[The Military Commission was called to order at 1112, 27 April 2014.]

MJ [COL POHL]: Commission is called to order. All parties are again present that were present when the commission recessed.

Concerning the government request that this witness testify under a pseudonym, I want to begin by saying that this witness, like every witness on such a request, is considered on the merits of the individual witness. It's a witness-by-witness, case-by-case testify.

I want to begin by saying is, is that --

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

MJ [COL POHL]: Okay. Can you hear them now? Interpreters, can you hear me?

INT: Yes, Your Honor. Yes, Your Honor, the interpreters can hear you.

MJ [COL POHL]: That's really low.

INT: Your Honor, the interpreters can hear you fine.

MJ [COL POHL]: Yes, but we cannot hear you fine. It's much lower than it has been in the past. Can you turn up your volume?

TRANSLATOR: It's coming in, Your Honor, but it's very

faint. It's much better now.

MJ [COL POHL]: Okay. It appears to be fixed. Okay.

Let me just kind of repeat what I had said earlier, is that on the government request that the witness testify under a pseudonym, this, like all such requests, is a case-by-case, witness-by-witness determination. And I want to begin by simply saying is that as a general overall threat by the nature of the proceedings that it's not a sufficient basis, because, quite frankly, that could apply to almost any witness.

As far as this particular witness, given the nature of his past duties and the fact that he performed those duties without being identified to the detainees and the fact that he may return to those duties and that this is an interlocutory matter, the commission grants the government's motion for this witness to testify under a pseudonym.

That being said, please call the witness. Trial Counsel.

ATC [LT DAVIS]: Sir, this is Lieutenant Davis, one of the prosecutors in the case. Can you hear me okay?

WIT: Yes, I can.

[END OF PAGE]

DR. 97, U.S. Army, was called as a witness for the defense, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Assistant Trial Counsel [LT DAVIS]:

Q. For the record, you are Dr. 97?

A. Yes, I am Dr. 97.

Q. And could you please state your current duty station.

A. Fort Bliss, Texas.

Q. And, sir, I wanted to remind you that these proceedings are unclassified, so you are not to reveal any classified information. If you have any concerns that you may be getting into classified information, your default position should be that you do not disclose that. Do you understand that?

A. Absolutely.

ATC [LT DAVIS]: All right. Thank you. I'm going to turn you over to the defense counsel who is going to question you at this time.

WIT: Okay.

Questions by the Learned Defense Counsel [MR. KAMMEN]:

Q. Good morning, Doctor.

A. Good morning, sir.

Q. Thank you.

We understand that you are a psychiatrist; is that correct?

A. Yes, I am.

Q. And ----

A. Yes, sir.

Q. And how long have you been a member of the U.S. military?

A. U.S. military, 19 years, not all as a psychiatrist, though.

Q. How long have you been a psychiatrist?

A. Approximately seven years.

Q. And so I gather -- we don't have your CV.

So I gather that you interrupted your military career to attend medical school; is that correct?

A. That is correct.

Q. And then you went on and took, I presume, an internship and a residency; would that be fair to say?

A. Yes, that's correct.

Q. Then decided to specialize in psychiatry; is that correct?

A. Yes. My residency -- yes, the residency was in psychiatry, and then after that I became board certified by

the American Board of Psychiatry and Neurology in psychiatry.

Q. And when did you become board certified?

A. September 2012.

Q. So not quite two years?

A. Correct.

Q. And during all of your time in medical school -- and were you in the military or were you a civilian during that time and did you come back into the military?

A. During medical school, I was a civilian.

Q. Now, after returning to the military, when did you return to the military as a psychiatrist?

A. When I started my residency, my psychiatry residency in the summer of 2007.

Q. And after -- and you completed your residency, then, in approximately 2009; would that be fair to say?

A. No, it was the -- it was 2012, early 2012.

Q. So you were a resident until 2012; is that correct?

A. Yes ----

Q. During that time ----

A. ---- that is.

Q. And during that time from 2007 to 2012, your residency, were you stationed in the United States?

A. Yes, I was.

Q. All right. So you were not deployed overseas prior -- as a psychiatrist prior to 2012; is that correct?

A. Correct.

Q. All right. And you -- we understand that you were assigned here in Guantanamo Bay for a period of time; is that correct?

A. Yes, I was.

Q. What were the dates of your assignment, approximately?

A. Was October through a few days ago.

Q. October of 2013 ----

A. Of 2013, yes.

Q. ---- until?

A. Until April of -- April of 2014.

Q. And I assume your change -- your relocation to your present duty station had been planned for some time?

A. Well, I have returned back to the duty station I came from.

Q. But it had always been contemplated that you would leave on December 14th, or was that something that changed last week for some reason?

A. It was planned ----

MJ [COL POHL]: You said December 14th. Excuse me. You

said December 14th. You meant April?

LDC [MR. KAMMEN]: I meant April 14th. I apologize, thank you, Your Honor.

A. Yes, it was planned.

Q. Now, prior to -- just generally, prior to coming to Guantanamo, were you advised as to generally what the nature of your duties would be upon your arrival?

A. Yes.

Q. Okay. And I understand that you were part of what's called Task Force Platinum; is that correct?

A. Yes.

Q. All right. And so you were a psychiatrist assigned to Task Force Platinum during your time here?

A. Yes.

Q. And your ----

A. Yes.

Q. And the commander, as I understand it, but please correct me if I'm wrong, during most of your time here was Colonel Bogdan; is that correct?

A. He was the Joint Detention Group Commander, yes.

Q. And was the commander of Task Force Platinum?

A. He oversaw Task Force Platinum. He was not the Task Force Platinum Commander.

Q. Okay. Who did you report to?

A. I reported to the -- to two different entities. Being a psychiatrist, a physician, I reported to the Joint Medical Group Command as well as working at the camp that I was working at. I reported to the camp commander for that camp.

Q. Okay. And when you say the camp commander, do you mean the detention facility commander or some other ----

A. The detention facility commander, yes.

Q. All right. And is that detention facility commander a physician?

A. No.

Q. All right. Now, were you the only psychiatrist at Camp 7 during your time there or were there others? And just -- that's a yes or no, please.

A. Yes, sir.

Q. Okay. You were the only psychiatrist; is that correct?

A. Yes.

Q. And, generally, prior to -- let me ask you this question, and please answer it yes or no: Prior to -- have you, in conjunction with your duties, received any classified evidence with your -- excuse me. Let me make that question

more precise.

In conjunction with your duties as a psychiatrist assigned here at Guantanamo to Camp 7, have you received any classified evidence? And please -- information -- and please answer that yes or no.

A. Yes.

Q. Okay. We are -- all of the questions I'm going to ask you, we do not want you to reveal any classified information. And if you can't answer the question without getting close, please tell us, okay?

A. Sure, will do.

Q. Okay. Now, prior to your assignment here, were you given -- or after your assignment but prior to arrival here, were you given any information about the inmate population you would be treating?

A. Only superficially, that they were high-value detainees, and that's all I was told.

Q. Were you told what a high-value detainee -- what that designation meant?

A. No. No, sir.

Q. Now, after your arrival here, did you come to understand what the designation of a high-value detainee meant?

A. Yes, sir.

Q. And can you tell us what your understanding of a high-value detainee means, without revealing classified information?

MJ [COL POHL]: Doctor, if you're not sure whether it reveals classified information or not, don't say it. Do you understand the question?

WIT: Yes, Your Honor, I do.

MJ [COL POHL]: And the question is: Can you answer that question without revealing classified information?

WIT: I don't think I can make that -- I don't think I can, Your Honor.

MJ [COL POHL]: Okay.

Questions by the Learned Defense Counsel [MR. KAMMEN]:

Q. Now, did you -- I want to direct your attention to Mr. Nashiri, to the next question. Prior to meeting with Mr. Nashiri, did you understand that he had been previously in CIA custody?

A. I understood that he was somewhere before Camp 7, but it was not clear to me, and it officially has never been explained to me where. But I know that he was somewhere before coming to Camp 7. I did not know who or where that was.

Q. And I'm understanding you to say that to this day, you don't know where he had been prior to coming to Camp 7; is that correct?

ATC [LT DAVIS]: Objection, Your Honor, asked and answered. But it's also not really relevant to the issue before the commission, which is what his current level of treatment is and whether that meets certain levels of adequacy.

MJ [COL POHL]: Objection overruled.

Go ahead and ask the question again, please.

Q. I'm understanding you to say, but correct me if I'm wrong, that to this day you don't know where Mr. Nashiri had been or what his circumstances were prior to him, Nashiri, coming to Camp 7. Am I understanding you correctly?

A. I have my suspicions, but I don't know factually where he was or with whom he was with. But I do have a general sense through my interactions with him what that experience was like for him.

Q. And what is your general sense of what that experience was like for him? But wait in case anyone has any objections.

MJ [COL POHL]: Well, Mr. Kammen, are we going to -- I'm not sure what your question is really asking. You said what

was it like for him? Pleasant, unpleasant? I mean, I'm not sure. We have got a doctor on here.

LDC [MR. KAMMEN]: Right. Of course ----

MJ [COL POHL]: I just don't know exactly what you are asking him. What was that experience like for him?

LDC [MR. KAMMEN]: No. He says he has a general sense of what Nashiri's experience was like, so I am asking the doctor his general sense.

MJ [COL POHL]: Okay.

LDC [MR. KAMMEN]: That's what I'm trying to get at, but I'm trying not to ----

MJ [COL POHL]: I understand. Okay.

Questions by the Learned Defense Counsel [MR. KAMMEN]:

Q. Do you understand my question, Doctor? Because if you do ----

A. I do.

Q. ---- you're ahead of me. Let me state it again.

What is your impression of what Mr. Nashiri's circumstances were prior to coming to Camp 7?

A. Well, I ----

MJ [COL POHL]: Doctor -- Doctor -- Doctor ----

A. I don't know about ----

MJ [COL POHL]: ---- in your initial answer characterize

it with adjective rather than instance. Are you with me on this?

WIT: I understand, Your Honor. Yes, sir.

MJ [COL POHL]: Okay.

A. Initially, I would say it was very stressful, but then after a period of time it actually was -- in his words, he felt he had more privileges and in some aspects was treated more favorably than the current conditions; not that the current conditions are bad, but he was given special favors and special treatment for approximately a year before coming to Camp 7.

Q. So I'm understanding that your impression is that part of the time before he came to Camp 7 was quite stressful, and then there was a time that was less stressful; fair to say?

A. Yes, that's correct.

Q. Now, it would be true that as a medical -- even a military medical doctor, you're trained to make diagnoses and recommend treatment due to what's in the patient's best interests; would that be fair to say?

A. Yes.

Q. And would it also be ----

A. Well, it ----

Q. I'm sorry?

A. In the patient's best interests, but simultaneously what is also the standard of care for that condition.

Q. Okay. And you certainly -- a good military doctor does not let a nonmedical command influence his judgment; would that be fair to say?

A. Within limits. I mean, we have finite resources of everything, so we can't, you know, universally be treating everything to, you know, heroic levels as -- you know, no country, no clinic, no hospital could do that.

So there is some understandable guidance as far as adhering to the standard of care and not necessarily going above and beyond what is considered the standard of care, but within that there has been no interference from command.

Q. Okay. I'm understanding, then, you to say that sometimes resources or other issues, that the command may -- the nonmedical command may have concerns about that may be communicated to you; is that correct?

A. Well, I'm just using that as the hypothetical example. I can't remember any specific instances where the command said we don't have a budget for that or we don't have this capability. That specifically was never addressed to me. But I'm just saying in general that could be a possibility for

any, you know, care or treatment, that would, in theory, undermine what you could do for a patient's best interests as far as their treatment.

Q. And would you agree that a good military physician doesn't let nonmedical issues influence his judgment about patients?

A. Generally, yes.

Q. Okay. You say generally. What do you mean?

A. Well, there's always exceptions, circumstances. You may have military, you may have a specific mission that causes kind of creative solutions or creative treatments in order to best treat a soldier, a patient. It's -- you know, things are not always black and white with, you know, the different military missions.

Q. Now, as a physician, it would be -- would it be fair to say that you are trained in the importance of documentation?

A. Yes.

Q. Okay. In fact, even in your early days in medical school, you're trained in the importance of -- the importance of medical documentation; isn't that correct?

A. Yes.

Q. It's important to not only take good notes but make

good notes; isn't that true?

A. Yes.

Q. And the benchmark that you're taught in medical school is if it's not in the records, it didn't happen; fair to say?

A. From a legal perspective, that's certainly possible. But obviously in the medical community you cannot document 100 percent of every single thing that has been done to a patient; you know, records would be voluminous. But we are trained to document the relevant, pertinent things that are -- that need documenting.

Q. Okay. So every relevant and pertinent thing that isn't documented didn't happen. That's what you're trained. True?

A. Generally, from a legal perspective, yes.

Q. Well, even from a medical perspective, wouldn't it be fair to say that that's important because of the need for continuity of care, correct?

A. It's -- well, definitely it's helpful for continuity of care, but there are other ways of continuity of care besides a written or electronic medical record. Many times physicians will consult over the phone, they can elaborate what is in the medical record. So it's -- to say that if it

wasn't written down, it didn't happen is a little bit misleading.

Q. Now, you have the ability as a physician assigned at Guantanamo to consult with other physicians, correct?

A. To a degree, yes.

Q. All right. And you have the -- when you say to a degree, what do you mean?

A. When I arrived, there was a period of -- a transition period with the previous camp psychiatrist, so we were able to go through the medical records, we were able to discuss individual cases, you know, from one psychiatrist to another.

Q. All right. Now, did you, with respect to Mr. Nashiri, ever go back and contact previous psychiatrists who may have seen him in 2006, 2007, 2008, 2009, 2010 or 2011?

A. Not over the phone, because that -- that's not standard of care. Just like if you would see a new family practice doctor for whatever condition you would have, they wouldn't call up every family practice doctor that you had for eight years and discuss your care.

Q. And that wasn't my question. I apologize.

My question is: Could you have contacted any of those doctors had you wanted to?

A. If I wanted or needed to, I could have.

Q. Now, as you said, certainly you are allowed to, I gather, consult with other specialists; is that correct?

A. Yes.

Q. And were you made aware of a request by Dr. Sondra Crosby to consult with the medical staff at Guantanamo concerning Mr. Nashiri?

A. I was not made aware of that, no.

Q. You were not?

A. No. No, sir.

Q. Okay. Do you know who Dr. Sondra Crosby is?

A. No, I don't, sir.

Q. All right. Well, did you -- I don't want to know his name. We met briefly a senior medical officer. We'll call him Dr. X.

Did Dr. X ever discuss with you that a request by a defense consultant to meet with the medical staff concerning Mr. Nashiri had been made -- had been made?

A. Is this -- are you saying within the last month or two?

Q. During your tenure in Guantanamo.

A. Recently? I don't know if you are getting to if this is -- this Dr. Crosby is the one that is involved with

the Istanbul Protocol, is that ----

Q. That's the same Dr. Crosby. She's also a psychiatrist ----

A. Yes.

Q. ---- who has examined Mr. Nashiri -- or, excuse me, an internist who has examined Mr. Nashiri.

A. Right. I thought she was a -- I thought she was an internal medicine physician ----

Q. That's correct. I misspoke.

A. ---- with the -- with the World Medical Association ----

Q. Well ----

A. ---- so I ----

Q. ---- were you aware of her ----

A. I'm not aware of -- I'm not aware of a request that she had to meet with Mr. Nashiri or to meet with me or to meet with Dr. X, the senior medical officer.

Q. All right. And had that request been communicated to you because of her concerns in a way to better facilitate treatment, would you have been willing to meet with her?

A. I would have been willing to meet with her, but I would have, of course, discussed that with my legal representative, the SJA for the camp, as well as the camp

command. A lot of decisions like that are well above my pay grade.

Q. Well, why would it be above your pay grade as to whether or not you could consult with another expert about a mutual patient, or another physician about a mutual patient? Why would that not be your choice?

A. Well, for several reasons, possible legal issues, possible security issues. I mean, there's how many millions of physicians in the world? You know, how many of those could just say, hey, I want to consult with this detainee in the interest of improving their care? So at some point you have to, you know, set limits and boundaries.

Most significantly, though, it goes to what I imagine will hopefully become -- or allow to be my testimony in this hearing or this part of the commissions, as to what my assessment is of Mr. Nashiri's diagnosis, what would be in his best interests as far as his treatment. Because from what I understand, I have a professional disagreement with what I consider his diagnosis to be and what Dr. Crosby's diagnosis is of him.

Q. Well, okay.

A. So in that regard, I wouldn't just automatically say, well, let's consult and go down this road of treatment

when I likely have a different opinion of what his diagnosis even is.

Q. Okay. Now, in order to explore that apparent disagreement, let me just ask you a few questions.

Are you aware that Dr. Crosby is of the opinion, as she has expressed to this commission, that Mr. Nashiri is a victim of physical, emotional, and sexual torture?

ATC [LT DAVIS]: Objection, Your Honor, relevance. What Dr. Crosby -- or whether he's aware of Dr. Crosby's diagnosis is irrelevant to the issue that's before Your Honor.

MJ [COL POHL]: Overruled. You may answer the question.

Are you aware of her opinion to that effect?

WIT: Your Honor, I'm not aware of her specific opinion.

MJ [COL POHL]: Okay.

Questions by the Learned Defense Counsel [MR. KAMMEN]:

Q. Now, just generally, in your practice of medicine, have you treated any victims of torture?

A. Not specifically of torture, but of -- victims of numerous traumas, and you mentioned alleged sexual abuse. I have definitely treated victims of that. And I guess it goes to what you define torture is very broad.

Q. Well, are you familiar with the definition of torture utilized by the United Nations Convention Against

Torture?

A. I don't knows that specific definition offhand, no.

Q. Now, have you -- are you familiar with the investigation -- the Istanbul Protocols on the investigation and documentation of torture?

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

A. I have a ----

MJ [COL POHL]: Overruled. You may answer the question.

A. I have a -- I was not made aware. I had no idea what that was until a month ago, and then I became familiar with it. I'm not an expert in it, but I have a general sense of what it was meaning and intending as far as the investigation of interrogation and torture as well as the documentation of that.

Q. And what caused you a month ago to become familiar with that? Something pertaining to this litigation?

A. Yes.

Q. Okay. Could you tell us what occurred that brought that to your attention?

A. I guess it was the interaction with Dr. X, the senior medical officer, with the -- and I don't know if it was with the prosecution side or with the defense side ----

Q. It was with the prosecution. Trust me.

A. But during that experience, he talked to me and asked me if I have ever heard of the Istanbul Protocol, and I hadn't. So we were discussing at that point. We got a copy of it, we looked at it. It's -- well, that's my exposure.

Q. Any familiarity you have with it is as a result of this motion that was filed; is that correct?

A. Yes.

Q. And did Dr. X also tell you in that conversation or in subsequent conversations that one of the -- that the concern was the quality of care that Mr. Nashiri was receiving?

A. He did express that, although to me it was incongruent with the Istanbul Protocol, which is more related to investigating and documenting interrogation and torture, not dealing with care or treatment.

To me, they're two completely separate things.

Q. Well, let's focus on your conversations with Dr. X for the moment. How many times prior to your departure did you and Dr. X talk about this litigation?

A. Probably a handful of times.

Q. And since Friday have you spoken with Dr. X?

A. No, sir.

Q. And it would be fair to say that you spoke with

Dr. X throughout March and April of 2014 concerning this litigation; isn't that true?

A. Yes.

Q. Now, after you arrived at Guantanamo, did you at any time prior to -- well, have you reviewed all of Mr. Nashiri's medical records here at Guantanamo?

A. All of them, no. I reviewed his psychiatric medical records. I did not review all of his other medical records. I reviewed more recent outright medical records as far as his back pain, his lab values, but I have not reviewed all of his other medical records.

Q. But you are telling us that you've reviewed his psychiatric records from as far back as 2006; is that correct?

A. I don't know exactly how far back the date went, but I reviewed in detail several years of his medical records.

Q. Well, let me ask you specifically. If it is true that Mr. Nashiri first came to Guantanamo in September of 2006, did you go back and look at his early -- the earliest medical records pertaining to -- psychiatric records pertaining to Mr. Nashiri?

A. Yes, sir.

Q. Okay. Now, in your experience with psychiatry, you're certainly familiar with PTSD; is that correct?

A. Yes, sir.

Q. And PTSD is a condition that arises as a result of trauma; isn't that true?

A. Correct.

Q. Okay. And PTSD can persist, especially if untreated, for many, many, many -- it can really persist forever if it's not treated; isn't that correct?

A. Yes.

Q. While we're talking about Mr. Nashiri -- and I am going to digress for a second. Certainly the survivors on the USS COLE, who were there on the COLE that day, potentially suffer from PTSD; wouldn't you agree?

A. Potentially, yes. Certainly.

Q. And, in fact, there's a condition known as secondary PTSD in which people who are associated with an event but weren't there can be traumatized as well; true?

A. That's not a medical diagnosis, secondary PTSD. The current DSM-V edition allows for diagnosis of post-traumatic stress disorder through learning of an event, learning of a stressor. Maybe ----

Q. Okay.

A. ---- maybe as a layman you might call that secondary PTSD, but from a psychiatrist, there's no distinction.

Q. Okay. So even people who only hear of an event but who have suffered a grievous loss, the death of a loved one, can also suffer from PTSD, true?

A. Yes.

Q. Certainly you will agree with me that the government would have an obligation to help those people in appropriate circumstances as well, wouldn't you?

A. Yes.

Q. Now, part of the goal -- or, excuse me, part of the way of diagnosing PTSD is to take what's called a detailed trauma history; isn't that true?

A. Not necessarily.

Q. So you don't believe it is necessary in determining whether or not an individual suffers from PTSD to determine if he or she ever endured trauma?

A. There are certain requirements by the Diagnostic and Statistical Manual, Fifth Edition, to diagnose post-traumatic stress disorder, and when you meet those requirements, then -- per the DSM-V or during -- you know, previously, prior to May of 2013, the DSM-IV Dexter Edition, you then meet that criteria for post-traumatic stress disorder. There are numerous other metrics and questionnaires and screening tools that are helpful in measuring the severity of PTSD or

measuring the effectiveness of treatment, but they don't qualify as outright diagnosing somebody with post-traumatic stress disorder.

Q. Doctor, I have been given a sign that's asked you to slow down as you speak, because this is being translated into Arabic.

A. Okay.

Q. Let me try to clarify your answer. Are you telling us that you can diagnose or reach a conclusion as to whether or not somebody suffers from post-traumatic stress disorder without knowing whether or not they even suffered a trauma?

A. No, I'm not saying that.

Q. Okay.

A. But I'm saying that ----

Q. Let me interrupt -- let's ----

A. You don't need ----

Q. Let's go slowly. You would agree that the starting point is to know if the individual suffered a trauma?

A. Yes.

Q. And if the individual suffered a trauma, to know how serious it was, correct?

A. That is helpful as far as treatment, but not necessarily helpful as far as diagnosis.

Q. So it would be helpful as far as treatment to know how serious the trauma was, correct?
A. Yes.
Q. How long the trauma endured would be helpful in terms of treatment?
A. Yes.
Q. The nature of the treatment ----
A. The treatment -- the treatment and prognosis.
Q. Treatment and prognosis?
A. Exactly. Yes.
Q. Okay. Treatment ----
A. As far as the -- **[VTC transmission interrupted]** ----
Q. You want to know -- let's go slowly. You say you want to know for treatment did you say prognosis or diagnosis?
A. Prognosis. The severity of the trauma and the duration of the trauma would be important and significant as far as treatment and prognosis.
Q. Okay. So you would want to know the severity of the trauma, correct?
A. Yes.
Q. I just summarized it. I just want to know -- the length of the trauma, how long it went on?
A. Yes.

Q. If it was one transient episode or something that went on for days or months or years, correct?

A. Yes.

Q. Had there been prior attempts to ameliorate the trauma, correct?

A. Yes.

Q. And all of that would make up what would be called a detailed trauma history; wouldn't you agree?

A. Those would be components of that, sure.

Q. And those would be components that you as a psychiatrist would want to know while arriving at a diagnosis and treatment plan and a prognosis; isn't that correct?

A. Possibly, but not definitely. It wouldn't necessarily be significant or important arriving at a diagnosis, and certainly you can engage in treatment without unnecessarily understanding what the severity or the duration or other factors of the stressor or trauma were.

Q. Well, help me understand, because just a couple of minutes ago you said it was important to know in terms of the treatment, and now you're saying, well, I really don't need to know how bad it was.

So are you saying that you don't need to know how bad the treatment -- the trauma was in arriving at a treatment

or prognosis? Are you changing your prior testimony?

A. No, I'm not changing the testimony at all, but it depends very much on the individual situation. In this case with Mr. Nashiri ----

Q. We'll come to this case. Let's go slowly.

A. Okay.

Q. You say it depends on the individual situation, right?

A. Yes.

Q. And the individual situation involves individual trauma; isn't that true?

A. Among other things, sure.

Q. People respond to situations differently, right?

A. Yes.

Q. You have to know their particular circumstances generally; isn't that true?

A. Yes.

Q. You're not going to treat a survivor of Hurricane Katrina the same way you would treat a Rwandan refugee who witnessed her village murdered; isn't that true?

A. Generally, yes.

Q. So you ----

A. But the ----

Q. So you need to know the ----

A. The ----

Q. ---- the specifics; isn't that correct?

A. It's helpful, but ----

Q. Okay.

A. ---- it's not that you -- you don't need to know the specifics, just like you can have an injury to yourself and if you're going to refuse treatment, then the physician does not necessarily need to do an MRI to accurately diagnose something if you're not going to follow on or accept treatment or participate in treatment, that that can become unnecessary, and even in some aspects can put you at harm to do invasive tests for something that you aren't going to engage in treatment.

The same thing psychologically, that to pursue a line of knowledge-gathering for somebody that has convincingly and repeatedly stated they were going to deny or refuse treatment, I wouldn't jeopardize an individual and put them at further harm by trying to gather that information when it wasn't going to be helpful for their specific situation if they're going to be refusing treatment. Just like you wouldn't want to have radiation exposure to diagnose a condition solely to diagnose it when you've already said you

were going to refuse whatever treatment would be for that condition.

Q. Let me ask you this, and I understand -- and we'll come to all of this. But when we're dealing with PTSD, the nature of the injuries can dictate the individual's response to it; wouldn't you agree?

A. Possibly, yes.

Q. Okay.

A. Not always.

Q. Okay. And one of the hallmarks of PTSD is avoidant behavior; isn't that correct?

A. Yes, but it depends on the situation and what they're avoiding.

Q. I understand -- I understand it depends on the situation, but one of the diagnostic criteria for PTSD is avoidant behavior, true?

A. Yes.

Q. And avoidant behavior means the individual avoids doing things that remind them of the trauma, correct?

A. Yes.

Q. So if an individual is repeatedly doing -- avoiding something, wouldn't it be important to know if that's because what they're avoiding reminds them of the trauma; isn't that

correct?

A. If that's why they are avoiding that, yes.

Q. And how do you know if that's ----

A. If they're ----

Q. Excuse me. How do you know if that's why they're avoiding it if you don't know what the trauma is?

A. There are many behaviors and ----

Q. Excuse me. Could you just answer ----

ATC [LT DAVIS]: Your Honor, the witness needs to be allowed to answer the question.

LDC [MR. KAMMEN]: I agree. I'd like him to answer my question.

MJ [COL POHL]: Okay. Doctor, hold on a second. Ask the question again.

LDC [MR. KAMMEN]: Okay.

Questions by the Learned Defense Counsel [MR. KAMMEN]:

Q. How do you know if the person is avoiding the reminders of the trauma if you don't know what the trauma was?

A. You can always make assumptions that there was a very severe, very stressful, distressing trauma, and that goes for many people with post-traumatic stress disorder, that in order to diagnose it, in order to treat it, you can make assumptions that there was an extremely severe, extremely

stressing trauma. And, you know, you can make that with any of the -- I've made that with all of the detainees that I've come across. I have just assumed that they probably went through some form of hell at some point in their life.

So my clinical decisions is basing that -- making that assumption that, yes, they have a trauma, that it was severe, that it was horrific.

Q. And when a ----

A. But I don't need to know specific -- I don't need to know specifically in detail what that trauma was in order for me to make that assessment and for me to undergo attempts of treatment.

Q. And when a detainee who went through some form of hell that you don't know what it is refuses to do certain things, how do you know he's -- that the things he's refusing to do don't remind him of the hell he went through?

A. Well, in some ways you don't know for sure, but you can make assumptions.

Q. So you don't know for sure, you don't ask, and you just guess. Is that what you're telling us?

A. No ----

Q. Okay. Now ----

A. ---- I'm not saying that.

Q. ---- one of the other symptoms of PTSD that you might expect to see are anger, correct?

A. Irritability, yes.

Q. Anger and irritability. Flashbacks, correct?

A. Yes.

Q. Nightmares of varying sorts, true?

A. If it's related to the trauma or the stressor, yes. Same with the flashbacks, same with the irritability. Like you and I could be irritable right now, but that might not be related to a PTSD stressor.

Q. That's absolutely true. But if you remind me of somebody who put me through hell, then I might engage in avoidant behavior; isn't that true?

A. True, yes.

Q. Now, PTSD survivors or victims may also have somatic complaints, true?

A. Yes.

Q. And what, to make sure we're communicating together, are somatic complaints?

A. Somatic complaints are what a layperson would consider medical complaints, such as pain, such as -- it could be insomnia, it could be difficulty accomplishing tasks or doing certain movements. Mostly from a PTSD perspective, it

would relate to whatever pain they may have, that that pain could cause a greater degree of suffering than otherwise would be.

Q. In other words, things become -- there may be things where you can find no specific medical reason for the pain, or minor pains appear major, either of those?

A. Correct. Correct. Also somatic complaints could be upset stomach, constipation, nausea. You know, any type of, you know, bodily system could have some form of -- you know, somatic-type symptom that either could be caused by but more likely not caused by it, but made worse by post-traumatic stress disorder.

Q. Okay. Or -- okay.

Now, you indicated that you looked at Mr. Nashiri's records; is that correct?

A. Yes.

Q. And you looked at all of his psychiatric records, true?

A. Yes.

Q. And it would be fair to say that throughout his psychiatric records, virtually every psychiatrist who saw him noted avoidant behavior of one sort or another; isn't that correct?

A. Not consistently, no. Like at some times there was mention in general that he had avoidant behavior, but it wasn't documented what specifically he was avoiding, nor was it documented why they thought he was avoiding that. It just was listing "had avoidant behavior," and that was on some notes, but it wasn't listed -- it wasn't documented in every encounter.

Q. Okay. But you saw episodes -- you saw in the records episodes of avoidant behavior, correct?

A. I saw it mentioned a couple times, yes.

Q. It was way more than a couple of times, wasn't it?

A. I only remember seeing it ----

Q. We have got the records. We can go through them.

A. I probably scanned them in myself. I don't know exactly how many times, but to me, the actual documentation, words of him having avoidant behaviors was not every encounter, for sure.

Q. Well, absolutely not every encounter. It's one of the themes that runs through his records; isn't that correct?

A. The generic classification of that, yes. But there was no description of what the specific avoidant behavior was, nor why he was having that.

Q. That's not entirely correct, because one of the

repeated themes in his medical records is his resistance to chains of one sort or another, belly chains, eyes and ears, that sort of thing, true?

A. Absolutely.

Q. Okay. Do you know of anything in his background where that might remind him of the hell you think he was under?

A. I don't know the specific -- the specific history of how wearing a belly chain would -- you know, how that may have been applied in his past that may be associated with his traumas, no.

Q. Wouldn't that be important to know in reaching a diagnosis and future treatment?

A. It would be relevant as far as reaching a diagnosis in the sense of -- it's universally agreed that he was exposed to a stressor. The -- but there could be other reasons for him having avoidant behaviors due to wearing a belly chain ----

Q. And how would you ----

A. ---- besides post-traumatic stress disorder.

Q. That's true. How would you know if you don't know the full nature of the trauma?

A. Well, one thing is I talked to him specifically

about that, about the issues of him wearing a belly chain, and I asked him why specifically did that affect him. And he explained that to me in a manner that I thought was more related towards his diagnosis that he has had for several years of narcissistic personality disorder than specifically relating to some stressor that happened years ago.

Q. And are you aware of the phenomena that people with PTSD are often reluctant to discuss the trauma if they don't have a trusting relationship with their -- the person they're with?

A. Yes, I'm aware that that certainly can happen.

Q. Now, his medical records, one of the themes is irritability and anger, agreed?

A. Yes.

Q. Okay. There are descriptions of nightmares, self-descriptions of nightmares on occasion; isn't that correct?

A. There's -- well, I cannot -- there's mention that he was having nightmares. There's no description of what those nightmares were. And when I talked to him about nightmares -- because he told me he was having nightmares, he described them very clearly as being related to his other detainees in the sense of him having severe interpersonal conflict with the

detainees on his cell block. They were not related to stressors or prior interrogation or prior events, but were related directly to the personal relationships that he has at the time, as well as having nightmares about his defense team and defense lawyers and personal conflict that he has with them. And that that's how he was describing the nightmares he was experiencing during my care for him.

Q. And, again, if you don't know the trauma, how do you know that the information you're getting is accurate? Fair to say?

A. The degree that he was describing what his nightmares were when he was having them, I was confident he was accurately describing this situation that he has on Bravo tier cell block.

Q. Now, his medical records reveal a history of somatic complaints, correct?

A. Mostly pain complaints in his lower back. He has occasional gastrointestinal complaints as well, so yes.

Q. There is an ongoing issue with colorectal problems, correct?

A. Yes, he feels he -- he has different degrees of that, yes.

Q. With respect to the back pain, do you know whether

that back pain might correspond in some manner to the hell you perceive he was in sometime before?

A. Well, it's -- I guess to clarify, it's not that I perceive he was in some kind of hell, but it's that I suspect that it's possible that he could have perceived that, so that's one thing. But I do not know specifically any connection between his back pain and what happened prior to coming to camp, although it could be causally related, although it could be any host of things as well.

Q. Sure. It could be any host of things, and it would be important to try to understand what it could be or what it couldn't be; isn't that true?

A. Yes. And I believe the senior medical officer, Dr. X, as well as previous medical officers, orthopedists, physical therapists, have all come to camp, have talked to him. You know, the focus of any medical condition is on the treatment. The diagnosis leads to how you treat that. Regardless of what may have caused his back pain, the focus is how do you treat that and improve that.

Q. And if the back pain is related to the trauma and is a somatic complaint related to the trauma, wouldn't it be important to know that so you could do adequate treatment?

A. The -- well, I have numerous times as well as

previous ----

Q. Sir, let me interrupt. That's a yes or no ----

MJ [COL POHL]: Please just -- hold, on Mr. Kammen.

Doctor, please just answer the question that was asked.

Q. A somatic complaint is one that arises partially in the body and partially in the mind; isn't that true?

A. Yes.

Q. And if you have a somatic complaint that is related to trauma that was inflicted on a person, you can treat the physical part all you can, but if it arises in the mind and you don't treat that, you're not going to make any progress; isn't that true?

A. It you'll be less effective, correct.

Q. You'll be less effective. So wouldn't it be important to know whether it arises in the body or the mind, right?

A. That's helpful, yes.

Q. Yes, it would be helpful to know if it arises in the mind, why it arises in the mind; isn't that true?

A. Yes.

Q. And if it arises in the mind because of trauma that was inflicted sometime in the past, you'd want to know that,

wouldn't you?

A. It would be helpful ----

Q. It would be helpful ----

A. ---- but, again ----

Q. ---- but in order to know that -- excuse me.

In order to know that, somebody has to ask; isn't that true?

A. To know that, yes, somebody has to ask ----

Q. Thank you. Thank you.

A. ---- but the degree of knowing that may not be helpful, if the individual is refusing any treatment you would be providing or offering.

Q. We're back to that again. If you don't know that they're refusing because of avoidant behavior because you don't know what happened, you're missing the whole point because it arises in the mind; isn't that true?

A. No, you're not missing the whole point because, just like many people with post-traumatic stress disorder or anxiety disorders, if you are -- many of them do not want to speak about the trauma, they don't want to talk about it, they avoid talking about it, but you nonetheless can still treat them for post-traumatic stress disorder or for anxiety or treat their somatic complaints.

You can attempt to, but if they are not going to talk about it, then, you know, how do you go about asking them, you know, what is the source of your back pain. Did this happen because of something in your past, when by your admission, if he's being avoidant and he's avoiding discussing that, then you can't discuss it?

Q. Well ----

A. And you have to make assumptions, and then based on those assumptions, you then offer the right treatment. You try to motivate the individual to participate in treatment ----

Q. Let me interrupt your speech ----

A. ---- but if they're refusing ----

Q. Let me interrupt your speech, Doctor, to ask this question: He avoided apparently discussing it with you; isn't that correct?

A. Well, I don't know when he was avoiding, because ----

Q. Okay. Well, let me make my questions more precise.

You have made it clear that, for whatever reasons, you chose not to ask about the trauma to which Mr. -- the hell that Mr. Nashiri went through; fair to say? You just assumed what it was, right?

A. I assumed that he had serious traumas.
Q. Okay. But you don't know the details of it, true?
A. I don't know factually the details. I have a high degree of suspicion, but that would be classified.
Q. Right. And whatever your high degree of suspicion is, the fact that we can all agree on is you don't know the details, correct?
A. I don't know specifically the facts for Mr. Nashiri prior to coming to camp ----
Q. Right.
A. ---- no.
Q. And the facts, the details, of what happened to Mr. Nashiri not only do you not know, but no other psychiatrist who examined him while at Guantanamo made the effort to know; isn't that true?
A. I can't speak for the other psychiatrists. I know that it was a ----
Q. Let me interrupt, because you reviewed the records; isn't that correct?
MJ [COL POHL]: Mr. Kammen, the way you phrased the question was "nobody made the effort." Let's perhaps rephrase it.
LDC [MR. KAMMEN]: I can make it more -- thank you, Your

Honor.

MJ [COL POHL]: Okay.

Questions by the Learned Defense Counsel [MR. KAMMEN]:

Q. Will you agree with me that nowhere in Mr. Nashiri's medical records, psychiatric records -- let me start again.

Will you agree with me that nowhere in Mr. Nashiri's psychiatric records compiled at Guantanamo from 2006 to 2014 is there a detailed account of what you suspect he went through prior to coming to Guantanamo? You would agree with that statement?

A. Yes.

Q. Now, if a person suffers from PTSD after they're -- and we're talking generally -- after they're removed from the source of trauma, having support from friends and families can be important; isn't that true, generally?

A. Yes, generally.

Q. Now, for example, in -- you may be aware Mr. Nashiri is prohibited from speaking with his parents. Are you aware of that?

A. Yes.

Q. And yet can we agree that if he suffers from PTSD, his ability to speak with his parents might be medically warranted, true? Might help him?

A. It would help him. It probably, yes, would help him.

Q. Thank you.

Now, additionally, people who suffer from PTSD -- and we've discussed some of the symptoms -- can have trouble recalling the traumatic events; isn't that correct?

A. Yes.

Q. They can suffer from memory loss, true?

A. Yes.

Q. They may not be the best source of information about the traumatic events; isn't that correct?

A. Yes.

Q. So ideally if other documentation about the traumatic events exists, a physician would want to obtain that; isn't that true?

A. Possibly, but not definitely.

Q. Sure. Possibly, but not definitely.

It would -- but you agree that the person who suffers from PTSD may well suffer memory loss, correct?

A. Yes.

Q. And in some cases ----

A. Correct.

Q. ---- that memory loss may be profound; isn't that

true?

A. In rare cases, yes.

[VTC transmission interrupted]

LDC [MR. KAMMEN]: Doctor, we've lost you. Now we're just looking at some ugly guy.

MJ [COL POHL]: Hold on a second. [No audio].

I'll tell you what, we have been going on for an hour and a half. We will take a 15-minute break. We'll still take a 15-minute break. Tell him to stand by.

Commission is in recess.

[The Military Commission recessed at 1227, 27 April 2014.]

[The Military Commission was called to order at 1240, 27 April 2014.]

MJ [COL POHL]: The commission is called to order. All parties are again present that were present when the commission recessed. The witness remains on the stand.

Doctor, I remind you, you are still under oath.

WIT: Yes, Your Honor.

MJ [COL POHL]: Mr. Kammen.

LDC [MR. KAMMEN]: Thank you.

Questions by the Learned Defense Counsel [MR. KAMMEN]:

Q. Doctor, you indicated earlier that you had heard of Dr. Crosby's diagnosis, and we'll come to your disagreement.

But you disagreed with it; is that correct?

A. Well, I don't -- I have no idea what her diagnosis is. I didn't know she made a diagnosis. I was aware that somewhere in the past he had a sanity board hearing, and during that sanity board hearing somebody provided him a diagnosis of post-traumatic stress disorder.

Q. And are you aware that the people who provided that diagnosis were three senior military psychologists and psychiatrists?

A. I was aware they were a military team.

Q. I'm sorry?

A. Yes.

Q. You were aware they were military?

A. I was aware that they were military, yes.

Q. And you were aware that they were appointed by this judge, correct?

MJ [COL POHL]: Well, to be fair ----

A. I would assume that.

MJ [COL POHL]: ---- to be fair, I did not appoint the members of the board.

LDC [MR. KAMMEN]: Or the convening authority or somebody, right.

MJ [COL POHL]: If you look at the order, I believe it was

the commander of the medical facility picked the individuals.

Questions by the Learned Defense Counsel [MR. KAMMEN]:

Q. Let me make my question precise. You were aware that they were appointed pursuant to direction of this judge at the request of the United States government who asked for a 706 evaluation?

A. Correct.

Q. And have you seen the public portion of that, of their findings?

A. No, I have not.

Q. Okay. Are you aware of the names of those three senior military officers?

A. No, I am not.

Q. So obviously you haven't spoken with them?

A. No, I have not.

Q. And you don't know on what they based their opinions, correct?

A. That's correct.

Q. Or you don't know how long they may have met with Mr. Nashiri?

A. Correct.

Q. How many months or, excuse me, hours or days collectively they may have spent with him?

A. Correct.

Q. Now, with respect to Dr. Crosby, you don't know how long she may have spent with him?

A. That's correct.

Q. You don't know whether it was a couple of hours or a couple of weeks, do you?

A. Correct.

Q. Now, you certainly are not aware of Dr. Barry Rosenfeld?

A. Never heard of that doctor.

Q. I'm sure not. He is a psychologist.

And you don't know how much time he may have spent with Mr. Nashiri?

A. That's correct.

Q. Or what tests he may have administered, right?

A. Correct.

Q. Now, there is a -- I think it's in the DSM-V, chronic complex PTSD. Are you familiar with that term?

A. I am not.

Q. Well, would you agree that it is PTSD that is long -- long-term PTSD prolonged by -- as a result -- strike that.

It is caused by long-term prolonged repeated trauma

or total physical or emotional control by another. Have you ever heard that definition for chronic complex PTSD?

A. I have never heard of chronic complex PTSD. I know there is a chronic specifier to post-traumatic stress disorder, but I'm not familiar with chronic complex PTSD.

Q. Well, would you agree that long-term prolonged repeated trauma or total physical or emotional control by another could be particularly damaging to a human being?

A. Absolutely.

Q. Now, you referred -- and I know we'll be discussing it -- to what you call narcissistic personality disorder; is that correct?

A. Yes.

Q. You're familiar with the diagnostic criteria for narcissistic personal disorder?

A. Yes, I am.

Q. Avoidant behavior is not one of the diagnostic criteria for narcissistic personality disorder; isn't that true?

A. Correct.

Q. Somatic complaints are not one of the diagnostic criteria for narcissistic personality disorder; isn't that true?

A. Yes.
Q. Flashbacks are not part of the diagnostic criteria for narcissistic personality disorder; isn't that true?
A. Yes.
Q. Anger and irritability are not part of the diagnostic criteria for narcissistic personality disorder; isn't that true?
A. That can be related to narcissistic personality disorder.
Q. My question is, sir, it's not part of the diagnostic criteria; isn't that true?
A. Correct.
Q. Flash -- strike that.
Nightmares are not part of the diagnostic criteria for narcissistic personality disorder; isn't that true?
A. Yes.
Q. Narcissistic personality disorder is when someone has a grandiose sense of self-importance, right?
A. Among other things, yes.
Q. Is preoccupied with fantasies of unlimited success, power, brilliance, beauty or ideal love, right?
A. In part, yes.
Q. Believes that he or she is special and unique,

right?

A. Yes.

Q. Requires excessive admiration, true?

A. Yes.

Q. Can have a sense of entitlement and unreasonable explanations of favorable treatment, right?

A. Yes.

Q. Potentially lacks empathy, right?

A. Yes.

Q. Can be envious of others or believes that others are envious of him or her, right?

A. Correct.

Q. Shows arrogant or haughty behaviors or attitudes, right?

A. Yes.

Q. Nothing in there about flashbacks, is there?

A. No, but people can have more than one diagnosis, obviously.

Q. My question is simple: Nothing about flashbacks, right?

A. Yes.

Q. Nothing about avoidant behavior?

A. Yes.

Q. Nothing about repeated trauma, right?
A. Yes.
Q. Nothing about ----
A. Right.
Q. ---- trying to avoid being reminded of trauma, correct?
A. Correct.
Q. Now, you came to Guantanamo in what month of last year?
A. October.
Q. And you indicated that you consulted -- excuse me -- with the prior physician during that turnover; is that correct?
A. Yes, the prior psychiatrist.
Q. Yeah. We'll call him Dr. Redact, okay? Because we don't know his name either.
ATC [LT DAVIS]: Objection, Your Honor.
A. Okay.
MJ [COL POHL]: Overruled. Go ahead.
Q. Now, you were aware of -- and the way it works here in Guantanamo, when there is a psychiatric evaluation -- periodic psychiatric meeting or evaluation that is done, there is a summary of what occurred; is that correct?

A. Yes. I mean, there should be.

Q. And there is a summary of the diagnoses that are attendant to the patient; isn't that correct?

A. Yes.

Q. And if those diagnoses change, that would be noted; isn't that true?

A. Not always.

Q. I see. So it would -- we would have discussed earlier the importance of keeping accurate detailed medical records; is that correct?

A. Absolutely.

Q. And part of an accurate and detailed medical record is the current diagnosis; isn't that true?

A. Absolutely.

Q. And so if the diagnosis changes, you would want to know that, wouldn't you, as a doctor?

A. Well, sure.

Q. Okay.

A. And maybe I would be ----

Q. So -- excuse me. Excuse me.

It would be medically prudent to note any changes in diagnosis; isn't that correct?

A. Yes.

Q. Thank you.

Now, you are aware, are you not, that Dr. -- your predecessor, Dr. Redact, repeatedly diagnosed Mr. Nashiri with PTSD; isn't that correct?

A. Correct.

Q. And, in fact, in every psychiatric evaluation commencing in about April of 2013, there is a diagnosis of PTSD; isn't that true?

A. Yes.

Q. There is also -- and, in fact, just picking at random -- and let me interrupt, Doctor.

LDC [MR. KAMMEN]: Mechanically, I'm not sure how to do this. And I just -- I can refer to the documents and provide them to the commission later on with AE numbers. I can mark them. I'm going to refer to about a half a dozen documents that the prosecutor has. They're from his records.

MJ [COL POHL]: But are you going to simply ask the witness are you aware of this?

LDC [MR. KAMMEN]: Yeah, but, I mean, I ----

MJ [COL POHL]: As long as he says he's aware of it, it doesn't need to be marked. If you want it introduced as a separate thing altogether, we'll ----

LDC [MR. KAMMEN]: We'll figure that out.

MJ [COL POHL]: We'll cross that ----

LDC [MR. KAMMEN]: I'll identify it with sufficient particularity that we all -- so using for example -- let's see if we can read this. Let's see if this works, okay?

MJ [COL POHL]: Once you do that, then we have to mark it. No, I mean, you go ahead and do it. I'm just saying, is that if you show it to the witness, then it has got to be part of the record.

LDC [MR. KAMMEN]: Okay. Well, let's ----

MJ [COL POHL]: I'm not saying that you don't have to. You can do whatever you want.

LDC [MR. KAMMEN]: Let's try it without it and see.

MJ [COL POHL]: Okay.

Questions by the Learned Defense Counsel [MR. KAMMEN]:

Q. Doctor, if you need to see the document, we'll make that happen, so ----

A. I understand.

Q. ---- however you're most comfortable, we're prepared to proceed.

A. Okay.

Q. I'm just using, for example, a psychiatric evaluation note dated 29 May 2013. It was from the prior doctor. And the Axis I diagnosis by Dr. Redact was PTSD

comma, severe, period. Do you recall seeing that repeatedly throughout Mr. Nashiri's medical records?

A. From around 2013 until probably ----

Q. Until March the 19th of this year.

A. ---- late ----

MJ [COL POHL]: Let him answer the question.

A. That was in the record, yes.

Q. Right. It was on March the 19th ----

A. But prior to 2013 -- prior to 2013, he had anxiety disorder not otherwise specified, in his record ----

Q. Okay. Well, we'll ----

A. ---- not PTSD.

Q. Let's do it the hard way.

LDC [MR. KAMMEN]: Should I write on it? Do you want the clerk to write on it?

MJ [COL POHL]: We'll refer to it as the next in order. I believe it's 2050.

WIT: I mean, I believe what you are holding has that diagnosis on there, yes.

LDC [MR. KAMMEN]: Just make sure that we're all on the same page.

ATC [LT DAVIS]: Your Honor, I don't think there's any disagreement here. I think the doctor testified that he

agrees that throughout 2013, the diagnosis does reflect that PTSD was present. The only difference of opinion was the statement that prior to that it had not included it. Simply to go through those documents is simply unnecessary.

MJ [COL POHL]: But if you want to make them part of the record, you can do that, and it will be 2050, Oscar. Go ahead.

Questions by the Learned Defense Counsel [MR. KAMMEN]:

Q. Now, let me go back. On 29 May, and I understand that prior to that, PTSD didn't -- wasn't a part of his diagnosis. We all agree on that.

MJ [COL POHL]: Mr. Kammen, I want you to hold up there.

A. Yes.

MJ [COL POHL]: How long do we have the VTC for him?

TC [CDR LOCKHART]: I believe that they scheduled it for three hours, with the potential ability to extend it one hour, sir.

MJ [COL POHL]: Okay. I'm just -- understand the current time constraints. If we can't meet it today, we'll do it another day, but we have gone with him almost two hours now, Mr. Kammen and the government may have a few questions, too. So go ahead.

LDC [MR. KAMMEN]: I understand, and ----

MJ [COL POHL]: No, I know. I'm just saying if that's our time limits, that's our time limits. Go ahead.

LDC [MR. KAMMEN]: I'm just going to guess that if the government's questioning, it will all be extended.

MJ [COL POHL]: And if you have more questions and you need more time, you will get the same courtesy.

LDC [MR. KAMMEN]: I know. I know that.

Questions by the Learned Defense Counsel [MR. KAMMEN]:

Q. Just so we're all on the same page, Doctor. In May of 2013, the Axis I diagnosis was PTSD, comma, severe, period, chronic; is that correct?

A. Yes.

Q. And then there is MDD, comma, severe, chronic, without psychotic features. What does MDD stand for?

A. Major depressive disorder.

Q. I'm sorry, say that again, please.

A. Major depressive disorder.

Q. Okay. And a major depressive disorder can often be associated with chronic PTSD; isn't that true?

A. Sure. Just like I said before, you can have more than one diagnosis.

Q. Absolutely. And as a trained -- major depressive disorder, though, is often associated with PTSD, because of

the ongoing effects of PTSD that renders people depressed, right?

A. Yes.

Q. Now, major depressive disorder can also impair memory; isn't that true?

A. Yes.

Q. So not only can PTSD impair memory, but a major depressive disorder can impair memory, correct?

A. Yes.

Q. Okay.

A. Yes.

Q. Now, Dr. Redact, this fellow who was there before you, do you have any reason to challenge his professional expertise? I understand you may disagree with him, but do you have any reason to think he was not competent?

A. No.

Q. Do you have any reason to think that he was less than professional?

A. No.

Q. Do you have any reason to think he was just going through the motions?

A. No.

Q. Now, from May to June to your arrival in October,

every time Dr. Redact met with Mr. Nashiri, he entered into the records that Mr. Nashiri was suffering from severe chronic PTSD; is that correct?

A. Yes.

Q. Major depressive disorder; isn't that correct?

A. Yes.

Q. Now ----

A. I believe at some point the major depressive disorder changed from major depressive disorder severe to major depressive disorder in remission.

Q. We'll come to that.

A. I don't have the records in front of me, obviously, but I believe there was that change at some point during this period.

Q. Well, we'll come to that.

In any event, you took over, you said, in October of 2013 ----

A. Yes.

Q. ---- correct?

A. Yes.

Q. And you began seeing -- do you happen to know the precise date on which you began seeing Mr. Nashiri?

A. I don't know the precise date, no. I know it was in

October.

Q. Okay. Would you have seen him on October the 9th of 2013?

[VTC transmission interrupted]

CP [BG MARTINS]: Excuse me. It looks like we may have a problem with the connection.

MJ [COL POHL]: Doctor, can you hear us?

WIT: I can hear you.

MJ [COL POHL]: Thank you.

Go ahead, Mr. Kammen, ask your question again.

LDC [MR. KAMMEN]: Thank you.

Questions by the Learned Defense Counsel [MR. KAMMEN]:

Q. Would you have seen Mr. Nashiri on October the -- well, in fact, you did -- would it be fair to say that you did see Mr. Nashiri on October the 9th because Dr. Redact introduced you to Mr. Nashiri?

A. I don't -- you know, I remember a lot of things. I don't remember the exact specific dates, but that's fairly -- it was some time in early October that I met with Nashiri, Mr. Nashiri for the first time.

Q. Okay.

A. That's correct.

Q. And certainly let me suggest to you that according

to the medical -- the psychiatric records, Dr. Redact said goodbye and introduced -- it's redacted, but I assume that's you -- my replacement. No issues today. The patient will follow up as needed with Dr. Blank.

So I assume that's the turnover?

A. Correct.

Q. Okay. And if the records we have ----

A. Yes.

Q. ---- reflect that that's October the 9th, you would no reason to quarrel with that, correct?

A. Not at all, correct.

Q. Now, at least according to the records we have, you saw Mr. Nashiri for 60 minutes on 4 November 2013. Will you accept that, that that's the record?

A. Sure. Yes.

Q. And at the conclusion when you filled out the psychiatric report, your diagnosis was PTSD, severe chronic; major depressive disorder, severe, chronic, without psychotic features. You would agree with that?

A. I agree that that's what I was diagnosing him at that time ----

Q. Sure.

A. ---- based upon not being able to do my own complete

assessment ----

Q. Okay.

A. ---- at that -- by that time.

Q. That diagnosis continued unchanged until very recently; isn't that true?

A. Yes. It continued for several months ----

Q. Right.

A. ---- because I was unable to do the assessment that I was wanting and intending to do with him.

Q. Okay.

A. And it took several sessions before I was able to collect enough information to make my own diagnosis, which then when I did that, I changed my diagnosis at that time.

Q. Sure. And, of course, you had orders to leave on April the 14th, as you've told us, correct?

A. More or less, correct, yes.

Q. Sometime in -- last week, right?

A. Right.

Q. Okay.

A. Yes.

Q. And you were working really diligently, we're to believe, to do this diagnosis before you left, to change the diagnosis before you left. Is that what you're telling us?

A. No. I wasn't working to change -- diligently change the diagnosis. I was trying to be more accurate, to reflect how best we can treat and support and help Mr. Nashiri.

Q. Sure.

A. And if we had the wrong diagnosis, obviously, we'll be providing the wrong treatment for him.

Q. Sure. Now, you indicated that you became aware of this litigation and you talked to Dr. X about it several times; isn't that true? That's what you told us earlier.

A. A handful of times.

Q. I'm sorry?

A. I said I talked to him -- I talked to him a handful of times. I wouldn't say several. It was possibly ----

Q. A handful, several.

A. Yeah, three, four times. Three, four times that we talked about ----

Q. You were aware ----

MJ [COL POHL]: Let's just talk one at a time.

LDC [MR. KAMMEN]: I'm sorry.

MJ [COL POHL]: Ask the question Mr. Kammen.

Q. As you've told us, you were aware of Dr. Crosby, right?

A. Yes.

Q. And a month before -- or so before you left, you began researching her and the Istanbul Protocols in conjunction with Dr. X; isn't that true?

A. Yes.

Q. You and Dr. X ----

A. Yes.

Q. ---- consulted, right? Isn't that correct?

A. Yes.

Q. And there was a point where you learned that Dr. X was going to be a witness potentially; isn't that true?

A. Absolutely.

Q. And that point was some time after March 10th of this year; isn't that correct?

A. I honestly don't remember when that was that I learned that he was going to be a witness. It was probably around that time. It may have been before, it may have been after. I don't remember specifically when because there was a lot going on.

Q. Well, on March the 5th of 2014, you saw Mr. Nashiri; isn't that correct?

A. Again, I don't remember the specific dates, but if that's what's documented, I will not disagree with that.

Q. And by that time -- well, let's -- strike that.

Let's go back.

As late as January the 3rd, you saw Mr. Nashiri, right?

A. Again, the specific dates, I do not -- you know, I don't have a photographic memory to memorize the specific dates that I meet with every detainee, but if that's what is in my notes, then, yes, I met with him on January 3rd.

Q. Still diagnosing him with PTSD, correct?

A. Yes.

Q. January 15th, still diagnosing him with PTSD, right?

A. Yes.

Q. January 24th, still diagnosing him with PTSD, correct?

A. Yes.

Q. Did you see him at all in February? Because we don't have any records suggesting you did.

A. I probably did not see him at all in February.

Q. Were you on leave or is there some reason why you quit seeing him?

A. The detainees have the right to refuse appointments. They can choose not to see someone.

Q. Okay. But when they refuse ----

A. I was always available ----

Q. Strike that.

But when they refuse, there's a notation made of that, isn't there?

A. Not always, no.

Q. So you don't know if you tried to see him or for some reason he was not available?

A. I know that I was available to see him, and he knows that he could have specifically requested me to see him anytime ----

Q. Excuse me. That's not my question.

A. ---- during that period.

Q. My question is: If you would have seen him, you would have created a record, true?

A. Correct.

Q. And there is no ----

A. Yes.

Q. Will you accept that at least we've been provided no record of February.

A. Yes.

LDC [MR. KAMMEN]: Do you have any February records, just to make sure there's not an oversight?

MJ [COL POHL]: Mr. Kammen?

LDC [MR. KAMMEN]: I'm asking the government just -- I

just want to make sure there's not an oversight.

A. I'm sure that's accurate. There was a period at that time that he did not want to be seen. He didn't have any issues or concerns or requests for treatment then.

Questions by the Learned Defense Counsel [MR. KAMMEN]:

Q. Well, then you started seeing him again on March the 5th, right?

A. Correct.

Q. And so after a month of not seeing him, the diagnosis changes; is that correct?

A. I don't know when specifically that changed in March, but, yes, it did change.

Q. Well, trust me, it changed on March the 5th. PTSD became ----

A. I ----

Q. ---- PTSD became an anxiety disorder, right?

A. Which is what he had prior to 2013.

Q. It became a -- your diagnosis, your Axis I diagnosis on March the 5th was anxiety disorder, not otherwise specified, correct?

A. Correct.

Q. Major depressive disorder, severe, chronic, without psychotic features in full remission, right?

A. Correct.
Q. And you even said he had a history of PTSD, severe and chronic, right?
A. Yes. Yes.
Q. So on March the 5th, at least it was important for you to note his history of severe and chronic PTSD, correct?
A. Yes.
Q. And that was true also on March the 10th; isn't that true?
A. Yes.
Q. Because on March the 10th, your Axis I diagnosis was anxiety disorder, not otherwise specified; major depressive disorder, severe and chronic, without psychotic features in full remission, right?
A. Yes.
Q. And a history of PTSD, severe and chronic PTSD; isn't that true?
A. Yes.
Q. That's what you entered on his report, his -- your psychiatric evaluation note as late as March 10th, 2014; isn't that true, sir?
A. Yes, it is.
Q. Now, again, you're researching Dr. Crosby, right?

A. I wasn't researching Dr. Crosby. I was curious what the Istanbul Protocol was.

Q. And you learned that the Istanbul Protocols deal with documentation and identification of torture; didn't you learn that?

A. Yes.

Q. And were you provided with any of the pleadings that were filed with this commission -- public pleadings that were filed with this commission that give rise to this proceeding?

A. No.

Q. Did you and Dr. X discuss those?

A. I don't remember discussing any public pleadings, no.

Q. Well, in any event, on March the 19th, shortly after the judge issued the order for Dr. X to be a witness, your diagnosis changed, didn't it?

A. I don't know that it changed from what you said in earlier March of him having anxiety disorder, not otherwise specified ----

Q. Well ----

A. ---- and narcissistic personality disorder, because that's what ----

Q. Let's examine this. Let's take a look at the

record.

Your Axis I diagnosis on the 5th of March -- excuse me, the 10th of March was precise enough to include a history of severe and chronic PTSD. Do you remember entering that in your March 10th record?

A. Vaguely, yes.

Q. Well, by March the 19th, you were very careful to have an Axis I diagnosis that reads as follows, "anxiety disorder, not otherwise specified," right? Isn't that correct?

A. Yes. Yes.

Q. Still haven't -- he's still suffering from major depressive disorder, correct?

A. Yes.

Q. But you didn't no longer -- you no longer thought it was necessary to include the history of PTSD that had been included in every psychiatric evaluation for over a year and a half, right?

A. Correct.

Q. And you went on to explain in considerable detail why you disagreed with every other mental health professional -- strike that. With three Army physicians and Dr. Sondra Crosby; isn't that true?

A. Correct.

Q. What you said -- and let's go through it together.

LDC [MR. KAMMEN]: Whatever this -- what will this next one be?

MJ [COL POHL]: Is it different from the last one?

LDC [MR. KAMMEN]: Yes.

MJ [COL POHL]: It will be Papa, 205P.

Questions by the Learned Defense Counsel [MR. KAMMEN]:

Q. Can you read this? Because if you can ----

A. It's not ----

Q. ---- you're better than me.

A. Oh, now it disappeared.

Yes, I can read it.

Q. All right. Now -- okay. I guess it appears here. Wow. Who knew.

Huh-oh. Doctor, are you still there?

A. I'm still here.

Q. Okay.

MJ [COL POHL]: Can you take it off that screen? Yeah, we want to see the doctor, not the ----

LDC [MR. KAMMEN]: We are just trying to -- okay.

Q. Doctor, can you read this?

MJ [COL POHL]: Hold the phone for a second.

A. Yes, I can.

MJ [COL POHL]: Don't put anything up there until I say you can, okay?

Q. Now, in your changed diagnosis in March this year, shortly before you left, you did notice that in early 2013 there was an added diagnosis of PTSD. You noted that, did you not?

A. Yes.

Q. And you say it's due to, quote, "nonspecific documented symptoms of psychological trauma as a trigger, avoidant behavior, reexperiencing symptoms and hypervigilance"; is that correct?

A. Yes.

Q. And so other physicians had found psychological trauma, correct?

A. Yes.

Q. They didn't document the causes as we've discussed, true?

A. Correct.

Q. But they found them, correct?

A. Correct.

Q. They found that those -- that that trauma worked as a trigger, true?

A. Yes.

Q. And a trigger is something that causes, in a PTSD person, arousal, hypervigilance, flashbacks, avoidant behavior, all of the symptoms we've discussed; isn't that true?

A. Yes.

Q. So ideally you would want to know -- at least someone would -- some people would want to know what the trigger is, correct? It would be nice to know ----

A. Correct.

Q. ---- to try to avoid it, right, if we could? True?

A. Right.

Q. Because we don't want to damage people any more -- excuse me.

We don't want to damage people any more, do we?

A. That's partially correct, because part of treatment is to purposefully have people address their triggers, and they can't do that if they're avoiding them. Part of -- and hopefully I'll get a chance to explain what ----

Q. I'm sure you will ----

A. ---- what the treatment for post-traumatic stress disorder ----

Q. ---- because I'm sure the prosecution ----

MJ [COL POHL]: Wait for the question.

Q. Just answer my questions. You will have plenty of time to answer theirs.

MJ [COL POHL]: I believe he has answered the question. Next question.

Q. As you said, you'd want to know the trigger as part of the therapy, right?

A. Yes.

Q. Now, these other doctors with whom you disagree also noted avoidant behavior, true?

A. Yes.

Q. These other doctors with whom you disagree noticed reexperiencing symptoms, correct?

A. Yes.

Q. And flash -- and hypervigilance; isn't that true?

A. Yes.

Q. All of which are diagnostic, to them at least, as severe, chronic PTSD, right?

A. I imagine to them, yes.

Q. Okay. Imagine to them.

Now, you took it upon yourself -- as you've said, you don't know the specific causes of his trauma, do you?

A. That's correct.

Q. You don't know the hell he endured, right?

A. Correct, not specifically.

Q. Okay. You say his avoidant -- one of the things you observed was that he wouldn't see some treatment providers, correct?

[VTC transmission interrupted]

A. ---- was coincident when the policy changed, prior to the change ----

LDC [MR. KAMMEN]: Hold it.

MJ [COL POHL]: We're having technical difficulties, hold on.

WIT: Yes, Your Honor.

COURTROOM TECH: Sir, we're going to disconnect and have you call us back.

WIT: Okay.

COURTROOM TECH: Thank you.

MJ [COL POHL]: How long will that take?

COURTROOM TECH: Five minutes.

MJ [COL POHL]: Commission is in recess for ten minutes. Let me know when it's reconnected.

[The Military Commission recessed at 1325, 27 April 2014.]

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