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1 [The R.M.C. 803 session was called to order at 0911,
2 23 January 2020.]

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

5 General Martins, will you please account for any
6 changes in your -- in your personnel, if any.

7 CP [BG MARTINS]: Your Honor, we have the same personnel
8 representing the United States, same counsel; and Mr. Swann is
9 back.

10 MJ [Col COHEN]: All right. Thank you, sir. Good morning
11 to everyone on the prosecution side.

12 Mr. Sowards, same to you. It looks like your team is
13 the same. Good morning.

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

15 MJ [Col COHEN]: I notice that Mr. Mohammad is not here
16 currently.

17 LDC [MR. SOWARDS]: That is correct, Your Honor. Perhaps
18 this afternoon. And also during the morning session,
19 Lieutenant Colonel Poteet and Ms. Radostitz may need to take
20 care of business in the office and will be excused.

21 MJ [Col COHEN]: Not a problem at all. Thank you very
22 much, sir.

23 LDC [MR. SOWARDS]: Thank you.

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1 MJ [Col COHEN]: Ms. Bormann, good morning to you. I
2 notice that Mr. Bin'Attash is also absent.

3 LDC [MS. BORMANN]: That's right, until this afternoon.
4 And then also missing is Captain Peer; he's doing other
5 commission-related business.

6 MJ [Col COHEN]: Thank you, ma'am.

7 Mr. Harrington, I see Mr. Binalshibh is here. Good
8 morning to you and your team.

9 LDC [MR. HARRINGTON]: The same, Judge.

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

11 Mr. Connell, it looks like Mr. Ali is not here today,
12 but good morning to you and your team. Any changes?

13 LDC [MR. CONNELL]: Good morning, Your Honor. No changes.

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

15 Mr. Ruiz, it looks like Mr. al Hawsawi has not joined
16 us here this morning. Are there any changes to your team?

17 LDC [MR. RUIZ]: No, Judge. Thank you.

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

19 All right. Is there a witness with respect to the
20 gentlemen who currently are not present?

21 I recognize the Major to be the same Major who
22 testified yesterday. Major, I remind you you're still under
23 oath.

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1 MAJOR, U.S. ARMY, was called as a witness for the prosecution,
2 was reminded of his oath, and testified as follows:

3 **DIRECT EXAMINATION**

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

5 Q. Major, you have in front of you what's been marked a
6 series of documents, AE 700A, B, C, and D; is that correct?

7 A. Yes, sir.

8 Q. Each of these documents consist of three pages?

9 A. Yes, sir.

10 Q. Let's take 700A ----

11 A. Yes, sir.

12 Q. ---- the proposed waiver of Mr. Mohammad. Did you
13 have occasion to advise Mr. Mohammad of his right to attend
14 today's proceedings?

15 A. I did.

16 Q. Did you do it the same way you've done it every other
17 time?

18 A. Yes, sir.

19 Q. I haven't now -- did he sign the Arabic or the English
20 version of this document?

21 A. He signed the English version, sir.

22 Q. With respect to Bin'Attash, three-page document, 700B.

23 A. Yes, sir.

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1 Q. Did you advise him of his right to attend today's
2 proceeding?

3 A. I did, sir.

4 Q. And he signed the Arabic version?

5 A. That's correct.

6 Q. With respect to Ali Abdul Aziz Ali, is that his
7 signature that appears on page 2 of this document?

8 A. It is, sir.

9 Q. And finally, Mustafa Ahmed Adam al Hawsawi, I see a
10 signature on page 3 of this document, the Arabic version.

11 A. That's correct.

12 Q. Do you believe that each of these men waived their
13 right to attend today's proceeding?

14 A. Yes, sir.

15 TC [MR. SWANN]: I have no further questions.

16 MJ [Col COHEN]: All right. Thank you, Mr. Swann.

17 Retrieving the exhibits from the witness.

18 Mr. Sowards, have you seen Appellate Exhibit 700A
19 respecting Mr. Mohammad's waiver for this morning's session,
20 and do you have any questions of the witness?

21 LDC [MR. SOWARDS]: I have seen it, and I have no
22 questions, Your Honor.

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

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1 LDC [MR. SOWARDS]: Thank you.

2 MJ [Col COHEN]: All right.

3 Ms. Bormann, same questions to you with respect to
4 700B, which purports to be signed by Mr. Bin'Attash.

5 LDC [MS. BORMANN]: I've reviewed it, and I have no
6 questions.

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

8 Mr. Connell, same questions to you with respect to
9 AE 700C, which purports to be signed by Mr. Ali.

10 LDC [MR. CONNELL]: I've reviewed AE 700C and I have no
11 questions.

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

13 And then, Mr. Ruiz, same questions to you with respect
14 to AE 700D.

15 LDC [MR. RUIZ]: Judge, I've seen a copy and I have no
16 questions.

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

18 All right. Major, you are excused. Thank you.

19 WIT: Yes, sir.

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

21 MJ [Col COHEN]: I find that having heard the testimony of
22 the witness and review of the documentation that I just
23 described, I find that Mr. Mohammad, Mr. Bin'Attash, Mr. Ali,

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1 and Mr. al Hawsawi have knowingly and intelligently waived
2 their rights to be here to start this session.

3 Consistent with the guidance I provided them on
4 Tuesday, if any of the gentlemen wish to be present at a later
5 session, they should notify the guard force. I'm sure they
6 will. And they may obviously appear at any time they choose.

7 It appears to be working fairly smoothly that if the
8 accused choose to come and go, I'm just going to let them come
9 and go with the guard force. They're doing it very quietly.
10 It's not disruptive. It seems to be the best use of our time,
11 rather than taking 15- or 20-minute recesses to allow that to
12 happen.

13 As long as -- well, Mr. Binalshibh is here so he can
14 hear this as well. Please pass this along to your clients.
15 As long as that continues, even if they need to get up and
16 leave, such as I made accommodations for Mr. Mohammad, just
17 let me -- just let me know that that's what's going on, and
18 we'll just continue. We'll -- we'll press with testimony or
19 argument, but that seems to be the better use as opposed to
20 the previous practice of taking 15- or 20-minute recesses.

21 So thank them for their -- for their -- I can't think
22 of a word besides deference, just the idea of being -- quietly
23 exiting the courtroom and coming back, I'm willing to

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1 accommodate that because I think that that's fine. Even if
2 it's a restroom break. If they need to go to a restroom break
3 but the rest of us are ready to continue, I let the parties do
4 that, so I don't have a problem with the accused doing that.
5 I just need to note for the record that they have exited the
6 courtroom. So thank you very much. All right.

7 Are we ready to proceed with the questioning? Please
8 call the witness.

9 LDC [MR. CONNELL]: Sir.

10 MJ [Col COHEN]: One second. Yes, Mr. Connell.

11 LDC [MR. CONNELL]: I'm sorry. I wasn't near a
12 microphone.

13 MJ [Col COHEN]: That's all right.

14 LDC [MR. CONNELL]: I have one issue I need to bring to
15 the military commission's attention before we move forward.

16 MJ [Col COHEN]: You may do so.

17 LDC [MR. CONNELL]: Thank you. In AE 538AA the military
18 commission ordered the government to produce all documents and
19 information within a certain scope linking CIA, FBI, and DoD.
20 The government filed its position in AE 538CC that they had
21 complied. We filed our position in AE 538DD that they had not
22 complied.

23 One of the elements of noncompliance in our view is

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1 that the FBI requirements cables that the government has
2 produced are substantially redacted without -- I'm slowing
3 down -- are substantially redacted without judicial review.
4 These are not documents that went through the 505 process with
5 three exceptions. I think there are three documents that went
6 through the 505 process, but the other 150 or so did not.

7 The -- and that's going to come into play this morning
8 because the FBI sent nine requirements cables either
9 immediately before, during, or immediately after
10 Mr. al Baluchi's EITs, and on five of those documents, the
11 date -- we can tell that it's May 2003, but the actual date
12 has been redacted without judicial review.

13 And that may come in -- that could be significant this
14 morning. I just wanted to point out, you know, just in -- in
15 one time that it's coming up, how the government's, in my
16 view, refusal to comply with the 505 process or produce the
17 documents in response to the order is interfering with our
18 ongoing cross-examination -- or our ongoing examination of
19 witnesses. And this is just one very pointed example, but I
20 thought I would bring it to the military commission's
21 attention.

22 MJ [Col COHEN]: All right. Thank you. I'll pay
23 attention to that while -- during the examination of the

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1 witness. Just in general -- I mean, I've seen the positions
2 in 538AA, 538 -- well, I -- I -- in 538CC and 538DD. I
3 understand there's some disagreement among the parties. At
4 some point I will address that.

5 I will say this generally, though: Consistent with
6 things I've said previously, to say it one more time, I -- the
7 prosecution -- if there's any -- if there's any -- the defense
8 is entitled to know whether a redaction exists because of 701
9 or a redaction exists because of 505. If it's 701, the
10 defense can file a motion to compel for a 701 redaction
11 because if they -- then if they can meet the -- their burden
12 of -- indicating that that should be -- that should be
13 provided to them or compelled by the court, you may do so.

14 And they are distinct in my mind as they are in the --
15 in the rule, so if there are any -- any confusions, you --
16 hopefully the prosecution is -- is letting you know whether
17 it's a 505 or a 701 redaction. If they're not, they should.
18 You are entitled to know that because then that would make a
19 difference as to whether you can file a motion to compel.

20 LDC [MR. CONNELL]: Well, I -- the government can speak
21 for itself, of course, but in no way have we ever been told
22 whether any redaction is 701 or 505.

23 MJ [Col COHEN]: And you should.

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1 LDC [MR. CONNELL]: The only thing that we've ever been
2 told in connection -- connection with the 156 series, if I
3 correct -- remember correctly, or maybe one -- no, it would be
4 165 -- the -- that some redactions were not PII related.
5 That's the only thing we've ever been told.

6 MJ [Col COHEN]: Okay.

7 LDC [MR. CONNELL]: But there are hundreds of thousands of
8 redactions, and to -- we don't ----

9 MJ [Col COHEN]: I understand.

10 LDC [MR. CONNELL]: ---- know what any of them are for.

11 MJ [Col COHEN]: Like I said, we're not going to resolve
12 that this morning, but I'm just letting you know that's my
13 view of the law. There's a difference between a 701 redaction
14 and a 505 redaction under the law.

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

16 MJ [Col COHEN]: So -- so I am -- one, you can ask for
17 reconsideration because that's what Congress told me. But the
18 other is within the -- the rules of -- rule -- Rules of
19 Military Commission 701 and ----

20 LDC [MR. CONNELL]: Right. And I do want to be clear the
21 documents that I was referring to this morning, although we
22 don't know what kind of redactions they are, they are not 505
23 redactions because under 505(f), you get to see the original

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1 and compare it with the redacted version to see if it
2 interferes with the ability to present a defense. And that's
3 what we can't ask to reconsider.

4 MJ [Col COHEN]: Correct.

5 LDC [MR. CONNELL]: These documents have never been
6 through that process. These are completely unilateral
7 redactions by the government and -- you know, of things like a
8 date which would show FBI involvement prior to or during
9 Mr. al Baluchi's EITs that the military commission has already
10 ordered.

11 I mean, you know, in some ways -- the reason why I
12 filed a notice of noncompliance, I don't know what relief
13 there is left to ask because we -- we've asked to compel it.
14 You issued an order to compel. And of the four elements of
15 your order to compel, they didn't comply with any of them.
16 And so -- they did produce additional material, but not in the
17 way that you directed and -- and with enormous redactions that
18 would normally have to go through you.

19 So, I mean, like I'm ----

20 MJ [Col COHEN]: I ----

21 LDC [MR. CONNELL]: I don't know what left to ask.

22 MJ [Col COHEN]: Yeah.

23 LDC [MR. CONNELL]: So -- but I just wanted to bring that

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1 to your attention this morning.

2 MJ [Col COHEN]: And I appreciate you doing so. And, like
3 I said, we will definitely -- I'm sure this will come up in
4 some of the other motions to compel that have already been
5 filed by the parties as well, and so I will definitely make
6 sure that we're going to -- we will address that issue on the
7 next docket in particular as to we're going to need some
8 resolution to this.

9 LDC [MR. CONNELL]: Yes, sir. Because witness after
10 witness is going by without the evidence.

11 MJ [Col COHEN]: Nope. And the nice thing about it is, is
12 that -- yes, all of which plays into other matters ----

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

14 MJ [Col COHEN]: ---- for me to consider. So ----

15 LDC [MR. SOWARDS]: Your Honor, I'm sorry.

16 MJ [Col COHEN]: Mr. Sowards.

17 LDC [MR. SOWARDS]: Thank you, sir. And not to put too
18 fine a point on it, but as the commission considers the
19 nomenclature going forward of what it may be requesting of the
20 government, it has been the case that, in the past, the
21 government has articulated the position that a 505 privilege
22 assertion or -- or denial of -- of information can subsume a
23 701 determination. In other words, having determined that

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1 it's not relevant, they don't have to decide whether we should
2 be getting the information. But the -- but the reference is
3 505.

4 So if that is their position going forward and you're
5 asking them to specify, it would be helpful to break that out.

6 MJ [Col COHEN]: I agree.

7 LDC [MR. SOWARDS]: Thank you.

8 MJ [Col COHEN]: I agree. I -- I agree.

9 LDC [MR. CONNELL]: I'm ready now, sir.

10 MJ [Col COHEN]: All right, thank you. Call the witness.

11 [The witness resumed the witness stand.]

12 MJ [Col COHEN]: Hello, sir. Please take your seat. Good
13 to see you this morning. Remind you you're still under oath.

14 WIT: Yes, sir.

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

16 Your witness.

17 **DIRECT EXAMINATION CONTINUED**

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

19 Q. Good morning, Dr. Mitchell.

20 A. Good morning. Before we get started, you had asked me
21 to give some thought to a unique identifier.

22 Q. Yes, sir.

23 A. And I did.

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1 Q. Thank you.

2 A. I sat last night in my room, and I thought about all
3 the people I'd encountered and the names, and -- and I'm
4 reasonably certain I can answer that question.

5 Q. All right, sir. And just to give it a little context
6 for the record, the question was, who was the -- what is the
7 UFI of the third person involved in the training in spring of
8 2003; is that right?

9 A. No. It was a UFI about the person who was at Site 4.

10 Q. Okay.

11 A. You asked me if I knew ----

12 Q. Yes.

13 A. ---- if I knew who that person was.

14 Q. Yes, sir. Thank you.

15 A. And -- oh, I'm looking at the wrong thing.

16 It was PU2 that you asked me about.

17 Q. Yes, sir.

18 A. And after thinking about it and thinking back to all
19 the ways I could have misspelled the way he pronounced this
20 last name, I'm reasonably certain that he was the person that
21 you were asking me about.

22 Q. Thank you, sir. I really appreciate that.

23 A. And as you asked, I believe he was an acolyte of the

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1 new sheriff.

2 Q. Very good.

3 A. Or acolyte, I guess is the right way of saying it.

4 Q. Thank you. And so I'm pleased to say that you were
5 also right about the Bandura chart being in the book *Social*
6 *Foundations of Thought and Action* at page 376. I'll hand you
7 the book, sir.

8 LDC [MR. CONNELL]: But I've also prepared an exhibit
9 which is 628PPPPP (AAA), which includes the chart that
10 Dr. Mitchell referred to as well as including the specific
11 citation that the military commission asked me for with the
12 edition and the page number.

13 MJ [Col COHEN]: Thank you. You may --

14 Trial Counsel, have you had the opportunity to see
15 this.

16 LDC [MR. CONNELL]: I gave them a copy.

17 TC [MR. GROHARING]: I have, Your Honor.

18 MJ [Col COHEN]: Okay.

19 LDC [MR. CONNELL]: May I approach?

20 MJ [Col COHEN]: You may.

21 WIT: Okay. It would be easier if you just put it on the
22 screen.

23 [Counsel away from podium; no audio.]

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1 WIT: Well, no. I virtually memorized this book.

2 LDC [MR. CONNELL]: Excellent. May I have access to the
3 document camera, Your Honor?

4 MJ [Col COHEN]: You may. You may publish.

5 WIT: Perfect.

6 Q. All right. Can you explain to us what what I'm
7 showing on the screen, which is 628PPPPP, is?

8 A. Right. It's a -- it's a flowchart or a diagram
9 listing what Dr. Albert Bandura identified as the major
10 components of a -- of moral disengagement, which is basically
11 how the self-sanctions that keep people's behavior in line
12 with established moral codes can be systemically -- not
13 attacked, that's the wrong word -- but systemically infected
14 in such a way that they can end up doing conduct that has
15 detriment effects for other people.

16 He wrote a very extensive paper, which is not in his
17 book but was published later, on about how this applies to
18 terrorist organizations. And I used this chart to teach
19 survival instructors and our own in-house interrogators when
20 we trained them what to watch out for.

21 Q. Okay. And so could you just walk us through the chart
22 and explain it to us?

23 A. Sure. The writing with the letters that have the

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1 opens in them, "Reprehensible Conduct," "Detrimental Effects,"
2 and "Victim," right, that's the primary things. And then up
3 above, you'll see these little boxes with lines coming down
4 that tell you what the most -- I'm trying to think of a way to
5 say this so that it doesn't sound too much like a college
6 professor. They tell you what the -- the factors are that
7 could influence that behavior.

8 Q. Okay. And so could you explain -- some of them you've
9 mentioned already, but if you could just tell us what the
10 factors are.

11 A. Well, sure. The first box that I'm looking at is on
12 the left-hand side at the top and it's moral justification,
13 palliative comparisons, and euphemistic labelling. And I
14 think we talked a little about that yesterday. And it implies
15 both ways, right? If you're an Islamic terror organization,
16 you can say that the infidels in the West have been
17 mistreating you for years and, therefore, in order to prevent
18 the destruction of your way of life, you have to attack them
19 first because an offensive attack is a defensive stand.

20 If you are an American who is responding to that, you
21 can say they killed thousands of our people and, therefore,
22 we're morally justified in reacting the way that we do.

23 Q. Sure. And ----

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1 A. Do you want me to ----

2 Q. Does that combine -- I know. I'm really -- that's for
3 myself, I'm sorry. The pointing is no help to you.

4 And the palliative comparison is what you mentioned
5 yesterday about a, well, they did something -- the other
6 side -- whatever the other side is did something so bad that
7 my side could do something ----

8 A. Sure. They killed 3,000 people, what's slapping your
9 client 20 times?

10 Q. Right. They starved 500,000 children in Iraq, so
11 we're justified in the attack?

12 A. Right. And it's not that some of those things are
13 untrue ----

14 Q. Right.

15 A. ---- it's just that those are the mechanisms by which
16 a person becomes more comfortable with reprehensible conduct.

17 Q. And you talked to us about euphemistic labelling
18 already?

19 A. Right.

20 Q. How about minimizing, ignoring, or misconstruing
21 consequences?

22 A. Okay. So the next major section of this thing is
23 that, if there's going to be reprehensible conduct and there's

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1 going to be detrimental effects like, for example, the person
2 is bruised or harmed or their family is killed or whatever it
3 happens to be, you -- what you can do is minimize it, say that
4 it's not very -- it wasn't very harmful. It was, in fact -- I
5 don't think I need to explain the word, right; you can -- you
6 can ignore it; or you can say that it was something else
7 rather than what it is by misconstruing it. And both of those
8 things are affected by displacement of responsibility and
9 diffusion of responsibility.

10 In the case of U.S. folks, displacement of
11 responsibility would be I'm not doing this under my own
12 volition; this is being ordered by the President of the
13 United States. And in the case of the Islamic terrorists, it
14 could be I'm not doing this on my own; Allah has preordained
15 that we need to do these things.

16 Q. And ----

17 A. And diffusion of responsibility is that if there's a
18 large crowd, it's easier to not take personal
19 responsibility -- like you see in mob attacks. It's easier
20 not to take personal responsibility for the detrimental
21 effects of those things.

22 Q. And is one element of that compartmentalization, like
23 one person may only have one small part of an attack, for

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1 example, and so not feel responsibility for the full part of
2 the attack?

3 A. Correct.

4 Q. Okay. The -- and -- and could you explain -- there's
5 a sort of arrow, which to me as a total psychological novice
6 suggests some sort of causation, but could you tell us about
7 the arrow between reprehensible conduct and detrimental
8 effects?

9 A. Well, what that arrow just basically says, that if you
10 do those sorts of things it can have an effect of the victim.

11 Q. Oh, I see.

12 A. Right? And -- and one way to make that more palatable
13 is to dehumanize the person, to use some euphemism, to not
14 call him "Khalid Shaikh Mohammad" but instead "a fucking
15 terrorist."

16 Q. Right.

17 A. Right?

18 Q. Or KSM, for that matter?

19 A. Right, or any -- you know, any -- well, no, you're not
20 dehumanizing him by calling him KSM. He's the one who told us
21 he wanted to be called that.

22 Q. Okay.

23 A. You know? The other thing you can do is blame them,

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1 right? You could say they brought this on themselves because
2 they voluntarily attacked us. They chose to do this. One of
3 the natural consequences of trying to kill 3,000 people is
4 that the people you're trying to kill aren't going to like it,
5 and they could have chose to stay home, but they chose not to.
6 So that's an attribution of blame.

7 And my job when I was training the folks that were
8 working for the CIA was to be sure that they understood how
9 these things worked so they could recognize it in themselves
10 as they could -- if they could, but also so they could
11 recognize it in other people, if you heard them voicing these
12 kinds of things.

13 Q. And when you taught it, was it always at the level of
14 the individual? The reason I ask is it seems like some of
15 these things could occur at an institutional level.

16 A. Well, Bandura's theory is at the level of an
17 individual, so we talked about it at the level of the
18 individual.

19 Q. Okay. Just, for example, one of the -- you know, when
20 you talked about EIT as a euphemism, no individual involved in
21 the -- in the program, including you, except maybe somebody
22 very high, ever decided on the phrase "EIT." So that's not
23 really an individual responsibility, is it?

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1 A. Well, I mean, it had to be called something, and I
2 don't think they liked calling it ----

3 Q. Coercive physical pressure?

4 A. ---- coercive physical pressure, which is what I was
5 in favor of calling it because that's what I thought it was.

6 Q. Right. If we were here talking about CPPs, we might
7 be in a whole different situation. All right. Thank you very
8 much.

9 Is there anything else we know about -- need to know
10 about this to -- to understand it?

11 A. I don't believe so.

12 Q. All right. Thank you.

13 A. One thing you might need, and I don't think it's
14 classified -- I think the government released it -- is I wrote
15 a paper specifically on this about Islamic terrorists.

16 Q. Okay. Do you know -- do you know what its title or
17 some of the words of its title?

18 A. Not offhand. I wrote that along -- in 2004, 2003, or
19 something. It's a government document. Should be
20 unclassified.

21 Q. Okay. I only ask because I did find Dr. Bandura's
22 paper that you referred to yesterday on that topic. And
23 I'll -- I'll look for yours.

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1 A. Okay.

2 Q. So when we left off yesterday, we were talking -- you
3 were sort of helping the military commission decode some of
4 these cables. And I'm going to refer you back to one we've
5 looked at a couple of times, MEA-10018-7258 at AE 628
6 Attachment D.

7 MJ [Col COHEN]: You may publish.

8 Q. And we've talked about a number of things already, but
9 the one thing that we have not talked about in the context of
10 Mr. al Baluchi is stress positions, forehead against the wall.

11 You told us about your observations of NX2 applying a
12 stress position, forehead against the wall against
13 Mr. al Nashiri or you told us about a stress position that
14 looked like a forehead against the wall. Is that the stress
15 position which NX2 called forehead -- I mean stress position,
16 forehead against the wall?

17 A. That would be the way I would interpret that phrase.

18 Q. Okay. And so taking you a little bit further down in
19 that -- in that paragraph, it describes 30 minutes of stress
20 position, forehead against the wall.

21 A. Can I say something about this before we move on?

22 Q. That's why I was kind of asking -- I leading it to
23 you, yes, sir.

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1 A. Because I feel compelled to say this.

2 Q. Sure.

3 A. I'm perfectly happy to answer any question that you
4 have, but you need to know, I think, to understand my position
5 that I think it's perfectly possible that the CIA -- some CIA
6 employees, without the knowledge of supervision -- because my
7 experience with the CIA Headquarters has been anytime somebody
8 stepped outside of the line, they referred them for an
9 investigation. They referred them to the Justice Department
10 for possible criminal investigation, and they disciplined
11 them. And in some cases -- in many cases for the ones that
12 the New Sheriff trained, they removed them from the program,
13 right? So I think the agency writ large did a job.

14 The other thing I think is that this is, in my view,
15 an example of something that should not have happened. But in
16 my mind, that this happened does not mean that there are those
17 who should be tried and, if convicted, subjected to whatever
18 the sentencing is. They're not mutually exclusive. The CIA
19 could have been mean and possibly physically assaulted people
20 in an inappropriate way, and they could still be guilty of
21 capital crimes.

22 So I just don't want you to take what I'm saying out
23 of context or to think I mean something that I don't say.

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1 Q. Dr. Mitchell, did you by any chance read my opening
2 statement for this -- in preparation? Did you read my opening
3 statement ----

4 A. No.

5 Q. ---- in this motion to suppress? Because that's
6 exactly what I said, so I understand completely. Thank you.

7 A. Okay. This -- it bothered me yesterday, and it
8 bothers me today. This, I think -- you haven't asked this
9 question, but I'm just going to try to share my opinion with
10 you, so ----

11 TC [MR. GROHARING]: Objection, Your Honor. I think we
12 should get back to a question-and-answer format with the
13 witness.

14 Q. I'll give you a question. In reading this material,
15 what observations do you have about it?

16 A. It looks like ----

17 TC [MR. GROHARING]: Objection, Your Honor, relevance.

18 LDC [MR. CONNELL]: Your Honor, the relevance of this
19 entire document is that the -- what we believe happened is
20 that there was a periphery, maybe -- some people call it a
21 second RDI program; some people call it a periphery -- where
22 NX2 and those who ----

23 Do you need water?

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1 WIT: I was just asking if I could get some water. Sorry.
2 I didn't mean to interrupt, sir.

3 LDC [MR. CONNELL]: No, that's all right.

4 ---- where NX2 and those who were his acolytes
5 operated outside the boundaries of the Department of Justice
6 authorizations. I think that once decoded, these cables
7 demonstrate that, and the best person to decode them is a
8 person with knowledge, experience, and training, probably more
9 than any other person involved in the whole operation.

10 And so it seems entirely fair to ask a person with
11 Dr. Mitchell's expertise to comment on his observations on the
12 cables describing the use of coercive physical pressures on
13 Mr. al Baluchi.

14 MJ [Col COHEN]: Okay.

15 Trial Counsel?

16 TC [MR. GROHARING]: Judge, I would just say I don't think
17 Dr. Mitchell's opinions on these cables or what happened here
18 will help you decide the issues that are before the
19 commission. Those -- those are decisions you have to make
20 regarding the legal questions before the commission, and
21 simply his opinions on what is contained in this cable and
22 what might have been done in this interrogation are not
23 relevant to that.

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1 MJ [Col COHEN]: Okay. There is currently pending before
2 me already an outrageous government conduct motion. Let's tie
3 it to -- I agree that it definitely needs to be a
4 question-and-answer format, right? I mean ----

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

6 MJ [Col COHEN]: ---- we've got that, so trial counsel was
7 right. The witness recognized that. You asked a question, so
8 I don't think anyone disagrees that we can't just say push
9 play and Dr. Mitchell ----

10 LDC [MR. CONNELL]: Sure. Of course.

11 MJ [Col COHEN]: ---- and Dr. Mitchell provides
12 everything.

13 LDC [MR. CONNELL]: May I articulate our outrageous
14 government conduct theory and why this question plays into it
15 directly?

16 MJ [Col COHEN]: You may.

17 LDC [MR. CONNELL]: Our outrageous government conduct
18 theory is that the coercive physical pressures to which
19 Mr. al Baluchi were subjected fall outside the approvals by
20 the Department of Justice. There -- the Office of the
21 Inspector General offers support -- report about
22 Mr. al Baluchi offers support for that theory, and I believe
23 that this witness' observations will, too.

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1 But that is our core theory of outrageous government
2 conduct, that there were lines that were drawn and that the
3 coercive physical pressures which were applied to
4 Mr. al Baluchi fall outside those lines.

5 MJ [Col COHEN]: Understand. And to the extent that you
6 want to ask him about the specifics of -- of what's mentioned
7 here and whether that falls within or without what his
8 understanding or what he would have instructed for that, that
9 is -- I find that to be relevant.

10 Greater pontification about the CIA or those kinds of
11 things, let's -- we -- let's not go there. Let's stick to the
12 facts and his -- his expertise ----

13 LDC [MR. CONNELL]: Yes.

14 MJ [Col COHEN]: ---- although I'm not recognizing as an
15 expert, but he clearly has significant knowledge as a -- as
16 a -- given his experience as to how these should be
17 implemented, what should have been -- what should have been
18 done, and his understanding of the rules of engagement, so to
19 speak, at the time as to how you would implement these
20 enhanced interrogation techniques.

21 So as long as we try -- tie it into that specifically,
22 I will -- you have leave of the commission to do so.

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

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1 MJ [Col COHEN]: All right.

2 **DIRECT EXAMINATION CONTINUED**

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

4 Q. Did you understand the parameters that the judge just
5 articulated?

6 A. You're going to ask me questions about my
7 understanding of how these things should be applied, and I
8 should stick to that and leave the speeches alone.

9 Q. Yes, sir. That's basically it.

10 MJ [Col COHEN]: Yes, sir. That's basically it.

11 LDC [MR. CONNELL]: All right.

12 MJ [Col COHEN]: Thank you.

13 Q. So with respect to the cable before you, what
14 observations do you have about the -- what -- what they --
15 what the cable reveals about the use of coercive physical
16 pressure against Mr. al Baluchi compared to how they should be
17 used?

18 A. Well, that's not clear and what you just asked me is
19 not clear in this. I can -- I can respond to some of them.

20 Q. All right, sir. Fair enough.

21 A. I do not know at this time whether the forehead
22 against the wall had been approved by the Justice Department.
23 At some point, the Justice Department -- Department opined

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1 that it was not inconsistent with the other stress positions.

2 It's not -- it's not obvious to me when he says 30
3 minutes that that's 30 minutes continuously or 5 minutes, you
4 know, at a time. So it's entirely possible that that could
5 have been applied consistent with the Justice Department rules
6 of engagement, it just happened more times.

7 The -- he doesn't talk about how many times they were
8 walled, so I have to assume that that was done within the
9 Justice Department limits.

10 Some things like facial grabs or facial -- the holding
11 and -- and that sort of stuff, those are so minor and -- it
12 wouldn't matter how many times somebody took somebody's face
13 and moved it so they can look at it because, I mean, that's
14 essentially what that is.

15 MJ [Col COHEN]: And the witness put his hands on each
16 side of his cheek and turned his head.

17 A. Belly slaps are really a slap with the back of the
18 hand, which again is one of those things that -- oh, he does
19 say one round of walling, so that would have been a relatively
20 short thing. One application of water ----

21 Q. I want to ask you about ----

22 A. ---- dousing. What?

23 Q. How do you know that one round of walling didn't last

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1 an hour and a half?

2 A. I don't.

3 Q. Okay. I just wanted to make sure that there wasn't
4 something that I was ----

5 A. But you would think that if you changed people that --
6 given the level of detail that they've provided in this
7 paragraph, you would have -- think that -- I mean, you're
8 asking me about my opinion about ----

9 Q. Sure.

10 A. ---- each one of these things. The thing that stands
11 out to me is 20 facial slaps. To me, that seems excessive.
12 The rest of them -- and the facial slaps were probably done in
13 accordance with the Justice Department rules of engagement,
14 but that's a lot of them, you know? I mean, it's really a lot
15 of them.

16 At the most contentious time with -- with Khalid
17 Shaikh Mohammad, he was looking at me like he wanted to cut my
18 head off, and I slapped him three times until he stopped
19 glaring at me. And I think those were the only two or three
20 times he was ever slapped by me, right? And that was -- so 20
21 times seems a lot -- seems like a lot. Even if they're done
22 properly, it seems like a lot.

23 Q. Okay. And how about 25-minute stress position,

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1 kneeling inclined to the rear as -- as -- keeping in mind that
2 this is NX2?

3 A. Again, it depends on whether it was continuous or
4 whether it was broken up. You know, in my experience,
5 being -- going through SERE training and going through the
6 advanced courses, if you added up how much time I spent
7 kneeling back, it's probably more than that, but it was spread
8 out over time. And I can't tell that from this cable.

9 Q. I understand.

10 A. Here's what I actually object to. It looks like they
11 used your client as a training prop.

12 Q. And what in this cable suggests to you that they used
13 him as a training prop?

14 A. The number of facial slaps and belly slaps and that
15 sort of stuff.

16 Q. The -- what would be improper about that, in your --
17 in your view?

18 A. I don't know that there's anything improper about it.
19 But whenever I worked with an interrogator who was, you know,
20 qualified but not certified, it was one on one, part of a real
21 interrogation that was focused on the use of whatever
22 techniques we were using, but we weren't using EITs, but
23 whatever techniques we happened to be using in real time. And

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1 it wasn't to demonstrate or give them practice, it was just to
2 show them how it was done and give them an opportunity to do
3 it in a live situation.

4 LDC [MR. CONNELL]: Okay. Can I have the court's
5 indulgence for just one moment?

6 MJ [Col COHEN]: You may.

7 [Counsel conferred.]

8 Q. So, sir, I have an unclassified paragraph in a
9 classified document that I have permission of the government
10 to read to you. I'd like to read it to you and ask you if
11 that is consistent with the opinion that you just offered,
12 okay?

13 A. Okay.

14 Q. All right. So I'll read it slowly for the -- for the
15 interpreters, and it is at page MEA-2C-440.

16 LDC [MR. CONNELL]: Do we have the AE number on it?

17 I'll catch up with an AE number. And it is -- let me
18 show it to counsel first.

19 It's AE 562B Attachment C.

20 All right.

21 MJ [Col COHEN]: Trial Counsel?

22 TC [MR. GROHARING]: Yes, Your Honor.

23 MJ [Col COHEN]: Okay. Just add -- wanted to make --

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1 verify that they -- they had it and had no issue. You may
2 read it then as -- as agreed to by the parties.

3 LDC [MR. CONNELL]: Okay.

4 Q. This is from an Office of Inspector General report.

5 "X3L described the situation at Location Number 2 as
6 a, quote, training setting with the addition of the detainees.
7 Besides NX2 and Z2C, a new crop of interrogators was present
8 to watch and participate in the measures X3L stated. He said
9 the" -- redacted -- "came out to watch and provide oversight.
10 X3L said the, quote, whole host of things we were trained on
11 were used, end quote, with the exception of waterboarding.

12 "According to X3L, the interrogators began using
13 enhanced measures on the detainees as soon as they began the
14 session. X3L said he remembered that the interrogations were
15 late-night affairs and that the first measures the
16 interrogators used were insult slaps and attention grabs.

17 "X3L stated that Ammar showed defiance. According to
18 X3L, the interrogators talked to Ammar, told him he had new
19 rules, took his clothes, and used measures to demonstrate that
20 his situations had changed.

21 "Interrogator QY7 also said the new guys trained on
22 him, meaning Ammar and Khallad. And each of the interrogators
23 NX2 was training used each of the measures on Ammar in order

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1 to gain their certification.

2 "SG1 explained that the goal was for NX2 to observe
3 the early 2003 interrogation class members employ EITs during
4 an actual interrogation, such as Ammar's, and then to certify
5 class members as interrogators.

6 "Similar -- similarly, interrogator X7Q explained his
7 role as that of a student doing on-the-job training. X7Q said
8 he was one of many who were trying to learn what they were
9 doing and how to apply the approved level of coercion. X7Q
10 noted that he needed to do substantial learning on the job and
11 felt behind the curve in part because he needed to practice
12 interrogation tactics."

13 The -- is that description of events consistent with
14 the interpretation you formed after reviewing this cable?

15 A. Yes.

16 Q. Okay. And is -- is using a human being as a training
17 prop in a real situation as opposed to a practice situation
18 something that you would do in the trainings that you
19 conducted?

20 A. We had them practice on themselves so they would know
21 what it felt like. We didn't have them practice on detainees.

22 Q. In a situation of practice on detainees in that --
23 after classroom instruction, do you see risks associated with

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1 the -- even the approved techniques?

2 A. I don't know that I can offer a cogent opinion on that
3 because I don't know how they distributed those things across
4 time, right? So it's entirely possible they could have been
5 done consistent with the Justice Department's guidelines if
6 enough time had passed. If they've compressed that into a
7 short period of time, then it seems to me like it could
8 potentially increase the risk of -- of -- at least minor
9 injuries.

10 Q. And in -- you told us yesterday that in your
11 experience, NX2 did not have a strong commitment to rules and
12 guidelines; is that right?

13 A. Well, I -- what I told you yesterday was that he was a
14 ask forgiveness kind of guy rather than an ask permission kind
15 of guy ----

16 Q. Yeah.

17 A. ---- and that -- that opinion stands.

18 Q. Okay. I'll direct your attention to -- MEA-10018-7247
19 is the -- is the beginning of the document. I'll let you look
20 at it, but the next page, 7248, is what I want to -- actually
21 want to ask you about. I just want you to have whatever
22 opportunity to get context you want. I'm going to zoom out.
23 You just tell me when to flip it.

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1 A. Okay.

2 Q. Okay. I'm going to flip it over. All right. Ready?

3 My question is: What is a cold water bath?

4 A. I think he's -- whoever wrote this is referring to
5 water dousing.

6 Q. Okay. And -- and what about the cold water part? I
7 thought you told us yesterday water dousing didn't involve
8 cold.

9 A. No, you asked me -- you said freezing.

10 Q. Yeah, true. I ----

11 A. I said water dousing doesn't involve freezing. The
12 water can appear cold because people's perception of how cold
13 water is is different, depending on, you know, what they're
14 used to.

15 Who knows what this psychologist thinks is cold water.
16 My guess is the water would be the ambient temperature of
17 whatever is around, unless it was freezing, in which case
18 medical guidelines would require that they check the
19 temperature.

20 Q. The next thing I want to ask you about is: Do you see
21 the line in the third paragraph, "To elicit information,
22 despite repeated attempts to elicit more cooperation,
23 elaboration, and spontaneity in responding, Ammar held to his

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1 resistance behavior"? Last sentence, third paragraph.

2 A. Which?

3 Q. Let -- if you -- if you look away from it, I'll zoom
4 in.

5 A. Okay. Okay. I see it. Yes, I see it.

6 Q. Okay. Here's my question, and this is not -- and this
7 is a general question.

8 Was the gold standard for compliance by a detainee
9 cooperation, elaboration, and spontaneity? Why is that the
10 criteria which is being applied here?

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

12 LDC [MR. CONNELL]: I don't understand the objection.

13 MJ [Col COHEN]: I think it's just the way you phrased it,
14 Counsel. Were those -- if you had a -- were those goals of
15 what you were seeking to achieve in RDI as opposed to in this
16 situation.

17 LDC [MR. CONNELL]: Sure.

18 MJ [Col COHEN]: I think it was -- I'll sustain as to the
19 way you phrased it. I think you can rephrase it in a
20 different way and ask the same question.

21 LDC [MR. CONNELL]: Sure.

22 Q. Was the -- was a goal of the RDI program writ large
23 cooperation, elaboration, and spontaneity?

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1 A. Well, it was an eventual goal. Whether it was a goal
2 for each individual session or not would depend on where that
3 person was in -- along this sort of continuum of resistance
4 that exists.

5 So I don't know whether the person who wrote this is
6 referring to the eventual goal or they are referring to the
7 goal of that particular session. I just don't know.

8 Q. And when you were teaching how to -- when you were
9 teaching interrogators, did you teach them that limited
10 specific answers to debriefer questions were -- was
11 appropriate detainee behavior or were you all -- did you teach
12 them to look for more than that?

13 A. The reason I'm pausing is because I'm trying to make
14 sense of your question.

15 Q. I'm sure it's a terrible question.

16 A. Again, it would depend on where they were in the --
17 there's a continuum of resistance from outright refusal to
18 spontaneous cooperation, right, and it would depend on where
19 they were and how you were trying to move them.

20 But in general, if the person was providing additional
21 information about things that we were interested in that were
22 part of the -- the intel requirements that we were provided,
23 we wouldn't have used EITs.

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1 Q. And "we" in that is you and Dr. Jessen?

2 A. Correct.

3 Q. Okay. So I think that you may have just provided the
4 key to a better question.

5 Could you explain that spectrum that you just
6 illustrated by holding up your hands between refusing to
7 answer any question and elaborate, spontaneous, or --
8 spontaneous cooperation?

9 A. Sure. Actually, I wrote a paper about this that the
10 agency has, which you guys probably have in the giant stack of
11 papers.

12 But essentially, when a person answers a question, the
13 answer falls on a continuum, right, from -- from outright
14 refusal to answer the question, to a defensive response, to
15 answer the question, to minimally answering the question, to
16 adding some additional details, all the way up to
17 spontaneously answering the question, anticipating what the
18 next question is, and providing details that aren't asked for
19 in the question.

20 Q. Okay. And at the -- at the spontaneous cooperation
21 end of the spectrum, that was -- that was the goal?

22 A. Well, that's what you would like people to do. But we
23 realistically realized that not everyone would do that. I

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1 mean, if -- I can -- I can give an example of KSM if the court
2 will indulge it.

3 Q. Do you -- do you have an example of Mr. Mohammad's
4 spontaneous cooperation?

5 A. Sure. At one point, well after EITs were over when we
6 had been using social influence techniques to get him to spend
7 more time talking to us, he would say to me, "My religion
8 prohibits me from answering any question that you do not
9 directly ask me. But since I know that you will eventually
10 get the information out of me, it's okay for you -- for me to
11 answer questions that you directly ask me."

12 And then he would say to me, "The question that you
13 asked me is an interesting question, and I will answer it; but
14 there was a better question." And then he would tell me the
15 better question. And then literally he would say, "Now ask me
16 that question."

17 Q. All right.

18 A. And I would ask him the question and he would give
19 the -- a more complete and full answer.

20 Q. Okay. And so in that spectrum, if you look in that
21 same paragraph, just the sentence that begins with, "He was
22 still only marginally cooperative with interrogation."

23 A. Is this in the third one?

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1 Q. It's in the -- one full paragraph that's visible now
2 on the screen. It's about ----

3 A. Oh, I see it now.

4 Q. ---- two-thirds of the way through.

5 A. Yeah. Yes.

6 Q. Okay. And so that's an example of whoever wrote the
7 cable considering Ammar to be still toward the lower end of
8 that spectrum and seeking to move him higher on that spectrum.

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

10 A. If they used that spectrum ----

11 MJ [Col COHEN]: Wait one second. One second. The
12 question calls -- he says calls for speculation. Response?

13 LDC [MR. CONNELL]: A witness with knowledge and
14 experience is giving what is not really even an expert but a
15 lay opinion about -- to decode a cable of a type with which he
16 is familiar.

17 MJ [Col COHEN]: Remind me again exactly of the specific
18 question.

19 LDC [MR. CONNELL]: The specific question is: Is the
20 language, "He was still only marginally cooperative with
21 interrogation, providing very limited answers to all questions
22 in the first half of the session," an example of the writer
23 considering Ammar to be lower on the spectrum of cooperation

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1 and seeking to move him higher.

2 MJ [Col COHEN]: To the extent that it asks whether the
3 writer was that as opposed to whether or not he -- he sees
4 those words as indicative of the -- the spectrum himself, I
5 will sustain it, because it asks for what the writer was
6 thinking ----

7 LDC [MR. CONNELL]: Sure.

8 MJ [Col COHEN]: ---- as opposed to what the witness was
9 thinking.

10 LDC [MR. CONNELL]: I understand.

11 Q. Do you see the words "He was still only marginally
12 cooperative with interrogation, providing very limited answers
13 to all questions in the first half of the session" as
14 indicative of Ammar being lower on -- less cooperative end of
15 the spectrum and being -- and trying -- and the interrogator
16 seeking to move him to a higher level of cooperation?

17 A. I don't know that the interrogator was seeking to move
18 him to a higher level of cooperation because it doesn't --
19 that sentence doesn't address that. But it does suggest that
20 he sees him on -- more towards the less cooperative end of
21 that spectrum.

22 Q. Okay. Well, let's -- let's look then to see if we
23 have other textual evidence for that.

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1 In the -- in the first full paragraph which is visible
2 on the screen, which -- "After Ammar was subjected to a cold
3 water bath, he became more cooperative and after a period of
4 time was allowed to sit, though still blindfolded." Does the
5 fact that after an interrogation technique Ammar is reported
6 as becoming more cooperative suggest to you that the
7 interrogator was trying to move him up on the cooperation
8 scale?

9 A. Yes.

10 Q. Okay. And then I'll direct your attention to the --
11 to the next -- or the next sentence, "He responded to
12 questions in greater detail and more spontaneously." Does
13 that indicate to you that the interrogator was seeking
14 greater -- greater level of cooperation than what he currently
15 had?

16 A. No.

17 Q. Did ----

18 A. That indicates to me that Ammar responded more
19 spontaneously and provided more level of detail.

20 Q. Okay.

21 A. Because that's, quite literally, what the sentence
22 says.

23 Q. Let's look at the next sentence then. "Ammar

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1 continues to struggle with the process and will possibly
2 revert to resistance unless periodically negatively reinforced
3 with cold water baths." Does that suggest to you that the
4 interrogator is trying to maintain Ammar at a higher level of
5 cooperation?

6 A. Well, this -- my interpretation of this is that it was
7 written by the psychologist.

8 Q. Okay.

9 A. And the use of "negatively reinforced" is incorrect.
10 It's used incorrectly here.

11 Q. How so?

12 A. Well, a negative reinforcement is removing an
13 aversive stimulus. It's not adding an aversive stimulus,
14 it's removing it. That's the technical definition. And this
15 person seems to be suggesting that, by adding the aversive
16 stimulus, you can motivate him to, which is -- which is
17 not ----

18 Q. Okay.

19 A. ---- negative reinforcement.

20 Q. And -- all right. So what you learned from that text
21 is that the writer did not have a correct understanding of
22 Pavlovian and operant conditioning?

23 A. I don't know that that's the case. I just know that

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1 he used that term incorrectly.

2 Q. Okay. And back to the other question, does it suggest
3 that the -- or the interrogation team, I'll say, is using
4 interrogation techniques to try to maintain Ammar at a higher
5 level of cooperation?

6 A. Let me see if I understand -- help me understand this
7 question ----

8 Q. Sure.

9 A. ---- that you asked me.

10 Q. Let me rephrase the question. The -- I will represent
11 to you that the cables we received are rife with references to
12 cooperation, spontaneity, compliance, and responsiveness,
13 language like that.

14 The -- what I'm trying to understand is, what was
15 the -- what did -- what did those terms mean? Like, what were
16 they trying to do in this interrogation or in an
17 interrogation?

18 A. I can tell you what I was trying to do in
19 interrogation.

20 Q. Fair enough, sir.

21 A. I was trying to get the detainee to sit down with the
22 subject matter expert and have a conversation with them like
23 you and I are having.

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1 Q. And were the used -- were the words -- how -- when you
2 wrote or when you contributed to cables, how did you describe
3 that?

4 A. Well, we were interested in cooperation and we were
5 interested in the person spontaneously giving details that we
6 hadn't asked for, right? So we would -- we would probably say
7 "provided details that went beyond the scope of the question"
8 is the way I would have probably worded it, but you could say
9 that means spontaneous.

10 You know, at the -- at -- ultimately, what you would
11 like the detainee to do is just sit down with a subject matter
12 expert, and when they ask a question, they answer the question
13 as fully and completely as they know how to do. And I think
14 that what these people are writing about is their
15 interpretation of what that means.

16 Q. Thank you. Sir, I'll direct your attention to
17 10018-7255, found in the record at AE 628 Attachment D. If
18 you look away, I'll zoom out.

19 A. Okay.

20 I've read it.

21 Q. Thank you. And before I flip it over, I have one
22 other question for you.

23 We just went through a process where you distinguished

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1 what you would do versus the writer or contributor to a cable
2 that you weren't a part of. Would the best witnesses for
3 understanding what the -- that cable actually meant be the
4 people who participated in it's drafting?

5 A. I don't -- I don't -- it certainly would be -- if you
6 want direct knowledge, certainly talking to the person who
7 wrote it would make more sense.

8 Q. Okay. Okay. Actually, there's nothing to flip. This
9 is what I need.

10 The -- I'd like to direct your attention to the second
11 paragraph -- well, let me just say -- I'll just represent it
12 to you that this is a cable relating to 20 May 2003,
13 interrogation by -- involving NX2, X3L, QY7, and JP2, and PG6.
14 I'm not asking you those things. I'm just telling you.

15 The one question that I have for you is: You see the
16 reference at the end -- in the middle of the second paragraph,
17 at the end of the session, "Ammar was placed in a larger cell
18 with clothing and a mat, and Ammar will be allowed to sleep
19 during the evening." Do you see that?

20 A. Yes, sir.

21 Q. Was there a standard type of mat that was used at
22 COBALT, to your knowledge?

23 A. I don't have any idea what the procedures were at

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1 COBALT.

2 Q. Okay. I'll draw your attention to the second
3 paragraph from the bottom.

4 A. I see it.

5 Q. Okay. In this cable, which I'll represent to you is
6 20 May even though it's not written on there, is the first
7 reference we see to, "Ammar is developing a sense of learned
8 helplessness which is contributing to his compliance."

9 Does that clause and that particular use of "learned
10 helplessness" indicate anything to you?

11 A. That it's used in -- that the term is used
12 inappropriately because clearly he wasn't developing learned
13 helplessness.

14 Q. Okay. The term "learned helplessness," we talked
15 about before, was used -- sort of adopted by a number of
16 people who didn't actually understand, you know, what it meant
17 from the literature, right?

18 A. Correct.

19 Q. And is this an example of that?

20 A. Correct.

21 Q. Okay. The one other phrase I'd like to direct your
22 attention to is at the -- in the second full paragraph, last
23 sentence, "Should Ammar regress into a defiant posture during

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1 future sessions, his clothing and sleeping privileges will
2 immediately be removed and enhanced measures will be applied
3 in order to instill a compliant posture."

4 This is a "do you know" question: Do you know how --
5 from -- from your experience, do you know how NX2 and his
6 acolytes would have conveyed that information?

7 A. No.

8 Q. Okay. Was it standard to -- across the program to
9 tell detainees of adverse consequences if they stopped
10 cooperating once they had begun?

11 A. I believe it is.

12 LDC [MR. CONNELL]: All right. If I could have the -- I'm
13 skipping a whole bunch of stuff, so if I could have the
14 court's indulgence for just a moment.

15 MJ [Col COHEN]: You may, Counsel.

16 LDC [MR. CONNELL]: We'll go to 61.

17 MJ [Col COHEN]: In fact, I'll tell you what. I think
18 it's probably about time for our midmorning break.

19 LDC [MR. CONNELL]: Okay.

20 MJ [Col COHEN]: I will give you at least 15 or 20 minutes
21 to work through that.

22 LDC [MR. CONNELL]: I don't need extra time, Your Honor,
23 I'm fine, I just need ----

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1 MJ [Col COHEN]: No, no, no. What I'm saying is I think
2 this is a good time for us to take that midmorning recess and
3 then we'll come back and I'm sure you'll be ready at that
4 point anyway. I'm not taking it for you. It just seems like
5 a good time to take it.

6 LDC [MR. CONNELL]: Very good, thank you, sir.

7 LDC [MR. RUIZ]: Judge, I could use the extra time, the
8 extra five minutes you offered.

9 MJ [Col COHEN]: Okay. We'll take a 20-minute recess.

10 LDC [MR. RUIZ]: Thank you.

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

12 [The R.M.C. 803 session was called to order at 1045,
13 23 January 2020.]

14 MJ [Col COHEN]: The military commission is called to
15 order. Parties are present. Mr. Binalshibh is still here.
16 The rest of the accused remain absent.

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

18 MJ [Col COHEN]: Just one second. Mr. Ruiz, did you need
19 to address me or are you just standing? Either one is fine.

20 LDC [MR. CONNELL]: I was just introducing Mr. Ruiz.

21 MJ [Col COHEN]: Okay. Got it. All right. Cool. All
22 right. Thank you. Good morning, sir.

23 LDC [MR. RUIZ]: Good morning, Judge. I apologize for the

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1 interruption ----

2 MJ [Col COHEN]: Uh-huh.

3 LDC [MR. RUIZ]: ---- but I have found that it's always
4 better to bring potential administrative issues to the court's
5 attention rather than wait until the last minute, so I'll give
6 you a little background and context.

7 We've been behind the scenes continuing to prepare for
8 eventually our opportunity to cross-examine this witness. And
9 in the course of doing that, we have, of course, been tracking
10 the estimated timelines.

11 Yesterday, I had a conversation with Mr. Connell in
12 the morning shortly before lunch as to his expected
13 completion. He estimated that he would take the entire time.
14 However, later in the evening after he had the opportunity to
15 reflect on the day's proceedings, testimony that was provided,
16 he alerted our team of the possibility that he might be done
17 by middle of this afternoon. Just a possibility, not a
18 certainty.

19 Nevertheless, that had a number of implications for us
20 because we have been working on the assumption that he would
21 take the entire time and that we would maybe be slotted in for
22 Friday.

23 We have a 2500-page filing that we would have filed

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1 today in accordance with that timing, but because of the
2 notice, we -- our paralegal team was essentially up until 2:00
3 in the morning making sure that that was ready to be presented
4 to the commissions this morning. I am informed -- because as
5 you may imagine, I don't naturally get involved in the nuts
6 and bolts of that process -- that after submitting that to the
7 judiciary, the parties that be, that filing has been rejected.

8 MJ [Col COHEN]: Okay.

9 LDC [MR. RUIZ]: And as I understand it, there seems to
10 be -- and again, I don't get involved in -- in the
11 sausage-making that often. It's complex. I let the experts
12 on the team do that. But as I understand it, there is a
13 controversy as to the guidance that's been provided and the
14 application of procedures, consistency from one motion to the
15 next. So as I understand the issue, there is a question about
16 the overall marking on the 2500-page filing as well as whether
17 it requires a downgrading instruction on every page.

18 The practice immediately prior to this in AE 632U,
19 which was our motion to suppress filed on 16 January 2020, as
20 I understand it, is that such a downgrading instruction was
21 not required in those pages. The filing was properly accepted
22 at that time in accordance with the guidance that was
23 provided, and that's how this filing was prepared and

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1 submitted to the court for its consideration.

2 As I understand it, my team members are being asked to
3 nevertheless go back now and add this additional instruction,
4 which, if we were talking about a couple of pages, wouldn't
5 necessarily be that big of an issue, but we're talking 2500.
6 For example, one exhibit is a 500-page exhibit -- and that's
7 just one exhibit -- that would need an application of that --
8 that instruction.

9 That's probably too much information, but I wanted to
10 alert you to that, assuming it may impact ----

11 MJ [Col COHEN]: It's a classification issue. I mean, in
12 other words, are these -- are these documents that are marked
13 UNCLASSIFIED//FOUO or what -- what are we ----

14 LDC [MR. RUIZ]: They're marked -- the overall
15 classification of the documents, as I understand it, is
16 unclassified, U//FOUO.

17 MJ [Col COHEN]: Okay.

18 LDC [MR. RUIZ]: The documents -- some of the documents
19 themselves are marked FOR OFFICIAL USE ONLY, and so ----

20 MJ [Col COHEN]: Okay.

21 LDC [MR. RUIZ]: ---- the question then becomes, does
22 there need to be a downgrade instruction within each of the
23 pages.

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1 MJ [Col COHEN]: Okay.

2 LDC [MR. RUIZ]: I'll confess freely that that's not my
3 area of expertise, but what I ----

4 MJ [Col COHEN]: You need these to do your cross -- to do
5 your cross-examination.

6 LDC [MR. RUIZ]: It's our exhibit list, Judge. Is the
7 exhibit list ----

8 MJ [Col COHEN]: I'll make that happen. We're going to
9 figure this out, we're going to catch it up.

10 LDC [MR. RUIZ]: I just wanted to give you a heads-up on
11 that.

12 MJ [Col COHEN]: Yeah, we'll -- we'll -- we will find a
13 way to make sure that you have the ability to use those --
14 those exhibits.

15 LDC [MR. RUIZ]: Thank you.

16 MJ [Col COHEN]: All right. We're ready for the witness.

17 **[The witness resumed the witness stand.]**

18 MJ [Col COHEN]: Sir, good to see you again. Please be
19 seated.

20 WIT: Thanks.

21 MJ [Col COHEN]: Mr. Connell, your witness.

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

23 ///

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DIRECT EXAMINATION CONTINUED

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

Q. You mentioned earlier the role of intelligence requirements in interrogations.

A. Yes, sir.

Q. So -- so I'm using the word "interrogation" I think the way that you use it, which is in the -- within a session in which there's the possibility of the use of coercive physical pressure.

Could you tell us about the use of intelligence requirements in the interrogations?

A. I can tell you the way that we used them.

Q. Yes, sir. That would be fine.

A. In the very beginning, we were given a question to ask to see whether the person would voluntarily choose to cooperate; that was in the -- what we call the neutral assessment, right? And we used that question as a bridging question for all of the sessions afterwards until they answered it or began to answer it.

But within the context of -- of these interrogation sessions, often the debriefers, targeters, subject matter experts, because you can't ask the same question over and over and over, would give us some other key pieces of the puzzle

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1 that they would be interested in, and we would sprinkle those
2 questions in and among the larger question that -- that we
3 would ask. That's how it ended up that Abu Zubaydah began to
4 cooperate with us because they began to ask those questions
5 and -- and he began to answer those questions. And that's how
6 we would use them.

7 And then as the -- as the person became more
8 cooperative and chose voluntarily to answer more questions,
9 then we would switch entirely to intelligence requirements and
10 away from sort of the big bridging question that we were
11 asking.

12 Q. Okay. Thank you. When you were in the role of
13 interrogator, how did the intelligence requirements inform
14 your actions?

15 A. Okay. So I imagine you're asking me about a session
16 in which there's a potential to apply EITs?

17 Q. Yes, sir.

18 A. Okay. The bridging question would be asked first.
19 And if the person answered the bridging question or appeared
20 to answer any part of the bridging question, no EITs would be
21 used for that session as long as they continued to cooperate.
22 If they didn't cooperate on the bridging question, then EITs
23 were applied and we moved away from the bridging question into

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1 one of the intel requirements. If they started answering that
2 question, EITs would stop at that particular point.

3 And then, depending on how forthcoming the person was,
4 they may not be applied at all for that particular session.
5 And if -- and if -- and if it wasn't, we would during --
6 during the bridging question, we would give the bridging
7 question again, and then -- at the end of it, and we would
8 tell them that as long as they continue to cooperate at the
9 level that they were cooperating at, it wouldn't be necessary
10 to use these other approaches.

11 Q. As an interrogator -- when you were in the
12 interrogator role, did you ever make up the questions or were
13 they always informed by the intelligence requirements?

14 A. Well, I'm not the guy to make up questions.
15 Occasionally I would ask follow-up questions to clarify an
16 intelligence requirement, right? So if it was something
17 about -- I'm just -- this is hypothetical. If it was
18 something about smuggling routes, I might ask the person, "Who
19 did you see along the route?" or "How did you -- how is the
20 route marked?" or something like that because it's an obvious
21 follow-up. But I didn't sit down myself and come up with
22 intelligence requirements.

23 Q. And in that example, the -- ask questions -- find out

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1 about smuggling routes was the -- would be the intelligence
2 requirement and you're really just fleshing out that it --
3 that intelligence requirement by follow-up questions?

4 A. It would be a -- it's a hypothetical example ----

5 Q. Sure.

6 A. ---- but it would be a specific question that they had
7 about perhaps a specific smuggling route.

8 Q. Okay. I'd like to ask questions about -- frame these
9 next questions with your experience in 2003. And I know that
10 you don't completely -- you know, there's time compression and
11 other things, but I don't mean during either the early
12 Abu Zubaydah, I don't mean during the summer of 2002 when
13 we're in the EIT and transitioning-out period, I mean in the
14 interrogation of Mr. Mohammad forward, basically.

15 A. Forward to when?

16 Q. To 2000 -- end of 2003, let's say.

17 A. Okay.

18 Q. So how -- how about, would it make -- would it help
19 you more if I just said while you were at Location 4?

20 A. You could. The last enhanced interrogation I was
21 involved in was in the summer of 2003, so ----

22 Q. Okay.

23 A. ---- if you go beyond the summer of 2003, I won't be

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1 able to answer.

2 Q. Okay. Easy. During that period of time, did you
3 receive intelligence requirements regarding Majid Khan?

4 A. I believe so. That's my recollection.

5 Q. Okay. What role did Majid Khan play in your
6 interrogations in -- during that time period, in 2003?

7 A. He didn't have any role in my interrogation.

8 Q. Okay. You never asked about Majid Khan?

9 A. Well, that's -- that's not what you just asked me.
10 You asked me what role ----

11 Q. I'm sure it's a terrible question. Did -- what would
12 be the better question?

13 A. Well, we probably wouldn't have been asking about
14 Majid Khan ourselves. We would have been -- the subject
15 matter experts would have been asking those questions.

16 Q. Okay. How -- during that period of time, 2003, did
17 you receive intelligence requirements related to Issa
18 al Britani?

19 A. I don't recall.

20 Q. Okay. From time to time, did you receive intelligence
21 requirements that came along with photographs of a person for
22 identification?

23 A. Yes.

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1 Q. Okay. How did you receive those photographs, you
2 personally? Did a -- did somebody hand them to you?

3 MJ [Col COHEN]: One second, Counsel. Is there an
4 objection?

5 TC [MR. GROHARING]: I'm not sure where this is going. I
6 don't have an objection to that question, but to the extent
7 that we get into the technical means or things of that nature,
8 I would object.

9 LDC [MR. CONNELL]: So there's no objection to that
10 question. Let's see what happens after that.

11 MJ [Col COHEN]: All right. Okay. Sir, you may answer
12 the question. Is there a way that you obtained personally
13 the -- any pictures, et cetera?

14 A. There was a subject matter expert there who received
15 the intelligence requirements and provided me with whatever
16 materials that were required. But by the time we were showing
17 photographs, usually the person was cooperative enough that
18 the subject matter expert could just keep the pictures and
19 show them themselves, and I wouldn't see them until the actual
20 debriefing session.

21 Q. Okay. Sir, I'll draw your attention to
22 MEA-10018-7240, contained in the record at AE 628
23 Attachment D, an UNCLASSIFIED//FOUO document.

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1 MJ [Col COHEN]: You may publish.

2 A. Isn't this the one we looked at before?

3 Q. No, this one is from -- oh, I'm sorry. I'll flip
4 over. Yeah, you are exactly right, sir. Here's the -- here's
5 the flip side.

6 TC [MR. GROHARING]: What was the page?

7 LDC [MR. CONNELL]: 10018-7241.

8 A. I've read it.

9 Q. All right. I'm authorized to tell you that this is a
10 report from on or about 22 May 2003, that the chief of
11 interrogations refers to NX2, that two of the three qualified
12 interrogators referred to are X3L and X7Q, and I don't know
13 who the third one is.

14 This document is an example of the cables describing
15 the interrogation, the atmospherics that -- or a summary
16 thereof that went back to headquarters from the base; is that
17 right?

18 A. I actually don't know what this document is. There's
19 no headings on it. It's not inconsistent with a summary, but
20 if you're asking me if it's a summary, I couldn't tell you.

21 Q. Fair enough, sir. I'll now direct your attention to
22 STA-1827. We'll take it -- focus. There we go.

23 A. I've read it.

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1 Q. All right. Thank you. I'm authorized to represent to
2 you that this document relates to -- again, on or about
3 22 May 2003, the same as the previous one -- and this is the
4 first -- I'll also represent to you that this is the first
5 document in this format which was produced from questioning of
6 Mr. al Baluchi.

7 The -- from your experience in the program, do you
8 have -- do you know what kind -- what this is a summary of?
9 An intel report, for example, or something else?

10 A. I don't want to guess about it. I mean, if the judge
11 requires me to, I'll make a guess.

12 Q. No, you don't have to guess. Is that because you
13 don't have sufficient information from this document to form a
14 reasonable conclusion?

15 A. Well, it reads more like the summary of an intel
16 report than a -- than an interrogation report.

17 Q. Okay. But you can't -- you're not sure. You'd have
18 to guess?

19 A. How can I be sure about a document that I just see
20 the -- the words on? I just -- I -- you're asking me if I'm
21 certain. I'm not certain. I'm 95 percent certain it's an
22 intel summary, but I'm ----

23 MJ [Col COHEN]: Counsel?

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1 TC [MR. GROHARING]: Your Honor, the government has no
2 objection to Mr. Connell representing that this is a summary
3 of an intelligence report.

4 LDC [MR. CONNELL]: Is that true?

5 MJ [Col COHEN]: Yeah, the ----

6 LDC [MR. CONNELL]: If the government is telling me that,
7 then I'll go with that.

8 MJ [Col COHEN]: Okay. I'll take -- the government said
9 that you can assert that, so we'll -- it's a summary of an
10 intelligence report.

11 Q. All right. So I'll represent to you that it's a
12 summary of an intelligence report. The -- what was the role
13 of -- I'm not going to ask you any questions about this
14 particular one. I just wanted you to see the format. What
15 was the role of the intelligence report in the intelligence
16 cycle related to detainee interrogations?

17 A. I don't understand your question.

18 Q. All right. I'll try again. When you -- when
19 interrogators -- and you can say you and Dr. Jessen or
20 somebody else -- when information obtained from a detainee,
21 what happened to it?

22 A. The subject matter expert would write a draft intel
23 report. Hopefully I'm not getting into techniques I'm not

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1 supposed to discuss. That draft intel report would be
2 reviewed by whoever the chief was at that particular area.

3 Ordinarily there was also a reports writer who would
4 make sure that it was formatted correctly. It would be sent
5 back to headquarters where it would be turned into a
6 disseminatable -- that they could disseminate it -- intel
7 report.

8 Q. Okay. And at -- at the secret level, those
9 disseminatable reports from the CIA [REDACTED] We've already
10 had testimony about that. Was that your experience?

11 A. Were what?

12 Q. [REDACTED]

13 A. I don't know ----

14 Q. [REDACTED]

15 A. It may well be, but I just had the document. I would
16 search for the subject matter expert or I would search for the
17 actual number that was associated with that document. I
18 didn't search for generic things.

19 Q. Okay. I just want to make sure I understand what you
20 said. Let's use the earlier hypothetical example of a
21 smuggling route. If you were given intelligence requirements
22 to ask questions about a particular smuggling route, what
23 would you do from there? And you can explain.

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1 A. I would ask the questions.

2 Q. Okay.

3 A. And the subject matter expert would listen and then
4 the subject matter expert would write a draft intel report
5 that went back.

6 Q. The part that I'm not understanding is that in the
7 previous answer, you said you would search for a specific
8 number or a specific subject.

9 A. I might if the subject matter expert says, "You need
10 to read this document. We don't have a hard copy." So I
11 might -- I might go into their version of Google and search
12 for a particular number, the particular identifier.

13 Q. I see. Is it accurate to say that, with respect to
14 intelligence requirements, the interrogator, either you,
15 Dr. Jessen, or -- or one of the others that you trained,
16 didn't have a lot of discretion in what to ask; that they were
17 told the subject matter that they should inquire about?

18 A. Well, I don't know how much discretion we had because
19 I never pushed the limits. But in my personal view, I'm not
20 filling in those puzzle pieces; so other than in the fireside
21 chats or in the "how's it going" meetings or in the -- you
22 know, the meetings that KSM used to have where he would teach
23 stuff, my questions are irrelevant, just like my speeches are

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1 irrelevant here, right? My questions are irrelevant ----

2 Q. Right.

3 A. ---- you know. So I -- my goal is to answer the
4 questions that the -- the folks who are generating the intel
5 requirements are.

6 Q. Okay. Did you ever receive information about
7 psychotic symptoms displayed by Mr. al Baluchi on or about
8 24 May 2003?

9 A. No.

10 Q. Is it -- did you ever examine Mr. al Baluchi to --
11 as -- in the role of a psychologist as opposed to a debriefer
12 or interrogator?

13 A. I don't recall doing that. I think by that point, we
14 had stopped being put in that sort of double bind where they
15 were trying to use us for both things.

16 LDC [MR. CONNELL]: Okay. I'm going to skip ahead to 366.

17 Q. All right. I'd like to direct your attention to
18 MEA-10018-7238.

19 A. I've read it.

20 Q. Thank you. I'll represent to you that this is a
21 report relating to on or about 27 May 2003, and the
22 interrogator involved was X3L.

23 I have a question similar to one I asked earlier,

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1 which is that the -- what -- and I'll direct your attention to
2 the fourth full paragraph which continues, "Ammar continued to
3 show."

4 A. I see it.

5 Q. Okay. And in the second sentence, it says, "A state
6 of learned helplessness appears to still be developing." Do
7 you see that?

8 A. I do.

9 Q. And in your experience, what -- what does that
10 sentence indicate to you?

11 A. That he doesn't know the meaning of the word "learned
12 helplessness."

13 Q. Thank you. I'll direct your attention to
14 MEA-10018-7273 found in the record at AE 628 Attachment D.

15 A. Okay.

16 Q. All right. I'll ask you the same question about the
17 same language, "A state of learned helplessness appears to be
18 developing." Do you give the same answer?

19 A. Yeah. It looks like something they just say as far as
20 I can tell. It's like something they stick into these cables
21 that's just become part of the response. It's the incorrect
22 use of the term.

23 Q. Okay.

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1 A. And, in fact, I would argue, if you want my ----

2 Q. You know ----

3 A. Okay.

4 Q. ---- the judge has cautioned me about that, so I'll
5 just ask you the next question, which is, if -- could I direct
6 your attention to the third paragraph from the bottom. The
7 last sentence. And I'll ask you, what does the phrase
8 "transitioning into full debriefing mode" indicate to you?

9 A. That was a term that was used when the -- the decision
10 was being made to take the person out of that situation where
11 they could potentially be applied -- the EITs could
12 potentially be applied.

13 Q. So the -- I actually forgot to tell you that this
14 document relates to on or about 28 May 2003, and X3L was the
15 interrogator.

16 In -- during this period of time between the beginning
17 of -- of coercive physical pressures and the transition to
18 full debriefing mode, would you expect substantive
19 intelligence requirements to be serviced?

20 A. Yes.

21 Q. Okay. And -- I'll take that answer. Okay.

22 LDC [MR. CONNELL]: I'm skipping to 376 and it will be
23 STA-1800. Sorry, Your Honor. I'm just skipping more

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1 so I'm -- caught Ms. Leatherwood off guard.

2 MJ [Col COHEN]: Fine. While you're doing that, let me
3 ask trial counsel a question.

4 Trial Counsel, is it your preference to do
5 cross-examination after each defense counsel or after the
6 entirety of the defense counsel? Either one is fine with me.

7 TC [MR. GROHARING]: After the entirety.

8 MJ [Col COHEN]: It will be allowed.

9 Thank you, Counsel, for that indulgence.

10 LDC [MR. CONNELL]: Thank you.

11 Q. All right. I'm going to direct your attention to
12 MEA-STA-10 -- excuse me, 1800, found in the record at
13 AE 628MMMM Attachment C. And if you look away, I'm going to
14 zoom out a little bit. Oh, I can't zoom out.

15 A. I've read it.

16 Q. Thank you. I can represent to you that this document
17 relates to 23 June 2003. The government has identified no
18 witness who wrote it.

19 What does the -- based on the text that you just read,
20 can you -- do you know what kind -- with reasonable certainty
21 what kind of a document this is? We've seen interrogation
22 reports and we've seen intel reports. Is this something
23 different?

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1 A. Well, it reads a lot like an intel report, but it
2 could be the summary of an interrogation report too. I just
3 don't -- I just have no idea.

4 Q. All right. Can't tell from what you ----

5 A. No.

6 Q. ---- see before you? Okay.

7 I'd like to ask you about a few of the phrases on it.

8 A. Okay.

9 Q. If I could direct your attention to the very first
10 sentence, "Ammar al Baluchi's current level of responsiveness
11 was characterizing as approaching satisfactory." What, if
12 anything, does that language indicate to you?

13 A. That they were happy with what he was doing.

14 Q. Okay. The second sentence continues, "It was noted
15 that Ammar answers questions directly asked of him and has
16 been trained to not only answer questions asked, but once
17 asked -- answered expands beyond the parameters of the
18 question and pertinent areas." What, if anything, does that
19 language indicate to you?

20 TC [MR. GROHARING]: Objection, Your Honor. Anyone could
21 answer these questions. He's just answering -- asking him
22 what a particular sentence means.

23 LDC [MR. CONNELL]: First of all, he's the only witness we

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1 have, Your Honor. The government has denied all -- has denied
2 telling us even the UFI of the person who wrote this report,
3 has denied all 50 of the CIA witnesses that we asked for.
4 They produced -- of the 52 witnesses that we asked for, they
5 produced two, Dr. Mitchell and Dr. Jessen, who don't actually
6 work for the -- for the CIA and are green-badgers as we've
7 heard. The -- or were green-badgers.

8 So the government, on behalf of the CIA, has agreed to
9 exactly two witnesses as -- as -- who are supposed to --
10 apparently supposed to carry the weight of thousands of pages
11 of documents, many of which -- the vast majority of which they
12 had nothing to do with. So my first argument is he's all
13 we've got.

14 The second argument, Your Honor, is that this witness
15 has significant training, experience, in a highly specialized
16 topic. On some examples, he -- when I've asked him about
17 language, he has explained that that was something that was
18 used, for example, "transitioning to full debriefing,"
19 something that was -- was what I would call conventional; that
20 is that it is a vocabulary used by the community to convey a
21 certain meaning. And I'm asking him if -- if -- what, if
22 anything, this language conveys to him.

23 We're almost done with this area, in case that's a

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1 concern for the -- the military commission, but this -- I'll
2 call it interrogation cable, but I don't know if that's what
3 it is, because I can't tell any better than Dr. Mitchell
4 can -- it really closes the loop on -- on this in June 23rd.
5 And then we're in debriefing mode. We're to a different sort
6 of type of report that we get.

7 And this is the only one that we've seen that
8 characterizes Mr. al Baluchi's internal experience, so I think
9 it would be appropriate for me to ask some questions about it.

10 MJ [Col COHEN]: So specifically what information in this
11 document that I'm -- specifically what information in the
12 document that I'm looking at that you need him to opine about?

13 LDC [MR. CONNELL]: So with respect to the "trained to
14 answer not only questions asked but expand beyond the
15 parameters," I was going to ask the -- I intend to ask the
16 witness about the spectrum of responsiveness that he talked
17 about and whether that indicates to him that the -- Ammar was
18 moved up on that spectrum.

19 I was going to ask about being -- the practice of
20 providing detainees with topics to be discussed the following
21 day and the -- I was going to talk to him about the reminders
22 of Ammar regularly that his limited comfort is fully
23 contingent on his total truthfulness.

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1 MJ [Col COHEN]: Okay. To the extent that -- the way you
2 phrased that is so essentially you just said -- it's not
3 really so much his opinion as it is is this consistent with
4 someone who is ready to go into a debriefing mode as opposed
5 to interrogation mode? I got that. The other one was -- is
6 the use of that word is, is you can be reverted back, is that
7 consistent with interrogation or debriefing? Essentially
8 that's kind of what you're saying, right?

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

10 MJ [Col COHEN]: To the extent that you are asking those
11 kinds of questions, I find -- I will find that that is
12 relevant in kind of understanding where your client was at the
13 time. It will -- it is -- it would be helpful to me to
14 understand with respect to whether or not his will was
15 completely overborne, et cetera, consistent with your argument
16 that therefore even years later, he somehow -- I'm not being
17 pejorative; I'm just summarizing because I don't know
18 exactly -- the exact wording in your motion off the top of my
19 head -- that he was incapable, therefore, of -- of refusing
20 to -- to provide a statement voluntarily to the -- to the FBI.
21 So I'll allow you some -- you may ask questions along
22 those lines with respect to where does this put you in the --
23 in the spectrum and is this consistent with what -- the way

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1 you -- you implemented the program, or words to that effect.

2 LDC [MR. CONNELL]: All right.

3 **DIRECT EXAMINATION CONTINUED**

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

5 Q. Sir, the -- the question at the time of the objection
6 referred to the second sentence of AE -- excuse me, of
7 STA-1800, and my specific question to you is -- well, I was
8 using the language that the -- that the military commission
9 told me to use earlier for the form of the question, which was
10 "What does it indicate to you," so I'll start there.

11 A. What does the second sentence indicate to me?

12 Q. Yes, sir.

13 MJ [Col COHEN]: Is that with respect to where he is on
14 the paradigm, Counsel? Is that what you're wanting to know?
15 On that scale of compliance?

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

17 MJ [Col COHEN]: Okay.

18 LDC [MR. CONNELL]: I was just using the language that
19 you ----

20 MJ [Col COHEN]: I'll let you do that. Because more
21 specificity like that I think is efficient to say, hey, what
22 does this show you on that spectrum, kind of like what you
23 were saying to me. What does that ----

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1 LDC [MR. CONNELL]: Okay.

2 Q. Does that language give you any indication of the
3 efforts or success or anything about the -- the interrogation
4 team's effort to move Mr. al Baluchi along that spectrum you
5 described earlier of cooperation?

6 A. It doesn't tell me anything about their efforts. It
7 just tells me where he is on that spectrum.

8 Q. And what does it tell you?

9 A. It tells me that he's answering questions and
10 providing details beyond the scope of the answer -- I mean the
11 scope of the question.

12 Q. The -- I will direct your attention to the third
13 sentence in that paragraph, which is -- relates to providing
14 topics for discussion the following day. Was that a
15 practice -- or could you tell us about the practice, if any,
16 of providing detainees with topics for them to think about
17 overnight?

18 A. Sure. We called that a bridging question. So it
19 wasn't unusual to either provide them with a specific question
20 or, in our hypothetical example we discussed before, if we
21 knew the subject matter expert was going to ask them about
22 smuggling routes or smuggling in general, we would say,
23 "Tomorrow when we get together, my friend is going to come

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1 talk to you, and she would like to discuss smuggling routes."
2 So the person goes back to the cell and thinks about those
3 things.

4 Q. And then I would like to direct your attention to the
5 first two sentences of the second paragraph, beginning, "Ammar
6 is reminded regularly."

7 A. I read those.

8 Q. Yeah. Is the process of reminding detainees that they
9 could go back to the hard times -- was that a regular practice
10 in some parts of the RDI program?

11 A. I don't know because -- it would not surprise me that
12 they said that to him here because he's just coming out of the
13 thing. If they said that to him a year later, I would have
14 questions about it. But I don't know of any instance where
15 that happened.

16 Q. Where -- where that was mentioned or where they
17 actually returned anyone?

18 A. I don't know of any instance where they actually
19 returned anyone that I dealt with, and I don't know of any
20 instance where they actually were threatening to put them back
21 into hard times. Often, the detainee would bring that up ----

22 Q. Oh.

23 A. ---- you know, but -- in a discussion like what the

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1 reaction was to the -- to the experience of -- of being
2 exposed to EITs. But in terms of constantly threatening them
3 to go back to hard times, that just didn't happen.

4 Q. How did the -- could you explain what you meant when
5 you said the detainee would bring it up?

6 A. Yeah. Khalid Shaikh Mohammad and I had lots of
7 discussions during the fireside chat about his reactions to
8 him being subjected to EITs. And then later on, we had
9 additional discussions about that. But it wasn't about
10 threatening him to go back, you know. It was about what --

11 We were trying to understand how to get jihadi males
12 to cooperate with us and answer our questions without using
13 EITs. And so a big piece of our push was to try to understand
14 their belief system so that we could couch our request so that
15 it matched their belief system. And to do that, we had to
16 discussion their reactions.

17 Q. And in that -- in the example that you just gave, what
18 was the -- what was the comment about going back to hard
19 times? You said -- which is where we started. I didn't hear
20 anything about Mr. Mohammad's comments on maybe going back to
21 hard times in that.

22 A. Well, I think he said he wouldn't like it.

23 Q. Okay. Where did that fit into the jihadi male

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1 discussion that you were just -- you just told us about?

2 A. Well, this is a long answer.

3 Q. I understand, sir.

4 A. One of the things we were told right away is that --
5 by Abu Zubaydah, is that a true Muslim male on the righteous
6 path was not expected by Allah to carry a burden that was too
7 great for him to bear, that Allah understood that he couldn't
8 lift cars or move mountains; and that if he couldn't do that,
9 he wouldn't be punished. Allah was also able to look into his
10 heart and know that he was not able to hold out indefinitely
11 against pressure to provide information. And that when he had
12 reached that point, it was no sin to put down his burden and
13 answer the questions exactly as asked.

14 And so the context about not wanting to go back to
15 hard times was -- was essentially -- this is a conversation
16 that it gets conflated because I had a lot of them with him,
17 but essentially it was there's no need to go back to hard
18 times because Allah doesn't expect me to blah, blah, blah, you
19 know.

20 Q. And -- and in that paradigm that you heard from
21 detainees, the -- do you not like the word "paradigm"? Do you
22 have a better word?

23 A. It doesn't mean what -- it doesn't mean what I

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1 understand it to mean.

2 Q. Okay. How would you describe that mode of thought?

3 A. Their religious belief or cultural belief.

4 Q. In that religious belief, once the threshold that a
5 person could withstand had been met, it didn't have to be met
6 again and again and again; is that -- is that what you're
7 saying?

8 A. That was my understanding. It -- from -- from the
9 description that Abu Zubaydah gave and a later conversation
10 with KSM, Allah did not expect them to endure all of that over
11 and over and over again; that if they understood that they
12 would eventually give the information, they should just give
13 the information, but do so within the limits initial -- you
14 know, initially they would do so, just the scope of the
15 question.

16 Q. And in -- in that religious belief, the -- what -- so
17 I just want to make sure I understand. Once the threshold has
18 been crossed, there's no need to be resubjected to physical --
19 coercive physical pressures?

20 A. Right.

21 Q. Okay. You mentioned earlier a couple of things that I
22 want to -- I want to ask you about together. You mentioned
23 Pavlovian conditioning ----

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1 LDC [MR. CONNELL]: I'm done with the document camera, by
2 the way.

3 Q. ---- and you mentioned the -- the collar or sometimes
4 made of a towel, but the collar that was used in walling. How
5 did those two things work together?

6 A. I mentioned Pavlovian conditioning ----

7 Q. Yes.

8 A. ---- and the towel? Well, the goal for Dr. Jessen and
9 I was to use as few EITs as possible, and so to put this in
10 context and make sense, I'll have to explain what a Pavlovian
11 conditioning ----

12 Q. Yes, sir. That's fine.

13 A. ---- process is.

14 Let's imagine that you had a dog that you would spray
15 meat powder into his mouth, right? The meat powder is
16 considered an unconditioned stimulus, right, because they
17 respond to it and it's not conditioned. And the response is
18 considered -- salivation is considered an unconditional
19 response. I hope that's clear ----

20 Q. Uh-huh.

21 A. ---- right?

22 But if you turn a light on contiguously with spraying
23 the meat powder, very soon that light will cause the dog to

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1 salivate.

2 And so what we wanted to do is have some innocuous
3 thing take the place of the light, like the towel, so that we
4 didn't have to actually use EITs. And so we would put that
5 towel around their neck in the beginning, right, and cinch it
6 up so that they noticed the towel, and we'd use it for
7 walling, and we'd have it on them the entire time that we were
8 using EITs.

9 And then as they began to progress to where we used
10 fewer EITs, we would take that towel off, set it somewhere
11 where they could see it. And we'd usually say something like,
12 "Are we going to need this today?"

13 And they would say, "No."

14 And we would set it down and say, "We'll put it right
15 here in case we do." And then we would have a back-and-forth
16 conversation, right? And if the person began to drift back
17 into resisting in a way that we couldn't control with -- or
18 influence with social influence kind of techniques, we would
19 get the towel back -- we would take up the towel again and
20 that was almost always enough.

21 And then eventually, I would say, "Do we even need to
22 bring it in the room?"

23 And they would say, "No." Right?

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1 So in our view, using that towel produced the same
2 sense of -- in the -- I don't think there's another word for
3 it -- dread that the light would do in producing the
4 salivation.

5 Q. So just so I understand it, the sense of dread that
6 was associated with walling itself became associated with the
7 towel.

8 A. Correct.

9 Q. Okay.

10 A. And the whole point of this, so that you don't
11 misunderstand me, is so that we could relieve it.

12 Q. Uh-huh.

13 A. Use the classical conditioning to raise their distress
14 and the operant conditioning, when they answer the questions,
15 to reduce that and relieve that distress.

16 Q. Okay. Could you explain the operant conditioning part
17 more?

18 A. Sure. In that particular spot -- situation, calling
19 it negative reinforcement would probably be correct. But what
20 we wanted them to do was to be sure that they experienced a
21 sense of relief and a sense of safety in answering the
22 questions, right?

23 So what we had to do was make sure that you didn't

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1 apply EITs after they started answering the questions because
2 then the correct psychological term -- although it's not a
3 term that I think people would use in this setting, but the
4 correct term is you punish the thing that you're trying to
5 actually accomplish. And we didn't do that, and we don't want
6 to do that ----

7 Q. Okay.

8 A. ---- right?

9 Q. So the Pavlovian part of the conditioning is
10 associating dread with an object or with some other thing.
11 Could be a light. Could be -- something else?

12 A. Could be a look. You know, it could be a uniform.
13 The problem with -- with something that isn't -- that you
14 don't have a lot of control over is it's -- if it's with you
15 all the time, it doesn't work. It doesn't -- it doesn't help.
16 You need something that you can actually fade out of the
17 picture.

18 Q. I see. So where do like environmental factors fit
19 into that?

20 A. Well, again, if you're thinking of it as -- as
21 removing an adverse stimulus, right, giving them better
22 clothes, giving them better food, giving them the opportunity
23 to sleep, giving them the opportunity to read, giving them the

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1 opportunity to sit down when they wanted to, better -- you
2 know, that sort of stuff, those would be -- it would be under
3 the operant conditioning side of it.

4 Q. Okay. So let me make sure that I understand. In
5 fact, let's take the plastic -- let's take white plastic
6 chairs as an example.

7 It would be possible -- I'm not saying that this was
8 your goal or anything else, but it would be possible for the
9 dread to be associated with the chairs that the -- the chair
10 that the interrogator always sat in, for example, or it would
11 be possible for the operant conditioning, the relief from
12 answering questions, to be associated with the white plastic
13 chair that the detainee sat in while answering questions?

14 Is that accurate?

15 A. That's possible, but what your question -- what needs
16 to be clear is that these effects fade very quickly over time
17 when the contingencies are no longer there. Pavlovian
18 conditioning goes [onomatopoeia sound effect]. It just drops
19 right out when the condition stimulus isn't paired anymore
20 with the unconditioned response, right? So that drops off
21 quite quickly over time. It's very difficult to maintain that
22 in a human.

23 The other thing that happens is in operant

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1 conditioning, which is the relief part of this thing that
2 we're talking about, as soon as there's a disconnect between
3 the contingent responses -- and that's the technical term that
4 psychologists would use -- those reinforcement contingencies
5 change, and it shifts to something like my interaction with
6 you, whether or not you enjoy being with me, and not about
7 relief from some sort of an adverse thing.

8 So these -- these -- if these conditioning processes
9 were as permanent as people would like them to think, there
10 would be no psychological problems and no one would smoke.

11 Q. All right. New book now, and that book is debriefing.

12 A. That's the -- that's the name of the book?

13 Q. Yes.

14 A. I've never read it.

15 Q. It's not that good.

16 MJ [Col COHEN]: It's his book.

17 WIT: Excuse me?

18 MJ [Col COHEN]: It's his book.

19 LDC [MR. CONNELL]: It's in the library back here.

20 Q. The -- the -- you told us earlier that as the --

21 that -- that in the early part of an interrogation, a

22 debriefer or a subject matter expert would join the -- inside

23 the room, right?

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1 A. Not in the earliest part, but as soon as possible.

2 Q. Okay. And the goal was that over time, the
3 interrogators would ask fewer questions and the debriefers
4 would ask more questions?

5 A. Within the context of the time when the person could
6 potentially be exposed to EITs, yes. Although there are times
7 when -- for example, KSM could have been exposed to EITs when
8 the subject matter expert asked all the questions after we
9 gave a little introduction to him.

10 Q. Okay. And how did that change after the transition to
11 full debriefing?

12 A. Okay. What happened was there weren't any EITs, so
13 the -- the day before, they would have been given what we call
14 a bridging question, which is the topic that you asked me
15 about.

16 Then the next morning, we -- we -- it depends on where
17 you are in the stage, right, but eventually, what would end up
18 happening is the interrogator would go in and they would say,
19 "You're going to be -- you're going to be debriefed today from
20 about 1030 until your prayer time, and then you're going to
21 get another debriefing this afternoon," just to give them some
22 structure so that they knew what was going on and they could
23 do their obligatory prayers or their nonobligatory prayers as

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1 they chose.

2 Then when it was time, the guards would move the
3 detainee to the debriefing room. The detainee would be
4 shackled. The -- the interrogator would come in, take off the
5 hood. Ask them if they had thought anything about the
6 bridging question because often the bridging question was
7 things that the -- the detainee was asked to think about.
8 Like you asked me to think about the unique identifier, right,
9 we would call that a bridging question.

10 And so the interrogator would ask if they had given
11 that any thought, and if they had, they -- the interrogator
12 would make a mental note to tell the debriefer who asked that
13 question that -- that he had an answer for them, if they
14 weren't monitoring.

15 And then he would say, you know, "Today you are going
16 to be talking to my friend. My friend wants to ask you some
17 questions about" -- and I'm going to use the hypothetical
18 example -- "smuggling routes. I'm going to sit in here with
19 you. If -- if anything is confusing, you can ask me because I
20 know you don't use language the same way she does, and I've
21 been with you longer."

22 So we'd have this little chat, and then the debriefer
23 would come in and would ask questions.

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1 Q. So you just explained the interrogators were there
2 longer. Were the debriefers on a faster rotation than
3 interrogators?

4 A. Oh, yeah. The debriefers moved in and out probably
5 every two weeks or three weeks. In the beginning, though, for
6 Abu Zubaydah, the debriefers were there a long time, months.

7 Q. Okay. But later in the process, they came in and
8 out ----

9 A. Yes.

10 Q. ---- every two or three weeks?

11 A. Uh-huh.

12 Q. Okay. The -- so over the course of years, say three
13 years, a detainee could easily see more than a hundred
14 debriefers, would you say?

15 A. I don't know the number, right? I have no idea.
16 There was -- somebody was interested in debriefing them every
17 day, so except for -- if you were an important HVD, if you
18 were an important detainee, somebody would be interested in
19 talking to you, so you would see either the same person or
20 somebody different.

21 Q. Right. And lots of somebodies sometimes?

22 A. Yeah. Lots of somebodies.

23 Q. So did you ever run into trouble -- you personally,

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1 did you ever run into trouble with a debriefer because they
2 didn't understand -- they had unreasonable expectations about
3 how memory worked?

4 A. Yes. In fact, I wrote a paper for the agency.

5 Q. And what was the -- what was the issue?

6 A. Well, a lot of people think memory works like a
7 videotape, you know, that you watch something and you remember
8 everything, like I would remember all the faces in this room
9 and who was here and -- which I wouldn't.

10 And so they would be questioning somebody like KSM
11 about a meeting that he attended. You know, he's a famous
12 jihadist, and they would be asking him not about what he did,
13 but about what some guy that sat in the back, way back in the
14 back.

15 And they would say something like, "It's inconceivable
16 that you would be in a meeting with this person who was an
17 explosive expert from blah, blah, blah, and you wouldn't
18 remember this person," you know. And that just shut KSM down.
19 You know, he just wouldn't respond very well to that.

20 And so I was asked by the agency to try to put
21 together a paper that interrogators and debriefers could read
22 so that they could better understand memory, and then at some
23 point, a second operational psychologist actually put together

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1 a memory course and that was part of the -- what was trained
2 by -- when they trained debriefers.

3 Q. Okay. And so how does memory actually work if it
4 doesn't work like a video camera?

5 A. It's re-created.

6 Q. What do you mean?

7 A. Well, what happens is your memory is influenced --
8 heavily influenced by what you attended to, right? And it
9 also has a little affective tag, a little emotional tag that
10 goes with it. And when you ask me to recall something that
11 happened 17 years ago, right, I don't hit play and that comes
12 across. I try to find out by recreating that memory.

13 And the interesting thing about memory is that, when
14 you recall an image and restore it, you add -- you change
15 the -- the affective tag. You change the little emotional
16 tag, which is how psychotherapy is supposed to work, right?
17 You change that little emotional tag that goes along with it.

18 And so if you didn't attend to it or you brought it
19 out a lot of times and put it back a lot of times and brought
20 it out a lot of times and put it back a lot of times, details
21 about that memory can change and you can forget things or add
22 things because it's re-created each time and not played from a
23 master.

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1 Q. And could you explain the affective tag? I wasn't
2 sure I knew what you meant.

3 A. The emotions that were in play when you had the
4 experience are stored with it. And when you think about it or
5 talk about it again, whatever emotions are in play when you do
6 that change that a little bit so that it's more like what it
7 is when I'm recalling it.

8 Q. Thank you. Now, in general, the -- well, maybe not
9 just in general, maybe completely; you'll tell me. The
10 debriefings were in an intelligence gathering model rather
11 than a law enforcement model; is that right?

12 A. Correct.

13 Q. Okay. And what -- what do you see as the difference
14 between those two things?

15 A. Well, the key difference is whether you're looking for
16 an individual piece of the puzzle that you don't have the
17 photograph to -- to look at. You know, thousands of pieces of
18 puzzle, and you don't -- you don't know -- have the
19 photograph. So very often, they're interested in very
20 specific things. They don't go in and say, "What would you
21 like me to know?" or "Tell me about what happened to you"
22 or -- you know, they don't give you these sort of general,
23 broad questions.

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1 And the other thing is, is that there -- an
2 intelligence debriefer is not focused on a confession. I
3 never, ever, under any circumstances was at all interested in
4 anything that the detainee said to me that sounded even
5 remotely like a confession. We don't want them, they weren't
6 useful for stopping attacks. So whatever they did in the
7 past, to the extent that it would help us identify how
8 that's -- the who, what, when, where, how part of the next
9 attack, we were interested in. If they wanted to say, you
10 know, "I blew up the Empire State Building." Somebody cared
11 about it, but I didn't care about it, and I wasn't interested
12 in collecting that kind of information.

13 Q. Was that true even after the transition to debriefing?

14 A. Yes.

15 Q. Okay. And did you find -- so you were just telling us
16 about what ----

17 A. That's my experience.

18 Q. Yeah.

19 A. I mean, somebody else may do it differently.

20 Q. Sure. With -- with your experience, you were just
21 telling us about what your priorities were, what was important
22 to you. Did you find that the FBI had a different priority?

23 A. Are you talking about in 2002, the June -- June --

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1 March through June of 2002?

2 Q. That could be an element of it. I don't know your
3 full experience, but -- so you can tell me.

4 A. That's the only time I know of that the FBI was
5 involved in any kind of interrogations that I'm aware of.

6 Q. Okay. Well, let me ask you this question, then.
7 You -- could -- I'll direct your attention in your book to
8 page 5 -- 294.

9 A. Okay.

10 Q. And in that, you write, "Law enforcement's primary
11 focus is taking a perpetrator off the streets and convicting
12 that person in a court of law." Could you explain what you
13 meant?

14 A. You want me to explain those two sentences?

15 Q. Yes, sir.

16 A. Law enforcement's primary focus is capturing bad guys
17 and putting them in jail.

18 Q. Okay. And how does that focus reflect itself in -- in
19 differences in debriefing or interviewing?

20 A. In the -- in the debriefing section of the thing, what
21 you're interested in doing is getting intel that will help you
22 stop new attacks or capture or kill people. But really, the
23 primary interest when you want to capture a guy like KSM isn't

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1 putting him in jail, it's getting information from the guy.
2 And if you can't get information from the guy, they might
3 consider other means of dealing with it. It's -- it's -- I
4 don't see those two things as related at all.

5 The skills are the same, right? The questioning
6 skills, the establishing rapport, understanding what the
7 person is saying to you, you know, that sort of -- using
8 elicitation if it's necessary. Those are the same. But the
9 goals are different.

10 Q. Did you ever receive intelligence requirements that
11 were historical in nature? "Please tell us -- tell me what
12 happened" or have the detainee identify what happened on this
13 occasion or something three years ago?

14 A. Yes.

15 Q. Okay. Another difference between intelligence
16 interviewing or interrogation and law enforcement is the --
17 I'll say rights, rights or legal protections of the person
18 being interrogated; is that -- is that right?

19 TC [MR. GROHARING]: Objection, Your Honor. Calls for a
20 legal conclusion.

21 LDC [MR. CONNELL]: That's all right. I'll rephrase.

22 MJ [Col COHEN]: Okay, sir.

23 Q. In intelligence interrogation, you didn't have any

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1 concern about the defendant's right to remain silent or
2 anything like that, did you?

3 A. No. President Bush had deemed that these folks were
4 illegal enemy combatants and that they weren't subject to
5 the -- initially subject to the Third Geneva Convention; of
6 course, that changed with the court ruling.

7 And since we weren't interested in -- I wasn't
8 interested in putting them in jail, we weren't required to
9 read them -- Mirandize them. We weren't required to do that.
10 We didn't do that. We didn't have to do that.

11 Q. Sure. There was never any conversation about some
12 kind of right to remain silent or Miranda or anything like
13 that, right?

14 A. I wouldn't know that because I wasn't part of the
15 discussions about the legal requirements that took place in
16 headquarters.

17 Q. Okay. Oh, I actually meant in your -- in -- in the
18 questionings, whether interrogations or debriefings, that you
19 were involved in.

20 A. I -- help me understand your question.

21 Q. Sure. In the interrogations and debriefings that you
22 attended, did anyone ever talk to one of the detainees about
23 their right to remain silent?

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1 A. No, not that I'm aware of. I don't recall that.

2 Q. Did anyone ever talk to them about the right to
3 counsel?

4 A. I don't recall that. I do recall that when I did the
5 neutral assessment of KSM to see what he would voluntarily
6 talk to me about, it was towards the middle of it, you know,
7 he had already told me that, "I'm" -- he gave he his name,
8 said he was the mastermind behind 9/11. I told him I wasn't
9 interested in talking about that. And then he said -- I told
10 him we were interested in stopping operations inside the
11 United States.

12 And then he said to me, "Maybe I'll talk when I get to
13 D.C. and meet that cowboy Bush and get a lawyer."

14 And I said, "That's not going to happen."

15 Q. Okay. Did anybody ever talk to the detainees about
16 their right to consult with their consul?

17 A. I don't know because I don't have a grasp of
18 everything anyone ever said to the detainees.

19 Q. In interrogations, debriefings that you were involved
20 in, did anyone ever talk to a detainee about their right to
21 consult with their consulate?

22 A. Not any I was involved in.

23 Q. And in interrogations and debriefings that you were

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1 involved in, did anyone ever talk to a detainee about their
2 right to be presented to a neutral magistrate?

3 A. That I personally witnessed?

4 Q. Yes, sir.

5 A. No.

6 Q. Were the detainees that you had interaction with
7 allowed to communicate with the outside world?

8 A. No.

9 Q. Why not?

10 A. Because they were -- you know, they were part of an
11 organization that was intent on attacking us. And we didn't
12 want them alerting the people that were already -- still out
13 there at large that we were looking for or helping them plan
14 attacks or -- or arranging to have money sent to support these
15 things. It would make no sense to me at all.

16 Q. Were they allowed to contact attorneys?

17 A. No.

18 Q. Were they allowed to contact their families?

19 A. No.

20 Q. Were they allowed to contact their consuls, their
21 consulate, their country?

22 A. No.

23 Q. And why not those things?

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1 A. You'd have to ask the CIA. I don't make those
2 decisions.

3 Q. Okay. Did you find that the -- in the interrogations
4 and debriefings that you were involved in, that over time, the
5 relationship that you had with detainees was quite cordial?

6 A. Yes.

7 Q. Did you ever find -- use the phrase, for example,
8 "Stockholm Syndrome" to describe what happened?

9 A. I'm familiar with the phrase "Stockholm Syndrome," and
10 I don't believe that's what happened.

11 Q. Okay.

12 A. The dynamics that would produce Stockholm Syndrome
13 weren't in play if you look at it from the psychological
14 scientific point of view.

15 Q. What do you mean?

16 A. Well, for Stockholm Syndrome to occur, a very specific
17 set of things have to happen. The person who is holding the
18 person, right, the detainee, and the detainee both have to
19 fear the outside authority. So this first occurred in a bank
20 in -- both fear the outside authority.

21 This first occurred in a bank in Stockholm, and inside
22 of that bank, they were talking about storming it with a SWAT
23 team, and they were under a tactical attack for several hours.

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1 And what happened is the people who were in the bank with the
2 bank robbers who were actually holding them hostage were more
3 afraid of the outside authorities than they were the people
4 holding them hostage. And so that's one of the key
5 ingredients to Stockholm Syndrome.

6 Q. So with respect to intelligence requirements that you
7 received, did you ever receive -- did you ever service
8 requirements submitted by the 9/11 Commission?

9 A. Yes.

10 Q. Could you tell us about that?

11 A. I was here at Guantanamo. I -- I'm -- that's
12 unclassified that they had a site here where they did no
13 interrogations, but they did do some debriefings. And we got
14 requirements from the 9/11 Commission, in which case I would
15 go talk to the folks that were here.

16 Q. How did you know that the requirements came from the
17 9/11 Commission?

18 A. I was told by the -- you know, the report person that
19 was here that these were requirements that were submitted by
20 the 9/11 Commission.

21 Q. Okay. What -- what kind of requirements were they?
22 What were they interested in?

23 A. Well, they were interested in the -- the details

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1 behind 9/11.

2 Q. Were you ever told that the FBI submitted
3 requirements?

4 A. I was never told that, no.

5 Q. Okay. Do you know it now?

6 A. No.

7 Q. The -- you read the *9/11 Commission Report*, I assume?

8 A. Not in its entirety, but I read big pieces of it.

9 Q. Sure. And there's a couple of chapters that are about
10 the plot of 9/11 itself. Do you know what I'm talking about?
11 Chapters 5 and 7?

12 A. I don't know that those are the chapters, but I know
13 that that's in there.

14 Q. Okay. And did you ever look at the footnotes?

15 A. No, not that I recall.

16 Q. Oh. Are you aware that the 9/11 Commission heavily
17 relied on detainee reporting?

18 A. Yes, I'm aware of that.

19 Q. Okay. And how did you become aware?

20 A. Because we provided them with intel -- they provided
21 us with intel requirements, and we provided them with
22 information.

23 Q. How -- what do you mean "we provided them with

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1 information"?

2 A. We asked the detainees about the intel requirements
3 that they provided. They gave us answers. We sent those
4 back.

5 Q. Were those requirements special in some way? I
6 mean -- or were they the same kind of requirements like all
7 other intelligence requirements you received?

8 A. Well, they were -- one of the differences, obviously,
9 was they were looking backwards instead of forward, right? So
10 it would be like ask Hawsawi about blah, right. So that
11 would -- it wouldn't be quite like that, but it would be
12 essentially ask Hawsawi about this.

13 Q. And then in -- and you received those intelligence
14 requirements from an analyst or subject matter expert in the
15 same way that you received other requirements?

16 A. Yeah. There was a SCIF, and they had a computer and a
17 printer, and I'd go in and ask them what I was supposed to do,
18 and they would tell me.

19 Q. Okay. And what year was that?

20 A. I -- [REDACTED] My memory is a
21 little bit fuzzy about that, but it was here for several -- I
22 was here for several months.

23 LDC [MR. CONNELL]: Okay. Your Honor, I know we're almost

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1 out of time. If I could have the court's indulgence for just
2 one moment, I just ----

3 [Counsel conferred.]

4 Q. And at the time that you were servicing those
5 requirements here at Guantanamo for the 9/11 Commission, do

6 [REDACTED]
7 [REDACTED]

8 A. Yes.

9 LDC [MR. CONNELL]: That's all I have, Your Honor. I
10 mean, that's not all I have total, but its 12:00, if you want
11 to -- it's a good place to break.

12 MJ [Col COHEN]: Where are we in the book?

13 LDC [MR. CONNELL]: We are ----

14 MJ [Col COHEN]: For planning purposes.

15 LDC [MR. CONNELL]: I will finish this afternoon.

16 MJ [Col COHEN]: Okay. Excellent. Okay. Let's go ahead
17 and take a lunch recess until 1315 hours, and we'll see
18 everyone then.

19 [The R.M.C. 803 session recessed at 1202, 23 January 2020.]

20 [The R.M.C. 803 session was called to order at 1321,
21 23 January 2020.]

22 MJ [Col COHEN]: The military commission is called to
23 order. Parties are present. Also have Mr. Mohammad,

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1 Mr. Bin'Attash. Mr. al Hawsawi is in the back; I see him as
2 well. Mr. Ali is still absent.

3 And, Mr. Harrington, my understanding is that
4 Mr. Binalshibh will be a few more minutes, but that it's okay
5 if we start; is that correct?

6 LDC [MR. HARRINGTON]: Yes, Judge.

7 MJ [Col COHEN]: Okay. Excellent. That's what we will
8 do.

9 Trial Counsel, Mr. Trivett?

10 MTC [MR. TRIVETT]: Good afternoon, sir.

11 MJ [Col COHEN]: Good afternoon.

12 MTC [MR. TRIVETT]: I just have a quick notice for the
13 commission. It's administrative in nature. But in AE 152FFFF
14 there was an order to the government that by 24 January 2020,
15 we appoint a properly cleared psychiatrist or other qualified
16 medical personnel to undertake a full psychiatric evaluation
17 of Mr. Binalshibh. That has been done.

18 I wanted to notice the commission that we have
19 identified an individual. A CV was provided to the defense
20 today. We're going to continue to work with the defense to
21 identify the universe of documents that both parties want him
22 to have prior to the actual evaluation.

23 We've also coordinated with JTF-GTM0. They stand

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1 ready to perform an MRI. We have not yet scheduled one.
2 We're going to make sure that that's coordinated with the
3 defense counsel in order to ensure they have whoever they want
4 here when that is done.

5 The order wasn't clear as to whether or not he had
6 actual formal notice requirement, but I wanted to let you know
7 that our 24 January 2020 notices have been completed, and I
8 wanted to put that on the record.

9 MJ [Col COHEN]: Thank you, sir. I appreciate that
10 update.

11 Mr. Harrington, take a look at the CV, with as much
12 time as you need to kind of figure whether things are going to
13 work out, but hopefully this will address those issues that
14 you needed me to address on your behalf.

15 LDC [MR. HARRINGTON]: I agree with Mr. Trivett's
16 representation, Judge. It will take us just a short time
17 review the CV and let him know if we have any objections to
18 it.

19 MJ [Col COHEN]: Excellent. Thank you. And I appreciate
20 both parties working on this. You know, consistent in that
21 is, like I say, also within that is just a brief reporting
22 back to me as to whether or not there are any -- anything that
23 would rise to the level where I need to order a 706. So --

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1 but I don't need a full report, just something to let me know
2 those lines. All right.

3 Let's -- Mr. Connell. Call the witness, please.

4 [The witness resumed the witness stand.]

5 MJ [Col COHEN]: Sir, please take your seat.

6 WIT: I will.

7 MJ [Col COHEN]: Thank you.

8 WIT: Thank you. Looks like I got a new gift.

9 MJ [Col COHEN]: There may be another book up there.

10 LDC [MR. CONNELL]: I thought we were going to have to do
11 it, but we don't, so you can -- you can return the gift if you
12 prefer store credit. Yes.

13 **DIRECT EXAMINATION CONTINUED**

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

15 Q. Sir, when we left off, we were talking about the
16 servicing of 9/11 Commission requirements at Guantanamo [REDACTED]

17 [REDACTED]

18 LDC [MR. CONNELL]: Your Honor, I'd like access to the
19 document camera. I have a document marked UNCLASSIFIED//FOR
20 OFFICIAL USE ONLY but displayable only to the parties. It's
21 LHM-1720. I showed it once before, but I just want to ----

22 MJ [Col COHEN]: Okay.

23 LDC [MR. CONNELL]: ---- show it one more time.

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1 Q. And, sir, when you were servicing those requirements,
2 were you acting in the role of interrogator or of debriefer?

3 A. Debriefers.

4 Q. Okay. And did that take place at [REDACTED] Does that
5 name mean anything to you?

6 A. Well, it was -- I mean, I know there were [REDACTED]
7 [REDACTED]

8 but ----

9 Q. Okay. Don't tell us the different names. Just do you
10 know the name [REDACTED]

11 A. I know of the name [REDACTED] I don't know that it took
12 place at [REDACTED]

13 LDC [MR. CONNELL]: Okay. Let me just ask because we
14 might be able to do something here.

15 [Counsel conferred.]

16 Q. Okay. I just checked with the government on this.
17 You know that this -- the place where you conducted the
18 debriefings [REDACTED]

19 A. I do.

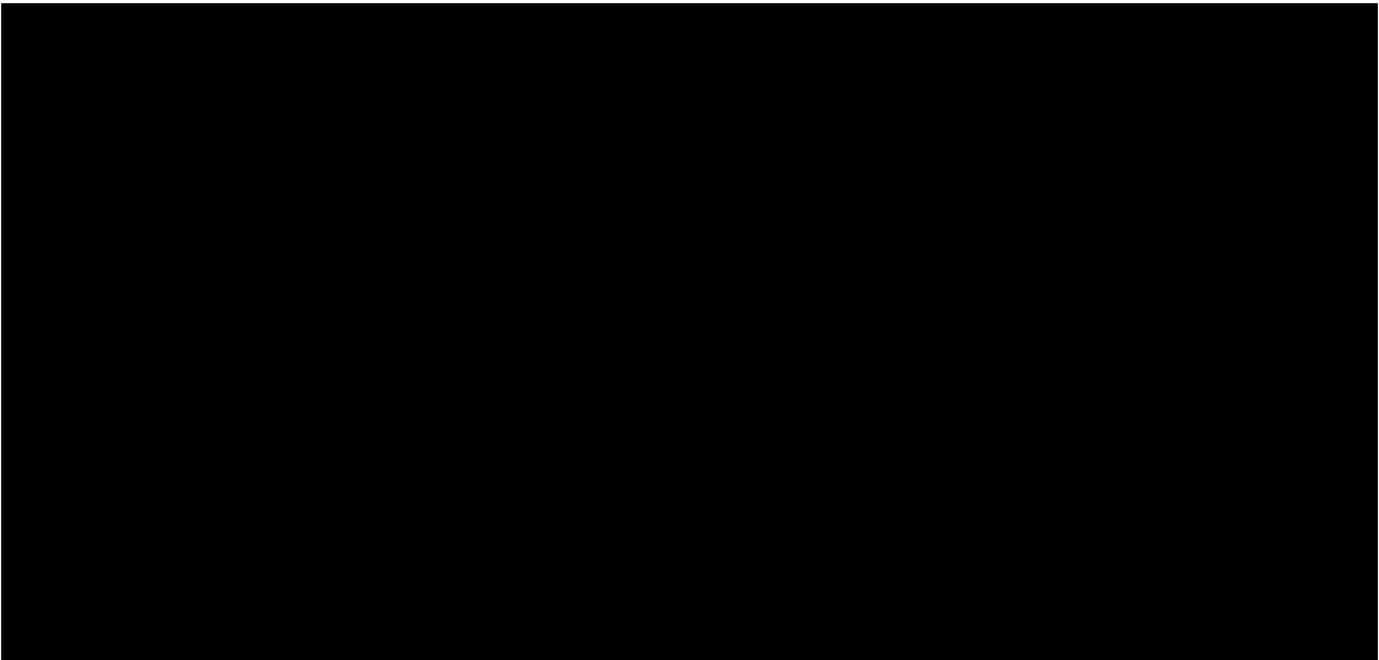
20 Q. And you know it was [REDACTED]

21 A. I assume that's so. I mean, to be -- yes.

22 Q. And I've showed you a picture which is LHM-1720.
23 [REDACTED]

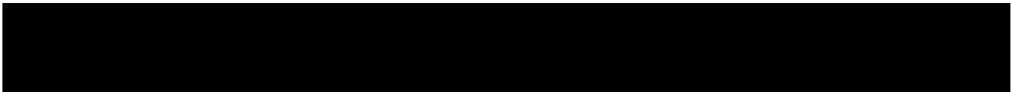
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Q. Okay.



Q. Okay. Different witnesses have called it different things. I understand that it -- let me -- let me just ask you more specifically the question: Does LHM--1720 depict the place where you conducted debriefings?

A. No.

Q. It does not?

A. No.

LDC [MR. CONNELL]: May I have a moment?

MJ [Col COHEN]: You may.

LDC [MR. CONNELL]: May we have the court's indulgence for a moment?

MJ [Col COHEN]: You may.

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1 [Counsel conferred.]

2 LDC [MR. CONNELL]: Your Honor, I'm going to draw the
3 witness' attention to MEA-FAC-57, which is a picture but
4 marked SECRET//ORCON displayable to the parties.

5 MJ [Col COHEN]: Okay.

6 LDC [MR. CONNELL]: So we're not displayed to the gallery,
7 right?

8 MJ [Col COHEN]: Correct. I was just verifying that with
9 my CISO.

10 Q. Sir, does FAC-57 more accurately -- does that
11 accurately predict [sic] the place you participated in
12 debriefings at Guantanamo?

13 A. No. But maybe I can help you out.

14 Q. Okay.

15 A. I did -- I conducted all the debriefings I did in
16 their cells.

17 Q. You mean the cells that they lived in?

18 A. Correct.

19 Q. How does that, in your mind, distinguish from these
20 pictures you've seen?

21 A. Nothing that I worked in had these kinds of things.

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1 [REDACTED]
2 [REDACTED]

3 Q. Okay. I'm going to show you FAC-61.

4 LDC [MR. CONNELL]: Same markings, Your Honor. I'm going
5 to zoom out.

6 A. Can you raise that up a little or out a little?

7 Q. Does FAC-61 more accurately depict the cell you were
8 talking about?

9 A. No.

10 LDC [MR. CONNELL]: I think this is what happens when you
11 can't investigate, Your Honor. You're stuck with a
12 preprogrammed set of materials and they don't mean anything to
13 the witness. I'll move on.

14 MJ [Col COHEN]: Sir, can you tell -- describe for us
15 again what -- what it looked like when you were at the -- the
16 front of the -- the cell.

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

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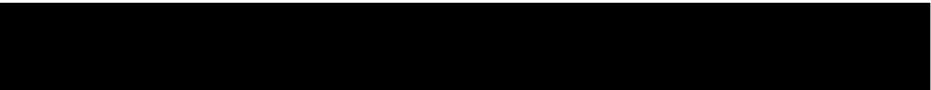
LDC [MR. CONNELL]: Okay.

MJ [Col COHEN]: Counsel, I think there's a picture that's close to that.

LDC [MR. CONNELL]: Yeah, I do, too.

MJ [Col COHEN]: May not be the same, but I remember with previous testimony that we've seen something at least similar to that.

LDC [MR. CONNELL]: Okay.

Q. So, sir, I'm going to show you what is FAC-58. Is that  that you were just talking about?

A. Yes.

Q. It is?

A. Yes.

Q. Okay. So we may be on the right track. Okay.

Sir, I'm going to show you LHM-1720 again, and I'm going to zoom in, and maybe I can help you out a little bit. Do you see on the far left-hand side of the photograph

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1 LHM-1720 that that [REDACTED] appears?

2 A. Yes.

3 Q. Okay. And I'll represent to you that at [REDACTED] the

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 A. Okay.

8 Q. Okay. So in that situation, could this photograph

9 [REDACTED]

10 [REDACTED]

11 A. It could, but I've never seen furniture in it like
12 that.

13 Q. Okay. So that -- that portion, the [REDACTED]

14 [REDACTED]

15 A. Correct.

16 Q. Okay. And so with that understanding, sir, maybe to
17 make it a little easier, I'm going to show you FAC-62. And
18 I'm going to zoom out, so be aware. This photograph, sir, is

19 [REDACTED] Do you see
20 that?

21 A. I do.

22 Q. And does that more accurately depict -- does that
23 accurately depict what you saw in the camp?

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1 A. It's consistent with my memory.

2 Q. Okay. Okay. When you were debriefing on the 9/11
3 Commission requirements, were you the only person in the room
4 or were there additional debriefers, interrogators, analysts,
5 subject matter experts?

6 A. There was a guard. Most of the debriefings were done
7 by debriefers and subject matter experts, but I would come
8 here and stay here over the holiday so they could go home, and
9 they would leave one person to handle the computer stuff. And
10 I also came here and stayed at other times, right, but
11 typically it was me and a guard.

12 Q. Okay. On any of those occasions, were -- was the
13 other person who did the debriefing with you a member of the
14 FBI?

15 A. No.

16 Q. Okay. The -- when -- so you just told us you came
17 to -- to Guantanamo on other occasions. What were the other
18 occasions? You mean ----

19 A. I would stay here for a few weeks, go home for a
20 little while, come back for a few weeks, go home for a little
21 while. I would get shipped to some other place on the planet
22 and then come back here. So I made I don't know how many
23 trips, but I made several trips over a few months.

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A. Yes.

Q. Had you known in advance of coming

A. I got a briefing before I came here. It wouldn't surprise me if they told me that, but I don't recall.

Q. Okay. Do you know how

don't know. I'm not part of that decision chain.

Q. Okay. I -- I actually do have a question about that. So it may take me a moment to find the exact place, but are you familiar with Mr. Rodriguez writing in his book that the CIA decided that going with the FBI approach was not the way to go?

A. I do. And I was also part of those meetings when that decision was made.

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[REDACTED]

Q. Okay.

[REDACTED]

Q. All right. One other question with that, and if you want to see the book, that's perfectly fine.

LDC [MR. CONNELL]: In fact, I'll -- if I may, since -- if I may approach, I'll show counsel first.

[Counsel conferred.]

Q. This is the book.

A. Okay.

MJ [Col COHEN]: Counsel, please let us know what page you're looking at of what -- or, excuse me, what page of what book you have asked the witness to look at.

LDC [MR. CONNELL]: Your Honor, I have asked the witness to look at *Hard Measures* by Jose Rodriguez at page 93.

MJ [Col COHEN]: Thank you.

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1 Q. I'd like to read you one sentence and then -- or even
2 part of a sentence and then comment on it -- and ask you to
3 comment on it: "The windfall reported in the intelligence
4 reports coming out of KSM's interrogation was so dramatic that
5 FBI officials petitioned the CIA to get back into the
6 interrogation program." Do you know whether that's true or
7 not?

8 A. I don't know whether that's true.

9 Q. To the best of your recollection, did the 9/11
10 requirements cover any topics other than 9/11?

11 A. None that I serviced.

12 Q. Okay. All right. I'll approach and get that book
13 back from you.

14 A. Thanks.

15 Q. All right. New chapter, which is the debriefings that
16 you attended with Mr. al Baluchi.

17 A. Okay.

18 Q. Those debriefings were at Location Number 7; is that
19 right?

20 A. I'll need to look.

21 Q. Yes.

22 A. I believe so, yes.

23 LDC [MR. CONNELL]: Okay. Your Honor, I have photographs

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1 that I'd like to show the witness. They are marked SECRET.

2 They are displayable to the parties but not the public.

3 MJ [Col COHEN]: You may do so. The parties and witness
4 only.

5 Q. Okay. I'm first going to show you FAC-73. Is that a
6 photograph of the hallway in which the cells were located at
7 Location 7?

8 A. It appears to be.

9 Q. Sir, I'll show you MEA-FAC-80. Do you recognize
10 what's depicted in that photograph?

11 A. It looks like the interior of one of those enclosed
12 areas that the doors you showed me would close off.

13 Q. Okay. And, sir, I'll show you FAC-81. Do you
14 recognize what's depicted in that photograph?

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19 A. I've seen those all over, but I believe those were at
20 Location 7.

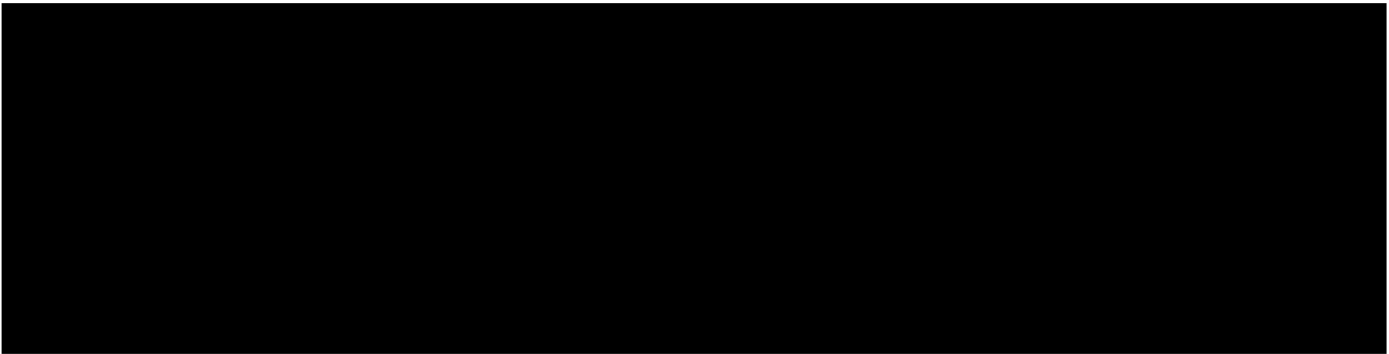
21 Q. And finally, I'll show you FAC-90. Do you recognize
22 what is depicted in FAC-90?

23 A. Yeah. That looks to me like a hard point on the

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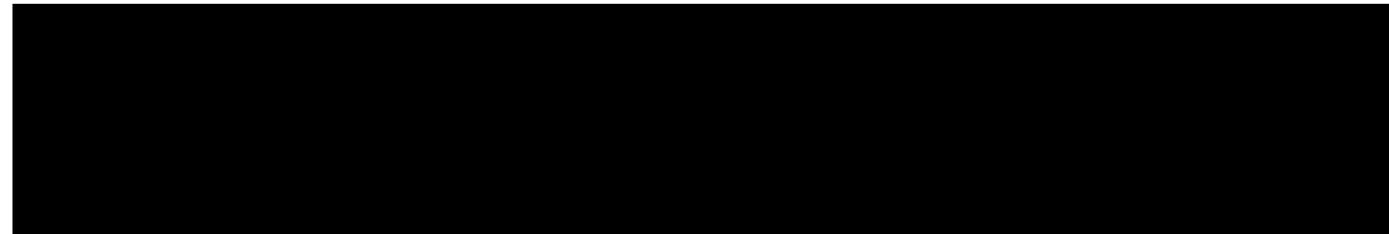


LDC [MR. CONNELL]: All right. Court's indulgence,
please?

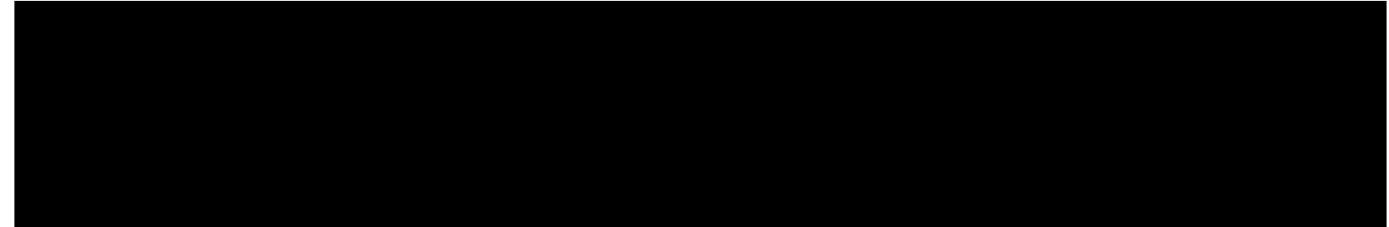
MJ [Col COHEN]: You may.

[Counsel conferred.]

Q. All right. Sir, I'd like to show you FAC-67. If the
screen is not good enough and -- and it would help to look at
the paper, you certainly can. The -- but you'd have to go to
one of those binders.

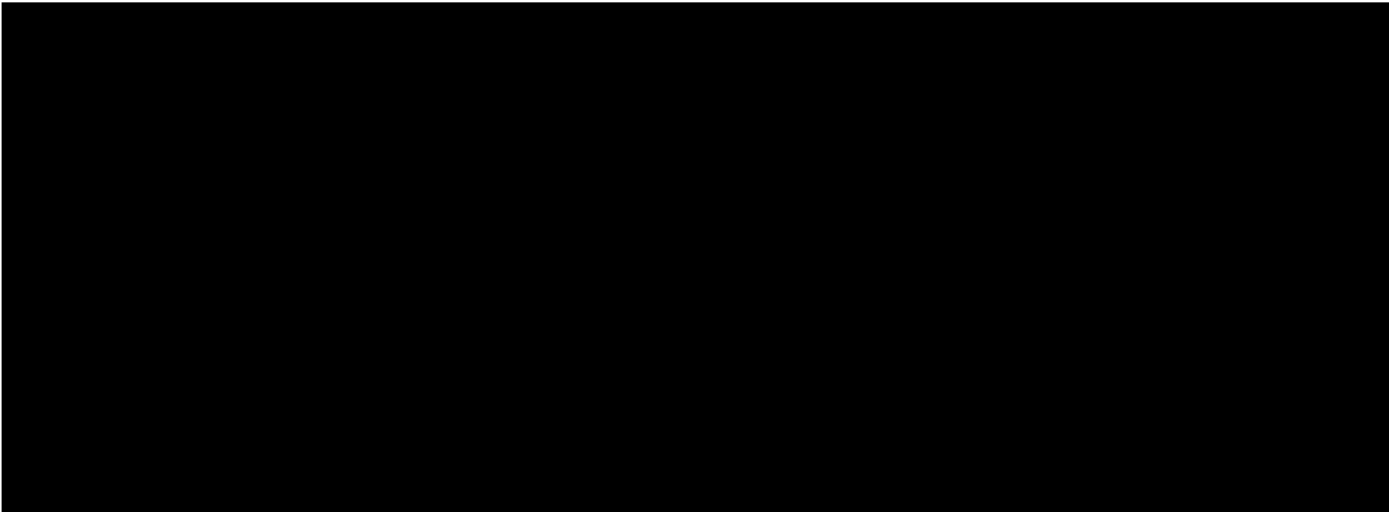


Q. Okay. And I'll draw your attention to the right half
of the photograph -- or actually right in the middle of the
photograph, do you see -- no, actually, I -- my agreement with
the government, I have to do it differently.



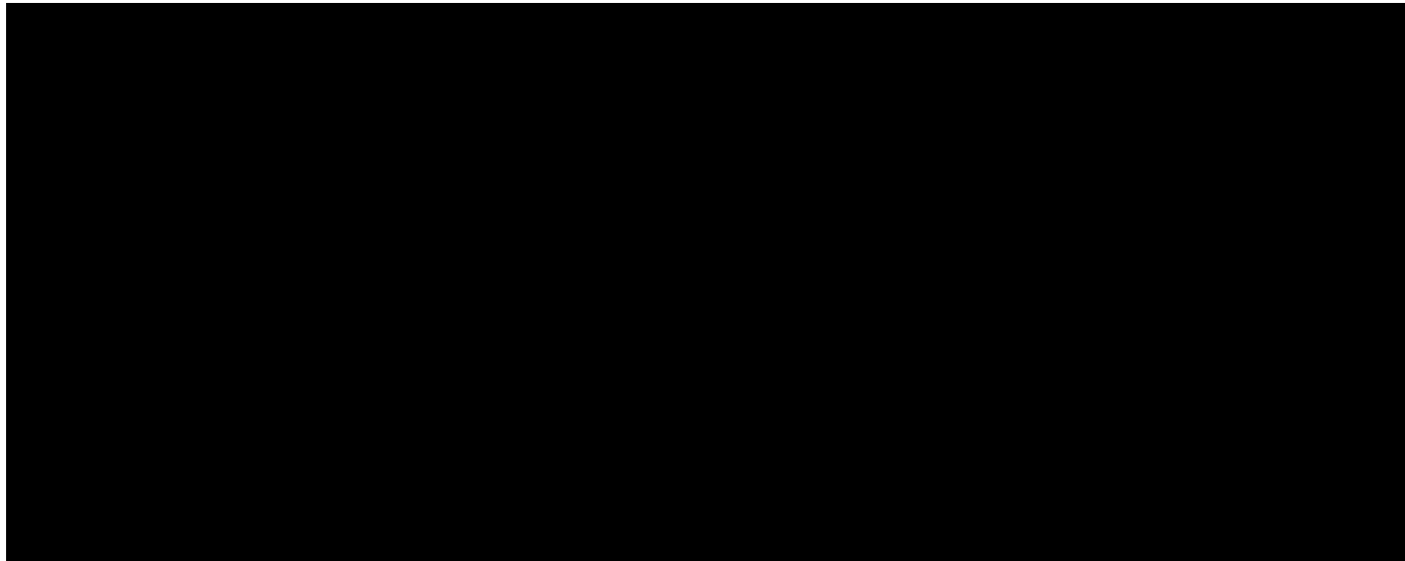
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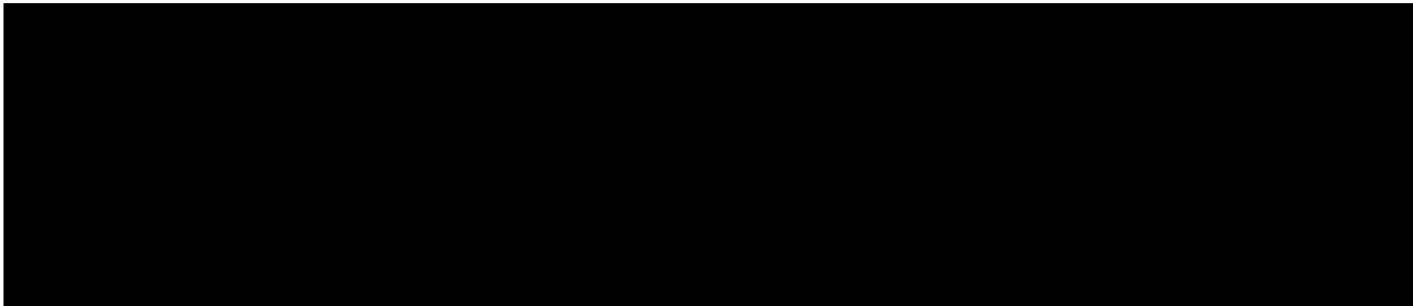
A. Yes.

Q. Okay. How many were there?



Q. Right.

A. I mean, it isn't necessarily there. I can't tell



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I can't tell.

3

4

Q. Okay. So would it be accurate to say that, given the quality of the -- the nature and quality of the photograph,

5

6

A. I don't think I could tell if you had a better

7

photograph.

8

9

10

11

Q. Right. Would it be correct to say that the only way to really know would be to go there and see

12

A. That would certainly be one way to do it.

13

14

Q. Okay. All right. So I'd like to ask you now about your -- the debriefings that you attended with Mr. al Baluchi.

15

16

And my questions will go to the nature of the relationship rather than the substance because I -- I imagine you don't

17

remember what the substance was.

18

19

A. I don't remember the substance. In my briefings, I was told that specific intel requirements and specific intel responses may be classified and I should stay away from them.

20

21

Q. No problem. And we're on top of that, so that's good.

22

23

But Mr. al Baluchi was -- was already answering questions at the time that you sat in on his debriefing?

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1 A. Yes.

2 Q. And did he appear comfortable during the debriefing?

3 A. Yes.

4 Q. What language did you speak with Mr. al Baluchi?

5 A. He was trying to learn English, so he had some
6 English. And I think there was a translator as well, but I
7 don't recall specifically with him. Like I said, I didn't do
8 the debriefings, I just sat in with him.

9 Q. Uh-huh.

10 A. And I think they would have -- they would have -- and
11 this is just me reasoning based on past experience. If there
12 was any doubt at all whether he could understand English or
13 not, they would have provided a linguist.

14 Q. Okay. And how would you describe the rapport between
15 Mr. al Baluchi and the debriefer during the debriefers you
16 observed -- the debriefings you observed?

17 A. Well, my recollection is there were several
18 debriefers, and he was always cordial.

19 Q. Courteous?

20 A. In the -- in the way that Arab males are courteous,
21 yes. He was ----

22 Q. Would you say that he was respectful?

23 A. He wasn't -- he wasn't disrespectful, okay. So he

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1 wasn't -- you know, he wasn't degrading of her; he didn't
2 refuse to talk to her because she was a woman, as some did.
3 And so, yeah, I would say he was respectful.

4 Q. Okay. Did -- during the debriefings, if you recall,
5 did anyone -- was it apparent that Mr. al Baluchi had answered
6 questions on a similar topic before?

7 A. Yes.

8 Q. Okay. And how did the debriefer deal with that? Did
9 they say "I'll just go look up your old answers" or did they
10 say "I want to hear it again for myself"?

11 A. It would depend on the debriefer and -- and whether
12 they were checking the veracity of what he was saying, so I
13 don't recall that specifically. But it wouldn't be unusual
14 for a debriefer to come in and say, "The last time you talked
15 to a friend of mine, you said this and this and this. I'm
16 wondering if you could tell me more about that."

17 Q. Okay. Would they sometimes say, "I know you've said
18 this before, but I don't care what you said to them. I'd like
19 to hear it again"?

20 A. Yeah, that happened with KSM quite a bit. It happened
21 with others. They didn't use those exact words, but
22 essentially what they were doing was getting them -- they
23 were -- we -- I kind of think of it as priming the pump,

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1 right? You'd go in and you'd get them to tell you what they
2 had told you before, and in the course of telling you what
3 they've told you before, they remember other things, right,
4 and that adds to the thing.

5 So it isn't -- it isn't a technique that was never
6 used and it isn't a technique that was always used.

7 Q. How were the -- how were the -- the time of the
8 debriefing arranged? You told us earlier, for example, that
9 you avoided prayer time.

10 A. Yeah, they made an effort to avoid prayer time,
11 although they couldn't avoid it all the time. If we got an
12 urgent response, they would frequently interrupt KSM with it.

13 Q. Okay. In a nonurgent situation, kind of a routine
14 situation.

15 A. Usually there was a briefing in the -- debriefing in
16 the morning and a debriefing in the afternoon.

17 Q. Okay. If the -- if the detainee were -- or if
18 Mr. al Baluchi or another detainee were sick or in some kind
19 of distress on a certain day, could they temporarily decline?

20 A. Yes.

21 Q. Okay. And how did that happen? Did they send a note
22 or what happened?

23 A. Usually, the -- usually, the interrogator would stop

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1 in in the morning and see how they were doing. And if they
2 didn't feel good, we'd go back to the main room and say,
3 "Listen, Baluchi's not feeling good, you know, he's got a
4 headache," or whatever it happened to be. And you'd talk to
5 the boss in charge and talk to the debriefer to see how urgent
6 it was and, you know, make arrangements around that.

7 Q. Okay.

8 A. And -- and usually get a physician or somebody to take
9 a look at him.

10 Q. Sure. So within limits -- and obviously you all
11 established those limits, but within limits, a detainee could
12 at least temporarily decline to have a meeting?

13 A. Well, when you say "you all," you actually mean the
14 CTC leadership, not Jim ----

15 Q. Yes, sir.

16 A. ---- right? So -- because I didn't ----

17 Q. Decide anything, I got it.

18 A. Right. But they could temporarily decline if they
19 wanted to. But sometimes they couldn't decline.

20 Q. Sure. If there was an urgent matter?

21 A. If there was an urgent matter or -- well, it would --
22 "urgent" is a word that's kind of strange, you know what I
23 mean? It doesn't mean lights flashing and the world is coming

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1 to an end. Sometimes it just means that you've got an asset
2 on site and they would like to have some sort of feedback
3 immediately.

4 Q. Sure. Typically in the -- or in the debriefings that
5 you were a part of with Mr. al Baluchi, was there an informal
6 or social beginning to the meeting before you got down to
7 business?

8 A. Ordinarily. Not with every debriefer, but ordinarily,
9 there would be a, "How's it going? Did you sleep okay?" You
10 know, that sort of stuff.

11 Q. Okay. And then how would the transition occur to the
12 business part of the debriefing?

13 A. They would start asking him questions.

14 Q. Okay. Anybody ever say, "Let's get down to business"?

15 A. I don't recall that term being used.

16 Q. Okay. How would you describe the tone and tenor the
17 debriefers used when interacting with Mr. al Baluchi?

18 A. Respectful. They were businesslike, you know. They
19 were cordial.

20 Q. Okay. Did the debriefers ask questions in an
21 open-ended manner?

22 A. Sometimes. You know, it depended on whether they were
23 seeing what additional things -- you know, they didn't ask

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1 leading questions, but they would sometimes say tell me about
2 this, you know, or they might specifically say what phone
3 number was so-and-so using to make these calls. So the
4 questions were very broad at times and very narrow at times
5 because that's the nature of questioning these guys.

6 Q. Would the debriefers sometimes ask Mr. al Baluchi to
7 suggest a topic?

8 A. I don't think they would do that during the -- I
9 don't -- that doesn't seem like something a debriefer would
10 do.

11 Q. Okay. Did you take breaks during debriefings?

12 A. If the prayer time came up, they would break and then
13 maybe go back to it if it was a long debriefing.

14 Q. Was there ever food or beverage involved in the
15 debriefing?

16 A. I don't recall that. I don't think so.

17 Q. Okay.

18 A. There would be food or beverage involved in the "how's
19 it going" visits sometimes, but I don't recall debriefers
20 normally bringing in food and beverage.

21 Q. Is that because the debriefings normally didn't go
22 through mealtime? If it went across mealtime, they would go
23 take their meals somewhere else?

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1 A. No, it could go across mealtime. It took however long
2 it took, right? And they tried to avoid the prayers, but I
3 don't recall the -- the obligatory prayers, you know?

4 Q. Uh-huh.

5 A. But I don't recall being concerned about mealtime at
6 all.

7 Q. Did Mr. al Baluchi appear disoriented or confused?

8 A. Not at any time that I either was in the cell with him
9 or monitoring him, you know, on camera, no.

10 Q. Did he appear depressed?

11 A. He appeared unhappy at times because, you know, it was
12 appropriate to being captive and, you know, held in relative
13 isolation; although, he wasn't, because he had interaction
14 with the debriefers and the guards and the physicians and all
15 those folks. But it seemed to me to be an emotional reaction
16 that was congruent with his circumstances.

17 Q. Okay. Did he show anxiety?

18 A. I don't recall seeing any anxiety.

19 Q. Fear?

20 A. I don't recall seeing any fear.

21 Q. Okay. Were there instances where you thought he was
22 not telling the truth?

23 A. I didn't -- I wasn't really monitoring for that. I

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1 only sat in on a few sessions, so I can't tell you one way or
2 the other.

3 Q. Okay. Did you ever witness a time when the debriefer
4 thought he was not telling the truth?

5 A. I don't recall specifically.

6 Q. Okay. Did you see -- or, excuse me.

7 Did he ever appear indifferent?

8 A. He appeared disinterested at times, you know, but I
9 don't -- indifferent is a -- he didn't care one way or the
10 other? I didn't -- I never saw him -- he either cared or he
11 didn't care. You know what I mean? It wasn't one way or the
12 other.

13 Q. Okay. Did you ever see any physical signs over the
14 course of the debriefings that caused you concerns with
15 Mr. al Baluchi's ability to participate in the debriefings?

16 A. No.

17 Q. Did you ever see any evidence that Mr. al Baluchi lost
18 the ability to offer statements that were favorable to himself
19 throughout the course of the interviews?

20 A. No.

21 Q. At any point, did Mr. al Baluchi seem to have
22 difficulty concentrating?

23 A. Not really, no.

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1 Q. Did he seem distracted?

2 A. He could be distracted, but it was usually by
3 something that was real, you know, as opposed to some internal
4 motivation.

5 Q. Sure. So you didn't see any signs of Mr. al Baluchi
6 hallucinating?

7 A. No.

8 Q. Okay. Did you see any signs of him disassociating?

9 A. No.

10 Q. Did he say things that were irrational?

11 A. Not that I heard.

12 Q. Was Mr. al Baluchi able to provide accurate details
13 regarding the information that he discussed with the
14 debriefers?

15 A. Well, that was a decision that would be made by the
16 debriefers, not by me. And at any point where he's talking,
17 I'm not in a position to decide whether it's accurate or
18 inaccurate.

19 Q. Do you have any reason to believe that -- you -- am I
20 correct in summarizing that as you just don't know whether he
21 was accurate or not?

22 A. Correct.

23 Q. Did he provide appropriate levels of detail?

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1 A. I think he did.

2 Q. Did you or anyone else put their hands on

3 Mr. al Baluchi during the debriefings?

4 A. Not that I saw.

5 Q. Did anyone ever threaten to do harm to Mr. al Baluchi
6 during the debriefings?

7 A. Not that I saw.

8 Q. Is it fair to say that the debriefers led the
9 debriefing?

10 A. It's accurate to say that the debriefers led to the
11 debriefing.

12 Q. On this occasion, actually, this is another lawyer's
13 question, so I won't take the hit for it. The -- it's
14 Mr. Groharing's question, actually.

15 But did anyone ask Mr. al Baluchi whether he would be
16 willing to meet with the debriefers again?

17 A. No.

18 Q. Okay. Did he ever bring notes with him to
19 debriefings?

20 A. Sometimes they were given writing material and asked
21 to write things down, so he may have brought notes.

22 Q. Okay. Did he ever volunteer information?

23 A. Yes.

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1 Q. Did he ever identify photographs?

2 A. I think he did, yes.

3 Q. Okay. During the course of the debriefings, was
4 Mr. al Baluchi ever shown documents?

5 A. The CIA's weird about showing detainees documents.
6 They -- they have to be special dispensation to do that. I
7 don't know that -- I didn't see them show him any documents.
8 But in some circumstances, like we would show Abu Zubaydah a
9 document, but you would think it was, you know, something that
10 they were very, very cautious about.

11 Q. Okay. Did you ever ask him how he had been -- let
12 me -- this is during the debriefing. I know we're bracketing
13 fireside chats for now. But during a debriefing did you or
14 anyone in your presence ask him how he had been treated during
15 the hard times?

16 A. I don't recall doing that.

17 Q. Did he bring up how he was treated during the hard
18 times?

19 A. Not to me.

20 Q. So what would have happened if Mr. al Baluchi said,
21 "I'm never going to answer another question again"?

22 A. Someone like me would have said, "Let's reconsider
23 that. Why don't we go back to our cell and think about it and

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1 we'll have another conversation about this later."

2 Q. Okay.

3 A. And they would have gone back to their cell and
4 thought about it and hopefully came to their senses.

5 Q. And what if they didn't come to their senses? What
6 would have happened?

7 A. There would have been consultation with headquarters
8 about it. Headquarters would have made a decision about
9 whether or not they think that he still contained information
10 that was valuable enough to put the person back into a
11 situation and they would start by removing a mattress or, you
12 know, the lowest level of -- of intervention that they could
13 do.

14 Q. And if the person continued to refuse?

15 A. I don't know. I have not ever seen that, so I don't
16 know how to predict it. You're asking me to speculate, and I
17 prefer not to speculate about what someone else would do.

18 Q. The decision would be made by CIA Headquarters?

19 A. The recommendation would be made by the interrogation
20 team and the psychologist and the -- whoever was in charge.
21 Headquarters would consider the recommendation and either
22 approve it or disapprove it.

23 Q. Sure. So a new chapter now. You told us a little bit

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1 earlier about your conversations with Abu Zubaydah and with
2 Mr. Mohammad in an attempt to develop nonphysically coercive
3 interrogation -- intelligence -- interrogation models?

4 A. Yes.

5 Q. Could you tell us a little bit about that?

6 A. That's a pretty broad question.

7 Q. And let me give you a more narrow one.

8 The -- in 2005, were you part of discussions over
9 seeking nonphysically coercive methods of intelligence
10 interviewing?

11 A. I wrote an interrogation manual for the CIA that
12 focused entirely on noncoercive measures.

13 Q. Okay. Could you tell us about that?

14 TC [MR. GROHARING]: Objection.

15 A. They asked me to write a manual, and I did.

16 MJ [Col COHEN]: Just a second.

17 TC [MR. GROHARING]: Relevance?

18 LDC [MR. CONNELL]: Relevance, Your Honor, the -- what --
19 we have already had testimony that the noncoercive methods
20 used by the CIA were virtually identical to those used by the
21 FBI in the January 2007 interrogation. Mr. Drucker, Special
22 Agent Drucker, testified to that after being trained as a
23 debriefer, he compared FBI and CIA. I'm seeking the

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1 development of the theory behind that same information from
2 Dr. Mitchell.

3 That's -- that's the theory. It's to link the
4 noncoercive -- nonphysically coercive parts of the CIA program
5 and the nonphysically coercive parts of the FBI ----

6 MJ [Col COHEN]: That took place during the interview of
7 your client?

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

9 MJ [Col COHEN]: All right. I'll allow it. Overruled.

10 LDC [MR. CONNELL]: Thank you.

11 WIT: Can you repeat your question because I got lost in
12 all of that.

13 LDC [MR. CONNELL]: Not a problem.

14 Q. You told us that you had written a manual about
15 noncoercive interrogations. Could you tell us what you meant?

16 A. Well, it was a manual that used social influence, so
17 it used what I had learned about their world view and how to
18 create situations where the person might be more willing to
19 provide information.

20 It -- I wrote it without any reference to any FBI
21 material. I wrote it without any reference to the Army Field
22 Manual. What I did was look at the current literature and ask
23 myself under what circumstances -- here's what I asked myself.

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1 This is a very broad question.

2 I asked myself: What must this person think? What
3 must this person feel? You know, what must the urge to act be
4 in order for this person to be more likely to provide
5 information than not provide information, right?

6 And so my goal in writing the manual was to provide
7 scientifically sound advice on how to get a terrorist who was
8 intent on withholding information to shift their priorities
9 away from protecting that information by changing their
10 priorities in the moment so that providing the information
11 seemed like the rational thing to do.

12 Q. Okay. And what was the name of that manual?

13 A. *Shifting Priorities*.

14 Q. Roughly how long was it?

15 A. Well, there were three volumes to it, so it was
16 probably -- well, there was -- there was a theory, a work --
17 theory, a discussion, and then a workbook, a planning
18 workbook. And so it would have been maybe over a hundred
19 pages altogether.

20 Q. Do you know what happened to the manual after you
21 wrote it?

22 A. They declassified it. I mean, it was never
23 classified, it was all based on unclassified things. What was

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1 classified was the relationship between that manual and the
2 agency.

3 Q. Okay. Was -- to the best of your knowledge, was the
4 manual ever put in use in the intelligence community?

5 A. I don't know. Because I delivered it to them, and
6 then it disappeared into whatever it disappears into, and then
7 I never heard of it again. Because shortly after that, I -- I
8 don't know. I don't know if it was ever put to use.

9 Q. Okay. When you say it was declassified, was it ever
10 released publicly?

11 A. It was sent to -- well, it was never classified.

12 Q. Okay.

13 A. What was classified was the relationship ----

14 Q. It was classified -- it went through classification
15 review. How about that?

16 A. Yeah. When -- when the ACLU suit came about, the
17 agency sent people to my house to collect stuff. And I had an
18 unclassified copy of it because it was unclassified. So they
19 collected it, they took it back to the agency, they did
20 whatever they do to it, and then they sent it back to me as an
21 unclassified document.

22 Q. I see. And am I correct that the techniques you
23 outlined in that manual don't use physical coercion at all?

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1 A. No, they don't use any physical coercion.

2 Q. New chapter. I'd like to talk a little bit about the
3 services provided by Mitchell, Jessen & Associates.

4 A. Some of those remain classified.

5 Q. Fair enough. In 2005, the -- 2004 there was an OIG
6 review of the -- of the RDI program; is that right?

7 A. I believe that's accurate, yes.

8 Q. Okay. And was there a policy recommendation to
9 contract out some of the elements of the RDI program?

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 Q. [REDACTED] The -- let me just ask you
21 about that.

22 So would it refresh your recollection if I reminded
23 you that the contract itself was for [REDACTED]

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[REDACTED]

2

A. If that's what they said in the contract, that's the term they used. It's just not how I remember it.

4

Q. Okay. And so you and others formed a company, Mitchell, Jessen & Associates; is that right?

6

A. We already had that company formed.

7

Q. Okay. It was formed in 2005? I guess depending on -- since we're talking about times, it matters what we're starting from, but you -- in 2005 you formed ----

10

A. It existed prior to them coming up with the contract.

11

Q. Okay. Did Mitchell, Jessen & Associates conduct any business prior to that contract?

13

TC [MR. GROHARING]: Objection, relevance.

14

MJ [Col COHEN]: Is -- what is the relevance, Counsel?

15

LDC [MR. CONNELL]: Well, it's really that the contract -- I mean, the company documents say that it was created in 2005. So I'm trying to find out if my -- if I don't have the right documents, if my document is wrong, or something else. I'm just trying to find out why there's a disconnect on the year of creation.

21

MJ [Col COHEN]: Okay. But for the response, you wouldn't be asking the question. Is that -- is that what you're telling me?

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1 LDC [MR. CONNELL]: Right. Except but for the prior
2 response, I would not be asking the question.

3 MJ [Col COHEN]: Okay. See if we can get there in like
4 one or two questions.

5 LDC [MR. CONNELL]: Sure.

6 MJ [Col COHEN]: All right. Overruled.

7 A. 2005 has 12 months in it. The company was originally
8 formed because I wanted to provide continuing medical
9 education for psychologists and other people who support war
10 fighters, and I didn't feel that we could get that through
11 normal American Psychological Association outlets. So we
12 applied to the American Psychological Association for a
13 credentialing to provide that service, and we provided some of
14 those services, and that company existed before.

15 Q. I see. And then once the -- once the contract from
16 the -- from the CIA became available, you used -- Mitchell,
17 Jessen & Associates was the -- was the contract vehicle, was
18 the company that took the contract?

19 A. Right. It wasn't formed specifically for that ----

20 Q. I understand.

21 A. ---- but it existed and we used it because we thought
22 that forming another company would take a long time, and we
23 just weren't interested in doing it.

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1 Q. Got it.

2 LDC [MR. CONNELL]: Thank you, Your Honor.

3 Q. The -- was there a bidding process?

4 A. I was told that it was an open-bid contract and that
5 our proposal would be considered along with other proposals.
6 Later I was told that someone had decided it was going to be a
7 sole-source contract and that it was sole sourced and we got
8 the contract.

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1 it would -- yes.

2 Q. What was the highest number of people who were ever on
3 the payroll of MJA?

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8 Q. Okay. All right. Now, of course, in -- oh, I have
9 one more -- one more question that's related to that.

10 In addition to you and Dr. Jessen, there were some
11 other co-owners or investors in MJA; is that right?

12 A. Yeah. It -- but that was the company that provided
13 CME, right, and they were -- became co-owners. They weren't
14 investors. We just gave them -- because we were doing CME,
15 you know, we weren't going to make a lot of money doing CME.
16 So it seemed like we wanted them to help us out and the way to
17 get them to help us out was to give them a percentage of the
18 company because we were hoping they would be out doing
19 briefings instead of us.

20 Q. I see. And that was on the -- sort of the training,
21 the CME side of the company?

22 A. Correct.

23 Q. Okay. And is that the reason that David Ayers was one

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1 of the co-owners or had a small piece of the company?

2 A. Dave -- David Ayers -- was one of the co-owners. And
3 the reason he had a piece of the company and was involved at
4 all in the first part of the thing is that he's brilliant. He
5 already had the kind of software. There's an accounting
6 software that's required for the government. He's just
7 brilliant guy with finances, and we were lucky to have him.

8 Q. And Mr. Ayers also works with Tate, Incorporated; is
9 that right?

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

11 MJ [Col COHEN]: Counsel?

12 LDC [MR. CONNELL]: It's a classified answer, but I can
13 tell counsel my -- if you don't mind.

14 MJ [Col COHEN]: Consult with counsel. And then if he --
15 if he tells you and you still object to relevance, then I'll
16 have to take it up in a closed session.

17 [Counsel conferred.]

18 MJ [Col COHEN]: Mr. Groharing, is there still a relevance
19 objection?

20 TC [MR. GROHARING]: No, Your Honor.

21 MJ [Col COHEN]: Okay. Then that's fine. Thank you for
22 letting me know that it would require a classified discussion.
23 I think the best way to say that is that I'll let you discuss

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1 it. You may always maintain it, but if you do, then I'll just
2 have to say we have to put a pin in that one and come back to
3 it. All right. You may ask the question then.

4 LDC [MR. CONNELL]: Sure.

5 Q. Mr. Ayers was also a principal in Tate, Incorporated?

6 A. He was the owner when -- when I knew him.

7 Q. All right. So you're aware obviously that in
8 September 2006, all detainees at that time in CIA custody were
9 transferred to Camp VII on Guantanamo Bay?

10 A. Yes.

11 Q. I have a question about a comment in your book. It's
12 at -- do you still have that copy? It's at page 297.

13 MJ [Col COHEN]: Counsel, he's there.

14 Q. 297, sir?

15 MJ [Col COHEN]: He's there. That's what ----

16 LDC [MR. CONNELL]: I'm sorry. I misunderstood. I
17 apologize.

18 Q. So in your book, you wrote, "I think the United States
19 should establish a detention facility where detainees are
20 interrogated using the full spectrum of human influence
21 strategies minus EITs. It would also be a place where the
22 deceptive events are individually staged for specific
23 detainees to pull for reactions that reveal intelligence, are

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1 seemingly safe places to talk and share secrets among
2 captives, are subject to eavesdropping through technical
3 collection and where like-minded brothers whom detainees
4 encounter seemingly unrelated details that fit into an
5 information matrix that yields actionable intelligence."

6 A. That's a sentence that I wrote, yes.

7 Q. At any time prior to writing your book, did you
8 express that idea to anyone?

9 A. That was the idea in my -- one of the ideas in the
10 manual that Dr. Jessen and I wrote.

11 Q. Okay.

12 A. It may not have been spelled out that explicitly,
13 but ----

14 Q. Sure. Sure. So you told us that the manual is
15 unclassified?

16 A. That's correct.

17 Q. Okay. So could you explain a little more what you
18 mean by that's the idea that was in your manual?

19 A. Sure. It will require a little bit of indulgence
20 because ----

21 Q. Of course, sir.

22 A. ---- it's such an open-ended question, that I don't
23 even know how to respond to it.

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1 MJ [Col COHEN]: Is the question why did he -- why did he
2 believe that that would be -- that that was a good thing? Or
3 what -- what -- I guess what are you asking him to tell you?

4 LDC [MR. CONNELL]: Yes, sir. I'm asking him to explain
5 the prior answer. Give a relatively short answer, "That was
6 in my manual." Never having seen the manual, I don't -- I
7 don't immediately know what that -- what the contours of that
8 are, so I just asked him to explain the previous answer.

9 MJ [Col COHEN]: Okay. So, in other words, sir, when you
10 say it was in your manual, in what -- in what way?

11 A. You know, people enter into a situation with a set of
12 priorities and goals and objectives and intentions. But when
13 the situation changes, very often those priorities and
14 intentions change, and they can change rapidly and even
15 temporarily, right?

16 And so the manual is about how to use the person's
17 beliefs and their motivations and their desires and the story
18 that they tell themselves about who they are and their world
19 view to change their perception of the situation so that it
20 aligns with the motivation to help instead of hinder.

21 Q. Okay.

22 A. I can use a euphemism that my grandmother used to use,
23 if it will help. It's a southern euphemism. It's a little

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1 bit off color, but she used to say, "If you're up to your ass
2 in alligators, it's hard to remember you went there to drain
3 the swamp." And that's what I'm talking about.

4 When we move into a situation, if the situation
5 changes, our objectives change and our goals change. And so
6 just to give a thumbnail of what I'm talking about, the
7 main -- the -- and compare it to law enforcement, the main
8 objective of a person who's been rolled up in law enforcement
9 usually, a common American criminal, is to spend no time in
10 jail, to get them to release them. That's their primary
11 objective. But once they get caught in the big lie and it's
12 obvious that they're going to spend time in jail, their
13 priorities shift, right, their intentions shift to spending
14 the least amount of time in jail they can.

15 My experience with folks like Khalid Shaikh Mohammad
16 is that his intention is to protect information that could
17 stop operations. It's not to stay out of jail. And the same
18 kinds of themes, the same kinds of approaches, the same kinds
19 of social influence things, if they contain the same content,
20 are not likely to work on him.

21 So what we need to do is figure out a way, based on
22 his beliefs and expectations, that will help him shift his
23 priorities and intentions so that providing the information

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1 makes more sense than not. And the manual is a complicated,
2 in-depth course on how to do that.

3 Q. Okay. This is a "do you know" question. Do you
4 know -- other than the limited amount you've already
5 described, do you know what the CIA did with your manual?

6 A. No. I delivered it. It disappeared. This was about
7 the time that they were becoming risk averse about doing
8 anything, and so there was a push to switch to noncoercive
9 means of doing things. But at the same time, they were simply
10 trying to get rid of the program, so the -- I think they
11 were -- this is based on comments that I heard. This is --
12 but it includes some speculation.

13 My reading of the situation, as the guy who wrote the
14 manual and delivered it, was that some people thought it was
15 good, some people thought it would be too hard for ordinary
16 case officers or operations officers, CIA officers, to do.
17 And -- and others thought we don't want to get into this
18 because we don't want to be in this business.

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1 Q. Okay.

2 [Counsel conferred with paralegal.]

3 Q. So, sir, I'll direct your attention to AAA-RDI-2842,
4 which is found in the record at AE 628GGGGG Attachment B.

5 LDC [MR. CONNELL]: I'll show you -- sir, I'll show you
6 the FOR PUBLIC RELEASE markings and ----

7 MJ [Col COHEN]: You may publish.

8 LDC [MR. CONNELL]: Let's see if I can get it so you can
9 see it and it's big enough. All right. I think that's my
10 best effort.

11 A. I've read what you have there on the screen.

12 Q. All right. Are you familiar with this document?

13 A. I believe I've seen that document.

14 Q. Do you know what it is?

15 A. I think it was a working document that someone in the
16 CTC put together to -- as -- as a description of what CTC
17 expected from MJA with respect to the detention program.

18 Q. Right. And I'm really only interested in the
19 personnel aspect.

20 A. Okay.

21 Q. [REDACTED]

22 [REDACTED]

23 A. [REDACTED].

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1 Q. Okay.

2 MJ [Col COHEN]: Counsel, Mr. Groharing ----

3 LDC [MR. CONNELL]: I'm not going any further on that
4 question.

5 MJ [Col COHEN]: No, no, no, no. Mr. Groharing -- I
6 thought Mr. Groharing was standing up. That's why I was just
7 recognizing him.

8 LDC [MR. CONNELL]: I saw the look. I knew what -- but I
9 don't need to know what those others were.

10 MJ [Col COHEN]: Okay. You know, I didn't mean to say --
11 I wasn't cautioning you. I was just recognizing counsel.

12 LDC [MR. CONNELL]: Sure.

13

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17 Q. Okay. And ----

18 [Counsel conferred with paralegal.]

19 Q. Sir, I'll direct your attention to AAA-RDI-2964 found
20 in the record at AE 628GGGGG Attachment B. I'll show you the
21 first page first, but the question that I have relates to the
22 second page. I'm going to zoom in a little bit, make it ----

23 A. I've never seen that document, but I read it just now.

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1 Q. Okay. I'm going to flip to the other side, and I'm
2 going to make it -- let's see. I might have to zoom out a
3 bit.

4 A. I've read it.

5 Q. Okay. If you haven't seen it before, I assume you
6 don't know what the purpose of that drafting of that document
7 was?

8 A. Looks to me like they're explaining what they would
9 like MJA to do for CTC.

10 Q. Okay. The -- I'd like to draw your attention to the
11 top paragraph and I'll -- I'll make that a little bit bigger.
12 I'm going to zoom in, so be advised. There's actually that
13 sole source reference you told us about earlier.

14 So I'd draw your attention to the second sentence,
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1 [REDACTED] So I just don't -- I mean, I don't know -- I can't
2 verify or not verify that.

3 I would think the person who wrote the paper would
4 have done his due diligence or her due diligence and it would
5 be accurate. I don't know.

6 Q. Okay. What about the other part of the sentence. Do
7 you know that if there -- when -- if there was a time [REDACTED]

8 [REDACTED]

9 TC [MR. GROHARING]: Objection, Your Honor, relevance.

10 MJ [Col COHEN]: Relevance?

11 LDC [MR. CONNELL]: Classified answer. Can I explain?

12 MJ [Col COHEN]: You may.

13 LDC [MR. CONNELL]: What I mean by that is I am laying the
14 foundation for questions that I intend to ask in closed
15 session.

16 MJ [Col COHEN]: I understand. Like I said ----

17 [Counsel conferred.]

18 TC [MR. GROHARING]: Your Honor, we'll withdraw our
19 objection for now.

20 MJ [Col COHEN]: For now? Okay.

21 LDC [MR. CONNELL]: Okay.

22 Q. So, sir, the question was, was there a time when

23 [REDACTED]

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[REDACTED]

A. I believe that's true.

[REDACTED]

A. I have no idea.

Q. Okay. [REDACTED]

A. It's basically what you have back here.

Q. Yeah. [REDACTED]

A. Right.

Q. Yeah. I'll direct your attention ----

MJ [Col COHEN]: The witness was using his hand [REDACTED]
[REDACTED]

LDC [MR. CONNELL]: I'm sorry?

MJ [Col COHEN]: Witness was just referring -- using his

[REDACTED]

LDC [MR. CONNELL]: Yes, sir.

Q. I'll ask you about the next -- the following sentence,

[REDACTED]

a time when that was true?

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1 A. "When" -- blank -- [REDACTED]

2 Q. Among other things.

3 A. I'm sure. Here's the part -- here's what -- let me
4 just answer your question directly rather than teasing you
5 about it. [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 Q. I see. Okay. And one more question about this
10 declassified document. Rather than move that around and make
11 everyone sick, I'm just going to find my sentence real quick.
12 Derp. It's the next sentence. [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 A. Yes.

17 Q. The original contract to MJA had four optional year
18 extensions.

19 A. I believe that's true.

20 Q. Okay. And were all four options exercised?

21 A. No.

22 Q. Okay. When did -- no?

23 [Counsel conferred with paralegal.]

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1 A. I think it was a five-year contract. You may be ----

2 Q. Okay. Sir, I'm going to show you a -- I'm going to
3 show you the front page of a document, but my question is
4 about -- I think the answer to this question is on the back
5 page. So I'm showing you AAA-RDI-2811 marked

6 UNCLASSIFIED//FOR PUBLIC RELEASE.

7 MJ [Col COHEN]: Okay.

8 Q. I'll zoom out. Are you familiar with that document?

9 A. No.

10 Q. Okay. Then let me just zoom in and let you make it
11 possible to read. It's still not possible. Let me do a
12 little work here.

13 A. Okay.

14 Q. All right. So this document -- this is a little bit
15 separate, a little bit of a digression, but this document
16 provides the answer to the \$81,000,000 number that everybody
17 always throws around. The vast majority of payments from the
18 CIA to you or any LLC affiliated with you were for the
19 personnel part of the mission, right?

20 A. Yeah. It was revenue, not profit.

21 Q. Right.

22 A. People tend to conflate revenue with profit.

23 Q. Yes. My -- I was going to make a joke about my wife,

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1 but I won't do that.

2 A. Okay.

3 Q. The -- so I'll go to the second page, and if you ----

4 A. This is a continuation of the first page?

5 Q. First page, yes, sir. If you'll look down at

6 number 3-- --

7 A. Okay.

8 Q. Okay. ---- and use that to refresh your recollection
9 about the contract?

10 A. Okay.

11 Q. All right. And so let me ask you a different way.
12 Did the -- did the contract last through fiscal year 2009?

13 A. No. I -- I realize now what the -- what my confusion
14 was. Well, they did it publicly, so I don't think it can be
15 classified.

16 The CIA contacted us and said they were going to renew
17 the contract for 2009. They did that informally on the phone.
18 And then we got another call that said they were being
19 pressured by the Senate and the White House to cancel our
20 contact -- contract and, for the convenience of the
21 government, they were going to cancel the contract.

22 And so it is, as you suggest, now that I think about
23 it, probably true that we got all of the four option years,

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1 and they were going to enter into a new contract for us to
2 dial back the interrogation stuff [REDACTED]

3 [REDACTED]
4 [REDACTED] when the Senate and the White House intervened. And for
5 the good of the government, the convenience of the government,
6 the contract was cancelled after they had already told us it
7 had been renewed.

8 Q. I understand. Thank you for the explanation. Okay.

9 Last topic, last book, is -- and I told you it would
10 be out of order, but I would like to talk to you about some
11 elements of the interrogation of Mr. Mohammad. I'm not
12 going -- he's not my client. I'm not going to do the whole
13 thing. But there are a few parts of it relating to the FBI
14 that are -- that are important to my questions.

15 A. Relating to the FBI?

16 Q. Yes, sir. I'll explain when I get there.

17 But just to set the stage for that, [REDACTED] the
18 [REDACTED]
19 [REDACTED]

20 A. Yes.

21 Q. Okay. And am I right that that's the same place where
22 NX2 had essentially held you prisoner?

23 A. Yes.

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1 Q. Okay. And when you arrived, you found that Dr. Jessen
2 had been there previously and was basically rotating out?

3 A. Yes.

4 Q. Okay. And initially, you were sent to the -- to the
5 site as an interrogator to advise the two new interrogators
6 who were questioning Ramzi Binalshibh; is that right?

7 A. Right. And in my book, I'm a bit confused about it.
8 Because I thought they were going to use EITs, but they
9 didn't, so ----

10 Q. Okay. I just didn't -- so -- okay.

11 And those two interrogators, they had been handpicked
12 by NX2, right?

13 A. That is true.

14 Q. Okay. This is kind of a yes-or-no question because
15 I'm not going to the classified underneath it: When you
16 arrived to advise the interrogators regarding Mr. Binalshibh,
17 did you receive any information about what statements Ramzi
18 Binalshibh had made while he was at Location 5?

19 A. I did not.

20 Q. Now, you write -- and this is page 134 of your book.
21 I have a couple of questions.

22 A. I'm there.

23 Q. On 134, you write, "After exposure to EITs, Binalshibh

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1 told the interrogators and debriefers that the best way to
2 find KSM was to find KSM's nephew Ammar al Baluchi." When did
3 that take place?

4 A. I don't recall specifically when it took place.

5 Q. Okay. Do you know at what location it took place?

6 A. I -- I believe it was at -- you know, at Location --
7 what are we calling it, 4? I believe that's where it was.

8 Q. The one that you were at?

9 A. Yeah. I think I could -- I think I could conflate the
10 places and dates because I'm relying on my memory here. The
11 agency wouldn't let me look at any documents and I didn't keep
12 any diaries, so ----

13 Q. Oh, that's a nightmare. I -- I'm impressed.

14 The -- did that occur while you were present?

15 A. I didn't. I wasn't present for that.

16 Q. Okay. And a little bit further down, "A few days
17 later, when shown a photograph of al Baluchi, Binalshibh
18 identified the person in the photo as the man he knew as Ammar
19 al Baluchi and had referred to when indicating the best way to
20 find KSM." Do you know when that occurred?

21 A. I don't know the specific day that occurred.

22 Q. Okay. The -- do you know at what location it
23 occurred?

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1 A. I don't know at what location it occurred.

2 Q. Okay. Is that, to your knowledge, documented in a
3 cable somewhere?

4 A. I don't know if it's documented in a cable anywhere.

5 Q. Okay. I'll represent something to you, and then I
6 will ask you a question about it.

7 The representation is: I have found a summary of a
8 cable describing an event very similar to this, but it was an
9 event that took place at Location 5, not at Location 4. Is it
10 possible that you conflated those two things in your book?

11 A. It's impossible [sic].

12 Q. It's possible?

13 A. It's possible, yeah.

14 Q. Okay. Okay. Moving forward to the arrival of
15 Mr. Mohammad at Location 4 ----

16 A. At which location are you talking about, 4?

17 Q. Well, we're getting to 4. We've got to get
18 Mr. Mohammad -- you know, in the story, we've got to get him
19 through Location 2 before he goes to Location 4.

20 So to the best of your knowledge, Mr. Mohammad was
21 taken into custody on 1 March 2003?

22 A. I believe that's accurate.

23 Q. Okay. And you write in your book that, "After KSM was

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1 captured and before he was rendered out of Pakistan, [REDACTED]
2 officers had tried to question him using standard debriefing
3 and rapport-building techniques." Was one of those persons
4 [REDACTED]

5 A. I don't know which -- which two people they were.

6 Q. Oh, okay. Did you read reports or cables from that?

7 A. No. I got the information from the operational
8 psychologist that -- about his previous -- KSM's previous
9 statement from the operational psychologist who had
10 accompanied him from Site 2 ----

11 Q. Uh-huh.

12 A. ---- and from the personnel there at the Site 4, where
13 I was at.

14 Q. Okay. And so while we're on that topic, what did they
15 tell you about the treatment of Mr. Mohammad at COBALT or
16 Site 2?

17 A. Well, it was the operational psychologist who was SERE
18 trained. I've known that man since 1985, so I trust and
19 believe him.

20 And what he said was that KSM was very masterful at
21 protecting information because he could lure the man I call
22 the New Sheriff into a battle of wills about getting him to
23 refer to the New Sheriff as Sir, and that basically it seemed

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1 to him like the New Sheriff had drawn a line in the sand and
2 thought it was incredibly important to get KSM to do that.
3 And every time KSM wanted to stall the interrogation and make
4 it not productive, all he had to do was not call him Sir, and
5 the whole thing was derailed.

6 And in the opinion of the psychologist, it set the
7 interrogation of KSM back because KSM won that exchange and
8 would feel more confident that he could continue to resist in
9 the future.

10 Q. You write in the -- in your book at page 151 that,
11 "The psychologist told you that with each refusal, NX2 used
12 more and more physical coercion." What did the psychologist
13 say about that topic?

14 A. Well, just that he used more and more physical
15 coercion. So he went through stress positions, he went
16 through water dousing, he went through other kinds of physical
17 coercion that he was authorized to do.

18 Q. Okay. And you also write that Mohammad was, quote,
19 subjected to a short regime of physical coercion, some of
20 which was not approved by the DoJ. That was by NX2?

21 A. Yes. I don't remember specifically what I was
22 referring to at this particular time, but I do recall that
23 the -- that the operational psychologist told me about some

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1 things that he thought were inappropriate, and that was my
2 recollection, so -- and I couldn't have been more specific in
3 the book, if you know what I mean.

4 Q. Okay. Because you don't remember what the specifics
5 were?

6 A. No. Because I think the agency would have taken them
7 out.

8 Q. Oh, I see.

9 A. I could have found out what the specifics were, but I
10 just didn't think it was worthwhile to do because the agency
11 would have -- the PRB would have taken them out, I think.

12 Q. Okay. Do -- do you recall now what they were?

13 A. No.

14 Q. Okay. One of the things that you write is that NX2
15 became more and more obsessed with, quote, breaking KSM's
16 will.

17 A. Correct.

18 Q. And is -- was that a ----

19 [The security classification button was pushed in the
20 courtroom which caused the video feed to terminate at 1447,
21 23 January 2020.]

22 [END OF PAGE]

23

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1 [The Military Commission resumed at 1452, 23 January 2020.]

2 MJ [Col COHEN]: Trial Counsel?

3 LDC [MR. CONNELL]: We've worked something out, Your
4 Honor.

5 MJ [Col COHEN]: Okay. All right. Let's discuss that in
6 the closed session.

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

8 MJ [Col COHEN]: All right.

9 **DIRECT EXAMINATION CONTINUED**

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

11 Q. The transfer of Mr. Mohammad to Location 4 put it at
12 capacity; is that right?

13 TC [MR. GROHARING]: No objection to that question.

14 MJ [Col COHEN]: Okay.

15 A. Yes.

16 Q. So the primary responsibility for the interrogation of
17 Mr. Mohammad involved you, Dr. Jessen, and the person you call
18 the preacher, who I think is NZ7; is that right?

19 A. Let me look.

20 Q. Yes, sir.

21 [Counsel conferred with paralegal.]

22 A. Correct.

23 Q. Sir, I'll direct your attention to MEA-10024-6172,

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1 which is contained at AE 628LLLLL Attachment D Corrected Copy.
2 I'll show you the header, sir.
3 MJ [Col COHEN]: Thank you. You may publish.
4 Counsel, while he's reading this, let me just ask.
5 This is just for me.
6 LDC [MR. CONNELL]: Yes, sir.
7 MJ [Col COHEN]: You mentioned your heading was kind of
8 like FBI interaction. Are we getting ----
9 LDC [MR. CONNELL]: We're getting there.
10 MJ [Col COHEN]: We're getting there?
11 LDC [MR. CONNELL]: Yes.
12 MJ [Col COHEN]: All right.
13 LDC [MR. CONNELL]: Pretty close.
14 MJ [Col COHEN]: Okay.
15 LDC [MR. CONNELL]: And I'm not trying to be mysterious.
16 Here's the answer. During the period of Mr. Mohammad's EIT
17 period, if you will, the FBI was sending requirements,
18 intelligence requirements. Those intelligence requirements, I
19 don't know if Dr. Mitchell knows they were FBI origin or not,
20 but those were used to -- in the interrogations associated
21 with the EITS of Mr. Mohammad, they're released in intel
22 reports, the FBI sent in further requirements which were used
23 in -- in the interrogation.

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1 So it's a very specific type of information loop, Your
2 Honor, that is information loop used in -- to establish the
3 questions in questioning during EIT period.

4 MJ [Col COHEN]: Okay. So the ----

5 LDC [MR. CONNELL]: I'm just establishing that we're in
6 the EIT period right now. It's not going to take long.

7 MJ [Col COHEN]: Okay.

8 LDC [MR. CONNELL]: I'm not going into any kind of detail.

9 MJ [Col COHEN]: Let's try to get to that point that
10 you -- that I understand why you need to make.

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

12 MJ [Col COHEN]: Or at least you want to try to make.

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

14 MJ [Col COHEN]: All right.

15 **DIRECT EXAMINATION CONTINUED**

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

17 Q. My question is: I'll direct your attention to the
18 fifth paragraph, second -- or second full sentence,
19 "Mohammad's sleep deprivation began at 0900 on 18 March 2003."
20 Do you see that?

21 A. Tell me the -- tell me again.

22 Q. So it's -- it's the fifth paragraph starts with
23 "Enhanced measures."

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1 [Counsel conferred with paralegal.]

2 A. Okay. All right. I see it.

3 Q. Yes. Is it accurate that Mr. Mohammad's sleep
4 deprivation began at 0900 on 18 March 2003, to the best of
5 your knowledge?

6 A. I don't remember at this point, but if it's in
7 the ----

8 Q. ---- cable, it's probably accurate?

9 A. Probably.

10 Q. Okay. I'd like to direct your attention now to
11 10024-6161.

12 A. If I could make a point about that last.

13 Q. Sure, of course.

14 A. They didn't make a distinction between sleep
15 deprivation and sleep disruption. He undoubtedly had catnaps
16 during that period because it would be difficult to stay awake
17 that long. So we just didn't make a distinction. They just
18 used the term "sleep deprivation."

19 Q. All right. I'll tell you what, I'll leave that alone,
20 and if somebody else wants to pick that up, they -- they can.

21 The -- I'll direct your attention to MEA-10024-6161.
22 And I'm allowed to -- I'm authorized to represent to you that
23 this document relates to 23 March 2003, described as

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1 Waterboard Session 15.

2 I think it may actually -- if I could first direct
3 your attention to the first sentence of the bottom paragraph.

4 A. All right.

5 Q. All right. Does that answer the -- so, "Mr. Mohammad
6 had last been allowed to sleep 145 hours prior to the start of
7 Session 15."

8 Does that answer the question about whether sleep
9 disruption might have been conflated with sleep deprivation in
10 this instance?

11 A. It appears to.

12 Q. Okay. Paragraph -- the -- if we're counting the
13 little short ones, the fifth paragraph describes the -- gives
14 some detail about the waterboarding?

15 A. This is the -- this is the physician's report.

16 Q. Okay.

17 A. That's true.

18 Q. Okay. I'll be honest with you, I can't tell what
19 things are. I can't tell generally who wrote ----

20 MJ [Col COHEN]: It does have medical ----

21 A. I know it is a physician's report because it says
22 medical assessment.

23 Q. Okay.

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1 A. And because guess who counted how long -- how many
2 times he was watered and how long those were? They had --
3 literally, the physician had a little silver thing like they
4 have at the front gate ----

5 Q. A clicker?

6 A. ---- a clicker. And he would click how many times the
7 water was poured and although we were controlling it in real
8 time with a -- with a guard who had a stopwatch and would --
9 you know, would tell us how many seconds had passed, they had
10 another stopwatch and -- and was monitoring very closely, very
11 closely. So my guess would be this is accurate.

12 Q. Okay. And so the water applications of two of less
13 than five seconds, two of ten, three of 15, one of 20, one of
14 25, one of 35, and one of 40 is -- because it was so closely
15 controlled, it was probably accurate?

16 A. I believe it is, yes.

17 Q. Okay. And 12 liters of water were used?

18 A. I don't know how many liters of water were used.

19 TC [MR. GROHARING]: Your Honor, I'm going to object at
20 least as to Mr. Ali. I'm sure we are going to hear more of
21 this when Mr. Mohammad's team questions the witness.

22 LDC [MR. CONNELL]: This is literally the last thing. I
23 just have to establish that the waterboarding is going on

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1 while the FBI requirements are coming in, so that's what I'm
2 trying to establish is ----

3 MJ [Col COHEN]: You have clearly established on the 23rd
4 of March 2003 waterboarding was going on.

5 LDC [MR. CONNELL]: Great.

6 MJ [Col COHEN]: And that apparently is accurate because
7 it was being monitored by two different people.

8 LDC [MR. CONNELL]: Okay. Great.

9 Q. All right. I will turn your attention to STA-3731.

10 LDC [MR. CONNELL]: Your Honor, do you intend to take a
11 1500 break before I launch into this next section?

12 MJ [Col COHEN]: 1515.

13 LDC [MR. CONNELL]: 1515? Okay.

14 MJ [Col COHEN]: That puts me closer to the prayer time.

15 LDC [MR. CONNELL]: The Court's indulgence.

16 [Counsel conferred with paralegal.]

17 LDC [MR. RUIZ]: Judge?

18 MJ [Col COHEN]: Mr. Ruiz.

19 LDC [MR. RUIZ]: Before you take that break, may I be
20 heard briefly ----

21 MJ [Col COHEN]: Okay.

22 LDC [MR. RUIZ]: ---- before you take the afternoon break?

23 MJ [Col COHEN]: All right.

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1 LDC [MR. RUIZ]: Thank you.

2 **DIRECT EXAMINATION CONTINUED**

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

4 Q. Okay. During this period -- during -- on this day, 23
5 March 2003, was it the same situation that you, Dr. Jessen,
6 and NZ7 were conducting the interrogation?

7 A. If there was waterboarding involved, there was all
8 three of us.

9 Q. Okay. At that time, early in the process, were
10 debriefers involved in the room at that time?

11 A. No, and we weren't servicing specific intel
12 requirements either.

13 Q. Really?

14 A. No.

15 Q. Okay. Well, on 23 March 2003, how did you know to ask
16 Mr. Mohammad about [REDACTED]

17 A. Can you show me where that is because ----

18 Q. Yeah. That's what I was working on. So that's all
19 right. I'll do it the way that I was going to do it. The --
20 so what I'm going to show you -- or -- is I have -- we have to
21 do it in the binder, though I can come up and hand it to you
22 if you prefer.

23 MJ [Col COHEN]: Actually, Counsel, if you don't need to

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1 publish it to the gallery, you can just use the easel. We've
2 got it set up now.

3 LDC [MR. CONNELL]: It's not marked "displayable to
4 detainees." Is that okay?

5 MJ [Col COHEN]: Show it to trial counsel real quick.

6 Trial Counsel, I'm not going to debate it, but if it's
7 possible to just keep things moving. But at the same time, I
8 get it. So I just -- I just wanted us to at least take a
9 quick look.

10 [Counsel conferred.]

11 MJ [Col COHEN]: Counsel, we can also publish this just to
12 the witness. We can also just publish this to the witness. I
13 have the ability just to -- for you to -- if you were having
14 him read from it. In other words ----

15 LDC [MR. CONNELL]: That's okay with me, Your Honor. I
16 didn't know how my colleagues would feel about that.

17 MJ [Col COHEN]: Well, it would be the same as looking at
18 the binder, right?

19 LDC [MR. CONNELL]: Sure. Yeah.

20 MJ [Col COHEN]: The reality is it's no different except
21 that you can put it up there on that screen a lot faster than
22 we can have him look it up in the binder.

23 LDC [MR. CONNELL]: Okay.

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1 MJ [Col COHEN]: So let's just do that.

2 LDC [MR. CONNELL]: Okay.

3 MJ [Col COHEN]: Can you still tell them what you're
4 looking at? If they have a copy of that they are welcome to
5 look at that. It would be no different than if you were
6 saying to read from the binder.

7 LDC [MR. CONNELL]: Yes. And, in fact, since it's five
8 pages long -- or three pages long and the witness might like
9 to read all three pages, since we're coming to a break anyway,
10 I'm going to switch to an unclassified document, cover that
11 one, and then he can read it over the break, if that ----

12 MJ [Col COHEN]: Copy. That's wonderful. What will you
13 have him read during the break?

14 LDC [MR. CONNELL]: It will be FBI-24415 and FBI-24421,
15 both of which are found in AE 628IIIII Attachment F.

16 MJ [Col COHEN]: Okay. Excellent. All right. Let's
17 transition to that UNCLASS version then.

18 LDC [MR. CONNELL]: Yeah.

19 MJ [Col COHEN]: And the witness may review that during
20 the break.

21 **DIRECT EXAMINATION CONTINUED**

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

23 Q. So, sir, I'm going to draw your attention to

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1 MEA-STA-3731, which is found at AE 628MMMM Attachment C.

2 MJ [Col COHEN]: All right. You may publish.

3 LDC [MR. CONNELL]: Thank you. I'm going to zoom in.

4 A. I've read that.

5 Q. Thank you. Does this appear to be a summary of an
6 intel report?

7 A. It does.

8 Q. And am I correct that on 23 March 2003, you were
9 asking that the -- you could just -- you can tell me the --
10 but you were asking Mr. Mohammad about persons on the
11 ground -- or who -- or who could travel to the United States
12 to conduct operations inside the United States?

13 A. You want me to tell you the actual questions we were
14 asking him ----

15 Q. Sure.

16 A. ---- during waterboarding? Because I remember them.
17 I'm the one who asked them.

18 Q. Yes, sir.

19 A. We would say to him, "We want information to stop
20 operations in the United States. We know you don't have all
21 of it, but you have some of it, and that's what we want. We
22 want to know who you have inside the United States or who
23 outside of the United States is likely to plan and carry out

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1 the attack. We want to know where. We want to know how. We
2 want to know when."

3 And my guess would be that he blurted out something
4 like -- he provided this piece of information, probably not on
5 the waterboard because they tend not to, but before the next
6 EIT session, which I will be happy to explain at some point if
7 somebody asks me a question that allows me to do that.

8 So, yes, it wouldn't surprise me that we got a piece
9 of information like this, but I think it comes from the
10 broader question.

11 Q. Yeah. All right. And on that day -- do you remember
12 the information about [REDACTED] coming out?

13 A. No.

14 Q. Okay. Do you remember information on -- on this same
15 day, do you remember information about any other potential
16 threat coming out?

17 A. I don't recall. I don't know what day this came out.
18 You have to under ----

19 Q. Oh, I'm sorry. I thought I told you. 23 March 2003.

20 A. You have to understand my role and my experience of
21 doing it. I am constantly moving forward. I have a dozen
22 people whose job it is to listen to what he has to say and
23 decide if and when and how it fits into the larger puzzle. So

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1 I just keep moving forward until -- I just keep moving
2 forward.

3 So I don't try to put it together in a picture in my
4 head, right, because that's somebody else is doing that. And
5 I couldn't do -- possibly do as good a job as they did.

6 So if you're going to ask me, do you remember he said
7 this? I spent years listening to people tell me all kinds of
8 plots and people and everything, and all that stuff gets kind
9 of conflated unless it stands out.

10 LDC [MR. CONNELL]: Okay. Your Honor, the next document
11 will be the one that I was suggesting that the witness read
12 over the break.

13 MJ [Col COHEN]: Okay. We'll go ahead and -- Mr. Ruiz,
14 you wanted to be briefly heard on something before we recess?

15 LDC [MR. RUIZ]: Judge, really it's up to you. I was just
16 anticipating that at some point, Mr. Connell is going to
17 finish, and I wanted to have an opportunity to talk to you
18 about timing of the examination. We can do it whenever you
19 want, whenever -- it's up to you. Now, later, I just want to
20 make that ----

21 MJ [Col COHEN]: No. Mr. Connell, how much more in your
22 chapters?

23 LDC [MR. CONNELL]: An hour?

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1 MJ [Col COHEN]: An hour. Okay. So we're looking at
2 probably -- we'll come back about 1545, 1645, so we'll have
3 about 45 minutes left in the day.

4 LDC [MR. RUIZ]: Yes. And that's what I wanted to talk to
5 you about ----

6 MJ [Col COHEN]: Okay.

7 LDC [MR. RUIZ]: ---- my -- my proposal for that.

8 MJ [Col COHEN]: Okay.

9 LDC [MR. RUIZ]: Whenever -- if you want. Whenever.

10 MJ [Col COHEN]: Yeah, go ahead and -- why don't we go
11 ahead and do it now because it's right before the break.

12 LDC [MR. RUIZ]: Sure.

13 MJ [Col COHEN]: Sir, just bear with me for a minute. I
14 want to take up this admin issue.

15 LDC [MR. RUIZ]: I'm sorry about that, Judge.

16 MJ [Col COHEN]: It's all right.

17 LDC [MR. RUIZ]: I just -- and then we can address it. So
18 I think there's -- I have good news, and the good news is that
19 I have a revised estimate of how long I think my examination
20 is going to be. Initially we talked about three days. I can
21 guarantee you that it's not going to be more than two days,
22 and I think there's a very good possibility that it will be a
23 day and a half, and a remote possibility that it could even be

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1 done before that.

2 MJ [Col COHEN]: Okay.

3 LDC [MR. RUIZ]: Again, no guarantees, as I've often
4 indicated. Some of that depends on the exchange and the --
5 and the way that the questions are answered.

6 But given that and kind of given where the time is
7 right now, what I want to ask the court is to consider
8 allowing me to begin tomorrow, which will allow my team and
9 myself to do a number of things. It will allow me to meet
10 with Mr. al Hawsawi and discuss some of the testimony that
11 we've heard here before in court. Typically if I were in the
12 States, what I would do is I would run out to the jail, spend
13 a couple of hours with the client. I don't have that
14 opportunity here, so that's something that would be
15 beneficial.

16 MJ [Col COHEN]: Okay.

17 LDC [MR. RUIZ]: I also would like to meet with the
18 prosecution and talk to them about a number of classification
19 guidance issues that have come to my mind that would certainly
20 streamline the process.

21 MJ [Col COHEN]: Okay.

22 LDC [MR. RUIZ]: And it will also allow my team to
23 complete a couple of other administrative tasks that they're

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1 trying to ----

2 MJ [Col COHEN]: Given the hour, I'll allow you to start
3 at 0900 hours tomorrow morning.

4 LDC [MR. RUIZ]: Thank you, Judge. That will really
5 streamline ----

6 MJ [Col COHEN]: All right, we're in recess.

7 [The R.M.C. 803 session recessed at 1511, 23 January 2020.]

8 [The R.M.C. 803 session was called to order at 1550,
9 23 January 2020.]

10 MJ [Col COHEN]: The military commission is called to
11 order. Parties are present. Witness remains on the stand.

12 Sir, did you have an opportunity to review the
13 document?

14 WIT: I did. I didn't memorize it, but I read it.

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

16 Mr. Connell, your witness.

17 LDC [MR. CONNELL]: Thank you.

18 **DIRECT EXAMINATION CONTINUED**

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

20 Q. Sir, I'd like to bring you forward two additional days
21 to 25 March 2003.

22 A. It would help me since I don't have a timeline of
23 KSM's capture if you told me the day he was transferred to 4.

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1 Q. All right. How would that help you?

2 A. Because it would help me put these documents that you
3 sent me into a timeline so I would understand them.

4 Q. Okay. Unfortunately, the government has invoked
5 national security privilege over the date on which
6 Mr. Mohammad was transferred, so I don't know it.

7 A. Roger that.

8 Q. The -- I can tell you that the sleep deprivation piece
9 began on 18 March, so 25 March is one week later. Does that
10 help at all?

11 A. It would be helpful.

12 Q. Okay. And so I can tell you -- I can also orient by
13 saying that 25 March is the day that the long-term sleep
14 deprivation ended in the evening at 2100 hours.

15 A. The day when he began to be moved out of EITs?

16 Q. If you want to characterize it that way, that's fine.
17 I don't know, but the ----

18 A. Okay. I got it.

19 Q. Okay.

20 A. Thank you, sir. That helps.

21 Q. Okay. Good.

22 [Counsel conferred with paralegal.]

23 Q. Sir, I'm going to direct your attention to STA-3746.

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1 It's marked UNCLASSIFIED//FOR OFFICIAL USE ONLY.

2 MJ [Col COHEN]: Okay. You may publish.

3 Q. I'll let you review that.

4 A. Correct.

5 Q. Okay. And I'm authorized to tell you that this
6 relates to information provided to you on that day,
7 25 March 2003, that we're talking about.

8 A. This relates to that initial intel summary that you
9 showed me? I'm confused about the documents because we took a
10 break -- a break, and you showed me a couple of different
11 documents, so ----

12 Q. Right. No. Different.

13 Before the break, we looked at documents both an
14 interrogation report and an intel report relating to
15 23 March 2003, two days before this, right? Does that sound
16 right?

17 A. I -- if you say, I'll take your word for it. I just
18 don't remember.

19 Q. I'll show you the documents.

20 A. No, you don't have to show me the documents. If you
21 say 23, I'm fine with that. I just didn't remember the days.

22 Q. Right. Okay. And do you need to see the
23 interrogation report from the 25th to orient yourself?

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1 A. I would like that.

2 Q. Yeah. Okay. Sir, I'm showing you MEA-10024-6172,

3 AE 628LLLLL Attachment D Corrected Copy.

4 A. Okay. I've oriented myself.

5 LDC [MR. CONNELL]: Okay. And I see the judge reading, so
6 you just tell me when, sir.

7 MJ [Col COHEN]: You're good. I'm not going to -- yeah.

8 I have the documents, so I'll be -- you guys just keep moving.

9 LDC [MR. CONNELL]: Okay.

10 Q. There's a second page to that interrogation report.

11 Do you need to see that?

12 A. I would like to just see it briefly if you don't mind.

13 Q. Sure. I certainly don't.

14 A. Okay.

15 Q. Okay. While we're here, I do have one question, which

16 is: You and Dr. Jessen and NZ7 were all acting in

17 interrogator roles, right?

18 A. Correct.

19 Q. Who -- who was the psychologist?

20 A. I've to get my glasses ----

21 Q. Sure.

22 A. ---- so that I can read that little bitty print on

23 that ----

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1 Q. You can see mine in my hand.

2 A. ---- life-saving document they provided.

3 ZQ5.

4 Q. Thank you. All right. So now that we're properly
5 oriented, I'm going to show you that intel report again.

6 A. Thank you. What date is this from?

7 Q. That -- the same day of the interrogation report that
8 you just saw, which is 25 March 2003.

9 A. Okay.

10 Q. And it's two pages, so you tell me when to change
11 them.

12 A. You can flip the page if you'd like.

13 I've read it.

14 Q. Okay. Who was the analyst working with you on that
15 day, 25 March 2003?

16 A. I have no way of knowing. I don't recall. I just
17 don't remember.

18 Q. Okay. Who was responsible for writing the intel
19 report?

20 A. It would be the analyst.

21 LDC [MR. CONNELL]: Court's indulgence for one moment?

22 Q. Okay. I'm going to -- if you have your list in front
23 of you, I'm going to read you two other UFIs and -- to see if

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1 either of those helps you figure out who the analyst was.

2 According to the government, five people were present:

3 You; Dr. Jessen; and NZ7; then W87, Whiskey-8-7 ----

4 A. On this particular form, you called those all
5 interrogators, so my form hasn't been changed.

6 Q. I understand that. I -- in fact, on my paper, it says
7 "Interrogator W87," but I didn't say that because I knew you
8 had corrected that.

9 A. It's certain that she was there?

10 Q. I'm not certain of anything, sir. I can represent to
11 you that the prosecution tells me that W87 was there.

12 A. She would have written it. Give me the other number
13 first.

14 Q. N75.

15 A. Are you certain of that number?

16 Q. N, as in November, 75.

17 A. That could have been written by either one of those
18 two people.

19 Q. Okay. Are they both analysts? I'm sorry. Don't
20 answer that yet.

21 [Counsel conferred.]

22 Q. Are they both analysts?

23 A. Yes, they're both analysts, but they're also both

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1 targeters.

2 Q. After the interrogation on that day, did you have
3 additional conversation with those two analysts/targeters or
4 did they draft the report solely from observing on the
5 monitor?

6 A. I don't -- I don't recall that. It -- if they had
7 some question about what I may have heard that they didn't
8 hear, we could have had a conversation like that. But this --
9 I know this seems like an important thing because they're
10 talking about a guy, a sleeper in the United States, but this
11 is Tuesday to me, you know? So it doesn't -- it doesn't -- I
12 just don't recall.

13 Q. Okay. Were you involved in any request to the FBI for
14 additional information about [REDACTED]

15 A. I made no additional requests to the FBI about
16 anything in my entire career with the CIA.

17 Q. All right. I didn't -- I didn't actually ask if you
18 yourself -- I understand the scope of what you're trying to
19 say, but I didn't actually ask if you yourself had made the
20 request. I asked were you involved in a request, like did you
21 ask the analyst for more information?

22 A. Well, that's what I'm saying is I never asked anybody
23 for any information from the FBI.

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1 Q. Okay. Did you ask for additional information about

2 [REDACTED]

3 A. See, you're thinking ----

4 Q. We'll leave ----

5 A. You're thinking ----

6 Q. ---- the FBI out of it.

7 A. You're thinking a law enforcement model, right, in
8 some ways and that I'm going to be interested in piecing
9 together everything I can know about [REDACTED] because that's
10 going to matter to me. What matters to me is the next set of
11 intel requirements.

12 Q. Okay.

13 A. That's what matters to me. And somebody else, the
14 experts who know this guy, who have been following this guy,
15 who have been targeting this guy, they're going to put those
16 things together, not me.

17 Q. Okay. Moving away from that topic, next topic. Were

18 [REDACTED]

19 A. That's -- that's -- I don't recall. I would assume
20 the government has that information if they choose to share
21 it. It wouldn't surprise me if I were still there, but ----

22 Q. Okay.

23 A. ---- I don't recall.

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1 Q. Well, I'll ask it a different way, then. Were you
2 present when Mr. Mohammad was shown capture photographs of
3 Ammar al Baluchi?

4 A. I was present when Mr. Mohammad was shown lots of
5 photographs. Whether they contained Ammar Baluchi's
6 photograph or not, I just don't recall.

7 Q. Okay. Were you present when Mr. Mohammad was
8 questioned about Ammar al Baluchi?

9 A. I recall some of those questions. I mean, I recall
10 being there for part of that, but I don't -- I mean, nothing
11 stands out in my mind about that.

12 Q. Okay. And consistent with what you've explained to us
13 about intelligence interrogation, was the purpose of those
14 questions to gain information to capture Mr. al Baluchi?

15 A. I would have to assume that they were -- I would have
16 to assume that they were or to capture someone he had been
17 working with who we could sort that out from the information
18 they got about it. Because, you know, they're trying to piece
19 together a link chart and a bunch of other things and, you
20 know, that's over my pay grade.

21 Q. Were you present when Mr. Mohammad was asked about
22 Iyman Faris?

23 A. I believe I was.

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1 Q. Okay. The -- I have a question for you based on your
2 book at page 163. Page 163, you write, "KSM's reporting
3 informed and focused the investigation for FBI and law
4 enforcement officials questioning Faris." What did you mean
5 by that?

6 A. I mean that the FBI used the information that came
7 from KSM. They had already picked him up, is my
8 understanding -- this is my understanding based in part on
9 what I know now.

10 Q. Uh-huh.

11 A. They had already picked him up, but they weren't sure
12 what he was involved in until they became aware of what KSM
13 had said about him and it helped them. It informed their
14 case.

15 Q. Okay. And by that do you mean they reviewed
16 intelligence reports that were coming out of -- of your work
17 and your colleagues' work relating to Iyman Faris?

18 A. That's my assumption. I don't know what the FBI
19 reviewed and didn't review because I have no knowledge of the
20 FBI's -- what they did.

21 Q. I understand. How do you know that the -- his
22 reporting informed and focused the investigation for the FBI?

23 A. In part because of the reports that came out of the

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1 CIA and from the Senate Select Committee Minority Report which
2 gets wildly overlooked by almost everybody.

3 Q. And ----

4 A. And also from the CIA's response to ----

5 Q. A copy of ----

6 A. ---- the Senate Select Committee Majority Report,
7 which is out everywhere.

8 Q. All right. But both of those documents simply make a
9 blanket statement about information from KSM assisted in the
10 following captures, you know, prosecution, stopping the
11 following plots.

12 Did any of the information that you were present for
13 Mr. Mohammad revealing regarding Iyman Faris assist in any
14 way, to your knowledge?

15 A. How would I know that?

16 Q. I don't know. You wrote it in your book, and I was
17 just trying to figure out what it meant.

18 A. I don't even understand why you're -- what your
19 question is.

20 Q. Okay. Then I'll ask it again. Probably a better
21 question. I'm sure it was not a good question.

22 In what way did Mr. Mohammad's reporting inform and
23 focus the investigation for the FBI?

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1 A. He talked about the things that Iyman Faris was going
2 to do in the United States, that he wanted -- do you want me
3 to go over them?

4 Q. I think it's pretty clear in your book, but I'm just
5 trying to figure out the -- it was his comments that to your
6 assumption, at least, were passed to the FBI?

7 A. It's my comments that -- his comments, my assumption
8 is, they were shared with the FBI. Whether they were passed
9 or how they did that, I don't know.

10 Q. Understood. Were you present when Mr. Mohammad was
11 asked about [REDACTED]

12 A. I don't recall.

13 Q. Were you present when Mr. Mohammad was asked about
14 Jafar al Tayyar?

15 A. Possibly. We've -- I don't know when he was first
16 asked or later asked or they asked for more information or
17 clarification, but I recall being present for some of that.

18 Q. Okay. And you write in your book that information
19 obtained -- and I'm on the same page, 163. "Information
20 obtained from KSM and others after enhanced interrogations
21 contributed to the identification of Jafar al Tayyar, a/k/a
22 Adnan Gulshair el Shukrijumah." What did you mean by that?

23 A. It helped determine his true name and what he was

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1 doing for al Qaeda.

2 Q. Okay. And how so?

3 A. He told us about the guy. Told us what he'd been
4 trained to do, told us what he'd been sent into the
5 United States to do.

6 Q. Were you present when Mr. Mohammad was questioned
7 about [REDACTED]

8 A. The name is -- the name is familiar. But I don't
9 recall. What you -- what you -- what you seem to be
10 suggesting is that someone asked him one time about somebody
11 and then went on. He was -- he was asked many times and I
12 spent a fair amount of time with the man. And so it's not
13 inconceivable to me, but I don't recall that I would have been
14 present.

15 Q. Okay. And were you present when Mr. Mohammad was
16 questioned about Saifullah and Uzair Paracha?

17 A. Yes.

18 Q. Okay. And the -- you write in your book at page 164
19 that information obtained from KSM after enhanced
20 interrogations led to the identification and arrest of
21 Saifullah Paracha and his son, Uzair. How so?

22 A. I'm sure law enforcement used that information to
23 arrest them, you know.

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1 LDC [MR. CONNELL]: Can I have a moment, Your Honor?

2 MJ [Col COHEN]: You may.

3 [Counsel conferred.]

4 LDC [MR. CONNELL]: That completes my examination, Your
5 Honor.

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

7 Before we recess entirely, I think I want to take
8 things -- well, I guess there isn't really a particular time
9 with the judge. I have some questions based on that and,
10 Trial Counsel, you indicated you wanted to go at the very end
11 anyway, which would mean that I should probably ask my
12 questions before you go as well.

13 So since we have a few minutes, I'm just going to ask
14 a few and then other counsel are welcome then to follow up as
15 we go along or however that works.

16 LDC [MR. CONNELL]: Your Honor, can I have just a second
17 to get back to my chair?

18 MJ [Col COHEN]: You may.

19 **EXAMINATION BY THE MILITARY COMMISSION**

20 **Questions by The Military Judge [Col COHEN]:**

21 Q. All right. Sir, I'll ask you some questions just on
22 just some specific facts and, in other words, some concepts
23 that you've discussed that I want to make sure that I

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1 understand what you were -- what you were trying to -- to
2 present as evidence -- in this trial.

3 The first one is, just starts out with a simple fact:
4 You indicated, I believe, at some point in your testimony,
5 either on Tuesday or Wednesday that -- actually it was
6 probably closer to Tuesday -- that sometimes when you showed
7 up at black sites, you were -- they would -- they would kind
8 of hide you from other people. What did you mean by that?

9 A. They would hide me [REDACTED]

10 Q. Copy. All right. Thank you. That makes sense. All
11 right.

12 In one of the documents that Mr. Connell showed you,
13 in particular some descriptions of reactions and things that
14 were done to -- to Mr. Ali, to whom he refers to as
15 Mr. al Baluchi, there was something in there with language to
16 the effect of "Detainee did not exhibit blocking" or "was no
17 longer blocking."

18 What does that term mean? Are you -- are you familiar
19 with that term and, if so, what does that actually mean?

20 A. Well, it's a -- it's a -- psychologists and
21 psychiatrists do something called the mental status exam. And
22 part of the mental status exam is to examine the flow of
23 thought. And some -- and so there are other terms like

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1 derailment, which is where I start talking about one thing and
2 I'm derailed to something else. And then another term, I
3 believe in the context that this was used, if I recall
4 properly, was about blocking, and so the person would start to
5 think of something and then, you know, it would be blocked,
6 literally. That -- that's what I took that to be.

7 Q. And by blocking then is that where no matter how hard,
8 for example, you or I or anyone might be trying to -- trying
9 to recall something, we just simply cannot? Is that what
10 they're referring to there or is it something ----

11 A. Or the intensity of it varies. That sort of blocking
12 is usually associated with a form of depersonalization or
13 psychosis.

14 Q. Okay.

15 A. So I think what the person is really trying to say is
16 I'm not seeing any symptoms of psychosis.

17 Q. Copy. All right.

18 And then we talked -- or there was -- there was some
19 fairly significant discussion about changing on the -- the --
20 the continuum of outright refusal to spontaneous cooperation.

21 A. Correct.

22 Q. All right. Now, with respect to enhanced
23 interrogation techniques, how -- how were these supposed to

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1 get someone from the -- from the left side to the right side
2 of the continuum?

3 I know you've discussed it, but I want to make sure I
4 completely understand how these played into it, and then I'm
5 going to ask you a follow-on question.

6 A. Okay. The simplest way for me to do this is to try to
7 talk you through the process that Dr. Jessen and I used in
8 the -- in the simplest form ----

9 Q. Okay.

10 A. ---- right, because to answer the question, I've got
11 to refer to something that didn't happen during enhanced
12 interrogations.

13 When a person is first brought to a black site,
14 they're met by a physician, and they're met by guards, and,
15 you know, they're examined and the photographs are taken and
16 there's a cavity search to be sure they haven't keistered
17 something, and they look for bruises and all that sort of
18 stuff. And then they temporarily put them away and move them
19 to an interrogation room.

20 In the interrogation room -- usually it's me because I
21 look like some guy's uncle -- I would go in and it do a
22 neutral assessment to see what they were willing to
23 voluntarily talk to us about. Let's assume they weren't

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1 willing to voluntarily talk to us. I would leave them with a
2 bridging question. In the case of KSM, it was that we want
3 information to stop operations inside the United States. What
4 I said earlier, right?

5 The next time a person came out to apply EITs, they
6 would ask him that bridging question. And if he answered any
7 part of it, no EITs would be used during that session. May be
8 used in another session, but not during that session. At the
9 end of that session, whether or not they were used, the
10 bridging question would be asked again.

11 Then we would have a short informal talk with that
12 person about their feelings and reactions to being
13 interrogated. Because what we found is that that process of
14 talking about what they experienced established rapport with
15 them and gave us a chance to get inside of the way they think
16 about things so that we can frame our questions to meet their
17 world view. Okay.

18 Then we put them away with another bridging
19 question -- the same bridging question reiterated. Hours
20 pass. They come back out. The bridging question is asked.
21 It is that -- at that point before the next EIT session when
22 they start to provide information. Like a person who has a
23 fear of dentists try to get out of going to the dentist as it

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1 gets closer rather than six months out when the appointment is
2 made, right? So that's where we actually start getting
3 information.

4 We're concerned about using something like the
5 waterboard and asking leading questions because we believe
6 people will just make stuff up to -- to stop it. But they
7 typically have -- although they sometimes do. But at that
8 moment when you ask them the bridging question is before the
9 next EIT session, that's when they start to provide little
10 snippets of information that's useful.

11 Q. Okay. So is that what you would call -- you threw out
12 several terms. I'm just going to use one. If I use it
13 incorrectly, this is why I'm asking it, for you to correct it.

14 So is the -- we talked about learned helplessness and
15 how that's particular. We talked about negative
16 reinforcement. We talked about the Pavlovian response and all
17 of those kinds of things.

18 Is the idea initially of the EITs then is to have kind
19 of like this negative reinforcement, like I really don't want
20 that to happen so I'm just going to go ahead and cooperate, or
21 is it something different? Or am I using that term
22 incorrectly?

23 A. Your -- your conceptualization is correct, but you're

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1 using the wrong term.

2 Q. Okay.

3 A. It's -- during the administration of EITs, we're
4 trying to elicit, you know, kind of fear or despair or
5 whatever it is, emotional distress, so that when it gets to
6 the next -- the bridging question just before the next one,
7 you can do what would be called negative reinforcement, which
8 is take away the fear when the person starts to answer the
9 question, any question, right?

10 So there's classical conditioning here, and the
11 operant conditioning happens over when the -- when -- when the
12 thing.

13 And here's the most important point: The person
14 actually has to be able to get out of the situation;
15 otherwise, the -- the reinforcement doesn't work. I mean, you
16 can't reinforce somebody if you continue to punish them once
17 they start talking to you.

18 Q. I understand. And then if I understood you correctly,
19 which I may not have, is that the actual term "learned
20 helplessness" refers to when someone cannot see any -- any way
21 out of something and just gives up; is that correct?

22 A. If a person is in a state of learned helplessness,
23 they are -- they won't answer questions. They won't do

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1 anything. Essentially they just lay on the ground and
2 whimper, you know? They don't make any effort to get out of
3 the situation.

4 Of course, we've never put humans in that situation
5 because even, you know, in the old days, they wouldn't do
6 those kind of studies. But they have put animals there. They
7 just whimper, don't even try to escape.

8 So as I said before, the term gets used three ways.
9 The learned helplessness paradigm or methodology that's used
10 to induce it requires that the person have no way to get out.
11 So even if they answered questions they couldn't get out of
12 it. You know, even if they wanted to tell you something,
13 you're still going to continue to apply the aversive
14 stimulus. Because in order for learned helplessness to
15 develop, the person has to come to believe that there is
16 absolutely nothing they can do to get out of the current
17 situation that they're in, not answering questions, not
18 anything, right?

19 So when people use the term "a state of learned
20 helplessness," what they're usually referring to is the third
21 definition, which is when you put the person in a situation
22 where they can actually solve the problem, they -- they don't.
23 The animals lay on the ground and they whimper and they --

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1 you -- even in some cases, if you go in there and you'd help
2 them over the net so that they discover it, they don't try.
3 They just lay there and whimper. That is, in my view,
4 completely worthless when it comes to the idea of intelligence
5 gathering.

6 Now, I gave briefings about avoiding that. And I
7 frequently told people like at the first -- like at Site 2,
8 right, that that's to be avoided at all costs -- and somehow
9 that sometimes gets misconstrued as me advocating it -- but if
10 a person induced learned helplessness, it would have the
11 opposite of the desired effect. And you can tell that the
12 folks who answer these intel questions aren't in a state of
13 learned helplessness because they're answering the questions.

14 Q. So what is the interplay then between a Pavlovian
15 response that you talked about earlier with respect to like
16 the towel, either having it around the neck or even later in
17 the room, et cetera, and this concept of -- of learned
18 helplessness, if at all?

19 A. None.

20 Q. Okay. So the -- what -- so was the -- the -- one of
21 the objectives then of the EITs to at least initially have
22 this type of Pavlovian response?

23 A. We wanted their distress and emotional -- emotional

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1 distress to go up so that we could relieve it when they
2 started answering questions, any question.

3 Q. Okay. Multiple times the word "fireside chat" was
4 thrown out.

5 A. Yes, sir.

6 Q. What is a fireside chat?

7 A. In -- the way that Bruce and I did interrogations are
8 heavily influenced by our profession as a psychologist. In
9 psychology, when you go to talk to a psychology -- a
10 psychologist or a psychiatrist, there's the content of what
11 you say and then there's the process of how you say it. So a
12 fireside chat is really not about what he told us but about
13 what he said.

14 I can -- I can give you a real example from KSM, if
15 you would like.

16 Q. Sure. Like I said, if they -- if they have issue with
17 it, I'm sure -- they're going to get the opportunity to ask
18 questions if they want, so ----

19 A. Okay. The WMD expert that was there had -- had used
20 a -- she was a debriefer. He wasn't in an interrogation mode.
21 She was asking him about al Qaeda's WMD efforts because UBL
22 had met with the Pakistanis passing out the, you know, nuclear
23 technology. And they had said the difficult thing is getting

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1 the fissionable material. And UBL had said, "What if we've
2 already got it? How long would it take us to make a bomb?"
3 And so she's there asking him about the movement of things
4 that could potentially be radioactive material.

5 And after that was over and she left, we did a process
6 thing. And so Dr. Jessen, who was there with me, said, "You
7 know, KSM, I noticed that when she was asking you some
8 questions, you were looking down and -- and you seemed anxious
9 and then you were going -- you started to say something,
10 and -- and then you looked away. And you just seemed
11 disturbed, like there was something you wanted to tell us but
12 you weren't telling us. I wonder what that is," right?

13 And he said, "Go get the lady that takes the notes" --
14 because he's a chauvinist -- she's actually an expert -- and
15 that's when he told us about beheading and dismembering Daniel
16 Pearl. So that happened during the fireside chat.

17 We weren't questioning him about Pearl. We weren't
18 questioning him about his -- about the movement of nuclear
19 material. We were talking to him about his physiological and
20 psychological reaction to being questioned.

21 Q. Thank you. And that's consistent among every time a
22 fireside chat is done, is more about focus?

23 A. Correct. Our main goal, sir, was to -- to -- to be

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1 like hostage negotiators who put ourselves between him and
2 Washington. So in the fireside chat, we could say something
3 like, "You know, you -- you're giving us details, but they
4 seem really vague. We're never going to be able to get
5 Washington to accept this unless you help us. Help us help
6 you get out of this situation." That sort of stuff would
7 happen in the fireside chat.

8 Q. There were some documents and discussion about
9 interrogators, slash, debriefers -- I'm going to use the
10 slash, the proverbial slash, because I kind of need you to
11 draw a distinction here for me.

12 If references are being made to going back to bad
13 times or, you know, innuendos or inferences to EITs that
14 someone does not want to go to, is that really still a --
15 if -- let me start with a preface.

16 I think you testified earlier that if you were in the
17 debriefing stage, you were not going to go back to EITs
18 without headquarters' approval; is that correct?

19 A. Yes. And, in fact, it would be very difficult to get
20 headquarters' approval.

21 Q. Okay. If that's the case, then was it a -- was it
22 a -- were people insinuating then things that couldn't really
23 happen to achieve a response or were you really not in a

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1 debriefing stage at that point? Were you still in a -- more
2 of an interrogation-esque stage?

3 A. The debriefers never made a threat like that. It was
4 never made by a debriefer, you know, so the -- the debriefers
5 would just go in and debrief. If the person decided they
6 weren't going to cooperate -- like, for example, again, I can
7 use a real-life example.

8 KSM set up office hours. He wouldn't -- he just
9 wouldn't -- you know, he didn't want to go out during -- he
10 had a little sign that says the office is open, the office is
11 closed; and it was very difficult to get him to participate in
12 anything when the office was closed.

13 And so the folks were thinking maybe we have to go
14 back to enhanced interrogations and stuff. Headquarters
15 didn't want to do that, so they sent Dr. Jessen and I out
16 there to sort that out, which we did successfully. And he, in
17 fact, was mostly right about what his concerns were.

18 So the guy in charge of that site was threatening to
19 move him back that way, and he might have been told at that
20 time not by the debriefer, but by someone else, that if he
21 continued to not cooperate, they were going to request
22 permission to go back to that.

23 Q. Okay. So you talked about the -- the -- the towel

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1 example with walling as creating this Pavlovian response in
2 individuals who are being interrogated using the EITs and
3 walling in particular.

4 Other than a towel, can a person, you know, produce a
5 Pavlovian response? In other words, because you were the
6 interrogator doing these things, what are -- you know, is --
7 are there studies to suggest whether or not just your presence
8 alone could -- could cause that kind of reaction in someone?

9 A. In the short term, yes. In the long term, no.
10 Because what -- as I said before, what happens in these
11 Pavlovian conditions is that while in the short run, they can
12 be powerful enough to influence people -- a person can become
13 scared of me, scared of my face, right, nervous about me being
14 there. But if I'm nice to them for 1200 days, that goes away
15 relatively quickly. And, in fact, in KSM's place -- case,
16 every time he got in trouble, he asked for either me or
17 Dr. Jessen to come sort this thing out.

18 So it would -- it would seem -- and the same thing is
19 true for chairs. The same thing would be true for rooms. You
20 know, if the only thing that happened in that room was an
21 adverse event -- you know, you go down to Room 7, you know
22 what happens in Room 7, right?

23 But if in that room you also feed, you also pray, you

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1 meet up with your friends, somebody comes in and talks to you,
2 the doctor comes in and takes care of you, the response
3 contingencies are such that that room does not take on the
4 same meaning.

5 I can give you another example. Khalid Shaikh
6 Mohammad fell asleep on the waterboard. If he was afraid of
7 the waterboard, he never would have fallen asleep on it.

8 Q. You also mentioned the term "priming the pump."

9 A. Yes.

10 Q. Make sure I understand, what did that mean? What does
11 that term mean when you use it?

12 A. Well, when I used it was just a colloquial term where
13 I meant that if you get a -- I can give you an example not
14 related to these guys but related to some other work that I --
15 that's not classified that I talk in my book.

16 Q. Okay.

17 A. Dealing with interrogators from other countries, they
18 would often hand someone a paper and say, "Is this yours?"
19 The person would say no, and then they wouldn't see it again.

20 What I -- when I interacted with them and they asked
21 my advice about it, I'd say have the person read the paper
22 because if it relates to them and they wrote it, what that
23 does is activate the guilty knowledge in their head. And then

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1 the next time -- that's priming the pump.

2 And then you have them read it out loud the next time
3 and you stop and you say what does this sentence mean? When
4 you used this term "perfume," what did you mean by that? And
5 it's much more effective because the person's already thinking
6 about it before you ask them the question.

7 So if you -- like the learned counsel over there said
8 I'd like you to think about these -- these unique identifiers,
9 right? I went back and I thought about it, and when I came
10 back in I was prepared to answer it.

11 Q. Okay. As you sit there today, how familiar are you
12 with the activities that took place at GTMO when it was a
13 black site?

14 A. [REDACTED]

15 [REDACTED]

16 Q. Okay. And so did I understand your testimony
17 correctly, then, that based on your -- what you know, that --
18 that interrogations were not done here?

19 A. I was told explicitly that they were not to be done
20 here. The -- the enhanced interrogations did not happen, to
21 my knowledge, and I believe it's true because everyone up the
22 chain was adamant about it not happening. In fact, they
23 admonished me from calling myself an interrogator in the

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1 cables going back because they said -- they said this presents
2 a false impression that we're doing interrogations out there.

3 Q. Sorry, sir. Just going through my notes to see if I
4 have anything else.

5 A. No, no, I'm here to serve, sir. Take as much time as
6 you need.

7 Q. The question I kind of wrote to myself here to -- to
8 ask you is -- once again, it assumes that I understood what
9 you said, so if I did not, please correct me.

10 If debriefings typically followed interrogations, then
11 is the potential for EITs the only distinction in how they're
12 conducted?

13 A. That's an interesting question that I haven't thought
14 about. Give me just a second to think about it, to think it
15 if there's a difference.

16 When Dr. Jessen and I were involved in debriefings,
17 there would be a bridging question, there would be the
18 debriefing, there would be a bridging question, there would be
19 a fireside chat, there would be a bridging question. So the
20 structure is the same except the EITs are gone and the
21 debriefing session is in.

22 The debriefers have been trained differently. You
23 know, they're not trained as interrogators, although some went

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1 through the course but didn't function as interrogators. But
2 the content is different, the -- in that -- in that in the
3 beginning of an EIT session, we're given a relatively fixed
4 series of questions they like -- would like us to ask, like
5 the "We want information to stop operations" question, right?

6 Whereas in a debriefing session, the questions are
7 controlled by whatever the intel requirements are that that
8 debriefer has. And they could come from anywhere. And as the
9 interrogator sitting in, I would not have any idea unless you
10 told me.

11 Q. Okay. Did I understand you correctly that at least at
12 some times based on your experience in the ones that you
13 were -- the interrogations and/or debriefings in which you
14 were involved, there were times when you could have an
15 interrogation followed by a debriefing the same day type thing
16 or did I misunderstand that?

17 A. There could be an interrogation, and then the next
18 time you went into talk to a person, the person would just
19 answer the questions. We would still consider that an
20 interrogation, we just wouldn't use any EITs, but it would
21 look like a debriefing.

22 Q. Okay. So in your mind then, if you're referring to a
23 debriefing, you're talking about that -- it's something

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1 completely distinct from an interrogation?

2 A. The CIA used the terminology and I've adopted it.

3 There are a lot of people who think anybody that asks
4 questions and gets answers is an interrogator, and that's sort
5 of the colloquial way people think about it. But if -- if
6 you're not -- A, haven't gone through their interrogation
7 course; and, B, authorized to apply EITs in that particular
8 time frame, then you're not doing an interrogation.

9 Q. All right. Thank you. To a layperson, it could
10 appear -- I have to phrase my stuff too, right? So it could
11 appear to a layperson that the -- the reason why someone would
12 use enhanced interrogation techniques or coercive pressure
13 would be to inflict a certain level of discomfort, in some
14 cases probably there's some level of pain associated with
15 that, to -- so that that person would find itself so --
16 that -- that that continuation would be so unconscionable that
17 I'll do whatever it takes to -- to make this stop. Is that an
18 oversimplification or is that at the core what this is about?

19 A. Well, I think it's the core of what the debate's
20 about, right? But in terms of the use of enhanced
21 interrogation, the whole point of doing that was to not use
22 pressure to that extent, but to rather to use social
23 influence; so that once they started shifting their

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1 priorities, you could move away from that sort of stuff. You
2 didn't have to wait until they were so, you know, desperate to
3 get out of it that they would just tell you anything or that
4 they would, you know, tell you what they know.

5 Because the point is to get them moving and then keep
6 them moving using the kind of skills a psychologist would use
7 to get someone who was reluctant to talk about something to
8 talk about it, because that's basically what we were
9 interested in.

10 Q. Yeah. As a judge, I can't -- I may have heard things
11 in the past in other cases, but that's irrelevant. You know,
12 I disregard all of that because I have to take all the
13 evidence that's presented in a particular case.

14 So when you use the word -- you said social -- I
15 forgot ----

16 A. Social influence?

17 Q. ---- social influence, what -- what do you mean when
18 you use that term?

19 A. I mean things like reciprocity, rapport-building, a
20 likability, shared experiences, shared -- you know, shared
21 desired. The sort of exchange that normal people have that
22 produce conversation and get them willing to do it.

23 Another way I can explain it, for example, is we were

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1 told by several detainees that Allah doesn't expect you to
2 carry greater burden than you bear. And so what I would do at
3 some point during the application of EITs is I would say, "You
4 know, I don't know about your God. I'm not a -- I'm not
5 Muslim. But I know that my God knows that I can't bear a
6 burden." And then often the detainee would go, "Mine too."
7 And then we're talking about when he's going to start talking
8 and that sort of stuff. So that's a social influence
9 technique with a shared experience.

10 Q. Copy.

11 MJ [Col COHEN]: Counsel, I think that's all the questions
12 I have of the doctor today. And given that Mr. Ruiz has asked
13 to start at 0900 hours, we'll go ahead and end about 45
14 minutes early today.

15 Oh, Trial Counsel?

16 MTC [MR. TRIVETT]: Sir, I had one notice and seeking some
17 guidance from the commission, but it would probably be
18 appropriate outside the presence of the witness.

19 MJ [Col COHEN]: Okay. All right. Sir, I'll excuse you
20 then for the -- for the day. We'll see you tomorrow morning.

21 WIT: Thank you, sir.

22 MJ [Col COHEN]: Thank you.

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

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1 MJ [Col COHEN]: The witness has exited.

2 Mr. Trivett.

3 MTC [MR. TRIVETT]: Thank you, Your Honor. And I'll be
4 brief.

5 There's a plan from at least one of the defense teams
6 to use actual physical items from Site A that was -- that were
7 preserved and we've made available and we've provided them
8 pictures. And we're going to do that. We just want a little
9 guidance from the commission on exactly how it's envisioned
10 and procedurally how it will work.

11 Generally, in -- in district courts, the FBI will sign
12 the evidence over to someone on the prosecution team at least
13 initially. And then once it's entered into evidence, although
14 these are only appellate exhibits, the question then becomes
15 are we going to have the FBI take back the items that were
16 used after you photograph them and make them appellate
17 exhibits or is the court's plan that, even for appellate
18 exhibits, you would then take custody and put that into the
19 judiciary's evidence trailer. So that's some of the questions
20 that we have to try to figure out.

21 MJ [Col COHEN]: No, that's a great question. To be
22 honest with you, I'm not really sure what -- I'd have to get
23 with my staff and figure out what even my abilities are.

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1 I guess the question is what kind of items are we
2 talking about because that would probably influence the nature
3 of the -- of my decision. In other words, is there any --
4 casting no aspersions but just thinking of -- of the fact that
5 we're in litigation, right, and it's adversarial -- is there
6 any chance that after having the witness view the items that,
7 if it was put back into the custody of -- for example, of the
8 FBI who -- that they could be manipulated in any way? Are
9 these like physical objections that they're -- just going to
10 be physical objects or what are we talking about?

11 MTC [MR. TRIVETT]: So there's certainly no ----

12 MJ [Col COHEN]: Because if that's the case, then I'm like
13 it really doesn't matter to me whose safe it's in as long as
14 it doesn't disappear as opposed to something that could be
15 potentially manipulated. In other words, I don't want
16 unnecessary litigation as a result of having them take it
17 back.

18 MTC [MR. TRIVETT]: Yes, sir. There's no nonfungible
19 evidence.

20 MJ [Col COHEN]: Okay.

21 MTC [MR. TRIVETT]: It's mostly the items from the sites.
22 We're awaiting -- and Mr. Nevin indicated he's going to
23 provide the actual list.

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1 MJ [Col COHEN]: Okay.

2 MTC [MR. TRIVETT]: We reviewed with the defense over a
3 four-hour period on Sunday all the items that were gathered.
4 I know he's going to narrow that down. Our plan was to have
5 it ready in the court on a table or two ----

6 MJ [Col COHEN]: That would be fine.

7 MTC [MR. TRIVETT]: ---- to try to ----

8 MJ [Col COHEN]: That makes sense.

9 MTC [MR. TRIVETT]: ---- facilitate it and expedite it.
10 The FBI is happy to do it, probably would prefer to do it.
11 Just wanted to know what the commission's plan was. I
12 actually don't even need an answer from you today.

13 MJ [Col COHEN]: Okay.

14 MTC [MR. TRIVETT]: Tomorrow would be fine. But we just
15 want to be sure that we advise -- it was just on Sunday that
16 eight personnel here to get all of the information ----

17 MJ [Col COHEN]: No, no, it makes sense. So -- so here's
18 where my inclination is and then I'll hear from, in particular
19 Mr. Nevin, since you want to use it and obviously it could
20 impact other -- other defense counsel as well.

21 My inclination is this: It makes sense to initially
22 sign that over to the prosecution similar to like I said other
23 courts and how you would do that. Once it's no longer needed

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1 here in the courtroom, for -- for any purpose, I -- my
2 preference is to have it stored where it was stored before it
3 got here. But if there's a reason why the parties believe
4 that that is just unacceptable, I'm -- I will -- I'm
5 definitely hear that.

6 But I think as long as we maintain those change of
7 custody documents so we know who had it, where it went and
8 those kinds of things, that's my preference as opposed to
9 putting it someplace -- to be honest with you, law enforcement
10 should be really good at maintaining this ----

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

12 MJ [Col COHEN]: ---- or at least a lot better than --
13 than -- than those of us who don't do this on a -- on a daily
14 basis.

15 MTC [MR. TRIVETT]: Yes, sir. And we owe you a 1 February
16 notice that all of the -- all of the evidence has been moved.
17 It has been moved. It's in there. It's cataloged. It's
18 ready to go.

19 MJ [Col COHEN]: Oh, perfect.

20 MTC [MR. TRIVETT]: This was part of that.

21 MJ [Col COHEN]: Excellent.

22 MTC [MR. TRIVETT]: Yes, they're professionals at it.
23 They have evidence techs assigned to it. It would be the

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1 preference of the government and the FBI to do it. I just
2 wanted to get ----

3 MJ [Col COHEN]: No, that's my preference as well. But I
4 will hear from Mr. Nevin here momentarily.

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

6 MJ [Col COHEN]: Thank you.

7 [Counsel conferred.]

8 MJ [Col COHEN]: Mr. Nevin, do you -- do you have any
9 objection to letting it go back to being stored with -- with
10 the evidence?

11 CDC [MR. NEVIN]: Your Honor, I spoke to counsel. I think
12 this affects more teams than just Mr. Mohammad's and so ----

13 MJ [Col COHEN]: Right.

14 CDC [MR. NEVIN]: ---- with the court's -- the military
15 commission's permission, I would give you a final response
16 tomorrow if that's okay.

17 MJ [Col COHEN]: That's fine. Absolutely. Like I said,
18 at least you know going in that's kind of my preference is
19 let's keep it all together. The more we separate this stuff,
20 the greater likelihood in my mind is that stuff inadvertently
21 gets lost or -- or damaged, et cetera.

22 But -- but I'll let you all chat about that tonight,
23 and then just let me know in the morning if that's -- if

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1 that's acceptable.

2 CDC [MR. NEVIN]: Yes, sir. And just one last wrinkle for
3 your consideration is that this is material that is either
4 directly or indirectly at issue in the 425 series of
5 litigation ----

6 MJ [Col COHEN]: Okay.

7 CDC [MR. NEVIN]: ---- that had to do with decommissioning
8 or de -- or destruction of -- of a black site. I heard
9 counsel use the plural, referring to sites, just a moment ago,
10 and I -- I don't know if that was intentional or inadvertent.

11 But I understand that this is material that came from
12 a -- from -- from that site, which was at issue, so
13 preservation of its status at least at this point remains
14 important.

15 MJ [Col COHEN]: Okay.

16 CDC [MR. NEVIN]: And so that's the -- the kind of
17 counter-consideration that I ----

18 MJ [Col COHEN]: Right. I just talked with my CISO folks.
19 I have to see what our -- what -- I don't know how much stuff
20 it is and I'll have to look at even what our -- our
21 capabilities are as court admin for -- for maintaining this,
22 so ----

23 CDC [MR. NEVIN]: Right.

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1 MJ [Col COHEN]: So, like I said, please consider all of
2 that, and then like I said, I'll hear from -- from you guys in
3 the morning.

4 CDC [MR. NEVIN]: Understood. Thank you.

5 MJ [Col COHEN]: Perfect. All right. Anything else
6 before we recess for the evening? Okay.

7 Mr. Sowards, yeah, you're going to ask if you can chat
8 for a few minutes?

9 LDC [MR. SOWARDS]: Yes, the ----

10 MJ [Col COHEN]: Yeah, as long as the government doesn't
11 have a problem with that -- I'm just going to say moving
12 forward I'm not requiring it to be allowed. I don't know what
13 the needs of various movements are, and I won't discuss them
14 in an open session.

15 But I understand the need to chat with -- with --
16 with -- with -- with clients while -- while they're -- they're
17 currently present, so to the extent the government can
18 accommodate that on given days, it makes sense to me. So you
19 don't need to ask every time.

20 LDC [MR. SOWARDS]: Okay. Thank you very much.

21 MJ [Col COHEN]: Thank you. All right, everyone. I will
22 see you tomorrow morning at 0-9.

23 [The R.M.C. 803 session recessed at 1650, 23 January 2020.]

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