Military Commissions:
Pre-Trial Hearings, 9/11: Khalid Sheikh Mohammad et al. (2)
Week of 2NOV2021–5NOV2021

Events:
The 9-11 military commission pre-trial hearings were telecast from facilities at Fort George G. Meade in Maryland from 2-5 November 2021. The open sessions were attended by a member of the Office of Military Commissions, a representative from Judicial Watch, and intermittently by a member of the defense team. There was no media presence.

The detainees were not consistent in attending the open sessions of court. All were in attendance on the first day, as legally required, but throughout the rest of the week the defense teams would announce that certain detainees would only be attending in the mornings or afternoons or not at all. In one instance, a detainee was excused for a medical appointment.

Observations:
Argued motions largely involved the defense teams for KSM, Bin Al Shibh, and Bin Attash attempting to delay testimony by witnesses called by the government or by the defense team for Baluchi, citing lack of discovery for preparation of examination strategies. The defense team for Hawsawi spoke infrequently, and the video of the few detainees in attendance always showed them as distracted or inattentive. Both the government and defense teams for Baluchi exhibited body language and vocal tones indicative of suppressed frustration during many of the arguments.

Additional to discovery for witness examination, the defense teams pressed for discovery on the extent of cooperation between the CIA and the FBI before and during the interrogation periods that employed Enhanced Interrogation Techniques (EITs). The defense insisted that since the FBI and the CIA had the same information at the same time showed that representatives of both agencies were complicit in the use of EITs. As such, statements made later by the detainees to the FBI benefitted from implied violence and could not be considered voluntary. The government, however, repeatedly insisted that the FBI and the CIA each had alternative sources of information prior to the time the detainees were captured. The defense never confronted this assertion. Instead, the lead defense counselor for KSM responded to those assertions with inflammatory language, ambiguity, and mockery.

The judge made use of several opportunities to restate his commitment to remain independent from prior judges in interpreting motions, evidence, and rulings – exhibiting patience and neutrality in each instance. His questioning of counsel for the defense and the government focused on information that both sides were reluctant to discuss. He did comment upon or appear to notice the inattentiveness of the detainees.

Motions/Arguments:

Motion	**Government**	**Defense**	**Judge**
AE 846 J		--D(Binalshibh) arguing for postponement of witness. Holds that Special Agent Butsch testified that he had seen Shibh being interrogated by the CIA at a	

		black site made Butsch a critical witness as to the voluntariness of Shibh's talk with the CIA. --D(Binalshibh) asserted that a forced cell extraction and a head-shaving prior to discussions with the FBI rendered the discussion involuntary. Also noted lack of legal counsel. --D(Binalshibh) also concerned about documented discussions of forced anti-psychotic medication, though noted that no anti-psychotic medication was ever force-administered. --D(Binalshibh) insisting on records from location 5 and expressing dissatisfaction with approved substitutions that report what was said. Seeking logs of discipline, medicine, conditions, and personnel. --D(Binalshibh) noted that when information changes because of new documents, it is difficult to recall witnesses to GTMO, so the defense wants all the documents first, just in case. --D(Binalshibh) also seeking the documents before Butsch's testimony in order to align the contents with Butsch's recollections and notes. Would also like the notes that other FBI agents took at or about location 5. --D(Binalshibh) most particularly looking for	--Asked how requested documents of CIA involvement would help in questioning Butsch, since Butsch testified to no knowledge of CIA involvement.

		documents about forced anti-psychotic medication after the FBI interview. --D(Binalshibh) requesting any documents about why the FBI only interviewed at a time between bouts of forced medication. --D(Binalshibh) stated emphatically that the government's offer of interrogatories is not acceptable. Additionally, remote testimony might not be acceptable, either, since credibility requires in-person presence. --D(Binalshibh) had no examples yet but expects responses to future questions will need credibility examinations. --D(Baluchi) declined joinder to this motion and was completely ready to proceed with questioning Butsch. Noted that D(Binalshibh) was completely free to postpone questioning until later. --D(Baluchi) was in full agreement with the government those depositions outside of court would be great for gathering evidence and would help in accommodating witnesses.	--Judge asked if the defense was afraid Butsch wouldn't be able to return. --On review, Judge noted no areas questioning credibility in remote testimony, so requested examples.
	--Government considered this motion to be defense counsel blocking case progress and cited that counsel knew about D(Baluchi) and government calling Butsch for two years, and even before		

	2019. --Government attested that asking Butsch the questions that concern D(Binalshibh) would result in unremarkable answers with no discovery. --Government responded that yes, multiple testimony would be problematic for some witnesses due to their schedules and responsibilities. --Government noted that it was hoping to go to trial in a year but assesses defense counsel as blocking this.	--D(Binalshibh) held that anything involving discovery is not a delay. --D(Binalshibh) asserted that the motion had been made two years ago and remained pending since then. Stated that discover was not complete nine years ago. --D(Hawsawi) indicated that they had filed this motion to suppress under order but had not intended to file. --D(Hawsawi) asserted that complete discovery was still necessary prior to witness testimony.	--Judge asked if multiple testimony sessions would be problematic to witnesses.
AE 846 K		--D(KSM) desired sua sponte reconsideration of Judge Watkins' docket order, including a delay in the calling of Special Agent Pellegrino. --D(KSM) stated that its examining member was not prepared to examine Pellegrino, due to discovery.	--Judge asked why the government, which had

			the burden, couldn't call its witnesses.
		--D(KSM) held that the previous judge had ruled that a sitting judge can allow the government to call the witness, but only after everyone had given input. --D(KSM) requested that the judge direct a meet-and-confer about the witness list, etc. Stated that the judge can decide based on the meet-and-confer (and indicated that this should have happened already and should in the future). --D(KSM) argued against the use of video teleconference. --D(KSM) did not hold that Pellegrino couldn't go forward but asserts that the testimony should not happen if discovery reasonably indicates that there is more to be revealed. Allowing it unchallenged would count as "ineffective assistance."	--Judge asked how initial questioning would render assistance ineffective and lead to prejudice against KSM. --Judge asked again how questioning would prejudice against KSM.
		--D(KSM) stated that there would be no knowing if a question or answer should be objected to if the discovery was incomplete. --D(KSM), "I don't know, I just know it's a really bad idea." "All these things might come out before I know I should object to them coming out." "This is part of the injustice to Mr. Mohammed that we are having this conversation." --D(Hawsawi) stated that prejudice can emanate from	

		the witness stand at this stage, given the public nature of the trial.	
	--Government asserted that D(KSM) does not want Pellegrino on the stand to talk about a comprehensive confession KSM gave in 2007. --Government noted that a lawyer choosing not to cross-examine due to unreadiness may be an effort at controlling the judge. --Government stated that it had been filed on Pellegrino as to the burden of voluntariness for 2.5 years.		--Judge asked how many more witnesses the government intended to call.
	--Government listed a return of Butsch and of Fitzgerald, and a calling of Perkins, Pellegrino, and a few others. Approximately 4-5 total. --Government pointed out that the defense had an extra 18 months to prepare, given the trial delay due to COVID. --Government stated that the judge has the scheduling authority but feels that reconsideration is not needed.	--D(KSM) accused the government of prosecutorial hubris, Orwellian word-twisting, and a desire for dictatorial control. --D(KSM) did not answer directly but chose to misquote from a discussion during the testimonies of Mitchell and Jessen.	--Judge asked if any of the witnesses named were not objectionable to the defense.

		--D(Baluchi) noted that the Baluchi defense list of witnesses was available at AE 888 VVVVV. It consists of 13 witnesses who were requested and agreed to and four witnesses that needed to return after prior testimony. --D(Baluchi) and the government had already agreed to go through all the witnesses agreed, then address later motions to compel. --D(Baluchi) noted that some of the defense witnesses were suitable for deposition and interrogatory. --D(KSM) stated that there would be no objection to examining the camp commander.	
AE 711		--D(Binalshibh) seeking to compel production of Camp 7 records, citing it necessary as both discovery and an indicator of outrageous government conduct. --D(Binalshibh) expects records that include conditions of confinement, medical evaluation, mentioning of Shibh, CIA cables, and CIA records. --D(Binalshibh) is concerned about records of dosing Shibh with anti-psychotics, which they consider to be forcible medication. --D(Binalshibh) has one "site daily report" obtained through the FOIA process and believes there are more. The DIMS and medical records the government has already provided are only partially helpful and are not	

		CIA documents. --D(Binalshibh) noted that the CIA's CP7 documents, Memorandum of Understanding, and Stipulation of Fact are not specific to Shibh. --D(Baluchi) also requested site daily reports, and prepared extensive 505 session classified arguments. --D(Baluchi) asserted that the amount of CIA involvement with Camp 7 goes to attenuation. "The torture program is a whole-government program." "The CIA maintained operational control over Camp 7." --D(Baluchi) noted that they were not asking for a Camp 7 data dump, just CIA records on Camp 7. --D (Bin Attash) stated, "The wider question is why the CIA has anything to say about this in 2007."	
	--Government asserted that the defense has not shown the necessity and existence of the documents it is seeking, and that the defense has the entirety of the information on forcible medication. --Government stated that, by 2007, the Camp Commander was wholly in control of Camp 7.	--D(Binalshibh) stressed that it is requesting reports, but not just reports because most of the information is relevant to Shibh. --D(Binalshibh) is hoping that a November psychological evaluation might contain admissions of	

	--Government asked the judge to look at AE 516, where the judge at the time and the government agreed that the government had met its obligations in Camp 7 discovery.	culpability in psychological problems. --D(KSM) indicated that the documents are not just interesting for their contents, but for who wrote the documents. --D(KSM) asserted that the CIA should or would not have been writing documents once it was no longer involved. --D (Bin Attash) stated that if the judge who approved the statement of relevant fact had not seen the site daily report, the substitution is not good. --D(Baluchi) defined the statement of relevant fact as produced to avoid providing CIA documents and noted it as both general and written in passive voice. --D(Baluchi) stated that all CIA witnesses have been refused, and that there seems to be no way to ask for CIA discovery.	
AE 721		--D(Binalshibh) moved to compel production of documents from Site 5, as relevant to the voluntariness of statements Shibh had made. --D(Binalshibh) is asking for non-EIT interrogations that Butsch witnessed, reports about medical treatment,	

		psychiatric treatment, conditions of confinement, discipline, and interrogation techniques. --D(Binalshibh) conceded that they do have the cable substitutions and Butsch's notes. --D(Binalshibh) showed interrogation plans, psychological assessments, and a report of disciplinary shaving in 2005 from a black site. --D(Binalshibh) believed it unlikely that there are no other documents from that time. --D(Baluchi) has been gaining information through FOIA, so had documents bracketing the time period to offer the judge: • Before: AE 628 GGGG Att. B is a cable with tear line reference, discussing rendition plans and offering lessons learned for interrogation. • After: 25FEB2003 report of EITS and methods for Shibh. --D(Baluchi) indicated that the bracketing documents contained details absent from the summaries. --D(Baluchi) offered AE 525 C as a detailed deposition about Site 5 and supposed that there might have been no medical care, and so no medical records.	--Judge asked for examples of what the defense wants that it already has from other locations or times.
	--Government asserted,		

	"There are no additional records regarding Location 5." --Government listed the documents already provided. --Government stated, "EITs were not approved for this individual until he was moved to another location." --Government stated, "There are none." --Government cited AE 658, the Classification Guidelines, to demonstrate the need for closed session arguments.	--D(Binalshibh) pressed that the judge can still compel, that "this is a black hole," and that, "'There is nothing' differs from 'there was never anything.'" --D(Binalshibh) noted that there are records from the second and third times Shibh was at Location 5. --D(Baluchi) clarified that there are known and acknowledged reasons for no records coming from the first session, but that it is a national security issue and cannot be discussed in open session. --D(Baluchi) opined that this interferes with adversarial processes.	--Judge asked why more documents don't exist, given the length of time at Location 5. --Judge asked about medical or psychological records. --Judge stated that this supports the government's assertion that the first period was before records started. --Judge asked government about the national security concerns.
AE 779		--D(KSM) quoted the government as saying that (a) there were no documents, and (b) if there were, they	

	--Government said, “We've turned over everything discoverable, and there is no more.” --Government defined AEs 779, 737, 769, 780, and 803 as part of a constellation of motions for more discovery and noted that the government has submitted AE 824 to exclude further evidence. --Government cited AEs 538 K, M, Z, and DD as showing the process of discovery, detail, and redactions in compliance with 161 J, in good faith. --Government noted that it had created discovery by generating FD-302 documents that were	would not be discoverable anyway. --D(KSM) said, “I think I see how the government could make that statement.” --D(KSM) pointed to an unpublished motion response indicating that discovery would publish “any documents reasonably known to anyone involved in the investigation or prosecution of the case” about “the cooperation between the CIA and FBI.” --D(KSM) interpreted that to mean the government reached out to those who were part of trying to obtain statements from the accused and asked for interagency policy documents. --D(KSM) asserted inappropriate scope narrowing and demanded explanation prior to examination of Pellegrino.	

	interviews of the FBI agents in these matters. --AE 695 was Judge Cohen's agreement that the government had complied with discovery, but it also gave extra instructions on the division of discrete "buckets" of information by discoverability. --Government stated that the defense has previously complained about scope, and in response the government created AE 538 GG to explain the provided discovery relative to the defense case theories. --Government stated that materiality-of-document analysis excludes some documents (for instance, country clearance requests), and the three categories seek those non-material documents. --Government held that it had produced all material documents, and that people acting within military commissions law are not discoverable. --Government requested that the judge review the documents and list of documents provided.	--D(Baluchi) agreed with the factual government statements but argued that	--Judge thanked the government for the record overview and committed to reviewing AE 538. --Judge asserted that AE 538 HH does not close AE 538 AA but allowed the "buckets" matter to be closed. --Judge asked how certain categories of requested discovery fall under AE 538.

		the motion should be granted because no evidence had been produced on the development of interagency policy. --D(Baluchi) inferred that the "buckets" ruling had determined that more evidence was needed, not that the matter was closed. --D(Baluchi) read AE 538 HH to only determine discovery related to detainees other than the five accused, and that Judge Cohen determined materiality, so a secondary government analysis rang false. --D(Baluchi) objected to actions within the law being undiscoverable because policy and the law are the issue. --D (Bin Attash) complained about the multiple connections to other motions. --D (Bin Attash) held that creating new documents was not over and above requirements, because the documents are usually created in investigations, and if they were not in this case, that was the result of a decision to create an alternate process. --D (Bin Attash) defined AE 695 as the first attempt to learn how the assumed alternate process came about, because the process for deciding which documents to supply which interrogators for which detainee is evidentiarily	

		material. --D(KSM) stated that the government confirmed improper narrowing of scope and held that e-mail between administrative assistants arranging country permissions for visiting FBI agents would be useful. --D(KSM) believed that the government attorneys were not fully informed by others in the government, so the judge needs to issue orders to force the others in the government to fully comply.	
AE 769		--D(Baluchi) seeking to compel discovery of the 9-11 Commission intelligence requirements. --D(Baluchi) stated that the 9-11 Commission had sent intelligence collection requirements to the RDI program. --D(Baluchi) said that this had initially been addressed in AEs 538 and 561, but that when those merged, the issue was not ruled upon and had gotten lost. --D(Baluchi) claimed that the government refused to provide the 9-11 Commission requirements because it was not required under other standards, but that the Unis Court standards show both relevance and necessity. --D(Baluchi) reviewed that the 9-11 Commission requested access to the interrogation of 111 named detainees, so the FBI briefed the commission on Baluchi (among others) and the CIA	

		gave the commission TD-314 documents. --D(Baluchi) showed the 9-11 Report citing TD-314 documents, including a citation of a TD-314 about Shibh when he was not under the CIA's custody. --Apparently, the 9-11 Commission had needed more information in general, and the CIA agreed to respond to inquiries. So, the commission sent inquiries, received responses, and determined that questioning the detainees rather than relying on previously gathered information was necessary. --D(Baluchi) noted that Dr. Mitchell had confirmed that the 9-11 Commission was asking Baluchi and six others about the events of 9-11, not the future operations that concerned the CIA. --D(Baluchi) showed that the CIA had sent a TD-314 to the FBI noting that Baluchi didn't know of any use of flight simulators, so the FBI sent a response about a hijacker’s use of a credit card to buy simulation software. --D(Baluchi) noted that the CIA had brought pre-EIT interrogators back to ask using non-physical coercion measures, and that Mitchell and Jessen were also tasked to serve 9-11 Commission intelligence requirements. --D(Baluchi) concerned because the FBI placed flight simulator software purchase in a charge sheet, which	

		information was sourced to intelligence collected from Baluchi at a CIA black site. --" This demonstrates how the 9-11 Commission intelligence requirements would complete the interrogation cycle picture." --D(Baluchi) stated that, after the 9-11 Commission requested direct access to the detainees. The CIA appointed a "focal point" person to handle 9-11 Commission requests. --D(Baluchi) offered an information loop that it has not been able to trace that 9-11 Commission requirements would help, in the APR2004 questioning about the significance of swearing bayat. --D(Baluchi) stated that the issue was specifically what the accused said under what atmospherics, which the specific document would provide, and the eight documents couldn't. A transcript of a statement made under duress is potent, per the *Moussaoui* trial. --D(Baluchi) noted that the defense has been constructing narrative from the discovery, rather than arranging discovery to fit narratives, due to the complexity of the case. Narrative construction without the 9-11	--Judge asked why the defense can't ask for a favorable ruling based on the eight potential documents, rather than drilling down to one document produced by or for the 9-11 Commission.

		Commission requirements would be incomplete. --D(Baluchi) asserted that it was not accusing the government of not providing discovery but was asking the judge to confirm relevance so that the defense and the prosecution could go to NARA for co-review of the documents. --D(KSM) quoted the 9-11 Commission as questioning the credibility of statements in some cases, because the commission had no direct access to the detainees. --D(KSM) wants to know why the commission had these concerns, because "This goes to our motion to dismiss for outrageous government conduct."	
	--Government noted that this was not a new issue, and was covered in AE 538 FF, and additionally the defense used the same flight simulator analogy in AE 824, which AE 824 H ruled against. --Government quoted Special Agent Perkins as noting that the simulator purchase was known before Baluchi's capture. --Government asserted that it is not using CIA black site documentation as reliable and is rather using discussions between detainees to make its case. For this issue, discoverability must go to something the government is actually using and relying upon.	--D(Baluchi) argued that the government's theory of	

		voluntariness in discussions between detainees is counter-factual and alternate reality “could have been.” --D(Baluchi) suggested that the judge consult AE 538 I attachment C for the state-of-play concerning information and open questions. --” The RDI program was so devious because answers came back and were laundered.” --D(KSM) claimed that Letter-Head Memorandum (LHM) statements were not the only reason that the 9-11 Commission requirements were relevant. --D(KSM) claimed that torture was randomly applied.	
AE 780		--D(KSM) moved to compel documents on coordination between the CIA and the FBI. --D(Baluchi) stated that it was not contesting that information about subjects other than the detainees is discoverable. --D(Baluchi) (further argument unintelligible, even in the transcript) --D(KSM) indicated this motion as related to AE 538 AAA but stated that it is not a motion to reconsider, but more an objection to the government ellipsizing wording to change meaning and scope. --D(KSM) asserted that there is no way to competently	

	--Government applied the arguments from AEs 538 C, 538 FF, and 538 G, where it considered the matters argued in great detail and decided. –Government asserted that integration between the FBI and CIA is not wrong in itself and has functioned to protect the U.S. from a deadly enemy.	defend without seeing everything. --D (Bin Attash) in agreement with D(KSM). --D(KSM) stated that the CIA-FBI cooperation legality is not at issue. --D(KSM) held that the CIA and FBI interrogated detainees together, and later interrogated the detainees separately, then stated the information from the second interrogations was given voluntary. --D(Baluchi) stated that the government was incorrect about Abu Zubaydah being part of Al Qa'eda and about Judge Cohen ruling against exploring the torture of Zubaydah. --D (Bin Attash) recalled spending almost a day examining Mitchell about Zubaydah.	
AE 781		--D(Baluchi) moved to compel documents focusing on the black sites and any requirements exchanged between the CIA, the FBI, and the 9-11 Commission. --D(Baluchi) acknowledged that some of the information qualifies under AE 194 and	

		AE 308 for substitutions. --D(Baluchi) considers CIA cables to be “reports produced from interrogations.” --Information that appears in interrogation reports that the defense does not have: • Recommendation to send tear line to larger intelligence community. • Discrepancies between detainee stories. • Strategizing on conditioning. • Information given to detainees that they might repeat later. • How the CIA used FBI requirements. • Presence of the CIA and the FBI with foreign government representatives. • Baluchi's disposition. --D(Baluchi)'s goal was to get an unclassified statement that the defendants or a jury could see. --D(Baluchi) noted that the MCRE 505 process allows for some use of classified information without revealing it, but the defense is not allowed to argue for 505 reconsideration. The defense *can* move for more information, which requires a fresh motion to compel. --D(Baluchi) proposed that, since all the CIA cables have already been gathered, and since the universe of documents is larger than the documents provided to the commissions, the	

		prosecution escorts the defense in an eyes-only review of all the documents. The defense can then negotiate for the specific documents that would be needed for release. --D(KSM) made statements ignoring the difference between the FOIA program and the declassification project. --D(KSM) repeated arguments about the government ellipsizing statements and narrowing scope. --D(KSM) explained that KSM was more or less willing to discuss questions based on the approach taken. --D (Bin Attash) asserted unconstitutionality and made statements ignoring the difference between the FOIA program and the declassification project.	
	--Government cited AE 538 AA as containing limiting statements, and all ellipsizing just reflects the limiting statements. --Government noted that many requirements were internal to the CIA, and were not asked by the FBI of the CIA. --Government responded that the process had been messy and disorganized, and that cables are not connectable by TD number, only by subject. Considering the		--Judge asked how a hole in the record demonstrates that there was no collaboration.

	disorganization, a hole in the records indicates a lack of coordination. --Government agreed with D(Baluchi) that the court does not have time to review the entirety of the cable traffic, however the court has also decided that the defense has no role in developing substitutions in CIPA, and it is presently an iterative process. --Government committed to working with D(Baluchi) to allow the defendants to see more information than the public and will review the FOIA request to attempt to generate parity between declassification and FOIA versions. --Government noted that parties have two different	--D(Baluchi) explained that this is not an effort to repeal CIPA. --D(Baluchi) suggested that adversarial testing of substitutions would be useful because the defense has matching expertise. --D(Baluchi) allowed that the government was correct about the government having happily provided nuanced information on specific request. --D(KSM) said, “This is not a motion that 538 AA should say something different... this is to say there's things responsive that we haven't received.” --D(KSM) was glad to hear that the ellipsis was only to save space, but still argued that the ellipsis artificially constrained the scope.	

	interpretations of the prior ruling and suggested that the judge contact Judge Cohen for a definition of what Cohen intended.		--Judge stated that he had no intention of contacting Judge Cohen and will consider all interpretations.
AE 720		--D(Binalshibh) argued for compulsion of information on interpreters' clearances. --D(Binalshibh) was most motivated to determine how a former CIA interpreter was installed as an interpreter on Shibh's team and noted that Shibh had even recognized the interpreter. --D(Binalshibh) stated that the interpreter continued denying ever working for the CIA to the present. --D(Binalshibh) cited that Judge Parella had authorized a deposition on three points: 1. What the interpreter could have said prior to being hired. 2. The interpreter's activities within the Military Commissions Defense Office. 3. What the interpreter has communicated about the defense. --D(Binalshibh) related that Judge Cohen had expanded the deposition with a fourth inquiry: What the interpreter said or did while working for the CIA or while seeking employment with the defense. --Despite the deposition, D(Binalshibh) still wondered how the interpreter had been accepted into the pool, how	

		the interpreter did not know the routing of his security clearance, and how he did not even know what a security clearance was. --Though the government had reviewed records and supplied information, D(Binalshibh) demanded the actual records. --D(Binalshibh) believed the records would tend toward mitigation. --D(KSM) argued that this production would be pertinent to attenuation. --D(KSM) claimed that KSM can't heal because he lives in fear that the CIA is saying, “You will never be safe. We can always reach you.”	
AE 629 I		--D(Binalshibh) moved to compel production in the matter of Shibh's letterhead memorandum. --D(Binalshibh) noted that this is the same thing that D(KSM) requested in A E 775, and so referred to those arguments. --D(Binalshibh) received some discovery in July 2019 and filed further discovery requests in October 2019: 1. Personnel advising. 2. Written reports. 3. Guidance by the CIA OGC to the RDI personnel. 4. Writings. --D(Binalshibh) stated that these would go against attenuation arguments. --D(Binalshibh) sought the history of personnel involved in the program, but the	

	--Government quoted, "Facts are stubborn things," repeating that the FBI agents interviewing Shibh for the LHM had had independent sources of information prior to Shibh's capture. --Government asked the judge to consider what the voluntariness standard requires because the FBI agents used rapport and documents to prompt Shibh, so his discussion goes to understanding and intent.	arguments for this had to take place in a 505 closed session.	