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1 [The Military Commission was called to order at 1304, 5
2 February 2013.]

3 MJ [COL POHL]: The commission is called to order. It
4 appears that all parties are again present that were present
5 when the court recessed.

6 Is that correct, Trial Counsel.

7 TC [MR. MATTIVI]: Yes, Your Honor, except Ms. Baltes.

8 MJ [COL POHL]: I believe ----

9 TC [MR. MATTIVI]: [Counsel not at podium; no audio].

10 MJ [COL POHL]: I noticed Major Ruge moved up. I tried
11 to figure whose place he took.

12 All the members of the defense are again here as
13 well as Mr. al Nashiri.

14 The witness appears to be on the video screen.
15 Trial Counsel, please swear in the witness.

16 TC [MR. MATTIVI]: Your Honor, if you wouldn't mind,
17 defense has something they would like to take up first ----

18 MJ [COL POHL]: Okay.

19 TC [MR. MATTIVI]: ---- with the commission's
20 permission, of course.

21 MJ [COL POHL]: Sure.

22 TC [MR. MATTIVI]: Until then, I would note for the
23 record, and for any observers, that the VTC is muted right now

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1 so there's no signal going out over -- no audio going out to
2 the VTC. I'm not sure what the commission's position is on
3 this but, once again, I'm putting on the record that we are
4 transmitting back to the remote viewing locations in the
5 United States.

6 MJ [COL POHL]: Thank you. You anticipated my question
7 about the audio going to the VTC site.

8 Commander.

9 DDC [LCDR REYES]: Your Honor, thank you. Good morning.

10 MJ [COL POHL]: Good morning. Or actually, good
11 afternoon.

12 DDC [LCDR REYES]: Good afternoon, yes, Your Honor.

13 I just wanted to bring to the commission's
14 attention an incident that occurred with respect to the
15 transportation of Mr. al Nashiri to this court proceeding.
16 Mr. Al Nashiri chose to attend; of course, Your Honor ordered
17 he attend, but there was no issue about him wanting to attend.

18 During the transportation, apparently Mr. al
19 Nashiri received some injuries to his wrist. We were just
20 told about that right before the start of this hearing when we
21 went into the hold cell to speak to Mr. al Nashiri. He
22 identified some red marks that appear on his wrists that, I'm
23 speculating because I don't know, that appear to have been

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1 caused from the handcuffs during transportation. He did seek
2 medical attention. A corpsman did see him.

3 Apparently, from our knowledge, is that there was
4 some type of recording of any type of movement. What we would
5 like, Your Honor, since it does go to Mr. al Nashiri's
6 attendance here at court, and perhaps this is speculating,
7 future attendance at court, we would like to get to the bottom
8 of what happened. Specifically, we would like to see or have
9 the opportunity to review any type of documentation that
10 occurred in -- regarding the incident that caused the injury.
11 Moreover, prior to the court recessing, and we've asked the
12 guards who have been very helpful fleshing this out -- if
13 there's an ability for us to photograph the injuries of Mr. al
14 Nashiri so we can have that for future purposes.

15 MJ [COL POHL]: Any objection to any of these requests
16 this?

17 TC [MR. MATTIVI]: No, Your Honor.

18 MJ [COL POHL]: Okay. Then your requests are granted.

19 DDC [LCDR REYES]: Yes, Your Honor.

20 MJ [COL POHL]: If we need to revisit it, let me know.

21 DDC [LCDR REYES]: Yes, Your Honor.

22 MJ [COL POHL]: Anything else to take up before the
23 witness?

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1 TC [MR. MATTIVI]: No.

2 MJ [COL POHL]: Trial Counsel, please turn on the audio
3 feed to the witness, swear the witness in; then, Mr. Kammen,
4 you will have the opportunity to examine.

5 TC [CDR LOCKHART]: Dr. Iacopino, can you hear us?

6 DR. IACOPINO: Yes, I can. Can you hear me?

7 TC [CDR LOCKHART]: I can. Can you please stand and
8 raise your right hand. Do you swear or affirm that the
9 testimony you are about to give in this case in hearing is the
10 truth, the whole truth and nothing but the truth, so help you?

11 DR. IACOPINO: I do.

12 TC [CDR LOCKHART]: Please be seated. And if you could
13 please state your full name, spelling your last name for the
14 record.

15 THE WITNESS: My name is Vincent James Iacopino.
16 Iacopino is spelled I-A-C-O-P, as in Paul, I-N-O.

17 TC [CDR LOCKHART]: Thank you, sir.

18 THE WITNESS: Thank you.

19 VINCENT JAMES IACOPINO, M.D., Ph.D., was called as a witness
20 by the Defense and sworn and testified as follows:

21 DIRECT EXAMINATION

22 Questions by the LDC [MR. KAMMEN]:

23 Q. Good morning, Dr. Iacopino.

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1 A. Good morning.

2 Q. For the record -- well, not for the record. What
3 is your profession or occupation?

4 A. I am a physician with a specialty in internal
5 medicine. I have a background in research as well.

6 Q. And could you give the ----

7 A. My current ----

8 Q. Go ahead.

9 A. I work full time with Physicians for Human Rights,
10 a human rights documentation organization based in Cambridge,
11 Massachusetts. I am their senior medical advisor.

12 Q. And could you ----

13 A. I have several other academic affiliations as
14 well.

15 Q. Could you give the commission a brief overview as
16 to your education, please.

17 A. I did my undergraduate training at Villanova
18 University. I obtained my M.D. degree and Ph.D. degree at
19 Georgetown University. I did my internal medicine residency
20 at the University of Minnesota followed by a chief residency
21 at the University of Minnesota. I then -- I worked overseas
22 for an area in a refugee camp on the border of Thailand and
23 Cambodia, came back and completed my residency, chief

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1 residency, then I went to Stanford for a postdoctoral
2 fellowship with the Robert Wood Johnson fellowship program,
3 and since that time been teaching at the University of
4 California Berkeley and I'm an adjunct professor at the
5 University of Minnesota School of Medicine.

6 Q. Did you this morning e-mail me an updated copy of
7 your curriculum vitae?

8 A. Yes, I did.

9 LDC [MR. KAMMEN]: For the record, Your Honor, I would
10 like to offer into evidence what I gather will be marked as AE
11 140E, which is that updated resume.

12 MJ [COL POHL]: Updates the one that's currently in the
13 exhibit?

14 LDC [MR. KAMMEN]: Yes, sir.

15 MJ [COL POHL]: Without objection?

16 TC [MR. MATTIVI]: [Counsel not at podium; no audio].

17 MJ [COL POHL]: Go ahead. Mark it 140E.

18 QUESTIONS BY LDC [MR. KAMMEN]:

19 Q. What is now in evidence as AE 140, your updated
20 resume, does that more fully and completely set out your
21 qualifications as a physician, as a teacher, as a lecturer?

22 A. Yes, it does.

23 Q. Now, you indicated that you were the director, I

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1 gather, for Physicians for Human Rights?

2 A. I am currently the senior medical advisor with
3 Physicians for Human Rights, or PHR, but I have held several
4 different positions over the last 20 years I worked with them.
5 At one point, I was the western regional director and ran
6 their office in San Francisco, but I'm not the director of the
7 organization.

8 Q. And what is ----

9 MJ [COL POHL]: One moment, please. What phone is
10 ringing? Is that in his office?

11 A. There's no phone on this -- Your Honor, there's no
12 phone on this end.

13 MJ [COL POHL]: Go ahead. It may be outside. Go ahead.

14 QUESTIONS BY LDC [MR. KAMMEN]:

15 Q. For the record, could you briefly describe for the
16 commission what Physicians for Human Rights is and what it
17 does.

18 A. It's a human rights documentation organization and
19 we use the knowledge and skills of health professionals and
20 scientists in the documentation of human rights violations,
21 particularly civil and political rights violations such as
22 crimes against humanity, torture, women's human rights
23 violations. There's a wide range of human rights concerns

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1 that we've investigated and documented from child labor
2 practices to mass atrocities. We were one of six
3 organizations to initiate the international campaign to ban
4 landmines and we're corecipient of the Nobel Peace Prize for
5 that work in 1997. So torture is one of the big human rights
6 violations we've been documenting for the past 25 years.
7 Regarding that concern, we've have helped to develop
8 international standards regarding documentation of human
9 rights violations and to have capacity building trainings
10 around the world to train other forensic experts to do that
11 work.

12 INTERPRETER: Your Honor ----

13 MJ [COL POHL]: One moment, please.

14 LDC [MR. KAMMEN]: I was just going to ask the doctor to
15 slow down.

16 MJ [COL POHL]: Does he realize it's being translated?

17 LDC [MR. KAMMEN]: He does, but doesn't have a sign that
18 says slow down.

19 MJ [COL POHL]: Doctor, this is the judge. You're
20 simultaneously being translated for Mr. al Nashiri. There may
21 be times where the person at the podium will indicate you need
22 to slow down, okay?

23 THE WITNESS: That's helpful. I will, Your Honor.

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1 MJ [COL POHL]: Thank you. Go ahead, Mr. Kammen.

2 LDC [MR. KAMMEN]: Thank you.

3 QUESTIONS BY LDC [MR. KAMMEN]:

4 Q. Now, for complete disclosure, in an ancillary
5 civil action entitled Nashiri versus MacDonald did -- and
6 please answer this question yes or no, did Physicians for
7 Human Rights file an amicus brief?

8 A. Yes.

9 Q. And again, short answer yes or no, does that brief
10 contain at least what Physicians for Human Rights believe to
11 be a compendium of the public source information about the
12 treatment to which Mr. Nashiri was subjected?

13 A. Yes, I believe so. And I say that I believe so
14 because I haven't seen that document in a long time. I have a
15 fairly -- some uncertainty about the content of it at this
16 point since I haven't reviewed it.

17 Q. Fine.

18 LDC [MR. KAMMEN]: For the record, Your Honor, that
19 document is a part of the record with respect to another
20 exhibit, so we're not offering it since it's available.

21 MJ [COL POHL]: I recall when it came in earlier. Thank
22 you.

23 QUESTION BY LDC [MR. KAMMEN]:

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1 Q. Now, again in the interest of completeness, it is
2 true, is it not, that you have not met Mr. al Nashiri?

3 A. That is correct.

4 Q. Okay. Now, could you briefly describe your
5 personal work with the victim ----

6 A. I'm sorry, Mr. Kammen, excuse me. You cut out at
7 the outset of your speaking and so I didn't hear any of that.

8 Q. Okay. Thank you. Could you briefly describe
9 your -- your personal work with individuals who have been the
10 victims of torture, and in special -- and focus, please,
11 generally on determining whether they suffer the psychological
12 and psychiatric effects of torture.

13 A. Yes. I've been doing this work, as I've
14 mentioned, for more than 20 years and so there's a lot to say
15 about this. I will do my best to summarize it briefly.

16 Starting in the early 1990s, I was the medical
17 director of a treatment center for survivors of torture in San
18 Francisco. I'm trying to speak slowly.

19 Q. Please.

20 A. In that role, I was responsible for the care of
21 survivors of torture and also documented physical and
22 psychological evidence of claims of torture among asylum
23 applicants, people tortured, allegedly tortured, in other

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1 countries who were claiming -- who were applying for political
2 asylum on the basis of torture claims, and I've testified in
3 literally hundreds of cases of asylum applicants.

4 Later in -- perhaps it was 1992 or '3, given my
5 skill in documenting torture, I was asked by Physicians for
6 Human Rights to participate in investigations of torture in
7 India and other countries. And soon after, I started working
8 with Physicians for Human Rights.

9 So over the past 20, 22 years with Physicians for
10 Human Rights, I have gone on international investigations, and
11 provided forensic evidence in various courts of law, national,
12 international, and so forth.

13 Given my experience -- in 1996, there were a
14 number of individuals who got together. I was honored and
15 fortunate to be the leader of the UN effort to develop UN
16 standards for the investigation and documentation of torture,
17 including physical and psychological effects.

18 That effort resulted in what is now called the
19 Istanbul Protocol. I am largely associated with that document
20 since I was the principal author of the effort. And since
21 that time, many countries have asked us to help them with the
22 implementation of the Istanbul Protocol, meaning to implement
23 the standards for effective medical and legal investigations

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1 of torture and ill treatment.

2 I've worked in dozens of different countries
3 documenting torture. With regard to the United States, we
4 have trained not only medical experts in the United States but
5 also judges with the Executive Office for Immigration Review,
6 have asked us to partner with them to develop model curriculum
7 for judges on documentation of torture, the medical
8 documentation of torture. By "medical documentation" I'm
9 always referring to physical and psychological effects.

10 I've worked with the International Criminal Court
11 to help train the Office of the Prosecutor on the medical
12 documentation of torture. And currently we're working with
13 the UN High Commissioner For Human Rights on a project to
14 develop another set of UN standards on the implementation of
15 the Istanbul Protocol.

16 Lastly, I would like to say that because of my
17 experience in documenting torture, I've been asked to review
18 medical records and/or testify in a number of cases of alleged
19 torture of detainees in U.S. custody. So I have examined one
20 detainee for a federal habeas case in the United States, a
21 high-value detainee and reviewed the medical records and legal
22 documents of approximately a dozen other individuals who were
23 detained in U.S. custody.

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1 Q. Thank you. Now, doing a medicolegal examination
2 of an individual who has been tortured, does that require, in
3 your experience, any special training or -- training?

4 A. Yes, indeed.

5 Q. Could you just -- go ahead, please.

6 A. Yes. Oftentimes there are experts that focus
7 specifically on the physical findings and others who focus on
8 the psychological findings. In rare cases there are experts
9 who are competent and qualified to examine both physical and
10 psychological evidence and to testify in court. I'm one of
11 those individuals because my experience extends back to the
12 beginning of this -- you know, the documentation efforts.
13 There are only a few people, maybe a handful, five or six in
14 the country, who do both physical and psychological
15 documentation.

16 Q. Let me interrupt and ask this question: Can
17 anybody who has -- perhaps as a psychiatrist or a psychologist
18 without any specialized training, in your opinion, adequate to
19 do a medicolegal examination of somebody who has been
20 tortured?

21 A. The answer is no.

22 Q. Let me interrupt. Why not?

23 A. Yes. Even though a psychiatrist or psychologist,

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1 clinical psychologist, may be skilled at diagnosing
2 depression, anxiety and so forth and have interview skills,
3 there are many other skills that are required to interview a
4 survivor of torture. And I can enumerate them.

5 Q. Would you, briefly?

6 A. First of all, it's important to understand
7 interview considerations, such as earning trust, demonstrating
8 empathy while being objective, obtaining relevant background
9 information, obtaining a very thorough psychosocial history,
10 also what we call a premorbid history, the person's
11 psychological history prior to the alleged traumatic events.
12 And then in the course of asking questions, one needs to be
13 skilled at eliciting a trauma history. You need some
14 cross-cultural competence in doing that, you need to have some
15 sense of what the possible -- what the country conditions are
16 and so forth, and then there are a number of components of the
17 psychological evaluation. It's important to know what those
18 components are. It's important to be skilled in documenting
19 the most likely psychological consequences or sequelae, as we
20 say, of torture and ill treatment.

21 For example, PTSD is just one of the cluster of
22 symptoms. There's all kinds of reactions that people have to
23 torture and ill treatment: Depression, changes in

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1 personality, sometimes there may be substance abuse. There --
2 there are cases where people have brief psychotic episodes and
3 so forth. There are emotional challenges in terms of guilt,
4 shame, rage.

5 There are serious effects on one's capacity to
6 interact with family members and social functioning and so
7 forth. And so all of these aspects have to be assessed. And
8 a skilled psychological evaluator not only assesses for
9 psychological symptoms, what they're really doing is finding
10 out who the individual is prior to the alleged torture, how
11 it's affected them. And I can tell you from experience that
12 there is some variability. There may be mitigating factors
13 that -- that decrease the symptoms that a person has. Those
14 symptoms can change over time based on ongoing experiences,
15 their support system, how their legal case is going, and so
16 forth.

17 So there are complexities that, without prior
18 experience or knowledge, you know, make it impossible for
19 someone to be qualified at the outset unless they gained this
20 knowledge and skills.

21 And I can tell you how we train people to actually
22 do this so you get a sense.

23 Q. We'll come to that in a second.

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1 A. Sure.

2 Q. Now, you mentioned the Istanbul Protocols. Now,
3 are the Istanbul Protocol largely about documenting the
4 perpetrators of torture or are they about documenting the
5 proper ways to do a medical or legal evaluation of somebody
6 who is the victim of torture?

7 A. It's the latter. The Istanbul Protocol is a set
8 of guidelines for the effective medical and legal
9 investigation and documentation of torture and ill treatment.
10 So many of the legal investigation and documentation
11 principles are already covered in international law, but the
12 Istanbul Protocol was somewhat unique in the inclusion of the
13 guidelines for medical investigation and documentation of
14 torture.

15 And so primarily the objective is to assess
16 physical and psychological evidence and to assess the degree
17 of correlation between specific allegations of abuse and those
18 physical and psychological consequences.

19 Q. Now -- go ahead.

20 A. May I continue just for a second?

21 Q. Sure.

22 A. One -- one subcomponent of the Istanbul Protocol
23 is the identify the perpetrator. If there are body fluids or

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1 information about the alleged perpetrators, that information
2 is supposed to be collected as well, but it's not the primary
3 purpose, no.

4 Q. Okay. Now, the court -- the commission here has
5 determined that it is appropriate that an examination of Mr.
6 al Nashiri be conducted to answer the question whether he
7 currently suffers from mental disease or defect and whether
8 that mental disease and defect, and I'm paraphrasing,
9 interferes with his ability to understand the charges and
10 assist in his defense.

11 Focusing on the does he currently suffer from
12 mental disease or defect, if someone was doing an examination
13 to determine that, and assume for the sake of my questions
14 that there's suggestions that Mr. al Nashiri was tortured,
15 would it be appropriate, in your opinion, that the people
16 doing those -- those evaluations, be familiar with and comply
17 with the Istanbul Protocol?

18 A. Yes, definitely. I mean, these are international
19 standards that have been recognized in regional and national
20 courts and, you know, it's -- it's hard to imagine that, you
21 know, someone could be tortured in a very significant way and
22 be completely unaffected psychologically. And you can say
23 with some high degree of certainty that based on the

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1 information in the records that I've reviewed, the allegations
2 of torture, that one would expect very serious psychological
3 sequela acutely and chronically, and that picture would be
4 quite complex and change over time.

5 Q. Now, the records you reviewed are the motions I
6 sent you; is that correct?

7 A. Yes. There are four documents and you can state
8 them or I can, if you wish.

9 Q. Well, why don't you state them. Just read the
10 titles of them.

11 A. Sure. One is The Government Motion for Inquiry
12 Into the Mental Capacity of the Accused dated November 15th,
13 2012.

14 The second, Defense Response to Government Motion
15 for Inquiry Into the Mental Capacity of the Accused Under
16 R.M.C. 706, dated December 28th, 2012.

17 The third is Government Reply to Defense Response
18 to Government Motion For Inquiry Into the Mental Capacity of
19 the Accused Under R.M.C. 706, dated January 4th, 2012.

20 And the last is a Defense Motion to Compel the
21 Production of Dr. Vincent Iacopino to Testify on AE 140.
22 There's no date on this one.

23 Q. Thank you. Now, going back to a medicolegal

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1 examination to determine whether an individual currently
2 suffers from mental disease or defect. I gather that it would
3 be your opinion, based on your prior testimony, that such
4 examiners need to be familiar with not only PTSD,
5 post-traumatic stress disorder, but all the other possible
6 sequelae of torture. Would that be fair to say?

7 A. Yes, that is correct.

8 Q. And briefly -- I mean, were the reasons for that
9 subsumed in your prior answers or are there additional reasons
10 why they would need to be familiar with those?

11 A. There are some additional reasons in addition to
12 what I've said. PTSD and major depression are two of the most
13 common psychological clusters of symptoms or diagnoses, a
14 change in personality, it's very common for people to have
15 with their depression symptoms, suicidal thoughts or ideation
16 and oftentimes actually suicide attempts. I know in my own
17 experience of evaluating medical records and examination of
18 Guantanamo detainees, that there was a very high rate of
19 suicidal attempts. So that's something that comes to play in
20 a person's behavior and their thinking and so forth, their
21 decision-making.

22 Also with individuals who have had head trauma
23 and/or asphyxia where there's a decrease of blood flow to the

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1 head from choking or ----

2 Q. Let's not get into any specifics just because ----

3 A. Well ----

4 MJ [COL POHL]: Just don't.

5 QUESTIONS BY LDC [MR. KAMMEN]:

6 Q. There are other conditions that ----

7 A. Well, it's ----

8 Q. Please.

9 A. Thank you. The -- there are also neurologic
10 conditions relevant to an evaluation depending upon the type
11 of injury to the [no audio].

12 Q. I'm not sure if we have him. Let's all get on the
13 same page.

14 A. Are you able to hear me?

15 Q. Let's all get on the same page. There may have
16 been an interruption.

17 MJ [COL POHL]: Mr. Kammen, let's try to keep this a
18 question-and-answer format.

19 LDC [MR. KAMMEN]: I'm trying.

20 MJ [COL POHL]: I know you are. I've had other experts
21 testifying and it's sometimes a challenge, but that's how
22 we've got to do it.

23 QUESTIONS BY LDC [MR. KAMMEN]:

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1 Q. Let's go a little slowly, please.

2 A. Sure.

3 Q. Now, let's turn to language. Assume for the sake
4 of my question that Mr. Nashiri's primary language is not
5 English. Would it be fair to say that whoever does this
6 examination needs to have an interpreter, assuming he or she
7 doesn't speak the language, that is fluent in both the
8 language and in the nuances of psychology as it applies to
9 that language?

10 A. Yes.

11 Q. Okay. And could you briefly explain why that is?

12 A. Because the meaning of -- of a particular concern
13 may be different across cultures, because there may be
14 different sensitivities to certain types of trauma. Let's say
15 in sexual assault, the way in which a person asks the question
16 should be culturally sensitive and respectful, otherwise the
17 examiner risks the possibility of nondisclosure.

18 So oftentimes it's helpful to have someone with
19 the cultural understanding as to how to phrase a particular
20 question [no audio] alert the examiner of perhaps some
21 confusion in the meaning of a particular symptom.

22 Q. And I'm gathering that -- and is it correct that
23 in some cultures things may be -- that may be significant may

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1 be described in language that an examiner not familiar with
2 the language may not get, for lack of a more elegant phrase?

3 A. Yes, that's correct.

4 Q. Now, would it be helpful in doing an examination
5 for current mental disease or defect that might be the result
6 of torture to have available, if it exists, all of the
7 documentation of the actual torture to which the interviewee
8 was subjected? And please answer the question yes or no so we
9 can go slowly.

10 A. Yes.

11 Q. Okay. And without regard to any particular
12 individual you may have seen, and please keep your answer
13 general, why would it be helpful to have available the actual
14 records of torture if they exist?

15 A. Well, the records would help to corroborate the
16 possible cause of torture for the symptoms that an individual
17 is displaying.

18 Let's say -- if an individual has PTSD symptoms,
19 that is not cause-specific. May I elaborate?

20 Q. Generally, yes. Please.

21 MJ [COL POHL]: Mr. Kammen, I understand this point. We
22 don't need to elaborate on it. I got it. This falls in you
23 need a complete medical history ----

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1 LDC [MR. KAMMEN]: Well, no we're getting ----

2 MJ [COL POHL]: ---- including treatment, the trauma
3 history that may have caused the problem.

4 LDC [MR. KAMMEN]: Well, we ----

5 THE WITNESS: Your Honor, I ----

6 MJ [COL POHL]: I'm not talking to you.

7 LDC [MR. KAMMEN]: Doctor, please.

8 MJ [COL POHL]: I'm not talking to you.

9 LDC [MR. KAMMEN]: Just to be clear, Your Honor, there's
10 two, there's the -- whatever records of the trauma that may
11 exist, the causes of the trauma ----

12 MJ [COL POHL]: Correct.

13 LDC [MR. KAMMEN]: ---- the actual records, and then
14 we're going to turn briefly to the medical records.

15 MJ [COL POHL]: Okay. But I think -- I think I
16 understand your point. We don't need to go into further
17 detail.

18 LDC [MR. KAMMEN]: I wasn't.

19 MJ [COL POHL]: Go ahead.

20 LDC [MR. KAMMEN]:

21 Q. Turning now to medical records of a person who is
22 subject to a medical examination -- a medicolegal examination
23 to determine his current -- whether he currently suffers from

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1 mental disease or defect, would it be helpful to have
2 available to the examiner all of the medical records that were
3 prepared from the -- that are available? Would it be helpful
4 to have as much medical records that were available as
5 possible?

6 A. Yes. In fact, I'd say that that information would
7 be critical, especially in a complex case.

8 Q. And again, would it undermine or make the
9 examination less reliable if several years of medical records
10 that were available were withheld from the examiners?

11 A. Again, we're referring to an examination to
12 determine whether or not there is a psychological disease or
13 disorder ----

14 Q. Yes.

15 A. ---- is that correct?

16 Q. Yes.

17 A. Yes. Then my answer is in the affirmative. Yes,
18 indeed.

19 Q. Now, if there are going to be psychological tests
20 performed, when we use the term culturally normed, is that a
21 term of art for testing for -- in the area to do a medicolegal
22 examination to determine the sequelae of torture?

23 A. I'm not sure I understand your question,

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1 Mr. Kammen. Can you repeat?

2 Q. I'm surprised. I don't think I even understood
3 it.

4 Do psychological tests need to be culturally
5 normed to be reliable?

6 A. Yes, they do.

7 Q. And when we talk about tests being culturally
8 normed, what do we mean by that?

9 A. That means that the -- the population of concern
10 needs to be tested with the instrument and compared to other
11 controls, other populations.

12 I want to -- I want to go to my previous answer
13 about reliability. Is that okay?

14 Q. Briefly, yes.

15 MJ [COL POHL]: What's the question before him? Ask him
16 a question. I'm not sure what he's referring to.

17 LDC [MR. KAMMEN]:

18 Q. Does this pertain to the reliability of tests or
19 the reliability of the examination, just so we know what
20 you're talking about?

21 A. Yeah -- no. When I'm referring to reliability,
22 I'm referring to the standardization of a test.

23 Q. Okay.

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1 A. In publication in a peer-reviewed journal, that
2 kind of reliability, there is some reliability to some tests
3 that may not yet be considered standardized. Many times
4 standardized tests are used in populations in which they have
5 not been validated through publication but there can be some
6 value to those tests.

7 Q. So it would be helpful to have advance notice of
8 what tests are going to be administered to make sure that
9 those are appropriate in a particular examination?

10 A. Yes.

11 Q. Now ----

12 MJ [COL POHL]: Mr. Kammen, advance notice to whom?

13 LDC [MR. KAMMEN]: Well, advance notice ideally to the
14 defense and the government so if there were any issues
15 regarding whether they were appropriate ----

16 TC [MR. MATTIVI]: Judge, I'm going to object [Counsel
17 not at podium; no audio].

18 MJ [COL POHL]: I understand your objection,
19 Mr. Mattivi, and as he -- if he were to drift into those
20 areas, I will give it the weight it deserves. Okay. Thank
21 you.

22 Go ahead, Mr. Kammen.

23 LDC [MR. KAMMEN]:

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1 Q. Now, finally, are there tests, and I'm not
2 suggesting there aren't, psychological tests that have been
3 normed to people who are the victims of torture?

4 A. Yes.

5 Q. Okay. And what sort of tests have been normed to
6 people who are the victims of torture?

7 A. Typically the tests are those which [no audio]
8 post-traumatic stress disorder, there are quite a few that
9 have been tested in various cultures and who allege different
10 traumatic experiences, including torture. Major depression,
11 there are symptom checklists and so forth. And so forth. So
12 [no audio] for sure.

13 LDC [MR. KAMMEN]: Doctor, I don't have any -- well,
14 excuse me just a second.

15 Doctor, I don't have any additional questions, but
16 perhaps the prosecutor might. Thank you very much.

17 MJ [COL POHL]: Okay. Mr. Kammen.

18 LDC [MR. KAMMEN]: Thank you.

19 MJ [COL POHL]: Mr. Mattivi, cross-examination.

20 TC [MR. MATTIVI]: Thank you, Your Honor.

21 MJ [COL POHL]: Sure.

22 **CROSS-EXAMINATION**

23 **Questions by the TC [MR. MATTIVI]:**

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1 Q. Good afternoon, Doctor. I recognize it's morning
2 for you, but good afternoon.

3 A. Yes, good afternoon.

4 Q. Are you able to see me okay, sir?

5 A. I can, and I can hear you as well.

6 Q. Very well. If I -- if I -- can you see me raise
7 my hand?

8 A. Indeed.

9 Q. Okay. So can we agree that if I need you to slow
10 down, that will be my signal, to raise my hands, and have you
11 slow down?

12 A. Yes, agreed.

13 Q. All right. Thank you. Dr. Iacopino, you and I
14 have spoken on the phone one time before previous, correct?

15 A. That is correct.

16 Q. And during that conversation I asked you whether
17 you would be willing to talk with me about the substance of
18 your testimony here today and you indicated at that time you
19 were not comfortable doing so, correct?

20 A. That defense counsel had asked me to confine my
21 discussion to logistics only and I indicated to you that I had
22 the intention of respecting that, but I would entertain any
23 question that you might pose to me.

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1 Q. And I -- I did not violate those wishes, correct?

2 A. That is correct.

3 Q. So we have not had the opportunity to speak about
4 your testimony prior to right now, correct?

5 A. Yes, correct.

6 Q. Dr. Iacopino, let me speak with you first about
7 the Istanbul Protocol itself, if you don't mind. The Istanbul
8 Protocol mentioned -- in fact, it has an entire chapter on
9 relevant ethical codes, correct?

10 A. Yes.

11 Q. And, in fact, in paragraph 51 of the Istanbul
12 Protocol, it speaks generally of healthcare ethics, correct?

13 A. I'm turning to paragraph 51. Yes.

14 Q. I'm going to read this fairly slowly for purposes
15 of the translator, so please -- please bear with me. But in
16 paragraphs 51, the Istanbul Protocol mentions that "a central
17 tenet of all healthcare ethics, however articulated, is the
18 fundamental duty to always act in the best interest of the
19 patient regardless of other constraints, pressures or
20 contractual obligations"; is that correct?

21 A. Yes, that is a medical-ethical principle.

22 Q. So would it be accurate, then, to say that any
23 physician who is generally an ethical physician is going to

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1 follow that guideline?

2 A. In the course of medical care, yes. With respect
3 to forensic and legal work, there are exceptions that are
4 mitigating.

5 Q. Well, I understand that there may be exceptions to
6 any rule, but generally speaking a physician is required by
7 his own professional code to act ethically, correct?

8 A. What ethics are you referring to? This specific
9 tenent?

10 Q. Yes, this specific tenent.

11 A. The answer is actually no, because in some
12 instances, and I deal with this all the time in being a
13 forensic expert, it -- it may be -- you know, the truth may
14 not be in the patient's best interest or in the client's best
15 interest. And you need to inform the client of your duty to
16 be objective and impartial prior to the outset, because you
17 can't act on their best interests. You have a third-party
18 interest in finding the truth and being objective.

19 Q. Let's confine our discussion today to a
20 hypothetical whereby this Military Commission or this judge
21 that I'm standing before appoints a group of physicians to
22 conduct a competency evaluation. Do you have any question
23 that those physicians would not conduct themselves ethically?

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1 A. I have no way of knowing. Maybe I didn't
2 understand your question.

3 LDC [MR. KAMMEN]: [Counsel not at podium; no audio].

4 MJ [COL POHL]: Okay. Just a second. Just a second.
5 Doctor, hold on a second.

6 The objection is overruled. I'll give the weight
7 to this as -- I mean, you're correct to a degree, Mr. Kammen,
8 but, quite frankly, some of the direct testimony was
9 speculative also. So I understand what you're saying. I got
10 it. It will be much easier to address after an examination as
11 to whether it was done properly and things like that. I got
12 it. But the objection is overruled.

13 You may answer the question.

14 QUESTIONS BY MR. MATTIVI:

15 Q. Go ahead, Dr. Iacopino.

16 A. I'm sorry, Your Honor, may I have the question
17 repeated? I don't think I fully understand the hypothetical.

18 MJ [COL POHL]: Sure.

19 QUESTIONS BY MR. MATTIVI:

20 Q. You mentioned in your experience you dealt with
21 physicians who, in your estimation, didn't behave ethically,
22 correct?

23 A. Yes.

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1 Q. Do you have any reason to speculate that a
2 physician appointed to a board by this judge before whom I'm
3 standing would for some reason behave unethically? Do you
4 have any reason to believe that?

5 A. No, I don't have a reason a priori to believe
6 that. But I do have a concern that the individual would be
7 able to develop a trusting relationship based on past
8 evaluations that I've conducted in the review of medical [no
9 audio] there's no evidence of a trusting or therapeutic
10 relationship. In fact, if I may continue ----

11 Q. Let me stop you there.

12 A. ---- we ----

13 Q. Let me stop you there if you wouldn't mind. The
14 Istanbul Protocol ----

15 A. I haven't answered the question.

16 MJ [COL POHL]: Doctor, you have answered the question.

17 THE WITNESS: I haven't completed my answer, sir.

18 QUESTIONS BY MR. MATTIVI:

19 Q. I submit you have, Doctor. Thank you.

20 MJ [COL POHL]: Wait for the next question, please,
21 Doctor. Go ahead.

22 QUESTIONS BY MR. MATTIVI:

23 Q. The Istanbul Protocol contemplates an interview of

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1 a detainee in custody, correct?

2 A. Yes.

3 Q. Would you follow along with me, Doctor, I'm going
4 to talk now about paragraph 123.

5 A. I can see it.

6 Q. In paragraph 123, the Istanbul Protocol suggests
7 that the detainee should be taken to a forensic medical
8 examination by officials other than soldiers and police,
9 correct?

10 A. Yes, that's true.

11 Q. How can a detainee who is in custody be
12 transferred to the examination by someone other than those who
13 are detaining him?

14 A. In many circumstances there are police associated
15 with judicial custody as opposed to those involved in the
16 predetention and investigation. So [no audio] is being
17 referred to there is that the alleged perpetrators are not
18 the -- responsible for either transporting or monitoring the
19 medical evaluation.

20 Q. So this -- this deals with the situation where
21 perhaps there are allegations of ongoing abuse?

22 A. Yes, that's correct.

23 Q. If there are no allegations of ongoing abuse, then

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1 does the Istanbul Protocol contemplate a situation where the
2 detainee is transported in custody?

3 A. As I recall, there's no stipulation as to that set
4 of circumstances.

5 Q. Okay. The Istanbul Protocol at paragraph 124 says
6 that each detainee must be examined in private and that police
7 or law enforcement should never be present in the examination
8 room, correct?

9 A. Yes.

10 Q. So the Istanbul Protocol contemplates an
11 examination where there's never a corrections officer or a
12 detention official present, correct?

13 A. I believe it is -- I think I can speak to the
14 collective wisdom of the people who developed this, and this
15 subject has come up many times.

16 There are very rare circumstances where forensic
17 experts would agree that when someone has, you know, been
18 violent to medical examiners or is very unstable, there's some
19 evidence to that -- that claim, that that might be grounds,
20 you know, for the exception.

21 Q. Okay. So under the Istanbul Protocol, it would be
22 a valid exception if the examinee -- if the patient had
23 demonstrated prior instances of violence, correct?

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1 A. Yes. But I can say in my experiences of
2 documenting hundreds of cases, and my colleagues, it's almost
3 never the case. I'm not aware of any case where that has
4 actually been true, so it's more theoretical than a practical
5 concern.

6 Q. But you haven't reviewed any records pertaining to
7 Mr. Nashiri, correct [no audio]?

8 A. That I mentioned only ----

9 MJ [COL POHL]: I'm sorry, just a second, Doctor.
10 Mr. Kammen, do you have an objection?

11 LDC [MR. KAMMEN]: [Counsel not at podium; no audio].

12 MJ [COL POHL]: Yeah, got it. Go ahead.

13 QUESTIONS BY MR. MATTIVI:

14 Q. And, in fact -- Dr. Iacopino, in fact, in
15 paragraph 125, the Istanbul Protocol says that if officers or
16 detention officials or soldiers are present that that should
17 simply be noted in the official report, correct?

18 A. It goes on to say and may, may constitute a
19 disqualification of the information if evidence of coercion.

20 Q. Dr. Iacopino, I understand it goes on to say that,
21 but that wasn't my question. My question was the Istanbul
22 Protocol mentions that if officers are present it should be
23 noted, correct? That was all my question asked, sir.

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1 A. Yes. I'm sorry, I'm trying to be as informative
2 as possible, so pardon me.

3 Q. Okay. Well, that's all right. Perhaps you can
4 concentrate on the question that I ask. Would that be all
5 right?

6 A. I'll do my best.

7 Q. Thank you. Under the Istanbul Protocol, the
8 concept of using interpreters is addressed, correct?

9 A. It is.

10 Q. And, in fact, let me direct your attention to
11 paragraphs 150 and 151.

12 In paragraph 150, the Istanbul Protocol mentions
13 that for many purposes it's often necessary to use an
14 interpreter, correct?

15 A. Yes.

16 Q. And during your direct examination with Mr.
17 Kammen, you talked about cultural norms and what I would
18 characterize as perhaps culturally specific experiences,
19 correct?

20 A. Yes.

21 Q. But, in fact, in paragraph 151 it simply says,
22 "When the interpreter is not a professional there is always a
23 risk of the investigator losing control of the interview,"

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1 correct?

2 A. That is correct.

3 Q. Okay. So the recommendation here is that a
4 professional -- and again, I'm just talking about what's here
5 in the Istanbul Protocol, a professional interpreter be used,
6 correct?

7 A. No. Because if we're referring to the Istanbul
8 Protocol, this is not the only text on interpretation. This
9 is only one paragraph. There's another chapter on
10 considerations of the interview in which interpreters is
11 discussed again.

12 Q. Okay. All right. Fair enough.

13 When a physician who is acting ethically is
14 looking for tests to use to accurately determine a patient's
15 psychological state, isn't it true that a physician who is
16 acting ethically is always going to use the most accurate test
17 possible?

18 A. Not if they're unaware, don't have the knowledge
19 or the experience of using that test. It's one thing to --
20 sorry. Go ahead.

21 Q. But again, a physician who is acting ethically is
22 going to look for every test possible, correct?

23 A. I don't think that the ethic -- ethical principle

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1 of competence requires complete knowledge or actually comments
2 on the degree of experience or knowledge that that individual
3 may have.

4 Q. Dr. Iacopino, have you been involved before in
5 what's been referred to here as a 706 board?

6 A. No, sir.

7 Q. Has Mr. Kammen shared with you the very limited
8 purpose of the 706 board in this case?

9 LDC [MR. KAMMEN]: [Counsel not at podium; no audio].

10 THE WITNESS: I've read the four documents which I've
11 referred to.

12 QUESTIONS BY MR. MATTIVI:

13 Q. So you're aware the 706 board is being requested
14 here for a very limited purpose of determining competency to
15 stand trial, correct?

16 A. What do you mean by [no audio] documents and there
17 are reasons given. I understand those to be the reasons for
18 the competence 706 hearing.

19 Q. All right. And would you agree with me, sir, that
20 a psychological examination conducted under the Istanbul
21 Protocol is not a very narrow examination; rather, that's a
22 very broad and comprehensive examination?

23 A. I would agree with that.

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1 Q. Okay. So by asking you to comply with the
2 Istanbul Protocol, then, Mr. Kammen is asking you to conduct a
3 very broad and far-reaching psychological examination,
4 correct?

5 A. Can you repeat the question, Mr. Mattivi?

6 Q. Sure. By asking you to comply with this protocol,
7 Mr. Kammen is asking you to conduct a very broad and far-
8 reaching psychological examination; isn't that correct?

9 A. He's not asking me -- I'm confused because you're
10 saying he's not asking me to comply with the Istanbul
11 Protocol, so I'm unsure about your construction of the
12 question.

13 Q. You're right. I apologize.

14 A. He's asking me about what are the international
15 standards.

16 Q. Right. And again, I apologize for a poorly worded
17 question.

18 An examination that complies with the Istanbul
19 Protocol would be a broad and far-reaching psychological
20 examination by virtue of the fact that it complies with this
21 protocol, correct?

22 A. That's correct.

23 Q. Now, are you saying, Doctor, that in order to

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1 conduct an examination that complies with the Istanbul
2 Protocol, you have to have records of the mistreatment that
3 was committed against a certain patient or examinee?

4 A. If they exist, they are relevant and would be
5 extremely helpful in the overall purpose of the evaluation
6 which, as I stated, is to assess the degree of consistency
7 between specific allegations of abuse and physical and
8 psychological sequela.

9 Q. Dr. Iacopino, just a moment ago we talked about
10 you helping us out by concentrating on the question that I
11 asked. Do you recall that?

12 A. Yes. My apology if I've wandered.

13 LDC [MR. KAMMEN]: [Counsel not at podium; no audio].

14 MJ [COL POHL]: That objection is sustained.

15 Mr. Mattivi, just ask the question. Get -- as
16 long as it's close to -- the answer's close to being
17 responsive.

18 QUESTIONS BY MR. MATTIVI:

19 Q. Dr. Iacopino, if you -- is it necessary,
20 Dr. Iacopino, to have a valid examination under the Istanbul
21 Protocol if you do not have records of the abuse suffered by a
22 patient? Is that necessary, sir?

23 A. No.

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1 Q. Correct. And, in fact, is it necessary, sir, to
2 have an accurate examination if you don't have prior medical
3 treatment records of a particular examinee?

4 A. Again, I don't understand your question.

5 Q. Okay. Let me give you a situation to help
6 illustrate my question. You have indicated you've done
7 examinations of refugees to the United States, correct?

8 A. Yes.

9 Q. Someone who may have been tortured in his home
10 country, correct?

11 A. Yes.

12 Q. When that person appears and presented to you for
13 an examination, you likely do not have records of the abuse
14 they suffered in their home country, correct?

15 A. Correct.

16 Q. You likely do not have records of the medical
17 treatment that they received in their home country, correct?

18 A. Yes. Correct.

19 Q. Under those circumstances, you would be able to do
20 an accurate examination or an examination that complied, to
21 the extent possible, of the Istanbul Protocol, correct?

22 A. No. I'm going to say that the accuracy will
23 depend upon the degree of corroboration and it may not be as

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1 accurate or accurate at all without relevant information.

2 So...

3 Q. Would you decline to do the examination?

4 A. It would depend on the circumstances.

5 Q. Finally, Doctor, the purpose of the Istanbul
6 Protocol is to document what's taking place through your
7 examination, correct?

8 A. To document what's taking place in my examination?

9 Q. Yeah ----

10 A. To document the physical and psychological -- I'm
11 sorry, I just can't put it -- understand it in those terms.
12 What do you mean by what's taking place?

13 Q. I asked a bad question. Let me try it again.

14 One of the primary purposes of an examination
15 under the Istanbul Protocol is documentation, correct?

16 A. That is correct.

17 Q. You want to document what your particular patient
18 has experienced, correct?

19 A. Yes.

20 Q. You want to document how those experiences have
21 manifested, correct?

22 A. In terms of physical and psychological evidence,
23 correct.

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1 Q. And how, under the Istanbul Protocol, are those
2 experiences and those medical and psychological manifestations
3 documented, typically?

4 A. They are documented through the process of an
5 interview and an examination, particularly -- and it's
6 different for the physical and psychological evidence.
7 Obviously a physical examination for physical evidence, and
8 there are certain components for the psychological evaluation.
9 And then there may be referrals for additional consultation,
10 there may be diagnostic tests that are ordered because they're
11 relevant to the opinion.

12 And so ultimately the examiner will write up the
13 findings, submit them to the court, and possibly testify in
14 person.

15 Q. Okay. And in order to be compliant with the
16 Istanbul Protocol, these findings and all of the processes
17 that you described are documented in a report, correct?

18 A. Yes, sir.

19 Q. And if a report isn't drafted, then the Istanbul
20 Protocol hasn't been complied with, correct?

21 A. No, I would not agree with that. The Istanbul --
22 you know, one could be in compliance and just not have
23 submitted the report. The Istanbul Protocol is a series of

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1 guidelines for torture documentation for a multitude of
2 purposes. One of them is for expert medical testimony in
3 court cases. There are other purposes that you can read in
4 the introduction as well, human rights investigations and so
5 forth.

6 Q. Correct. But what you said was not submit the
7 report, correct?

8 A. Not submit the report?

9 Q. Yes.

10 A. No, sir. I said -- in a forensic case, if the
11 purpose is forensic that you've been asked as a medical expert
12 to testify in a case, then clearly one of the duties would be
13 to submit the report. That is true. But not in all cases
14 of -- following the Istanbul Protocol guidelines. Do you
15 understand?

16 Q. Correct. Correct. But if you have been asked to
17 do a forensic examination, then you do have an obligation
18 under the protocol to draft a report, correct?

19 A. Actually, I'm thinking of my own experience now.
20 In some cases, like in this case in particular, I have not
21 been asked for work product other than my interview. So there
22 are some circumstances in which experts are asked just to
23 testify, and I don't claim to know what all those

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1 circumstances are, but it's most typical that there would be a
2 written report in most forensic cases.

3 Q. And I'm a little confused ----

4 INT: My apologies, Your Honor. Can we slow down?

5 MJ [COL POHL]: Are your lights working there,
6 Mr. Mattivi?

7 TC [MR. MATTIVI]: It was. I didn't see it because of
8 the glare. I'm sorry.

9 MJ [COL POHL]: That's okay.

10 QUESTIONS BY MR. MATTIVI:

11 Q. Dr. Iacopino, you mentioned just a moment ago that
12 you've not been asked for a report of your interview in this
13 case. Was that correct? Did I misunderstand?

14 A. No, I was not asked to provide a work product for
15 my testimony today. I have not interviewed the client or
16 anyone else.

17 Q. Okay. All right. I suspect there is just a
18 misunderstanding. Thank you, Doctor.

19 TC [MR. MATTIVI]: No further questions from the
20 government, Judge.

21 MJ [COL POHL]: Mr. Kammen.

22 LDC [MR. KAMMEN]: Thank you.

23 **REDIRECT EXAMINATION**

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1 Questions by the LDC [MR. KAMMEN]:

2 Q. Would it be fair to say, Dr. Iacopino, that when
3 we are looking for a determination of whether an individual
4 suffers from mental disease or defect that that -- to do a
5 competent evaluation should be something more than what I will
6 call a drive-by?

7 A. Yeah, absolutely. These are complex evaluations
8 that often take many hours and they require -- require skill
9 and experience -- knowledge and experience to document.

10 Q. And the goal, I think we can all agree, is the
11 most complete and thorough evaluation that is possible under
12 the circumstances.

13 A. Yes, and that is an ethical duty to provide an
14 impartial and accurate report.

15 Q. Now, if under the circumstances, for example, a
16 long history of medical records, and I'm just talking
17 hypothetically, a long history of medical records exists, it
18 would help the evaluator to have those records available to
19 have the most complete and thorough examination possible,
20 correct?

21 A. Yeah, absolutely.

22 Q. And similarly, if by happenstance, hypothetically,
23 there were detailed records of the abuse or trauma to which a

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1 hypothetical person had been subjected and those were
2 available to the examiner, that would help to have the most
3 complete and thorough evaluation. Would that be true?

4 A. Yes. Yes. And my -- this is based on my
5 experience of having and not having those -- such records, and
6 it makes a huge difference.

7 Q. Okay. And could you talk generally, without any
8 reference to any specific case, why having those records could
9 make a difference? A huge difference, using your words.

10 A. Because the actual allegations of abuse may be
11 corroborated, very specific methods of torture or injury can
12 be corroborated and, therefore, you may know what to expect on
13 your physical examination. The forces of injury can be
14 mitigated by various things, barriers and so forth.

15 Knowing the exact circumstances of the alleged
16 abuse gives a clinician a detailed expectation of what they
17 will find on physical examination, what the healing process
18 will be and so forth. So it develops -- one develops a sense
19 of certainty about the findings.

20 Q. Please slow down. Please slow down.

21 A. Yes.

22 Q. Just a couple more questions.

23 What is the risk, from your perspective where

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1 we're looking -- where an individual is tasked with
2 determining whether there is presently mental disease or
3 defect, what is the risk of doing a limited examination?

4 A. Well, the risk is providing a -- underestimating
5 the [no audio] of psychological and/or physical, including
6 neurological symptoms and disabilities that have a direct
7 bearing on an individual's behavior, their thinking, their
8 judgment and so forth.

9 Q. And finally, you indicated there needs to be sort
10 of special training and expertise with respect to an
11 evaluation for an individual who is -- where we're looking for
12 the effects of torture in determining his -- whether he
13 currently suffers from medical disease or defect.

14 And could you give the judge a very brief overview
15 of the specialized treatment that might be necessary?

16 TC [MR. MATTIVI]: Your Honor [Counsel not at podium; no
17 audio].

18 A. With respect to the training ----

19 MJ [COL POHL]: Just a second, please.

20 Mr. Mattivi.

21 TC [MR. MATTIVI]: I'm going to object [Counsel not at
22 podium; no audio].

23 LDC [MR. KAMMEN]: Let me ----

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1 TC [MR. MATTIVI]: We're not talking about treatment,
2 we're talking about an evaluation.

3 MJ [COL POHL]: Mr. Kammen -- and that objection is
4 sustained. And you may -- it's kind of the question I have.
5 The difference between a therapeutic evaluation that always
6 has a diagnostic component to it as opposed to strictly a
7 diagnostic examination.

8 LDC [MR. KAMMEN]: I was going to re-ask the question
9 that way.

10 MJ [COL POHL]: You can ask it or I can ask it. Okay.

11 QUESTIONS BY LDC [MR. KAMMEN]:

12 Q. Just so we're clear, as the judge said, what he
13 has tasked individuals with doing is a diagnostic evaluation
14 not a therapeutic evaluation. Are you with me?

15 A. Yes. I am with you and I will confine my comments
16 to diagnostic rather than treatment.

17 Q. Now, assuming we are looking diagnostically for
18 whether an individual suffers from current mental disease or
19 defect and there's been a suggestion that the individual was
20 subject to torture, would the person doing that diagnostic
21 evaluation, in your experience and training, need special
22 treatment -- or special expertise -- special training?

23 A. Yes, they would.

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1 Q. Okay. And could you briefly describe the kinds of
2 training you're referring to?

3 A. Well, I'd like to divide this into two groups, the
4 physical evidence experts and the mental health experts.

5 Q. Let's just look at the mental health experts.

6 A. Very well. Psychiatrists and psychologists,
7 though familiar with the diagnosis of anxiety and depression,
8 rarely have knowledge and/or experience documenting --
9 interviewing people who allege torture, or documenting PTSD.

10 I've trained dozens, if not hundreds of
11 clinicians, psychologists, psychiatrists, on the documentation
12 of psychological evidence of torture. And that training
13 usually involves the following components: One is knowledge
14 to read literature, to participate in didactic seminars and
15 role play interviewing scenarios where we actually have an
16 actor act out the role of a survivor of torture so they can
17 practice interviewing and get critiqued and even testifying in
18 mock court cases.

19 A next step is to actually have individual
20 mentoring of the evaluator, the trainee, meaning they sit in
21 on evaluations, perhaps two or five evaluations, and they
22 learn from an experienced evaluator.

23 After that they conduct the evaluation under the

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1 supervision of the evaluator and write up their own
2 evaluations and obtain feedback from their mentor, from their
3 instructor. And oftentimes mentors and trainees continue
4 their relationship for some period of time and they are -- the
5 mentors are available for questions that come up. And as the
6 trainee has additional experience, eventually they practice on
7 their own without the help of supervision.

8 Q. One final question. We've referred to PTSD as one
9 of the sequela of torture, correct?

10 A. Yes, correct.

11 Q. There are other sequelae of torture, true?

12 A. Yes, there are other sequelae. And I would hasten
13 to add that individuals have very unique responses sometimes
14 and that's what a psychologist is trying to get at.

15 Q. Now, when we talk about PTSD, that comes from
16 outside the body, it's a result of trauma, true?

17 A. Yes. The disorder is contingent upon the
18 experience that is outside normal human experience.

19 Q. And PTSD inflicted from various causes can be --
20 can look different; isn't that correct?

21 A. More often than not, PTSD does not reveal the
22 cause unless you look for it in certain ways. So someone who
23 has PTSD, as in a Vietnam vet, may appear somewhat similar.

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1 That's why it's very important to look at other individual
2 factors.

3 LDC [MR. KAMMEN]: Thank you. I don't have any other
4 questions.

5 TC [MR. MATTIVI]: [Counsel not at podium; no audio].

6 MJ [COL POHL]: Doctor, this is the judge. I have a
7 couple questions for you. Can you hear me okay?

8 WIT: I can, Your Honor.

9 MJ [COL POHL]: You just discussed a number of steps,
10 what I call training steps, true?

11 WIT: Yes, I did.

12 MJ [COL POHL]: Okay. And just to clarify, you believe
13 that only somebody who's gone through those steps would be
14 equipped to provide an accurate, professional diagnosis of an
15 alleged victim of torture?

16 WIT: I think in some instances it may not be required,
17 depending upon the individual's experience [no audio]. It
18 depends on a range of factors, Your Honor.

19 MJ [COL POHL]: And you also indicated earlier that
20 experience with PTSD would be a significant factor in a
21 diagnosis of an alleged torture victim, true?

22 WIT: It would be one of -- of many important factors in
23 the diagnosis of someone alleging torture, yes.

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1 MJ [COL POHL]: Okay. Thank you. I have no further
2 questions.

3 Mr. Kammen, any further questions.

4 LDC [MR. KAMMEN]: No, sir.

5 MJ [COL POHL]: Mr. Mattivi?

6 TC [MR. MATTIVI]: No, Your Honor.

7 MJ [COL POHL]: Doctor, I want to thank you for your
8 testimony. You're excused.

9 THE WITNESS: Thank you.

10 LDC [MR. KAMMEN]: Before we get into discussion, I
11 don't know -- it appeared at one point there was an
12 interruption which may have just been an interruption and may
13 have been an episode of organized interruption. Do we know
14 what occurred?

15 MJ [COL POHL]: Trial Counsel, to your knowledge was
16 that just a VTC glitch and not a ----

17 LDC [MR. KAMMEN]: Because it certainly came at a point
18 where I'll acknowledge we were in sensitive territory.

19 MJ [COL POHL]: I understand.

20 TC [MR. MATTIVI]: Yes, Your Honor. Not only was it
21 simply a glitch that occurs with VTCs, but I spoke to the
22 video folks before. There was no delay and we were concerned
23 about the fact the VTC was not subject of the 40-second delay.

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1 It was live out of the courtroom.

2 MJ [COL POHL]: Okay.

3 LDC [MR. KAMMEN]: So the interruption was not
4 somebody ----

5 MJ [COL POHL]: The representation of the government is
6 it was technology of VTCs.

7 LDC [MR. KAMMEN]: Fine. Thank you.

8 MJ [COL POHL]: Okay. Okay. We don't need to rediscuss
9 what we've already discussed. I've heard his testimony. Is
10 there any additional matters either side wants to discuss on
11 this -- we're talking about the 706 order.

12 LDC [MR. KAMMEN]: Only if the court has any questions.
13 I mean, I think our position is -- is very clear.

14 MJ [COL POHL]: Yeah, because much of what he said, I
15 think you said this before, is embedded in your brief ----

16 LDC [MR. KAMMEN]: Yes.

17 MJ [COL POHL]: ---- about requirements that you would
18 want.

19 LDC [MR. KAMMEN]: Yes.

20 MJ [COL POHL]: Okay. Mr. Mattivi, do you have anything
21 you wish to add?

22 TC [MR. MATTIVI]: [Counsel not at podium; no audio].

23 MJ [COL POHL]: I do have two questions for you but they

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1 simply deal with logistics.

2 TC [MR. MATTIVI]: [Counsel not at podium; no audio].

3 TC [CDR LOCKHART]: [Counsel not at podium; no audio].

4 MJ [COL POHL]: Commander.

5 TC [CDR LOCKHART]: Your Honor, the government would
6 just like to address one issue. I noticed in the defense's
7 request they asked that the judge order all histories of any
8 sort in their original format provided, simply defense trying
9 to find a workaround around discovery. Obviously we have a
10 system in place for turning over discovery and we would just
11 ask that Your Honor not include any kind of order that would
12 circumvent discovery.

13 MJ [COL POHL]: Okay. But there's another piece of
14 this, you've now into interjected a third party.

15 TC [CDR LOCKHART]: I'm sorry, sir?

16 MJ [COL POHL]: We've now interjected a third party, the
17 706 board itself.

18 TC [CDR LOCKHART]: Yes, sir.

19 MJ [COL POHL]: Let me finish.

20 TC [CDR LOCKHART]: If the 706 board requests certain
21 records, they will certainly be provided.

22 MJ [COL POHL]: That is separate and apart from
23 discovery. I generally, and I doubt I will in this case,

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1 interfere with their professional judgment of what they need
2 they will get some guidance but that's why they're the
3 professionals in this area and I'm not.

4 TC [CDR LOCKHART]: Yes, sir.

5 MJ [COL POHL]: While you're standing there, Commander,
6 do you know to whom the order should be sent?

7 TC [CDR LOCKHART]: I do, Your Honor. I would be happy
8 to provide that to you. Would you like that on the record?

9 MJ [COL POHL]: Just send me an e-mail. What I'm going
10 to do, the order, when you see it, is not very exotic. It
11 goes to, and then I tell them what to do. It will be
12 delivered to both sides. And included in it routinely is also
13 a requirement to submit some records which ----

14 TC [CDR LOCKHART]: Yes, sir.

15 MJ [COL POHL]: But I'm not doing that. The mail will
16 be carried by the government to whomever. Okay.

17 TC [CDR LOCKHART]: Yes, sir. The government will make
18 sure the ----

19 MJ [COL POHL]: And that being said, and this is a
20 scheduling issue, I don't like coming back and addressing an
21 issue that can be addressed now. Is there a need to
22 deconflict this process with Dr. Crosby schedule-wise?

23 LDC [MR. KAMMEN]: [Counsel not at podium; no audio].

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1 MJ [COL POHL]: What I'm saying is my view, because this
2 stops the proceedings, I understand Mr. Mattivi's view, is
3 this needs to be addressed hopefully as quickly as possible.
4 But I don't -- and so that's what I'm saying is my view --
5 this needs to be done and then -- but I don't want to
6 interfere with Dr. Crosby's examination. But I don't want the
7 situation to come up where two sets of doctors are -- or one
8 set of doctors and Dr. Crosby are knocking on the door the
9 same time fighting over who gets in first.

10 TC [CDR LOCKHART]: Yes, Your Honor, we will certainly
11 work with the defense and find out what Dr. Crosby's schedule
12 is and work around with that so they are not both here at the
13 same time.

14 MJ [COL POHL]: Have you contacted the commander
15 involved?

16 TC [CDR LOCKHART]: I have not. Our office has
17 contacted them. They do know that it's coming.

18 MJ [COL POHL]: Okay.

19 TC [CDR LOCKHART]: And that was strictly for logistical
20 purposes.

21 MJ [COL POHL]: I got it. Understanding there's going
22 to be a need for, and correct me if I'm wrong -- if you
23 disagree with this, there is a likelihood -- I'll rephrase

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1 that, for the third time, it certainly seems possible that the
2 members of the board will all require top-secret clearances
3 and appropriate read-on.

4 TC [CDR LOCKHART]: That's correct, sir.

5 MJ [COL POHL]: Okay. Did you embed that in your
6 one-month suspense?

7 TC [CDR LOCKHART]: Yes, sir.

8 MJ [COL POHL]: Because they can have a top-secret
9 clearance now ----

10 TC [CDR LOCKHART]: I understand, sir.

11 MJ [COL POHL]: ---- but the read-in ----

12 TC [CDR LOCKHART]: Yes, sir.

13 MJ [COL POHL]: If I set a suspense of, say, 15 March,
14 you think that's realistic?

15 TC [CDR LOCKHART]: That's six weeks from now,
16 approximately, sir?

17 MJ [COL POHL]: Okay. You guys want to discuss that
18 issue? I'm just going to tell you my experience. You tell me
19 your experiences all the time, I'll tell you my experiences.

20 TC [CDR LOCKHART]: Yes, sir.

21 MJ [COL POHL]: Is when we set these suspenses for
22 doctors, there are more honored than breached, let me put it
23 that way.

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1 TC [CDR LOCKHART]: I understand, Your Honor.

2 MJ [COL POHL]: I understand the priority of these
3 things, so I want to give a realistic suspense, but I would
4 like to give them a suspense. So if you tell me six weeks is
5 realistic ----

6 TC [CDR LOCKHART]: It is, sir.

7 MJ [COL POHL]: We'll see.

8 TC [CDR LOCKHART]: I understand ----

9 MJ [COL POHL]: Apparently there's an issue you want to
10 discuss among yourselves on that issue so I won't get into it.
11 Okay.

12 Anything more on this issue at this time?

13 LDC [MR. KAMMEN]: [Counsel not at podium; no audio].

14 Yes, just to deal with ----

15 MJ [COL POHL]: Sure.

16 LDC [MR. KAMMEN]: This really applies to Dr. Crosby as
17 well. I mean, there's -- we'll be happy to discuss it with
18 you in camera if it needs for fleshing out, but things will go
19 much, much more smoothly if one of the defense counsel is
20 present to at least make introductions so that ----

21 MJ [COL POHL]: Introductions to them?

22 LDC [MR. KAMMEN]: Of the physicians to Mr. Nashiri.

23 MJ [COL POHL]: Okay.

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1 LDC [MR. KAMMEN]: If all of a sudden strangers in Army
2 uniforms show up ----

3 MJ [COL POHL]: I got it. You understand this, Mr.
4 Kammen, I will -- to me that doesn't seem like an unreasonable
5 request as long as you understand this, is that who is present
6 when the board is conducted is up to the board.

7 LDC [MR. KAMMEN]: Sure.

8 MJ [COL POHL]: Many times defense counsel want to be
9 present. My experience is rarely the board wants defense
10 counsel present. But it's as a simple matter of the first
11 meeting of the members of the board with the client that you
12 would like to have a defense counsel there at that time, and
13 it does not unreasonably delay the proceedings, I don't see a
14 problem with it.

15 It sounds to me it may be helpful. But again, I
16 don't want to get into the situation where I'm ordering that
17 has to be done and then we spend six weeks negotiating
18 schedules.

19 LDC [MR. KAMMEN]: No. I mean, we'll certainly work
20 with people. There are some logistical issues perhaps in the
21 near term.

22 MJ [COL POHL]: Trial Counsel, just -- I'll put it in
23 the order. I'll put in the order that -- that the first

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1 meeting, the time and date of the first meeting should be
2 provided to the defense counsel for an introduction, if the
3 board believes that's appropriate.

4 TC [CDR LOCKHART]: And, sir, if we could add, if
5 defense counsel is available again with our schedule.

6 MJ [COL POHL]: That's what I -- I already said that.

7 TC [CDR LOCKHART]: We don't want to be negotiating
8 schedules if they're not available to come down.

9 MJ [COL POHL]: No, this is not a negotiation. I
10 understand Mr. Kammen's view and, quite frankly, I can see
11 where it might help the board.

12 TC [CDR LOCKHART]: I understand, sir. If they have a
13 set date to do it, they can come or not come.

14 MJ [COL POHL]: I got it. I got it. I'm not a doctor
15 I'm not telling them how to break eggs seems like a good idea
16 to me. They may think it's a lousy idea. I don't know.

17 TC [CDR LOCKHART]: Yes, sir. Thank you.

18 LDC [MR. KAMMEN]: Just so long as we're clear, there's
19 some history here we don't need to get into, we all know it.
20 If you really want this to happen ----

21 MJ [COL POHL]: Mr. Kammen, I understand the view and as
22 happened today frequently happened the other day. We're
23 all ----

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1 LDC [MR. KAMMEN]: I don't know that we are. I doubt
2 the government and I are on the same page.

3 MJ [COL POHL]: I'm not saying you're on the same page.
4 I don't have that naivety. I'm simply saying we're talking
5 about what we think might happen, the best way to do something
6 in the future, which test to run, how to do the introduction,
7 whatever it is. My experience with this thing is do the
8 board; when it's over with, we have a mark on the wall of how
9 it was done, and that's usually a more fruitful time to say we
10 should have done it this way, we should have done it that way.
11 I can't anticipate, and I don't believe either side can at
12 this point, every possible potential problem that can come up
13 in this type of case. So I understand your position. If my
14 lawyer view on the introduction thing seems to make sense, but
15 that's where it's at. Okay?

16 LDC [MR. KAMMEN]: I understand, but I think these
17 are -- because these are not normal circumstances, I think the
18 possibility of a response that's counterproductive to ---- the
19 government wants this evaluation and you want this evaluation
20 and I think that's fine. We accept that.

21 MJ [COL POHL]: Understand, I ordered it at the
22 government request. I wasn't asked whether I wanted it or
23 not.

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1 LDC [MR. KAMMEN]: Right, you ordered it.

2 MJ [COL POHL]: I agree, Mr. Kammen. If we end up with
3 a six-week suspense date, arguably, and they say we want to
4 meet with the client not -- on or about whatever date, let's
5 just say February, for example, and we're going to talk other
6 potential scheduling conflicts on another issue altogether,
7 then if defense counsel is not available, within reason, we've
8 got to address it. That's all. What I'm saying, I do not
9 believe the board should be delayed inordinately for that
10 process. But on the other hand, a reasonable combination
11 should make sense, and all that means let's see if it can work
12 out.

13 LDC [MR. KAMMEN]: Okay.

14 MJ [COL POHL]: Okay. Thank you. Anything further,
15 Trial Counsel, on this issue?

16 LDC [MR. KAMMEN]: On this issue, no. There are other
17 issues that need to be addressed on the record.

18 MJ [COL POHL]: Okay. Well, Trial Counsel, anything
19 further on this issue?

20 TC [MR. MATTIVI]: No, Your Honor. Thank you.

21 MJ [COL POHL]: Commander.

22 DDC [LCDR REYES]: Your Honor, I just wanted to just
23 revisit the first request I made in the beginning of this

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1 session with regards to any kind of film recording and also
2 the photographs of Mr. al Nashiri's injuries. I just
3 want to ----

4 MJ [COL POHL]: Just to make it clear, what do you want,
5 line by line?

6 DDC [LCDR REYES]: Essentially, Your Honor, is the first
7 thing I need is immediate photographing of Mr. al Nashiri's
8 injuries today.

9 MJ [COL POHL]: Trial Counsel, there's no objection to
10 that?

11 TC [MR. MATTIVI]: No, Your Honor.

12 MJ [COL POHL]: Next.

13 DDC [LCDR REYES]: I believe there's a film recording of
14 the events that may have transpired at the camps that may have
15 caused the injuries. I need to examine that, defense needs to
16 examine it.

17 MJ [COL POHL]: Assuming such recording exists. Any
18 objection?

19 TC [MR. MATTIVI]: We'll work with them.

20 MJ [COL POHL]: [Counsel not at podium; no audio].

21 DDC [LCDR REYES]: Your Honor, basically I want to
22 underscore, because this may go into Mr. al Nashiri's coming
23 into this courtroom on another occasion, because if there is

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1 evidence of some type of -- I'm not saying there is, but if
2 there is evidence of some type of abuse that goes on in the
3 camps and it occurs during transportation, that Mr. al Nashiri
4 may or may not choose to attend. Because of that, we need to
5 flesh it out immediately so that we can get to the bottom of
6 it.

7 MJ [COL POHL]: I got it.

8 DDC [LCDR REYES]: We'll be here tomorrow, if we can
9 have that information tomorrow, so we can examine it before
10 the next court session.

11 MJ [COL POHL]: I understand you'll be here Wednesday
12 and Thursday.

13 DDC [LCDR REYES]: I will. Yes, Your Honor.

14 MJ [COL POHL]: So I think you will have sufficient time
15 to explore it.

16 DDC [LCDR REYES]: Thank you, Your Honor.

17 MJ [COL POHL]: We're just saying I may get another
18 motion down the road.

19 DDC [LCDR REYES]: Yes, Your Honor, you very well may.
20 Thank you, Your Honor. I appreciate it.

21 I believe there's one more issue from the defense.
22 Can I have a second?

23 MJ [COL POHL]: Sure.

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1 LDC [MR. KAMMEN]: You want to go into an 802 to deal
2 with what is described as scheduling issues and I'm not sure
3 what -- I know there's one schedule issue we're all sort of
4 dancing around. But there was an 802, I believe, on January
5 the 24th of ----

6 MJ [COL POHL]: 24th.

7 LDC [MR. KAMMEN]: 24th or 25th.

8 MJ [COL POHL]: Sure.

9 LDC [MR. KAMMEN]: I don't recall the specific date.
10 And may at least talk about the subject matter without getting
11 into details.

12 MJ [COL POHL]: Let me give you my summary of what
13 happened, then, because I think it may be on another motion
14 and you tell me where I'm wrong. Okay?

15 LDC [MR. KAMMEN]: Okay.

16 MJ [COL POHL]: Because what I took away from it may
17 have been different than what other people took away from it.

18 LDC [MR. KAMMEN]: Well, okay.

19 MJ [COL POHL]: But I have no problem putting it on the
20 record. Actually, I made some notes about it.

21 At the request of the government dealing with a
22 scheduling issue in March, a scheduling issue in the
23 springtime time frame, whether it's March or April -- I think

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1 we never did decide exactly which one it was.

2 LDC [MR. KAMMEN]: In another country.

3 MJ [COL POHL]: Yes, there was a scheduling issue. They
4 wanted some clarity on it. And they articulated the reason
5 why they wanted an answer right then. You had a scheduling
6 conflict.

7 LDC [MR. KAMMEN]: Have a -- continue to have a schedule
8 conflict and have filed objections ----

9 MJ [COL POHL]: Yeah.

10 LDC [MR. KAMMEN]: ---- in advance ----

11 MJ [COL POHL]: To the schedule, not to the 802. Now,
12 as we discussed this we drifted this away from strictly
13 scheduling issues because, quite frankly, the substance of
14 both sides drifted into those areas.

15 LDC [MR. KAMMEN]: I disagree it was both sides ----

16 MJ [COL POHL]: Okay.

17 LDC [MR. KAMMEN]: ---- because we made numerous
18 objections to the fact we were drifting away.

19 MJ [COL POHL]: Okay. What I took out of it is this: A
20 very tentative agreement -- let me finish -- until we can
21 discuss it on the record, if necessary, to that date.

22 I never -- I know how it -- looking back at it, my
23 words may have indicated that it was we're going to do this at

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1 this time no matter what.

2 But if you look at your own footnote in your 802
3 motion, it was not a firm decision and, as I sit here today,
4 it's not a firm decision until we discuss it further.

5 LDC [MR. KAMMEN]: And we believe that discussion should
6 be not in camera but should be in public.

7 MJ [COL POHL]: Okay. Now ----

8 LDC [MR. KAMMEN]: And also, commander, when you say
9 there's an agreement, we didn't agree. You specifically
10 acknowledge that we were opposed to this and that you were
11 granting this over our objections.

12 MJ [COL POHL]: Okay. As much as it can be, it was a
13 recognition of the government's position -- here's what I'm
14 going to do, Mr. Kammen. You own the keys to this process.
15 We can discuss this. What I would propose we discuss
16 the way ---- because there is some other issues on this that
17 can't go on the record. Simply -- it's not a classified
18 issue, it's a separate issue altogether. Okay.

19 What I propose is this, is let's do those, and how
20 you wish to present it again we go on from there. Because I'm
21 not sure, as -- let me put it this way. We're going to
22 take -- we'll take a recess. We will do a -- we will discuss
23 it in chambers of what questions can be discussed in open

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1 court, whether it's 802 or something else.

2 If what's discussed in chambers needs to be put on
3 the record, we will.

4 LDC [MR. KAMMEN]: But will there be a court reporter in
5 chambers?

6 MJ [COL POHL]: Not initially. The reason why is this,
7 is both sides want to keep some of this information close --
8 hold.

9 LDC [MR. KAMMEN]: Well, I don't think we have. I think
10 that's more on their side.

11 MJ [COL POHL]: Okay. Okay. If we need to do it, we
12 will. I don't mind a court reporter being present. That
13 doesn't necessarily mean the record is going to the public.

14 LDC [MR. KAMMEN]: I understand that. We just want a
15 record to be made if it needs to be part of the appellate
16 record.

17 MJ [COL POHL]: Here's my suggestion then, because it's
18 easier to do it. We would conduct it -- I will propose this:
19 It's conducted as an 802 with a court reporter present and,
20 when it's done, I will decide whether or not the record should
21 be sealed for that purpose. Okay? Understanding that if you
22 wish, we'll have to come back on the record to memorialize at
23 least the decisions, if any were made in the 802. You with me

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1 on this?

2 LDC [MR. KAMMEN]: Well, again, maybe I'm not ----

3 MJ [COL POHL]: No.

4 LDC [MR. KAMMEN]: The problem is that we have a
5 disagreement. We have a disagreement -- so it's -- you know,
6 what I'm concerned about is you're going to reach the decision
7 on the merits of something that is contested.

8 MJ [COL POHL]: Other than the dates and the location,
9 Trial Counsel, is there anything that cannot be discussed in
10 open session?

11 TC [MR. MATTIVI]: [Counsel not at podium; no audio] --
12 and I understand counsel's objection and I think this is an
13 appropriate thing for him to come up in an appropriate
14 inquiry, but the problem as we sit here, this all may be OBE.
15 And I think if we have our discussion, we need about a
16 10-minute recess because, concerning this issue, there are
17 some honest-to-God operational security concerns.

18 MJ [COL POHL]: Understand.

19 TC [MR. MATTIVI]: We can check on those right now
20 because they're developing as we sit here today.

21 MJ [COL POHL]: Understand.

22 TC [MR. MATTIVI]: We can check on those right now
23 because they are developing as we sit here. If we have a few

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1 minutes to check on those, this whole discussion may be
2 irrelevant with regard to the substance of the 802. Then Mr.
3 Kammen has, I think, a real and important issue that we can
4 address after the operational stuff is out of the way.

5 MJ [COL POHL]: Okay. Let's do this, let's take a
6 recess and we'll do all we can on the record. And again, my
7 only caution here is the -- there's a -- an issue that -- that
8 I understand the government is concerned that should not be
9 discussed on the record in open court. And so let's see where
10 you're at and discuss with each other, which I think did come
11 up at the 802, whether there's alternative dates that would
12 deconflict schedules, because this, as a moving target that
13 the date's been moving a number of times. And if we could
14 move it again to a date certain that there is no conflict,
15 then -- I understand the government's position, but -- I
16 understand the defense position. And neither of you
17 understand my position, but that's okay.

18 Okay. Let's go ahead and we'll take a recess for
19 15 minutes. Commission is in recess.

20 [The Military Commission recessed at 1442, 5 February 2013.]

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