting your cables were any more

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1 formal than Mr. Sterling's cables, are you?

2 A. No.

3 Q. And in your cables, we've seen you did use the
4 term "firing set," correct?

5 A. Yes.

6 Q. Okay. If we can go to page 198 of the book, the first
7 partial paragraph?

8 This is talking about the meeting in the San
9 Francisco hotel room, correct?

10 A. Correct.

11 Q. And it says that a senior CIA official -- now, is it your
12 assumption that that is a reference to you?

13 A. Yes.

14 Q. Brought in experts from one of the National Laboratories
15 to go over the blueprints that he was supposed to give -- "he"
16 being Merlin -- was supposed to give to the Iranians.

17 Now, first of all, "blueprints" is not a term that
18 you used, correct?

19 A. No.

20 Q. Do you know if Merlin ever used the term "blueprints"?

21 A. No, not to my recollection. And, of course, it is not
22 correct, what is stated there.

23 Q. In terms of the National Laboratory representative?

24 A. Correct. That is not correct.

25 Q. Thank you. I was just going to get to that. In fact,

Robert S. - Cross

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1 there wasn't actually a person from the National Lab there,
2 correct?

3 A. No, there was not.

4 Q. There was a former Russian engineer, Mr. G., correct?

5 A. Former Russian by which you mean current American?

6 Q. Correct.

7 A. Yes.

8 Q. In fact, current CIA officer, right?

9 A. Correct.

10 Q. He wasn't with the National Labs; he was with the CIA?

11 A. Correct.

12 Q. But he had a background as a Russian engineer, correct?

13 A. He did.

14 Q. And this was -- Mr. G. was known to Merlin as Len,
15 correct?

16 A. That's correct.

17 Q. And Merlin had private conversations with this person,
18 with Len, at the San Francisco meeting, correct?

19 A. Correct.

20 Q. Now, Mr. Sterling knew that Mr. G. was not from the
21 National Lab; he was from the CIA, correct?

22 A. He knew that, and Merlin knew that.

23 Q. You believed that Merlin knew that?

24 A. We told him.

25 Q. Okay. Did Merlin ever get confused about that point and

Robert S. - Cross

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1 indicate to you that he thought there was somebody there from
2 the National Labs?

3 A. Not to me.

4 Q. Okay. We discussed a moment ago that you sensed that
5 before the trip, Merlin was getting cold feet?

6 A. Yes.

7 Q. And that you worked hard over a series of meetings to
8 assess that, and you told the FBI that you had to convince him
9 to move forward, correct?

10 A. Yes, to stop his acting out.

11 Q. And you're not aware -- well, you were the one who had to
12 convince him. That's what you told the FBI?

13 A. I think I played a major role in that, although
14 Mr. Sterling did as well.

15 Q. And in that last meeting in the cable we saw that you were
16 referred to as C/O -- case officer, correct?

17 A. Yes.

18 Q. And page 197 of the book, in the paragraph in the middle
19 of the page that starts with "The case officer," that very
20 first sentence says, "The case officer worked hard to convince
21 him," and it says, "even though the officer had doubts about
22 the plan as well."

23 Now, you didn't have any doubts about the plan,
24 correct?

25 A. No. So this is not a reference to me.

Robert S. - Cross

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1 Q. Well, are you sure of that?

2 A. I am.

3 Q. How are you sure that when Mr. Risen talks about a case
4 officer that had to work hard to convince Merlin to go forward,
5 that it's not the person who's referred to in a cable in the
6 last meeting as case officer, when you yourself had to work
7 hard to convince him?

8 A. Because if you read the rest of the paragraph, it's
9 clearly not a reference to me.

10 Q. So in other words, if it is a reference to you, the latter
11 part of the paragraph is inaccurate, correct?

12 A. Yes.

13 Q. And you would agree with me that some of what is in
14 chapter 9 is accurate, correct?

15 A. Some of it.

16 Q. And some of what is in chapter 9 is not accurate,
17 correct?

18 A. Correct.

19 Q. Now, let's go to page 205 of chapter 9, the last
20 paragraph. It says that by 8:00 a.m., he found
21 Heinestrasse.

22 A. Spelled wrong, but it's the same place.

23 Q. Yeah. You're familiar enough with Austrian streets that
24 you know the proper spelling?

25 A. Correct.

Robert S. - Cross

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1 Q. Okay. And then it says on the next page, 206, the last
2 full paragraph, at 1:30 p.m., he got a chance to look inside
3 the gate, correct?

4 A. That's what it says.

5 Q. Now, you don't recall Merlin in his debriefing ever
6 mentioning the precise times that he found the building or the
7 time that he got inside, correct?

8 A. I do not recall that.

9 Q. But Merlin would obviously know those times, correct?

10 A. If he recalls them, yes.

11 Q. Now, the debriefing meeting that occurred on March 9,
12 after Merlin got back from Vienna, was a meeting that both you
13 and Mr. Sterling attended, correct?

14 A. Correct.

15 Q. Now, I believe that you testified on direct that you
16 recall Mr. Sterling having met with Merlin alone in advance of
17 that meeting between the two of you, or did I miss something?

18 A. Mr. Sterling told me that he had heard something from
19 Merlin and the news was good. So I don't know whether he met
20 him or Merlin sent him an e-mail or -- I don't know what
21 happened, but I do recall that when I went into that meeting on
22 the 9th, I knew that things had gone well.

23 Q. Any meeting with an asset is supposed to be documented?

24 A. It is.

25 Q. Documented in a cable?

Robert S. - Cross

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1 A. Yes.

2 Q. And your testimony is that you recall 15 years later that
3 there was a meeting between Mr. Sterling and Merlin that was
4 never documented?

5 A. That's not what I said. I said I recall that Mr. Sterling
6 had informed me that things had gone well.

7 Q. Okay. Was that the extent of the interaction?

8 A. That's my recollection.

9 Q. It was not a significant enough interaction that you told
10 Mr. Sterling that a cable needed to be done, correct?

11 A. No, because I believe this was the day of or the day
12 before, and we were going to have a meeting which then
13 documented everything.

14 Q. Now, one thing -- well, let's go back to -- let's go back
15 to page 198, the first partial paragraph, and it references the
16 wine-tasting trip that was done in conjunction with the
17 meetings in San Francisco?

18 A. Yes.

19 Q. And it says "Sonoma Country" rather than "Sonoma County,"
20 correct?

21 A. It does.

22 Q. Some kind of a conflation between Wine Country and Sonoma
23 County?

24 A. Perhaps an editing problem with Mr. Risen's publisher.
25 I'm not sure.

Robert S. - Cross

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1 Q. But in any event, the fact that you and Mr. Sterling and
2 the Merlins went to Wine Country in conjunction with San
3 Francisco's meetings is documented in a cable, correct?

4 A. It is.

5 Q. But what is not documented in a cable is specifically that
6 it was in Sonoma County, correct?

7 A. That is correct.

8 Q. And you are the one who selected Sonoma County, correct?

9 A. Yes.

10 Q. You know wines, Mr. S.?

11 A. I do.

12 Q. And you have a distinct preference for Sonoma County wines
13 over Napa County wines, correct?

14 A. Basically, I prefer a pinot noir to cabernet. I do prefer
15 Sonoma wine.

16 Q. And this meeting took place in 1998, correct?

17 A. Yes.

18 Q. And 16-17 years later, you remember that it was Sonoma
19 that you went to?

20 A. I remember specifically our having lunch in a restaurant
21 in Healdsburg Square, in the heart of Sonoma Wine Country
22 County -- Wine Country, whatever.

23 Q. And even though that's not documented anywhere, you have
24 an independent recollection of that 16 years later because that
25 was of significance to you because you know wine, correct?

Robert S. - Cross

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1 A. That's correct.

2 Q. And it's a detail that whoever Mr. Risen spoke to
3 remembered that detail even though it's not documented?

4 A. Correct.

5 Q. Now, when you were interviewed by the FBI in 2006, you
6 were asked about a passage of the book that appears on page
7 206, so I'm going to call up the paragraph that begins, "At
8 1:30 p.m." You were asked specifically about that paragraph,
9 and you recalled, did you not, that Merlin -- the paragraph
10 mentions that amongst other things, the mailbox was on the left
11 side of the door?

12 A. Yes.

13 Q. And you recalled in 2006 Merlin having mentioned that the
14 box was on the left side of the door, correct?

15 A. That's my recollection.

16 Q. That information is not in any cable, that it was the left
17 side of the door.

18 A. Okay.

19 Q. Well, let's look at Exhibit 44. That's the debriefing
20 meeting.

21 A. Um-hum.

22 Q. In paragraph 4, it says that the locked mailbox was right
23 outside the mission door, correct?

24 A. Yes.

25 Q. It doesn't say it was to the left?

Robert S. - Cross

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1 A. It does not.

2 Q. And then let's look at Defense Exhibit 3, and paragraph 1.
3 Toward the end of the paragraph, it says that the locked
4 mailbox was immediately adjacent to the door, correct?

5 A. Yes.

6 Q. It doesn't say it was on the left side, correct?

7 A. No.

8 Q. But yet you recalled in 2006 that it was on the left side?

9 A. I do, and that's partially based on the photograph that
10 Merlin took and showed us.

11 Q. Okay. So Merlin showed you a photograph in March of 2000,
12 correct?

13 A. Correct.

14 Q. And in 2006, you recalled from that photograph that the
15 mailbox was on the left side of the door?

16 A. That was my recollection. I'm a visual person. I
17 remember things much better when I see a picture than just
18 reading it or hearing it.

19 Q. Okay. So presumably, that was a fact that you would have
20 recalled in 2003, 2004, and 2005, correct?

21 A. I might have, yes.

22 Q. Now, in -- if we can go back to that same paragraph on
23 page 206 of *State of War*, it says that Merlin covered the
24 package in an old newspaper. Do you see that?

25 A. Yes.

Robert S. - Cross

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1 Q. And Merlin was not instructed to cover the package in an
2 old newspaper, was he?

3 A. He was not.

4 Q. He wasn't instructed to cover it in a newspaper at all,
5 correct?

6 A. Correct.

7 Q. And the fact that he covered it in a newspaper is not in
8 any cable, correct?

9 A. Correct.

10 Q. But in 2006, you told the FBI that you recalled Merlin
11 having, having mentioned the newspaper?

12 A. Yes. He said he put the package in, and he had a
13 newspaper that was already in it, and he stuck that in front of
14 it. That's my recollection.

15 Q. That's your recollection today?

16 A. Today I'm recollecting what he told us in 2000.

17 Q. Right. And so you certainly would have recalled that in
18 2003 and 2004 and 2005, correct?

19 A. Yes.

20 Q. Even though it's not reflected in any cable?

21 A. Correct.

22 Q. And that fact that you recalled that's not in any cable is
23 in Mr. Risen's book?

24 A. I don't follow you, sir.

25 Q. The fact that Merlin covered the plans in a newspaper, a

Robert S. - Cross

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1 fact that is not in any cable but a fact that you recall, ends
2 up in Mr. Risen's book, correct?

3 A. That's correct.

4 THE COURT: Since we're talking about that chapter,
5 did Merlin provide you-all with a letter as described in that
6 chapter? It's quoted.

7 THE WITNESS: Yes. My recollection is that he did
8 not.

9 THE COURT: All right.

10 THE WITNESS: To me anyway.

11 THE COURT: All right.

12 BY MR. POLLACK:

13 Q. So you're not aware of any document that reflects this
14 information?

15 A. No, I'm not.

16 Q. But they are facts that you recall?

17 A. I recall Merlin saying it orally, and I recall his showing
18 a picture which certainly showed the mailbox is to the left. I
19 don't recall whether it showed the newspaper in front of the
20 package.

21 Q. Now, chapter 9, on pages 193 and 194 -- 193 is the very
22 beginning of the chapter, correct?

23 A. Yes.

24 MR. TRUMP: Your Honor, this was discussed pretrial.

25 MR. POLLACK: I'm certainly going to --

Robert S. - Cross

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1 THE COURT: Let me hear the question first. Let me
2 hear the question first.

3 BY MR. POLLACK:

4 Q. This material on pages 193 and 194 reflects an incident
5 that Mr. Risen reports occurred in 2004, correct?

6 A. That's what it says.

7 MR. TRUMP: I'm objecting to the form of the
8 question, Your Honor.

9 THE COURT: Well, I don't see -- I don't think that's
10 a problem. I'll overrule that objection. Go ahead, let me
11 hear the next question.

12 BY MR. POLLACK:

13 Q. In 2004, Mr. Sterling was no longer employed by the CIA,
14 correct?

15 A. That's my understanding.

16 Q. And had not been for quite some time?

17 A. That's my understanding.

18 Q. You were still employed by the CIA in 2004?

19 A. Correct.

20 THE COURT: You can take it off the screen.

21 BY MR. POLLACK:

22 Q. On page 2006 -- I'm sorry, 206, it -- Mr. Risen --

23 THE COURT: What paragraph?

24 MR. POLLACK: I'm sorry, Your Honor. The paragraph
25 in the middle of the page that begins, "He came back that

Robert S. - Cross

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1 afternoon."

2 Q. Mr. Risen references the fact that Merlin observed an
3 Austrian postman, correct?

4 A. Correct.

5 Q. The fact that there was an Austrian postman is not
6 reflected in any cable, correct?

7 A. Correct.

8 Q. That's a fact that you recalled in 2006?

9 A. Yes. That's a fact that Merlin in his debriefing told us
10 about.

11 Q. So that would be like the mailbox being to the left, the
12 plans being covered in newspaper, there being a postman there,
13 those are three facts that are not in any document that you
14 recall that Mr. Risen reports, correct?

15 A. Correct.

16 MR. POLLACK: Your Honor, can I have just a moment?

17 THE COURT: Just a moment.

18 BY MR. POLLACK:

19 Q. On page 207, if we can go to paragraph 74? "Just days
20 after the Russian dropped off his package at the Iranian
21 mission, the NSA reported that an Iranian official in Vienna
22 abruptly changed his schedule and suddenly made airline
23 reservations and flew home to Iran."

24 I believe that you testified that to your knowledge,
25 that's not accurate, correct?

Robert S. - Cross

610

1 A. That's what I testified, and that is my knowledge.

2 Q. All right. And certainly you never told Mr. Sterling that
3 the NSA had reported that information, correct?

4 A. It's not accurate.

5 Q. All right. So you certainly never told Mr. Sterling that,
6 correct?

7 A. Correct.

8 Q. Mr. Risen had to have gotten that from somewhere, right?

9 A. Right.

10 MR. TRUMP: Objection.

11 THE COURT: Sustained. That's purely speculative.

12 BY MR. POLLACK:

13 Q. In April of 2003, you learned that Mr. Risen was working
14 on a story about Classified Program No. 1, correct?

15 A. Correct.

16 Q. And you -- I mean, did you learn about that from somebody
17 higher up at the CIA?

18 A. I did.

19 Q. And you knew that it was a topic of discussion amongst
20 some of your superiors at the CIA?

21 A. Yes.

22 Q. Amongst some of the generals, as you would put it?

23 A. Yes.

24 Q. And you certainly hoped that Mr. Risen would not publish
25 such a story, correct?

Robert S. - Cross

611

1 A. Yes.

2 Q. And it's your understanding the generals at the CIA hoped
3 that he would not publish such a story, correct?

4 A. That's my understanding.

5 Q. In --

6 THE COURT: Well, I think at this point, we've been
7 here for two hours. I'm going to let the jury take their
8 morning break. We'll recess until 10 of.

9 (Recess from 11:30 a.m., until 11:51 a.m.)

10 (Defendant and Jury present.)

11 THE COURT: All right, Mr. Pollack, I'm told you'll
12 wrap this up in about ten minutes, correct?

13 MR. POLLACK: That's correct, Your Honor.

14 THE COURT: All right.

15 BY MR. POLLACK:

16 Q. Mr. S., you had testified on direct that you had learned
17 from intelligence sources that the plans had been taken from
18 Vienna back to Iran, correct?

19 A. Correct.

20 Q. You didn't have firsthand knowledge of that, correct?

21 A. No.

22 Q. And intelligence sources are not always correct; is that
23 fair?

24 A. That is correct.

25 Q. If I can have you turn to page 203 of the book, paragraph

Robert S. - Cross

612

1 50? There's a quote here that Mr. Risen attributes to the
2 Russian, and the quote is, "I spent a lot of time to ask people
3 as I could," and then he puts parenthetically "[language
4 problem] and they told me that no streets with this name are
5 around."

6 Is there any cable or, or other document that you're
7 aware of that reflects this language?

8 A. No.

9 Q. Do you know whether this is, in fact, something that
10 Merlin said?

11 A. I do not know that.

12 Q. Okay. And you're not aware of any cable that would have
13 been available to Mr. Sterling that would have reflected that
14 quote?

15 A. No.

16 Q. Now, in April of 2003, when you learned that Mr. Risen was
17 working on a story about Classified Program No. 1, Mr. Sterling
18 was no longer employed by the agency, correct?

19 A. That's my understanding.

20 Q. And he had not been working on Classified Program No. 1
21 for about three years at that point?

22 A. That is correct.

23 Q. And had not had access to the cable traffic for three
24 years at that point?

25 A. Correct.

Robert S. - Cross

613

1 Q. You continued to be read into Program No. 1, correct?

2 A. Correct.

3 Q. And you continued to have access to the cable traffic,
4 correct?

5 A. Yes.

6 Q. If we can pull up Exhibit 15?

7 This is a cable that reflects a meeting with Zach W.
8 and, and Mr. Sterling with Merlin, paragraph 2.

9 A. Okay.

10 Q. And shortly after you learned that Mr. Risen was working
11 on a story about Classified Program No. 1, you accessed this
12 document?

13 A. Correct.

14 Q. And there will be a stipulation entered about this later,
15 but I can represent to you that CIA records reflect that on
16 April 11, 2003, you accessed this document.

17 A. Okay.

18 Q. And will you look at Exhibit 35? 35 reflects a meeting --
19 again, if you can go to that paragraph No. 2? -- between
20 Mr. Sterling and Merlin?

21 A. Yes.

22 Q. And on May 8, 2003, you accessed this document, correct?

23 A. I don't know that --

24 Q. Okay.

25 A. -- but I'm sure if the record shows that, that I did.

Robert S. - Cross

614

1 Q. Fair enough. Let's do it that way. I'll represent to you
2 that CIA records reflect that.

3 A. Okay.

4 Q. And they also reflect that on that same day, May 8, 2003,
5 you also accessed Exhibit 38, and Exhibit 38 is the document
6 that reflects the meeting that you had alone with Merlin,
7 correct?

8 A. Yes.

9 Q. The reason that you were accessing these documents at this
10 time was so that you could provide information to your
11 superiors who were engaged in an effort to try to prevent or
12 dissuade Mr. Risen from publishing a story about Classified
13 Program No. 1, correct?

14 A. I'm not sure of that. I think it might also have been to
15 assist Agent Hunt in her inquiries, but I was directed by my
16 superiors to review the program. Yes, I was.

17 Q. And in 2006, in January of 2006, *State of War* was
18 published, correct?

19 A. Yes.

20 Q. And at that point, any effort by the CIA to dissuade
21 Mr. Risen from publishing about Classified Program No. 1 was
22 too late, correct?

23 A. Yes.

24 Q. And at that point, you knew that the FBI was again
25 investigating, correct?

Robert S. - Cross

615

1 A. Yes.

2 Q. And that that investigation could focus on you?

3 A. I was told that I was not a suspect, but, of course,
4 anything's possible.

5 Q. And if we look at Exhibit 33, this is a meeting that you
6 attended -- this is a cable about a meeting that you attended
7 with Mr. Sterling, correct?

8 A. Yes.

9 Q. And Merlin?

10 A. Yes.

11 Q. And I'll represent to you that CIA records reflect that in
12 January and February of 2006, you accessed this cable six
13 times. Even though you had access to Classified Program No. 1
14 throughout, the FBI told you that you were not at all a suspect
15 in their investigation?

16 A. By 2006, they did.

17 Q. At any point, at any point, did the FBI ever ask you for
18 your phone records?

19 A. No.

20 Q. Did they ever review your computer?

21 A. I don't know that.

22 Q. Your home computer?

23 A. Not to my knowledge.

24 MR. POLLACK: Thank you. I don't have anything
25 further.

Robert S. - Redirect

616

1 THE COURT: All right, any redirect?

2 MR. TRUMP: Thank you, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. TRUMP:

5 Q. I'll start at the end, Mr. S. Did you provide any
6 information to James Risen?

7 A. No.

8 Q. Directly or indirectly?

9 A. Directly or indirectly, I have never had any contact with
10 Mr. Risen.

11 Q. Have you ever provided anyone who was not read in and
12 cleared for this program with information about Classified
13 Program 1 or Human Asset No. 1?

14 A. No.

15 Q. Now, you were asked some questions about Merlin's legend?

16 A. Yes.

17 Q. And that sometimes a legend has to be a mix of truth and
18 fiction?

19 A. Yes.

20 Q. But in Merlin's case, almost all of it was true, correct?

21 A. Almost all of it, yes. What was missing, of course, was
22 that he was doing it for the CIA.

23 Q. Now, you were asked about some mention in Mr. Risen's book
24 about a suicide in Russia. Do you recall that?

25 A. I do.

Robert S. - Redirect

617

1 Q. That's public information, correct?

2 A. It is.

3 Q. Now, you were first interviewed by the FBI in 2003?

4 A. Yes.

5 Q. And at that time, you were also asked by your superiors to
6 do some research?

7 A. Yes.

8 Q. And so you looked at not just the cables that defense
9 counsel mentioned, but you looked at a lot of the stuff in the
10 files?

11 A. All of the cables, yes. As I did again in 2006.

12 Q. And in 2006, you actually sat down with FBI agents at a
13 terminal and went through cable after cable after cable; is
14 that correct?

15 A. With the specific approval of my superiors, yes.

16 Q. And the agents at the time were also cleared for the
17 program, correct?

18 A. Yes.

19 Q. And you were interviewed in 2010?

20 A. Yes.

21 Q. And 2011?

22 A. Yes.

23 Q. And at all times, you were cooperative?

24 A. Yes.

25 Q. Honest?

Robert S. - Redirect

618

1 A. Yes.

2 Q. Forthcoming?

3 A. Yes.

4 Q. You also provided them with access to Merlin, correct?

5 A. Correct.

6 Q. And you facilitated that access?

7 A. Yes.

8 Q. When you first discussed this program with, with the
9 defendant, Mr. Sterling, you gave him the hard file, correct?

10 A. Yes, although that was less significant than that I
11 arranged for him to have access to the complete electronic
12 file.

13 Q. So he had everything in Classified Program 1 when he was
14 read in and working with you at headquarters at CPD?

15 MR. POLLACK: Your Honor, I realize it's redirect,
16 but it's still a leading question.

17 THE COURT: Sustained.

18 BY MR. TRUMP:

19 Q. What information did you provide to the defendant when he
20 was read into the program?

21 A. Everything that I knew about the program.

22 Q. At your offices in Langley, can you take documents without
23 being inspected or searched?

24 A. I can.

25 Q. It's an honor system, right?

Robert S. - Redirect

619

1 A. Well, there's periodic spot-checks.

2 Q. But coming and going in the building, CIA employees are
3 not searched; is that right?

4 A. Correct.

5 Q. Same is true in New York, right?

6 A. Yes.

7 Q. You were asked some questions about access lists?

8 A. Yes.

9 Q. And at some point, did CPD provide the FBI with a list of
10 people who had, at one time or the other had been read into
11 Classified Program No. 1?

12 A. Yes, I've seen a copy of that.

13 Q. The number that counsel threw out, that was a number for
14 the entire --

15 THE COURT: Wait, wait, wait. That's going to be a
16 leading question; I can tell from the form.

17 BY MR. TRUMP:

18 Q. Was the number that you provided for the entire time frame
19 of the program?

20 A. Yes.

21 Q. Did that number reflect the number of people who were
22 given access at a particular point in time?

23 A. No.

24 Q. So, for example, Zach W., he would be on such a list,
25 correct?

Robert S. - Redirect

620

1 A. He would.

2 Q. After he was read out of the program, would he retain
3 access to the program?

4 A. No.

5 Q. Do you recall the questions about the percentage of flaws
6 that were discovered by the Red Team?

7 A. I do.

8 Q. Can you tell us whether spotting a flaw means being able
9 to fix a flaw?

10 A. Not necessarily.

11 Q. And even if -- based on your understanding of this Red
12 Team project, had they spotted all the flaws, does that mean it
13 would work?

14 A. No, because the flaws were designed to nest, so that if
15 you fixed one, others would appear, and also, it was missing
16 two key components.

17 Q. The discussion of the letters, the draft letters?

18 A. Yes.

19 Q. Did you work on those with the defendant?

20 A. Yes.

21 Q. Together?

22 A. Yes.

23 Q. Did you discuss language together?

24 A. Yes.

25 Q. Did you make some suggestions about language together to

Robert S. - Redirect

621

1 Merlin?

2 A. Yes.

3 Q. In that regard, did you think the defendant was doing a
4 good job?

5 A. I did.

6 Q. The money issues with Merlin, did they come up every
7 January?

8 A. Pretty much.

9 Q. And in January, was his accounting different than your
10 accounting?

11 A. Yes.

12 Q. When it says you paid him \$66,000, does that reflect you
13 paid him for the salary of \$66,000 that he believed he was owed
14 for the whole year?

15 MR. POLLACK: Objection. Leading.

16 THE COURT: Sustained.

17 MR. TRUMP: I'm just trying to move things along,
18 Judge.

19 THE COURT: Well, I'll move it on but just no
20 leading.

21 BY MR. TRUMP:

22 Q. Would you explain what you meant when you said you paid
23 him \$66,000?

24 A. That was a year salary or 11 months probably. The dispute
25 was over whether he had been paid for one month in the previous

Robert S. - Redirect

622

1 year or he had not, and as I say, his records were different
2 from ours.

3 Q. So the actual cash that you paid him was the difference?

4 A. No, I paid him the entire amount.

5 Q. The entire amount for the year?

6 A. Yes.

7 Q. In Exhibit 36, did you note in that cable that Merlin was
8 actually right about some of his accounting?

9 MR. POLLACK: Objection.

10 THE COURT: That again is leading. Sustained.

11 BY MR. TRUMP:

12 Q. What is in the cable about the reference to Merlin and his
13 accounting?

14 A. Could you point me to a --

15 THE COURT: Well, I think the cable speaks for
16 itself. Let's move this along, Mr. Trump.

17 THE WITNESS: But --

18 THE COURT: There's no question pending, sir.

19 BY MR. TRUMP:

20 Q. Cable 36.

21 A. Yes.

22 Q. Was that a cable sent to New York by you?

23 A. Yes.

24 Q. To the defendant?

25 A. He would certainly be the prime reader.

Robert S. - Redirect

623

1 Q. And did it provide him with directions to do something
2 with Merlin?

3 MR. POLLACK: Objection. It's leading. It's also
4 not --

5 THE COURT: Well, that's not sufficiently leading
6 that I'm going to -- let's move this along, but I want --

7 BY MR. TRUMP:

8 Q. Was the purpose of the cable to provide the defendant with
9 some direction to take to Merlin?

10 A. Yes.

11 Q. The final meeting you had at the hotel --

12 A. Yes.

13 Q. -- was there any, was there any discussion of the
14 schematics?

15 A. No, not that I recall.

16 Q. Any discussion of any concern about the schematics?

17 A. Definitely not.

18 Q. At the final meeting, there was a discussion of maps and
19 streets and plans and things like that?

20 A. Yes.

21 Q. Had that been discussed at a prior meeting?

22 A. Yes, it had.

23 Q. Was the defendant present at that prior meeting?

24 A. Yes.

25 Q. Was it detailed?

Robert S. - Redirect

624

1 A. Yes.

2 Q. Was there anything about your discussions with Merlin in
3 Exhibit 38 about the plan not something that was previously
4 discussed with the defendant?

5 A. No.

6 Q. Do you recall some questions about whether Merlin had made
7 any sort of racist comments?

8 A. Yes, I recall questions.

9 Q. When he made the comment that you referred to in your
10 direct, what did you say to him?

11 A. When he asked about whether he should buy a house because
12 there was a black person in the neighborhood?

13 Q. Correct.

14 A. I said to him, "You are in America. You are wanting to
15 become an American. You've got to cut that out. That black
16 person might well be wondering whether he should move into that
17 area because a newly arrived Russian immigrant is there. His
18 people have been in the United States for 400 years. Cut it
19 out. Become an American."

20 Q. And from what you observed, did his attitude, did his
21 attitude change over time?

22 A. Yes, it did.

23 Q. Now, I believe you actually were asked by the judge
24 certain questions about concerns that were expressed to you by
25 Mr. Sterling?

Robert S. - Redirect

625

1 A. Yes.

2 Q. Did he have a mentor at the CIA?

3 A. He did.

4 Q. Someone you knew?

5 A. I didn't know him personally. I certainly knew -- he was
6 a famous man. I knew his position well.

7 Q. He was one of those generals we talked about?

8 A. Yes.

9 Q. So you are aware that Mr. Sterling had someone to talk to
10 about these concerns?

11 A. I was aware.

12 Q. This collaborative process between, in terms of writing a
13 letter, did some of that occur at the New York office?

14 A. Yes.

15 Q. Side by side with the defendant?

16 A. Yes.

17 Q. Would you describe how you did that?

18 A. Well, oftentimes, it occurred in the hotel meeting site
19 before we would meet with Merlin. The defendant and I would
20 arrive early, and we'd discuss changes we'd want to make -- we
21 wanted to get Merlin to make, and we'd have half an hour to an
22 hour to plan for the session before he arrived.

23 And then most often, we would go over the meeting
24 that had occurred the next day back in the New York office.
25 This is standard procedure.

Robert S. - Redirect

626

1 Q. When you went back to the office, did you work together on
2 drafting the cable?

3 A. Yes.

4 Q. How did you do that?

5 A. Well, one or the other of us would do a first draft and
6 immediately show it to the other and add or correct anything
7 that the other party thought needed to be changed.

8 Q. Did you print it out and sit next to each other and go
9 over it?

10 A. We'd usually look at it on the computer screen.

11 Q. And you made edits?

12 A. Real time.

13 Q. In other words, whatever you knew, he knew?

14 MR. POLLACK: Objection.

15 THE COURT: Sustained.

16 BY MR. TRUMP:

17 Q. You were asked questions about the door and left side,
18 right side, the building?

19 A. Yes.

20 Q. Would, would anyone going to Vienna be able to make those
21 observations?

22 A. Yes.

23 MR. TRUMP: The Court's indulgence?

24 THE COURT: Yes, sir.

25 MR. TRUMP: One moment, Your Honor.

Robert S. - Recross/Stephen Y. - Direct

627

1 That's all, Your Honor.

2 THE COURT: All right, any recross?

3 MR. POLLACK: Yes, Your Honor, very briefly.

4 RECCROSS EXAMINATION

5 BY MR. POLLACK:

6 Q. Mr. S., would anybody going to Vienna be able to observe
7 that Merlin saw an Austrian postman while he was there?

8 A. No.

9 Q. Would they be able to observe that Merlin covered the
10 plans with an old newspaper?

11 A. No.

12 MR. POLLACK: That's all I have. Thank you.

13 THE COURT: All right. Mr. S., thank you for your
14 testimony. It's been a long haul, but you're finished now.
15 You may leave the building.

16 Thank you.

17 (Witness excused.)

18 THE COURT: Your next witness?

19 MR. FITZPATRICK: Stephen Y., Your Honor.

20 THE COURT: Stephen Y.

21 STEPHEN Y., GOVERNMENT'S WITNESS, AFFIRMED

22 MR. FITZPATRICK: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. FITZPATRICK:

25 Q. Good afternoon, sir.

Stephen Y. - Direct

628

1 A. Good afternoon.

2 Q. Are you Stephen Y.?

3 A. Yes, correct. Steve Y.

4 Q. Have you had a career with the CIA?

5 A. Yes, I have.

6 Q. And for how long is that career?

7 A. For over 20 years.

8 Q. And were you a case officer or an operations officer?

9 A. Yes, I was.

10 Q. Was there a point in time when you were assigned to the
11 New York office?

12 A. Yes.

13 Q. Were you assigned to the New York office on September 11
14 of 2001?

15 A. Yes, I was.

16 Q. For how long had you been in that office, roughly?

17 A. Several years.

18 Q. And was there a point in time during your stay in the New
19 York office where you were an acting supervisor?

20 A. That's correct.

21 Q. During your time in New York, did you meet a person by the
22 name of Jeffrey Sterling?

23 A. Yes, I did.

24 Q. Do you see Mr. Sterling in the courtroom today?

25 A. Yes. Mr. Sterling is seated at the table to my right.

Stephen Y. - Direct

629

1 MR. FITZPATRICK: May the record reflect, Your Honor?

2 THE COURT: Yes.

3 MR. FITZPATRICK: Thank you.

4 Q. When -- do you approximately know when you met him?

5 A. It would have been around 2000.

6 Q. Did there come a point in time when you assumed
7 responsibilities for an individual by the name of Merlin, or
8 Human Asset No. 1?

9 A. Yes, there was a time when I assumed responsibility.

10 Q. And from whom did you assume that responsibility for the
11 handling case officer?

12 A. From Mr. Sterling.

13 Q. Describe how that changeover took place.

14 A. Well, we would have a plan, a discussion first, and then
15 there would be a meeting in a secure location.

16 Q. And do you recall having that meeting with Mr. Sterling
17 and others?

18 A. Yes, that's correct.

19 MR. FITZPATRICK: Your Honor, I'd like to show the
20 witness Government Exhibit No. 47, please.

21 THE COURT: All right.

22 MR. FITZPATRICK: It's been previously admitted.

23 THE COURT: Yes.

24 MR. FITZPATRICK: Mr. Francisco, if you could pull up
25 the first two paragraphs?

Stephen Y. - Direct

630

1 Q. Mr. Y., do you see that in front of you?

2 A. Yes, I do.

3 THE COURT: Well, just for the record, that's May 25,
4 2000? Is that the date?

5 MR. FITZPATRICK: That's correct.

6 THE COURT: So the jury has a sense of the time. All
7 right.

8 MR. FITZPATRICK: Yes, Your Honor.

9 Q. It's a cable dated May 25, 2000. Have you previously seen
10 a version of this document?

11 A. Yes.

12 Q. And there's a reference there to a Mr. Y.?

13 A. Yes.

14 Q. Is that you?

15 A. Yes.

16 Q. And what does this document reflect?

17 A. This is an account of a meeting, a changeover meeting.

18 Q. And who else was in attendance?

19 A. Mr. Sterling and myself.

20 Q. And were there other people involved in the meeting as
21 well?

22 A. (Nodding head.)

23 Q. Who was -- for this operation, using just the first name
24 and the last initial, who was the, the operation manager, for
25 lack of a better --

Stephen Y. - Direct

631

1 A. Bob S.

2 Q. And what about the human asset?

3 A. What was --

4 Q. Was he in attendance as well?

5 A. Yes, of course. Yes, he was.

6 Q. All right. You can close the exhibit. Thank you.

7 Now, prior to -- when you became involved in this
8 operation regarding Mr. Merlin, we'll call him, did you gain
9 access to the cable traffic for the operation?

10 A. Yes.

11 Q. Prior to taking on this assignment, were you allowed
12 access to this program?

13 A. No, not prior to planning for the, the changeover meeting.

14 Q. So when you became assigned to the program, in effect, you
15 educated yourself on the program?

16 A. That's correct.

17 Q. Did you also speak to Mr. Sterling?

18 A. Yes.

19 Q. And what was the purpose of speaking to Mr. Sterling?

20 A. To sort of get a feel for the, for the asset, how he is,
21 what kind of a relationship there may be, and that would be, of
22 course, beneficial for me. Also, what kind of contact plan had
23 been set up so if we needed to contact him, how I would be able
24 to do that.

25 Q. And when you had this discussion with Mr. Sterling, what,

Stephen Y. - Direct

632

1 if any, operational concerns did he raise with you?

2 A. He didn't raise any concerns with me.

3 Q. Can you tell us, what is a soft file?

4 A. A soft file is sort of a working file that we maintain.
5 It usually has the information that you need at your
6 fingertips, so things that you would like to keep and be able
7 to look at quickly.

8 So we keep, it's just a regular manila file, and
9 inside would be contact instructions, maybe telephone number or
10 contact plan in order to -- and plus some information about
11 when the next scheduled meeting might be, and it's kept in a,
12 just a soft manila file.

13 Q. Is the, the maintenance of a soft file customary among
14 case officers?

15 A. Yes, it is.

16 Q. And are these personal files?

17 A. No, they're official files. They have to be maintained by
18 us, but they're official files; that's correct.

19 Q. And how are they maintained?

20 A. At the, at the conclusion of the day before you would
21 leave to go, to go home or to leave to go to an event or
22 whatever, these are stored in a secure, a secure vault, a
23 secure drawer, a safe drawer, and we would put it in there and
24 secure the, secure the safe.

25 Q. And what is the purpose of maintaining the security of a

Stephen Y. - Direct

633

1 soft file?

2 A. Well, it's to protect the asset's identity and information
3 about him, also to protect the information that may have been
4 obtained from him, and also to protect, you know, a contact
5 plan information that you may need at a later date.

6 Q. Would you maintain -- or would a case officer maintain if
7 necessary for that particular case officer cable traffic within
8 a soft file?

9 A. Yes, there would be some select cables in there. Cable
10 traffic would be maintained in there.

11 Q. And who decides what information goes into an individual
12 case officer's soft file?

13 A. The case officer himself.

14 Q. Now, you said that you were in the New York office for at
15 least a couple of years.

16 A. That's correct.

17 Q. If a case officer desired to break protocol and take a
18 soft file away from the office, would that be possible?

19 A. Yes.

20 MR. MAC MAHON: Your Honor, I'm going to object to
21 the form of the question and the speculation as well.

22 THE COURT: I think there's a better way of asking
23 that question. I'm going to sustain the objection.

24 MR. FITZPATRICK: Thank you, Your Honor.

25 Q. What, if any, security measures are in place to measure a

Stephen Y. - Direct

634

1 case officer's behavior with respect to soft files?

2 A. There were none other than the fact of securing it in a
3 vault at the end of the evening.

4 Q. You previously responded to one of my questions by saying
5 that Mr. Sterling had, didn't raise any operational concerns
6 with you about Mr. Merlin, or Human Asset No. 1. Is that
7 right?

8 A. That is correct.

9 Q. And this was in May 25, 24-25, 2000, correct?

10 A. That's correct.

11 Q. When you educated yourself on this program, did you become
12 aware of a significant event that had happened several months
13 earlier?

14 A. That is correct, yes.

15 Q. And do you have a recollection, was this in short form the
16 Vienna operation?

17 A. Yes.

18 Q. Now, when that took place, did you have any access to this
19 program?

20 A. When the Vienna operation actually occurred?

21 Q. Yes.

22 A. No, I did not. Not until the time before the changeover
23 meeting.

24 Q. In your discussions with Mr. Sterling, when you overlapped
25 with him in the New York office, did you have other discussions

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1 with him about other matters?

2 A. Yes, about some ideas, you know, ideas we might have for,
3 for new prospective activities or things that we wanted to try
4 to do.

5 Q. How would you characterize Mr. Sterling's openness with
6 you?

7 A. Not very open. No, not very open.

8 Q. Now, with respect to the maintenance of soft files, did
9 you receive any soft file from Mr. Sterling?

10 A. No, I did not.

11 Q. So when you became the primary handling officer, did you
12 create your own soft file?

13 A. Yes.

14 THE COURT: Did you ever ask Mr. Sterling, if you can
15 recall, for a soft file?

16 THE WITNESS: No. I never asked for it, no.

17 THE COURT: Okay.

18 BY MR. FITZPATRICK:

19 Q. And in addition, were there other files related to this
20 operation that you're aware of maintained within the New York
21 office back in --

22 A. No.

23 Q. -- prior to 2001?

24 A. No.

25 Q. Was it the practice in the New York office for case

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1 officers, did you have the ability to print cables from your
2 duty station?

3 A. Yes.

4 Q. What -- describe for us, please, you said that you were
5 assigned to the New York office on September 11 of 2001.

6 A. Yes.

7 Q. What happened to your office on that day?

8 A. It was destroyed, totally destroyed.

9 Q. Did you make an effort or was there any effort to get your
10 files back from that office?

11 A. Well, there was, there was an effort, but the building was
12 completely destroyed.

13 Q. What, if anything, did you recover from your office?

14 A. I didn't recover anything from the office.

15 Q. To your knowledge, was anyone able to recover anything
16 from the office?

17 A. Not to my knowledge.

18 MR. FITZPATRICK: I want to show the witness -- this
19 has not been admitted yet -- I want to show the witness
20 Government Exhibit No. 75, please.

21 THE COURT: Is there any objection to 75?

22 MR. MAC MAHON: Objection to using this exhibit with
23 this witness, Your Honor. We talked about this in a motion in
24 limine. This is unfair the way this is coming in.

25 THE COURT: Well, to be honest, I don't recall what

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1 the previous objection was.

2 MR. MAC MAHON: Well, the witness has already
3 testified that the office was destroyed. This would be
4 cumulative and unnecessary, Your Honor, in the way it's coming
5 in.

6 MR. FITZPATRICK: I'm going into another line of
7 questioning.

8 THE COURT: All right. Well, let's pass on this now.
9 Do you have another line of questioning?

10 MR. FITZPATRICK: Well, it was in relation to this.

11 THE COURT: Related to this? Well, let me hear what
12 your question is.

13 BY MR. FITZPATRICK:

14 Q. All right. With respect to the identity of the New York
15 office, what, if any, concerns do case officers have about
16 maintaining the secrecy of those offices?

17 A. Well, it's for the protection of all the officers that
18 work there as well as the information that may be contained
19 there, which would be coming from some of our sources and
20 activities.

21 THE COURT: In other words, you don't want your field
22 offices' locations being identified.

23 THE WITNESS: That is correct. Yes, yes, Your Honor.

24 THE COURT: Ask the question directly.

25 BY MR. FITZPATRICK:

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1 Q. Do you know, do you know James Risen?

2 A. No, sir.

3 Q. Have you ever spoken with him?

4 A. No.

5 MR. FITZPATRICK: Your Honor, I would move in
6 Government Exhibit 75. It's self-authenticated.

7 THE COURT: I'm going to permit it. It's relevant to
8 the questioning. It's in.

9 MR. FITZPATRICK: Thank you.

10 (Government's Exhibit No. 75 was received in
11 evidence.)

12 BY MR. FITZPATRICK:

13 Q. Going back to -- if we could just put up on the screen
14 Government Exhibit 75?

15 Now, Mr. Wood had shown you this just a couple of
16 moments ago. You're familiar with this article?

17 A. Yes.

18 Q. And you've seen this article before?

19 A. Yes.

20 Q. Are you the source for Mr. Risen in this article?

21 A. No.

22 Q. All right, thank you.

23 THE COURT: And I think that wasn't shown to the
24 jury, but we should get a date to make it relevant to the case,
25 the date of the article.

Stephen Y. - Direct

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1 MR. FITZPATRICK: Oh, yes, Your Honor. It's
2 November 4, 2001.

3 THE COURT: All right.

4 MR. FITZPATRICK: Thank you.

5 If we could show the witness Government Exhibit 35,
6 please? And, Mr. Francisco, if we could go to the second page,
7 please?

8 Q. Mr. Y.?

9 A. Yes.

10 Q. On the second page of that cable, there is a text of a
11 letter, and it begins: "To University."

12 Do you see that?

13 A. Yes, I do.

14 Q. And are you familiar with this?

15 A. Yes, I've seen this letter before.

16 Q. And was this one of the cables that you viewed back in
17 May 24, thereabout, when you became familiar with this case?

18 A. Yes.

19 Q. Have you disclosed the contents of this letter to anyone
20 outside of the CIA?

21 A. No.

22 Q. With respect to any hard copies of this letter, did you
23 maintain a hard copy of this letter?

24 A. No.

25 MR. MAC MAHON: Your Honor, objection to foundation.

Stephen Y. - Cross

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1 If he ever had a hard copy of the letter.

2 THE COURT: All right, ask that question first.

3 BY MR. FITZPATRICK:

4 Q. In what other forms, if any, did you have this letter?

5 A. Only in the, in the traffic. That was it.

6 Q. Did you ever -- with respect to documents that were
7 maintained by you, did you receive anything from the human
8 asset?

9 A. No.

10 Q. If you had, what would have occurred to that document?

11 MR. MAC MAHON: Your Honor, objection. He said he
12 didn't receive one.

13 THE COURT: I'm going to sustain the objection.

14 MR. FITZPATRICK: All right. One moment, Your Honor.
15 Nothing further, Your Honor.

16 THE COURT: All right, Mr. MacMahon?

17 MR. MAC MAHON: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. MAC MAHON:

20 Q. Mr. Y., good afternoon.

21 A. Good afternoon.

22 Q. If I say "why" and it's part of a question, I apologize if
23 it's your last name, it's our first Y.

24 Do I understand your testimony correctly that at the
25 New York office, that -- and this was a secure facility,

Stephen Y. - Cross

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1 correct?

2 A. Yes.

3 Q. Are you telling this jury that a CIA case officer could
4 come and go as they pleased with all the documents that they
5 wanted to?

6 A. Yes.

7 Q. There was no, no spot-checks, no nothing, huh?

8 A. No spot-checks, no.

9 Q. And you never saw Mr. Sterling leave the office with any
10 documents, did you?

11 A. No, I've never seen that. No.

12 Q. No. You never saw that, correct?

13 Do you know how many other articles there were
14 published in, after September 11 that disclosed that the CIA's
15 office in New York was destroyed other than the one that they
16 just showed the jury?

17 A. No, I don't, I don't know how many were written.

18 Q. You didn't look to see if there were other ones, correct?

19 A. No, I did not.

20 Q. And you have no idea who this source was for that story?

21 A. No.

22 Q. Now, when you -- you, you thought that Mr. Sterling was
23 very difficult to work with, correct?

24 A. Yes.

25 Q. All right. And that's what you told the FBI in 2006, that

Stephen Y. - Cross

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1 he had a high opinion of himself?

2 A. Yes.

3 Q. And when you, when you took over for Mr. Sterling, I think
4 your testimony was that there was no soft file that existed,
5 correct?

6 A. No, I said I never received one from Mr. Sterling. No.

7 Q. And you never asked him for one, either, did you?

8 A. No.

9 Q. In fact, you don't know whether he even kept one, do you?

10 A. Well, to the best of my recollection, I don't recall
11 asking him for it, no.

12 Q. Okay. You don't recall ever seeing him -- how --

13 A. Well, it would be standard practice to maintain one, so --

14 Q. Right. But you don't know what he did, do you?

15 A. No, I don't.

16 Q. And you don't know where he would have maintained any
17 documents in a soft file at all, correct?

18 A. No. I wouldn't be looking at his, you know, the things he
19 had in his file drawer.

20 Q. How far was your office from his?

21 A. Oh, 20 feet or so, 10 feet. Between 10 or 20 feet to the
22 best of my recollection.

23 THE COURT: I'm sorry, you said "file drawer."

24 THE WITNESS: Right.

25 THE COURT: Did each agent have his own drawer then?

Stephen Y. - Cross

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1 THE WITNESS: Yeah, that's exactly it. Each one
2 would be assigned one drawer.

3 THE COURT: And was there a lock or any kind of a --

4 THE WITNESS: Oh, yeah. It's a very heavily secured
5 safe.

6 THE COURT: Well, that's the safe, but within the
7 safe, would each drawer have its own lock?

8 THE WITNESS: No.

9 THE COURT: So you could --

10 THE WITNESS: One, one combination would open the
11 entire four-drawer safe, but there would be multiple safes. So
12 that's the way it was done. Each one would have about four
13 drawers, and then they would be lined up in a row, and each
14 officer would have his own, his own drawer to put his stuff in.

15 THE COURT: But my question is if you had a drawer in
16 that safe --

17 THE WITNESS: Yes, I did.

18 THE COURT: -- then you could also look at the other
19 drawers within that safe.

20 THE WITNESS: Yes, that's correct.

21 THE COURT: All right. Could you look at what was in
22 another safe?

23 THE WITNESS: No, just the one that you had access
24 to.

25 THE COURT: You only had access, all right.

Stephen Y. - Cross

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1 THE WITNESS: That's correct.

2 THE COURT: Go ahead.

3 BY MR. MAC MAHON:

4 Q. So, Mr. Y., you have no personal knowledge at all that
5 Mr. Sterling kept a soft file dealing with Classified Program
6 No. 1, correct?

7 A. No, I have, I have no knowledge.

8 Q. And you have no knowledge that Mr. Sterling kept a soft
9 file with respect to any of his dealings with Mr. Merlin,
10 correct?

11 A. No, I have no knowledge of that.

12 Q. And you never -- when you took over for Mr. Sterling as
13 the case officer for Mr. Merlin, it's a fact that you never
14 asked Mr. Sterling for any documents you thought might be
15 missing from the file, correct?

16 A. That's correct.

17 Q. And you made an exhaustive review of the file when you
18 took over as a case officer, correct?

19 A. Well, I have access to the information electronically as
20 well, so that would be the ones where I would have read the
21 past information.

22 Q. But when you read through all that past information, your
23 testimony would be that at no time did you think by reading a
24 cable that there was something missing, correct?

25 A. No, not by reading in an electronic cable. How would I

Stephen Y. - Cross

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1 know what's missing?

2 Q. Nothing you read ever prompted you to call Mr. Sterling
3 and say, "Do you have something else?" Right?

4 A. No.

5 Q. And you, you told the FBI that it was against CIA policy
6 to use e-mails in communicating with assets, correct?

7 A. That's correct.

8 Q. And you don't have any information that Mr. Sterling ever
9 did that, do you?

10 A. No, I don't recall if he did. To the best of my
11 recollection, I don't know.

12 Q. Yeah. And the same with respect to using recording
13 devices during debriefings. That's completely against your
14 training, correct?

15 A. Yes.

16 Q. And you don't have any information that Mr. Sterling ever
17 did that, either, do you?

18 A. No. To the best of my recollection.

19 Q. And you knew by the time that you met Mr. Sterling in New
20 York that he was in litigation with the CIA over a
21 discrimination case, correct?

22 A. No, I did not. I was not aware of that.

23 Q. He never told you about that?

24 A. No, he did not.

25 Q. And by the time the story that the -- I'll strike that,

Stephen Y. - Redirect

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1 Your Honor.

2 Let me consult with Mr. Pollack for a second?

3 THE COURT: Go ahead.

4 MR. MAC MAHON: No further questions, Your Honor.

5 Thank you, sir.

6 THE COURT: All right, redirect?

7 REDIRECT EXAMINATION

8 BY MR. FITZPATRICK:

9 Q. Was there a policy regarding removing soft files from the
10 office?

11 A. Yes.

12 Q. What was the policy?

13 A. The policy is you could not take home any soft files or
14 information. It was forbidden.

15 Q. As a case officer, what is your secrecy agreement?

16 A. It says that all the information that I acquire on
17 anything I can't discuss beyond working with my colleagues, my
18 coworkers.

19 Q. What does the secrecy agreement say about the handling of
20 closely held or classified documents?

21 A. That it must be secured and kept only in an official
22 installation.

23 Q. And did that include the soft file?

24 A. That's true, yes, sir.

25 Q. Were all case officers trained in this regard?

Stephen Y. - Recross

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1 A. Oh, yes.

2 MR. FITZPATRICK: I have nothing further.

3 THE COURT: Any recross?

4 MR. MAC MAHON: Just very briefly, Your Honor.

5 RECCROSS EXAMINATION

6 BY MR. MAC MAHON:

7 Q. Again, this -- excuse me, I'll go to the podium.

8 You were asked questions about taking soft files out
9 of your office. Do you remember that? You have no evidence at
10 all that Jeffrey Sterling ever took a soft file out of his
11 office in New York or anywhere else; isn't that correct?

12 A. To the best of my recollection.

13 Q. Right. And you don't even have evidence that he had a
14 soft file, right?

15 A. No, sir.

16 MR. MAC MAHON: That's all, Your Honor. Thank you.

17 THE COURT: All right, thank you, Mr. Y. Your
18 testimony is finished. You're excused.

19 THE WITNESS: Okay. Thank you

20 (Witness excused.)

21 THE COURT: I think rather than breaking into another
22 witness, it's easier to just move forward and have our lunch
23 break now, and then we'll start -- is the next witness
24 Denis M.?

25 MR. TRUMP: Yes, Your Honor.

1 THE COURT: How long do you anticipate that witness
2 to be?

3 MR. TRUMP: This is a screen witness, whereas the
4 next two would not be, so if we want to do it now, we can.

5 THE COURT: Well, I don't think he's up here.
6 There's no more witnesses here, right? We didn't call for one.
7 I don't think there's one here.

8 THE COURT SECURITY OFFICER: No.

9 THE COURT: No.

10 MR. TRUMP: So if you want to go to the unscreened
11 witnesses after lunch, we can put him in with the next three
12 remaining screened witnesses.

13 THE COURT: All right, so we have two unscreened
14 witnesses.

15 MR. TRUMP: Correct.

16 THE COURT: We'll start those at quarter of two, just
17 a one-hour lunch break, just 15 minutes earlier.

18 All right, so we will need -- over the lunch break,
19 we need to push the screen back so that those two witnesses can
20 be seen publicly. Who will those witnesses be so defense
21 counsel knows?

22 MR. TRUMP: Mr. Harlow and Ms. Rice.

23 THE COURT: All right, so everybody has those two on
24 board. All right.

25 So, ladies and gentlemen, I'm giving you your lunch

1 break a little bit earlier today. It is one hour, so please be
2 back here promptly at quarter of two, and we'll see you-all
3 then. We'll recess court.

4 (Recess from 12:45 p.m., until 1:45 p.m.)

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1 A F T E R N O O N S E S S I O N

2 (Defendant and Jury present.)

3 THE COURT: Mr. Trump, call your next witness.

4 MR. TRUMP: Mr. Harlow.

5 THE COURT: Mr. Harlow. He's outside, correct?

6 MR. TRUMP: Yes.

7 THE COURT: All right. No, he's outside.

8 WILLIAM HARLOW, GOVERNMENT'S WITNESS, AFFIRMED

9 MR. TRUMP: Mr. Wood, he'll need the binder with
10 exhibits in the hundred series.

11 DIRECT EXAMINATION

12 BY MR. TRUMP:

13 Q. Would you please state your name?

14 A. William Harlow.

15 Q. Would you spell your last name?

16 A. H-a-r-l-o-w.

17 Q. Were you formerly employed at the CIA?

18 A. Yes, I was.

19 Q. What was your title?

20 A. I was the Director of Public Affairs.

21 Q. And what, what was your term there? What --

22 A. I was there from 1997 until 2004.

23 Q. Did you serve in the military?

24 A. Yes, I did.

25 Q. When did you begin your military service?

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1 A. I was commissioned in 1972 and served on active duty in
2 the Navy until I retired to take the job at the CIA in 1997.

3 Q. Prior to working at the CIA, what position did you hold in
4 the military?

5 A. I was a public affairs specialist for most of my time in
6 the Navy, so I served in jobs dealing with the news media,
7 public communication, information. I had assignments overseas
8 in London and Japan, a lot of time in the Pentagon. I served
9 four years while on active duty as the Assistant Press
10 Secretary for National Security Affairs at the White House.
11 That was 1988 to '92.

12 Q. Have you held a Top Secret clearance?

13 A. I'm sorry?

14 Q. Have you held a Top Secret clearance?

15 A. Yes, I have.

16 Q. Since when?

17 A. I believe I got my first Top Secret clearance in 1981.

18 Q. And obviously, as a result of your -- as part of your
19 duties at the CIA, you had to be cleared?

20 A. Absolutely, yes.

21 Q. What, what does the Office of Public Affairs do?

22 A. Well, among the things it does is deal with the news
23 media, respond to public inquiries from, from the media, try to
24 answer questions as we could from, from the media, and other
25 functions involving internal communication with agency

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1 employees and other public communications, but the principal
2 part of my job was dealing with the news media.

3 Q. And what was your position specifically, Director? What
4 were your responsibilities?

5 A. Well, my responsibility was to run the entire operation of
6 the, of the Press Office, or the Public Affairs Office, but
7 specifically with the news media, I would receive calls from
8 the media, respond to those calls. They'd have questions. I'd
9 try to answer if I could from my personal knowledge; if not,
10 research the question to try to find out what the answer was
11 and respond appropriately.

12 Q. And were you authorized to speak to the media, obviously?

13 A. Yeah. I was the official spokesman for the agency. I
14 was, was authorized and expected to be the person who would
15 respond to the, to the press on whatever matters they were,
16 they were concerned with.

17 Q. And did you have what's called original classification
18 authority?

19 A. I had that authority, yes.

20 Q. Which means what in layman's terms?

21 A. It means I could determine the information that I was
22 creating which I thought needed to be maintained at a certain
23 level of classification within the agency, or within
24 government.

25 Q. In terms of executing your duties, however, did you always

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1 seek authorization from those involved in whatever the activity
2 was for your discussions with the press?

3 A. Well, there were many occasions where I had the
4 information already, I knew the information. I had the
5 background that I could respond to the press. On other
6 occasions, on very sensitive matters or things that I just
7 wasn't personally involved with or aware of, then I would seek
8 out other officials within the agency hierarchy to find out
9 what the facts were in order to be able to respond.

10 Q. Do you know someone by the name of James Risen?

11 A. Yes, I do.

12 Q. And did you have dealings with him over time?

13 A. Yes. He was an intelligence correspondent who dealt with
14 the agency, first with the -- he worked for *The Los Angeles*
15 *Times* and then later became a correspondent for *The New York*
16 *Times* and was a regular caller to our office.

17 Q. And what was the nature of your communication? Was it
18 phone? direct? e-mail?

19 A. Almost always telephonic. Occasionally, we'd get e-mails
20 from him and other reporters, but generally, it was telephonic.

21 Q. Let me direct your attention to April of 2003. Do you
22 recall getting a telephone call from Mr. Risen?

23 A. Yes, I do.

24 Q. Do you recall exactly what date?

25 A. I believe it was April 3.

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1 Q. Now, do you, do you and your staff keep a phone log?

2 A. Yes, they do.

3 Q. And how is that phone log kept?

4 A. My administrative assistant would field incoming calls and
5 would write down the time of the call and the caller, and it
6 kept it in a running log. They would also note the time that I
7 returned the call. Sometimes I'd answer immediately, and that
8 time would be noted in the log. Other times, I'd call back 15
9 minutes, an hour, two hours later. They'd, they'd write down
10 the time of the return phone call.

11 Q. Are these logs kept accurately?

12 A. Yes. To the best of my knowledge, they were.

13 Q. And what purpose does it serve for you to have this log?

14 A. Well, it, it ensured that I returned all of the phone
15 calls, which was a very important thing to do, to make sure
16 that I got that, and it would keep a record of who was calling
17 when so that if I needed to go back at a later date and find
18 out, you know, who I spoke to a week before, two weeks before,
19 whenever it was, I'd be able to determine what transpired.

20 Q. Would you look at what's in the binder as Exhibit 105?

21 THE COURT: Is there any exhibit -- any objection to
22 105?

23 MR. MAC MAHON: No objection, Your Honor.

24 THE COURT: All right, it's in evidence then.

25 (Government's Exhibit No. 105 was received in

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1 evidence.)

2 MR. TRUMP: Could we have that on the screen?

3 THE COURT: You may. It's in evidence.

4 BY MR. TRUMP:

5 Q. All right. And what is 105?

6 A. This is the phone log from April 3 of 2003.

7 Q. And your name is in the upper right-hand corner?

8 A. That's correct.

9 Q. And do you see an entry for 4:03?

10 A. Yes.

11 Q. And what does that entry indicate?

12 A. It says, "Jim Risen, NYT."

13 Q. And that's *New York Times*?

14 A. Yes.

15 Q. And the area that's blacked out, those were just the other
16 names of the people who called?

17 A. Right. The other, presumably the other reporters who
18 called during the course of that day.

19 Q. When you receive a call from a reporter, do you take
20 notes?

21 A. Yes, that was my practice.

22 Q. And then if necessary, do you memorialize your notes in a
23 communication to other officials?

24 A. Right. I mean, very frequently it wasn't necessary, but
25 just you would never know, so I'd keep notes on a spiral steno

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1 pad as I was talking to a reporter, and then if I needed to go
2 back and repeat anything to somebody either telephonically or
3 in an e-mail internally, I'd, I'd have the material available
4 to me to, to construct that, that communication.

5 Q. And internally, do you call that a Lotus Note?

6 A. That's correct.

7 Q. And did you prepare a Lotus Note of your telephone
8 conversation with Mr. Harlow on April 3?

9 THE COURT: Mr. Risen.

10 BY MR. TRUMP:

11 Q. Excuse me, Mr. Risen on April 3?

12 A. Yes, I did.

13 Q. And you then communicated -- you communicate via Lotus
14 Note with those people who need to know what that conversation
15 was about?

16 A. That's correct.

17 Q. And would you look at Exhibit 106?

18 THE COURT: Any objection to 106?

19 MR. MAC MAHON: No objection, Your Honor.

20 THE COURT: All right, it's in.

21 (Government's Exhibit No. 106 was received in
22 evidence.)

23 BY MR. TRUMP:

24 Q. Was that the Lotus Note that you prepared of your
25 telephone conversation with Mr. Risen on April 3?

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1 A. Yes, it is.

2 Q. And was that prepared from your notes?

3 A. Yes.

4 Q. Fairly contemporaneous with the conversation as your
5 duties would allow?

6 A. Right. It looks like the timing of this was 6:43 p.m., so
7 a couple hours later, I had time to, to create this note, but
8 it was based on my handwritten notes that were made
9 simultaneous to the incoming phone call.

10 Q. And what, what did Mr. Risen call about?

11 A. He called and told me that he was working on a story, and
12 he stressed that it wasn't a tomorrow story. Usually if you
13 get a call late in the afternoon from a reporter, it may be
14 that they're on deadline.

15 He said it, you know, wasn't a tomorrow story but
16 implied that it was reasonably soon, and he said that he was
17 writing about a classified CIA program which he said involved
18 the Iranian nuclear program, weapons program, and he told me
19 that this program was, was known by a code name, he used the
20 word "Merlin," and he told me that there was a Russian
21 scientist who had defected to the U.S. who the CIA had arranged
22 to sell some nuclear weapons designs to the Iranians, and he
23 said that these designs had been modified by the National Labs,
24 which is a U.S. organization that is involved with nuclear
25 weapons design, production, and whatever, and they were

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1 modified, he told me, so that they wouldn't work or there was
2 some problem with them, and he said that the Russian had given
3 the plans to, to the Iranians in Europe.

4 Q. Let me, let me stop you there. At this time, 2003, was
5 this subject matter something that you heard about a lot?

6 A. This particular operation?

7 Q. Let me -- I should rephrase it a better way. Were most of
8 your calls about other subject matters?

9 A. Yes. This was a few weeks after the launch of the
10 invasion of Iraq. This was 18 months or so into the post-9/11
11 period, so most of the activity I was getting was about
12 terrorism or about the Iraq war, although weapons proliferation
13 is always an important issue, but it wasn't one that I was
14 getting calls on on a daily basis, so this was a little bit out
15 of the blue to me.

16 Q. And you mentioned that he had used a specific code word.
17 That code word specifically wasn't "Merlin." It was a more
18 precise term?

19 A. That's correct.

20 Q. And you recognized it as a CIA type of code?

21 A. It was a CIA type of code. I didn't recognize it
22 specifically, but just the way it was formulated struck me as
23 the way we would encode things at the agency.

24 Q. Was that also rare that you would receive that type of
25 information?

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1 A. Yes. It's very rare that those code words leak or are
2 known to the public, and so if somebody purports to have one of
3 some operation which is current, not historical, that was quite
4 rare and alerting to me.

5 Q. Okay. Let's go on. What did he say -- after he said the
6 Russian gave the Iranians the plans, did he tell you what the
7 plans involved?

8 A. Yes. He went on to explain, he said the plans involved
9 what he called a fire set, which he said controlled the
10 implosion of the nuclear weapons detonation, and, and he also
11 told me he wasn't sure whether this program was still going on
12 or not but that it, it had started in, in the year 2000 in the
13 previous administration.

14 Q. Have you just summarized the substance of the factual
15 information provided by Mr. Risen?

16 A. I'm sorry?

17 Q. That summary were all the facts that Mr. Risen provided to
18 you?

19 A. Yes, yes, right.

20 Q. When you typed this note and you quoted the word "fire
21 set," was that a specific term that Mr. Risen had used?

22 A. Yes. It was a term specifically that he used; and I
23 wanted to put it in quotes to make clear that, that that was
24 the terminology he was using; it wasn't my own interpretation
25 of nuclear weapons design.

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1 Q. What did you tell Mr. Risen at this point?

2 A. Well, I, I told him I would check to see if there was
3 anything I could tell him about, about his question, but I also
4 told him that, you know, that if there was such a program, I
5 didn't think a respectable newspaper should be writing about
6 it. That is the kind of thing that was highly sensitive, and I
7 didn't think it was, would do any good for that kind of
8 information to be bandied about in the press.

9 Q. How did you leave it with Mr. Risen?

10 A. Only that I would look into it and, and get back to him.

11 Q. Now, did you get a call from another intelligence public
12 affairs officer?

13 A. Yes. Later that afternoon, I did.

14 Q. And what was that about?

15 A. Another public affairs officer elsewhere in government
16 said he had gotten a similar call from Risen with the same kind
17 of questions. He told me that Risen told him that he knew that
18 President Clinton --

19 MR. MAC MAHON: Your Honor, this is hearsay on top of
20 hearsay.

21 THE COURT: Well, it's not being offered for the
22 truth of its contents. It's just being offered to explain what
23 that man had been told or heard. I'm overruling the objection.
24 Go ahead.

25 THE WITNESS: He told me that, that Risen had told

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1 him that he heard that the program had been approved by
2 President Clinton, and he was trying to find out whether it had
3 been reapproved or continued to be approved under the current
4 administration, and he, too, had no immediate comment to Risen,
5 but he was just sharing with me a heads up that he had gotten a
6 similar call.

7 BY MR. TRUMP:

8 Q. Did you get another call the following day?

9 A. Yes, I did.

10 Q. And that was April 4, 2003?

11 A. Yes.

12 MR. TRUMP: And if we could look at 107?

13 THE COURT: Any objection to 107?

14 MR. MAC MAHON: No, Your Honor.

15 THE COURT: All right, it's in.

16 (Government's Exhibit No. 107 was received in
17 evidence.)

18 BY MR. TRUMP:

19 Q. Is that your phone log for the following day?

20 A. Yes, it is.

21 Q. April 4?

22 And did you receive two telephone calls from
23 Mr. Risen?

24 A. Yes.

25 Q. Or -- on the first page of, excuse me, 107, there are two

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1 calls listed?

2 A. Yes.

3 Q. And the second page, one?

4 A. One more, right.

5 Q. Sometimes calls are recorded that you don't return right
6 away?

7 A. Yeah, sometimes.

8 Q. But you had one conversation with Mr. Risen on April 4?

9 You only had one conversation on April 4?

10 A. No, no, I don't think so. I think the call at 10:43 looks
11 like I returned it at 11:00; the call at 4:33, I'm not sure
12 what that says; and then there was another call at 6:20. It
13 doesn't have a call completed time. That probably just meant
14 that my staff went home before I did, but I think the first
15 call, I may be wrong, but my vague recollection is the first
16 call was unrelated to his call the day before.

17 The second calls were -- I may be wrong on this, but
18 I think it was -- he may have been talking about multiple
19 things, and the later calls certainly were about this issue.

20 Q. And again, did you prepare notes and then a Lotus Note of
21 the telephone conversations?

22 A. Yes, I did.

23 Q. And is that memorialized in Exhibit 108?

24 A. Yes.

25 MR. MAC MAHON: No objection, Your Honor.

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1 THE COURT: All right, it's in.

2 (Government's Exhibit No. 108 was received in
3 evidence.)

4 THE WITNESS: And I see from this I'm wrong because
5 the timing of this is, would have been after the first phone
6 call, so the others may have been follow-ups to it but --

7 BY MR. TRUMP:

8 Q. The bottom of that exhibit is simply the e-mail chain from
9 the previous day?

10 A. That's right. The way it worked is you'd see the whole
11 chain.

12 Q. Now, in this telephone call, did Mr. Risen provide any
13 more details of, of what he discussed the previous day?

14 A. Yes. Initially, he was asking did I have an answer for
15 him, and I told him I didn't yet but that I was working on it.
16 Do you want to go --

17 Q. And what did you, what did you respond?

18 A. I'm sorry?

19 Q. What was your response?

20 A. Well, I, I told him that, that, more about I was
21 questioning why he should want to write about a story like this
22 and told him that, you know, if the facts were correct as he
23 laid them out, which I wasn't confirming, that I told him I
24 thought such a story would jeopardize U.S. security and didn't
25 think it was in anyone's benefit to do so.

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1 And he -- as I say in the note, he responded to me,
2 amazingly enough, that he hadn't really thought through the
3 security implications of the, of that particular article that
4 he was working on.

5 Q. Let me, let me stop you there. In terms of the factual
6 information or the information that Risen had for his story,
7 did you get anything more on April 4 that you didn't have on
8 April 3?

9 A. I don't think so. I think this is mostly him trying to
10 drag out of me: Are you going to answer the question? What's
11 the answer?

12 Q. And how did you -- when you and Mr. Risen hung up, how was
13 it left with him?

14 A. Well, just that I was going to continue to, to try to get
15 the answer. He was telling me that he thought -- he would
16 think about how he might adjust the story so that it wouldn't
17 have an impact on national security.

18 And I'd also had a conversation with him as part of
19 this reminding him of an earlier incident where he had
20 objected, when senior officials at the White House had called
21 his publisher to try to prevent the publication of a very
22 sensitive bit of information, and he -- and his editor had
23 objected to that. So I told him, you know, "We should work
24 together. If you don't want that to happen, you should come
25 back to me and think this through," although I didn't think

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1 that there was a way to dumb this story down to make it so that
2 it would be appropriate to put in the paper given the nature of
3 this particular, this particular story.

4 Q. What did you do now? Two phone calls, and what was your
5 responsibility at this point?

6 A. When I would get calls like this and what I did in this
7 case would be to reach out to appropriate officials within the
8 agency and ask them: What do you know about this? Do you know
9 anything about this particular code word that he gave us --
10 gave me? Is there such an operation?

11 And I'd try to gather information about it so that I
12 could advise senior leadership about if and how to respond.

13 Q. Were you able to gather some information?

14 A. I did.

15 Q. Were you able to determine whether there was, in fact, a
16 program like this?

17 A. Yes. I learned that there was a program similar to what
18 he was describing and that it was highly sensitive and was not
19 the kind of information which we would ever have wanted to
20 reach the media.

21 Q. In doing that research, did the name of the defendant,
22 Jeffrey Sterling, come up?

23 A. Yes. At one point, someone within that group, and I don't
24 know at this point who, mentioned to me this was the program
25 that Jeffrey Sterling had been working on or had been involved

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1 in or something like that.

2 Q. Did you know Jeffrey Sterling?

3 A. I knew the name. I never met Mr. Sterling, but I knew his
4 name.

5 Q. And why was his name familiar to you?

6 A. The previous year, I believe, he filed a lawsuit alleging
7 discrimination against the agency for his treatment while he
8 was a case officer. That, that story got a lot of publicity,
9 was in the media quite a bit, and there was a, particularly a
10 story about him and his case written in *The New York Times*, I
11 believe, by Jim Risen.

12 Q. After gathering the information, did you call Risen back,
13 or did he call you?

14 A. We were still -- the way I left it with him is that he was
15 going to think about if there was a way to deal with the story,
16 and so as I recall, there was a period of time when he didn't
17 press the issue and I didn't have a good answer for him other
18 than don't do it. So I think there was a gap in time before
19 there was another exchange on the specifics of this story.

20 Q. And did that occur on April 25?

21 A. Yes.

22 Q. Of 2003?

23 And could we look at Government 111?

24 A. Okay.

25 Q. And again, was this the phone log of your calls?

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1 A. Yes.

2 Q. And there were calls reflected from Mr. Risen?

3 A. Yes.

4 Q. And did you talk to him on April 25?

5 A. Yes, I did.

6 Q. Did you prepare notes and then subsequently a Lotus Note
7 of that conversation?

8 A. Yes, I did.

9 Q. And is that Exhibit 112?

10 THE COURT: I assume there's no objection to 111 or
11 112?

12 MR. MAC MAHON: No, Your Honor.

13 THE COURT: All right.

14 (Government's Exhibit Nos. 111 and 112 were received
15 in evidence.)

16 THE WITNESS: Yes, that's the note.

17 BY MR. TRUMP:

18 Q. And about what time did you talk to Mr. Risen on April 25?

19 A. It was about 3:30 in the afternoon.

20 Q. And what did you discuss with him?

21 A. He said he had been considering my previous communication
22 with him urging him to think about it, but he was still working
23 on the story, and then he started to read to me the lead of his
24 story. So it was clear to me at this point that the story was,
25 was fairly well along, because usually by the time a reporter

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1 has written out the lead and structure of their story, it's
2 getting closer to publication.

3 So he started reading to me the, what he planned to,
4 to write.

5 Q. And it was the same story about the Iranian nuclear
6 weapons?

7 A. Same story but, but it was more fully laid out, and he,
8 you know, told me how the story would probably appear in the
9 paper, you know, saying that the U.S. had an ongoing classified
10 program to derail the Iranian nuclear program and by selling
11 them intentionally flawed diagrams, and then he said something
12 about according to government documents and knowledgeable
13 people.

14 Q. And what did that mean to you?

15 A. You know, that triggered in my mind an alarm bell. So I
16 stopped and asked him, you know, "Are you telling me that you
17 have documents about some of this stuff?"

18 And he said, "Yes."

19 Then he went on to further, you know, read from his
20 draft story, and he said the program was code name Merlin and
21 that it involved a Russian defector pretending to be a
22 scientist willing to sell the firing sets, and he said the deal
23 was eventually made and it was part of a larger program to
24 inject design flaws into the Iranian program.

25 Q. Now, stopping you there, again, without revealing the true

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1 code name, he had used the true code name for the -- he had
2 used a true cryptonym rather than --

3 A. He used, he used a, more than "Merlin," which he said was
4 the description of the entire operation. I believe I, you
5 know, by the time, I had learned that perhaps the code name
6 that he was using was referring to the individual as opposed to
7 the overall program, but he was still using very specific,
8 agency-like code words in his communication with me.

9 Q. And in your Lotus Note, you used the term "firing set,"
10 i-n-g, rather than "fire sets." Is this what Risen is telling
11 you, as best as you can recall?

12 A. As best as I can recall, that's what he was saying, yes.

13 Q. What did you ask him in response?

14 A. Well, I, I asked him again whether he had considered the
15 wisdom of doing this story, and he told me he had, and he said
16 to me that he had talked to some people who believed that the
17 operation was not handled properly and that, that the Iranians
18 were already aware of the flaw. Therefore, his revealing it
19 wouldn't be, wouldn't be a problem, and that the Iranians had
20 already been able to fix the flaws that were in the diagrams
21 that were sent to him.

22 And this was the first time that he ever mentioned to
23 me any notion that the program was not well run, successful,
24 appropriate, and that's the first time I had heard that
25 allegation either from him or anywhere else, so that was

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1 concerning to me.

2 Q. And what did you ask him to do?

3 A. I asked him how widely this had been discussed at his
4 newspaper, because by this point, I was certain this was a
5 highly sensitive program, and I didn't want too many people
6 bandying about the story because the more people who know about
7 it in the newsroom, the greater the possibility that it might
8 leak. Even if it didn't end up in *The New York Times*, it could
9 leak somewhere else.

10 So I asked him to control that, and I did tell him at
11 that point that I thought that there was enough concern about
12 this that very high officials in the U.S. government would want
13 to make strong representations to his leadership about the lack
14 of wisdom of running such an article, and so I urged him to not
15 go ahead until we had an opportunity to do that and to keep
16 tight the number of people who would see his draft or know
17 about this article that he was preparing.

18 Q. Now, at the bottom of that note, it indicates you had to
19 move quickly?

20 A. Yes. Again, because he already had a draft of the
21 article, I thought this is something which could appear in the
22 paper in the next few days, so we didn't have a lot of time to
23 think about this. If we wanted to prevent it from appearing in
24 a paper, we needed to act quickly to make a representation to
25 his leadership about not doing so.

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1 Q. So what did you do?

2 A. Well, I sent this note to agency senior leadership. They
3 agreed, and in conversations with the White House, there was a
4 decision that the National Security Advisor, Dr. Rice, would,
5 in fact, hold a meeting with *New York Times* officials to talk
6 about this, and then I was asked to craft some talking points
7 that she could have for her use or consideration in that
8 meeting to, to make the case to *The New York Times* that this
9 was not an article which ought to appear in their paper.

10 Q. And did you, in fact, draft some talking points?

11 A. Yes, I did.

12 Q. Was that based upon the research that you had done over
13 the last two weeks or so?

14 A. Yes.

15 Q. And looking at Government 114 --

16 THE COURT: 114? Any objection?

17 MR. MAC MAHON: No objection, Your Honor.

18 THE COURT: All right, it's in.

19 (Government's Exhibit No. 114 was received in
20 evidence.)

21 BY MR. TRUMP:

22 Q. Are those the talking points you drafted?

23 A. Yes, they are.

24 Q. Now, when was the White House meeting? Let me back up.
25 Did you prepare a memorandum memorializing the White House

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1 meeting?

2 A. Yes. After the meeting took place, I prepared a --
3 because I was present at the meeting, I took notes and then
4 created a memo to circulate at the agency beyond this.

5 Q. And did, did that memo reflect the date of the meeting?

6 A. Yes.

7 Q. And is that memo Exhibit 113, Exhibit 113?

8 THE COURT: Any objection to 113?

9 MR. MAC MAHON: No objection, Your Honor.

10 THE COURT: All right, it's in.

11 (Government's Exhibit No. 113 was received in
12 evidence.)

13 THE WITNESS: Yes. That's, that's my note.

14 BY MR. TRUMP:

15 Q. And when was the White House meeting?

16 A. April 30.

17 Q. And who was there on behalf of the CIA?

18 A. The Director, George Tenet, was there; Steve Kappes, who
19 was the No. 2 in the clandestine service, the Deputy Director
20 of Operations; and myself.

21 Q. And obviously, Dr. Rice was the chair of the meeting?

22 A. Yes.

23 Q. And who was there on behalf of *The New York Times*?

24 A. Jill Abramson, who was then the Washington bureau chief,
25 and Jim Risen.

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1 Q. And there was also someone from NSC staff?

2 A. Anna Perez, who is Dr. Rice's spokesperson, was also
3 present.

4 Q. Did you give Dr. Rice the talking points, or had someone
5 given them to her?

6 A. Someone had given them to her in advance, so she had them
7 before we arrived.

8 Q. And tell us what happened at the meeting.

9 A. It lasted about 15 minutes. I noted that she followed the
10 talking points very closely, and when she got done, there was
11 some conversation. Jill Abramson asked for more information
12 about one of the talking points, one of the assertions in the
13 talking points, which is that leak of this information could
14 result in people dying.

15 At that point, Director Tenet spoke up and said that,
16 reminding people that this was off the record because we didn't
17 want this to end up in their story if they ended up ignoring
18 us, but the Russian involved had used his true name when
19 dealing with the Iranians, and so if they learned that they had
20 been misled, they might go after him, and so that was a concern
21 particularly for, you know, for that one individual.

22 Q. Did Mr. Risen ask any questions?

23 A. Yes. He, he asked about the question about we had
24 asserted -- or the notion of whether the Iranians were witting
25 of the program, whether they were aware this operation had been

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1 conducted, and he said that he -- or he implied that he had
2 seen a letter to the Iranians from the Russian which had told
3 them that the program was flawed, and so he took from that that
4 it meant, you know, they already know, so, you know, our story
5 won't make it any worse for this guy.

6 And Director Tenet answered up and said no, the
7 purpose for the letter was for the individual to suggest to the
8 Iranians that they continue to need him, they needed his
9 services, so he wasn't telling them, "What I just gave you was
10 no good." He was telling them, "You need me to continue to
11 help you on this program."

12 Q. So what happened -- how did the meeting wrap up?

13 A. Well, Jill Abramson, the Washington bureau's chief, said
14 that they had a fully realized draft, which to me meant the
15 story was done, it was ready to go, but they hadn't yet decided
16 to publish it, and they would go back and think about it and
17 would let us know. And she said that the decision was above
18 her pay grade, that it would be made by her bosses in New York.

19 And there was a discussion about we were urging them
20 to keep the information very tightly held and don't have it
21 easily available on your computer systems, don't have it laying
22 around, don't have too many people editing it, because we
23 didn't want the information to leak. Even if it didn't appear
24 in *The New York Times*, we didn't want it to appear anywhere
25 else. We asked them to keep it closely held.

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1 Q. And how did it wrap up?

2 A. Abramson said that she would let us know her decision --
3 or the paper's decision after she talked to her bosses in New
4 York, and that was the end of the meeting.

5 Q. And did you later find out that *The New York Times* decided
6 not to post the story?

7 A. Yes. I believe it was a week, ten days later or so I got
8 a call from Anna Perez, the spokesperson for Dr. Rice, who said
9 that they had gotten a call from *The New York Times* saying not
10 to worry, we're not going with it, and that appeared to be the
11 end of the story.

12 Q. And is that reflected in Government Exhibit 115?

13 A. Yes.

14 MR. MAC MAHON: No objection, Your Honor.

15 THE COURT: All right, 115 is in evidence.

16 (Government's Exhibit No. 115 was received in
17 evidence.)

18 MR. TRUMP: The Court's indulgence?

19 THE COURT: Yes, sir.

20 MR. TRUMP: That's all I have.

21 THE COURT: All right. Mr. MacMahon,
22 cross-examination?

23 MR. MAC MAHON: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. MAC MAHON:

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1 Q. Good afternoon, Mr. Harlow. My name is Edward MacMahon.
2 I'm one of the attorneys representing Mr. Sterling.

3 Sir, you say, I think, on direct -- first of all,
4 these events took place how many years ago?

5 A. Not quite 12 years ago.

6 Q. All right. And you've been reading off of the documents
7 in front of you as you testified today, haven't you?

8 A. Yes.

9 Q. Because you don't have really an independent recollection
10 of many of these events, do you?

11 A. Well, this was a very memorable event, so of my time at
12 the agency, this was one of the more startling phone calls I
13 got, so I have a recollection of it. I couldn't have given you
14 the date of the phone call or the exact order or the sequence
15 of events, but the events, you know, I remember that.

16 Q. All right. But you're reading off the paper in front of
17 you, aren't you?

18 A. I was because it makes it easier and so I didn't get it
19 wrong, but I guarantee you I remember that phone call.

20 Q. Okay. And you said you told Mr. Risen that you didn't
21 think a respectable journalist would publish this story?

22 A. Yes, sir.

23 Q. That's not exactly what you told him, is it? Didn't you
24 tell him Al Jazeera was the only outlet that would publish
25 that?

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1 A. If you'd like me to read all of these back to you, I'll
2 read the entire document, but yeah.

3 Q. You did tell him that it would be Al Jazeera that would
4 publish this story?

5 A. Yeah, I did because I thought that it might shock him into
6 thinking that a publication that maybe didn't have our best
7 interests, U.S. best interests, you know, we're talking weeks
8 after the invasion of Iraq, 18 months after 9/11, I wanted to
9 give him the impression that a reputable news organization
10 would not be putting this kind of information out, and so I
11 wanted to get his attention.

12 Whether I did or not, I don't know.

13 Q. And Al Jazeera is what, an Arab-owned news network?

14 MR. TRUMP: Objection, Your Honor. This is going far
15 afield.

16 THE COURT: It is. However, it's mentioned in the
17 notes, and I'm going to allow just a bit of this. I doubt
18 we're going very far.

19 MR. MAC MAHON: I'm almost done, Your Honor, I
20 promise.

21 THE COURT: Go ahead. Overruled.

22 BY MR. MAC MAHON:

23 Q. What is Al Jazeera, Mr. Harlow?

24 A. It's an Arab-owned news network which at the time was not
25 particularly held in high regard. It's gotten better over the

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1 years from my observing from afar, but at the time, it wasn't
2 particularly held in high regard, and I was trying to get his
3 attention.

4 Q. Did you get a reaction from Mr. Risen when you suggested
5 his journalism might appear on Al Jazeera?

6 A. No.

7 Q. Now, when you -- if you look at Exhibit 106, which I think
8 you told us was your notes of the first time that you talked to
9 Mr. Risen, correct? About this subject. I know that you
10 talked to him a lot.

11 A. Right. Yes.

12 Q. Okay. And in your notes -- if we could put that up,
13 Mr. Francisco? -- he told you that there were -- excuse me, he
14 was unaware, and this is in the middle, whether the program was
15 still in operation, correct?

16 THE COURT: Third paragraph down.

17 BY MR. MAC MAHON:

18 Q. Third paragraph down. It starts with, "He went on to say
19 that the plans involved"?

20 A. Yes, correct.

21 Q. Right? That's what you wrote down in your notes, that
22 Mr. Risen on April 3, 2003, was unsure that the program was in
23 operation but that it started in 2000.

24 A. Right.

25 Q. Now, that -- he obtained more information in the next

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1 three weeks, didn't he? He appeared to, didn't he?

2 A. Yes.

3 Q. Okay. So if we'd look at Government Exhibit 112, and it's
4 the -- if Mr. Francisco could highlight the fifth line down?

5 It starts, "The United States," please.

6 Now, he says, "The United States has an ongoing
7 classified program"?

8 MR. TRUMP: Objection. That's not what it says, Your
9 Honor.

10 BY MR. MAC MAHON:

11 Q. ". . . has had an ongoing classified program to derail the
12 Iranian nuclear weapons," correct?

13 A. Right.

14 Q. "Ongoing" is your word here, right?

15 A. Right.

16 Q. Is that what Mr. Risen told you, that he now knew the
17 program was ongoing?

18 A. Assuming that he was telling me the truth in his first
19 call, that he didn't know whether it was ongoing, and he now is
20 saying it is ongoing, then I accept your point that he learned
21 something in that period. Whether or not he did, I don't know.

22 Part of Risen's MO is that he would do all this
23 aw-shucks kind of stuff and would often not tell you much of
24 what he knew, and so whether he was, he was telling me
25 everything he knew, I'm certain he wasn't telling me everything

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1 he knew on April 3, he was telling me more since he had drafted
2 his story on April 25.

3 Q. Sir, you don't disagree that he told you something
4 different and knew that he -- on April 25 than he had told you
5 on April 3, correct?

6 A. He definitely told me something different, yes.

7 Q. Okay. And in that same call, you said he had "according
8 to government documents and knowledgeable people," correct?

9 A. Right.

10 Q. He didn't attribute that to one person, did he?

11 A. I wrote down what he told me.

12 Q. Right. Let's go to Exhibit 113 as well, if we could,
13 please. And these are notes from the meeting at the White
14 House on April 30?

15 A. Right.

16 Q. And if we could focus in on the paragraph that starts with
17 "Risen said" -- "Risen asked," excuse me? Mr. Risen said at
18 that meeting, and you were present, that he had seen a letter
19 to the Iranians from the Russian which told them that their
20 program was flawed.

21 That's what he said at the meeting, isn't it?

22 A. It says he implied he had seen a letter to the Iranians.

23 Q. Well, what did he exactly say, do you remember?

24 A. I don't remember that. You know, as he pointed out, it
25 was a dozen years ago.

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1 Q. Right. This was your -- this is your best recollection of
2 what happened is that he implied that he had seen a letter to
3 the Iranians from the Russian telling them that their program
4 was flawed. Right?

5 A. Right.

6 Q. Did you ever see that letter?

7 A. No, sir.

8 Q. Now, you were interviewed by the FBI several times about
9 this matter, correct?

10 A. Yes, sir.

11 Q. And did you tell the FBI that Mr. Risen has lots of
12 sources for the stories that he calls you with?

13 A. Sure. Most reporters, national news stories, they can
14 have lots of sources.

15 Q. Right. You told him that Mr. Risen had access to senior
16 CIA officials, correct?

17 A. I think I told him former senior CIA officials.

18 Q. Right. He'd written a book recently with a former CIA
19 official named Milt Bearden, correct?

20 A. Right. Who had been retired for about ten years.

21 Q. But that's something you told the FBI?

22 A. I told them Milt Bearden, who had been retired for about
23 ten years, yes.

24 Q. And you told -- you didn't -- Mr. Bearden wasn't the only
25 former CIA -- that was the only CIA official that you named

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1 when you talked to the --

2 A. Yeah.

3 Q. Because you didn't know if there was anybody else,
4 correct?

5 A. No.

6 Q. All right. And you also told the FBI in 2003 that you
7 didn't even know whether Mr. Risen had documents about the
8 program.

9 A. I -- he said he did in response to me. I don't know
10 whether he was telling me the truth again, but that's what he
11 told me.

12 Q. Okay. And you also told them that someone they should
13 talk to about something like this would be Bill Duhnke, a
14 person named Bill Duhnke, correct, up at the -- that worked at
15 the U.S. Senate?

16 MR. TRUMP: Objection, Your Honor. That gets into
17 another topic that we would need to discuss at the bench.

18 THE COURT: Approach the bench. Mira.

19 (Sealed Bench Conference C not transcribed in this
20 volume.)

21 BY MR. MAC MAHON:

22 Q. Now, Mr. Harlow, in 2003, you told the FBI that you
23 thought that Mr. Risen might reach out to the Staff Director of
24 the Senate Select Intelligence Committee on Intelligence for
25 confirmation, that Mr. Risen would, correct?

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1 A. I'm sorry?

2 Q. Do you remember telling the FBI that Mr. Risen didn't
3 indicate or tell you in any way where he'd gotten this story
4 from?

5 A. That's correct; he didn't.

6 Q. And you told him that he didn't tell you whether it was a
7 Hill staffer or not?

8 A. He didn't tell me at all where he got it.

9 Q. And you suggested to the -- you told the FBI that he might
10 have contact with someone affiliated with one of the
11 intelligence committees, and that's the permanent United States
12 Select Intelligence Committee on Intelligence, correct?

13 A. My recollection is what the FBI asked me is who are the
14 kind of people that Risen might talk to on a story like this,
15 and I told them that he had regular contact with the
16 Congressional Oversight Committees, including the Senate
17 Intelligence Committee, and so the kind of places he might go
18 to ask about the story would be the Senate Oversight
19 committees.

20 That's my recollection of it. You know, it's a dozen
21 years ago but --

22 Q. And one of the names you gave them was Bill Duhnke, right?

23 A. Right.

24 Q. Now, do you -- you testified earlier that you were aware
25 from your duties in the Press Office, is it, that Mr. Sterling

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1 had filed a discrimination case against the CIA?

2 A. Yes.

3 Q. Okay. In fact, you had, you had written an e-mail in 2002
4 about Mr. Sterling's discrimination case. Do you remember
5 that?

6 A. No.

7 Q. Do you remember an e-mail titled "Bill Harlow's Tirade"?

8 A. No.

9 Q. Do you know whether that e-mail has to do with
10 Mr. Sterling's discrimination case?

11 A. I have no idea.

12 MR. MAC MAHON: Your Honor, I have a document that's
13 marked as Defendant's Exhibit 4. If I could hand it to the
14 witness? I have copies for the Court.

15 MR. TRUMP: I fail to see any relevance in this. It
16 doesn't relate --

17 THE COURT: Well, I don't have it, so let me take a
18 look at it.

19 I'm going to permit this. Overruled.

20 MR. MAC MAHON: Move Exhibit No. 4, Your Honor.

21 THE COURT: All right, it's in.

22 (Defendant's Exhibit No. 4 was received in evidence.)

23 BY MR. MAC MAHON:

24 Q. Are you done reading that, Mr. Harlow?

25 A. Yes.

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1 Q. Does this e-mail -- if we can publish this for the jury,
2 please? The subject line of this e-mail is "Bill Harlow's
3 Tirade"?

4 A. Yes.

5 Q. Does this refresh your recollection as to what the tirade
6 was about?

7 A. Haven't a clue.

8 Q. Does reading of the body of the e-mail suggest to you that
9 in any way this had to do with Mr. Sterling's pending case in
10 the Southern District of New York?

11 A. It has something to do with it. Exactly what it has to do
12 with it, I don't know. I'm not even sure who it's from since
13 it's been blacked out, but --

14 Q. But Mr. Sterling did have a case in the Southern District
15 of New York in 2002, correct?

16 A. I believe that's where it was. I know he had a case,
17 yeah.

18 Q. All right. And you knew that there were articles in the
19 paper and otherwise in that time frame?

20 A. Yes.

21 Q. And you were being asked to comment about his case,
22 weren't you?

23 A. Sure.

24 Q. And that resulted in your tirade, correct?

25 A. I don't know if that's what resulted in it or not. I'm

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1 sure the "tirade" is a joke, but in any case, this is somebody
2 responding to it, saying while we can't talk about
3 Mr. Sterling's case, we can talk about our efforts to, to have
4 an effective hiring program, equal opportunity at the agency,
5 and somebody who wanted to talk about that, and we did to some
6 extent talk about that without talking about the specifics of
7 his case.

8 We were able to talk about how many people we had
9 hired in the last class of clandestine officers, 20-some
10 percent had been of minority. So we were addressing the
11 overall charge that we were an organization which discriminated
12 against, without getting into specifics of his case because we
13 weren't allowed to due to privacy.

14 Q. All right. And lastly, Mr. Trump asked you about in April
15 of 2003, you were fielding a lot of calls, weren't you?

16 A. Sure.

17 Q. All right. And you were fielding a lot of calls about
18 whether weapons of mass destruction had been found in Iraq,
19 correct?

20 A. Sure.

21 MR. TRUMP: Objection.

22 THE COURT: Well, it's already been answered. You
23 have to be faster on your feet, Mr. Trump.

24 BY MR. MAC MAHON:

25 Q. That was a, that was a topic of great interest, correct?

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1 MR. TRUMP: Objection.

2 MR. MAC MAHON: He opened the door.

3 THE COURT: Well, he opened the door. Your witness
4 did testify that he had a lot of activity. We're not going to
5 go very far into that, but that's not inappropriate.
6 Overruled.

7 BY MR. MAC MAHON:

8 Q. And that was the subject of most of your calls, was
9 whether the U.S. government was actually going to find weapons
10 of mass destruction in Iraq after you went to war, correct?

11 A. No, I wouldn't say most of my calls. Certainly not in
12 April, because the invasion had only happened a few weeks
13 before, and we were telling people, you know, that it was going
14 to take a lot longer than that, and it wasn't until months and
15 months later that we determined that we probably weren't going
16 to find weapons of mass destruction, so at this point, no.

17 We were getting questions at this point about how was
18 the war going? Have you found Saddam yet? And also, how is
19 the war against Al Qaeda going? You know, have you found Bin
20 Laden yet?

21 So in April of 2003, that wasn't the principal
22 question.

23 Q. But you were fielding calls at that time --

24 A. Sure.

25 Q. -- about whether the CIA --

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1 A. We were getting some. Some, yeah.

2 THE COURT: That's been asked and answered.

3 MR. MAC MAHON: Nothing further, Your Honor.

4 THE COURT: All right, is there any redirect?

5 MR. TRUMP: No, Your Honor.

6 THE COURT: All right. Mr. Harlow is not going to be
7 called as a witness again, correct?

8 MR. TRUMP: Correct.

9 THE COURT: Mr. Harlow, you're free to stay in court
10 and watch the proceedings if you want to, or you may leave.
11 Thank you for your testimony.

12 THE WITNESS: Thank you very much.

13 (Witness excused.)

14 THE COURT: All right, call your next witness.

15 MR. OLSHAN: Your Honor, the government calls
16 Condoleezza Rice.

17 THE COURT: All right. Mr. Wood, the next witness is
18 outside as well.

19 CONDOLEEZZA RICE, PH.D., GOVERNMENT'S WITNESS, AFFIRMED

20 MR. OLSHAN: May I proceed?

21 THE COURT: Yes, sir.

22 DIRECT EXAMINATION

23 BY MR. OLSHAN:

24 Q. Good afternoon, ma'am.

25 A. Good afternoon.

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1 Q. If you could, please state and spell your name for the
2 record.

3 A. My name is Condoleezza Rice, C-o-n-d-o-l-e-e-z-z-a, Rice,
4 R-i-c-e.

5 Q. Secretary Rice, were you formerly the Secretary of State
6 for the United States?

7 A. I was.

8 Q. Can you tell the jury what years you were Secretary of
9 State?

10 A. I was Secretary of State from January 2005 until 2009.

11 Q. That's a cabinet-level position within the U.S.
12 government?

13 A. It is.

14 Q. Can you tell the jury a little bit about your educational
15 background?

16 A. Yes. I was a graduate -- I was an undergraduate student
17 at the University of Denver, where I studied first music and
18 then political science. I received my B.A. in 1974 and then
19 did my master's degree at Notre Dame, finishing in 1975. I
20 received my Ph.D. in International Studies from the University
21 of Denver in 1981 and then went to Stanford University.

22 Q. And are you currently employed, Secretary Rice?

23 A. I am. I'm on the faculty of Stanford University in the
24 Graduate School of Business, and I'm a senior fellow at the
25 Hoover Institution on Public Policy.

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1 Q. Do you teach courses?

2 A. I do. I teach undergraduate courses in American foreign
3 policy. I teach courses for the business school in, concerning
4 political risk and also on global politics.

5 Q. Other than your position as Secretary of State, have you
6 held other positions within the United States government?

7 A. I have. From 1989 until 1991, I was Special Assistant to
8 the President for National Security Affairs and Senior Director
9 for Soviet and East European Affairs in the administration of
10 President George H. W. Bush; and then from 2001, January of
11 2001 until my becoming Secretary of State in 2005, I was
12 Assistant to the President for National Security Affairs, more
13 commonly known as National Security Advisor.

14 Q. Let's focus on that time, time frame. In approximately
15 April of 2003, were you National Security Advisor?

16 A. I was.

17 Q. Can you briefly describe for the jury what the National
18 Security Advisor is and what she does?

19 A. The National Security Advisor is the principal aide or
20 assistant to the President for National Security Affairs. It's
21 the responsibility of the National Security Advisor to make
22 sure that the President is properly briefed on matters of
23 national security.

24 The National Security Advisor also coordinates the
25 government's policies through the National Security Council,

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1 which consists of the Secretary of State, the Secretary of
2 Defense, and some other key national security officials; and
3 the National Security Advisor undertakes various tasks at the
4 direction of the President on behalf of American national
5 security policy.

6 Q. Is it fair to say with that description that it's a fairly
7 high-ranking government position?

8 A. Yes, I think that's fair.

9 Q. As of April 2003, approximately how long had you been
10 National Security Advisor?

11 A. I became National Security Advisor after the inauguration
12 of President George W. Bush. The National Security Advisor
13 does not require confirmation, so upon his inauguration, I was
14 National Security Advisor. That would have been in January of
15 2001, so roughly two years and a few months.

16 Q. As the National Security Advisor, did you hold a security
17 clearance?

18 A. I did hold several security clearances, yes.

19 Q. And at other times prior to that, perhaps during the first
20 Bush administration, did you also hold security clearances?

21 A. I had held security clearances a number of times during my
22 government service.

23 Q. What about when you were later Secretary of State?

24 A. As Secretary of State, I also held security clearances.

25 Q. In connection with your government positions, did you

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1 receive training on how to properly handle classified
2 information?

3 A. Yes. We received training on how to properly handle
4 national security information to make certain that it would not
5 be disclosed, how to handle documents, how to secure documents,
6 and after that training, we were certified and, in fact,
7 certified by signature that we had been properly trained and
8 agreed to handle the materials properly.

9 Q. You did this periodically through your career?

10 A. Yes.

11 Q. How important would you say the proper handling of
12 classified information was during your tenure?

13 A. The proper handling of national security information is
14 extraordinarily important because it very often involves some
15 of the most sensitive programs that the United States is
16 carrying out to try to secure the country. It can contain
17 intelligence information that is important to securing the
18 country. So the handling of sensitive national security
19 information is extraordinarily important.

20 Q. Do you recall attending a meeting on April 30, 2003, at
21 the White House with representatives from *The New York Times*?

22 A. I do.

23 Q. And that was in your office at the White House?

24 A. The meeting was held in my office, yes.

25 Q. Can you describe for the jury how that meeting came about?

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1 A. Prior to that meeting, I received information from the
2 National Security Council press staff that *The New York Times*
3 had called to say that they were about to publish an article
4 related to a sensitive national security program. I informed
5 the President that there was likely to be a *New York Times*
6 article about this program concerning the Iranian nuclear
7 program and efforts to disrupt it.

8 At that time, the President and I talked about and I
9 decided that I should ask *The New York Times* leadership to come
10 to the White House for a meeting to discuss why that story
11 should not be published. In fact, Jill Abramson, the
12 Washington bureau chief of *The New York Times*, agreed to come.
13 I explained that I could not talk about this on an open line
14 and so it was very important that a meeting take place, and I
15 held that meeting in my office.

16 Q. So let's back up a little bit. First, you just mentioned
17 that you told Ms. Abramson that you couldn't talk about it on
18 an open line. Can you tell the jury a little bit about why you
19 couldn't do that?

20 A. Well, on an open line, one had to assume given that the
21 call would be between the White House and *The New York Times*
22 that those lines could have been monitored. We have secure
23 lines but obviously would not have had a secure line to *The New*
24 *York Times*. We would have had a secure line between the White
25 House and the Defense Department, for instance, but not with

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1 *The New York Times*.

2 And on an open line, there was a chance of compromise
3 of the information, compromise to a foreign government, and so
4 I was concerned about talking, even talking about this program
5 in that way on an open line.

6 Q. So you mentioned that your understanding as to the nature
7 of this proposed *New York Times* story was it had something to
8 do with disrupting the Iranian nuclear program; is that
9 correct?

10 A. That's correct.

11 Q. And do you remember any more general specifics about this
12 program as it was going to be reported in *The Times*?

13 A. Yes. It is my recollection that the thrust of the story
14 was that the effort to disrupt the Iranian nuclear program by
15 supplying to the Iranians flawed parts for their program had
16 been botched or had been mismanaged and that the program was
17 therefore not working.

18 Q. At the time that you learned about this anticipated *New*
19 *York Times* story, were you familiar with a classified program
20 similar to the description of that article?

21 A. I was familiar with the program that fit that description.

22 Q. You'd been briefed on this program previously?

23 A. I had been briefed on the program previously.

24 Q. Secretary Rice, to your knowledge, did everyone -- you
25 mentioned the National Security Council. To your knowledge,

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1 did everyone on the National Security Council know about this
2 specific classified program?

3 A. No, quite to the --

4 MR. POLLACK: I would object, Your Honor. This may
5 be an issue that we need to take up at the bench, but I think
6 it is beyond the protective order's bounds.

7 MR. OLSHAN: Your Honor, it's not.

8 THE COURT: I think the government is very sensitive
9 to the protective order, and I doubt that they would go beyond
10 it so --

11 MR. OLSHAN: I'll rephrase the question.

12 MR. POLLACK: This is an area that if they go into
13 it, we can't be prevented from going into.

14 MR. OLSHAN: I'll rephrase the question.

15 THE COURT: Let me hear what the new question is.

16 BY MR. OLSHAN:

17 Q. You testified, Secretary Rice, that you were familiar with
18 this program, correct?

19 A. Yes.

20 Q. How closely held would you describe this program?

21 A. This program was very closely held. It was one of the
22 most closely held programs during my tenure as National
23 Security Advisor.

24 Q. When you learned that *The New York Times* was prepared to
25 write an article about this program, what was your initial

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1 reaction to that?

2 A. Well, my initial reaction upon learning this was first of
3 all to be stunned because to my knowledge, very few people knew
4 about this program. I knew that very, very few people knew
5 within the White House about the program, and so I was stunned
6 that *The Times* had the information.

7 Secondly, I was deeply concerned because this was not
8 just a sensitive program, but it was one of the only levers
9 that we believed we had, that the President had to try to
10 disrupt the Iranian nuclear program.

11 Q. You said "one of the only levers." Is that the same as
12 saying only a few options were in play as far as how to disrupt
13 a foreign nuclear program?

14 A. The Iranian nuclear program was -- disruption of or even
15 preferably destruction of the Iranian nuclear program was one
16 of the highest priorities of the Bush administration. It had
17 been a high priority before in the Clinton administration. It
18 remains a high priority today for the Obama administration.

19 And so yes, it was an important option, an important
20 way that we might be able to disrupt the program, and that's
21 why I was concerned about its possible compromise.

22 Q. You testified that you convened a meeting at the White
23 House, correct?

24 A. Yes.

25 Q. Do you recall who was in attendance at that meeting?

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1 A. Well, I recall that Jill Abramson, the bureau chief,
2 Washington bureau chief with *The New York Times*, was there.
3 James Risen, the reporter who was going to write the story, was
4 there. I remember also George Tenet, the Director of Central
5 Intelligence and the Director of the Central Intelligence
6 Agency. The positions were combined at the time, and so George
7 held both the positions of Director of Central Intelligence and
8 the Director of the Central Intelligence Agency, the CIA.

9 And I can't remember specifically, but I believe that
10 there was also a member of my staff there from the Press
11 Office.

12 Q. You mention that you were notified by an individual in the
13 Press Office; is that correct?

14 A. That's correct. In the NSC Press Office.

15 Q. Did you share with that person from the Press Office any
16 of the details that you knew about this classified program?

17 A. I did not share the details of this program. I was in a
18 receiving mode to know what the press person had been told, but
19 because the press person would not have been briefed on the
20 program, would not have been, as we say, read into the program,
21 I did not discuss the details of the program with that person.

22 Q. Was it important not to discuss the details with that
23 person?

24 A. It was important not to discuss the details with anyone
25 who was not, not properly on a need-to-know basis for that

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1 program.

2 Q. You testified that George Tenet was in attendance, and you
3 described his positions at the time. Was he the
4 highest-ranking intelligence official in the United States
5 government at the time?

6 A. At the time, the Director of Central Intelligence was the
7 highest-ranking intelligence official in the government. There
8 have since been subsequent reforms that have created another
9 position, but at that time, the Director of Central
10 Intelligence, George Tenet, was the highest-ranking
11 intelligence official.

12 Q. And the purpose of this meeting was to convince *The Times*
13 not to run the story?

14 A. The purpose was to convince *The Times* not to run the
15 story.

16 Q. Did you speak at the meeting?

17 A. I did speak at the meeting.

18 MR. OLSHAN: Your Honor, if we could bring up
19 Government's Exhibit 114, which is already in evidence?

20 THE COURT: Yes.

21 If you'll look at the screen, that's probably the
22 easiest way of seeing it.

23 THE WITNESS: Thank you.

24 BY MR. OLSHAN:

25 Q. Secretary Rice, you've got two options there, one on the

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1 screen and a hard copy in front of you as well.

2 A. Yes, thank you.

3 Q. Do you recognize that document?

4 A. I do recognize the document.

5 Q. And what is that document?

6 A. The document is a set of talking points that were provided
7 to me by the Central Intelligence Agency for use in the meeting
8 with *The New York Times*.

9 Q. Was it common when you attended meetings as National
10 Security Advisor for someone to prepare talking points for you
11 to use?

12 A. When I conducted or attended sensitive or important,
13 significant meetings, I was provided talking points so that I
14 would remember the key points that had to be, that had to be
15 made in said meeting.

16 Q. How important were talking points such as these when you
17 were going to be dealing with not only a sensitive topic but a
18 classified topic?

19 A. Well, in a case like this, I was concerned that I would
20 properly deliver to *The New York Times* a statement that, about
21 the importance of a program, about the sensitivity of the
22 program, about the dangers of its compromise; but I wanted to
23 do so in a way that would not further compromise the program by
24 inadvertently giving information that I didn't need to provide;
25 and so these points were to make certain that I stayed within

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1 the boundaries of what the CIA thought was appropriate to, to
2 convey to *The New York Times*.

3 So the talking points were extremely important in
4 this case.

5 Q. And would you have reviewed these prior to delivering
6 them?

7 A. I would have reviewed them, I would have checked them for
8 whether they accorded with my own understanding of what the
9 program was and what had happened, and I would have reviewed
10 them several times.

11 Q. In sensitive meetings where you're dealing with topics
12 such as a very significant classified program or story about
13 it, would you tend to hew closely to those talking points, or
14 would you sort of freelance a little?

15 A. I would not freelance in a circumstance like this because
16 my concern was to in this meeting deliver only what I needed to
17 deliver to *The New York Times* to convince them not to publish
18 the story and to avoid straying into further information that
19 might have confirmed, directly confirmed the program, that
20 might give further information about the program, and so the
21 safety valve, if you will, was to adhere very closely to the
22 talking points.

23 I can't say that I delivered them word for word, but
24 I would have adhered to them very closely.

25 Q. If we could highlight or if you could take a look at the

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1 second talking point, that starts with "We've never called"?

2 A. Yes.

3 Q. Can you read that, please?

4 A. Yes. "We've never called a meeting like this before in
5 this administration. The fact that we have done so may tell
6 you how seriously we view this matter."

7 Q. And do you recall as you sit here today conveying that
8 sentiment about never having convened a meeting like this at
9 the meeting?

10 A. I did.

11 Q. If you could take a look at the fourth, fifth, and sixth
12 bullet points? It's the ones that start with "Jim" --

13 A. Yes.

14 Q. -- and go down to the bullet point that starts with "I say
15 incorrectly."

16 A. Yes.

17 Q. Do you see that?

18 A. I do.

19 Q. Do you remember making any comments at this meeting with
20 Mr. Risen and Ms. Abramson about whether the information they
21 had purportedly obtained was inappropriately provided to them?

22 A. I told them that it had been inappropriately provided to
23 them and also that some of the information that they had
24 received was inaccurate.

25 Q. And when you say "inappropriately," what do you mean by

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1 that?

2 A. Inappropriately because intelligence programs are not to
3 be disclosed to those who are not authorized to know about
4 them, and *The New York Times* would not have been authorized to
5 know about them.

6 Q. And again, can you recall word for word what you said?

7 A. Some 12 years later, I can't recall word for word, but I
8 recognize these points, and I did say that they had been
9 inappropriately provided the information and that some of it
10 was inaccurate.

11 Q. And to the extent the information as you understood it was
12 inaccurate, what were you thinking about? What did you convey?

13 A. I had been told that *The Times* was going to publish in the
14 story that the program had been botched, that it wasn't
15 working, and that the Iranians knew this, and it had been my
16 understanding, in fact, I had been told just the opposite, that
17 the program was indeed working, was underway and was working,
18 and I had no reason to believe that the Iranians knew anything
19 about it.

20 Q. You testified that you, you had heard that the story was
21 that this program had been botched in some way; is that
22 correct?

23 A. Yes.

24 Q. Now, was the purpose of your convening this meeting out of
25 any sort of embarrassment that it would get out that there had

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1 been a botched operation?

2 A. My concern in convening this meeting was that we had a
3 very sensitive, extremely important program for the security of
4 the country that was about to be compromised, and given that we
5 did not have very many options for disrupting and possibly
6 undermining the Iranian nuclear program, I was very concerned
7 that any compromise of this program was going to take a good
8 option out of the hands of the President. That was my concern.

9 Q. So was the disclosure of the existence of the program the
10 driving force behind convening the meeting?

11 A. The driving force was the disclosure of a very sensitive
12 program which if disclosed and compromised, was going to at the
13 very least alert the Iranians that this, this program was
14 underway and the dangers associated with that, and that was my
15 concern was the disclosure and compromise of a highly sensitive
16 and closely held program.

17 Q. Secretary Rice, you testified that this is the first time
18 in two-plus years that you had convened a meeting like this,
19 correct?

20 A. Yes.

21 Q. Did you, did you understand the significance of asking a
22 news-gathering organization not to print a story?

23 A. I certainly understood the significance of the White House
24 asking *The New York Times* not to publish a story. It's why I
25 talked first to the President about whether we should even do

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1 so.

2 I understand and fully respect the role of the press.
3 I understand and fully respect the importance of a free press
4 to our democracy and our democratic values, but I needed in
5 this case to make certain that *The New York Times* understood
6 the import of what they were about to do, and so with the
7 President's consent, I went to them to ask that they not
8 publish the story.

9 Q. If you could take a look at the last bullet point on the
10 first page of the bullet points, it starts, "Asking
11 journalists"?

12 A. Yes.

13 Q. Do you see the second -- excuse me, the third sentence
14 that begins, "I am going to"?

15 A. Yes.

16 Q. Can you read that?

17 A. "I am going to ask in the strongest possible terms that
18 you not discuss this matter with colleagues and that you not
19 conduct further inquiries around town about it."

20 Q. Why, if at all, was it important to convey to the
21 participants of this meeting not to go talking about this?

22 A. Well, there were very few people who had been briefed on
23 the program, read into the program, but I knew that it was
24 often the practice of journalists that they would get a nugget
25 about a program and then they would make calls around town to

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1 different agencies to try to get confirmation, to get some
2 further information, and my concern was that in doing so, they
3 would actually spread the news about the program to people who
4 did not yet know.

5 Q. Did you have any concern about further inquiries even
6 within the government ranks?

7 A. Well, yes, within the government ranks especially, because
8 there were people who would likely be called by the press who
9 didn't know about the program, and to start asking questions
10 about it would further compromise the program itself.

11 Q. Do you remember whether you expressed anything
12 specifically to the group about the gravity of this disclosure
13 and what it could mean for people's lives?

14 A. I did say to *The New York Times*, to Ms. Abramson and to
15 Mr. Risen, that the disclosure of this program, the compromise
16 of this program would likely or could result in actual danger
17 to lives of people. Obviously, it would endanger the program
18 itself and take away from us a tool for dealing with the
19 Iranian nuclear program.

20 I adhered closely to what was said in the talking
21 points because the problem is to say enough about what is being
22 proposed without confirming too many details of the program to
23 the press, and so the language that I used is actually, I
24 recognize this language that is in the talking points.

25 Q. And specifically, which language are you referring to?

Rice - Direct

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1 A. Let me see.

2 Q. If I could direct your attention --

3 A. Yes, it's --

4 Q. Go ahead.

5 A. I'm trying to. "Preventing working nuclear weapons from
6 falling into the hands of rogue states is one of the most
7 important missions that this or any other administration can
8 have."

9 Q. Thank you.

10 What was your understanding at the time of how close
11 *The Times* was to publishing this story?

12 A. The NSC press spokesman, press people had told me that
13 they believed that the publication of the story was imminent,
14 probably within the next couple of days.

15 Q. During the meeting, do you recall after you delivered the
16 talking points whether you answered any questions?

17 A. I don't recall answering any questions, and it was my
18 practice in these circumstances to deliver the points, not to
19 get into a conversation so that I wouldn't inadvertently
20 disclose more information, and then to refer questions to the
21 agency, in this case to George Tenet.

22 Q. Do you recall during the meeting whether you asked,
23 whether you asked *The New York Times*, either Ms. Abramson or
24 Mr. Risen, to do anything with any materials that they had?

25 A. I, I do recall that I asked that if they had any

Rice - Direct

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1 materials, that they would destroy them. I remember saying
2 that I, I knew that they wouldn't give them back to us
3 because -- and I wouldn't ask that, but that if they had any
4 materials, to please destroy them.

5 Q. Following the meeting, did you learn at some point that
6 *The New York Times* had decided not to run the story?

7 A. I remember that the bureau chief, Ms. Abramson, told me
8 that she had to discuss this with her higher-ups, the editor,
9 Howell Raines, and she would get back to me. I don't remember
10 precisely who she got back to, whether it was to me or to the
11 press shop. I think it may have been to people in the press
12 area. I don't remember having a further conversation with her
13 myself.

14 Q. *The New York Times* did not run the story; is that right?

15 A. That's correct.

16 Q. And do you recall what your reaction was when you
17 ultimately did learn that the story wasn't running?

18 A. I was relieved when I learned that the story was not
19 running and grateful to *The Times* for not doing so.

20 Q. Other than sitting in that room with Mr. Risen, did you
21 ever have any other conversations with him about this
22 classified program?

23 A. I had no conversations with Mr. Risen about this program.

24 Q. And have you ever discussed this classified program with
25 anybody whom -- who was not authorized to know about it?

Rice - Cross

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1 A. I did not at the time and I have not since discussed the
2 program with anyone who was not authorized to know about it.

3 MR. OLSHAN: One moment, Your Honor?

4 THE COURT: Yes, sir.

5 MR. OLSHAN: That's all I have for now, Your Honor.

6 THE COURT: All right. Mr. Pollack?

7 MR. POLLACK: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. POLLACK:

10 Q. Good afternoon, Dr. Rice. My name is Barry Pollack, and
11 I'm one of the lawyers that represents Mr. Sterling.

12 Dr. Rice, you had indicated to Mr. Olshan that this
13 was the first meeting of this kind that you participated in as
14 the National Security Advisor, correct?

15 A. That's correct.

16 Q. But while this was the first such meeting, this was not
17 the only meeting that you participated in where there had been
18 a disclosure of such sensitive information, correct?

19 A. That is correct.

20 Q. And this also was not the first occasion on which you had
21 asked editors for *The New York Times* not to run a story,
22 correct?

23 A. I don't recall having asked editors of *The New York Times*
24 prior to this not to run a story, but subsequent to this, I
25 did.

Rice - Cross

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1 Q. Okay. If we could pull up Exhibit 108, which is already
2 in evidence?

3 Dr. Rice, this is a Lotus Note from Bill Harlow at
4 the CIA. Do you know who Mr. Harlow is?

5 A. I do.

6 Q. He was the press person for the CIA?

7 A. That's correct.

8 Q. And this is Mr. Harlow indicating toward the middle of the
9 page, the paragraph that begins, "I reminded"?

10 A. Yes.

11 Q. This is less than 24 hours after Mr. Harlow received a
12 phone call from Mr. Risen about the story that Mr. Risen was
13 working on about Classified Program No. 1?

14 MR. OLSHAN: Objection. Can the defense lay a
15 foundation that this witness has any knowledge of that?

16 THE COURT: All right. Lay a foundation first,
17 Mr. Pollack.

18 BY MR. POLLACK:

19 Q. Well, specifically, Dr. Rice, what I want to ask you about
20 is Mr. Harlow says that he reminded Mr. Risen of a recent
21 occasion on which they had Condi Rice call his publisher to
22 kill a story.

23 A. I don't know to what Mr. Harlow is referring.

24 Q. And you did learn -- you learned about Mr. Risen's story
25 from the press person at the National Security Council,

Rice - Cross

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1 correct?

2 A. That's my recollection.

3 Q. But you did become aware that a similar call had been made
4 by Mr. Risen to Mr. Harlow, the press person at the CIA?

5 A. I was told by our press people that Bill Harlow said that
6 he had been called by Mr. Risen, yes.

7 Q. Okay. And you were aware that the CIA did not want this
8 story published, correct?

9 A. That's correct.

10 Q. And as you indicated in your talking points, Exhibit 114,
11 the -- in the middle of the page -- well, it's toward the
12 bottom of the screen now, preventing working nuclear weapons
13 from falling into the hands of rogue states is one of the most
14 important missions of your, the administration you worked for
15 certainly --

16 A. Yes.

17 Q. -- and any other administration, correct?

18 A. That's correct.

19 Q. And certainly counterproliferation was of great interest
20 at this particular time, correct?

21 A. That's correct.

22 Q. The United States had invaded Iraq the earlier month?

23 MR. OLSHAN: Objection.

24 THE COURT: Well, we've heard that before. Let's
25 just move this along, Mr. Pollack. Sustained.

Rice - Cross

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1 BY MR. POLLACK:

2 Q. Well, specifically, it was of great interest --
3 counterproliferation was of great interest in the Intelligence
4 Community, correct?

5 A. It was of great interest throughout the administration
6 and, of course, in the Intelligence Community.

7 Q. And the Intelligence Community particularly at this point
8 in time did not want a story published about a
9 counterproliferation program that they were working against
10 Iran, correct?

11 A. I cannot speak to the, what the Intelligence Community was
12 thinking. I can only speak to what I was thinking about this
13 matter.

14 Q. Okay. But you were aware that the Intelligence Community
15 wanted you to meet with *The New York Times*, correct?

16 A. I was aware that the Intelligence Community was concerned
17 about it and that they wanted the -- that no one wanted *The New*
18 *York Times* to publish this story, and it was actually with the
19 President that I talked about meeting with *The New York Times*.

20 Q. Okay. What I'm asking is about the CIA. You weren't
21 meeting with *The New York Times* over the CIA's objection,
22 right?

23 A. No, of course not.

24 Q. Of course not. The CIA very much wanted you to meet with
25 *The New York Times* because they believed that you might be

Rice - Cross

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1 effective in convincing *The New York Times* not to publish the
2 story, correct?

3 A. I wanted to meet with *The New York Times* because I
4 believed that I might be effective in convincing *The Times* not
5 to publish the story.

6 Q. I understand that, but what I'm asking you is wasn't it
7 communicated to you that the CIA wanted the same thing?

8 A. Of course.

9 Q. It was -- you knew it was important to the CIA?

10 A. It was important to the administration and to the CIA.

11 Q. Yeah. And, in fact, it was the CIA that drafted the
12 talking points that you used for that meeting, correct?

13 A. That is correct.

14 Q. The talking points that you adhered to very closely?

15 A. That is correct.

16 Q. And the meeting was attended by three officials from the
17 CIA?

18 A. I remember George Tenet's attendance. I don't remember
19 who else was there.

20 Q. Do you remember the Assistant Deputy Director of
21 Operations was there?

22 A. I don't remember.

23 Q. Do you remember that Mr. Harlow was there?

24 A. I don't remember.

25 Q. And you were aware by the time of the meeting that

Rice - Cross

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1 Mr. Risen had made an inquiry of the NSC press person, correct?

2 A. Yes.

3 Q. And an inquiry of the CIA press person?

4 A. Yes.

5 Q. Were you aware of others?

6 A. I was not aware of others.

7 Q. You don't know how many people Mr. Risen had spoken to at
8 that point?

9 A. I do not.

10 Q. And, Dr. Rice, from your experience at that point, you
11 knew that when the administration wanted to convince someone
12 not to publish a story, there were two tactics that they could
13 employ. They could either indirectly confirm the story, or
14 they could say that the story was not entirely correct.

15 Would you agree with that?

16 A. Well, there are several tactics that one can employ. I
17 would imagine that those are among them.

18 Q. Do you remember being interviewed by the FBI in April of
19 2006?

20 A. Yes.

21 Q. Do you remember telling the FBI that when scheduling a
22 meeting with a publication for the purpose of requesting it not
23 to publish a story, one of two tactics is usually taken: The
24 administration either stated that the publication did not have
25 the story entirely correct, or the administration indirectly

Rice - Cross

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1 confirmed the story?

2 A. Those are two of the tactics that you could use, yes.

3 Q. And in this case, the administration chose to employ the
4 former tactic, correct?

5 A. Would you repeat what the former tactic is?

6 Q. Sure. You told the FBI that the former tactic would be to
7 tell the publication that they did not have the story entirely
8 correct.

9 A. That was a part of what I told *The New York Times*.

10 Q. And that's what you told the FBI was the tactic that you
11 employed?

12 A. I told *The New York Times* that part of the story, part of
13 what they had told -- had been told was not correct.

14 Q. Because you believed that if you convinced *The New York*
15 *Times* that they did not have the story correct, that might
16 convince them not to publish it, correct?

17 A. That was one part of what I told *The New York Times*. The
18 other part was that it was a program of significance to
19 national security and that indeed, not only was part of it not
20 correct, but it was inappropriate that they had access to it at
21 all. So I said both of those, not just one.

22 Q. Hoping that both -- either or both would be effective?

23 A. I certainly hoped, I certainly hoped they would not
24 publish.

25 Q. But you understood that the danger of employing the tactic

Rice - Cross

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1 of trying to convince the publisher that the story is not
2 correct is that you might allow the reporter in doing so to
3 collect additional information about the story?

4 A. My goal was to state for *The New York Times* that some of
5 what they had was not correct and that they had been
6 inappropriately provided this information, and then to do so
7 within points that did not provide further information to the
8 reporter.

9 It's also why I asked that they not continue to call
10 around to try to confirm the story.

11 Q. Do you recall telling the FBI that the danger in answering
12 the questions of the reporter or in this case his superior is
13 that by doing so, the meeting becomes an interview during which
14 the reporter collects additional information for the story?

15 A. That is why I adhered closely to talking points, not to
16 get into a conversation about the story, correct.

17 Q. And in this particular meeting, it wasn't just the editor
18 of the publisher or the bureau chief of the publisher that was
19 there, but the reporter was there, correct?

20 A. That's correct.

21 Q. And in fact, *The Times* insisted on having Mr. Risen at
22 this meeting, correct?

23 A. I believe that's right.

24 Q. And in your experience, these meetings are often just with
25 the publisher, not with the reporter, correct?

Rice - Cross

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1 A. Well, I can't speak in a general way about this. These
2 meetings are set up with the appropriate people in the room,
3 and if *The New York Times* wanted to bring the reporter, that
4 was fine with me.

5 Q. Do you remember telling the FBI that often such a meeting
6 would be held with the editor rather than the reporter and that
7 on occasions when a publication presses the government to meet
8 directly with the reporter, you believe it's because the
9 reporter wants to be present to develop additional information
10 for the story?

11 A. I don't remember that specific statement, but clearly in
12 this case, *The New York Times* wanted to bring the reporter, and
13 I didn't object.

14 Q. And as you indicated, it's -- because you don't want to
15 provide additional information, that's why you rarely -- well,
16 it's why you don't want to stray from the talking points,
17 correct?

18 A. That's correct.

19 Q. And at meetings like this, you personally rarely answer
20 questions, correct?

21 A. In meetings of extraordinary sensitivity, particularly
22 ones that involve intelligence information, it was my practice
23 and habit not to stray from the talking points and to defer
24 questions really to the intelligence personnel.

25 Q. And that's what you did here. You decided it would be up

Rice - Cross

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1 to the CIA to determine how much or how little to say, correct?

2 A. That's correct.

3 Q. And you referred to Director Tenet and the others from the
4 CIA to answer questions or to respond to comments from the
5 reporter, correct?

6 A. I believe that that is the case. I can't say that I
7 didn't answer any questions. It's a very long time ago, but in
8 general, it was preferable to have the agency answer questions,
9 not me.

10 Q. You do recall that Director Tenet answered at least one
11 question, a question that was posed by Mr. Risen where he said
12 that he had seen a letter and that suggested that the program
13 was flawed in some way, and Director Tenet told Mr. Risen that,
14 in fact, the letter was intended to suggest that the Iranians
15 needed the services that were being offered?

16 A. I --

17 MR. OLSHAN: Your Honor, I'm going to object. If
18 Mr. Pollack is going to read from a document, he should show
19 the document to the witness.

20 THE COURT: I think that's appropriate. Do you have
21 a copy? And I need to see one, too. Is it a defense exhibit?

22 MR. POLLACK: No. Let's go to Government Exhibit
23 113, which is already in evidence.

24 THE COURT: All right. This is one of Mr. Harlow's
25 Lotus Notes.

Rice - Cross

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1 MR. POLLACK: In fact, this is Mr. Harlow's notes of
2 the meeting in which Dr. Rice participated.

3 Q. And if you can go to the fifth paragraph?

4 A. Yes.

5 Q. It says, "Risen asked about the issue of whether the
6 Iranians were witting of the program. He implied that he had
7 seen a letter to the Iranians from the Russian which told them
8 that their program was flawed. The DCI" -- now, DCI is the
9 Director of Central Intelligence?

10 A. Yes.

11 Q. That would be Mr. Tenet?

12 A. That's correct.

13 Q. ". . . DCI said that the individual was suggesting to the
14 Iranians that they needed his services, not telling them that
15 the designs they got from him were flawed."

16 Does that match your recollection of what happened?

17 A. These are Mr. Harlow's notes apparently, and I don't
18 recall myself what Director Tenet said in response to the
19 question.

20 Q. You don't recall whether in responding to the questions,
21 Director Tenet --

22 THE COURT: She's answered the question. She doesn't
23 recall.

24 BY MR. POLLACK:

25 Q. Okay. Do you recall whether Director Tenet gave any

Rice - Cross

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1 additional information to Mr. Risen that he didn't have prior
2 to the meeting?

3 A. I don't.

4 Q. Now, this was the only meeting that you were involved in
5 with *The New York Times* on this issue, correct?

6 A. I believe that's the case.

7 Q. Okay. You don't know what efforts the CIA made to
8 dissuade Mr. Risen from publishing this story?

9 A. I do not.

10 MR. POLLACK: I don't have anything further. Thank
11 you, Dr. Rice.

12 THE WITNESS: Thank you very much.

13 THE COURT: Mr. Olshan, is there any redirect
14 examination for Secretary Rice?

15 MR. OLSHAN: No redirect.

16 THE COURT: All right. Then thank you, ma'am, for
17 your testimony. You're free to go.

18 THE WITNESS: Thank you, Your Honor.

19 (Witness excused.)

20 THE COURT: All right, we're going to go back to
21 witnesses who need the screen, and we'll take a few extra
22 minutes to set the screen up, so let me give the jury a recess
23 until quarter of four to do that.

24 MR. TRUMP: When was that?

25 THE COURT: Until quarter of four.

Denis M. - Direct

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1 MR. TRUMP: Thank you.

2 (Recess from 3:25 p.m., until 3:43 p.m.)

3 (Defendant present, Jury out.)

4 THE COURT: All right, there's an issue?

5 MR. MAC MAHON: Yes, Your Honor. We're going to have
6 to approach the bench.

7 THE COURT: Approach the bench.

8 (Sealed Bench Conference D not transcribed in this
9 volume.)

10 THE COURT: All right, let's bring the jury in.

11 Mr. MacMahon, I can't pay another attorney; you know
12 that.

13 MR. MAC MAHON: He knows that.

14 THE COURT: All right.

15 (Jury present.)

16 THE COURT: You-all seem to have adopted your own
17 chair. Everybody keeps sitting in the same spot. That's fine,
18 as long as you're comfortable.

19 DENIS M., GOVERNMENT'S WITNESS, AFFIRMED

20 DIRECT EXAMINATION

21 BY MR. TRUMP:

22 Q. Would you state your first name?

23 A. Denis.

24 Q. And your first initial of your last name?

25 A. M.

Denis M. - Direct

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1 Q. Are you employed by the Central Intelligence Agency?

2 A. Yes.

3 Q. And at some point, were you assigned to the New York
4 office?

5 A. Yes.

6 Q. As a case officer?

7 A. Yes.

8 Q. And at some point in time, did you become the case officer
9 responsible for a human asset we are referring to as Merlin?

10 A. Yes.

11 Q. About what time was that?

12 A. About 2005.

13 THE COURT: Mr. M., can you speak up?

14 THE WITNESS: Oh, I'm sorry. Approximately 2005.

15 BY MR. TRUMP:

16 Q. And at that time, was there a case officer from New York
17 who had -- who preceded you as a case officer for Merlin?

18 A. Yes.

19 Q. Was there a gap in case officers?

20 A. Yes.

21 Q. So when you met Merlin, who was it that introduced you?

22 A. Bob S.

23 Q. And who is Bob S. in relation to Merlin and the program
24 Merlin was working on?

25 A. Bob S. was the headquarters officer responsible for the

Denis M. - Direct

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1 operation.

2 Q. And he was from the Counterproliferation Division?

3 A. Yes.

4 Q. From that point on, were you the, the last CIA case
5 officer to work with Merlin?

6 A. Yes.

7 Q. When you took over as case officer, did you discuss with
8 Merlin the things he had done with the agency?

9 A. Not in much detail.

10 Q. Were you able to obtain and read past cables with respect
11 to Merlin?

12 A. Very few.

13 Q. Why was that?

14 A. We didn't have access to them at the time.

15 Q. Was that a result of 9/11 and the destruction of the
16 office?

17 A. Yes. They were lost then.

18 Q. So the only cables you were able to review were the
19 current ones?

20 A. Yes.

21 Q. If you had needed past cables, you'd have to make a
22 request of, of headquarters?

23 A. Yes.

24 Q. Did Merlin ever express to you any concerns about any of
25 his past work with the CIA?

Denis M. - Direct

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1 A. I don't recall specifically, but I think that he had
2 concerns about in general working with the agency if anything
3 was ever compromised.

4 Q. He was concerned for his safety and his security?

5 A. Yeah. We talked about it several times, about any
6 operation that he was involved in, what his security would be
7 for that operation.

8 Q. Now, at some point in time, were you working with Merlin
9 on the possibility of conducting an operation that was
10 completely unrelated to some of the other things he had done?

11 A. Yes.

12 Q. But that was just in the planning stages, is that right?

13 A. Yes.

14 Q. At some point, did you learn that a book had been
15 published?

16 A. Yes.

17 Q. Was that during your tenure as a case officer?

18 A. Yes.

19 Q. As a result of the publication -- was that book *State of*
20 *War*, by James Risen?

21 A. Yes.

22 Q. As a result of the publication of that book, did you scrap
23 your plans?

24 A. Did I what?

25 Q. Were the plans scrapped in terms of using Merlin

Denis M. - Direct

724

1 operationally?

2 A. Eventually, yes.

3 Q. And at some point, did you have to meet with him and
4 discuss the fact that this book was published?

5 A. Immediately because of fear for his security.

6 Q. And that was reflected in a cable you drafted?

7 A. I believe so, yes.

8 Q. And was there then a second meeting with him?

9 A. I don't have access to any of the cables, so I don't know
10 how many. There were subsequent meetings, yes.

11 MR. TRUMP: Is there any objection to those two
12 cables?

13 MR. MAC MAHON: Well, just move them in.

14 THE COURT: What are the cable numbers?

15 MR. TRUMP: 133 and 135, I believe.

16 THE COURT: 133 and 135?

17 MR. MAC MAHON: No objection, Your Honor.

18 THE COURT: All right, they're both in.

19 (Government's Exhibit Nos. 133 and 135 were received
20 in evidence.)

21 THE WITNESS: Yes, I wrote those cables.

22 BY MR. TRUMP:

23 Q. And 133 was a cable written on January 6 of 2006; is that
24 right?

25 A. Yes.

Denis M. - Direct

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1 Q. And that was the first meeting you had with Merlin and
2 Mrs. Merlin over the publication of the book?

3 A. Yes.

4 Q. And then the second cable was January 23, 2006; is that
5 right?

6 A. Yes.

7 Q. The first meeting, Bob S. accompanied you; is that right?

8 A. Yes.

9 Q. And then the second meeting was just you?

10 A. Yes.

11 Q. How much longer after that did you have contact with
12 Merlin?

13 A. Several years.

14 Q. About two years?

15 A. I'd have to look at the cable traffic to be sure. I think
16 so, yes.

17 Q. And during that time, he was still paid a salary?

18 A. Yes, yes.

19 Q. Were you the case officer responsible for coordinating his
20 payments?

21 A. To make sure he got paid, yes.

22 Q. Did he occasionally have some questions/concerns about his
23 payments?

24 A. It was only over the tax year in which he had to declare
25 payments. So if he was paid in January for December salary, he

Denis M. - Direct

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1 wanted to know which year he had to declare the taxes for that
2 salary.

3 Q. And that came up every January?

4 A. Pretty much.

5 Q. And at some point, those -- his salary and his operational
6 use for the agency was terminated?

7 A. Yes.

8 MR. TRUMP: The Court's indulgence?

9 THE COURT: Yes, sir.

10 BY MR. TRUMP:

11 Q. Now, the book was published and authored by James Risen.
12 Do you know James Risen?

13 A. No.

14 Q. Have you ever spoken to him?

15 A. No.

16 Q. Have you ever spoken to anyone from the media about Merlin
17 or Classified Program No. 1?

18 A. I've never spoken to the media nor the Merlin operation.

19 Q. Without describing what Merlin said after he read the
20 book, what was his, his reaction?

21 MR. MAC MAHON: Your Honor, I'm going to object.

22 This was litigated before, and now they're going to hear Merlin
23 testify as to what happened. You've already found they
24 couldn't put in an excited utterance.

25 THE COURT: Not asking for statements. This witness

Denis M. - Cross

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1 can describe the physical reaction. That's certainly an
2 observation he can make.

3 So did you notice anything about him physically when
4 you told him the news?

5 BY MR. TRUMP:

6 Q. Without saying anything about what he said, just describe
7 what his reaction was.

8 A. Yes. He was very stressed, very nervous, very scared,
9 shocked, very unlike I'd ever seen him before. He's generally
10 unanimated.

11 MR. TRUMP: That's all I have, Your Honor.

12 THE COURT: All right, cross-examination?

13 CROSS-EXAMINATION

14 BY MR. MAC MAHON:

15 Q. Mr. M., my name is Edward MacMahon. I'm one of the
16 lawyers for Mr. Sterling. Good afternoon.

17 A. Good afternoon.

18 Q. Just a few questions. You don't know Mr. Sterling at all,
19 right?

20 A. No.

21 Q. Never had any interaction with him whatsoever?

22 A. No.

23 Q. Okay. Now, you, you gave an interview to the FBI in 2006
24 in which you said in 2006 that there still wasn't a complete
25 file on Classified Program No. 1 at the New York office? Am I

Denis M. - Cross

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1 right in reading it that way?

2 A. Is Classified Program No. 1 the Merlin operation?

3 Q. Yes.

4 A. I'm sorry, I didn't --

5 Q. I think I may have been confused, but you testified that
6 you didn't have a complete file in the New York office.

7 A. That's correct.

8 Q. Okay. And when was that?

9 A. From the day that I started the case.

10 Q. Okay. And that date was what?

11 A. About 2005.

12 Q. And so in 2005, the -- there was a complete file in
13 Langley, though, whatever that was, correct?

14 A. I'm sure there was one in Langley, yeah.

15 Q. Okay. And did you, did you ever go and review the file in
16 Washington?

17 A. No.

18 Q. Did you ever see that there were -- I'm trying to
19 understand. So if somebody between the September 11 attacks
20 and the day you saw the file wanted to see the complete file or
21 access the complete file, they had to be in headquarters,
22 correct?

23 A. I assume so because I didn't have access to it.

24 Q. Do you know whether that was the state of the file -- as
25 far as you know, that was the state of the file from September

Denis M. - Cross

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1 11, '01, to when you saw it as well?

2 A. As far as I know, there was no physical file. There was
3 an electronic file somewhere at headquarters.

4 Q. At headquarters.

5 A. Yeah.

6 Q. I'm probably asking you bad questions, but by -- there
7 wasn't a complete file in New York after the September 11
8 attack?

9 A. No.

10 Q. So somebody that wanted to get access to cables after 9/11
11 and other documents would have to be in headquarters here in
12 Washington, right?

13 A. I don't know what the process would have been. I didn't
14 have access to them. That's all I know.

15 Q. But you know they weren't in New York?

16 A. They were not available to me.

17 Q. And was there ever a year that, that you were in charge of
18 handling Merlin in which he made \$60,000 a year?

19 A. I don't recall specifically how much he made per year.

20 Q. And Merlin never called you or Mrs. Merlin called you and
21 said that they were actually threatened at all, that anyone had
22 come to their house or called or e-mailed? Nothing, right?

23 A. That they called anybody. I don't recall anything
24 specifically other than they were generally afraid for their
25 safety because they several times said that the Russians kill

Denis M. - Redirect

730

1 people for much less and demonstrated publicly, and so my point
2 was to try to calm them down.

3 Q. But that never happened to them, right?

4 A. They're still alive as far as I know. I don't --

5 MR. MAC MAHON: That's all, Your Honor. Thank you.

6 THE COURT: Any redirect?

7 REDIRECT EXAMINATION

8 BY MR. TRUMP:

9 Q. You haven't had any contact with them since approximately
10 2008, correct?

11 A. That's right.

12 THE COURT: Any recross?

13 MR. MAC MAHON: No, Your Honor.

14 THE COURT: All right, thank you, sir, for your
15 testimony.

16 THE WITNESS: Thank you.

17 THE COURT: You're free to go.

18 (Witness excused.)

19 THE COURT: Call the next witness.

20 MR. FITZPATRICK: Thomas H., Your Honor.

21 The Court's indulgence for one moment?

22 THE COURT: Yes, sir.

23 All right, Mr. Fitzpatrick? Everything okay?

24 MR. FITZPATRICK: Yes, thank you, Your Honor.

25 THOMAS H., GOVERNMENT'S WITNESS, AFFIRMED

Thomas H. - Direct

731

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DIRECT EXAMINATION

BY MR. FITZPATRICK:

Q. Good afternoon, sir. Are you Thomas H.?

A. Yes, I am.

Q. Sir, give us a brief description of your current occupation, an overview.

A. Currently?

Q. Currently.

A. Currently in Corporate America, in a managerial position.

Q. Did you have a prior career?

A. Yes, I did.

Q. What is that prior career?

A. I was an operations officer at the Central Intelligence Agency.

Q. When did you retire?

A. At the end of 2010.

Q. How long was your career?

A. Just shy of 24 years.

Q. I want to direct your attention to the New York office. Were you ever assigned there?

A. Yes, I was.

Q. Were you assigned there in a supervisory capacity?

A. Yes, I was.

Q. When did you leave the New York office?

A. July of 2000.

Thomas H. - Direct

732

1 Q. And while you were assigned to the New York office and in
2 your supervisory capacity, do you see anyone in the courtroom
3 today that you recognize from that time?

4 A. Yes, I do.

5 Q. And who do you recognize?

6 A. Mr. Sterling.

7 Q. Would you please identify him?

8 A. The gentleman right there (indicating).

9 THE COURT: That's fine.

10 MR. FITZPATRICK: Thank you, Your Honor.

11 Q. With respect to your supervisory responsibilities on
12 Mr. Sterling, were you familiar with an individual where he
13 was the case officer that we're calling Merlin, or Human Asset
14 No. 1?

15 A. Yes.

16 Q. And why is it that you were familiar with that, that
17 program?

18 A. I was Mr. Sterling's supervisor at the time that he was
19 involved with that case.

20 Q. So was your involvement or knowledge of that program
21 limited to your administrative responsibilities over
22 Mr. Sterling?

23 A. Yes.

24 Q. With respect to the operational details of that program,
25 did you have any involvement in that?

Thomas H. - Direct

733

1 A. No.

2 Q. And where was that program being run from or supervised
3 from?

4 A. Out of our headquarters.

5 Q. In your administrative or supervisory capacity over
6 Mr. Sterling, did you have access to the cables produced in, in
7 that program?

8 A. Yes, I did.

9 Q. And for what reason?

10 A. To ensure that the right operational reporting,
11 administrative reporting, and intelligence reporting came out
12 of a meeting cycle.

13 Q. When you left the New York office -- and tell us again
14 when you left.

15 A. July of 2000.

16 Q. Is that when your supervisory responsibilities -- on or
17 about that time, did your supervisory responsibilities for
18 Mr. Sterling end?

19 A. Yes.

20 Q. What happened to your ability to access the program that I
21 mentioned regarding Mr. Merlin, or Human Asset 1?

22 A. After I left?

23 Q. Yes.

24 A. I don't have access to it anymore.

25 Q. I want to show you -- it's Government Exhibit No. 83,

Thomas H. - Direct

734

1 please, Mr. Wood.

2 THE COURT: Is there any objection to 83?

3 MS. HAESSLY: No objection, Your Honor.

4 THE COURT: All right, it's in.

5 (Government's Exhibit No. 83 was received in
6 evidence.)

7 MR. FITZPATRICK: We can publish it.

8 Q. So the first page of this, Mr. H., it's an article dated
9 March 2, 2002, "Fired by CIA, He Says Agency Practiced Bias."
10 Have you seen this before?

11 A. Yes.

12 Q. And the name James Risen, are you familiar with that name?

13 A. Yes.

14 Q. Have you ever spoken with Mr. Risen?

15 A. No.

16 Q. Have you ever had any personal contact with Mr. Risen?

17 A. No.

18 Q. Have you ever provided any information at any time to
19 Mr. Risen?

20 A. No.

21 Q. I want to direct your attention to the second page of
22 Government Exhibit 83 and perhaps even direct your attention
23 further to the middle column. Do you see where I'm talking
24 about?

25 A. Yes, I do.

Thomas H. - Direct

735

1 Q. Do you recognize any language that's in the second column?

2 A. Yes, I do. The paragraph beginning with "Again, he was
3 assigned."

4 Q. If you would, please, could you just read that entire
5 paragraph?

6 A. "Again, he was assigned to try to recruit Iranians as
7 spies, and soon received a positive evaluation. Mr. Sterling
8 'demonstrated good tradecraft in the handling of his assigned
9 cases,' according to an evaluation in September 1999 by a
10 supervisor and provided by Mr. Sterling."

11 Q. And part of what you just read is quoted, and it says,
12 "demonstrated good tradecraft in the handling of his assigned
13 cases"; is that correct?

14 A. Yes.

15 Q. And how do you recognize that language?

16 A. It appears it came out of the evaluation I wrote on
17 Mr. Sterling.

18 Q. Do you recognize that as something you wrote?

19 A. Yes, the part in quotes.

20 Q. And you've never provided that to Mr. Risen; is that
21 correct?

22 A. No.

23 Q. I want to show you now, please, Government Exhibit No. 59.

24 THE COURT: Any objection to 59?

25 MS. HAESSLY: No objection, Your Honor.

Thomas H. - Direct

736

1 THE COURT: All right, it's in.

2 (Government's Exhibit No. 59 was received in
3 evidence.)

4 BY MR. FITZPATRICK:

5 Q. I want to turn to the second page -- well, first of all,
6 what is a performance appraisal review?

7 A. It's an annual report of an officer's accomplishments
8 during that period.

9 Q. And who prepares -- and is the acronym "PAR"?

10 A. PAR, yeah.

11 Q. Who prepares PARs?

12 A. The immediate supervisor.

13 Q. And did you have responsibility for preparing PARs for
14 Mr. Sterling?

15 A. Yes.

16 Q. Turning to the second page, do you see a reference there
17 to a Mr. H.?

18 A. Yes.

19 Q. And who is Mr. H.?

20 A. Me.

21 Q. And do you recognize -- you've had a chance to review this
22 document prior to today?

23 A. Yes.

24 Q. And do you recognize -- what is this document?

25 A. This is Mr. Sterling's PAR.

Thomas H. - Direct

737

1 Q. That you prepared?

2 A. Yes.

3 THE COURT: For what time period?

4 THE WITNESS: 10 January '99 to 31 July '99.

5 MR. FITZPATRICK: If we could, Mr. Francisco, put
6 that on the screen, please? It's Exhibit 59. Just turn to the
7 second page, please.

8 THE COURT: And, counsel, just so the jury is clear
9 about this, in this document, there are white spaces which
10 reflect deleted information, and there's also different type,
11 and where there's that smaller dark, black type, that was a
12 word substituted, correct, counsel, so we're clear about how
13 this exhibit was put together?

14 MR. FITZPATRICK: Correct.

15 THE COURT: And again, I warned you during voir dire
16 this was done for security reasons, so that's why this
17 document, it's a little hard to read, but that's why it looks
18 the way it does.

19 All right, are you ready to go?

20 MR. FITZPATRICK: Just to be clear, Your Honor, this
21 document -- and I can get into this with the witness -- there
22 were two phases of redactions done to this document, one when
23 it was initially distributed and then one for the preparation
24 of this trial. I'm only getting into the first phase of
25 redactions.

Thomas H. - Direct

738

1 THE COURT: All right.

2 BY MR. FITZPATRICK:

3 Q. So, Mr. H., directing your attention -- you can look at
4 the document. At the bottom, there's a sentence that
5 begins, "Subject fully and completely met expectations." Do
6 you recall writing that?

7 A. Yes.

8 Q. And then it continues, "Subject demonstrated good
9 tradecraft in the handling of his assigned cases." Do you
10 recognize that?

11 A. Yes, I do.

12 Q. Did you write that?

13 A. Yes, I did.

14 Q. And is that the same language that appears in Mr. Risen's
15 article published March 2, 2002?

16 A. Yes, it is.

17 Q. Thank you. You can close that.

18 Oh, one other question: Are you familiar with when
19 individuals, case officers go into an Equal Employment
20 Opportunity process, or EEO process --

21 A. Yes, I am.

22 Q. -- what happens to their name?

23 A. They're assigned another name for the course of the EEO
24 procedure.

25 Q. By whom?

Thomas H. - Direct

739

1 A. An EEO officer at headquarters.

2 Q. Okay. So turning to the first page of that document, what
3 is the name reflected there?

4 A. Samuel Crawford.

5 Q. You don't -- do you know a Samuel Crawford?

6 A. No, I don't.

7 Q. But you're confident that this is an evaluation that you
8 prepared for Mr. Sterling?

9 A. Yes, I am.

10 Q. All right, thank you.

11 MR. POLLACK: Your Honor, if I might?

12 THE COURT: Well, wait, why are you objecting? I
13 think your colleague is handling this witness.

14 MR. POLLACK: She is.

15 THE COURT: Well, then she's the only one who can --

16 MR. POLLACK: I'm not objecting, Your Honor. I was
17 just asking for a clarification on the document.

18 THE COURT: One counsel per witness.

19 MR. POLLACK: Thank you. That's fine, Your Honor.

20 BY MR. FITZPATRICK:

21 Q. During -- I'm just waiting to see if there's an objection
22 pending, Your Honor.

23 THE COURT: 59 is already in so --

24 (Discussion between Mr. Fitzpatrick and Ms. Haessly
25 off the record.)

Thomas H. - Direct

740

1 BY MR. FITZPATRICK:

2 Q. With respect to your supervisory responsibilities with
3 Mr. Sterling, did you ever have any conversations with
4 Mr. Sterling where he expressed dissatisfaction or perhaps
5 mishandling of an operation?

6 A. No.

7 Q. Had he expressed to you that a program was mishandled, is
8 that something you would have remembered?

9 A. Yes.

10 Q. And if that had been expressed to you, what would you have
11 been required to do?

12 A. Notify my immediate supervisor as well as sending the
13 appropriate cable traffic to headquarters.

14 Q. And did you ever have to do that in this case?

15 A. No.

16 MR. FITZPATRICK: The Court's indulgence for one
17 moment?

18 THE COURT: Yes, sir.

19 BY MR. FITZPATRICK:

20 Q. During your -- in your administrative responsibilities
21 over the Merlin file, did you ever remove any cables from the
22 cable traffic?

23 A. No.

24 Q. Or the electronic database?

25 A. No. The electronic database, no.

Thomas H. - Cross

741

1 Q. You never removed anything?

2 A. No.

3 Q. Final question: Have you in the last several months
4 received an unexpected phone call?

5 A. Yes.

6 Q. And from whom did you receive that phone call?

7 A. James Risen.

8 Q. And where did the -- where did Mr. Risen call you?

9 A. My cell phone.

10 Q. Did you take the call?

11 A. No.

12 Q. And how do you know it's James Risen?

13 A. On the voice mail, he said, "This is James Risen. I'd
14 like to talk to you about CIA and Iran. Please give me a call
15 back."

16 Q. Did you return the call?

17 A. No.

18 Q. And again, have you ever had any contact with James Risen?

19 A. No.

20 MR. FITZPATRICK: Nothing further, Your Honor.

21 THE COURT: All right, cross-examination?

22 MS. HAESSLY: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MS. HAESSLY:

25 Q. Good afternoon, Mr. H. My name is Mia Haessly, and I'm

Thomas H. - Cross

742

1 one of the attorneys for Mr. Sterling.

2 You testified that you had administrative
3 responsibilities for Mr. Sterling while you were his
4 supervisor?

5 A. In the Merlin case.

6 Q. And as part of those administrative responsibilities, did
7 you review the cables that he authored?

8 A. Yes.

9 Q. Including cables about Classified Program No. 1?

10 A. Yes.

11 Q. So in your review then, you would have become familiar
12 with the details, with certain details about Classified Program
13 No. 1?

14 A. Yes.

15 Q. And once the cable was sent to headquarters or wherever it
16 was sent to, any number of people there would also become
17 familiar with details about Classified Program No. 1?

18 A. Yes.

19 Q. Mr. Fitzpatrick asked you about a performance evaluation.
20 I believe that was Exhibit 59? Can we pull that up again?

21 Do you know if a declassified version of one of these
22 performance evaluations is made available to an employee during
23 a litigation?

24 A. I wouldn't know.

25 THE COURT: I'm sorry, what is your answer?

Thomas H. - Cross

743

1 THE WITNESS: I wouldn't know.

2 THE COURT: You would not know, all right.

3 BY MS. HAESSLY:

4 Q. And in this particular exhibit, if you look at the bottom,
5 it appears that the word "Secret" has been whited out.

6 A. I'm sorry, can you repeat that?

7 Q. At the bottom of this exhibit, it appears that the
8 word "Secret" has been -- has a slash through it at the bottom.

9 A. It appears partial. I can't see a slash, but I see parts
10 of "Secret" in there.

11 Q. Do you know whether this exhibit is a declassified version
12 of the PAR?

13 A. I don't know.

14 Q. Have you seen a declassified version of this?

15 A. No.

16 Q. Mr. H., while you were Mr. Sterling's supervisor, did you
17 ever see Mr. Sterling mishandle classified documents?

18 A. No.

19 Q. Did you ever see Mr. Sterling mishandle Human Asset No. 1,
20 who we refer to as Mr. Merlin?

21 A. No.

22 Q. In fact, you told the FBI during an interview that you
23 thought he handled him well; is that correct?

24 A. In the PAR, they asked me the question, and I said he
25 handled his assigned cases well.

Thomas H. - Cross

744

1 Q. And do you recall being interviewed by the FBI?

2 A. How long ago was that?

3 Q. In 2003.

4 A. Yeah.

5 Q. And during that interview, you told the FBI that Sterling
6 did well handling the Merlin asset?

7 A. Right.

8 MS. HAESSLY: One moment, please.

9 Nothing further, thank you.

10 THE WITNESS: Thank you.

11 THE COURT: Any redirect?

12 MR. FITZPATRICK: No, Your Honor.

13 THE COURT: All right, sir, thank you for your
14 testimony. You're free to go at this time.

15 THE WITNESS: Thank you.

16 (Witness excused.)

17 THE COURT: Call the next witness.

18 MR. TRUMP: There's one logistical issue with this
19 witness that we need to take up at the bench.

20 THE COURT: All right. Regular machine?

21 MR. TRUMP: Yes, regular.

22 THE COURT: All right.

23 (Bench conference on the record.)

24 THE COURT: Yes.

25 MR. TRUMP: The next witness is the witness who

1 prepared a PAR which we believe is quoted directly in the book,
2 but a portion of the quote refers to covert action operation.
3 I would like to simply read to the witness the part of the
4 quote that doesn't refer to anything that's off limits.

5 I don't want to show it on the screen, so that I
6 don't want to draw attention to those words that are quoted in
7 the book. So in other words, I would just read to the witness,
8 "One secret CIA report said that the Russian was a known
9 handling problem due to his demanding and overbearing nature,"
10 and ask if that is the language in the PAR, and then say, "Yet
11 the same report stated he was also a sensitive asset," period.
12 Ask him if that's the language in the PAR, without reading the
13 next line, because I don't want to draw attention to that part.

14 THE COURT: What's your view of that? I mean, the
15 problem is you've put the exhibit into evidence.

16 MR. TRUMP: I can't change what Mr. Risen wrote.

17 THE COURT: I understand that, and I don't understand
18 how that reveals anything whatsoever since you've already
19 clearly established for this jury significant inaccuracies in
20 the chapter. That could be just as inaccurate.

21 MR. TRUMP: This is a quote from the PAR. Mr. Risen
22 is quoting a CIA document, and he's putting it in quotes.

23 THE COURT: Are you going to put that PAR in evidence
24 as well?

25 MR. TRUMP: Yes, but that part -- those words are

Mark L. - Direct

746

1 redacted. So I just want -- I don't want to draw attention to
2 those words. I'm just going to confirm that the first part of
3 the quote comes from his PAR.

4 THE COURT: All right, I'm going to permit that. Of
5 course, the jury, you know, this jury is paying rapt attention.
6 If they put the two side by side, they'll see it themselves.

7 MR. TRUMP: If they do that, they do that, but I
8 can't elicit that fact from those witnesses.

9 THE COURT: All right.

10 MR. MAC MAHON: That's fine.

11 MR. TRUMP: So I'm not going to have it up on the
12 screen.

13 MR. MAC MAHON: I'm not sure how I can object.

14 THE COURT: You can't.

15 (End of bench conference.)

16 MARK L., GOVERNMENT'S WITNESS, AFFIRMED

17 DIRECT EXAMINATION

18 BY MR. TRUMP:

19 Q. Would you please state your first name?

20 A. Mark.

21 Q. And the first initial of your last name?

22 A. L.

23 Q. Had you previously worked for the Central Intelligence
24 Agency?

25 A. Yes.

Mark L. - Direct

747

1 Q. For how long?

2 A. Twenty-one years.

3 Q. And are you now retired from the official employment by
4 the CIA?

5 A. Yes.

6 Q. Do you still have a contractor relationship with the
7 agency?

8 A. Yes.

9 Q. Do you know the defendant, Mr. Sterling?

10 A. Yes.

11 Q. In what capacity?

12 A. I worked with him in New York.

13 Q. How long had you worked in New York?

14 A. Three years.

15 Q. From when to when?

16 A. July 1999-June 2002.

17 Q. And what was your position with respect to Mr. Sterling?

18 A. I was his supervisor, branch chief.

19 Q. And did you in turn report to someone else?

20 A. Yes.

21 Q. Was that Thomas H.?

22 A. Yes.

23 Q. And what were your duties as a branch supervisor with
24 respect to Mr. Sterling's job responsibilities?

25 A. I set the expectations. I provided oversight to his

Mark L. - Direct

748

1 activities. I wrote his performance appraisal.

2 Q. Were you generally familiar with his workload then?

3 A. Yes.

4 Q. And the operations that he was working on?

5 A. Yes.

6 Q. Are you familiar with a Counterproliferation Division

7 operation that we have called Classified Program No. 1

8 involving a human asset, a Russian known as Merlin?

9 A. Yes.

10 Q. Do you know generally what that operation was about?

11 A. Yes.

12 Q. And during your tenure, was Mr. Sterling a case officer

13 responsible for that?

14 A. I'm sorry, could you repeat that?

15 Q. Was Mr. Sterling the case officer responsible for that

16 operation?

17 A. Yes.

18 Q. Were there any other case officers in New York who worked

19 on it?

20 A. Yes.

21 Q. At the same time as Mr. Sterling?

22 A. No.

23 Q. What was your responsibility with respect to cables that

24 Mr. Sterling would have to draft as part of his role as a case

25 officer in this operation?

Mark L. - Direct

749

1 A. I recall some occasions where I reviewed his write-up on
2 the case.

3 Q. And that was a typical role of a supervisor, to review
4 cables?

5 A. Yes.

6 Q. So you were read into the program for that purpose?

7 A. Yes.

8 Q. And this was a, a limited access program requiring someone
9 to be read in before they had any access to documents or cables
10 of the program, correct?

11 A. Yes.

12 Q. At any time, do you recall removing language or cables
13 drafted by Mr. Sterling?

14 A. No.

15 Q. As a supervisor, you had to do his evaluation?

16 A. Yes.

17 Q. And did you prepare an evaluation for the period August 1,
18 '99, to July 31, 2000?

19 A. Yes.

20 Q. And that is typically called a performance appraisal
21 report, or PAR?

22 A. That's correct.

23 MR. TRUMP: Could we have Exhibit 60, please?

24 THE COURT: Any objection to 60?

25 MR. MAC MAHON: No objection, Your Honor.

Mark L. - Direct

750

1 THE COURT: All right, it's in.

2 (Government's Exhibit No. 60 was received in
3 evidence.)

4 BY MR. TRUMP:

5 Q. And prior to trial yesterday, you reviewed this exhibit;
6 is that right?

7 A. Yes.

8 Q. It doesn't have Mr. Sterling's name on it, does it?

9 A. No.

10 Q. But you've reviewed this, and you can testify that this
11 is, in fact, the evaluation you did for Mr. Sterling?

12 A. Yes.

13 Q. It has a fictitious name, Samuel Crawford?

14 A. Yes.

15 Q. At the bottom of page 2 and the top of page 3, do you see
16 that language: "Subject fully met expectations"?

17 A. Yes.

18 Q. And did you write, "Subject securely and productively
19 handled a sensitive asset who was a known handling problem due
20 to his demanding and overbearing nature"?

21 A. Yes.

22 Q. And, "Subject persevered with this asset and applied his
23 tradecraft skills to work around these problems and guide the
24 asset through the successful first stage of a . . . classified
25 operation"?

Mark L. - Direct

751

1 A. Yes.

2 Q. What is your practice in preparing a PAR? How do you
3 start the, the PAR process?

4 A. Normally I would ask the employee to provide notes, what I
5 would call a brag sheet on their accomplishments, and then I
6 would prepare, draft the PAR from that and from my own
7 knowledge of the individual's cases.

8 Q. And then from that, you drafted the actual document we see
9 here, without the redactions and the substitutions?

10 A. Yes.

11 Q. Then what would you do?

12 A. Before it was transmitted to the headquarters, it would be
13 discussed with the employee. There may also be a reviewing
14 process by one of my superiors.

15 Q. So you sat down with Mr. Sterling and discussed this?

16 A. I don't recall.

17 Q. And was your practice also to provide them with copies?

18 A. Yes.

19 Q. As originally drafted, they're marked Secret and kept
20 classified?

21 A. I'm sorry, say it again?

22 Q. As originally drafted, they're marked Secret and
23 maintained as classified documents?

24 A. Yes.

25 MR. TRUMP: With the help of Mr. Wood? Just show him

Mark L. - Direct

752

1 that.

2 Q. What I've showed you is a copy of Government Exhibit 132,
3 and I'd just like to read a portion of it and ask you a
4 question. The first sentence of paragraph 20, "One Secret CIA
5 report said that the Russian 'was a known handling problem due
6 to his demanding and overbearing nature.'"

7 That is the identical language from the PAR you
8 prepared, is it not?

9 A. Yes.

10 Q. And the book goes on to say, "Yet the same report stated
11 that he was also a 'sensitive asset' Again, you used
12 that phrase, "sensitive asset," in your PAR, correct?

13 A. Yes.

14 Q. Now, were you in New York on 9/11, 2001?

15 A. Yes.

16 Q. Were you in the office that day?

17 A. Yes.

18 Q. Was the office completely destroyed?

19 A. Yes, it was.

20 Q. So all of your files were destroyed?

21 A. Yes, they were.

22 Q. Did you keep copies of these PARs after you prepared them?

23 A. I'm not sure I understand.

24 Q. Did you keep -- did you have any reason to keep copies of
25 the PAR that we just discussed in your office?

Mark L. - Direct

753

1 A. In the office, we would keep copies of PARs for all the
2 employees.

3 Q. But those were destroyed in, in 9/11?

4 A. To my knowledge, everything was destroyed.

5 Q. Did you ever either orally or in writing give that
6 information to James Risen?

7 A. No.

8 Q. Have you ever spoken to James Risen?

9 A. No.

10 Q. Do you know James Risen?

11 A. No.

12 Q. With respect to Classified Program 1 and the cables that
13 you had reviewed with respect to that, did you ever provide any
14 information about that program to anyone outside the CIA?

15 A. No.

16 Q. Now, during your tenure as a CIA case officer, you had
17 been overseas for periods of time?

18 A. Yes, 13 years.

19 Q. And you also taught case officers; is that right?

20 A. Yes.

21 Q. You were a training officer for several years?

22 A. I was an instructor for two years.

23 Q. In the mid-1990s?

24 A. Yes.

25 Q. Is it part of the instruction of --

Mark L. - Direct

754

1 A. Late 1990s.

2 Q. Was it part of the instruction of case officers to train
3 them in the handling of classified materials?

4 A. Yes.

5 Q. Was it part of the instruction to train them in the
6 protection of human assets?

7 A. Yes.

8 Q. Was it also part of the instruction to train them to
9 understand why it was necessary to maintain the secrecy of
10 human assets and their relationship with the CIA?

11 A. Yes.

12 MR. TRUMP: The Court's indulgence?

13 THE COURT: Yes, sir.

14 BY MR. TRUMP:

15 Q. In the chain of command at, at New York, do those people
16 get these PARs?

17 A. Those above me?

18 Q. Those above you.

19 A. Yes.

20 Q. Are they sent out to any other -- let me back up. Is
21 there any reason, for example, that the Counterproliferation
22 Division would need access to a PAR from someone in New York?

23 MR. MAC MAHON: Your Honor, objection to foundation.

24 BY MR. TRUMP:

25 Q. If you know.

Mark L. - Cross

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1 THE COURT: If you know.

2 THE WITNESS: I don't know.

3 BY MR. TRUMP:

4 Q. But Thomas H. would have -- would review this, correct?

5 A. Yes.

6 Q. And then Charlie Seidel would review it?

7 A. Yes.

8 Q. And David Cohen would review it?

9 A. Yes.

10 MR. TRUMP: That's all I have.

11 THE COURT: Mr. MacMahon?

12 MR. MAC MAHON: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. MAC MAHON:

15 Q. Mr. L., my name is Edward MacMahon. I'm one of the
16 lawyers for Mr. Sterling. Good afternoon.

17 A. Yes.

18 Q. Did you work in the same office with Mr. Sterling?

19 A. Same branch.

20 Q. Were you physically in the same office with him at any
21 time in 1999 or 2000?

22 A. On occasion. I had my own office.

23 Q. Was it, was it in the same building?

24 A. Yes.

25 Q. And in that time, you never saw him mishandle any

Mark L. - Cross

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1 classified information at all, did you?

2 A. No.

3 Q. You never saw him leaving with a backpack full of

4 documents or anything of the sort, right?

5 A. No.

6 Q. And were people in that office able just to come and go

7 with documents without being searched at all during 1999 and

8 2000?

9 A. Yes.

10 Q. There was no security at all in the office to stop anybody

11 from leaving with any documents at all; is that your testimony?

12 A. You mean is there someone at the door checking our

13 packages?

14 Q. Yeah. Was there any security at all?

15 A. Well, yes, there was security.

16 Q. No spot checks on employees leaving with information or

17 coming and going or anything?

18 A. I don't recall any spot checks of someone's baggage being

19 checked.

20 Q. And nobody reported to you that Mr. Sterling had taken

21 documents or misplaced classified documents whatsoever, right?

22 A. That's correct.

23 Q. The document that Mr. Trump showed you, Exhibit No. 60 --

24 right?

25 A. Yes.

Mark L. - Cross

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1 Q. Can you look at that again, please, Government Exhibit 60?

2 A. Okay.

3 Q. That's not a Secret report, is it?

4 A. It was a Secret report when it was prepared in our office
5 and sent to our headquarters.

6 Q. And you don't know whether the document was declassified
7 afterwards, correct?

8 A. At our headquarters, you mean?

9 Q. Ever, by anybody. You don't know whether this document
10 was declassified after you prepared it, correct?

11 A. Not to my knowledge.

12 Q. In fact, the markings on the -- the Secret markings on the
13 bottom of this have been almost completely erased, haven't
14 they? If you look at the bottom of all four pages.

15 A. Well, the document's been heavily redacted.

16 Q. Right. And Mr. Trump's question to you was whether this
17 was originally marked, originally marked as Secret, correct?

18 A. It was.

19 Q. And you don't -- you can't tell us if in the litigation
20 process with Mr. Sterling, he received a declassified version
21 of this document, correct?

22 A. I'm not sure what you're referring to, litigation process.

23 Q. Are you familiar at all with the process with EEO claims
24 and what happens once they're initiated at the CIA?

25 A. No.

Mark L. - Cross

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1 Q. So you wouldn't be a witness who could tell us if
2 Mr. Sterling did receive a declassified version of this?

3 A. I could not tell you.

4 Q. And this document actually does -- you know that there was
5 a discrimination case and EEO complaint filed by Mr. Sterling,
6 correct?

7 A. Yes.

8 Q. Okay. And then on page 2 of this document, the second
9 page, it's just not marked, and that's the first full
10 paragraph -- if I may, Your Honor, can I show Mr. Francisco
11 which one to highlight?

12 THE COURT: Go ahead.

13 MR. MAC MAHON: Thank you, Your Honor.

14 Q. Do you see the part that Mr. Francisco has highlighted
15 about him not fully meeting expectations and not having
16 sustained operations? Do you read that?

17 A. Yes.

18 Q. Okay. And do you know that these, that these complaints
19 were part of -- what's set forth here ended up being part of
20 Mr. Sterling's discrimination case against the CIA?

21 A. No, I did not know that.

22 Q. And that's the same article -- the same discrimination
23 case that's discussed in Government Exhibit 83, which you've
24 already seen, which is the article by Mr. Risen, correct?

25 A. No, I don't know what you're referring to.

Mark L. - Cross

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1 Q. Okay. Could we put up Exhibit 83 again, please?

2 Have you ever seen this document before?

3 A. I don't recall seeing it before.

4 Q. Okay. And when was the first time you saw any copy of *The*
5 *New York Times* article about Mr. Sterling's discrimination
6 case?

7 A. I don't recall.

8 Q. Okay. And who's the picture? You identified Mr. Sterling
9 before, and the exhibit we have here is cut out, but can you
10 identify just partially who the person is?

11 If we go to the next page, I think it will be
12 clearer.

13 MR. TRUMP: I think we can all agree that it's
14 Mr. Sterling.

15 THE COURT: Yeah, that's not in dispute.

16 BY MR. MAC MAHON:

17 Q. Mr. Sterling, correct?

18 A. It appears to be.

19 Q. And that was published in the newspaper in *The New York*
20 *Times*, correct?

21 A. According to what's on the screen here, yes.

22 MR. MAC MAHON: That's all I have, Your Honor. Thank
23 you.

24 THE COURT: Is there any redirect?

25 MR. TRUMP: Just very briefly.

1 REDIRECT EXAMINATION

2 BY MR. TRUMP:

3 Q. There was security in the building, correct?

4 A. Yes.

5 Q. Only CIA employees with badges and access cards and things
6 like that could get in and out, correct?

7 A. That's correct.

8 Q. But if you had a briefcase or a satchel or even a folder,
9 whatever, that was not searched, correct?

10 A. That's correct.

11 Q. So if you or Mr. Sterling or anybody wanted to leave the
12 building with classified documents, you could?

13 A. That's correct.

14 Q. It was an honor system, right?

15 A. Yes.

16 MR. TRUMP: That's all I have, Your Honor.

17 THE COURT: Any recross?

18 RECROSS EXAMINATION

19 BY MR. MAC MAHON:

20 Q. Is this even after the CIA was infiltrated by Aldrich
21 Ames? Do you know when that happened?

22 A. When it happened? Yes.

23 MR. TRUMP: I'm sorry, Your Honor, I was talking. I
24 object to the question.

25 THE COURT: You missed the Aldrich Ames question. I

Mark L. - Recross

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1 think that's far afield.

2 MR. MAC MAHON: I'll withdraw the question, Your
3 Honor.

4 Q. Let me ask you this: The security was not CIA security in
5 the building, was it?

6 A. Our office was CIA security.

7 Q. But in the building itself, it was just regular commercial
8 security?

9 A. When you came in off the street, there was a mezzanine
10 level with commercial security.

11 MR. MAC MAHON: That's all I have, Your Honor. Thank
12 you.

13 THE COURT: All right, thank you, sir. You're free
14 to go as a witness. Thank you.

15 (Witness excused.)

16 THE COURT: And, ladies and gentlemen, your reward
17 for having been such an attentive and timely jury is I'm going
18 to actually let you get out even earlier tonight. I've been
19 told by counsel we are actually ahead of schedule, which is
20 good.

21 I do want to start tomorrow morning at 10:00, not
22 9:30, and you really do need to get some coffee before you come
23 to court tomorrow morning because the first witness you're
24 going to hear from was done by deposition, and that means
25 you're going to be watching that testimony on the screen, and

1 so I want to make sure that you're able to stay nice and alert
2 and focused.

3 Please remember to follow my instructions about
4 avoiding any exposure to any media coverage of any kind about
5 this case. Do not discuss what you've seen or heard in court
6 today. I know Dr. Rice is somebody who you might want to talk
7 about. You can't do it while this case is in progress, all
8 right? Because I don't want you thinking about the case. You
9 know, I warned you about that before.

10 So your best job to get ready for tomorrow is a good
11 night's sleep and then come in fresh and ready. So 10:00
12 tomorrow morning, and I will have you out by five, no later
13 than five tomorrow. Leave your stuff here. You know the drill
14 at this point. We'll see you tomorrow.

15 I'm going to stay in session for just a second with
16 counsel.

17 (Jury out.)

18 THE COURT: All right, now, what we're going to do
19 tomorrow morning is I have my regular docket at 9:00, so I have
20 two civil matters. After that, we are going to reset the
21 courtroom. The screen is going to shift to the other side, so
22 this is in part for our deputy. The far, my far right is the
23 section of the courtroom that will not be available to people
24 who don't have clearances, so that the screen is not available.

25 I think we're going to have to turn down your,

1 defense counsel's machine and the witness box. In other words,
2 we can't have any TV screens showing in a non-protected
3 context, all right?

4 My recollection is that the deposition is going to
5 run close to three hours. Now, we can certainly cut -- we had
6 a 15- or 20-minute break. We can cut that time, but it's going
7 to be a little bit dry at the end of it, especially because of
8 the accent.

9 I hope that the technology is in good shape. I
10 assume the government has done a dry run of the tape to make
11 sure it's playing well.

12 MR. FRANCISCO: Judge, we tested it during the break
13 earlier, and sound came out.

14 THE COURT: All right, fine.

15 MR. FRANCISCO: There's a portion at the beginning of
16 the video where the audio drops in and out for, like, the first
17 19 lines of the transcript, but after that, everything is fine.

18 THE COURT: All right, that's fine. And then my
19 understanding is what we agreed to was that there are
20 transcripts of the deposition, so the jurors are going to have
21 a physical transcript, correct? Plus, they'll have the ability
22 to listen and watch the screen. That's what we've told them to
23 do; is that right?

24 And everybody is comfortable with the transcript?
25 There are no issues with the transcript. I think that is

1 correct as well.

2 MR. MAC MAHON: Judge, so far as I understand, the
3 transcript's not going into evidence, though. It's just going
4 to be an aid, correct?

5 THE COURT: Correct. This is like any other witness
6 who testifies. We don't send witness testimony in to the jury.

7 MR. MAC MAHON: I remember. I just was --

8 THE COURT: Yeah. No, that's --

9 MR. MAC MAHON: I'm sorry. That's fine with the
10 defendant.

11 THE COURT: All right. So do we anticipate any other
12 issues?

13 And that will take care of tomorrow morning, and we
14 start at ten. That will take us to the lunch break most
15 likely. And then the government will have how many witnesses
16 approximately coming in tomorrow?

17 MR. OLSHAN: Probably five to seven, Your Honor.

18 THE COURT: All right.

19 MR. OLSHAN: They're going to start going a little
20 bit quicker, so --

21 THE COURT: Good. And we don't need the screen --
22 will we need the screen any further for the government's case?

23 MR. OLSHAN: I think that's it.

24 THE COURT: All right.

25 MR. TRUMP: The only possibility would be rebuttal.

1 THE COURT: All right. Does the defense think we may
2 need the screen for any of your witnesses?

3 MR. MAC MAHON: Not that I can think of, Your Honor.

4 THE COURT: All right. I'll see whether we're going
5 to keep it up here or not. I think out of an abundance of
6 caution, we'll keep it up here.

7 All right, is there anything else we need to address
8 before tomorrow? No?

9 MR. MAC MAHON: Not for the defense.

10 THE COURT: All right. Then, Mr. Trump?

11 MR. TRUMP: Unless there's an objection, we would
12 move in the deposition as an official exhibit as part of the
13 trial record.

14 THE COURT: It's part of the trial record, but it's
15 not going in as an exhibit to the jury. It can't.

16 MR. TRUMP: It has to be marked in some way, so we
17 were just going to mark it as an exhibit for purposes of
18 maintaining a number for the record.

19 THE COURT: That's fine. You check that out with
20 Ms. Guyton. So just give it a number, but the point is that
21 document, that transcript will not be going to the jury.

22 MR. TRUMP: No. The actual tape would be the, the
23 disc or however it is -- it would be a disc, and that will be
24 marked as an exhibit.

25 MR. MAC MAHON: If I understand, Your Honor, we

1 haven't had a chance to argue this, I know that the disc itself
2 needs to be marked as part of the record --

3 THE COURT: Correct.

4 MR. MAC MAHON: -- but it wouldn't be put in the cart
5 that goes back into the jury room.

6 THE COURT: Correct. It is not going to go to the
7 jury --

8 MR. TRUMP: Correct.

9 THE COURT: -- for its consideration.

10 MR. TRUMP: It just needs to be marked for purposes
11 of the record.

12 THE COURT: And the transcript is going to also be
13 similarly marked.

14 MR. TRUMP: Correct.

15 THE COURT: So if the exhibit is 120, the transcript
16 is going to be 120A, so they're together.

17 MR. TRUMP: It's actually 171 and 172.

18 THE COURT: All right, 171 and 172. 172 is the
19 transcript; 171 is the disc; and that's for down the road if
20 there is an appeal, then the Court of Appeals has it.

21 (Government's Exhibit Nos. 171 and 172 were received
22 in evidence.)

23 Now, Ms. Thomson is not going to be taking anything
24 down while the deposition is being played. I mean, she's going
25 to be here in court in case one of you says something, but, I

1 mean, that is the testimony. It's my ruling on objections.
2 It's whatever you-all said during the deposition, all right?
3 So she's not going to do anything.

4 And as I said, if you want to have just one member of
5 each trial team here, and quite frankly, even if Mr. Sterling
6 wanted to sleep in in the morning, that's fine. I mean, he was
7 present at the deposition. You-all decide how you want to do
8 that, and I'll certainly explain to the jury why we're doing it
9 that way, because we were all together for that deposition.

10 All right, anything further before we recess?

11 (No response.)

12 THE COURT: No? Then I'll see you-all back here at
13 10:00. We start court at nine for the other cases.

14 (Recess from 4:48 p.m., until 10:00 a.m., January 16, 2015.)

15

16 CERTIFICATE OF THE REPORTER

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

19

20

21

_____/s/
Anneliese J. Thomson

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