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1 [The R.M.C. 803 session was called to order at 0905, 19 July 2024.]

2 MJ [Col McCALL]: The commission is called to order.

3 Good morning, Mr. Trivett. Could you please identify who's
4 here on behalf of the United States.

5 MTC [MR. TRIVETT]: Yes, sir. Good morning. Representing the
6 United States today in the courtroom in Guantanamo is myself,
7 Mr. Clay Trivett; Lieutenant Commander Robert Baxter; Mr. Christopher
8 Dykstra. Also present are paralegals Legalman First Class Trevis
9 Howard, Ms. Karissa Grippando, Mr. Rudolph Gibbs. Also present from
10 the FBI is Supervisory Special Agent Justin Zuccolotto, and
11 Management and Program Analyst Kate Rice.

12 Representing the United States today from the Remote Hearing
13 Room is Mr. Jeffrey Groharing, Major Neville Dastoor, Colonel Joshua
14 Bearden. Also present, paralegal Staff Sergeant Samantha Resendiz.

15 I do believe that Dr. Michael Welner will be present, at
16 least early in the morning, and Mr. Paszamant should be in attendance
17 as well, although neither of them are in the courtroom right now.

18 MJ [Col McCALL]: All right. Understood.

19 MTC [MR. TRIVETT]: And, Your Honor, these proceedings are
20 being transmitted via closed-circuit television to sites in the
21 continental United States pursuant to the commission's orders.

22 MJ [Col McCALL]: All right. Thank you.

23 Good morning, Mr. Sowards.

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1 LDC [MR. SOWARDS]: Good morning, Your Honor. Appearing on
2 behalf of Mr. Mohammad, who is present, are Gary Sowards; Lieutenant
3 William Xu, United States Navy; Major Elspeth Theis, United States
4 Air Force; and Ms. Denise LeBoeuf.

5 Representing Mr. Mohammad from the Remote Hearing Room is
6 Gabriela McQuade.

7 MJ [Col McCALL]: All right. Thank you.

8 LDC [MR. SOWARDS]: Thank you, sir.

9 MJ [Col McCALL]: Good morning, Mr. Engle.

10 LDC [MR. ENGLE]: Good morning, Your Honor. On behalf of
11 Mr. Bin'Attash, who is not present today, myself, Matthew Engle;
12 Edwin Perry; William Montross; and Captain Marian Messing in the
13 courtroom. We have Lieutenant Colonel Daniel Goldberg in the RHR.

14 MJ [Col McCALL]: All right. Thank you.

15 Good morning, Mr. Connell.

16 LDC [MR. CONNELL]: Good morning, Your Honor. Today is day
17 six, and I seem to have recovered on schedule, so...

18 MJ [Col McCALL]: Outstanding.

19 LDC [MR. CONNELL]: Representing Mr. al Baluchi, who we think
20 is here, is myself, James Connell; Alka Pradhan; and in the RHR,
21 Defne Ozgediz.

22 MJ [Col McCALL]: All right.

23 Good morning, Mr. Ruiz.

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1 LDC [MR. RUIZ]: Good morning, Judge. I'm here on behalf of
2 Mr. al Hawsawi, along with Suzanne Lachelier, Captain Kerry Mawn,
3 Captain Patrick Tipton.

4 MJ [Col McCALL]: All right.

5 All right. So kind of leaving off with what Mr. Connell had
6 said, I see Mr. Mohammad is here. I don't see the other three
7 accused. Perhaps there's a little bit more information.

8 But, Mr. Dykstra, do you have a witness to account for the
9 absences or more details on the accused who might be in the adjacent
10 facility?

11 DMTC [MR. DYKSTRA]: Yes, Your Honor. As far as Mr. Ali goes,
12 my understanding is that he is here.

13 MJ [Col McCALL]: Couldn't have timed it better.

14 DMTC [MR. DYKSTRA]: And that he may be entering stage left.

15 MJ [Col McCALL]: All right.

16 DMTC [MR. DYKSTRA]: At this point in time I'd call the
17 litigation support section assistant staff judge advocate.

18 And before you have a seat, Major, if you can please stand,
19 face me, and raise your right hand.

20 [END OF PAGE]

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1 MAJOR, U.S. Army, was called as a witness for the prosecution, was
2 previously sworn, and testified as follows:

3 DIRECT EXAMINATION

4 Questions by the Deputy Managing Trial Counsel [MR. DYKSTRA]:

5 Q. Please have a seat.

6 For purposes of the record, what is your call sign?

7 A. Kimball.

8 Q. Thank you. Now, did you have the opportunity to advise
9 the accused of their right to be present this morning?

10 A. I did, sir.

11 Q. And did you use any particular form when you -- when you
12 did so?

13 A. I did, sir, the statement of understanding.

14 DMTC [MR. DYKSTRA]: Your Honor, if I may approach the
15 witness. I'm going to hand her what has been previously marked as
16 Appellate Exhibit 954H (WBA) and 954I (MAH).

17 MJ [Col McCALL]: That's fine. Go ahead.

18 A. Thank you.

19 Q. Are these the forms you used to advise Mr. Bin'Attash and
20 Mr. Hawsawi of their right to be present this morning?

21 A. Yes, sir.

22 Q. And approximately what time did you do so?

23 A. I began at approximately 0632, and I finished at

1 approximately 0645.

2 Q. Thank you. And did you do so in Arabic or English?

3 A. I did so in English, and there was an interpreter present.

4 Q. And what was their response when you so advised them?

5 A. Mr. Bin'Attash indicated he did not wish to attend at all
6 today. Mr. Hawsawi indicated that he did not wish to attend the
7 morning session but would attend the afternoon session.

8 Q. And when advising them of their right to attend this
9 morning, did you have any concerns regarding their voluntariness of
10 their waivers?

11 A. No, I did not.

12 DMTC [MR. DYKSTRA]: Thank you, Your Honor. I have no further
13 questions for this witness.

14 MJ [Col McCALL]: All right. Thank you, Mr. Dykstra.

15 Do any defense counsel have questions of this witness?

16 Apparently not.

17 All right. Thank you for your testimony. You're excused.

18 **[The witness was excused and withdrew from the courtroom.]**

19 MJ [Col McCALL]: The commission finds that Mr. Bin'Attash and
20 Mr. al Hawsawi have knowingly and voluntarily waived their right to
21 be present at today's session, although it sounds like Mr. al Hawsawi
22 may join us later this afternoon.

23 All right. So we stayed here late last night to finish off

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1 the open cross-examination of Dr. Bruce Jessen. Today I anticipate
2 that we're going to spend the majority of the day handling the open
3 redirect.

4 Any matters to take up -- and I'm going to take a little bit
5 of time to do some housekeeping at the end of the day just to talk
6 about the next few weeks we're down here, but any housekeeping we
7 should take up before we bring in Dr. Jessen?

8 Go ahead, Mr. Connell.

9 LDC [MR. CONNELL]: Sir, my notes might be more appropriate
10 for the housekeeping that you just mentioned, so if they are, just
11 tell me.

12 Two issues that I just wanted to make sure the military
13 commission is tracking, one of which is new to me. The first one is
14 with respect to Ms. Jocys who will be testifying next week.

15 The government advised me yesterday that they will be
16 providing updated classification guidance for her that changes the
17 classification of a key fact; previously marked U//FOUO in the
18 discovery that we've been provided. So we would want to talk about
19 that so I expect there might have to be a 505(h) hearing or some
20 other vehicle to discuss that.

21 MJ [Col McCALL]: All right.

22 LDC [MR. CONNELL]: I understand that when it comes to the
23 government saying things are classified, I always lose, but I still

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1 want to talk about it.

2 MJ [Col McCALL]: All right.

3 LDC [MR. CONNELL]: The second thing is, I just want to
4 mention that the former Camp VII commander testimony is coming down
5 the pike, and we still don't really understand the posture of 692.

6 MJ [Col McCALL]: No.

7 LDC [MR. CONNELL]: So, you know, at some point we would like
8 to discuss that so we can see where the military commission thinks
9 that we're going on that, what -- how to divide things between
10 open -- if there's going to be another -- right now we're in the
11 middle of closed cross, technically, and so how that's going to work,
12 we'd like some clarity.

13 MJ [Col McCALL]: All right. And, you know, we're actually on
14 the same page on that. I'm -- I should be issuing an order -- I'm
15 hoping to get it out Sunday on that, kind of explaining the way
16 forward with Camp VII commander.

17 LDC [MR. CONNELL]: Thank you, sir.

18 MJ [Col McCALL]: All right. Let's get Dr. Jessen back in
19 here.

20 Mr. Sowards, did you have something?

21 LDC [MR. SOWARDS]: I believe I'm going to be first up. And
22 with leave of the commission, I'll approach the lectern and ----

23 MJ [Col McCALL]: That's fine.

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1 LDC [MR. SOWARDS]: ---- set up my ----

2 MJ [Col McCALL]: That's fine.

3 **JOHN BRUCE JESSEN, civilian, was called as a witness for the defense,**
4 **was previously sworn, and testified as follows:**

5 MJ [Col McCALL]: Dr. Jessen, welcome back.

6 Please have a seat.

7 WIT: Thank you.

8 MJ [Col McCALL]: Do you have the UFI key, that binder up
9 there with you?

10 WIT: Yes, I do.

11 MJ [Col McCALL]: Perfect. I'd just remind you're still under
12 oath.

13 WIT: Okay.

14 MJ [Col McCALL]: Mr. Sowards, your witness.

15 **REDIRECT EXAMINATION**

16 **Questions by the Learned Defense Counsel [MR. SOWARDS]:**

17 Q. Good morning, Dr. Jessen.

18 A. Good morning.

19 Q. That's one of my favorite shirts of yours.

20 A. Well, thanks.

21 Q. Yeah. So I just wanted to go over some of the things you
22 discussed with Mr. Groharing yesterday. And we'll try to be fairly
23 brief. So...

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1 A. Okay.

2 Q. First, I just wanted to clarify the record and my
3 understanding with respect to post-traumatic stress disorder, your
4 experience, clinical experience, with that phenomenon. Okay?

5 A. Well, I've seen two individuals who were eventually
6 diagnosed with PTSD. And that was a long time ago at the SERE
7 school.

8 Q. Okay. And when you say two individuals who were
9 eventually diagnosed, you referred them to someone else who diagnosed
10 them?

11 A. That's correct.

12 Q. Okay. And then my understanding, then, is correct from
13 the deposition you gave some time ago that otherwise you did not have
14 specialized training with diagnosing the PTSD; is that correct?

15 A. That's correct.

16 Q. And also you, in your -- I know you were also an
17 instructor, I think, at the undergraduate level in psychology, and
18 that did not involve instructing students in PTSD; is that correct?

19 A. No. That's correct.

20 Q. Okay. Thank you, sir.

21 And then I wanted to ask with respect to your position, if I
22 jotted it down correctly, that you were at the -- or I guess the head
23 of the Air Force SERE code of conduct directorate. Do I have

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1 anything ----

2 A. I was ----

3 Q. ---- close to what you said?

4 A. I was the chief psychologist. I wasn't head of the
5 directorate.

6 Q. Okay. Chief psychologist. But the agency at which you
7 were chief psychologist was the Air Force SERE code of conduct
8 directorate?

9 A. That's -- I don't believe that's the exact title. Maybe I
10 can clarify for you.

11 Q. Sure.

12 A. Initially, I was the psychologist at the basic school, the
13 Air Force Survival School. And then when I moved into the black
14 program that I mentioned yesterday, I was in a joint position. That
15 eventually came to be known as the, I think, Joint Service -- I can't
16 remember.

17 Q. Okay.

18 A. JP -- JPRA was the acronym. Joint Service Personnel
19 Recovery Agency. That was it. And I was the psychologist for that
20 agency as well as working at that training facility.

21 Q. Okay. And is it -- in the course of any of that, those
22 positions, did I, I hope, hear accurately some reference to a code of
23 conduct or code of code of conduct directorate that's involved in the

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1 SERE training?

2 A. Yes.

3 Q. Okay.

4 A. Yes.

5 Q. And the code of conduct is what is expected of American
6 servicemembers, and I think probably, to a degree, any American who
7 is detailed by the government, should they be captured by enemy
8 forces?

9 A. That's correct.

10 Q. And included in that is that, I believe it's
11 Article II -- and this isn't going to be a pop quiz. If you remember
12 generally, fine; if not, correct me. But Article II refers to the
13 code that servicemembers swear to is: I will never surrender of my
14 own free will. If in command, I will never surrender the members of
15 my command while they still have the means to resist.

16 Is that one of the -- one of the provisions of the code of
17 conduct?

18 A. Yes.

19 Q. And then also Article III requires the servicemember: If
20 I am captured, I will continue to resist by all means available. I
21 will make every effort to escape and aid others to escape. I will
22 accept neither parole nor special favors from the enemy; is that
23 correct?

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1 A. Yes.

2 Q. Okay. Also, if I become a prisoner, I will keep faith
3 with my fellow prisoners. I will give no information or take part in
4 any action ----

5 MJ [Col McCALL]: Mr. Groharing?

6 TC [MR. GROHARING]: Objection to this line of questioning,
7 Your Honor.

8 MJ [Col McCALL]: Overruled.

9 TC [MR. GROHARING]: Relevance.

10 MJ [Col McCALL]: Understood. Overruled.

11 Go ahead, Mr. Sowards.

12 LDC [MR. SOWARDS]: Thank you, sir.

13 Q. I will give no information or take part in any action
14 which might be harmful to my comrades. If I am senior, I will take
15 command. If not, I will obey the lawful orders of those appointed
16 over me and will back them up in every way.

17 That's also one of the codes of conduct?

18 A. Yes.

19 Q. Then also the Article V, when questioned, should I become
20 a prisoner of war, I am required to give name, rank, service number,
21 and date of birth. I will evade answering further questions to the
22 utmost of my ability. I will make no oral or written statement
23 disloyal to my country and its allies or harmful to their cause.

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1 Is that one of the obligations under the code of conduct,
2 sir?

3 A. Yes.

4 Q. And Article VI, I will never forget that I am an American
5 fighting for freedom, responsible for my actions, and dedicated to
6 the principles which made my country free. I will trust in my God
7 and in the United States of America.

8 Article VI? Sound familiar?

9 A. Yes. Yes.

10 Q. Okay. And then superimposed over all of this, Article I
11 is: I'm an American fighting in the forces which guard my country
12 and our way of life. I am prepared to give my life in their defense.

13 That's also a code that people take into action and governs
14 their actions should they be captured?

15 A. Yes.

16 Q. Okay. And then, as I understand it, the SERE training is
17 intended to apply to servicemembers' means of persuasion or coercion
18 that are not -- that were not used by America, but were used by
19 communist forces to try to break their allegiance to these codes; is
20 that correct?

21 A. Initially, it was patterned after a communist detention,
22 but it was modified by, you know, the current theaters of war. But
23 that's generally accurate, yes.

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1 Q. Okay. And so, in other words, you break the person's -- I
2 guess you coerce them to break their pledge under the code of
3 conduct?

4 A. You mean while they're in training?

5 Q. Yes, sir. Yes, sir.

6 A. You give them an opportunity to resist and you give them
7 specific -- some specific things to protect, and then you give them a
8 realistic experience about how difficult that is to do, yes.

9 Q. Okay. And part of what you were saying in terms of
10 the -- particularly the people in the general program, but I assume
11 it applies to the higher senior-developed program, is part of
12 the -- excuse me -- the psychological -- I think you described it as
13 sort of disappointment or despair or things that they need to rebound
14 from -- is the feeling they feel when they're actually broken and
15 have to violate these codes; is that correct?

16 A. Yeah. I wouldn't use the term "broken." That has a
17 significance that may be different for me than you. But certainly if
18 they're pressured to the point where they give up something they had
19 intended not to, we want them to be able to regroup and bounce back.

20 Q. Okay. And what they're regrouping and bouncing back from
21 is what?

22 A. Is what I just said, revealing something that they
23 intended not to or they were told not to in terms of classified

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1 information.

2 Q. Right. And when they're -- when they're forced to do
3 that, is it your understanding that there's a certain emotional or
4 psychological price that that takes?

5 A. Yes.

6 Q. Okay. And when you -- when you say "not broken," because
7 your understanding of it may be different from mine, what were you
8 thinking of or referring to?

9 A. Well, obviously, it's an independently defined variable.
10 But in terms of how the code of conduct was promulgated, it was to
11 prevent anyone from, quote, being broken, which might be, again,
12 interpreted in different ways. But they didn't want individuals to
13 feel it was futile to resist.

14 And having made a mistake or having capitulated under
15 pressure and given some information, they didn't want them to stop
16 resisting. They wanted them to say, okay, I wish I hadn't done that,
17 but I'm going to buck myself back up. I'm going to go back in. And
18 I'm going to resist more.

19 Q. And do you recall, sir, in -- during the EIT period -- and
20 I don't know whether you were the author of particular cables -- but
21 do you recall on occasions, especially near the end of the EIT
22 period, that Mr. Mohammad explicitly articulated the observation that
23 everybody -- every man can be broken and he's about to break?

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1 A. I don't remember the specific words, but I do remember him
2 saying something like that. I don't remember the specific words ----

3 Q. Okay.

4 A. ---- but -- you know.

5 Q. And did that -- if you recall, did that trigger any
6 particular evaluation of his mental state, either before or after
7 proceeding, in light of him saying that he was about to be broken?

8 A. Could you clarify that for me? I don't really understand.

9 Q. Sure. To the extent you remember an incident where
10 Mr. Mohammad -- and I'll represent to you it is documented in the
11 cables -- saying that every man can be -- "You can break every man
12 and I'm about to break," if you remember him saying something like
13 that?

14 A. Yes, I do.

15 Q. Okay. Do you then recall any particular psychological
16 evaluation being undertaken, either before proceeding with additional
17 EITs or immediately after you proceeded with additional ----

18 A. Okay. I ----

19 Q. Do you --

20 A. Yes, I understand.

21 Q. Okay. Thank you, sir.

22 A. No, I don't remember any evaluation.

23 Q. Okay. And during the -- I'm sorry.

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1 As part of the evaluations that any psychologist may have
2 performed while Mr. Mohammad was in the EIT period, do you have
3 knowledge of whether any individual conducted what is called a
4 structured clinical interview?

5 A. Well, yeah. There, again, that is probably defined
6 differently by people, but I remember they often did a SOAP note type
7 of interview, which is a structured interview. But because I wasn't
8 present with them when they did them, I can't tell you exactly what
9 they did.

10 Q. Okay. Do you recall whether any structured clinical
11 interviews were actually documented in records? Hard copy.

12 A. A summary of these interviews were often in the cables,
13 yes.

14 Q. And do you recall whether -- I mean, under the DSM
15 diagnostic protocols, there is a form, a checklist for a structured
16 clinical interview. Do you recall whether anyone filled out a formal
17 version of that to maintain in any records?

18 A. No, I'm not. However, I would -- I would tell you that,
19 at least my experience, that template that's in the DSM manual is not
20 a requirement, nor is it followed precisely by any -- you know,
21 everyone who does any kind of a mental health interview. It's a -- I
22 think -- I vaguely remember it, but it's a template for giving an
23 interview.

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1 But there are a lot of other -- depending on where you go to
2 school it had -- they have different acronyms, but they generally
3 cover the same areas.

4 Q. Okay. And were you aware of any of the psychologists in
5 the RDI program during the EIT period with Mr. Mohammad using any
6 other structured clinical interview format?

7 A. Well, I told you I saw references to SOAP notes, which is
8 a structure for a -- for an interview. But no, I don't know of any
9 other template they followed.

10 Q. And are you -- are you aware of the National Institute of
11 Mental Health's report in 1999, shortly before -- or four years
12 before Mr. Mohammad's capture, that indicated that psychological
13 diagnoses performed consistent with those specified in leading
14 handbooks for diagnosis are as reliable as physical diagnoses made by
15 a medical doctor? Were you aware of those findings?

16 A. No.

17 Q. Okay. I wanted to just ask you briefly about one aspect
18 of the -- you discussed with Ms. Pradhan and Mr. Groharing, your
19 involvement in the Gul Rahman investigation. Do you recall that,
20 sir?

21 A. Yes.

22 Q. Okay.

23 LDC [MR. SOWARDS]: And, Your Honor, if I may have access to

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1 the document camera to show something to the witness and counsel and
2 the commission.

3 MJ [Col McCALL]: Go ahead. It can be displayed to counsel,
4 the commission, and the witness.

5 LDC [MR. SOWARDS]: Okay.

6 Q. And this is -- the first page -- the first page,
7 Dr. Jessen, is just to orient you to the documents that were shown
8 you yesterday.

9 LDC [MR. SOWARDS]: And I'll represent so the commission also
10 knows, and the DISO, that the document that was displayed yesterday
11 was a classified document. This is the FOIA public-releasable
12 version, but I understand that sometimes the government's a little
13 cherry of having those things discussed in the context here, so
14 it's -- but I'll assure you there's nothing in here that hasn't been
15 authorized, released by the CIA.

16 MJ [Col McCALL]: All right. And is this in -- where is this
17 in the record?

18 LDC [MR. SOWARDS]: This appears in the record -- thank you,
19 Your Honor -- at AE 630IIIII (KSM) Attachment F.

20 MJ [Col McCALL]: And I take it there's no Bates number as it
21 was provided via FOIA rather than discovery; is that correct?

22 LDC [MR. SOWARDS]: There is -- I'll represent I don't know if
23 this helps us follow along because it's repeated, but it's approved

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1 for release number 2016, 0610 followed by C, as in Charlie, 06555318.

2 And I believe that just may be the FOIA release ----

3 MJ [Col McCALL]: Right.

4 LDC [MR. SOWARDS]: ---- number.

5 MJ [Col McCALL]: All right. Go ahead, Mr. Sowards.

6 LDC [MR. SOWARDS]: Thank you, sir.

7 Q. And, again, do you recognize that as the cover sheet of
8 the document you saw, I believe, day before yesterday?

9 A. I'll take your word for it.

10 Q. Okay. But you see that it's a memorandum for deputy
11 director of operations, and the subject is: Death Investigation, Gul
12 Rahman?

13 A. Yes, I see that.

14 Q. And then this is just the -- what I wanted to ask you
15 about, this is just the direction -- description of the actual
16 procedure you referred to as either the hard or rough takedown.
17 Okay?

18 A. Okay.

19 Q. Okay.

20 LDC [MR. SOWARDS]: And this is Attachment F at page 22, Your
21 Honor, in the record.

22 Q. And I'll represent to you, sir -- and I can show you the
23 earlier pages -- this is the discussion, as you may recall, of you

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1 and the chief of base -- I believe you identified him -- observing
2 the -- of the takedown.

3 And what I want to -- the line beginning across from my pen,
4 just above it: While -- blank -- you -- has not used this technique
5 at facilities at which he has worked and had never seen one
6 conducted, he thought it was worth trying. According
7 to -- blank -- there were approximately -- blank -- CIA officers from
8 the -- blank -- team. Each one had a role during the takedown, and
9 it was thoroughly planned and rehearsed.

10 They opened the door of Rahman's cell and rushed in
11 screaming and yelling for him to, quote, get down. They dragged him
12 outside, cut off his clothes and secured him with mylar tape. They
13 covered his head with a hood and ran him up and down a long corridor
14 adjacent to his cell. They slapped him and punched him several
15 times.

16 Blank -- which was your observation, sir -- stated that
17 although it was obvious they were not trying to hit him as hard as
18 they could, a couple of times the punches were forceful. As they ran
19 him along the corridor, a couple of times he fell and they dragged
20 him through the dirt (the floor outside of the cells is dirt).

21 Rahman acquired a number of abrasions on his face, legs, and
22 hands, but nothing that required medical attention. Parens, this may
23 account for the abrasions found on Rahman's body after his death.

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1 Rahman had a number of surface abrasions on his shoulders, pelvis,
2 arms, legs, and face.

3 At this point, Rahman was returned to his cell and secured.
4 Blank -- stated that -- blank -- may have spoken to Rahman for a few
5 moments, but he did not know what -- blank -- said. Blank -- stated
6 that after something like this is done, interrogators should speak to
7 the prisoner to, quote, give them something to think about.

8 LDC [MR. SOWARDS]: Thank you, Your Honor. I'm through with
9 that.

10 Q. What I wanted to ask you, Dr. Jessen, is whether from this
11 report or the testimony that we have from the 2017 deposition you
12 gave, that you recall that after you observed this particular
13 procedure you spoke to the chief of base and told him, consistent
14 with a line below about you should give -- you should speak to the
15 prisoner to give him something to think about, you said that this was
16 a -- perhaps a useful dislocation technique, but it was really a
17 wasted opportunity when you don't speak to the individual afterwards
18 to give him something to think about following that incident.

19 Do you recall that testimony?

20 A. I do. I also told the COB that I thought it was an
21 unauthorized technique, that the way it was done was inappropriate.
22 And if it was going to be used, they should get approval and on and
23 on. So there's some context that's lost in that IG report.

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1 Q. Sure. No, and I beg your pardon, sir. I was going to
2 follow up with exactly that point, that you did testify at your
3 deposition and you did tell the -- and I believe the OIG report
4 indicates that it was something you used and not something that was
5 in the program -- part of the program you were involved in, but your
6 recommendation to the chief of base was to get it approved. And if
7 he then used something like this again, he should be prepared to
8 speak to the individual afterwards to tie the takedown with the
9 request that he think about certain information; is that correct?

10 A. That's correct, as well as eliminate the gratuitous
11 violence and the abrasions and -- yes.

12 Q. Okay. And did you have any suggestions for how to -- how
13 to modify the takedown?

14 A. No.

15 Q. Okay. Then I wanted to ask you, sir, about the -- this
16 discussion we had about a -- I'm sorry -- extinction of some of
17 the -- I guess some of the conditioning stimuli.

18 And I don't know if -- and it's quite all right if you did
19 or didn't. I don't know if you have been aware -- are aware of any
20 of Dr. Mitchell's more recent testimony on this subject about the
21 possibility of the coercive effects of the conditioning being
22 extinguished over time and under certain circumstances.

23 Are you aware of any of the testimony he gave in that

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1 regard?

2 A. No.

3 Q. Okay. And Mr. Groharing, did he ask you about any
4 scientific articles on that?

5 A. Pardon me?

6 Q. Did Mr. Groharing ask you to review any scientific
7 articles on that subject?

8 A. I think he made them available to me, yeah.

9 Q. Yeah. I'm sorry?

10 A. Yeah. Yeah, I think I remember him saying here's some
11 articles about that. I didn't review them, but he made them
12 available.

13 Q. Okay. Did you -- when he gave you the articles, do
14 you -- if you know, do you know if one of them may have been authored
15 by a Robin -- I'm sorry -- Robin Nguyen ----

16 A. I don't know.

17 Q. ---- entitled -- and here we go -- Fear Extinction Relies
18 on Ventral Hippocampal Safety Codes Shaped by the Amygdala?

19 A. No, I ----

20 Q. Okay.

21 A. ---- don't know that. I didn't read it.

22 Q. Okay. If you saw that, I could understand why it might
23 not be the first thing you'd read. But you'd mentioned before that,

1 last couple of days, that sometimes the scientific articles are
2 written in a way that use language that perhaps sounds a little
3 fancier than everyday speak.

4 And so I was going to ask you some questions to see if we
5 can sort of translate into everyday English some of the stuff we're
6 talking about with regard to extinction. Is that okay?

7 A. Yes.

8 Q. Okay. Part of the abstract for Dr. Nguyen's article that
9 he writes with other individuals says that: Extinction memory
10 retrieval is influenced by spatial contextual information that
11 determines responding to conditioned stimuli. However, it is poorly
12 understood whether contextual representations are imbued with
13 emotional values to support memory selection.

14 Does that sound like a professional paper writer's language?

15 A. It does to me.

16 Q. Okay. But the thrust, as I understand it -- and tell me
17 if this is also your understanding -- is that, for the most part, the
18 articles and conclusions on fear extinction are based on laboratory
19 animal studies; is that correct?

20 A. I know some of them are. A lot of them, when I -- when I
21 first was in school, most of them were. But I'm not up on, you know,
22 what's being reported today.

23 Q. Okay. And when you testified yesterday, you said -- and I

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1 don't know if this is based on what you were learning in school or
2 since then -- that it is difficult to measure accurately notions of
3 the extinction of fear over time or over trials. Do you recall that?

4 A. Yes.

5 Q. Okay.

6 **[Pause.]**

7 Q. And, in fact, the -- it's not possible to measure them
8 without empirical scientific data regarding the individual's exposure
9 to the stimuli, and then the periods of -- the numbers of trials
10 after which the person's exposed to it without the response; is that
11 correct?

12 A. Could you say that again?

13 Q. Sure. Let me -- let me state it a different way. Maybe
14 the point I'm asking about, is the studies that are conducted are
15 highly controlled disciplinary studies that rely on a great deal of
16 empirical data, including the particular stimuli, the number of
17 exposures, and the circumstances of exposures.

18 And the responses of the subject, whether human or animal,
19 are meticulously noted. And then those -- that information is
20 further calibrated and analyzed to try to draw some correlation, if
21 it can be found, to the decrease of response after there has been a
22 period of stimuli without the consequences.

23 Did that make it any easier?

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1 A. Yes. Thank you. Yeah, that's an accurate statement.

2 I think typically, although they report correlative
3 responses, they're looking for empirical evidence, usually more than
4 correlative, but...

5 Q. And then ----

6 A. And that's accurate.

7 Q. I beg your pardon? But that's accurate, did you say?

8 A. Yes. Yes.

9 Q. Okay. And in -- I take it, because of the prohibition
10 against human experimentation, in Mr. Mohammad's case no one was
11 tracking meticulously the number of instances in which he was exposed
12 to certain stimuli or individuals and then following through on what
13 his response was and what their response was to then assess whether
14 there could possibly be some extinguishing effect of that particular
15 encounter?

16 A. Well, that's not quite accurate. It certainly was not
17 monitored like an empirical study, like the one you are referring to
18 was. But part of the process was to see if the individual, as we've
19 said ad nauseam, would cooperate. And those observances certainly
20 included subjective judgments or assessments about how calm or
21 relaxed or composed the individual was.

22 So that's a measure. It's a subjective measure. It's not
23 like the one that you referred to and not as accurate as the one that

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1 you referred to.

2 But in a -- in a general way, as I've tried to explain,
3 those assessments did take place. They weren't written down in a
4 book, and that wasn't a primary goal or imperative, but it was noted
5 in terms of the behavior of the detainee.

6 Q. Okay. So not written down in a book, but noted in the
7 sense of, perhaps, being observed?

8 A. Correct.

9 Q. Okay.

10 A. Yes.

11 Q. And not written down in a book, so not complying with any
12 sort of rigorous records keeping that would attend these other
13 extinction studies, correct?

14 A. That's correct.

15 Q. Okay.

16 **[Pause.]**

17 Q. And then in terms of the -- when we talk about social
18 contract, or I believe Mr. Montross had introduced the concept of
19 rules of the road, that's sort of an understanding of what sorts of
20 rules everyone is proceeding under. Would it be fair to say that
21 least in the -- well, beginning with the EIT period, what we really
22 have is sort of a threat and response?

23 And let me see if we can characterize it this way: That

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1 what you're essentially telling the individual is if you do something
2 I like, I will do something you like. But if you do something I
3 don't like, I'm going to have to do something you don't like.

4 A. Well, that would be one way to couch it. But it certainly
5 was made clear that the individual would never have to endure what
6 they didn't like if they, you know, made the choice to cooperate in,
7 quote, some way.

8 So it wasn't a capricious, arbitrary hard line that had no
9 variance to it. And as I said, we gladly accepted any sign of
10 movement in that direction.

11 So you could characterize it the way you did, but that
12 leaves out some nuances that I think are probably -- well, they are
13 important.

14 Q. Sure. And I -- I'll move this along, but I hope to
15 discuss the nuances briefly in just a moment.

16 But just in that moment -- so what you're saying is, if I
17 understand it, is the decision to do something, you, Dr. Jessen,
18 likes, would be returned by doing something that the detainee likes.
19 But that if the detainee does something that Dr. Jessen doesn't like,
20 the message to the detainee is he is not going to like the reaction
21 from Dr. Jessen? In broad terms.

22 A. Okay. We're back to square one. So in general ----

23 TC [MR. GROHARING]: Objection, Your Honor.

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1 A. ---- yes.

2 TC [MR. GROHARING]: Asked and answered.

3 MJ [Col McCALL]: Objection overruled.

4 Go ahead, Dr. Jessen. You can explain.

5 A. No, I'd just say, yeah, we're having the same discussion
6 we had before. So what you're saying is correct. You said you're
7 going to get the nuances, which I think are important.

8 So yes. The answer is yes.

9 Q. Okay. And I -- and I apologize in advance for the model
10 here. I'm not casting aspersions.

11 But in terms of a more familiar clinical experience than
12 working with people who have been in hard times and black sites for
13 three and a half or four years, is the sort of more familiar clinical
14 model that of coercive control that's exerted by an abusive partner
15 in a domestic relationship?

16 A. I wouldn't make that comparison.

17 Q. Okay. Well, is it -- in the -- in the context of the EITs
18 and the black sites, is it that the individual -- in this case
19 Mr. Mohammad -- who is given the choice of either doing something you
20 or someone else likes or dislikes with the corresponding
21 consequences, isn't that similar to an abused individual who has to
22 negotiate the relationship with his or her abuser?

23 A. No, I don't agree with that at all.

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1 Q. Okay. Is it the case that in the black site context, the
2 threat of negative consequences is always there?

3 A. That's probably -- yeah, I think that's accurate.

4 Q. Okay.

5 A. The threat, as I've described it. If you -- if you're in
6 an abusive relationship, you can't predict the threat. The threat's
7 not something that you have any sense of control over. It
8 could -- it's capricious. One day you could be battered for one
9 reason. Another day it could be another reason. That's very
10 different than the dynamics that we tried to establish in a program.

11 Q. Okay. And in the -- in the program, then, you're
12 distinguishing that from the notion that the interrogator will mean
13 what he or she says, and they will say what they mean, so that the
14 detainee can count on predictability in response?

15 A. Yes, that's correct.

16 Q. Okay. And the -- within that context, then, you were
17 saying that there are times when -- particularly as the
18 detainee -- in this case Mr. Mohammad -- moves -- and we understand
19 it's not a clean break, there's some -- there's some nuance and
20 segue.

21 As they move from the EIT phase into the debriefing phase,
22 there is, for want of a better term, some probing or testing by the
23 detainee about what they can withhold and what they can give you, and

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1 then assessing your response to that; is that correct?

2 A. Yes.

3 Q. Okay. And then, again, in this debriefing mode, the
4 debriefers or the interrogators can -- if they feel there has been
5 some withholding, they can then decide whether it's important enough
6 to elevate their response all the way up to a return to hard times;
7 is that correct?

8 A. Not a debriefer but ----

9 Q. I'm sorry. Interrogator.

10 A. An interrogator could do that, yes.

11 Q. Okay. And at some level, either -- well, I think actually
12 maybe explicitly the detainee understands that, that you have that
13 authority or that option?

14 A. Yes.

15 Q. Okay. And sometimes, whether in the context of fireside
16 chats or being asked to -- being called in by the Agency because a
17 detainee is being problematic about some particularly important
18 information, you can come in and be fairly explicit with the
19 individual about Washington's unhappiness and what might follow if
20 the person continues to be uncooperative?

21 A. That's correct.

22 Q. Okay. And with -- and with Mr. Mohammad, you testified to
23 Mr. Groharing that neither you nor Mr. Mohammad would ever forget

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1 what happened to him during your time in the black sites; is that
2 correct?

3 A. I believe that's true.

4 Q. Okay.

5 A. Yes.

6 Q. And that would include the times when you were -- you were
7 walling him and being very forceful and loud and requesting
8 information?

9 A. Yeah. My comment wasn't in terms of specifics. It was in
10 terms of the overall interaction. Something that's that poignant, I
11 just -- I don't think -- well, eventually organicity can rob you of
12 that memory.

13 But I -- but I think barring something like that, you're
14 going to remember that. And I will.

15 Q. Sure. Yeah. So it would -- it would -- and that would be
16 sort of precisely encapsulated in the phrase "hard times"?

17 A. No. The whole experience.

18 Q. From ----

19 A. Not just the hard times.

20 Q. Right. But the ----

21 A. I ----

22 Q. I'm sorry.

23 A. No, I'm talking about the whole experience of interaction.

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1 It was very unique. It was just something that -- I guess -- I can't
2 speak for KSM, but I won't forget it.

3 Q. And when you say I can't forget it, when you say that very
4 moment, what mental picture do you have?

5 A. I didn't say I can't because I'm not trying to.

6 Q. I understand.

7 A. I just said I won't. I don't think I will forget it.

8 Q. Okay. And when you said that, what mental picture did you
9 have? What were you recalling?

10 A. Well, it -- oh, you're asking me what mental picture I had
11 in my mind when I said that?

12 Q. Yes, sir.

13 A. I actually had the picture when I went to him and told him
14 about the name of his son.

15 Q. Well ----

16 A. But that's only one picture. There are, you know, lots of
17 pictures.

18 Q. Uh-huh. But the newborn was a daughter. Who -- what son
19 did you name?

20 A. Well, there you go. That's what happens with memory. If
21 that's accurate, I'll take your word for it. I remembered it a
22 different way.

23 Q. Okay. But, I mean, I'm just thinking of different

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1 vignettes, the times that you removed a hood from his face and pulled
2 him close to you, got nose to nose, and told him what was going to be
3 happening if he didn't get information. Do you think that's
4 something that stays in his memory to the present time?

5 A. It might stay in his. It didn't stay in mine. I didn't
6 remember it when it was brought up whenever we did that, but...

7 Q. And you holding a cloth, pressing it down over his nose
8 and mouth when he choked on his own vomit, would that be something
9 that you would expect a normal human being to maintain as a memory?

10 A. I don't believe he did choke on his own vomit. If that
11 happened, I don't remember it. I remember that happened to one
12 detainee, and that resulted in a change in how things were done. And
13 that's when Ensure was used to make sure that a detainee wouldn't
14 aspirate food. But I don't remember that happening with
15 Mr. Mohammad.

16 Q. Okay. And so if it's -- if it's in the cables, that those
17 incidents happening ----

18 A. Yeah, if it's in the cables, I wouldn't dispute that. I
19 just don't remember.

20 Q. Okay. And if that were to happen, would that be the sort
21 of incident that would -- you would expect to stay in a person's
22 memory for a considerable period of time?

23 A. Yes, I would.

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1 Q. Okay. And what I'm asking -- and I didn't want to be
2 indelicate, but would it -- would you also expect it to be the case
3 that he, Mr. Mohammad, being an intelligent person, could sit in a
4 room with you at some years later date, and as long as you were being
5 cordial, he could be cordial to you while also recalling those
6 instances?

7 A. Yes.

8 **[Pause.]**

9 Q. And I also wanted to ask, because I was not trying to be
10 selective in what I was asking you about, but you mentioned to
11 Mr. Groharing that in addition to the occasion that I asked you about
12 that you had testified to in 2017, when the CIA told you you had 15
13 minutes to get out of your house, you and your family, you said that
14 there were other instances where you received information like that?

15 A. I don't see that you need to know anything about that.

16 Q. No. No. I'm not asking you to give me any details. I'm
17 just saying were there other reports like that?

18 A. I defer to comment.

19 MJ [Col McCALL]: Answer the question.

20 WIT: Really, Judge?

21 MJ [Col McCALL]: Answer the question, Dr. Jessen.

22 Q. And, Doctor -- and, I'm sorry, Dr. Jessen, if I may ----

23 MJ [Col McCALL]: Go ahead, Mr. Sowards.

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1 LDC [MR. SOWARDS]: It might make it easier for him.

2 Q. Sir, I'm not asking you to go into detail. I'm just
3 asking you if there were a number of occasions, if you can tell me,
4 when the CIA reported threats of a similar type?

5 A. Not exactly the similar type, but there were reports of
6 other threats.

7 Q. Okay. And those -- did you regard those as credible
8 reports?

9 A. Yes.

10 Q. Okay. And did anything happen after that untoward to you
11 or your family members?

12 A. No.

13 Q. Okay. And you recall that from Dr. Jessen's [sic] book
14 that he received a similar ----

15 A. It's Dr. Mitchell's book.

16 Q. I'm sorry. It's hard to separate the two.

17 A. I know.

18 Q. I beg your pardon. Laurel and Hardy had the same problem
19 I decided, if it's any consolation.

20 In Dr. Mitchell's book, he mentions that he received at
21 least one similar threat for him and his family to vacate, and I
22 think even resulted in having colleagues come to his house and stand
23 armed guard.

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1 Are you aware of that incident?

2 A. First of all, I won't take it as an insult that you
3 compared us to Laurel and Hardy. And, secondly, I think it was the
4 same incident -- I believe it was the same warning that came to both
5 of us.

6 Q. Okay. And this is a genuine question, sir. What
7 I'm -- what I'm trying to get at is we wouldn't think that
8 the -- would you agree that because people reported threats to you
9 and nothing came of it, that you still wouldn't be alarmed and
10 appropriately react if you received similar threats in the future?

11 A. I agree.

12 Q. Okay. So your fear for your family's safety would not be
13 extinguished by these people not materializing on earlier occasions;
14 is that correct?

15 A. Not instantaneously with a warning, that's for sure.

16 Q. Okay. And do you recall, sir, ever -- you, yourself, ever
17 authoring a cable to headquarters in which you said Mr. Mohammad is
18 refusing to provide us with what we think is critical information
19 that we want to get from him, but we have decided not to use any
20 enhanced interrogation techniques or other coercive measures to try
21 to get it from him?

22 A. I don't recall that. I may -- I may have. I don't
23 recall.

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1 Q. Okay. And do you recall seeing any other cables like that
2 from any other interrogator who had contact with Mr. Mohammad?

3 A. I don't recall.

4 Q. And Mr. Groharing asked you about Mr. Mohammad on occasion
5 delivering lectures to -- I guess it was personnel at the black
6 sites; is that correct?

7 A. Yes.

8 Q. And that was during the debriefing phase?

9 A. Yes.

10 Q. And you mentioned Mr. Mohammad being an intelligent
11 person, but that long periods of idle, solitary confinement, if I
12 understood your answer to Mr. Groharing, can contribute to some
13 mental decline or decay; is that correct?

14 A. I don't think I said mental decline or decay. I think
15 what I said is you get bored and -- yeah.

16 Q. Okay.

17 A. I did say that.

18 Q. You did say that, okay.

19 And as an intelligent human being in a situation that has
20 improved from the EITs, it would not be unnatural for the individual
21 to see if he could persuade his captors to allow him to engage in
22 some mental stimulating activity; is that correct?

23 A. Yes.

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1 Q. And with respect to the lectures themselves, were these to
2 the entire black site personnel staff, or did he have selected
3 individuals he wanted to speak to?

4 A. No. Not everyone who was on-site would be in there, but
5 it varied who would come, you know, who was available. I think the
6 chief of base was always there, but I don't remember the complement
7 of people each time.

8 Q. Okay. And so in those situations -- or in addition to
9 those situations, I had asked you about Mr. Mohammad being asked to
10 write up biographical information, autobiographical information. Do
11 you remember him doing that as well?

12 A. I have a vague memory of that, but not specifically.

13 Q. Okay. Did you ----

14 A. I know -- I know he wrote quite a few things.

15 Q. And do you recall him incorporating some of that
16 information into his lectures?

17 A. I don't recall that.

18 Q. Okay. And I believe -- and, again, correct me if I'm
19 wrong -- initially when I was talking to you oh so long ago on
20 direct, you did not recall Mr. Mohammad speaking in terms of his
21 religious beliefs in the context of being interrogated and eventually
22 deciding to cooperate.

23 But then I believe yesterday when you were speaking with

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1 Mr. Groharing, you recalled during the lectures, Mr. Mohammad was
2 divulging information about his religious beliefs and upbringing; is
3 that correct?

4 A. That is correct.

5 Q. Okay. And what I wanted to ask you about with that
6 clarification is whether it's fair to describe the overall thrust of
7 these lectures that Mr. Groharing asked you about, as Mr. Mohammad
8 attempting to educate you as to what he thought were the world's
9 pressing issues for him as a Muslim and as a jihadist?

10 A. To some degree, yeah, I -- that sounds correct. I don't
11 remember the lectures specifically, but I wouldn't disagree with
12 that.

13 Q. Okay. Well, did he -- for instance, did he discuss the
14 historical occurrence at the time that Sephardic Jews were expelled
15 from Spain by King Ferdinand and Queen Isabella, that they were
16 actually invited to resettle in the Middle East by the Muslim caliph
17 at the time, offering protection?

18 A. I don't remember that.

19 Q. Okay. Do you remember any thematic discussion about prior
20 to the rise of the Zionist movement that Jews and Muslims and
21 Christians had peacefully coexisted in what we refer to as the Holy
22 Land or the Middle East?

23 A. I don't remember him talking that.

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1 Q. Okay. Did he mention the phrase Skyes Picot? And it's a
2 treaty that carved up the Middle East in arbitrary manner for the
3 benefit of British and French colonial interests.

4 A. I don't remember that.

5 Q. Okay. Do you recall him referring to the British
6 politician Lord Balfour, who created the Jewish settlement in
7 Palestine, but, in fact, was himself an anti-Semite and was trying to
8 export Jews from the United Kingdom?

9 A. No, I don't remember that.

10 LDC [MR. SOWARDS]: Just a moment, Your Honor.

11 MJ [Col McCALL]: Sure.

12 **[Counsel conferred.]**

13 LDC [MR. SOWARDS]: Just a moment, Your Honor.

14 **[Pause.]**

15 Q. And during the time, Dr. Jessen, that Mr. Mohammad was in
16 this debriefing phase, and you mentioned as a person of intelligence,
17 would it be a fairly normal survival mechanism to seek opportunities
18 that would be afforded by you or anyone else who was willing to offer
19 him some improvement in his condition as long as he was cooperating
20 with you?

21 A. Yes.

22 Q. And just to define the, kind of, array of words -- and I
23 know this will sound obvious -- but if Mr. Mohammad, after spending

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1 some time with you and debriefing with you had now said, you know,
2 he'd just as soon take leave and go home, that would not be an option
3 for him; is that correct?

4 A. That is correct.

5 Q. Okay. And if he wanted to say at this point "I've been
6 here, you know, two, three years, I would like to write to my family
7 and let them know that I'm okay," would that have been allowed?

8 A. No, it wouldn't.

9 Q. And if at some later point in his captivity he had been
10 allowed to meet with the ICRC and to write letters to his family,
11 would that be reasonably -- expected to be viewed as a fairly great
12 improvement in his situation?

13 A. Yes. You know, I learned yesterday about some of those
14 conditions, and it must have been -- very relief to all of them.
15 Yeah.

16 Q. Okay.

17 LDC [MR. SOWARDS]: If I may have just one last moment, Your
18 Honor.

19 MJ [Col McCALL]: That's fine.

20 **[Counsel conferred.]**

21 Q. And, Doctor, I'm sorry, just one kind of last loose end.

22 Yesterday you were asked by Mr. Groharing about the doctors
23 who were present at the time of the administration of the EITs. And

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1 unless -- at least we've -- different ones of us have notes that
2 earlier when you talked about the medical staff available, it sounded
3 as if they were physicians assistants.

4 Are you saying that there were, in fact, medical doctors who
5 were present or were they doctors in the sense of PAs?

6 A. There were both. More PAs than physicians, but there were
7 both.

8 Q. Okay. And were there -- do you know, during the EITs,
9 were there always doctors or were they sometimes replaced by PAs?

10 A. Both. Again, more PAs than physicians.

11 Q. Okay.

12 LDC [MR. SOWARDS]: Thank you, sir. That's all I have, Your
13 Honor.

14 MJ [Col McCALL]: All right. Thank you, Mr. Sowards.

15 LDC [MR. SOWARDS]: You're welcome.

16 MJ [Col McCALL]: All right. We've been going a little bit
17 over an hour. Let's go ahead and take a 15-minute recess. So let's
18 be back on the record at 1025.

19 **[The witness was excused and withdrew from the RHR.]**

20 MJ [Col McCALL]: The commission's in recess.

21 **[The R.M.C. 803 session recessed at 1013, 19 July 2024.]**

22 **[END OF PAGE]**

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1 [The R.M.C. 803 session was called to order at 1031, 19 July 2024.]

2 MJ [Col McCALL]: The commission's called to order.

3 The parties are present. All of the accused are absent.

4 [The witness, John Bruce Jessen, resumed the witness stand.]

5 MJ [Col McCALL]: Dr. Jessen is on the witness stand.

6 Ms. Pradhan?

7 ADC [MS. PRADHAN]: Yes, sir. I'd considered getting up just
8 to make everyone practice my name a little bit more, but I
9 actually -- following the government's cross, I do not have anything
10 on redirect for Dr. Jessen.

11 I just wanted to thank Dr. Jessen for his time and his
12 testimony. Thank you, sir.

13 WIT: Thank you.

14 MJ [Col McCALL]: All right.

15 Mr. Montross?

16 DC [MR. MONTROSS]: And, Your Honor, understanding that you've
17 been present for the entirety of the four days of testimony and that
18 you're going to consider all of it, I don't have a need to ask any
19 further questions either.

20 MJ [Col McCALL]: All right.

21 Mr. Ruiz?

22 [END OF PAGE]

REDIRECT EXAMINATION

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

Q. Dr. Jessen, yesterday you testified under oath that you had interacted with Mr. al Hawsawi at Locations 5, 6, 8, and 9. Is that still your testimony today?

A. Yes, that's what the record showed. I don't remember all of those, but I don't dispute that.

Q. When you say "the record," what are you referring to?

A. I was shown a list of sites that I'd been at where your client was at, official list of some kind.

Q. And by whom were you shown that?

A. My attorney -- or the government attorney.

Q. Okay.

LDC [MR. RUIZ]: Judge, I'm going to ask to display a U//FOUO document. It's at AE 632Y Attachment F. And to the -- this is to the parties as well as to the gallery.

MJ [Col McCALL]: All right. It can be displayed to the public.

LDC [MR. RUIZ]: Exhibit Number 4, please. I need the feed to Table 5, please.

MJ [Col McCALL]: It's up.

Dr. Jessen, let us know when you can see it. Sometimes there's a little bit of a lag when it's coming from one of the other

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1 computers.

2 WIT: I can see it now.

3 MJ [Col McCALL]: All right.

4 Q. And, Dr. Jessen, I showed you this document the first time
5 I had an opportunity to question you. Do you recognize this
6 document?

7 A. No.

8 Q. All right. This document ----

9 LDC [MR. RUIZ]: Can we scroll to the very top?

10 Q. All right. This is the government-provided list of your
11 direct and substantial contacts with Mr. al Hawsawi.

12 A. Okay.

13 Q. We reviewed that the first time you and I talked. As you
14 can see, it indicates the dates as well as the locations. And you
15 are designated as Interrogator 1, as we've established, correct?

16 A. Correct.

17 Q. All right. I'm going to have you take a look at this
18 document to refresh your memory as to where the government indicates
19 you had direct and substantial contacts with Mr. al Hawsawi. Just
20 let me know when you're finished with the page that is on the
21 display.

22 **[The witness reviewed the evidence.]**

23 A. Well, it says all of them were at Location 6, correct?

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1 Q. That first page, yes, that's correct. Are you finished
2 with that page?

3 A. Yep.

4 LDC [MR. RUIZ]: Next page, please.

5 Q. Okay.

6 A. Yeah, I see the page. It says Location 6.

7 LDC [MR. RUIZ]: Next page, please.

8 A. Again, Location 6.

9 Q. And, of course, you see your designation as Interrogator 1
10 there on the right-hand column, correct?

11 A. Yes.

12 LDC [MR. RUIZ]: Next page, please.

13 A. Okay. I see it.

14 LDC [MR. RUIZ]: Next page.

15 A. Okay.

16 LDC [MR. RUIZ]: Next one, please.

17 A. Okay. I see it.

18 Q. And I'll tell you, that's the last page of the direct and
19 substantial contacts that we have been provided with in discovery.

20 TC [MR. GROHARING]: Your Honor ----

21 Q. Is there another -- is there another ----

22 TC [MR. GROHARING]: Objection, Your Honor ----

23 MJ [Col McCALL]: Hold on, Mr. Ruiz.

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1 Go ahead, Mr. Groharing.

2 TC [MR. GROHARING]: ---- just to the form of the question.
3 This document is an index of discovery provided by the government,
4 and it attaches a UFI to particular discovery. It's not a list of
5 direct and substantial contacts that anyone had with an accused
6 necessarily.

7 So I think it's misleading to suggest that that's the
8 purpose of this document.

9 LDC [MR. RUIZ]: I would like to cross-examine Mr. Groharing
10 on that point, Your Honor, if he's going to testify in a decades-long
11 litigation.

12 MJ [Col McCALL]: Objection overruled. I'll allow the
13 question.

14 LDC [MR. RUIZ]: And I would simply -- thank you, Your Honor.

15 Q. Dr. Jessen, I'm just going to wait for you to pop back up
16 there on the screen.

17 A. It's there. I see it.

18 Q. You see -- you see that 9/17/2004 date there?

19 A. Yes.

20 Q. All right. Do you see right above that where it says "no
21 D&S"? Right by -- right above that entry, the yellow.

22 A. Yeah, I'm looking at the entry. On -- in which column am
23 I supposed to be looking?

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1 Q. If you look at Interrogator Number 1, and right above
2 that.

3 A. Yeah, I see "no D&S," yes.

4 Q. All right. So that would stand for "direct and
5 substantial contact." I would just submit that for your
6 consideration.

7 Now, on that 9/17/2004 entry at Location Number 5, that is
8 the one instance when you testified that you remembered having spoken
9 to Mr. al Hawsawi, correct?

10 A. Yes.

11 Q. And that is the conversation you've referenced that had to
12 do with the report of the waterboarding?

13 A. That's correct.

14 Q. And that's the one where you indicated that Mr. al Hawsawi
15 seemed disturbed when he reported that to you, correct?

16 A. That's correct.

17 Q. Your testimony earlier, when we talked, was that you had
18 no recollection at all of having met with Mr. al Hawsawi at Location
19 Number 6, correct?

20 A. Yes, that's correct. I think I qualified that -- that,
21 you know, the records showed that I did and I don't dispute that. I
22 just don't remember.

23 Q. Right. You have no -- you have no independent

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1 recollection of those contacts, correct?

2 A. That's correct.

3 Q. Or any details surrounding what that may have been?

4 A. That's correct.

5 Q. And aside from the 9/17/2004 contact, you have no
6 recollection of any other contact with Mr. al Hawsawi after
7 9/17/2004, correct?

8 A. Yes, that's correct.

9 Q. And so I ----

10 LDC [MR. RUIZ]: We can take this document down.

11 Q. Do you remember how long -- specifically referring to the
12 Location 5 contact that we've just referenced, do you remember how
13 long that interaction took place in terms of your actual engagement
14 with Mr. al Hawsawi ----

15 A. Yes.

16 Q. ---- on that date?

17 A. I would just have to speculate, but it was, I believe, at
18 least more than a half an hour and maybe an hour.

19 Q. Okay. So it wasn't -- it wasn't, like, a half a day or a
20 full day or anything like that?

21 A. No.

22 Q. All right. And, of course, that's 20 years ago, correct?

23 A. Yes.

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1 Q. Okay. As of January 2007, did you have any knowledge
2 whatsoever -- okay? -- in January 2007, did you have any knowledge
3 whatsoever about Mr. al Hawsawi's mental status at that time?

4 A. No.

5 Q. Did you have any knowledge whatsoever about
6 Mr. al Hawsawi's medical status at that time?

7 A. No.

8 Q. Did you have any information whatsoever about the
9 conditions of his confinement at that time?

10 A. You said January 2007?

11 Q. Correct.

12 A. No.

13 Q. You testified yesterday generally about the efficacy of
14 psychological assessments of detainees. Do you remember that?

15 A. Yes.

16 Q. All right. It is correct, is it not, that you never
17 witnessed any psychological assessment of Mr. al Hawsawi, correct?

18 A. That's correct.

19 Q. Never witnessed any psychological status assessment of
20 Mr. al Hawsawi?

21 A. That's correct.

22 Q. You were very clear, I think, that you never conducted a
23 psychological assessment of Mr. al Hawsawi?

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1 A. That's correct.

2 Q. So you have no independent factual bases for opining as to
3 the efficacy of any psychological assessment conducted of
4 Mr. al Hawsawi, correct?

5 A. The only judgment that I think that I have already made
6 was that the individuals who were doing them, that I knew of, were
7 competent.

8 Q. So let me ask the question again. You have no independent
9 factual bases of the efficacy of psychological assessments conducted
10 of Mr. al Hawsawi?

11 TC [MR. GROHARING]: Objection, asked and answered.

12 MJ [Col McCALL]: Overruled.

13 A. I'd say the same thing I just said.

14 Q. Okay. Did you ever review any medical documents or
15 psychiatric notes of Mr. al Hawsawi's psychiatric assessments?

16 A. Not to my recollection, no.

17 Q. Prior to testifying, you didn't review any such documents,
18 correct?

19 A. I didn't understand.

20 Q. Prior to testifying here, you did not review any such
21 documents, correct?

22 A. Yes.

23 Q. Yes, you did not?

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1 A. Correct. I did not.

2 Q. And you have no recollection of ever having reviewed any
3 such documents at all?

4 A. Correct.

5 Q. What factual -- what independent factual bases do you have
6 for opining on the degree of Mr. al Hawsawi's cooperation with
7 interrogators?

8 A. Back in the day I'm sure I had memories or I had
9 experiences that I could relate to, and I could have given you an
10 opinion. But as I've already told you, my only recollection now is
11 that conversation I had with him that we have just talked about.

12 Q. And I believe that he was cooperative during that
13 communication, correct?

14 A. Yes, he was.

15 Q. So you have no independent factual bases to opine that
16 Mr. al Hawsawi was not cooperative with his interrogators, correct?

17 A. Correct.

18 Q. You have no independent factual basis to opine that
19 Mr. al Hawsawi was not cooperative with his debriefers, correct?

20 A. Correct.

21 Q. You never observed Mr. al Hawsawi's interrogations?

22 A. Not interrogations, no.

23 Q. So you have absolutely no idea what his interrogators were

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1 wearing?

2 A. That's correct.

3 Q. Where they were seated or where they were located?

4 A. That's correct.

5 Q. What tone of voice they used or didn't use?

6 A. Correct.

7 Q. Same goes through for the debriefers, correct? You never
8 witnessed Mr. al Hawsawi's debriefings, correct?

9 A. I probably did witness a debriefing. I don't remember
10 specifically. Your records, you know, may show that, but I don't
11 remember it.

12 Q. So you have absolutely no recollection of what tone of
13 voice the debriefers used with Mr. al Hawsawi?

14 A. No, I don't.

15 Q. What they were wearing?

16 A. No.

17 Q. Where he was seated?

18 A. No.

19 Q. How he was shackled or not shackled?

20 A. No.

21 Q. Whether he was cooperative or not?

22 A. No.

23 Q. Did you ever read any documents -- any documents that were

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1 written by Mr. al Hawsawi's interrogators referencing the substance
2 of his interrogations?

3 A. I do not -- I don't think so, no.

4 Q. Did you ever read any documents generated by
5 Mr. al Hawsawi's debriefers?

6 A. I probably did, but I don't recall them.

7 Q. Okay. So if I understand you correctly, the last
8 interaction you had with Mr. al Hawsawi was in 2004, at least based
9 on the records that we have, correct?

10 A. I'll take your word for it.

11 Q. Okay. You don't remember any interaction after that?

12 A. That's correct.

13 Q. Yet you feel comfortable opining on the voluntariness of
14 Mr. al Hawsawi's statements in 2007 to law enforcement officials?

15 TC [MR. GROHARING]: Objection, Your Honor. It misstates the
16 testimony.

17 MJ [Col McCALL]: Objection overruled.

18 A. I don't believe you've ever asked me about that.

19 Q. Mr. Groharing asked you yesterday during the examination
20 if you believe that Mr. al Hawsawi would be able to provide a
21 voluntary -- or make a voluntary statement in 2007, and you answered
22 yes.

23 A. Okay. If there would have been some significant problem

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1 with Mr. Hawsawi that I knew about, I think I would have remembered
2 it. That's a subjective ----

3 Q. Right.

4 A. But I think I would -- okay. Let me finish. I think I
5 would have remembered. And there was none in my memory. The only
6 interaction that I clearly remember I've described to you and
7 everyone else. And he was certainly cooperative and that went well.
8 So based on that, I have no reason to believe that he wouldn't be
9 cooperative.

10 Q. Well, I think the question was directed at the -- his
11 ability to make a voluntary decision ----

12 A. Right.

13 Q. ---- in 2007, some three years after you had observed him.
14 You feel comfortable testifying that Mr. Hawsawi could make a
15 voluntary decision in 2007 after only having seen him once in the
16 preceding three years, having ----

17 A. Yes.

18 Q. ---- no knowledge of his medical records or his
19 medical -- or mental status?

20 A. I think you're begging for something that I'm not. Based
21 on my interactions with him, based on the recollections I have, yes.
22 I saw nothing. I heard nothing. No one told me anything, that I
23 remember, that would counter that opinion.

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1 LDC [MR. RUIZ]: That's all I have, Judge.

2 MJ [Col McCALL]: All right. Thank you, Mr. Ruiz.

3 Mr. Groharing, do you have any further questions?

4 TC [MR. GROHARING]: Your Honor, could we have a couple
5 minutes, please?

6 MJ [Col McCALL]: Sure.

7 **[Counsel conferred.]**

8 TC [MR. GROHARING]: Thank you, Your Honor. No further
9 questions from the government.

10 MJ [Col McCALL]: All right. Dr. Jessen, thank you for your
11 patience this week as we've worked through your testimony. So, as
12 promised, we're getting you out of here in time for your flight. And
13 I know you have -- it sounds like you have other engagements for next
14 week.

15 Again, there's no guarantee that you won't be called back to
16 testify at a later point during either these pretrial proceedings or
17 during the trial. So don't discuss your -- the subject matter of
18 your testimony with anyone, to include any of counsel or even your
19 own counsel without getting prior authorization from the court.

20 If you -- for some reason you are brought back to testify
21 later, then I'll give authorization to the prosecutors to prepare you
22 for that testimony with whatever new documentation might necessitate
23 you coming back.

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1 Do you have any questions?

2 WIT: No. Thanks for getting me out of here on time. I
3 appreciate it.

4 MJ [Col McCALL]: I appreciate your patience going late last
5 night.

6 All right. But at this time you can go ahead and leave the
7 RHR.

8 Thank you, Dr. Jessen.

9 WIT: Yes.

10 MJ [Col McCALL]: And, Mr. Groharing, just let me know when
11 Dr. Jessen and Mr. Paszamant have left the RHR.

12 **[The witness was warned, was excused, and withdrew from the RHR.]**

13 TC [MR. GROHARING]: They've left the RHR, Your Honor.

14 MJ [Col McCALL]: All right. Thank you, Mr. Groharing.

15 All right. Let's just do a little bit of housekeeping. So
16 I think the parties know I usually like to fill up white space, but
17 we've also been pushing it pretty hard this week, even if it wasn't
18 in court. I know there have been a lot of meetings late at night and
19 during lunch hours for some of these other side issues that we're
20 dealing with.

21 I'm inclined to still have some oral argument today if the
22 parties are ready. It sounded like the parties wanted to argue 942MM
23 and also 950.

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1 So if the -- are the counsel who wanted to argue those
2 available? We can do that this afternoon. I'm also happy to give
3 you back a little bit of your time as we prepare for next week. At
4 least my assumption is that next week doesn't seem too onerous with
5 Special Agent Jocys, so we should have some free time next week to
6 also do some oral argument.

7 If -- and I also understand that there is this
8 classification guidance that just came out for Ms. Jocys. If we need
9 to discuss that this afternoon, we can attempt to do that. I'm open.

10 Maybe if the parties want to confer and we'll just sit here
11 in a pause.

12 Well, let's do this. Let's just go ahead and take a recess.
13 That way people that are involved can go ahead and have a bathroom
14 break. Let's be back in 15 -- well, I would open-end it. My staff
15 will let me know when the parties are ready to go back on the record.

16 The commission's in recess.

17 **[The R.M.C. 803 session recessed at 1054, 19 July 2024.]**

18 **[The R.M.C. 803 session was called to order at 1111, 19 July 2024.]**

19 MJ [Col McCALL]: The commission's called to order.

20 Parties are present. The accused are absent.

21 All right. I know the parties were able to confer. They
22 passed on to my staff some inputs.

23 So it sounds like -- I understand that the parties are, I

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1 think, trying to digest this new classification guidance for Special
2 Agent Jocys which may necessitate having a 505(h) hearing. And then
3 there's also the ex parte hearings that we're trying to work in.

4 So it sounds like the parties' preference would be to prep
5 for next week the rest of today. And next time we are -- on
6 Monday -- so have no more hearings this afternoon, and then on Monday
7 have a 505(h) hearing, if needed, and potentially do the ex parte
8 session with Mr. Bin'Attash. And then any other matters we will
9 adjust at that point.

10 But it sounds like the next time we'd be in an open session,
11 for the public and the media's understanding, is next Wednesday
12 on -- and, again, we would start at normal 0900 with Special Agent
13 Jocys.

14 Is that correct?

15 I see a lot of head nods. I'm going to take that as an
16 affirmation. So okay.

17 All right. So that's fine with me.

18 So what I would like to do for the logistics, because it
19 starts to get a little bit difficult on that, let's plan on starting
20 Monday at 0900 with an ex parte with the Bin'Attash defense team.
21 And then we'll see how long that takes and where that goes. But that
22 way it's the normal time of bringing Mr. Bin'Attash over so there's
23 not any logistic issues with him being late.

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1 And after that's done -- and again, it's hard to predict
2 when that would be done, so let's plan on having the 505(h), if
3 needed, in the afternoon. And we'll have that at 1330 -- or let's
4 make it 1345, that's -- trying to stick to that normal schedule for
5 this session.

6 Does that make sense?

7 Looks like it does.

8 And then, again, if we have white space, I'm happy to do
9 some oral argument next week depending on -- again, with Special
10 Agent Jocys it doesn't seem like we're going to be working some of
11 the hours we worked this week, so I'm happy to work those in.

12 If there's AEs that the parties are prepared and wish to
13 push to the top of the queue, just let me know and we will. None of
14 them jump out to me as ones that I need to get out.

15 My due back to the parties is, again, I will -- especially
16 having this afternoon free, I will try to get out that ruling on the
17 way forward with the Camp VII commander.

18 I do want to put the parties on notice again, kind of as
19 we've been doing the past several sessions, I would like to go ahead
20 and next Wednesday, at some point, probably at the end of the day,
21 have, again, some housekeeping with the parties to discuss the
22 witnesses for the next session that we're down here. Because, again,
23 that's going to be on us in no time. I want to know where we're at

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1 on some of those witnesses that we had discussed. So just be
2 prepared to discuss that.

3 Any other housekeeping just while we're here?

4 Mr. Connell?

5 LDC [MR. CONNELL]: Sir, understanding it might be a little
6 premature, but do you have any guidance on what you see as the way
7 forward in further discussions on 952, the national security
8 privilege issue? Are you going to want to hear oral argument from us
9 on that?

10 MJ [Col McCALL]: I might. I'm not going to promise -- I want
11 to digest what the defense has. And then, honestly, I'm going to
12 take what both sides have presented to me and look at how it's
13 actually worked in practice in this commission.

14 Because, again, I think we're in -- it's just an area that's
15 gotten a little bit convoluted, I think, over time. And so I want to
16 look at it and see if I need to put out further guidance. I might
17 have enough from the parties that maybe the status quo is working,
18 but I'll let the parties know. So I guess the long story short is I
19 don't know yet.

20 LDC [MR. CONNELL]: We'll stand by, sir.

21 MJ [Col McCALL]: Anything else?

22 Mr. Montross.

23 DC [MR. MONTROSS]: Very briefly, thank you. So just to

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1 confirm, we do want Mr. Bin'Attash here for the -- for the ex parte.

2 MJ [Col McCALL]: 0900 ex parte, only the Bin'Attash defense
3 team and Mr. Bin'Attash.

4 DC [MR. MONTROSS]: Can the RHR be available?

5 MJ [Col McCALL]: Of course.

6 DC [MR. MONTROSS]: Okay. Great. Thank you.

7 MJ [Col McCALL]: Sure. All right. The commission's in
8 recess. Sorry. Hold on.

9 Mr. Ruiz, I didn't see you.

10 LDC [MR. RUIZ]: Just since we're talking scheduling matters,
11 I want to give you a heads up. I don't think this is something that
12 will impact the commission's scheduling, but I did want you to be
13 aware of it. Next Friday we were planning -- we're trying to
14 coordinate a reenlistment -- a fairly significant event for our
15 team ----

16 MJ [Col McCALL]: Sure.

17 LDC [MR. RUIZ]: We're trying to plan that for what would
18 normally be after hours on Friday, around 1700, requires coordination
19 with the Marine force security forces. So I just wanted to let you
20 know that. It doesn't seem, from what we have on the schedule, that
21 it will be impacted, but I just wanted to let you know.

22 MJ [Col McCALL]: No, I appreciate that. I can work around
23 that. And, again, I think the parties all know, but just to foot

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1 stomp it, I'm always happy to adjust our hours. There's been things
2 that have come up with counsel for dealing with outside matters, and
3 I usually can work around it. Just give me a heads up. So, yeah,
4 that shouldn't be a problem.

5 All right. The commission's in recess.

6 **[The R.M.C. 803 session recessed at 1117, 19 July 2024.]**

7 **[END OF PAGE]**