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1 [The R.M.C. 803 session was called to order at 0901,
2 22 January 2020.]

3 MJ [Col COHEN]: The commission is called to order.

4 Let's go ahead and briefly account for who is here
5 this morning. I -- it looks like four out of the five accused
6 are here. Mr. Ali is absent. We'll take that up momentarily.

7 General Martins, would you like to speak on behalf of
8 the prosecution?

9 CP [BG MARTINS]: Good morning, Your Honor.

10 MJ [Col COHEN]: Good morning.

11 CP [BG MARTINS]: All counsel representing the
12 United States remain the same, and Mr. Swann has returned.

13 MJ [Col COHEN]: Excellent.

14 CP [BG MARTINS]: Your Honor, I can also report that the
15 CCTV sites, including the one in the Pentagon, are -- have
16 reported to be functioning this morning and have also inquired
17 as to CCTV capability on Saturday should the commission wish
18 to go there.

19 MJ [Col COHEN]: Okay.

20 CP [BG MARTINS]: And that -- that that is not a problem,
21 except that the Pentagon site will not be open because it just
22 won't be open on Saturdays at any point.

23 MJ [Col COHEN]: Great. Thank you, sir.

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1 CP [BG MARTINS]: But the other ones are okay.

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

3 Yeah, based on the informal -- and the intent was to
4 do informal inquiry last night. We won't do a Saturday
5 session based on those informal responses last night. Thank
6 you. It made it very easy just to send out a quick e-mail and
7 say are there any -- if there wasn't unanimity, I wasn't
8 interested. But I didn't want to like ignore the opportunity
9 because it would require some -- some pretty advanced
10 inquiries with CCTV. So we'll stick with the Monday through
11 Friday schedule, 0900 to 1730 each day.

12 General Martins, thank you again for making that
13 inquiry. I appreciate it. All right.

14 Mr. Sowards, if you would like to account for your
15 folks this morning.

16 LDC [MR. SOWARDS]: Good morning.

17 MJ [Col COHEN]: Good morning.

18 LDC [MR. SOWARDS]: Mr. Mohammad is here, and counsel
19 remain the same.

20 MJ [Col COHEN]: Thank you very much.

21 Ms. Bormann, good morning.

22 LDC [MS. BORMANN]: Good morning. Counsel do not remain
23 the same. Mr. Montross has joined us today.

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1 MJ [Col COHEN]: Oh, excellent. Glad to see you here,
2 Mr. Montross. Hope you're feeling well. All right.

3 Mr. Harrington.

4 LDC [MR. HARRINGTON]: Judge, Lieutenant Lawrence and I
5 are both here but Major Bare is out for now. She'll be
6 joining us later in the morning.

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

8 Mr. Connell?

9 LDC [MR. CONNELL]: Good morning, Your Honor.

10 MJ [Col COHEN]: Good morning.

11 LDC [MR. CONNELL]: Counsel remain the same.

12 Mr. al Baluchi is not present.

13 MJ [Col COHEN]: Copy.

14 Mr. Ruiz?

15 LDC [MR. RUIZ]: Judge, counsel are the same.

16 MJ [Col COHEN]: Excellent. Thank you very much.

17 All right. Is there a witness with respect to

18 Mr. Ali's absence?

19 CP [BG MARTINS]: There is, Your Honor.

20 MJ [Col COHEN]: Thank you. If the witness will please
21 come forward.

22 CP [BG MARTINS]: Major, please proceed to the witness
23 stand, remain standing, and raise your right hand for the

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1 oath.

2 MAJOR, U.S. ARMY, was called as a witness for the prosecution,
3 was sworn, and testified as follows:

4 **DIRECT EXAMINATION**

5 Questions by the Chief Prosecutor [BG MARTINS]:

6 Q. You are a United States Army Major ----

7 A. Yes, sir.

8 Q. ---- is that correct?

9 And you are an assistant staff judge advocate?

10 A. Yes, sir.

11 **DIRECT EXAMINATION**

12 Questions by the Trial Counsel [MR. SWANN]:

13 Q. Major, do you have what's been marked as Appellate
14 Exhibit 700 consisting of three pages?

15 A. Yes, sir.

16 Q. Did you advise Mr. Ali of his right to attend today's
17 proceeding?

18 A. I did, sir.

19 Q. Did you use the Arabic or the English version of the
20 form?

21 A. English, as his preference was.

22 Q. Did you read the English version to him?

23 A. Yes, sir.

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1 Q. Now, I see a signature that appears on page 2 of this
2 document. Is that his signature?

3 A. Yes, sir.

4 Q. And do you believe that he voluntarily understood that
5 he could attend -- or voluntarily understood that he could
6 attend today's proceedings if he wished to?

7 A. Yes, sir.

8 Q. And did he indicate that he did not wish to attend
9 today's proceeding?

10 A. Yes, sir.

11 MJ [Col COHEN]: Thank you, sir. Major, if I could have
12 that document. Thank you.

13 Mr. Connell, I -- standing objection is still noted
14 with respect to the identity of the witness. Have you had the
15 opportunity to review Appellate Exhibit 700 (AAA), is how it's
16 marked in front of me, and do you have any questions of the
17 witness?

18 LDC [MR. CONNELL]: I have had the opportunity to review
19 it. I have no questions.

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

21 Major, thank you very much for your testimony.

22 WIT: Thank you, sir.

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

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1 MJ [Col COHEN]: The commission finds that Mr. Ali, also
2 referred to as Mr. al Baluchi, has knowingly and voluntarily
3 waived his right to be present at today's session. If he
4 changes his mind and wishes to attend the afternoon portion,
5 he may do so.

6 Mr. Connell, are you ready to proceed?

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

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

9 **[The witness, James E. Mitchell, resumed the witness stand.]**

10 MJ [Col COHEN]: Good morning, sir. Go ahead and have
11 your seat again. We're going to continue with your testimony
12 this morning. The key has been placed again in front of you
13 there for your reference as you need it and as just a simple
14 reminder that you're still under oath.

15 WIT: Could I make one suggestion to the court?

16 MJ [Col COHEN]: Yes, sir.

17 WIT: That is that there is a list of people who have been
18 declassified. That list is not obvious to me. If it was
19 possible at some point in the future, either for me or for
20 future witnesses, to have that list of people available, there
21 wouldn't be as much hesitation about me trying to remember
22 whether or not that person's involvement with the program was
23 still classified.

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1 MJ [Col COHEN]: Yes, sir. Let me see. I might be able
2 to help you out there.

3 Counsel, is there any objection to me letting the
4 witness see page 8 of 658F?

5 LDC [MR. CONNELL]: No, sir. I have a hard copy, if you
6 want.

7 MJ [Col COHEN]: Counsel?

8 TC [MR. GROHARING]: No objection -- no objection, Your
9 Honor.

10 MJ [Col COHEN]: Great. Any from any of the other
11 parties? It is the list of the unclassified persons. You
12 may. Mr. Sowards, go ahead and take a look real quick.

13 LDC [MR. SOWARDS]: It is page ----

14 MJ [Col COHEN]: It's page 8 of 658F, sir.

15 LDC [MR. SOWARDS]: Of the third revision?

16 MJ [Col COHEN]: Yes, the last one. It's in paragraph --
17 it would be paragraph 13(iii).

18 LDC [MR. CONNELL]: And sir, just to be squeaky clean on
19 the record, it's actually the third corrected, the 21 January.

20 MJ [Col COHEN]: Third corrected, yes, that's correct.

21 LDC [MR. SOWARDS]: The 21 January 2020?

22 MJ [Col COHEN]: Yes.

23 LDC [MR. SOWARDS]: No objection, Your Honor. Thank you.

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1 MJ [Col COHEN]: Great. Excellent. Then, Counsel, if
2 you'd like to hand that to the witness, he can keep that up
3 there with him along with the key.

4 WIT: Thank you, sir.

5 MJ [Col COHEN]: Absolutely, sir. That was a fair
6 request. We'll make sure that throughout your testimony,
7 we'll maintain that up there along with the other -- the other
8 key.

9 WIT: Thank you.

10 MJ [Col COHEN]: You're welcome. Take a moment to review
11 it.

12 WIT: I've glanced over it.

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

14 Counsel, your witness.

15 LDC [MR. CONNELL]: Thank you.

16 **DIRECT EXAMINATION CONTINUED**

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

18 Q. Good morning, Dr. Mitchell.

19 A. You know, you asked me a question yesterday that I --
20 I don't feel like I was able to provide you with an adequate
21 answer for.

22 Q. Yes, sir.

23 A. And if you don't mind, or if you'd prefer not, I'll

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1 just go on.

2 But you asked me if it would surprise me if the
3 documents that you had suggested I'd only been with your
4 client two days, and it did surprise me.

5 Now, assuming that's not a lawyer trick to just see my
6 reaction, okay, then I thought about why might that be the
7 case, and ----

8 Q. I am interested in the answer, so please continue.

9 A. The routine things that happened at the site like the
10 "How's it going" visits and "Do you want a book" or -- you
11 know, those things aren't recorded and they don't ordinarily
12 show up. And so, for example, the fireside chat visits
13 wouldn't be broke out of the -- the debriefing visits or the
14 interrogation sessions unless something extraordinary happened
15 in those.

16 So my guess would be, and it's a guess, that whoever
17 was writing the cables for that day didn't see any reason to
18 say that I had stopped by to see how his headache was or if he
19 wanted a book or whatever it was, have a chat with the guy.
20 That would be my -- that's my reasoning.

21 Q. That makes sense. So what you're saying is
22 maintenance visits, for example, were not separately recorded
23 in a logbook or anything like that?

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1 A. I don't recall that happening because they were just
2 routine. And if something came out of it, like the person
3 actually wanted to -- it was something more than how's it
4 going, what are you thinking about -- because, you know, we
5 frequently talked about whatever they wanted to talk about.

6 If something that was of intel value came out of it,
7 then the intel analysts who were observing would say
8 something, and we would arrange for them to come in and
9 actually do an interview. Otherwise, it's just a maintenance
10 visit, like the guard moving him from one place to the other.

11 Q. And does that same reasoning apply to the fireside
12 chats which really were part of, you know, were part of an
13 overall interrogation?

14 A. They wouldn't be broken out. They wouldn't say he was
15 transitioned to the fireside chat. That just doesn't happen.
16 And my guess is, you know, as we talk about this later on,
17 you're probably going to ask about bridging questions or
18 somebody is going to ask about bridging questions. Those
19 wouldn't be broken out either.

20 Q. I see. Okay. Thank you very much for your fulsome
21 answer.

22 So in soul searching last night, I realized to get
23 anything close to three days, I have to cut a lot of material,

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1 so if you find that I skip around a little bit, I apologize.
2 I want to move forward to -- for the last Abu Zubaydah chapter
3 that we're going to talk about today which will be the CIA's
4 reaction when you tried to stop waterboarding Abu Zubaydah.
5 Do you understand?

6 A. Understood.

7 Q. Okay. So in late July or early August 2002, you were
8 at Location 3; is that right?

9 A. Yes.

10 Q. And you were advised that the Office of Legal Counsel
11 had approved a set of enhanced interrogation techniques; is
12 that correct?

13 A. Yes.

14 Q. And you were directed by your supervisor to implement
15 the enhanced interrogation strategy which headquarters had
16 devised and approved?

17 A. That's correct.

18 Q. Okay. I'd like to turn your attention to RDI-132,
19 which is found in the record at AE 628GGGGG Attachment B. And
20 let me just get the second page of it too, please. Thank you.
21 This is a ----

22 LDC [MR. CONNELL]: I'll show you, Judge, an
23 UNCLASSIFIED//FOR PUBLIC RELEASE document. May I have

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1 access ----

2 MJ [Col COHEN]: You may.

3 LDC [MR. CONNELL]: ---- to the document camera and
4 display to the gallery?

5 MJ [Col COHEN]: Before you hit the gallery, just let me
6 pull it up on the screen and I'll just verify the
7 classification. We're good to go. You may publish to the
8 gallery.

9 LDC [MR. CONNELL]: Yes. I've been asked to say the RDI
10 page again, and it is AAA-RDI-132.

11 MJ [Col COHEN]: Thank you.

12 LDC [MR. CONNELL]: Okay.

13 Q. Let me just zoom out a little bit. Now, you explained
14 to us yesterday that you had relatively limited contact with
15 or input into cables from base to headquarters during the
16 pre-July phase of Abu Zubaydah's interrogation. Did that
17 remain true after August or did you have greater input into
18 the cables?

19 A. The -- the content of the cable was them describing
20 what -- what we did to -- to whatever level they chose to
21 describe it. So I didn't write these cables. There would be
22 a hot wash afterwards of which they would talk about what they
23 were going to put in the cables.

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1 I don't -- you know, I mean, certainly the content
2 would have come up, but I don't know how much control I had
3 over it because their job was to accurately reflect what we
4 did, you know.

5 Q. Sure.

6 A. Although, as I will mention to you later on, there was
7 a little bit of a focusing on drama in order to get
8 headquarters' attention. But yes, they -- somebody else wrote
9 these cables.

10 Q. Got it. The ----

11 A. And I didn't review them before they were released.

12 Q. Okay.

13 A. They didn't give them to me for me to look at ----

14 Q. Sure.

15 A. ----- and correct.

16 Q. Okay. So this document was released in relationship
17 to the civil case. It has -- it's dated August but not a
18 specific date, but it tells us that it -- that it's related to
19 7 August 2002. Do you see that in the subject line?

20 A. I do.

21 Q. Yeah, great. Here is my question that I would like to
22 talk to you about. Ah. Okay.

23 That was page 1 of the document. I'm going to show

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1 you pages 2 and 3 of the document, which are RDI-133 and 134.
2 I'll direct your attention down to paragraph 4, "The
3 interrogators returned to the cell at 1157 hours and noted
4 that the subject's distress level increased the moment the
5 team entered the cell, a sign that the conditioning strategy
6 was working." Do you see that?

7 A. Yes.

8 Q. Okay. Can you -- can you explain to us what the
9 conditioning strategy was?

10 A. Sure. It will require a little background
11 information.

12 Q. Yes, sir. I figure we're going to be referring to it
13 a lot. I want you to explain the background and -- and
14 whatever you feel is important about it and then we can refer
15 back to that later.

16 A. Okay. Well, it was a two-part process that Dr. Jessen
17 and I used. We used classical conditioning to increase the
18 person's distress, and then we used operant conditioning to
19 decrease that distress when they began to work with us.

20 And then after the conditioning process was over,
21 it -- much like a person who's afraid to go to the dentist, it
22 didn't stop them from voluntarily lying to us or being
23 deceptive or something, but it made them appear nervous when

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1 they attempted to do that so it was easier to tell that they
2 were trying to hide something.

3 Q. And in the -- when you say appear nervous, also -- you
4 mean also that would be a reflection of the internal anxiety
5 that they would feel?

6 A. Assuming that they hadn't been trained to resist
7 interrogation as Zubaydah had, yes.

8 Q. Okay. The cable that I just showed you refers to
9 the -- which I'll show you again -- the fourth day of
10 aggressive interrogation phase on 7 August 2002. You see
11 that?

12 A. Yes.

13 Q. Okay. And how long did it take before headquarters
14 started sending additional intelligence requirements to be
15 sprinkled into the questioning?

16 A. It was days, not weeks, because we started asking for
17 them right away. And we had an intel analyst there, a subject
18 matter expert -- in fact, we had the subject matter expert on
19 Abu Zubaydah there, the -- the targeter who had tracked him
20 and was -- was primarily responsible for his capture.

21 Q. And she's on the list, [REDACTED]

22 A. Say again?

23 Q. She's on your list there, [REDACTED]

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1 A. Let me double check.

2 [Counsel conferred.]

3 MJ [Col COHEN]: Sir, they're just conferring about
4 classification.

5 LDC [MR. CONNELL]: They tell me she's not on the list.

6 Your Honor, counsel has asked me for a few minutes.

7 [Counsel conferred.]

8 MJ [Col COHEN]: Counsel, where are we?

9 TC [MR. GROHARING]: Judge, we objected to the question
10 and would like some time to consider it further to discuss a
11 possible way to ----

12 MJ [Col COHEN]: Okay. I'll just leave it at that for
13 now.

14 TC [MR. GROHARING]: ---- let the witness answer. And we
15 can come back to it.

16 MJ [Col COHEN]: I'll leave it at that since I don't know
17 where we're at. So we're in a Glomar situation; and if the
18 name is -- is critical, it sounds like there -- more
19 discussion needs to be had.

20 LDC [MR. CONNELL]: Your Honor, I just wanted it to be on
21 the record that the government objected ----

22 MJ [Col COHEN]: Yes.

23 LDC [MR. CONNELL]: ---- the -- I agreed to the plan of

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1 letting -- giving them time to consult.

2 MJ [Col COHEN]: Okay. Excellent. Then let's just move
3 on at this point. If the name -- like I said, we'll be here
4 at least all of the day. If it comes up and that name is
5 necessary, then we'll see if something can be worked out. If
6 not, then ----

7 LDC [MR. CONNELL]: Sure.

8 MJ [Col COHEN]: ---- we'll work that ----

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

10 MJ [Col COHEN]: All right. So we're at that point where,
11 regardless of the name ----

12 LDC [MR. CONNELL]: Right. I'm moving on to the next
13 topic.

14 MJ [Col COHEN]: All right.

15 **DIRECT EXAMINATION CONTINUED**

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

17 Q. And within a few days, Abu Zubaydah started providing
18 fuller and more complete answers as a result of the
19 conditioning strategy; is that right?

20 A. About the things other than what we were initially
21 asking him. I can explain if you like.

22 Q. No, I know what you mean. Please explain.

23 A. Okay. Abu Zubaydah -- there was a piece of technical

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1 intelligence that I can't describe but I can tell you the
2 content of. When Abu Zubaydah sent Jose Padilla to KSM, [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED] he was sending Abu Americali to KSM to
6 join the others on the ground in the United States and that he
7 was already on the ground in the United States, and that he
8 was hot to do a dirty bomb but he didn't think he was capable
9 of doing it -- Zubaydah didn't think he was capable of doing
10 it -- but KSM would use him for another operation.

11 That led the CIA to believe he knew more about
12 operations inside the United States than that exchange. And
13 so in an effort to, A, stop the dirty bomb if there was going
14 to be one, and to round up the other people he already had on
15 the ground in the United States, and to find out more about
16 any potential plots, headquarters was very interested in
17 keeping the pressure up and staying focused on information to
18 stop operations inside the United States.

19 I need to say one other thing to put this in context,
20 to hopefully make sense about it. The -- please bear with me.

21 Q. Yes, sir.

22 A. The key difference between a law enforcement
23 investigation and an intelligence investigation has to do with

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1 what the investigators are trying to do. In a law enforcement
2 investigation, you're trying to put together a timeline for
3 the 24 hours of the perp and a timeline for the 24 hours of
4 the victim and you're trying to figure out where they crossed.

5 General Hayden has described the task of gathering an
6 actionable intelligence to stop an operation like putting
7 together a puzzle that has thousands of pieces without ever
8 being able to look at the picture on the front of the box. So
9 it's a very different task, and it's primarily driven by intel
10 requirements.

11 So there were other intel requirements that would help
12 them put together pieces of that puzzle outside of operations
13 that would happen in the United States to help them capture
14 people that they were interested in gathering, that the
15 analysts and the targeters were interested in gathering. But
16 headquarters was very concerned about this notion of other
17 people in the United States prepared to do operations, and so
18 their focus was on getting that information first.

19 Q. And ----

20 A. Oh, I have one other comment.

21 Q. Yes, sir.

22 A. What they did in those first few days was allow us to
23 focus part time on information that the analysts wanted to

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1 target operations outside of the United States with our allies
2 in other places, and they required that we part time focus on
3 operations inside the United States. Although for the most
4 part, Dr. Jessen and I, and even, I think, the analysts there,
5 thought that he didn't know that much about it.

6 Q. And just so the record is clear, did -- didn't -- did
7 not know that much about it ----

8 A. Yes.

9 Q. ---- is what you just said?

10 A. Yeah. My southern accent probably threw that off.

11 Q. That's all right.

12 The -- and just to circle back to the original
13 question, on topics other than operatives on the ground in the
14 United States, he started to provide fuller and more complete
15 answers?

16 A. Correct. He started identifying people from
17 photographs. He started providing means that people
18 communicated. He started doing other things.

19 Q. And he started provided context to his answers as
20 opposed to simply answering yes or no or very short answers;
21 is that right?

22 A. It evolved, but he initiated that.

23 Q. So because you and Dr. Jessen and others thought that

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1 Abu Zubaydah didn't actually know that much about operatives
2 in the United States, there came a point where you and
3 Dr. Jessen said look, we're just not going to waterboard him
4 anymore; is that right?

5 A. Well, I don't know that we phrased it like that, but
6 essentially we said we don't want to do this anymore. We're
7 not going to do this anymore. If you continue to ask us to do
8 this, we're going to leave.

9 Q. Okay. And the first -- so we're going to go through
10 the efforts that you made to put that view or resolution into
11 effect, okay?

12 So first, you talked to the chief of base; is that
13 right?

14 A. Well, the chief of base had the same position that I
15 had. So, you know, the way these things work, as I told you
16 before, is there's a meeting before and a meeting afterwards,
17 and it was -- it was pretty clear from what the targeters and
18 intel analysts were saying that they thought they could get
19 more useful information out of him if we focused on the stuff
20 that he -- that he ----

21 Q. He actually knew?

22 A. Yeah. Well, I was going to try to be more clever,
23 but, yes.

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1 Q. Okay. And did you -- did the chief of base have a
2 UFI?

3 A. Let me look.

4 Q. Sure.

5 A. Either I don't know his true name or he does not have
6 a UFI.

7 Q. Okay. And did you -- so above a chief of base is --
8 in the CIA hierarchy, is the chief of station, right?

9 A. That's correct.

10 Q. And did you ask the chief of base to convey, you know,
11 sort of the consensus of you and the analysts and the targeter
12 and everybody else to the chief of station?

13 A. Well, we did more than that.

14 Q. I know. I'm just sort of taking them in piece --
15 we're going to go through all the different things that you
16 said, but please feel free to explain.

17 [The security classification button was pushed in the
18 courtroom which caused the video feed to terminate at 0929,
19 22 January 2020.]

20 [END OF PAGE]

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1 [The Military Commission resumed at 0935, 22 January 2020.]

2 MJ [Col COHEN]: Trial Counsel, when you have a moment
3 during the lunch break, if this issue doesn't come up again, I
4 would like to chat momentarily about ex parte because I'm sure
5 there's -- there's -- there's something going on here. But I
6 need to have a quick discussion about page 35 of the 680F real
7 quick. And I suspect that that classification is related to
8 some kind of -- to a declaration I may have seen in the past,
9 but I want to have a quick ex parte on that one, all right?

10 LDC [MR. CONNELL]: Yes, sir. And I think your page 35,
11 that you're referring to the court reporter markings?

12 MJ [Col COHEN]: You are probably correct.

13 LDC [MR. CONNELL]: Okay.

14 MJ [Col COHEN]: That's the thirty-fifth page of 680F
15 [sic].

16 LDC [MR. CONNELL]: Right. So if I could direct your
17 attention I think to that same page, the page number that --
18 the indigenous page number, if you will, that appears on it is
19 33.

20 MJ [Col COHEN]: See, he's tracking that too. My copy is
21 different, so I'll figure out why my copy is different from
22 your copy.

23 LDC [MR. CONNELL]: It's the chart.

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1 MJ [Col COHEN]: It's the chart.

2 LDC [MR. CONNELL]: Yes.

3 MJ [Col COHEN]: I need to have an ex parte about the
4 classified portions of that chart.

5 LDC [MR. CONNELL]: Yes, sir. And I also have something
6 else to say right now about that chart.

7 CDC [MR. NEVIN]: And could I just clarify, you intended
8 to say 658F?

9 MJ [Col COHEN]: 658, yes, I did. Thank you.

10 CDC [MR. NEVIN]: All right. Thank you.

11 MJ [Col COHEN]: Appreciate it. Thank you.

12 LDC [MR. CONNELL]: Sir, if you wouldn't mind opening to
13 that chart. I've discussed with the government an
14 unclassified way that I can explain what the issue is.

15 MJ [Col COHEN]: Perfect. Let me get to it again. I am
16 there.

17 LDC [MR. CONNELL]: All right. So, sir, the question that
18 I just asked involved a positional title and a UFI, two
19 elements. And if you look at the fifth box down in the chart.

20 MJ [Col COHEN]: Yes, I'm there.

21 LDC [MR. CONNELL]: My understanding of this compilation
22 chart is that three elements are required to bring it into
23 classified status, and my question involved only two elements.

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1 MJ [Col COHEN]: I agree.

2 LDC [MR. CONNELL]: And so that's ----

3 MJ [Col COHEN]: I don't agree with that, but I agree
4 with -- with the fact that there are three elements listed
5 there.

6 LDC [MR. CONNELL]: Yes, sir. And so I just wanted to
7 frame the issue for you now, and the government can tell you
8 their position.

9 MJ [Col COHEN]: All right.

10 Trial Counsel?

11 TC [MR. GROHARING]: Judge -- and we can take this more
12 up -- I don't know if this is the particular issue you want to
13 discuss ex parte.

14 MJ [Col COHEN]: That was it. It's the only one in that
15 section that really required probably an ex parte discussion.

16 TC [MR. GROHARING]: What I would suggest is we do that
17 first. We do object at this point to discussion in a -- or
18 disclosure in a closed session -- or an open session of that
19 information.

20 MJ [Col COHEN]: Copy.

21 TC [MR. GROHARING]: And we can discuss more in the
22 ex parte.

23 MJ [Col COHEN]: Okay. Yeah, I need -- I want to make

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1 sure I understand the rationale or see the declaration --
2 remind me where the declaration is that I can look at with
3 respect to that -- that decision.

4 LDC [MR. CONNELL]: Our -- our long-running position in
5 the case is that we don't object to ex parte conversations
6 when properly noticed and approved by the military commission,
7 as you just did, with the exception of when a -- there's an
8 adversarial issue that arises with respect to a certain issue.
9 And ----

10 MJ [Col COHEN]: Right.

11 LDC [MR. CONNELL]: ---- in this situation, it seems, I
12 suggest, improper to have an ex parte hearing on the issue of
13 that -- that is joined adversarially here in open court. Now,
14 there might be some other aspects that an ex parte hearing
15 would be -- or would be proper on, but to allow the government
16 to argue their objection ex parte and for us not to be able to
17 be represented does not seem consistent with an adversarial
18 process.

19 MJ [Col COHEN]: Yeah. No, it's different from that.
20 It's the issue of, specifically in 505, it talks about during
21 the testimony of a witness ----

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

23 MJ [Col COHEN]: ---- if there's an ex parte portion to

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1 that, in other words, the -- the rationale behind the
2 assertion and not whether or not you get the information; I
3 agree, that's -- we can argue about whether or not you get it
4 in an adversarial setting. What I'm just really looking for
5 is, is remind of me of what declaration I can look at to make
6 sure that this -- that this assertion, I agree, is reasonable.

7 LDC [MR. CONNELL]: I understand, sir.

8 MJ [Col COHEN]: That's really all I'm looking for, and
9 that's specifically covered in 505.

10 LDC [MR. CONNELL]: Yes, sir. I agree. I agree with
11 that. It was only the comment that we can take up the --
12 my -- when I explained my position, the government made a
13 comment, we can take up their position on -- in response to my
14 position ex parte, and I think that would be improper.

15 MJ [Col COHEN]: Yes. Yeah. Like I said, to the extent
16 that I would require the disclosure of the declaration, we'll
17 get there, but, yeah, that's all my intent is. I just need to
18 figure out where I look to to get the -- that the -- that the
19 OCA has given me the proper information to agree that it is a
20 reasonable assertion of the -- of the classification under --
21 under the circumstances.

22 LDC [MR. CONNELL]: Right. And in this particular
23 situation, I think the adversarial part of it is, given --

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1 assuming that there's a proper invocation of classified
2 information privilege with respect to that chart, which is
3 something I'm not permitted to be involved in, this situation
4 does not seem to fall within the chart.

5 MJ [Co] COHEN]: I agree. So ----

6 LDC [MR. CONNELL]: But I will be ----

7 MJ [Co] COHEN]: ---- I guess the question is, is ----

8 LDC [MR. CONNELL]: ---- clear about one thing. I don't
9 object to the government having more time to consult the OCA
10 and work out their part of it so ----

11 MJ [Co] COHEN]: Okay.

12 LDC [MR. CONNELL]: ---- I don't object to that.

13 MJ [Co] COHEN]: All right. The other thing is, is in --
14 just because it may require -- yes, on its face, there are
15 three elements to that. The real question I have is, is can
16 we discuss -- can we have a formal argument beyond that of --
17 it didn't appear that you did, but if there are reasons why
18 they think you did, can we discuss that in an open session
19 here in court right now or is this something that I have to do
20 in a closed session?

21 Because I can't repeat necessarily what you said
22 again, because there's a reason why I hit the button, so
23 that's what I'm trying to figure out is what can we do on this

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1 issue? Is this something we can -- to what extent can we
2 discuss this here right now?

3 TC [MR. GROHARING]: Judge, I would suggest we not discuss
4 it right now; we have some time to have additional discussions
5 with the OCA ----

6 MJ [Col COHEN]: Okay.

7 TC [MR. GROHARING]: ---- and also to point you to the --
8 the particular paragraphs of the declaration that -- that
9 supports the OCA's position.

10 MJ [Col COHEN]: Okay.

11 TC [MR. GROHARING]: That will better inform both you and
12 the government, frankly, for the later discussion that may
13 take place on whether or not this information should be
14 classified.

15 MJ [Col COHEN]: Okay. So is the government's position --
16 just generally or you need to verify this -- that that -- that
17 the manner in which that chart is written for that particular
18 type of information may be incorrect; that it's not three
19 elements, that it's less than three elements?

20 TC [MR. GROHARING]: Or perhaps not as clear as it could
21 be with -- in this particular scenario, when you have a ----

22 MJ [Col COHEN]: Okay.

23 TC [MR. GROHARING]: ---- position that is mentioned and

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1 then whether or not ----

2 MJ [Col COHEN]: Right. Okay. All right.

3 Counsel, I'm not ruling against you. I guess my
4 question for you is, is -- I can take a break and we can take
5 this up and that's not a threat in any way. I'm just asking
6 you is, how important is this particular issue to you at this
7 point in time? Do you want me to do that? Because if you do,
8 I will.

9 If you're telling me that -- that it's something you'd
10 like to know but you don't have to have it right this second,
11 I can say, okay, we'll table that, and -- and I'll allow you
12 to move on. But I'm going to make -- the choice is yours.
13 You tell me what you want to do.

14 LDC [MR. CONNELL]: Sir, the information is quite
15 important. But I can also move on for now, and we can take it
16 up in due course after the government has the opportunity
17 to ----

18 MJ [Col COHEN]: Okay.

19 LDC [MR. CONNELL]: ---- consult the OCA.

20 MJ [Col COHEN]: Then if that's what you want me to do,
21 then that's what we will do.

22 LDC [MR. CONNELL]: Yes, sir, that's what I want.

23 MJ [Col COHEN]: All right. I'll let you move on then and

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1 we'll table this issue, and we'll -- I'll take some time.
2 And, like I said, and during the lunch break, I'll have that
3 brief ex parte solely for the purpose of getting whatever that
4 declaration is.

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

6 MJ [Col COHEN]: All right. There's been a lot of
7 declarations, so I'm not going to pretend that I remember the
8 particulars.

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

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

11 LDC [MR. CONNELL]: And I'm of no use on that topic.

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

13 Mr. Sowards.

14 LDC [MR. SOWARDS]: Thank you, Your Honor. If it's
15 convenient for me just to mention for the record what I
16 believe ultimately became AE 690T, which was our motion
17 responding to the Friday version of the guidance, this
18 particular issue was one of the explicit grounds we raised.
19 So I just ----

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

21 LDC [MR. SOWARDS]: ---- I know you're aware, but I just
22 wanted the record to ----

23 MJ [Col COHEN]: Thank you, sir. I appreciate it.

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

2 MJ [Col COHEN]: All right. Counsel, please continue.

3 LDC [MR. CONNELL]: Thank you.

4 MJ [Col COHEN]: Pick up where you would normally pick up,
5 except tabling that question.

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

7 **DIRECT EXAMINATION CONTINUED**

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

9 Q. So either through chief of base or yourself, did you
10 learn what the initial position of the chief of station was on
11 continuing the waterboarding?

12 A. Well, this black site was in kind of an unusual
13 position. [REDACTED]

14 [REDACTED]
15 [REDACTED] And although
16 on paper you had the -- have the permission of [REDACTED]

17 [REDACTED]
18 [REDACTED]

19 So I think that he was -- I think that he was neutral
20 about it. You know, he was interested in getting the
21 information, he was interested in supporting headquarters, and
22 he was interested in supporting the black site. But he didn't
23 have a particular position because, you know, the seventh

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1 floor, which is the senior people at the -- at the
2 CIA Headquarters, were very interested in this notion that KSM
3 had people on the ground and that -- in the United States and
4 that -- which he did, and that there were folks that
5 Abu Zubaydah knew about. And they did not want to move off
6 that topic, and he did not want to appear to be abandoning
7 them. So he struck me as a neutral player.

8 Q. Okay. And after learning that initial position, did
9 you ask the chief of station to actually come and see the
10 process?

11 A. Yeah. We -- initially what we did is we sent a -- we
12 sent -- actually, it was probably via phone. We had a lot of
13 phone contact with headquarters saying we want to stop this,
14 we want to stop this. And we got some disappointing responses
15 back.

16 Q. What do you mean?

17 A. Well, they told us that we were -- can I use the
18 language they used?

19 MJ [Col COHEN]: You may.

20 A. They said that we were pussies, that we had lost our
21 spine, that there was going to be another catastrophic attack
22 on the United States at any time; and that it would be our
23 fault, that we would have the blood of dead Americans on our

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1 hands.

2 Q. And they also told you you were just contractors and
3 you could be replaced with somebody else, right?

4 A. Right. The implication was that if we weren't willing
5 to carry their water, that they would send someone else who
6 would do it and that it -- and that they may be harsher than
7 we were.

8 Q. Okay.

9 A. Now, that's not CIA Headquarters doing that. This is
10 the middle management. You know, the -- my experience with
11 the senior leadership at the CIA is that they weren't really
12 interested in some of the more extreme -- they wanted the
13 information, but they wanted the information however they
14 could get it.

15 If the question-and-answer version of the FBI's
16 approach had worked, they would have still been using the FBI.
17 They were wanting to stop that next operation that KSM had in
18 play with Hambali. They wanted to stop it. And so they were
19 being told by their middle management that it was necessary to
20 keep the pressure up and to increase the pressure, and so they
21 were trying to be, I think, honest arbitrators of that.

22 Q. The people who were on the phone that you were talking
23 to and that were calling you names and -- and calling your

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1 loyalty and -- and patriotism and willingness to do what was
2 necessary into question, did any of those people have UFIs?

3 A. One of them did.

4 Q. All right. And what was that UFI?

5 A. W87.

6 Q. Thank you, sir. And the -- the other middle
7 management that you were dealing with did not have UFIs, as
8 best you know, as best you can tell from that list?

9 A. Well, what we got was not the author of the message,
10 but the message.

11 Q. I see. Okay.

12 A. I was later able to piece together who the most
13 skeptical person was.

14 Q. Understood. Okay. So the chief of station is a
15 neutral part of the CIA structure, but the -- I understand
16 that the black site is not being run traditionally by the
17 chief of station. And so do you either directly or through an
18 intermediary invite the chief of station to come and see the
19 EITs in person?

20 A. My recollection -- this is my recollection. It's been
21 a long time. But my recollection is that the chief of station
22 invited us to come to the station and sit down and chat with
23 him about our concerns.

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1 Q. Okay.

2 A. And we did that.

3 Q. Okay.

4 A. And then during that, I think it was probably me who
5 asked him to come watch and asked him to do it in the room,
6 and -- and he agreed to do that.

7 Q. And why did you want the chief of station to be in the
8 room as opposed to just watching on a monitor?

9 A. Well, my concern was that you see so much on TV that
10 you become sort of anesthetized to it. It seems much more
11 anesthetic than -- than it actually is. And I wanted him on
12 tape.

13 Q. Because the tape is running, and you wanted somebody
14 more senior if accountability ever came down the pike?

15 A. I mean, I wish that wasn't true, but my mental
16 calculus on it at the time was Dr. Jessen and I were the only
17 two people on that tape, you know, other than the guards who
18 were, you know, covered; and that if they were going to try to
19 force us to continue to to this, I wanted other CIA officers
20 on that tape.

21 Q. All right. And so did the chief of station actually
22 appear in the interrogation room?

23 A. He did. He was dressed as a guard, but he appeared.

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1 Q. Was his face visible?

2 A. No.

3 Q. No? Okay.

4 And in addition to -- so you talked about the
5 anesthetization that comes from watching so many things on TV.
6 Were there other sensory aspects of the experience of EITs,
7 smells, feels?

8 A. Feels?

9 Q. Well, I -- you know, I noticed one thing that you
10 wrote in your book was about, you know, you wanted the person
11 to feel the spray of water and snot when Abu Zubaydah cleared
12 his sinuses.

13 A. Yeah, during the longer pours. Yeah, it's a small
14 room, and there are a lot of people in it and it -- you know,
15 it has the smell of a prison cell because he lives in that
16 room all the time.

17 And so I wanted him to -- the chief of station to get
18 a sense of what we were experiencing, and my belief is if you
19 want the person to experience what you're experiencing, get
20 them as close to it as you can.

21 Q. And, you know, I've been in a lot of prison cells.
22 They don't all smell the same. What did this prison cell
23 smell like?

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1 A. I don't recall right now. The smell was unpleasant.
2 It was just unpleasant.

3 Q. He didn't have a toilet, right?

4 A. He had a -- he had a bucket, but that was changed. It
5 didn't smell like feces. It just smelled like sweat, you
6 know, and ----

7 Q. Fear?

8 A. ---- kind of musky.

9 Q. So after the -- after that event, the station --
10 excuse me, the base formally asked for permission to stop
11 using EITs, not just by telephone calls but in a cable. Do
12 you recall that?

13 A. Yeah. We had been asking to stop using EITs
14 informally for some time, and then we put together a
15 cable ----

16 Q. Okay.

17 A. ----- and sent it. Actually, we didn't. The chief
18 of base put together a cable along with the analysts that were
19 there. I certainly contributed to it, but I can't claim
20 credit for it.

21 Q. Okay. The -- sir, I'd like to draw your attention to
22 AAA-RDI-3, which is in AE 628GGGGG Attachment B.

23 LDC [MR. CONNELL]: I'll show the military commission the

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1 UNCLASSIFIED//FOR PUBLIC RELEASE marking.

2 MJ [Col COHEN]: You may publish to the gallery.

3 LDC [MR. CONNELL]: Thank you. I'm going to zoom in on
4 this a little bit.

5 Q. So, sir, I'm showing you a cable with the date of
6 10 August 2002 entitled "Team Assessment of the Current Status
7 of Aggressive Interrogation Strategy of Abu Zubaydah." Is
8 this the cable that you were just describing?

9 A. Well, I haven't ----

10 Q. You can look it over, if you want.

11 A. ---- read it so I don't know if it's the cable or not.

12 Q. Okay. I can let -- would you -- I can do a couple of
13 things. I can flip it over if you want to read it on the
14 screen. I can point you to it in the binders. What's your
15 preference?

16 A. Please don't point to it in the binders. Flip -- if
17 you don't mind flipping it?

18 Q. Sure. I'm going to zoom in a little bit on the
19 summary.

20 A. Whew. Yeah, I believe that's the cable.

21 Q. Okay. And so in the cable, the chief of base talks
22 about that "The team's collective preliminary assessment is
23 that it is highly unlikely that Abu Zubaydah has actionable

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1 new information about current threats to the United States."

2 Was that your understanding of the situation?

3 A. Oh, yeah. I'm sure I had input into this cable. I
4 didn't write it, but I'm sure I had input into it.

5 Q. Sure. And moving down further on page 4 ----

6 MJ [Col COHEN]: Paragraph 4.

7 Q. Looking at -- on RDI-4, paragraph 5, sentence 4 begins
8 furthermore.

9 A. Okay.

10 Q. All right.

11 A. All right.

12 Q. It says, "Furthermore, it is our assessment that the
13 intensity of the pressure applied to him thus far approaches
14 the legal limit." Was that your understanding of the
15 situation?

16 A. Well, I'll tell you what we actually did. After
17 sending this cable, we dialed everything back.

18 Q. I know that, sir, and we're going to talk about it.

19 A. That was my concern, was that we were quickly
20 approaching the legal limit.

21 Q. Sure. And in the last sentence in paragraph 5,
22 there's a note, and I'm going to read a little slower this
23 time, that "According to the medical officer on the scene,

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1 under current medical intervention, subject's medical status
2 is likely to deteriorate to an unacceptable level over the
3 next two weeks and thus will continue to be closely
4 monitored." Was that your understanding of the situation?

5 A. We were throwing everything but the kitchen sink into
6 this cable, you know. We wanted headquarters to know that if
7 they persisted in this course of action, we were all concerned
8 that it may have a negative impact on Abu Zubaydah's physical
9 condition.

10 Q. And so ----

11 A. And I would ----

12 Q. ---- just to summarize that ----

13 A. ---- repeat may have. May have.

14 Q. I understand. The -- just to summarize, you all were
15 working -- I mean, like the base was unified, the people who
16 were actually on the ground were unified in -- that the -- you
17 should dial back the aggressive interrogation and were
18 explaining all of the different reasons for that to head -- to
19 CTC or to whoever you -- whoever sat at the other end of these
20 cables.

21 You know, you're explaining the legal reasons, the
22 medical reasons, the intelligence reasons, the operational
23 reasons, right?

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1 A. Yeah, that's my -- I would agree with that assessment.

2 Q. All right. And you all got a cable back, right?

3 A. We did. I -- I don't remember precisely what it said
4 except continue.

5 Q. I'll help you out. I'll direct your attention to
6 AAA-RDI-8, which is dated 2002 -- excuse me, 11 August 2002.

7 LDC [MR. CONNELL]: I'll show the military commission
8 the -- I don't know how to make this work --

9 UNCLASSIFIED//FOR PUBLIC RELEASE marking.

10 MJ [Col COHEN]: We're good.

11 Q. The comment came back, "Let's stay the course."

12 A. Correct.

13 Q. And I'll flip it over so you can see the other side.

14 How would you like me to refer to -- I've been using
15 headquarters for the other side because that's what they used.
16 How would you like me to refer to the people who are sending
17 these cables?

18 A. They have removed the unit designators, so I don't
19 believe I can clarify that without ----

20 Q. And so Alec Station is unclassified. Would that help?

21 A. Certainly the cables originated in Alec Station and
22 were probably reviewed by everybody in the chain.

23 Q. Okay. Is it okay if I refer to Alec Station as the

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1 other end? Is that -- would that be accurate?

2 A. No. We would refer to it as headquarters because
3 they -- everything has to be coordinated. They don't release
4 a cable unless it's been reviewed by legal, by CTC, by all of
5 those things, especially about this.

6 Q. Excellent. So in this cable, headquarters tells you
7 that they see this point as still early in the phase two
8 process, meaning the aggressive interrogation?

9 A. That's what it says, yes.

10 Q. Yeah. And -- but there was -- you had asked -- in the
11 previous cable, you had asked for a video teleconference to
12 present your case, right?

13 A. Correct.

14 Q. Okay. And in paragraph 5, they agree that there will
15 be a video teleconference on 13 August; is that right?

16 A. It says that there, yeah.

17 Q. Was that your understanding at the time?

18 A. Yeah. I mean, there was. I mean, when the cable came
19 back in, we were told there was going to be a video
20 teleconference.

21 Q. Okay. And I want to point your attention to one thing
22 before we leave this cable. Back on RDI-8, you see -- make
23 this a little easier.

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1 A. You can actually see the coordination for most of
2 these. Some of them have been removed, but you can see that
3 it went through the DDO, the chief of CTC, legat. You know,
4 you can see the coordination.

5 Q. Yeah, you're exactly right. And in your experience,
6 that coordination meant that basically all of the different
7 groups had had to sign off on it before this cable went out?

8 A. They had seen a draft of it and made suggestions if
9 they felt like suggestions needed to be made.

10 Q. Sure. So I'm going to draw your attention to this
11 section that I am highlighting in pink, which includes the
12 word "Ref." Do you see that?

13 A. Yes.

14 Q. And what was your understanding of -- of things that
15 were listed in the -- under the "Ref" heading?

16 A. It's a -- the agency has a method of searching for
17 cables or intels, and the ref -- you type that in kind of like
18 Google and it pops up.

19 Q. Okay. And the point of putting a reference on an
20 individual cable is to say -- is to orient the receiver of the
21 cable to other -- other documents that they might want to read
22 to gain a complete understanding; is that right?

23 A. Yeah. It's background information.

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1 Q. Yeah. Okay. And so it also makes it a lot easier for
2 people to understand when two cables are connected to each
3 other; is that right?

4 A. Yes.

5 LDC [MR. CONNELL]: Okay. Sir, I know that we're still
6 working through this. Do you want a screen capture of this?

7 MJ [Col COHEN]: They're making one right now.

8 LDC [MR. CONNELL]: Great.

9 MJ [Col COHEN]: We've got one.

10 LDC [MR. CONNELL]: Great.

11 MJ [Col COHEN]: We'll catch up with a number later.

12 LDC [MR. CONNELL]: Thank you. And just so the record is
13 100 percent clear, that was a screen capture of a -- of
14 RDI-008.

15 MJ [Col COHEN]: Thank you.

16 LDC [MR. CONNELL]: Okay.

17 Q. All right. Now, in preparation for that video
18 teleconference -- oh, excuse me.

19 Before we move to that, so as directed by
20 headquarters, you continued with the aggressive interrogation
21 strategy but dialed it back a bit; is that what I understand?

22 A. Yeah. There was a considerable amount of confusion
23 about the number of pours and how many times the guy was

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1 waterboarded. And at some point, I'd like to explain that,
2 and this may be the place to do it.

3 Q. So just -- I think you will get that opportunity,
4 especially -- but -- with respect to Mr. Mohammad --
5 Mr. Mohammad -- but, you know, go ahead. That's fine. I want
6 you to say what you want to say.

7 A. Well, the DoJ guidance said that you could pour water
8 for 20 to 40 seconds, give them three full breaths, and then
9 repeat it for 20 minutes. And -- and if you do that, at 20 --
10 you know, at -- it takes about 30 seconds to do the 20-second
11 pour and then give them three breaths -- breaths. So in
12 20 minutes, you could do 40 pours. If you did that for 17 or
13 18 days, it would quite literally be many hundreds of pours.

14 And with respect to Abu Zubaydah, it became very clear
15 to me right away in the first session that that was too much
16 water; that we had actually been authorized to use too much.
17 And so what we started doing -- because my reasoning was, if
18 you can pour it for 20 seconds, you can pour it for 3 seconds,
19 right -- that we did a lot of 3-second pours so we didn't
20 occlude the person's breathing that much. And that's what we
21 did with Zubaydah.

22 Q. I see.

23 A. You know, we still had to put him on the waterboard,

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1 we still had to go through the process; but we didn't have to
2 pour water long enough to completely occlude his -- his
3 ability to breathe.

4 So it looks like, on paper, when somebody counts the
5 number of pours, that there were many, many -- you know, 83 or
6 whatever the number is, I don't recall the number offhand.
7 But, in fact, although there were many less than would have
8 been authorized -- it's a shocking number when you just look
9 at that raw number, but increasing the number of pours and
10 shortening the durations actually gave him more time to
11 breathe, not less time to breathe.

12 Q. I understand. So you were ordered by headquarters to
13 continue to waterboard. You're not at liberty to disregard
14 your orders. But you do have discretion as to the length of
15 the pours.

16 A. Well, let me tell you one of the things that we were
17 told by middle managers. The middle managers said, remember
18 that you're at a CIA black site and that you're here at our
19 convenience. And the suggestion was that if we didn't go
20 along with it, we might be finding our way home on our own, if
21 we were even able to leave.

22 But those were the middle managers. I think Jose
23 Rodriguez, George Tenet, the people in the senior levels of

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1 CTC would have had a fit had they actually known that.

2 Q. Right. And the implication of that, I guess, is that
3 those -- those senior people like Mr. Rodriguez and Mr. Tenet
4 didn't know this sort of day-to-day granular detail of what
5 was going on?

6 A. Well, they knew the -- they knew the cable traffic,
7 but what they didn't know was the sort of interpersonal
8 exchanges that were happening back and forth because, you
9 know, you know how senior people are; they're kind of
10 protected, you know.

11 Q. They've got a lot of things to do.

12 A. Well, and middle managers don't necessarily want to
13 have their food fights pushed up to the seventh floor the
14 whole time.

15 And, in fact, when Jose found out that we were
16 interested in having a videoconference, he actually ordered
17 it. Alec Station didn't order it. I mean, you know, he was
18 the one who ordered it.

19 Q. Okay. And so in the lead-up to the video
20 teleconference, you continued to send -- or the chief of base
21 continued to send cables back updating Alec Station that you
22 were complying with what they had told you to do; is that
23 correct?

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1 A. That's correct.

2 Q. Okay. Directly in preparation for the video
3 teleconference, someone asked the criminal investigator at the
4 site -- or the CIA person with criminal investigation
5 background might be a more accurate way to describe -- to put
6 together a video. Do you recall that?

7 A. Yes. I'm the one that asked him.

8 Q. Okay. I didn't know if it was you specifically
9 or ----

10 A. Well, I'm sure Dr. Jessen did too and so did the chief
11 of base. You know, it was a decision that was made in the
12 group.

13 Q. Okay. So can you tell us what your request or
14 instructions were?

15 A. Well, what we wanted him to do was take the most
16 dramatic instances of waterboarding from several of the
17 sessions, put them together in one tape without any of the
18 middle -- you know, without any of the other scenes that would
19 make it appear less dramatic, and piece those together in one
20 tape so that we could show them to the boss.

21 Q. Okay. And this is 2002. Are we talking VHS
22 videotape?

23 A. Yeah. It's a regular -- you slide it in, hit the

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1 record button.

2 LDC [MR. CONNELL]: Okay. And so -- if I could have 11,
3 please.

4 Q. So since that videotape had been put together, the
5 chief of base sent a cable giving headquarters or the middle
6 management, Alec Station, whatever we're going to call it,
7 notice that there was going to be a videotape and trying to
8 set up some ground rules. Do you recall that?

9 A. I recall that a cable like that went out. I don't
10 recall the details of the cable.

11 Q. Okay. I'll direct your attention to AAA-RDI-11.

12 LDC [MR. CONNELL]: Your Honor, it's a little bit tough to
13 read the UNCLASSIFIED//FOR PUBLIC RELEASE, but ----

14 MJ [Col COHEN]: I see it. You're good.

15 LDC [MR. CONNELL]: Thank you. If I may publish it to the
16 gallery?

17 MJ [Col COHEN]: You may. It's already on.

18 LDC [MR. CONNELL]: Great.

19 Q. There's a cable dated 12 August 2002, and I'll show
20 you the backside in just a second. But tell me when you're
21 ready for me to flip it.

22 A. Is that the date up top handwritten?

23 Q. No. It is -- if you look at TOR in the middle of the

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1 page.

2 A. Okay.

3 Q. Let me know if I'm okay to flip it.

4 A. Yes.

5 Q. I'm going to -- you might want to look away. I'm
6 going to zoom.

7 A. It doesn't make me sick. Just do whatever you need to
8 do.

9 Q. Okay. And so did you have input into this cable?

10 A. Probably. I mean, most -- at this particular point,
11 the chief of station, the chief of base, everybody that was
12 there were, you know, sitting around brainstorming what to put
13 in these cables.

14 Q. Okay. So by this point, chief of station is on board
15 with the idea we need to stop with these EITs on Abu Zubaydah,
16 transition to another strategy?

17 A. I don't know that he was on board with the idea of
18 stopping them. What he was on board with was making sure that
19 we had an opportunity to present our case to headquarters.

20 Q. Okay. The ----

21 MJ [Col COHEN]: Counsel, as you're thinking, we're going
22 to take a break for about five minutes for the midmorning
23 recess.

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1 LDC [MR. CONNELL]: Okay. All right. Sounds good.

2 Q. So let's move forward to the video teleconference ----

3 MJ [Col COHEN]: Unless you tell me like ten is better, I
4 mean, so just wherever you're at.

5 Q. The -- you told us just a moment ago that
6 Mr. Rodriguez chaired the video teleconference?

7 A. Correct.

8 Q. Okay. How many other people were present for the
9 video teleconference on your end?

10 A. On my end?

11 Q. Yes.

12 A. Everyone that was at the base except the guards who
13 kept an eye on Abu Zubaydah.

14 Q. Okay.

15 A. And the CIA is weird about numbers, so I can't tell
16 you.

17 Q. Okay. How many people were on the other end of the
18 video teleconference that you could tell?

19 A. A conference room full of people. But, remember,
20 we're looking through those little-bitty conference
21 cameras ----

22 Q. Right.

23 A. ----- so it could have been 500 outside. But I doubt

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1 it because it was a compartmentalized program.

2 Q. Okay.

3 A. But it was a conference room full of people. I mean,
4 they had physicians. They had lawyers. They had Alec
5 Station. They had the targeters. They had all sorts of
6 people.

7 Q. So the request in the previous cable, please limit
8 this to the absolute minimum number of people out of deference
9 to the people whose faces appear on the tape, they -- Alec
10 Station just put whoever they wanted in the meeting?
11 There ----

12 A. I don't believe that's the case. I wouldn't
13 characterize it that way.

14 Q. Okay.

15 A. I think the physicians ought to know what's going on.
16 I think the lawyers ought to know what's going on. And they
17 had been briefed into the program anyway.

18 That program was so tightly held, if you went to a
19 meeting, they would check to see whether or not you were read
20 in before they allowed you to stay in the meeting. So if the
21 person was there, they had been read in and likely were one of
22 the people who were signing off on the release of cables
23 coming back to us.

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1 Q. Okay. And because these are all people in the
2 compartment, these are people who had all been on the cable
3 traffic. They had access to the cable traffic?

4 A. I can't verify that everyone there had been on the
5 cable traffic.

6 Q. Okay. Substantial numbers of -- you knew that some
7 people had?

8 A. I assumed that most had ----

9 Q. Yeah.

10 A. ---- otherwise, they couldn't be there.

11 Q. Okay.

12 A. But I can't verify that that's the case.

13 Q. All right. And when you attended that meeting, did
14 you feel that reading those cables had given the people there
15 at Alec Station a good sense of what waterboarding was
16 actually like?

17 A. No.

18 Q. Could you explain?

19 A. Well, they were -- they were looking at it -- see, I
20 think what -- the people who were pushing back were the same
21 people that Congress had just chewed out about being
22 risk-assess -- you know, being overly risky, and Congress had
23 just told them that they were cowards who had not been able to

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1 connect the dots and that -- and that 9/11 was partially their
2 fault. Those people did not want to be in that position
3 again.

4 And so some of those folks felt like they had the
5 legal go-ahead to pursue this task, and they did not want to
6 fail the American folks. So I don't -- I don't disparage them
7 for that, but I think in this particular case, with this
8 particular detainee, they were wrong.

9 Q. With respect to their understanding of waterboarding,
10 you write in your book at page 73 that "They talked about it
11 as if it were some kind of sterile, impersonal procedure."
12 Could you explain that?

13 A. Sure. They -- they -- they talk about waterboarding
14 the same way they would talk about the belly slap, which is
15 just a little flip on the belly, you know. So in my mind,
16 they -- some of them, not all of them. Certainly not Jose
17 Rodriguez, certainly not the senior folks, but some of the
18 middle managers treated it as if it were a tool that could --
19 should and could be used more than I thought it should be
20 used.

21 Q. Okay. And during the video teleconference, were you
22 allowed to give your opinion about whether EITs should
23 continue?

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1 A. Buddy, you bet it.

2 Q. Can you tell us about that?

3 A. Yeah. We just -- Dr. Jessen and I just told them we
4 weren't going to do it; that they should bring their rubber
5 boots and come on down, if that's what they intended to do.
6 And that -- they agreed to ask -- I asked them during my
7 conversation with them, send your most skeptical person who
8 believes this man is still withholding information and not
9 willing to help us. Send that person. Don't send us somebody
10 who is going to answer to that person who we then have to try
11 to convince. Send the person.

12 And send somebody that's got enough SIS throw weight
13 that when this person says we don't need to do this, you
14 believe them. Don't send us somebody who is going to try to
15 convince somebody who isn't there. And Jose Rodriguez agreed
16 to do that.

17 Q. Now, did you have to make that request because people
18 were pushing back on you in the meeting?

19 A. Yes.

20 Q. What did people say in pushback?

21 A. I think -- you know, I think I bear some
22 responsibility for the pushback. You know, early on when we
23 were initially talking about the use of EITs before

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1 waterboarding came up, Jose Rodriguez had asked me, well, how
2 long would we have to do this before we think, you know, the
3 person is going to take it to their grave, you know?

4 And to be candid with you, I was thinking about
5 walling and sleep deprivation, and so I said I can't imagine
6 that anybody would last more than 30 days. If they can do
7 that for 30 days, they probably aren't going to tell you
8 what -- you know, what you want to know, and -- if they know
9 it.

10 And so for reasons that I understand as a psychologist
11 but as a rational person I wonder about, when the same person
12 who said that said we don't need to be doing this, they said,
13 no, no, no, somebody told us 30 days, you know. And so I'm
14 saying, well, I'm the guy that told you that, and I'm telling
15 you that in this particular case, it doesn't apply, you know.
16 And so I think I bear some responsibility -- if I'm honest,
17 right, I bear some responsibility.

18 But also, I think the primary concern was that there
19 really were people on the ground that was working for him, and
20 they really did have another attack planned that was in the
21 works. And there was clear evidence, convincing intelligence,
22 that al Qaeda was trying to set off some sort of catastrophic
23 WMD, and they were not going to dial it back until -- with

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1 respect to Abu Zubaydah until they were convinced that there
2 was another avenue.

3 Q. So did they tell you, "You're not turning him, he's
4 turning you"?

5 A. They may have said that during the videoconference,
6 but I know they said that before the videoconference.

7 Q. Okay. Did they call you names again?

8 A. Not in the videoconference. They would have never
9 done that in front of Jose Rodriguez. He would have put a
10 short ----

11 MJ [Col COHEN]: Counsel, are we at a good spot?

12 LDC [MR. CONNELL]: Very good. Just one moment, Your
13 Honor?

14 MJ [Col COHEN]: You may.

15 Q. Last question. Did they agree to send the most
16 skeptical person and a person with senior authority?

17 A. They agreed to and they did.

18 LDC [MR. CONNELL]: Okay. We'll pick up there later.

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

20 For the record, the screen shot is AE 628GGGGG
21 (AAA Sup).

22 Sir, we're in a 15-minute recess.

23 [The R.M.C. 803 session recessed at 1019, 22 January 2020.]

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1 [The R.M.C. 803 session was called to order at 1042,
2 22 January 2020.]

3 MJ [Col COHEN]: The military commission is called to
4 order. Parties are present to include the accused who were
5 previously present. Ready for the witness.

6 Sir, thank you. You may return to your seat.

7 Your witness.

8 [The witness resumed the witness stand.]

9 LDC [MR. CONNELL]: Thank you.

10 **DIRECT EXAMINATION CONTINUED**

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

12 Q. Dr. Mitchell, so we're at the point in the story, you
13 just had the video teleconference. It's 13 August of 2002.

14 A. I realized I didn't completely answer one of your
15 questions. I'm willing to answer it, if you would like me to.

16 Q. Sure.

17 A. You had asked me a question that elicited from me a
18 response where I was talking about the reasons that
19 headquarters was so interested in Abu Zubaydah and their
20 belief about why they thought he had information about
21 operations inside the United States.

22 Q. So I feel like you fully answered that ----

23 A. I didn't.

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1 Q. ---- at that time, but if you feel that your previous
2 answer was inaccurate in some way, then you have a right to
3 correct your answer.

4 A. When he was captured, he was captured with many
5 videotapes on which he was claiming credit for attacks inside
6 the United States. That combined with his interactions with
7 one of the defendants, they were absolutely convinced that he
8 had something cooking.

9 LDC [MR. CONNELL]: May I have a moment, Your Honor?

10 MJ [Col COHEN]: You may.

11 [Counsel conferred.]

12 LDC [MR. CONNELL]: Your Honor, I just wanted to point out
13 that that is one of the answers that I was trying to get to
14 yesterday that the -- when I was talking about the --
15 Abu Zubaydah's capture.

16 And, so thank you, sir. The -- all right. I mean,
17 the government objected at the time but did not object this
18 time, so that's fine. We'll talk later about who did that
19 capture.

20 Q. So I'd like to direct your attention, sir, to RDI-19
21 found in the record at AE 628GGGGG Attachment B and ----

22 MJ [Col COHEN]: Publish to the gallery initially?

23 Q. ---- I'll show you the UNCLASSIFIED marking, sir.

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1 MJ [Col COHEN]: As soon as it pops up, Counsel. We're
2 good. Publish.

3 LDC [MR. CONNELL]: Thank you.

4 Q. So after the video teleconference, headquarters sent
5 you a cable -- sent the base a cable back, right?

6 A. Yes.

7 Q. And in that cable, despite your persuasive and
8 authoritative opinion or at least persuasive opinion, the
9 seeing of the most dramatic video clips and having at least
10 the decision-makers having access to all the relevant
11 intelligence, they said, "Please continue with the aggressive
12 interrogation strategy for the next two to three weeks."

13 A. That's what it says in the cable, yes.

14 Q. Was that your understanding at the time?

15 A. Of course.

16 Q. Yeah. And directing your attention to page 20 ----

17 LDC [MR. CONNELL]: I'm sorry, Your Honor. Just one
18 moment.

19 MJ [Col COHEN]: You may.

20 Q. Oh, I'm sorry. To page 21, third page of that same
21 cable. You were cabled back at the end of this interrogation
22 process, "We may realize and understand -- we realize and
23 understand that we may, repeat may, learn that Abu Zubaydah

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1 has the inner personal strength and mental acumen to withstand
2 any pressure that we can put to bear against him."

3 Did these middle managers that you were dealing with
4 think that this person was inhumanly strong?

5 A. Well, he -- he had been ----

6 Q. He had been trained. I get it.

7 A. Yeah.

8 Q. But what did they think, like he was some kind of
9 super human?

10 A. I can only go by what they wrote.

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

12 A. I can't read his mind.

13 MJ [Col COHEN]: Yeah, he said he can't go by just what
14 they wrote. He says he doesn't know.

15 Q. At the time, did you see this cable?

16 A. I heard about the cable. I don't know that I actually
17 read the cable. I don't know that I actually read those
18 words.

19 Q. What were you told about the cable when you heard
20 about it?

21 A. That they wanted us to continue.

22 Q. Okay. And so as ordered, you continued?

23 A. I don't think we went on two to three more weeks.

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1 Q. Oh, no, not two to three more weeks. You didn't go on
2 two to three more weeks, but you continued -- and I'll walk
3 you through the dates. My question did not include two to
4 three more weeks.

5 For example, the next day, 14 August 2002, you
6 waterboarded him again?

7 A. I don't recall. We were -- if we did, we dialed it
8 way back so that it was -- I don't want to use the word
9 perfunctory about something that horrible, but yeah.

10 MJ [Col COHEN]: Based on the witness' previous answer,
11 I'll overrule the objection. He said he didn't know, and it
12 would have been a -- it was speculation.

13 Q. So, sir, I will direct your attention to RDI-26, found
14 in the record at AE GGGGG [sic] Attachment B.

15 LDC [MR. CONNELL]: Showing you, Your Honor, the
16 UNCLASSIFIED//FOR PUBLIC RELEASE marking.

17 MJ [Col COHEN]: Thank you.

18 Q. And this is a cable dated 14 August 2002. Is it?

19 A. That's a statement?

20 Q. Is it a statement -- is it a cable dated 14
21 August 2002?

22 A. Yes.

23 Q. Okay. And I'll direct your attention to RDI-27, the

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1 third page of the cable. Sorry. We've got to wait for it to
2 stabilize. Direct your attention to paragraph 3. "While
3 being" -- oops, sorry. "While being subjected to pressures
4 other than the waterboard," and then continues the narrative.
5 So does that refresh your recollection that you applied
6 enhanced interrogation techniques but not the waterboard on
7 that date?

8 A. My -- my overall recollection is that we had asked
9 permission to discontinue using the waterboard until they sent
10 the team. And then we had told him that we will waterboard
11 him one more time. That's my recollection.

12 Q. Okay. And over the next few days, the 14th through
13 the 17th -- I'll show you every cable, if you want -- but he
14 continued to report what you expected him to report, was which
15 he didn't have any new threat information?

16 A. Right. It was divided into two -- it was divided into
17 like two sessions, for example. We would have intel
18 requirements not related to threats inside of the
19 United States; and then we would have, in a separate session,
20 intel requirements related to pieces of the puzzle they were
21 trying to put together in other countries in other parts of
22 the world. And he was responsive to those.

23 And, in fact, during this session, very -- very few

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1 EITs were actually used, even though they were potentially
2 used, if you know what I mean. Because at this particular
3 point, he was -- he was -- he was entertaining and -- he was
4 entertaining questions and he was responding to them in ways
5 that we actually thought -- with respect to the questions that
6 had to do with what was going on in other places, the little
7 pieces of the puzzle, he was responding in ways that we didn't
8 need to use them.

9 We had to use some EITs during the -- the session
10 where we were asking about questions -- attacks inside the
11 United States; but again, we dialed that way back, and to my
12 knowledge -- to my recollection, didn't use the waterboard.

13 Q. So I'll move you forward to 17 August 2002. The
14 people from the headquarters arrive?

15 A. I don't remember the actual date.

16 Q. A few days later after the -- after the
17 teleconference?

18 A. Yes.

19 Q. And they're headed by a highly respected senior
20 operations officer?

21 A. Yes.

22 Q. And does that person have a UFI?

23 A. I'll look and see.

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1 Q. Thank you, sir.

2 LDC [MR. CONNELL]: Unless there's an objection.

3 [Counsel conferred.]

4 LDC [MR. CONNELL]: We're waiting to find out if you guys
5 are objecting.

6 TC [MR. GROHARING]: Judge, we would object on the same
7 grounds. It would be a position title with a UFI, which would
8 make it classified.

9 LDC [MR. CONNELL]: This does fall under paragraph 75,
10 Your Honor.

11 Sir, I'll be less cryptic because it's FOUO paragraph.
12 What I mean is that the exact words in my question are
13 contained in Dr. Mitchell's book at page 75.

14 MJ [Col COHEN]: Well, all right. Trial Counsel, I don't
15 want to get argumentative with you at this point, but I think
16 you're going to have to get me in touch with the OCA because I
17 don't understand it. I don't understand how a UFI that no
18 one -- that no one knows except for the people who have been
19 provided that information and the list that connects them
20 is -- is nowhere -- I mean, the only -- I've seen it, he's
21 seen it, and the government's seen it.

22 I don't see how just a generic reference to -- I mean,
23 how many -- there's got to be lots of senior operational

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1 officers and, you know, intelligence officers in the CIA. I
2 mean, they are the Central Intelligence Agency. "Senior"
3 usually refers to just some experience.

4 I'm not saying you can't. That's what I'm saying, I'm
5 not trying to be argumentative, but I really need some help
6 here understanding how we can't be as -- this generic. I
7 mean, I see this as fairly generic, and the -- the declaration
8 I got the other day still didn't quite scratch my itch of
9 understanding. I'm not saying you can't.

10 But we're at a different stage of -- of the
11 proceedings. Summaries and substitutions back in the day, and
12 to the extent those go on, that kind of makes sense because I
13 don't understand how information is playing. But now we're in
14 testimony, and I have a better context of why things are more
15 relevant than -- than not.

16 And so during that afternoon ex parte, like I said, if
17 it's possible to get them on the phone or a VTC or something,
18 then I can -- then I can have a conversation and say, okay,
19 help me understand what you're asserting, because I don't get
20 it.

21 TC [MR. GROHARING]: I understand, Your Honor.

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

23 LDC [MR. SOWARDS]: And I'm sorry, Your Honor. Just so

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1 the record is clear, that was second ground that we raised in
2 our motion.

3 MJ [Col COHEN]: Understand.

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

5 LDC [MR. CONNELL]: All right.

6 MJ [Col COHEN]: Once again, not -- I understand I don't
7 get to make classification decisions, I just have to look at
8 whether or not something -- whether I determine something is
9 reasonable. And right now, I'm -- I'm not disagreeing, I'm
10 just saying I don't -- it's not clear to me yet.

11 So here's what I can tell you, Counsel. He can't --
12 he can't answer that one yet, but I'm going to try over my
13 lunchtime to get a better feel for why this is -- why -- why
14 it is classified.

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

16 **DIRECT EXAMINATION CONTINUED**

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

18 Q. The team that came from headquarters was accompanied
19 by the person who had been most skeptical about stopping the
20 harsh interrogations?

21 A. That's correct.

22 Q. And that's W87?

23 A. I believe I previously answered that, yeah, and it

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1 is -- it was. Let me just double check the nomenclature again
2 because I do not want to ----

3 Q. Yes, sir.

4 A. ---- misstate.

5 CP [BG MARTINS]: Your Honor, while the witness is
6 studying that, Mr. Dykstra has gone to chase down that
7 specific thing you're after.

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

9 Q. Sir, I said W87, but it's actually WH7,
10 Whiskey-Hotel-7.

11 A. Actually that's not what I said.

12 Q. All right.

13 A. I said W87.

14 Q. Oh, okay. So I was wrong the first time. W87.

15 A. Yes.

16 Q. Okay. And also a CTC senior attorney?

17 A. Correct.

18 Q. Okay. And does that person have a UFI?

19 A. Correct.

20 Q. Okay. And what is that UFI?

21 MJ [Col COHEN]: Same issue or are we good with -- this
22 time or ----

23 TC [MR. GROHARING]: One moment, Your Honor.

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1 MJ [Col COHEN]: All right.

2 Counsel, remind me again what your question was
3 specifically.

4 LDC [MR. CONNELL]: So the lead-in to the question was
5 part of the -- one of the party who arrived from headquarters
6 is a CTC senior attorney, which is ----

7 MJ [Col COHEN]: Okay.

8 LDC [MR. CONNELL]: ---- language from Dr. Mitchell's book
9 at page 75. And my -- I asked does that person have a UFI.
10 The answer was yes. Then I asked what is the UFI. And we're
11 pausing to wait for the objection, if any.

12 MJ [Col COHEN]: All right. Okay. Thank you. I just
13 didn't -- I hadn't caught the senior attorney part. Thank
14 you.

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

16 [Counsel conferred.]

17 TC [MR. GROHARING]: Judge, no objection to connection
18 here. We consider that a functional title as opposed to a
19 position title.

20 MJ [Col COHEN]: Okay.

21 TC [MR. GROHARING]: And so the UFI connected to that does
22 not pose a problem.

23 MJ [Col COHEN]: All right. That is consistent with

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1 the ----

2 LDC [MR. CONNELL]: Right. It's two elements instead of
3 three.

4 MJ [Col COHEN]: Yep.

5 **DIRECT EXAMINATION CONTINUED**

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

7 Q. And what is that UFI, sir?

8 A. PJ1.

9 LDC [MR. CONNELL]: All right. And, Your Honor, at this
10 point in my questioning, I would ask another question about
11 the targeter, but I understand that to be subject to the
12 ruling that you made earlier about the targeter.

13 MJ [Col COHEN]: Is a targeter ----

14 TC [MR. GROHARING]: The same objection as before, Your
15 Honor.

16 MJ [Col COHEN]: Got it.

17 LDC [MR. CONNELL]: And I will tell the military
18 commission that over the break, I showed counsel the -- my
19 source which was from a book which had been subjected to
20 prepublication review called *The Targeter* [REDACTED]

21 MJ [Col COHEN]: Copy.

22 LDC [MR. CONNELL]: I do not believe [REDACTED] to be the
23 targeter at issue here, just ----

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1 MJ [Col COHEN]: All right.

2 LDC [MR. CONNELL]: ---- so you know.

3 Q. Okay. So after the party from headquarters arrived,
4 can you tell us what happened in the interrogation session?

5 A. Well, they showed up with a bunch of maps and they
6 showed up with a bunch of charts and they showed up with a
7 bunch of photographs and they just went in and debriefed him.
8 They just went in and sat down and debriefed him.

9 Q. I think my question must have been poorly worded.
10 Can you tell us about the interrogation session
11 that ----

12 A. You mean the waterboard session?

13 Q. Yes.

14 A. Is that what ----

15 Q. I'm sorry. I'll call it a waterboard session.

16 Can you tell us about the waterboard session that the
17 senior members of the -- the senior people attended?

18 A. I have to provide some context.

19 Q. Sure.

20 A. They initially spent a long time with him, days, at
21 least two or three days -- I can't remember the exact number
22 of days -- essentially debriefing him about all sorts of
23 things that the government probably doesn't want me to talk

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1 about. And they were thrilled, all of them, even the most
2 skeptical person, thrilled.

3 And then they came back out and said, okay, we're
4 going to leave, but we may want to go back to waterboarding
5 him.

6 And Bruce and I said -- Dr. Jessen and I said that's
7 not going to happen. You know, if you -- if you think you
8 might want to waterboard him, we want you to witness the
9 waterboard, you know. Because we're going to do it one more
10 time, and then we're never going to do it again to him.

11 And they said okay. And so we waterboarded him. We
12 gave -- we did essentially the same thing that we had done
13 before which was not doing the dialed-down version but the
14 version that I thought didn't -- you know, wasn't excessive,
15 was two 20-second pours followed by a chance to fully recover
16 and one 40-second pour with lots of 3- to 6-second pours
17 between the two so that he had lots of chances to breathe.

18 And their decision after watching that was we don't
19 need to be doing this. That was -- you know, that was
20 essentially their decision; that we can get lots of
21 information that will allow us to fill in those little pieces
22 of the puzzle that we can't see the whole picture from without
23 doing this to him.

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1 Q. Okay.

2 A. And then they left.

3 Q. The -- can you tell us about the -- their observations
4 of the waterboarding?

5 A. Well, they -- some of the folks who were watching
6 were -- were tearful, you know? I don't think the people in
7 the room were tearful so much, but the -- some of the folks
8 who had been there all along and, you know, didn't really want
9 to see him waterboarded again were tearful.

10 Q. So do you have your book up there in front of you?

11 A. I have it.

12 Q. Can I direct your attention to page 75.

13 A. Okay.

14 Q. Okay. When writing about this in your book, you
15 explain, "Everyone, even those observing, were tearful."

16 A. Yeah, that -- that was a generalization. I could have
17 probably been more specific. I apologize for that. You know,
18 I was tearful, you know? I cry at dog food commercials,
19 but -- and it was particularly hard for me to do.

20 But not everybody was tearful. The guards weren't
21 tearful. The ----

22 Q. You wouldn't know if the guards were tearful, right?

23 They had masks on.

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1 A. I would know the guards outside because we left. They
2 didn't have masks on, you know?

3 Q. All right. Understanding that you cry at dog food
4 commercials, why were you crying at waterboarding of a human
5 being?

6 A. I felt sorry for him. I thought it was unnecessary,
7 and I felt sorry for him. You know, he had agreed to work
8 with us, and in my view, aside from occasionally lying and
9 sometimes being deceptive, he held up that end of the bargain,
10 you know. In fact, he very specifically said, "I will be your
11 man. I will work for you."

12 Q. The -- so there were a couple of different cables that
13 were prepared after that session, and I'd like to direct your
14 attention one of them at RDI-45, 628GGGGG Attachment B.

15 LDC [MR. CONNELL]: We're skipping that. We're going to
16 45.

17 MJ [Col COHEN]: We're good. Thank you.

18 LDC [MR. CONNELL]: The -- oh, actually, I'm sorry. I'm
19 going to -- I'm confused, faking everybody out. Let's do 43.

20 Q. So, sir, I'm going to show you a cable dated 19
21 August 2002 ----

22 A. Uh-huh.

23 MJ [Col COHEN]: We're good.

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1 Q. ---- which describes that waterboarding session you
2 just told us about.

3 A. Yes.

4 Q. And I'm going to show you the second page of it, which
5 is RDI-43. And the cable says that "Water was applied with a
6 soaked full-face covering resulting in immediate fluid intake
7 and involuntary body, leg, chest, and arm spasms." What does
8 that mean?

9 A. I don't know. I didn't write this. I didn't review
10 it, and I don't know. He didn't have any seizures or anything
11 like that. I didn't see this happen, and I was controlling
12 the cloth.

13 Q. All right. And the cable later provides, "Subject
14 continued to cry and claim ignorance of any additional
15 information. This resulted in a second full-face watering."

16 Why after saying that you would only waterboard him
17 one more time did you waterboard him again?

18 A. We didn't waterboard him twice. We poured water
19 twice.

20 Q. So afterward -- and I'm directing your attention to
21 AAA-RDI-45 at 628GGGGG Attachment B -- you sent -- or, excuse
22 me, base sent a cable back to headquarters. Do you recognize
23 that cable?

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1 A. I've seen this cable before, but not at the time.

2 Q. Okay. So chief of base writes, "As of 23 August,
3 following 19 days in the aggressive phase, team assessment is
4 that we have successfully broken subject's willingness to
5 withhold threat and intelligence information. He is presently
6 in a state of complete subjugation and total compliance." Was
7 that your understanding at the time?

8 A. No. That's not the way that I would have
9 characterized that, but I didn't write the cable.

10 Q. Okay. Did you believe that Abu Zubaydah was in a
11 state of complete subjugation and total compliance?

12 A. No. I believe that he would engage in questions and
13 answers and provide information. The one that I really object
14 to is the idea of broken. One of the things that Dr. Jessen
15 and I tried to do over and over and over was tell them that
16 that's not a term that should be used because that's not what
17 happened, you know, and that -- but it's a -- you know, you
18 have an operations officer writing a cable using whatever
19 words he has in his head to put the -- the thing together.

20 You know, a complete -- I don't know what he means by
21 "a complete subjugation" other than -- to me "subjugation"
22 means that he's willing to submit to whatever you ask him to
23 do, and "total compliance" means that he's willing to comply.

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1 Q. Okay. Did you ever see the headquarters cable that
2 came back?

3 A. I don't recall seeing the headquarters cable.

4 Q. Okay. I'll show you AE RDI -- excuse me, AAA-RDI-48
5 found in the record at AE 628GGGGG Attachment B.

6 LDC [MR. CONNELL]: I'll show you first the marking, sir.

7 MJ [Col COHEN]: Thank you.

8 Q. I'll need to flip that for you, so you just tell me
9 when.

10 A. Okay.

11 Q. All right. And you can see that this cable is dated
12 26 August 2002; is that correct?

13 A. Yes.

14 Q. Okay. And I'd like to draw your attention to
15 headquarters' response, and it begins with the last three
16 words of paragraph 2: "We are not" -- turning to the next
17 page -- "convinced that we can yet determine that AZ is no
18 longer purposefully or actively holding back information or
19 not cooperating, even on the requirements already serviced.
20 Also, we believe we cannot yet say that Abu Zubaydah has no
21 threat information not already provided. We must also
22 collectively accept the possibility that we may never be able
23 to definitively state AZ has provided all the information he

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1 knows, regardless of how compliant he appears to be."

2 Do you -- did you -- were you made aware of that at
3 the time?

4 A. I knew that they didn't want to rule out enhanced
5 interrogation measures completely for him, and that was
6 because of those tapes.

7 Q. Did you -- after having -- this middle management,
8 after having seen your videotape, after having been present,
9 after having talked to Abu Zubaydah, after having smelled the
10 smells and felt the water and snot, read your last -- the
11 chief of base last cable, did you at this point at the end of
12 August 2003 feel there was anything that you could do to
13 convince those middle managers that it was time to stop EITs
14 on Abu Zubaydah?

15 A. I will tell you what I did do. What I did do is --
16 because we didn't know about the tapes. We didn't know about
17 the videotapes. What I did do is I said, there must be
18 something that you haven't told us that you're worried about.
19 How about telling us what that is so that we can ask him about
20 it? And if we ask him about it and he can provide an answer
21 that makes sense, we don't need to go down this road.

22 And my recollection is they listened, and they told
23 us, and they sent us the tapes. And we played them for him,

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1 and we asked him about them.

2 I'm willing to -- to describe the tapes. I don't
3 think they're classified. They're in my book.

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

5 MJ [Col COHEN]: You may.

6 A. Okay. So here's what -- here's what happened.
7 Abu Zubaydah wanted to start his own terror cell. And his
8 concern was -- because we were, you know, interdicting a lot
9 of al Qaeda at that point in -- killing them in Afghanistan.
10 His concern was that he has very Arab features and that he
11 would be caught.

12 But he has to raise money, right, to have a terror
13 cell. He had a few hundred thousand dollars and some plans.
14 In fact, he was planning on leaving in two weeks from the --
15 before the time he was captured in order to do this. This is
16 what he's telling me, right?

17 So he said, so I think I'll make a bunch of videotapes
18 claiming credit for attacks that haven't occurred, get plastic
19 surgery, change my appearance. And then after an attack has
20 occurred anywhere, I'll release one of those tapes, and
21 they'll think that I've done it, right? Meanwhile, I have
22 this other face, and I can move around freely without being
23 targeted by the United States as -- you know, the same way he

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1 would if he looked the same that he did.

2 And so what he told me about that is that -- I've got
3 to be careful here -- that there were organizations and groups
4 who were willing to fund terror attacks, but they wanted to
5 see results. And what they wanted to see was you claiming
6 credit for the attack.

7 And so this was part of some sort of marketing scheme
8 that he had that went horribly wrong. And ultimately, oddly
9 and ironically enough, a lot of the discomfort that he
10 experienced he brought on himself with this, I think,
11 hair-brained scheme.

12 Q. I'd like to direct your attention now to AAA-RDI-54,
13 which is found in the record at AE 628GGGGG Attachment B.
14 Have you seen this document before?

15 A. I don't know -- I don't know what this is.

16 Q. Okay. Let me zoom out.

17 A. I haven't had a chance to read enough of it to ----

18 Q. Sure. Yeah, take your time.

19 A. Back off a little bit.

20 Q. I am.

21 A. Go up here, "Subject: Jim and Bruce."

22 Q. Bruce.

23 A. That would be me and Dr. Jessen.

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1 Q. Just tell me when you've had the chance to review it.

2 A. I think I probably wrote this.

3 Q. Okay. Which part did you write? It looks like --

4 would it be fair -- sorry. Would it -- is this some sort of

5 e-mail [REDACTED] exchange?

6 A. It's a [REDACTED] exchange between me and someone back
7 at headquarters.

8 Q. Okay. And did you write the top section or the bottom
9 section?

10 A. I wrote the -- I wrote the bottom -- the top section.
11 I don't know -- I haven't read the bottom section, so I don't
12 know what I was responding to.

13 Q. Okay.

14 A. I -- I was trying to convince this person that -- that
15 they had a sort of naive view of -- of waterboarding.

16 Q. Right. And I -- if you'd just take a moment, just --
17 I want you to be able to tell me what you're responding to, so
18 if you wouldn't mind reading the bottom section as well.

19 A. Okay. Okay.

20 Q. Okay. Do you know who was -- who wrote the bottom
21 section?

22 A. I believe I do.

23 Q. Okay. Is that person's identity classified?

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1 A. I haven't seen it on any of the papers that I've got,
2 either -- either one, so my assumption is it is.

3 Q. It is? Is it a person who works for the CIA -- or
4 worked for the CIA?

5 A. Yes, it's an employee.

6 Q. Okay. And does that person have a UFI ----

7 A. I just said no.

8 Q. ---- that you've seen? Okay. I know but the ----

9 A. I'll look again, if you'd like me to.

10 Q. If you are confident, then I'm confident.

11 A. I'll look again. I don't see one.

12 Q. Okay. And so one of the things you're responding to
13 in your e-mail is the statement of the unknown interlocutor
14 that, "I've been struck with the fact that AZ needed numerous
15 waterboard administrations to become helpless while the
16 special ops guys needed just one." Do you see that sentence?
17 That's something that the person who did not have a proper
18 understanding of waterboarding wrote to you.

19 A. Right. Here's the problem I had with her thinking.
20 She had this helplessness model in her head that some people
21 had, right, and -- and she was working under the misperception
22 that what you did is apply the waterboard, they squirted
23 something out, you know, and then you applied it again

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1 and et cetera.

2 When I say capitulate, what I mean is capitulate on
3 that -- for the fighters, is capitulate on that particular
4 topic that you're asking them about. They always bounce back
5 and continue to resist and -- and don't capitulate as often
6 the next time because they get used to the procedure, if -- if
7 they were exposed to it the next time. And there were some
8 groups in the past that were exposed multiple times that I
9 really couldn't talk to her about.

10 And so all I was trying to do was tell her that it
11 wasn't necessary in my view to waterboard him multiple times,
12 that he had agreed to start working with us virtually the
13 first time.

14 Q. Okay. I'm -- I'm -- thank you for that, but I'm
15 really more interested in the improper model, the mistaken
16 model that the first e-mailer has.

17 The -- you know, there's a comment here about you guys
18 wimping out on the waterboard. Was -- did -- was there some
19 sort of rumor at -- that you -- that made its way to you that
20 you guys had acted in the ways that they had accused you of
21 acting of being turned or not being willing to do the tough
22 things that were needed to be done? Why is she talking about
23 wimping out on the waterboard?

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1 A. Isn't she talking about Navy fighter pilots wimping
2 out on the waterboard? Am I misreading that?

3 Q. Go down to the third paragraph, the bottom paragraph.
4 "Other than you guys" -- which I assume is you and
5 Dr. Jessen -- "wimping out on the waterboard, I know" --
6 blank -- "thought the trip was incredibly interesting and
7 useful."

8 A. Oh. I didn't remember that. She must have been told
9 that.

10 Q. Okay. And in the -- so now going back up to the
11 paragraph that you were just looking at about the becoming
12 helpless, people who did not have the same understanding as
13 you often thought that the idea was to reduce a person to a
14 sense of helplessness, and then they would just tell you
15 whatever you wanted to know; is that right?

16 A. That's the way it's -- my impression of what they --
17 they thought. But I -- again, let me see if I can explain the
18 model that they have in their mind and what's wrong with the
19 model that -- that some of those folks had in their mind.

20 The point is to get them to provide intelligence, not
21 be so helpless and submissive that they think there is no way
22 that answering the question is going to relieve this issue.
23 It's just going to continue, and -- and so ----

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1 Q. I want you to answer completely and -- but are you
2 right now -- you told us you were going to describe what they
3 thought and then what was wrong with it.

4 A. Right. That you expose them to -- I think they did
5 not understand the actual helplessness paradigm; that you
6 expose the person or animal that you wanted to produce learned
7 helplessness to an inescapable situation. So it didn't matter
8 what they did. If they answered questions, they couldn't
9 escape. If they didn't answer questions, they couldn't
10 escape. The outcome would be the same.

11 In -- in my language as a psychologist, the -- the
12 outcome would be noncontingent on their response. Nothing
13 they could do would change the outcome, right? And then the
14 actual state of learned helplessness is when they're exposed
15 to a new problem and they don't try to solve the problem.

16 Muddled in people's minds was this notion that if you
17 expose them to EITs, eventually what would happen is -- you
18 may remember that I talked about self-efficacy. Eventually
19 what would happen is they would come to believe they couldn't
20 resist any longer and they would provide information. That's
21 not a learned helplessness model, but that became what they
22 referred to as learned helplessness.

23 Q. That was very helpful. Thank you.

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1 And my last question about this e-mail is about the
2 last sentence in the top half that you wrote, where you
3 recommend *Torture and Its Consequences*, especially the
4 chapters that deal with Pavlovian-conditioned neurosis?

5 A. Yes, sir.

6 Q. Could you explain what that's a reference to?

7 A. I can. And I want to do a competent and complete job.

8 Q. Yeah.

9 A. But you've just asked me for six hours' worth of
10 lecture.

11 Q. Let's start it with this way then. What is *Torture*
12 *and Its Consequences*?

13 A. It's a book of -- of essays about the sorts of things
14 that could potentially happen to a person who was held,
15 kidnapped, exposed to the kinds of torture that some foreign
16 countries do or some kidnappers do. It's a very good book.

17 Q. And I understand that, you know, you're not in a place
18 that you can teach us all, you know, Ph.D.s in psychology, but
19 can you summarize why you thought it was useful for this
20 person who e-mailed you to read those chapter -- that book or
21 those chapters?

22 A. Because when Martin Seligman developed the theory of
23 learned helplessness, the studies that motivated him to do

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1 that was Pavlovian-conditioned neurosis. I can explain what
2 it is ----

3 Q. Sure.

4 A. ---- if you would like me to. Here's how that occurs.
5 Let's imagine that you're -- let's -- not you, sir, but let's
6 imagine there's a dog in a cell, a cage. And he's presented
7 with a square, and he's presented with a zero. If he presses
8 the zero, he doesn't get shocked in a certain amount of time.
9 If he presses the square, he does.

10 And then what you do is you start making that zero
11 look more and more and more like the square, right, so that
12 the -- the animal can no longer determine the difference
13 between those two acts that he's supposed to perform.

14 Under that situation, the dogs developed what Pavlov
15 called conditioned neurosis, which is basically they were
16 unable to distinguish what the indicators of the response
17 contingencies -- where they were at, in terms of what would
18 happen to them and they began to act, whine, you know, run
19 in -- move in circles, not try to solve the problem.

20 Q. And do I correctly understand that the analogy to that
21 in a coercive physical pressure situation is that if the
22 perhaps unskilled or not understanding the model that you
23 proposed, that the interrogator continues to hurt the person

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1 whether they give truthful answers or not?

2 A. That's -- that was my concern is that there was this
3 sort of -- you know, when most people think about the use of
4 physical pressures, they think you apply the pressures and
5 that's where you get the information. You know, they squirt
6 them out as you're applying the pressures.

7 That's not what we did, and that's what I thought she
8 was talking about.

9 Q. And just to be clear, "we" in that sentence is you and
10 Dr. Jessen and people you trained?

11 A. Correct.

12 Q. Okay. Last question on this Pavlovian-conditioned
13 neurosis. What are some of the -- what are some of the -- in
14 a human being, what are some of the symptoms of that having
15 taken place?

16 A. I don't know that they've ever done any human studies.

17 Q. All right. Okay. All right. Moving topics now,
18 changing to a fairly short book but we're more or less done
19 with this area. And I'd like to talk a little bit about Ramzi
20 Binalshibh.

21 A. Okay.

22 Q. You have written and others have written that
23 Abu Zubaydah provided information which led to the capture of

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1 Ramzi Binalshibh.

2 A. That's correct.

3 Q. Okay. And what information was that?

4 A. Just making sure there's no objections before I answer
5 the question.

6 Q. No problem. I'm not aware of one, but they're free
7 to ----

8 A. We -- the CIA was very anxious to catch Hassan Ghul.
9 They wanted to catch him. And Abu Zubaydah, we were
10 constantly asking him intel requirements related to the
11 capture of Hassan Ghul.

12 And Abu Zubaydah, who had been working with us and who
13 I felt was being relatively truthful -- because they never
14 tell you everything, and they always lie, and they always try
15 to be deceptive at some point, right, you've got to expect
16 that -- wasn't answering questions.

17 And headquarters is going, we've got to go back to
18 EITs, we got to catch this guy. [REDACTED]

19 [REDACTED]

20 And so we were asking him about, you know, where he
21 is, you know, that sort of stuff. And he kept saying, "I'm
22 not even going to speculate about that." And that just was
23 making headquarters crazy.

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1 And just for clarification, sir, one of the techniques
2 that I used, I was a -- trained as a hostage negotiator, is I
3 put myself between the detainee and headquarters so I could
4 say, "Well, headquarters is not going to settle for that. You
5 know, you got to help me out," right?

6 And so one of us, either Dr. Jessen or myself -- and
7 to this day, I can't remember which one it was -- said to him,
8 "Well, what if I took you to the door, took your chains off,
9 gave you some money. How would you find him?"

10 And Abu Zubaydah said, "Oh, that's easy. Go to
11 Pakistan, find this man, ask him where Hassan Ghul's apartment
12 is. He always keeps Hassan Ghul's apartments. He can lead
13 you right to it."

14 Q. And who was the man?

15 A. I'm not going to -- I can't say.

16 Q. Because you don't know?

17 A. Well, I don't remember. But I also think his -- it's
18 a Pakistani national that's classified.

19 So anyway, they roll this guy up. They ask him where
20 Hassan Ghul's apartment is. He takes them to Hassan Ghul's
21 apartment. They raid the apartment. Hassan Ghul is not
22 there, but Ramzi Binalshibh is, along with, I think, four
23 other al Qaeda members.

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1 Q. And in -- they roll him up. Who is "they"?

2 A. [REDACTED]

3 Q. Mr. Binalshibh -- does it sound correct to you that
4 Mr. Binalshibh was captured on 11 September 2002? Easy to
5 remember date.

6 A. I -- I don't. I just don't know when he was captured.

7 Q. Okay. Before -- as a prelude to what happened to
8 Mr. Binalshibh, I'd like to ask you: You told us yesterday --
9 you told us yesterday about the 1 July 2002 meeting that took
10 place in -- in Washington or National Capital Region?

11 A. Okay.

12 Q. Okay. The ----

13 LDC [MR. CONNELL]: Excuse me, Your Honor. My numbers
14 have gone astray.

15 MJ [Col COHEN]: Okay.

16 WIT: Oh, this is classified too.

17 LDC [MR. SOWARDS]: Excuse me, Your Honor.

18 MJ [Col COHEN]: Yes, Mr. Sowards?

19 LDC [MR. SOWARDS]: As we referenced yesterday, may we
20 have a 20-minute opportunity for Mr. Mohammad ----

21 MJ [Col COHEN]: You may.

22 LDC [MR. SOWARDS]: ---- to be excused?

23 MJ [Col COHEN]: Guard force, you may allow him to step

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1 away from the courtroom.

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

3 MJ [Col COHEN]: You're welcome.

4 LDC [MR. CONNELL]: All right.

5 Q. So, sir, I'd like to draw your attention to
6 AAA-RDI-4760. It's a little bit hard to read, but I'm going
7 to show the military commission first the markings, the
8 UNCLASSIFIED//FOR PUBLIC RELEASE marking?

9 MJ [Col COHEN]: It is. You may publish.

10 LDC [MR. CONNELL]: Okay.

11 WIT: Oh, my goodness.

12 Q. Okay. So I'm going to blow it up to make it a little
13 bit easier to read. Direct your attention to paragraph 2,
14 which refers to a 1 July 2002 Headquarters Alec meeting
15 regarding post-isolation phase of Abu Zubaydah. Do you see
16 that?

17 A. I do.

18 Q. Okay. And now I'm going to show you the next page,
19 which is RDI-4761. And the text says that -- a substitution,
20 "Mitchell, FBI SA" -- blank -- "and" -- blank -- "returned
21 from" -- blank -- "and were present from the meeting. In
22 addition to" -- blank -- "FBI officers present were" -- blank.
23 Do you see that?

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1 A. Yes.

2 Q. Okay. Here's my question: Yesterday you testified
3 that, to the best of your knowledge, the only person you knew
4 who was FBI who was present at the 1 July meeting was Special
5 Agent Gaudin. Given the number of people who were present at
6 that meeting, could there have been other FBI persons there
7 that you just didn't know?

8 A. Of course that's possible.

9 [The accused, Mr. Mohammad, withdrew from the courtroom.]

10 Q. Okay. The -- you also testified yesterday -- and I'm
11 done with the document camera.

12 MJ [Col COHEN]: Okay.

13 Q. You mentioned a meeting that you had had with Mueller
14 and Tenet?

15 A. Correct. I was a straphanger at that meeting.

16 MJ [Col COHEN]: One second. We've lost comms on the
17 witness mic. If we can just do a test real quick.

18 A. It's more accurate to say that Mueller and Tenet had a
19 meeting and I attended.

20 Q. Okay. Fair enough. Is that Robert Mueller or Scott
21 Muller?

22 A. It was the -- I believe it was the director of the
23 FBI.

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1 Q. Robert Mueller, okay. And ----

2 A. I mean, it could have been -- it could have been the
3 other -- you know, the deputy director, but I don't think so.
4 I think it was Mueller.

5 Q. Okay. And when you say the deputy director, you mean
6 Pat D'Amuro, the deputy director of the FBI at that time?

7 A. Then it definitely wasn't him. It was Mueller.

8 Q. Okay. Were the enhanced interrogation techniques
9 described at that meeting?

10 A. Yes.

11 Q. Okay. So was there any question in your mind that the
12 FBI, in the person of Robert Mueller, understood what was
13 being proposed?

14 A. Well, let me think about my previous answer. Because
15 I -- I don't know for certain that they were described.
16 Certainly, the use of enhanced interrogation techniques were
17 discussed, and they were told that they were -- that they were
18 SERE -- they were going to be SERE things. I don't think they
19 had been approved yet by the DoJ. What -- do you have a date
20 for this meeting?

21 Q. I don't, but I do -- I believe it's -- it occurred in
22 mid-July and I believe it had not yet been approved by the
23 DoJ.

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1 A. Right. So -- so ----

2 Q. I think was in consultation with the NSA.

3 A. I don't think they would have specifically described
4 the techniques to him other than the SERE techniques and that
5 they were physically coercive, but I don't actually know, you
6 know.

7 Q. Was that the main topic of the meeting?

8 A. The topic of the meeting was whether or not the FBI
9 wanted to be involved with interrogations that used physical
10 coercion.

11 Q. Okay. And did the FBI -- did Director Mueller express
12 a position at the meeting?

13 A. Yes.

14 Q. What was his position?

15 A. He said, "We don't want to do it. We're not going to
16 have our agents there."

17 Q. Was he any more specific than that?

18 A. He might have been after he left. I mean, I didn't --
19 you know, he and I weren't -- I mean, he's a -- you know, he's
20 the director of the FBI. I'm a guy sitting in a chair on the
21 edge of the table. So he could have been more specific.

22 Q. Okay. Did you know that -- or do you know now that
23 less than two months after that meeting, [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]

4 A. I've actually never heard that until just now.

5 Q. Okay. Do you know that -- do you know now that
6 immediately after that interrogation, Mr. Binalshibh was
7 transferred to Location 5?

8 A. Let me look at Location 5.

9 Q. Sure.

10 A. I did not know that.

11 Q. And last question in this line: Did you know that

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 A. No.

16 Q. In the course of your professional duties, did you
17 have access to detainee reporting from Ramzi Binalshibh during
18 the period September 2002 to January 2003?

19 A. I could have if I had needed it, but I -- because of
20 the other duties I was focused on, I didn't even know he was
21 captured.

22 But if I could say one thing, because you seem to be
23 implying with the direction that you're going that enhanced

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1 interrogation techniques were used at Location 5.

2 Q. I'm not implying anything. I'm just asking about --
3 what I'm really -- because I'll give you my follow-up
4 question, which is: When Director Mueller said that they
5 didn't want to be there or they didn't want to do it, I -- do
6 you know what he -- "it" was?

7 A. I think it was the application -- specific application
8 of SERE techniques. I don't know his position on nudity. I
9 don't know his position on the person being chained to the
10 floor. I don't know their position -- when they talk about
11 sleep deprivation, when the FBI agents that I talked to at
12 the -- at the third site talked about sleep deprivation, they
13 talked about staying awake with the detainee, a single agent
14 staying awake with the detainee as long as that detainee was
15 awake.

16 So I don't know what that cable means about -- or
17 whatever you read means about what they called sleep
18 deprivation in Location 5. I just don't know what it is.

19 Q. Okay. And when you say the third location, do you
20 mean Location Number 3 or -- you can refer to your paper, if
21 you want to give us a location number. I'll give you a more
22 precise question.

23 What is the location number of the detention site you

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1 just referred to as the third location?

2 A. It's Location Number 3.

3 Q. Okay. That's good. Understood.

4 A. I was just double checking. I knew it was Location
5 Number 3.

6 Q. Sure. Next page. The -- in your book at page 60,
7 referring to Abu Zubaydah, you write that the plan became a
8 template for future interrogations.

9 A. Let me look.

10 Q. What did you mean by that?

11 A. I meant by future interrogations that Bruce and I did.
12 That's my initial response to this, and that ----

13 Q. Yeah. So let me just follow up on that, because
14 that's actually where I was going.

15 You don't mean that every interrogator who ever
16 worked -- who ever interrogated an al Qaeda prisoner followed
17 your template or your theories, right?

18 A. What I'm hesitant on is this notion about theories,
19 but I can tell you that not every -- I can tell you for a fact
20 that not every interrogator for the CIA followed the
21 methodology that Bruce and I did.

22 Q. Methodology is a better word. I'll use it.

23 Did you have something else you wanted to say about

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1 the template? I -- I cut you off, so if you had something
2 else you wanted to explain. No? Okay. All right.

3 New book now. I'd like to talk about Location
4 Number 2. After having snatched you away to your -- from your
5 house with basically without a toothbrush or anything else,
6 you eventually got to go home briefly in November of 2002; is
7 that right?

8 A. That's my recollection.

9 Q. Okay. And you'd been home less than a week, and then
10 you're summoned back to the CIA; is that your recollection?

11 A. Correct.

12 Q. Okay. And when you got there, you were instructed
13 that you should travel and participate in interrogations of
14 Mr. al Nashiri; is that right?

15 A. That's correct.

16 LDC [MR. CONNELL]: Okay. And following the prior ruling
17 of the military commission with respect to flights, persons,
18 all those things, I'm -- I'm normally I would make the
19 government invoke classified information privilege, but I'm
20 just going to follow the ruling and ----

21 MJ [Col COHEN]: They have.

22 LDC [MR. CONNELL]: Okay.

23 MJ [Col COHEN]: And that -- now that you're telling me

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1 that's where you would have gone, we're good. Thank you.

2 LDC [MR. CONNELL]: Thank you.

3 Q. And so initially, your flight landed in a country
4 which does not have a location number, correct?

5 A. I'm sorry. I'm not following what you're trying to
6 say.

7 Q. It's okay.

8 TC [MR. GROHARING]: Objection, relevance, regardless.

9 MJ [Col COHEN]: What is the relevance, Counsel?

10 LDC [MR. CONNELL]: There is one particular fact that I
11 need from that, [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED] That's the one particular
15 fact that I was going to get out of this.

16 MJ [Col COHEN]: Okay. What is the relevance of that?

17 LDC [MR. CONNELL]: [REDACTED]
18 This was immediately after his capture.

19 MJ [Col COHEN]: Okay. What would you do with that fact?
20 I guess that's what I'm trying to figure out is -- I know in
21 your mind you've already thought where you're with that, but
22 I'm not there with you.

23 LDC [MR. CONNELL]: Right.

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1 MJ [Col COHEN]: So I'm trying to think like why does it
2 matter who captured Nashiri, is kind of what I'm thinking in
3 my mind.

4 LDC [MR. CONNELL]: Sure. I'll tell you what. To lay a
5 foundation or maybe even not need it, I'll move on from that
6 point, and if I need it, I'll double back.

7 MJ [Col COHEN]: Copy. All right, I'll sustain it for
8 now. That doesn't mean you can't readdress it. That's kind
9 of what I'm looking for to rule on the relevance objection,
10 though, ultimately.

11 LDC [MR. CONNELL]: Okay.

12 **DIRECT EXAMINATION CONTINUED**

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

14 Q. So eventually, you land in the country of Location
15 Number 2, right?

16 A. That's correct.

17 Q. And Mr. al Nashiri was on that plane?

18 A. That's correct.

19 Q. Okay. And you drove straight from the airport to
20 where the detainees were being held?

21 A. That's correct.

22 LDC [MR. CONNELL]: Okay. The Court's indulgence for just
23 one moment?

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1 MJ [Col COHEN]: You may.

2 Counsel, I know you don't have the clock behind you.
3 Just so I can keep you just informed, we're about 17 minutes
4 from the next break.

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

6 MJ [Col COHEN]: You're welcome.

7 LDC [MR. CONNELL]: Thank you for the indulgence.

8 Q. You tell a story in your book about ----

9 A. What page are we looking at?

10 Q. 93. Would you like a moment or finish the question?

11 A. No, no.

12 Q. The -- tell the story about essentially your linguist
13 was assigned to sleep under a pool table in a bar?

14 A. Correct.

15 Q. Okay. My first question is: There was a bar [REDACTED]

16 [REDACTED] ---

17 TC [MR. GROHARING]: Objection, Your Honor. Eliciting
18 these kind of details would tend to identify the location or
19 could tend to identify the location. I assume that's where
20 Mr. Connell is going.

21 LDC [MR. CONNELL]: I'm actually going to a very specific
22 place, but why don't I consult with counsel for a moment and
23 tell them what it is.

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1 MJ [Col COHEN]: Please do.

2 [Counsel conferred.]

3 LDC [MR. CONNELL]: Your Honor, counsel has asked me for a
4 moment to confer.

5 MJ [Col COHEN]: We're good. Thanks.

6 [Counsel conferred.]

7 MJ [Col COHEN]: Have the parties reached an agreement?

8 TC [MR. GROHARING]: I believe so, Your Honor.

9 MJ [Col COHEN]: Okay. Then you may continue.

10 LDC [MR. CONNELL]: Sure.

11 Q. Was there a bar [REDACTED]

12 A. No.

13 Q. Okay. Was there a bar [REDACTED]

14 A. Can you define "near"?

15 Q. So let me -- I'll ask you a different question. You
16 write in the book at page 93 that your linguist was assigned
17 to sleep under the pool table in the bar.

18 A. That's correct.

19 Q. Okay. And that immediately follows, you drove
20 straight from the airport to where the detainees were being
21 held.

22 A. Okay.

23 Q. Okay. My -- what is the relationship of those two

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1 sentences?

2 A. Let me just read the sentences so that I can refresh
3 my thinking at the time that I wrote them.

4 Q. Yes.

5 A. I think I was just giving a sequential description of
6 my day.

7 Q. Okay. So bar obviously was not actually in the
8 detention site, right?

9 A. Not even remotely.

10 Q. All right. Okay. So pause before you answer this
11 question, okay?

12 If I showed you a picture of the bar, would you
13 recognize it?

14 A. I don't know. I don't drink, and so I don't spend a
15 lot of time in the bars. And I didn't spend a lot of time in
16 that bar because it was very crowded.

17 Q. So the answer is maybe?

18 A. You're welcome to show me the picture.

19 Q. Okay.

20 TC [MR. GROHARING]: We would object, Your Honor.

21 MJ [Col COHEN]: Okay. And that's under your assertion of
22 the national security privilege?

23 TC [MR. GROHARING]: As well as relevance.

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1 MJ [Col COHEN]: Right. Okay. Relevance would be -- just
2 be determining the location?

3 LDC [MR. CONNELL]: So it absolutely is determining the
4 location with -- with substantial accuracy, in that ----

5 MJ [Col COHEN]: No, I understand. That would be the --
6 is that the relevance?


7 LDC [MR. CONNELL]: Yes.

8 MJ [Col COHEN]: Okay. All right. They have precluded
9 you by assertion of their privilege from identifying the
10 specific location.

11 [The accused Mr. Mohammad returned to the courtroom.]

12 LDC [MR. CONNELL]: Okay.

13 Q. One of the things you wrote in the book was on the
14 ground at the time you could tell that COBALT was headed for
15 some sort of trouble. Same page, 93. Could you tell us a
16 little bit about that, what you meant?

17 A. I thought it was poorly run. 

18 

19 

20 

21 I -- I thought that it was cold. It was colder than
22 it should have been given that you had people who were, you
23 know, in various stages of clothing, chained in what looked to

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1 me like horse stalls.

2 Q. And, in fact, you write in the book that you and
3 Dr. Jessen spent hours the day you flew in sort of cataloging
4 those potential problems, like talking about them.

5 A. Right.

6 Q. Right.

7 A. He actually wrote the cable that went back. I just
8 sat with him while he wrote it.

9 Q. Could you tell us a little bit about that, the cable?

10 A. Well, he had been asked to do an assessment of whether
11 or not EITs would be -- should be applied to Gul Rahman, the
12 one who unfortunately died of exposure. And he determined
13 that they shouldn't, that it would actually be a waste of time
14 and increase his resistance because of the resistance posture
15 that he had.

16 But at the same time when he wrote that cable back, he
17 said get physicians involved, get him some blankets, get him
18 some heaters, get him some better food, get -- put Americans
19 down there at night. I mean, there was a list of things. And
20 that was the context of the cable. I think it's available.

21 Q. Have you seen an unclassified version of it?

22 A. I think it was released for our hearing.

23 Q. The civil case?

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1 A. Yeah.

2 Q. All right. And so that time in November 2002, that
3 was the only time that you were ever personally present at
4 COBALT, right?

5 A. Yeah. I was just there overnight.

6 Q. And that was on or about 12 November 2002?

7 A. I actually don't recall the date.

8 Q. Okay. Would it refresh your recollection if I showed
9 you your prior testimony in the deposition?

10 A. I mean ----

11 TC [MR. GROHARING]: Objection, Your Honor. Relevance to
12 the specific date.

13 LDC [MR. CONNELL]: Oh, it's going to become quite
14 relevant because there were two other things that were
15 happening on that same date. One of them was a Bureau of
16 Prisons training for guards, [REDACTED]

17 [REDACTED] And the second was that was the day that NX2's
18 training, which had nothing to do with Dr. Mitchell, started
19 his training of his vision of how interrogation should happen.

20 It had a practical aspect to it. I don't know that
21 Dr. Mitchell personally saw either of those two things but I'd
22 like to ask him about it. So the date is important because
23 that's the date that those two other things begin.

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1 MJ [Col COHEN]: Okay. I'll allow it. Overruled.

2 A. NX2.

3 Q. Sir, I'm showing you AE -- I'm sorry, AAA-RDI-766,
4 the -- which is found in AE 628GGGGG Attachment B. It's
5 the -- it's not marked with release. And anybody who feels a
6 little seasick, look away, because I'm about to change the
7 focus.

8 And if -- if you just want to read this to refresh
9 your recollection, then I'll show you after -- show you the
10 next page.

11 A. I'm -- I'm reading the bottom of it.

12 Q. Okay.

13 A. Show me the first page again.

14 Q. Sure.

15 A. Now show me the second page again. Okay. So I said
16 sometime about November the 12th.

17 Q. Okay.

18 A. If that's what I said in that deposition, I have
19 reason to believe it's accurate.

20 Q. Thank you, sir. Thank you.

21 MJ [Col COHEN]: Counsel, you've got six minutes to lunch,
22 to the recess.

23 LDC [MR. CONNELL]: Thank you. Your Honor, I'm going to

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1 show the government really one of the most important facts
2 that appears from a source that's been through publication
3 review. I think that it brings that issue into sharp focus.

4 I'm pretty sure what I -- that the government's
5 response will be, but I want to -- if I could have just a
6 moment to show ----

7 MJ [Col COHEN]: You may.

8 [Counsel conferred.]

9 LDC [MR. CONNELL]: I can't exactly ask the question
10 without reading him the ----

11 TC [MR. GROHARING]: Well, I would object. Mr. Connell's
12 indicated a particular passage of the book that he would like
13 to read and ask the witness about. We would object to -- to
14 that question, either reading the passage or asking the
15 question.

16 MJ [Col COHEN]: Okay.

17 TC [MR. GROHARING]: I believe Mr. Connell will put it on
18 the record in a closed session, is the understanding.

19 LDC [MR. CONNELL]: Yes. And that falls -- as I
20 understand, that objection is based on national security
21 privilege.

22 MJ [Col COHEN]: All right.

23 TC [MR. GROHARING]: That's correct, Your Honor.

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1 MJ [Col COHEN]: Okay. All right. Let's bring up that --
2 bring that up in a closed session. So is that -- okay. A
3 that's a pure -- like I said, I want to make sure we're never
4 conflating the issues, right? So it's not that it can't be
5 asked in a closed session, but that it can never be asked and
6 answered.

7 LDC [MR. CONNELL]: Correct.

8 MJ [Col COHEN]: Mr. Groharing, is that -- I'm
9 understanding that it's the latter, correct?

10 TC [MR. GROHARING]: Correct, Your Honor.

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

12 LDC [MR. CONNELL]: I have another question that -- my
13 next question would fall into the same category.

14 MJ [Col COHEN]: Can you -- and I will allow you to -- to
15 put the specific passages and sentences on the record in
16 the -- in the closed session.

17 LDC [MR. CONNELL]: Thank you. And with the -- and then
18 there's a third question that would fall into the same
19 category, and then that brings me to a new chapter. So if
20 it's the right time to break ----

21 MJ [Col COHEN]: I think it is then. Let's go ahead.

22 Counsel, I'm going to try to stick to the 75-minute
23 lunch period. I obviously have some things I need to take up

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1 with the government. I don't know how long that's going to
2 take me, but I do -- it will be -- if it's going to be longer
3 than that, I'll make sure we get the word to everyone, to
4 include the public. But otherwise, plan on coming back at
5 1315 hours.

6 If you show -- if -- this is for the public, because I
7 have better access to -- to counsel than I do to the public.
8 We will have someone at the door with an exact time for the
9 public if for some reason we cannot start exactly at 1315. I
10 don't know whether I need to do the ex parte in here or
11 whether I can get the -- them to go back with me into
12 chambers. Chambers is ideal. That way people can come into
13 the courtroom, but I'm going to have to work with the stenos
14 on that.

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

16 MJ [Col COHEN]: All right. We're in recess until at
17 least 1315 hours.

18 [The R.M.C. 803 session recessed at 1158, 22 January 2020.]

19 [END OF PAGE]

20

21

22

23