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1 **[The R.M.C. 803 session was called to order at 0901, 08 May 2024.]**

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

3 Good morning, Mr. Trivett. Could you identify who's here on
4 behalf of the United States, both in the courtroom and at the RHR?

5 MTC [MR. TRIVETT]: Yes, sir. Good morning.

6 Representing the United States today in the courtroom in
7 Guantanamo is myself, Mr. Clay Trivett; Lieutenant Commander Robert
8 Baxter; Mr. Christopher Dykstra. Present is paralegal Rudolph Gibbs.

9 And present from the FBI today is Supervisory Special Agent
10 Joseph Hokanson, as well as Assistant Section Chief Morgan Bailey.

11 Representing the United States today from the Remote Hearing
12 Room is Mr. Jeff Groharing, Colonel Joshua Bearden. Paralegals
13 present are Ms. Karissa Grippando and Staff Sergeant Samantha
14 Resendiz.

15 We are expecting Major Dastoor later this morning, sir.

16 And these proceedings are being broadcast via closed-circuit
17 television to sites in the continental United States pursuant to the
18 military commission's orders.

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

20 Good morning, Mr. Sowards.

21 LDC [MR. SOWARDS]: Good morning, Your Honor.

22 Appearing on behalf of Mr. Mohammad, who is not present in
23 the courtroom, are Gary Sowards; Kathleen Potter, Lieutenant Colonel,

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1 United States Air Force; and Gabriela McQuade.

2 For the commission's information, we anticipate being joined
3 later by Lieutenant Xu. And I -- at my request, Captain Leahy and
4 Major Theis -- I'm sorry, I had that wrong. Captain Leahy and
5 Lieutenant Xu are engaged in some negotiations with the prosecution
6 about our 3300 discovery, and Major Theis will be joining us later.

7 MJ [Col McCALL]: Understood.

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

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

10 And I'm not sure. Is it going to be Mr. Montross?

11 DC [MR. MONTROSS]: It would be.

12 MJ [Col McCALL]: Good morning.

13 DC [MR. MONTROSS]: William Montross for Mr. Bin'Attash, who
14 is not present.

15 In the RHR, Ms. Tasnim Motala, Captain Marian Messing,
16 Matthew Engel, Chris Pipe, Prax Kennedy.

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

18 Good morning, Mr. Connell.

19 LDC [MR. CONNELL]: Good morning, sir.

20 For Mr. Al Baluchi is myself, James Connell; Alka Pradhan.

21 And in the Remote Hearing Room, Lieutenant Jennifer Joseph.

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

23 Good morning, Mr. Ruiz.

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1 LDC [MR. RUIZ]: Good morning, Judge.

2 Walter Ruiz on behalf of Mr. al Hawsawi, along with
3 Ms. Suzanne Lachelier, Captain Kerry Mawn, Captain Patrick Tipton,
4 and Mr. Sean Gleason.

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

6 All right. I don't see any of the accused in the courtroom.
7 Mr. Dykstra?

8 DMTC [MR. DYKSTRA]: Yes, Your Honor.

9 MJ [Col McCALL]: Mr. Dykstra, go ahead.

10 DMTC [MR. DYKSTRA]: Leaning forward, sir.

11 MJ [Col McCALL]: I just heard somebody's alarm going off, but
12 I think it's been resolved.

13 Can you -- do you have a witness to account for these
14 absences?

15 DMTC [MR. DYKSTRA]: I'm always leaning forward, as you
16 commented last night, so...

17 **CAPTAIN, U.S. Air Force, was called as a witness for the prosecution,**
18 **was previously sworn, and testified as follows:**

19 **DIRECT EXAMINATION**

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

21 Q. Please have a seat, Captain. Good morning.

22 A. Good morning, sir.

23 Q. Now, for purposes of the record, what is your call sign or

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1 pseudonym?

2 A. Doc.

3 Q. And you've previously testified in these proceedings,
4 correct?

5 A. Yes, sir.

6 Q. I'd just remind you that you remain under oath.

7 A. Yes, sir.

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

10 A. Yes, sir. Between approximately 0615 and 0635 this
11 morning, I advised each of the accused of their respective rights to
12 attend today's session, using the English version of the Statement of
13 Understanding, Right to Be Present for Commission Proceedings. I
14 also had a translated version and a linguist present with me when I
15 did so.

16 Q. Thank you.

17 DMTC [MR. DYKSTRA]: Your Honor, if I may approach the
18 witness? I'm going to hand him what has been previously marked as
19 Appellate Exhibit 943UU (KSM), 943VV (WBA), 943WW (AAA), and 943XX
20 (MAH).

21 MJ [Col McCALL]: Go ahead.

22 Q. Are these the forms that you used to advise the accused
23 this morning?

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1 A. Yes, sir. They are.

2 Q. Thank you. And once you advised the accused, what was
3 their response to whether or not they wanted to attend this morning?

4 A. They declined to be present for the commission sessions
5 but did accept meetings either at the ELC or at other locations
6 throughout the day.

7 Q. Thank you. Did you have any concerns regarding the
8 voluntariness of their decision this morning?

9 A. No, sir. I did not.

10 DMTC [MR. DYKSTRA]: Your Honor, no further questions for
11 the -- this witness. But I will flag just for Your Honor that
12 Mr. Groharing wants to address a housekeeping matter before
13 proceeding to Dr. Morgan this morning.

14 MJ [Col McCALL]: Okay. Understood.

15 And if the AV people can just turn up the mics a little bit.
16 It sounds like it's a little bit low for the court reporters.

17 All right. Mr. Connell, do you have a question for this
18 witness?

19 LDC [MR. CONNELL]: Yes.

20 **CROSS-EXAMINATION**

21 **Questions by the Learned Defense Counsel [MR. CONNELL]:**

22 Q. Sir, Mr. al Baluchi is actually present here in the ELC;
23 is that right?

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1 A. I don't know if he's present here. I didn't watch his
2 movement, but he did indicate that he wished to attend his legal
3 meetings at the ELC.

4 Q. So he's in the holding cell, right?

5 A. I don't know if he's in the holding cell, sir. I didn't
6 witness his movement, but he did accept his legal meeting. And when
7 I asked where it was, he said it was at the ELC holding cell.

8 MJ [Col McCALL]: I can note for the record that my
9 understanding is that Mr. Ali is in one of the adjacent facilities.

10 LDC [MR. CONNELL]: Thank you.

11 MJ [Col McCALL]: And I believe Mr. Mohammad is as well.

12 All right. Any other questions for this witness?

13 Mr. Sowards?

14 LDC [MR. SOWARDS]: I was going to say, as always, you're
15 correct, sir.

16 MJ [Col McCALL]: I appreciate that.

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

18 WIT: Thank you, sir.

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

20 MJ [Col McCALL]: The commission finds that Mr. Mohammad,
21 Mr. Bin'Attash, Mr. Ali, and Mr. al Hawsawi have knowingly and
22 voluntarily waived their right to be present at today's session;
23 although, it sounds like Mr. Ali and Mr. Mohammad are in the adjacent

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1 facility where they can listen in to the proceedings, and they may
2 join us at some point today.

3 All right. A few administrative matters. So I do want to
4 first address witnesses.

5 Are the parties prepared to discuss this at this point? Do
6 we have any further fidelity on just next week and next session?
7 Whoever wants to address it. First up to the podium.

8 MTC [MR. TRIVETT]: Good morning, sir.

9 MJ [Col McCALL]: Good morning.

10 MTC [MR. TRIVETT]: So we're just actually looking for some
11 fidelity on the decision on Special Agent McFadden. He's available.
12 We've begun his preparation. He is not available preparation-wise
13 from Wednesday through Sunday.

14 So if there's some thought that the doctor who's going to
15 begin her testimony tomorrow is not going to be done by Friday, I
16 would prefer to be able to give him, like, a set day next week where
17 we can start.

18 It doesn't necessarily matter to us, but we just would like
19 to be able to provide that information to him for his planning
20 purposes and for our preparation purposes.

21 MJ [Col McCALL]: All right. Well, let's start first with, I
22 guess, WKI. Is she available next week? I know that that was in the
23 works, as far as checking her availability.

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1 **[Counsel conferred.]**

2 MTC [MR. TRIVETT]: I believe those conversations are
3 happening today ----

4 MJ [Col McCALL]: Okay.

5 MTC [MR. TRIVETT]: ---- with one of our prosecutors, so we'll
6 be able to update you as soon as we hear on that.

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

8 And then, yeah -- Mr. Engle, has your position changed at
9 all? I know that before you had concerns on trying to prepare for a
10 key witness on short notice, but I don't know if in the intervening
11 time if you had had an opportunity to prepare for that.

12 Again, my concern is we've had witnesses -- yeah, I'm
13 prepared to go forward with at least getting the direct, as I
14 mentioned before, but I know in the past we've had multiple witnesses
15 where we started with them. And, I mean, we're still trying to
16 finish off the Camp VII commander just -- and some of the other
17 witnesses based on health issues that arose. And so I would like to
18 accomplish his testimony, if possible.

19 But what's your position?

20 LDC [MR. ENGLE]: Yes, Your Honor. Our position really hasn't
21 changed. I don't think we would be ready to cross next week. You
22 know, the -- the government indicated the last time we discussed this
23 that they were still working through their affirmative discovery

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1 obligations. I assume that's still the case, because we haven't
2 received anything, which is not a criticism. I wasn't expecting to
3 receive anything yet.

4 MJ [Col McCALL]: Sure.

5 LDC [MR. ENGLE]: But we are expecting discovery. We are also
6 finalizing a discovery request of our own related to Special Agent
7 McFadden, so -- so I don't think we'll be ready until we can get
8 those materials, work through 505 notices, and put our cross
9 together.

10 MJ [Col McCALL]: All right.

11 LDC [MR. ENGLE]: But I would anticipate being ready to do
12 that at the next session, and we have no problem with him doing his
13 direct next week, if that's what the commission wants to do.

14 MJ [Col McCALL]: All right. And then, again, I know in past
15 practice some of the judges tried to change it up per witness and
16 have a random rotation on the defense teams. I typically defer to
17 the defense teams on the order in which they desire to cross-examine
18 a witness.

19 Do any of the defense teams feel prepared and desire to
20 cross-examine Agent McFadden next week? Again, I'm not going to
21 force it because of the -- the fact that we've been having a busy
22 schedule and this was a last-minute change to the lineup of
23 witnesses, and it's an important witness. But if parties are ready

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1 to question, I'm certainly open to hearing the questioning and the
2 testimony.

3 Mr. Connell?

4 LDC [MR. CONNELL]: Sir, can I address that when I address the
5 witness issues more globally?

6 MJ [Col McCALL]: All right. Well, why don't we do that,
7 then.

8 Why don't you have a seat, Mr. Trivett. Let's hear from
9 Mr. Connell, and then we'll kind of continue to figure out what data
10 we have so we can make some of these decisions.

11 What do you have, Mr. Connell?

12 LDC [MR. CONNELL]: Sir, so I have a few observations. The
13 first one is: As far as Mr. al Baluchi is concerned, the government
14 is almost done with its presentation, which to us is a critical
15 milestone, right?

16 The -- there's cross -- finishing cross-examination and any
17 redirect of former Camp VII commander. There's whatever tiny bit of
18 Mr. Kohlmann might still be out there. I haven't tracked. I don't
19 know what the resolution of that issue is. And then there's Welner,
20 where the government has refused to commit to whether they are
21 calling him in their case in chief or whether he's rebuttal.

22 That's actually important because if -- if he's case in
23 chief, like, theoretically we could cut him off by resting.

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1 The -- but if he's rebuttal, then they would call him in rebuttal.
2 So, you know, it is really important, and I feel a little manipulated
3 by the government's position on that.

4 The -- I say that because, you know, the court made the
5 comment the other day that September will be upon us before we know
6 it, and that's absolutely true, especially since the government is
7 making an intentional strategic choice to hang on to Dr. Welner as
8 long as they can and, you know, hear all the defense witnesses
9 testify, which would not normally happen for a government
10 case-in-chief witness; you know, normally we would go second.

11 And if we get to September and the government is like, oh,
12 I'm sorry, we don't have enough time or, oh, I'm sorry, he has a
13 health issue, then we're in a very difficult position for our hard
14 stop on arguments in November.

15 The reason why I say all this is a couple of things, which
16 is: First, it's really important who is going to testify in the
17 first two weeks of the July hearing because we think it's most
18 important -- you know, right now Jessen is scheduled to testify for
19 those weeks ----

20 MJ [Col McCALL]: Right.

21 LDC [MR. CONNELL]: ---- or at least penciled in. I won't say
22 scheduled. But McFadden and Gaudin are more important to the overall
23 progress of moving the case forward than ----

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1 MJ [Col McCALL]: Dr. Jessen?

2 LDC [MR. CONNELL]: ---- than Dr. Jessen is because, you know,
3 Dr. Jessen is our witness and theoretically there is some
4 accommodation that we could make around that.

5 So that's really important. And so it's important to hear
6 from the government about McFadden and Gaudin for that time.

7 That brings me to my answer to your question, which is: We
8 are not prepared to cross-examine McFadden. Until very recently we
9 had no idea that he was going to testify. And these
10 cross-examinations that we prepare take between 100 and 200 person
11 hours, you know, spread over about six people.

12 That said, if it is a question of do we need to do the
13 cross-examination to move forward and get all the government's
14 witnesses in in the appropriate amount of time, then I will take one
15 for the team. And if it -- if it needs to be done, I will do it.

16 And -- because the last thing that I think any of us want is
17 to get to September and the government still says, oh, we've come up
18 with some more witnesses or they're not available or whatever.
19 Because they have been able to string this out long enough, and there
20 has never been a single subpoena issued as far as I know.

21 And, you know, I know comparisons with other courts are not
22 always useful, but, like, it's astonishing to me that no
23 witness --- no subpoenas get issued for witnesses. In a stop sign

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1 case in Fairfax, Virginia, where I started my practice, you had to
2 issue subpoenas for your witnesses.

3 The -- so I do think it's really important, and so my answer
4 is: If we need it, I will do it.

5 MJ [Col McCALL]: All right. I appreciate that.

6 So yeah, I don't want you to feel like you're in a position
7 where you have to do it. And what I'm hearing is that there still
8 needs to be prep done for a proper cross-examination. And again,
9 that's -- actually what is useful for me is, you know, intelligent
10 questioning by counsel help pull out the important facts for me to
11 consider in making a decision. And so, yeah, I'm fine with just
12 doing the direct if -- if the parties are not ready to do a cross.

13 And, again, maybe -- if it ends up being where we can't have
14 a hearing on the Bin'Attash motion to suppress, I'm prepared to go
15 forward with the other accused and we'll do what we have
16 accomplished, so...

17 LDC [MR. CONNELL]: Understood, sir.

18 MJ [Col McCALL]: Okay. And just on a couple points,
19 because -- so, I guess, let me talk to Mr. Trivett, because then
20 maybe he can give me a little bit more if he has more information
21 on -- let's -- let's go ahead and talk about Jessen and Gaudin.

22 Like, I assume you're probably giving Agent Gaudin a chance
23 to adapt to the current situation he's in? I don't know if there's

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1 been any contact with him about potential testimony.

2 MTC [MR. TRIVETT]: I spoke with him late last week, and the
3 issue is that he doesn't know what his treatment protocol is going to
4 be yet, right? They're still going through it, they're still
5 diagnosing and performing biopsies and all of those things.

6 MJ [Col McCALL]: Sure.

7 MTC [MR. TRIVETT]: So that -- we just don't know what his
8 life situation is going to look like in August. That's why we
9 decided, at a minimum, to call Special Agent McFadden on it.

10 MJ [Col McCALL]: No, I get that.

11 So at this point, what is your direct looking like on
12 McFadden? Two days? One day?

13 MTC [MR. TRIVETT]: Less than two.

14 MJ [Col McCALL]: Okay.

15 MTC [MR. TRIVETT]: It's a little bit longer than ----

16 MJ [Col McCALL]: That sounds about right based on prior LHM
17 witnesses.

18 MTC [MR. TRIVETT]: It is, understanding that there's three
19 different interviews they did with Mr. Bin'Attash, which is going to
20 make it a little bit longer than the others who tended to have just
21 one set of interviews. There's a ----

22 MJ [Col McCALL]: So ----

23 MTC [MR. TRIVETT]: ---- January '07, October '07,

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1 February '08. So it's a little bit longer in that respect.

2 MJ [Col McCALL]: Understood. So we can budget him for two.

3 Again, I don't -- until I know whether, one, how quickly we
4 can resolve Dr. Morgan. Do we know if Dr. Morgan's available -- I
5 assume he's available tomorrow. I mean, he's down on island and
6 there's limited flights back.

7 LDC [MR. CONNELL]: He's here all week, sir.

8 MJ [Col McCALL]: Perfect. So if we run into -- continue with
9 Dr. Morgan tomorrow, which is a possibility, then -- I think we first
10 need to know if WK5I needs to slide to next week, but it sounds like
11 we could accomplish her and Special Agent McFadden next week.

12 So I'm open with -- from hearing from McFadden and WK5I,
13 however it works next week for their schedules, if that gives you the
14 information you need to get back with them and try to schedule that.

15 MTC [MR. TRIVETT]: It should. Once we talk to the doctor,
16 then we'll be able to give you our -- our definite slots for that.

17 MJ [Col McCALL]: Okay. Perfect.

18 So next piece would be -- so Dr. Jessen. Have we had any
19 more contact with him?

20 MTC [MR. TRIVETT]: I'm going to have to defer to Mr. Dykstra
21 on that.

22 MJ [Col McCALL]: Sure. And just on the point that
23 Mr. Connell raised about subpoenas on witnesses, sure, I get it. We

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1 do it also in the military. It's not unusual. Typically it's not
2 quite the issue because we have military witnesses who we can just
3 order, and so you don't have to necessarily rely on a subpoena.

4 The witnesses that we've had that have been scheduled and
5 then have fallen off, if I thought it was some type of gamesmanship
6 or a witness that's really just trying to dodge testifying, I could
7 have easily pushed for a subpoena. They actually sounded like very
8 credible reasons.

9 But we are getting to the point where I think we need to
10 have a subpoena in place or something to make sure that the person
11 knows they need to be here. And if not, then we need to have a
12 backup plan to look at, well, how are we going to take the testimony
13 if -- if they're not going to be able to come here because of some
14 kind of health issues. So, like, a deposition or something like that
15 where we can preserve the testimony.

16 And, again, I will say I appreciate the -- all the parties
17 seem to be understanding my drive to attempt to have the motions
18 hearing in November. As I mentioned at the -- earlier in this
19 session, I believe, that is aspirational. I put that on there sort
20 of like a trial date as a goal to try to line up the other witnesses.

21 Again, I'll put it out there. I have not asked to extend my
22 retirement a third time, but I still have not applied for any jobs
23 and I have a lot of flexibility. And so if I have to adjust, I can.

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1 I would rather not. But -- so it's just -- that's out there as well.
2 But I think at this point, things are still lined up where that
3 November date is -- is more than aspirational.

4 But how are -- so do we have any information now? And I'll
5 let Mr. Dykstra address it on Dr. Jessen. I think the parties know
6 I'm not one wedded to one counsel/one cause, so go ahead.

7 DMTC [MR. DYKSTRA]: Thank you, Your Honor. This is a team
8 effort on lining up witnesses and so forth.

9 MJ [Col McCALL]: Right.

10 DMTC [MR. DYKSTRA]: We appreciate your patience as well as we
11 work through different schedules and so forth. I think the record
12 shows that we have been fully gainfully employed with witnesses since
13 September of last year. So even when there has been a hole opened,
14 we've -- we've filled that in some fashion or ----

15 MJ [Col McCALL]: Right.

16 DMTC [MR. DYKSTRA]: As far as Dr. Jessen, what I can say is
17 his situation remains the same as far as his availability that first
18 week of July.

19 We would -- obviously, he's been on the stand for a day
20 and -- and Dr. Mitchell has also been on the stand for three weeks.
21 So the question becomes as far as time -- timeline-wise, how much of
22 his testimony becomes cumulative with Dr. Mitchell's at some point in
23 time.

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1 And that's why we feel -- we strongly believe that five days
2 of additional testimony from Dr. Jessen, in combination with the
3 three weeks of testimony -- and I think it was 180 hours or so forth
4 of testimony from him -- should, overall, be sufficient.

5 But obviously, Your Honor, we'd leave that to you as far as
6 if additional time is necessary of Dr. Jessen. But we would strongly
7 encourage Your Honor to curtail -- or not curtail, but just ask
8 defense counsel to bring focused questions that weren't already asked
9 of Dr. Mitchell, so...

10 MJ [Col McCALL]: I understand the government position. I do
11 understand some of the reason that you would probably ask some of the
12 same -- cover some of the same ground to confirm what Dr. Mitchell
13 said. But yeah, obviously if defense counsel can just be
14 appreciative of the fact that we have limited time.

15 But it's a pretty key witness. And just with the limited
16 witnesses we've had in the RDI program, I can understand why there's
17 going to be some overlap. But, yeah ----

18 DMTC [MR. DYKSTRA]: Yes. Absolutely, Your Honor.

19 MJ [Col McCALL]: So we'll see how that goes.

20 DMTC [MR. DYKSTRA]: Okay.

21 MJ [Col McCALL]: But -- all right. And Agent McFadden is
22 available for that second week if we end up bringing him potentially?
23 I know we are looking at Jessen potentially the first week, 15 July

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1 to 19 July. And then we had Jessen, Gaudin, and McFadden somewhat
2 penciled in as possibilities for the week of 22 July to 26 July.

3 DMTC [MR. DYKSTRA]: If I may have one moment to consult?

4 MJ [Col McCALL]: Please, go ahead. Take your time.

5 **[Counsel conferred.]**

6 DMTC [MR. DYKSTRA]: Your Honor, we'll certainly run those
7 dates past Special Agent McFadden. We weren't -- he didn't indicate
8 that he had any, like, availability issues during the July month, but
9 we certainly want to ask him first before we ----

10 MJ [Col McCALL]: No, I understand. He might have -- in the
11 summer people have holidays, right? So -- but he's in the NCR.

12 DMTC [MR. DYKSTRA]: Yes, he is ----

13 MJ [Col McCALL]: So that ----

14 DMTC [MR. DYKSTRA]: ---- which makes it a little bit easier.

15 MJ [Col McCALL]: Sure. All right. If you could run that
16 down, and then let's try to discuss that again next week. As we get
17 closer, we're going to continue to work these.

18 DMTC [MR. DYKSTRA]: Absolutely.

19 MJ [Col McCALL]: All right. And then ----

20 DMTC [MR. DYKSTRA]: And then ----

21 MJ [Col McCALL]: Go ahead, if you had something for me.

22 DMTC [MR. DYKSTRA]: I was going to add, for purposes of the
23 September and October hearing, we're already beginning reaching out

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1 to witnesses as far as availability, starting with Special Agent
2 Soufan and -- and so forth.

3 MJ [Col McCALL]: Okay.

4 DMTC [MR. DYKSTRA]: So we'll have a -- and I know Your Honor
5 wanted to discuss witnesses for the September/October hearing next
6 week, Wednesday.

7 MJ [Col McCALL]: Yep.

8 DMTC [MR. DYKSTRA]: We're on a good glide slope to be able to
9 address that.

10 MJ [Col McCALL]: All right. Perfect.

11 And so, yeah, again, I know we -- I forget who had
12 mentioned -- I believe it was Mr. Trivett -- saying that we are
13 starting to run low on the witnesses that both sides had agreed to.

14 Again, I'm not looking to just fill up the docket to fill up
15 the docket. If it's a useful witness that people think they need to
16 push to the top of the list, let's have argument like we did earlier
17 in this session over some of the witnesses that we could fill in on
18 week five.

19 Obviously, I would like -- we need to hear from Dr. Welner,
20 and so I think it's going to be, again -- the things to discuss next
21 week are going to be, as Mr. Connell had raised, so is Dr. Welner
22 testifying in the case in chief or is he going to be a rebuttal
23 witness? If we can go ahead and get him lined up and how many days

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1 we're expecting, if he's submitting a report, when it's going to be.

2 Obviously, tracking that, the amended defense motions are
3 due on 9 October and then the -- you know, the government response on
4 23 October, just to make sure that -- I don't know that the defense
5 needs to incorporate anything from Dr. Welner in their defense
6 motions because they'll have a chance to reply on 30 October. But
7 I'm also trying to leave the parties flexibility.

8 So things to be considering in preparation for discussing
9 witnesses next week.

10 DMTC [MR. DYKSTRA]: And something, Your Honor, just -- just
11 to -- we bring up the fact that our brief is due in the middle of the
12 October hearing. And obviously that curtails ----

13 MJ [Col McCALL]: Well, and ----

14 DMTC [MR. DYKSTRA]: ---- kind of figures into our overall
15 strategy of who we're calling. Because obviously anybody that's
16 called after that date ----

17 MJ [Col McCALL]: And I understand that. And my thinking on
18 that was -- no promises. Don't get your hopes up -- but I may cancel
19 some of those dates. If -- if we really are going to end with
20 Dr. Welner, perhaps we'll cancel those sessions to allow the parties
21 to work on briefs.

22 I'm also not too sympathetic, though. I mean, these briefs
23 have been pending for years and have been massaged and polished, and

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1 there's a certain point where you're just adding in a little bit of
2 extra data to the arguments that are already in place.

3 But I am open to having some adjustment if maybe we
4 have -- we're down here on island but we cancel some of the days or
5 we're just going to be focused on starting to move on to some of
6 these other issues that -- this is the big rock but there are other
7 rocks that we need to move on to.

8 DMTC [MR. DYKSTRA]: Yes, Your Honor.

9 MJ [Col McCALL]: So there's some flexibility there, but I'm
10 not making any promises.

11 DMTC [MR. DYKSTRA]: I will say this, that -- and I'm not here
12 to quibble or anything like that, but the brief is a big rock for us.
13 It's not something that has been, as Your Honor -- that's being
14 polished or anything like that.

15 As testimony has developed over the last -- even over the
16 last four or five months, that has had -- that has changed the course
17 of our brief.

18 So I just want Your Honor to -- or I just wanted to bring
19 that up to Your Honor that it's not some sort of thing that we have
20 been working on for -- for a year or so forth, because the testimony
21 has changed how things have formulated into our strategy.

22 MJ [Col McCALL]: Understood.

23 DMTC [MR. DYKSTRA]: Thank you, Your Honor.

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1 MJ [Col McCALL]: All right.

2 All right. Anything else to take up?

3 Mr. Sowards?

4 LDC [MR. SOWARDS]: Thank you, Your Honor. I just wanted to
5 address a couple of points that were raised in your comments with
6 Mr. Dykstra.

7 First of all, I understand Mr. Connell's emphasis on the
8 importance of Agents Gaudin and McFadden.

9 However, with regard to Dr. Jessen, the -- my concern is the
10 notion of his -- any of his testimony potentially being cumulative to
11 Dr. Mitchell's and then falling victim to some implicit or inherent
12 pressures created by our time constraints.

13 I would like to just caution the commission, or at least be
14 explicit on the record, that my anticipation is that Dr. Jessen is a
15 co-equal participant in what we regard -- you know, you've heard or
16 characterization of what we think about the -- the RDI program, the
17 CIA's involvement in it.

18 There's also the -- the fact, and we certainly don't mean
19 to, by any means, extend unnecessarily the proceedings with any
20 witness. We're as eager as Your Honor is, if possible, to hear what
21 you think about this motion before you go into your currently
22 scheduled retirement. We don't want to -- we don't want to impose
23 upon you to -- and we appreciate the efforts you've made to date to

1 accommodate this litigation.

2 But Dr. Jessen is a very necessary and material witness. He
3 has very specific details about his understanding of what they were
4 doing that sometimes, yes, corroborate Dr. Mitchell's, but also
5 deviate slightly from his.

6 And we know from the al Nashiri litigation that he was a
7 prominent source of evidence upon which the judge relied in that case
8 in suppressing these -- these same sort of letterhead memorandum
9 statements.

10 Secondly is, when we began this odyssey of the -- the sort
11 of what we characterized as kind of a dry run of a suppression
12 motion, and as further refined under Judge Cohen's regime, is the
13 idea that this would, perhaps for purposes of judicial economy or
14 maybe practicality, also for the parties, not so much a discovery
15 opportunity but an opportunity to get some limited focus, but
16 nevertheless, relevant evidence as regards potential other issues in
17 the case, including outrageous governmental misconduct.

18 And finally, what we now unfortunately contend with -- and
19 we are -- you know, we share with everyone, regrets and compassion
20 for any witness who may potentially be unavailable because of life
21 crises, but the fact remains that time has passed and people may
22 not -- just may not be available at trial.

23 And particularly when a witness is currently being postponed

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1 because of health concerns, that raises all the more the concern for
2 that. And so this may be the only time a key witness in the case is
3 available to have his or her -- his or her testimony preserved for
4 the record.

5 And as Your Honor alluded to, this is really one of exactly
6 two insiders we have in terms of what was really done and why it was
7 done and the effect. So I would just ask you to keep that in mind.

8 With respect to the -- what to do about accommodating some
9 of the -- or budgeting our time that we have available, two things:
10 One that I raised before, and I think I promised you a formal motion,
11 but what I would say until I make good on that promise, is that at
12 the time, both preceding the November -- the currently scheduled
13 November hearings on the motion for briefing purposes and at
14 the -- the motions hearing itself, that the commission is open to
15 also hearing the theory that under -- under the compulsion of
16 Miranda, standing alone for the failure to give advice, explicit
17 advice, required advice on the right to remain silent in the presence
18 of counsel, that ground alone is sufficient for suppressing the
19 letterhead memorandum.

20 That, I think, is sort of a -- while I regard that as
21 actually more -- perhaps the more predominant ground for ruling and,
22 in fact, was designed by the -- by the United States Supreme Court to
23 dispense with the sort of very protracted litigation, I think

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1 it's -- you know, it's something that -- that is at least worthy
2 of -- of equal consideration and could serve as sort of a safety
3 valve if -- if we're running out of time.

4 The second potential way to maybe eliminate some of the fat
5 from the schedule is -- with respect to Dr. Welner, I know that the
6 government in the past on certain issues has been open to
7 stipulations.

8 Thus far, what I understand the purpose of Dr. Welner's
9 testimony to be is to establish that -- and I will limit it just to
10 Mr. Mohammad. I won't speak for the other defendants -- but that
11 Mr. Mohammad, based on the information available to Dr. Welner,
12 retained the capacity to make voluntary decisions. He was not
13 incapacitated from voluntarily doing certain things, including
14 waiving his rights.

15 And I'm happy to confer with the prosecution and agree to,
16 you know, to the extent it is, as we say, tethered to reality, a
17 stipulation that would dispense with that testimony. Because I
18 think, otherwise, what we're going to be doing is spending a week or
19 two going into all sorts of information perhaps aimed at Dr. Welner's
20 credibility, among other things, that we really needn't expend.
21 Because at least from Mr. Mohammad's perspective, we don't -- I
22 think, depending upon what their -- what their point is, I don't
23 think we disagree with his capacity to make decisions to preserve his

1 life.

2 I mean, he can voluntarily do that, but that's not the legal
3 definition of voluntariness. So I would invite them, if they want to
4 talk to us about that, to reach a stipulation that would -- would
5 save us considerable time and the government expense in that regard.

6 Thank you, sir.

7 MJ [Col McCALL]: Thank you, Mr. Sowards. And I understand
8 your position on that.

9 All right. And so two saved rounds from me just on the
10 issue of witnesses and then I'll let you speak, Mr. Connell.

11 So one -- one other issue I did want to go ahead and bring
12 up was: With some of these witnesses that the parties maybe are
13 discussing for not the next session but the September/October
14 session, I'd like the parties to start to discuss what procedures we
15 can use or should be used if we are calling a witness that is
16 testifying under a UFI.

17 Because I know -- I believe it was Mr. Dykstra brought up
18 the fact of there may be a lot of coordination involved in getting
19 somebody. Again, I know this -- we do many unusual things in this
20 court, but it's not the first time that somebody has had to testify
21 in a manner where it's protecting their identity.

22 So I'm very open to allowing testimony, whether it's not
23 just from the courtroom or the RHR, but my understanding from my

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1 staff is that there is the capability of taking testimony from people
2 at other locations. Again, this is motions practice, so I'm open to
3 having identities obscured, potentially having just, like, telephonic
4 testimony.

5 Again, I'm not wedding myself to it, and please don't think
6 that I'm hinting that I'm going to grant any of the motions to
7 produce these witnesses. But I don't want to make that decision, and
8 then the long pole in the tent is that we haven't figured out how
9 exactly it's going to work. So I don't want that to cause the delay.

10 So I need -- so the parties need to start figuring out what
11 that's going to mean and talking to the various equity partners on
12 how they may want to protect the identities of some of these
13 witnesses.

14 Mr. Dykstra?

15 DMTC [MR. DYKSTRA]: I appreciate Mr. Connell's patience now.

16 I think that's part of the logistics -- logistics issue with
17 regards to UFIs, and I appreciate Your Honor's flexibility -- stated
18 flexibility on that issue.

19 The other piece and parcel of this is walking through the
20 various steps under 949p-4 and so forth and making sure that the
21 government preserves its rights to seek a statement of any relevant
22 facts, what this witness would testify to, maybe a stipulation of
23 expected testimony that would obviate their need for testimony.

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1 Now, obviously, the defense have a say in regards to a
2 stipulation of expected testimony and so forth, but that -- that's
3 part -- in addition to logistics Your Honor spoke about, it's -- it's
4 also the other steps that we have to go through.

5 And then while I'm up here, I do -- Mr. -- I think it was
6 Mr. Sowards that mentioned something about -- as far as filing
7 additional motions and so forth. We note that -- and it's something
8 that we ----

9 MJ [Col McCALL]: And I don't believe he was saying filing
10 additional motions. I believe he was referencing back to the -- in
11 their motion to suppress that they had raised the issue on Miranda
12 and whatnot and believing that was a separate issue that could be
13 resolved based -- just on that point, if I was understanding
14 Mr. Sowards.

15 LDC [MR. SOWARDS]: Yes, Your Honor. It was actually going
16 back to the fact that we -- green light's on. Can you hear me?

17 MJ [Col McCALL]: I can hear you.

18 LDC [MR. SOWARDS]: ---- that we had, in our supplemental, had
19 responded to the government's response, which had -- had raised the
20 inapplicability of Miranda and had triggered the discussion of the
21 United States Supreme Court's decision in Dickerson.

22 And so we, because the issue had been unsettled as to the
23 place of Miranda in this, we went ahead and briefed it in response to

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1 the government's response to us. So our view was that it had been
2 framed and set up.

3 MJ [Col McCALL]: But I could rule on that bases ----

4 LDC [MR. SOWARDS]: You could rule on that ----

5 MJ [Col McCALL]: ---- and issue more of a narrow ruling.

6 LDC [MR. SOWARDS]: ---- and allow them to have an
7 opportunity.

8 That was specifically left in question with Judge Cohen and
9 Judge Parrella's rulings -- or orders, I'm sorry. And the government
10 had taken the opportunity to assert the inapplicability, so we were
11 addressing that. If it obviously is applicable, then our position is
12 the statements are excludable.

13 MJ [Col McCALL]: I'm tracking.

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

15 DMTC [MR. DYKSTRA]: Yes, Your Honor. And I wasn't -- to be
16 clear, I wasn't -- I wasn't saying that they were going to file
17 additional motions and so forth.

18 I recognize that certain teams -- I think it was
19 Mr. Hawsawi's team that filed a direct motion on the applicability of
20 Miranda and so forth.

21 I -- the -- the thing that we have noticed, Your Honor, is
22 that as we draw near to the potential end of the suppression
23 litigation on voluntariness as it relates to the LHMs, that Your

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1 Honor in the previous trial scheduling order in 639M, I think it was
2 fifth amend, withdrew the deadline for the filing of additional
3 motions and so forth.

4 It's our belief and our position that Your Honor should
5 consider reinstating that deadline at some point in time to at least
6 give this commission something to focus on after the suppression
7 litigation.

8 Obviously, there's additional rocks that come with that,
9 but -- but we're interested in moving forward and getting this
10 commission moving forward, so that if -- if and when Your Honor
11 retires, that your successor has something to focus on after that,
12 so...

13 MJ [Col McCALL]: I was thinking along those same lines. So
14 it's something I'm considering.

15 DMTC [MR. DYKSTRA]: All right. Thank you, Your Honor.

16 MJ [Col McCALL]: All right. And Mr. Connell.

17 Oh, and I had a second point -- I'm sorry. Just -- you can
18 go ahead and come up to the podium, but ----

19 So the second issue that I just wanted to put out there
20 again to the parties: In my scheduling order and then when we're
21 discussing, we're always talking Monday to Friday. Just as in the
22 past couple of sessions, people need to be prepared to go late and
23 people need to be prepared to go on the weekends.

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1 So go ahead, Mr. Connell.

2 LDC [MR. CONNELL]: Yes, sir. And -- and I'm on board with
3 that. It's just occasionally we have to schedule things in the
4 evening.

5 MJ [Col McCALL]: Understood. And I understand that.

6 LDC [MR. CONNELL]: So I have a separate issue, and I know
7 that Mr. Groharing has been patiently waiting to bring up his issue.

8 But on these issues that have come up here, the first one is
9 Miranda. The -- the original order from Judge Parrella, of course,
10 excluded anything -- a requirement of filing anything other than
11 voluntariness. In our -- different teams took different approaches
12 to that.

13 In our motion, we went beyond voluntariness and went to the
14 whole 948r obtained by torture position, but we carved out Miranda,
15 we carved out prompt presentation, we carved out other incommunicado
16 detention, you know, other bases that might be used to suppress.

17 Our current intention is to file a motion to -- for leave to
18 file a supplement and to rejoin Mr. al Hawsawi's position on Miranda.
19 We have additional facts that have been developed, you know,
20 during -- since the filing of that, which we'll lay out. But we
21 think that's the cleanest way to squarely present the issue to the
22 military commission because, obviously, the Miranda issue has become
23 disjointed between filing and opting out and then, you know, a sort

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1 of supplemental position attached to something else in response. You
2 know, it's become disjointed.

3 We don't have any problem, if you decide to set a date for
4 the filing of a Miranda motion specifically, we don't have any
5 problem with that whatsoever. We are very close to prepared to -- to
6 go forward on that.

7 MJ [Col McCALL]: All right.

8 LDC [MR. CONNELL]: With respect to other motions, however,
9 you know, we have all adapted to an extremely high
10 witnesses -- witness OPTEMPO and all of our resources are being
11 devoted to that.

12 Listen, let me tell you that I took very strongly when the
13 military commission said to the government earlier, you know, if
14 you're having trouble with the OPTEMPO, you know, get some more
15 people, right? There's a convening authority for that. And we are
16 fighting hard for that.

17 I have taken that transcript to leadership and said, look,
18 that -- the instruction from the government -- I mean, from the
19 military commission is we're going at the speed that we're going, and
20 if that means additional resources.

21 Now, there's a long lag on that occurring ----

22 MJ [Col McCALL]: Of course.

23 LDC [MR. CONNELL]: ---- right?

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1 We're down four people in 2024 already, including two
2 attorneys. So, you know, we're -- we're not asking for any
3 accommodation for that; we're pushing forward. But it's not the time
4 to distract from that key effort to get past the big rock by setting,
5 you know, motion deadlines for other things that are -- we have not
6 been devoting resources to.

7 MJ [Col McCALL]: I can understand that.

8 LDC [MR. CONNELL]: Okay. The -- the other thing that I
9 wanted to say is that we are very strongly considering the
10 possibility of taking up the government's invitation to negotiate a
11 stipulation of facts around SG1.

12 And we have been working on a stipulation of facts that we
13 could present to them. And then, you know -- I'm not going to lie,
14 part of it is to test this idea that they are willing to agree to
15 anything tethered to reality, which we've never believed, but we
16 could be wrong, right?

17 And so in one way, we intend that -- it's not the whole RDI
18 program, but let's try one witness, you know, sort of as a test case
19 and see what happens.

20 MJ [Col McCALL]: Okay.

21 LDC [MR. CONNELL]: So we strongly intend to do that. I can't
22 tell you exactly when that's going to happen, but it is in train, it
23 is in progress being worked right now.

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1 MJ [Col McCALL]: All right. I appreciate you letting me know
2 that.

3 LDC [MR. CONNELL]: Okay. And that's all I have to say about
4 motions. Then I'm happy to address Mr. Groharing's issue, but I have
5 another completely separate issue as well.

6 MJ [Col McCALL]: Well, let's move on to your separate
7 issue ----

8 LDC [MR. CONNELL]: Okay.

9 MJ [Col McCALL]: ---- and then hopefully the -- you and
10 Mr. Groharing's issue will lead right into Dr. Morgan testifying.
11 But go ahead.

12 LDC [MR. CONNELL]: Very good.

13 Sir, I want to bring up -- because we are on a ticking
14 clock, I want to bring up the issue in AE 948. In AE 948, the
15 government gave notice that yesterday, on 7 May 2024, the government
16 has claimed, inaccurately in my opinion, but I'm the ----

17 MJ [Col McCALL]: On the classified ----

18 LDC [MR. CONNELL]: My opinion doesn't matter very much on
19 this topic -- the -- that we need to destroy certain evidence. I am
20 tracking the order in AE 911E. I understand my responsibilities
21 under AE 911E and will comply.

22 But the question that I -- we actually went to comply last
23 night, and -- but ran into a very serious problem. And the problem

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1 is that in the AE 911 material, it was -- it was -- it had had
2 restricted impact on the case. No one had ever attached the 911
3 material to a pleading. No one had ever questioned a witness about
4 it. It was on its own, right? We had never incorporated it into
5 work product. It was -- it was encapsulated.

6 This situation is much more like what happened in 112.
7 The -- the evidence was -- the document which the government is
8 asking us to destroy not only is -- is present on the appropriately
9 classified system, has been -- and as the government notes, has been
10 filed in two separate pleadings with the military commission, but
11 also both Mr. al Baluchi and Mr. Bin'Attash questioned the witness
12 specifically about the document and its contents in -- Mr. Zebley in
13 closed session. And I went and checked this morning, and it's
14 incorporated into nine different work-product documents that we
15 maintain on the appropriately classified system.

16 So this is not like 911 where literally we can hit delete
17 and we can get rid of something. This is much more like 112 where we
18 had incorporated it into work product, we had argued it and presented
19 it to the military commission, and ultimately we were not required to
20 destroy our work product or what had been presented to the military
21 commission.

22 We were only ordered to destroy the underlying document,
23 which here the government has given no additional version, right? In

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1 both 112 and in 911, the government had given substitution versions
2 that they wanted us to use. Maybe that's in the works. I don't
3 know.

4 But what my real question to the military commission is:
5 What are you -- what does 911E order me to destroy? Do I have to
6 destroy my nine work-product documents? Do we have to get rid of the
7 classified version of the transcript that we have received from the
8 court reporters?

9 How -- how far do we have to go? Or is it just we have to
10 eliminate the document that the government gave us? Like, how do we
11 deal with the tendrils of this document?

12 MJ [Col McCALL]: Fair question.

13 All right. Mr. Trivett, I don't know if the government has
14 a position that we can discuss this in open.

15 MTC [MR. TRIVETT]: So we are working on providing another
16 copy to the defense counsel. I think our position would be that
17 they'll -- they should be able to determine, based on this new
18 document, what the concern was. And that to the extent that that
19 concern is not present in the record or in their work product, then I
20 don't think there's anything to do.

21 But we don't know, obviously, because we don't know what's
22 in their work product. But we are working on providing a further
23 redacted copy of that document.

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1 MJ [Col McCALL]: All right. And then once you've done that,
2 if we need to discuss -- I mean, first I'd ask the parties to confer,
3 and then let's discuss either in open or in closed session if there's
4 questions on how to proceed forward.

5 I'm somewhat tracking what the issue is, and so I can
6 picture multiple different ways on how it may work itself out. But I
7 think that's all I can say right now.

8 MTC [MR. TRIVETT]: Yes, sir.

9 MJ [Col McCALL]: Mr. Connell?

10 So bottom line to the defense teams is not to do anything
11 other than returning that one piece of discovery.

12 Is that correct, Mr. Trivett? Or deleting that one piece of
13 discovery?

14 MTC [MR. TRIVETT]: Yes, sir. That's what we're requesting
15 right now.

16 LDC [MR. CONNELL]: Okay. So just so I'm clear -- first of
17 all, all of this is over my objection, right? This was not an
18 inadvertent disclosure.

19 MJ [Col McCALL]: I'm tracking.

20 LDC [MR. CONNELL]: All the arguments that we made in 911 ----

21 MJ [Col McCALL]: Sure.

22 LDC [MR. CONNELL]: ---- they're lost.

23 MJ [Col McCALL]: Sure.

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1 LDC [MR. CONNELL]: The second piece is, just to be clear what
2 you are -- what the order is, we are to destroy -- which really just
3 on a computer -- on a network means delete because we don't have any
4 capacity beyond that -- to delete the information from our classified
5 system and return the disc that the government provided to us to the
6 government. Is that the order?

7 MJ [Col McCALL]: Do this for now: I mean, is there a harm in
8 waiting until the government has more fidelity on the way forward on
9 some type of summary and substitution? Again, I believe I know what
10 the issue is, but it's ----

11 LDC [MR. CONNELL]: We don't have any ----

12 MJ [Col McCALL]: I don't believe it's in any kind of position
13 where it's going to be inadvertently disclosed at this point if it's
14 just in their files. Correct?

15 LDC [MR. CONNELL]: We won't do anything with it.

16 MJ [Col McCALL]: I think we're ----

17 LDC [MR. CONNELL]: We don't intend to ask any of these
18 witnesses about it.

19 MJ [Col McCALL]: Right.

20 MTC [MR. TRIVETT]: It's a bit of a chicken-and-egg issue ----

21 MJ [Col McCALL]: Right.

22 MTC [MR. TRIVETT]: ---- for the government.

23 MJ [Col McCALL]: Right.

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1 MTC [MR. TRIVETT]: Because we don't want to have to identify
2 with particularity ----

3 MJ [Col McCALL]: Right.

4 MTC [MR. TRIVETT]: ---- what was the inadvertently disclosed
5 classified information.

6 MJ [Col McCALL]: I understand that.

7 MTC [MR. TRIVETT]: And so we're not going to be able to
8 provide that further redacted copy until they've confirmed that
9 they've destroyed the copies that they have.

10 MJ [Col McCALL]: All right. I'm just going to have to
11 consider how to work this, especially with you mentioning that it's
12 brought -- it's incorporated into some work product. I don't see how
13 that would impact the work product. But again, it's hard for me to
14 say in a vacuum.

15 So here's the way forward. We're going to just stay -- keep
16 the status quo for now. Don't make any actions, even though that
17 delays the government doing any summaries and substitution.

18 I'm going to consider the issue. I may have to do an
19 ex parte with the government and I may have to do ex partes with the
20 defense teams to see how this has been incorporated into any work
21 product, and then that may give me a way forward. Because, yeah, I
22 understand both sides, the concerns. So let's leave it at that for
23 now.

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1 LDC [MR. CONNELL]: Yes, sir.

2 MJ [Col McCALL]: All right.

3 LDC [MR. CONNELL]: We will not do anything and wait for
4 further instructions.

5 MJ [Col McCALL]: Correct.

6 LDC [MR. CONNELL]: Thank you.

7 MJ [Col McCALL]: All right. Mr. Groharing, thank you for
8 your patience. What do you have for me?

9 TC [MR. GROHARING]: Your Honor, just briefly. Yesterday it
10 came up that Dr. Morgan had some kind of exchange with Dr. Mitchell.
11 And that's something that ordinarily we would -- we would want to
12 maybe reach out and talk to other witnesses about to include, in this
13 case, Dr. Mitchell.

14 MJ [Col McCALL]: Okay.

15 TC [MR. GROHARING]: But you provided an admonishment to
16 Dr. Mitchell following his testimony that indicated he shouldn't talk
17 to the parties. So I wanted to raise that with you and ensure that
18 if we were able to -- I haven't done anything to contact him because
19 I wanted to wait on the court's guidance, but if we are able to make
20 contact, if we can ask him about that information.

21 MJ [Col McCALL]: So I will authorize the prosecution to reach
22 out to Dr. Mitchell to ask him that ----

23 LDC [MR. CONNELL]: May I be heard first?

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1 MJ [Col McCALL]: Hold on. I'll let you be heard.

2 So I'm inclined -- before I hear from the defense, I'm
3 inclined to allow you to reach out to Dr. Mitchell to ask him about
4 that conversation, I mean, with the understanding that then, I mean,
5 so we're bringing Dr. Mitchell back?

6 TC [MR. GROHARING]: Well, that's -- that's definitely
7 not -- that's not our intent. Just to have a better understanding of
8 what it might have entailed or not entailed to maybe be able to ask
9 the witness about.

10 And it could be something that -- something we don't want to
11 pursue, but just to attempt to, you know, to get knowledge on that as
12 best as we can.

13 I do not and -- have any desire to recall Dr. Mitchell and
14 bring him down for additional testimony. So I don't envision calling
15 Dr. Mitchell to rebut this testimony and opening that door. But it
16 would be helpful to know what he says about it, just to know how to
17 handle it with Dr. Morgan.

18 MJ [Col McCALL]: Mr. Connell?

19 LDC [MR. CONNELL]: Sir, I so appreciate Mr. Groharing's
20 dilemma. The fact that one would want to talk to a witness about
21 what information they would provide and how they interact with
22 another witness makes so much sense.

23 Mr. Groharing is a hundred percent correct about the

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1 critical importance of reaching out to witnesses, particularly those
2 who are mentioned in the testimony of other witnesses, to see what
3 they have to say about a topic.

4 They might want to call them as witnesses. They might not
5 want to call them as witnesses. They might want information to
6 inform their future strategic vision of how they proceed with their
7 case. I agree 100 percent.

8 The path forward that I will propose is, in this particular
9 issue, that why don't we just issue an -- craft between the parties
10 an interrogatory to Dr. Mitchell? It would be something like: Did
11 you have an interaction with Dr. Morgan and what was it like? And
12 then jointly we send it to them -- him, and he gives us an answer and
13 then we proceed accordingly.

14 MJ [Col McCALL]: I don't have a problem with that. So -- all
15 right. I'll allow the parties during the recesses to confer on
16 potentially going forward with that approach.

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

18 MJ [Col McCALL]: Again, I'll just -- I'm not going to say
19 anything more.

20 TC [MR. GROHARING]: But is it the case, Your Honor -- I mean,
21 Dr. Mitchell's testimony appears done, right?

22 MJ [Col McCALL]: I certainly was hoping so.

23 TC [MR. GROHARING]: And so absent some indication he's going

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1 to testify, normally parties would be able to talk to witnesses about
2 relevant matters throughout the course of litigation.

3 MJ [Col McCALL]: Sure.

4 TC [MR. GROHARING]: And so now we're -- we have an
5 admonishment which typically wouldn't be the case after the witness
6 left the stand. And so I could envision other issues coming up along
7 the way where we want to -- and again, Dr. Mitchell may tell me to
8 pound sand when I reach out for a request.

9 MJ [Col McCALL]: Sure.

10 TC [MR. GROHARING]: He may have had his fill ----

11 MJ [Col McCALL]: Sure.

12 TC [MR. GROHARING]: ---- on involvement with this.

13 But normally with witnesses, we'd be able to at least reach
14 out and attempt -- I mean, just like the defense and with
15 Dr. Mitchell, through his attorney, make a request to see if we can
16 talk to him. And so it doesn't seem like there's any reason to
17 prohibit that at this point.

18 MJ [Col McCALL]: Well, and I know you said that -- and I was
19 being a little bit glib as well, on just the -- Dr. Mitchell being
20 done with his testimony. I meant in the pretrial phase.

21 Again, I'm not trying to guess whether or not the defense or
22 the government would want to call him in the actual trial. I could
23 imagine reasons why he might testify, given his knowledge and what

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1 he's testified about previously. So that's why I gave him the
2 admonishment that I gave him.

3 TC [MR. GROHARING]: Right.

4 MJ [Col McCALL]: Again, I'm open potentially to you asking
5 him about this conversation with Dr. Morgan, but I don't see why it
6 would be problematic to go the route that Mr. Connell had suggested.
7 But go ahead.

8 TC [MR. GROHARING]: But, Your Honor, if he is going to
9 testify at trial, surely we'd be allowed to speak to him before he
10 testifies, right? There wouldn't -- we wouldn't be stuck with your
11 prior admonishment about not being able to call -- to talk to a trial
12 witness in advance of his testimony, I assume.

13 MJ [Col McCALL]: Of course. And I actually think it was the
14 prosecution that first brought up this procedure of some of the
15 witnesses coming back to testify and saying that we want to prep
16 these people for their testimony. Are we good to show them their
17 prior -- the prior transcripts of their testimony ----

18 TC [MR. GROHARING]: Right.

19 MJ [Col McCALL]: ---- and their statements?

20 So, yeah. Again, I don't anticipate that's going to be a
21 problem for the prosecution.

22 TC [MR. GROHARING]: So then ----

23 MJ [Col McCALL]: But the problem is, with the state of the

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1 case, I didn't want any of the parties, in particular the
2 prosecution, talking to witnesses that may be in the middle of their
3 testimony or being brought back later as more discovery comes out,
4 and then we're trying to figure out what was said and prepped
5 and -- I'm actually doing you a favor.

6 But go ahead.

7 TC [MR. GROHARING]: Okay. I'm just -- our preference
8 obviously is to have a discussion with him where it could involve a
9 back-and-forth as opposed to any type of interrogatory.

10 I don't feel like that right now the admonishment is
11 necessary to be in place. Obviously, we'll defer to the court's
12 guidance and direction and follow whatever direction you provide.

13 MJ [Col McCALL]: Okay. Yeah, the admonishment's still in
14 place. Discuss with -- confer with defense counsel.

15 And, again, this seems like a very limited scope issue as
16 far as one conversation in time and what happened. So that seems
17 kind of perfect for an interrogatory.

18 TC [MR. GROHARING]: Okay.

19 MJ [Col McCALL]: All right. What other issues? Anything
20 else?

21 TC [MR. GROHARING]: I don't have any other issues related to
22 the commission, Your Honor.

23 MJ [Col McCALL]: All right. Perfect.

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1 TC [MR. GROHARING]: I'm ready to go. I don't know if -- with
2 the time, it might make sense to take our health and comfort now and
3 then just roll until lunch.

4 MJ [Col McCALL]: That makes sense.

5 TC [MR. GROHARING]: I can do either.

6 MJ [Col McCALL]: No, I like that idea. Let's do that. So I
7 hate for Dr. Morgan sitting back there, but it will give him a chance
8 as well to go take a comfort break.

9 So it's just about 1000. Let's be back on the record at
10 1015.

11 Commission's in recess.

12 **[The R.M.C. 803 session recessed at 0958, 08 May 2024.]**

13 **[The R.M.C. 803 session was called to order at 1014, 08 May 2024.]**

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

15 The parties are present. The accused are absent.

16 All right. If we ----

17 Yes, Mr. Connell.

18 LDC [MR. CONNELL]: Sir, during the break it was brought to my
19 attention that -- obviously, there's no transcript yet that I've
20 reviewed, but that Judge Pritchard just made a statement on the
21 record that he had received an e-mail from what he described as OMC
22 leadership, to him in his judicial capacity, asking him not to issue
23 any ruling on the issue of press freedom of movement.

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1 I don't know whether this iteration of the military
2 commission received a similar e-mail. Obviously, it's inappropriate,
3 raises issues of unlawful influence and other things.

4 And so I don't -- I don't know if I'm asking for voir dire
5 for what, but I wanted to ask if the military commission has any
6 information about that topic.

7 MJ [Col McCALL]: Sure. And I'll allow voir dire on this.

8 So I had the -- I received the same e-mail. It was after I
9 had already ruled on both your motion and Mr. Sowards' motion, so I
10 considered the issue resolved in my case.

11 So it had no influence on me. And, yeah, I think I've been
12 more than clear with my rulings that, you know, I'm not going to be
13 influenced by outside parties.

14 LDC [MR. CONNELL]: Sir, my voir dire will be brief, but who
15 sent you the e-mail?

16 MJ [Col McCALL]: It was from Mr. Taylor, the -- I guess he's
17 the director of staff, I believe, chief of staff. I'm not sure what
18 his title is exactly for OMC TJ.

19 LDC [MR. CONNELL]: Okay. And would you be in a position to
20 put a copy of the e-mail in the record?

21 MJ [Col McCALL]: I can do that.

22 LDC [MR. CONNELL]: Okay. Thank you, sir.

23 MJ [Col McCALL]: Sure. Any other parties desire to question

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1 me about this?

2 Apparently not -- Mr. Sowards, go ahead.

3 LDC [MR. SOWARDS]: I'm sorry, Your Honor. I'm disappointed
4 to hear that you considered the issue resolved, which I gather means
5 no change under the current policy. And I -- was that then before
6 you received the e-mail?

7 MJ [Col McCALL]: So my understanding is that the policy has
8 changed as far as the press does -- are able to move between the two
9 commissions, just given the manning that's available.

10 But, no, my view was the issue had been raised, the -- both
11 you and Mr. Connell had asked for certain remedies, and I put on the
12 record that I felt although the policy in place at the time didn't
13 make a lot of sense, it was -- it did not impact the right to a
14 public trial and the press's access to the -- the commissions since
15 they could access the proceedings from the media center where they
16 could switch back and forth between the two commissions. And so
17 that's why I felt it had been resolved.

18 I was open to hearing more information, more data on the
19 security concerns. But it had no impact on me, this e-mail.

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

21 MJ [Col McCALL]: Sure.

22 But I will put it in the record just so that the parties can
23 see it. And if you desire more voir dire on it, I'm open to that.

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1 All right. Let's bring Dr. Morgan in.

2 **[The witness, Dr. Charles Alexander Morgan III, resumed the witness**
3 **stand.]**

4 MJ [Col McCALL]: Good morning, Dr. Morgan.

5 WIT: Good morning.

6 MJ [Col McCALL]: Welcome back. Please have a seat. I just
7 remind you you're still under oath.

8 WIT: Yes, sir.

9 MJ [Col McCALL]: All right, Mr. Groharing, your witness.

10 TC [MR. GROHARING]: Thank you, Your Honor.

11 **CROSS-EXAMINATION CONTINUED**

12 **Questions by the Trial Counsel [MR. GROHARING]:**

13 Q. Good morning, Dr. Morgan.

14 A. Good morning.

15 Q. I think it was in your testimony on Monday, you talked
16 about PTSD and someone who, you know, was involved in an act -- and
17 it was a defendant, I believe -- who then got PTSD themselves from
18 the act for -- which they were involved in.

19 Does that sound familiar?

20 A. Yes.

21 Q. Could you talk through that a little bit more
22 about -- about what happened there.

23 A. Yes. That was an individual who, with his girlfriend, had

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1 decided they would experiment with ketamine. And while both of them
2 were using ketamine, the thought occurred to them it would be
3 interesting to see, while they were playing with a pistol, what it
4 looked like to see what a bullet would do to a person. And so he
5 shot her through the head.

6 When he came down off the ketamine and realized he had
7 murdered his girlfriend, you know, he was arrested, convicted, and
8 serving time. And I saw him in the prison system. He had a complete
9 array of symptoms of PTSD and depression, mourning the loss of
10 someone he loved.

11 So it was -- it's one of those situations in which a person
12 can be the perpetrator of an act and suffer from PTSD from the act.

13 Q. Okay.

14 A. Lots of people -- that's a surprise to some people, but if
15 you study victims of trauma, it's the exposure to the event that can
16 result in PTSD.

17 Q. Okay. So I want you to assume some facts for me and I'm
18 going to ask you a question.

19 In this case Mr. Ali sent \$120,000 -- over \$120,000 to
20 hijackers in the United States in support of the operation and that
21 he bought a flight simulator video with Marwan al Shehhi, who was the
22 pilot for Flight 175.

23 He facilitated nine hijackers' travel to the United States

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1 through United Arab Emirates and helped them make travel plans and
2 helped them disguise their efforts to avoid detection.

3 He then applied for a visa himself on September 4th, 2001,
4 to travel to the United States, presumably to be part of the
5 operation. And September 11th happened. And then Mr. Ali watched on
6 television all of the death and destruction that his actions caused.

7 Could that give Mr. Ali PTSD?

8 A. It might. From the studies of the 9/11 event -- there's
9 actually a number of studies that looked at who developed PTSD in
10 New York. And if people were below a certain street level in
11 New York or knew someone in the building, they were more likely to
12 have PTSD than any American who just watched it on television.

13 So it's a horrifying event, but the people who were at the
14 highest risk and who developed PTSD were people who knew loved ones
15 on the plane or were in very close proximity to, I believe it was
16 Water Street or Canal Street or something where -- I'd have to go
17 back and look at the study, but it was the proximity to the event.

18 So it's -- it would be possible. It would depend on how
19 he -- connected he was or felt to people on the plane or his -- his
20 views of the event.

21 By history, we know that pilots who dropped the bomb on
22 Hiroshima later in life expressed some negative feelings and regret
23 about the incident, for the loss of life. So it's ----

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1 Q. Okay.

2 A. ---- it's a possibility that he has experienced
3 psychological distress over things he may have been related to.

4 Q. Sure. And what types of symptoms might present from
5 Mr. Ali in that scenario?

6 A. Well, if he developed post-traumatic stress from that
7 event, we would see the same types of -- the same categories of
8 symptoms.

9 So in post-traumatic stress disorder, it doesn't really
10 matter which traumatic event you had. The -- the classifications of
11 symptoms are the same. So we would expect to see re-experiencing
12 symptoms, which may be intrusive thoughts, dreams about the event,
13 cued reactivity on reminders to the event or cued emotional
14 reactivity. You might see numbing and avoidance and depression
15 symptoms related to the activity, altered cognition about himself,
16 views of himself related to the activity.

17 And then under the hyperarousal cluster, we would expect to
18 see symptoms of exaggerated startle, irritability, difficulty
19 concentrating, anger, irritability, and hypervigilance, scanning.

20 And those symptoms would have to be -- they'd have to extend
21 beyond the -- at least the period of a month and then extend forward
22 in time and show an impact on behavior in some way. Then he
23 would -- if he had adequate symptoms, he could meet the threshold or

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1 the criteria for PTSD.

2 Q. So what about anxiety? You know, separate from PTSD, how
3 might that cause him anxiety? And if so, how might that present?

4 A. For the anxiety, it would -- it would be difficult to tell
5 without seeing what triggered the anxiety. So in -- anxiety
6 is -- from a behavioral science perspective, the distinction we make
7 between fear and anxiety is that with fear, you can say
8 what it -- you can point to the thing or the -- or an entity or a cue
9 that you're -- that is eliciting the emotion.

10 And when -- when you cannot, when you can't identify the
11 cue, then we kind of -- we refer to it as anxiety. So think of it as
12 it's -- it's a very similar response. But if you can't identify the
13 cue, we label it as anxiety. And if you can say what it is that's
14 making you afraid, then we'll call that fear.

15 So without, you know, exploring that, someone may not know,
16 then, how to think about the anxiety, whether it's ruminative and
17 non-clinically relevant or whether it is the side effect of a formal
18 mental disorder, of which there are many kinds in which people have
19 anxiety. Not only post-traumatic stress disorder, but any of the
20 anxiety disorders, like panic or generalized anxiety disorder or
21 major depression in the mood disorders.

22 People can have anxiety for many different reasons. So you
23 wouldn't know just by looking at someone if they were anxious

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1 independent of other information, other symptoms to see what the
2 constellation of symptoms was, whether or not it made sense within
3 the category of one diagnosis versus another.

4 Q. And assume that Mr. Ali has a conscience, you know, for
5 purposes of this question. How might guilt weigh into that? As far
6 as the feeling of guilt for participating in mass murder, how might
7 that present itself?

8 A. That's -- we don't measure conscience, somebody's
9 conscious -- or conscience. The sense of conscience is a term that
10 we think about socially, but we don't measure that scientifically.

11 Clinically, we just ask people: Has this, in your view,
12 kind of been a violation of your beliefs and your values? And we
13 might get at it that way. But there's no -- there's no animal model
14 of, you know, guilt and that.

15 But clinically, typically -- because we often get asked in
16 evaluations, does someone have remorse? And I often have to explain
17 to the court we don't have a measure of remorse. So we don't know
18 what that is, really, psychiatrically. That's -- that's a construct
19 that exists in the courtroom and in society, but it's not a -- it's
20 not a criteria symptom for what we think of as a mental illness.

21 So in your -- in your scenario, as you describe it to me,
22 I'd probably have to ask him, "Did this violate something that you
23 value?" And it may not have, right? Because we train our own

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1 soldiers to do things that sometimes later they -- they have regret
2 about, the acts they've been involved in, but they'll still say, "I
3 was doing the right thing." They don't believe they've violated
4 their oath to the country, but they can develop PTSD, yeah.

5 Q. And, for sure, sometimes be conflicted, right?

6 A. Oh, I'm sorry? It's ----

7 Q. And sometimes be conflicted about those feelings, I would
8 think.

9 A. That's usually how we see them in -- in psychiatry.
10 Someone has presented because they're experiencing some sort of
11 tension or conflict or trouble related to that.

12 Q. And what about shame? How does that play into it, if at
13 all?

14 A. In post-traumatic stress disorder, shame is a very
15 prominent symptom under the avoidance and cognitive change cluster.
16 So in DSM-5, as opposed to DSM-IV, the avoidance cluster was split
17 into two categories: Trying to not think about the trauma and avoid
18 talking about it, and then the ways people think about themselves.

19 So it's very common to hear things talked about like
20 survivor guilt. Sometimes people wonder why they're the only one
21 alive after a bad accident or an attack. So guilt and shame are
22 integral parts of that symptom category in PTSD.

23 And they're very much what you'll see when you're looking

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1 like -- like *The Feeling Good Handbook* or other cognitive behavioral
2 therapy handbooks, there's pretty routinely a section on shame,
3 guilt, lack of trust.

4 The -- it's just -- it's part of the -- it's part of the
5 disorder when we look at traumatized individuals.

6 Q. Okay. Doctor, you testified about the impact of SERE on
7 memory. And you talked about an experiment with -- at SERE school
8 where you asked -- you put soldiers, sailors, Marines,
9 under -- airmen, under extreme stress and then asked them to look at
10 a figure and then attempt to draw it.

11 Are you -- do you know what experiment I'm talking about?

12 A. Well, we did a number. But, no, I didn't put them under
13 stress. The school did.

14 Q. Well ----

15 A. But right after the stress, I could give different kinds
16 of -- depending on the study. In that particular study ----

17 Q. Right.

18 A. ---- 15 minutes after their exposure to interrogation
19 stress, we also did it an hour later in a different study, but we
20 would ask them to do a neuropsych task to be able to assess, compared
21 to baseline when they were not under stress, what the impact of
22 stress exposure itself was on the -- the prefrontal cortex
23 functioning ----

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1 Q. Right.

2 A. ---- with the particular test I referred to the other day.

3 Q. And those studies were focused, if I understand, on the
4 memories, how that was affected during the high stress as far as
5 information presented to them and how they would recall that. They
6 weren't focused on the impact of prior memories. Something that
7 happened, you know -- what unit they came from, you know, trying to
8 figure out if they could still remember what unit they came from
9 after being -- going to SERE school. Like if it would have a -- some
10 type of impact on their memory, right?

11 A. Well, we collected data like that, but for a different
12 reason, to control for differences in MOSs or time in the service.

13 Q. Right.

14 A. I was more interested in previous exposure to trauma to
15 see whether previous exposure or the number of times a person had
16 been previously exposed to combat-related trauma might influence
17 their reactivity while they were going through SERE or trauma before
18 they came into the military.

19 So that was ----

20 Q. So ----

21 A. ---- that was the purpose, to see who was more -- would
22 that present a vulnerability to being even less capable during and
23 after stress of performing. The -- yeah.

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1 Q. Okay. So in all of these studies, is there any evidence
2 from -- from your studies that showed the impact of SERE had an
3 impact on the participants' memories that they encoded prior to going
4 to SERE?

5 A. That wasn't the focus of our study. So I don't -- I don't
6 have data about someone's memory for childhood or something else they
7 did in the military.

8 Q. So we know ----

9 A. We did a childhood trauma questionnaire. I had to accept
10 at face value that what they were saying was true.

11 But no, the focus of our study was not to examine reactivity
12 at survival school with respect to what someone could say about their
13 past because I didn't have ground truth about their past. So it
14 would just be subject to recall bias ----

15 Q. Okay.

16 A. ---- if that makes sense? It's like asking someone at a
17 later date what happened before. We just don't know where the ground
18 truth is in that. So that wasn't the focus of the study.

19 Q. And are you aware of any study that would suggest that
20 high stress, like SERE, causes someone to forget things that happened
21 in their past?

22 A. At SERE, no; but studies outside of SERE, yes. We know
23 that victims of trauma with PTSD, their recollections from the past

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1 are highly subject to distortion, which is how some of the false
2 memory literature came about, about people mis-recalling the past
3 about being sexually abused or being assaulted.

4 So there is a ----

5 Q. Sure.

6 A. ---- relationship between something that some -- if
7 somebody becomes traumatized and develops a mental disorder, that can
8 significantly affect what they recall from the past or their ability
9 to do that.

10 Q. And is that connected to the trauma?

11 A. We think so. Because the -- what we seem to see in -- in
12 both highly traumatized nonhuman animals or in humans, the basic
13 mechanism of how memories both form and get recalled seems to be
14 damaged. So the -- some of those enduring traits that I talked about
15 with safety signaling, it turns out that seems to be a pretty good
16 marker for severe PTSD over one's life.

17 So those kind of geeky studies in the lab, we say startle,
18 we're really looking at the building blocks of how a person has a
19 memory, and we know that that is damaged by trauma.

20 Q. Right.

21 A. And, therefore, the implication of that is we -- it's a
22 very real possibility that what they attempt to recall from the past,
23 because they're resurrecting and re-creating memory -- when you pull

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1 it up in mind, you're re-creating the past. And so it's -- it's
2 really generally believed in my community, it's subject to
3 substantial error.

4 And so when we're training psych residents, we tell them you
5 can go with what someone says they remembered, but we don't go
6 digging to do, like, regressive therapy to find out ----

7 Q. Right.

8 A. ---- what someone remembers because it's a rabbit hole.
9 And we just tell therapists to focus on the present ----

10 Q. Right.

11 A. ---- and work with that.

12 Q. Fair to say you are not concerned that we subject our
13 servicemembers -- and these are some of the best Americans there
14 are we're sending there to be trained and we're subjecting them to
15 this experience. Fair to say that you're not concerned that we're
16 damaging them in a way that we're -- that we're damaging their prior
17 memory in a way that they won't have access to that anymore?

18 A. In part, that was, I think, why they let me start studying
19 people at survival school. One of the colonels wanted to know, are
20 we -- is the stress is enough or too much? Are we damaging our
21 folks, right?

22 Because the principle at SERE is to create enough fear
23 conditioning that once they leave, even years later, if they're

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1 exposed to a reminder, we want all that training to flash back into
2 their mind so they can -- they can be safe, right?

3 Q. Exactly.

4 A. So in one respect, we are -- we are doing severe fear
5 conditioning in them and hoping it's not too much to become
6 debilitating, but we do know that some people have developed
7 PTSD ----

8 Q. Right.

9 A. ---- from the training experience. So it has damaged some
10 people, but most people know, we -- you know, I mean, I think most
11 people stay healthy.

12 Q. Right.

13 A. But the fear conditioning we're hoping is -- it's for
14 life, for somebody that goes through SERE school.

15 That's why I think I disagreed the other day on the drawing
16 about maybe it's unlikely reexposure to a cue would elicit, you know,
17 memories of EITs.

18 But the whole principle of SERE school is that years later,
19 exposure to a cue should bring all that back into a person's mind.
20 But the goal is not to damage people at SERE. That's why the ----

21 Q. Sure.

22 A. ---- experiences are limited and ----

23 Q. And ----

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1 A. ---- and also framed and supported by people around
2 them ----

3 Q. Right.

4 A. ---- to help them understand, this is for your own good,
5 right?

6 Q. Yeah. Like, we still need a sniper to be able to, you
7 know, apply his training and shoot somebody from a thousand meters,
8 right?

9 A. Yes.

10 Q. It would serve no purpose to then lose the benefit of that
11 training by taking him through this, right? Where he'd forget
12 everything he learned about his other training, right?

13 A. And that's -- you know, when we do the psychological
14 screening in different units, people have different profiles. The
15 snipers look different, yeah. So do the submariners, so...

16 Q. Indeed. Okay.

17 Next subject. I want to ask about your thoughts on
18 observations of CIA and Guantanamo Bay medical professionals.

19 Are you aware that Mr. Ali was routinely treated by -- and
20 observed by mental health professionals throughout the course of his
21 detention?

22 A. That's my understanding, yes.

23 Q. Would dissociative condition have been detectible by

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1 someone following an examinee or conducting a psychiatric exam?

2 A. It may have. People can experience symptoms of
3 dissociation. They're an internal event. And so to an outside
4 observer, very often dissociation may look like a person losing their
5 train of thought and sort of being lost -- lost in thought.

6 To a layperson, it might just look like someone was
7 daydreaming for a moment, momentarily out of touch with what's
8 immediately going on around them. And so they might label it as
9 seemed preoccupied or look distracted or couldn't concentrate. But
10 sometimes you -- you can't observe it. You have to ask people about
11 the symptoms that they're experiencing.

12 Q. Do you have any basis to believe that psychological
13 assessments done by successive examiners who did not note the
14 presence of dissociation were ignoring signs of dissociation?

15 A. You'd have to ask them if they were trained to look for it
16 and think about it. I don't know. I mean, not seeing something
17 doesn't tell us it's not there.

18 Q. Right.

19 A. And it really depends on the nature and focus of the
20 evaluation and then the rapport they have with the person they're
21 evaluating and then the degree of trust, which is typically
22 significantly impaired.

23 That's why I was alarmed when I saw a censored medical

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1 record with information blanked out on it, not -- not blacked
2 out ----

3 Q. Sure.

4 A. ---- removed, so ----

5 Q. Now, in that sense ----

6 A. ---- if medical records are censored, it's difficult to
7 understand what's really in the record, because I honestly don't know
8 if people were encouraged not to mention things, which I know
9 happens.

10 I've been in government a long time. People might get the
11 message ----

12 Q. Right.

13 A. ---- you write notes and you write them minimally and ----

14 Q. But you don't ----

15 A. ---- and don't ----

16 Q. You don't know with regard to that record whether or not
17 that was something classified and it's contained in another
18 classified record or something like that and that was just the
19 unclassified version, right?

20 A. All the information was gone from that except the name at
21 the bottom of the page. It was supposed to be the report of abuse.
22 So I can't imagine that every aspect was classified. It's ----

23 Q. All right.

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1 A. ---- you know, it -- it does -- it really strains
2 credulity, too, to say it's just all blanked out. It looks like an
3 effort to avoid anything really going anywhere.

4 Q. Do you agree you're pretty much speculating on that,
5 though?

6 A. I'm not speculating that the chart was censored.

7 Q. But why -- but why it might be redacted.

8 A. I -- I can only speculate as to why it might be redacted.

9 Q. Okay.

10 A. There's a limited number of hypotheses that would explain
11 it.

12 Q. Okay. Would properly defined learned helplessness have
13 been undetectable by mental health professional -- by a mental health
14 professional following an individual or conducting a psychiatric
15 exam?

16 A. Well, learned helplessness is a term we use for nonhuman
17 animals. It's an animal model to explain why people do
18 self-defeating things and fail to actually be able to behave in ways
19 that would really be beneficial to them.

20 In working with people, we might refer to it as conditioned
21 defeat or depression. The clinical ----

22 Q. Well ----

23 A. ---- term is people can look depressed, discouraged,

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1 defeated. They may believe that there is -- all the options are
2 illusory, and so ----

3 Q. And would ----

4 A. ---- nothing will really change if they make an effort.

5 Q. Would conditioned defeat have been undetectable by a
6 mental health professional who is following an individual or
7 conducting an exam?

8 A. It could be, yes.

9 Q. Do you have any basis to believe that psychological
10 assessments done by successive examiners who did not note the
11 presence of conditioned defeat were ignoring signs of conditioned
12 defeat?

13 A. I don't know. Yeah.

14 Q. Would regression to an earlier state of development and
15 dependency have been detectable by a mental health professional
16 conducting a psychiatric exam who was looking for signs of regression
17 to an earlier state of development and dependency?

18 A. I'm not sure I understand what you mean when you say
19 "regression to an earlier state of dependency." I -- can you just
20 explain a little bit? I don't know what I'd be answering. I'm
21 sorry.

22 Q. Is that a -- is that a term that's familiar to you?

23 A. I've heard people talk about regression therapy when they

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1 would try to recover memories. It's not something we approve of
2 ethically because we know ----

3 Q. Did ----

4 A. ---- that it produces false memories and ----

5 Q. It ----

6 A. ---- erroneous memories.

7 Q. Would -- the concept of regression to an earlier state of
8 development, is that a concept that's familiar to you?

9 A. That's a concept that we talk about when we have an adult
10 who then begins to behave like a child, and that may be because they
11 have a reduction in their cognitive capacity or they become
12 psychotic.

13 For example, as an adult, someone will use the restroom and
14 not bring their feces to their doctor. When I have psychotic
15 patient, I've had them wrap them in a facecloth and bring them to
16 rounds because they have a gift. Which is something like a toddler
17 might do because they're proud they've used the toilet and want their
18 parent to come and see what they've done. That would be a
19 regression.

20 Q. Okay.

21 A. So it's a term that refers to the person shouldn't behave
22 in this way for their age ----

23 Q. Okay.

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1 A. ---- and developmental progress.

2 They have moved back in the age timeline and are thinking
3 and reacting much more like a child or -- or a toddler.

4 Q. Okay. And is that something that a mental health
5 professional conducting a psychiatric exam would be able to see?

6 A. We typically notice it if a person is psychotic.
7 It's -- I don't know what meaning it would have if a person is not
8 experiencing psychosis. And what I mean by psychosis, actively
9 hallucinating, having delusional thoughts.

10 There is a comment in the chart that he reported having
11 auditory and visual hallucinations, but I haven't seen any
12 evaluations of those ----

13 Q. All right.

14 A. ---- but the doctor did note them.

15 Q. And when you refer to the chart, you're referring to that
16 one medical record. Not his entire medical record, right?

17 A. No. But it -- that was in the rule-out and follow-up part
18 on ----

19 Q. Okay.

20 A. ---- whether or not it would be why he would be having,
21 you know, visual and auditory hallucinations.

22 Most people with a schizophrenia disorder don't have visual
23 hallucinations, they usually have auditory. So the auditory and

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1 visual combination means on the differential diagnosis you'd want to
2 know if it was related to head trauma ----

3 Q. Okay.

4 A. ---- or -- or a tumor growing in the person's head. Yeah.

5 Q. You mentioned psychosis. Would psychosis have been
6 undetectable by a mental health professional conducting a psychiatric
7 exam looking for signs of psychosis?

8 A. It can be. It -- it would depend on the in-depth nature
9 of the evaluation.

10 Some people who are psychotic -- I, myself, have treated
11 patients where I didn't know for several sessions that they believed
12 they were communicating to an unseen entity in the room while I was
13 interviewing them. And I slowly became aware. They seemed to be
14 distracted while I was speaking to them. And I finally had to ask,
15 "Are you listening to somebody else?" And the patient said, "Yes."
16 And then I could ask about it.

17 But sometimes it's not obvious at all when a person is
18 having a psychotic experience.

19 Q. Okay.

20 A. Yeah.

21 Q. Do you have any basis to believe that psychological
22 assessments conducted by successive examiners, who did not note the
23 presence of psychosis, were ignoring signs of psychosis?

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1 A. Well, I haven't seen any successive evaluations, because
2 my focus was on whether or not there was substantial evidence that he
3 suffered from PTSD ----

4 Q. Okay.

5 A. ---- and there's adequate data for that. But no, I didn't
6 see other evaluations.

7 Q. Do you have any basis to believe that psychological
8 assessments done by successive examiners, who did not note the
9 presence of depression, were ignoring signs of depression?

10 A. Well, looking at the neuropsych testing that has been
11 recently done and the brain scan imaging, the changes in the brain
12 are not acute. In other words, they've been around for a long time.

13 So I would assume if people had done a neuropsych eval
14 during his course of detention, they would have noted the same
15 neuropsychological difficulties that Dr. Shea reported because those
16 aren't new findings. So I'm assuming if they did notice something
17 and evaluate it, they -- they would have noted the
18 process -- information processing deficits and ----

19 Q. And do you have any basis ----

20 A. ---- memory problems much sooner.

21 Q. Do you have any basis to believe that examiners who did
22 not note the presence of depression were ignoring those signs?

23 A. No, I don't know what -- I don't know what they thought or

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1 what they saw or ignored.

2 Q. Okay. Would persistent hopelessness and suicidal ideation
3 have been undetectable by a mental health professional conducting a
4 psychiatric exam?

5 A. They can be. It depends whether the patient decides to
6 let the person know.

7 I think some of the observations that are in the OIG record
8 do indicate there was a sense of fear and despair, a fear of dying, a
9 fear of being killed. But those symptoms can be hidden from an
10 evaluator.

11 Q. Are you aware that doctors were evaluating Mr. Ali on the
12 basis of having seen him get EITs as to whether he was at risk for
13 developing a serious psychological condition like PTSD?

14 A. You faded at the initial part of your question. Can you
15 repeat it for me, please?

16 Q. Sure. Are you aware that doctors that were evaluating
17 Mr. Ali on the basis of having seen him get EITs, they were
18 evaluating him as to whether he was at risk for developing a serious
19 psychological condition like PTSD?

20 A. I am aware from the comments in the report that people saw
21 him and made an assessment as to whether or not the EITs would or
22 would not be harmful to him, which is surprising to me because ----

23 Q. Okay.

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1 A. ---- they wouldn't have any scientific basis and clinical
2 evidence basis on which to make that judgment.

3 Q. Are you aware of -- that doctors were evaluating him
4 during the EITs to assess whether, as a result of the EITs, he was at
5 risk of developing a serious psychological condition like PTSD?

6 A. Yes, I'm aware that -- that he -- that doctors were
7 present during EITs for the purpose of doing that. But once again,
8 I'd say that would be based on an erroneous sense of what we know in
9 medicine and psychiatry.

10 It would be like asking someone while being raped, "Do they
11 look like they can take any more of it?" And the doctor saying,
12 "Yes, I believe they can. I see no reason why this would produce a
13 subsequent injury."

14 Q. So is it your opinion, then, that they -- they were not
15 evaluating him as directed?

16 A. It's my opinion, whether they saw it directly or
17 indirectly, they were making medical judgments that are not possible
18 to make based on what we know.

19 Q. Okay. And the doctors did not apprise Mr. Ali of -- to be
20 experiencing a threat to his body, integrity, or to his life,
21 correct?

22 A. I'm not aware of them asking him for his informed consent.
23 He didn't ask -- he didn't ask to be the test dummy for people

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1 learning how to wall for two hours.

2 Q. Right.

3 A. I don't think he asked if -- for his permission to be ----

4 Q. No ----

5 A. ---- doused or slapped or -- I don't think he asked for
6 any of it, which is very different than what's ----

7 Q. Yeah.

8 A. ---- done at SERE. So I don't know how doctors could
9 imagine they could predict that something would be okay in the
10 future ----

11 Q. I ----

12 A. ---- based on the known scientific data at that time, at
13 least ----

14 Q. Yeah, I think ----

15 A. ---- in 2002.

16 Q. I think you may have misunderstood my question or maybe it
17 was a poorly worded question.

18 What I was asking is whether the doctors -- whether the
19 doctor did not assess him -- I used the word "apprise" but I didn't
20 mean apprise as if they were saying something to them, but whether
21 they assessed him to be experiencing a threat to his body integrity
22 or to his life.

23 A. I'm not aware whether they did or didn't. It's my

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1 understanding from some of my colleagues that they did.

2 Q. For Mr. Ali?

3 A. No. I mean from while I was at the CIA and knowing what
4 was going on between the DoD and the CIA, I'm aware that people were
5 present during some of them to consult. This is why we have the
6 debate in both APAs about whether or not psychologists and
7 psychiatrists ----

8 Q. Right.

9 A. ---- could render consultation to interrogation.

10 Q. But this is not specific to Mr. Ali.

11 A. I'm just saying in general ----

12 Q. That discussion you're talking about wasn't specific
13 about ----

14 A. No. It was whether or not our profession could
15 ethically ----

16 Q. Right.

17 A. ---- consult to government interrogations.

18 Q. Which is a different question. The ethics question is a
19 different question than whether they could actually assess ----

20 A. The question -- the question arose because colleges were
21 participating ----

22 Q. Right.

23 A. ---- and consulting to interrogation. So it isn't

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1 hypothetical. They were. And that's why we had the debate in both
2 APAs ----

3 Q. Yeah.

4 A. ---- about whether or not for our ----

5 Q. I'm not ----

6 A. ---- professions, whether we could.

7 Q. I'm not challenging ----

8 A. So -- no, I'm not -- I'm not arguing with you. I'm just
9 saying they were.

10 Q. Yeah, and I get that. The question was whether or not
11 they were actually assessing him and what their observations were
12 when they were actually assessing him. Putting aside the question of
13 whether or not people are arguing about whether it's ethical, just
14 the fact that they actually made that assessment and were in a
15 position to assess him. That -- that was the purpose of the
16 question.

17 A. Oh. I haven't seen a document saying that this doctor
18 observed him while receiving a specific EIT, no.

19 Q. Okay. You talked about studying hardiness and resilience,
20 correct?

21 A. I have.

22 Q. And the role they play in an individual's ability to
23 respond to stress.

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1 A. Yes.

2 Q. And did you assess Mr. Ali's hardness at any point?

3 A. I've already said I have not assessed Mr. Ali, so I have
4 not ----

5 Q. Okay.

6 A. ---- assessed his hardness.

7 Q. Okay. And a significant stressor would be indefinite
8 confinement, correct?

9 A. That would be considered a significant stressor, yes.

10 Q. Or harsh interrogation.

11 A. The different kinds of stressors, right? I mean, any
12 confinement is stressful to someone who doesn't want to be in jail or
13 in prison or something, so -- so ----

14 Q. And ----

15 A. ---- stressors vary in their intensity, but those would be
16 considered stressful if it's against a person's will, yes.

17 Q. And resilience also affects a person's impact from
18 confinement, correct?

19 A. Resilience is a -- is a term that we are using to try and
20 describe why some people can either bounce back more easily from a
21 traumatic event, or don't seem as severely impacted by a traumatic
22 event, or that they just never get as sick when they're exposed to a
23 traumatic event, or whether or not they simply recover faster. They

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1 might get just as sick and then show a recovery.

2 So it's a -- it's a clinical model when we ----

3 Q. Okay.

4 A. ---- talk about stress resilience and ----

5 Q. And ----

6 A. ---- we're exploring why do -- why do we vary as human
7 beings and the degree to which we get sick after terrible things
8 happen.

9 Q. And lots of different factors go into that, right?

10 A. Oh, yes. There's a number of ----

11 Q. Okay.

12 A. ---- genetic factors, environmental factors that
13 contribute to a person's risk for post-traumatic stress disorder.

14 Q. What about their faith? Strength in faith, is that a big
15 factor in determining whether someone will bounce back from a
16 traumatic event?

17 A. I don't know if it determines it, but we do know that
18 having a belief in something, that can help a person deal with
19 something terrible that's happened in either reframing it, in helping
20 them cope in a better way and not suffer quite as much. A person
21 doesn't have to be religious, but they may have a belief in something
22 that organize -- that helps them organize their thoughts and
23 feelings.

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1 So in -- so Steve -- my colleagues, Steve Southwick and
2 Dennis Charney did a nice book on stress and resilience, and one of
3 the sections is devoted to faith or having a belief in something.

4 Q. Okay.

5 A. So is optimism, being able to be optimistic means a person
6 is trying to get a different perspective on the situation they're in.
7 And we believe faith or a belief in something helps a person cope.

8 Q. And ----

9 A. It doesn't mean they don't get PTSD. I'm -- I published a
10 paper. It's on my CV. We looked at social support and social
11 networks as maybe helping prevent PTSD. They don't, but they do
12 help -- they don't affect the incidence rate of PTSD but they do help
13 a person deal with their ongoing symptoms.

14 Q. Well ----

15 A. And that's the same as with something like diabetes. If
16 you have a good support group or you have faith, it helps you
17 modulate stress in a different way.

18 Q. And hardiness is certainly something that -- do you agree
19 that that -- a person's hardiness impacts whether or not they would
20 get PTSD or could impact it?

21 A. Well, that's the -- that's what we've been looking at in
22 our Special Operations. And so I have a colleague who developed the
23 hardiness scale or the grit scale, and trying to figure out if people

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1 fill out a number of items on the hardiness scale or the grit scale,
2 do they look different after we expose them to stress? Do they show
3 fewer medical issues over time or psychological issues over time?

4 So we're still trying to understand what it is we all mean
5 when we say they're hardy.

6 Q. Yeah.

7 A. But when you back up from it, you're saying, wow, stress
8 impacts some people more than others. So compare the airline pilot
9 who sounds very calm when he goes, "We have one engine that has
10 failed but we'll be landing shortly," and it's supposed -- we're all
11 calm, right? And then you have characters who are much like George
12 Costanza on Seinfeld where everything is expressed in its full volume
13 of what they're feeling.

14 In our Special Operations folks, through selection, what's
15 weeded out is anyone who's high in emotional reactivity. They
16 represent the bottom 5 percent of the population in emotional
17 reactivity, which is a risk factor for PTSD.

18 Q. And ----

19 A. So for hardiness, we do think that it's a person who, by
20 temperament, is less prone to anxiety, fear, depression, and who more
21 easily can tolerate ----

22 Q. Sure.

23 A. ---- stress. Those are -- those are actually the items

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1 like on the "neo" for assessing neuroticism or emotional reactivity.

2 Q. And ----

3 A. Yeah.

4 Q. And different people react differently to confinement or
5 harsh interrogation?

6 I'll give you an example. John McCain, shot down and
7 detained in Hanoi for over six years. Are you familiar with his
8 treatment?

9 A. I am. I actually was at the Mitchell Center for POW
10 studies and know a great deal about his case and diagnoses.

11 Q. And, you know, in people like Admiral Stockdale who were
12 detained in Hanoi. And for whatever reason, some of these folks that
13 were -- that were exposed to the very same treatment developed PTSD
14 and some didn't, right?

15 A. Without being specific, whether we see them in public or
16 not, a large number of PTSD and other issues -- the -- the issue in
17 psychiatry that we're trying to help -- we want to understand more is
18 because in spite of those symptoms, some have been able to go on to
19 serve in public life or ----

20 Q. Sure.

21 A. ---- or that -- and that was true with the veterans I saw
22 at the VA. Some had been able to hide their symptoms for years and
23 work at IBM ----

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1 Q. Right. But some ----

2 A. ---- and also keep it away from their spouse, right?

3 Q. Right.

4 A. And then suddenly ----

5 Q. Sure.

6 A. ---- they get exposed to a cue and it all reemerged.

7 Q. Different categories. Like, some folks got PTSD and were
8 able to hide symptoms and do other things but some folks just didn't
9 get PTSD, period ----

10 A. Right.

11 Q. ---- that were exposed to similar treatment. It depends
12 on the person ----

13 A. Well ----

14 Q. ---- and how they're impacted.

15 A. John Henry Krystal did the studies of Holocaust survivors.
16 And from the camp at Auschwitz for survivors of Auschwitz, it wasn't
17 100 percent PTSD rate from being in a concentration camp.

18 They suffered from a lot of other things if it wasn't PTSD.
19 There was alexithymia, difficulties in mood regulation and things
20 like that. So they were damaged, but they didn't have classic
21 post-traumatic stress disorder.

22 Q. Okay. Now, Dr. Hanrahan, he didn't assess resilience in
23 Mr. Ali, did he?

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1 A. No, but that wouldn't be -- that's not a traditional
2 clinical assessment. So, I mean...

3 Q. But he didn't as far as you know, right?

4 A. As far as I know.

5 Q. Or -- and he didn't assess hardiness in Mr. Ali, did he?

6 A. No. If he said he did, I'd kind of wonder how he would
7 know the scale would be valid. We -- we've never validated the
8 current scales that are -- that purport to measure hardiness in -- in
9 sort of non-American populations or non-Norwegian populations or
10 non-Canadian populations and perhaps non-Australian populations. So
11 if he did, I wouldn't know whether the findings ----

12 Q. Yeah.

13 A. ---- would be valid or not.

14 Q. Right. And that's important -- right? -- because knowing
15 the normative set, you know, knowing who you're comparing this person
16 to or a person to is important?

17 A. If you're using a testing system, yes.

18 Q. Yeah. I assume also Dr. Shea, you're not aware of any
19 testing he did to measure Mr. Ali's hardiness or resilience?

20 A. Well, the neuro -- I think that's a misunderstanding of
21 the evaluation. The evaluation is to look at neuropsychological
22 functioning and specific functioning that parts of our brain do. And
23 those things are -- our brains function cross-culturally in very

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1 similar ways with respect to those building-block activities that
2 some of the neuropsych testing elements are challenging a person to
3 do.

4 With respect to the PTSD evaluation, it doesn't have a
5 hardiness component in it, but the CAPS is normed across different
6 populations. So it is valid ----

7 Q. Right.

8 A. ---- it is valid to use in non-American,
9 non-English-speaking populations.

10 Q. Are you saying that -- that there are not tests that can
11 be done for hardiness or resilience to measure someone ----

12 A. I'm saying there are no measures of hardiness and
13 resilience that have been normed in other populations that we could
14 use predictively. It -- it would be an experimental phase right now.
15 Because I've been a part of some of that research. I have measures
16 that do predict which U.S. special operators will and won't do well
17 when they're interrogated or at dive school or at other schools with
18 measures that I get at baseline.

19 I did green team selection assessment for Dam Neck for three
20 years. And by assessing them in week one, I could predict 92 percent
21 of the drops from their selection program and 75 percent of the
22 keepers without knowing anything else about them, right?

23 So we're -- but, I wouldn't say that's what a clinician

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1 should go out and do.

2 Q. Okay.

3 A. Even though we have great data from three years running on
4 it, it needs to be normed in different populations than just that
5 version of SEALs.

6 Q. Okay. Okay. During your testimony you talked a lot about
7 PTSD and the impact that that has on extinction in the classical
8 conditioning construct, okay? I want to just make sure I understand
9 your testimony.

10 In your declaration, your supplemental declaration ----

11 TC [MR. GROHARING]: And if I -- if I could get the feed from
12 Table 2, please, I'll -- I'll pull it up for you.

13 MJ [Col McCALL]: Go ahead. I'll let you know when it's
14 showing down here.

15 All right. It's up.

16 TC [MR. GROHARING]: Judge, I'm just trying to see if it's
17 been cleared. I believe that's been cleared for display.

18 MJ [Col McCALL]: My understanding -- my understanding is it's
19 not cleared for the gallery, but we can have it for the witness.

20 TC [MR. GROHARING]: Okay. And that's 628ZZZZZ (AAA)
21 Attachment B.

22 Q. All right. So if we can go to paragraph 12.

23 ADC [MS. PRADHAN]: Sir? Sorry. Just a brief correction for

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1 the record. It's 628TTTTTTT Attachment B.

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

3 ADC [MS. PRADHAN]: Yep.

4 MJ [Col McCALL]: Okay. Go ahead, Mr. Groharing.

5 TC [MR. GROHARING]: I apologize, Your Honor. This ----

6 MJ [Col McCALL]: Oh, take your time.

7 TC [MR. GROHARING]: This -- this font is smaller than I might
8 have ever seen on a piece of paper, but...

9 Q. Okay. Paragraph 12, the last bottom lines, the last two
10 lines, it says: Fear-based contextual conditioning in people with
11 PTSD is more resistant to extinction, i.e., harder to eliminate than
12 that of healthy individuals.

13 Okay. That was your declaration that you swore to in
14 January. I thought you said during your testimony that it was
15 impossible to extinguish conditioned fear ----

16 A. That's ----

17 Q. ---- in people that had PTSD.

18 A. ---- in ----

19 Q. Maybe I misheard that, but if you could clarify that,
20 please.

21 A. I can clarify it so it's not misunderstood.

22 The very nature of the problem clinically in post-traumatic
23 stress disorder is that their fear is not extinguished. They -- the

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1 enduring and reproducible findings, they do not learn safety
2 signaling like normal human beings. And that is the persistent
3 nature of their illness over time, and we don't have a cure for it.

4 So the -- the general understanding of the -- the
5 fundamental pathophysiology of the disease PTSD is that they lack the
6 capacity to extinguish their fear. And I think the mixup in the
7 language is I think that some people -- when we use "extinction" in
8 one term, it means you can't observe the behavior, that you don't
9 observe the behavior.

10 And what we find in people with PTSD is that under the
11 conditions you want, you can continuously observe the behavior. You
12 can see the behavior reemerge over time and that it fails to do
13 extinction like it does in most people.

14 But extinction is not the vanishing of the fear-conditioned
15 memories. Extinction is the -- is the outward appearance because
16 people can learn a safety signal that inhibits the expression of the
17 fear.

18 And what's well known in PTSD, some people argue, like
19 Jovanovic -- I believe you have at least their name in the reference
20 for their paper. They've been arguing it should be a biomarker for
21 PTSD because the findings are so stable.

22 But the point is, is that what clinicians have known for
23 years is the reason why the person is sick is because their mind and

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1 body keep responding over time as if the danger is still present ----

2 Q. Right.

3 A. ---- and it affects the way they think and behave.

4 So that's what I'm getting at when I say in PTSD, we don't
5 get fear extinction. The fear remains ----

6 Q. Right.

7 A. ---- in an abnormal way.

8 Q. But you -- that's not what you said in the declaration,
9 though, right? In the declaration you said it was more resistant,
10 harder to eliminate. That would imply, to me at least, that it's not
11 impossible, but ----

12 A. Well, we don't have ----

13 Q. ---- the PTSD ----

14 A. We don't have a cure for it, so I don't know which word
15 you would prefer, but the clinical ----

16 Q. Okay.

17 A. ---- the clinical -- the clinical issue is that the fear
18 never goes away.

19 Q. Okay.

20 A. And most therapy is designed to try and help a person
21 suppress it as much as possible in order to have as normal a life as
22 possible. The more severe the trauma, the greater that challenge.

23 Q. Okay.

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1 A. If you have a mild case of PTSD, the more successful they
2 appear to be at suppressing the expression of -- of fear.

3 Q. Okay.

4 A. So -- but if you look at any of the studies of cognitive
5 behavioral therapy or flooding, people aren't cured when it's over.
6 They've just reduced their symptoms to a degree on a -- on a
7 threshold scale that either does or doesn't match now either a
8 diagnosis or they've moved from the severe category to the moderate
9 category. And because the shift is significant, we say, oh,
10 that -- that treatment is effective.

11 But -- but to believe that that means they can extinguish
12 fear and it goes away would -- would be a misconception entirely.
13 That's the core problem in post-traumatic stress disorder ----

14 Q. And ----

15 A. ---- is they can't extinguish the fear.

16 Q. And so assume -- even assuming, just for argument's sake,
17 that Mr. Ali did have PTSD or does have PTSD, that diagnosis alone
18 does not prevent him from providing a voluntary and reliable
19 statement, correct?

20 A. No. I know that he does have PTSD based on ----

21 Q. Right.

22 A. ---- the neuropsych testing and the psychological
23 assessments I've seen ----

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1 Q. But ----

2 A. ---- from the doctors.

3 Q. But it's not ----

4 A. But hypothetically, if we say would that be alone enough
5 to affect his decision-making capacity to believe what was in his own
6 interest, the answer would be yes.

7 Q. Okay.

8 A. We know that it impairs frontal lobe functioning, and
9 people are impaired in their ability to make decisions that are in
10 their own best interest.

11 Q. So ----

12 A. And as I said previously in testimony, the purpose of the
13 EIT program was to render people malleable in order to have them act
14 in ways that were not in their own interests. And I'm quoting ----

15 Q. Okay.

16 A. ---- Dr. Mitchell and Jessen, right? So ----

17 Q. So just ----

18 A. ---- I would say, yes, that would impair him.

19 Q. If you focus -- the question I asked was: A diagnosis of
20 PTSD, a diagnosis alone, doesn't prevent Mr. Ali from providing a
21 voluntary statement?

22 A. It may.

23 Q. You'd have to look at all ----

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1 A. It may.

2 Q. The question is ----

3 A. I can't say that it wouldn't.

4 MJ [Col McCALL]: Let me stop both counsel and the witness.

5 You're starting to talk over each other a little bit.

6 WIT: Yeah.

7 MJ [Col McCALL]: So, Mr. Groharing, go ahead and ask your

8 question. Just pause ----

9 TC [MR. GROHARING]: Okay.

10 MJ [Col McCALL]: ---- Dr. Morgan. Allow him to complete his

11 question ----

12 WIT: All right.

13 MJ [Col McCALL]: ---- and then answer.

14 WIT: Okay.

15 MJ [Col McCALL]: Go ahead, Mr. Groharing.

16 TC [MR. GROHARING]: And I'll acknowledge that that's at least

17 half my fault.

18 Q. People with PTSD make voluntary decisions for themselves

19 all the time, right?

20 A. Some do, yes.

21 Q. Yeah. They are -- they are able to vote. They don't lose

22 the ability to vote in an election, right?

23 A. Yeah. I mean, some people do. Some people don't.

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1 Q. Are you aware of a case ever of a person who was not
2 allowed to vote because they were diagnosed with PTSD?

3 A. No, I'm not aware. So it may have occurred. It may not
4 have occurred. I wouldn't know.

5 Q. What about care for themselves? People with PTSD, they're
6 allowed to care for themselves?

7 A. Sometimes. I've had patients with PTSD who have been
8 involuntarily detained in the hospital because they were identified
9 as being gravely disabled ----

10 Q. Right.

11 A. ---- which means they were unable to care for themselves.

12 Q. But millions of people who have been diagnosed with PTSD
13 go about their daily lives and care for themselves, right?

14 A. Some do.

15 Q. Okay. And they're allowed to make decisions about medical
16 care for children?

17 A. Some are.

18 Q. Sure.

19 A. Some -- some actually have their -- their child privileges
20 revoked because of the severity of their condition. I've worked ----

21 Q. But ----

22 A. ---- with veterans who have lost their custody issues
23 because of the severity of their illness. So some people will and

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1 some people won't.

2 Q. Okay.

3 A. There's not -- yeah. It could go either way.

4 Q. What percent of folks with PTSD would you put in that
5 category? One percent?

6 A. Oh, it would be more than that. In our clinic ----

7 Q. Do you think ----

8 A. ---- of PTSD patients, it would be hard to say. I'd have
9 to look and see if someone has studied the exact numbers.

10 Q. Would ----

11 A. But clinically -- clinically I know for the fact just
12 because you have the diagnosis doesn't mean that you have all those
13 things that you're describing, the ability to make good decisions or
14 sound decisions.

15 Q. Right. You can sign official documents? There's
16 no -- you're not prevented from signing -- you know, buying a house
17 or signing a will?

18 A. Well, most people don't announce I'm a mentally ill
19 patient, I'd like to sign a lease for the apartment. Their medical
20 history is usually private.

21 Q. Okay.

22 A. So of course they might be allowed to get a driver's
23 license, do all kinds of things.

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1 Q. Right.

2 A. People with schizophrenia are allowed to go get a driver's
3 license and they're psychotic.

4 Q. Right.

5 A. So they suffer with delusions and psychoses and they can
6 drive. So, yeah, sure, mentally ill people ----

7 Q. All right.

8 A. ---- can get a driver's license.

9 Q. And they can act as jurors?

10 A. That's entirely ----

11 Q. That does not disqualify you from being on a jury, right?

12 A. Well, in voir dire, you guys get to decide with the number
13 of votes you have who you want on a jury ----

14 Q. Right.

15 A. ---- and who you don't want on a jury, so...

16 Q. It's the guy or gal with the robe decides whether or
17 not -- who sits. But I agree, the preemptories, we get to exercise
18 those.

19 But there's not any kind of rule that you're aware of that
20 would prevent a juror from sitting by just the mere fact they had
21 PTSD, right?

22 A. No, I'm not aware of a rule about that. It's usually
23 about function and attitude.

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1 Q. Sure. And act as counsel in a case. Lawyers have PTSD
2 and are able to act as an advocate before a court?

3 A. I would agree with the first part. I'm not sure about the
4 second part.

5 Q. How so?

6 A. I don't know if they function adequately or not adequately
7 as the attorney representing their client. That speaks to an
8 assessment of how well they're doing their job.

9 Q. But individually, that would be an individual ----

10 A. But they may have a -- they may have a mental illness.
11 Their functional capacity may or may not be impaired by that illness.

12 Q. It would depend on the person, right?

13 A. I'm sorry. I didn't hear you.

14 Q. It would depend on the person.

15 A. It does. It depends on ----

16 Q. At ----

17 A. ---- the person at a particular point in time.

18 Q. And a diagnosis of PTSD alone would not make someone
19 incompetent to stand trial?

20 A. No.

21 Q. It would not make them incompetent or unable to understand
22 a rights advisement?

23 A. It -- it may. It doesn't necessarily. That was the

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1 case -- that was a case I did two years ago in federal court in
2 Colorado. The very issue was the relationship of his PTSD to his
3 ability to be competent to stand trial. And because of his PTSD, he
4 was unable to assist in his own defense and was ultimately declared
5 noncompetent, nonrestorable.

6 Q. Yeah.

7 A. And that was his diagnosis. So a person may.

8 Q. Right.

9 A. It depends on the condition ----

10 Q. Yeah.

11 A. ---- and the severity of their PTSD.

12 Q. Competency or a rights advisement, you know, if they were
13 advised of rights in a particular situation, a diagnosis of PTSD
14 alone would not mean that a person cannot understand a rights
15 advisement? It would depend on the particular person, right?

16 A. And the severity of the illness.

17 Q. A diagnosis of PTSD alone would not prevent a person from
18 making an informed decision about whether they want to speak to law
19 enforcement personnel, right?

20 A. Well, again, it depends on the severity of the ----

21 Q. Right.

22 A. ---- PTSD. A severity indicator is actually a way of
23 communicating in psychological reports about -- that it's having a

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1 very real and meaningful impact on the person's life ----

2 Q. Right.

3 A. ---- the way they think, the way they act.

4 And so Mr. al Baluchi has been diagnosed with severe
5 post-traumatic stress disorder.

6 Q. But you'd have -- a judge would have to look at the
7 particular facts of the case ----

8 A. I -- sure.

9 Q. ---- make all those considerations and then assess whether
10 or not he could make an informed decision, right?

11 A. I would agree with that, yes.

12 Q. And a person with PTSD alone, that fact alone does not
13 prevent a person from providing information that's reliable?

14 A. Well, again, it -- it would depend on the state at the
15 time of the person with PTSD. Because the symptoms increase and
16 decrease in their severity.

17 I've actually published papers on that as well. Over the
18 longitudinal course of PTSD, they may be functioning very well one
19 week and very poorly another week. So the symptoms are always there,
20 but the degree of impact varies.

21 Q. Sure.

22 A. So we'd have to know how severe the condition was, whether
23 it was mild, moderate, or severe PTSD.

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1 Q. And look at all the other factors and information
2 available to figure out how it all -- how it all factored in and then
3 a judge would decide ----

4 A. Yeah, to see if it was relevant, yes.

5 Q. Okay. Your declaration and testimony, much of it
6 responded to Dr. Mitchell's testimony, his writings, and what you
7 think he intended to convey when he described classical and operant
8 conditioning and the concepts of extinction.

9 So I want to talk through that with you and just make sure
10 that the court is in a position to really understand your views, how
11 they contrast with his views, make sure we're all using the same
12 terms so we're all on the same page. Okay?

13 A. All right.

14 Q. And these terms are well known in the scientific
15 literature: Classical conditioning, operant conditioning, and the
16 concept of extinction, right?

17 A. Those are commonly used terms and then depending on which
18 discipline in science, people may describe ----

19 Q. Right.

20 A. ---- aspects of those terms in a different way.

21 Q. Right. So, yeah, term -- extinction and fear reduction
22 and conditioned defeat, a couple additional terms that came up in
23 your testimony?

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1 A. Yes.

2 Q. So -- and it's important we're precise when talking about
3 these medical terms because they can be misunderstood. Is that fair?

4 A. Medical terms can be misunderstood. That's true.

5 Q. And so do you agree that in classical conditioning, the
6 specific goal is to create a conditioned response?

7 A. Yes.

8 Q. That -- that's classical -- that's classical conditioning.

9 A. Classical conditioning is the pairing of a stimulus with
10 an unconditioned response so that the presence of the stimulus will
11 now evoke the unconditioned response.

12 Q. And I understand you -- you disagree with Dr. Mitchell on
13 a lot of things. But do you agree that Dr. Mitchell's goal was not
14 to cause detainees to suffer from PTSD?

15 A. I don't know that. I believe his goal was to create
16 conditioned fear that could be manipulated over time based on his
17 drawing and his writings.

18 Q. He wasn't attempting to cause detainees to have PTSD. You
19 have no reason to ----

20 A. I don't know what his intent was.

21 Q. Okay.

22 A. It -- I think it resulted from what he did, but his
23 intention ----

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1 Q. He ----

2 A. ---- wouldn't have anything to do with whether or not a
3 person ultimately developed PTSD or not.

4 Q. But you -- you testified that you reviewed all of his
5 testimony, right?

6 A. I have.

7 Q. So you're familiar, then, with his intention or his
8 testimony regarding his intention, right?

9 A. Well, his views have changed over time. I'm aware of what
10 he said, but I -- I can't say that I truly know what his intention
11 was, no.

12 Q. Well -- and he testified that his goal was to get
13 information to stop the next attack.

14 A. I think that was his goal, yes.

15 Q. Okay. And that the CIA believed that the individuals that
16 were subjected to EITs had perishable, actionable intelligence?

17 A. Yes, I think ----

18 Q. Right.

19 A. ---- other people call that the ticking time bomb
20 syndrome. They believe they can do anything because it's an
21 emergency. But, yeah, I think that was the attitude people
22 were -- were functioning under.

23 Q. And he wanted a conditioned response, a response of not

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1 deceiving and providing intelligence? That's the response he was
2 shooting for. And again, you take ----

3 A. Correct.

4 Q. I got it, everyone understands you take issue with how he
5 went about it. But that was his intent ----

6 A. ---- that appears ----

7 Q. ---- to ----

8 A. ---- to have been his intent. It's not just me that
9 disagrees with that.

10 Q. And that -- that's fine.

11 A. It's different than how it's thought about in the science
12 community. But, yes, I believe that was his intent.

13 Q. And he never said his -- his aim was to elicit a
14 conditioned response of an enduring startle response or anything like
15 that?

16 A. He wanted conditioned fear to be able to be evoked.

17 Q. Right. And so to do that, he was pairing an unconditioned
18 stimulus, EITs, with the conditioned stimulus, like a particular
19 interrogator or an object like a towel.

20 A. No. The unconditioned stimulus is the fear a person has
21 when they're experiencing being beaten or doused or having something
22 painful or aversive.

23 The unconditioned response is the ----

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1 Q. Right.

2 A. ---- natural human reaction to being attacked.

3 Q. Right.

4 A. That's the unconditioned response.

5 The conditioned stimulus would be the jingling of the keys.

6 Q. Okay.

7 A. If that's paired, like an interrogator appearing, it's
8 just like a bell. If when the interrogator appears, what
9 subsequently follows or they're present during, then the -- when the
10 unconditioned response is evoked, the fear, helplessness, terror ----

11 Q. Right.

12 A. ---- and they're in that presence, the two become paired
13 so that soon the jingling of the keys can remind the person right
14 away of the experience that they went through.

15 Q. And ----

16 A. And it's become what you call the -- the CS+. The -- the
17 CS+ means conditioned stimulus linked to the unconditioned response.

18 Q. And I think you guys completely agree on that. And you
19 can correct me if I'm wrong as far as -- whether or not ----

20 A. Yeah.

21 Q. ---- he should have done it, that's a different question.
22 But -- but the actual relationship between the conditioned stimulus
23 and the unconditioned stimulus.

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1 A. Correct, based on -- based -- I believe we are in
2 agreement on that, yes.

3 Q. All right. And his testimony on extinction was in the
4 context of conditioned fear.

5 A. I believe that is the case, yes.

6 Q. And under classical conditioning, in order to extinguish
7 the conditioned response, you introduced uncoupling. Is
8 that -- that's correct?

9 A. That's correct.

10 Q. Okay. And so the idea is to introduce frequent and
11 repeated exposures where the unconditioned stimulus is disconnected
12 from the conditioned stimulus?

13 A. In -- in other words, if a -- if a rodent assumes it's
14 going to get a foot shock every time the light comes on ----

15 Q. Right.

16 A. ---- to uncouple the relationship, they would go through
17 several hundred trials of just turning a light on without a shock,
18 just turning a light on without a shock, just turning a light on, no
19 shock.

20 Q. Yeah.

21 A. And after a while, when you turn the light on and without
22 a shock, the -- the animal probably wouldn't startle as much.
23 Startle would go down, meaning the animal is no longer fearful when

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1 the light is turned on.

2 Q. Right. And ----

3 A. And we refer to that as extinction, yes.

4 Q. And his -- and his concept was, you know, the -- assume
5 the interrogator was -- was the unconditioned -- or the conditioned
6 stimulus ----

7 A. Correct. Yeah ----

8 Q. ---- and ----

9 A. ---- the interrogator isn't the unconditioned ----

10 Q. Right.

11 A. ---- the interrogator would be the conditioned stimulus.

12 Q. Right. The interrogator performs EITs, the detainee
13 associates that interrogator with the EITs, the fear. And then the
14 idea is that every time that person comes in, that fear comes back,
15 right? Because they think that that means that's what's coming.

16 A. They were told that ----

17 Q. They connect to that person.

18 A. Yeah.

19 Q. Or a towel. Just the interrogator walking in with a
20 towel, the detainee says, oh, that's the towel they put around my
21 neck during the walling ----

22 A. Yes.

23 Q. ---- and in their mind, they connect those things?

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1 A. Yes.

2 Q. And so ----

3 A. They would be paired.

4 Q. And Dr. Mitchell's testimony was that then over time, if
5 that person or that towel or a chair or whatever the conditioned
6 stimulus was, if the detainee was exposed to that conditioned
7 stimulus over time, at some point it would get uncoupled from the
8 unconditioned stimulus. It would no longer be connected, right?

9 A. That's where -- that's where Dr. Mitchell is wrong. For
10 people who have been traumatized, that uncoupling does not occur.

11 Q. Okay.

12 A. Like I said, the analogy would be continuing to meet with
13 one's rapist and saying, "Well, they didn't rape me today. They
14 didn't rape me tomorrow. They didn't" ----

15 Q. Right.

16 A. ---- "rape me for three weeks in a row." The person will
17 never forget. It's never uncoupled ----

18 Q. If ----

19 A. ---- because that's the person who's responsible for
20 their ----

21 Q. Right.

22 A. ---- life-threatening experiences.

23 Q. Sure.

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1 A. So it works in the lab for mild foot shock where we can
2 make the relationship uncoupled. But the fear doesn't go away
3 because when they're reexposed to a cue subsequently, we can see the
4 reemergence of all the fear in the rodent.

5 Q. And that would be -- that would depend on how strong that
6 cue is. Some -- some cues are probably stronger than others, right?
7 If the interrogator who walled you comes back in the room, that's
8 probably a strong cue?

9 A. It would depend on the -- it depends on the experience of
10 the person who ----

11 Q. Right.

12 A. ---- has it, what element they're more terrified of.

13 Q. Sure.

14 A. But what I'm saying is that the -- it's Dr. Mitchell's
15 idea that it's fundamentally wrong. It's incorrect scientifically to
16 say if I just sit in their presence and they no longer look anxious,
17 they're no longer afraid of me.

18 Because we know for a fact the deficit in people with PTSD
19 is they don't learn safety.

20 Q. And ----

21 A. They might mask -- they may be able to mask their fear for
22 a while in the presence of it to endure it, but the fear is there.

23 Q. Right.

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1 A. And we know that for sure. It's like ----

2 Q. Assume ----

3 A. ---- 30 years -- 30 years of studies looking at PTSD,
4 the -- it doesn't go ----

5 Q. So ----

6 A. ---- away. So it's a fantasy on Dr. Mitchell's part.

7 Q. Sorry. I'm not sure not trying -- I keep -- I'm not sure
8 when you've finished. Sometimes I ----

9 A. It's okay.

10 Q. ---- start a new question but then you get going again.

11 So assume that the conditioning with the towel worked, that
12 that became a conditioned stimulus. That, you know, at first you
13 walked in and then in the days after, anytime you walked in, just
14 holding a towel was enough to get the -- regardless of who it was.
15 You know, it could have been the interrogator, could have been
16 someone else ----

17 A. Well ----

18 Q. ---- and they had the same thing, this towel that he put
19 around his neck. But assume, then, that person saw towels repeatedly
20 to the -- to the point where, you know -- even, you know, they used a
21 towel to dry themselves in the shower. They used, you know, towels
22 throughout the course of detention. And never -- they never went
23 back to EITs.

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1 A. They'd still remember.

2 Q. The deal would be that that mere sight of the towel
3 doesn't invoke that kind of response, right?

4 A. No. If it was ----

5 Q. At some point ----

6 A. If it was paired ----

7 Q. ---- that's extinction ----

8 A. I'm sorry. If it was paired with a traumatic stress? No,
9 the person never forgets it. They -- they may be able to then divert
10 their attention.

11 I've worked with people who they've changed the towels in
12 their house. They get a different kind of towel. They get a
13 different kind of carpet. They -- they rearrange things so there are
14 no more reminders of their traumatic event.

15 So I'm saying the towel would be conditioned with it. It
16 would not extinguish for someone who's experienced the EITs.

17 Q. Help me understand what you just said.

18 What -- a towel, you've worked with someone who had a towel
19 that was a trigger for them, and then because of that, they got
20 rid ----

21 A. Yes.

22 Q. ---- of those types of towels in their house?

23 A. Yes. With patients with PTSD, they'll tell you they'll

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1 rearrange the furniture. If it's a towel, if it's a smell, if
2 it's ----

3 Q. You're ----

4 A. ---- a different kind of -- the configuration of the room,
5 they'll either not get the apartment or they'll change the furniture
6 so it's no longer reminding them of the traumatic event.

7 Q. Okay.

8 A. People -- people make -- they make these memories and the
9 memories last for life.

10 Q. And ----

11 A. So if they can, they change the cue. They don't want that
12 stimulus around.

13 Q. Sure. But uncoupling or coupling can -- I'm sorry.
14 Strike that.

15 Yeah. And I want to focus on your understanding of what
16 Dr. Mitchell said, okay? And just make sure that you understand what
17 his understanding of the use of EITs and conditioned stimulus,
18 unconditioned stimulus, classical conditioning was.

19 And so I do want to ask you, you testified that -- that some
20 things that weren't intended to be conditioned stimulus could become
21 conditioned stimulus. You know, even if -- even if Dr. Mitchell
22 didn't intend a chair to be a conditioned stimulus, that could, in
23 the eyes of a detainee, that could become a conditioned stimulus.

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1 They could associate that with the ----

2 A. Yes. That's what's known as either context conditioning
3 or cue generalization. Fear generalizes over time in rodents and in
4 humans, and it expands to anything else it can associate with the
5 danger so that the animal will avoid that danger in the future.

6 Q. And Dr. Mitchell said that the uncoupling of the
7 conditioned stimulus and the conditioned stimulus, that can occur
8 while a person is still simultaneously experiencing fear.

9 A. I think his idea is that they would be uncoupled, yes.
10 His -- as far as I understand his belief, he believed that by -- by
11 appearing but not presenting the person with EITs, that the
12 conditioned fear would go away.

13 Q. Yeah. And they could ----

14 A. Yeah.

15 Q. And a detainee could still be fearful for many other
16 reasons other than just because of the conditioned fear. They could
17 be concerned about the nature of their indefinite detention, what's
18 going to happen to them next. Any number of things could cause fear
19 other than the conditioned fear that was used with them. Is that
20 fair?

21 A. Yeah. That's fair, although the fear induced by the EITs
22 is quite a bit more intense than the ultimate worry about how long
23 one's detention might be. But for fear conditioning, it would be

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1 pretty powerful.

2 Q. But they could be -- they could be fearful of being tried
3 and executed for murdering 3,000 people. Like, that could be a very
4 intense fear, right?

5 A. A fear of -- I'm sorry?

6 Q. Of being tried and executed for murdering 3,000 people.

7 A. That might -- that might evoke anxiety, if that's what
8 someone wanted to avoid, sure. That's different than saying the fear
9 from a traumatic stress.

10 Q. Right.

11 A. That's a different kind of fear.

12 Q. Sure. And that could exist completely separate from the
13 conditioned fear.

14 A. Sure.

15 Q. And, you know, the uncertainty of their families and their
16 well-being, that's a fear. You talked about that a little bit with
17 Mr. Sowards.

18 A. Yeah.

19 Q. That's a fear that would exist completely separate from
20 the conditioned fear.

21 A. It would -- it could be separate from the conditioned
22 fear. It depends on the -- it depends on what's in that person's
23 mind. Their -- it's their perception of what's going on that -- that

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1 is significantly at play in how the brain is making an association
2 between ----

3 Q. Right.

4 A. ---- stimuli and fear.

5 Q. And he never said that extinction equaled the absence of
6 fear, right?

7 A. Well, on his line on his graph, he implies that. Because
8 way over to the right when -- that drawing where he said it's
9 possible or highly unlikely that something would reemerge, he's
10 positing that it might show up later, but probably not, which is a
11 complete 180 in what our actual scientific understanding is about
12 conditioned fear.

13 When re-presented with a trauma cue, it will reemerge. It's
14 not highly unlikely. It's very highly likely. And it emerges
15 faster.

16 In fact, that's the purpose of the SERE program in a healthy
17 way. It's highly likely we want you to -- we want stuff flashing
18 back into your head and you're responding in the way you were trained
19 at SERE just so you can save your life if you are captured.

20 So it's baffling to me how someone who ran SERE programs
21 would draw a picture like that on a -- on a piece of paper and say
22 it's highly unlikely that fear-conditioned responses would show up
23 later in time when they're reminded of it. Because that was the very

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1 function, that was the very purpose of this whole program of military
2 training.

3 Q. Sure.

4 A. And it's completely -- it's completely at odds with what
5 we actually know for scientific fact.

6 Q. Was that ----

7 A. So that part of his drawing was baffling to me ----

8 Q. His ----

9 A. ---- and I can't explain it.

10 Q. His testimony, though, was that the conditioned stimulus,
11 the towel, things like that would go away and not be likely to bring
12 that fear back if there was -- there was regular exposure to that
13 conditioned stimulus and it was then not associated with the
14 unconditioned stimulus. That was his testimony, right?

15 A. I understand ----

16 Q. Okay.

17 A. ---- that is his belief.

18 Q. That's all I'm asking you.

19 A. All right. No, we're clear. He believes that ----

20 Q. Okay.

21 A. ---- it's true.

22 Q. And the fear itself might still extend out even though
23 separate from that conditioned fear? I think we've already covered

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1 that, right? That's your understanding of his testimony?

2 A. That's my understanding of his testimony, yes.

3 Q. And we've established that in your forensic examination,
4 you did not conduct a day-by-day timeline for Mr. Ali's experience in
5 the RDI program, right?

6 A. Yeah, I think it was clear about that, that that wasn't
7 necessary for what I was asked to render an opinion on.

8 Q. So ----

9 A. I think if there were more data, it would help fill out
10 the degree to which there were more cues that trigger his responding.
11 So since there's enough data to say he has PTSD, more data, if I were
12 able to review it, I would be able to identify a full array of cues.

13 Q. So ----

14 A. Those information might be in Dr. Shea's notes from the
15 CAPS.

16 Q. Which you haven't reviewed, right?

17 A. Well, I didn't need to. But I'm ----

18 Q. Okay.

19 A. ---- assuming you'll get to speak to Dr. Shea.

20 Q. So there might be details in the record, though, that
21 would counteract concepts like conditioned fear, right? What would
22 be inconsistent ----

23 A. I don't know what would be in the record that would

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1 counteract the conception of conditioned fear. I don't know what
2 that means. I'm sorry.

3 Q. Okay. I think it was a bad question.

4 There -- there might be details in the record that would
5 impact your assessment of whether conditioned fear was still present,
6 you know, whether -- there might be examples of reaction to a -- one
7 of the conditioned stimulus or not a reaction to one of the
8 conditioned stimulus -- stimuli.

9 Those types of things would be something you could consider
10 to assess whether or not conditioned fear was still present?

11 A. Well, for example, if the records had data of progressive
12 increasing exposure to EITs in tolerable doses, that would be an
13 example that they were actually doing flooding and trying to ----

14 Q. Okay.

15 A. ---- treat someone for PTSD. But -- but it's not just the
16 absence of the cue. But if I looked at the records, it's possible
17 they would have more data about the kinds of triggers that would
18 exacerbate ----

19 Q. Sure.

20 A. ---- his condition.

21 Q. Sure. And whether these other conditioned stimuli,
22 chairs, tables, shackles, movements, all of those things were
23 impacting the detainee in a way that would suggest he was still

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1 experiencing the condition to fear, if he was having reactions to
2 those things?

3 A. It might elaborate on it.

4 Q. Okay.

5 A. It's clear he met full criteria nearly 20 years later.

6 Q. And Dr. Mitchell testified -- and again, you agree with
7 how he went about it -- but do you agree that he testified about
8 wanting the accused to get into the operant conditioning phase as
9 quickly as possible? To move away from classical conditioning and
10 then move to using operant conditioning as quickly as they could.

11 A. Yes. That's my understanding.

12 Q. Okay. Okay. And that he wanted to use social influence
13 techniques to -- because that would result in more reliable
14 information coming from them, right?

15 A. Yes. This is Dr. Mitchell's theory ----

16 Q. All right.

17 A. ---- and what he's ----

18 Q. You ----

19 A. ---- retroactively drawn on a piece of paper, but it fits
20 theoretically with his idea of exploitation ----

21 Q. But then he testified that was ----

22 A. ---- that's in his writing.

23 Q. I'm sorry.

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1 A. I just ----

2 Q. Did you ----

3 A. Yeah, I'm sorry. The -- it is compatible with the idea he
4 expressed in the writing that operant conditioning, giving reward and
5 punishment, it is -- essentially it's shaping behavior later.
6 Operant condition is rewarding behaviors you like, dis-attending to
7 behaviors you don't like. So that would fit with the model as
8 expressed in the writing that he and Dr. Jessen gave out on the -- on
9 the ----

10 Q. And that ----

11 A. ---- on the layout of the program.

12 Q. And yeah. And that's not something that -- that he
13 determined for the first time in the chart that he drew. That's
14 something that was -- that formed the basis of the program in his
15 mind. That was his testimony, right?

16 A. Yes. But I ----

17 Q. That's what's in his ----

18 A. I don't know. It would have been nice to see that drawing
19 from more than 20 years ago. But it certainly is compatible with the
20 ideas laid out ----

21 Q. Right.

22 A. ---- in the writing, so ----

23 Q. Right.

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1 A. Yeah, so I believe that. It's just that it was produced
2 so late. It's a -- it's a retrospective reconstruction of what he
3 believed he was doing.

4 Q. Well, he was ----

5 A. So I don't know if that's what he actually did.

6 Q. Do you agree that he was trying to explain that to people,
7 you know, with the graphic demonstration?

8 A. I would agree with that. I think he was trying to explain
9 what he thought he did.

10 Q. And it was clear that it was -- it was explaining the
11 whole program and how -- you know, how to look at it on a chart,
12 basically?

13 A. That's my understanding of what he was trying to do, yes.

14 Q. Got it. Now, Mr. Ali was transported with shackles and
15 without incident on hundreds of occasions. And the record shows that
16 he had no expectation when he was shackled that anything was to occur
17 other than just the mundane exercises of security.

18 ADC [MS. PRADHAN]: Objection. Objection, Your Honor.
19 If -- if counsel has a document he'd like to point to that says that,
20 that's fine. But this is assuming facts actually not in the record
21 and contrary to the record.

22 MJ [Col McCALL]: Mr. Groharing?

23 TC [MR. GROHARING]: I don't intend to ask -- to show him a

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1 document. I'm asking him what his understanding of -- and if counsel
2 wants to go and say they have a different understanding of the
3 record, that's fine. But I'm not going to go and produce every
4 record of every movement Mr. Ali had to show to the witness, nor
5 should I have to.

6 MJ [Col McCALL]: Yeah ----

7 ADC [MS. PRADHAN]: This is directly contrary to the record.

8 MJ [Col McCALL]: So ----

9 TC [MR. GROHARING]: That's why we have cross.

10 MJ [Col McCALL]: Let's not have a back-and-forth.

11 So objection is overruled. I'll allow the question.

12 I'm taking it as -- again, with the -- the volume of
13 documents we have in this case, I'm going to allow counsel to ask
14 questions if the witness is aware of what may have happened, or if
15 not -- you know, I can interpret what -- the facts that the counsel
16 is putting out there and what the doctor has to say about it.

17 So go ahead and ask your question again, Mr. Groharing.

18 TC [MR. GROHARING]: Okay.

19 Q. And I believe -- I'll try to ask a better question.

20 In your declaration you asserted that shackles were a
21 fear-based cue, right?

22 A. Yes.

23 Q. What can you point to in the medical record that supports

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1 that? What evidence of Mr. Ali's reaction to being shackled, can you
2 point to anything that supports that?

3 A. Well, that's not based on the medical record to know that
4 cues that are associated with being immobilized, losing your freedom
5 of movement, being sort of temporarily blind, not having sound, not
6 being able to speak, those are what we call immobilization stress,
7 sensory deprivation stress.

8 And those are all techniques that are used to produce
9 uncontrollable stress in nonhuman animals. And they are techniques
10 that are used to produce stress in humans and to restrict their
11 ability to orient to where they are and to control their movement.

12 So whether the intent on the part of the person doing it is
13 malevolent or benign doesn't matter. It's the experience of the
14 person ----

15 Q. Sure.

16 A. ---- in that situation. So I ----

17 Q. And ----

18 A. Those -- those kinds of things, shackling, hooding,
19 restricting vision, those are uncontrollable stressors. Those are
20 cues that become -- he is not in control of those and they are
21 stressful.

22 Q. They certainly could be. Let's go back to my question.

23 I asked you what you'd point to that shows a reaction that

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1 Mr. Ali had that is tied to being shackled. Not all of this other,
2 just shackling.

3 A. At what point? Oh, just shackles. No, it's kind of
4 common sense when you understand the literature on uncontrollable
5 stress.

6 Q. Okay.

7 A. It -- it's -- it's a cue. When paired in the context that
8 we're talking about, constitutes a cued -- a conditioned stimulus.

9 Q. Okay. But you can point to nothing in the record that
10 supports that, though?

11 A. Well ----

12 Q. That was the question.

13 A. ---- the record is often censored. So no, I don't know if
14 there's something in the record where he would say that to someone.

15 We know that he expressed fear about his conditions, fear
16 about what had been done to him, nightmares about what had been done
17 to him.

18 Q. Well ----

19 A. And so those -- those are pretty good indications. And
20 when we think about PTSD, we think about the context associated with
21 trauma ----

22 Q. Doctor, if I could ----

23 A. ---- and shackling is.

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1 TC [MR. GROHARING]: Your Honor, if I could have some help
2 here?

3 Q. I'm trying to ask you questions to -- to move this along
4 as efficiently as possible, and relatively straightforward questions.
5 Your nature -- and I respect that you've got a lot to say. You've
6 said a lot of this already and you're going back and, you know, just
7 repeating your prior testimony.

8 I'm trying to just ask you particular points, and so if you
9 could just help me and focus on the questions. And if I ask you a
10 question that doesn't make sense or you can't answer, just let me
11 know ----

12 A. Well, I thought the premise was ----

13 Q. ---- and I'll rephrase.

14 A. ---- I thought the premise was incorrect. And usually if
15 I'm asking a question to which the premise is incorrect, the answer
16 can be misleading.

17 Shackling was done, my understanding, at other sites for
18 standing and isolation. And so shackling itself would become a
19 conditioned cue.

20 Q. Yeah, I ----

21 A. There doesn't have to be a note in the medical record to
22 let me know, in my professional expertise, that that is a cue.
23 That's a conditioned cue.

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1 Q. Doctor ----

2 MJ [Col McCALL]: Dr. Morgan -- hold up, Mr. Groharing.

3 WIT: Yeah.

4 MJ [Col McCALL]: Dr. Morgan, it will be helpful if you can
5 try to confine yourself to answering the questions ----

6 WIT: Okay.

7 MJ [Col McCALL]: ---- that counsel's asking.

8 Ms. Pradhan will get an opportunity to come up ----

9 WIT: Okay.

10 MJ [Col McCALL]: ---- and ask you to elaborate. But ----

11 WIT: Sure.

12 MJ [Col McCALL]: So let's go with that ----

13 WIT: ---- all right.

14 MJ [Col McCALL]: ---- process.

15 Go ahead, Mr. Groharing.

16 Q. So let's go all the way back to my question.

17 You can't point to anywhere in the record that documents a
18 response from Ali to being shackled, a response of conditioned fear?

19 A. I don't respond -- I don't recall anything pinpointing
20 that precisely, but I ----

21 Q. Okay.

22 A. ---- do recall his statements about his condition.

23 Q. Okay. I want to ask you about plastic chairs.

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1 Are you aware of anything in the record anywhere that
2 supports -- or that documents a conditioned fear response from
3 Mr. Ali to a plastic chair?

4 A. Specifically to the chair itself?

5 Q. Right.

6 A. No.

7 Q. Okay. How about plastic tables?

8 A. No. Again, no.

9 Q. How about being blindfolded when a -- during a movement to
10 having his vision -- you know, being unable to see.

11 A. I'd have to look back at the record, but I believe there
12 are comments about his feelings about what he experienced ----

13 Q. Where did he do that?

14 A. ---- and not being able to -- being blindfolded.

15 Q. What record are you referring to?

16 A. I think it's in the OIG report.

17 Q. I want to shift gears and ask you about your understanding
18 of Mr. Ali's conditions of confinement throughout his detention. And
19 I'm not -- I'm not going to ask you anything that elicits -- that
20 would elicit classified information. That's not my intent. So let
21 me know if a question I have happens to do that. That's not my
22 intent.

23 If there is something we have to take up in closed, we will.

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1 I don't think any of these questions would elicit that -- that
2 information, and they're certainly designed not to.

3 So your understanding is Mr. Ali was EIT'd -- he was
4 subjected to EITs at Location 2, right? Correct?

5 A. Yes.

6 Q. And that was in May of 2003?

7 A. That's my understanding. I'll have to go back and look at
8 the exact date, but yeah.

9 Q. And he was held at Location 2 until sometime in September
10 of 2003?

11 A. It's my understanding.

12 Q. Does that sound right?

13 A. Yeah.

14 Q. And that after his enhanced interrogation, he was
15 debriefed for the remainder of the time at Location -- if he was
16 questioned, it was during the debriefing mode vice interrogation
17 mode; is that your understanding?

18 A. That is my understanding.

19 Q. And interrogation and debriefing had distinctly different
20 meanings for the CIA.

21 A. I'm aware it did for the CIA, yes.

22 Q. And so interrogation was more adversarial, more
23 confrontational, whereas debriefing was more question and answer; is

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1 that your understanding?

2 A. That's my general understanding of it, yes.

3 Q. More open-ended questions designed to elicit, you know,
4 not yes or noes, more information from the detainees?

5 A. My understanding is that was their -- that's what they
6 said they were doing.

7 Q. Okay. And do you have any reason to think that that was
8 not what they were doing during debriefing?

9 A. Well, the videotapes were -- the CDs were destroyed, so I
10 can only speculate. I'm trusting that they did what they say they
11 did, yeah.

12 Q. To what CDs are you referring to?

13 A. At the Agency when there was the request for the
14 interrogation videos.

15 Q. Are you talking about Abu Zubaydah's enhanced
16 interrogation?

17 A. I'm just talking about the CDs that were -- DVDs at the
18 CIA and they vanished. So I would say I have to trust that they did
19 what they said they were doing.

20 Q. You're talking about CDs. Are you talking about the tape
21 destruction of Abu Zubaydah's enhanced interrogation techniques?

22 A. Not exactly, no.

23 Q. You're talking about CDs of Mr. Ali's debriefings or

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1 something? Are you suggesting that those existed and somehow
2 vanished?

3 A. I can talk about that in a closed session once we talk to
4 the Agency.

5 Q. Sometimes the debriefing sessions were lengthy. Sometimes
6 they were just asking him whether he recognized a photo, right? Is
7 that your understanding?

8 A. That is my understanding.

9 Q. And not all black sites were outfitted the same? You've
10 looked at the photos of black sites and reviewed descriptions of that
11 in the OIG report. They had different configurations, different
12 amenities?

13 A. I believe they were fairly similar based on my observation
14 of things.

15 Q. But as far as amenities to which the -- were made
16 available to the detainees, that was different throughout the black
17 sites?

18 A. There were some differences, yes.

19 Q. And is it fair to characterize that as the amenities, the
20 things that the detainees were able to have, improved over time?
21 They increased over time?

22 A. That is my understanding.

23 Q. They got greater access to reading materials, ultimately

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1 video games, those types of things? Is that your understanding?

2 A. That's my understanding.

3 Q. As it transitioned from a interrogation setting to a
4 debriefing setting, a more comfortable setting.

5 A. Yes. And I believe on Dr. Mitchell's chart, that would be
6 the operant conditioning phase of offering rewards for behavior he
7 liked.

8 Q. Right. Or whoever else. Like ----

9 A. Or whoever else.

10 Q. And Location 2, as far as the physical location, was much
11 different than the actual locations. Do you agree with that?

12 A. Yeah. I think the similarities are pretty striking
13 between the two, but they are different.

14 Q. But Location 2 was complete darkness, right?

15 A. Yes.

16 Q. No other place was complete darkness.

17 A. No other place was complete darkness, but I think there
18 are other features that are very similar.

19 Q. Okay. Just with regard to, you know, whether or not there
20 was light or not, Location 2 was dark.

21 A. Yes.

22 Q. And the other locations were light.

23 A. That's correct.

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1 Q. Okay. And within the OIG report and the SSCI Report, both
2 of which you've reviewed, there are a number of characterizations of
3 that facility, right?

4 A. Yes, there are.

5 Q. And it was described as dreadful, traumatic, CIA officers'
6 house of pain, freezing, hard to imagine, having squalid conditions,
7 something out of a horror show, a slimy side of what we do, a
8 primitive prison, and it looked like a Nazi concentration camp. Are
9 you familiar with all of those descriptions?

10 A. Yes.

11 Q. Are you aware of any other description of any other
12 facility that's anything like that?

13 A. I didn't see descriptions by people of the other
14 facilities like that.

15 Q. But -- and you reviewed photos?

16 A. I did.

17 Q. And the other facilities were more sterile? They had been
18 described as sterile?

19 A. I described them as they're sterile environments, and
20 they're -- they're highly similar in their sterility across the
21 sites.

22 Q. Very clean -- right? -- the other facilities?

23 A. Yes.

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1 Q. And Dr. Mitchell described the cells the detainees were
2 held at at Location 2 to be horse -- like horse stalls.

3 A. Yes.

4 Q. Much different than the photos you saw of the other -- I
5 would assume, of the other facilities, right?

6 A. Yes, I think part of that's obvious. Yes.

7 Q. And that's where Mr. Ali was subjected to the enhanced
8 interrogation techniques? It was that Location 2 site?

9 A. That is my understanding, yes.

10 Q. Are you aware that, according to the OIG investigation,
11 that Mr. Ali was assessed prior to EITs being applied to him? There
12 was a psychological assessment prior to enhanced interrogation
13 techniques being applied?

14 A. Yes.

15 Q. You're familiar with that assessment?

16 A. Yes.

17 Q. What's your understanding of that assessment?

18 A. It would be invalid. An assessment -- a psychological
19 assessment before applying EITs would be really simply an assessment
20 of whether the person was alert, oriented. There would be no ability
21 to determine by doing a psychological assessment other than seeing if
22 they were awake, could pay attention, to determine the impact of it
23 on them.

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1 So I find the assessment would be really questionable from a
2 psychiatric perspective.

3 Q. Because you have no idea of what they actually did or
4 didn't do, right?

5 A. I do know what the psychological -- psychological
6 assessments consisted of.

7 Q. But you don't know how a particular psychiatrist or
8 psychologist went about conducting this psychological assessment.

9 A. Well, I did speak to my colleagues at the CIA when I was
10 consulted.

11 Q. You have no knowledge of this psychological assessment of
12 Mr. Ali, do you?

13 A. Not his specifically, no ----

14 Q. Okay.

15 A. ---- but in psych, the assessment is not unique to the
16 individual. There's an assessment of concentration, vigilance,
17 attention, awareness of one's surroundings.

18 Q. Okay. And Mr. Ali described himself, he said his mood was
19 down at this time, below five on a scale of one to ten, and he was
20 very sensitive. Is that type of information, that type of
21 information that may have been provided before he was subjected to
22 enhanced interrogation techniques, is that something that could be
23 important to assess Mr. Ali's mental state and the impact of EITs on

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1 his mental state?

2 A. I think it would be.

3 Q. Okay. He also noted that he had a history of stomach
4 problems and was treated at the American Hospital in Dubai prior to
5 being detained.

6 Are prior health issues important to your evaluation?

7 A. Prior health issues with respect to psychiatry may be
8 important, depending on whether the condition has side effects that
9 affect a person's mental state. For example, if someone has an
10 adrenal problem called pheochromocytoma, they may experience panic
11 attacks. People may have different medical disorders that contribute
12 to depression.

13 Q. Sure.

14 A. So understanding a person's medical condition is really an
15 important part of the psychological assessment to make sure that
16 we've ruled out organic causes to a person's issues.

17 For example, sleep apnea. It's -- it produces depression in
18 people. So if someone's evaluated and appears to have major
19 depression, we have to make sure that we can rule out sleep apnea
20 because it's a treatable cause for major depression.

21 Q. Sure. And all that's important to ultimately assessing
22 later on his mental state and what may or may not have caused changes
23 to Mr. Ali's mental state. All that would be important to consider,

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1 right?

2 A. Oh, I don't know what was in the mind of the person
3 evaluating him. If -- if the intent was to compare how a person was
4 from timeline A to B to C to D, we would expect to have a record of
5 standardized assessments on those variables over time.

6 Q. And so back to Location 2. He was debriefed for almost
7 three months with no more EITs. That's your understanding, right?

8 A. Yes, and reminded that they could go back to them.

9 Q. And -- but he never did.

10 A. It wouldn't matter. But he wasn't, no.

11 Q. And he was never subjected to sleep deprivation after his
12 initial period of enhanced interrogation techniques.

13 A. Not that I'm aware.

14 Q. And are you aware of any harsh treatment toward Mr. Ali
15 following his period of enhanced interrogation techniques?

16 A. I don't know what you mean by harsh treatment. Do you
17 mean EITs? If we're going to be specific. I don't -- I mean, I
18 don't know ----

19 Q. Okay.

20 A. ---- I don't know if -- my understanding is he was not
21 reexposed to EITs.

22 Q. Okay. What -- is your understanding that he was exposed
23 to any other harsh treatment?

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1 A. I don't know what you mean by harsh treatment. What would
2 be harsh? I'm -- you're asking me to answer a question, but I don't
3 know what you mean by harsh.

4 Q. Okay.

5 A. What's harsh?

6 Q. Fair enough. That's a good example of me asking a bad
7 question that's not easy for you to answer. And it's helpful for
8 you, then, to then explain.

9 A. Okay.

10 Q. I'll represent to you that -- I want to give you one
11 description of an individual who interacted with Mr. Ali on 13
12 occasions during debriefings during his time at Location 2. And this
13 is from mid-June until towards the end of August, okay? And -- and
14 the individual is NE5, for -- for everyone else's purpose.

15 But he indicated that he spent a lot of time -- this
16 is -- this is when he was interviewed for the IG investigation where
17 Mr. Ali had made his complaints and the IG went and interviewed a
18 bunch of people and got their statements about what they knew or
19 didn't know about the allegations. Okay?

20 MJ [Col McCALL]: Ms. Pradhan?

21 ADC [MS. PRADHAN]: Sorry. Just can I ask for a record cite
22 for what exactly Mr. Groharing is referring to in the OIG report?
23 What page ----

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1 MJ [Col McCALL]: Sure.

2 TC [MR. GROHARING]: It's -- it's -- this is not in the OIG
3 report. But I can -- let me just confirm -- I mean, I can give them
4 the actual -- the underlying report. The ----

5 MJ [Col McCALL]: Well, ask you question and then maybe that
6 will ----

7 TC [MR. GROHARING]: Okay.

8 MJ [Col McCALL]: Like, is there a document you're referencing
9 or are you just referencing, in general, when he was questioned?

10 TC [MR. GROHARING]: I'm talking generally about information
11 he provided during his -- when he was interviewed by the -- not
12 Mr. Ali, this -- this NE5, when he was interviewed by the OIG.

13 This information I don't believe all made it into the
14 ultimate report. But it's in -- it's in a report that's been
15 provided to the defense. So I can provide that report to them.

16 MJ [Col McCALL]: Yeah, if you can give a citation for that.

17 TC [MR. GROHARING]: And I'm -- just one moment, if I could
18 ask the court's indulgence.

19 MJ [Col McCALL]: Sure. Take your time.

20 **[Counsel conferred.]**

21 TC [MR. GROHARING]: Judge, I don't think I can get that
22 quickly. I can certainly find that during the break.

23 MJ [Col McCALL]: Well, about -- well, let's do this. About

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1 how much longer do you have? If you're getting close -- and I'm not
2 trying to rush you at all -- we will go ahead and have a later lunch
3 hour. If it's a good point to break, then we'll break.

4 TC [MR. GROHARING]: I didn't realize it was noon. Yeah, I
5 think breaking probably makes sense. Then we can find this and just
6 pick up right where we are.

7 MJ [Col McCALL]: All right. That works.

8 All right. So what we're going to do now is take a recess
9 until 1330.

10 And I see that there is housekeeping. Should I go ahead and
11 excuse the witness?

12 LDC [MR. CONNELL]: Yes, sir.

13 MJ [Col McCALL]: All right. Dr. Morgan, thank you for your
14 testimony this morning. Just like yesterday, please don't discuss
15 your testimony with anyone, to include counsel for any of the
16 parties. But at this time you can go ahead and leave the courtroom.
17 We're going to be back on the record at 1330 ----

18 WIT: All right.

19 MJ [Col McCALL]: ---- hopefully.

20 **[The witness was warned, was excused, and withdrew from the**
21 **courtroom.]**

22 MJ [Col McCALL]: The witness has left the courtroom.

23 What do you have, Mr. Connell?

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1 LDC [MR. CONNELL]: Sir, I just wanted to let you know that
2 it's our understanding from the government that WK5I is available
3 next week.

4 MJ [Col McCALL]: Perfect.

5 LDC [MR. CONNELL]: Gives us flexibility around ----

6 MJ [Col McCALL]: No, I appreciate the government working
7 that. And we will -- yeah, it seems that we will be in open the rest
8 of today. We'll see how far we get and then go into the closed
9 portion when we get there at some point tomorrow, it seems like.

10 Mr. Trivett?

11 MTC [MR. TRIVETT]: So based on that, sir, can I inform
12 Special Agent McFadden that his testimony won't begin any earlier
13 than Tuesday?

14 MJ [Col McCALL]: Seems to me -- well, and again, I don't know
15 where WK5I is. Is this -- are we going to be able to start on Friday
16 and then have them stay over the weekend? Which is fine with me, but
17 I don't know, like, what their travel arrangements are. Or start
18 with them on Monday and we can do oral argument on Friday. I'm
19 flexible.

20 MTC [MR. TRIVETT]: So the doctor's in the -- in the Remote
21 Hearing Room area.

22 MJ [Col McCALL]: Okay. Then let's ----

23 MTC [MR. TRIVETT]: She's available to start tomorrow, she's

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1 available to start Friday. And she -- it's really just an estimate
2 as to whether or not she's going to take longer than a day or two.
3 And if so, then it's likely she would move to Monday, but she is
4 available.

5 MJ [Col McCALL]: Let's tell Agent McFadden to plan on
6 starting on Wednesday. And then that way, if we run long with WK5I,
7 great. And if not, well, we'll fill it with oral argument.

8 MTC [MR. TRIVETT]: Roger that, sir.

9 MJ [Col McCALL]: All right.

10 All right. Commission's in recess.

11 **[The R.M.C. 803 session recessed at 1204, 08 May 2024.]**

12 **[The R.M.C. 803 session was called to order at 1337, 08 May 2024.]**

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

14 The parties are present. The accused is absent. The
15 witness is not on the witness stand.

16 Any housekeeping matters to take up before we bring the
17 witness back in?

18 LDC [MR. CONNELL]: Your Honor, there was a pending sort of
19 classified question, record question, that was before the military
20 commission when we broke.

21 MJ [Col McCALL]: I'm tracking.

22 LDC [MR. CONNELL]: We've spent some time working through
23 that.

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1 MJ [Col McCALL]: Okay.

2 LDC [MR. CONNELL]: And I don't know if the government wants
3 to say its position first, but we're prepared to address it.

4 MJ [Col McCALL]: Sure. What do you have? What do you have,
5 Mr. Connell?

6 LDC [MR. CONNELL]: Your Honor, the government did give us the
7 AE number of the document it plans to question from, and it's our
8 understanding that the government wants to question on the substance
9 of a classified document, which is something that we've never been
10 allowed to do.

11 There are certain very narrow ways in which one can use an
12 open -- classified document in open, and there are certain carve-outs
13 but this doesn't fall into either that in a special way or that
14 carve-out.

15 So I am intensely aware that ultimately it's the
16 government's classified information privilege and they can assert it
17 or waive it over themselves. But it seems to me that this would be a
18 much better topic for closed if you -- if the government intends to
19 question from STA-00005773, as it advised.

20 MJ [Col McCALL]: All right. Mr. Groharing?

21 TC [MR. GROHARING]: And I'm -- Your Honor, I don't think it's
22 correct to say I'm questioning from the document. There's some
23 information in a classified document that in essence describes this

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1 particular person that I was describing before the break, his
2 interactions with Mr. Ali. It's completely unclassified. It's ----

3 MJ [Col McCALL]: Is it portion marked?

4 TC [MR. GROHARING]: It's not portion marked. But I'm
5 confident that I -- the information is not classified or I wouldn't
6 have been asking it.

7 MJ [Col McCALL]: Well, I mean, I'll say this. I mean,
8 Mr. Trivett, let's hear from you because I know you're addressing the
9 classified issues on this.

10 Are we good with using this procedure going forward for the
11 defense?

12 MTC [MR. TRIVETT]: Sir, there's no reading directly from any
13 classified document. I'm not that familiar with what Mr. Groharing's
14 intending to do or ask in this issue.

15 So there is a distinction, obviously, between reading from a
16 classified document verbatim and then discussing something that might
17 be in a classified document that you know to be unclassified.

18 So nothing would be changing in that regard. But again, I'm
19 not sure exactly. I'd have to talk to Mr. Groharing to see exactly
20 what the intent was on this ----

21 MJ [Col McCALL]: Okay.

22 MTC [MR. TRIVETT]: ---- just to make sure we're being
23 consistent. We do want to be consistent with other practices. I

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1 just don't see this as being inconsistent.

2 MJ [Col McCALL]: Okay. Mr. Groharing?

3 TC [MR. GROHARING]: Yeah, I -- yeah, I don't want to have any
4 kind of advantage. I just -- you know, it's information that
5 I -- that was contained within a classified information that I was
6 confident was unclassified information that we have. And
7 unfortunately in many, many, many instances there are documents that
8 aren't portion marked that contain classified information, so ----

9 MJ [Col McCALL]: I know.

10 TC [MR. GROHARING]: ---- I don't want to muck up this issue.
11 It's -- frankly, it's a pretty minor point. And ----

12 MJ [Col McCALL]: Let's just save it for closed, then.

13 TC [MR. GROHARING]: Okay.

14 MJ [Col McCALL]: All right. Any other issues to address?

15 All right. Let's bring the witness in.

16 **[The witness, Dr. Charles Alexander Morgan III, resumed the witness**
17 **stand.]**

18 MJ [Col McCALL]: Welcome back, Dr. Morgan. Please have a
19 seat. I remind you you're still under oath.

20 All right. Over to you, Mr. Groharing.

21 **CROSS-EXAMINATION CONTINUED**

22 **Questions by the Trial Counsel [MR. GROHARING]:**

23 Q. Okay. Dr. Morgan, we were talking about Location 2 and

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1 Ammar transitioning to the -- to debriefing from interrogation. And
2 is that your understanding, that after being subjected to EITs, he
3 was transitioned to what I'll call debriefing mode or only subjected
4 to debriefings after the EIT period?

5 A. Yes. That's my understanding.

6 Q. Okay. And then in September of 2003, Mr. Ali was
7 transferred to Location 7. Is that your understanding?

8 A. That is, yes.

9 Q. Okay. And the OIG report to which you've testified about
10 described Location 7 as clean, sterile, efficient, and modern. Is
11 that consistent with your understanding?

12 A. Yes.

13 Q. The cells were described as spotless and Agency officers
14 provided good food, showers, and regulated the temperature of the
15 facility. Is that consistent with your understanding?

16 A. Yes.

17 Q. Didn't have loud music playing?

18 A. I'm not aware of whether loud music was played or not
19 played at Location 7.

20 Q. Okay. Did your review of photos or otherwise provide any
21 information that was inconsistent with the description that I've just
22 provided?

23 A. In the cell -- I know in my observation, there

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1 were -- it's consistent with what you're describing, yeah.

2 Q. Okay. And then in the report, SM1 is quoted as -- this is
3 again in that same report -- saying that the role of the
4 interrogators at that point was to enhance Mr. Ali's comfort with his
5 new surroundings.

6 Is it your understanding that the conditions of confinement
7 starting at Location Number 7 were improving?

8 A. Yes. That's my understanding.

9 Q. And interrogators noted that at Location 7 Mr. Ali
10 appeared bright, fully engaged, and interacted easily and pleasantly
11 with debriefers.

12 A. That's my understanding of what they said, yes.

13 Q. And is it your understanding that at Location 7, they used
14 plastic furniture, plastic tables and chairs similar to what was used
15 at Echo II?

16 A. Yes.

17 Q. Are you aware of any information that Mr. Ali demonstrated
18 symptoms of PTSD when he was being debriefed at Location Number 7?

19 A. I don't know. I'd have to go back and look at the report.
20 But I -- as I sit here now, I don't -- I don't recall.

21 Q. Okay. And is it your understanding he was shackled during
22 those debriefings as well?

23 A. That is my understanding, yes.

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1 Q. Do you have any evidence to suggest that he demonstrated
2 signs of PTSD when he was shackled during those debriefings?

3 A. No, I haven't seen any notation about that.

4 Q. Have you reviewed the reports from the psychologists who
5 examined Mr. Ali during the time he was at Location Number 7?

6 A. No.

7 Q. And it is your understanding that when he was questioned,
8 it was either in his cell or at -- in a plastic table -- at a plastic
9 table with a plastic chair?

10 A. Yes.

11 Q. The OIG report references -- you've already talked about
12 this, I believe it was on Monday -- an instance where the
13 interrogator thought Mr. Ali was untruthful. Do you recall that?

14 A. Yes.

15 Q. And during that exchange, his debriefer indicated that
16 Mr. Ali got very, very nervous when she told him that the information
17 didn't add up. Do you remember that?

18 A. I do.

19 Q. And getting nervous after being confronted about lying,
20 that doesn't equate to PTSD, right?

21 A. I'm not sure I interpreted that scenario in the way you
22 have, so I'm not quite sure how to answer. He was nervous after
23 being told that he was effectively lying.

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1 Q. Okay.

2 A. All that tells me is that being told that the interrogator
3 did not believe him, that it -- the person did not believe him
4 created a state of anxiety in him. It doesn't speak to whether or
5 not he was lying.

6 Q. Sure, yeah. Fair enough. But getting nervous is a very
7 common reaction to someone who was -- is caught in a lie, right?

8 A. No.

9 Q. No?

10 A. Scientifically, we know it is not a significant indicator
11 of lying or truth-telling. As a matter of fact, in some situations
12 truthful people may exhibit more anxiety than deceptive people.

13 We do know that interviewers, psychiatrists and police
14 alike, often interpret anxiety as a sign that someone's lying. But
15 scientifically that is -- that has never held up as an empirical
16 fact.

17 Q. And Mr. Ali was not threatened with -- there's no evidence
18 that he was threatened with repercussions or other measures,
19 right ----

20 A. I didn't see anything that was documented.

21 Q. ---- in that report?

22 A. I didn't see any documentation that he was or wasn't.

23 Q. And there's no indication that any display of anger or

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1 yelling or anything towards Mr. Ali, right?

2 A. I didn't see anything documented about that.

3 Q. And in the same report, another interrogator described
4 Mr. Ali as never being anything other than cooperative at Location 7.
5 Is that consistent with your understanding of Mr. Ali's experience at
6 Location 7?

7 A. It's my understanding of their description of how he
8 appeared to them.

9 Q. But is that your understanding based on your review of
10 information of Mr. Ali's experience at Location Number 7?

11 A. It's my understanding that he had experience of anxiety,
12 and it's my understanding from the notation about how that was
13 perceived by people who saw him. But that's all I know from that
14 moment.

15 Q. To what document are you referring?

16 A. Well, how he -- how he appeared later in the 2006
17 evaluation.

18 Q. Oh, so you're referring to something -- a medical report
19 three years later ----

20 A. Yes.

21 Q. ---- not in real time?

22 A. But in those notes, it's referred to him as thinking back
23 in time. So that would be the reference point.

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1 But at -- from notes at that time, no, I have not seen
2 anything to indicate that.

3 Q. And then in the spring of 2004, Mr. Ali was transferred to
4 Location 5. And at Location 5, is it your understanding he was only
5 debriefed there?

6 A. That was my understanding, yes.

7 Q. And the OIG investigation did not reveal any mistreatment
8 of Mr. Ali at Location 5, did it?

9 A. I am not aware of any report of mistreatment.

10 Q. Are you aware of any information inconsistent with the IG
11 investigation ----

12 A. I am not.

13 Q. ---- regarding ----

14 A. Not at present, no.

15 Q. And then in early 2005, Mr. Ali was transferred to
16 Location Number 8. And the investigation revealed that Mr. Ali was
17 only debriefed at Location Number 8 and he received good care. Is
18 that your understanding?

19 A. That's my understanding.

20 Q. And at Location 8, Mr. Ali was described as one of the
21 more cooperative, likable, and even gentle detainees. Do you recall
22 that from the report?

23 A. I do.

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1 Q. And Location Number 8 was a nicer facility; is that fair
2 to say?

3 A. That's in the eye of the beholder. I have no evidence to
4 say that it was better or worse than the previous place he was.

5 Q. You -- you reviewed photos of all the locations?

6 A. I have.

7 Q. And Location 8 had a bathroom and shower in the cell of
8 the detainee?

9 A. Yes.

10 Q. And that was not available at previous locations, right?

11 A. Not to my knowledge, no.

12 Q. So it was an improvement in amenities, more things
13 available to -- consistent with what you talked about before.

14 As -- as his time in the RDI program went on, Mr. Ali and other
15 detainees were provided with additional amenities.

16 A. Yes.

17 Q. And then he was transferred to Location 9 in early 2006
18 after about a year at Location 8. And again, Location 9 was also
19 only used for debriefing, correct?

20 A. Yes. That's my understanding.

21 Q. And again, at Location 9, he had an in-room shower and
22 climate control.

23 A. Yes.

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1 Q. Access to an outdoor gym.

2 A. I believe so, yes.

3 Q. With a basketball hoop.

4 A. I don't recall whether there was or wasn't a basketball
5 hoop. It's possible.

6 Q. You didn't see that in the photos you looked at?

7 A. I don't recall as I sit here whether I saw a basketball
8 hoop or not. I'll take your word for it there's a basketball hoop.
9 That's -- yeah.

10 Q. What about a multipurpose machine for weight lifting? Do
11 you recall seeing that in the photos?

12 A. I'd have to relook at the photos. I don't recall that.

13 Q. Okay. A stair-stepper -- or, I'm sorry, elliptical
14 machine?

15 A. I don't recall seeing an elliptical machine.

16 Q. Okay. And they had access to video games -- Mr. Ali and
17 the other detainees -- video games, movies, books at that location.

18 A. Yes. That's my understanding about that.

19 Q. Okay. Are you aware of any physical abuse of Mr. Ali at
20 that location?

21 A. I am not.

22 Q. And that location was described as a low-stress location.
23 Are you familiar -- have you seen that description?

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1 A. I don't quite recall that -- that phrasing, but it could
2 have been, yeah.

3 Q. Based on Dr. Mitchell's testimony -- you indicated you're
4 familiar with his testimony -- he said by that point in detention,
5 the debriefers were using social influence techniques. Is that your
6 understanding?

7 A. That's my understanding of what they thought they were
8 doing, yes.

9 Q. But it was question-and-answer interviews with Mr. Ali;
10 that's your understanding?

11 A. Yes.

12 Q. Now, in September of 2006, they were -- Mr. Ali was
13 transferred, and the others, to Guantanamo Bay. Have you read the
14 testimony of the first camp commander from Guantanamo Bay?

15 A. You might want to refresh my memory with a document, and I
16 can tell you whether I've seen it or not. I don't recall.

17 Q. It was not among the items you listed at any point during
18 our prior discussion of -- of something you reviewed in advance of
19 your testimony?

20 A. It doesn't -- it doesn't ring a bell, so I -- I don't
21 believe I've seen it, but...

22 Q. Okay.

23 A. I'd be happy to -- happy to see it if you'd like me to

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1 look at it.

2 Q. Okay. It was an Army lieutenant colonel. Does that ring
3 any bells?

4 A. Again, if you could just -- I don't like guessing games.
5 If you have a document you'd like me to review, I'd be happy to
6 review it.

7 Q. Well, I'll see if I can jog your memory with -- with some
8 questions.

9 He -- he -- he met with the accused upon their arrival at
10 GTMO. Are you familiar with what happened upon the accused's arrival
11 at GTMO?

12 A. Again, if you'd like to refresh my memory, I can comment
13 on it.

14 Q. So as you sit here, you don't know what happened to -- at
15 their arrival?

16 A. If you'd like to show me something to review, I'd be happy
17 to be able to tell you my opinion. I don't recall as I sit here.

18 ADC [MS. PRADHAN]: Objection, Your Honor. It's -- it's
19 really not clear whether the question pertains to the specific
20 testimony of the former Camp VII commander or whether it's just a "do
21 you know what happened to Mr. al Baluchi when he arrived at GTMO?"

22 MJ [Col McCALL]: Well, I think the questioning changed,
23 but ----

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1 TC [MR. GROHARING]: Right.

2 MJ [Col McCALL]: So, Dr. Morgan, try to answer the question.
3 I know that he was previously asking you about the Camp VII
4 commander. But ----

5 WIT: Oh.

6 MJ [Col McCALL]: ---- Mr. Groharing, go ahead and ask that
7 last question that you had.

8 TC [MR. GROHARING]: Sure, sure.

9 Q. What is your understanding of what happened when the
10 accused arrived at Guantanamo Bay?

11 A. You'd have to be more specific. What is my understanding
12 of what happened is that he was transferred to Guantanamo Bay. I
13 know that he underwent a mental health evaluation because I saw the
14 initial mental health evaluation from 2006. But I don't know what
15 happened once -- when he directly arrived.

16 Q. Okay. Are you aware of how they were in-processed at
17 Guantanamo Bay, how that process worked?

18 A. I'm aware of some of that process. It's sort of
19 whether -- how people were transported and when they arrived.

20 Q. So I'm getting at once at Guantanamo Bay, there
21 was -- they were in-processed. Are you familiar with that process as
22 you sit here today?

23 A. Well, that's why I was asking if you'd like to show me

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1 something, because I can tell you whether I am or am not familiar
2 with it. I -- I don't know. I don't know what you're referring
3 specifically to ----

4 Q. Okay.

5 A. ---- whether you're referring to what kind of clothing
6 they were wearing, were they shackled, were they -- were they
7 deprived of seeing what was going on around them, was their hearing
8 blocked and things like that when they were being transported.

9 I don't know what you're asking me to answer, so
10 I'm -- I'm ----

11 Q. Okay. Are you aware they were told they were in the
12 custody of the United States military?

13 A. I am aware of that.

14 Q. And that they were being held at Guantanamo Bay, Cuba?

15 A. Yes.

16 Q. And that the camp commander told them that they would be
17 treated humanely in accordance with the Geneva Conventions?

18 A. Yes.

19 Q. And that is something that the detainees were never told
20 during their CIA detention, right?

21 A. Okay. I have no idea what they were told specifically
22 during -- throughout their detention, but I accept the fact they were
23 told that when they arrived here.

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1 Q. Okay. Do you have any information to suggest that anybody
2 in the CIA told the accused that the Geneva Conventions applied to
3 them?

4 A. No, I don't. But I didn't want to assume.

5 Q. And there were rules posted in the camp, at Camp VII?

6 A. That's my ----

7 Q. That's your understanding?

8 A. That's my understanding.

9 Q. And the guards were in military uniforms at the camp,
10 that's your understanding?

11 A. Yes.

12 Q. And this was different than when the accused were detained
13 at CIA black sites, right?

14 A. It's my understanding there were some differences, yes.

15 Q. And the camp commander also advised the accused that they
16 would have access to the International Committee of the Red
17 Cross ----

18 A. Yes.

19 Q. ---- is that your understanding?

20 A. That is my understanding.

21 Q. And that they would be able to send and receive mail
22 through the Red Cross?

23 A. That is my understanding.

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1 Q. And is it your understanding that that is not something
2 they were able to do while detained by the CIA?

3 A. That is my understanding.

4 Q. While detained by the CIA, they -- they could not have any
5 communication with their families, right?

6 A. That is my understanding.

7 Q. Or anybody else?

8 A. That is my understanding.

9 Q. And their families could not send information to them?

10 A. That is my understanding.

11 Q. And the accused were never visited by the Red Cross?

12 A. That is my understanding.

13 Q. And at Guantanamo Bay they were able to interact with
14 another detainee during their recreation time, correct?

15 A. That is my understanding.

16 Q. And that was different than CIA custody, right?

17 A. That is my understanding.

18 Q. And we talked a little bit about the Red Cross meeting
19 with Mr. Ali at Guantanamo Bay. Is that something that you knew
20 before your testimony here this week or is that something you
21 had -- you had learned before today?

22 A. I believe I learned it before, about the mail and the Red
23 Cross.

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1 Q. Okay. And was it your understanding that it was his
2 decision about whether or not -- Mr. Ali's decision about whether or
3 not he wanted to meet with the Red Cross?

4 A. That's my understanding.

5 Q. Okay. And he then first in October did elect to meet with
6 the Red Cross, right?

7 A. That's what I understand, yes.

8 Q. All right. Do you have any reason to believe his decision
9 to meet with the Red Cross was involuntary?

10 A. I don't have information of what was going on in his mind
11 at that time, so...

12 Q. Okay. But no information to suggest, based on any of your
13 review in this case, that it was involuntary?

14 A. I haven't seen anything that said visiting the Red Cross
15 was involuntary.

16 Q. Okay. And that was Echo II, right? That's your
17 understanding?

18 A. Yes.

19 Q. And Mr. Ali was transported there in a van?

20 A. That's my understanding.

21 Q. And shackled?

22 A. Yes.

23 Q. And you've not reviewed medical reports or any

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1 psychological reports during that time frame, right?

2 A. From that specific time frame?

3 Q. I ----

4 A. I think I said that the other day.

5 Q. Yeah. And so you wouldn't know if there was any
6 information in there that would or would not suggest a reaction from
7 Mr. Ali based on being shackled or transported in the van or anything
8 like that?

9 A. It's unlikely there's information that would change what I
10 commented on as noted in the 2006 report.

11 Q. Right, I'm not asking about ----

12 A. I know. I haven't seen any information from that moment
13 in time, no.

14 Q. Okay. Same thing. Any information -- if there was a
15 reaction to having to sit in a white plastic chair at a white plastic
16 table, you're not aware of anything to suggest that that caused the
17 symptoms of PTSD in Mr. Ali when he met with the Red Cross?

18 A. Look, I don't have information that people who were
19 looking at him had the -- the capability of describing it, so I don't
20 have any information about it. I have no information about whether
21 something was written down or whether it's credible or anything. So
22 no, I don't.

23 Q. Are you aware he was meeting regularly with a

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1 psychologist?

2 A. I'm aware that he did meet.

3 Q. And so -- I'm sorry, a psychiatrist. And that's somebody,
4 though, that would have training to identify those types of things,
5 right?

6 A. I would assume that they had the training. I am
7 not -- that doesn't mean they would necessarily identify them.

8 Q. Okay. And any record of -- are you aware of any record of
9 anxiety demonstrated by Mr. Ali as a result of his meetings with the
10 ICRC?

11 A. I'm not aware of anything that pinpoints that
12 specifically, no.

13 Q. And after that meeting Mr. Ali sent a note to the
14 guards -- through the guards providing the ICRC with a phone number
15 in connection with one of the letters that he had provided them.
16 Were you aware of that?

17 A. I believe I was aware of that, yeah.

18 Q. Do you think that Mr. Ali could meaningfully appreciate
19 the difference between ICRC personnel and his former CIA captors?

20 A. It depends on what you mean by meaningfully.

21 Q. I'm using the term you used in your declaration.

22 A. By "meaningfully," it refers to a distinction as to
23 whether or not the degree to which he can place any trust and

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1 confidence in them.

2 In my declaration, I meant there's no meaningful distinction
3 in terms of who has control over what he can do and not do. In my
4 declaration, the intent of my word "meaningful" is that although the
5 meaning may look different to us, to a detained individual, they
6 still know what they can do is really dependent on someone else
7 approving that action or behavior.

8 Q. Okay. So that -- your declaration was in reference to FBI
9 personnel. And you used that term, which is why I used it. What I
10 want to ask you is whether, as you understand that term, Mr. Ali
11 could meaningfully appreciate the difference between ICRC personnel
12 and his former CIA captors.

13 A. I think with respect to the threat of things perhaps going
14 back to being -- having the experience that he had with EITs, no, I
15 don't believe there is a significant difference.

16 Q. So in his mind, the ICRC personnel that met with him were
17 just like the CIA debriefers from his CIA detention?

18 A. Based on my work with trauma victims, they don't make that
19 distinction. People who have been traumatized tend to view that fear
20 generalizes, and they don't really make a meaningful distinction
21 between who is a source of something bad for them and someone who's
22 new. They're constantly trying to evaluate that.

23 But the distinction -- the reason why I say the distinction

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1 is not meaningful is because they're symptomatic. They're ill. Part
2 of the illness is the inability to make meaningful distinctions
3 between safety and threat, and that includes people.

4 Q. And you've never asked Mr. Ali about this interaction with
5 the ICRC, right?

6 A. No, I think it was clear.

7 Q. Based on those two records you reviewed?

8 A. And the subsequent evaluations that confirmed the
9 diagnosis from that previous time.

10 Q. Do you ----

11 A. That's just how mental illness works. So, yeah, I
12 wouldn't need their notes from that time.

13 Q. So ----

14 A. If I had their notes from that time, it would simply
15 clarify it in more detail.

16 Q. And you know that without even looking at them?

17 A. I do, yes.

18 Q. Is that training that all psychiatrists get, this ability
19 to predict what's in records without even looking at the records
20 themselves?

21 A. That's like me asking you if you speculate spontaneously
22 all the time.

23 No. The training varies in different programs. I am

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1 trained in indirect assessment. I was trained in that by the
2 government for the government. I have just finished a six-year grant
3 for the CIA on indirect assessments. I performed them for over 15
4 years. That was my job at the Agency.

5 I am familiar with that process of making diagnoses from
6 information in a chart, and in my declaration I say why, and I'm
7 confident in that. It's not a -- it's not a speculation. It's not
8 predicting the future, so I just ----

9 Q. Okay.

10 A. ---- thought your comment was kind of out of line.

11 Q. Do you think the statements Mr. Ali made to the Red Cross
12 were reliable?

13 A. I can't judge the reliability of his statements to the Red
14 Cross.

15 Q. Okay. That's obviously something that a judge would have
16 to do, to take into account all the circumstances surrounding those
17 statements, right?

18 A. Oh, that's up to a judge.

19 Q. Professionally, you're in no position to opine on the
20 reliability of statements that Mr. Ali made under these circumstances
21 to the Red Cross?

22 A. It would depend on the information I was given. I am
23 trained in evaluating statements with respect to truth and deception,

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1 and I published extensively on that. So it would depend on the kind
2 of information someone wanted me to review, and I could comment on
3 what we know from an evidence-based science on what we see in
4 truthful ----

5 Q. Okay.

6 A. ---- versus deceptive statements.

7 Q. And Mr. Ali then in December met with the ICRC again. Is
8 that -- that's your understanding?

9 A. Yes.

10 Q. I mean, any -- any evidence that you're aware of that he
11 attempted to avoid meeting with the ICRC?

12 A. I'm not aware of any evidence, but the absence of evidence
13 is not evidence.

14 Q. Are you -- is it your understanding it was his voluntary
15 decision on whether or not he wanted to meet with the ICRC the second
16 time?

17 A. It's my understanding that it stated it was voluntary,
18 yes.

19 Q. Okay. So he decided and he was capable of making a
20 voluntary decision to meet with the ICRC?

21 A. That's my understanding, yes.

22 Q. And he did this knowing he'd be transported in the same
23 manner, right?

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1 A. I think that was the only option for transportation.

2 Q. Sure.

3 A. I don't think it was a choice, so yes. He did that
4 knowing the same transportation process would likely occur.

5 Q. Wearing shackles ----

6 A. But that's not a choice.

7 Q. Well -- but if that process was such that it was traumatic
8 for him, he may avoid the process, right?

9 A. No. In PTSD, the avoidance criteria is that they may
10 avoid it completely or it can be endured with great emotional effort,
11 which is invisible to you, the observer. So no, it doesn't tell you
12 that he's not experiencing anxiety just because he went along with
13 the transportation.

14 Q. There's no way to tell other than what's in his head,
15 right?

16 A. For certain symptoms, that's exactly right. Trauma is in
17 the eye of the beholder.

18 Q. So ----

19 A. And for someone outside their head cannot say that
20 something was not traumatic or not distressing.

21 Q. But there are signs and there are symptoms that are
22 demonstrated by people with PTSD. You've already testified to that
23 at length ----

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1 A. Yes.

2 Q. ---- about that at length.

3 A. Yes, there are.

4 Q. Are you aware of any of those signs or symptoms that were
5 demonstrated by Mr. Ali as a result of his transport to meet with the
6 ICRC?

7 A. I'm not aware of any notation describing those during his
8 transportation, but that would depend on who was making the
9 observations.

10 Q. You might want to ----

11 A. I'm not aware of any notes. I'm not aware of any notes
12 about the specifics of his demeanor during transportation.

13 Q. Okay. And you've never asked for those records?

14 A. I think I was clear about that.

15 Q. Yep. So do you think during that second December meeting
16 with the ICRC he could meaningfully appreciate the difference between
17 ICRC personnel and his former CIA captors?

18 A. I think that he knew they were different teams. I don't
19 think -- I don't think there was a meaningful distinction in that
20 they had control over what would happen to him.

21 Q. So you think they -- he thought that they had control over
22 what would happen to him? The ICRC folks he met with.

23 A. I suspect so, yes. He has post-traumatic stress disorder.

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1 People fail to make a meaningful distinction between that with
2 respect to threat.

3 They can say consciously "I know you are different than
4 person B." We've seen that both in the laboratory experiments and
5 for years in doing therapy with people. They can conscious -- they
6 can say I know there is a difference. It does not mean that their
7 reasoning and decision-making is significantly based on that
8 state -- that kind of a statement.

9 Q. Okay. Are you aware that Mr. Ali had access to medical
10 personnel every day at Camp VII?

11 A. I'm aware he had access to medical personnel. I -- I did
12 not know whether or not it was every day.

13 Q. And routine contact with a psychiatrist and trained psych
14 assistant?

15 A. Yes. I'm aware he had -- he had contact with trained
16 mental health personnel.

17 Q. And that those personnel were experienced in dealing and
18 treating with prisoners?

19 A. That's my understanding.

20 Q. Both at Guantanamo Bay and in other prison settings.

21 A. It's my understanding.

22 Q. Their job ----

23 A. I don't know the extent of their experience.

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1 Q. Okay. And their job was to care for the detainees?

2 A. I would assume it is.

3 Q. Okay. Any reason to think it's -- it's otherwise?

4 A. Yes. But because the physicians and psychologists had
5 been recruited to participate in BSCT teams, the Behavioral Science
6 Consultation Teams, and I have no idea whether those personnel ever
7 functioned in any of those capacity for the Department of Defense.

8 So I don't know what their experience is, but that was
9 a -- that was very active during that time frame.

10 Q. And -- so do you have any evidence to suggest that they
11 were not attentive to the needs of detainees?

12 A. No, I'm not saying that. I don't know what their
13 attention was focused on. That would depend on what they thought
14 their intent was and what they thought their focus was. I -- I
15 haven't seen notes from them, so I don't know what their intent was.

16 Q. And -- and you did not ask to look at the notes from them,
17 right?

18 A. I think I've answered that several times. No ----

19 Q. Okay.

20 A. ---- that was -- that was not the scope of what I was
21 asked to do.

22 Q. Any doubt that they were qualified to provide medical
23 care?

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1 A. I didn't hear that. I'm sorry.

2 Q. Any doubt that the medical personnel were qualified to
3 provide care?

4 A. I am assuming they were qualified to provide medical care.

5 Q. Any reason to -- to suggest they were not attempting to
6 provide the best care possible to detainees?

7 A. I have no evidence either way. They were providing care.
8 I don't know what they were attempting to deliver.

9 Q. Okay. You indicated that you did review the LHM, the
10 letterhead memorandum, that documented the January 2007 interviews of
11 Mr. Ali, right?

12 A. Yes.

13 Q. We talked about that yesterday, the 40-or-so-page ----

14 A. Yes.

15 Q. ---- report.

16 And I want to ask you some questions about your opinion that
17 we talked about a little bit a few minutes ago: That within a
18 reasonable degree of medical and scientific certainty that Mr. Ali
19 experienced fear conditioning responding that negatively impacted his
20 ability to meaningfully appreciate the distinction between FBI agents
21 and the CIA personnel who had previously exposed him to torture.
22 Okay?

23 A. Yes.

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1 TC [MR. GROHARING]: Could I have the feed from Table 2,
2 please?

3 MJ [Col McCALL]: Go ahead.

4 TC [MR. GROHARING]: Is this ----

5 MJ [Col McCALL]: It's showing up down here.

6 TC [MR. GROHARING]: Just a second, Your Honor. I'm just
7 checking to see if it's displayed -- I think it's display only to the
8 courtroom.

9 MJ [Col McCALL]: Okay.

10 TC [MR. GROHARING]: I'm just confirming that.

11 MJ [Col McCALL]: That's correct.

12 TC [MR. GROHARING]: Okay.

13 Q. Doctor, have you seen this form? Have you seen this
14 document?

15 A. I believe that I have.

16 Q. Okay. I represent to you that it was a checklist that was
17 used by the agents interviewing Mr. Ali. Does that sound right?

18 A. Yes.

19 Q. Okay. And that checklist required agents to assure the
20 detainee that the agents do not work for and are independent of any
21 organization that previously held the detainee, right?

22 A. Yes.

23 Q. And that -- that's line number 1, and that -- that's

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1 checked, right?

2 A. They checked the box.

3 Q. Any reason to doubt that they provided that advisement to
4 Mr. Ali?

5 A. I certainly hope they did. I believe they did because
6 they checked the box.

7 Q. And that agents were required to ask the detainee about
8 his belief that he is in the custody of the Department of Defense.

9 A. I have no reason -- I have no reason to doubt that that's
10 what they told him.

11 Q. Okay. And they were required to advise the detainee that
12 if he had made prior -- I'm sorry -- that they were aware that he may
13 have made prior statements but the agent wasn't interested in prior
14 questioning or answers he may have given. That's your understanding?

15 A. That's my understanding.

16 Q. And he checked that box as well, right?

17 A. Yes.

18 Q. And then they were -- the agents were required to
19 determine whether the detainee was willing to answer questions.

20 A. Yes.

21 Q. And that's line 4 and that box is checked.

22 TC [MR. GROHARING]: And, Your Honor, this is in the record at
23 628C (Gov) Attachment E.

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1 MJ [Col McCALL]: All right.

2 Q. And with regard to documents, the agents were required to
3 tell the detainee that they -- he may or may not have seen a
4 detainee -- a document before, but the agent does not care what he
5 may have said in the past about the document.

6 A. That's -- that's what they said they told him. I don't
7 have any reason to doubt that's what they told him.

8 Q. Okay.

9 TC [MR. GROHARING]: We can take down the feed.

10 Q. And during the interview, the agents introduced themselves
11 to Mr. Ali in true name, at which time they showed him their law
12 enforcement credentials; is that your understanding?

13 A. That's my understanding.

14 Q. Are you aware of any CIA agents at any point showing
15 Mr. Ali their credentials?

16 A. I'm not aware of that, no.

17 Q. Any identification of any kind?

18 A. I'm not aware what kind of identification CIA showed him.

19 Q. And it -- do you have any knowledge of CIA agents showing
20 Mr. Ali any identification at all?

21 A. I don't know what kind of identification they showed him,
22 if any at all.

23 Q. If any? Okay.

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1 And the LHM documents that if -- after Mr. Ali was asked if
2 he knew who the FBI was, Mr. Ali said he was previously with the CIA,
3 who he described as the external people, and he understood the FBI to
4 work within the U.S. And this is after the FBI agent showed Mr. Ali
5 their credentials.

6 Does this not reflect Ali appreciating the difference
7 between his January 2007 interviews and his debriefings with the CIA?

8 A. No. That means he's cognitively aware of a difference
9 between them. That's different than to appreciate from a psychiatric
10 perspective.

11 To appreciate means integrating that information within a
12 context and knowing its implications. But he can -- he can say, "I
13 know the difference between the CIA and the FBI."

14 We -- we do this all the time in competency evaluations.
15 The one prong is, does the person know and understand charges and the
16 way the court works. The second prong is appreciate, which means to
17 integrate that knowledge in a meaningful way and the way different
18 possible outcomes can occur and what's required to achieve an outcome
19 that's in their self-interest.

20 Q. Sure. But you've already testified that people with PTSD
21 are not automatically not competent to stand trial, right? That's
22 not an automatic ----

23 A. No.

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1 Q. ---- he's not competent. So ----

2 A. Sometimes their symptoms render them incompetent, and that
3 speaks mainly to the appreciating and assisting in
4 their -- appreciating the context, assisting in their own defense.

5 The cognitive prong about understanding the charges and how
6 the court works is usually something people with PTSD can do quite
7 well.

8 It's not a disease of intellect. This -- this mental
9 illness, it doesn't mean a person is dumb. So they can tell you the
10 difference between the CIA or the FBI or where they are and what they
11 know. Those are all aspects of semantic memory, things that we've
12 learned, things that we know.

13 It's the emotional appreciation and processing of that,
14 which is part of what our frontal lobe activity is involved in, that
15 is highly impaired.

16 Q. And that's not based on anything that Mr. Ali said about
17 his interactions with the FBI, right?

18 A. No. I just -- I know that Mr. Ali -- I haven't seen any
19 data to suggest he's different from, you know, just dozens of studies
20 on human beings with post-traumatic stress disorder. And at this
21 point in time, he's already exhibited more than enough symptoms to
22 have PTSD that cause him pain and distress and psychological despair.
23 He also has headaches and there's been a report of abuse.

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1 So they are interviewing a person who's been traumatized and
2 a person who suffers from a significant mental illness. And that's
3 why I say I wouldn't automatically assume that he does understand
4 everything. He's being compliant. He can acknowledge what's going
5 on. But ----

6 Q. There's a difference ----

7 A. ---- they're talking to a mentally ill person at this
8 point.

9 Q. But you're saying -- I think you just said you wouldn't
10 automatically assume. That's an awful lot different than you saying
11 he did not appreciate the difference. You're saying
12 categorically ----

13 A. So we're kind of talking past one another.

14 At this point in time in my mind, I already know he suffers
15 from a case of post-traumatic stress disorder. And what I said in my
16 declaration, I adhere to. I don't believe he could meaningfully
17 distinguish the difference.

18 It's a -- it's a distinction without a difference when he
19 says, yeah, you're one part of the government, you're another part of
20 the government. They're interviewing a mentally ill person. And
21 although their intent may be good in checking all the boxes, they
22 know what they mean and they're assuming they know what the mentally
23 ill person means, what their understanding is of that situation.

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1 Q. Okay. When he's asked if he knew where he was, he said
2 Guantanamo. He said Guantanamo was 100 percent under the control of
3 the Army. Is that your understanding?

4 A. That's my understanding.

5 Q. And does that not reflect that Mr. Ali appreciates the
6 difference between this interview and his CIA debriefings?

7 A. It means he understands locations.

8 Q. Ali was told he was not in the custody of the CIA.
9 Mr. Ali said he understood because he had not seen them anymore.
10 Does that not demonstrate Ali's knowledge that he was being
11 interviewed by someone other than the CIA?

12 A. It looks like it might be on the surface. However, he had
13 been told that perhaps he could be exposed to new people at different
14 points of time previously.

15 So it's -- it certainly sounds like he can identify where he
16 is. He's cognitive -- he's cognizant that he's in a new geographic
17 location. He can identify the people he's with. But there's no data
18 to suggest that he's made a meaningful difference in that -- in what
19 these people are capable of doing versus the ones prior.

20 Q. And there's no data to suggest that he's not capable ----

21 A. Well, based on the ----

22 Q. ---- of ----

23 A. Based on the plan that was illustrated by Dr. Mitchell,

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1 this was the goal, that EITs could be administered early, and then
2 you moved into an operant conditioning phase where people could be
3 manipulated without exposing them.

4 This is now in that phase. They're no -- we know that the
5 EITs were no longer a possibility for him. He does not because he's
6 been told it could go back at any time.

7 And when we work with traumatized people, we know fear does
8 not extinguish ----

9 Q. Right.

10 A. ---- and this would be -- this would be an example where
11 they're just asking him questions and he -- he's compliant and going
12 yes. I know where I am.

13 Q. That's something you're able to tell without ever having a
14 conversation with him or anyone else asking him those questions.
15 That's what's you're saying?

16 A. I'm saying I've seen the evaluation that was a year
17 before, and he's got post-traumatic stress disorder that's quite
18 severe.

19 Q. Mr. Ali asked why they called him Ali instead of Ammar.
20 He said, "It seems like you're looking at me officially." Did those
21 statements of Ali not demonstrate his understanding that the FBI
22 agents interviewing him are different from the CIA?

23 A. Those statements, like on neuropsych testing, he's -- he's

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1 got a normal intellect. So he can say those things. He can
2 acknowledge who they are.

3 Q. Is it your understanding that during Mr. Ali's CIA
4 detention, they asked him whether he would participate in
5 debriefings?

6 A. That was my understanding, yeah.

7 Q. Do you agree that Mr. Ali was expected to participate in
8 debriefings in CIA detention?

9 A. Yes.

10 Q. That that was his expectation, that he had to participate
11 in debriefings. They didn't ask him whether or not you're willing,
12 right?

13 A. Well, that's my understanding, yeah. It wasn't -- it
14 wasn't a voluntary thing.

15 Q. Right.

16 A. But the goal of the program was to render people helpless.

17 Q. I understand all that. We don't -- Doc ----

18 A. You're asking me what I think and why I made the
19 declaration.

20 MJ [Col McCALL]: Counsel. Mr. Groharing.

21 ADC [MS. PRADHAN]: Objection.

22 MJ [Col McCALL]: Dr. Morgan, Mr. Groharing, please don't talk
23 over each other. Again, it's -- it makes it impossible, one, for us

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1 to get a good record. And it also helps -- it doesn't help me in
2 tracking the testimony.

3 WIT: Right.

4 MJ [Col McCALL]: Pause for a second.

5 Ms. Pradhan, was that the objection you were going to make?

6 ADC [MS. PRADHAN]: That was the objection, sir.

7 MJ [Col McCALL]: All right.

8 ADC [MS. PRADHAN]: If we could just wait until the witness
9 finishes his answer and then ask an actual question instead of
10 testifying.

11 MJ [Col McCALL]: Objection sustained.

12 So go ahead, Mr. Groharing.

13 Q. The question that I asked you was whether it was Mr. Ali's
14 choice to participate in debriefings when he was held by the CIA.
15 Just yes or no. What's your understanding?

16 A. My understanding is that whether he said yes or no, he was
17 going to be in a debriefing. It was an uncontrolled situation. He
18 had no control over that situation at all.

19 Q. But that he wasn't given the choice; is that your
20 understanding?

21 A. My understanding is that he did not have a choice.

22 Q. I'm asking you ----

23 ADC [MS. PRADHAN]: Objection. Asked and answered.

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1 Q. ---- listen to the full question.

2 MJ [Col McCALL]: Objection overruled.

3 So, Dr. Morgan ----

4 Q. I ----

5 MJ [Col McCALL]: ---- listen to the question and please
6 answer the question.

7 Go ahead, Mr. Groharing.

8 Q. What's your understanding? Was Mr. Ali advised that he
9 could choose whether or not he wanted to participate in debriefings
10 in CIA detention?

11 A. I'm not aware that he was given that option, that he was
12 advised that he could -- or that he had a choice. No.

13 Q. And is it your understanding that at the LHM interview
14 that he was told it was his choice whether or not to participate in
15 the interview?

16 A. I am aware he was told that, yes.

17 Q. Are you aware of any statements that Mr. Ali made during
18 the LHM that are untrue?

19 A. I didn't hear the last part of your sentence. I'm sorry?

20 Q. Are you aware of any statements Mr. Ali made that are
21 documented in the LHM interview that are untrue?

22 A. I'm not -- I'm not aware of whether they are true or not
23 true.

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1 Q. So you're not aware of any information about them being
2 untrue?

3 A. I haven't been shown any information that would say that
4 they were untrue.

5 Q. And Special Agent Fitzgerald, and Perkins, and McClain
6 have all testified in this military commission about the
7 circumstances of those interviews, and you've reviewed those
8 transcripts, right?

9 A. I have.

10 Q. And the agents testified that the interviews were
11 courteous, professional, and respectful. Do you have any reason to
12 doubt that?

13 A. Well, I hope I don't, no. I'm -- I'm -- I believe their
14 statement that they were courteous and professional.

15 Q. And they conferred with Mr. Ali on the schedule that they
16 would keep?

17 A. That's my understanding.

18 Q. And when they would take breaks?

19 A. Yes.

20 Q. When Mr. Ali wanted the break to pray, those types of
21 things?

22 A. That's what we do in a psych eval as well, yes, if they
23 request a break.

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1 Q. And the agents never raised their voice throughout the
2 interview?

3 A. They say they didn't. I don't know if they did or didn't,
4 but my understanding is that it was a polite interview.

5 Q. They never confronted Mr. Ali and told him they thought he
6 was lying?

7 A. I didn't see any evidence of that in the transcript.

8 Q. The agents testified that he did not appear disoriented at
9 any point. Is that your understanding?

10 A. That's my understanding of what they thought they were
11 assessing, yes.

12 Q. Well ----

13 A. They're not -- they're not mental health professionals, so
14 I just have to take them at their word that that's what they believed
15 was occurring, yes.

16 Q. That they wouldn't be able to tell if he was -- looked
17 disoriented during the interview?

18 A. No. They're -- they're not specialists in evaluating
19 mental health status with a mentally ill person. So I can only take
20 their statements for what they are. They believed he was not ----

21 Q. Okay.

22 A. ---- disoriented.

23 Q. Did not appear depressed?

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1 A. Again, that's what they believe. I don't doubt their
2 opinion that they didn't think he was depressed.

3 Q. Did not appear anxious?

4 A. Once again, they're not mental health people, so I can
5 only say I believe that that's what they thought was the case.

6 Q. Okay. But are you suggesting that -- that people who are
7 not mental health professionals have -- can't observe if someone's
8 depressed or anxious?

9 A. I am saying I've met plenty who cannot. Part of the
10 consultation to many people in the Department of Corrections is that
11 many signs and symptoms of mental illness are invisible to people who
12 are not well trained in them.

13 Q. Okay.

14 A. So they may say someone looks comfortable, non-anxious,
15 maybe slightly depressed or not depressed. And when we evaluate
16 them, we find out no, they have a full-blown mental illness. They're
17 able to mask it from people they don't want to reveal it to.

18 So all I can say from the statements in that is the agents
19 believed that that was the case. But from a psychiatric perspective,
20 I -- I don't have to take that at face value as a true -- as a fact
21 because I've seen an evaluation from the year before indicating that
22 this person suffers from mental illness and possibly a traumatic
23 brain injury.

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1 Q. The agents testified they didn't see any physical signs
2 which caused them any concern about his ability, Mr. Ali's, to
3 voluntarily participate in the interview. Is that your
4 understanding?

5 A. That's my understanding.

6 Q. They saw no evidence that Mr. Ali had lost the ability to
7 offer statements that were favorable to him throughout the course of
8 the interview. Is that your understanding?

9 A. That's my understanding.

10 Q. And at no point did Mr. Ali have difficulty concentrating.

11 A. Again, that's my understanding of how they perceived his
12 degree of concentration.

13 Q. That he did not appear distracted.

14 A. Again, it's a nonmental health evaluation, so I have to
15 take them at their word that that's what they believed was the case.

16 Q. Didn't see any signs of Mr. Ali hallucinating.

17 A. Again, they believed they did not. I don't know if that
18 was or was not the case.

19 Q. And did not see any signs of him dissociating.

20 A. Again, I don't even know if they're trained in assessing
21 dissociation. But I -- I take them at their word, they believed they
22 did not observe anything.

23 Q. That he did not say things that were irrational.

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1 A. Again, if you -- I will agree with you that what they
2 write in their report is what they believed they saw.

3 They're not mental health professionals. They're not
4 qualified to evaluate mental states. This is a mentally ill person.
5 It's been previously documented in the medical record.

6 So if you want to read me each line, I can say I agree,
7 that's what they believe to have been the case when they met with
8 him. But it -- it -- it -- it is unrelated to whether or not they're
9 accurate in making valid psychiatric assessments of a person's mental
10 status and the nature of their illness. They are not qualified to do
11 that.

12 Q. Of course, they're not diagnosing him with some kind of
13 disorder.

14 A. No, but they're ----

15 Q. They're just ----

16 A. ---- identifying ----

17 Q. ---- observing his behavior ----

18 A. You're asking about very specific kinds of psychiatric
19 symptoms, and it does require training to learn how to evaluate them
20 to know what they are and what the differential is.

21 Q. All right.

22 A. That's one reason people go into residency programs and
23 train for years. So I -- I take it at their word. They went in in

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1 good faith. They said what they believed that they saw. I don't
2 think they're trying to distort anything or hide anything.

3 I'm just saying they're not mental health professionals. So
4 when I look at the record with them, the only kind of data that's
5 relevant is if there's a positive indicator of an illness that a
6 layperson might notice. But the absence of noticing something is not
7 evidence that it's not there. And they're not -- they're not trained
8 in it, so...

9 Q. Okay.

10 A. But you can keep reading each line, and I'm happy to go,
11 "That is my understanding."

12 Q. Okay. And Mr. Ali, throughout the course of the
13 interview, was able to provide accurate details regarding
14 information.

15 A. That -- that is my understanding.

16 Q. Okay. And that's something FBI agents could
17 professionally -- you don't dispute that, right?

18 A. That I would dispute that they would know that a statement
19 in and of itself was accurate or not, meaning ----

20 Q. Okay.

21 A. ---- detecting deception?

22 Q. They were observing him providing details, accurate
23 details, that's something that an FBI agent could do, right? They

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1 don't need to have an advanced psych degree to do that, right?

2 A. If they have ground truth on something to which they can
3 compare his statements and say those are accurate details, I would
4 agree with you.

5 If they're listening to him and say, "I hear detail in what
6 he's saying; therefore, it must be accurate," I would disagree with
7 you. And all the science on detecting deception would back me up on
8 that.

9 Q. Okay. Are you aware of any GTMO medical or psychiatric
10 record that documents complaints from Mr. Ali about his participation
11 in the multiday law enforcement interviews?

12 A. I'm not aware, no.

13 Q. Any concerns about transport to the interview?

14 A. I think -- I think I mentioned that. No, I'm not aware of
15 a note documenting his concern about being transported.

16 Q. Okay. And this is the same location that he was
17 interviewed by the ICRC in December -- first in October, then in
18 December?

19 A. That's my understanding.

20 Q. Okay. And so the first day was January 17th, and then
21 Mr. Ali was asked if he was willing to return the following day. Is
22 that your understanding?

23 A. That's my understanding.

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1 Q. And then returned to his cell back in the camp, and then
2 Mr. Ali returned on the 18th. Is that your understanding?

3 A. That's my understanding.

4 Q. To the same location, Echo II?

5 A. That's my understanding.

6 Q. Following all those same procedures.

7 A. That's my understanding.

8 Q. And he sat at a white plastic table.

9 A. That is my understanding.

10 Q. In a white plastic chair.

11 A. I believe so.

12 Q. And was shackled.

13 A. I believe so.

14 Q. And those were the circumstances of his first interview at
15 Echo II; is that your understanding?

16 A. That is my understanding.

17 Q. And do you have any reason to doubt that Mr. Ali would
18 assume those would be the circumstances of his second interview, the
19 second day of interviews?

20 A. I didn't hear the middle part. I would assume what?

21 Q. That those same circumstances would be in place for the
22 second day of interviews, the 18th of January?

23 A. I'm assuming he would expect them to be similar.

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1 Q. Okay. And then he chose to return.

2 A. He returned. We see that in compliant people.

3 Q. But it -- it was his decision. You don't dispute that it
4 was his decision?

5 A. I don't dispute it was his decision.

6 Q. Okay. And then they met again on the 18th. And at the
7 end of the day he was asked if he wanted to come back on the 19th,
8 right? That's your understanding?

9 A. That's my understanding.

10 Q. And then he returned to the camp, and then Mr. Ali
11 returned back to Echo II on January 19th.

12 A. That's my understanding.

13 Q. And that was his decision?

14 A. It's said to be his decision, yes. A person's decision is
15 a complicated thing.

16 Q. Any reason to think that he didn't assume the
17 circumstances of that third day of interviews were going to be the
18 same as far as his transport, sit in a white chair, sit at a white
19 plastic table?

20 A. Well, it's a misunderstanding of mental illness to say a
21 person could decide to go back day after day and not experience
22 conditioned fear. So it's his decision. Yes, he would go back.
23 He'd expect it to be the same, so...

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1 Q. He was -- you're suggesting that wasn't his decision?

2 A. I'm saying at that point you have a mentally ill person
3 who is going along with a procedure. There's an opportunity
4 available to meet with people. Many people choose to meet with
5 people rather than to be alone. I can't speak to his motivation for
6 meeting.

7 Q. Sure. That -- and that's a voluntary decision, though.

8 A. I don't know.

9 Q. Choosing to meet with someone rather than staying alone in
10 your cell, that's a voluntary decision, right?

11 A. I'm -- I'm assuming he would have to agree to go have the
12 meeting because he wasn't being told he had to go, so you could say
13 that's a voluntary decision.

14 Q. So he voluntarily elected to go back a ----

15 A. Yeah.

16 Q. ---- second and third day to meet again with the agents,
17 right?

18 A. Yeah. He can -- he can choose to go meet with them.

19 My patients choose to go to the mailroom. They choose to go
20 to the post office. They choose to go to dinner.

21 Q. And here, he knew that he was being interviewed at that
22 point by agents. And he would assume that that same practice would
23 follow the second and third day, right?

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1 A. Yeah.

2 Q. He was going back to be interviewed further.

3 A. That would be consistent with ----

4 Q. Okay.

5 A. ---- the program for EIT, yes.

6 Q. I didn't -- I didn't ask if it was consistent with the
7 program for EIT.

8 A. You're -- I'm just saying yes, that's consistent with what
9 you would expect him to be doing. Yes.

10 Q. But you agree that those are voluntary actions on his
11 part?

12 A. I am agreeing that he's -- he seems to be doing that of
13 his choice, of his choosing. I can't speak to whether or not -- what
14 his emotional state was that made him make that decision.

15 Q. Okay. Right. Now, I note that he also meets with his
16 attorneys at Echo II. Would he consider, you know, those meetings
17 also to -- not be able to appreciate a difference between those
18 meetings and his former CIA captors?

19 ADC [MS. PRADHAN]: Objection.

20 MJ [Col McCALL]: Basis?

21 ADC [MS. PRADHAN]: What's the foundation for this question?

22 MJ [Col McCALL]: Repeat your question, Mr. Groharing.

23 TC [MR. GROHARING]: I asked if -- that -- if he's aware that

1 he meets with his attorneys at Echo II. My understanding is that's
2 where they have met. If I'm -- correct me if I'm wrong.

3 ADC [MS. PRADHAN]: Yeah, he didn't ----

4 The court's indulgence?

5 MJ [Col McCALL]: Sure.

6 **[Pause.]**

7 ADC [MS. PRADHAN]: I'd ask for a time frame on this question,
8 Your Honor, because for two years Mr. al Baluchi did not meet with
9 his legal team at Echo II.

10 MJ [Col McCALL]: Mr. Groharing, can you rephrase?

11 Q. Well, if at any point, whatever time frame, Mr. Ali met
12 with his attorneys at Echo II, would he be able to meaningfully
13 appreciate the difference between meeting with his attorneys and
14 meeting with his former CIA captors?

15 A. Well, I know for a fact that at times he did not, from an
16 emotional standpoint. He knew he was meeting with his attorneys and
17 he's lashed out at them and accused them of betraying him because
18 there's suspicion. I know that from communicating with his attorney.

19 I do believe that he knew he was meeting with an attorney
20 and could cognitively know that it should be to his advantage to meet
21 with an attorney. But there's also evidence that parallel to that he
22 suspects they're all working for the same government and ultimately
23 are going to betray him.

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1 Q. Okay.

2 A. So he could make that choice, but it's -- it's not the
3 same kind of a choice that a person without a mental illness makes.

4 Q. Okay. You conducted research on the impact of
5 misinformation on the reliability of statements, correct?

6 A. Yes.

7 Q. Have you conducted research on why suspects confess to
8 crimes?

9 A. Yes.

10 Q. Are you aware that the perception of the strength of
11 incriminating evidence in the hands of law enforcement is an
12 important factor in a suspect's decision to confess to a crime?

13 A. Yes. It's a gamble. There -- because our police can lie
14 to people.

15 Q. Right.

16 A. So they have to weigh their options. That's the reason
17 why the Reid -- the interrogation folks have gotten into trouble and
18 been sued for creating false confessions.

19 Q. Okay.

20 A. It's part of their -- it's part of their technique, part
21 of their program.

22 Q. Have you reviewed the information that was shown to
23 Mr. Ali during his LHM interview?

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1 A. During his what interview?

2 Q. I'm sorry. The interview with the FBI agents that
3 resulted in documentation in the LHM.

4 A. I've not seen that material, no.

5 Q. Okay. Are you aware that he was presented with physical
6 evidence that documented his involvement in the 9/11 attacks?

7 A. I am aware of that, yes.

8 Q. At times in true name?

9 A. I'm sorry, you're muffled.

10 Q. At times in true name, in his own name.

11 A. Okay.

12 TC [MR. GROHARING]: Can I have the feed from Location
13 Number 2?

14 WIT: All right.

15 TC [MR. GROHARING]: I'm sorry, a feed from Table Number 2. I
16 don't know if we have a feed from Location Number 2.

17 MJ [Col McCALL]: Sure. Go ahead. Feed from Table 2.

18 TC [MR. GROHARING]: Is it time for a break? Okay.

19 All right. Judge, this only -- my understanding, this is
20 only for the courtroom.

21 MJ [Col McCALL]: That's correct.

22 TC [MR. GROHARING]: And let me get the -- it's in the record
23 already. I just want to make sure I have it.

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1 It's AE 628AA Attachment U.

2 MJ [Col McCALL]: All right.

3 Q. Okay. You've never seen this document before?

4 A. I saw this document yesterday.

5 Q. Oh, correct. Right. Before yesterday you'd never seen
6 it?

7 A. I had not, no.

8 Q. Okay. And I'll represent to you that Mr. Ali was shown
9 this document during his interview with the FBI. And when he was
10 shown that document, Mr. Ali acknowledged that he was familiar with
11 the document. Are you aware of that?

12 A. Okay.

13 Q. And this is a wire transfer that has Mr. Ali's -- I'll
14 represent to you -- his name and P.O. Box on the document, if you
15 look at the middle of the page. Do you see the "applicant" line?

16 A. Yes, I do.

17 Q. So that's -- Mr. Ali was shown a document and asked about
18 a document that had his name, his P.O. Box reflecting a transfer of
19 \$5,000.

20 ADC [MS. PRADHAN]: Objection, Your Honor. This is an
21 expert -- this is a psychiatric expert. I'm not sure of the
22 relevance of this.

23 TC [MR. GROHARING]: We'll get to it, Your Honor.

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1 MJ [Col McCALL]: Well, let's get to it now. So I mean, if
2 you want to explain ----

3 TC [MR. GROHARING]: Sure.

4 MJ [Col McCALL]: ---- we can have the witness step out. Or
5 if you don't mind explaining with him on the stand, I'm open to
6 either.

7 TC [MR. GROHARING]: My next question I think will make it
8 obvious.

9 MJ [Col McCALL]: Okay. All right.

10 Objection overruled. I'll give you a little bit of leeway
11 on this.

12 TC [MR. GROHARING]: All right.

13 Q. Do you agree that being confronted with evidence of his
14 guilt is a possible explanation for Mr. Ali's admission in
15 January 2007?

16 A. It's a possibility.

17 Q. That's perception of proof, right?

18 A. Well, they're interviewing a mentally ill person, so it
19 would depend on how that person perceived it, yes. So it's possible.
20 I don't -- I don't know if that's the case, but ----

21 Q. Do you ----

22 A. ---- it's possible.

23 Q. Any evidence to suggest he couldn't perceive his own name

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1 and P.O. Box on this document?

2 A. I'm not aware of any.

3 Q. Okay. So that's not a false memory, right? If Mr. Ali
4 said this is ----

5 A. Well, no. If he's saying that's my address and it is his
6 address, then that would appear to be accurate information.

7 A false memory might be the context in which something was
8 done and how it was used and when things occurred. I wouldn't know
9 without knowing more detail but ----

10 Q. Are -- are you aware his fingerprint was found on this
11 document?

12 A. That's what I've been told.

13 Q. Okay. Does that not corroborate Mr. Ali's statement that
14 he made this \$5,000 transfer?

15 ADC [MS. PRADHAN]: Objection.

16 A. I'm not sure.

17 MJ [Col McCALL]: Hold on, Dr. Morgan.

18 Ms. Pradhan.

19 ADC [MS. PRADHAN]: Objection, Your Honor. This is
20 just -- this is just not his field of expertise. This is a legal
21 argument.

22 TC [MR. GROHARING]: Your Honor, earlier he talked about the
23 importance of corroborating information in statements, that's one

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1 thing you would consider in determining whether or not a statement
2 was reliable in his earlier testimony.

3 ADC [MS. PRADHAN]: He's just been asked if he recognized his
4 own fingerprint.

5 MJ [Col McCALL]: I'll -- if there's a pause, it's not
6 inviting argument from either side. It's I'm thinking about the
7 objection. If I need more information, I'll ask for it from either
8 counsel.

9 I'll give you a little more leeway on this, Mr. Groharing,
10 but I think we're getting a little far afield from the direct
11 testimony.

12 But objection overruled.

13 Q. Would you agree that Mr. Ali's fingerprint found on this
14 document would corroborate his statement that it was, in fact, a wire
15 transfer that he made?

16 A. It might if the fingerprint was accurate. You know,
17 people have been renditioned from Seattle over the Madrid bombing and
18 the fingerprint data was erroneous and falsified by the FBI. So it's
19 possible if it really is his fingerprint, that would be corroborating
20 information that, in fact, he had been in contact with the document.
21 If the fingerprint identification was on fewer than the necessary
22 points, there's a system on how many points have to match, then it
23 might not be credible. It might be erroneous.

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1 Q. Sure. Any evidence that there was some kind of conspiracy
2 to get Mr. Ali's fingerprint on this document?

3 A. Well, look, I've seen documents that have been censored
4 and edited. We know that the government makes mistakes. You're
5 asking me this hypothetical if it is. I don't know if the
6 fingerprint is his or not. You're telling me that it is.

7 If it says it's a match, then I'd say, well, there are
8 degrees to which fingerprinting is done. I know that. And I know
9 that the government has made errors before. If it matches, if it
10 goes on, he can identify his address, I'd say that would be what I
11 would consider ----

12 Q. Okay.

13 A. ---- an external piece of data with which to try and check
14 a memory. But -- yeah.

15 Q. Assuming it was valid.

16 A. Assuming it was valid, yeah.

17 Q. Okay.

18 TC [MR. GROHARING]: Could I have -- could we please pull up
19 AE 628AA Attachment W?

20 Q. Have you seen this document before?

21 A. No, I have not.

22 Q. I would represent to you that that's an identification
23 card for Mr. Ali that he provided to the Wall Street Exchange Center

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1 that -- to make the transfer that you just ----

2 MJ [Col McCALL]: Mr. Groharing, let me -- let me stop you.

3 So I understand the point that you are making as far as the
4 witness testifying about corroborating evidence and its potential
5 impact on a person. Are we going to go through every piece of
6 evidence?

7 TC [MR. GROHARING]: No.

8 MJ [Col McCALL]: Is there something to be gained from this
9 with this witness?

10 TC [MR. GROHARING]: Your Honor, my intent is to go through
11 three different exhibit -- four.

12 MJ [Col McCALL]: How about this? Let's -- let's do this.
13 Let's cut to the chase.

14 Dr. Morgan, if there's corroborating evidence, why don't you
15 just say that.

16 TC [MR. GROHARING]: But, Your Honor, my point is the ----

17 MJ [Col McCALL]: Go ahead.

18 TC [MR. GROHARING]: ---- perception of -- it's the perception
19 of proof.

20 What I want to establish is there was a powerful perception
21 of proof in Mr. Ali's mind. He was confronted with evidence of
22 transferring money in true name, sometimes an alias. But that was
23 clearly connected to him and he was confronted with that proof.

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1 And based on the doctor's testimony, he thinks that
2 makes -- that would make a statement more reliable, the fact that
3 somebody made it under those circumstances. So that -- that's what
4 I'm trying to establish.

5 MJ [Col McCALL]: All right. Well, get to that. I mean,
6 again ----

7 TC [MR. GROHARING]: That's what ----

8 MJ [Col McCALL]: ---- I don't know that going through each
9 piece for -- with a witness that doesn't know the underlying facts
10 and how strong a corroboration that is and all the other
11 pieces -- why don't you just ask him the fact pattern of the stronger
12 the corroborating evidence, is there more pressure on the person to
13 perhaps want to voluntarily say something?

14 Get -- get -- get to the heart of the question. I really
15 don't want to go through all of the evidence with a witness that is
16 not familiar with this evidence.

17 TC [MR. GROHARING]: Right. But the witness is also rendering
18 an opinion that these statements were involuntary, right? That's a
19 very important opinion in this case.

20 And to the extent you're going to give it any kind of
21 weight, it's -- it's incumbent upon the government to demonstrate
22 how -- how reliable this statement was. And I ----

23 MJ [Col McCALL]: And I'm not stopping you at that. I'm

1 stopping you from going through each piece of the evidence.

2 All right. You said you're going to go through three more
3 pieces of evidence?

4 TC [MR. GROHARING]: That's -- that's -- yes, Your Honor.

5 MJ [Col McCALL]: All right. I'll allow that, and then move
6 on.

7 **Questions by the Trial Counsel [MR. GROHARING]:**

8 Q. So this -- this document is an -- a photocopy of an
9 identification card that Mr. Ali, I'll represent to you, provided to
10 the Wall Street Exchange Center. And Mr. Ali during the interview
11 acknowledged that it was his ID card and that he did provide that to
12 the Wall Street Exchange Center.

13 Do you agree that being confronted with this evidence of his
14 guilt is a possible explanation for his admission in January of 2007?

15 A. It -- it is possible. I mean, Saul Kassin has done a
16 great deal of work on why people decide to take a plea or -- or, you
17 know -- or why they confess to -- to something ----

18 Q. Sure.

19 A. ---- when the police confront them with data.

20 I think what I've testified to before in other courts as
21 well is that when we see two different memories being reported by
22 someone, without something independent of that, we don't -- by -- by
23 just listening to a memory, a statement, a story from someone,

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1 there -- it's very difficult to tell. You can't tell a false memory
2 from a true one, and that's not the same as detecting a lie from a
3 truth.

4 And what I have said is that with respect to human memory,
5 without having something external to anchor the assessment of the
6 memories, human memory is unreliable because we -- we don't know
7 which version is true.

8 So I'm not saying that it boosts somebody's -- somebody's
9 feelings about I need to confess. That's -- that's an opinion that
10 people who do interrogations have. It's something that's taught in
11 the interrogation programs. I've taken the interrogation course.

12 So that's the belief. I -- I think you have to pay
13 attention to why the -- why the person would confess to something is
14 something that they only know and if they're willing to divulge that.

15 With respect to my expertise, I would say if there was a
16 story being told, let's say about this document. There's -- I
17 remember doing X, Y, and Z and this was involved. But then you had a
18 different version of the story and you didn't know, but then you
19 found this and you found that the data matched one story versus the
20 other. As an eyewitness memory expert, I would say, well, we can't
21 use memory as the defining characteristic of what may be more
22 reliable, what's something we can count on more valid. I'd say go
23 with your forensic -- go with your forensic data that you have.

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1 So -- but that's all I'm saying. I'm not saying that it
2 boosts one's confidence in why someone might decide to say I confess
3 to something or admit to a crime. I mean, what we know from that
4 literature is people are weighing their options. And the reason why
5 that is relevant to PTSD is that that's actually what's shown in the
6 frontal lobe dysfunction in PTSD. The region that's deeply affected
7 is the one about weighing future options, pros and cons. Will this
8 help me or not help me?

9 And this is what's hard -- it's hard for other people to
10 appreciate, that with this mental illness they are damaged with
11 the -- in the capacity to weigh what is really in their own interest.
12 And that's why the issue of frontal lobe dysfunction comes up in many
13 different kinds of cases in court, because we know that region of the
14 brain is damaged in people with PTSD. We know it is in this
15 individual from the brain scans. We know it is from the neuropsych
16 testing.

17 And so the very region of the organ in his body known as his
18 brain that is damaged is the region we rely on to make these very
19 kinds of decisions. When confronted with data, what do I do if the
20 police say I know this?

21 So my own ----

22 Q. Okay.

23 A. ---- view based on the science is if there's external

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1 forensic data, go with that and not somebody's memory, because memory
2 is fluid. If you've got two different versions of a memory and I
3 had -- I had to decide, I'd say, well, I need something else to try
4 and figure out what is more reliable. That's -- that's all I'm
5 saying.

6 But -- but the decision to confess, not to confess or to
7 plea or not involves this -- this complicated form of reasoning of
8 weighing options. And that's the very region of the frontal lobe
9 that's severely impaired in this illness, so...

10 TC [MR. GROHARING]: Can we pull up 628AA Attachment Y,
11 please?

12 Q. And I'll represent to you that this is a copy of a wire
13 transfer that was shown to Mr. Ali during the interview, which also
14 contained the same P.O. Box as the prior transfer that I showed
15 you ----

16 A. Uh-huh.

17 Q. ---- but it contained a different name.

18 A. Okay.

19 Q. And then he was shown this document during the interview.
20 And during the interview, Mr. Ali noted that he did recognize this
21 transaction as being sent by him.

22 A. Uh-huh.

23 Q. Is that another example of perception of proof?

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1 A. It could be. I don't know whether fingerprints were found
2 on this or not. If there were no fingerprints on this, I would say
3 this could be the creation of a false memory in the sense that being
4 paired with another piece of data, he could assume that it,
5 therefore, was something that was sent by him.

6 Like, if I didn't know ----

7 Q. So ----

8 A. ---- any other information, if you pair it with something
9 that they know -- that they know, we know that we can create a false
10 memory about it.

11 So I ----

12 Q. So you ----

13 A. ---- wouldn't know whether that was true or not true when
14 he says, "I do recognize this." Because ----

15 Q. Yeah.

16 A. ---- if it has been paired with something previous that he
17 did recognize in the context of an interview, that's how we were able
18 to create the paired association between now that and a false memory,
19 and the person remembers it as being true. So this might be
20 something that corrupts his memory and is a false memory statement,
21 but you wouldn't know.

22 Q. Would the fact that it was his own P.O. Box and in his own
23 handwriting ----

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1 A. Well, again, that would depend on your forensic expert and
2 that you'd have to make your decision ----

3 Q. Well, you ----

4 A. ---- how much you believe those, yeah.

5 Q. He could recognize those things, right? Like, if in his
6 mind he knew he had done these things, right?

7 A. Right.

8 Q. And then he saw proof that -- of something that he knew he
9 had done, that's -- that's perception of proof, right? That's
10 powerful?

11 A. Well, that's what -- that's what usually the police or law
12 enforcement is hoping -- right? -- to have an impact if someone
13 recognizes something.

14 But, again, that's the decision on the part of
15 the -- the -- you know, the prosecution or the police or whatever to
16 say ----

17 Q. Sure.

18 A. ---- what evidence do you want to use and what do you
19 think is the most reliable?

20 Q. Okay.

21 A. I just know that when we pair information together, people
22 can create a -- an erroneous narrative, a false memory about it ----

23 Q. Sure.

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1 A. ---- that they then believe is true. And that's what
2 makes it hard -- it makes it very hard sometimes in looking at this
3 data to know what do I believe and what don't I believe.

4 Q. Okay.

5 A. And that's why I have testified before, go with something
6 that's external, corroborative ----

7 Q. Okay.

8 A. ---- and independent.

9 Q. Fair enough.

10 TC [MR. GROHARING]: Can we pull up 628AA Attachment Z?

11 It's the last one, Your Honor.

12 Q. And I'll represent to you this is a copy of another wire
13 transfer that was shown to Mr. Ali during his interview, which also
14 contained the same P.O. Box number. This time a bit of an alteration
15 of the fake name that he provided the first time. It was Isam
16 Mansour instead of Isam Mansur.

17 A. A variation.

18 Q. A variation, sure. And I'll represent to you that Mr. Ali
19 said he also recognized this transfer as one made by him. Is that
20 not also an example of perception of proof?

21 A. I would anticipate that being a -- generating a perception
22 of proof in his mind with the ----

23 Q. Yeah.

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1 A. ---- FBI showing him that, yes.

2 Q. And being confronted with this evidence of his guilt is a
3 possible explanation for his admission in January 2007?

4 A. It's a possibility, yes.

5 Q. You said you reviewed the testimony of those who
6 questioned him in the LHM. Is there any documentation of startle?

7 A. Well, no. There -- they're not evaluating his startle, so
8 no. There's not.

9 TC [MR. GROHARING]: Your Honor, I don't know where we are in
10 time. I'm good keeping going.

11 MJ [Col McCALL]: Yeah, let's press.

12 TC [MR. GROHARING]: I didn't realize there was a clock.

13 MJ [Col McCALL]: That's fine. Let's press.

14 TC [MR. GROHARING]: All right.

15 Q. Are you aware that Mr. Ali was recorded in a conversation
16 on January 26th, 2007, with Ahmed Ghailani?

17 A. I'm not aware of that, no.

18 Q. Okay. That's a week or so after he was -- participated in
19 these interviews. Does that sound about right?

20 A. All right.

21 Q. Okay. And so you haven't reviewed the transcripts of
22 those conversations?

23 A. I don't believe I have, no.

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1 TC [MR. GROHARING]: All right. Can you please pull up the
2 next document?

3 Q. And I'll represent to you that this is a summary of a
4 verbatim translation of a recording of Mr. Ali and Mr. Ghailani on
5 January 26th, 2007.

6 A. Okay.

7 Q. Okay. Do you know who Mr. Ghailani was?

8 A. No.

9 Q. Okay. He was a member of al Qaeda who was convicted of
10 his role in the East Africa embassy terrorist attacks in Kenya ----

11 ADC [MS. PRADHAN]: Objection. Counsel's testifying.

12 MJ [Col McCALL]: Mr. Groharing?

13 TC [MR. GROHARING]: It's -- that information too, it's
14 him -- the point I offered it is to show Mr. Ali talking to another
15 member of al Qaeda. I'm representing to him that's who he's talking
16 to, explaining who this person is that's listed on the page.

17 MJ [Col McCALL]: All right. I think that's fine. Go ahead.

18 TC [MR. GROHARING]: Okay. And this is AE 628AA Attachment F.

19 Q. And if we could go to page 2. Page 2 in the second line.
20 It says: Ammar asked G -- Ghailani -- about details of when they
21 told Ghailani that he would go for an interview again and who the
22 people were and what they looked like.

23 ADC [MS. PRADHAN]: Objection. This transcript is not a

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1 verbatim transcript.

2 MJ [Col McCALL]: Objection overruled.

3 TC [MR. GROHARING]: Could we go to page 5, please?

4 Q. And so Mr. Ali, Ammar, says during this conversation:

5 Things, disasters. They obtained the bank accounts, the banks that I
6 had opened, things that I bought. I mean, disasters.

7 TC [MR. GROHARING]: Go to page 6, please.

8 Q. So everything was there, so disasters, I mean, they showed
9 me papers. Disasters. Disasters. I mean, like that. So they, uh,
10 that is why they, uh, they were asking me to sign because they were
11 official papers. Hmm. To their advantage. So the more official
12 paperwork you have, they will benefit more.

13 Mr. Ali continues: So that's why I was thinking myself and
14 Ubaydah have the most official paperwork.

15 And I'll represent to you that Ubaydah is Ramzi Binalshibh.

16 A. Okay.

17 Q. Mukh -- is a reference to Mr. Mohammad -- has nothing at
18 all. I mean, they only asked him did you know this or not know this,
19 right? So we used to move around using our names and our passports
20 and our ID cards, so everywhere we would leave behind a picture. I
21 mean something.

22 Mr. Ali continues: We would leave behind a bank account.
23 We would leave uh my travel tickets. They found and brought all of

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1 them. All of them.

2 Now, do you agree with me that this provides further
3 evidence of perception of proof and the impact it had on Mr. Ali?

4 A. It might. I was wondering, what's the -- the "glory be to
5 God" after that last one? It -- culturally is that a celebration
6 of -- of the awareness of the statement from one person to another?

7 Q. It ----

8 A. I don't understand the context of that.

9 Q. I don't -- it's what Mr. Ghailani said, so we'd have to
10 ask him what he meant by it. But I don't -- I can't answer your
11 question.

12 A. Well, the reason I ask -- I'm a psychiatrist -- it's nice
13 to know what somebody means when they say something to somebody else,
14 the meaning it has.

15 It -- you know, in the context when people are being
16 interviewed by law enforcement to try and present as much data you
17 have to get a statement out of a person, it -- it -- I really don't
18 know what is going on in the person's mind. I know that they're
19 working with someone with a mental illness, and part of the danger
20 is -- and that's where we talk about conditioned defeat -- is that
21 very often patients do not do something that is in their own
22 self-interest. And their own self-interest would be to not confess.

23 Q. True.

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1 A. Right? So the dilemma is that you're confronted with a
2 couple possibilities here. You have a mentally ill person who's
3 still a human being and understands they need to try and weigh
4 options. We know with his condition, people are -- they have
5 deficits in formulating those kinds of options in their mind.

6 So it's certainly possible that he would say what he
7 said ----

8 Q. Yeah.

9 A. ---- from the perspective that, okay, you have enough
10 data. It's also certainly possible that from the defeatist position,
11 being a mentally ill person, it's -- you know, it's going to happen
12 anyway, so I won't defend myself in that way.

13 Q. Okay.

14 A. And we certainly -- we certainly have seen that in other
15 cases with PTSD. People don't want to defend themselves. And that's
16 part and parcel of symptomatology, which is why evaluations are
17 important.

18 Q. Okay.

19 A. They don't think about the odds in the same way that we
20 do. So it's possible that -- that that played a role in his decision
21 to say what he said.

22 Q. Sure.

23 A. But -- but I want to be clear, you're not dealing with a

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1 healthy individual.

2 Q. I -- Doctor ----

3 A. Whether or not, you know, I'm just wondering ----

4 Q. I don't think at this point anybody would think that
5 that's not your opinion. I understand that that's your opinion.

6 TC [MR. GROHARING]: Could we please pull up the next
7 document? It's 340.

8 Q. And I'll represent to you this is another recording of a
9 conversation again with -- between Mr. Ali and Mr. Ghailani, and it
10 was on April 8th, 2008.

11 TC [MR. GROHARING]: If we could go to page 2.

12 Q. So Ammar -- and on page 2, about two-thirds of the way
13 down, it says -- and they're talking about what names they've used.

14 A. Uh-huh.

15 Q. Mr. Ghailani asked if he only goes by Ammar. Ammar says:
16 No. The most thing I have are the names. There is a name repeated
17 three times, Ammar, Ali, Hani. They were transfers. I sent
18 transfers through the bank. So these are the names for those
19 transfers.

20 Now, you'll recall on the transfers that -- I'm sorry.

21 And he continues, he says: Oh, Hani. Is Hani Hanjour, Hani
22 Isam Mansour and Isam Mansar at the bottom.

23 And you'll recall from the previous exhibits two of the

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1 names Mr. Ali used ----

2 ADC [MS. PRADHAN]: Objection, Your Honor.

3 MJ [Col McCALL]: Basis?

4 ADC [MS. PRADHAN]: I don't see any difference between the
5 facts that Mr. Groharing is asking this psychiatric expert about now
6 and the facts that he was asking about when he was putting pieces of
7 paper in front of him that he couldn't corroborate.

8 MJ [Col McCALL]: I assume he's getting there, so I'll give
9 him a little more room to get there.

10 If you can do so, Mr. Groharing.

11 TC [MR. GROHARING]: Sure.

12 MJ [Col McCALL]: Objection, overruled.

13 Q. Does this information not corroborate Mr. Ali's statement
14 about sending the wire transfers we previously discussed?

15 A. Well, it would be consistent with what he said to the FBI
16 before, so they might consider it corroborating.

17 I don't know whether there's additional bragging going on.
18 I don't know how candid the conversation is. I don't know the nature
19 of what he was intending to convey, but it could be seen as
20 corroborating, yeah.

21 Q. Okay.

22 TC [MR. GROHARING]: Please pull up -- I'm sorry, in the
23 record -- let me make sure I have that. Just one moment, Your Honor.

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1 MJ [Col McCALL]: Take your time.

2 TC [MR. GROHARING]: Your Honor, that was 628AA, I believe
3 Attachment H.

4 MJ [Col McCALL]: All right.

5 Q. Okay. I'm showing you another conversation between
6 Mr. Ali and Mr. Ghailani.

7 TC [MR. GROHARING]: Could you -- there we go. That's 628AA
8 Attachment I, the current document that's on the screen.

9 MJ [Col McCALL]: All right.

10 TC [MR. GROHARING]: And I believe these documents are
11 displayable to the public, Your Honor. I'm not sure if that's
12 already happening, but I don't think I indicated that earlier.

13 MJ [Col McCALL]: Hold on.

14 All right. Go ahead. It can be displayed to the gallery.

15 TC [MR. GROHARING]: And if I could go to page 2, please.

16 Q. Again, Mr. Ali and Mr. Ghailani are talking. And
17 Mr. Ghailani asks: You sent it?

18 Mr. Ali says: I did send it. Plead guilty. Signed. A
19 complete letter, complete. There's no chance. We cancelled all the
20 motions.

21 Ghailani responds: The problem is, Ammar, that you cannot
22 change your statement.

23 TC [MR. GROHARING]: Next page, please.

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1 Q. Let me ask you, when the brothers wanted to do this
2 action, did you know about it?

3 Which one?

4 The operation, that the brothers wanted to do; you didn't
5 know!

6 Ammar responds: No, I did know.

7 Okay. So where is the guilt here?

8 The guilty is, look. I did the action that I wanted to do.
9 Not the one they did, the one I did. You understand?

10 Yes.

11 And if I am guilty in regards to the action I did, then I am
12 guilty. That is only what -- unintelligible.

13 TC [MR. GROHARING]: Page 4, please.

14 Q. Ammar says: I did. I said it like it happened. The
15 issue is, there were a lot of questions that needed answers. We sat
16 down and answered them.

17 The biggest question was, that we take the responsibility of
18 September 11th. We announce it, not them putting the charges on us.
19 These charges are in court. Believe me; they are there, printed on
20 paper and with the evidence. No one believes it in the whole world.
21 The Sheikh talked a thousand times. There are books with the
22 American people. There are programs that they watch. They say the
23 Sheikh works for the CIA. Okay? You understand? Up until now,

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1 there are people who do not believe the Sheikh. They say this is a
2 fictional thing; the CIA did this and it is a game by the CIA. Until
3 now! Until now, inside America.

4 So for me, my lawyers did not help me to understand things.
5 There are people who do not believe it and still don't. You see? So
6 we have to accept reality and give a very clear picture, not leave
7 any shadow of a doubt.

8 Ammar talks further: I will say what I did. My role was
9 this and I did this. And you judge me. So I will not add or
10 subtract, I will say this is my role. This thing, this idea is not a
11 new idea. I have been working on it since August.

12 And that's -- that's not a statement you're familiar with,
13 right?

14 A. No. That's the first time I've seen that.

15 Q. And that's a statement made -- made to Mr. Ghailani by
16 Mr. Ali. That wasn't coerced by the FBI, right?

17 A. It doesn't appear to be, no.

18 Q. Do you have any evidence that that was a false memory?

19 A. I wouldn't know the veracity of it. I -- it does appear
20 to be someone who believes that he needs to say what he did to be
21 able to prove a different point, that the American perception is
22 wrong ----

23 Q. Okay.

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1 A. ---- it seemed.

2 But within the context of someone with a mental illness,
3 I -- I wouldn't know the difference between this and a defeatist
4 attitude.

5 He sounds proud of it, wants to change the opinion of the
6 public. I don't know if that's true. We know the -- he believes the
7 Americans think the Sheikh worked for the CIA and you could see his
8 beliefs listed.

9 So his reasoning is -- is interesting to follow
10 psychiatrically, though, about why he would then say he did it. It
11 seems to have a different purpose, something about validating the
12 perception of the Sheikh ----

13 Q. Okay.

14 A. ---- rather than just owning personal responsibility for
15 something. So it -- but it's an interesting statement.

16 Q. Okay. Sure.

17 Are you familiar with al Qaeda efforts to use propaganda?

18 A. With some of them, yes.

19 Q. Okay. And what -- what's your understanding of how
20 al Qaeda uses propaganda?

21 A. Well, when we were in Sharana in Afghanistan ----

22 ADC [MS. PRADHAN]: Objection ----

23 A. ---- we got to see some of it.

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1 ADC [MS. PRADHAN]: ---- Your Honor.

2 MJ [Col McCALL]: Hold on, Dr. Morgan.

3 ADC [MS. PRADHAN]: This is not one of the many areas in which
4 Dr. Morgan was qualified as an expert. This is not relevant to his
5 testimony here. I'm not just -- is there somewhere that counsel
6 intended to go with this?

7 MJ [Col McCALL]: Beyond the scope? Is that ----

8 ADC [MS. PRADHAN]: Yes.

9 MJ [Col McCALL]: All right.

10 Mr. Groharing?

11 TC [MR. GROHARING]: It goes directly to Mr. Ali's -- you
12 know, this, again, corroborates the statements he made to the FBI in
13 the LHM interview. This is another example of corroboration, an
14 important point that ----

15 MJ [Col McCALL]: No, I -- I understand the ----

16 TC [MR. GROHARING]: ---- the witness has indicated ----

17 MJ [Col McCALL]: I understand the corroboration piece.

18 What's the piece on the propaganda?

19 TC [MR. GROHARING]: Well, it -- I had asked if he was aware
20 they used propaganda. It sounds like he is. And I wanted to ask him
21 if that was an explanation in his mind. It sounds like he has some
22 knowledge in that regard.

23 MJ [Col McCALL]: Objection sustained. Move on.

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1 TC [MR. GROHARING]: Okay.

2 Q. I want to refer you to something that I'll represent
3 Mr. Ali co-wrote in 2008.

4 TC [MR. GROHARING]: Pull up -- just one moment, Your Honor,
5 and I'll get the appellate exhibit number.

6 **[Pause.]**

7 TC [MR. GROHARING]: AE 511B (Gov) Attachment C.

8 MJ [Col McCALL]: All right.

9 Q. I'll represent that -- yeah, oh.

10 TC [MR. GROHARING]: Your Honor, this is displayable as well.
11 Where are the highlights? Are there no highlights?

12 MJ [Col McCALL]: All right. It can be displayed to the
13 gallery.

14 Q. And I'll -- and I'll just read to you from it.

15 TC [MR. GROHARING]: Your Honor, I apologize. I highlighted
16 this document further, and I -- no doubt my own error -- didn't save
17 the highlights on the document. So I'll read this ----

18 MJ [Col McCALL]: Take your time.

19 Q. In the second line -- and this is from the 9/11 Shura
20 Council. I'll represent to you that that was the accused in this
21 case, the defendants in this case, something they refer to
22 themselves, as the 9/11 Shura Council.

23 With regards to these nine accusations that you were putting

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1 us on trial for, to us, they are not accusations. To us, they are
2 badges of honor which we carry with pride. Many thanks to God for
3 his kind gesture in choosing us to perform the act of jihad for his
4 cause and to defend Islam and Muslims. Therefore, killing you and
5 fighting you, destroying you and terrorizing you, responding back to
6 your attacks are all considered to be great legitimate duty in our
7 religion.

8 Fair to say that Mr. Ali and the other defendants are
9 justifying their actions, right?

10 A. Just ----

11 LDC [MR. SOWARDS]: Your Honor, as to the reference to other
12 defendants, I would object. A lack of foundation.

13 LDC [MR. RUIZ]: Same here, Judge.

14 And Mr. Groharing continues to make references to what he
15 represents as the Shura Council and defendants representing
16 themselves. Continues to testify, facts that are not in evidence,
17 facts that this witness does not know. So object to that.

18 MJ [Col McCALL]: Objection overruled.

19 So I understand what Mr. Groharing is doing. He's testing
20 the witness' opinion. I -- so it's proper.

21 Objection overruled.

22 Go ahead, Mr. Groharing.

23 LDC [MR. SOWARDS]: Yes, Your Honor, just so it's clear ----

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1 MJ [Col McCALL]: Mr. Sowards?

2 LDC [MR. SOWARDS]: ---- there's never been any authentication
3 of this document as coming from anyone.

4 MJ [Col McCALL]: Understood.

5 LDC [MR. SOWARDS]: Thank you.

6 Q. And does this document reflect someone who's fearful of
7 his captors and how they will respond?

8 A. It doesn't appear to. It reminds me of the Mark Twain *War*
9 *Prayer* -- war poem where there's great praise for going to war by
10 Americans and then the opposite side of the prayer is the destruction
11 and the impact of war.

12 So it -- I don't know how to evaluate that. I don't know
13 how it was generated or who wrote it, so ----

14 Q. And just assume for ----

15 A. But it -- it appears to be ----

16 Q. Assume that for ----

17 A. ---- writing.

18 Q. ---- my question that Mr. Ali did participate in the
19 drafting of this report.

20 ADC [MS. PRADHAN]: Objection, Your Honor. This assumes facts
21 not in the record.

22 MJ [Col McCALL]: That's why he said "assume."

23 Objection, overruled.

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1 Q. And so I believe you were answering whether or not this
2 reflected someone who is fearful of his captors and how they will
3 respond.

4 A. I didn't say that. I think it reflects -- it
5 reflects -- whoever wrote it is expressing how they believe and
6 perceive something. I don't -- I don't know how you'd read more into
7 it without knowing a context and specifically who wrote it and why.

8 Q. Okay.

9 A. Right? It could be exaggeration. It could be metaphor.
10 It could be direct. It could be specific. But it could be pure
11 speculation to try and apply this to anything on ----

12 Q. Okay.

13 A. ---- my part.

14 TC [MR. GROHARING]: Page 2, please.

15 Q. And I'll go to the fourth full paragraph: You were
16 attacking us in Palestine and Lebanon by providing political,
17 military, and economic support to the terrorist state of Israel,
18 which in turn is attacking unarmed civilians.

19 In addition, Israel attacks Palestine and lesbian
20 **[sic]** -- sorry -- Lebanese civilian objects by bombing them and
21 destroying them. Furthermore, Israel is causing grave bodily harm by
22 using weapons that are forbidden internationally.

23 Do you recall reviewing the notes of Mr. Ali's interviews

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1 with the FBI?

2 A. I was going to say, this sounds like the current news.

3 No.

4 What -- what is it you wanted to know if I reviewed?

5 Q. Do you recall Mr. Ali providing justifications for the
6 September 11th attacks in his LHM interview?

7 A. I don't, no. I'd have to look at it.

8 Q. Okay.

9 TC [MR. GROHARING]: One moment. I'll have that pulled up,
10 Your Honor. And that's -- the RHM has already been opened, it's AE
11 628AA (Gov) Attachment E. That is not for public display.

12 MJ [Col McCALL]: All right.

13 TC [MR. GROHARING]: Page 3, please. Oops. My apologies,
14 Your Honor.

15 MJ [Col McCALL]: No, that's fine. Why don't we do this?
16 We've been going for a while, so let's go ahead and take a recess.

17 It's almost 1530. Let's plan on being back in here
18 at -- it's 1525, so let's be back in here at 1540.

19 **[The witness withdrew from the courtroom.]**

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

21 **[The R.M.C. 803 session recessed at 1524, 08 May 2024.]**

22 **[The R.M.C. 803 session was called to order at 1542, 08 May 2024.]**

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

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1 be seated.

2 All right. Are we ready to proceed with the witness?

3 TC [MR. GROHARING]: Yes, Your Honor.

4 MJ [Col McCALL]: All right. If we can get Dr. Morgan back on
5 the witness stand.

6 TC [MR. GROHARING]: And thank you for the court's indulgence,
7 Your Honor. I think we figured out our technical difficulties.

8 MJ [Col McCALL]: All right.

9 TC [MR. GROHARING]: At least -- we figured out a workaround.

10 MJ [Col McCALL]: You probably just jinxed yourself, but all
11 right ahead.

12 TC [MR. GROHARING]: Well, I went old school.

13 **[The witness, Dr. Charles Alexander Morgan III, resumed the witness**
14 **stand.]**

15 MJ [Col McCALL]: Welcome back, Dr. Morgan. Please have a
16 seat.

17 Go ahead, Mr. Groharing.

18 TC [MR. GROHARING]: All right. So when we broke, we had the
19 LHM, page 3, I believe, on -- and that's not for public display.

20 MJ [Col McCALL]: Correct. You can go ahead and pull up that
21 feed.

22 **[END OF PAGE]**

23

1 **CROSS-EXAMINATION CONTINUED**

2 **Questions by the Trial Counsel [MR. GROHARING]:**

3 Q. LHM page 3. All right. Just to orient us and get us all
4 in the same place -- we can pull up the prior statement if you want,
5 but I had read a statement that talked about justifying the attacks
6 by U.S. support for Israel from the other document. And what I'd
7 like to point your attention to on page 3 and on the second -- and
8 the second paragraph under "Khalid Shaikh Mohammad"?

9 A. Yeah. Yes.

10 Q. Said: Ali's uncle, Khalid Shaikh Mohammad, and Ramzi
11 Yousef agreed with the goal of attacking the United States because of
12 its support of Israel. Ali later stated that he, too, agreed with
13 the goal of attacking the United States because of its support for
14 Israel.

15 Is that consistent with the statement that I just read to
16 you?

17 A. It appears to be.

18 TC [MR. GROHARING]: Okay. If we could go back to 101,
19 page 3, please.

20 Q. And, again, in the -- underneath the "Destroying property
21 in violation of law of war," the second paragraph reads: You have
22 violated the law of war by supporting the Israel occupation of Arab
23 land in Palestine and Lebanon and for displacing 5 million

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1 Palestinians outside their land. You have supported the oppressor
2 over the oppressed and the butcher over the victim.

3 Is that consistent with a statement that Mr. Ali made in the
4 LHM about justifying the attacks?

5 A. You're asking me to do reasoning by analogy. And forgive
6 me, but I wasn't read in as the expert to do intelligence analysis
7 work for you. This is really far afield from what I testified about,
8 memory and ----

9 Q. Sure.

10 A. ---- finding corroborating memory. I just want to tell
11 the court, I was never retained to testify as an intelligence
12 analyst, but it feels like you're asking me to thread a needle for
13 you.

14 I appreciate that and I can give my opinion and -- but
15 that's not ----

16 Q. Okay.

17 A. ---- really my ----

18 Q. Just ----

19 A. ---- role but ----

20 Q. Can you ----

21 A. The reason -- lots of people would agree with that
22 statement if that's their faith, right? We're seeing protests around
23 the world right now with people acknowledging this; they're not all

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1 terrorists. So yes, there's a similarity between the statements.

2 Q. Okay.

3 A. But that has nothing to do with what I was testifying
4 about with memory, false memory, versus statements that might be true
5 or not true.

6 Q. That ----

7 A. So I think you've misunderstood ----

8 Q. All right.

9 A. ---- both what I testified to.

10 Q. Okay.

11 A. But I just want to be clear. You're asking me to do a
12 completely different kind of mental work right now, which is more in
13 my role when I was at the Agency doing analytic work, evaluating
14 things to see how much alike and similar they are and whether or not
15 it can support your thesis that this is a proof for -- for this
16 assertion, right? You're lining up your proofs that you hope will
17 support your claim.

18 And that's what I feel I'm in the process of doing right
19 now, but that's your job as the prosecutor, not mine ----

20 Q. Okay.

21 A. ---- as a witness.

22 Q. Sure. And my question to you was: Were those statements
23 consistent? To the extent that Mr. Ali indicated justification for

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1 the September 11th attacks was because of the United States support
2 for Israel, is that consistent with the sentiment expressed there?
3 That's the question.

4 A. It's consistent with many people's beliefs, but it is
5 consistent with his statement, yes.

6 Q. Okay. Thank you.

7 And finally, on page 6, second paragraph: We asked to be
8 near God. We fight you and destroy you and terrorize you. The jihad
9 and God's cause is a great duty in our religion. We have news for
10 you. The news is you will be greatly defeated in Afghanistan and
11 Iraq, and America will fall, politically, militarily, and
12 economically. Your end is very near and your fall will be just as
13 the fall of the Towers on the blessed 9/11 day.

14 We will rise from the ruins, God willing. We will leave
15 this imprisonment with our noses raised high in dignity as the lion
16 emerges from his den. We shall pass over the blades of the sword
17 into the gates of Heaven.

18 Does this writing express a conditioned defeat to you?

19 A. This sounds like poetry. It's religious. It's
20 belief-related poetry, like biblical texts. You could read
21 statements like this in the Bible. You can read statements like this
22 from many people who are zealous in their faiths.

23 I've heard Jim Mitchell comment on the need for Islam to go

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1 away. There's just -- this is expressing a belief. I don't know
2 whose it is.

3 Q. It's -- but the belief is -- the author, I will represent
4 to you, one of the authors is Mr. Ali.

5 ADC [MS. PRADHAN]: Objection.

6 A. I have no basis ----

7 MJ [Col McCALL]: Dr. Morgan, if -- if you see counsel stand
8 up ----

9 WIT: I didn't. I'm sorry.

10 MJ [Col McCALL]: ---- to object, please stop testifying.

11 Ms. Pradhan?

12 ADC [MS. PRADHAN]: Objection. We're beyond the assumption
13 now, and counsel's just represented that the author was
14 Mr. al Baluchi, and that is not in the record anywhere.

15 MJ [Col McCALL]: Objection -- yeah, if you can just watch
16 your phrasing, Mr. Groharing.

17 Objection sustained.

18 TC [MR. GROHARING]: All right.

19 Q. I will represent to you that the author of this
20 document -- one of the authors is Mr. Ali. You indicated ----

21 ADC [MS. PRADHAN]: Objection.

22 MJ [Col McCALL]: Objection sustained.

23 TC [MR. GROHARING]: We have this in evidence?

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1 TC [MAJ DASTOOR]: No.

2 TC [MR. GROHARING]: It's in evidence.

3 MJ [Col McCALL]: And just be careful of the hot mic,
4 Mr. Groharing.

5 Look, I know this is subject to a motion right now, whether
6 it's even going to be coming in at some point. If you want to test
7 the witness' -- the basis of his opinion, if you want to ask him if
8 this is true, does this show something, go for it.

9 TC [MR. GROHARING]: Okay. Thank you, Your Honor.

10 Q. Do you believe this statement would reflect conditioned
11 defeat?

12 A. It may. It may reflect a fatalism that it's all up to the
13 hands of God, which is a religious acceptance of what happens
14 happens.

15 At the individual, personal level, we would -- we might call
16 it conditioned defeat in a person who's been tortured, but it'd be
17 difficult to say what this is compared to a psychological
18 understanding of a depressed person and a traumatized person.

19 It appears to be attributed to a number of people, so I have
20 no idea whose -- whose thinking ----

21 Q. Okay.

22 A. ---- this would reflect, but...

23 Q. Okay.

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1 A. And ----

2 Q. And you noted that in the bottom of the document, it says
3 signed, The 9/11 Shura Council. And that's Khalid Shaikh Mohammad,
4 Ramzi Binalshibh, Walid Bin'Attash, Mustafa Ahmed al Hawsawi, and Ali
5 Abdul-Aziz Ali, right? That's what's on the bottom of the document?

6 A. It also appears to be a statement meant for other people,
7 which means there's a -- there's an ideology or political purpose to
8 it. I mean...

9 Q. Okay. Can you please pull up the next document.

10 TC [MR. GROHARING]: And this is the last document, Your
11 Honor.

12 MJ [Col McCALL]: All right.

13 TC [MR. GROHARING]: And one moment, I'll give you the
14 appellate exhibit.

15 Your Honor, it's AE 628AA Attachment J.

16 MJ [Col McCALL]: All right.

17 Q. Okay. And this is another transcript of a conversation
18 between Mr. Ali and Mr. Ghailani.

19 TC [MR. GROHARING]: Next page, please.

20 Next page, please.

21 Q. And if you read from the top, Mr. Ali asks Ghailani: Do
22 you want to hear my plea or you don't?

23 Ghailani says: What?

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1 Do you want to hear my plea guilty?

2 Ghailani: Do you have a problem?

3 Ammar: I do have a problem, you will use it against me
4 later.

5 Ammar: They will bring you to testify. They will tell you,
6 "We will let you out."

7 Ammar goes on: I consider the military operations in
8 New York and Washington on September 11th are of the best of my
9 deeds, that I will face God Almighty with on the day of judgment.
10 Therefore I am happy -- I am happy to. I am extremely very happy to
11 announce today in front of all people, those who are infidels and
12 those who are believers, that I participated in financing this
13 operation through transferring amounts of monies to the following:
14 The martyr Mohamed Atta.

15 Do you know who Mohamed Atta is?

16 A. I do.

17 Q. Is your understanding he's the pilot hijacker for Flight
18 11?

19 A. I worked with the Department on Justice on a project
20 related to that issue.

21 Q. Okay.

22 And Marwan al Shehhi, God have mercy on him. In order for
23 them to complete their studies and preparedness for the operation

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1 and uh -- I received all these moneys from my mujahideen brother,
2 Khalid Shaikh Mohammad. And I was also the link. You know what the
3 link means? Between the leadership headquarters in each of Pakistan
4 and Afghanistan and Germany and the America. And I had the honor of
5 participating in preparing some of the mujahideen brother who carried
6 out these attacks by providing logistic support to them while they
7 were present in the Emirates before they traveled to the
8 United States. And it was the **[sic]** intention to follow to join them
9 and it was my intention to join the battalions of this blessed raid,
10 but unfortunately, I could not obtain an entry visa in
11 America -- entry visa to America.

12 I carried out this work, and I pledged allegiance to the
13 mujahideen Sheikh, the Sheikh of the mujahideen, the great
14 mujahideen, Usama bin Laden, may God protect him, to give submission
15 and obedience in jihad and to commit jihad with total conviction in
16 religious Shariah about the necessity to commit jihad and fight you
17 wherever you are in this world until you leave our holy lands in the
18 land of the two noble holy mosques; and until you stop you siege in
19 killing Muslims in Iraq; and until you stop ----

20 TC [MR. GROHARING]: Next page, please.

21 Q. ---- your support to the state of terrorist Zionism that
22 is killing our Muslim brothers in Palestine and Lebanon and is
23 desecrating the Aqsa mosque and occupying the Arab and Muslim lands.

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1 So if you consider my work in jihad against you on 11th of September
2 to be terrorism or a crime, then I, with much pride, honor, and
3 dignity, announce it to all people that I am a terrorist and a
4 first-class criminal.

5 Ammar continues: And I wish that I would be killed by you
6 so I can win Heaven and you would be in hell. And I tell you what
7 God ordered me -- I tell you what God ordered me to say to you. Say
8 that we will not be subjected but to only what God has predestined
9 for us; he is our lord, and on God, the believers will go forward.
10 This announcement comes voluntarily from me, without being forced or
11 pressured, or promise of an agreement with any side. God is great
12 and may the prophet of the believers be honored.

13 TC [MR. GROHARING]: Next page, please. You can take that one
14 down.

15 A. If you -- could I ask you to go back to the line that
16 started right before you began reading?

17 Q. Sure.

18 TC [MR. GROHARING]: Back to page 4, please.

19 A. The one prior.

20 TC [MR. GROHARING]: Page 3, please.

21 A. From a psychiatric standpoint, the lines that precede
22 where you started are very important.

23 Q. Okay.

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1 A. Where it says: I do have a problem. You will use it
2 against me later. They will bring you to testify and they will tell
3 you we will let you out.

4 That reflects directly an attitude about the people of
5 government; that they're not -- they're going to lie. They're never
6 going to let him out.

7 He goes -- he laughs and says: They're going to bring you
8 to testify and they will let you out.

9 That sets the framework that reveals a mindset about the
10 FBI, the U.S. Government, and the -- the situation the person's in.

11 What follows psychiatrically, in my opinion, is you hear
12 someone's expression of announcement of faith. Mentally ill people
13 can do that. It could be an expression of martyrdom, a desire to die
14 and go to Heaven.

15 But that is more important up front above it, in my mind,
16 because that frames the reference that lets you know -- you asked me,
17 does he trust them? That says he does not. And says no,
18 this -- this is a world that he believes he's going to be lied to.
19 Which is why I maintain this is a mentally ill person who knows he
20 doesn't have any other choices. If this is the way he can express
21 how he believes meaning will be found, that makes perfect sense.

22 But it -- it doesn't mean -- it doesn't mean he's freely
23 choosing what would be in his best interest. He knows his -- he

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1 doesn't have those options.

2 Q. And you make that assessment without ever speaking to him?

3 A. I make that assessment -- why do you think someone would
4 laugh? You don't have to be a behavioral specialist to look at
5 that -- look at that dialogue that comes up ahead and then look at
6 that. It certainly puts the possibility front and center that
7 they're mocking the system, going, "You've got to be kidding.
8 They're not going to let him out."

9 Q. Doctor ----

10 A. He's making a joke.

11 Q. Okay. Doctor, is that same analysis that you just
12 provided, is that the same kind of rigor and analysis that you put
13 into all of the opinions that you've provided in this court today?

14 A. No, I'm just pointing out something obvious, that you
15 don't need a degree ----

16 Q. Right.

17 A. You don't need a degree to understand when someone is
18 laughing and saying what they think of the FBI. You don't like that
19 because that doesn't go with your position that he trusted them. I'm
20 saying he didn't trust anybody underneath his polite facade, but ----

21 Q. It's that kind of rigor that you brought to these
22 proceedings and to all of your opinions. Is that fair?

23 A. That's actually preposterous. You know full well I've

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1 identified the specific symptoms of PTSD, the criterion; I've laid
2 them out. I'm sorry if I annoyed you by pointing out something that
3 you didn't want to point out on here, but you're asking me my
4 opinion ----

5 MJ [Col McCALL]: Dr. Morgan, thank you for your testimony.

6 Mr. Groharing, move on to your next question.

7 TC [MR. GROHARING]: That's all very helpful, Dr. Morgan. I
8 appreciate your testimony.

9 MJ [Col McCALL]: All right. Let's take a ten-minute recess.

10 **[The witness withdrew from the courtroom.]**

11 MJ [Col McCALL]: The commission is in recess.

12 **[The R.M.C. 803 session recessed at 1559, 08 May 2024.]**

13 **[The R.M.C. 803 session was called to order at 1609, 08 May 2024.]**

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

15 The parties are present. The accused are absent.

16 **[The witness, Dr. Charles Alexander Morgan III, resumed the witness
17 stand.]**

18 MJ [Col McCALL]: Dr. Morgan is on the witness stand.

19 Ms. Pradhan, are you ready?

20 ADC [MS. PRADHAN]: Sorry. I was trying to not be right here
21 when you ----

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

23 ADC [MS. PRADHAN]: Thank you.

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REDIRECT EXAMINATION

Questions by the Assistant Defense Counsel [MS. PRADHAN]:

Q. Good afternoon, Dr. Morgan.

A. Good afternoon.

Q. All right. I'd like to start by talking a little bit about the timeline of your work with Mr. al Baluchi's team.

A. Yes.

Q. So you were asked by Mr. Groharing about your 2016 declaration, which was -- I think it was dated April 2016.

ADC [MS. PRADHAN]: And that's in the record at AE 425NN.

Q. Do you recall that?

A. I do.

Q. All right. And that declaration focuses on the impact of stress on memory, broadly; is that correct?

A. Yes.

Q. All right. That's your area of expertise -- one of them, right?

A. That's correct.

Q. ---- in which you were qualified as an expert before this commission?

A. Yes.

Q. Okay. And, sir, could you tell me what -- the impact of stress on memory, just recount for us what -- what studies that

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1 expertise is based on?

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

3 MJ [Col McCALL]: Well, Ms. Pradhan, look, maybe go -- get to
4 the point on it. I ----

5 ADC [MS. PRADHAN]: Okay.

6 MJ [Col McCALL]: I have the transcript, so I -- I know the
7 different studies. If you -- but if you want to draw his attention
8 to a particular study, that's fine.

9 ADC [MS. PRADHAN]: Okay.

10 MJ [Col McCALL]: But objection sustained.

11 ADC [MS. PRADHAN]: All right.

12 Q. And that's based -- that 2016 declaration is based on your
13 extensive work in SERE school; is that correct?

14 A. SERE school and at the National Center for PTSD.

15 Q. Thank you.

16 Now, between that period when you submitted your declaration
17 in 2016 and March 2022 when you were called upon to conduct forensic
18 inspections, were you -- do you recall being very active in
19 Mr. al Baluchi's case between those years?

20 A. I wasn't, no. I -- I was busy teaching at the university.

21 Q. And then in the lead-up to the writing and the drafting
22 and submission of your second declaration, which was in January 2024,
23 you reviewed a number of documents. Do you recall?

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1 A. I did.

2 Q. Okay. And among those were medical reports?

3 A. They were.

4 Q. Conducted by independent experts?

5 A. That's correct.

6 Q. In the medical reports that you reviewed, do you recall
7 when those were completed?

8 A. There were a number. The ones by Dr. Xenakis I think were
9 2015 and 2016. Dr. Gur's for brain imaging, I believe, was 2019.
10 And I think Dr. Shea's was 2020, 2021. Yeah.

11 Q. Okay. And in what capacity or pursuant to what area of
12 expertise were you asked to inspect Camp VII and Echo II in 2022?

13 A. It was -- I was asked to consider aspects of our -- if one
14 is under a state of fear, would fear -- if fear conditioning was
15 occurring, what might be the cues? And if we think of context
16 conditioning, what would be the contextual cues and how would
17 I -- how would I think about that?

18 And so when I inspected the sites, that -- that was the
19 framework for how I was evaluating the spaces and the objects that
20 were in the spaces, in the same way that I would when we do a
21 research experiment, and we say we're going to study fear
22 conditioning and memory. Here are the spaces participants will be
23 in.

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1 So I went there with an eye toward evaluating the
2 characteristics of the space.

3 Q. All right. And you were asked by Mr. Groharing what you
4 reviewed in the process of drafting that supplemental declaration and
5 for your testimony today, correct?

6 A. That's correct.

7 Q. And you've testified about reviewing the report written by
8 the CIA's Office of the Inspector General?

9 A. I did.

10 Q. A number of Dr. Jessen and Mitchell's white papers,
11 correct?

12 A. I did.

13 Q. A number of classified documents about the RDI program?

14 A. Yes, I did.

15 Q. A number of Mr. al Baluchi's previous medical records?

16 A. Yes, I reviewed those.

17 Q. You testified about voluminous ----

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

19 ADC [MS. PRADHAN]: Yes.

20 MJ [Col McCALL]: Mr. Groharing?

21 TC [MR. GROHARING]: The question misstated the
22 evidence -- the testimony.

23 MJ [Col McCALL]: Give me more.

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1 TC [MR. GROHARING]: He didn't testify about a number of
2 classified CIA documents that he reviewed.

3 MJ [Col McCALL]: Ms. Pradhan?

4 ADC [MS. PRADHAN]: I suppose I could be mistaken, but
5 Mr. -- I believe Dr. Morgan gave, you know, as -- we've been over
6 this a few times now about exactly what he reviewed, and he did say
7 that he reviewed classified documents, so...

8 MJ [Col McCALL]: Objection overruled. Go ahead.

9 ADC [MS. PRADHAN]: All right.

10 Q. Well, my last question was: You testified in response to
11 Mr. Groharing's questioning about voluminous courtroom testimony from
12 Drs. Jessen and Mitchell in 2020 and 2024 as well as from FBI agents.
13 Do you recall?

14 A. That's correct.

15 Q. All right. You also testified that you reviewed
16 photographs of all the black sites in which Mr. al Baluchi was held?

17 A. I did.

18 Q. Photographs taken by the team during your inspection of
19 Camp VII and Echo II?

20 A. I'm sorry?

21 Q. Sorry. Photographs taken by our legal team during your
22 inspection of Camp VII and Echo II?

23 A. Yes.

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1 Q. Okay. Did you base your conclusions in your second
2 declaration on those documents along with your previous -- along with
3 your accumulated expertise?

4 A. Yes.

5 Q. Okay. I'd like to talk about uncontrollable stress,
6 Dr. Morgan.

7 Mr. Groharing asked you about the length of time that
8 Mr. al Baluchi was tortured and represented that it was three to four
9 days of EITs, enhanced interrogation techniques. Do you recall that?

10 A. I do.

11 Q. All right. Do you recall in your review of the OIG report
12 reviewing -- and during -- on direct examination reviewing a number
13 of techniques that were approved for use with Mr. al Baluchi?

14 A. I do.

15 Q. And there were a number of techniques that required
16 approval by CIA, right ----

17 A. Yes.

18 Q. ---- in order for use?

19 Do you recall what those were?

20 A. I believe the ----

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

22 MJ [Col McCALL]: Objection, overruled.

23 A. I believe there were a couple of statements about the

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1 degree to which one could be sleep deprived and also relevant to the
2 waterboarding. There were some concerns about the risk of heart
3 attack and things like that that were mentioned in the report.

4 Q. Okay. Do you recall a list of other techniques that could
5 be used by the CIA without approval?

6 A. I do. The -- they included there could be cold or heat
7 stress, there could be walling, there could be control of the body,
8 with the chin grasp, the belly slaps, stress positions. It was
9 someone's impression for a while, I guess, that broomsticks were to
10 be used behind the knees for a stress position. That has never been
11 a SERE technique, at least since the early 19 -- 1994, '95, to my
12 knowledge.

13 Other techniques were being -- with restraint sort of
14 standing. In other words, the sleep deprivation was done by
15 requiring the person to be standing. And then water dousing was
16 another one of the stressors. Sound was a stressor. White noise,
17 stress. And then between light and dark, depending on the condition.

18 Q. All right. Dr. Morgan, based on your expertise in
19 interrogation and detention stress, would one incidence of mock
20 drowning on a tarp cause uncontrollable stress?

21 A. Yes, it would be. If a person did not ask for the
22 experience and was fearful, it would be -- it is an uncontrollable
23 stress experience. They don't have control over what's happening.

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1 They cannot say when it should be started, how long the duration or
2 intensity of it should be, and when it would cease.

3 And those are the parameters that define uncontrollable
4 stress. And uncontrollable stress may be greater -- there are
5 degrees of magnitude of uncontrollable stress, but it would be -- it
6 would be scientifically uncontrollable stress.

7 Q. Would having a stick placed behind your knees causing
8 intense pain cause uncontrollable stress?

9 A. Yes.

10 Q. Does the fact that it was, in fact, not an approved
11 technique and the CIA did not approve it make any -- would that
12 change the level of uncontrollable stress in Mr. al Baluchi?

13 A. No. Whether it was approved or not approved
14 doesn't -- from a science standpoint doesn't make something
15 controllable or uncontrollable stress.

16 Q. Would two and a half years of continuous sleep disruption
17 via 24/7 light and white noise cause uncontrollable stress?

18 A. That would be uncontrollable stress, yes.

19 Q. Would it matter to Mr. al Baluchi and the effect on
20 Mr. al Baluchi if the CIA ----

21 A. Sorry.

22 Q. ---- said that 24/7 light and white noise were not
23 enhanced techniques and, in fact, were not an interrogation technique

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1 at all?

2 A. I'm sorry. I didn't hear the first part. I was trying to
3 clear my ears. I'm sorry.

4 Q. Sorry. Would it matter to the effect, the overall impact
5 on Mr. al Baluchi, if the CIA said that 24/7 light and white noise
6 for prolonged periods of time were not intended as an interrogation
7 technique?

8 A. It wouldn't matter about the impact of it. It is
9 uncontrollable stress. It doesn't -- the intention as to why it was
10 being done doesn't matter. We know that prolonged light exposure or
11 dark exposure or fluctuation in sound exposure are detrimental to
12 nonhuman animals and human animals.

13 And when I say that, I mean their elevations of cortisol,
14 depressions of the immune system, increase of gastric ulcers and
15 increased cognitive difficulty in processing information.

16 Q. Now, Dr. Morgan, you were asked by Mr. Groharing if you
17 had reviewed any records that indicated that the shackling caused
18 Mr. al Baluchi stress at the black sites. Do you recall that?

19 A. I do.

20 ADC [MS. PRADHAN]: May I have use of the document camera,
21 sir? This is not for display to the gallery.

22 MJ [Col McCALL]: All right. Go ahead.

23 Q. I'd like to show you a document that's in the record at

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1 AE 200MM Attachment E. I know it's a little bit difficult to read,
2 and I apologize for that. It's the quality of our -- quality of the
3 scan, I think.

4 But this is an unclassified statement by Mr. al Baluchi
5 written, as you'll see at the top, December 1st, 2015. And it says:
6 In black site -- self-redacted -- there the U.S. Government had my
7 both hands tied together by tight handcuffs for about 120 days
8 straight.

9 When my torturers decided to move me to black
10 site -- self-redacted -- they had to cut the handcuffs by bolt cutter
11 because the handcuffs got so rusted that wouldn't open with keys.
12 During that time, half of my body, either left side or right, would
13 go numb because I couldn't move my arms away from each other.

14 Until this day, I'm suffering from the symptoms, along with
15 multiple neurological pain all over my body, as handcuffs and
16 restraints are still being used on me on daily basis, at least once
17 every 24 hours, as a reminder to my mind of what happened in the past
18 and to my body to reignite.

19 Does that provide you with additional detail to assess the
20 impact of uncontrollable stress on Mr. al Baluchi?

21 A. It does. With nonhuman animals, we would call that
22 prolonged restraint stress. The inability to -- inability to move
23 for great periods of time was extraordinarily stressful for animals

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1 in the laboratory. It's stressful for humans as well. And this
2 would be a remarkable period of time, if it was 120 days, for someone
3 to have restraint stress.

4 It is the kind of experience that's also been described by
5 other victims of torture. They've talked about the swelling in the
6 limbs and then pain afterward. And it's -- it's very consistent with
7 what could become a conditioned stimulus to be in the -- a position
8 of being handcuffed again. And body pain would also be a cued
9 reminder of the torture.

10 Q. All right. I'd like to show you a document that's in the
11 record at the same place.

12 ADC [MS. PRADHAN]: AE 200MM Attachment C.

13 MJ [Col McCALL]: Go ahead.

14 ADC [MS. PRADHAN]: Thank you, sir. And, again, this is not
15 for display to the gallery at this time.

16 MJ [Col McCALL]: All right.

17 Q. And I'd like to direct your attention to about halfway
18 down the page, beginning, "Now back to suspension."

19 It states: Now back to suspension, I wasn't just
20 being -- excuse me -- suspended to the ceiling. I was naked,
21 starved, dehydrated, cold, hooded, verbally threatened, in pain from
22 the beating and water drowning, as my head smashed by hitting against
23 the wall for dozens and dozens of times.

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1 Let me stop there and ask if that is consistent with what
2 you read in the CIA OIG report describing, by the CIA, the
3 descriptions of Mr. al Baluchi's EITs?

4 A. Yes.

5 Q. Thank you.

6 Continuing: My ears were exploding from the blasting harsh
7 music which is still stuck in my head.

8 Is that statement, Dr. Morgan, consistent with what you know
9 of the impact of acoustic stressors?

10 A. It's one of them. Excuse me. Studies on acoustic stress,
11 just white noise. In healthy humans, white -- uncontrollable stress,
12 such as white noise, for a period of ten hours will produce symptoms
13 of depression and mental confusion and anxiety.

14 The -- the prolonged experience of hearing white noise might
15 even suggest that he sustained some hearing damage. It would depend
16 on whether it's ringing in his ears.

17 If there is no damage to his ears neurologically, then this
18 would be what we would call a reexperiencing symptom in PTSD, which
19 can be very vivid in a person's mind. It can even take on the form
20 of an auditory flashback where a person actually reexperiences,
21 literally, the sound in their ears of what they've been exposed to.
22 But, yeah, noise stress is extraordinarily debilitating to people.

23 Q. All right. And I'll come back to noise stress in a

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1 minute, but I want to move a little bit further down the page to this
2 line, where he states: I was shaking and trembling. My legs barely
3 supported my weight as my hands were pulled even higher above my head
4 after I complained that the handcuffs were so tight as if cutting
5 through my wrist.

6 Then my legs start to -- I believe that word is "swell" as a
7 result of long suspension. I started screaming and the doctor came
8 with a tape measure, wrapped it around my leg. And to my utmost
9 shock, the doctor told the interrogators, "No, that wasn't enough"
10 and my leg should get more swollen.

11 So my first question is: Does that description of the use
12 of shackles provide you with more detail about the impact of stress
13 on Mr. al Baluchi during this period of EITs?

14 A. Yes. To be suspended in that way and waiting for leg
15 swelling to occur. Leg swelling occurs because we have peripheral
16 edema. It means there's not enough muscle movement to milk to fluid.

17 So when our arteries are pulsating and blood is going to our
18 extremities, a degree of fluid and nutrients are moving out from the
19 blood into the tissue. And then our lymphatic system moves that
20 fluid back into the venous system that returns the blood to the
21 heart.

22 Just as some people find when they've been on an airplane
23 too long, their feet swell. Well, when someone's hanging in that

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1 position, the blood is draining, really, from their upper extremities
2 and the -- the interstitial fluid is swelling in the lower
3 extremities. It's not able to be returned to the heart.

4 And so that's the phenomenon he is describing, which means
5 there are several different things that then would be associated with
6 pain. The wrists, we have our ulnar, median, and radial nerves. And
7 with something pulling on the wrists, it would be very likely enough
8 to cause numbness and pain that could be permanent in the
9 extremities. And the same is true for -- in his legs and feet.

10 Q. And I'd like to direct your attention on -- on -- to the
11 very last -- last three lines, saying: The doctor came with a tape,
12 wrapped it around my leg, and said, "No, that wasn't enough."

13 Now, you were asked by Mr. Groharing whether you were aware
14 that medical personnel at the black sites were assessing the
15 detainees during their periods of EITs. Do you recall that?

16 A. I do.

17 Q. All right. Now, is this description consistent with your
18 understanding of what medical personnel were doing at the black sites
19 during the period of EITs?

20 A. It is. And that's what prompted a vigorous debate in the
21 American Psychiatric Association community and the American
22 Psychological Association community, because physicians were actively
23 participating in the process of people being tortured.

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1 They might not have been doing it directly, but they were
2 signaling it could continue. And in the mind of the people who were
3 being tortured, then the doctor is no different. They're part of the
4 team of the people who conduct the torture.

5 So subsequently, it would be natural that a person would not
6 want to trust completely a physician because the physician would
7 represent an individual who gives the thumbs up or down as to whether
8 or not pain can continue, whether pain and suffering can continue.

9 Q. Thank you.

10 I'd like to call your attention to a document that's in the
11 record at AE 200MM Attachment G.

12 ADC [MS. PRADHAN]: And, again, this is not for display to the
13 gallery, sir, at this time.

14 MJ [Col McCALL]: All right. Go ahead.

15 ADC [MS. PRADHAN]: And I will zoom in a little bit. This is
16 a little small.

17 LDC [MR. CONNELL]: I'm sorry, Your Honor. Can I have a
18 break?

19 MJ [Col McCALL]: Sure.

20 LDC [MR. CONNELL]: Just five minutes.

21 MJ [Col McCALL]: All right. That's fine.

22 **[The witness withdrew from the courtroom.]**

23 MJ [Col McCALL]: The commission is in recess.

1 **[The R.M.C. 803 session recessed at 1629, 08 May 2024.]**

2 **[The R.M.C. 803 session was called to order at 1635, 08 May 2024.]**

3 MJ [Col McCALL]: Commission's called to order.

4 The parties are present. The accused are absent.

5 **[The witness, Dr. Charles Alexander Morgan III, resumed the witness**
6 **stand.]**

7 MJ [Col McCALL]: Dr. Morgan's on the witness stand.

8 Go ahead, Ms. Pradhan.

9 ADC [MS. PRADHAN]: Thank you, sir.

10 MJ [Col McCALL]: And just for planning purposes, I'm planning
11 on only going to 1700 tonight. So just -- when you get -- as we get
12 closer to that, if you're reaching a point that's a good stopping
13 point, let me know.

14 ADC [MS. PRADHAN]: Absolutely. No problem, sir.

15 **REDIRECT EXAMINATION**

16 **Questions by the Assistant Defense Counsel [MS. PRADHAN]:**

17 Q. Dr. Morgan, I'd -- just for the record, I'd like to direct
18 your attention to a document that's in the record at AE 200MM
19 Attachment G. Let me know when you can see that. I believe that's
20 the entire document on one page.

21 Are you able to read that as it is?

22 A. I am.

23 Q. All right. Great. So I'd like to direct your attention

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1 to the first paragraph. About halfway through that paragraph, the
2 line beginning "This is when."

3 Do you see that?

4 A. I do.

5 Q. All right.

6 This is when I knew others had been manipulating
7 the -- blank -- redacted -- interrogators. Redacted -- was another
8 place of complete darkness where I was naked, thirsty, starving, and
9 shackled while suspended from the ceiling and waiting for them to
10 come for me with more questions.

11 Now, with regards to that sentence, is that consistent with
12 what you just read in that statement by Mr. al Baluchi?

13 A. It is.

14 Q. All right. And is the reference to complete darkness,
15 when -- you recall you were asked about, by Mr. Groharing on cross,
16 about the darkness at COBALT. Do you recall that?

17 A. I do.

18 Q. Is that description, a place of complete darkness,
19 consistent with your review of the photographs of COBALT?

20 A. It is.

21 Q. All right. The second paragraph: After the place of
22 darkness was the place of sterile white light. Here, they blazed
23 light that was bright and intense because of the sterile white of the

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1 walls, floors, and ceilings.

2 Now, is that description of sterile white light consistent
3 with what Mr. Groharing read you about Location Number 7, the second
4 place Mr. al Baluchi was held?

5 A. It is.

6 Q. All right. And to continue: Here it felt as if I was
7 living in a refrigerator. Here I finally had clothes, short pants,
8 and a blanket, which was not enough to ward off the cold of this
9 place.

10 Now, does that provide -- does that statement about the
11 temperature of Location Number 7 provide you with additional detail
12 in your assessment of stress on Mr. al Baluchi?

13 A. It does. It would be what we call cold -- heat or cold
14 stress, moving the temperature of the room beyond the -- there's a
15 very narrow band for humans and on human animals, depending on what
16 kind of animal it is. But cold stress is quite significant, as is
17 heat stress.

18 It is a way of both activating the sympathetic nervous
19 system, which then disrupts sleep, shutting down the immune system,
20 which puts people at risk for infection and GI distress.

21 And as people become more and more cold, they also get more
22 drowsy and more confused. It's quite disorienting to people after a
23 while, and it changes sensation in the extremities as well.

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1 So it's a very effective stressor when we want to create
2 stress in the laboratory to use either the cold presser test, which
3 is the mini version, keeping people's hands in ice water. And it's
4 very effective at producing significant changes in healthy people,
5 even in short periods of time.

6 When I say short, I mean up to 20 minutes, 15 minutes, if
7 people can keep their hands in the cold water that long. But it's a
8 powerful stressor.

9 Q. Do you recall that Mr. al Baluchi was held in Location
10 Number 7? Mr. Groharing made reference to September 2003, and that
11 he was held there for a minimum of four months.

12 A. Yes.

13 Q. Okay. And do you recall reviewing the photographs from
14 Location Number 7?

15 A. I do.

16 Q. Do you recall where the air conditioning controls were in
17 his cell?

18 A. I believe they were outside, outside the cell.

19 Q. So he would not have had control over the temperature in
20 his cell; is that correct?

21 A. That's correct.

22 Q. All right.

23 A. That's what would make the stress uncontrollable as well.

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1 It -- there's -- there's no ability -- that's what it refers to,
2 the person has no ability to regulate the level or intensity or
3 duration of an aversive cue.

4 Q. In the third paragraph there's a sentence beginning,
5 "There were constant threats." Do you see that?

6 A. Yes.

7 Q. And the sentence reads: There are constant threats that I
8 would be returned to -- redacted -- and to the sterile white rooms.
9 Here in -- redacted -- the interrogators played a game of good
10 cop/bad cop. I spent my days and nights listening to the sounds of
11 others being tortured with the lights always on, not bright,
12 just -- not dim, just on.

13 My first question is: The third place in which
14 Mr. al Baluchi was held was Location Number 5 which was a
15 foreign -- foreign government controlled.

16 However, with regards to the third sentence: There were
17 constant threats that I would be returned to -- redacted.

18 Is that consistent with the documents that you reviewed,
19 both in the OIG report and other documents, regarding
20 Mr. al Baluchi's debriefings?

21 A. It is. It's clear that he was given feedback that it was
22 always a possibility that things could change and he could return to
23 the previous highly aversive state.

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1 Q. Next in the fourth paragraph: Another place of constant
2 light, light that I was told was to provide me with Vitamin D because
3 I had not seen the sun for a very long time.

4 Now, my first question is: Are you familiar with special
5 lights that can provide Vitamin D?

6 A. I am.

7 Q. Okay. And how are those used?

8 A. Those are used to both treat mood disorders in psychiatry,
9 but also helping treat the Vitamin D deficiency.

10 And he had rickets, according to his medical records, as a
11 child. So he is aware of that concept of why lights would be helpful
12 for Vitamin D. But that is one way of getting people enough exposure
13 to the right band of light that can let the body transform Vitamin D
14 into its appropriate downstream component.

15 Q. Okay. Are you familiar with the use of lights -- of these
16 special lights providing Vitamin D in lieu of any natural light?

17 A. In short doses for -- for people with mood disorders,
18 seasonal affective disorder, for people who live in very gloomy parts
19 of the world where the sun's not out, they will use them for certain
20 specified periods of time in the day.

21 No one uses them continuously. For some people, there's a
22 risk of mania. There is -- it alters their circadian rhythm. Our
23 brain is very sensitive to the cycling of light to regulate our

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1 internal chemistry, and this disrupts it. If it's prolonged light,
2 it disrupts the very internal chemistry that regulates our body and
3 brain.

4 Q. And would that be a source of uncontrollable stress?

5 A. Definitely.

6 Q. The last line of that paragraph: It was here that
7 manipulation of time was used to ensure that I never knew when to
8 pray, whether it was day or night or even what day it was on the
9 calendar.

10 And does that provide you more detail to assess
11 Mr. al -- the impact of stress on Mr. al Baluchi?

12 A. Well, in addition to light, cold, heat,
13 the -- disorientation occurs if we can't mark time. That's usually
14 why you see in people's prison cells they scratch the wall to try and
15 find some system to organize their thinking to demarc a period of
16 time from the next. And the more people are unable to do that, the
17 more confused, usually anxious, and more sort of cognitively impaired
18 they become. We've seen that from sensory-deprivation experiments.

19 But it's completely consistent with the reports of other
20 people who have been tortured that when deprived of the sense of
21 time, it becomes extraordinarily disorienting. And many people, if
22 they can, they establish some mental routine to try and organize
23 themselves. So it's highly stressful.

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1 Q. And is that, again, that description of constant
2 light -- I'll represent to you the fourth place Mr. al Baluchi was
3 held was Location Number 8, the photographs you've reviewed. Does
4 that description, another place of constant light, is that consistent
5 with your review both of the photographs and the descriptions of
6 Location Number 8?

7 A. Yes, it is. There were lights that
8 appeared able -- appeared to be capable of producing a great amount
9 of light.

10 Q. All right. The second-to-last paragraph: In many of the
11 places that I was held, I saw the same people who interrogated me.
12 And in other places new interrogators were present, but there were
13 ones who always seemed to reappear at some point.

14 Now, is that statement consistent with your review of the
15 documents regarding who was -- which interrogators were present at
16 different sites?

17 A. It is.

18 Q. And does that provide you more detail regarding your
19 previous testimony regarding people as potential cues for fear-based
20 memories?

21 A. Yes. A person who's associated with a traumatic event
22 who's then away for a while and comes back is a source, is a cue. I
23 know I use the terms a "cue" and a "stimulus." But in everyday

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1 language, we'd say I remember that person was intimately involved,
2 responsible for doing something to me.

3 But in -- in science terminology, they become a conditioned
4 stimulus because their presence evokes in the mind of the person the
5 reminder of what could follow based on what they've experienced.

6 As in the Damasio chart, we -- there was a stimulus. Like I
7 drew the big red line, the presence of a cue rapidly moves the brain
8 to its fear and alarm systems, especially if it's associated with
9 danger.

10 And that appears to have been the purpose, design, and
11 function of that program as I understand it from Dr. Mitchell's
12 drawing and from his descriptions in the chapter that he and
13 Dr. Jessen wrote.

14 They intended to make conditioned fear through the use of
15 various means and then extend it by making sure people -- they could
16 mentally go back to that when re-exposed to cues so that they could
17 be manipulated.

18 Q. And would that cause uncontrollable stress?

19 A. Yes.

20 Q. All right. The last document on this point is you were
21 asked about the use of music at COBALT and whether you recalled the
22 description of loud music being played at COBALT. Do you recall
23 that?

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1 A. I do recall that.

2 Q. All right. I'd like to show you a document that's in the
3 record at 200MM Attachment H.

4 MJ [Col McCALL]: Go ahead.

5 Q. And I'll represent that this is another unclassified
6 statement by Mr. al Baluchi, with apologies for the language depicted
7 there in which he describes one of the songs that were played.

8 And I'd like to start halfway down the first paragraph,
9 starting, "As if that wasn't enough."

10 Do you see that?

11 A. I do.

12 Q. All right. It states: As if that wasn't enough, I would
13 be taken to a room where I would be suspended from the ceiling, my
14 hands above my head. I was completely naked. It was very cold.
15 Even that wasn't enough for them. So they added the element of
16 blasting music 24/7 nonstop for months and months.

17 My first question for you is: Is that description of
18 blasting music 24/7 nonstop consistent with your understanding of the
19 conditions at COBALT?

20 A. It is.

21 Q. All right. Continuing: The lyrics of the music were so
22 harsh. Among the many things that were going through my mind was the
23 conviction that I was about to be killed. It was just a matter of

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1 when. I was counting every second, every minute, and on many
2 occasions I thought I was already dead. I had to go through an
3 effort every time, every moment, to know if I was dead or alive.
4 Until this day, those lyrics are stuck in my head.

5 So the first question I have for you is: Does this provide
6 you more detail with regards to the impact of noise and music on
7 Mr. al Baluchi?

8 A. Yes. It -- it is a conditioned stimulus that -- that then
9 can evoke a conditioned response. Loud noise is aversive. And in
10 healthy people who have not been tortured, loud noise can produce in
11 extended periods of time feelings of helplessness and depression.

12 People are working at understanding how that happens, but it
13 is the aversive nature of the sound and its volume and its constancy,
14 and it's highly disruptive to our ability to think and process
15 information.

16 So his description is very consistent with the noise
17 exposure like that's done at SERE school to our own men and women who
18 often report that years later they can still remember all the lyrics
19 of the songs that were played when they were in isolation at SERE
20 school. It's a very effective stimulus that can be -- that can be
21 conditioned with noise and sound.

22 Q. Thank you.

23 ADC [MS. PRADHAN]: Done with the document camera for now,

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1 sir.

2 Q. Now, you were asked -- so, actually, just to complete
3 that. According to your review of the documents and your
4 understanding of Mr. al Baluchi's treatment throughout the course of
5 his time in CIA detention from early 2003 or mid-2003 through
6 September 2006, he was subjected to uncontrollable stress for much
7 longer than three days or two weeks; is that correct?

8 A. Yes, it is correct.

9 Q. All right. And you were asked by Mr. Groharing whether
10 Mr. al Baluchi -- it was a fairly specific question -- whether
11 Mr. al Baluchi was threatened with the use of EITs at Location
12 Number 7. Do you recall that?

13 A. I do.

14 Q. All right.

15 ADC [MS. PRADHAN]: And here I just want to note for the
16 record, Your Honor, that my ability to redirect Dr. Morgan on this is
17 limited by the fact that the document in question is SECRET//NOFORN.
18 And so I could effectively rebut this, but I'm prevented from doing
19 so.

20 And so it's one of those situations like we had with the
21 Camp VII commander where certain testimony is elicited in open
22 session and the ability to rebut is simply not available. And I can
23 give you the record cite for that and we will address it in closed

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1 session.

2 MJ [Col McCALL]: Well, tell me this. I mean, I know in open
3 sessions we show Secret documents to witnesses and let them answer in
4 limited fashion, not getting into the subject matter.

5 But are you saying that you couldn't show him this document
6 that you have and say does that change your opinion or -- of whether
7 or not EITs were imposed on Mr. Ali at Camp VII?

8 ADC [MS. PRADHAN]: I'm happy to do it that way in a very
9 summary fashion if that's acceptable to everyone.

10 MJ [Col McCALL]: That works for me.

11 ADC [MS. PRADHAN]: All right. This document is in the record
12 at AE 628SSS Attachment F, MEA-PRG-00000896.

13 Q. And I'd like to direct your attention to the last full
14 paragraph. And I'll ask you to just review that and ask if that
15 refreshes your memory about whether or not he was specifically
16 threatened at Location Number 7.

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

18 A. Yes. I've completed it.

19 Q. Thank you. Now, you were also specifically asked about
20 the difference between -- in distinguishing COBALT from the rest of
21 the sites in which Mr. al Baluchi was held, you were asked about the
22 aspect of darkness -- right? -- and the fact that COBALT was very
23 dark and whether Mr. al Baluchi was subjected to darkness after that.

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1 Do you recall that?

2 A. I do.

3 Q. All right. I'd like to show you a photograph which is in
4 much the same manner, sir.

5 ADC [MS. PRADHAN]: This is a SECRET//NOFORN photograph. This
6 is displayable only to the parties and the commission.

7 MJ [Col McCALL]: All right.

8 Q. Can you see that?

9 A. I can.

10 Q. All right. Do you recall reviewing this photograph
11 previously?

12 A. I do.

13 Q. All right. And I'll represent to you that that is a
14 photograph from Location Number 9, also known as Site A, which is the
15 last location in which Mr. al Baluchi was held before his rendition
16 to Guantanamo Bay.

17 Do you recall that?

18 A. I do.

19 Q. All right. Does that -- without going into detail, does
20 that refresh your memory about whether or not Mr. al Baluchi may have
21 been exposed to darkness after his time at COBALT?

22 A. It does.

23 Q. Thank you. Now, you've previously testified that

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1 uncontrollable stress causes fear-conditioned memories; is that
2 correct?

3 A. Yes.

4 Q. Okay.

5 A. It causes a number of things, but it creates a
6 fear-conditioned memory, yes.

7 Q. Is PTSD the only result of uncontrollable stress?

8 A. No. There's a range of outcomes from uncontrollable
9 stress.

10 PTSD is the most commonly discussed outcome for people who
11 have been subjected to uncontrollable stress. Major depression is a
12 comorbid disorder that goes with it. But other people who have
13 experienced deliberate uncontrollable stress, which we'll call
14 torture, the -- torture isn't the scientific term. We talk about
15 uncontrollable stress.

16 Other outcomes are chronic pain syndromes, gastrointestinal
17 issues, headaches that may or may not look like migraines. They
18 frequently complain of pain, chronic pain, but pain that can't be
19 pinpointed to a specific part of the nervous system.

20 So sometimes it's more of a -- it appears to be a
21 psychosomatic sort of illness, that they have unexplained body aches
22 and pains and seem to be complaining about a lot.

23 Those are the most typical things. Depending on the degree

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1 of uncontrollable stress, mild traumatic brain injury is also very
2 common, depending on what people experienced in that stressor, or
3 difficulty walking if people have been severely beaten on their feet
4 or have been maintained in shackles.

5 From a psychiatric standpoint, it's -- it's largely
6 post-traumatic stress disorder, major depression, and anxiety not
7 otherwise specified, and -- and illnesses related to body symptoms
8 like pain and hypochondriasis.

9 Q. And can any of the other psychiatric conditions that you
10 identified there, other than PTSD, cause involuntary conditioned
11 responses?

12 A. Well, the conditioned responses are present in all of
13 them. And I think sometimes we don't know why some people go down
14 the major depression -- they show more symptoms of major depression
15 than some symptoms of the classical conditioning, but in all of them
16 they show conditioned responses.

17 But what we -- the reason why we -- excuse me. The reason
18 why we know we can link them is because the deficits in the learning
19 of safety are common to the psychiatric disorders that emerge as a
20 result of torture and exposure to uncontrollable stress.

21 Q. So conditioned responses are not limited to only patients
22 who are diagnosed with PTSD; is that correct?

23 A. That's correct.

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1 Q. Thank you.

2 ADC [MS. PRADHAN]: Sir, this is a good stopping point, if
3 that's all right.

4 MJ [Col McCALL]: All right. Perfect.

5 Dr. Morgan, thank you for your testimony today. It looks
6 like your testimony will go an extra day. So again, tonight please
7 don't discuss your testimony with anyone, to include counsel for any
8 of the parties.

9 WIT: I won't.

10 MJ [Col McCALL]: But at this time I'm going to go ahead and
11 excuse you and then we're going to recess.

12 We'll plan to start tomorrow, again, with -- continuing on
13 with the open testimony at 0900. And then at some point tomorrow I
14 anticipate we'll have closed testimony.

15 WIT: All right.

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

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

19 MJ [Col McCALL]: Any housekeeping matters to take up?

20 And Ms. Pradhan, was there an AE for that picture?

21 ADC [MS. PRADHAN]: I'm so sorry, sir. Yes, there is. I
22 don't usually do that. It's AE 517 Attachment B. That was
23 MEA-10018-00003868.

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1 MJ [Col McCALL]: All right. Terrific.

2 All right. I'll see everyone tomorrow at 0900.

3 Commission's in recess.

4 **[The R.M.C. 803 session recessed at 1658, 08 May 2024.]**

5 **[END OF PAGE]**