

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 [The Military Commission was called to order at 0906, 24 April  
2 2014.]

3 MJ [COL POHL]: The commission is called to order. All  
4 parties are again present that were present when the  
5 commission recessed, and General Martins is back with us.

6 The first issue I want to address is 205K. Trial  
7 Counsel, it's your motion.

8 TC [CDR LOCKHART]: Yes, sir. I was first going to place  
9 on the record that these proceedings are being transmitted  
10 CONUS.

11 LDC [MR. KAMMEN]: [Microphone button not pushed; no  
12 audio].

13 MJ [COL POHL]: Sure.

14 LDC [MR. KAMMEN]: Before we get to 205.

15 MJ [COL POHL]: Sure.

16 LDC [MR. KAMMEN]: Yesterday, Your Honor, after the closed  
17 session we had what essentially was an 802, and we indicated  
18 to the commission that, as the commission knows, the  
19 government filed a motion to reconsider 120. We've reviewed  
20 that motion. We believe it does not warrant a written  
21 response and we would request that that be argued yet this  
22 week so that the commission could perhaps have the weekend to  
23 reflect on it and then ideally rule before we depart on

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Wednesday.

2 MJ [COL POHL]: Okay. I've read the motion. I think it's  
3 highly unlikely I would be able to give a complete ruling  
4 before you left the island, but I think if we do -- I do think  
5 if you are prepared to argue -- and, Trial Counsel, I'm  
6 assuming you're prepared to argue?

7 CP [BG MARTINS]: Your Honor, we are. We agree with that  
8 remark, that it's something that we would hope would be pretty  
9 exhaustively reviewed, but I think oral argument could assist  
10 in that.

11 MJ [COL POHL]: Okay. So let's -- we will add it to the  
12 list, but it won't be at the end of the list. My suggestion  
13 is, let's set it for -- we'll do it next Monday or Tuesday.  
14 That way it gives both sides and, of course, myself the chance  
15 to read it and then we can do the argument and then I will try  
16 to expeditiously issue a ruling. But, again, I don't -- from  
17 looking at it quickly, it is highly unlikely I can give a  
18 ruling in that time frame. So that would be my suggestion.

19 LDC [MR. KAMMEN]: Again, our preference would be to argue  
20 it tomorrow, but we understand.

21 MJ [COL POHL]: Okay.

22 Trial Counsel, it doesn't bother me.

23 CP [BG MARTINS]: Your Honor, I believe we could provide

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 some oral argument. We would need to do it, you know -- we  
2 have to think through what parts of it could be in this  
3 session. I mean, the ----

4 LDC [MR. KAMMEN]: I don't believe ----

5 CP [BG MARTINS]: The national security pieces are ones  
6 that just understandably are going to have to not be ----

7 MJ [COL POHL]: No, I understand. And as I recall, parts  
8 of it were in a closed session last time.

9 LDC [MR. KAMMEN]: Given the nature of -- I'm sorry. I  
10 apologize.

11 MJ [COL POHL]: But it would seem to me that if we limited  
12 the oral argument to the reconsideration and the unclassified  
13 order itself, there should be no issue. If we need to discuss  
14 something over and above that, I -- I understand, but let's  
15 just assume we're only going to do the unclassified portion of  
16 it.

17 If this is a need, perhaps -- so maybe it does make  
18 sense. We'll do this tomorrow. We have a witness scheduled  
19 for 0900. Let's do the witness, then we'll pick up 120 right  
20 after that.

21 LDC [MR. KAMMEN]: Fine.

22 MJ [COL POHL]: Okay. Does that work for the government?

23 CP [BG MARTINS]: So, specifically, your thought, Your

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Honor, is when?

2 MJ [COL POHL]: It is, we'll do the witness tomorrow at  
3 0900, and then once he is done, we'll pick up 120 at that  
4 point. Again, we'll limit it to the unclassified portion.

5 CP [BG MARTINS]: I believe that could be of some help,  
6 Your Honor, talk through the law and discuss Yunis and so  
7 forth, and -- but, again, there's significant materials there  
8 and -- but the oral argument, unclassified could be done, I  
9 believe.

10 MJ [COL POHL]: Okay. Okay. Let's plan that. Sure.

11 LDC [MR. KAMMEN]: All right. Fine. Thank you.

12 MJ [COL POHL]: Now 205K deals with a witness tomorrow, as  
13 I understand?

14 TC [CDR LOCKHART]: Yes, sir.

15 MJ [COL POHL]: And the request is that he not be publicly  
16 identified ----

17 TC [CDR LOCKHART]: That's correct, Your Honor.

18 MJ [COL POHL]: ---- by name.

19 And, Defense, you oppose the request?

20 DDC [CDR MIZER]: Yes, Your Honor.

21 MJ [COL POHL]: Basis for the request?

22 TC [CDR LOCKHART]: It's contained within the written  
23 pleadings, sir.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 MJ [COL POHL]: Okay.

2 TC [CDR LOCKHART]: We laid out all of the reasons on why  
3 his identity should not be public, sir, or releasable to the  
4 accused.

5 DDC [CDR MIZER]: Your Honor ----

6 TC [CDR LOCKHART]: I'm sorry. Neither side requested  
7 oral argument on this, nor did the defense file a reply, a  
8 response.

9 DDC [CDR MIZER]: Your Honor, we just have a general  
10 objection based upon allegations of other detainees made to  
11 other witnesses that we are going to, I guess, shroud these  
12 proceedings in secrecy -- I mean, hide the identity of  
13 witnesses. And that's our concern, Judge, is that if another  
14 detainee does something to another witness or actor within the  
15 JTF, it has nothing to do with Mr. Nashiri, it has nothing to  
16 do with this case, and I'm sure Your Honor is well aware, as  
17 we discussed yesterday, the preference that the proceedings  
18 remain open to the public, and that includes knowing who those  
19 witnesses are. If this is a full, fair and open proceeding,  
20 that should happen here, Judge.

21 MJ [COL POHL]: But there are certain limitations on that,  
22 as -- encompassed in the protective order.

23 DDC [CDR MIZER]: Surely there are, Judge, and we just

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 don't believe it will be appropriate in this circumstance.

2 MJ [COL POHL]: It's a case-by-case and witness-by-witness  
3 determination whether a witness needs to testify and be  
4 identified?

5 DDC [CDR MIZER]: Yes, Your Honor. And our concern here  
6 is this is going to set a terrible precedent because our fear  
7 is it's going to be -- I hear what you are saying, a  
8 case-by-case witness, but this is going to be the first one,  
9 and then it's just going to cascading from there, Judge, and  
10 that's really the basis for our position.

11 MJ [COL POHL]: Okay. Well, Commander, I understand your  
12 concern about precedent, but I still think the rule is witness  
13 by witness. The fact that one witness may testify under a  
14 pseudonym doesn't mean another witness can't.

15 DDC [CDR MIZER]: Yes, Judge.

16 MJ [COL POHL]: Okay. So although you may not have  
17 confidence that this is the prescient thing, it's a  
18 witness-by-witness, and given the nature of this witness'  
19 duties as shown by the pleading, I'm going to overrule your  
20 objection and permit the witness to be -- to not be identified  
21 in open court.

22 DDC [CDR MIZER]: Yes, Your Honor. Thank you.

23 MJ [COL POHL]: That being said, defense, you have a

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 witness you wish me to hear on 205?

2 ADDC [MAJ HURLEY]: Yes, Your Honor, we do. The defense  
3 calls Dr. Sondra Crosby.

4 SONDRAS CROSBY, civilian, was called as a witness for the  
5 defense, was sworn and testified as follows:

6 **DIRECT EXAMINATION**

7 **Questions by the Assistant Trial Counsel [LT DAVIS]:**

8 Q. Please have a seat. Ma'am, for the record, could  
9 you state your full name, spelling your last name.

10 A. Sondra Crosby, C-R-O-S-B-Y.

11 Q. And your city and state of residence?

12 A. Dedham, Massachusetts.

13 ATC [LT DAVIS]: Thank you, ma'am.

14 **Questions by the Assistant Detailed Defense Counsel**

15 **[MAJ HURLEY]:**

16 Q. Ms. Crosby, good morning.

17 A. Good morning.

18 Q. Ms. Crosby, do you hold a medical degree?

19 A. I do hold a medical degree from the University of  
20 Washington.

21 Q. Is it appropriate that I call you Dr. Crosby?

22 A. Whatever you like, sir.

23 Q. Dr. Crosby, let's start here. These -- what you and

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 I both say, what everyone says during the court proceeding, is  
2 translated into Arabic for the benefit of Mr. Nashiri. Do you  
3 understand that?

4 A. Yes, I do.

5 Q. And do you also understand the need to speak slowly  
6 or moderately in order to allow time for that translation to  
7 occur?

8 A. Yes, I do.

9 Q. Dr. Crosby, you've reviewed a good deal of  
10 information with respect to Mr. Nashiri; is that correct?

11 A. Yes, I have.

12 Q. That information was both classified and  
13 unclassified?

14 A. Yes, sir.

15 Q. Do you understand that this is an unclassified  
16 forum?

17 A. I do.

18 Q. Do you also understand that discussing classified  
19 information in this forum would be inappropriate?

20 A. I do understand.

21 Q. Will you indicate to me or whomever is asking you  
22 the question that a complete answer to that question would  
23 involve revealing classified information before you reveal it?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 A. Yes, I will.

2 Q. Ma'am, as a medical doctor, or in your practice, you  
3 diagnose victims of torture as victims of torture?

4 A. I do specialize in diagnosing and treating survivors  
5 of torture in my medical practice.

6 Q. Ma'am, briefly, what are you here today to tell  
7 Colonel Pohl?

8 MJ [COL POHL]: Just ask the questions.

9 ADDC [MAJ HURLEY]: Okay.

10 MJ [COL POHL]: I mean, that's not a -- I mean, you ask a  
11 question about relevant testimony and she will respond. An  
12 open-ended question like that is -- there's no way the other  
13 side has an opportunity to object to it. I have no idea what  
14 it means.

15 ADDC [MAJ HURLEY]: Yes, sir. What we intend -- or what  
16 Dr. Crosby -- or what the defense wants Dr. Crosby to say is  
17 in brief form, summarize the testimony that she's going to  
18 give so that you have a roadmap for her testimony.

19 ATC [LT DAVIS]: Your Honor, the government would request  
20 that if this witness is going to testify as an expert, that it  
21 at least the defense first qualify her as such and state the  
22 field that she does have expertise in.

23 MJ [COL POHL]: Is she going to give an expert opinion?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 ADDC [MAJ HURLEY]: She certainly is, sir.

2 MJ [COL POHL]: Then you need to qualify her first.

3 And back to the other thing is, I understand what  
4 you want to do. I don't need a roadmap. Just ask her  
5 relevant questions on the facts that you want me to consider.  
6 But, first of all, you need to qualify her as an expert.

7 ADDC [MAJ HURLEY]: Sir, yes.

8 MJ [COL POHL]: Go ahead.

9 **Questions by the Assistant Detailed Defense Counsel**

10 [MAJ HURLEY]:

11 Q. Sir -- I'm sorry, Dr. Crosby, let's talk about your  
12 educational background. You indicated before that you have  
13 gone to medical school?

14 A. Yes, sir.

15 Q. And that your medical school was at the University  
16 of Washington?

17 A. Yes, sir.

18 Q. And that's in Seattle, Washington?

19 A. Yes, sir.

20 Q. In what field did you perform your residency?

21 A. I completed my internship and residency in internal  
22 medicine in Boston, Massachusetts.

23 Q. And that's the area in which you currently reside

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

*UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT*

1 now?

2 A. Yes, it is. I practice in Boston.

3 Q. Describe briefly for the -- for Colonel Pohl what an  
4 internist does.

5 A. An internist is generally an adult medicine  
6 physician, and I'm board certified in that field.

7 Q. How long have you been board certified as an  
8 internist?

9 A. 1994-95.

10 Q. So approximately 20 years?

11 A. Yes, sir.

12 Q. When in your practice as an internist did you become  
13 interested in treating victims of torture?

14 A. So I have been practicing in Boston since 1995. My  
15 practice is primarily focused on refugees, asylum seekers,  
16 immigrants who have experienced torture, war trauma, sexual-  
17 and gender-based violence. And I have been doing this work  
18 exclusively since -- well, I have been caring for these  
19 patients since graduating from residency in 1995. I've  
20 focused exclusively in this field since the late '90s.

21 Q. So for approximately 15 years you've focused  
22 exclusively in this field?

23 A. Yes, sir.

*UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT*

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. So before we go any further, Doctor, the -- you  
2 would agree that the word "torture" is a much discussed word  
3 in the public sphere?

4 A. Yes, sir.

5 Q. So that we know or we have a clear understanding of  
6 your testimony going forward, what definition of the word  
7 "torture" are you using?

8 A. In my work, I use the U.N. Convention Against  
9 Torture definition.

10 Q. Could you briefly summarize that for Colonel Pohl?

11 A. I can paraphrase it.

12 Q. That's perfect.

13 A. I don't have it memorized. It is infliction of  
14 severe pain, either physical or mental, on a person for any  
15 number of purposes, including getting a confession, coercion,  
16 punishment, that is done either by the government or with the  
17 knowledge or acquiescence of the government.

18 Q. Is this a definition that's widely used by experts  
19 such as yourself in the field?

20 A. Yes, it is, sir. It's a standard.

21 Q. When you first became interested in treating victims  
22 of torture, was that in your role as a clinician?

23 A. Yes, sir.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

*UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT*

1 Q. Basically, as your practice has developed, you work  
2 in three roles: First, that of clinician; is that correct?

3 A. Yes, sir.

4 Q. Then that as forensic evaluator?

5 A. That is correct, sir.

6 Q. And also as educator for other -- other workers in  
7 the field of dealing with victims of torture?

8 A. Yes, sir.

9 Q. So let's talk about the clinical process first.  
10 How do you typically treat -- clinically treat  
11 someone who comes into your office as a, at that point,  
12 purported victim of torture?

13 A. It depends on what their needs are. I mean,  
14 ultimately it's making the diagnosis and being sensitive to  
15 whatever the individual needs are. Usually it involves  
16 working with a care team of clinicians who are experienced and  
17 sensitive to the needs of survivors of torture.

18 Q. Now, ma'am, as an internist, you make -- you  
19 certainly make diagnoses with respect to the physical signs --  
20 the potential physical signs of torture, right?

21 A. I do, yes, sir.

22 Q. And as an internist, do you also make diagnoses  
23 regarding the mental health -- any mental health diagnoses for

*UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT*

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 torture survivors?

2 A. I do make mental health diagnoses of torture  
3 survivors. And in care caring for torture survivors, mental  
4 and physical health are very closely intertwined, so it's very  
5 difficult to separate.

6 Q. How often as a clinician do you make mental health  
7 diagnoses for torture survivors?

8 A. On a weekly or even daily basis.

9 Q. As a clinician over the course of this -- these 15  
10 years, how many torture victims or potential torture victims  
11 have you seen?

12 A. Many. I certainly have not counted them. Over 500.  
13 Maybe close to 1,000.

14 Q. And then as a clinician, you make -- as just said,  
15 you make routine mental health diagnoses?

16 A. Yes, I do. And referrals to treatment as  
17 appropriate.

18 Q. Is that unusual for an internist or a family  
19 practice doctor to make mental health diagnosis?

20 A. No, it's very common in the United States. In fact,  
21 the majority of routine mental health diagnoses are made and  
22 managed by family doctors, primary care doctors.

23 Q. Now, let's talk about your role as a forensic

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 evaluator. How long have you been a forensic evaluator,  
2 Dr. Crosby?

3 A. I received early training in forensic evaluation in  
4 the late '90s, and I have continued to pursue that field. I  
5 am the co-founder and codirector of the Forensic Medical  
6 Evaluation Group at Boston University, and continue to perform  
7 forensic evaluations and teach other doctors, both nationally  
8 and internationally, on an ongoing basis. I have also  
9 published extensively in the field of torture evaluation.

10 Q. Is this your first time testifying in court?

11 A. No, sir.

12 Q. You've testified in immigration court in  
13 Massachusetts; is that correct?

14 A. I do testify in immigration court in Massachusetts  
15 on a fairly regular basis.

16 Q. Were you accepted as an expert by the - in the  
17 field -- an expert in the field in the diagnosis and treatment  
18 of torture victims?

19 A. Yes, I have been.

20 Q. Have you been qualified as an expert in that field  
21 before any other court?

22 A. I have been qualified as an expert witness in the  
23 United States District Court of Columbia in a capital case.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. Now, as a forensic evaluator, how -- I'm glad you  
2 did that, Dr. Crosby. That water is there for your  
3 consumption, should you need it.

4 A. Thank you.

5 Q. In those instances, and this is in a general sense,  
6 how are you brought on to any particular case to provide a  
7 forensic evaluation?

8 A. That -- it's different. In immigration cases, I am  
9 usually requested to do an evaluation by the respondent's  
10 attorney. If it's an overseas evaluation, I have been asked  
11 to perform evaluations by the Independent Commission of  
12 Inquiry and other organizations that are investigating human  
13 rights violations. So it's variable.

14 Q. Dr. Crosby, briefly explain to Colonel Pohl what the  
15 components of a forensic evaluation are.

16 A. All right. So the international standard for  
17 performing forensic evaluation is the Istanbul Protocol, which  
18 was -- has been in existence since 1999. It is the -- it's  
19 really the guide to the international legal and medical  
20 documentation of torture, and this is -- these are the  
21 guidelines that I use in my own evaluations. It's been  
22 adopted by the U.N. It is an international standard around  
23 the world.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1                   The components of that, to answer your question,  
2 sir ----

3           Q.       Thanks.

4           A.       The components of a forensic medical evaluation are  
5 clearly taking a very detailed and accurate history, building  
6 rapport with the individual in order to be able to do that.  
7 It's performing a very focused -- or a complete physical exam  
8 focusing on particular areas that might be traumatized. It is  
9 doing an inventory of all symptoms that might be related to  
10 the history. It's reviewing any records that are available,  
11 perhaps doing radiological tests that might be indicated, and  
12 speaking to other ancillary people who might have information  
13 to help corroborate or not corroborate your information.

14                   At that point you take everything and analyze it and  
15 come up with a conclusion as to whether or not your findings  
16 support the individual's allegations of torture.

17           Q.       And, Dr. Crosby, those times that you testified in  
18 immigration court, the findings supported the conclusion; is  
19 that accurate?

20           A.       Usually, in immigration court the respondents will  
21 call experts. And so if I'm called as an expert in  
22 immigration court, it's on behalf of respondent, and I will  
23 not write an affidavit or testify if my findings don't

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

*UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT*

1 corroborate the allegations of torture.

2 Q. Does that occur fairly frequently that your findings  
3 don't corroborate the allegation of torture?

4 A. It certainly has occurred not on a regular basis.

5 Q. How do you communicate and to whom do you  
6 communicate that your findings do not match the allegation  
7 that you understand?

8 A. It's very simple. I will tell the individual that  
9 my findings don't corroborate the story, the history, and I'm  
10 unable to write an affidavit. And I communicate that to the  
11 attorney as well.

12 Q. Does the government and -- the United States  
13 government typically call witnesses in immigration court?

14 A. In immigration court in Boston, they do not. The  
15 government, to my knowledge, does not call witnesses.

16 Q. Had the government abandoned that practice in one of  
17 these instances in which you found the allegations don't  
18 support your findings, would you have testified on behalf of  
19 the government?

20 A. I certainly would, yes.

21 Q. We've talked extensively, Doctor, about your  
22 interest in treating victims of torture, and implicit in that  
23 is that you've done a good deal of study in this area; is that

*UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT*

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 correct?

2 A. Yes, I have.

3 Q. And you've also done a good deal of instruction in  
4 this area?

5 A. Yes, I have, sir.

6 Q. You're on the staff of the Boston University Medical  
7 School; is that right?

8 A. Yes, I am. I'm an associate professor.

9 Q. And what is it that you teach at the school?

10 A. I teach medical students and residents in aspects of  
11 internal medicine. My focus of teaching is on caring for  
12 refugees, survivors of torture, and documentation of such.

13 Q. So you work with medical students at Boston  
14 University. Have you done continuing education for other  
15 doctors in the field?

16 A. Yes, I have.

17 Q. And has that training occurred both in the United  
18 States of America and overseas?

19 A. It has occurred in the States and multiple places  
20 overseas.

21 Q. In one instance you traveled to Syria to provide  
22 this sort of training, correct?

23 A. Actually, I have made five trips to the Syrian

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 border to teach Syrian doctors how to document torture in  
2 people alleging to have been tortured in Syrian prisons, yes.

3 Q. Does part of this instruction entail classroom  
4 environment where you go through how to take adequate trauma  
5 history?

6 A. Yes. It's a detailed, complicated training course.  
7 And part of it is classroom instruction, part of it is role  
8 modelling, having people practice, and part of it is actually  
9 going into the field and mentoring, doing actual evaluations  
10 on people.

11 Q. So when you actually go out into the field, part of  
12 that is you're doing the evaluations yourself, correct?

13 A. Yes, with a doctor that -- in training.

14 Q. And then a function that's performed while you're  
15 doing these evaluations is mentoring the trainee, for want of  
16 a better expression, as to the appropriate way to handle these  
17 situations?

18 A. Yes, sir.

19 Q. And you said you've done that five times in Syria?

20 A. On the Syrian border.

21 Q. Or in the vicinity of Syria?

22 A. Yes.

23 Q. Have you done any -- that sort of training

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 internationally in any other location or at any other  
2 location?

3 A. I've done trainings in Kyrgyzstan, in Tajikistan, in  
4 Kazakhstan, and I did a broad training in Istanbul that  
5 included doctors from the MENA region.

6 Q. The MENA region?

7 A. The East North Africa region.

8 Q. The training that you described now or that you  
9 described before as happening in the vicinity of Syria, that's  
10 also the training that you conducted at these other locations?

11 A. Right. And this is in conjunction with Physicians  
12 for Human Rights, an organization I was working for.

13 Q. And that -- and you've also done, as you indicated  
14 before, that sort of training in the United States?

15 A. Yes, I have. In addition, I do a yearly medical --  
16 or, I'm sorry, a continuing legal education course for  
17 immigration judges and immigration attorneys that's broadcast  
18 nationally.

19 Q. Dr. Crosby, in -- just one second. Dr. Crosby, I'll  
20 wait until you're done drinking.

21 What's the Defense Health Board?

22 MJ [COL POHL]: I'm sorry. Could you repeat the question?

23 ADDC [MAJ HURLEY]: Certainly, sir.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

*UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT*

1 Q. Dr. Crosby, what's the Defense Health Board?

2 A. The Defense Health Board is -- I mean, a broad part  
3 of the Office of the Assistant Secretary of Defense that has a  
4 Subcommittee on Medical Ethics, which I assume you're asking  
5 me about, because that's the branch that I'm familiar  
6 with ----

7 Q. Right.

8 A. ---- which examines medical ethical issues in the  
9 military.

10 Q. Have you been invited to participate in panel  
11 discussions or group discussions at the Defense Health Board?

12 A. I have been invited on two occasions to make  
13 presentations in the Subcommittee on Medical Ethics.

14 Q. Were those presentations related to the treatment of  
15 detainees in Guantanamo Bay?

16 A. They were related to medical ethics in Guantanamo,  
17 specifically on hunger strikes, yes.

18 ADDC [MAJ HURLEY]: Your Honor, the defense offers  
19 Dr. Crosby as an expert in the field of diagnosis and  
20 treatment of torture as well as the appropriate standard of  
21 medical care for torture survivors based on her training and  
22 education as a doctor and her years of experience in treating  
23 torture victims.

*UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT*

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 MJ [COL POHL]: Trial Counsel, do you wish to inquire or  
2 object?

3 ATC [LT DAVIS]: Yes, Your Honor. The government does  
4 have an objection and would request to voir dire the witness.

5 MJ [COL POHL]: Go ahead.

6 **INDIVIDUAL VOIR DIRE EXAMINATION**

7 **Questions by the Assistant Trial Counsel [LT DAVIS]:**

8 Q. Good morning, Dr. Crosby.

9 A. Good morning.

10 Q. I believe you testified earlier that you are an  
11 internist by training; is that correct?

12 A. Yes.

13 Q. And specializing in internal medicine?

14 A. That is correct.

15 Q. So you are not a psychologist?

16 A. That is correct, sir.

17 Q. And you are not a psychiatrist?

18 A. I'm not either a psychologist or a psychiatrist.

19 Q. Okay. Have you ever been hired as an expert  
20 consultant in the field of clinical psychology?

21 A. No, sir.

22 Q. What about in the field of clinical psychiatry?

23 A. No, sir.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. What about in the field of forensic psychology?

2 A. No, sir.

3 Q. The field of forensic psychiatry?

4 A. It depends on how you define these fields. If they  
5 relate to torture, I have been hired as an expert to document  
6 both the medical and psychological effects of torture.

7 Q. I understand that, but you have never been hired as  
8 a forensic psychiatrist?

9 A. I'm not a psychiatrist, so no.

10 Q. Okay. And you discussed that you have been  
11 qualified to testify -- I wasn't particularly clear in what  
12 area of expertise, but if we could clarify that a little bit.  
13 Have you ever been qualified to testify as an expert in the  
14 field of clinical psychology?

15 A. Sir, I have been qualified in Boston Immigration  
16 Court to give testimony on an individual's ----

17 Q. In clinical psychology?

18 MJ [COL POHL]: Let her answer the question.

19 A. About people's psychological and psychiatric  
20 diagnoses and treatment, so I have been qualified as an expert  
21 in the mental health diagnoses, yes.

22 Q. Okay. But not in clinical psychology?

23 A. That question doesn't make sense.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. Have you been qualified in clinical psychiatry?

2 MJ [COL POHL]: Lieutenant, she is not a psychologist.

3 She is not a psychiatrist. I got it.

4 Q. Dr. Crosby, people generally study for years to be  
5 trained to provide psychotherapy; is that right?

6 A. To -- I'm sorry, to deliver psychotherapy treatment?

7 Q. Yes.

8 A. There's certainly a standard training program.

9 Q. And states generally have licensing requirements?

10 A. I'm not a psychologist. I assume they do. I don't  
11 know the licensing requirements for psychologists.

12 Q. So in the work that you do, when there may be  
13 evidence of the -- of psychiatric or psychological trauma, you  
14 would work in conjunction with a psychologist or psychiatrist?

15 A. For -- can you specify whether you mean diagnosis or  
16 treatment?

17 Q. For the treatment.

18 A. For the treatment I would attempt, yes. So that  
19 would be preferable. I would try to work in conjunction with  
20 a mental health specialist. It could be a clinical licensed  
21 social worker. It does not have to be a psychologist or  
22 psychiatrist.

23 Q. Okay. Because they have a different area of

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 expertise than you do, right?

2 A. They have an expanded area of expertise in  
3 treatment, yes.

4 Q. Okay. So you specifically have never provided  
5 psychotherapy for patients with PTSD?

6 A. No, sir, that's not true. There are many patients  
7 in my practice who come from cultural backgrounds who don't  
8 want to be referred to a psychiatrist or psychologist because  
9 it's stigmatizing. In our primary care world, in my world, I  
10 provide treatment for PTSD, for depression, for anxiety.

11 Q. Okay. But on a more limited basis, right?

12 A. It depends on the patient.

13 Q. Okay. Well, you testified previously that a  
14 psychiatrist or psychologist would have an expanded ----

15 A. That's right.

16 Q. ---- experience level. So they would be able to do  
17 things that you wouldn't?

18 A. So for a complicated patient, I would certainly  
19 refer to a psychologist, psychiatrist or clinical social  
20 worker. Sometimes patients don't want to go.

21 Q. And referring to patients that may currently be in  
22 confinement, have you ever provided therapy, psychotherapy to  
23 a patient that is currently in confinement?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1           A.       I don't provide complicated forms of psychotherapy  
2 such as cognitive behavioral therapy processing. I do  
3 counseling. I help people through narrative counseling and  
4 some biofeedback and things like that, but, no, I don't do  
5 complex psychotherapy.

6           Q.       And you are aware that the defense has been  
7 appointed an expert in psychology?

8           A.       Yes.

9           Q.       Okay. Would you not agree that he would be in a  
10 better position to address the standard of care when it comes  
11 to psychological or psychiatric treatment?

12          MJ [COL POHL]: Lieutenant, does this go to her  
13 qualifications as an expert or a cross-examination question if  
14 she provides an opinion?

15          ATC [LT DAVIS]: Yes, sir, Your Honor. I think it goes to  
16 both.

17          MJ [COL POHL]: Well, I don't think it does. Move on to  
18 something else.

19 **Questions by the Assistant Trial Counsel [LT DAVIS]:**

20          Q.       And speaking ----

21          ATC [LT DAVIS]: Can I have a moment, Your Honor?

22          MJ [COL POHL]: Sure.

23          Q.       Dr. Crosby, you testified on direct about some of

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

*UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT*

1 the travel that you have done and the patients that you've  
2 worked with and the Istanbul protocol and things along those  
3 lines.

4 A. Yes, sir.

5 Q. That is primarily -- as I understand it, that's  
6 primarily focused on the documentation of the effects of  
7 torture; is that right?

8 A. The Istanbul Protocol is focused on the  
9 documentation of the effects of physical and psychological  
10 torture, yes.

11 Q. And so it's not -- the work that you've done is more  
12 on the documentation side as opposed to the actual treatment  
13 side?

14 A. No, sir, that's not correct. I have a full clinical  
15 practice of torture survivors that I treat on a daily  
16 basis ----

17 Q. Okay.

18 A. ---- since -- for 15 years.

19 Q. Right. Focusing more on the physical side?

20 A. On both. In torture survivors it is very difficult  
21 to separate physical and psychological because they go  
22 together.

23 Q. Okay. I'm trying to get a sense of the parameters

*UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT*

*UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT*

1 of this -- of the field of studying and treating victims of  
2 torture. Are there certain publications that focus on this  
3 field?

4 A. Yes, sir. And I have provided them to the court as  
5 far as I know. I have actually been the author of a number of  
6 these publications.

7 Q. And are there degree programs in this field?

8 A. In what field particularly? In medical forensics  
9 or ----

10 Q. Well, certainly there is a medical forensics, but as  
11 far as the documentation and treatment of torture victims.

12 A. There are not currently degree programs. That is  
13 something that I am trying to pioneer within the United  
14 States, and have co-founded and I co-direct the Forensic  
15 Medical Evaluation Group at Boston University, which one of  
16 our aims is pushing forward to create an actual certificate  
17 program in this field.

18 Q. So this is an emerging field?

19 A. Yes, it is, sir.

20 Q. And you are heading up that fight; is that right?

21 A. Yes, sir.

22 Q. What -- you talked about a certificate program.

23 What would that consist of? How would somebody qualify for

*UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT*

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 that?

2 MJ [COL POHL]: Lieutenant, what does that got to do with  
3 her current qualifications?

4 ATC [LT DAVIS]: Your Honor, the defense has offered her  
5 as an expert in this field, and it's quite an undefined field.  
6 So by describing the process by which somebody might gain  
7 certification, I'm trying to get a sense of.

8 MJ [COL POHL]: Someone might gain this hypothetical  
9 certification that currently doesn't exist. That's what we're  
10 talking about?

11 ATC [LT DAVIS]: Apparently it's in the works, Your Honor,  
12 and I think it lays out kind of what exactly this field is, or  
13 maybe it doesn't. But from the government's position, this is  
14 an amorphous field that we're trying to get some -- some  
15 specifics on.

16 MJ [COL POHL]: I'll give you some leeway, but we're  
17 talking about her qualifications. Okay? We're not talking  
18 about qualifications of other potential students in the  
19 future. It's her qualifications to give an expert opinion on  
20 what it's being offered as.

21 ATC [LT DAVIS]: Yes, sir.

22 MJ [COL POHL]: Okay. Go ahead.

23 Questions by the Assistant Trial Counsel [LT DAVIS]:

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. So, ma'am, I'll repeat the question. When we're  
2 talking about this potential certificate program, what would  
3 go into somebody being able to obtain a certificate like that?

4 A. All right. Well, it depends -- this could be a long  
5 conversation, so ----

6 MJ [COL POHL]: Could you give the short, Reader's Digest  
7 version?

8 WIT: I will try to do that.

9 A. Certainly there are programs that teach  
10 documentation of torture and ill treatment, both physical and  
11 psychological, based on the Istanbul Protocol. I have been  
12 involved in those programs. There are a group of experts in  
13 the United States who are recognized nationally and  
14 internationally as experts in the documentation of torture and  
15 ill treatment. I'm one of those experts.

16 I'm not sure the other part of your question is  
17 actually relevant, but I'll answer it. My aim is to actually  
18 create -- to create a subspecialty in medical forensics and  
19 documentation of torture. That's something that's probably  
20 ten years down the road. But I'm not sure how it's relevant  
21 here today.

22 ATC [LT DAVIS]: Can I have a moment, Your Honor?

23 Your Honor, the government has no more questions,

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 but the objection -- and it really goes to the extent of the  
2 opinion that this expert is going to provide. From the  
3 defense's brief, it appears that she is going to offer opinion  
4 testimony about what the proper standard of care would be when  
5 it comes to psychiatric or psychological treatment, and it  
6 would be the government's position that she does not have the  
7 background or the expertise in that.

8           If the defense wants to go into what physical  
9 findings she may have made or what diagnoses she may have come  
10 up with, that would certainly -- she would seem to be  
11 qualified in that area. But when we're crossing over into  
12 this realm of psychiatry or psychology or what type of  
13 treatment the accused should be receiving, it's the  
14 government's position that she doesn't have the expertise.

15           And I would refer you, Your Honor, to  
16 Appellate Exhibit 205G, and there's two attachments to that,  
17 Alpha and Bravo. In Alpha that would be the defense's request  
18 to have Dr. Crosby appointed as an expert in the case to the  
19 convening authority. And in that they specifically say that  
20 her role is to evaluate the physical effects of torture.  
21 There's a footnote in that request which states that  
22 Dr. Crosby is unable to conduct a mental health evaluation.

23           And then you take a look at the subsequent request,

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 which is for Dr. Rosenfeld. Dr. Rosenfeld is requested to do  
2 the mental health evaluation. And it's also stated in there  
3 that not only is he going to do the mental health evaluation,  
4 but he will be able to -- or the idea is that he might be able  
5 to obtain evidence and analyze what the course of treatment is  
6 or should be on the psychological or psychiatric side of  
7 things.

8           So while the government doesn't object to  
9 Dr. Crosby's qualifications in certain areas, if this starts  
10 going off the rails and going into an area that she clearly  
11 doesn't have the expertise in providing actual treatment for  
12 complicated cases of PTSD involving all of the particular  
13 types of treatment that a psychologist or psychiatrist would  
14 provide, that's where the government's main objection lies.

15           MJ [COL POHL]: Okay. Thank you.

16           An expert may be qualified both by training and  
17 experience and based on her training and experience. She is  
18 accepted as an expert in the diagnosis and treatment of  
19 victims of torture with the caveat, as she said herself, that  
20 complicated treatment plans would probably be more appropriate  
21 by a psychiatrist or a psychologist. If we get to that line,  
22 we will address it at that time, but your basic objection  
23 really goes to whether she testifies outside her scope of

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 expertise.

2 So that being said, Major Hurley.

3 **DIRECT EXAMINATION CONTINUED**

4 **Questions by the Assistant Detailed Defense Counsel**

5 **[MAJ HURLEY]:**

6 Q. Dr. Crosby, if we get to the point where you feel we  
7 need to take a break, just let us know.

8 A. I'm fine. Thank you.

9 Q. Dr. Crosby, what did you consider -- let me first  
10 ask this question generally. I apologize.

11 Do you have an opinion to a reasonable degree of  
12 medical certainty regarding whether or not Mr. Nashiri is a  
13 victim of torture?

14 A. I do have an opinion.

15 Q. What is that opinion?

16 A. I believe that Mr. al Nashiri has suffered torture,  
17 physical, psychological and sexual torture.

18 Q. Now, before we talk in detail about how you arrived  
19 at that opinion, first I'm just going to go over -- it's been  
20 an hour, and I'm going to re-establish the idea that if I ask  
21 you a question that calls for a classified response, that you  
22 will let me know before you say any classified information.

23 All right?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 A. Yes, sir.

2 Q. All right. So before we get into -- in detail  
3 discussion of your opinion, do you have any concerns about  
4 this testimony occurring in the presence of Mr. Nashiri?

5 MJ [COL POHL]: Wait a minute. Let me make sure I  
6 understand why this witness is being called. You can stay  
7 behind the mic. The defense motion was current diagnosis and  
8 adequacy of current treatment.

9 ADDC [MAJ HURLEY]: Yes, sir.

10 MJ [COL POHL]: Okay? Okay?

11 ADDC [MAJ HURLEY]: Yes, sir.

12 MJ [COL POHL]: You called this witness.

13 ADDC [MAJ HURLEY]: Certainly did.

14 MJ [COL POHL]: And now you're -- you've got an opinion on  
15 the causation, if you want to call it that. You can ask an  
16 opinion of current conditions, current diagnosis, and adequacy  
17 of current treatment. That's the issue before me.

18 ADDC [MAJ HURLEY]: Yes, sir.

19 MJ [COL POHL]: Okay. Now, I just want to make sure that  
20 you understand this. So whether or not Mr. Nashiri wants to  
21 hear this or not, I don't see how that goes to those issues.

22 ADDC [MAJ HURLEY]: Sir, my response to that would be  
23 it's -- Dr. Crosby has had interaction over the course of this

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 week with Mr. Nashiri, and that that interaction informs -- or  
2 continues to inform her diagnosis as an evaluator -- an  
3 evaluator in this case, and that we believe that's relevant  
4 for her to establish, at the outset, because it does require  
5 her to give an opinion with respect to this interaction that  
6 she had with Mr. Nashiri this week.

7 MJ [COL POHL]: Do you propose to introduce what happened  
8 in the interaction?

9 ADDC [MAJ HURLEY]: Sir, we propose to -- yes, sir, we  
10 propose to introduce what happened in the interaction.

11 MJ [COL POHL]: Okay. Let me see -- perhaps you and I are  
12 misunderstanding what an opinion witness does.

13 ADDC [MAJ HURLEY]: All right, sir.

14 MJ [COL POHL]: The proponent of an opinion witness gets  
15 the opinion. Okay. The proponent of an opinion witness does  
16 not get into specific instances of the basis of said opinion.  
17 Am I misunderstanding what the rules are?

18 ADDC [MAJ HURLEY]: No, sir, I think you adequately  
19 understand what the rules are.

20 MJ [COL POHL]: Okay. So as long as you're talking about  
21 opinion, current diagnosis, which is what you've asked for her  
22 to give, opinion on current treatment and inadequacy of  
23 current treatment, I'm good.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1           But you are drifting down -- almost your first  
2 question is factual predicates, and that's not -- the  
3 proponent of an opinion witness, as I read the rules, isn't  
4 permitted to do that.

5           ADDC [MAJ HURLEY]: Well, certainly, sir, she's entitled  
6 to -- I guess we are at a misunderstanding. It's the position  
7 of the defense that the doctor is entitled to discuss how she  
8 arrived at that conclusion, that it wasn't just some -- it  
9 wasn't by ----

10          MJ [COL POHL]: She is allowed to generically say what she  
11 looked at, like I've read records, I interviewed the accused.  
12 Generically. That's it. That's the way I read that rule.  
13 She cannot say, I talked to the accused and he said X, and  
14 that's why I got this conclusion, or I read this piece of  
15 paper, or I know this fact.

16          ADDC [MAJ HURLEY]: It's the position of the judge -- or  
17 the judge of this case ----

18          MJ [COL POHL]: That's what the rule says. Am I  
19 misreading the rule, the opinion evidence rule?

20          ADDC [MAJ HURLEY]: No, sir, I think you're appropriately  
21 apprehending the opinion evidence rule. What -- it's the  
22 position of the defense is that this is the -- an explanation  
23 on direct examination by the proponent to further -- to

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 further describe the basis of the opinion so that you can  
2 understand it and give it the validity or the lack of validity  
3 that it deserves.

4 MJ [COL POHL]: Other than what I just discussed about a  
5 generic discussion of what it was based on, you want to go  
6 into more detail than that?

7 ADDC [MAJ HURLEY]: No, sir.

8 MJ [COL POHL]: Okay. Well, with those parameters -- but  
9 understand what I'm saying, specific instances or specific  
10 things are not appropriate for the proponent of an opinion.  
11 That's not what you called her for. What you called her for,  
12 in your motion, was current diagnosis and current and adequate  
13 treatment. Okay.

14 ADDC [MAJ HURLEY]: Yes, sir.

15 MJ [COL POHL]: Okay.

16 ADDC [MAJ HURLEY]: So if the government on  
17 cross-examination questions the basis of her opinion, then we  
18 get to inquire into those areas?

19 MJ [COL POHL]: If we -- I'm not going to have a -- the  
20 rule says what the rule says. The rule says that the  
21 proponent of an opinion evidence is allowed to get the  
22 opinion. The opponent, if they wish to test the basis by  
23 specific facts, they can. Okay?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 ADDC [MAJ HURLEY]: Yes, sir.

2 MJ [COL POHL]: If they say something in cross-examination  
3 that may open the door for you. I don't know because I have  
4 not heard the cross.

5 It's just the rule straight out of the book. I  
6 mean, I'm not sure why this is -- we are apparently talking  
7 across each other. But let's just end this discussion. Those  
8 are the parameters that we are going to operate under on your  
9 direct examination. You may proceed.

10 ADDC [MAJ HURLEY]: Yes, sir. Thank you.

11 **Questions by the Assistant Detailed Defense Counsel**

12 [MAJ HURLEY]:

13 Q. Dr. Crosby, what, in general terms, did you consider  
14 in arriving at the conclusion that you just gave to Colonel  
15 Pohl?

16 A. I considered multiple things, some of which are  
17 classified and I can't discuss, and those include records that  
18 are classified. Those include multiple conversations and  
19 evaluation of Mr. al Nashiri. Those include my observations  
20 of Mr. Nashiri.

21 Q. Did you review the medical records, or portions at  
22 least, of the medical records?

23 A. I have reviewed portions of the unclassified medical

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

*UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT*

1 records.

2 Q. Did you -- and you said that you also reviewed  
3 classified records?

4 A. Yes, sir.

5 Q. Let's talk about the examination that you conducted.  
6 You indicated to Colonel Pohl before the components of a  
7 forensic evaluation exam ----

8 A. Yes, sir.

9 Q. ---- do you recall that?

10 Did you follow -- did you hit those components in  
11 your conversations with Mr. Nashiri?

12 A. I did hit those components, yes.

13 Q. And the first component, as I recall, is the  
14 development of rapport?

15 A. Yes, sir.

16 Q. The second one is -- in your development of rapport,  
17 did that take any particular longer period of time with  
18 Mr. Nashiri?

19 A. Certainly, with survivors of torture, trust has been  
20 broken and it is often difficult to establish rapport.  
21 Certainly, the circumstances at Guantanamo and culture,  
22 language also can be obstacles to rapport building. But, yes,  
23 to the degree that I could, I feel that I established a

*UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT*

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 reasonable rapport.

2 Q. After you've established rapport, the next -- or one  
3 thing to do at some point in the evaluation process early on  
4 is to obtain the informed consent of the evaluatee; is that  
5 correct?

6 A. That's right.

7 Q. Did you obtain Mr. Nashiri's informed consent?

8 A. I did obtain Mr. Nashiri's informed consent.

9 Q. The next process is taking a detailed torture  
10 history, is that -- or another portion of the examination is  
11 taking a detailed torture history?

12 ATC [LT DAVIS]: Objection, Your Honor, leading.

13 MJ [COL POHL]: Overruled. In this type of situation,  
14 leading questions are probably better to avoid a responsive  
15 answer that may go into classified material.

16 A. Thank you.

17 Q. Yes, sir.

18 A. Yes, sir. It's history, all the while making  
19 observations of the person's behavior, their affect, and  
20 certainly obtaining a detailed history is critical to the  
21 evaluation.

22 Q. Is it more or less critical than it is in any other  
23 clinical or forensic environment? Or is obtaining an adequate

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 history always important?

2 A. It's always important.

3 Q. Obviously, this may touch on classified information,  
4 so I'm not -- I don't want to get into the substance of  
5 what -- of anything that was conveyed to you by Mr. Nashiri,  
6 but was it -- describe the process of taking Mr. Nashiri's  
7 history, his patient history, without getting into classified  
8 material.

9 MJ [COL POHL]: Did you take a patient history from him?

10 WIT: I took a patient history from Mr. Nashiri.

11 MJ [COL POHL]: That's enough.

12 WIT: I ----

13 MJ [COL POHL]: No, you're done on that question.

14 WIT: It's classified.

15 ADDC [MAJ HURLEY]: Yes, sir.

16 **Questions by the Assistant Detailed Defense Counsel**

17 [MAJ HURLEY]:

18 Q. And then after that, you took a symptoms inventory  
19 from Mr. Nashiri?

20 A. Yes, I did.

21 Q. And then after that, you did a physical exam of  
22 Mr. Nashiri?

23 A. I did perform a physical exam. I did not do --

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 things were -- you know, I got all of the components done, but  
2 in the best order I could.

3 Q. Right. So your answer, if I may clarify it,  
4 Dr. Crosby, is -- I was in the phrasing of my question making  
5 it seem like a sequential process, but it really -- it's not a  
6 sequential process. It's just a process that has certain  
7 tasks that need to be performed?

8 A. Exactly. Yes, sir.

9 Q. Describe briefly for Colonel Pohl the process of  
10 conducting a physical examination of the type that you would  
11 conduct in a forensic evaluation.

12 ATC [LT DAVIS]: Objection, Your Honor, relevance. The  
13 basis of this motion is the adequacy of the training with  
14 regard to his PTSD and depression. It states it right at the  
15 top of the motion the relief requested. Getting into the  
16 physical findings is not relevant.

17 MJ [COL POHL]: As discussed earlier, do I need to know  
18 the details of everything that was done? Aren't we getting  
19 into what I just discussed with you? I mean, you said, did  
20 you conduct a physical exam, did you conduct this exam. The  
21 answer is yes, yes, yes. Okay. Fine. I don't know that --  
22 we're sliding right into what I just discussed with you.

23 ADDC [MAJ HURLEY]: Sir, first I would say we -- this is a

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 barebones explanation of what this expert did in order to  
2 inform her opinion. So it's not -- this isn't in any sort of  
3 detail. It's you conducted an examination, how did that  
4 examination occur. I did this and I did that.

5 MJ [COL POHL]: Okay. I'll give you a little limited --  
6 the objection is overruled. I'm going to give you some leeway  
7 on this, but you're drifting close to things that an opinion  
8 witness doesn't need to say or should say. I'm still waiting  
9 for the opinion you've asked for. I haven't gotten that.  
10 That's what you called her for.

11 ADDC [MAJ HURLEY]: Yes, sir. You've -- I asked her, do  
12 you have an opinion ----

13 MJ [COL POHL]: No, no.

14 ADDC [MAJ HURLEY]: ---- what is it.

15 MJ [COL POHL]: You asked her opinion of whether or not he  
16 was subject to torture.

17 ADDC [MAJ HURLEY]: Right.

18 MJ [COL POHL]: That's not what I understand -- maybe I  
19 misread your motion. I thought your motion was current  
20 diagnosis of physical/psychological problems and inadequacy of  
21 current treatment.

22 ADDC [MAJ HURLEY]: Yes, sir.

23 MJ [COL POHL]: All the other -- the opinion that was

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 given to me was an opinion of what he may have experienced  
2 previously. That's not a current diagnosis of anything.

3 ADDC [MAJ HURLEY]: But she ----

4 MJ [COL POHL]: It's simply a statement of -- in her view,  
5 of past treatment of Mr. Nashiri, but it's not a diagnosis  
6 of -- let's say -- unless I misunderstand the term diagnosis.  
7 And she simply stated that in her opinion he was subject to  
8 torture. Okay. Fine. That's not a medical condition, to my  
9 knowledge.

10 ADDC [MAJ HURLEY]: And, sir, I guess we are talking past  
11 each other, and ----

12 MJ [COL POHL]: Yeah. I just looked at what your motion  
13 said.

14 ADDC [MAJ HURLEY]: Right, sir. The point of what we're  
15 going through is to say this process was gone through. Now,  
16 has it informed an opinion as to whether or not there -- as to  
17 whether or not he suffered physical signs of torture or  
18 whether or not that's indicated? Yes, it is, I have that  
19 opinion.

20 MJ [COL POHL]: And she has given me that. She has given  
21 the opinion of whether or not he has suffered torture in the  
22 past. I've got that.

23 ADDC [MAJ HURLEY]: Yes, sir.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

*UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT*

1 MJ [COL POHL]: Okay. But that's not the issue before me.

2 ADDC [MAJ HURLEY]: So she is going to diagnose -- or,  
3 sir, she is going to continue to say he continues to have  
4 physical problems of as a result of the torture. Diagnosis.

5 MJ [COL POHL]: I'm asking for a current diagnosis.  
6 Rephrase that.

7 You asked this witness to provide a current  
8 diagnosis ----

9 ADDC [MAJ HURLEY]: Yes, sir.

10 MJ [COL POHL]: ---- and then an opinion about the  
11 inadequacy of current treatment ----

12 ADDC [MAJ HURLEY]: Yes, sir.

13 MJ [COL POHL]: ---- neither of which I have heard.

14 ADDC [MAJ HURLEY]: Sir, I got it.

15 MJ [COL POHL]: Do it in any order you want, but I'm just  
16 saying that that's the issue you wanted to raise.

17 ADDC [MAJ HURLEY]: Right.

18 MJ [COL POHL]: Go ahead.

19 ADDC [MAJ HURLEY]: Sir, what was the ruling on the  
20 government's objection? I've lost it.

21 MJ [COL POHL]: On the physical thing? I overruled it.

22 ADDC [MAJ HURLEY]: Yes, sir.

23 Questions by the Assistant Detailed Defense Counsel

*UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT*

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 [MAJ HURLEY]:

2 Q. Dr. Crosby?

3 A. Yes, sir.

4 Q. Could you describe how you conduct a physical  
5 examination in this environment?

6 A. In ----

7 ATC [LT DAVIS]: Objection, Your Honor, relevance. Again,  
8 this just goes to the basis.

9 MJ [COL POHL]: Overruled. Again.

10 Q. Do you -- let me do some leading questions, all  
11 right, which may help.

12 Do you visually observe the person that you're  
13 evaluating?

14 A. Yes, sir. Visual observation is important.

15 Q. Likewise, do you physically touch the person that  
16 you're evaluating?

17 A. Yes. Head-to-toe physical examination.

18 Q. After you've done that, is there a component -- and  
19 did you do that with Mr. Nashiri?

20 A. Yes, sir, I did.

21 Q. Is there another component to the physical  
22 evaluation that we have not discussed that you performed with  
23 Mr. Nashiri?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1           A.       Head-to-toe complete systems exam, complete skin  
2 exam, looking for any signs of abnormalities or past  
3 indicators of trauma.

4           Q.       Just one second, Doctor.

5                    Doctor, and again with the admonishment regarding  
6 classified evidence, have you formed any diagnoses with  
7 respect to the physical -- you said he had been physically  
8 tortured, that he -- the physical aspects of torture that were  
9 suffered by Mr. Nashiri?

10          A.       I have, sir. And as I've said before, they're  
11 inseparable from some of the psychiatric complications.

12          Q.       Did you make physical findings that were consistent  
13 with the -- your diagnosis of torture?

14          A.       Yes, sir.

15          Q.       Now, I use that term "consistent with." Would you  
16 describe briefly for Colonel Pohl what that term "consistent  
17 with" means to you as a medical practitioner.

18          A.       Yes ----

19                    ATC [LT DAVIS]: Your Honor, objection, relevance.

20                    MJ [COL POHL]: Sustained. I can understand what  
21 consistent with means. Go ahead.

22          Q.       Have you had an opportunity -- and that was the  
23 diagnosis that you've -- that there are physical signs of --

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 or there are physical indicators of torture; is that correct?

2 A. There are physical indicators that are consistent  
3 with the classified allegations.

4 Q. Doctor, at any point -- and you met with Mr. Nashiri  
5 how many times?

6 A. I've made three visits to the base to see him, and  
7 I've seen him briefly this week, 30-plus hours, probably,  
8 total.

9 Q. Is that an adequate period of time to make not only  
10 any physical determinations but any psychological or  
11 psychiatric determinations?

12 A. It was enough time for me to reach my conclusions.

13 Q. And do you have a medical opinion -- or do you have  
14 an opinion, with a reasonable degree of medical certainty,  
15 regarding whether or not there are indicators of torture in  
16 Mr. Nashiri in his mental state?

17 A. Yes, sir, I do have an opinion.

18 Q. And what is that opinion?

19 A. That there is -- the evidence -- his psychological  
20 evidence is highly consistent with allegations of torture that  
21 are classified and that I cannot discuss.

22 Q. What is your specific finding with respect to  
23 Mr. Nashiri's mental state? What did you diagnose him with?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 A. Mr. Nashiri has post-traumatic stress disorder.

2 Q. Now ----

3 A. Chronic, more complex post-traumatic stress disorder  
4 that we often see in survivors of torture.

5 Q. Post-traumatic stress disorder, generally speaking,  
6 is a construct of western medicine; is that correct?

7 A. Generally speaking, yes.

8 Q. How does it fit -- or how difficult is it to make  
9 the diagnosis of post-traumatic stress disorder with people  
10 that are from other cultures or regions, such as Mr. Nashiri?

11 A. I see people with post-traumatic stress disorder  
12 from all over the world, many different cultures, religions.  
13 And essentially, there are clusters of symptoms that are  
14 similar and that make up the diagnostic criteria for  
15 post-traumatic stress disorder. And Mr. Nashiri meets that --  
16 those diagnostic criteria, although I can't specifically say  
17 what those criteria are, or I can't specifically say what  
18 Mr. Nashiri's symptoms are that meet the criteria.

19 Q. Doctor, did you form an opinion to a reasonable  
20 degree of medical certainty as to whether or not Mr. Nashiri  
21 was sexually tortured?

22 A. I did reach an opinion.

23 MJ [COL POHL]: We're talking -- again, now you're

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 getting -- I'm not going to do this again and again. Well,  
2 maybe I am. Okay.

3 We're talking about her opinion. Okay. Her opinion  
4 of his current status, current diagnosis. Okay.

5 ADDC [MAJ HURLEY]: That's what -- did you reach an  
6 opinion, what is that opinion, has anything changed.

7 MJ [COL POHL]: No, that's an opinion of a fact. All  
8 opinions -- an opinion that he currently suffers from PTSD,  
9 chronic PTSD, is a medical opinion, okay? That's what you're  
10 here for, what's the treatment therefor. That's what I'm  
11 limiting you to, okay, opinion of specific types of activity  
12 that may have caused it -- however you couch it is the same  
13 thing that I am not going to let you do, okay? So move to  
14 another question.

15 ADDC [MAJ HURLEY]: Okay.

16 MJ [COL POHL]: She is offering medical opinions -- let me  
17 make this clear -- medical opinions about current medical  
18 conditions. She has testified as to chronic PTSD. Okay.  
19 That's what you want. That's what you've asked for this  
20 witness for. Now you complain about -- you say he is not  
21 getting adequate treatment, which is the crux of the motion.  
22 Okay. So let's move into what you asked her to be. She has  
23 given a diagnosis of his problems. Now the question is what

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 is his current treatment and why it's inadequate.

2 ADDC [MAJ HURLEY]: Yes, sir.

3 **Questions by the Assistant Detailed Defense Counsel**

4 [MAJ HURLEY]:

5 Q. You said that your review of the entirety of this --  
6 these records of your opinions were based on your evaluation,  
7 your review of the medical reports, and your review of other  
8 classified information ----

9 A. Yes, sir.

10 Q. ---- is that right, Doctor?

11 Let's talk about the medical reports. The medical  
12 reports, these reports relate to Mr. Nashiri's time here in  
13 Guantanamo?

14 A. Yes, sir.

15 Q. And you've reviewed a number of these medical  
16 records?

17 A. Yes, sir.

18 Q. Have you ever seen an adequate trauma history in any  
19 of those medical records?

20 A. I have not seen a trauma history in any medical  
21 records that I have reviewed.

22 Q. The failure to include a trauma history, does that  
23 make that -- the treatment that Mr. Nashiri has received and

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 is receiving inadequate?

2 A. I would say yes, but let me -- let me explain.

3 Q. Explain it to Colonel Pohl, please.

4 A. People -- there are individuals coming from certain  
5 situations where clinicians must suspect trauma, violence,  
6 domestic violence, whatever it is.

7 People in prisons ----

8 MJ [COL POHL]: I'm going to ask you to stay near the  
9 microphone. I know he keeps telling you to look at me, but  
10 the court reporters appreciate it if you stay near the  
11 microphone.

12 A. People in prisons; people coming from countries that  
13 are engaged in civil war, like Syria; a woman coming from the  
14 Democratic Republic of Congo where rape is rampant; people who  
15 are opposition leaders, such as in Uganda. When you see  
16 patients from high-risk situations, it should raise a red flag  
17 in your head and you should initiate that trauma history. And  
18 it's not easy. People are reluctant. They're fearful. They  
19 may not want to tell you at first until they really trust you.

20 And, you know, I'll just, you know, give an example.  
21 A woman comes in to my office with bruises, with multiple ER  
22 visits for unexplained injuries, depression, not sleeping, not  
23 able to make eye contact, and I don't do a trauma history for

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 domestic violence. That would be substandard care. All of  
2 the red flags are there. I didn't do the history.

3 That is the exact same way that a torture history is  
4 warranted in high-risk populations in certain contexts, and  
5 the red flags are there in the medical record.

6 Q. What -- in your analogy of spousal abuse, you as the  
7 treating clinician didn't inquire into the spousal abuse. Did  
8 I understand your example correctly?

9 A. That if I didn't, it would be substandard care.

10 Q. What was not inquired into with respect to  
11 Mr. Nashiri?

12 A. Mr. Nashiri, as far as I know, it was known that he  
13 was kept in a black site. He was in a prison. There just is  
14 a baseline high prevalence of trauma and abuse in these  
15 situations.

16 MJ [COL POHL]: No. The question is not before you. The  
17 question before you is -- is what was not done in his current  
18 treatment plan -- I may be paraphrasing here -- that you  
19 believe should have been done?

20 A. A trauma history was not done, and it should have  
21 been done to make the diagnosis of PTSD.

22 Q. A trauma history that reflected all of his time in  
23 the custody of the United States government?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 A. Any -- any -- all of his time anywhere.

2 Q. Does the failure to take that history, does that  
3 fall below a minimum standard of care?

4 A. In my opinion, yes.

5 Q. How does this shortfall, this inadequacy affect  
6 Mr. Nashiri even today?

7 A. I can give what my current diagnoses are, right?

8 Q. Yes, you can.

9 A. Mr. Nashiri suffers from post-traumatic stress  
10 disorder that has not been addressed -- or it hasn't been  
11 diagnosed except for a brief period, or treated. He suffers  
12 from chronic pain. He suffers from anal-rectal complaints,  
13 and all of these are documented in the unclassified records.  
14 Multiple other physical complaints, headaches, chest pain,  
15 joint pain, stomach pain. These are all symptoms that are  
16 highly prevalent in people who have suffered torture and to  
17 have chronic PTSD. These are all kind of red flags.

18 And the fact that the medical record documents that  
19 Mr. Nashiri has had to some extent workups for these  
20 complaints that are appropriate, but nobody's put together the  
21 picture. It's like the elephant in the room. I believe  
22 there's a huge psychosomatic component to a lot of his current  
23 physical suffering and psychological suffering that is related

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 to his torture that was never diagnosed.

2 Q. Do you know whether that diagnosis was -- that  
3 failure to diagnose was a deliberate choice or a negligent  
4 choice? Can you make ----

5 ATC [LT DAVIS]: Objection, calls for speculation.

6 MJ [COL POHL]: Sustained.

7 ADDC [MAJ HURLEY]: She is an expert that can make --  
8 apply her expertise to a diagnosis and say I find this to be a  
9 deliberate cause or merely a negligent cause or, Major Hurley,  
10 I don't know the answer to that question. I mean, she is,  
11 after all, an expert that's reviewing a medical record, sir.

12 MJ [COL POHL]: That's beyond the scope of her expertise.  
13 Objection sustained. Next question.

14 **Questions by the Assistant Detailed Defense Counsel**

15 [MAJ HURLEY]:

16 Q. Let's talk about that PTSD example that you  
17 discussed. And this goes to the inadequacy of the patient  
18 history from Mr. Nashiri, right? The diagnosis of PTSD in  
19 March of 2013 is what I'm talking about.

20 A. Okay.

21 Q. And ----

22 A. What's your question?

23 Q. My question is, have you reviewed records that

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 indicate Mr. Nashiri was diagnosed by a Guantanamo doctor as  
2 having PTSD in March of 2013?

3 A. Yes, I did see that medical record.

4 Q. And that diagnosis was that -- let me stop that  
5 question and I ask another one.

6 Did you ever see that diagnostic medical record,  
7 that one in March of 2013?

8 ATC [LT DAVIS]: Objection, relevance. Again, the scope  
9 is the current treatment, current diagnosis. We're now  
10 talking about 2012-2013.

11 MJ [COL POHL]: What's the relevance?

12 ADDC [MAJ HURLEY]: We're talking about -- this happened  
13 in 2013, sir, and the relevance is the standard of care that  
14 Mr. Nashiri has received. It's this is an indication of it.

15 MJ [COL POHL]: Where was that diagnosis located?

16 ADDC [MAJ HURLEY]: Guantanamo Bay, Cuba.

17 MJ [COL POHL]: No, no, no, no.

18 ADDC [MAJ HURLEY]: In his medical records.

19 MJ [COL POHL]: As part of what? As part of the 706 exam  
20 or part of something else?

21 ADDC [MAJ HURLEY]: It was part of something else.

22 MJ [COL POHL]: Okay. So the question -- okay. I'll  
23 overrule the objection, if you want to establish he had PTSD

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 in 2013 -- but, again, let's get to the issue before me.

2 ADDC [MAJ HURLEY]: Yes, sir.

3 MJ [COL POHL]: She is -- the witness has testified that  
4 he has PTSD and argue -- did you see the diagnosis in 2013  
5 that he had the PTSD in the medical records?

6 WIT: Yes, I saw it in the unclassified record.

7 MJ [COL POHL]: Okay. She has seen that. She has  
8 discussed the inadequacy of the current treatment plan.

9 ADDC [MAJ HURLEY]: Right. This is a recent indicator,  
10 March of 2013, and, sir, maybe I just ought to ask the witness  
11 questions and you can decide whether or not this is relevant  
12 for you. Because I think you will see its relevance in a  
13 second.

14 MJ [COL POHL]: Okay.

15 **Questions by the Assistant Detailed Defense Counsel**

16 [MAJ HURLEY]:

17 Q. You've reviewed that record?

18 A. Yes, sir.

19 Q. Does it contain an adequate foundation for the  
20 diagnosis of PTSD, in your medical opinion?

21 A. No, it did not. The diagnosis appeared, but there  
22 was no -- there was no history about what the trauma was,  
23 which is the number one criterion for diagnosing PTSD, and

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 there was no listing of symptoms that Mr. Nashiri was  
2 exhibiting that would meet criteria for PTSD. Although he had  
3 the diagnosis, the foundation was not clearly laid.

4 Q. Was there ever a diagnosis before 2013 of PTSD?

5 A. In the unclassified records?

6 Q. Yes.

7 A. Not to my knowledge, but I -- not to my knowledge.

8 Q. In March of 2013, do you know whether or not the 706  
9 board, the Mental Health Status Board, had published its  
10 findings with respect to Mr. Nashiri?

11 A. Yes, I do, sir. I reviewed it.

12 Q. And that occurred, to your knowledge, in March of  
13 2013?

14 A. Yes, sir.

15 Q. So this change in diagnosis from the Guantanamo Bay  
16 doctors happened the same month as the publication of the 706  
17 board?

18 A. It appears so.

19 Q. It appears that way based on the dates that you  
20 observed on the document?

21 A. Yes, sir.

22 Q. All right. Now, that diagnosis of PT -- that  
23 diagnosis changed, didn't it?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 ATC [LT DAVIS]: Objection, relevance.

2 MJ [COL POHL]: Well, it's been asked and answered. The  
3 objection is overruled, but it's been asked and answered.

4 ADDC [MAJ HURLEY]: Asked and answered?

5 MJ [COL POHL]: Yeah, she just said it changed. You just  
6 asked her again. I got it.

7 ADDC [MAJ HURLEY]: Thank you, sir.

8 MJ [COL POHL]: Go ahead.

9 **Questions by the Assistant Detailed Defense Counsel**

10 [MAJ HURLEY]:

11 Q. When did that change occur? That change occurred in  
12 March of 2014, didn't it?

13 A. So the record I reviewed from March 2014 did not  
14 have a diagnosis of PTSD, that is correct, yes.

15 Q. Do you recall what the diagnosis was?

16 A. I don't have it in front of me. I believe it was  
17 anxiety, not otherwise specified, and major depression in  
18 remission.

19 Q. Did that medical record have an adequate basis for  
20 the diagnosis that was included in the note?

21 A. Not in my opinion, and I will explain. My  
22 recollection of that note actually endorse symptoms that would  
23 be consistent with PTSD; however, they were not attributed to

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 PTSD. They were attributed to other causes.

2 So the note, quite frankly, as a clinician who sees  
3 lots of records and writes lots of records, didn't make sense  
4 to me.

5 Q. Based on your knowledge of Mr. Nashiri in this  
6 situation, did that March 2014 medical record comply with any  
7 appropriate standard of medical care?

8 A. As I said, the record didn't make sense. There was  
9 not a clear explanation about why the diagnosis was changed,  
10 and the foundation in the note did not support the change in  
11 diagnosis.

12 Q. When were you told that you were coming to  
13 Guantanamo Bay to testify in this case?

14 ATC [LT DAVIS]: Objection, relevance.

15 Q. Do you recall ----

16 MJ [COL POHL]: Overruled.

17 Q. Do you recall what month that happened?

18 A. It was last month, so that would have been March,  
19 2014.

20 Q. So this same month as you were ordered to come down  
21 here and testify, and in the same month the -- this new  
22 diagnosis was filed into Mr. Nashiri's medical file?

23 A. Yes, sir, appears so.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. Now, you testified before, as we were establishing  
2 your bona fides as an expert, that you worked with the Defense  
3 Health Board before?

4 A. Yes, sir.

5 Q. And in that work with the Defense Health Board, it  
6 was on medical ethics as they relate to Guantanamo Bay?

7 A. Yes, sir.

8 Q. And your first trip to see Mr. Nashiri was not your  
9 first trip to Guantanamo Bay?

10 A. No, sir.

11 Q. So you had been here before several times?

12 ATC [LT DAVIS]: Objection, relevance.

13 MJ [COL POHL]: I'll give him some leeway. The objection  
14 is overruled for now.

15 ADDC [MAJ HURLEY]: We'll cut to the chase right now.

16 A. Ten or 11 times.

17 Q. You're familiar with how often the medical staff  
18 turns over here in Guantanamo Bay?

19 A. Yes, sir.

20 Q. And that happens fairly frequently?

21 ATC [LT DAVIS]: Objection, leading.

22 MJ [COL POHL]: Overruled.

23 You may answer the question. Do you believe it

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 happens frequently?

2 WIT: My understanding is nine months, yes. That ----

3 MJ [COL POHL]: Okay.

4 WIT: That's frequent because of continuity of care  
5 reasons.

6 MJ [COL POHL]: Okay. Got it.

7 **Questions by the Assistant Detailed Defense Counsel**

8 [MAJ HURLEY]:

9 Q. Does this staff turnover rate make continuity of  
10 care here on Guantanamo Bay difficult?

11 A. In my opinion, it does, and you know, one of -- just  
12 one of the basic tenets of caring for traumatized patients,  
13 people with PTSD, is having an established, ongoing  
14 therapeutic trusting relationship, and changing so often, I --  
15 is disruptive to care, and can certainly be adverse to the  
16 patient.

17 Q. In your examination or your evaluation of  
18 Mr. Nashiri and your evaluation of all of the other documents,  
19 does this continuity of care, does it still affect him today?

20 A. I would have to reveal classified information to  
21 answer that question.

22 Q. Thanks.

23 MJ [COL POHL]: Don't answer it. Next.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. Now, let me just ask you this question straight  
2 away, Dr. Crosby: Do you have any idea how Guantanamo Bay  
3 doctors are trained?

4 A. No, sir, I do not. I -- I assume they graduate from  
5 medical school and residency like the rest of us. I don't  
6 know what specific training they might have before deployment  
7 to Guantanamo Bay.

8 Q. You've worked with military doctors before?

9 A. Yes, sir, I have.

10 Q. And on specific cases and in close capacities?

11 A. Yes.

12 Q. But you're not aware -- so that you understand that  
13 they are given not only their initial training as doctors but  
14 also continuing education in whatever field?

15 A. Correct, like all of us.

16 Q. Right. Like all clinicians and caregivers. But you  
17 have no idea how they're trained with respect to their  
18 deployments here to Guantanamo Bay?

19 A. I do not know what the specific curriculum is for  
20 training for doctors coming here specifically, no. I  
21 have ----

22 Q. Based on your review of the record, does that  
23 curriculum include taking an adequate trauma history?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1           ATC [LT DAVIS]:  Objection.  The witness has testified  
2 that she doesn't know what the training is.

3           MJ [COL POHL]:  Sustained.  She has already given an  
4 opinion about the lack of a trauma history in this particular  
5 case, and that's the only thing relevant to the issue before  
6 me.  Go ahead.

7           Q.       Dr. Crosby, you've made and you've discussed with  
8 the court your evaluations of Mr. Nashiri, correct?

9           A.       Yes, sir.

10          Q.       If you were free to treat Mr. Nashiri as a caregiver  
11 to participate in his treatment, what steps would you take in  
12 order ensure that his -- afflictions is the word I want to  
13 use, but that seems wrong -- his problems are adequately  
14 treated?

15          A.       My opinion is that Mr. al Nashiri's problems are  
16 complicated.  I believe strongly that he needs an experienced  
17 team which includes a psychologist or a psychiatrist who is  
18 experienced in the care of survivors of torture, in  
19 conjunction with either a primary care family doctor who also  
20 has experience in treating survivors of torture with a number  
21 of subspecialists to address specific complaints and concerns  
22 that he has.

23                   The level of treatment he needs is completely, you

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 know, beyond that of a primary care doctor. He needs a  
2 specialist in torture and trauma.

3 Q. Do you have any confidence that Mr. Nashiri will be  
4 given a specialist in torture and trauma to help him with his  
5 treatment?

6 ATC [LT DAVIS]: Objection, Your Honor.

7 MJ [COL POHL]: Sustained.

8 Q. Let's talk about the first time that you met with  
9 Mr. Nashiri. Do you recall your first trip down here to  
10 Guantanamo Bay for that purpose?

11 A. I do, sir.

12 Q. Your understanding of this meeting was that it was  
13 to be unshackled and unsupervised; is that right?

14 A. For the physical exam portion of the meeting, I was  
15 told there was an order that I would be able to examine  
16 Mr. al Nashiri unshackled and without guards in the room, yes.

17 Q. When you arrived here to Guantanamo Bay ----

18 ATC [LT DAVIS]: Objection, Your Honor, relevance.

19 MJ [COL POHL]: What's the relevance of this?

20 ADDC [MAJ HURLEY]: Sir, it goes to how the camp treats  
21 physicians and doctors, and if it's how they treat -- and so  
22 the offer proof that I would make is there was resistance from  
23 the leadership of the camp that that -- those -- the

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 preference of Dr. Crosby be followed and the order of this  
2 commission be followed.

3 MJ [COL POHL]: Well, objection overruled. You may ask  
4 the question.

5 **Questions by the Assistant Detailed Defense Counsel**

6 [MAJ HURLEY]:

7 Q. Was there resistance to the unshackled, unguarded  
8 meeting with Mr. Nashiri?

9 A. Yes, there was. I was ----

10 Q. From whom did that resistance come?

11 A. A representative from camp leadership told me that  
12 despite the court order, I would be unable to examine  
13 Mr. al Nashiri without shackles.

14 Q. What was your response to that?

15 A. That I would be unable to examine him at all,  
16 because I could not examine him properly if he were to remain  
17 in shackles.

18 Q. What was the next thing that the representative of  
19 the camp leadership told you?

20 A. They then came back and told me that if I examined  
21 him without shackles, I would have to have four guards in the  
22 room while he was being examined.

23 Q. How did you respond to this new restriction?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1           A.       I could not examine him with four guards in the  
2 room. That would be a violation of a privacy, and I would not  
3 be able to do an adequate examination.

4           Q.       What was the response of the camp leadership to  
5 that?

6           A.       Finally, it was my understanding that they would do  
7 me a favor and let me do this.

8           Q.       And were you able to ----

9           A.       And to let me examine him without shackles and to  
10 have the guards outside the room, which was the initial court  
11 order, and which is what I expected when I arrived.

12          Q.       As a medical caregiver, how did you feel as a result  
13 of this treatment?

14          ATC [LT DAVIS]: Objection, relevance.

15          MJ [COL POHL]: Sustained.

16          ADDC [MAJ HURLEY]: Your Honor, may we take a 15-minute  
17 break?

18          MJ [COL POHL]: How much more do you got?

19          ADDC [MAJ HURLEY]: I don't have very much more at all,  
20 sir, but I have a sense that I'm going to speak with  
21 Mr. Kammen on this topic.

22          MJ [COL POHL]: Okay. We will recess for 15 minutes.

23                    During the recess, Doctor, I don't want you to talk

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 to anybody during the recess.

2 WIT: Okay. Should I just sit here?

3 MJ [COL POHL]: No, you can sit out there, and if you need  
4 to do other things, that's fine, too. But just don't talk to  
5 anybody about your testimony until you come back in.

6 Commission is in recess for 15 minutes.

7 [The Military Commission recessed at 1033, 24 April 2014.]

8 [END OF PAGE]

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**