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1 [The R.M.C. 803 session was called to order at 0903,
2 21 January 2020.]

3 MJ [Col COHEN]: This military commission is called to
4 order.

5 I apologize for the three-minute delay. I have
6 received AE 463B (Gov), which is an ex parte filing
7 declaration. It will be relevant to some matters that I'm
8 sure the parties want to discuss today with respect to
9 AE 658D.

10 How is everyone doing this morning? I hope you're
11 doing well. It's good to see everyone again.

12 General Martins, it's good to see you. Would you
13 please account for who is here on behalf of the United States.

14 CP [BG MARTINS]: Good morning, Your Honor. Representing
15 the United States are Brigadier General Mark Martins,
16 Mr. Robert Swann, Mr. Edward Ryan, Mr. Clay Trivett,
17 Mr. Jeffrey Groharing, Ms. Nicole Tate, Mr. Christopher
18 Dykstra, and Major Neville Dastoor.

19 Also at counsel table are paralegals Mr. Dale Cox,
20 Mr. Rudolph Gibbs, and Staff Sergeant Clifford Johnson. Also
21 present, Ms. Devi Modha and Mr. Todd Musher. And also present
22 in the courtroom is Supervisory Special Agent Jeffrey Brown of
23 the Federal Bureau of Investigation.

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1 Your Honor, these proceedings are being transmitted
2 via closed-circuit television to sites in the continental
3 United States pursuant to the commission's orders.

4 Your Honor, I will also announce for the record the
5 presence in the courtroom, with the commission's permission,
6 of counsel for witnesses scheduled to testify in these
7 sessions. They are Henry F. Schuelke, III, and Brian S.
8 Paszamant, representing the witnesses James Elmer Mitchell and
9 John Bruce Jessen.

10 The presence of Mr. Schuelke and Mr. Paszamant is
11 intended to assist these proceedings by enabling wrinkles to
12 be handled more efficiently should an occasion arise in which
13 their representation of their clients can move things forward.
14 They are aware not to speak nor to communicate with their
15 clients except during breaks or as provided leave to do so by
16 the military judge.

17 Thank you, Your Honor.

18 MJ [Col COHEN]: Thank you, sir. I appreciate it. And I
19 thank you -- thank you for anticipating the question about the
20 broadcast. I appreciate that as well.

21 Mr. Sowards, I know, based on your motion, which I'll
22 put on the record here momentarily, that Mr. Mohammad will be
23 joining us shortly. In fact, he may be en route. But I

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1 noticed he's not here currently. But if you would please
2 indicate who is here on behalf of Mr. Mohammad.

3 LDC [MR. SOWARDS]: That is correct, Your Honor. He is
4 not present, and we appreciate the commission's indulgence to
5 accommodate that matter. Gary Sowards, David Nevin,
6 Lieutenant Colonel Derek Poteet, Rita Radostitz, and Denise
7 LeBoeuf, all present for Mr. Mohammad.

8 MJ [Col COHEN]: Thank you, sir. It's good to see
9 everyone.

10 LDC [MR. SOWARDS]: Thank you.

11 MJ [Col COHEN]: Ms. Bormann, I notice Mr. Bin'Attash is
12 here. If you would please announce who is here on behalf of
13 Mr. Bin'Attash.

14 LDC [MS. BORMANN]: I will. Judge, on behalf of
15 Mr. Bin'Attash, myself, Captain Jay Peer, and Ms. Anisha
16 Gupta, who is not of record yet, but we intend that to happen
17 this morning.

18 We appreciate your ruling last night. Unfortunately,
19 because of the inability to contact our client via telephone
20 or some other way, Mr. Bin'Attash, in anticipation of today's
21 hearing, had cancelled his physical therapy appointment and
22 then was told when he tried to reinstitute it that the
23 physical therapy that he had scheduled would cause him pain

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1 for about 24 hours after the administration of the physical
2 therapy, so -- and he didn't want to miss today's court
3 hearing, so he's here.

4 MJ [Col COHEN]: Okay. Excellent.

5 All right. Ms. Gupta, let's go ahead and take that up
6 now before I forget. If you'd please come forward.

7 Ms. Gupta, I'll just ask you some generalized
8 questions. I know you filed the notice, but you are an
9 attorney licensed to practice in a jurisdiction; is that
10 correct?

11 DC [MS. GUPTA]: I am.

12 MJ [Col COHEN]: And which jurisdiction is that?

13 DC [MS. GUPTA]: New York and California.

14 MJ [Col COHEN]: Okay. And are you an attorney in good
15 standing with both jurisdictions?

16 DC [MS. GUPTA]: I am.

17 MJ [Col COHEN]: Do you prefer to swear or affirm this
18 morning?

19 DC [MS. GUPTA]: I can swear.

20 MJ [Col COHEN]: Okay. Please raise your right hand.

21 [Counsel was sworn.]

22 MJ [Col COHEN]: All right. Thank you, ma'am. You may be
23 seated.

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1 DC [MS. GUPTA]: Thank you.

2 MJ [Col COHEN]: Mr. Harrington, good morning. I see that
3 Mr. Binalshibh is here. It's good to see you and your team.
4 Would you please announce who is going to be here, at least
5 for today, on behalf of Mr. Binalshibh.

6 LDC [MR. HARRINGTON]: Yes, Judge. For Mr. Binalshibh,
7 James Harrington, Navy Lieutenant Clarence -- or Clayton
8 Lawrence, and Air Force Major Virginia Bare.

9 MJ [Col COHEN]: All right. Thank you, sir.

10 Mr. Connell, it's good to see you. And I see Mr. Ali
11 is here as well. Would you please announce who is here on
12 behalf of Mr. Ali this morning.

13 LDC [MR. CONNELL]: Good morning, Your Honor. On behalf
14 of Mr. al Baluchi is myself, James Connell, Alka Pradhan,
15 Benjamin Farley, Captain Mark Andreu of the United States Air
16 Force. Lieutenant Colonel Thomas of the United States Air
17 Force has previously been excused by military commission
18 order.

19 MJ [Col COHEN]: All right. Thank you, sir.

20 Mr. Ruiz, I see that -- yes, Mr. al Hawsawi is here in
21 the courtroom. Would you please announce, in addition to
22 yourself, who is representing him here this week. And good to
23 see you.

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1 LDC [MR. RUIZ]: Yes, Judge. Lieutenant Colonel Jennifer
2 Williams, Major Joseph Wilkinson, Mr. Sean Gleason are here on
3 behalf of Mr. al Hawsawi as well.

4 MJ [Col COHEN]: Okay. Thank you. And you did give
5 notice and asked for leave to swap out defense counsel
6 mid-session, correct?

7 LDC [MR. RUIZ]: That is correct.

8 MJ [Col COHEN]: All right. If it hasn't already gone
9 out, that will be approved, and a written ruling will follow.

10 LDC [MR. RUIZ]: Thank you.

11 MJ [Col COHEN]: All right. Thank you.

12 Mr. Schuelke and Mr. Paszamant, good morning,
13 gentlemen.

14 [Counsel away from podium; no audio.]

15 MJ [Col COHEN]: Go ahead and have a seat.

16 I just wanted to give you some general instructions.
17 I just want to make sure that you understand that although you
18 may be present in the courtroom during the testimony of your
19 clients -- you've probably already anticipated this, but I'll
20 go ahead and reiterate it anyway.

21 I do not anticipate you entering a formal appearance.
22 Obviously you're not the prosecution, so I wouldn't anticipate
23 the -- that -- a third-party counsel raising any objections

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1 during the testimony of a witness. That would be the
2 obligation of the prosecution or the defense, as parties to --
3 to the litigation.

4 And unless there's a need, which we -- I could address
5 with you at that time, I'll -- I will treat your clients as --
6 as I do typical witnesses, which while they were -- while they
7 remain on the stand, they should not discuss the contents of
8 their testimony. That doesn't mean that I can't be told
9 differently, but that is the general rule that we -- that we
10 practice here in -- in this commission. But if something
11 arises, then we -- we can address it at that time. But those
12 are just the general guidelines in anticipation of moving
13 forward.

14 [Counsel away from podium; no audio.]

15 MJ [Col COHEN]: All right. Thank you, sir.

16 LDC [MR. SOWARDS]: Your Honor?

17 MJ [Col COHEN]: Mr. Sowards.

18 LDC [MR. SOWARDS]: Thank you, Your Honor. On behalf of
19 Mr. Mohammad, may we also ask that in the event that some
20 extraordinary circumstance arises that requires their
21 communication with their clients about the substance of the
22 testimony, that we have notice of that and ----

23 MJ [Col COHEN]: Absolutely.

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1 LDC [MR. SOWARDS]: Thank you, sir. And if you allow them
2 to do it, then we receive advice as to what that substance of
3 that discussion was?

4 MJ [Col COHEN]: Right. So what I'll probably do, I
5 understand I will -- I will -- I will find a way to maneuver
6 between attorney-client privilege and just a general
7 understanding of why that -- that discussion might need to
8 occur without requiring the divulge -- them divulging actual
9 attorney-client information.

10 LDC [MR. SOWARDS]: I appreciate that, Your Honor. And
11 also not to put too fine a point on it, but I assume that your
12 admonition also applies to attorney for one of the witnesses
13 telling the other witness what -- what his client has
14 testified to, so that -- in other words, what we are -- what I
15 believe the -- the commission was focused on and we're
16 concerned about is them not having information about either
17 coaching as it were on ----

18 MJ [Col COHEN]: Right.

19 LDC [MR. SOWARDS]: ---- their own testimony but also
20 being informed of what the other witness is testifying to.

21 MJ [Col COHEN]: Right. Yeah, I would treat that the same
22 as any witness who's represented by counsel. I mean, to the
23 extent that it's a public proceeding and a counsel could

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1 always hear what was discussed in the -- in the public
2 proceeding, to a certain extent, whether or not they've been
3 instructed what to testify might be a fair cross-examination
4 question as opposed to the actual nature of -- of
5 attorney-client information, et cetera.

6 But -- but to the extent that -- that any witness who
7 is represented, their client -- their attorney, I would hope
8 that they wouldn't coach them.

9 I'm being asked to slow down already.

10 But like I said, I -- based on the -- the
11 understanding of everyone involved here, and that initial
12 admonition, I think we'll be okay, but if something comes up,
13 we'll address it at that time.

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

15 MJ [Col COHEN]: All right. You're welcome.

16 I recognize that Mr. Mohammad was not here this
17 morning. At 1630 on 20 January 2020 counsel for Mr. Mohammad
18 and Mr. Bin'Attash filed AE 690T (KSM WBA) requesting to
19 voluntarily waive their presence for the first hour or so of
20 the pretrial motions hearing scheduled to begin at 0900 today.
21 The request was based upon the fact that the Joint Task Force
22 Guantanamo had scheduled physical therapy sessions for
23 Mr. Bin'Attash at 0800 and Mr. Mohammad at 0900. I granted

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1 the motion and directed the trial judiciary staff to notify
2 the parties via e-mail, given the hour at which it was
3 requested.

4 Although I will advise all of the accused who are
5 currently present here this morning of their rights with
6 respect to voluntarily absences, upon Mr. Mohammad's arrival,
7 I will take the few minutes that will be required to remind
8 him of what his rights are and to verify with him that he --
9 that his absence was both knowing and voluntarily -- voluntary
10 here with respect to the portions he will miss early this
11 morning.

12 With respect to nonemergency medical appointments
13 moving forward, I'm asking trial counsel and defense counsel
14 to make sure that the JTF has a copy of the scheduled trial
15 dates and is willing to work with the accused to deconflict
16 nonemergency appointments with the sessions. I'm not saying
17 it did or did not happen in this case; I'm just saying let's
18 take a look, make sure that everyone understands, you know,
19 kind of what's going on.

20 However, the accused does have a right to be
21 voluntarily absent, and so notwithstanding that
22 deconfliction, if an accused voluntarily chooses to schedule
23 an appointment during a scheduled session of the commission,

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1 the accused has the right to be voluntarily absent, and I will
2 recognize that right.

3 Typically, I like them here for the first day, and
4 we're still going to have everyone here for the first day.
5 This was a minor modification to that, so it was -- I was
6 willing to accept it. But I just wanted to make sure that --
7 that the parties -- and make sure that the JTF is definitely
8 aware, especially their medical staff, as to kind of what's
9 going on and so they can possibly deconflict. If this was a
10 choice that it could have been deconflicted and Mr. Mohammad
11 just chose, that's fine. Like I said, he has the right to be
12 voluntarily absent, but I just want to make sure that that is
13 the case as opposed to doctors, International Red Cross,
14 et cetera, the schedules being -- the schedule being set
15 without consideration of the actual session dates. Okay.

16 I'm now going to speak directly to Mr. Bin'Attash,
17 Mr. Binalshibh, Mr. Ali, and Mr. al Hawsawi.

18 Gentlemen, each of you have the right to be present
19 during all sessions of the commission. If you request to
20 absent yourself from any session, such absence must be
21 voluntary and of your own free will. Your voluntary absence
22 from any session of the commission is an unequivocal waiver of
23 the right to be present during that session.

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1 Your absence from any session may -- may negatively
2 affect the presentation of the defense in your case. Your
3 failure to meet with and cooperate with your defense counsel
4 may also negatively affect the presentation of your case.
5 Under certain circumstances, your attendance at a session can
6 be compelled regardless of your personal desire not to be
7 present.

8 Regardless of your voluntary waiver to attend a
9 particular session of the commission, you have the right at
10 any time to decide to attend any subsequent session. If you
11 decide not to attend the morning session but wish to attend
12 the afternoon session, you must notify the guard force of your
13 desires. Assuming there's enough time to arrange
14 transportation, you will then be allowed to attend the
15 afternoon session. You will be informed of the time and date
16 of each commission session prior to the session to afford you
17 the opportunity to decide whether you wish to attend that
18 session.

19 Mr. Bin'Attash, do you understand what I just
20 explained to you?

21 ACC [MR. BIN'ATTASH]: Yes.

22 MJ [Col COHEN]: Mr Binalshibh, do you understand what I
23 just explained to you?

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1 ACC [MR. BINALSHIBH]: Yes.

2 MJ [Col COHEN]: Thank you, sir.

3 Mr. Ali, do you understand what I just explained to
4 you?

5 ACC [MR. AZIZ ALI]: Yes.

6 MJ [Col COHEN]: And, Mr. al Hawsawi, do you understand
7 what I just explained to you, sir?

8 ACC [MR. AL HAWSAWI]: Yes.

9 MJ [Col COHEN]: Thank you, gentlemen.

10 I will now go into a summary of the R.M.C. 802
11 conference which we held on Saturday.

12 For the rest of the parties' edification, the 802 that
13 I was going to have yesterday with the government and
14 Ms. Bormann's team, that did not happen. It was -- it became
15 OBE, and so we did not have it, so I will not be summarizing
16 that 802.

17 On Saturday, 18 January 2020, I conducted a conference
18 with trial and defense counsel in accordance with Rule for
19 Military Commission 802. The accused were absent. In
20 addition to parties, we were joined by the Chief Defense
21 Counsel, counsel for Drs. Mitchell and Jessen, and counsel for
22 the accused in the military commission case of
23 U.S. v. al Nashiri. None of the parties objected to the

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1 presence of these additional attorneys at the 802.

2 Ms. Bormann introduced Ms. Anisha Gupta, a new member
3 of Mr. Bin'Attash's defense team, and informed the commission
4 that one of the other attorneys on the team was not on island
5 because he became ill prior to departure; but that if he
6 became physically able, he intended to join the team on island
7 later in the week; and that this particular attorney was the
8 one who they had intended to conduct the examination of the
9 witnesses in this session.

10 Ms. Bormann, I'm -- for his privacy, I will -- if you
11 need to put his name on the record, I will, but for -- for
12 purposes of right now, I'll just leave it at one of your
13 members of your team.

14 At this conference, we discussed our anticipated
15 schedule for the next two weeks and various other procedural
16 matters. I informed the parties that, due to the impact of
17 Monday's federal holiday on the broadcast of our open
18 sessions, we would postpone the start of the open sessions
19 until today. I informed the parties that we would make use of
20 Monday morning for a classified in camera of 505(h) hearing.

21 I informed Mr. Ruiz that I wanted to have an ex parte
22 in camera session with his team immediately following the
23 505(h) hearing in order to address some questions I have --

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1 have regarding AE 673C (MAH). Mr. Ruiz replied that he was
2 prepared to do so.

3 For the record, we conducted both the 505(h) hearing
4 and the ex parte session as discussed at the 802.

5 Additionally, I noted that the commission did not
6 intend to make use of the courtroom on Monday afternoon and
7 indicated to the parties that they could confer and, if -- if
8 practicable, make arrangements to make use of the courtroom as
9 they needed.

10 I informed the parties that beginning on Tuesday
11 morning, I intended to take testimony in open session from
12 0900 to 1730 daily. I indicated that I intended to follow our
13 usual practice of taking a short mid-morning break of
14 approximately 15 minutes and then an afternoon break for
15 prayer time of approximately 30 minutes, as well as an
16 extended 75-minute lunch break due to the ongoing construction
17 between here and the dining facilities.

18 I inquired of the parties as to their estimates as to
19 the amount of time they anticipated needing to examine the
20 doctors, Mitchell and Jessen.

21 Mr. Mohammad's team mentioned their pending motion for
22 abatement, but indicated that if the motion were denied, they
23 anticipated needing two to three days per witness if they were

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1 to go first, and a day or so if they were to go after some of
2 the other teams; but that it would be dependent upon what was
3 questioned by other counsel.

4 Mr. Bin'Attash's counsel similarly -- noted the
5 current absence of the defense counsel that they had intended
6 on doing the -- the examination of the witnesses and indicated
7 a preference for going last or later in the week or in the
8 sessions, although Ms. Bormann at the time was unsure how many
9 days she would need per witness, depending on how much
10 information had already been elicited at that time, which made
11 sense to -- to me, at least.

12 And I generally indicated, without ruling, that I
13 didn't see a reason why we couldn't find a way of -- of
14 allowing for additional time in the event that that defense
15 counsel is able to -- to arrive; and if not, to at least allow
16 more time for preparation and a change of counsel for their --
17 for their team's purposes.

18 Mr. Binalshibh's counsel anticipated one day or less
19 per witness depending on what is elicited by the other teams,
20 which also sounded reasonable under the circumstances.

21 Mr. Ali's counsel indicated that he would need at
22 least three days of open testimony and two days of closed
23 testimony for Dr. Mitchell and a similar period for

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1 Dr. Jessen.

2 Mr. al Hawsawi's counsel reiterated that
3 Mr. al Hawsawi was not joining a pending motion to continue by
4 some of the parties and instead desired to take the testimony
5 of Drs. Mitchell and Jessen. To that end, he anticipated he
6 would need three days for Dr. Mitchell and two to three days
7 for Dr. Jessen in total for open and closed session.

8 The government indicated it would need approximately a
9 half a day for each of the two witnesses. The government also
10 informed the commission that Drs. Mitchell and Jessen did not
11 intend to return to GTMO for further testimony following the
12 completion of the current two-week session and asked the
13 commission to consider limiting the parties' questioning in
14 order to complete the examination of both witnesses within the
15 current session.

16 Although I did not issue any ruling setting time
17 limits on the parties because I do not issue rulings at 802
18 conferences, I did indicate that we would begin the
19 questioning of Dr. Mitchell by counsel for Mr. Ali on Tuesday
20 morning and see how it goes from there.

21 Brigadier General Martins inquired as to when would be
22 the best time and format for the government to present the
23 updated logistics briefing to the commission that has been

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1 ordered in the Trial Scheduling Order. General Martins
2 offered to provide the commission and the parties with a
3 classified PowerPoint briefing via e-mail. I indicated that
4 that would be acceptable, at least initially, just to get it
5 via e-mail and then to review it and see what needed to be
6 discussed.

7 The commission briefly addressed, without ruling or
8 taking argument, the government's motion for reconsideration
9 of the commission's order in AE 692, which is AE 692A (Gov),
10 or in the alternative, grant the government an ex parte
11 hearing. The commission notified the parties of its intent to
12 clarify its order, or at least desire to clarify its order in
13 AE 692, which concerned an opinion by the first camp commander
14 that the government elicited in open court, but which
15 necessarily required follow-up questions regarding the opinion
16 to be done in closed session.

17 AE 692 gave the government the option of providing the
18 defense with an unclassified summary of classified facts
19 sufficient to cross-examine the first camp commander in open
20 court as to the basis of his opinion or to have the commission
21 disregard his opinion.

22 The commission recognized, upon seeing AE 692A, that
23 the directive in AE 692 could have been more clear about the

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1 commission's intentions and expectations and could have
2 provided more guidance about how the commission expected the
3 parties to work within the procedural framework set forth in
4 Military Commission Rule of Evidence 505, which required --
5 typically requires the defense to first submit an
6 M.C.R.E. 505(g)(1)(A) notice to the government advising them
7 of the classified information they wish to use to
8 cross-examine the first camp commander in open session or
9 otherwise. This would typically occur before the government
10 elects whether to propose an unclassified summary or
11 substitution for the classified information.

12 As the briefing cycle for the government was not yet
13 complete, the commission asked the parties for their position
14 whether the -- position regarding whether the commission
15 should issue its clarification of AE 692 prior to the
16 completion of the briefing cycle for the government motion for
17 reconsideration or simply allow the briefing cycle to
18 continue.

19 Mr. Connell in particular advised the commission that
20 he would have a position regarding the timing of AE 692
21 guidance from the commission but suggested that the issue was
22 more expansive than this AE 692 series and the parties perhaps
23 could benefit from the commission specifying an issue in more

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1 broad terms.

2 Counsel, that is my summary of the 802 session that we
3 had on Saturday night. I will start with the prosecution.

4 Does the government have any additions or corrections
5 to the commission's summary of the R.M.C. 802 conferences?

6 CP [BG MARTINS]: No, Your Honor. Thank you.

7 MJ [Col COHEN]: Thank you, sir.

8 Mr. Sowards?

9 LDC [MR. SOWARDS]: No, Your Honor.

10 MJ [Col COHEN]: All right.

11 Ms. Bormann?

12 LDC [MS. BORMANN]: Just that the attorney who is missing
13 is doing one of the witnesses, not both of them, so ----

14 MJ [Col COHEN]: Copy. Thank you very much for letting me
15 know that. Thank you. All right.

16 Mr. Harrington, is there anything you would like to
17 add or correct?

18 LDC [MR. HARRINGTON]: No, Judge.

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

20 Mr. Connell, as far as additions or subtractions,
21 anything?

22 LDC [MR. CONNELL]: No, thank you, sir.

23 MJ [Col COHEN]: All right.

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1 Mr. Ruiz, same to you.

2 LDC [MR. RUIZ]: I don't have anything, Judge.

3 MJ [Col COHEN]: All right. Thank you.

4 Counsel, just one second. I need to take a look at
5 AE 680A before I say anything else.

6 [Pause.]

7 MJ [Col COHEN]: All right. I think I can do this in a
8 very generic format based on the review of AE 680A -- we'll
9 take a quick break. All right.

10 My understanding is that Mr. Mohammad has arrived, and
11 so I'd rather just go ahead and take care of that now, allow
12 him to arrive. I'll advise him of his rights, and then as
13 soon as he's ready, we will -- we'll continue. We're in
14 recess.

15 [The R.M.C. 803 session recessed at 0931, 21 January 2020.]

16 [The R.M.C. 803 session was called to order at 0938,
17 21 January 2020.]

18 MJ [Col COHEN]: The military commission is called to
19 order. The parties are present. Mr. Mohammad has joined us.

20 Mr. Mohammad, I need to advise you of your rights for
21 these military commissions.

22 Sir, you have the right to be present during all
23 sessions of the commission. If you request to absent yourself

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1 from any session, such absence must be voluntary and of your
2 own free will. Your voluntary absence from any session of the
3 commission is an unequivocal waiver of the right to be present
4 during that session.

5 Your absence from any session may negatively affect
6 the presentation of the defense in your case. Your failure to
7 meet with and cooperate with your defense counsel may also
8 negatively affect the presentation of your case.

9 Under certain circumstances, your attendance at a
10 session can be compelled regardless of your personal desire
11 not to be present. Regardless of your voluntary waiver to
12 attend a particular session of the commission, you have the
13 right at any time to decide to attend any subsequent session.

14 If you decide not to attend the morning session, for
15 example, but wish to attend the afternoon session, you must
16 notify the guard force of your desires. Assuming there is
17 enough time to arrange transportation, you will then be
18 allowed to attend the afternoon session.

19 You will be informed of the time and date of each
20 commission session prior to the session to afford you the
21 opportunity to decide whether you wish to attend that session.

22 Mr. Mohammad, do you understand the rights I just
23 advised you about?

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1 ACC [MR. MOHAMMAD]: Yes.

2 MJ [Col COHEN]: Sir, my understanding is that you had a
3 medical appointment that you wished to attend this morning,
4 and therefore, you voluntarily chose to not attend starting at
5 0900; is that correct?

6 ACC [MR. MOHAMMAD]: Yes.

7 MJ [Col COHEN]: Okay. Thank you, sir.

8 Going back to my recitation, the commission is in
9 receipt of AE 680C, Mr. Mohammad's motion to abate the
10 proceedings.

11 After reviewing that motion, which is classified, I
12 have determined that there is no need for additional oral
13 argument on that matter. I understand the -- the matters that
14 were discussed and the particular paragraphs of the -- the
15 guidance in AE 680A that are at issue. I fully understand the
16 position of Mr. Mohammad's defense team and believe that I can
17 rule on the request for abatement absent oral argument.

18 I'll note that throughout these proceedings, at least
19 since I've been the judge in June and based on just historical
20 practices and things that I've read in the record, it appears
21 that this has generally been the case. The defense teams and
22 the prosecution have significantly greater flexibility than --
23 and to -- to come and go during a trial to -- to get up and to

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1 move seats, to converse with -- with clients and/or witnesses
2 and/or one another with greater flexibility than probably in
3 any courtroom in -- in the United States of America or --
4 well, we're not there, but clearly in any federal practice and
5 probably most state practices that are out there as well as
6 any military for court-martial.

7 The commission sees no reason to change that. I
8 believe that's in the best interest of -- of all the parties,
9 to have that flexibility to come and go, to gather
10 information, given the sheer volume of it, to bring it back
11 and forth, and to allow the -- the counsel to confer with
12 their clients, you know, throughout the entirety of -- of
13 the -- of the proceedings, to include allowing additional
14 time. I know consistently upon request that more times than
15 not, if not 90-plus percent of the time, I've even allowed for
16 additional consultation time here in the courtroom after a
17 session concludes in the evening for -- for defense counsel to
18 confer.

19 I have looked at the specific classified portions of
20 AE 680A. I recognize that there are some modifications. I
21 can't say what those are because that -- it's a Secret
22 paragraph, but there were some -- some issues with respect
23 to -- I probably could say this: It deals with the -- because

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1 that's in an unclassified paragraph. It deals with the
2 handling and access to the -- to the ELC of the classified
3 information that's in here.

4 And although some of these modifications may have some
5 impact on how the counsel interact with that classified
6 information while we are here in the courtroom, it does not
7 preclude conversations with -- with clients. It does not
8 preclude conversations amongst counsel. It does not preclude
9 counsel getting up from one table, going to another table, and
10 having conversations, which I have routinely allowed
11 throughout the -- throughout these commissions.

12 And so although I am -- I am aware, I have -- I have
13 fully considered it, and based on the -- the facts that all of
14 these activities are still allowed to be and the fact that, if
15 there is any classified information that has not been cleared
16 for the sharing with a particular client, that that was
17 impossible, regardless of any -- any additional guidance,
18 counsel are still welcome to discuss at any time classified
19 information which has been cleared for discussion with the
20 client. That -- this makes no change in that.

21 But for -- for those reasons, I'm going to deny the
22 motion to abate.

23 The commission is also in receipt of AE 691 filed

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1 by -- by Captain Mizer. It's a third-party filing in which
2 counsel for Mr. al Nashiri requests permission to attend
3 closed sessions of this commission in their capacity as
4 members of the public who -- who happen to possess security
5 clearances. I have not yet ruled on this motion because I
6 have not yet ruled that any of the scheduled testimony will
7 require one or more closed sessions yet. That -- it would be
8 premature to rule on something that I haven't even ordered.
9 Nonetheless, I -- I don't require oral argument on that motion
10 either. I understand what the issue is.

11 In addition, I'm just going to make this very clear:
12 The public is the public. The public sits behind the glass in
13 the gallery or at one of the closed-captioned television
14 locations. That's where the public sits in this case.

15 Only the parties or -- and I'm not going to change
16 this rule now. I'm allowing the counsel representing a
17 witness while the witness is testifying to be present in the
18 courtroom.

19 So, for example, if Mr. al Nashiri was to ever testify
20 in this commission and his counsel wished to be present in the
21 courtroom at the time of his actual testimony on the stand,
22 that would make sense to allow a similar accommodation to an
23 accused that testified to being present in there, given the

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1 fact that there's a 40-second delay. But with respect to the
2 public, the public sits in the -- where the public always
3 sits.

4 Therefore, if there's room in the gallery during open
5 sessions, counsel for Mr. al Nashiri, Mr. Hadi, or any other
6 counsel from any other case are welcome and free to observe
7 just as the general public is welcome and free to observe the
8 proceedings in this case.

9 Once again, with respect to access to a closed
10 session, I will deal with that if and when I order the closed
11 session 806 testimony occur.

12 I also received AE 690Q (KSM WBA RBS), Defense Notice
13 of Intent to Move to Reschedule Witness Testimony Suppression
14 of LHM Statements During January Hearing. Counsel, I have
15 been reviewing a lot of stuff over the last -- last night or
16 so. Was a motion ever filed by any of those teams with
17 respect to the actual move to reschedule?

18 LDC [MR. SOWARDS]: Yes, it was, Your Honor.

19 MJ [Col COHEN]: Okay.

20 LDC [MR. SOWARDS]: That was 690S ----

21 MJ [Col COHEN]: Okay.

22 LDC [MR. SOWARDS]: ---- as in Sowards.

23 MJ [Col COHEN]: Okay. Thank you.

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1 LDC [MR. SOWARDS]: Thank you.

2 MJ [Col COHEN]: All right.

3 LDC [MR. SOWARDS]: And there may be -- Your Honor, there
4 may be some OBE resolution of that. I don't know if the ----

5 MJ [Col COHEN]: Okay.

6 LDC [MR. SOWARDS]: ---- the commission wants to hear
7 additional facts, but ----

8 MJ [Col COHEN]: Yeah. Let me -- here was my -- my
9 general thoughts, and so I'll let you all kind of be heard on
10 that.

11 Mr. al Hawsawi, Mr. Ali, is it your intent to not join
12 that motion?

13 LDC [MR. CONNELL]: That's correct, sir.

14 LDC [MR. RUIZ]: That is correct, Judge, but I want to be
15 clear. It's -- it's not because there is no impact, and we do
16 not necessarily see that. But we are making a decision to
17 move forward.

18 MJ [Col COHEN]: Okay.

19 LDC [MR. RUIZ]: But I just want the court to understand
20 that these kind of late disclosures do impact our preparation.
21 If I were going first, then it may be a different situation.
22 I'm counting on Mr. Connell going first, taking some time,
23 and, therefore, we're moving forward. But the ----

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1 MJ [Col COHEN]: Okay.

2 LDC [MR. RUIZ]: ---- the essence of what the motion says,
3 we agree in principle with. We just are not joining it for
4 those reasons.

5 MJ [Col COHEN]: I understand, sir.

6 LDC [MR. RUIZ]: Thank you.

7 MJ [Col COHEN]: Thank you. All right, then.

8 So what I'm going to do, then, is I'm going to allow
9 the parties that are not joining to go ahead and proceed, and
10 then I will take a look at 690S, and we will address it with
11 respect to the -- to the other parties. I think that's in the
12 interest of individualized justice.

13 Mr. Sowards?

14 LDC [MR. SOWARDS]: Yes, Your Honor. I don't know if
15 you've been updated on this, but there is now a corrected
16 third version which was served on us this morning dated
17 21 January 2020.

18 MJ [Col COHEN]: Okay.

19 LDC [MR. SOWARDS]: Approximately the same number of
20 pages, as -- as far as I can tell very quickly looking at it.
21 Of course, I was doing other things in court this morning, so
22 I haven't -- I haven't read it. But I can tell you it's
23 there, if that helps.

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1 MJ [Col COHEN]: Okay.

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

3 MJ [Col COHEN]: All right. Thank you. I will make sure
4 we've got that.

5 MTC [MR. TRIVETT]: Sir, we have a hard copy ----

6 MJ [Col COHEN]: Please.

7 MTC [MR. TRIVETT]: ---- for the commission.

8 MJ [Col COHEN]: Thank you.

9 MTC [MR. TRIVETT]: May I approach?

10 MJ [Col COHEN]: You may.

11 [Pause.]

12 MTC [MR. TRIVETT]: For the record, sir, it's going to be
13 AE 658F.

14 MJ [Col COHEN]: Okay. Counsel, is it possible to tell me
15 what paragraphs, if any, were -- were modified, without going
16 into the substance of the modifications?

17 MTC [MR. TRIVETT]: Yes, sir. One second.

18 MJ [Col COHEN]: Thank you.

19 MTC [MR. TRIVETT]: All right. Consistent with an e-mail
20 I sent yesterday to the judiciary and to the defense counsel,
21 paragraph 22(v) should have been marked as unclassified as the
22 fact that Special Agent Gaudin participated in the
23 interrogations of Abu Zubaydah had been previously officially

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1 released by the 9/11 Commission following Executive Branch
2 classification review.

3 Paragraph 82 was incorrectly portion marked and the
4 portion marking should have read U//FOUO.

5 We also added two exceptions to a chart listed in
6 paragraph 96, and specifically as set forth in the fifth row,
7 "Any combination of position title plus functional title plus
8 three-character UFI remains classified." But there will be
9 two exceptions to that rule. We've added the exceptions.

10 For the position title of Chief Interrogator as it
11 solely relates to NX2, the UFI NX2, such information is
12 UNCLASSIFIED//FOUO and may be elicited and discussed in open
13 court. And for the position title of Group Chief of
14 Renditions as it solely relates to C12, UFI C12, such
15 information is UNCLASSIFIED//FOUO and may be elicited and
16 discussed in open court.

17 So really it's a downgrade in classification on
18 paragraphs 22, 82, and two exceptions in paragraph 96.

19 MJ [Col COHEN]: Thank you, sir.

20 LDC [MR. SOWARDS]: Excuse me, Your Honor. May I be
21 heard ----

22 MJ [Col COHEN]: Mr. Sowards.

23 LDC [MR. SOWARDS]: ---- one moment?

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1 MJ [Col COHEN]: You may.

2 LDC [MR. SOWARDS]: Thank you, Your Honor. Very briefly.

3 MJ [Col COHEN]: Yes, sir.

4 LDC [MR. SOWARDS]: If I understood the commission, the
5 indication was to allow the two other teams who -- who are
6 prepared to proceed to do so, and then you would revisit this,
7 at which time we would have an opportunity to be heard by the
8 commission?

9 MJ [Col COHEN]: Yes, sir.

10 LDC [MR. SOWARDS]: Okay. So then I'm not going to talk
11 about anything other than just to -- if I might alert you to
12 two facts when -- when you look at the new guidance; and that
13 is, in the 690S filing that you will receive, one of the
14 points we make -- so you can wait to read that or begin with
15 this -- is one of the difficulties -- and I don't know if it
16 applies to the third, improved edition that we just received
17 this morning -- one of the things we did notice is that there
18 are -- there are -- there can be significant omissions from
19 the earlier versions of the guidance.

20 MJ [Col COHEN]: Okay.

21 LDC [MR. SOWARDS]: And because they use the convention --
22 the government uses the convention of underlining changes,
23 those don't show up in the third version. So at least for us,

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1 or me, having just recently seen it, that complicated the
2 comparison, and I'm sure will do so for this.

3 Also, Your Honor mentioned in passing a discussion of
4 the 802, and we had a general reference to the Ninth Circuit
5 case. And so I just wanted to invite the court's attention,
6 because it may be available in PACER, but not -- not as a
7 published case, we were referring to Husayn v. United States
8 of America and James Mitchell and John Jessen and the number
9 in the Ninth Circuit, the docket number is 18-35218.

10 And as relevant to at least the version we were
11 talking about on Saturday, and I don't know if it's affected
12 still in this version, was an -- in paragraph 13(iv) in which
13 the government -- and this is the government's open
14 pleading -- mentions a continent, particular continent in six
15 instances; a country name in 21; and country adjective -- so
16 if you say "America" and "American," you figure out what the
17 country is -- on 15 occasions. And so that was what we were
18 trying to invite the commission's attention to.

19 MJ [Col COHEN]: Okay. Thank you, sir. I appreciate
20 that.

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

22 MJ [Col COHEN]: All right.

23 MTC [MR. TRIVETT]: Sir, may I add something to my earlier

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1 comments?

2 MJ [Col COHEN]: You may.

3 MTC [MR. TRIVETT]: It had been the prosecution's
4 intention to attach classification guidance regarding the
5 Survival, Evasion, Resistance, and Escape training, the SERE
6 training, the classification guidance that had been used in
7 Salim v. Mitchell, to our initial 658 filing. We did not do
8 that. That was just inadvertent. We have provided that to
9 the defense earlier last week.

10 MJ [Col COHEN]: Okay.

11 MTC [MR. TRIVETT]: That will be -- that will be attached
12 to the new filing that we are filing momentarily.

13 MJ [Col COHEN]: Okay. Thank you. All right.

14 So I promised the parties that I would allow them to
15 be briefly heard on concerns about the new classification
16 guidance found in AE 658D. I will allow the parties no more
17 than five minutes per party to inform the commission of their
18 concerns in open session.

19 I fully understand the concerns, and I -- it's -- at
20 least at this point, I believe a short synopsis in the open
21 session will be sufficient for me to address the matters as
22 they arrive -- arise in these proceedings.

23 Mr. Connell, as you have the -- as you will be

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1 starting the -- the questioning of the witness, you may be
2 heard first on the matter.

3 LDC [MR. CONNELL]: Thank you, sir. And I have a time
4 hack of 10:00 exactly.

5 MJ [Co] COHEN]: Perfect.

6 LDC [MR. CONNELL]: Your Honor, our objection is
7 different. Our objection arises under M.C.R.E. Rule 505(a)
8 and 18 U.S.C. 949p-1(a), which provides the rule of privilege.
9 It's my understanding that this is the text on which the
10 government is relying for its invocations of national security
11 privilege. And it provides that, "Classified information
12 shall be protected and is privileged from disclosure if
13 disclosure would be detrimental to the national security.
14 Under no circumstances may a judge order the release of
15 classified information to any person not authorized to receive
16 such information."

17 So the real question is, what does that mean? The
18 government has correctly identified Afshar v. Department
19 of State, 702 F.2d 1125, D.C. Circuit 1983, as one of the
20 important authorities. And I think that this would be easiest
21 if I were to just make a quick chart, if I could have access
22 to the ----

23 MJ [Co] COHEN]: You may.

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1 LDC [MR. CONNELL]: ---- camera, please. Your Honor, if
2 we may have permission to display this ----

3 MJ [Col COHEN]: Let me see what you wrote first.

4 LDC [MR. CONNELL]: ---- little chart.

5 MJ [Col COHEN]: All right. You may.

6 LDC [MR. CONNELL]: So really there are three categories
7 of information that are significant.

8 The first one of those is unauthorized disclosures.
9 We all know what that is. They're defined by Protective
10 Order #1, et cetera. But what Afshar says and Schlesinger,
11 it's -- it's D.C. District companion case says is that really
12 there are two different categories of authorized disclosures.
13 Category number 1 is official disclosures. That isn't a
14 disclosure not from Mr. Tenet or Mr. Brennan or Mr. Panetta,
15 but from the CIA itself. And that's the distinction that
16 those two cases draw. So that's official authorized
17 disclosures.

18 MJ [Col COHEN]: Counsel, make sure you turn that mike so
19 that if you talk while you're writing we're more likely to
20 catch it. Thanks.

21 LDC [MR. CONNELL]: And official announcements by the CIA
22 or materials released under FOIA fall under that category.

23 But what they also make -- those two cases also make clear is

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1 that there are unofficial/authorized disclosures. And
2 unofficial/authorized disclosures are those which go through
3 the prepublication review process.

4 The fact that the plaintiff in Afshar, for example,
5 wrote about CIA activities in Iran was not a violation of that
6 person's nondisclosure agreement, but neither was it an
7 official disclosure, which is the distinction drawn now there.
8 Now, I gave AR 13-10, a courtesy copy to the parties but that
9 after Afshar and Schlesinger is the CIA's adoption of this
10 exact distinction. And it is the agency prepublication review
11 of certain material prepared for public dissemination.

12 The -- what falls under this unofficial/authorized
13 category are prepublication -- are Publication Review Board
14 books, but also this is the category that my statements fall
15 into or Dr. Mitchell's statements fall into because we are not
16 the CIA. We can't make official disclosures.

17 So the -- when the government says that it can invoke
18 national security privilege, it can only do so under
19 unauthorized disclosures, not unofficial/authorized
20 disclosures because those disclosures are not detrimental to
21 national security and are not unauthorized.

22 Now, the last point I'll make in my final minute is
23 that I want to draw the court's attention to Kareem v. Haspel,

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1 2019 U.S. District 162656 from the D.C. District in 2019. I
2 gave a courtesy copy. And although it's unpublished it is
3 from Judge Collyer.

4 And if there is any judge in the United States who
5 knows both classified information and the death penalty, it is
6 Judge Collyer. She was on the Foreign Intelligence
7 Surveillance court, and she is one of the very few D.C. judges
8 to have ever tried to verdict a death penalty case in the
9 D.C. District.

10 And she explains at star 14 the way that a national
11 security privilege would work in a criminal trial. In a
12 criminal trial, she writes, the government may not withhold
13 information that would be material to the defense even if it
14 is a privileged state secret. To do so would be to deprive
15 the defendant of liberty without due process. The
16 United States may either proceed with the indictment or
17 disclose the information or -- or forgo prosecution by
18 dismissing the charges.

19 On the second part, at star 15, the plaintiff in that
20 case, who was a journalist on the United States kill list,
21 argued that he was like a capital defendant. The -- Judge
22 Collyer distinguished his situation from that of an actual
23 capital defendant.

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1 "Were the United States," she says, "to choose to
2 prosecute Mr. Kareem for his alleged involvement in terrorist
3 activities the government would be required to disclose with
4 relevant protections any classified information that would be
5 material to Mr. Kareem's defense."

6 So in addition to violating the distinction between
7 official authorized disclosures and unofficial/authorized
8 disclosures, the government's invocation of national security
9 privilege in general, but also with respect to things
10 previously through the publication review process, violate
11 what has been the law of classified information in criminal
12 cases since the Reynolds case from the 1950s.

13 I'm one minute over. Thank you very much.

14 MJ [Col COHEN]: Thank you for your time, sir. I
15 understand.

16 LDC [MR. CONNELL]: No, I'm good.

17 Your Honor, would you like this document marked?

18 MJ [Col COHEN]: Yes. Let's go ahead and mark that. I'll
19 get you a number here momentarily. If you'll just hand that
20 to the court reports, they'll let me know what to announce.
21 AE 658G (AAA).

22 Thank you, Counsel. All right.

23 Are there any other counsel that would like to take

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1 their five minutes now? Mr. Sowards?

2 LDC [MR. SOWARDS]: Yes, Judge. Just looking ahead and
3 while the court -- or the commission is considering the facts
4 as they unfold and -- and what we're requesting, in part what
5 I mentioned earlier is that some of the very modest requests
6 we're requesting or relief we're requesting may have been
7 overtaken by events in terms of the realignment of counsel and
8 how long they may take with the first witness.

9 MJ [Col COHEN]: Copy.

10 LDC [MR. SOWARDS]: Essentially what we've been requesting
11 is that our obligation begin examining witnesses be deferred
12 to next week while we review these, now the latest version of
13 the -- of the guidance. Which to those who are uninitiated in
14 this process of handling national security, always feels sort
15 of like buying an iPhone. Then the next week, they've got
16 another one that you've got to look at the manual with and put
17 together.

18 But I just invite the court's attention earlier to
19 your comments about 692A which began back in September when I
20 respectfully objected and complained that we had on the eve of
21 an important series of witnesses new guidance from the
22 government purporting to tell us how to -- how to negotiate
23 the classified information.

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1 And I raised the point that we -- at that point were a
2 number of years into the proceedings and we were getting
3 this -- this new guidance. And the prosecution assured the
4 commission that this wasn't anything new. We should have
5 known about this all along; this was just a compilation of
6 what we had been operating under.

7 And then within that hearing, we had something arise
8 in which, again, on behalf of Mr. Mohammad, we complained that
9 they had violated the very restriction they had imposed upon
10 us in terms of examining the camp commander.

11 Your Honor, who has throughout these proceedings shown
12 the patience of Job to try to put together these pieces and
13 find some middle ground, referred the -- the 692 to the
14 government for some explanation about how we should proceed.
15 And on the day their response was due, rather than give you
16 that -- that explanation, they moved for reconsideration of
17 your order, and you very generously and, you know, without ego
18 involvement, went back and looked at your original order and
19 said, okay, yeah, maybe I could have been a little bit clearer
20 about what it is I want. And now we're going forward to sort
21 that out.

22 But I think what that indicates, or at least from my
23 perspective and so people understand, we're not trying to

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1 inconvenience witnesses or -- or prolong anything. It's just
2 that every time one of these new series of guidances comes
3 out, including just this morning -- and, of course, we think
4 if there's no -- if there's no need to issue a new set of
5 guidance, then why do it? But if there is a need, then there
6 also is a need to understand it and comply. And so that's --
7 that's what we need time to do.

8 And the -- the section that I was referring to earlier
9 in the September guidance that we had -- and this is with
10 respect to a major potential component of Dr. Mitchell's
11 testimony; that is, his -- his book that he wrote on his
12 experiences, and -- and that is treated a couple of times in
13 the -- what would have been the new guidance if they hadn't
14 given us some this morning. But I -- and I'm referring to the
15 September 18th filing.

16 On page 21 at paragraph 71, the prosecution, the
17 government's position is that, "Dr. Mitchell has written a
18 book that has undergone CIA prepublication review entitled
19 *Enhanced Interrogation* that contains many unclassified or
20 since declassified facts detailing his and Dr. Jessen's
21 involvement in the design and implementation of the RDI
22 program."

23 If you look at the intervening new and improved

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1 guidance on the 17th of January of this year, and look at that
2 same paragraph which I believe now has been moved to 75, you
3 will search in vain for the acknowledgment that -- that
4 classified information apparently appearing in the book has
5 been, quote, since declassified.

6 And what I suggest to you, the commission, without
7 unnecessary rancor, is that the government is always in charge
8 of this information and these facts, and there have been a
9 number of instances in which, when it becomes advantageous to
10 them in these proceedings, information is declassified.
11 Perhaps it's declassified to make things easier. That's fine.
12 We encourage that. But other times, it's for the purpose of
13 controlling the narrative or allowing someone to say something
14 that they find advantageous at the time. And then when they
15 find that perhaps defense attorneys doing their jobs are going
16 to make use of those disclosures, they wish to reel back that
17 information.

18 I'm not saying that's necessarily what's going on
19 here. I was mystified by the ability to find that language in
20 the -- in the new -- the new guidance. But what I do say to
21 the court is, and I will admit it, that I'm not as nimble as
22 Mr. Connell who probably has this morning's guidance all
23 outlined and cross-referenced to the old -- so I'll -- I'll

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1 check with him at lunch.

2 But this is a capital case. And the problem is
3 that -- and one of the things I was going to ask Your Honor
4 because I wasn't sure you mentioned it, but Mr. Groharing,
5 when he generously accepted a lot of the 505 notices that were
6 perhaps a little broader than they should have been, twice at
7 our 802 said, but I just wish people would understand that
8 this -- this stuff is hard to do on the fly, that, you know,
9 it's much better if we do this in an orderly fashion.

10 And I would be the last person to criticize anyone for
11 coming up to the deadline and trying to get something in. But
12 when it is a capital case, if people try to do things on the
13 fly or in a hurried fashion, facts get missed, objections get
14 missed, principles get trampled on. And what happens maybe
15 several years after that fact, when no one really thought it
16 mattered much, is that's the particular element that kills the
17 client.

18 So I have a very, you know, focused interest in making
19 sure I know what I'm supposed to be doing, and that's why
20 we've asked the judge -- or the commission, for this modest
21 scheduling alteration.

22 MJ [Col COHEN]: Thank you, sir.

23 LDC [MR. SOWARDS]: Thank you.

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1 MJ [Col COHEN]: All right. Ms. Bormann, I'll give you
2 until just past 1019.

3 LDC [MS. BORMANN]: I'd like to adopt what Mr. Connell so
4 ably argued with respect to the difference and distinction
5 between authorized disclosures, because they're both, you
6 know, in the public record.

7 And so the issue with respect to national security
8 damage is sort of OBE, as we like to say. And I feel like I'm
9 now a member of the military with the use of acronyms. I'm
10 getting accustomed to them.

11 I just want to say in echoing what -- something
12 Mr. Sowards just said, which is this, it's the eve of the --
13 it's the morning of the witnesses' proposed testimony, and we
14 are -- I'm frantically looking through the document for the
15 changes. We received an e-mail last night, but without it in
16 print, I actually didn't know.

17 This is information that the government has known for
18 a very long time. The proposal that Special Agent Gaudin's
19 testimony -- or his presence at a black site for the
20 Abu Zubaydah interrogation has been declassified since the
21 publication of the 9/11 Commission report oh so many years
22 ago, more than a decade ago.

23 So I'm not sure what's happening, but things are being

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1 sort of after-the-fact classified for us that have been out in
2 the public sphere and declassified for a very long time. And
3 only by the vigilance of defense counsel, frankly, are we
4 catching these mistakes. And I'm not that good -- maybe
5 Mr. Connell is, but I'm not that good of knowing everything
6 that's out there in the public sphere. But we ought not to
7 have to point out the errors in their guidance.

8 And when there -- so what that leads me to argue is
9 that we ought to have time to examine it. Because when I get
10 it this morning and -- or yesterday, and I'm supposed to
11 examine a witness -- now, I'm not going to this time, we're
12 going at the end -- or but we ought to be able to argue
13 whether or not it's appropriately filed and whether or not it
14 actually is what it purports to do, which is protect national
15 security.

16 I have one last comment. We're at a bit of a
17 disadvantage beyond what I just argued when they do something
18 last minute. Paragraph 5 of the guidance talks about the fact
19 that previously classified documents with banner markings
20 saying SECRET or TOP SECRET now contain unclassified
21 paragraphs, information which either was unclassified to start
22 with and somebody realized it or, you know, has since been
23 declassified. We're supposed to now take that information and

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1 submit it to a review team to determine whether or not we can
2 use it in an unclassified session. I received that
3 information two days ago, two business days ago.

4 That process for defense counsel takes 60 days. So
5 there's no way, if the government gives us classification
6 guidance on the eve of a hearing, that we can ever make that
7 determination in the way they suggest.

8 All of that, I'm done.

9 MJ [Col COHEN]: All right. Thank you, ma'am.

10 Mr. Harrington, do you want to take your five minutes
11 now or do you want to wait and see how things progress; and
12 then if it was your turn to go, you would have the opportunity
13 to address it at that point while you need some additional
14 time? Either way is fine, sir.

15 LDC [MR. HARRINGTON]: Judge, I just have an additional
16 comment or perspective that needs to be considered.

17 MJ [Col COHEN]: Yes, sir.

18 LDC [MR. HARRINGTON]: When you work with clients on this
19 kind of an issue, obviously it's complicated. It goes on over
20 a long period of time, it's talked about. Sometimes you go
21 back and forth about it. And it's not like you sit down,
22 especially on this issue, with what our clients have been
23 through, that you sit there for a day and just go through

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1 these things one after another. That's not possible in this
2 kind of a situation.

3 But you discuss things that are in an open book with
4 the client and they give you their perspective on it, their
5 memories, and all of the rest of it to the extent that you're
6 at, and then that's taken back from you. So now we're in a
7 position that a witness is going to come in here and testify
8 in open session when they are here but not be able to testify
9 about things that you've already discussed with them, which
10 may be important to their argument and to their presentation.
11 And not only that are they not here, but you can't go back to
12 them and talk to them again about what was testified in there.
13 And so it makes it very, very difficult for us in -- in this
14 situation to -- to do this.

15 And it's possible in this case that one or more of the
16 accused may testify on -- just on the suppression issue,
17 right, to the extent that they're able. So how does a defense
18 counsel prepare their client to testify about that when you've
19 had a witness testify about the facts that your client is
20 going to testify about and you can't say to your client he
21 said this about that or he said that about that.

22 MJ [Col COHEN]: I understand.

23 LDC [MR. HARRINGTON]: Thank you.

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1 MJ [Col COHEN]: All right. Thank you.

2 Paragraph 75 of -- well, let me see if it's still
3 unclass. I anticipate it probably is, but -- yes. Counsel, I
4 also have permission -- the -- okay.

5 Trial Counsel, I believe that an UNCLASSIFIED//FOUO
6 paragraph can be -- can be discussed in this session. Do you
7 concur?

8 MTC [MR. TRIVETT]: Concur.

9 MJ [Col COHEN]: All right. So let's go ahead and just
10 talk about ----

11 LDC [MR. RUIZ]: Judge?

12 MJ [Col COHEN]: Yes.

13 LDC [MR. RUIZ]: May I have an opportunity to make
14 some ----

15 MJ [Col COHEN]: You may. I was going to give you a
16 chance just right after I read this.

17 LDC [MR. RUIZ]: No worries.

18 MJ [Col COHEN]: Right. Absolutely. No, I wasn't
19 forgetting you. Thank you. I just wanted to give some
20 context.

21 All right. So in paragraph 75, which is under the
22 title (u) Drs. James Mitchell and Bruce Jessen, the paragraph
23 says, "Drs. Mitchell and Jessen were integral to the

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1 development of the CIA's RDI program. Drs. Mitchell and
2 Jessen were requested by the Defense and are expected to
3 testify on direct and/or cross-examination about the design of
4 the RDI program, as well as their observations of and/or
5 participation in interrogations of the Accused and the
6 application of enhanced interrogation techniques.
7 Dr. Mitchell has written a book titled 'Enhanced
8 Interrogation' that contains many unclassified facts detailing
9 his and Dr. Jessen's involvement in the design and
10 implementation of the RDI program. The specific language,"
11 which is underlined, "in his book is unclassified and may be
12 elicited in open session of the Commission."

13 The following information is also -- "To avoid
14 disclosure of information that would tend to identify CIA
15 personnel, contractors, or locations of black sites"
16 consistent with -- consistent with previous assertions of the
17 national security privilege of which I have made findings in
18 favor of the defense along these lines and -- and that has not
19 changed nor will it -- will it, unless the government all of a
20 sudden tells us they can -- you can just talk about all
21 that -- "The defense may not elicit in an open session
22 confirmation of any physical descriptions of such
23 individuals" -- which is consistent with their previous

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1 assertions of which I have made findings that the -- the
2 defense has been precluded from doing that --
3 "pre-RDI/post-RDI biographical information of such
4 individuals, or descriptions of locations, even if such
5 information is included in the book.

6 "Any such questions must be asked in a closed
7 session" -- which, to be honest with you, is a slight
8 difference from what was previously -- previously discussed,
9 so if and when we get to a closed session, I'm curious how
10 this is going to play out with respect to what was previously
11 precluded.

12 "Any such questions must be asked in a closed
13 session" -- sorry to repeat myself. "The prosecution will
14 continue to assert the national security privilege over all
15 such information of all other CIA personnel, contractors, and
16 descriptions of locations not specifically described in the
17 book."

18 My interpretation of that as the -- as the commission
19 is as follows: If it's in the book, you can talk about it in
20 an open session as long as it does not ask you for -- to -- to
21 confirm specific identifying information about a specific
22 person or the geographic location of a black site.

23 Now, as far as the internal construct of a black site,

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1 what was being used, what it looked -- what -- what the
2 internal stuff looked like, all of those kinds of things, I
3 don't see that that's prohibited by this paragraph 75. Just,
4 for example, information that would make it very clear that
5 country X was the location of that particular place of
6 interrogation, for example, whether or not Humvees were there;
7 whether or not, you know, people speaking a certain language
8 were -- were present, you know, all of -- all of these types
9 of things are the types of information that -- that the
10 government has asserted that privilege over.

11 Now, what's interesting is when we get to a closed
12 session, if that information is contained in the book, the
13 government is now saying defense can ask about that in a
14 closed session.

15 Once again, I remind the parties that there -- we are
16 still at this pretrial balance between closed and open, and
17 the fact that something has -- has -- is necessary to be
18 discussed in this closed session, prior to trial, information
19 that is disclosed in a closed session, the defense still has
20 at least the opportunity, which we will probably end up
21 arguing about with the 505 process, of at least giving notice
22 of I want to talk about this in an open session or this is the
23 information that I want to use.

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1 And then I'm going to have to make some hard calls
2 about whether or not they can use that actual evidence at
3 trial against the guilt or, you know, not guilt of the -- the
4 accused who are -- who are charged for these offenses. So I
5 just want to make sure that -- that that unclassified
6 paragraph is out there.

7 With respect to last-minute changes, I get it. It
8 is -- it is -- it is not ideal. That's why I specifically
9 wanted the government to put on what -- what they've changed.
10 Declassification is typically more helpful than unhelpful.

11 To the extent that the defense notices that there is
12 something that's inaccurate, something has been declassified,
13 while we would want to avoid that, I do think that is part of
14 the role of the defense, to call the government on something
15 when they see it. I mean, that's the adversarial process of,
16 like hey, I think you got this wrong. You need to fix this.
17 But we shouldn't have overclassification either for stuff
18 that's clearly been declassified for significant periods of
19 time, and so it's finding that balance.

20 So I understand the issues. I haven't ruled on
21 anything yet.

22 Mr. al Hawsawi -- excuse me, you are representing
23 Mr. al Hawsawi, so -- but, Mr. Ruiz, if you would like your

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1 five minutes, you may take them now, sir.

2 LDC [MR. RUIZ]: I'll take my five minutes, Judge.

3 MJ [Co] COHEN]: All right. You may.

4 LDC [MR. RUIZ]: Judge, I've -- we've been here before.

5 MJ [Co] COHEN]: We have.

6 LDC [MR. RUIZ]: In your -- in your short stint, I think
7 you've been here before. And that is exactly the -- the
8 problem I see with this process. Your comments are well
9 taken. I understand and know where they're coming from.

10 But the reality is that in 2008, Mr. Clayton Trivett
11 filed a notice saying that we're ready for trial, that all
12 discovery had been provided. And that would also subsume that
13 all classified information disclosures had been made and the
14 appropriate guidance was in place and the parties knew what
15 the rules were before they engaged in that trial.

16 That's 2008. That's 12 years ago. And just a couple
17 days ago, we continue to get new rules, new guidelines, new
18 explanations on how to conduct this hearing. This is
19 fundamentally at odds with due process.

20 And I understand that there is a tension between all
21 of us on -- in terms of wanting to make positive progress and,
22 at the same time, wanting to be faithful to the due process
23 that's due in a case where you have a capital defendant who

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1 ultimately may lose their life through a judicially sanctioned
2 process. That is the tension.

3 I also understand the military culture. Having served
4 for 24 years, I get the fact that part of that mentality and
5 part of that conditioning and culture is to try and accomplish
6 a mission by any means, in any way, shape, or form, even when
7 the conditions are not, as you indicated, ideal.

8 But I would suggest to you, Judge, that that is not
9 the standard. Less than ideal is not the standard. And I
10 think you know that very well; I'm not suggesting otherwise.
11 But that's not the standard in a capital trial, even in the
12 pretrial stage. These are critical stages of the proceedings,
13 where real rights and -- and real issues are being decided
14 that will impact significantly what happens at trial.

15 I would say to you, Judge, if you find some spare time
16 for reading, which is probably not -- not very much, you may
17 want to look at the 367 series, the (MAH) 367 series. That
18 series chronicles a history of conflicts between due process
19 in this case and national security privilege.

20 There is language that we've cited about previous
21 judges in this commission have said when that tension becomes
22 too much, the government must choose, and the choice is -- is
23 one or the other. You can't have both.

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1 And, quite frankly, what the government has been
2 having for the past decade is both. They've had the ability
3 to erode the defense function, to erode the due process that
4 is due in this case, and continue to prosecute this case,
5 because there is this real desire and there is this culture of
6 getting a mission accomplished. But that is inconsistent with
7 the type of process that is ultimately due in a capital case.
8 And that is the problem, is we continue to press forward. We
9 try to do the best that we can, but it's an ever-shifting
10 landscape that has a real impact on our preparation. It may
11 not be seen here, but there is a real impact.

12 I received notice of this new guidance when I was in
13 transit. I took the rotator, so I was out of pocket for two
14 days. I didn't have access to the classified system. It was
15 the first thing I read when I got on island because I didn't
16 know how it had changed everything that I had been preparing,
17 thinking, and trying to organize to make an efficient and
18 zealous presentation for Mr. al Hawsawi. But there is a real
19 impact, Judge.

20 Just this weekend, you saw that the NFL played their
21 playoffs. They're getting ready for the Super Bowl, and
22 you're going to have the Chiefs and the 49ers. And the
23 equivalent of this really is that right before that game,

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1 teams would be handed a new set of rules. Instead of the
2 rules that they've known for the entire time that they're
3 going to play this game by, they're going to be sent a new set
4 of rules that they're going to have to adjust to. They've set
5 their playbook, they've gotten ready to play this biggest of
6 games.

7 What do you think would happen if a new story broke
8 that the NFL had changed the rules for the Kansas City Chiefs
9 three days before the Super Bowl that told them that, you
10 know, now they could do something entirely different or
11 couldn't do something that they've been doing all along. The
12 public wouldn't stand for it.

13 And yet we have a capital defendant, Mr. al Hawsawi,
14 who is looking at losing his life and we get that same kind of
15 treatment very often where the rules change, we have to
16 adjust, we have to reorganize everything that we're doing
17 right before we come in here and question critical witnesses.

18 I would just say, Judge, that's not consistent with
19 due process, and I think we've got to get to a point where --
20 the government has had 12 years to figure this out. They've
21 known that this evidence is out there far longer than we've
22 known. They've known the possibilities and the witnesses that
23 would likely come and testify.

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1 There has to come a point where there's a finality to
2 the ever-shifting landscape because that goes into what
3 Mr. Sowards indicated, which is this litigation advantage and
4 the way that it does chill the defense function and the way
5 that it does impact our ability to prepare.

6 At some point, there has -- this pattern, this process
7 has to stop or the court has to just say, in my -- in my
8 opinion, this is inconsistent with due process. This is not
9 the way to run a capital trial. At some point, there must be
10 some finality in the guidance, and the defense must be in a
11 position where we understand the rules of the road and we can
12 abide by them.

13 And that goes back to the comment I made in the closed
14 session, Judge, when I talked to you about asking questions of
15 these witnesses, and I said to you, Judge, I'm going to stand
16 up there, and I'm going to ask questions in good faith based
17 on the guidance that I understand, based on consultation with
18 the professionals on my team who are there to guide me along
19 these lines. I mean, that's the best I can do.

20 This whole process of questioning witnesses and
21 constantly having conversations with the government, I
22 understand that. Again, there's a willingness to try to do
23 things by -- by the rules that are laid out before us. But it

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1 does have a degrading effect on our ability to effectively
2 question a witness, to thoroughly question a witness without
3 having constantly to check and see if we're stepping on
4 eggshells that have been recently laid there for us.

5 So those are my comments, Judge. I echo the
6 sentiments of my colleagues and adopt their legal arguments as
7 well. But I do think the court needs to think long and hard
8 about, is there a point at which we just stop this and say
9 what is the finality in this guidance? How long does the
10 government get to figure this out? And are we going to be
11 trying to figure this out on the eve of trial as well?
12 Because we're 12 years into this and we're still here.

13 And this -- this in and of itself, Judge, is the
14 impact. We have a hearing with two witnesses who have
15 traveled who are of significant importance to all of the
16 parties who are waiting while we discuss this issue because of
17 the late disclosure and then the late guidance.

18 So those are my comments, Judge. Thank you.

19 MJ [Col COHEN]: Thank you, sir.

20 LDC [MR. SOWARDS]: Your Honor?

21 MJ [Col COHEN]: Mr. Sowards.

22 LDC [MR. SOWARDS]: Yes. I'd beg your indulgence for just
23 a minute in response to a couple of things you mentioned

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1 before Mr. Ruiz spoke.

2 MJ [Col COHEN]: Okay. Real quick. Two minutes.

3 LDC [MR. SOWARDS]: First, Your Honor, the happy news is
4 that your reading of paragraph 75, if that is consistent with
5 the government's understanding of that, the scope of it, may
6 be helpful in our resolution of some of these conflicts.

7 MJ [Col COHEN]: I'm getting a nod, so I don't think we're
8 going to hear them say something different, so ----

9 LDC [MR. SOWARDS]: Okay. Well, Judge -- and we -- as a
10 defense attorney, I'm very concerned about knowing and
11 intelligent waivers. So let me just say that -- and I
12 apologize, I misspoke, that it was paragraph 71; if I said 72,
13 it was 71 in the old guidance.

14 But that specifically -- in addition to the helpful
15 language you read as to the new guidance, 75, the other -- the
16 other conflict there is that it specifically said that the
17 information in the book is unclassified information, so
18 broader in terms of what he's disclosing, the author is
19 disclosing. The comparison with paragraph 75 on page 26 of
20 the January 21st guidance now narrows that down to the
21 specific language, underlined, in his book.

22 So as long as that -- what I -- initially it concerned
23 us very much and was fairly alarming that we went from general

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1 information, all facts, all information is unclassified, to
2 only being able to rely on specific language gave us a
3 problem. So if Mr. Trivett, upon reflection, still agrees
4 with the commission, that's great.

5 MJ [Col COHEN]: Okay.

6 LDC [MR. SOWARDS]: The second thing was -- and I
7 understand Your Honor was speaking in -- in general terms
8 about there is obviously several differences between pretrial
9 and what we have to do in terms of the actual trial.

10 But what I would just, without being presumptuous,
11 remind the commission of, because we have mentioned it a few
12 times, and that is the United States Supreme Court guidance in
13 Powell v. Alabama, 287 U.S. 45, particularly at 68-69, a 1932
14 case which remains a guiding principle for the right to
15 counsel in capital cases.

16 And what that specifically emphasizes is that the
17 pretrial stage at which time thorough-going investigation and
18 consultation is as important a part of the right to counsel as
19 is counsel during the trial. And particularly, in light of
20 our colleague, Mr. Harrington's comments which made explicit
21 the issue, there is going to be ongoing consultation and then
22 further investigation as a result of what we can explore here.

23 And then the final point is, with respect to the

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1 court's ruling on AE 680B, which I'm not going to reargue --
2 that was on the one in terms of the position of the parties,
3 whatnot -- that I -- that I did want the record to reflect my
4 formal objection to going forward under -- under those
5 restrictions. And then in due course, just to alert, I will
6 either file a motion for reconsideration or just a formal
7 notice of that objection.

8 MJ [Col COHEN]: All right. Thank you, sir.

9 LDC [MR. SOWARDS]: Thank you very much, sir.

10 MJ [Col COHEN]: Thank you. Okay. All right.

11 Trial Counsel, would you like to -- was the court --
12 was the court's interpretation of paragraph 75 incorrect?

13 MTC [MR. TRIVETT]: It was not incorrect, sir.

14 MJ [Col COHEN]: All right. Thank you. All right. Is
15 there anything else that you need to say on this?

16 MTC [MR. TRIVETT]: One second to confer?

17 MJ [Col COHEN]: All right.

18 [Counsel conferred.]

19 MTC [MR. TRIVETT]: Subject to any questions you may have,
20 sir.

21 MJ [Col COHEN]: No questions.

22 MTC [MR. TRIVETT]: Thank you, sir.

23 MJ [Col COHEN]: All right. Thank you. All right.

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1 Mr. Connell.

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

3 MJ [Col COHEN]: I'm inclined to, before we start the
4 testimony of the witness, take a brief comfort break and then
5 call the witness. Are you prepared to proceed?

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

7 MJ [Col COHEN]: All right. We're in recess for -- we'll
8 go ahead and take 20 minutes.

9 [The R.M.C. 803 session recessed at 1038, 21 January 2020.]

10 [The R.M.C. 803 session was called to order at 1101,
11 21 January 2020.]

12 MJ [Col COHEN]: Military commission is called to order.
13 Parties are present.

14 General Martins.

15 CP [BG MARTINS]: Your Honor, Mr. Swann is absent from the
16 courtroom ----

17 MJ [Col COHEN]: All right.

18 CP [BG MARTINS]: ---- on commission business.

19 MJ [Col COHEN]: Thank you, sir. All right.

20 We will go for one hour and then take the lunch break
21 and then reconvene after a 75-minute lunch break.

22 Mr. Connell, please call your witness.

23 LDC [MR. CONNELL]: Your Honor, I call Dr. James Mitchell.

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1 MJ [Col COHEN]: Please retrieve the witness.

2 CP [BG MARTINS]: Sir, please proceed to the witness
3 stand, remain standing, and raise your right hand for the
4 oath.

5 **JAMES E. MITCHELL, civilian, was called as a witness for the**
6 **defense, was sworn, and testified as follows:**

7 CP [BG MARTINS]: The witness answered affirmatively.
8 He's a little far away from the mic. If you'd please take
9 your seat.

10 MJ [Col COHEN]: Take a seat, sir.

11 CP [BG MARTINS]: Please be seated.

12 MJ [Col COHEN]: Go ahead, sir.

13 **DIRECT EXAMINATION**

14 **Questions by the Chief Prosecutor [BG MARTINS]:**

15 Q. Good morning, sir. Could you please state your full
16 name and spell it for the record.

17 A. Spell my entire name?

18 Q. Yes, please.

19 A. My name is James Elmer, E-L-M-E-R, Mitchell. So it is
20 J-A-M-E-S, E-L-M-E-R, Mitchell, M-I-T-C-H-E-L-L.

21 Q. Thank you, sir. And what is your state of residence?

22 A. I live in Florida.

23 CP [BG MARTINS]: Thank you.

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1 MJ [Col COHEN]: Mr. Connell. Oh, Mr. Groharing.

2 TC [MR. GROHARING]: Your Honor, as you may recall in the
3 616 series when we took the testimony of the interpreter, we
4 provided a key to the witness that was marked as an appellate
5 exhibit. I have a similar key prepared for this witness ----

6 MJ [Col COHEN]: Okay.

7 TC [MR. GROHARING]: ---- to help facilitate his
8 testimony. If I could approach, Your Honor?

9 MJ [Col COHEN]: You may. Okay. It will be 628NNNNN
10 (Gov).

11 LDC [MR. SOWARDS]: Excuse me, Your Honor, before we
12 begin. Is it possible to lay the binders down on their -- on
13 their sides?

14 MJ [Col COHEN]: Oh.

15 LDC [MR. SOWARDS]: Does that interfere with you? Then
16 never mind.

17 LDC [MR. CONNELL]: No, if that's a problem, we can ----

18 MJ [Col COHEN]: Counsel, let's ----

19 LDC [MR. CONNELL]: Which binder offends Mr. -----

20 ACC [MR. BINALSHIBH]: Judge?

21 MJ [Col COHEN]: Wall to our left.

22 Mr. Groharing, the intent is I have reviewed
23 628NNNNN (Gov). Is the intent to have the witness keep this

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1 in his possession during his testimony?

2 TC [MR. GROHARING]: Yes, sir.

3 MJ [Col COHEN]: Okay. I will allow him to do so.

4 TC [MR. GROHARING]: Obviously not during breaks, Your
5 Honor. We'll secure it during breaks for classification
6 reasons.

7 MJ [Col COHEN]: Sir, I'm handing you this document. TOP
8 SECRET cover sheet is on top of it.

9 WIT: Thank you, sir.

10 MJ [Col COHEN]: If you'd please take a minute and look at
11 it, and then I just have a couple of questions about the --
12 about the document once you've seen it.

13 WIT: Sorry, sir?

14 MJ [Col COHEN]: I just have a couple of questions for you
15 after you've had a chance to take a look at what it is.

16 [Pause.]

17 MJ [Col COHEN]: Have you had the opportunity to
18 the discuss the -- how this document is being used with
19 respect to the unique functional identifiers and substitutions
20 for actual locations of any black sites?

21 WIT: Yes.

22 MJ [Col COHEN]: Okay. And do you have any questions
23 about how to use this document at this time?

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1 WIT: I don't have any questions but I have a comment
2 about the document.

3 MJ [Col COHEN]: Okay.

4 WIT: This document identifies a number of people who
5 are -- as interrogators who were not interrogators.

6 MJ [Col COHEN]: Okay.

7 WIT: And I think it presents a false and misleading
8 picture that these folks were interrogated the entire time
9 they were in CIA custody when, in fact, they were not.

10 So the vast majority of these people that they
11 identify as interrogators simply aren't. They're debriefers.

12 MJ [Col COHEN]: They're debriefers.

13 WIT: Or targeters or analysts or subject matter experts
14 on something like WMD.

15 MJ [Col COHEN]: Okay. I'll tell you what, then. We may
16 have some questions for you along those lines later.

17 WIT: Yes, sir.

18 MJ [Col COHEN]: That's one of the benefits of having you
19 here to testify is to provide a little more clarity on some of
20 these issues, so -- but with respect to then the -- the -- a
21 name and a unique functional identifier, do you feel
22 comfortable using that, that system?

23 WIT: Yes, sir. I can use that for that.

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1 MJ [Col COHEN]: Okay. Great.

2 TC [MR. GROHARING]: Judge?

3 MJ [Col COHEN]: Counsel.

4 TC [MR. GROHARING]: I just ask, we have invoked the
5 national security privilege over the information in that
6 document, so to the extent the defense needs to approach, I
7 would just ask the witness to cover it at that time ----

8 MJ [Col COHEN]: Makes sense.

9 TC [MR. GROHARING]: ---- so that the information is not
10 disclosed.

11 MJ [Col COHEN]: Please do so, sir.

12 WIT: I will try. Would someone remind me if that comes
13 up?

14 MJ [Col COHEN]: Yes, we'll make sure we remind you.

15 WIT: I'm an old guy and a little bit slow.

16 MJ [Col COHEN]: I understand. All right.

17 LDC [MR. CONNELL]: And, sir, it's very unlikely we're
18 going to get to that document before lunch, so you can just
19 cover it up now if you want, and I'll let you know if it would
20 be helpful to take it out or if you think it would be helpful
21 to take it out.

22 WIT: Okay.

23 LDC [MR. CONNELL]: Okay.

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1 MJ [Col COHEN]: Mr. Connell, just general guidance, I
2 haven't ruled on the issue of the limitations in -- in
3 paragraph 75 that I read yet.

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

5 MJ [Col COHEN]: So to the extent that you can push that
6 towards the end of any open session testimony at this point,
7 it would be great if you could until I can actually address
8 it.

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

10 MJ [Col COHEN]: In other words, the -- the whole book is
11 fair game except for, like I said, just specific details about
12 an individual or ----

13 LDC [MR. CONNELL]: I understood. I understood your
14 ruling -- or maybe not ruling, guidance, and think I can
15 comply.

16 MJ [Col COHEN]: Okay. If you can't, we'll address it on
17 the fly; but I just didn't know how you had structured your
18 opening ----

19 LDC [MR. CONNELL]: Yes, sir. If you need me to -- if
20 you're like, "Mr. Connell, could you come back to that,"
21 that's fine.

22 MJ [Col COHEN]: Okay. Perfect.

23 Mr. Nevin?

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1 CDC [MR. NEVIN]: If I could be heard. Lest there be a
2 misunderstanding, I intend to move -- depending on the
3 witness' use or nonuse of that document, I intend to move that
4 it be produced to counsel ----

5 MJ [Col COHEN]: I understand.

6 CDC [MR. NEVIN]: ---- to the extent that it's relied upon
7 by the witness. And I believe I made a similar motion when --
8 in -- in the 616 series when we were ----

9 MJ [Col COHEN]: Yes.

10 CDC [MR. NEVIN]: ---- when we took the interpreter's
11 testimony. I -- I don't need to make the motion now, but I
12 wanted you to know I will be ----

13 MJ [Col COHEN]: Yes, sir.

14 CDC [MR. NEVIN]: ---- at a later time.

15 MJ [Col COHEN]: Not a problem.

16 All right, Mr. Connell, thank you. It is -- thank you
17 for letting me have a couple of minutes here to start. It is
18 your witness.

19 LDC [MR. CONNELL]: Thank you.

20 LDC [MR. SOWARDS]: Your Honor, may I have just a moment
21 with ----

22 MJ [Col COHEN]: Or maybe not.

23 LDC [MR. SOWARDS]: I'm sorry.

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1 [Counsel conferred.]

2 MJ [Col COHEN]: Mr. Connell.

3 LDC [MR. CONNELL]: Thank you.

4 **DIRECT EXAMINATION CONTINUED**

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

6 Q. Good morning, sir.

7 A. Good morning.

8 Q. My name is James Connell, and I'm the attorney for
9 Mr. al Baluchi, who is at the fourth table.

10 I'd like to begin by saying thank you for traveling
11 down here. I know that there's a -- at least a controversy
12 over whether civilians can be required to come to Guantanamo
13 or to a video teleconference, and I know you didn't have to do
14 it, and I just wanted to tell you that I appreciate it.

15 A. Well, thank you. I actually did it for the victims
16 and families, not for you.

17 Q. Well, fair enough. And from my limited experience,
18 I'm sure they appreciate it, too.

19 The -- you may have noticed already that there is
20 somewhat of a ridiculous number of documents that we have.
21 And we don't have any network access in this SCIF, so we have
22 a lot of paper. I will always give you the opportunity to
23 review a document if I ask you about it. Or if you want to

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1 review a document, can we agree that you'll just ask me, hey,
2 can you -- can I review that document, and I'll find it for
3 you.

4 A. We don't have to agree to that. If you offer me a
5 document, I'll review it.

6 Q. All right. My specific question is, if you would --
7 I'm just letting you know, if you want a document -- maybe I
8 don't even know it's relevant, but if you want to review a
9 document, please just ask and I'll do my best to get it for
10 you.

11 A. Will do.

12 Q. All right. So I can tell you that the documents are
13 organized by trigram.

14 A. I don't know what that means.

15 Q. Yes, sir. I'm sorry. We're in the sort of the ground
16 rules section, so I'm trying to explain to you what things
17 mean.

18 So, for example, there's a trigram which is STA, and
19 that's short for statements. And so basically all the
20 statements of the defendants go in that trigram, and then they
21 get organized 1 through 20,000 or whatever. There's another
22 one, PRG, for program. All certain category of documents
23 related to that go in there.

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1 So each of those binders that is -- basically you're
2 surrounded by have a trigram or sometimes more than one
3 trigram of information in them. And if I'm orienting you to
4 them, I will tell you which trigram we're looking for first,
5 let you find the binder, and then I'll tell you the number,
6 which are in ordinary numerical sequence. Does that make
7 sense?

8 A. Yes.

9 Q. Okay. And this is something very much changing over
10 time, but when I can, I'll cut out that process and show you a
11 document on the document camera. And if you need me to make
12 it bigger, I can make it bigger. If you need me to look at a
13 different part of the document, you just let me know. Is that
14 fair?

15 A. I don't know whether fair or unfair applies to it. I
16 don't know what you mean by "fair."

17 Q. Okay. Can we agree on that as a procedure?

18 A. Sure.

19 Q. The -- I just want to inform you that when I'm talking
20 to you about Bates numbers, say PRG-777 or something like
21 that, your documents are organized by Bates number to make it
22 easier for you; but the military judge and the -- the court
23 reporters have their documents organized differently, so I'll

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1 also mention an AE number. That number is for the record and
2 for the military judge; you don't have to worry about it.
3 It's sometimes confusing because I say two numbers.

4 The number that you have to worry about is the trigram
5 and then the digits that follow it. Does that make sense?

6 A. If I have any questions, I'll ask you.

7 Q. Very good. Thank you, sir.

8 So obviously a substantial amount of information in
9 this case is classified, and I'd like to represent to you that
10 classified information in a military commission works a little
11 bit differently than, for example, the deposition that you
12 were involved in.

13 The military judge has ruled that all of us in this
14 room are custodians of classified information. That includes
15 the defense, that includes you, that includes the prosecution,
16 and the judge. And that means that any of us can raise an
17 objection if we think that a question calls for a classified
18 answer. Do you understand that responsibility?

19 A. I understand what you're saying.

20 Q. Is there a problem?

21 A. No.

22 Q. Okay. And so I'll represent to you, sir, that every
23 question that I ask is intended to call for an unclassified

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1 answer in this forum. The -- so if you think that I'm asking
2 for -- intentionally asking for a classified answer, I'm not.
3 So, for example, you have in front of you 628NNNNN, which is a
4 key to UFIs. You don't have to take it out.

5 A. I don't ----

6 Q. The document that the judge just handed you?

7 MJ [Col COHEN]: It would be the Top Secret document I
8 just gave you.

9 WIT: This thing here?

10 Q. Yeah. You don't -- I'm just saying you have that in
11 front of you, sir?

12 A. I do.

13 Q. And did the prosecution explain the UFI process to
14 you?

15 A. Yes.

16 Q. And if I ask you a question that begins with the word
17 "who," I'm asking for the UFI, if one exists. Do you
18 understand?

19 A. I understand what you said, yes.

20 Q. Okay. I'm not asking you for the real name of the
21 person if they have a UFI. Do you understand?

22 A. Yes.

23 Q. Yes. And so if I ask you -- have you been briefed on

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1 the location number or color code system for detention sites?

2 A. Is that a question?

3 Q. Yes. Have you been briefed on the color code or
4 location number system for detention sites, is the question.

5 A. It's on this form.

6 Q. Okay. Would -- did someone explain -- did the
7 prosecution explain to you how it works?

8 A. Yes.

9 Q. Okay. And so I want to represent to you that if I ask
10 you a question that begins with "where" and the answer is
11 classified, I'm asking you for the unclassified substitute,
12 the color code or the location number, instead of the name of
13 a country. Do you understand?

14 A. Yes.

15 Q. Okay. Did the government explain to you that in their
16 current interpretation, both the color code, say COBALT or
17 BLACK or whatever, and the location number refer to detention
18 sites specifically, not countries?

19 A. They didn't explain that to me, but it's pretty
20 obvious.

21 Q. Okay. And I'll also represent to you that if I ask
22 you a question that begins with the words "do you know,"
23 I'm -- that's kind of a yes-or-no question. I'm asking you

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1 whether you know the information; I'm not asking for the
2 underlying information. Does that make sense?

3 A. Yes.

4 Q. Okay. The -- sometimes you might want to give an
5 answer that involves classified information or you might not
6 sure -- be sure whether it's classified or not. Can you
7 envision that situation?

8 A. I can imagine that might happen.

9 Q. Okay. In that case, sir, I'll tell you that this --
10 the military judge's practice or best practice is that the --
11 that you simply say, "Your Honor, I think there's a 505
12 issue."

13 A. Yeah, I can't guarantee that I'll remember "there's a
14 505 issue."

15 Q. Okay.

16 A. I mean, I -- I can probably remember it may be
17 classified ----

18 MJ [Col COHEN]: Perfect.

19 A. ---- but to ask me to memorize your nomenclature at
20 your convenience seems a little extreme to me.

21 Q. Okay. Can you understand why the military judge might
22 not want you to answer a question that the answer to that is
23 classified because it might be confirming or denying

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1 classified information?

2 A. Certainly.

3 Q. Okay. And so with that in mind, can -- does it make
4 sense that referring to the 505 process in some way -- which I
5 can write down the number for you if it would help -- would --
6 it seems like a reasonable accommodation?

7 A. No. Let me -- let me -- I'm here to answer your
8 questions. I'm here to shed light on what I -- what I did,
9 what I was involved in, what I saw. And so I'm not going to
10 make some sort of a guarantee to answer in a specific way
11 about a hypothetical question that I haven't heard.

12 MJ [Col COHEN]: Tell you what, sir. How about this: If
13 you think that the answer itself is classified, will you just
14 say, "I'm not sure I can answer that right now"?

15 WIT: Yes, sir.

16 MJ [Col COHEN]: Perfect.

17 LDC [MR. CONNELL]: Great.

18 Q. Did the government explain what it means when they
19 invoke national security privilege to you?

20 A. Yes.

21 Q. Okay. And is it your understanding that when the
22 government asserts national security privilege, that they're
23 essentially taking a fact, whether you want to say it or I

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1 want to hear it, and removing it from the process?

2 A. That's my understanding.

3 Q. Okay. And so without asking you to adopt any
4 convention, I have to tell you a convention that I have to
5 follow because the judge, military judge, has told me to.

6 So that specific convention is that if I want to ask
7 whether certain information is covered by the national
8 security privilege, I have to ask you the following -- in the
9 following form: If I were to ask you X fact, would you have
10 to decline based on national security privilege? Do you
11 understand?

12 I can repeat it if you want. It's a little confusing.

13 A. It's not confusing to me. I understand what you said.

14 Q. Okay. Good. And the reason for that is that I'm
15 often trying to stay on very narrow unclassified ground, and
16 so I often have to ask very narrow questions. Make sense?

17 A. I understand what you're saying.

18 Q. Okay. So I'm sure you'll notice that, unlike the
19 deposition that you were involved in, there are no separate
20 CIA attorneys present.

21 A. Well, since I don't know everyone in the room, I can't
22 be sure of that, but I'll take your word for it.

23 Q. You know, actually, sir, you shouldn't take my word

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1 because I don't know either, so I'll move on from that
2 question.

3 The -- but I will tell you that the prosecution --
4 prosecution represents all the interests of the United States
5 in this case on behalf of all United States agencies. Does
6 that seem fair?

7 A. Fair?

8 Q. Does that make sense?

9 A. Yes.

10 Q. And in the same way that your personal attorneys
11 represent your personal interests, correct?

12 A. I would hope they do.

13 Q. And so if anyone objects, can we agree that you'll
14 simply wait until whatever discussion there is finishes and
15 the military judge instructs you?

16 A. I will attempt to do that, but I -- again, I can't
17 agree in advance how I'm going to respond to a question that I
18 haven't heard. You know, it's possible that I may shoot my
19 mouth off prematurely, and what I would expect is that -- that
20 you have procedures in case that accidentally happens.

21 Q. Right. So I will tell you that we do have procedures,
22 and one of them is going through this -- this little
23 organizing -- these organizing principles, but there also is a

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1 40-second delay. Have you been instructed on that?

2 A. Yes.

3 Q. Okay. So I'll just inform you that the school of
4 examination that I follow calls for me to divide my questions
5 into -- into -- into broad topics. There will be books, which
6 are broad topic, and then within that book, there will be
7 chapters. And I'm informing you now they're organized by
8 subject and not chronology because I don't want you to be
9 thrown off by that.

10 And I'll commit to you that when I change chapters,
11 like change topics, I'll tell you so that I'm -- I don't trick
12 you in some way or you think I'm talking about a different
13 topic. Right now, for example, we're in introductory
14 material, ground rules.

15 And I'll commit to you this is not like TV. None of
16 my questions are tricks. You have information that you want
17 to tell us. I have information that I want to know. And
18 that's the way this process works. Can we agree on that?

19 A. I'm -- I'm fine with the process.

20 Q. Great. All right. So now in that process, we're
21 moving on to a different chapter, which is about your book.
22 Understand?

23 A. I understand that we're going to talk about my book.

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1 Q. Very good. So you published a book in 2016; is that
2 right?

3 A. I would prefer to just look at the book if you're
4 going to ask me questions about the book.

5 Q. Are you saying you want a copy of the book?

6 A. Yes.

7 LDC [MR. CONNELL]: The court's indulgence, Your Honor?

8 MJ [Col COHEN]: You may.

9 LDC [MR. CONNELL]: Sir, may I approach?

10 MJ [Col COHEN]: You may.

11 LDC [MR. CONNELL]: I'm going to hand the witness a copy
12 of *Enhanced Interrogation* by James E. Mitchell. And the
13 prosecution and I just looked through it to make sure that it
14 didn't have any markings in it, so it's a clean copy.

15 MJ [Col COHEN]: Okay. Counsel, remind me. That is a
16 separate AE exhibit or am I now marking that as an AE exhibit
17 or appellate exhibit? I know it was referenced in notices of
18 exhibits. I just don't know.

19 LDC [MR. CONNELL]: Sir, the general practice has been
20 that when we refer to books or -- in fact, the court's rule is
21 that when we refer to books or easily available bulky
22 material, that we don't place it ----

23 MJ [Col COHEN]: Okay.

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1 LDC [MR. CONNELL]: ---- in the record. If the military
2 commission decided this was an exception to that, I would
3 understand.

4 MJ [Col COHEN]: Let's see how much we use it.

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

6 MJ [Col COHEN]: Thanks.

7 **DIRECT EXAMINATION CONTINUED**

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

9 Q. Dr. Mitchell, about -- and I'll take any kind of round
10 number. About how many copies of that book were sold?

11 A. I actually haven't been tracking that, so I don't
12 know. Probably 40 or 50,000. I don't know.

13 Q. Okay. And ----

14 A. It's a guess.

15 Q. I'm sorry? A guess, sure.

16 You hold a security clearance; is that right?

17 A. Again, that's one of those things that I assume is
18 true, since I'm here and have access to Top Secret
19 information. I haven't been briefed that I continue to have a
20 security clearance.

21 Q. Do you consider yourself to be a good steward of
22 national security information?

23 A. Yes.

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1 Q. In the period of time between 2002 and let's just cut
2 it off at 2006, you held a TOP SECRET//SCI clearance; is that
3 correct?

4 A. Yes.

5 Q. And I assume there were additional compartments on top
6 of the SCI?

7 A. Yes.

8 Q. One of those compartments dealt with the Rendition,
9 Detention, and Interrogation Program, or RDI program?

10 A. Yes.

11 Q. And you knew, of course, that you were not
12 disclosed -- allowed to disclose classified information from
13 that compartment, correct?

14 A. Yes.

15 Q. At any time did you ever see a security classification
16 guide for that compartment?

17 A. I don't recall.

18 Q. I assume that when you got your clearance, you signed
19 a standard nondisclosure agreement?

20 A. That would be true.

21 Q. And in that standard -- in that nondisclosure
22 agreement you committed not to disclose classified information
23 to any unauthorized person; is that a fair characterization?

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1 A. Yes.

2 Q. And you agreed that if you were uncertain about the
3 classification of any information, you would confirm from an
4 authorized official that that information was unclassified,
5 correct?

6 A. If it was part of the nondisclosure agreement, I
7 signed it.

8 Q. Okay. In your book, *Enhanced Interrogation*, you had a
9 coauthor, Bill Harlow; is that right?

10 A. Correct.

11 Q. And Mr. Harlow is a former spokesperson for the CIA
12 from 1997 to 2004?

13 A. That's correct.

14 Q. And as spokesperson, his entire job was speaking on
15 behalf of the CIA without compromising national security.
16 Would you agree?

17 A. You'd have to ask him what his job was and what he
18 did. I -- I wouldn't presume to guess.

19 Q. When did you begin the process of writing the book?

20 A. After I talked with the PRB about how we could write
21 the book together without compromising classified information.

22 Q. Great. Could you tell us a little bit more about that
23 conversation?

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1 TC [MR. GROHARING]: Objection, relevance.

2 LDC [MR. CONNELL]: We just spent two hours arguing this
3 issue, Your Honor. The factual ----

4 MJ [Col COHEN]: Yes, I'll allow a little bit of
5 testimony. I think this will help me in addressing this
6 particular issue. Overruled.

7 You may answer, sir.

8 A. Okay. So I called the PRB and told them I wanted to
9 write the book and that he was going to be the coauthor, and
10 they had a system for doing that, which I don't feel that I'm
11 at liberty to disclose.

12 Q. Did the system involve a mechanism that would allow
13 you to check to make sure that facts were unclassified?

14 A. Not -- not for the initial draft.

15 Q. Okay. How about after the initial draft?

16 A. It was submitted to the PRB.

17 Q. Through their formal process?

18 A. Through their formal process. Every change that
19 happened to it after the initial draft had to be submitted to
20 the PRB.

21 Q. Okay. So the -- if there was a -- you know, a
22 version 3, a version 17, whatever, each -- each new change had
23 to be submitted to the PRB?

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1 A. If it was something other than a "he" to "she" or a
2 "they" to "them," yes.

3 Q. For -- without disclosing the substance of the
4 communications, can you tell us if they ever gave you any kind
5 of feedback?

6 A. Of course they do. They grant you a letter that says
7 it's been approved.

8 Q. Okay. And ----

9 A. And they also send a letter that says you need to take
10 this stuff out.

11 Q. Okay. And did that happen? Did on -- on one or more
12 occasions, did they send you a letter saying you needed to
13 take something out or change something?

14 A. Yes.

15 Q. Okay. Approximately how many occasions did that
16 occur?

17 A. You're talking about specifically for the book?

18 Q. Yes, sir.

19 A. There were several. I don't remember how many because
20 there were -- there were several things that I wanted to
21 include in the book that they didn't want me to include. In
22 the -- in the final draft, the Department of Defense took more
23 out than the -- than the actual CIA did. Because I had

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1 contact with them where they told me we will not let you write
2 about this, we will not let you write about this, we will not
3 let you write about this.

4 And previously, I had -- because I had been in the
5 media for a while, I had submitted a bunch of questions to
6 them for review with potential answers that were unrelated to
7 the book but became substance for the book. So I already had
8 a pretty good feel for what they would let me write about and
9 what they wouldn't let me write about.

10 Q. And in that answer, is "they" DoD or is "they" CIA?

11 A. They is the PRB at the CIA.

12 Q. Okay.

13 A. The Publication Review Board ----

14 Q. Right.

15 A. ---- for those who don't know the acronym.

16 Q. And did -- when -- when the DoD was undergoing their
17 review, did you have to submit it to a separate board, like
18 DOPSR under DoD, or did you go through the PRB?

19 A. The PRB submitted it to the DoD. In fact, that --
20 that was the longest delay in getting the draft back to me.

21 Q. So if I correctly understand, the CIA PRB took care of
22 making sure that any other agency that might have an equity in
23 the information had the opportunity to review it?

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1 A. And to delete.

2 Q. And to delete.

3 A. Yeah. Whereas the PRB would say take this sentence
4 out, the DoD would say take these pages out.

5 Q. I see. And did -- at some point, did DoD write you a
6 letter that told you to take certain pages out?

7 A. No. It was included with the PRB's letter.

8 Q. I understand. Okay.

9 Sir, I noticed on the copyright page of your book --
10 and you're welcome to look along -- there's a disclaimer.

11 A. Yes.

12 Q. To the effect that this is not an official release of
13 CIA information.

14 A. Correct.

15 Q. And did the PRB tell you to put that disclaimer in
16 there?

17 A. Yes, they required it.

18 Q. Okay. Now, what year did you begin the book writing
19 and PRB interaction process?

20 A. You mean in what year did I begin the PRB? They're
21 two different answers.

22 Q. Fair, sir. Thank you for the clarification. What
23 year did you begin writing the book?

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1 A. Probably 20 -- late 2015, early 2016, somewhere in
2 there; maybe even spring 2015, I don't know. Took about eight
3 months.

4 Q. What year did you submit your initial draft to the
5 PRB?

6 A. I don't recall.

7 Q. Okay. During the course of the process, the overall
8 writing process, is it correct that it was during that time
9 that you were sued related to some of the subject matter
10 material?

11 A. I think that what happened was the draft had been
12 submitted to the PRB, and we got notice of the lawsuit.

13 Q. All right. And during that deposition, you were asked
14 about the manuscript which hadn't been finally published yet;
15 is that right?

16 A. Well, I think at that deposition, the hard copy had
17 been published.

18 Q. Okay.

19 A. And I -- but I don't -- I mean, it's been a while, and
20 I just don't recall.

21 Q. Sure. The -- during that deposition, there were
22 present not just attorneys for you and Dr. Jessen and
23 attorneys for the plaintiff, but also representatives of

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1 various government agencies?

2 A. Yes.

3 Q. And do you have any doubt in your mind that your
4 particular manuscript was thoroughly reviewed for classified
5 information?

6 A. As it stood at the time, given the national security
7 classification methodology they were using at the time, I'm
8 convinced that they had approved my manuscript saying that
9 there was nothing classified in it. That can change, as you
10 well know.

11 Q. The -- prior to that approval, are you similarly
12 convinced that your book was thoroughly reviewed?

13 A. By whom?

14 Q. By the PRB and associated equity holders?

15 TC [MR. GROHARING]: Objection, speculation.

16 A. Yes, I believe it was.

17 MJ [Col COHEN]: One second. The objection is
18 speculation?

19 LDC [MR. CONNELL]: Well, he knows the answer and he's
20 already -- we've already laid the foundation for the answer,
21 which is the multiple interactions with the PRB.

22 MJ [Col COHEN]: Overruled. You did ask for his personal
23 opinion as to what his thoughts on the process.

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1 LDC [MR. CONNELL]: Okay.

2 WIT: Judge, if you could bring me up to speed on what
3 just happened.

4 MJ [Col COHEN]: Yeah. There was an objection to
5 speculation, sir. I gave him the opportunity to respond. I
6 overruled it, so your answer stands.

7 WIT: Okay.

8 Q. At the time ----

9 MJ [Col COHEN]: Sir, just so you know, if a party stands
10 up and says objection, unlike a deposition where it's kind
11 of -- just kind of -- it's free-flowing, because we're in the
12 actual court as opposed to a deposition, for example, if they
13 stand up and say objection, please just pause for a second.
14 I'll then hear what the objection is, then I'll give the --
15 the party that's asking the question the opportunity to
16 respond. If I overrule the objection, I'll then look to you
17 and say you may answer.

18 If you're -- if it's been a long objection and so
19 you're not sure what the question was, just ask to have him
20 repeat the question, then you can answer.

21 WIT: Did I miss somebody standing up and objecting?

22 MJ [Col COHEN]: Yeah. Mr. Groharing had stood up and
23 objected.

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1 WIT: Oh, sorry.

2 MJ [Col COHEN]: That's all right. No, that's okay. Like
3 I said, just catching things up, but that will be the process.

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

5 **DIRECT EXAMINATION CONTINUED**

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

7 Q. So to your understanding, the -- the nondisclosure
8 agreement that you signed threatens various repercussions if
9 you were to disclose classified information without approval;
10 is that correct?

11 A. Yes.

12 Q. And to your knowledge, did you include any classified
13 information at the time of publication of your book?

14 A. Well, I -- I must have included something in the draft
15 that they thought was classified because they asked me to take
16 it out. The same thing would be true for the Department of
17 Defense. So logic would dictate that there was something in
18 there they didn't like or they anticipated that they wouldn't
19 like, and they asked me to remove it.

20 Q. And so at the time of publication, all that
21 information had been removed?

22 A. At the time of publication for the ----

23 Q. Of your book, yes, sir.

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1 A. ---- of the hard copy of the book, the final draft of
2 the book or the draft that went to print of the book, that
3 would be true.

4 Q. Okay.

5 A. But again, that changes, as you know, with the federal
6 government.

7 Q. Yes, sir.

8 The ----

9 LDC [MR. HARRINGTON]: Excuse me, Judge.

10 MJ [Col COHEN]: Mr. Harrington.

11 LDC [MR. HARRINGTON]: Could I have just a moment with
12 Mr. Trivett or General Martins for a message I got?

13 MJ [Col COHEN]: You may.

14 LDC [MR. CONNELL]: I'll stand by, sir.

15 MJ [Col COHEN]: Please.

16 [Counsel conferred.]

17 CP [BG MARTINS]: Your Honor, Counsel shared with me an
18 e-mail that seems to indicate somebody observing in the
19 Pentagon is noting the feed isn't working well to the Pentagon
20 at the moment.

21 MJ [Col COHEN]: Okay. Please have our IT folks look into
22 that.

23 CP [BG MARTINS]: We're doing so, Your Honor.

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1 MJ [Col COHEN]: All right. Thank you.

2 Counsel, continue.

3 LDC [MR. CONNELL]: Thank you.

4 **DIRECT EXAMINATION CONTINUED**

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

6 Q. Dr. Mitchell, prior to this past Thursday, right -- so
7 I'm putting a time boundary on my question -- prior to this
8 past Thursday, has anyone ever suggested to you that you made
9 an unauthorized disclosure of classified information in the
10 final published version of your book?

11 A. No.

12 Q. I'll ask you to turn to page [REDACTED]

13 A. [REDACTED]

14 Q. Yes, sir. [REDACTED]

15 [REDACTED]

16 A. Correct.

17 Q. All right. Did anyone ever suggest to you [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 A. No. And, in fact, I specifically asked about that,
21 and they told me I could use her name specifically.

22 Q. I'd ask you to turn [REDACTED]

23 [REDACTED]

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1 A. Okay.

2 Q. In it, you describe [REDACTED]

3 [REDACTED] -----

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

5 MJ [Col COHEN]: Basis?

6 TC [MR. GROHARING]: As we discussed earlier, I believe
7 where counsel is going is the specific physical details of a
8 CIA officer. I think that it would call for a classified
9 response.

10 LDC [MR. CONNELL]: My -- no. The question was very
11 specific. "Did you write?"

12 MJ [Col COHEN]: Right. You are not asking the specifics
13 of what's written there?

14 LDC [MR. CONNELL]: Right.

15 MJ [Col COHEN]: Your question is going to be similar to
16 the previous one, which is: Did anyone tell you you couldn't
17 write what's written there?

18 LDC [MR. CONNELL]: That's right, sir.

19 MJ [Col COHEN]: Okay. I'll overrule that. You're not
20 asking for the specifics, and you're not asking him testify as
21 to whether or not whether what he wrote was true.

22 LDC [MR. CONNELL]: Right.

23 MJ [Col COHEN]: All right.

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1 **DIRECT EXAMINATION CONTINUED**

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

3 Q. Would you like me to repeat the question,
4 Dr. Mitchell?

5 A. If the question is did I write it, I believe I
6 understand the question.

7 Q. All right. I'll just put some specificity to what
8 "it" is just so I'm very clear.

9 Did you write about the physique and complexion of a
10 Counterterrorism Center operational psychologist?

11 A. Yes.

12 Q. Did anyone ever suggest to you at any time that
13 including the physique and complexion of a Counterterrorism
14 Center operational psychologist would damage national
15 security?

16 A. In my book or in my testimony?

17 Q. In your book.

18 A. In my book, no. In my testimony, yes.

19 Q. What were you told about your testimony?

20 A. I was told ----

21 Q. Let me put it -- let me put it differently.

22 A. You asked the question. Let me answer it.

23 Q. I just wanted to tell you if the person who told you

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1 was your own attorneys, then -- then don't answer the
2 question.

3 A. As part of the briefing on the classification
4 guidance, I was told that I could not link descriptions with
5 particular identifiers. That's somebody telling me in --
6 that -- and it was done by the prosecutors, that I couldn't do
7 that. It's part of the briefing. It's not, you know, some
8 nefarious thing.

9 Q. The -- without telling me the name, you know the name
10 of the operational psychologist who is referred to at page 21,
11 correct?

12 A. I could probably remember it. I'm not sure it would
13 come to mind right now, but, yeah, it would -- I could
14 certainly identify it on a list.

15 Q. Sure. Have you ever seen any of the professional
16 profiles of that person, again, in your -- in your
17 professional career? LinkedIn ----

18 A. No, I don't follow that person.

19 Q. Okay. Sir, I'd like to direct your attention [REDACTED]

20 [REDACTED]

21 A. Sure.

22 Q. In the first paragraph, is it correct that you
23 described the hair color of a subject matter expert who

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1 targeted al Nashiri?

2 A. Let me read this.

3 Q. Sure.

4 A. Yes.

5 Q. And prior to last Thursday, did anyone ever suggest to
6 you that including describing the hair color of a CIA targeter
7 in your book would damage national security?

8 A. No.

9 Q. Sir, I'd like to direct your attention to page 105.
10 Sir, is it correct that at page 105, you use a pseudonym for
11 the chief interrogator for the newly formed Rendition,
12 Detention, and Interrogation Group of the CTC's Special
13 Missions Department?

14 A. Say that to me again.

15 Q. Sure. Is it correct that on page 105, you use a
16 pseudonym for the chief interrogator for the newly formed
17 Rendition, Detention, and Interrogation Group of the CTC's
18 Special Mission Department?

19 A. This is one of those instances where I may need some
20 guidance from the prosecution on whether this is appropriate
21 or not.

22 Q. Okay. I just want to -- that's perfectly -- you can
23 certainly have it. I just want to point out that my question

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1 is: Did you write that, not is it true.

2 LDC [MR. CONNELL]: And with that understanding?

3 TC [MR. GROHARING]: No objection, Your Honor.

4 MJ [Col COHEN]: No objection.

5 A. If it's in the printed copy of the book, I wrote it.

6 Q. I understand, sir.

7 MJ [Col COHEN]: All right. The answer to that is ----

8 LDC [MR. CONNELL]: Yes.

9 MJ [Col COHEN]: Yes.

10 Q. The -- did anyone prior to Thursday suggest to you
11 that pairing a pseudonym with a functional title would damage
12 national security?

13 A. Yes.

14 Q. And what were the -- what were the -- other than
15 conversations with your own personal attorneys, what were the
16 circumstances?

17 A. 

18

19

20

21

22 Q. The -- so given your knowledge of that danger area,

23 did you seek guidance from the PRB?

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1 A. Well, you're referring to it as a pseudonym. I would
2 just refer to it as a position description. Not the same
3 thing.

4 Q. Yes, sir. The question is -- I'll repeat the question
5 for you, but is -- it is my -- my question that you just
6 answered was: Did anyone suggest to you that pairing a
7 pseudonym with a functional title would damage national
8 security. So it's the two things together that I'm asking
9 about, and you gave me an answer.

10 And so now my question is: Knowing that the --
11 those -- that pairing presented -- presented potential
12 dangers, was that a topic that you brought to the attention of
13 the PRB?

14 A. I don't consider that a pseudonym. I don't consider
15 the words that are written there that I'm not sure that we can
16 say or not say are pseudonym. I think it's a position
17 description.

18 Q. Okay. And so let me just make sure that I'm caught
19 up. The position description is Chief Interrogator, right,
20 and later you refer to that person as New Sheriff?

21 A. Oh, I see what you're saying. I misunderstood.

22 Q. No problem, sir.

23 A. That was just something I called him. It was just a

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1 nickname I called the guy.

2 Q. Okay. So let's say nickname instead of pseudonym
3 because I understand that in the CIA, pseudonym has a
4 specific ----

5 A. Very specific meaning. And if you ask me about it,
6 I'm going to give you the -- the answer that goes with the
7 program.

8 Q. Did anyone prior to Thursday suggest that pairing a
9 nickname and a functional title would damage national
10 security?

11 A. No.

12 Q. If today, three years after the publication of -- or
13 more years after the publication of your book, someone told
14 you that your book contained classified information, the
15 disclosure of which would be damaging to national security,
16 what would your reaction be?

17 A. My reaction would be buy the publication rights and
18 take it off the market.

19 Q. Thank you, sir. We're moving to a new chapter
20 now ----

21 A. There's more?

22 Q. ---- which is your preparation for your testimony.

23 When did you first learn that you would be testifying

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1 in the military commission?

2 A. When -- when did I learn? When did I know?

3 Q. Yes, sir.

4 A. Or when did I suspect? I suspected from the beginning
5 I would eventually end up here.

6 Q. Okay.

7 A. When did I actually know that I would be doing it? My
8 attorney approached me -- I can't recall exactly when.

9 Q. Okay. Have you been served with a subpoena?

10 A. No. I'm here voluntarily.

11 Q. When did you first -- and I -- and your -- so what
12 does that mean to you, "I'm here voluntarily"?

13 A. It means I'm here because I chose to come here. I
14 could have done it with a videoconference, if I was compelled
15 by the judge to do that. But -- I could have held out until
16 you folks sent a subpoena, but I chose not to because I'm
17 happy to talk about my role in the program and what the
18 program did.

19 Q. Very good. But you're saying the prosecution never
20 sent you a subpoena?

21 A. I don't recall getting a subpoena. You'd have to -- I
22 don't recall getting one. Oh, maybe my attorney accepted one,
23 but I don't recall getting a subpoena.

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1 Q. Okay. Who are you looking at?

2 A. I'm looking at my attorney who's back there somewhere.

3 Q. Okay.

4 MJ [Col COHEN]: Sir, please don't take any notes from
5 him. Like I said, just answer to the best of your knowledge.
6 If you don't recall personally being informed of it, that's a
7 perfectly acceptable response and ----

8 WIT: Well, it could have happened. There's chatter
9 around these commissions ----

10 MJ [Col COHEN]: Right.

11 WIT: ---- back and forth all the time between me and my
12 attorney. And, in fact, I think I've been approached by
13 individual attorneys for other detainees to ask -- you
14 know ----

15 MJ [Col COHEN]: Right.

16 WIT: ---- independently at my house to see if I would
17 testify on their behalf.

18 MJ [Col COHEN]: Right.

19 WIT: So I don't really -- I just don't pay any attention
20 to that stuff. When -- when I was asked if I would come, I
21 said I would come, and so I'm here.

22 LDC [MR. CONNELL]: Okay.

23 Q. When did you first meet with one of the prosecutors in

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1 this case?

2 A. Sometime before Christmas.

3 Q. How many different days did you meet with prosecutors
4 in this case?

5 A. Are you talking about total?

6 Q. Yes, sir.

7 A. Eight or nine days. Not the whole day, just bits and
8 pieces of the day.

9 Q. Okay.

10 A. A lot of that was eaten up reading through these --
11 some of these documents and -- you've got tens of thousands of
12 pages of documents, and, you know, I'm locked in a SCIF by
13 myself reading through things that I've never seen before ----

14 Q. You ----

15 A. ---- theoretically I'm going to be questioned about.

16 Q. The -- so in the past maybe two months you've met with
17 the prosecution eight or nine different days?

18 A. That's probably true.

19 Q. Okay. And for the next questions, I just want to be
20 clear that I'm not asking you for the substance of any
21 conversation between you and your attorneys, what you said to
22 them, what they said to you, only what you know. Do you
23 understand?

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1 A. Yes, sir.

2 Q. Okay. So do you know that I'm part of a defense team
3 that is calling you as a witness, you know, in sort of TV
4 attorney vernacular, that you are my witness?

5 A. I didn't realize that initially; but I think when I
6 met with the prosecution, somebody informed me of that.

7 Q. Okay.

8 A. Because I originally thought I was coming as a
9 prosecution witness.

10 Q. Okay. And do you know that I met with your attorneys?

11 A. They told me they did.

12 Q. Okay. And do you know that I sent your attorneys the
13 major themes of my examination and some of the unclassified
14 documents?

15 A. They told me they did.

16 Q. Okay. Please don't tell me what they told you. Just
17 say whether you know it or not. I just don't want to invade
18 your attorney-client privilege, sir.

19 A. Oh, I see your point. Yes.

20 Q. Did you ever see the e-mail or the documents that I
21 sent?

22 A. I don't recall.

23 Q. Okay. Do you know that I offered to go over an

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1 outline of my questions with you and show you the classified
2 documents I intended to ask you about?

3 A. Yes.

4 Q. Okay. And do you know that I offered to go over an
5 outline of your questions -- of my questions with your
6 attorneys and show them the classified documents that I would
7 ask you about?

8 A. I know they met with you.

9 Q. This is a separate question, so let me repeat this one
10 again.

11 Do you know that I offered to go over an outline of my
12 questions with your attorneys and show them the classified
13 documents I would ask you about?

14 A. I don't know that that's the case. I know that they
15 met with you. I assumed you had an agenda.

16 Q. Do you know that I requested that the CIA pass
17 clearance to DoD so I could show your attorneys the classified
18 documents?

19 A. No.

20 Q. Do you know that your attorneys declined the offer?

21 A. Yes.

22 Q. Okay. And with respect to your attorneys, was it your
23 decision or someone else's decision that your attorneys

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1 decline the offer of seeing an outline of my questions and the
2 classified documents I intended to ask you about?

3 A. My decision.

4 Q. Okay. And ----

5 A. On the advice of my attorney, but it was my decision.

6 Q. Okay. And without -- other than -- you know, saying
7 advice of your attorneys is fine, but what was the basis for
8 your decision? Like, why wouldn't you want your attorneys to
9 know what I was going to ask you?

10 A. You folks have been saying untrue and malicious things
11 about me and Dr. Jessen for years, for years. So you
12 shouldn't be surprised that I don't want to spend a lot of
13 time with you and I'm not particularly interested in looking
14 at things that you have to present.

15 I'm here to answer your questions. If you have
16 questions, please ask them. I will answer them.

17 Q. What -- I know there's a whole bunch of documents, but
18 what categories of documents did you review with the
19 prosecution in preparation for your testimony?

20 LDC [MR. CONNELL]: Do you have a list? The court's
21 indulgence?

22 MJ [Co] COHEN]: You may.

23 LDC [MR. CONNELL]: Your Honor, counsel asked me for a

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1 moment.

2 MJ [Col COHEN]: You may.

3 [Counsel conferred.]

4 WIT: Judge? Sir?

5 MJ [Col COHEN]: Yes, sir.

6 WIT: What's going on?

7 MJ [Col COHEN]: Oh, I think they're just seeing if they
8 have the list that they can produce for you, so we're just
9 waiting to find out.

10 LDC [MR. CONNELL]: Sir, I withdraw the question.

11 MJ [Col COHEN]: Okay.

12 Q. When you ----

13 MJ [Col COHEN]: You don't need to answer that question.

14 Q. When you provided services to the CIA, did you have
15 access to relevant cable traffic as part of your duties?

16 A. I could have had access, yes.

17 Q. Okay. Does that mean that you chose -- you -- you
18 didn't have access?

19 A. I was on the road hundreds of days a year and didn't
20 have time to sit in a cubicle reading cables.

21 Q. Okay. In the course of your duties when you were
22 providing services to the CIA, did you ever see CIA cables?

23 A. Yes.

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1 Q. You're familiar with what they look like?

2 A. Yes.

3 Q. Okay. Did the government provide you original CIA
4 cables to review or some other form of document?

5 A. I'm sorry. I don't understand the question. I don't
6 understand the temporal timeline that you're asking about.

7 Q. I -- fair enough. Since the end of November 2019, in
8 your preparation for this testimony, did the government
9 provide you original cables to review or did they provide
10 documents in some other format?

11 A. I -- I don't know how to answer that question because
12 I didn't pay any attention to that. I had paper copies of
13 stuff that I reviewed.

14 Q. Okay.

15 A. If you'll show me ----

16 Q. Yes, sir.

17 A. ---- something, I'll tell you whether I looked at it
18 or not.

19 Q. Sir, I'm going to show you a document which is
20 MEA-STA-1 at AE 628SSSS Attachment C. It is marked FOR
21 OFFICIAL USE ONLY.

22 LDC [MR. CONNELL]: May I have access to the document
23 camera?

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1 MJ [Col COHEN]: You may.

2 WIT: You're going to put it somewhere? Is it going to
3 show up on my screen?

4 MJ [Col COHEN]: Yes, sir.

5 LDC [MR. CONNELL]: It will in just a moment, yes, sir.

6 MJ [Col COHEN]: It's marked -- you may publish to the --
7 to the gallery.

8 Q. Okay. I'm not going to ask you about the content of
9 it, you're not -- but I do want to ask, did the -- when you
10 reviewed intelligence reports -- or documents that involved
11 intelligence reports from CIA Headquarters out to the
12 intelligence community, did they look like this or did they
13 look like a normal CIA cable?

14 A. I don't know that it -- during this review that you're
15 referring to that I actually looked at intelligence reports.
16 I don't remember doing that. The things I were reviewing were
17 things like papers that I had read and that I forgot about and
18 text messages and, you know, that sort of stuff.

19 This looks like an intel report or part of a -- of a
20 summary from an interrogation. Actually, it looks like the
21 first couple of chapters of a cable. But I didn't review any
22 cable, so I don't know what they would have presented me with
23 if they had presented me with this.

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1 Q. Okay. I'm going to ask -- I understand your answer.
2 I'm going to ask one more question about it.

3 Did you see -- in the course of your review from
4 November -- the end of November 2019 until today, in the
5 course of your preparation for testimony here, did you review
6 intel reports or cables that included headers and dates?

7 A. Probably. I mean, I -- I can't remember, but
8 probably. I mean, it's just a mountain of paper. And to be
9 candid with you, the last thing I'm looking at is the format
10 of the paper.

11 MJ [Col COHEN]: Counsel, you've got about five minutes.

12 LDC [MR. CONNELL]: Okay.

13 MJ [Col COHEN]: Just before the lunch recess.

14 LDC [MR. CONNELL]: Sure.

15 Q. Did -- in preparation for your specific --
16 specifically in preparation for your testimony here, did you
17 review any documents already in your possession?

18 A. I looked at my book.

19 Q. Okay.

20 A. That's it.

21 Q. Did you review any documents given to your attorneys
22 by third parties in preparation for your testimony?

23 A. Not to my knowledge, no.

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1 Q. Okay.

2 A. I went to a SCIF in D.C. and sat in a SCIF and tried
3 to wade through that mountain of paper.

4 Q. Yes, sir. What, if anything, did the prosecution tell
5 you was the legal issue in this hearing?

6 A. This particular -- in this particular hearing?

7 Q. Yes, sir.

8 A. I -- I had a chance to glance at your -- I think you
9 have a motion out there. I think I had a glance -- a chance
10 to glance at the motion. My impression is that you're trying
11 to get their earlier statements to FBI agents set aside.

12 Q. Okay. Did they tell you about any other legal issues
13 in the case?

14 A. We didn't talk about legal issues.

15 Q. Okay. Did you have a practice examination?

16 A. I don't know what that means.

17 Q. Did -- did you ever practice question and answer with
18 the prosecution?

19 A. They -- I didn't practice question and answers. They
20 asked me questions, provided answers -- and I provided
21 answers, but they didn't give me feedback.

22 Q. Was it in this sort of feed -- you know, was it in an
23 interview format or was it in this kind of stylized legal

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1 question/answer format?

2 A. Probably both. You know, they asked me questions, I
3 gave them answers. And -- and the main point that they were
4 making is tell the truth. Don't let us put words in your
5 mouth. We're not -- and they wouldn't let Dr. Jessen and I
6 participate in any of this stuff together. They kept us
7 separated. You know, even reading the documents, we were
8 separated.

9 So, you know, my view was they were trying very, very
10 hard to avoid, you know, coaching me, you know. So they asked
11 questions. I gave answers. They took notes.

12 Q. Okay. Was there a court reporter present?

13 A. Not to my knowledge.

14 LDC [MR. CONNELL]: Your Honor, that's the end of a
15 chapter. I'm happy to move to the next one or break here as
16 your ----

17 MJ [Col COHEN]: Let's go ahead and break here. So we're
18 going to take a 75-minute lunch. While we're on break -- I
19 don't know what the plans are for getting you lunch, but we'll
20 make sure that you get the opportunity to eat lunch as well.

21 Please do not discuss your testimony with anyone other
22 than the prosecution and the defense while the case is
23 ongoing. And while you're on the stand, please do not discuss

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1 the substance of your testimony here today.

2 WIT: I'm sorry, sir? The last ----

3 MJ [Col COHEN]: Please do not discuss the substance of
4 your testimony. So, in other words, if your attorneys just
5 want to have general conversations, but not about the specific
6 things you're testifying about today.

7 WIT: No worries.

8 MJ [Col COHEN]: All right. Thank you, sir. We're in
9 recess until 1315.

10 [The R.M.C. 803 session recessed at 1159, 21 January 2020.]

11 [The R.M.C. 803 session was called to order at 1316,
12 21 January 2020.]

13 MJ [Col COHEN]: The military commission is called to
14 order. Parties are present. All five accused are present.
15 Thank you.

16 General Martins?

17 CP [BG MARTINS]: Your Honor, Mr. Ryan is absent from the
18 courtroom ----

19 MJ [Col COHEN]: Okay.

20 CP [BG MARTINS]: ---- on commission business. I do
21 expect him to return at some point.

22 MJ [Col COHEN]: Thank you, sir.

23 Mr. Connell, are you ready to proceed?

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

2 MJ [Col COHEN]: Okay. Please call the witness.

3 [The witness resumed the witness stand.]

4 LDC [MR. CONNELL]: Dr. Mitchell, just -- you may take
5 your seat again, I remind you that you're still under oath,
6 but the questioning will continue. Thank you, sir.

7 WIT: Thank you.

8 MJ [Col COHEN]: Your witness.

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

10 **DIRECT EXAMINATION CONTINUED**

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

12 Q. Dr. Mitchell, you commented earlier that you felt
13 the ----

14 A. I can barely hear you. I don't know why.

15 Q. I'm sorry. It's my fault for being too far from mic.
16 You commented earlier that the list that you'd been
17 given of the -- the unique functional identifiers, the UFIs,
18 that you thought was misleading. Do you recall that?

19 A. Yes.

20 Q. Okay. And I told you that you'd have a chance to get
21 back to it. So that's where we are now. We're moving to a
22 new chapter, which is issues with that list. So could you --
23 just without describing specifically anything about the list

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1 yet, could you tell us what your general -- what the general
2 issue is?

3 A. The general issue?

4 Q. Yes, sir.

5 A. Can you please be more specific ----

6 Q. Certainly.

7 A. ----- because I'm not sure ----

8 Q. What did you -- what did you feel was misleading about
9 it?

10 A. Well, Khalid Shaikh Mohammad was subjected to 21 days
11 of interrogation and 1287 days of debriefing. Those
12 debriefings were done by debriefers who you have mentioned
13 listed as interrogators. So you might think that he had close
14 to 1800 days or, you know, 2000 days of -- I'm sorry, 1300
15 days of interrogations when that just isn't true.

16 Q. All right. So help us out with vocabulary. What does
17 the word "interrogator" mean to you?

18 A. "Interrogator" in the CIA vernacular means questioning
19 an unwilling -- a person who is unwilling to provide
20 information using enhanced interrogation methods.

21 Q. Okay.

22 A. Or the potential use of enhanced interrogation
23 methods. You don't have to use them the whole time they're

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1 authorized.

2 Q. Sure. And what does "debriefers" mean to you?

3 A. A debriefer is a person who services intel
4 requirements through question and answer, just ordinary
5 question and answer.

6 Q. Okay. And the distinction there is whether some --
7 the potential of physical coercion is present; is that right?

8 A. Physical coercion or any kind of psychological
9 coercion beyond just plain question and answer and normal
10 social influence exchange sort of things.

11 Q. Okay. And so at -- during those first days that you
12 mentioned and the example that you gave with Mr. Mohammad,
13 the -- there was a period of time where only interrogators
14 were involved in questioning; is that right?

15 A. A short period of time.

16 Q. A short period of time?

17 A. Because about halfway through the application of the
18 EITs, debriefers would sit in the room but not ask any
19 questions.

20 But the debriefers were mainly subject matter experts.
21 You know, if -- if they're questioning him about al Qaeda's
22 WMD efforts, it would be the CIA's best WMD person who was
23 there, not an interrogator. Not someone who was trained to do

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1 interrogations the way the CIA wanted them done.

2 Q. Sure. And there's another phrase that is sometimes
3 used in the cables which is "transitioned to full debriefing
4 mode." Are you familiar with that phrase?

5 A. Yes.

6 Q. And what do you consider that to mean?

7 A. What that means is that even the interrogators will
8 just use question and answer and ordinary social exchanges, if
9 they're servicing intel requirements, and not use any EITs.

10 Q. Okay. And so with those definitions in mind, what do
11 you find misleading about the list that you have in front of
12 you that is AE 628NNNNN?

13 A. Is that -- is that that list that says ----

14 MJ [Col COHEN]: Yes, sir.

15 A. ----- TOP SECRET on it?

16 MJ [Col COHEN]: That's the TS document that I provided
17 you with.

18 WIT: Let me get my glasses out.

19 LDC [MR. CONNELL]: Sure.

20 A. I see people who are debriefers who are listed as
21 interrogators.

22 Q. Okay. So on your list, is the first person listed
23 Interrogator Number 1? I've never seen your list, so I don't

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1 know what order it's in.

2 A. I -- are you just asking me for a description of the
3 list?

4 Q. No, sir. I'm asking you whether the first person --
5 the first UFI listed on your list is Interrogator Number 1.

6 MJ [Col COHEN]: Tell you what, Counsel, why don't we ask
7 it this way:

8 Sir, are you able as you sit there, based on having
9 that document now, to kind of go through and tell us a UFI
10 number and tell us whether that person was or was not an
11 interrogator or a debriefer?

12 WIT: Not for everybody on the list because, frankly, I
13 don't know everybody on the list.

14 MJ [Col COHEN]: Okay. But for those that you do
15 recognize, are you able to do that?

16 WIT: I could do that in the -- here's my problem, Judge.

17 
18 
19  Sometimes I know those. Sometimes I
20 don't.

21 So there's some people on here that I would know would
22 be a debriefer, and there are some people on here I just
23 simply don't know who they are, even if they had been deployed

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1 with me, because I may not know their true name.

2 MJ [Col COHEN]: I understand. I understand. So for
3 those that you do know, then, are you able to tell us whether
4 or not they've been incorrectly designated as an interrogator
5 when they were a debriefer?

6 WIT: Some of them.

7 MJ [Col COHEN]: Okay. I tell you what. Why don't you
8 tell us those -- by using the unique functional identifier,
9 please tell us the ones that you do recognize and
10 understanding that you don't recognize all of them.

11 WIT: Holy moly. Okay. How much time do you have, Judge?

12 MJ [Col COHEN]: Well, this is kind of an important issue,
13 so we'll take the time, sir.

14 WIT: Okay. Interrogator DC1 is a debriefer.

15 Interrogator DS7 is a debriefer.

16 I do not know who interrogator EH1 is. That name is
17 completely unfamiliar with me.

18 Interrogator ----

19 MJ [Col COHEN]: One second, sir.

20 Mr. Nevin?

21 CDC [MR. NEVIN]: Was that Echo-Hotel-1?

22 MJ [Col COHEN]: Yes, sir.

23 WIT: Echo-Hotel. I don't know whether that person is a

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1 debriefer or an interrogator. Don't know.

2 MJ [Col COHEN]: Anyone else, sir?

3 WIT: Oh, yeah.

4 MJ [Col COHEN]: Please continue.

5 WIT: I was just waiting for people to catch up.

6 MJ [Col COHEN]: Okay. The nice thing is we have an
7 almost instantaneous access to the transcript among the
8 parties, so they'll be able to catch up with you, sir.

9 WIT: F1G, I don't think that's an interrogator.

10 FC4 -- I'm sorry, F4C was trained as an interrogator.

11 GK8, I never heard -- I never heard of that person,
12 and I think I've heard of most of the interrogators, so I
13 don't -- I don't -- I don't think she was an interrogator.

14 I don't know about HL4.

15 I believe that HV5 was a debriefer.

16 MJ [Col COHEN]: V as in Victor, sir?

17 WIT: Victor, yes.

18 MJ [Col COHEN]: Thank you, sir.

19 WIT: I believe that -- well, I don't know about 12F. I
20 don't know. The name is completely unfamiliar to me.

21 J, as in Juliet, Y8, I believe she -- she was a -- I
22 believe it was a debriefer.

23 LDC [MR. CONNELL]: Sir, you can't ask them. You have to

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1 just testify from your own ----

2 MJ [Col COHEN]: Yeah, that's fine, sir. Just recall from
3 your recollection. If you not sure ----

4 WIT: I mean, the person is a debriefer.

5 MJ [Col COHEN]: Copy.

6 WIT: K12 is a debriefer.

7 KG5, a debriefer.

8 LQ3, debriefer.

9 I don't know about LY9.

10 MA2 was trained as an interrogator.

11 MJ [Col COHEN]: Sir, let me ask you a follow-on. I want
12 to kind of guide you a little bit through this because I think
13 it's in the benefit of all the parties.

14 When you say "trained as an interrogator," does that
15 mean you're aware that they were trained but may not have
16 actually acted as an interrogator or is it -- does -- does the
17 training in your mind mean that they also interrogated?

18 WIT: I -- they also -- I know he also ----

19 MJ [Col COHEN]: Okay.

20 WIT: ---- did it.

21 MJ [Col COHEN]: Thank you very much, sir.

22 WIT: N4A, debriefer.

23 N75, debriefer.

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1 I don't know about NE5.

2 LDC [MR. CONNELL]: Mike-Echo?

3 WIT: No.

4 LDC [MR. CONNELL]: November-Echo.

5 WIT: November-Echo.

6 Well, obviously Number 1 and Number 2 are considered
7 interrogators. I think Number 3 is also considered an
8 interrogator.

9 MJ [Col COHEN]: Any other changes, sir?

10 WIT: Number 4 and Number 5 were also considered -- were
11 also interrogators.

12 MJ [Col COHEN]: Thank you, sir.

13 WIT: Interrogator Number 6 was a debriefer.

14 NY7 was a debriefer.

15 NZ7 was an interrogator.

16 I don't know about PU2 because the name is unfamiliar
17 to me.

18 QW9, I think was a debriefer.

19 QY7, never heard of that person, would -- couldn't
20 tell you.

21 R19, never heard of that person.

22 And I would say that if I've never heard of the
23 person, they're probably debriefers. So where I am at?

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1 SR2, debriefer.

2 SD6, I don't know that person.

3 SG1, a debriefer.

4 SM1, debriefer.

5 TV5, debriefer.

6 I have no idea who UB1 is; name is not familiar to me.

7 VC9, debriefer.

8 W87, debriefer.

9 WC2, I have no idea who that person is.

10 WU4, I have no idea who that person is.

11 WX7, debriefer.

12 X3L, I have no idea who that is.

13 I have no idea who X7Q is, YP3 is, or Z2C. But since

14 I know virtually everyone who did interrogations for the --

15 who were actually interrogators for the CIA, my guess is if I

16 don't know them, they were a debriefer that was working at a

17 site -- and that's just a guess -- that I wasn't at.

18 LDC [MR. CONNELL]: Okay.

19 WIT: Anyway, that's the clarification of that list to the

20 best of my ability at this time.

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

22 [END OF PAGE]

23

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1 DIRECT EXAMINATION CONTINUED

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

3 Q. Is Z9A on your list? Z9A?

4 A. Let me -- let me make sure. I have these things
5 arranged two different ways. One is alphabetical and one is
6 numerical by the numeral designator. Repeat the number.
7 Repeat the ----

8 Q. Sure. So the last one you told us about was Z2C, and
9 I'm asking about Z9A.

10 A. I don't see a Z9A listed as an interrogator.

11 Q. Okay. So if I understand what ----

12 A. Z9A is not listed as an interrogator ----

13 Q. Got it. Okay.

14 A. ---- and I know for a fact wasn't.

15 Q. Okay. The military commission asked you about -- when
16 you said that MA2 was trained as an interrogator and you said
17 that MA2 also interrogated, is the same true for F4C? Your
18 comment was that F4C trained as an interrogator.

19 A. Let me look at it.

20 Q. Sure.

21 MJ [Col COHEN]: Take your time, sir.

22 A. Well, I wasn't making the distinction between people
23 who had trained and not trained, so the odds are good that --

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1 you know, that if I said that, he was -- I keep using the sex;
2 that's probably bad.

3 Q. No, the gender is authorized, sir.

4 A. Oh, is it? He was trained and acted as an
5 interrogator.

6 Q. And so you mentioned that you basically know everyone
7 who acted as an interrogator in the RDI program.

8 A. I said it would be unusual if I didn't know them.

9 Q. So let's ----

10 A. I'm not trying to lead you to believe that I know
11 everyone that's there because there were essentially people
12 that I didn't know who were trained earlier.

13 Q. In fact, that's exactly where my question was going.

14 So we're going to get -- cover this in some detail,
15 but just while we're here, there was an early training program
16 run by NX2 and MA2.

17 A. Let me look at these names.

18 Q. Sure. I can tell you that NX2 is the New Sheriff.

19 A. I will ----

20 MJ [Col COHEN]: Counsel, again, NX2 and?

21 LDC [MR. CONNELL]: And MA2.

22 MJ [Col COHEN]: Copy. Thank you.

23 A. Okay.

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1 Q. Okay. Did you have a chance to look at those?

2 A. Uh-huh.

3 Q. So my question was: Is it possible that somebody like
4 X3L, for example, that you don't know was trained in some
5 separate or earlier generation of training?

6 A. Anything is possible.

7 Q. Okay. Is it -- to be fair, that's not actually my
8 experience of the world, but the -- does it seem consistent
9 with the information that you have that they might have been
10 trained earlier?

11 A. I don't have that information because I never saw the
12 roster of who attended those classes. I had nothing to do
13 with those classes.

14 Q. Right. And we're going to talk about that.

15 The -- the other specific question that I had about
16 this list is: When you say that someone was a debriefer,
17 what -- is what you mean that they were not authorized to use
18 coercive pressures beyond question and answer?

19 A. That's correct.

20 Q. Okay. And so to you, the distinction between
21 interrogator and debriefer is authorization to use coercive
22 pressures?

23 A. Well, my primary distinction, of course, as it applies

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1 to the detainees is what phase of the -- their captivity
2 they're in; you know, whether they're in debriefing mode or
3 the -- the opportunity or the sometimes necessity or the
4 possibility of using EITs are there. Debriefers weren't
5 trained to use EITs, they weren't authorized to use EITs, and
6 wouldn't have been authorized by headquarters to use them if
7 they had requested them.

8 Q. Okay. Sometimes -- and just to close this out,
9 sometimes interrogators used question and answer, obviously,
10 right?

11 A. Well, that's our primary job.

12 Q. Right. And there were plenty of times when
13 interrogators would be in an interaction but would not either
14 use or threaten the use of coercive pressures, right?

15 A. Right. If you're asking me if I've done debriefings,
16 the answer is yes.

17 Q. Yes, and beyond you, other interrogators did
18 debriefings?

19 A. I'm sure that's true.

20 Q. Okay. Now, back to your global point, now that you've
21 gone through the list and explained, what -- can you -- can
22 you tell us how you feel that someone might be misled by this
23 list?

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1 A. Well, it's -- the -- the list as it's currently
2 printed suggests that they were interrogated every single day
3 that they were in CIA captivity, and that's simply not true.

4 Q. And so a person who was working off the information
5 contained in this list without your life experience or access
6 to the underlying information would not get an accurate
7 picture of what actually happened in the RDI program; is that
8 your point?

9 A. My concern is that a person may think that the
10 detainees were subject to being exposed to EITs which were
11 only for a short duration even though -- just simply because
12 this says interrogator, interrogator, interrogator. And the
13 misinformation that's out there suggests that all
14 interrogators did these things, and if you list somebody as an
15 interrogator, then those things may be misperceived as being
16 authorized.

17 Q. Sure. Combined with other things which are out there
18 in the open source, would be misleading to a reader?

19 A. That's my belief.

20 Q. Yes, sir. Thank you.

21 Does your version of the list contain real name
22 pseudo, in the way that you described it, or both? They will
23 object if they -- if they need to. They're well trained at

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1 it.

2 TC [MR. GROHARING]: No objection.

3 WIT: Say again.

4 MJ [Col COHEN]: Sir, what he's asking for is can you tell
5 us what the -- without giving -- without giving any specifics,
6 do you have a real name, a pseudonym, and unique functional
7 identifier as far as general columns of information or how is
8 it -- how is it -- how is the document organized as opposed to
9 what the actual contents of the -- the documents say?

10 WIT: True name, pseudonym, unique functional identifier.

11 Q. All right. So, for example, for -- let's just take
12 12F, who you said was a person that you don't know at all.

13 A. Who?

14 Q. You don't know them by their -- by the true name
15 that's listed and you don't know them by the pseudonym?

16 A. Stand by. Let me find it.

17 Q. Sure.

18 MJ [Col COHEN]: Give him a chance to locate that,
19 Counsel.

20 LDC [MR. CONNELL]: Sure.

21 MJ [Col COHEN]: Like I said, I think the document itself
22 is about 12 pages.

23 LDC [MR. CONNELL]: Okay. I haven't seen it.

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1 MJ [Col COHEN]: I know. I just wanted to let you know
2 that's why it might take him a minute to see where that one
3 is.

4 A. I found it.

5 Q. All right. And so for orientation, 12F was a person
6 that you mentioned that you weren't familiar with them.

7 A. I don't recognize the name. I'm not saying I'm not
8 familiar with them. They could be somebody that I'm very
9 familiar with but just don't know their name ----

10 Q. Sure.

11 A. ---- and don't recall the pseudonym.

12 Q. Okay. In -- in stating, however, that you don't know
13 the name, you mean both, you don't know the name which is
14 listed as true name and you don't know the CIA-assigned
15 pseudonym?

16 A. I will double check just to be sure. No.

17 Q. No doubt it's a problem with my question.

18 I just wanted to make sure that in -- in reviewing
19 that document, you have access to both true name and
20 CIA-assigned pseudonym; is that correct?

21 A. That's correct.

22 Q. Okay. You said that debriefers are really subject
23 matter experts, and you gave a WMD example.

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1 A. I said some debriefers are subject matter experts.
2 Often the debrief is a targeter.

3 Q. Okay. And could you explain the difference to us?

4 A. Right. The debriefers came in kind of three flavors.
5 There were targeters, debrief -- subject matter experts and
6 analysts, right.

7 A targeter is an analyst who targets a specific
8 person, right, so they -- you know, they're following that
9 person. They kind of know everything there is to know about
10 that particular person and they're attempting to locate them,
11 right?

12 An analyst is a person who is interested in putting,
13 you know, intelligence together, you know, disseminatable
14 intelligence, and they analyze and then put together different
15 pieces of raw intelligence into finished intelligence.

16 And that actually is one of the key differences
17 between a law enforcement approach to doing these kinds of
18 interrogations and the way that the CIA approached it. I
19 don't know how other intel communities do it, but essentially
20 an investigator for the law enforcement is trying to put the
21 case together and that person usually asks a question and does
22 the analysis of the data.

23 In this particular case, neither Dr. Jessen nor I nor

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1 any other intel -- interrogator who was a trained interrogator
2 did the analysis. We didn't do the investigation. We turned
3 the information over to intel analysts or targeters or subject
4 matter experts who did that themselves, and they made the
5 decision about whether it was useful information or not.

6 We included them as soon as we can because very often
7 the person who is the subject matter expert is right there
8 outside of the cell when the interrogations are initially
9 started and then inside, about halfway through the EITs, so
10 that they can, you know, ask some questions and do some other
11 stuff. And then pretty much asking all the questions once
12 they're in full debriefing mode. So you have those people.

13 And then who was the other? Target? Intel analyst?

14 Q. Subject matter expert, I think.

15 A. Huh?

16 Q. SME, I think.

17 A. Subject matter expert. So there are people who work
18 for the CIA who are their foremost expert on whatever it
19 happens to be, right? They're not really -- I mean, they may
20 be analysts, right, but they're the expert. And so they would
21 send that person out to actually ask the questions or to feed
22 us intel requirements or provide us with briefings about the
23 person.

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1 I mean, one of the reasons I didn't have to spend
2 weeks going through written cables is because very often the
3 person who had written the cables was sitting across the desk
4 from me telling me here are the links, here's what we know,
5 here's what we're looking for, here are the gaps, you know.
6 Otherwise, I would have had to have been spending all that
7 time you were asking about.

8 Q. So you mentioned that on -- in some occasions when,
9 very early in detention, when an interrogation is still going
10 on, that sometimes the targeter or analyst or SME might be
11 waiting outside the room. How does that process work?

12 A. They would monitor it, the same way those folks
13 monitor, usually with a camera and a -- you know, and a
14 monitor through some kind of closed circuit with an audio
15 capability. They could send in notes. They could send
16 someone in to stop the interrogation if there was a topic that
17 was particularly interesting to them that they wanted us to
18 spend more time on.

19 But our job as interrogators was to get them in the
20 room as quickly as possible because they're the people who
21 should be asking the questions, in my view, not me, right? My
22 job was to get the person engaging with the question.

23 Q. And we're going to talk about this in more detail, but

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1 in general, the whole point of the conditioning model was to
2 condition detainees to answer questions of debriefers so the
3 right person would have the right information?

4 A. That would be one way to characterize it. It's --
5 it's simplistic, but yeah.

6 Q. Okay. Well, I'll let you give nuance to it later.

7 And speaking of simplistic, the last chapter in the
8 introductory part is I just wanted to put some sort of
9 temporal boundaries on time you spent with -- with the
10 defendants, and two of them in particular.

11 So you're aware, I take it, that Mr. al Baluchi and
12 Mr. Bin'Attash were -- were taken into custody at the same
13 time?

14 A. I believe I was aware of it. I -- I don't recall it
15 right now.

16 Q. Okay. And you never acted in the role of
17 interrogator -- no, let me say it a different way.

18 When you -- when was the first time that you ever
19 saw -- not interacted with, but saw Mr. al Baluchi?

20 A. I don't remember the exact date, but the EITs were
21 over.

22 Q. Right.

23 A. So he was in debriefing mode.

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1 Q. And he was in Location 7?

2 A. I'd have to look.

3 Q. Sure.

4 MJ [Col COHEN]: Please do, sir.

5 A. I believe that's correct.

6 Q. Okay. And did you ever see him electronically,
7 Mr. al Baluchi, before you interacted with him in person?
8 Like, you told us about people monitoring. Did you monitor
9 him for some period of time before you interacted with him
10 directly?

11 A. Are you asking me if I ever saw him on a video camera?

12 Q. No. I'm asking you did you see him on a video camera
13 for some length of time prior to your first actual interaction
14 with him.

15 A. I would have -- the reason I'm -- I'm trying to
16 provide you with an accurate answer, but it's a question that
17 doesn't really fit my reality, you know.

18 Q. Tell me what you mean.

19 A. You know, I mean, I go to a site. The first thing I
20 do is read the rules of engagement, because they change. I
21 sign the book that says that I've read the rules of
22 engagement, because they change. I get a debriefing from
23 whoever is in charge, because things change.

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1 Then I go to the security thing and I look at the
2 panels to look at who -- because, you know, they're under
3 constant surveillance. I may sit there and watch them for a
4 while, I might not. So I don't recall. I probably watched
5 him more than you might think and less than I might claim, if
6 you know what I mean.

7 Q. Okay. All right. And is it fair to say that in the
8 debriefing that you just described, or that debriefing process
9 at Location 7, that your role was to sit in and help the
10 debriefers elicit the information that they wanted?

11 A. Yes.

12 Q. And ----

13 A. Well, I did other things as well.

14 Q. Okay. What were those?

15 A. Well, the way that -- the way that Dr. Jessen and I
16 handled these things is that we liked to stop in with the
17 person first thing in the morning, give them some sort of a
18 sense of what their day was going to be like to add some
19 structure, to see how they were doing, to see if they have any
20 issues or any concerns.

21 Because I believe at the time -- and it gets a little
22 fuzzy because things change and it's been 17 years, right --
23 at the time, they weren't allowed to talk to the guards or the

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1 guards weren't allowed to talk to them. So I would try to get
2 a sense of what was going on with them, whether they had any
3 complaints or not.

4 And then when he was moved to be into the
5 interrogation room or the debriefing room, whichever happened
6 to be going on -- they were the same rooms -- I would go in.
7 They were usually hooded and shackled. I would take the hood
8 off. I would tell them that a friend of mine was going to
9 come in and talk with them, blah, blah, blah, and see how they
10 were doing and make sure they were ready, and then I would sit
11 in.

12 And then afterwards, we would do these things which
13 I'll elaborate on later if you would like me to, called a
14 fireside chat, where we would talk about their reaction and
15 the process of them being interrogated, right?

16 So I interacted with him more than just sitting in the
17 room when the debriefer was asking questions.

18 I also monitored sometimes -- sometimes as the
19 debriefer got more familiar with him, I would actually monitor
20 the debriefing session from a camera rather than being in
21 there, because we wanted to get them used to talking to the
22 debriefers.

23 Q. So the -- the different pieces of the process that you

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1 just described, the check-in in the morning, the dehooding,
2 the introduction, sometimes staying in the room for the
3 debriefing, and the fireside chat afterward, all those are
4 part of the overall exploitation process. Would that be fair
5 to say?

6 A. If -- if what you -- yes.

7 Q. Okay. Ballpark -- and so I'm going to talk about just
8 the debriefing part for a moment. I'll let you talk about the
9 whole spectrum, but I want to pull out the debriefing first.

10 Ballpark, how many debriefings would you say that you
11 either -- that you were physically present for of
12 Mr. al Baluchi?

13 A. I couldn't possibly tell you. You know, he was not
14 top on my list, and so I just -- I don't know, you know.

15 Q. Okay. A hundred?

16 A. Oh, no.

17 Q. Two dozen?

18 A. I would have probably -- I don't know -- remember how
19 many days I was with him. I would have probably done what I
20 did for each day that I was at the site that he was at.

21 Q. Okay. And about how long were you at Location 7 in
22 2003?

23 A. Off and on for weeks at a time. I -- I mean, I

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1 don't -- I don't know. I don't recall. I don't keep -- you
2 know, oddly enough, the CIA frowns on you keeping a diary, you
3 know, so I don't actually know.

4 Q. Okay.

5 A. I assume there's a record. And if you have it and you
6 want me to talk about, I would be happy to talk about it.

7 Q. Sir, nothing would make me happier than to have that
8 record; but if it exists, I don't have it. I would show it to
9 you if I did.

10 A. Okay.

11 Q. And so when you say that -- so I want to widen it out
12 now because you properly said it wasn't just debriefings,
13 there's more to the structure.

14 Is the answer the same for all the different parts of
15 the structure, the check-in, the dehooping, the introduction,
16 the fireside chat; if you were there at the same place as
17 Mr. al Baluchi was, you did it with Mr. al Baluchi; is that --
18 is that accurate?

19 A. Well, it would depend on what phase of interrogation
20 Mr. al Baluchi was in, you know.

21 Q. Well, you told us he wasn't in -- in the -- I don't
22 know what you called the -- the -- there were no physical
23 coercion being applied at the time, right? You told us that

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1 already. And that he's in debriefing ----

2 A. I left one thing out.

3 Q. Yes, sir.

4 A. Sometimes we just stopped in to talk to him. Because
5 they were by themselves, and, you know, somebody that's locked
6 in a cell by themselves with nobody to talk to -- we called
7 them maintenance visits. They really weren't interrogations;
8 they were just sitting and talking to them about whatever they
9 wanted to talk about.

10 Q. Okay. All right. So with that addition, is it fair
11 to say that basically if you and Mr. al Baluchi were in the
12 same location, that you did those things with Mr. al Baluchi?

13 A. I did. I -- if there was another interrogator there,
14 we might have traded off, but it would have been me or another
15 one if we were there. It would depend on, you know, how
16 troublesome some of the other of the clients here might have
17 been that were attracting our attention.

18 Q. Sure. If I were to tell you that you had only
19 interacted with him twice, would you say I was not telling you
20 the truth?

21 A. I don't know. I really don't know.

22 Q. You -- do you think you only interacted with him
23 twice?

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1 A. It seems low to me.

2 Q. Okay.

3 A. Well, in terms of -- in terms of monitoring ----

4 Q. Any kind of interaction.

5 A. I'm sorry?

6 Q. Any -- any kind of interaction, yeah.

7 A. Oh, I would say that was low.

8 Q. Was Mr. -- so I mentioned Mr. Bin'Attash earlier. Was
9 he at the same location at the -- around the same time as
10 Mr. al Baluchi? Were you at Location 7 with both of them?

11 A. I think that's where I first encountered him.

12 Q. And approximately when did you first directly interact
13 with Mr. Bin'Attash?

14 A. Oh, I don't -- I don't recall the approximate day.

15 Q. Did you interact with Mr. Bin'Attash anywhere other
16 than Location 7 that you recall?

17 A. If he had been moved to the -- the other locations, I
18 would have probably seen him while I was there. But again, he
19 wasn't someone on my radar.

20 Q. All right. I should have asked you the same question
21 for Mr. al Baluchi. Did you interact with Mr. al Baluchi at
22 any site other than Location 7?

23 A. I believe so, but again ----

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1 Q. Location 5, maybe? You can look it up if you need to.

2 A. 5, you say?

3 Q. 5, yes.

4 A. I don't recall that.

5 Q. Okay. Do you recall where it would have been?

6 A. I think it would have -- it would have either been 9
7 or 10.

8 Q. Okay. So late in the program?

9 A. Uh-huh.

10 Q. You have to answer yes or no.

11 MJ [Col COHEN]: Affirmative response. I'll note it.

12 LDC [MR. CONNELL]: Thank you.

13 Q. What -- when you interacted with Mr. Bin'Attash, what
14 role were you in?

15 A. I was an interrogator supporting the debriefings.
16 Although he and I had a -- he and I had a long talk about him
17 helping the Taliban blow up those Buddhas that were in
18 Afghanistan. That wasn't really part -- it was just a,
19 stopped in to see how he was doing and that topic came up,
20 and, you know, he told me about doing that.

21 Q. Was that as part of the fireside chat?

22 A. Yeah.

23 Q. And when was the last time that you saw

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1 Mr. Bin'Attash?

2 A. I couldn't tell you.

3 Q. Okay. When was the last time that you saw


4 Mr. al Baluchi?

5 A. I'd have to guess. Probably before they were moved to
6 the DoD custody.

7 Now, see, the difference is, is that you may think
8 that by that, I mean that I go in the room with him, right,
9 and that I stand and talk to him. But there were other
10 interrogators there, and I would have monitored that on the
11 camera and watched what they were doing. So I wouldn't have
12 necessarily shown up as being someone that was in the room
13 with him. But I don't recall, to be candid with you.

14 Q. Okay. Prior to this trip, when was the last time you
15 were at Guantanamo?

16 A. 

17 

18 Q. Okay. So we're done with that sort of stage-setting.
19 The -- and I told you that it was sort of organized by subject
20 and not by chronology, so now we're going to talk about early,
21 even before there was an RDI program, when -- with your
22 interactions with Mr. Abu Zubaydah. Do you understand?

23 A. Yes.

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1 Q. Okay. So is it true that in April 2002, [REDACTED]
2 the department that housed the CIA's operational psychologists
3 called you?

4 A. Yes.

5 Q. Okay. And ----

6 LDC [MR. CONNELL]: May I have a moment?

7 MJ [Col COHEN]: You may. Sir, there will be periodic
8 moments where I allow the counsel to confer to determine
9 whether or not an unclassified question and response can be
10 solicited.

11 WIT: As I said, Judge, my main goal is just to answer the
12 questions and give you some insights into what we did.
13 However it works is good for me.

14 LDC [MS. BORMANN]: Judge, can we put that on the record,
15 please?

16 MJ [Col COHEN]: Yes. The witness said his main goal is
17 just to answer the questions and put as many facts on the
18 record as he possibly can, so he understands there might be a
19 slight delay periodically. Or words to that effect, if I did
20 not get it exactly, but the mic should have picked it up.

21 LDC [MR. CONNELL]: Sir, counsel is consulting.

22 MJ [Col COHEN]: You may.

23 [Counsel conferred.]

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1 WIT: Is it possible for me to have an alibi?

2 LDC [MR. CONNELL]: Fine with me.

3 MJ [Col COHEN]: What would your alibi be about, sir?
4 With clarification for a prior question that was answered?

5 WIT: Yes, sir.

6 MJ [Col COHEN]: I'll ask the question: What is your
7 alibi with respect to a particular issue?

8 WIT: You asked me what the interrogators did with the
9 detainees. I gave you a list of things that they did
10 routinely with the detainees. What I forgot to tell you is
11 later in the program they played basketball with them, they
12 lifted weights with them, they watched movies with them, they
13 ate dinner with them, they read books with them, they -- you
14 know, they did all sorts of things that were kind of
15 recreational with them. I left that out because I just didn't
16 recall it at the time.

17 LDC [MR. CONNELL]: Sure, no problem.

18 **DIRECT EXAMINATION CONTINUED**

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

20 Q. When did that start?

21 A. I believe it would have been Location 7 or 8. I don't
22 know. I don't recall specifically.

23 Q. I'm sorry. My question was when. When did that

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1 start?

2 A. Oh, I'm sorry. I -- it would have been whenever they
3 were at those locations. To me, the time frame is less
4 important than where they are. I organized things in my
5 memory by where people are located for the most part, [REDACTED]

6 [REDACTED]

7 Q. All right. And you were with Mr. al Baluchi at
8 Location 7 in 2003, correct?

9 A. 7 in 2003?

10 Q. Yes.

11 A. Well, then I may be wrong about the date that that
12 started. But if that's -- if that's the date, I won't
13 question the date. I don't recall the specific date.

14 Q. Okay. You're not saying that there was some sort of
15 outdoor recreation that was occurring at Location 7, are you?

16 A. No.

17 Q. But maybe Location 9 or 10?

18 A. [REDACTED]
19 What I'm saying is that there was a movement for the people
20 who were cooperating to give them books and movies and chances
21 to eat with each other, one or two of them and -- and I didn't
22 say anything about taking them outside at Location 7.

23 Q. All right. Fair enough. The -- okay.

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1 So the department -- so are you done with your alibi?

2 A. Yes.

3 Q. Okay. The department that housed the CIA's
4 operational psychologist was in the Directorate of Science and
5 Technology, Office of Science and Technology, correct?

6 A. Correct.

7 Q. Okay. They will definitely object when they object,
8 and you even saw me consult with them before. So that's what
9 we're doing, is working it out, so this thing stays
10 unclassified.

11 So does the name of the person who called you have a
12 UFI?

13 A. Well ----

14 Q. Does the person who called you have a UFI?

15 MJ [Col COHEN]: You may look at the list of names, sir.

16 A. Yes.

17 Q. And what is it?

18 A. CIA Officer DF7.

19 Q. Okay. And DF7 asked you to attend a meeting at the
20 Counterterrorism Center; is that right?

21 A. When he called me?

22 Q. Yes, sir.

23 A. No.

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1 Q. Okay.

2 A. He told me to come back to the headquarters as quickly
3 as possible. Actually he said immediately and I told him I
4 couldn't do it, and then he said come back the next day. And
5 it wasn't until I was actually in the headquarters building
6 that he escorted me to the Counterterrorism Center and told me
7 on the way I was going to attend a meeting.

8 Q. Okay. So the distinction between -- that you're
9 drawing is that you were -- you were asked to come to the CIA,
10 and you didn't know it was at the Counterterrorism Center at
11 the time, but later, you -- the meeting actually occurred at
12 the Counterterrorism Center?

13 A. Yeah. I had no idea why they were asking me to come
14 back initially.

15 Q. Okay. And that meeting, how many people attended that
16 meeting?

17 A. I don't know. A roomful of people. It was -- it was
18 a fair-sized conference room. Probably as many as in the
19 gallery back there.

20 Q. Maybe 40?

21 A. That seems a little high, but it was packed. It was
22 absolutely packed. It was standing room, and everybody was
23 seated, and there were people all over the place.

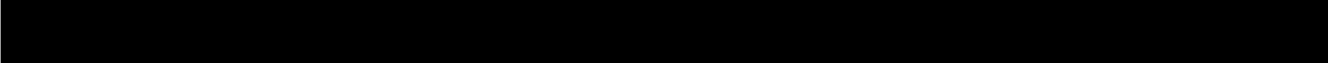
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1 Q. Okay. And the meeting was chaired by Mr. Rodriguez,
2 Jose Rodriguez?

3 A. Jose Rodriguez chaired the meeting.

4 Q. Okay. And this is a "do you know" question: Are you
5 aware that the Senate Armed Services Committee has identified

6 

7 A. Well, I -- the Senate Armed Services Committee?

8 Q. Yes, sir. It's a Senate Armed Services Committee
9 report.

10 A. I don't know what the Senate Armed Services Committee
11 did.

12 Q. All right. I can help you out then.

13 LDC [MR. CONNELL]: 628 -- sorry. I need RDI-6750.

14 MJ [Col COHEN]: Counsel, is this for use as ----

15 LDC [MR. CONNELL]: Yes. It's an unclassified document.
16 I'm just pulling the document.

17 MJ [Col COHEN]: Sir, those will show up momentarily on
18 your screen.

19 LDC [MR. CONNELL]: Unclassified document, Your Honor.

20 MJ [Col COHEN]: Okay. It is marked UNCLASSIFIED. You
21 may publish to the gallery. Counsel, Dr. Mitchell may be way
22 ahead of us, but can you orient us where you need him to look.

23 LDC [MR. CONNELL]: Sorry. Sorry about that, too fast.

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1 The full paragraph.

2 MJ [Col COHEN]: Middle paragraph now.

3 WIT: Run over by that paragraph.

4 LDC [MR. CONNELL]: I'm sorry. The paragraph marked

5 UNCLASSIFIED, [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 MJ [Col COHEN]: Thank you, Counsel.

9 Q. So I'll just move on to the next question, which is,
10 was [REDACTED] present?

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

12 A. For what?

13 TC [MR. GROHARING]: Relevance.

14 MJ [Col COHEN]: Relevance.

15 LDC [MR. CONNELL]: Sir, we're -- this -- let me back up
16 because I don't want to overclaim it. I can explain. I don't
17 mind.

18 TC [MR. GROHARING]: What I'm assuming, maybe this will
19 clear things up, is that Mr. Connell may be wanting to elicit
20 testimony regarding what, if any, connection [REDACTED] would
21 have to the CIA RDI program. If that's the line of
22 questioning, we would invoke the national security privilege
23 off -- over that information.

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1 MJ [Col COHEN]: Okay. Entirely or just with respect to
2 open session?

3 TC [MR. GROHARING]: I ----

4 MJ [Col COHEN]: In other words, are you saying it's
5 classified or that -- I just want to make sure that I'm --
6 we're all on the same page as what you're doing.

7 TC [MR. GROHARING]: It's classified and we've invoked the
8 national security privilege for that information.

9 MJ [Col COHEN]: Copy. All right. All right. So his
10 role with the RDI program, you're invoking the national
11 security privilege over.

12 TC [MR. GROHARING]: And I'm not even acknowledging that
13 he had a role with the RDI program.

14 MJ [Col COHEN]: Copy.

15 TC [MR. GROHARING]: So just the line of questioning to
16 identify him or anyone else who hasn't been officially
17 identified with the CIA RDI program.

18 MJ [Col COHEN]: Okay.

19 LDC [MR. CONNELL]: Okay.

20 MJ [Col COHEN]: So, Counsel, I -- what finding do you
21 need me to make potentially based off of that?

22 LDC [MR. CONNELL]: I'm going to give a little bit of
23 context, and then I'll answer the question directly.

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1 MJ [Col COHEN]: That's fine.

2 LDC [MR. CONNELL]: It's widely believed that Dr. Mitchell
3 was the first person to ever suggest SERE techniques to the
4 SCI [sic]. That's not, in fact, accurate. JPRA had -- the
5 Joint Personnel Recovery Agency had been working, positioning
6 itself forward on interrogation issues, including many of
7 which were derived from SERE techniques for a long time.

8 The -- one of our core points is that, although
9 Dr. Mitchell is often painted as the face of the RDI program,
10 that it was an institutional program; it was a CIA program, it
11 wasn't Dr. Mitchell's program.

12 So the part of the way that we're going to elicit
13 information about that is to show the institutional
14 bureaucracy that was involved here. The -- that what's --
15 what happens at this meeting is the -- a decision is made by
16 someone, and I don't think it's Dr. Mitchell -- though he'll
17 tell us, of course -- that extralegal -- and I don't mean
18 illegal, I just mean outside the judicial process --
19 interrogation is going to be made Abu Zubaydah -- of
20 Abu Zubaydah. That eventually leads to a meeting at the CIA,
21 eventually leads to approval of enhanced interrogation
22 techniques.

23 And then there were some elements -- and that

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1 eventually leads to an RDI program. There were some elements,
2 mostly the ones that Dr. Mitchell didn't recognize, who
3 engaged in coercive pressures outside the structure set up by
4 the DoJ.

5 The -- this is -- it's not the very beginning of this
6 process, we're going to -- I'm going to talk to Dr. Mitchell
7 about this as well, but this is a critical inflection point,
8 this meeting. It winds up with Dr. Mitchell sent halfway
9 across the world and sets us -- sets the United States on the
10 path with eventually leads to institutionalization of the RDI
11 program. So that's the context.

12 What I understand the government to be doing is to be
13 invoking national security privilege over details of what
14 happened at that seminal meeting, including the people who are
15 present, also known as witnesses, and the -- so the finding
16 that I would ask for is that the government, by invoking
17 national security privilege, is removing from the case vital
18 information about the origin of the RDI program which is at
19 issue in 628 and other series.

20 MJ [Col COHEN]: Okay. All right.

21 Mr. Groharing?

22 TC [MR. GROHARING]: Your Honor, to be clear, we haven't
23 objected to discussion of the meeting or what took place at

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1 the meeting or what he did after the meeting. The objection
2 is to identifying the particular people that were in
3 attendance at the meeting, other than those that have been
4 officially acknowledged by the CIA.

5 LDC [MR. CONNELL]: Sir, may I respond?

6 MJ [Col COHEN]: You may.

7 LDC [MR. CONNELL]: You know, Dr. Mitchell is sometimes
8 painted as like this rogue actor. He's not a rogue actor. He
9 is a -- one small but important part of an institutional
10 structure. He takes orders from others; he's a contractor and
11 not an employee.

12 And the fact that this decision was made so
13 deliberately with advice of counsel [REDACTED]
14 probably, and others and was done institutionally is at the
15 core of the argument that we're making about the
16 United States' decision to go down this path.

17 And that's why we keep bringing the FBI information;
18 we have a lot of focus on the FBI. The -- the discovery order
19 from the military commission brings in the DoD. That's why
20 we're talking about JPRA -- or we're going to talk about JPRA.
21 That this is not one person off -- who decided to engage in --
22 in coercive pressures. Dr. Mitchell plays an important role,
23 but only a small one, in this overall structure which is set

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1 up to extract information.

2 MJ [Col COHEN]: I need to make -- I need to ask for
3 clarification from the government real quick.

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

5 MJ [Col COHEN]: All right. So, Mr. Groharing, just --
6 just help me understand, okay? So I have this unclassified
7 paragraph that just says that -- that seems to have a
8 statement of fact in the very first paragraph, or an
9 assertion, at least, by -- by someone that someone attended a
10 meeting.

11 Attending a meeting doesn't in and of itself
12 necessarily mean that someone was or was not affiliated with
13 anything down the road, but just I may have attended a
14 meeting. I mean, all of us can attend meetings. I guess is
15 what I'm saying is, what is the extent, that ----

16 TC [MR. GROHARING]: Well, the meeting in the document is
17 a different meeting.

18 MJ [Col COHEN]: Okay.

19 LDC [MR. CONNELL]: Yes, that's right. I agree.

20 TC [MR. GROHARING]: Mr. Connell ----

21 MJ [Col COHEN]: Okay. That helps me. All right. So
22 what you're just saying is, is any additional questions on to
23 what [REDACTED] role may or may not have been with the

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1 RDI program is what the government is asserting national
2 security privilege over.

3 TC [MR. GROHARING]: That's correct, Your Honor.

4 MJ [Col COHEN]: Okay. All right. So, Counsel, we're
5 going to talk about the finding based on that.

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

7 MJ [Col COHEN]: And I'll give you -- instead of making it
8 on the fly, I'll give the parties some time to think about
9 that. But right now, it sounds to me like the meeting you
10 want to talk to him about, let's go ahead and ask questions
11 about it because they haven't asserted anything over that.

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

13 MJ [Col COHEN]: And then what his role was and what
14 finding of fact is -- is relevant in the case, let's talk
15 about that down the road.

16 LDC [MR. CONNELL]: Yes, sir. That will also let us wrap
17 any other assertions ----

18 MJ [Col COHEN]: Perfect.

19 LDC [MR. CONNELL]: We'll see what the cumulative ----

20 MJ [Col COHEN]: I understand.

21 LDC [MR. SOWARDS]: I'm sorry, Your Honor.

22 MJ [Col COHEN]: Mr. Sowards.

23 LDC [MR. SOWARDS]: I apologize. For reasons we discussed

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1 with you in the ex parte, we just needed to excuse
2 Mr. Mohammad for maybe 20 minutes. And he's happy to leave
3 without ----

4 MJ [Col COHEN]: Not a problem. He may -- he may go.

5 Guards, you're free to take him out and bring him back
6 when he's ----

7 LDC [MR. SOWARDS]: Thank you very much.

8 MJ [Col COHEN]: All right.

9 Counsel, you may continue. Thank you.

10 LDC [MR. CONNELL]: Thank you. I'm done with the ----

11 MJ [Col COHEN]: All right. Sir, just so you're
12 understanding, based on the assertion, all -- if you believe
13 that any question calls for you to respond as to what [REDACTED]
14 [REDACTED] role was or was not, please do not answer that at
15 this time.

16 WIT: Got it, sir.

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

18 **DIRECT EXAMINATION CONTINUED**

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

20 Q. This is a "do you know" question. Do you now know the
21 identity of anyone else who was present at that meeting other
22 than Jose Rodriguez and a person over whom the government has
23 invoked national security privilege?

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1 A. Yes.

2 Q. Okay. How many?

3 A. I couldn't tell you. I'd have to look at names
4 and ----

5 Q. Okay.

6 A. ---- see if I can recall them.

7 Q. I -- you're having the same problem that I am, which
8 is microphone -- being close to the microphone.

9 MJ [Col COHEN]: Counsel -- excuse me. IT personnel, you
10 guys are awesome. Can you just turn up the volume a little
11 bit for today? Thank you.

12 Q. Do any of those persons whose identity you know who
13 were present at the meeting have UFIs?

14 A. Yes.

15 Q. Okay. What were those UFIs?

16 A. I will look and see if I can recall.

17 Q. Thank you.

18 A. And I'm going to need to ask prosecution a question.

19 MJ [Col COHEN]: What is it? What is the general topic,
20 sir?

21 WIT: The -- the name of a person who I believe is
22 unclassified or been declassified that was at the meeting.

23 That doesn't -- well, maybe he doesn't have a UFI. Yeah.

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1 MJ [Col COHEN]: Yeah, please check the list first, and
2 then we can look at that. Is the person's name on the list?

3 WIT: No.

4 MJ [Col COHEN]: It's not on the list?

5 WIT: No.

6 MJ [Col COHEN]: Okay.

7 TC [MR. GROHARING]: Judge, I believe the answer is
8 probably in 658, the classification guidance.

9 MJ [Col COHEN]: Okay.

10 TC [MR. GROHARING]: On page 8. I have it, if you want me
11 to ----

12 MJ [Col COHEN]: I've got a copy, thanks. Let me -- let
13 me take a look before -- before I hand this to the witness.

14 You're talking 658F?

15 TC [MR. GROHARING]: Foxtrot, Your Honor.

16 MJ [Col COHEN]: Yes, sir. All right.

17 Counsel, is the relevant topic you need here is
18 whether or not there were CIA personnel and -- present and
19 whether or not there were any other agencies present as
20 opposed to the specific identities? I'm just trying to figure
21 out kind of what is the -- what is the -- the fact of
22 consequence.

23 LDC [MR. CONNELL]: Yes, sir. I can ask about other

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1 agencies. I don't believe that there were other agencies
2 present. But if you want, we can clear up that piece by
3 just -- if I just want to -- if you want me to ask the
4 witness.

5 MJ [Col COHEN]: Okay. Let me just ----

6 LDC [MR. CONNELL]: A fact of consequence, let me
7 answer ----

8 MJ [Col COHEN]: In other words, it's an unclass paragraph
9 so I have no problem saying it. They say they reserve the
10 right to object under 401, I mean ----

11 LDC [MR. CONNELL]: Yeah, of course.

12 MJ [Col COHEN]: I mean, so essentially, could have just
13 made a relevance objection. I'm just trying to understand the
14 relevance.

15 I don't want to cut you short, but I'll admit that the
16 fact of consequence that -- that you described is more of --
17 that the institution was talking about these topics as to
18 potentially who -- who specifically was talking about the --
19 about these topics.

20 LDC [MR. CONNELL]: I understand, sir. Your -- your
21 understanding of the institution as the fact of consequence is
22 correct. The -- it makes a difference whether this was a
23 formal meeting with counsel and different elements represented

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1 like an institutional decision of the CIA or at least of the
2 Counterterrorism Center versus whether it was low-level
3 people, you know, just being led by Mr. Rodriguez. So the --
4 that's the -- it's the institutional nature of it that I'm
5 going for. That's the fact of consequence.

6 MJ [Col COHEN]: Okay. All right. So essentially what
7 you're wanting to ask is was this some ad hoc meeting held by
8 low-level -- low-level employees or was this a more
9 significant meeting where actual institutional decisions on
10 programmatic efforts were -- were going to be decided?

11 LDC [MR. CONNELL]: That's the fact I'm driving toward.
12 It wouldn't be the question exactly that I would ask, but
13 that's the fact.

14 MJ [Col COHEN]: Okay. Tell you what, let's ask some
15 questions along that lines -- along those lines, and then I'll
16 think about with respect to the other names, and then I'll
17 also get an opportunity of how I'm going to handle this. He
18 may know someone that's unclassified that the government may
19 not realize is unclassified.

20 LDC [MR. CONNELL]: Sure.

21 MJ [Col COHEN]: All right.

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

23

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1 DIRECT EXAMINATION CONTINUED

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

3 Q. So at the time Mr. Rodriguez was Director of the
4 Counterterrorism Center; is that correct?

5 A. I'm confused about what meeting you're talking about.

6 Q. April of 2002.

7 A. No.

8 Q. Okay. What was his role at that time? Oh, that's
9 right. Cofer Black was the -- was the Director of
10 Counterterrorism Center at the time, correct?

11 A. Right.

12 Q. And was Mr. Black at the meeting?

13 A. Not to my recollection.

14 Q. Okay. What was Mr. Rodriguez's role at the time --
15 in -- during April 2002?

16 A. It's unclear to me. I think in my book I said that he
17 was the Deputy Director of the CIA, but -- I mean, Deputy
18 Director of Counterterrorism Center. But later, much later, I
19 found out that he went through a phase where he was something
20 called the Chief Operating Officer or something like that and
21 then the Deputy and then the Chief of Counterterrorism Center.

22 So which of those amorphous roles he had at that
23 particular time, I don't know.

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1 Q. Okay. Would it be fair to say that he ----

2 A. Fair?

3 Q. ---- a relatively senior person in the CIA at the
4 time?

5 A. I don't know what you mean by fair.

6 Q. It's just a legal convention. What -- what -- how
7 would you prefer me to ask that question? I want to ask
8 it ----

9 A. Is it accurate to say that he was a fairly senior
10 person?

11 Q. Yeah, sure.

12 A. Because in my mind, it's not about dividing up equity
13 or making sure that one person doesn't have an advantage over
14 another. It's about am I answering accurately or
15 inaccurately.

16 Q. Absolutely. Is it accurate to say that Mr. Rodriguez
17 was a fairly senior person in the CIA at the time?

18 A. Yes.

19 Q. Okay. Were other persons in -- in senior roles at CIA
20 or CTC also present at the meeting?

21 A. This is -- this was my first contact with the CTC,
22 right? And so how senior -- it was -- it was a room full of
23 heads, right, to me. It's just a room full of heads, and I

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1 was kind of brought in there and sat down.

2 And so I didn't quiz people about what their role was
3 because that's just not something I would do. So we could
4 have had, you know, people from the 7th floor, senior people
5 there that I didn't know. I just don't know.

6 I do know a couple of the people who have designators
7 who were there, and -- but my guess would be there were some
8 fairly senior people there. It's a guess, but I don't know.

9 Q. Okay. So ----

10 A. Certainly from CTC. Certainly from CTC and from Alec
11 Station.

12 Q. Okay. So I'm going to draw a line there, sir. That's
13 my foundation. I'm going to ask the question again, and -- so
14 who were the person with UFIs? Who were the persons with UFIs
15 who were present at the meeting in April of 2002?

16 A. That I can recall?

17 Q. Yes, sir.

18 A. W87. I believe DF7 was there as well. PJ1 was there.
19 And I'm not sure completely, but I think EX2 was there as
20 well; I could be wrong about that last one. This is just
21 to my best recollection.

22 Q. Does that complete your answer, sir?

23 A. Yes, sir.

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1 Q. At the meeting, you and -- and all the other people
2 assembled were briefed that Abu Zubaydah had been captured in
3 a raid; is that right?

4 A. That's correct.

5 Q. Okay. And were you briefed that that capture had
6 taken place on 29 March 2002?

7 A. I don't recall the date that they used.

8 Q. Okay. Were you briefed that it took place in
9 Faisalabad, Pakistan?

10 A. I believe that's correct.

11 Q. Are you aware now ----

12 A. Am I aware now?

13 Q. Yes.

14 MJ [Col COHEN]: He was just starting a question, sir.

15 LDC [MR. CONNELL]: Yes.

16 Q. Are you aware now that Robert Grenier has given the
17 following description of events: "On the afternoon of
18 March 28th, 2002, a pseudonym laid out the plan for the
19 visiting Senators. [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 So my question to you is: Are -- are you aware now of

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1 that description?

2 TC [MR. GROHARING]: Objection. Relevance.

3 MJ [Col COHEN]: Relevance?

4 LDC [MR. CONNELL]: Sir, if -- if Robert Grenier, who I
5 think the prosecution does not want me to state his role,
6 although it's on the back of his book jacket, is accurate,
7 then, in fact, members of the Senate Select Committee on
8 Intelligence were present, being briefed before the raid that
9 captured Abu Zubaydah, which is going to become important
10 later when we talk about what the Senate Select Committee on
11 Intelligence knew and didn't know.

12 MJ [Col COHEN]: Okay. So is the question relatively
13 then -- is he aware that Grenier said it or is he aware that
14 that happened?

15 LDC [MR. CONNELL]: So I would like to ask the question of
16 whether he's aware that it happened, but the way that the
17 government has set this up, I have to sneak up on it. So I
18 don't know if they're going to invoke national security
19 privilege to did that actually happen or is the witness aware
20 that that happened.

21 MJ [Col COHEN]: Let's find out.

22 LDC [MR. CONNELL]: I'm sorry?

23 MJ [Col COHEN]: Let's find out. Are you going to assert

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1 national security privilege over whether or not he's aware
2 that that occurred?

3 TC [MR. GROHARING]: No, Your Honor.

4 MJ [Col COHEN]: Great. Let's just ask it, then.

5 LDC [MR. CONNELL]: Great.

6 **DIRECT EXAMINATION CONTINUED**

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

8 Q. Are you aware that there were members of the Senate
9 Select Committee on Intelligence who were present in Pakistan
10 and briefed before the raid on Abu Zubaydah?

11 A. I'm not being flippant, but you just told me that, so
12 of course I'm aware of it.

13 MJ [Col COHEN]: Were you aware of it before he mentioned
14 it?

15 WIT: No.

16 MJ [Col COHEN]: Okay. Thank you.

17 LDC [MR. CONNELL]: Thank you. All right.

18 Q. Were you briefed about any role of the FBI in the raid
19 that captured Abu Zubaydah?

20 A. I don't recall being briefed about a role that the FBI
21 played.

22 Q. Okay. Do you know now of any role that the FBI played
23 in the raid that captured Abu Zubaydah?

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1 TC [MR. GROHARING]: Objection, relevance.

2 MJ [Col COHEN]: Relevance. I'm not -- I'm actually --
3 I'm just following the process.

4 LDC [MR. CONNELL]: Yes, sir. The central issue in these
5 series of hearings is the involvement of the FBI in the
6 greater effort to use coercive pressures. I -- I say it that
7 way specifically because there are -- I -- I think this
8 witness will testify that the RDI program was a -- that he --
9 as he understood it, was a -- had a certain scope and that
10 there were coercive pressures used outside the scope of that
11 particular program.

12 The involvement of the FBI in the -- in the larger
13 U.S. effort that resulted in the use of coercive pressures in
14 the exploitation of statements from Mr. al Baluchi is like the
15 core issue ----

16 MJ [Col COHEN]: I understand that. But with respect to
17 Abu Zubaydah -- I mean, I guess that's really the relevance
18 here. In other words, we call the various FBI agents to get
19 their -- I guess that's what I'm saying is, is ----

20 LDC [MR. CONNELL]: May I make a proffer, Your Honor?

21 MJ [Col COHEN]: ---- even -- yeah. That's kind of what
22 I'm looking for, is why -- if things went really bad with
23 Abu Zubaydah and so they changed the process, I can see some

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1 relevance with -- with -- with that, right, because then it
2 goes specifically to what was or wasn't done and why it was
3 done and those kinds of things.

4 But what I can't figure out is if the FBI played a
5 role with Abu Zubaydah, it seems like the real importance
6 would be whether or not the FBI played a role in this case.

7 LDC [MR. CONNELL]: Okay. Yes. The FBI -- our point is
8 the FBI had -- and we have more witnesses; I know that he's
9 not the very best witness on this -- is that the FBI has been
10 involved in the use of coercive pressures from the very
11 beginning, from -- even from the capture of Abu Zubaydah
12 through the transfer to Guantanamo.

13 The -- that takes a wide variety of different sort of
14 mechanisms. It's involvement in the captures. It's
15 involvement in the prerendition interrogation. It's feeding
16 questions -- excuse me, intelligence requirements to the CIA
17 which are sometimes used during coercive pressures and
18 sometimes used during the debriefings which follow the
19 coercive pressures.

20 It's -- this is -- this whole effort to extract
21 information from these defendants has been an interagency
22 process. It has been a government-wide process. We're going
23 to have the Bureau of Prisons that's going to become involved

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1 from the DoJ. We're going to have the Office of Legal Counsel
2 famously involved. We're going to have JPRA become involved.
3 The -- and so this is just one fact among a wide variety of
4 the deep involvement of multiple agencies in the decision to
5 use coercive pressures.

6 MJ [Col COHEN]: Okay. With respect to Abu Zubaydah, I'm
7 going to sustain it on relevance. But -- but obviously any
8 questions related to the FBI's involvement with -- with any of
9 the -- the -- the accused here, completely relevant and we've
10 had testimony on that.

11 LDC [MR. CONNELL]: All right.

12 MJ [Col COHEN]: I'm not saying you can't call additional,
13 I'm just saying that obviously that is -- I mean, we've talked
14 about FBI agents -- well, I can't remember whether something
15 is classified or unclassified, to be honest with you.

16 LDC [MR. CONNELL]: I understand what you're saying, sir.
17 Your -- your ruling with respect to the involvement of the FBI
18 in the capture or -- because if you -- I thought that's all we
19 were talking about.

20 If you're talking about the role of the FBI in the
21 entire decision from -- the process from April 2002 to the
22 FBI-CIA meeting in July 2002 to the involvement of the FBI
23 in ----

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1 MJ [Col COHEN]: Not necessarily. I'm talking about
2 specifically with respect to Abu Zubaydah.

3 LDC [MR. CONNELL]: I know, sir. But the first six months
4 of this story are about Abu Zubaydah. I was just talking
5 about -- my question to the -- to this witness related to like
6 the first day of this story. There's -- most of the
7 information that later became the Rendition, Interrogation --
8 Detention, Interrogation Program and was used -- was hashed
9 out in the first place in the Abu Zubaydah process.

10 So I just -- I want to make sure that I understand the
11 scope of your ruling because my question was about FBI
12 involvement in the capture. The -- I think that we will be
13 spending the rest of the day on the evolution which eventually
14 led to the creation of EITs and the Rendition, Detention, and
15 Interrogation Program, lots of cables about it.

16 It has nothing to do with whether statements made by
17 Mr. Abu Zubaydah were voluntary or not. I'm ----

18 MJ [Col COHEN]: No, I understand.

19 LDC [MR. CONNELL]: ---- not asking that question. I'm
20 going to the origin story of the RDI program. And if you skip
21 over that origin -- if -- origin story, then we've excluded
22 a -- then we sort of pick up in the middle of the -- of the
23 story.

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1 MJ [Col COHEN]: I understand. I guess the relevant
2 question that I think would -- would be a predicate question
3 is, one, does he even know what the FBI's role was? And then,
4 two -- you know, in the -- in -- basically in the -- in the
5 development of the RDI program.

6 LDC [MR. CONNELL]: Yes, sir. I'll ask those foundation
7 questions.

8 MJ [Col COHEN]: Yeah. That's what I -- that's what I
9 really want to know. Because your explanations, I -- I get,
10 but I don't see -- but to me, it seems like we can get to the
11 point where, why was the RDI program created the way that it
12 was? What was it meant to correct? Those kinds of things.
13 And I'll -- did the FBI have a role in that?

14 LDC [MR. CONNELL]: Right. I'm going to lay some
15 foundation, and then I'm going to skip some pages and ----

16 MJ [Col COHEN]: All right.

17 LDC [MR. CONNELL]: ---- I think I know what you want,
18 sir.

19 **DIRECT EXAMINATION CONTINUED**

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

21 Q. In April of 2002 when you -- so at the meeting that we
22 just -- I'm backing up.

23 In April 2002, you attended the meeting. As a result

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1 of that meeting, you were engaged as a consultant in an
2 interrogation of Abu Zubaydah; is that right?

3 A. Correct.

4 Q. Okay. And what was your role in that interrogation?

5 A. It was to monitor the resistance to interrogation
6 techniques that he employed and to suggest countermeasures.

7 Q. All right. And at that time in April 2002, were you
8 in any way, shape, or form designing a program or creating
9 enhanced interrogation techniques or making policy in any way?

10 A. No.

11 Q. So we're going to go through this in some detail, but
12 would it be fair to say -- would it be accurate to say -- did
13 you just use an interrogation technique on me? Very clever.

14 The -- would it be accurate to say that the process
15 evolved through the spring and summer of 2002 until it was
16 finally presented to the Office of Legal Counsel in July of
17 2002 for their consideration?

18 A. That's not how I would characterize it from my
19 experience.

20 Q. How would you characterize it?

21 A. In April, May, June of 2002, they were -- the CIA and
22 the F -- and the FBI agents that were there were both focused
23 on questioning Abu Zubaydah. And once he was out of the

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1 hospital and he was able to participate better, there was a --
2 there was an emphasis on it.

3 I didn't hear any discussions about an evolving
4 program myself, although people were concerned that -- you
5 know, that he had basically shut down after a couple of
6 incidents that I describe in my book. And there was some talk
7 about what do we do next, how do we -- how do we move this guy
8 forward. But it wasn't like there was a consistent churning,
9 evolutionary process that was goal-directed and -- and
10 controlled by someone.

11 Q. All right. So ----

12 A. At least that's my perception.

13 Q. Sure. With that as foundation, let's go back to the
14 briefing.

15 A. The 2000 -- the April 2002?

16 Q. The April 2002 briefing, yes, sir.

17 At that time, were you briefed about a Presidential
18 finding regarding authorization for the CIA to capture,
19 detain, and interrogate people like Abu Zubaydah?

20 A. Yes.

21 Q. Did the CIA briefer mention any limits on that
22 authority?

23 A. I don't recall them doing that.

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1 Q. During that meeting, was the phrase "the gloves are
2 off" used?

3 A. I believe it was.

4 Q. And at the time, what did you understand that phrase
5 to mean?

6 A. Well, I have to put it in context.

7 Q. Please do.

8 A. It was immediately after 9/11. There was credible --
9 are you going to argue that a couple of months later is not
10 after 9/11? I saw you roll your eyes.

11 Q. I -- I'm not arguing anything. I -- please continue
12 with your answer.

13 A. Okay.

14 Q. I was actually doing the math.

15 A. It was after 9/11. It felt at the agency like we were
16 in a run-and-gun battle. There was credible intelligence that
17 I was briefed about before, during, and after that meeting
18 that there was another catastrophic attack planned by the
19 defendants that could possibly involve nuclear weapons.

20 I was told that they had credible reason to believe
21 that al Qaeda had already had some kind of a biological or
22 chemical warfare capability that they were working on and that
23 they intended to do a nuclear weapon, and that the President

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1 had directed them to do everything that was legal to stop that
2 from happening because they were not going to set off -- let
3 al Qaeda set off a nuclear weapon in a city of ours. That's
4 the context for this thing.

5 So everybody was leaning forward, and many of the
6 people who were at that meeting had just been chewed out by
7 the Senate Select Committee and the House Select Committee
8 about being too risk averse to stop 9/11. So they were --
9 they did say that the gloves were off, but I don't recall that
10 they mentioned any limitations.

11 Q. I'm -- my question is: What did you understand the
12 phrase "the gloves are off" to mean?

13 A. That they were intending to do whatever was legal to
14 get the information that they -- that they needed out of this
15 person to stop the next attack, because the focus is on
16 stopping the next catastrophic attack.

17 Q. In your answer, you referred to "the defendants."
18 What did you mean by that?

19 A. What did I mean by "the defendants"?

20 Q. Yes. You were -- so you told us you were briefed that
21 the defendants were planning an attack.

22 A. al Qaeda.

23 Q. Is -- is that the complete answer?

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1 A. Yes.

2 Q. Okay. In April, early April 2002, you were asked by
3 the Counterterrorism Center to deploy with an interrogation
4 team; is that right?

5 A. Yes.

6 Q. And so there was a contract drawn up?

7 A. Yes.

8 Q. And your contract at that time was not to be an
9 interrogator at all, correct, but to act in the role of
10 psychologist?

11 A. I was to act in the role as an operational
12 psychologist providing them consultation on the resistance
13 techniques that were employed. You -- you probably have a
14 copy of it. We can just read what the statement of work is.

15 Q. Do you feel that you need to do that?

16 A. No.

17 Q. Okay. And was it made clear to you that decisions
18 regarding what would be done during interrogations were the
19 responsibility of the CIA; that you were not the decider?

20 A. Yes, many times.

21 Q. And in what context did they make it clear many times?

22 A. Well, they just -- they basically said that I could
23 make recommendations, but whether or not they chose to follow

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1 those recommendations or even entertain the recommendations or
2 ask for further clarification of the recommendations was
3 really not my call. I was a green-badger. Green-badgers
4 don't run the CIA. Blue-badgers do.

5 Q. Can you explain the terms green- and blue-badger for
6 us?

7 A. Yes. A green-badger is a contractor or a
8 subcontractor who works for the CIA. A blue-badger is a
9 federal employee.

10 Q. And what was the significance of that distinction?

11 A. It's a kind of a caste system like it is everywhere.
12 You know, if you're a federal employee -- for example, a CIA
13 officer can maintain custody of a detainee at the time. A
14 contractor could never take custody of a detainee.

15 There were -- there were things that officers,
16 employees, federal employees, were authorized to do that
17 contractors were not.

18 Q. Was one of those having decision-making authority?

19 A. Always.

20 Q. And what was the distinction? Blue-badgers had
21 decision-making authority and green-badgers didn't?

22 A. That's correct.

23 Q. The answer that you gave a moment ago, the context to

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1 "the gloves are off," you included a comment that there -- you
2 had been briefed that there was credible information that
3 al Qaeda was planning a nuclear attack on the United States?

4 A. That it would possibly include nuclear material.

5 Q. Were you -- during that briefing, not other times, but
6 during that briefing, were you told the basis of that belief?

7 A. Not during that briefing. I subsequently came to know
8 what the basis is.

9 Q. Was -- the judge told me to ask this question a while
10 ago, and I forgot. I apologize.

11 Was any -- anyone from the FBI present at that
12 meeting, the April 2002?

13 A. No. In fact, there were no other government agencies
14 there. Bruce Jessen was initially brought into the meeting
15 but when they found out that he was -- Dr. Jessen, but when
16 they found thought that he was a Department of Defense
17 employee, they politely asked him to leave.

18 Q. Okay. Were you -- did the briefing include that the
19 WMD conclusions were not universally shared by CIA analysts?

20 A. That briefing that I'm referring to was to me
21 separately when they were bringing me up to speed before I
22 deployed. I don't recall that being said.

23 Q. Okay. Are you -- do you know who Philip Mudd is?

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1 A. Yes.

2 Q. Okay. Did you read his book?

3 A. No.

4 Q. Okay. I'd like to read you a statement from it and
5 ask if you agree.

6 A. You want me to agree to some guy's book? Have you got
7 a copy of it or something?

8 Q. Sure.

9 A. Because I mean I ----

10 LDC [MR. CONNELL]: Your Honor, I'm going to show it to
11 the government first.

12 MJ [Col COHEN]: You may.

13 For counsel's planning purposes, my understanding is
14 that -- and if I'm incorrect, Mr. Sowards, let me know. I'm
15 tracking 1522 for 'Asr prayer. My intent is to stop at 1515
16 for a 30-minute recess.

17 LDC [MR. SOWARDS]: That's correct, Your Honor. Yes.

18 MJ [Col COHEN]: All right. Thank you. Counsel, we're
19 going until 1515.

20 LDC [MR. CONNELL]: Thank you, sir. May I approach?

21 MJ [Col COHEN]: You may.

22 LDC [MR. SOWARDS]: I'm sorry, Your Honor. Just to follow
23 up, there's also a 5:46, if you were planning to stop at ----

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1 MJ [Col COHEN]: Yeah, we're going to hard stop at 1730.

2 LDC [MR. SOWARDS]: Okay. And then they remain.

3 MJ [Col COHEN]: It makes sense to let them pray before
4 they go.

5 LDC [MR. SOWARDS]: Thank you.

6 MJ [Col COHEN]: Thanks.

7 LDC [MR. CONNELL]: Your Honor, I was otherwise engaged, I
8 missed that last bit of scheduling.

9 MJ [Col COHEN]: 1730 hard stop.

10 LDC [MR. CONNELL]: Yes.

11 MJ [Col COHEN]: Mr. Ruiz?

12 LDC [MR. RUIZ]: Just going to ask if Mr. Hawsawi can be
13 excused after the next break?

14 MJ [Col COHEN]: Absolutely.

15 LDC [MR. RUIZ]: Thank you.

16 WIT: Okay. So what am I going to do with this book?

17 **DIRECT EXAMINATION CONTINUED**

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

19 Q. Okay. First, who is Philip Mudd?

20 A. Philip Mudd was a CIA officer.

21 Q. Is he ----

22 A. I think he worked for the -- he was an analyst, I
23 think.

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1 Q. All right. Was he one of the deputy directors of the
2 Counterterrorism Center between 2002 and 2004?

3 A. I have no idea.

4 Q. Okay. Here's the question that I'd like to ask you.
5 I'm going to read you the sentence. It's the last sentence on
6 page 129. It's underlined on your book there.

7 "For the agency, those kinds of troubling unknowns" --
8 referring to WMDs -- "motivated managers to press for
9 continued detainee transfers to black sites and for authority
10 to use enhanced interrogation techniques."

11 Do you agree with that characterization?

12 A. I would agree with that characterization.

13 Q. All right.

14 LDC [MR. CONNELL]: May I approach, Your Honor?

15 MJ [Col COHEN]: You may.

16 Q. All right. Next chapter, your travel to Location
17 Number 3.

18 A. My ----

19 Q. Did you travel essentially immediately after the
20 April 2002 CTC meeting?

21 A. I traveled that night.

22 Q. Okay. You traveled [REDACTED]

23 TC [MR. GROHARING]: Objection, relevance.

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1 MJ [Col COHEN]: Relevance?

2 LDC [MR. CONNELL]: We're going to talk about who is on
3 the jet, so that's where this is foundation for that.

4 MJ [Col COHEN]: All right. Let's get to the -- so the
5 specific type of jet that it was, whether or not he traveled
6 with other, for example, CIA personnel or FBI personnel or
7 something like that to that location.

8 LDC [MR. CONNELL]: Okay.

9 Q. Did you -- let me ask it a different way. [REDACTED]

10 [REDACTED]

11 A. No.

12 Q. Okay. And on the plane, you sat next to the chief
13 psychologist for Counterterrorism Center; is that right?

14 A. I checked -- I sat next to the operational
15 psychologist who had been detailed to the Counterterrorism
16 Center, so he was the only psychologist and, thus, the chief
17 psychologist.

18 Q. Okay. And -- and you told us a little bit about
19 green-badgers and blue-badgers earlier. What did that
20 psychologist tell you about decision-making authority on this
21 mission?

22 A. He told me that he had -- that he had lobbied for me
23 not to go; that he didn't think I should be there; and that

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1 any decisions that were made about any psychological aspects
2 of the interrogation would be his decisions; and that
3 essentially I was to -- I don't want to characterize it that
4 way. That's a euphemism that isn't true. That essentially
5 was his decision.

6 Q. Okay. Did he tell you his reasons?

7 A. That's an interesting question. I think he thought he
8 could do what I did and I wasn't needed. That was my
9 impression. It struck -- you know, at that particular time,
10 deploying for such a high-visibility mission carried a lot of
11 gravitas, you know. He had been hand-selected to go, and then
12 they stuck this other guy in there with him who was doing
13 something that he felt that he was qualified to do and --
14 that's my impression. And he just -- he just basically said,
15 "I'm the operational psychologist. You're a consultant.
16 These decisions are my decisions."

17 Q. Okay. And was the message you took from that this CIA
18 operation, not a Dr. Mitchell operation?

19 A. I never thought it was a Dr. Mitchell operation. And,
20 in fact, I never thought of it as a CIA inter -- thing either.
21 I thought of it as America's, because we were trying to stop
22 that next attack, and that was the only thing we were focused
23 on.

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1 Q. And when you say it was not CIA, it was America's, is
2 that because it was a full government effort?

3 A. That was because it -- I don't recall whether it was
4 then or later, but I was told that the President had approved
5 of -- of the things and that it had been briefed to the
6 National Security Council. And so I thought of it as
7 America's program.

8 Q. Okay. And the implication -- is it accurate to say
9 that the implication is that, if the President knew about it
10 and the National Security Council knew about it, then the --
11 it was a full government effort?

12 A. You're asking me to come to a conclusion that I didn't
13 make at the time, you know. I just didn't make that
14 conclusion at the time. My sole focus was on stopping the
15 next attack. I was told that it was legal. I was told that
16 the -- you know, that it was authorized. And that these
17 people were going to hit us any minute. And I didn't stop and
18 quibble about whether it was a full government authorization
19 or whether there was food-fighting between the FBI and the
20 CIA. That's not my focus.

21 Q. What led -- at the time, what led you to the
22 conclusion that it was America's effort?

23 A. Because we were trying to save American lives.

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1 Q. Who -- who is "we" in that sentence?

2 A. The CIA.

3 Q. Could you explain what you mean? Because you're
4 saying it was CIA effort but that made it America's effort.
5 Is that the -- is that your point?

6 A. I think that CIA was -- represented America at the tip
7 of the spear. You may feel differently, but I don't.

8 Q. Okay. So -- thank you.

9 Was there -- but -- so CIA is the tip of the spear.

10 Was there anybody from the FBI on the plane?

11 A. No.

12 Q. The -- did you fly to the country that hosted
13 Location 3?

14 A. Let me look.

15 Q. Sure.

16 A. It's easy to get confused.

17 Q. Sure.

18 A. Yes.

19 Q. [REDACTED]

20 TC [MR. GROHARING]: Objection, relevance.

21 MJ [Col COHEN]: Relevance?

22 LDC [MR. CONNELL]: I'm sorry?

23 MJ [Col COHEN]: Where they stopped on the way, why is

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1 that relevant?

2 LDC [MR. CONNELL]: Oh. One of the things that's not
3 clear from the public record and is not clear from the book --
4 well, actually, I can be -- is that George Tenet says that
5 they -- that this group flew [REDACTED] Jose Rodriguez in
6 his book says they flew [REDACTED] The -- and they talk
7 about who else was on the plane. So there's other pieces of
8 information that are coming together.

9 What I am trying to find out is whether there were two
10 flights, one went [REDACTED] and one went to the country of
11 Location Number 3, or whether we're all talking about just the
12 same flight and perhaps it made a stop [REDACTED]

13 MJ [Col COHEN]: Okay. For decision before me, what --
14 what -- why would that matter?

15 LDC [MR. CONNELL]: Because the FBI, Special Agent Franco
16 and Jennifer Hill Keenan, who shows up here a lot, and
17 Christopher Riemann are all [REDACTED] with Abu Zubaydah at
18 this time. So my hypothesis is that the plane stopped [REDACTED]
19 [REDACTED] picked up Abu Zubaydah, and took him to the country
20 of Location Number 3. That's what I think happened with FBI
21 involvement. And that's why I'm trying to find out.

22 MJ [Col COHEN]: So wouldn't the better question be, did
23 the FBI then travel with you ultimately to that location even

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1 though they weren't initially on the flight.

2 LDC [MR. CONNELL]: Sure.

3 MJ [Col COHEN]: Okay. I'll allow that question.

4 LDC [MR. CONNELL]: But there's nothing classified about
5 [REDACTED] right?

6 MJ [Col COHEN]: No, no, no. I'm just trying to -- like I
7 said, I'm just really -- just for me and the decisions that I
8 need to make, I mean, I -- I see -- as you've noticed, I mean,
9 I -- I get why the -- the FBI's involvement has some
10 relevance ----

11 LDC [MR. CONNELL]: Uh-huh.

12 MJ [Col COHEN]: ---- but what -- to -- but so to me,
13 that's -- that is the -- that is the factor that I need --
14 that I potentially need to know, is, is so at some point on
15 that trip -- if they went to China first, for example, I
16 really don't care. What matters to me is, is was the FBI
17 involved in assisting in the -- in the interrogation or
18 present while the -- these were being used, et cetera.

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

20 **DIRECT EXAMINATION CONTINUED**

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

22 Q. Was the FBI -- did the FBI participate in the transfer
23 of Abu Zubaydah to the country of Location 3?

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1 A. I have no idea.

2 Q. Okay. And by "I have no idea," you mean you did not
3 observe any?

4 A. That's correct.

5 Q. Okay. When did you first interact with a person in
6 the country of Location Number 3 that you knew to be part of
7 the FBI?

8 A. Probably the day we landed.

9 Q. And at that time, was Abu Zubaydah in a hospital?

10 A. Correct.

11 Q. Okay. And just to be clear, that hospital was not
12 part of Location Number 3, correct?

13 A. Correct.

14 TC [MR. GROHARING]: Objection, relevance.

15 LDC [MR. CONNELL]: The -- well, it's quite important
16 where the -- like, what I think happens is the FBI is -- I
17 think Dr. Mitchell has described it as like snatching words,
18 you know, random words from Abu Zubaydah when he surfaces from
19 consciousness at this hospital. And then later, they as a
20 group, the interrogators, which include the FBI, move to
21 Location Number 3. I just want to make sure that's the --
22 what actually happened.

23 MJ [Col COHEN]: Okay. So -- so the fact of consequence

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1 is whether or not the FBI was present with him at the
2 hospital?

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

4 MJ [Col COHEN]: You may ask that question.

5 Q. Was the FBI present with Abu Zubaydah at the hospital?

6 A. Yes.

7 Q. Okay. And was that Special Agents Soufan and Gaudin?

8 MJ [Col COHEN]: You may answer that one.

9 A. Yes.

10 Q. Okay. Did you, yourself, go to the hospital?

11 A. I believe once or twice.

12 Q. Okay. And what did you observe -- what role of the
13 FBI did you observe? What did -- what was happening?

14 A. Well, the FBI and the -- and the CIA were taking turns
15 sitting by his bedside, he was drifting in and out of
16 consciousness, and attempting to talk to him when he was
17 conscious.

18 Q. Okay. Why was he in the hospital?

19 A. He engaged in a fire fight with the arresting force
20 and was shot leaping from one building to another building.

21 Q. How serious was his injury?

22 A. It was pretty serious.

23 Q. Life threatening?

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1 A. It would have been if the CIA had not deliberately
2 brought a hospitalist there to save his life.

3 Q. On the same plane with you?

4 A. Yes.

5 Q. The -- were there any other patients in the hospital?

6 TC [MR. GROHARING]: Objection, relevance.

7 MJ [Col COHEN]: Relevance?

8 LDC [MR. CONNELL]: Those are witnesses, Your Honor. I'm
9 just trying to find out who -- who all is there. Is this a --
10 like, I -- I don't know if it's a -- I don't know what is
11 meant by "hospital." I'm not sure if it means ----

12 Q. Was this a regular public hospital?

13 A. It was not a public hospital.

14 Q. Okay. Was it a hospital-like environment which was
15 set up specifically for Abu Zubaydah?

16 MJ [Col COHEN]: Counsel?

17 TC [MR. GROHARING]: No objection to that particular
18 question, but ----

19 MJ [Col COHEN]: Okay. Counsel, I'll give you some brief
20 leeway because of the nature of the case and -- and the
21 classification, putting things together, but let's not spend
22 too much time on discovery as opposed to the issues currently
23 before us.

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1 LDC [MR. CONNELL]: Sir, I just do want to be super clear
2 that the -- throughout this process since July, you have
3 encouraged us to participate in this process despite the fact
4 that the government has not satisfied its discovery
5 responsibilities fully.

6 MJ [Col COHEN]: No, I'm allowing some -- like I said, but
7 the idea is we get too close to the line of identifying marks
8 about that, then that would -- that -- it's another fact.

9 LDC [MR. CONNELL]: The -- the security -- national
10 security privilege part is completely ----

11 MJ [Col COHEN]: Yeah.

12 LDC [MR. CONNELL]: I completely understand.

13 MJ [Col COHEN]: That's my concern right now.

14 LDC [MR. CONNELL]: Okay. Got it.

15 MJ [Col COHEN]: See what I'm saying, is this like a
16 public hospital, those kinds of things, those are the factors
17 of which they've asserted the national security privilege
18 because it could tend to identify. In other words, you can
19 start putting things together.

20 LDC [MR. CONNELL]: Is that true? You have to -- so
21 you're saying that the government has asserted national
22 security privilege over whether it was a public hospital? I
23 did not understand that. That's the reason why I'm asking.

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1 MJ [Col COHEN]: Well, in my reading of that guidance --
2 I'll let him speak, but my reading of some of that guidance
3 was most recently with respect to black sites, it's ----

4 LDC [MR. CONNELL]: But this isn't a black site. He's not
5 at a black site. He's at a -- he's not at location -- that's
6 why I was so specific about what does Location 3 mean. He's
7 not at location -- Abu Zubaydah is not -- at this point in the
8 story, Abu Zubaydah is not at Location 3 yet. You ----

9 MJ [Col COHEN]: I thought you prefaced -- let me just ask
10 you. I thought the initial question you asked him was a
11 hospital in the country of Location 3.

12 LDC [MR. CONNELL]: Yes, the country of Location 3.

13 MJ [Col COHEN]: Right, which would be an identifier of
14 the country in which Location 3 is located.

15 LDC [MR. CONNELL]: Yeah, I didn't ask anything about the
16 country.

17 MJ [Col COHEN]: I understand. That's similar to the
18 issue of were Humvees there, were -- you know, you see what
19 I'm saying?

20 LDC [MR. CONNELL]: Sir, if that's covered by national
21 security privilege, all I'm asking for is a ruling ----

22 MJ [Col COHEN]: I'll verify that that seems to be
23 consistent with the finding that I made in your favor, is that

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1 those kinds of questions because they tend to elicit
2 information that could -- from which you could discern
3 Location Number 3's true identity.

4 But Mr. Groharing, you may speak.

5 TC [MR. GROHARING]: That's correct, Your Honor.

6 MJ [Col COHEN]: Okay. All right. So you have -- you
7 have a finding that also encompasses that.

8 TC [MR. GROHARING]: Yes, sir.

9 MJ [Col COHEN]: Yeah, that's what I meant by too far
10 afield on the discovery.

11 LDC [MR. CONNELL]: I under -- I apologize for being too
12 slow to pick that up.

13 MJ [Col COHEN]: Nope. Nope. Like I said, this is --
14 we're all working through this.

15 LDC [MR. CONNELL]: Yes.

16 **DIRECT EXAMINATION CONTINUED**

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

18 Q. Were any American -- no, let me -- I withdraw that
19 question.

20 How many -- do you know how many times Abu Zubaydah
21 had been shot?

22 A. I believe he had been shot twice.

23 Q. Is it accurate to say that when you arrived,

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1 Abu Zubaydah had a massive leg wound?

2 A. He had a massive leg wound as a result of the
3 physicians trying to -- it was a tunneling wound, and they
4 opened his leg up in order to fight the infection.

5 Q. Did Abu Zubaydah also have an emergency tracheotomy?

6 A. I don't recall that.

7 Q. Would it be accurate to say that until American
8 medical intervention, he was dying?

9 A. That was my understanding at the time.

10 Q. Was he on pain medication?

11 A. I have no idea.

12 Q. Okay.

13 MJ [Col COHEN]: Counsel, where are you going with this?

14 LDC [MR. CONNELL]: Nowhere further.

15 MJ [Col COHEN]: Okay.

16 Q. At some point, did you learn [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 A. You mean at some point ever?

20 Q. Yes.

21 A. Possibly, I was told. But, you know, details like
22 that, you know, my focus is not behind. It's forward. So I
23 wouldn't have tracked it. I don't recall it.

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1 Q. Okay. So there's a story that is sometimes told about
2 an alphabet chart, an Arabic alphabet chart, being brought to
3 the hospital because of a tracheotomy. Do you know if that
4 story is true? Mr. Soufan tells it sometimes.

5 A. I have no idea whether that's true or not. I don't
6 recall anything like that.

7 Q. Okay. Is it -- is it fair to say that the effort to
8 obtain information at the hospital from Abu Zubaydah was a
9 joint effort between the FBI and CIA?

10 A. That would be true.

11 Q. Was it a -- sort of a regular interrogation process or
12 was it something different? At the hospital.

13 A. Well, it couldn't be a regular interrogation process.
14 He was drifting in and out of consciousness.

15 Q. Okay. And how did that interfere with their ability
16 to gather information?

17 A. When he wasn't awake, you couldn't talk to him. And
18 when he was awake, he was sometimes disoriented, sometimes
19 delirious, depending on how sick he was.

20 Q. And despite that delirium and disorientation, the FBI
21 continued to question him?

22 A. I don't -- I don't think they did. I -- you know, I
23 think that they stood by looking for opportunities to question

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1 him, the FBI and the CIA, when -- when he was lucid enough to
2 be responsive to them.

3 I didn't -- I didn't get -- I didn't get that
4 impression. I saw several videotapes of their efforts to
5 question him, and I didn't see anything that resembled
6 anything that you just described.

7 Q. What do you think I just described?

8 A. Him being delirious and them continuing to try to
9 question him.

10 Q. Okay. So two questions -- two answers ago when you
11 said that he was delirious and disoriented, what did you mean?

12 A. I mean at times. Sitting by his bedside, waiting for
13 him to become lucid enough, sometimes he comes out of
14 consciousness and isn't lucid. Sometimes he comes out of
15 unconsciousness and is.

16 Q. Okay. The -- so can you -- there are many versions of
17 the story, of the -- of the questioning or volunteered
18 information or the connection of Khalid Shaikh Mohammad to
19 Mukhtar by Abu Zubaydah. Can you tell us your understanding?

20 A. I can tell you what I was told.

21 Q. Okay. Who told you?

22 A. Ali Soufan.

23 Q. Okay. Yes, with that understanding, please go ahead.

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1 A. Well, what he said -- well, I was also told, I think,
2 by the chief of station's chief of security, who -- who was
3 there.

4 The story, as I understand it, was Abu Zubaydah
5 thought he was dying and identified himself as Abu Zubaydah at
6 some point, and provided a tidbit of information, which was
7 that, you know, KSM was the mastermind behind 9/11 or the --
8 or something to that effect, Mukhtar, and then -- and then
9 essentially quit responding for a time, quit providing some
10 information.

11 So I think the way that it was described to me by the
12 people involved was that he provided bits and pieces of
13 information that would suggest that he was a valuable person
14 to keep alive but, in the long run, wasn't particularly useful
15 for actionable intelligence because the agency had already
16 identified through banking records what -- you know, who was
17 involved.

18 Q. The -- I just want to break that down and make sure I
19 understand it.

20 Do you understand a phone to have been involved in
21 that process?

22 A. No.

23 Q. Okay. So you -- when you spoke to the chief of

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1 station, chief of security, and ----

2 A. Well, the chief, the ----

3 Q. ---- the ----

4 A. The chief of security for the station.

5 Q. The station.

6 The chief of security for the station and Mr. Soufan,
7 did they tell you that Mr. Soufan had brought up a photograph
8 on his phone and showed it to Abu Zubaydah?

9 A. Oh, that I do remember, yes.

10 Q. Okay. So can you -- can you explain that to us?

11 A. You just explained it.

12 Q. Okay. So where does that fit in with your previous
13 answer that Abu Zubaydah identified Khalid Shaikh Mohammad as
14 the mastermind of 9/11?

15 A. He did it in response to the picture.

16 Q. He said ----

17 A. Not quite like that.

18 Q. What were you told? I know you weren't there, but
19 what were you told?

20 A. I can't remember the exact wording of what I was told,
21 but the basic -- the basic thrust of it is precisely what
22 we've been dancing around, that -- you know, that he
23 identified a picture of KSM and that he said essentially that

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1 that was -- he was Mukhtar.

2 Q. Okay. Did he -- and when you were told this story,
3 was there any mention of 9/11?

4 A. Yeah, I believe it was. I mean, that was -- that was
5 the point behind it.

6 Q. All right. And so what was the -- what did -- what
7 were you told?

8 A. Essentially that. I mean, it was a very short
9 statement.

10 Q. Okay. And ----

11 A. That he was shown a picture of KSM and that -- and
12 that he said it was Mukhtar and that he was the mastermind
13 behind 9/11, something to that effect. It's been many years,
14 so I could be conflating it.

15 Q. Okay. Now, you just explained to us that as you
16 understand the story, Mr. Abu Zubaydah provided that
17 information to the FBI because he ----

18 A. And the CIA.

19 Q. ---- was dying ----

20 And CIA, excuse me.

21 ---- to try to convince him to keep him alive,
22 basically. Is that fair?

23 A. Well, what's accurate is that that's something that

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1 was the opinion of the chief of security and the other CIA
2 folks who were around.

3 Q. Okay. So the station chief of security and other CIA
4 folks who were around told you that Abu Zubaydah thought he
5 was dying and provided valuable information in an attempt to
6 have himself kept alive; is that accurate?

7 A. I think the word they used was "tidbits."

8 Q. So here's my actual question -- or the question that
9 I'm leading to: That -- it is sometimes described that the
10 FBI was trying to use rapport-building techniques in this
11 questioning. That -- getting tidbits from a person you think
12 is dying has nothing to do with rapport-building, does it?

13 A. I didn't witness this, and I can't read Ali Soufan's
14 mind, nor would I want to. But the -- the point that I
15 would -- that I would make about that is, if I were an outside
16 observer and I came to that conclusion, I would think rapport
17 didn't play a huge role in it; that the person was actually
18 bargaining for additional medical care, or at least trying to
19 position themselves in a position where it would seem like it
20 was a good idea to keep them alive.

21 Perhaps some rapport-building was involved, you know,
22 in the sense that there was hand-holding and -- and, you know,
23 reassurance that everything was being done to keep him alive.

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1 I don't -- you know, I don't know. I wasn't there.

2 Q. Okay. The -- I'd like to -- are you familiar with
3 Marc Thiessen?

4 A. I do know him.

5 Q. Okay. Did you read his book?

6 A. I did read his book.

7 Q. Okay. I'd like to read you a statement from it and
8 see if you agree.

9 A. Do you ----

10 Q. And I'm happy to give you a copy, if you'd like.

11 A. Do you have a copy of it that I could look at?

12 Q. I have like a whole library back here, so ----

13 A. I would encourage you to buy more of my books.

14 Q. You know, in this room, I think there are about eight
15 of them, so I hope -- I hope that you made some money off of
16 that.

17 Here's the book.

18 MJ [Col COHEN]: Counsel, you're about five minutes before
19 the recess.

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

21 [Counsel conferred.]

22 LDC [MR. CONNELL]: May I approach, Your Honor?

23 MJ [Col COHEN]: You may.

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1 WIT: Thank you, sir.

2 MJ [Col COHEN]: Counsel, while he -- you can point him to
3 the point you want to be.

4 WIT: The underlined piece?

5 MJ [Col COHEN]: And if you'll put that on the record now,
6 please. And then remind us what the title of the book is and
7 the page number he's looking at.

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

9 MJ [Col COHEN]: Thank you.

10 LDC [MR. CONNELL]: The title of the book is not easily
11 accessible in my notes.

12 MJ [Col COHEN]: Dr. Mitchell, would you tell us the title
13 of the book, please?

14 WIT: Do you want me to read it to you?

15 MJ [Col COHEN]: Yes, please.

16 WIT: *Courting Disaster: How the CIA Kept America Safe and*
17 *How Barack Obama is Inviting the Next Attack* by Marc A.
18 Thiessen.

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

20 LDC [MR. CONNELL]: And I've directed the witness'
21 attention to page 82.

22 MJ [Col COHEN]: Thank you.

23 **[END OF PAGE]**

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1 DIRECT EXAMINATION CONTINUED

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

3 Q. And, sir, the statement I would like to ask you about
4 is, "Considering his condition, this was hardly a standard FBI
5 interview. His circumstance, lying in a hospital bed,
6 dependent on his captors for pain medication and
7 life-sustaining care, was by its very nature coercive."

8 Do you agree with that statement?

9 A. I'm thinking about the word "coercive," right?
10 Certainly he's in a position where he's dependent on his
11 captors writ large, not the FBI, because the FBI doesn't make
12 a decision about whether or not he gets pain medication; and
13 they don't make a decision about whether or not he's kept
14 alive.

15 So what I try to -- what I'm trying to do -- it's
16 psychologically coercive, I would think, because the decision
17 not to provide some information would put you in a position
18 where they might think that you -- that a person like
19 Abu Zubaydah is of really no value. So I could see how a
20 person might do that.

21 Whether or not he did -- because I don't -- I can't
22 read Zubaydah's mind, even though I know him pretty well, but
23 who knows what he actually thought, what -- I could certainly

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1 see that. I don't disagree with the way that Marc wrote it.

2 LDC [MR. CONNELL]: This would be a good time to stop,
3 Your Honor.

4 MJ [Col COHEN]: All right. Thank you.

5 All right, sir. We're going to be in a 30-minute
6 recess. That's for the parties as well. We'll reconvene --
7 well, actually, we'll take a 32-minute recess. We'll
8 reconvene at 1545.

9 [The R.M.C. 803 session recessed at 1513, 21 January 2020.]

10 [The R.M.C. 803 session was called to order at 1548,
11 21 January 2020.]

12 MJ [Col COHEN]: The military commission is called to
13 order.

14 General Martins, is anyone missing from your team?

15 CP [BG MARTINS]: No, Your Honor. Except Mr. Swann is
16 still out on commission business.

17 MJ [Col COHEN]: Okay.

18 CP [BG MARTINS]: Your Honor, I do have a brief update on
19 the Pentagon.

20 MJ [Col COHEN]: Oh, thank you, sir.

21 CP [BG MARTINS]: That it has been experiencing
22 intermittent fluctuation in the signal.

23 MJ [Col COHEN]: Okay.

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1 CP [BG MARTINS]: The estimate I got was up to 5 percent
2 is sometimes lost in different conversations.

3 MJ [Col COHEN]: Okay. All right.

4 CP [BG MARTINS]: And they're -- they're doing everything
5 they can. They're going to try ----

6 MJ [Col COHEN]: I understand.

7 CP [BG MARTINS]: ---- to put in a new circuit. And I'll
8 just keep the commission updated.

9 MJ [Col COHEN]: Thank you, sir. Appreciate it. All
10 right.

11 And Ms. Radostitz is not here, apparently. Do you
12 expect her back, sir?

13 LDC [MR. SOWARDS]: We may have sent Lieutenant
14 Colonel Poteet to look for her. I don't know what's ----

15 MJ [Col COHEN]: Okay. That's right, he's not here
16 either. They're welcome to come back. That's fine.

17 LDC [MR. SOWARDS]: Thank you, Your Honor.

18 MJ [Col COHEN]: Ms. Bormann, you're good to go.

19 Mr. Harrington, you're good to go.

20 Mr. Ali, looks like your team is all the same.

21 Mr. Ruiz, looks like your team is all the same.

22 Okay. Let's call the witness.

23 Sir, please take your seat again. Remind you that

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1 you're still under oath.

2 [The witness resumed the witness stand.]

3 MJ [Col COHEN]: Mr. Connell, your witness.

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

5 MJ [Col COHEN]: You're welcome.

6 **DIRECT EXAMINATION CONTINUED**

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

8 Q. All right. Dr. Mitchell, I would like to move forward
9 to the transition to the black site. I'd like to draw your
10 attention to AAA-RDI-2817, which is found in the record at
11 AE 628GGGGG Attachment B. It is an UNCLASSIFIED//FOR PUBLIC
12 RELEASE document.

13 LDC [MR. CONNELL]: May I have access to the document
14 camera?

15 MJ [Col COHEN]: You may.

16 Counsel, if you can just show me the classification.
17 Is it on there?

18 LDC [MR. CONNELL]: I've learned not to move this thing
19 too quickly.

20 MJ [Col COHEN]: That's all right.

21 LDC [MR. CONNELL]: It will cause whiplash.

22 MJ [Col COHEN]: Okay. You may publish to the gallery.

23 LDC [MR. CONNELL]: Thank you.

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1 Q. Sir -- oh. Were -- did communication take place
2 between the base where you were and CIA Headquarters via
3 cable?

4 A. Yes.

5 Q. Did you have any role in drafting of cables?

6 A. No.

7 Q. Okay. Did -- when ----

8 A. I mean, it depends on the cable you're talking about;
9 but I assuming you're talking about this one.

10 Q. Well, I actually just meant in general. But -- so
11 sometimes is the answer?

12 A. Well, the role that I would have is somebody would ask
13 me an opinion while they were writing the cable. At the time
14 that these things were being done, I didn't even have access
15 to the system.

16 Q. Okay. The -- I'd like to draw your attention to the
17 date on this cable, 12 April 2002. Do you see that?

18 A. I -- I do.

19 Q. Okay. In your experience, did cables generally have a
20 date on them?

21 A. In my experience, they always had a date on them.

22 Q. All right. I'd like to draw your attention to the
23 highlighted material at the center of the page which says --

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1 which refers first to the three-member Behavioral
2 Interrogation Team. Do you know who that refers to?

3 A. I have no idea who -- oh, wait a minute. Let me look
4 at this again. What is an NVTAG special agent?

5 Q. I was going to ask you, but apparently neither of us
6 know.

7 A. I've never seen this cable before. But if I had to
8 guess, I would think it was -- that I was one of those three
9 members, I would guess, because I was there when they did
10 this. But I don't know if they're specifically referring to
11 me, if they're referring to some, you know, other person.

12 Q. Were there three psychologists at the base?

13 A. Eventually.

14 Q. Okay. Were, as of ----

15 A. Well, one of them left almost as soon as the other one
16 got there. So there was a very temporary period of time when
17 there were three.

18 Q. Okay. Do you think that temporary period of time
19 involved 12 April 2002?

20 A. I don't think so.

21 Q. Okay. Was there something on base called a Behavioral
22 Interrogation Team?

23 A. I've never heard of the term.

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1 Q. Okay. Do you know who -- this is a "do you know"
2 question. Do you know who of the psychologists who at some
3 point were at Location 3 wrote cables? You didn't have access
4 to the system, you told us.

5 A. Not at the time that this was done.

6 Q. Right.

7 A. Once I got my clearance, I had access to the system.
8 And I might have written a cable towards the end of the --
9 before the move to Site 4. But at the time this was done --
10 but I do know who the psychologists are that had access to the
11 system, is that what -- was that your question?

12 Q. Yes, sir.

13 Do any of those psychologists have a UFI?

14 A. I will look.

15 Q. Thank you, sir.

16 A. Yes.

17 Q. Okay. And what are the UFI -- what is the UFI or what
18 are the UFI?

19 A. Well, one of them doesn't have a UFI.

20 Q. Okay.

21 A. The other one is ZQ5.

22 Q. Okay. Do you believe that ZQ5 wrote this cable?

23 A. No.

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1 Q. Okay. Do you believe the person without a UF -- the
2 psychologist without a UFI wrote the cable?

3 A. All I can see is one paragraph. This looks like a
4 cable that would be written by the chief of base, not by the
5 psychologist.

6 Q. Okay. Does the chief of base have a UFI?

7 A. I will look. I don't know -- I don't know his true
8 name, and I don't know his pseudonym, so I don't know.

9 Q. Was the chief of base a psychologist?

10 A. No.

11 Q. Did you find in the course of your involvement in the
12 Abu Zubaydah interrogation and then later in the RDI program
13 that non-psychologists would sometimes adopt psychological
14 terms without a full understanding of their meaning?

15 A. Absolutely.

16 Q. And could you give us an example of that?

17 A. Learned helplessness.

18 Q. Could you explain?

19 A. Sure. You want me to explain what learned
20 helplessness is or ----

21 Q. You are going to have to do it at some point, so why
22 don't you just take us through the whole thing.

23 A. Okay. In the literature, "learned helplessness," the

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1 term, gets used in three different ways. One way that it's
2 used, it refers to the procedure that's used, the experimental
3 procedure or the -- it's called a paradigm that's used in
4 experiments involving learned helplessness to induce learned
5 helplessness.

6 Sometimes in the literature it's used to mean the
7 emotional reactions or the behavioral affect of reactions that
8 you can see, if it's an animal, during exposure to a learned
9 helplessness paradigm.

10 The third way that it frequently gets used is --
11 and -- and the only way that it's legitimately used in the
12 literature by most people is when you expose that animal
13 that's been trained in a learned helplessness model to a new
14 problem that is solvable and they don't solve the problem;
15 they approach it in a very passive way.

16 So let me explain what most people think learned
17 helplessness is. The learned helplessness paradigm is when
18 you put a person or an animal in an inescapable situation,
19 doesn't matter what they try to do, doesn't matter if they try
20 to answer questions, doesn't matter if they jump across a net,
21 doesn't matter, they cannot escape it.

22 And in the animal model, the easiest example to
23 understand -- and I want to say that I object to these studies

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1 because I don't think -- I think dogs should be catching
2 frisbees, not taking place in shock experiments. But what
3 they do is they put a dog in an electrified -- a room that has
4 an electrified floor and they put a net running across the
5 thing. They electrify the floor, and he jumps to the other
6 side, but that section is electrified and electrified and he
7 keeps jumping back and forth. And for a majority of the dogs
8 who are exposed to that, not all of them, but a majority of
9 them, they will just lay down and whimper and not even try to
10 escape, right? So that would be a description of the paradigm
11 and a description of the behavioral indices of the affect of
12 the animal at the time.

13 The learned helplessness piece of this thing is when
14 you put him in a situation where there's an electrified floor
15 but only half of it is electrified, if they jump over the net,
16 they can escape the aversive shock, but they don't even try.
17 They just lay down on the floor and they're passive. They
18 don't do anything.

19 The -- but the literature is pretty clear in that --
20 especially -- there's a book called *Human Learned*
21 *Helplessness: A Coping Perspective*. That's the best review
22 of the learned helplessness literature that I'm aware of. And
23 in that book, they point out that a significant number of

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1 people who are exposed to learned helplessness paradigms
2 actually improve their performance at later tasks. Not
3 everyone, but a significant number of people do. And in
4 addition to that, there are some people who never develop
5 learned helplessness and show the behavioral indices of it.

6 And with people, because the story that you tell
7 yourself about what's going on is so important in your
8 attributions about your failure, once you explain that the
9 situation was inescapable, that there was nothing you could do
10 to get out of it, the helplessness effects dissipate very
11 rapidly. They just don't continue. They tend to go away very
12 rapidly.

13 And I would make one more comment about learned
14 helplessness studies. In the studies that appear in the
15 literature, they screen the animals and they screen the people
16 to weed out those folks for whom -- who are relatively immune
17 to the learned helplessness paradigm because they're not
18 interested in studying those. They're only interested in
19 studying the ones who are affected by it. And they also weed
20 out those people who come into the experiment already feeling
21 kind of helpless and not being able to work it.

22 I don't think it's a very good model for
23 interrogation, but it is something that you want to avoid.

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1 Q. Okay.

2 A. Did I answer your question?

3 Q. Yes, sir. We're -- I knew that at some point we have
4 to distinguish between different types of learned helplessness
5 because it's going to come up later, different people's
6 understanding, so thank you for the -- for the explanation.

7 The -- directing your attention to RDI-2818 -- and I
8 want to let you see the whole thing, and then I want to scroll
9 into the paragraph as you choose.

10 A. Can I look at the date?

11 Q. Yes, sir. What page you want?

12 A. I just want to see the date. Isn't there a date --
13 oh, that's the release date, isn't it?

14 Q. Yes, but this is still the 12 April 2002 ----

15 A. Okay.

16 Q. ---- document.

17 So the second page of the document, and I'm going to
18 draw your attention to paragraph 6. In describing the
19 physical environment, psychological state and interrogation
20 process, states that "They're intentionally designed to
21 develop three basic psychological conditions, to enhance
22 cooperation and willingness to discuss vital intelligence.
23 The development of psychological dependence, learned

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1 helplessness, and short-term thinking are key factors in
2 reducing" -- redacted -- "sense of hope that is well-honed
3 countermeasure interrogation skills will help him from
4 disclosing important intelligence."

5 My question is: Given that the chief of base was not
6 a psychologist, in your view, is this one of the examples of a
7 non-psychologist taking a layperson's understanding of learned
8 helplessness or is this a more sophisticated understanding of
9 learned helplessness?

10 A. It's not sophisticated, and the wording suggests that
11 it wasn't written by a professional psychologist because I
12 don't -- I wouldn't write it this way.

13 I would like to make a comment about the way that I
14 think this person was using the word "learned helplessness."

15 Q. Please.

16 A. There's actually a better theory to explain what he's
17 trying to refer to as learned helplessness, and that's
18 self-efficacy theory. In order to continue to resist, a
19 person has to believe that they have the capacity to organize
20 and execute the courses of action to protect a piece of
21 information and that they can call on that capacity now.

22 And I think what this person meant was the person --
23 they were -- they were wanting the psychological dependence,

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1 which is just another word for feeling indebted to and, you
2 know, having some sense of dependence on the interrogators --
3 that they were hoping to undermine his efficacy to continue to
4 resist, and short-term thinking, meaning focused on his --
5 shifting his priorities away from protecting information to
6 trying to improve his conditions.

7 So I don't think I wrote that. I mean, I know I
8 didn't write it.

9 Q. So I have another question about psychological terms,
10 and I'm directing your attention higher on the page. It's
11 paragraph 4, just so you can see.

12 The highlighted language refers to diminishing --
13 essentially, cutting off communication with others as
14 "diminishing affirmation of the person as an individual and
15 restricting psychological affiliation." What do those terms
16 mean?

17 A. Nothing to me, but I'll attempt to unpack it for you.

18 Q. Thank you, sir.

19 A. It sounds like this person is proposing to get this
20 guy not to focus on himself as an individual, right? Or at
21 least reinforce himself as an individual, affirm, right, and
22 to restrict psychological affiliation, which means --
23 affiliation means feeling like you belong to something. So

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1 undermining his belongingness, I guess, a sense of
2 belongingness. But I have no idea. That -- to me, that's
3 gobbledygook.

4 Q. Okay. And then the last question I want to ask you
5 about in this cable, I'm showing you page 4 of the same cable.
6 It's RDI-2820 in the record. Let's let that focus for a
7 second.

8 A. I hope that's not my eye.

9 Q. This is -- this is written by the same person, same
10 cable. And paragraph 11 refers to, "White noise generators
11 will be used in variable lengths of time to help disrupt" --
12 blank's -- "problem-solving thinking and to increase his sense
13 of helplessness by highlighting his inability to alter the
14 environment around him."

15 Do you know in what sense "helplessness" is used in
16 that sentence?

17 A. Well, it looks to me like whoever is talking about
18 this, this is suggesting that if you play white noise, it will
19 make it more difficult for him to focus -- focus his
20 problem-solving skills on resisting interrogation when he's
21 questioned in future attempts.

22 That's what it looks like. But it just looks like
23 that to me, that's just my opinion. It's not a -- I don't

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1 know what the fact is because I don't know -- I don't know
2 who -- I mean, I'm familiar with the use of white noise
3 generators, and that's not why I would use them.

4 Q. On that point, did you find that, especially in the
5 early days in the black sites where you were not present, that
6 people often did things that you wouldn't do?

7 A. That's an interesting question. Let me -- let me --
8 give me just a second to think about that.

9 Q. Sure.

10 A. I know that they didn't use the interrogation approach
11 that we used, and they had a different role in mind when it
12 came to the use of EITs, right? And so if they used EITs --
13 and I don't know they did -- there were several times when I
14 took objection to the way that they were used and the lack of
15 a fireside chat or, you know, a bridging question. But again,
16 I'm a contractor, and contractors don't control what's
17 happening.

18 Also, they did -- well, let's just take the case of
19 Gul Rahman. You've asked me this question, and I suppose it's
20 okay if I answer it. You know, Dr. Jessen made a number of --
21 of suggestions, right? Get a physician involved; get him some
22 blankets; you know, get him adequate food. He suggested that
23 they continue to interrogate the guy, but if they had been

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1 interrogating him, he wouldn't have died of exposure, you
2 know.

3 And then I went to a physician and said -- not a
4 physician, but a physician's assistant, and said, "Hey, you
5 need to go see that guy. I think his wrists are infected,"
6 you know, and he cursed at me and said he didn't have time to
7 do it.

8 And so in that circumstances, I would have got a
9 physician down there immediately. And that is, in fact, what
10 would have happened at a black site that I was at. Because
11 what may not be known even to your clients is that there was a
12 physician or a physician's assistant assigned to each black
13 site to deal specifically with them and to monitor what was
14 happening to them.

15 So it was inconceivable to me that I could walk up to
16 a -- you know, a physician's assistant, because I know that's
17 what he was, and say, "Hey, there's a -- there's a detainee
18 that needs medical attention," and he -- you know, he -- he'd
19 tell me that that's none of my business, you know?

20 So there were many -- there were several things like
21 that that I -- I -- I objected to the use of some of the EITs
22 that weren't approved.

23 Q. In fact, if they weren't approved, they weren't even

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1 really EITs, right? They were just other forms of coercive
2 pressure.

3 A. You know, you're right. You know, I actually --
4 you're right. I won't add to that.

5 Q. And that location that you just described, that was
6 Location 2, or COBALT?

7 A. It was Location 2, but I also saw it in Location 4.

8 Q. All right. Returning for a moment ----

9 LDC [MR. CONNELL]: And I'm done with the camera, Your
10 Honor. Thank you.

11 MJ [Col COHEN]: Thank you.

12 Q. Returning to Location 3 for a moment, what -- what
13 role did the FBI have in moving Abu Zubaydah from the hospital
14 to the -- to the site itself?

15 A. I don't know because I wasn't part of the move. I was
16 at the site awaiting his arrival.

17 Q. Okay. There were -- in your book, you tell a story
18 about -- involving Abu Zubaydah and plastic chairs.

19 A. Oh, yes, sir. I'm very familiar with that.

20 Q. Sure. And were there plastic patio-style chairs in
21 use at the black site?

22 A. Everybody used the same chairs.

23 LDC [MR. CONNELL]: So, Your Honor, this document is

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1 UNCLASSIFIED//FOUO. It is displayable to defendants but not
2 to the public. So I would ask that, after I show that to you,
3 that I would have access to the document camera but it will
4 not be published to the gallery.

5 MJ [Col COHEN]: Okay. That's fine. We've taken
6 precautions to -- yeah, that's fine. You may publish it to
7 everyone except the gallery.

8 LDC [MR. CONNELL]: Thank you.

9 Q. Sir, I'm going to show you a picture. Is -- and for
10 the record, it is LHM-1720. Where -- is this the sort of
11 plastic patio chairs that were in routine use?

12 A. It is, but that's not ----

13 Q. I know that's not -- I'm asking only about the chairs,
14 not the location.

15 A. Okay. Yes. Sort of. I mean, they could be slightly
16 different, but those are the kind of chairs.

17 Q. Okay. All right. So ----

18 LDC [MR. CONNELL]: I'm done with the document camera for
19 now, Your Honor.

20 MJ [Col COHEN]: Thank you, Counsel.

21 Q. So during the interrogation process of Abu Zubaydah at
22 Location 3, part of the daily battle rhythm was to review
23 intelligence requirements; is that right?

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1 A. You'll have to explain what you mean by battle rhythm.

2 Q. Sorry. It's a militarism I've picked up.

3 Let me -- let me -- part of the daily schedule is --
4 the military never uses one word when they can use two --
5 so part of the daily schedule was to review intelligence
6 requirements; is that correct?

7 A. Yes.

8 Q. Okay. And can you tell us what intelligence
9 requirements are?

10 A. Sure. They're -- it's information that the analysts
11 who are putting together intelligence reports would like to
12 have in order to flesh those out. So if you're a targeter,
13 you'd like to know locational information or contact
14 information or -- or something like that.

15 Q. Sure. And other types of subject matter experts would
16 want to know different ----

17 A. Yeah.

18 Q. ---- different ----

19 A. It would vary depending on what you were interested
20 in. I mean, if you were interested in interdicting, you might
21 want to know smuggling routes.

22 Q. Sure. If you were interested in prosecuting, you
23 might want to know prior criminal activity?

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1 A. CIA was never interested in prosecuting. They had one
2 thing in mind and I think ----

3 Q. Future attacks.

4 A. ---- and that, I think, was the core conflict between
5 the CIA and the FBI. The CIA was not going to let them set
6 off another catastrophic attack in the United States. They
7 were going to walk right up to the line of what was legal, put
8 their toes on it, and lean forward.

9 Q. Let's finish out the second half of that. The FBI, on
10 the other hand, was interested in prosecuting criminal
11 behavior.

12 A. Both. They were interested in stopping attacks if
13 they could; but in my view, they were easily distracted and
14 the -- especially Abu Zubaydah was quite good at providing
15 information that would be useful in a criminal case, if you
16 were trying to build a criminal case, but not particularly
17 useful for stopping that next attack or capturing, you know,
18 someone like Binalshibh or something like that.

19 Q. Okay. Now, when -- did you ever see the -- so did
20 intelligence requirements come in cables from headquarters?

21 A. Yes.

22 Q. Did you ever see them?

23 A. I'm sure that I did. You know, in the beginning, they

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1 could not show me documents with certain classifications
2 because I had not taken a polygraph, right? So by August of
3 that year, I had taken a polygraph and, you know, could have
4 access to the cables.

5 But the way that it would work, just so that you would
6 know, is that -- and this is during the period of time between
7 April and when the FBI left the site, right? So I'm not
8 talking about EITs or other -- or similar sort of thing.

9 What would happen is they would gather together in the
10 morning. There would be a meeting. The physician and the two
11 nurses that were attending to Abu Zubaydah would give an
12 update, you know, what his medical status was, what sort of
13 care had to be given to him that day.

14 The security folks would give an update that included,
15 you know, any potential threats of site location and any
16 threats they might have noticed about other sorts of things
17 and -- and, you know, how comfortable they were with the
18 security of the thing.

19 The -- the COB would give kind of what the Navy would
20 call a muster, where he would pass out things that were
21 important for folks to know.

22 Then an intel analyst would brief us on the intel
23 requirements and then give us a briefing on the supporting

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1 intel documents, right?

2 And then after that, the -- the chief of base, who was
3 in charge of the base, and the FBI and the CIA would figure up
4 how to split the interrogations that day.

5 And then -- just so that you know the order of battle,
6 then what would happen is once the interrogation had ended,
7 they would come out. They would talk about what intel they
8 had received, if any, out of that process. Some people would
9 go off and write reports. There would be another discussion
10 of the next interrogation and any intel requirements that were
11 associated with this. The next interrogation would start, and
12 the process would just keep repeating until it was late enough
13 for them to stop interrogating him.

14 Q. Okay. Focusing on the requirements and the associated
15 briefing, some -- the requirements would be basically
16 questions, here's what we need to know. And the briefings
17 would be here is what we know so far or why we believe certain
18 things; is that right?

19 A. It's a generalization. Sometimes yes. Not only would
20 they be here's what we need to know. It would be question --
21 it would be specific questions. Ask him for Abu whoever's
22 phone number, the one that they use, you know, that sort of
23 thing.

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1 Q. Hmm. Okay.

2 A. So ----

3 Q. And did you ever see the cables that the requirements
4 came in?

5 A. I'm sure I did towards the end of my tenure there,
6 after August of twenty -- 2002, but I don't know that I
7 actually physically saw the cables before that. I mean,
8 they'd be sitting at the table, I'm sure the cables were there
9 so I glanced at them, but I'm not reading headers and footers.

10 Q. All right. But the -- did you see -- well, actually,
11 let me just ask the question. You tell me if you don't know.

12 The requirements would come in essentially question
13 format with a question mark at the end sometimes? Who is ----

14 A. What would typically happen is there would be -- this
15 is my experience, right? And since I didn't see the cables, I
16 can't tell you precisely what was happening there, but
17 typically there would be a paragraph that says we are
18 interested in these kinds of things. This is what we're
19 interested in. This is what we need to flesh out. Here are
20 the questions that we suggest you ask.

21 Q. Great. So at the black site, there was video
22 recording; is that right?

23 A. Initially.

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1 Q. And ----

2 A. Actually, I think at that black site, it was almost
3 always.

4 Q. Okay. Were FBI agents captured on the videotapes?

5 A. Yes. Well, no, wait. Let me think about that. I
6 think so. The early tapes, I'm trying -- right now I'm
7 blanking on whether they started taping in April or they
8 started taping in August, but I think they started taping in
9 April.

10 Q. Sir, do you have your book in front of you? Let
11 me just -- it might just refresh your recollection. At page
12 261. I'll draw your attention to the first full paragraph on
13 page 261. There's a sentence, "Just before CIA and FBI
14 interrogators entered the room with Abu Zubaydah, one of the
15 guards monitoring on a closed-circuit TV would push a VCR tape
16 into a recorder and press record."

17 A. That refreshes my memory. So the decision was made in
18 that meeting, the initial meeting in April, to do the
19 recording.

20 Q. And just to -- just because we're lawyers and have to
21 put the final point on everything, thus, the images of the FBI
22 conducting interrogations were captured on the recordings?

23 A. Yes.

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1 Q. Now, you made a comment just a few moments ago
2 about that there were some coercive pressures that were in use
3 at Location 3, although there was no such phrase as enhanced
4 interrogation techniques yet; is that accurate?

5 A. Yeah, I think they called them standard pressures or
6 something like that.

7 Q. Okay. And would you agree that the coercive pressures
8 which were in use there included nudity, a liquid diet,
9 sensory deprivation, and sleep deprivation?

10 A. I don't know that sensory deprivation -- he's in a
11 light cell with a light on. He can see the guards, you know.
12 It's not what I personally would call sensory deprivation.
13 Sensory deprivation to me is in a tank in the dark floating in
14 Epsom salts.

15 Q. The guards were head to foot in black with kind of
16 NASA-looking space helmets on?

17 A. Yes, they are.

18 Q. And ----

19 A. But that's a sensory ----

20 Q. It is a sense. I'll give you that. The -- so did the
21 FBI agents present ever object to interrogating someone nude?

22 A. I don't recall. I do know that the typical thing for
23 both CIA and FBI interrogators were to take a towel in with

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1 them when they -- you know, when they went in and give him a
2 towel to cover himself.

3 Q. Because he was naked the rest of the time?

4 A. Yes.

5 Q. Okay.

6 A. Well, not the rest of the time, the whole rest of the
7 time. You know, there was some debate in the beginning as I
8 recall -- and it's been a long time ago -- with the physicians
9 about whether it would be better to keep him in a diaper,
10 because you didn't want anything on that leg, or to keep him
11 nude, right? Because if he's in a diaper and he inadvertently
12 soiled himself in the diaper, it could get into that wound.
13 And that wound had to be debrided every day because it was
14 heavily infected.

15 And the physicians were under the -- said that
16 although it seemed odd -- this is my recollection -- it would
17 be better for him in the long-run if he was nude, and the
18 decision was made by the chief of base, who had all final say
19 in this thing, that that could also be used as kind of a
20 twofer, in the sense that he might be willing to shift his --
21 well, they wouldn't use that term -- that he might be willing
22 to provide intelligence in order to improve his conditions and
23 get some clothes.

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1 But regardless, he wouldn't have had anything covering
2 that wound until that wound was much better healed than it was
3 in the beginning.

4 Q. Okay. Can you tell us a little bit about the use of
5 sleep deprivation at Location 3 in the interrogation of
6 Abu Zubaydah?

7 A. Well, there was sleep deprivation and then sleep
8 disruption, right? Sleep disruption is where you keep a
9 person up for a few hours and then give them a few hours --
10 not a few hours. You keep a person up for like a day or so or
11 two days and then you give them about three hours of sleep, so
12 they never really get enough REM sleep in order to catch up,
13 and it's like they're jet-lagged for the most part.

14 And the whole point behind that kind of sleep
15 disruption was to make it more difficult for them to plan
16 ahead and think ahead and, you know, you wanted to kind of
17 short-circuit that thing. Because Zubaydah is a very bright
18 guy who had not only studied resistance to interrogation but
19 had trained it, so he was very familiar with resistance
20 techniques. And the -- the idea was to -- was to do that,
21 that he would seek some relief.

22 Q. And ----

23 A. But there was sleep deprivation used as well, because

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1 it would be disingenuous of me to say that they didn't keep
2 him up 48 hours or, you know, whatever. Probably more than
3 that, but I don't recall. It would be listed in the cables.

4 Q. Sure. The -- so there's one fairly well-known
5 interrogation or piece of information that came out of this
6 interrogation relating to two men, one of whom was ultimately
7 identified as Jose Padilla. Do you know what I'm referring
8 to?

9 A. I do.

10 Q. And how many hours had Abu Zubaydah been sleep
11 deprived when he provided that piece of information?

12 A. I think in my book I talk about sleep disruption.

13 Q. I think I might be able to ----

14 A. And I think that's probably more accurate.

15 LDC [MR. CONNELL]: Court's indulgence just for a moment.

16 MJ [Col COHEN]: You may.

17 Q. Can I direct your attention to page 34 in your book,
18 Dr. Mitchell?

19 A. Sure. I was looking too far back into it.

20 Q. 34.

21 A. Okay, I'm there.

22 Q. At the top of page 34, there's a statement, "The
23 initial breakthrough happened after 126 hours of sleep

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1 deprivation during around-the-clock interrogations conducted
2 over a little more than five and a half days. That is hardly
3 rapport-only interrogation."

4 A. I wrote that.

5 Q. Yeah.

6 A. I believed it to be true at the time I wrote it. I
7 believe it to be true now.

8 Q. Thank you. And those around-the-clock interrogations,
9 they involved both FBI and CIA?

10 A. Yes.

11 Q. And would it be accurate to say that the FBI fully
12 participated in using sleep deprivation as a technique?

13 A. I -- I can't say whether they objected to the chief of
14 base or not because I wasn't privy to those conversations. I
15 know towards the end Ali Soufan objected vociferously to
16 everything, you know. But they certainly participated in the
17 interrogations.

18 And -- and, in fact, here's my recollection. My
19 recollection is that when the discussions about sleep
20 disruption and sleep deprivation was taking place, that -- I
21 don't remember which one of them it was, but that one of the
22 agents said, well, you know, if the agent who is questioning
23 the person stays up with that person, then it's okay for them

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1 to keep them awake for longer periods of time. If the -- if
2 the interrogation involves the same agent.

3 Q. Okay. But is it accurate to say what actually
4 happened is that, because it was round-the-clock interrogation
5 over five days, that you -- they worked in shifts? Some of
6 them would go sleep while the other ones interrogated?

7 A. I believe that's accurate.

8 Q. In -- moving forward to June of 2002, there came a
9 time when there was a decision to have an isolation phase for
10 Abu Zubaydah; is that correct?

11 A. That's correct.

12 Q. Let me draw your ----

13 LDC [MR. CONNELL]: Can I have 128? I'm on page 78.

14 Sir, I have here a document marked UNCLASSIFIED//FOR
15 PUBLIC RELEASE. It's a FOIA cable.

16 MJ [Col COHEN]: Okay.

17 LDC [MR. CONNELL]: May I have access to the document
18 camera and publish to the gallery?

19 MJ [Col COHEN]: You may. Well, before you make it
20 public, let me just -- show me again the ----

21 LDC [MR. CONNELL]: Sure.

22 MJ [Col COHEN]: ---- classification.

23 LDC [MR. CONNELL]: I can't see what you can see. Now I

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1 can. Do you see it?

2 MJ [Col COHEN]: Got it. We're good. You may publish.

3 LDC [MR. CONNELL]: All right. I'm going to zoom out
4 first, so don't let me give anybody whiplash.

5 Q. Sir, do you see the -- can you see that cable? I can
6 zoom in when you want to see it more, but you wanted to see --
7 earlier you wanted to see the cables in full first, so can you
8 see that page?

9 A. Yes, sir.

10 Q. Okay. And you see that there is a redacted date, but
11 June '02 appears?

12 A. Yes.

13 Q. And then in the subject line, there is a reference to
14 some sort of update occurring 1900 hours 30 June 2002?

15 A. You said there's a redacted date? Oh, I see what
16 you're saying. Okay. It's just that there's a date
17 underneath it.

18 Q. Yes, that's right. And so I was about to mention
19 that, that there's a reference to 30 June 2002?

20 A. I see that.

21 Q. Okay. The -- do you see paragraph 1 on this cable?

22 A. I do.

23 Q. And it's a little bit cut off, but it seems to say,

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1 "Please ensure that substantive portions of information below
2 are shared with" -- I believe that says FBI Headquarters, FBI
3 HQS.

4 A. I wouldn't hazard a guess.

5 Q. Okay. Did you ----

6 A. Well, if -- but I would say this: If the FBI asked,
7 agents were still there, they certainly would share it with
8 the FBI Headquarters. They wouldn't ----

9 Q. Sure. So it doesn't -- it is routine that information
10 coming out of this would be shared with FBI Headquarters?

11 A. You're asking a question that I can't answer.

12 Q. Fair enough. You don't have to answer it then.
13 That's fine.

14 A. But it just seems logical to me that it probably does
15 say FBI Headquarters; and if you have two FBI agents on site,
16 I would think they would share that with headquarters.

17 Q. All right. So did you -- does -- this cable familiar
18 to you? Did you see it at the time?

19 A. I don't think I -- I don't think I saw the cable, but
20 I probably was part of the conversation or heard part of the
21 conversation. I don't know if I was actually at the site in
22 30 June or not. I -- you know.

23 Q. Okay. The ----

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1 A. Do you mind if I read the ----

2 Q. Yes, please.

3 A. Are you going to ask me questions about it?

4 Q. Yeah, of course.

5 A. Okay.

6 Q. Okay. My question is: Do you know who wrote this
7 cable?

8 A. No.

9 Q. Okay.

10 A. I would think it was the chief of base.

11 Q. Do you see the sentence about a little bit past
12 halfway, "Isolation will likely be highly disconcerting to the
13 subject given the extent of his pre-capture level of activity
14 and affinity for interaction with others and his generally
15 intensive post-capture rate of interaction with team members"?
16 Do you see that?

17 A. Yes.

18 Q. Was -- is that a summary of any discussion that was
19 had in your presence?

20 A. It likely is. I -- you know, it was a long time ago,
21 but it's not inconsistent with a discussion that I would have
22 had.

23 Q. And what were the discussions about the role of

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1 isolation in the interrogation of Abu Zubaydah?

2 A. Here's the -- the -- part of it was based on the
3 reason that the isolation stage started in the first place.

4 Q. Would you explain?

5 A. Sure. The -- the FBI had thought that they had
6 established so much rapport with him that if they -- this is
7 just based on my observations and my conversations with the
8 other operational psychologist that was there -- that they
9 could express disappointment in his -- because he had
10 basically just shut down and -- oh, wait a second. I'm
11 getting these confused.

12 The CIA -- the FBI had posited a couple of times
13 that -- I may have these two reversed. They're proper in my
14 book, but in my mind sitting here today, I may have them
15 reversed. Two things happened. They pitched him and he
16 rejected it and then they did this thing they called going
17 Sipowicz on him, where they went in there and they cursed at
18 him. Now, I don't know sitting here right now which one
19 occurred first, but I think it's correct in my book.

20 Q. Okay.

21 A. And so what happened is he just basically said I'm not
22 going to talk to you guys anymore. You might as well go home
23 and have babies. And he just quit talking. And the decision

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1 was made -- there were sorts of things of how do we get this
2 guy to talk because we're going in there and we're begging him
3 and we're begging him and we're begging him and that's going
4 nowhere. How do we get this guy to talk?

5 And so the thought was -- the discussion was around,
6 well, how about isolation? What if we put him in isolation
7 because he does like to talk. Eventually, he'll get tired of
8 not talking and -- and provide some information or be willing
9 to talk to us again, even talk to us.

10 Q. Prior to the -- the isolation, was there a crisis
11 precipitation event? Do you recall that?

12 A. Well, the two things that I suggested, that I just
13 described. The Sipowicz ----

14 Q. So the Sipowicz is the crisis precipitation event?

15 A. There were two of those events.

16 Q. Okay.

17 A. I think the first one -- I'd have to look at my book
18 to get the order correct.

19 Q. Please do, sir.

20 MJ [Col COHEN]: Counsel, just make sure we verify which
21 page he used to refresh ----

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

23 MJ [Col COHEN]: ----- refresh. If it refreshes.

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1 A. Okay. So the decision to go Sipowicz was first,
2 right? They -- essentially every now and then, he would
3 squirt out a piece of information, usually after some sort of
4 psychological ploy, which I had a hand in crafting, and then
5 he would just shut up for a while. And he had shut up.

6 And so the FBI agents, the two of them together -- and
7 I listened, and the operational psychologist was there
8 listening as well, though not participating, right, said,
9 well, you know, the -- this guy likes us. He seems to like
10 us. He talks to us. We've got a good rapport. So if we go
11 in there and go Sipowicz on him -- and that was the term they
12 used, which is based on that NYPD Blue character who yelled at
13 people and cussed at people and did that sort of stuff -- then
14 he'll feel so bad that he'll start talking to us again. And
15 the goal at that point was just to get him talking again, you
16 know, get him talking about anything.

17 And so they did that. They went in there and they
18 started yelling at him. You know, they started cursing at
19 him. And at one point, one of them called him ----

20 Can I use the words that they used or -- these are
21 obscene words.

22 MJ [Col COHEN]: Yes, sir.

23 A. Motherfucker, right? And in -- in his language and in

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1 his culture, that's a generally frowned on, right? And
2 when -- and when he shut down and started pulling back from
3 that, he was called a son of a bitch, which equates his mother
4 to a dog, and he just literally leaned back and said, "You
5 boys might as well go home. I'm not talking to you anymore.
6 Go home, have babies. I'm not talking anymore." And he just
7 stopped, right?

8 MJ [Col COHEN]: And the witness laid back in his chair as
9 he said that?

10 A. Yeah. He leaned back in his chair and he put his hand
11 on his crotch like a street thug might and just glared at them
12 with his one eye, right?

13 MJ [Col COHEN]: Sir, real quick, before you -- what page
14 did you use to refresh your recollection?

15 WIT: Oh. Let me just look.

16 MJ [Col COHEN]: Thank you, sir.

17 WIT: Page 35.

18 MJ [Col COHEN]: Thank you, sir.

19 WIT: Thank you.

20 Q. 35. Thank you.

21 A. Do you want me to go on about the second incident
22 because it was really the second incident combined with the
23 first that ----

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1 Q. Yes, I want you to do that, but I have a question
2 about that first incident first, which is: Was that plan
3 coordinated with headquarters in advance or was that just kind
4 of an idea -- spur-of-the-moment idea?

5 A. I don't believe it was coordinated with headquarters.

6 Q. Okay. And was it intended to be followed by an
7 isolation phase or was it intended for Abu Zubaydah to talk to
8 them?

9 A. It was intended for Abu Zubaydah to talk.

10 Q. Okay. Now the second event.

11 A. Okay. So after that, the whole team was really
12 scrambling about what to do, kind of brainstorming what to do,
13 what to do, what to do to get him talking again. And the FBI
14 suggested that they pitch him to see if they could turn him to
15 work for them, and the CIA Headquarters said no, not under any
16 circumstance, we're not going to do that, right?

17 But they did it anyway. And they did it in that sort
18 of surreptitious way that people who like to ask forgiveness
19 but not permission do, and by that I mean they said America
20 remembers her friends. They take care of their friends. They
21 take care of their friends' mothers and sisters and they --
22 they find a way to provide support for them. And we -- you
23 know, we could get you Pepsi -- because he's rabid about

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1 Pepsi -- we can get you Pepsi and candy and improve your
2 conditions.

3 And Abu Zubaydah again leaned back and said, "What
4 makes you think I would betray my God for a Pepsi?" And it
5 was over. I mean, it was just done, you know.

6 Q. All right. So when was the -- so on 18 June 2002, was
7 there a -- was that the crisis precipitation event intended to
8 be followed by isolation?

9 A. I think the two -- I think the two combined and his
10 continued refusal to talk -- because generally, he would talk
11 to the CIA chief of base, who was also questioning him, but he
12 wouldn't even answer questions for him at all, not -- you
13 know, nothing.

14 Q. Okay. The isolation idea was coordinated with
15 headquarters in advance, right? No, not -- this is the
16 twelfth day of the isolation phase, but in advance of the
17 isolation phase, it was coordinated; is that right?

18 A. I would think so, yes.

19 Q. Yes. And ----

20 A. It would be very unusual for the chief of base to not
21 coordinate with headquarters.

22 Q. Yeah. And so this document shows us that on 30
23 June 2002, there's a report that it's the twelfth day of

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1 isolation phase, right?

2 A. Okay.

3 Q. All right. And suggesting, would you agree, that the
4 isolation phase began on -- on or about 18 June 2002?

5 A. Well, I mean, you're within the time. I don't know
6 what a day or two one way or the other would make, but the
7 time frame sounds rational to me, if you count back 12 days
8 from the date they have there.

9 Q. Were you involved in planning for an isolation phase?

10 A. I think I was asked my opinion about it.

11 Q. And what was your -- did -- do you recall what it was?

12 A. Yeah. My opinion was you're not going to beat it out
13 of him. You know, you're not going to increase the coercive
14 pressure. There's a very limited number of things you could
15 do. This might work, but you need to carefully monitor it.

16 Q. I'm moving now to AAA-RDI-117 contained in the record
17 at AE GGGGG [sic] Attachment B. It is marked UNCLASSIFIED FOR
18 PUBLIC RELEASE. I'm going to zoom out so you can see the full
19 cable, sir.

20 A. You don't need to do that.

21 Q. Okay.

22 A. I can see that it's a cable.

23 Q. All right. This is following up on the question of

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1 coordinating possible increases in coercive pressure, although
2 this one is in April of 2002. The -- this cable involves a
3 discussion of making a box 85 inches long, 30 inches wide, and
4 20 inches deep. Do you see that?

5 A. I do. You know, I've seen this cable before in
6 preparation for the case that it was released for. And I'm
7 befuddled by the cable because my recollection is until EITs
8 were approved, no box was used, but this cable suggests that
9 there was discussion about that before the EITs were approved.

10 Q. Right. And my specific question is: If you look at
11 paragraph 5 ----

12 A. Uh-huh.

13 Q. ---- "We're consulting with the FBI Headquarters and
14 will advise soonest." Are you aware of discussion with the
15 FBI about use of a -- I guess this would be the large box?

16 A. Yeah. It's a quite large box, if you look at the --
17 the numbers that they're talking about. I'm aware of --
18 because it's in the paragraph.

19 I mean, my assumption for -- was that from April
20 through whenever the FBI left the black site and that meeting
21 occurred with Mueller because there was a meeting with Mueller
22 and Tenet that I was at when the FBI said we're not going to
23 participate in this, we're not going to do any black sites,

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1 we're not going to have any coercive pressure where we're at,
2 that until then, the FBI was intimately involved.

3 Q. One more topic with respect to the FBI, pre-July 2002
4 is -- well, I'm going to skip ahead just a second.

5 It's sometimes discussed that one of the possible EITs
6 which had been proposed involve a mock burial. Do you know
7 what I'm talking about?

8 A. Yeah, I'm the person who proposed it, me and Steve.

9 Q. That mock burial idea was part of a threat-and-rescue
10 scenario; is that right?

11 A. Yes.

12 Q. Okay. And was there discussion of involving the FBI
13 in a threat-and-rescue scenario?

14 A. Well, this is -- this is the circumstance under which
15 this came up. The -- the FBI and the CIA were going back and
16 forth, you know, with the National Security Council and the
17 President and the rest of those people in that airy place in
18 Washington, D.C. that I have no access to about who would have
19 primary custodial control over Abu Zubaydah.

20 And Steve's concern was that since the FBI had been
21 involved in the sleep deprivation and the nudity and all that
22 sort of stuff -- this is my recollection; he may have a
23 different recollection, but this is mine -- that they wouldn't

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1 trust the FBI folks who came in to question him because they
2 would think it was just more of the same, and they wanted to
3 switch to a completely noncoercive thing.

4 And so he and I talked about the potential of using a
5 threat-and-rescue thing, where the mean CIA sets up a
6 situation where it looks like they're going to bury
7 Abu Zubaydah, and then before that happens, the good FBI shows
8 up and says, "What are you bastards doing? Get out of here.
9 We're taking this man," and then he's off to FBI land. And
10 that was the -- the kind of a shorthand slang version of the
11 way that we thought about it.

12 And it was unclear to me when I wrote the thing in
13 July of 2002 and included that whether they were going to do
14 that or not. And so I put that in there, just so that they
15 would -- you know, that they would know it. And it caused a
16 tremendous amount of controversy.

17 Q. When -- when you said Steve was concerned that
18 Abu Zubaydah wouldn't trust the FBI, that's Steve Gaudin?

19 A. Yes, sir.

20 Q. Yeah. Okay.

21 A. I don't know how -- I mean, Ali Soufan may have felt
22 the same way, I don't know. He and I are not the best of
23 friends, and so -- but -- and I can't read his mind.

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1 Q. Sure.

2 LDC [MR. CONNELL]: The court's indulgence for a moment?

3 MJ [Col COHEN]: You may.

4 Q. Sir, obviously you're familiar with Jose Rodriguez?

5 A. Yes.

6 Q. Yeah. Did you read his book?

7 A. I did read his book.

8 Q. Okay.

9 LDC [MR. CONNELL]: May I have the court's indulgence?

10 MJ [Col COHEN]: Yes.

11 [Counsel conferred.]

12 LDC [MR. CONNELL]: May I approach, Your Honor?

13 MJ [Col COHEN]: You may.

14 LDC [MR. CONNELL]: Your Honor, I'm going to show the
15 witness the book *Hard Measures* by Jose Rodriguez. And I'm
16 going to direct his attention to the last full paragraph on
17 page 61.

18 MJ [Col COHEN]: Thank you. Sir, if you need to look at
19 something before or after that, as long as you tell us what
20 you're looking at, it will be fine.

21 WIT: Yes, sir.

22 MJ [Col COHEN]: All right.

23 WIT: So what am I looking at?

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1 Q. Sir, the last -- I can read it to you, but what I'm
2 about to read to you is the last full paragraph on page 61.
3 All right. The -- and then I'm going to ask you about it.

4 The quote is, "The FBI had talked about bringing in a
5 clean team, a group of agents who were not privy to whatever
6 Abu Zubaydah had previously said while he was in detention nor
7 would they know anything about how he had been treated. They
8 hoped he would repeat some of the things he had previously
9 told us so it would be useful in an eventual court case."

10 Do you see that?

11 A. Yes, sir.

12 Q. Okay. Did you hear any discussion of that idea?

13 A. Yes.

14 Q. And what did you hear?

15 A. Essentially that.

16 Q. Oh, okay.

17 A. That was the point of the -- that was the point of the
18 threat and rescue.

19 Q. Did they use the phrase "clean team"?

20 A. The phrase "clean team" was used.

21 Q. Was that idea, that discussion, was it ever put into a
22 cable, to your knowledge?

23 A. Not to my knowledge.

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1 Q. Okay. How -- how did it -- how did that information
2 make it back to headquarters? Like, how did Mr. Rodriguez
3 know about it?

4 A. You'd have to ask Mr. Rodriguez. I don't -- I
5 don't -- I'm -- you know, he and I know each other and we -- I
6 count him as a friend. But, you know, he's the chief of CTC.
7 I ----

8 Q. Sure.

9 A. ----- I don't ----

10 Q. I'm just asking about procedures that I thought you
11 might know.

12 A. It wouldn't surprise me if [REDACTED] or a
13 phone call or -- you know, I mean, I don't know. I mean ----

14 Q. [REDACTED] -- is the CIA e-mail system?

15 A. Yes.

16 Q. Okay. In -- in your ----

17 A. But I don't know that for a fact. I mean, he had to
18 find out somehow. It's in his book.

19 Q. Yeah. Makes sense.

20 The -- in the discussion, was there -- did it ever
21 come up why there would be ----

22 A. And, sir, I have an alibi.

23 Q. Okay.

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1 A. He and I talked about this at some point when I went
2 back to headquarters, so he could have found out it from --
3 from me. So it may not be in a cable, it may not be in a
4 phone call, may not be anything. It may be from me.

5 Because one of the things that irked the man I called
6 the New Sheriff is that the director of CTC would ask for me
7 by name, and when he became the director of the -- the chief
8 of the National Clandestine Service, the same thing happened.
9 And, you know, so he and I had private conversations about
10 those things.

11 Q. Sure. And in the -- in the course of your discussion
12 with Special Agent Gaudin, was there -- was the idea that
13 there would be a group of agents who were not privy to what
14 Abu Zubaydah had previously said, was that a part of the
15 discussion as well?

16 A. Yes. That's the point.

17 Q. And can you -- can you explain to us what the point
18 was, what the idea of that part of it was?

19 A. Well, here's my understanding -- you'd obviously have
20 to ask Steve what his recollection is -- but my understanding
21 was that the new set of agents, the ones who were not privy to
22 that, would come in, read Abu Zubaydah his rights, and then
23 have a conversation with him about things, you know, just ask

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1 him about his involvement.

2 They wouldn't use what we had gathered as part of
3 the -- you know, as an outline or a structure. In fact, they
4 wouldn't have even known that. They were basically just
5 ignorant of everything that had happened and they believed
6 that they were just getting this guy.

7 Q. Sure. And why would the clean team's not -- lack of
8 knowledge about his treatment be important?

9 A. You'd have to ask them. I mean, I think -- I think
10 they're not supposed to know anything about the case. I mean,
11 they're just not supposed to know what he said and not -- not
12 supposed to know some things. I -- you'd have to ask them.

13 Q. Okay. Was this -- did this discussion take place
14 while you were still at Location 3?

15 A. That's my recollection.

16 Q. And was the idea of -- was the clean-team idea bound
17 up with or part of the same discussion with the
18 threat-and-rescue idea? Were they the same idea?

19 A. The -- the involvement of new agents who had no
20 previous knowledge of what had been said or done, no previous
21 knowledge of what Abu Zubaydah had previously told either the
22 CIA or the FBI, that idea came first; and then the question
23 was how do you make that transfer?

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1 Q. Thank you.

2 A. And make it believable.

3 Q. Okay. So that's the end of the -- that Abu Zubaydah
4 spring part, and I'd like to ask you some questions now about
5 the meeting or meetings that took place when you returned from
6 Location 3 to the National Capital Region.

7 A. Okay.

8 Q. When you came back to the United States, you had been
9 invited to attend a meeting at the CTC; is that right?

10 A. Correct. Actually, I'd been directed.

11 Q. Directed, yes. Yes. Because you're not the
12 decision-maker.

13 A. [Nods head.]

14 MJ [Col COHEN]: Affirmative response.

15 LDC [MR. CONNELL]: Yes.

16 Q. The -- at that time, you knew that there had already
17 been discussions in the CIA of the use of some kind of
18 coercive measures; is that right?

19 A. I had heard -- I had heard that the gloves were off,
20 that officers had been asked to think outside of the box, and
21 that prior to that meeting -- not during that meeting, and
22 sometimes that gets conflated in people's minds -- but prior
23 to that meeting, I had heard CIA officers talking about

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1 various sorts of things they might do to, you know, get him
2 talking again that involved physical coercion and other ideas.
3 But the crazy stuff didn't come up in that meeting.

4 Q. I wanted to ask you just a few more questions about
5 the -- sort of the pre-meeting ideas that were out there.

6 Did you know at that time or did you learn later that
7 CIA had in as early as December 2001 reached out to JPRA for
8 information about exploitation?

9 A. I found out about that when we were preparing for the
10 ACLU case.

11 Q. Okay. And whatever requests went from CIA to DoD to
12 JPRA, you had nothing to do with it?

13 A. No. Well, Dr. Jessen was at JPRA. I don't think so.
14 I don't think -- I mean, I'm trying to be honest with you ----

15 Q. I appreciate it.

16 A. My recollection isn't -- is that I didn't.

17 Q. Are you now aware of meetings that took place between
18 Chief of JPRA Operational Support Office, Christopher Wirts,
19 and the CIA regarding JPRA-assisted exploitation?

20 A. I think I read about that.

21 Q. Do you -- do you know if it's true? Do you know if
22 it's true that there were such meetings?

23 A. Do I know for a fact it was true?

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1 Q. As far as you know, was it true?

2 A. Did any of the players tell me it was true? Did any
3 of the players -- none of the players told me it was true, but
4 I've treated it as if it were true, and I believe it probably
5 is.

6 Q. Okay. Are you aware now that during the first six
7 months of 2002, JPRA assisted in training a person sent to
8 interrogate an unnamed alleged high-level al Qaeda operative?

9 A. I'm aware now.

10 Q. Okay. And that operative, was that Abu Zubaydah?

11 A. No.

12 Q. Okay. That makes more sense because I -- do you know
13 who the person trained was?

14 A. No.

15 Q. Okay.

16 A. It would have -- I think it would have been a DoD
17 asset -- I mean, DoD personnel. I didn't have anything to do
18 with the DoD at that time.

19 Q. And do you know who the alleged al Qaeda operative
20 was?

21 A. No. The CIA compartmentalizes everything.

22 Q. Makes sense. I myself have been a victim of those
23 compartments.

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1 So let's talk about the first meeting after your --
2 that you had at the CIA -- that you attended at the CIA prior
3 to -- after you came back from Location 3.

4 A. Okay.

5 Q. Was that meeting on 1 July 2002?

6 A. I don't recall the date.

7 Q. Okay.

8 A. In -- if it's -- if that's what's in the record, I
9 won't contest it.

10 Q. Okay. And you weren't the convener of the meeting.
11 It wasn't your meeting in any way, right?

12 A. No.

13 Q. Okay. Was it -- was it Mr. Rodriguez's meeting?

14 A. He was the person in charge of the thing. He was -- I
15 mean, he -- he ran it, so I would say yes.

16 Q. Okay. Do you know how all the people who were at the
17 meeting came to be summoned there other than yourself?

18 A. No.

19 Q. Okay. How many people attended the meeting?

20 A. A conference room full of people, standing room only.

21 Q. Something like 40, like before?

22 A. Yeah, something like that room you've got back there
23 except a little smaller, completely crowded. Imagine

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1 everybody sitting around a big table and then there's a bunch
2 of people standing up, and there's a bunch of chairs in the
3 back, and it's all heads.

4 Q. Okay. And we talked earlier about how Mr. Rodriguez
5 had worn a couple of different hats at different times. At
6 that time, he was the Chief of the Counterterrorism Center?

7 A. I don't know when he made that difference.

8 Q. I think I can refresh your recollection. Can I direct
9 your attention to page 39 of your book.

10 A. Okay.

11 Q. Bottom paragraph.

12 A. Well, then, that must be correct.

13 Q. Did Special Agent Soufan attend that meeting?

14 A. No.

15 Q. He did not?

16 A. No.

17 Q. Did Special Agent Gaudin attend that meeting?

18 A. I believe he did, but I can't be certain.

19 Q. Okay. Who else from FBI attended that meeting?

20 A. Nobody from -- nobody.

21 Could I speak to the -- to him for -- well, never
22 mind. It's -- it's an irrelevant thing that you haven't asked
23 about that I'm concerned about, but no big deal. Go ahead.

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1 Q. Okay.

2 MJ [Col COHEN]: Yeah, let's wait until we actually get to
3 that matter, sir, and then we'll -- we'll address it.

4 WIT: Okay.

5 LDC [MR. CONNELL]: Okay. The Court's indulgence.

6 Q. All right. Sir, I'm going to attempt to refresh your
7 recollection with AAA-RDI-698, which is a part of the
8 transcript of the deposition in the civil case.

9 A. Sure.

10 Q. And ----

11 A. Is it my deposition?

12 Q. Yes, sir, your deposition.

13 A. Okay.

14 MJ [Col COHEN]: Counsel, we'll give this to counsel and
15 the witness only since it's being given to refresh
16 recollection.

17 LDC [MR. CONNELL]: That's fine. May I have access to the
18 document camera with those constraints?

19 MJ [Col COHEN]: You may.

20 Q. So if you would just read this -- the page that's
21 available here, and then I have a question for you.

22 A. Okay.

23 LDC [MR. CONNELL]: I'm done with the document camera.

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1 MJ [Col COHEN]: Thank you.

2 Q. Does that refresh your recollection in any way about
3 what -- who from FBI was present at the 1 July meeting?

4 A. Yeah, I think I was sloppy with my speech when I said
5 the entire interrogation team minus the ops psychologist. The
6 FBI person that was there that I distinctly remember being
7 there was Steve. The other one, I don't think he was there.

8 Q. Okay. So Gaudin was present, Soufan was not?

9 A. That's my recollection.

10 Q. Okay. That's fine. And the topic of the meeting was
11 the interrogation of Abu Zubaydah, what had happened, what was
12 going to happen?

13 A. What next, basically.

14 Q. What next? Okay.

15 And from what you knew up to that time and the
16 conversation at that meeting, did you believe that the CIA was
17 going to use some kind of coercive pressures?

18 A. Yes.

19 Q. Okay. And am I right that that was whether you were
20 present, not present, whether you had anything to do with it
21 or not?

22 A. I believe so.

23 Q. Okay. And what -- what supported that belief?

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1 What ----

2 A. The conversations that I'd heard from -- you know, the
3 discussions that I'd been within earshot of or had
4 participated in prior to the meeting.

5 Q. Okay. And the phrase "getting rough" is sometimes
6 used in connection with that; is that right?

7 A. Yes, a title chapter to my book.

8 Q. Sure. And the idea of getting rough did not originate
9 with you; is that fair to say?

10 A. No.

11 Q. Okay. Was it brought up at the meeting before you
12 said anything?

13 A. I think what was brought up was the idea that there
14 was this impending attack, that there was a lot of chatter
15 about that everybody was concerned about and the President was
16 concerned about, and Congress was concerned about, and -- and
17 it -- it felt like it was looming and could potentially happen
18 any minute. And that, again, like I said, the President's
19 position, as I recall what I was told, is that they're not
20 going to let al Qaeda set off a nuclear weapon in one of our
21 cities or crash another series of airplanes into a bunch of
22 our buildings and the gloves were off.

23 And, like I said, based on what I had heard before, I

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1 came to believe that they were going to use some form of
2 physical coercion, and my concern was that they were going to
3 make it up on the fly.

4 Q. And so from your time with SERE, you had experience
5 with techniques that were used in that program; is that fair
6 to say? Is that accurate?

7 A. Yes.

8 Q. Did someone ask you, "Dr. Mitchell, do you have any
9 techniques that are -- have been used before that we have some
10 data on?"

11 A. I don't think it -- I don't think it went like that.
12 I thought about this last night because I figured we were
13 going to get into this, and I tried, as best I could, to
14 reconstruct my memory of what happened.

15 [REDACTED]
16 [REDACTED] I believe Steve had gone through
17 SERE training, and I had done a lot with SERE training. And
18 so I think at the original black site, you know, we -- we, the
19 three of us, had a discussion about SERE techniques that may
20 have involved someone else.

21 Now, I have subsequently come to learn that there were
22 independent discussions that were taking place back at
23 headquarters that I was unaware of at the time. So it's

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1 entirely possible that something from those informal
2 discussions that the three of us had somehow made it back to
3 headquarters, right?

4 The other thing -- the other reason I think they asked
5 me about SERE techniques was because of a paper I wrote, you
6 know, Recognizing, Encountering al Qaeda Resistance to
7 Interrogation Techniques, a Training Approach -- a Resistance
8 Training Approach. And in that, I used -- and I've got to be
9 careful here -- I used the information in the Manchester
10 Manual, which was a stolen resistance-to-interrogation manual
11 that a U.S. soldier stole and took to al Qaeda, and some other
12 documents that they won't allow me to talk about, I know, to
13 write this paper about what to expect if they've been
14 resistance trained and what some countermeasures might be that
15 were very much like what you would find in the Army Field
16 Manual, right, so that they would comply with the Geneva
17 Conventions.

18 And so they knew that I had some resistance training
19 background. And the whole point of sending me out there to
20 monitor the resistance training techniques that he was -- the
21 resistance techniques that he was using to evade answering
22 questions from the CIA and FBI was because I had had all this
23 SERE training and all of this SERE experience. So it doesn't

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1 surprise me that someone in that meeting would have asked me
2 what my recommendations would be.

3 Q. Okay. Does the second operational psychologist that
4 you referred to have a UFI?

5 A. Yes. I've given it to you already ----

6 Q. Okay.

7 A. ----- but I'll give it to you again if you'd like.

8 Q. That would be great. Just so we can -- it's not
9 always easy to match up references with the UFI.

10 A. Understood. ZQ5.

11 Q. Thank you. What was the discussion about coercive
12 pressures that had been going on at headquarters that you
13 subsequently learned?

14 A. I don't know the full details of it, but that they --
15 had been conversations back and forth between the Justice
16 Department and -- and from JPRA about the applicability of
17 these and whether or not they would be legal, that sort of
18 stuff, informal stuff.

19 Q. And at the meeting, is it accurate to say that you
20 recommended that the CIA should consider SERE techniques if it
21 intended to use coercive pressure?

22 A. Right. The emphasis there should be on "if it
23 intended." If it intends to use coercive pressure, my

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1 recommendation is that they use SERE techniques because
2 they've been used since the 1950s, have produced no lasting
3 psychological harm or physical harm in their application.
4 There have been minor injuries, occasionally a broken eardrum,
5 sometimes a sprained back. If a slap is done incorrectly, you
6 could get a scratched eye. But in general, they can be
7 applied safely.

8 Q. Perhaps this is obvious, but you were not the decider?

9 A. No. And here's -- just so that you know -- you
10 haven't asked me why I recommended them, I don't think; you
11 just asked me if I did.

12 Q. Oh, yeah, true. I thought you had explained it, but
13 feel free.

14 A. No, I haven't explained it.

15 The problem that we have is with the phenomena that we
16 observed in the resistance-to-interrogation training camp that
17 Bruce and -- Dr. Jessen and I call abusive drift. And that is
18 that when people are left to make up different kinds of
19 coercive pressure, it tends to increase. It tends to escalate
20 over time as they become more comfortable with it, regardless
21 of the students' experience of it, right?

22 And so my concern was that if it -- if they were going
23 to use coercive pressure, then they should use coercive

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1 pressure that was approved, that was medically supervised,
2 that had psychological supervision, and that people who were
3 not involved in the interrogation could stop at any time they
4 wanted to stop it for any reason they wanted to stop it.

5 So I felt like it could be done safely and you reduce
6 the probability of abusive drift if -- and that was my major
7 concern.

8 Q. In -- in the effort to contain abusive drift, what is
9 the significance of an outside, noninvolved observer being
10 able to stop the interrogations?

11 A. Well, you know, what happens in a lot of cases when
12 that abusive drift starts is they begin to dehumanize the
13 detainee -- I'm going to just use detainee, but whoever it is,
14 student, whatever it is -- they start to dehumanize them, and
15 they -- they don't -- let me search for the right words here.
16 They think that they're justified in applying increasing
17 levels of pressure because they're comfortable with it and
18 they're used to it, and it -- you know, it feels like it would
19 be more effective. If a little is good, a lot is better.

20 And so -- am I getting away from your question?
21 Because now I'm lost.

22 Q. You're answering it precisely.

23 A. Oh, okay.

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1 Q. I'm sorry, I ----

2 A. Would you repeat it just so that I can get back on
3 track?

4 Q. I'm sorry?

5 A. Would you repeat your question?

6 Q. Sure. What is the role of the ability to -- for
7 outside, uninvolved observer to stop an interrogation in
8 containing abusive drift?

9 A. Got it. Thank you.

10 The point is, is that that person is not involved.
11 They don't have their hands on them. They're in control; they
12 have the authority to stop it. And -- and in truth, the
13 instructions was that anyone, including the guards, because
14 there were lots of guards -- you have almost as many as we
15 have in the room when we waterboarded people -- you know, that
16 any guard, any physician, any analyst, any interrogator,
17 anybody could just stop it.

18 But the expectation was, if you weren't putting your
19 hands on the person and you weren't engaged in the
20 back-and-forth, the tussle about getting intelligence, then
21 you would be in a better position to say, "Knock that off.
22 You're getting out of control."

23 Q. And we're going to come back to this in detail, but

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1 you, yourself, tried to stop an interrogation by NX2 one time,
2 right?

3 A. I tried to stop several interrogations.

4 Q. By NX2?

5 A. I'd have to look at the thing, I don't ----

6 Q. New Sheriff?

7 A. Yes.

8 Q. You told us about the process -- or perhaps one of the
9 mechanisms involved in abusive drift of -- whereby a person
10 who is administering coercive pressure can dehumanize the
11 person who's receiving that pressure. Can you tell us a
12 little bit more about that?

13 A. Sure. One of the things that they start to do is they
14 start to use euphemisms for the coercive pressure. I didn't
15 come up with the term "enhanced interrogation techniques."
16 The term that I suggested they use was "coercive physical
17 pressure" because it's clearly what it was, right, and
18 coercive SERE techniques. But someone at the agency decided
19 it was enhanced interrogation techniques, and that's what it
20 was.

21 Q. I see.

22 A. And so there's this tendency to use euphemism and then
23 tendency to feel like you're entitled to use increasing levels

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1 of pressure because you're trying to manipulate the person to
2 do what you want them to do.

3 Q. What -- what is the role of euphemism in a
4 dehumanization process?

5 A. It takes the sting out of what you're actually doing.
6 You know, it's -- it's one thing to say we kill grandmothers
7 and grandchildren and babies playing in the yard and another
8 thing to say collateral damage.

9 Q. And what is the mechanism by which that sense of
10 entitlement grows?

11 A. It's the use of power over another person.

12 Q. Did you ever see that mechanism at play with NX2, New
13 Sheriff?

14 A. That wasn't my objection to what he was doing. My
15 objection to what he was doing was they weren't authorized.
16 They weren't judged to be legal. And I didn't think that the
17 agency had approved the specific techniques that he was using,
18 and I thought he was applying them much more intensely than I
19 thought this -- it warranted because, in my view -- well, I
20 have said in my book, so I'll say it here -- in my view, it
21 wasn't necessary with Nashiri at that point.

22 Q. The -- is that an example of the phenomenon that you
23 mentioned, that some people think that if a little bit is

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1 good, a lot must be better?

2 A. It could be interpreted that way.

3 Q. So back to the meeting on 1 July. At that meeting, is
4 it correct that you described some of the SERE techniques in a
5 less formal fashion?

6 A. It is. But I'd like to back up one second since
7 you've got me on this topic, if you don't mind.

8 There were basically two prevailing theories about the
9 use of enhanced interrogation techniques at the agency. And I
10 don't think this was at the senior level, but it certainly was
11 at the middle management level.

12 There was the -- there was the -- you know, the way
13 that Bruce and I -- and Dr. Jessen and I did it, and then
14 there was this other view that what you do is you essentially
15 hurt the person until they tell you what you want to know, and
16 then you hurt them a little bit more. And if they change
17 their story, then they're obviously lying to you, and then you
18 hurt them until their story becomes consistent.

19 And my concern about that kind of thing was that it
20 leads to false information, especially if you're asking
21 leading questions. So I don't know how relevant that is to
22 you, but that was part of my calculus when I interrupted
23 the -- the New Sheriff.

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1 Q. Sure. And sometimes you call that second view the
2 punishment model; is that right? As opposed to the
3 conditioning model?

4 A. Did I call it that?

5 Q. We'll come back to that. That's okay. Maybe it's one
6 of those papers that you wrote that -- that ----

7 A. Oh. Basic -- I think you're saying that EITs are not
8 used to punish detainees.

9 Q. I apologize. I was skipping ahead, and that's never a
10 good idea, so I'll -- my mistake.

11 The -- so coming back to the 1 July meeting, the -- is
12 my understanding correct that at the meeting when you were
13 describing the SERE techniques, you said that some of them
14 have a greater risk of harm if they're misapplied?

15 A. That's true.

16 Q. Okay. And -- and what's that dynamic? How does
17 that -- how does that occur?

18 A. Well, there were SERE techniques that I didn't
19 recommend because when I did a study for the wing commander at
20 the Air Force Survival School, there were actually some
21 injuries that prevented pilots from staying on pilot status
22 for a while, and that usually happened when they were
23 misapplied.

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1 Q. Okay.

2 A. There's also the possibility that -- oh, for example,
3 if walling is done incorrectly, you could inadvertently hit
4 the person's head instead of, you know, controlling it. You
5 could scratch a person's eye, like I said, if you did a slap
6 inappropriately. I mean, I can imagine there would be
7 problems with waterboarding if you did that inappropriately.
8 I don't think I need to describe that.

9 Q. Sure. In your experience of the coercive physical
10 pressures that were used -- some of which were EITs and, as
11 you've told us, some of them were not -- the -- was it
12 generally a training and experience problem, the
13 misapplication? Was it that people didn't know what they were
14 doing? Or was it an abusive drift problem?

15 A. Well, the -- your question implies that I saw people
16 injure detainees ----

17 Q. I didn't imply that. I meant -- okay. I withdraw the
18 question. The -- because I do want to get through this
19 meeting, among other things. My bad -- my poor question.

20 But one more question about the 1 July meeting: At
21 that meeting itself, no one had asked you to participate in
22 applying coercive physical pressure; is that right?

23 A. That's my recollection. I think that happened later.

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1 Q. Okay.

2 A. But there could have been a meeting earlier in June
3 that you're conflating with the 1 July. Whatever documents
4 you have that document those meetings, because there were two
5 meetings kind of back-to-back, close together, those are
6 probably accurate and my memory is probably wrong. The first
7 meeting, I wasn't asked to apply the pressure. After the
8 second meeting, I was.

9 Q. Okay. If I suggested that the two meetings took place
10 on the 1st and the 8th of July, would that sound right to you?

11 A. Yes. But it's also entirely possible that I was in
12 there for an individual meeting with Jose when he asked me if
13 I'd apply the pressure right after the -- the first June
14 meeting. I just don't recall.

15 Q. Okay.

16 MJ [Col COHEN]: Counsel, you have 11 minutes left today.

17 LDC [MR. CONNELL]: Thank you very much.

18 Can I have 2137? RDI-2137.

19 The Court's indulgence, please?

20 [Counsel conferred.]

21 LDC [MR. CONNELL]: Your Honor, I am going to direct the
22 witness' attention to AAA-RDI-2937, which is found in the
23 record at AE 628GGGGG Attachment B. It doesn't actually have

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1 banner markings on it, but I just confirmed with the
2 government that the FOIA markings which are on it are
3 sufficient.

4 MJ [Col COHEN]: Counsel, are we good? Trial counsel is
5 indicating we're good.

6 Publish to the gallery?

7 LDC [MR. CONNELL]: Yes, please.

8 MJ [Col COHEN]: You may do so.

9 Q. So I'm going to show you a document which is almost
10 entirely redacted, but which is entitled "Proposal for an
11 Enhanced Interrogation Strategy in the War on Terrorism." Are
12 you familiar with this document at all?

13 A. I think I might have seen it for preparation for the
14 other case, but this -- but this could be the first time I've
15 seen it because the title surprises me.

16 Q. Okay. Have you ever seen the classified version of
17 this document?

18 A. I don't recall seeing it.

19 Q. Okay. Do you know anything about the circumstances of
20 the preparation of this document?

21 A. I don't believe so.

22 Q. Is it correct to say that you are not the author of
23 this document?

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1 A. Is there another sentence that's not blacked out?

2 Q. Let me see if I can find you one. Hang on just one
3 second.

4 A. Well, you know what, sir? I don't know what you need
5 to do that.

6 My experience with the CIA is that when it comes to
7 me, they don't black out it very much, so the odds are pretty
8 good that it's not my document.

9 Q. Sir, I'm going to show you the one other sentence or
10 half sentence that I have for you, which is AAA-RDI-2941, same
11 AE, and we have the words "currently interrogating a senior
12 al Qaeda terrorist, Abu Zubaydah." Does that help at all?

13 A. Yeah. I didn't write this document. I -- I don't
14 recall seeing that.

15 Q. Okay. Do you know if someone else within the CIA had
16 made a formal proposal for the use of coercive physical
17 pressures before your 1 July 2002 meeting?

18 A. No, I don't know that.

19 Q. Do you have more that you want to say about that?

20 A. Well, the problem is it's speculation, and I don't
21 know that it would be helpful to you.

22 LDC [MR. CONNELL]: Okay. All right. I'm done with the
23 document camera, Your Honor.

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1 Q. So you mentioned just a moment -- it's a new chapter
2 about the request for your personal participation.

3 You said a moment ago that in a -- in a sort of
4 private meeting, Mr. Rodriguez asked you if you would help put
5 together an interrogation program?

6 A. That's -- that characterization I'm afraid is not
7 entirely accurate. When I say "private meeting," there may
8 have been a few more people in the room, but essentially I was
9 walking out of the room after a discussion about enhanced
10 interrogation techniques when he said, "Will you help us with
11 this?" And I said "Sure." Thinking that I was going to do
12 what I had been doing all along, which is monitoring
13 resistance to interrogation techniques.

14 And he said, no, no, no, we want you to do the
15 techniques. And I said -- well, you know, because I thought
16 as a psychologist and, you know, a contractor, that would
17 probably not be the wisest move. And -- but I said I can help
18 you find some SERE instructor or somebody else.

19 And he said, "You don't understand. This is a
20 compartmentalized program. You've sat through all the threat
21 matrix information. You've watched this guy for months."

22 And then some guy leaned over, who I don't recall, and
23 said, "After what you've -- after seeing what you've seen, how

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1 can we ask someone else to do it?" And ----

2 Q. Was ----

3 A. Excuse me. I'm not done with my answer.

4 Q. I'm sorry.

5 A. I just tear up when I think about this, and it slows
6 me down.

7 And I went back to my hotel room and thought about it,
8 and I thought, you know, there -- in my mind, a genuine threat
9 that there was going to be an imminent attack, possibly
10 involving nuclear biological weapons and certainly involving
11 some kind of mass casualty.

12 And I thought my -- after considering both sides of
13 it, I thought my moral obligation to protect American lives
14 outweighed the temporary discomfort of terrorists who had
15 voluntarily taken up war against us and voluntarily chose to
16 try to destroy us and our way of life; and that whatever
17 personal consequences came of that, I would just live with.

18 Q. Sir, you said "terrorists." Aren't we talking about
19 Abu Zubaydah at this point?

20 A. Abu Zubaydah was viewed then as a -- as a -- at least
21 a facilitator for al Qaeda.

22 Q. I know that, sir. That's not my ----

23 A. But I'm talking ----

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1 Q. ---- isn't it -- excuse me.

2 A. Yes. But the -- the point here is that they viewed
3 him as the linchpin for getting into the rest of al Qaeda,
4 which, in fact, he was, right?

5 So in -- in the way that it was presented to me, if we
6 didn't get him talking -- because they knew very little about
7 al Qaeda's organizational structure or about the mentality and
8 the thought processes of those senior leadership, and
9 certainly not much about their communication system or those
10 kinds of things.

11 And to me, it just seemed like it would be dereliction
12 of my moral responsibility as an American who had spent most
13 of his life in the military to put my own personal preferences
14 above protecting American lives. And let me tell you, just
15 so, you know, I'd get up today and do it again.

16 Q. In making that decision, were you contemplating
17 designing a program for multiple detainees or at that time in
18 July of 2000 -- July of 2002, were you talking about coercive
19 physical pressures on Abu Zubaydah?

20 A. My thought was that the use of coercive physical
21 pressures on Abu Zubaydah would provide the puzzle pieces to
22 allow us to capture and kill and disrupt other plots. So I
23 was focused on Abu Zubaydah.

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1 Q. When you suggested the techniques -- when you
2 suggested consideration of the SERE techniques, did you have
3 in mind designing an RDI program or were you thinking about
4 techniques for Abu Zubaydah?

5 A. I think you just asked me that question, and I just
6 answered it. But I'll answer it again.

7 I was thinking about Abu Zubaydah because I viewed him
8 as the linchpin to being able to get inside of the -- the
9 operational cycle of al Qaeda and disrupt these plots and
10 capture and kill other people ----

11 Q. I ----

12 A. ----- you know.

13 Q. I understood that answer, but the -- you've said on
14 multiple occasions that, at that time in July 2002, you
15 weren't designing any programs, you were ----

16 A. I wasn't. I just told you I wasn't.

17 Q. Okay.

18 A. I was designing a program for Abu Zubaydah because I
19 thought, through him, we could get to the others.

20 Q. And -- and when you suggested consideration of SERE
21 techniques, were you -- did you -- contemplating when you got
22 to whoever those others were, that you were going to impose
23 coercive physical pressures on them, too?

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1 A. No. I'm a contractor. I'm paid by the day. I
2 don't -- I thought at some point they would, you know, do
3 something else. I -- you know, my -- my thought at that
4 particular time was get this guy talking, get this guy
5 answering questions, and it -- I wasn't looking forward into
6 the future. I wasn't thinking, oh, I'll do this, I'll do
7 this, and then there will be this -- you know, this -- I'll
8 have a job forever kind of nonsense that people suggest. No.

9 I was thinking about Abu Zubaydah. But the reason I
10 was thinking about Abu Zubaydah was I thought he was the
11 linchpin to stopping this next attack because he was the
12 person we had.

13 Q. Understood, sir. Thank you.

14 A. And it turned out, he was.

15 LDC [MR. CONNELL]: That's an excellent place to stop.

16 MJ [Col COHEN]: Okay. Excellent. All right, we'll be in
17 recess for the evening, sir. I give the same admonishment to
18 every witness so I'll give the same one to you.

19 You are not sequestered during your testimony. You
20 can interact with folks. I just ask that you do not discuss
21 the substance of your testimony with anyone with whom you come
22 in contact.

23 WIT: Can I describe the witness trailer to Dr. Jessen?

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1 MJ [Col COHEN]: Let the prosecution describe the witness
2 trailer to Dr. Jessen.

3 WIT: Okay.

4 LDC [MR. CONNELL]: That will just make it easier. That
5 way I don't end up with a bunch of other questions about what
6 else was discussed.

7 WIT: Got it, sir.

8 MJ [Col COHEN]: All right. We're in recess for the
9 evening. Tomorrow morning at 0-9.

10 [The R.M.C. 803 session recessed at 1730, 21 January 2020.]

11 [END OF PAGE]

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