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1 [The R.M.C. 803 session was called to order at 0904,  
2 24 January 2020.]

3 MJ [Col COHEN]: The military commission is called to  
4 order. Good morning, everyone.

5 General Martins, is everyone on your team the same  
6 today?

7 CP [BG MARTINS]: Good morning, Your Honor. Mr. Swann has  
8 returned. With the commission's permission, Mr. Swann will  
9 depart on commission business right after accounting for the  
10 accused. Mr. Ryan will also be in and out on commission  
11 business, again with your permission.

12 MJ [Col COHEN]: Absolutely.

13 CP [BG MARTINS]: And after the midafternoon break, I'm  
14 going to be doing some logistics again if -- if the commission  
15 gives leave.

16 MJ [Col COHEN]: Absolutely. You -- you all -- yeah.  
17 Same rules apply to you all that I would let the defense do,  
18 so yeah, if you need to come and go, absolutely, sir.

19 CP [BG MARTINS]: Thank you, Your Honor.

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

21 Mr. Sowards, it looks like your team is exactly the  
22 same. Mr. Mohammad is just not with us.

23 LDC [MR. SOWARDS]: Yes, good morning, Your Honor. That's

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1 correct.

2 MJ [Col COHEN]: Good morning. All right, thank you, sir.

3 Ms. Bormann, I don't see Mr. Montross today, but -- or  
4 Captain -- oh, excuse me.

5 LDC [MS. BORMANN]: Captain Peer is doing other ----

6 MJ [Col COHEN]: I did see you now.

7 LDC [MS. BORMANN]: ---- business and Mr. Montross is to  
8 my left.

9 MJ [Col COHEN]: All right, thank you. You are correct.  
10 I was looking for you, sir, at the other end where you were  
11 sitting yesterday, and -- yeah. All right. Mental images,  
12 and they -- they shift on me during the days. All right.

13 Mr. Harrington, it looks like your team is the same;  
14 is that correct?

15 LDC [MR. HARRINGTON]: We are the same, Judge.

16 MJ [Col COHEN]: All right. And Mr. Connell, the ----

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

18 MJ [Col COHEN]: Good morning.

19 LDC [MR. CONNELL]: Mr. Farley is conducting other  
20 commissions business this morning.

21 MJ [Col COHEN]: Copy. Thanks.

22 And, Mr. Ruiz, is your team the same?

23 LDC [MR. RUIZ]: Yes, Judge. Thank you.

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1 MJ [Col COHEN]: Okay. And right now, I'm currently  
2 seeing only Mr. al Hawsawi here. Good to see you this  
3 morning, sir.

4 And we'll now hear some testimony with respect to the  
5 other gentlemen.

6 CP [BG MARTINS]: Your Honor, we have a different  
7 assistant staff judge advocate, so I will swear her in.

8 MJ [Col COHEN]: Please do so.

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

11 **DIRECT EXAMINATION**

12 Questions by the Chief Prosecutor [BG MARTINS]:

13 Q. You're a major in the United States Army?

14 A. Yes, sir.

15 Q. And you are assigned to the Joint Task Force?

16 A. Yes, sir.

17 Q. With the duty position of assistant staff judge  
18 advocate?

19 A. Yes, sir.

20 CP [BG MARTINS]: Thank you.

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

22 **[END OF PAGE]**

23

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**1 DIRECT EXAMINATION**

**2 Questions by the Trial Counsel [MR. SWANN]:**

**3 Q. Do you have the documents?**

**4 A. Yes, sir.**

**5 Q. All right. Did you have occasion to advise Khalid**  
**6 Shaikh Mohammad of his right to attend today's proceeding?**

**7 A. Yes, sir.**

**8 Q. I have in front of me what's been marked, I think,**

**9 700 ----**

**10 A. E.**

**11 Q. ---- E, consisting of two pages. Is that his**  
**12 signature that appears on the second page of the document?**

**13 A. Yes, sir.**

**14 Q. With respect to Bin'Attash, a three-page document,**  
**15 700F, did you have occasion to advise him of his right to**  
**16 attend?**

**17 A. I did.**

**18 Q. I see a signature on the third page in Arabic. Is**  
**19 that his signature?**

**20 A. It is.**

**21 Q. With respect to Ramzi Binalshibh, a two-page document,**  
**22 a signature appears on the Arabic -- excuse me, the English**  
**23 version on the second page. Is that his signature?**

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1 A. Yes, sir.

2 Q. Ali Abdul Aziz Ali, a two-page document, is that his  
3 signature that appears on the second page?

4 A. Yes, sir.

5 Q. Did these men indicate they did not wish to attend  
6 today's proceeding?

7 A. That's correct.

8 Q. And did you believe -- do you believe that they  
9 voluntarily waived their presence to attend?

10 A. I do.

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

12 MJ [Col COHEN]: Thank you, Mr. Swann. Thank you.

13 I have retrieved Appellate Exhibits 700E, F, G, and H.  
14 Counsel, I note the standing objection with respect to  
15 identity.

16 Mr. Sowards, have you or someone -- has someone on  
17 your team had the opportunity to review 700E and do you have  
18 any questions?

19 LDC [MR. SOWARDS]: I have, Your Honor, and no questions.

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

21 Ms. Bormann, same questions to you with respect to  
22 700F.

23 LDC [MS. BORMANN]: I have reviewed it and I have no

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1 questions.

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

3 Mr. Harrington, same questions to you with respect to  
4 700G.

5 LDC [MR. HARRINGTON]: I've reviewed it, Judge, and I have  
6 no questions.

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

8 And, Mr. Connell, same questions for you with respect  
9 to 700H.

10 LDC [MR. CONNELL]: Your Honor, I've reviewed 700H, I do  
11 have one question.

12 MJ [Col COHEN]: Okay.

13 **CROSS-EXAMINATION**

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

15 Q. Ma'am, it was my understanding that Mr. al Baluchi  
16 intended to attend the afternoon part of the session. Is that  
17 your understanding?

18 A. Not that he intended; that he may attend it, he might  
19 attend it. They will ask again.

20 LDC [MR. CONNELL]: Thank you.

21 MJ [Col COHEN]: Thank you.

22 All right. I think that's all the questions, ma'am.

23 You are excused.

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1 WIT: Thank you, sir.

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

3 MJ [Col COHEN]: Obviously if Mr. Ali or any of the -- the  
4 accused want to show up, they may do so at any time. They --  
5 just work with the guard force to -- to make that happen.  
6 I'll just let the guard force know now, if they show up while  
7 we're in session, as long as they come in quietly, they are  
8 allowed to join us at any time rather than having to take a  
9 formal recess. It will not be -- based on past practice if it  
10 stays the same, it will not be disruptive to me, I think, or  
11 the decorum of the -- of the trial, so -- all right.

12 That being said, based on the testimony and the  
13 evidence presented to the commission, I find that  
14 Mr. Mohammad, Mr. Bin'Attash, Mr. Binalshibh, and Mr. Ali have  
15 knowingly and intelligently waived their right to be present  
16 at this morning's session so far. I'm handing those exhibits  
17 to the court reporter.

18 Mr. Ruiz, are you ready to examine the witness?

19 LDC [MR. RUIZ]: [Counsel away from podium; no audio.]

20 MJ [Col COHEN]: You may.

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

22 MJ [Col COHEN]: Good morning.

23 LDC [MR. RUIZ]: Just one -- one matter I want to make you

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1 aware of. There's nothing you need to do ----

2 MJ [Col COHEN]: Okay.

3 LDC [MR. RUIZ]: ---- at this point. Mr. al Hawsawi has  
4 requested some pain medication. He's requested that he be  
5 provided with his normal medication, which is Tramadol, which  
6 is a narcotic-like pain substance, pain-killing substance, as  
7 well as ----

8 MJ [Col COHEN]: Okay.

9 LDC [MR. RUIZ]: ---- some Tylenol. I understand that  
10 they don't have the medications, so they've sent for it.

11 MJ [Col COHEN]: Okay.

12 LDC [MR. RUIZ]: I also understand that they can't  
13 administer apparently the medication in the courtroom.

14 MJ [Col COHEN]: Okay.

15 LDC [MR. RUIZ]: So he may have to leave at some point.  
16 But I will tell you that he has been experiencing some  
17 discomfort since early this morning.

18 MJ [Col COHEN]: Okay.

19 LDC [MR. RUIZ]: And, like I said, there's nothing that I  
20 need you to do now, other than wanting to make you aware of  
21 that in case it becomes more of an issue later ----

22 MJ [Col COHEN]: Absolutely.

23 LDC [MR. RUIZ]: ---- for ----

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1 MJ [Col COHEN]: Yeah, he's welcome to come and go. Like  
2 I said, it's -- it's more complicated for them than it is for  
3 counsel, but -- but to the extent that he needs to step out  
4 for a few minutes, take any medications or things along those  
5 lines, or even just to rest, he may do so.

6 LDC [MR. RUIZ]: Thank you.

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

8 All right. Let's call the witness.

9 Dr. Mitchell, please come forward.

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

11 MJ [Col COHEN]: Welcome back again.

12 WIT: Thank you, Your Honor.

13 MJ [Col COHEN]: Please have your seat. I'll remind  
14 you're still under oath, sir.

15 WIT: Thank you.

16 MJ [Col COHEN]: Thank you.

17 Mr. Ruiz, your witness.

18 LDC [MR. RUIZ]: Thank you.

19 **DIRECT EXAMINATION**

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

21 Q. Good morning.

22 A. Good morning, sir.

23 Q. My name is Walter Ruiz, and I represent Mustafa

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1 al Hawsawi.

2 A. Yes, sir.

3 Q. I see you glancing to the back of the courtroom. Do  
4 you see Mr. al Hawsawi back there?

5 A. Isn't he in the very back? I can't really tell  
6 because he's got a lot of stuff on his head, but I think he's  
7 towards the rear.

8 Q. Can you -- okay. You've met Mr. al Hawsawi personally  
9 before, correct?

10 A. Yes, sir.

11 Q. And as I understand it, your interaction with  
12 Mr. al Hawsawi began in 2004 -- excuse me, late 2003.

13 A. Late 2003 ----

14 Q. Correct.

15 A. ---- yes, sir.

16 Q. And prior to, I think it was November of 2003, had you  
17 ever seen or -- or met Mr. al Hawsawi?

18 A. I thought about this last night because I thought you  
19 were going to ask me this question. I don't recall doing  
20 that. I think the first time I encountered him was when he  
21 was transferred to GTMO, but I can't be 100 percent sure  
22 because he was never high on my radar.

23 Q. I understand. And the reason he was not high on your

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1 radar is what?

2 A. He didn't make trouble, for one thing. Because  
3 normally I was sent to places if one of the detainees was  
4 acting out like some of the others have. And in my  
5 experience, he was always polite. He was always cordial. He  
6 answered the questions that people asked him. So he was not  
7 really high on my radar.

8 Q. And your -- your focus, as you've testified to in the  
9 early parts of this week, were essentially three individuals,  
10 Mr. Zubaydah, Mr. Nashiri, and later, Mr. Mohammad, correct?

11 A. Those were the three people that most of my time was  
12 spent focused on, yes.

13 Q. Certainly that was the -- that was at least the  
14 progression in terms of who you saw and who you spent a  
15 significant amount of time -- you started with Mr. Zubaydah,  
16 as you've testified.

17 A. Yes, sir.

18 Q. And is it fair to say that these three particular  
19 individuals were considered to be very high-value targets?

20 A. It's accurate to say that. I don't -- the word "fair"  
21 throws me off because it suggests there's some equitable  
22 exchange we're going to make.

23 Q. I'm sorry. I picked that up from Mr. Connell. I'll

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1 try and discard it.

2 A. But in terms of -- but in terms -- it is accurate to  
3 say that they were considered very high-value targets.

4 Q. Right. And Mr. al Hawsawi was not in that category,  
5 correct?

6 A. I think he was considered a high-value target  
7 initially and perhaps the whole time because they thought he  
8 could shed some light on how KSM moved the money and maybe  
9 al Qaeda moved money, that sort of stuff.

10 Q. Okay. All right. So you've given me a little bit of  
11 information in terms of the -- kind of your interactions in  
12 terms of how you characterized his dialogue. You said he was  
13 polite?

14 A. He's deferential. You know, he always seemed to me  
15 kind of quiet. He seemed like an accountant, not -- you know  
16 what I mean? He seemed more like an accountant than anything  
17 else.

18 Q. I understand. When you -- when you first met  
19 Mr. al Hawsawi, do you recall how you introduced yourself to  
20 Mr. al Hawsawi?

21 A. I never really introduced myself to any of them,  
22 really. I would give them a throwaway name to use, and I  
23 would ask them what they wanted me to call them and what I

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1 needed to know about them.

2           And then in his particular case, since he was -- you  
3 know, he was [REDACTED] and there were no interrogations  
4 being done, I had two kinds of interactions with him. One was  
5 to check up on him and see how he was doing, right? And then  
6 the other one was really to service some intel requirements if  
7 they came in and there wasn't an analyst there to do that.

8           Q. Okay. So in terms of -- I understand you didn't come  
9 in there and say, "Hi, I'm James Mitchell."

10          A. No, I -- I didn't.

11          Q. You didn't come in there and say, "Hi, I am James  
12 Mitchell, green-badger, CIA contractor"?

13          A. No, I didn't say that. I -- I think it was clear to  
14 him and, in fact, I think -- I wouldn't have hid the fact from  
15 him that I was with the CIA. I mean, it was -- I think it was  
16 clear.

17               In fact, one of the conversations I had with him was  
18 about his experiences with water dousing at Site 2, I think.  
19 I think that's where it occurred. And so what I would have  
20 said is CIA Headquarters is interested in your experience of  
21 blah, blah, blah, so ----

22          Q. So you do believe that at least you communicated to  
23 him that the Central Intelligence Agency was the agency or the

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1 personnel responsible for that experience at Site 2; is that  
2 what you ----

3 A. I wouldn't have put it in it those exact words.  
4 Sometimes I would have said Washington is interested in.  
5 Sometimes I would have said CIA. You know, I don't -- it  
6 wasn't -- making clear that I was working for the CIA was not  
7 top of my priority.

8 Q. I understand. So was it permissible to tell a  
9 high-value detainee that the Central Intelligence Agency was  
10 the detaining agency? Is that not a -- I'm just -- was that  
11 not considered a top secret fact?

12 A. Not to my knowledge.

13 Q. Okay. I just ask because my -- from -- from the  
14 outside looking in, it seems like there was an incredible  
15 amount of secrecy, and there's a great deal of protection that  
16 at least I've seen in terms of names of agencies and  
17 affiliations. So from my perspective, it seems a little bit  
18 odd that you'd be telling people, hey, the CIA is doing this  
19 or that. So that's why I asked.

20 A. Okay.

21 Q. Okay. So it is your belief that he was clear that it  
22 was the Central Intelligence Agency that was ----

23 A. It's my belief that he knew that it was the Central

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1 Intelligence Agency, but that's just my belief. You'd have to  
2 ask him what he believed and what he knew.

3 Q. Of course.

4 A. I can't answer for him.

5 Q. Of course. I just -- I wanted to see if, your  
6 personal interaction, that had been made clear.

7 A. You know, this is 14 years ago. I had a handful of  
8 interactions with him. I can recall topics, but if you -- if  
9 you're asking me whether I specifically told him I worked for  
10 the CIA, I can't tell you.

11 Q. Okay. Great. Did you -- in your dealings,  
12 interactions with Mr. al Hawsawi, that encompasses everything  
13 you've described.

14 Did you ever see a person from another agency identify  
15 themselves and indicate to Mr. al Hawsawi what their  
16 affiliation was, whether it was CIA, FBI, whatever?

17 A. I don't recall seeing that.

18 Q. Okay. As I understand it, your work with  
19 Mr. al Hawsawi -- and correct me if I'm wrong -- included  
20 noncoercive social-influence-based debriefs; is that correct?

21 A. Yes.

22 Q. All right. And a typical noncoercive debrief would  
23 include a procedure where guards hooded, would escort a hooded

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1 detainee into a briefing room, sit with him in a chair, make a  
2 bit of small talk, ask how they slept, and if they needed  
3 anything, correct?

4 A. That's the typical one, but that's not what I did with  
5 Mr. Hawsawi.

6 Q. Okay. We'll get to that in a -- in a minute. Okay.

7 Well, why don't you -- why don't you tell me what you  
8 did with Mr. al Hawsawi.

9 A. I walked into his cell with a guard, I pulled up a  
10 chair, I sat down in front of the cell bars, and I talked to  
11 him.

12 Q. Okay. Were you the person who was actually doing the  
13 questioning?

14 A. I was when I was doing the debriefings. I --  
15 frequently what would happen is most of the debriefings were  
16 done by debriefers, but on holidays, when people been here a  
17 long time, I volunteered to come here and take their place  
18 while they could go home and be with their families.

19 And so sometimes I was by myself. Sometimes I was  
20 with other people. Sometimes I was with a linguist, you know.  
21 It just varied. It varied depending on the requirements of  
22 the circumstance.

23 Q. I understand. So let me ask you about the linguist.

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1 In your -- in your book, much talked about in the -- do you  
2 have a copy?

3 A. No.

4 Q. It's gone? I think there's a copy back there ----

5 MJ [Col COHEN]: I think Mr. Connell has a library of  
6 books, so you might be able to grab one from him.

7 LDC [MR. RUIZ]: We've got one, Judge. May I approach,  
8 Judge?

9 MJ [Col COHEN]: You may.

10 WIT: Thank you, sir.

11 Q. Just in terms of the role of linguists, page 82.

12 A. Okay. All right. I've -- now that I see what you  
13 want me to look at ----

14 Q. Okay.

15 A. ---- I don't need to read it to know what it says.

16 Q. Sure. I'm going to read it to you and if you need to  
17 check against the text or you can tell me that.

18 So you indicated it was important to have a translator  
19 skilled enough to do realtime simultaneous word-for-word  
20 translations. Word-for-word translations are critical because  
21 many indicators of deception are flagged by how things are  
22 said as much as by what is said. And you wanted a precise  
23 translation.

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1       A. As precise as possible, knowing that there are some  
2 Arab words for which there are no English equivalents.

3       Q. So is that -- is that your -- is that your opinion,  
4 that having a skilled Arabic translator is important to get a  
5 precise translation?

6       A. Sure. I don't want them to tell me what the person  
7 meant. I want them to tell me what the person said.

8       Q. Understood. And you indicated that in some of the  
9 interactions you had with Mr. al Hawsawi, you would bring a  
10 linguist?

11      A. I said if a linguist was required, I'd bring a  
12 linguist. I don't recall whether we had to use one with him  
13 or not, to be candid, because -- a linguist to me was like my  
14 wallet, you know. If one was needed, one was there. It was  
15 just there. And -- and a lot of times in my memory, the  
16 linguist gets moved completely out of the recollection.

17      LDC [MR. RUIZ]: Okay. Judge, we have an exhibit in the  
18 record. It's at AE 632Y (MAH). It's pages 459 to 463. It is  
19 a copy of a Top Secret document that I want to provide to  
20 Dr. Mitchell for his reference on some of the questioning I'm  
21 going to ask. I'm not going to ask him, obviously, to tell us  
22 some of the information from there, but I would like to  
23 provide that to him.

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1 MJ [Col COHEN]: Okay. Just show trial counsel real  
2 quick.

3 LDC [MR. RUIZ]: May I approach?

4 MJ [Col COHEN]: You may. The witness does have the  
5 requisite clearance.

6 WIT: Thank you, sir.

7 MJ [Col COHEN]: Counsel, if I understand you correctly,  
8 you just need him to review it and then there's going to be  
9 some general questions, but that gives him some framework?

10 LDC [MR. RUIZ]: Yes, sir. I'm going to -- and I'm going  
11 to -- you know, depending on the questions and the answers,  
12 I'm going to -- or the answers, I'm going to be referring him  
13 to specific portions of that document ----

14 MJ [Col COHEN]: Okay.

15 LDC [MR. RUIZ]: ---- as they hopefully will help refresh  
16 his recollection.

17 MJ [Col COHEN]: Copy.

18 LDC [MR. RUIZ]: This is a document that will help  
19 pinpoint him, his time [REDACTED]

20 MJ [Col COHEN]: I understand. Thank you.

21 LDC [MR. RUIZ]: Judge, this is also contained at -- just  
22 a second here. That's fine.

23 WIT: I see it.

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**DIRECT EXAMINATION CONTINUED**

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

Q. Okay. In that -- in that document, Dr. Mitchell, you're -- you are Interrogator Number 2. Did you know that? Were you briefed on that?

A. I think I saw a thing that said that -- that that was me.

Q. Okay. So you've had an opportunity to review that document. The highlighted portions are the portions where the government has indicated you had substantial and direct contact with Mr. al Hawsawi [REDACTED]

A. A lot more contact than I remember.

Q. Well, as you've indicated, it's been quite some time.

A. Yes, yes.

Q. All right. So I'm going to direct your attention in that document --

LDC [MR. RUIZ]: Actually, one second, Judge.

[Counsel conferred.]

Q. If you, in the left-hand column, were to look down at the [REDACTED] entry ----

A. Okay.

Q. ---- do you see that?

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1 A. Yes.

2 Q. All right. You see right next to that, there is a  
3 specific document, specific -- we call it Bates number.

4 A. I do see it.

5 Q. All right. And there's two of those?

6 LDC [MR. RUIZ]: Judge, I have a document that I would  
7 like to provide the witness with. It is, however, marked as a  
8 Top Secret document.

9 MJ [Col COHEN]: Okay. Like I said, just let the trial  
10 counsel take a look before you hand it to the witness, and if  
11 it's related to his duties, it shouldn't be a problem.

12 [Counsel conferred with paralegal.]

13 MJ [Col COHEN]: Sir, may I see the document that he  
14 handed you, please?

15 WIT: Just -- you wanting just this?

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

17 LDC [MR. RUIZ]: All right, Judge. I need to pinpoint the  
18 document.

19 MJ [Col COHEN]: Okay. Please do. Handing this back to  
20 the witness.

21 WIT: Thank you, sir.

22 LDC [MR. RUIZ]: Okay.

23 MJ [Col COHEN]: What is the pinpoint cite, Counsel? Or

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1 are you -- are you looking for it?

2 LDC [MR. RUIZ]: I'm looking for it, Judge.

3 MJ [Col COHEN]: That's fine.

4 [Counsel conferred with paralegal.]

5 LDC [MR. RUIZ]: Actually, Judge, I have a different  
6 document I want to ----

7 MJ [Col COHEN]: That's fine.

8 LDC [MR. RUIZ]: ---- I want to utilize.

9 MJ [Col COHEN]: You guys are welcome to use the evidence.  
10 Just let us know what they're being shown or what you're  
11 using, and then ----

12 LDC [MR. RUIZ]: Absolutely.

13 **DIRECT EXAMINATION CONTINUED**

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

15 Q. So is it fair to say in your interactions with  
16 Mr. al Hawsawi that he had a difficulty with more technical  
17 type discussions?

18 A. I don't know that I had any technical discussions with  
19 him, so I don't know whether it's accurate or inaccurate to  
20 say that he had that.

21 Q. Okay. What would your assessment be in terms of his  
22 language ability? I think you indicated you did not recall?

23 A. I don't. Like I said, I don't recall using a linguist

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1 or not using a linguist. If the -- if his -- if I had had  
2 difficulty understanding him or he appeared to have difficulty  
3 understanding me, a linguist would have been involved. A lot  
4 of my contact with him was primarily around how he was doing  
5 and that sort of stuff, and -- and I -- I just don't recall  
6 whether a linguist was there or not. There were linguists  
7 assigned to that camp that seemed to be there all the time  
8 that I was there.

9 Q. I want to ask you a couple of questions about  
10 Mr. Zubaydah and some of the procedures that you utilized when  
11 questioning Mr. Zubaydah.

12 A. Sure.

13 Q. All right. So the impression I got was that when you  
14 questioned Mr. Zubaydah, I think you indicated that you had a  
15 team-like approach to questioning him.

16 A. A what like approach?

17 Q. A team-like, where it was a team of personnel who  
18 would get together ----

19 A. Oh, a team. Yes, sir.

20 Q. Right. Get together prior to the session, have a  
21 discussion, and then go into the -- the questioning of  
22 Mr. Zubaydah; is that correct?

23 A. Correct.

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1 Q. All right. And some of that -- some of that team  
2 included medical personnel?

3 A. Yes. Physicians.

4 Q. Okay. And during -- during that questioning or before  
5 the questioning, would those physicians identify any potential  
6 medical issues for the person that was going to be  
7 interrogated?

8 A. Well, it depends on the -- where they are in that  
9 timeline. During the EIT session for Zubaydah, we had a  
10 doctor, an ER-qualified, board-certified doctor and two RNs.  
11 So those folks were very interested in what was going on with  
12 Zubaydah, and we got constant updates. And they would check  
13 him after, you know, each interrogation to be sure that he --  
14 his wound hadn't been intensified.

15 Q. But as the -- the person who was going to interrogate  
16 Mr. Zubaydah, or whoever you were going to interrogate, it was  
17 important for you to understand their medical status?

18 A. Yes.

19 Q. Okay. And in order to do that, you're relying on  
20 medical personnel who would make an assessment or perform an  
21 assessment of the medical status of the person you were going  
22 to interrogate?

23 A. That's correct. I didn't do a physical exam myself or

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1 review of their medical history.

2 Q. Okay. Did the medical personnel do a review of their  
3 medical history?

4 A. They sat down with them and they asked them about  
5 major medical events in their life.

6 Q. Right. And then that information would be relayed to  
7 the interrogator?

8 A. If it seemed relevant. If they had an appendectomy  
9 20 years ago, they wouldn't have told us that; but if they had  
10 a recent break or, you know, something like that, we would  
11 have heard about it.

12 Q. If the person you were going to interrogate had, for  
13 instance, been refusing to eat, is that a piece of information  
14 that would have been made available to you so that you could  
15 assess that or you could factor that into ----

16 A. Well, we would have already known that, right, because  
17 we're there. And so the security personnel who provided  
18 feeding would have -- would have come into the morning  
19 meeting, because the security -- chief of security is there as  
20 well, and say detainee so-and-so refuses -- is refusing to  
21 eat.

22 Q. Very good.

23 A. What the -- let me see if I can answer your question,

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1    though, a better question.

2           Q.   Thank you.

3           A.   Okay.   Trying to learn from KSM.

4                If they -- their not eating was likely to impact the  
5   interrogation or the debriefing, the physician would have  
6   waded in and told us.

7           Q.   Understood.   What I'm trying to make sure of that I  
8   understand well and I understand how you -- how you approached  
9   this is:   You would have knowledge of any medical issues that  
10   would have impacted the interrogation, yes?

11          A.   Correct.

12          Q.   And if a detainee or a person you were going to  
13   interrogate had been, for instance, refusing to eat or to  
14   hydrate, you would have been provided that information or you  
15   would have known that information?

16          A.   I would have known that information, and the physician  
17   would have told us it -- it's okay to continue with this or  
18   it's not okay.   Although, in my experience, I never had anyone  
19   that was refusing to eat or refusing to drink.

20          Q.   Okay.   Were you, prior to the interrogations of  
21   Mr. Mohammad, told that there was an instance where he had  
22   refused to drink and therefore the rectal rehydration  
23   procedure had been utilized on Mr. Mohammad?   Were you aware

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1 of that?

2 A. Not at the time that he was being interrogated, not at  
3 the time that he was transferred to us.

4 Q. Okay. You were not aware of that at the time or that  
5 procedure didn't happen at the time? I'm trying to understand  
6 what you said.

7 A. We were not told that that had happened because that  
8 happened, I think, at -- I know subsequent to that, after  
9 reading reports preparing for this. Because when I first  
10 heard that, I thought that was probably a medical procedure  
11 that we should have known about.

12 But -- so subsequently, I learned that that happened,  
13 but we did not know that when he was transferred to Site 4  
14 with us.

15 Q. Understood. So you -- you did not have that  
16 information prior to your interrogation?

17 A. We didn't, but I think the physician that was with him  
18 traveled with him, and so if that had been an issue the  
19 physician thought we were -- it was important for us to know,  
20 he would have told us.

21 Q. Okay. Now, you testified that the plan for -- the  
22 interrogation plan for Abu Zubaydah was ultimately adopted or  
23 used as a template for future high-value detainee

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1 interrogations, correct?

2 A. And I meant in the most general sense, but in terms of  
3 the way that Dr. Jessen and I did it, I don't -- again, there  
4 was a training program that someone else had set up and they  
5 were doing training, so it may or may not have followed the  
6 process that Dr. Jessen and I followed.

7 Q. All right. And the other person you're referring to  
8 is the person that we've heard about earlier this week which I  
9 believe was NX2?

10 A. Yes.

11 Q. All right. And NX2 is also synonymous with the new  
12 sheriff?

13 A. Yes, sir.

14 Q. All right. All right. And so when you referred to  
15 the other training program, you're referring to that  
16 individual?

17 A. Yeah. It's probably a mistake to call it the other  
18 training program like I did because it was the training  
19 program. We didn't have a separate one, you -- if you follow  
20 what I'm saying. Dr. Jessen and I weren't training people, so  
21 there's only one training program, and it was his training  
22 program.

23 Q. Right. And this is the one where you described having

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1 attended one of those trainings and having raised your  
2 objections to the procedures that were being utilized during  
3 the training, correct?

4 MJ [Col COHEN]: Counsel?

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

6 MJ [Col COHEN]: Counsel, I'll give you a little leeway.  
7 Is there -- is there -- to the extent do you -- are you just  
8 trying to confirm it or is it leading to a follow-on question  
9 by just refreshing his recollection?

10 LDC [MR. RUIZ]: Yes, sir. It's going to lead on to -- to  
11 additional testimony.

12 MJ [Col COHEN]: Okay. All right. It is asked and  
13 answered, but if it's leading to -- to a question that's  
14 pertinent to your client or your issue, I will allow just some  
15 brief recollection because we did have three days of  
16 testimony. But let's -- please, to the extent that you can,  
17 don't just continue to ask asked-and-answered questions.

18 LDC [MR. RUIZ]: I understand. I understand, Judge.

19 MJ [Col COHEN]: I'll overrule for now, give you a little  
20 bit of leeway since we're just starting on your testimony.

21 LDC [MR. RUIZ]: I appreciate that.

22 MJ [Col COHEN]: All right.

23 Q. In terms of moving on to rendition transportation,

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1 okay, is it -- is it fair to say that some of your experience  
2 with rendition transportation was one that you thought that  
3 was unfair, in the sense -- in your book you recount a  
4 situation where you thought rendition transportation had been  
5 unnecessarily rough with Mr. Zubaydah and Mr. Nashiri?

6 A. It's accurate to say that.

7 Q. Okay. And in your book, you indicate that you were  
8 displeased by how rough that was?

9 A. I thought they were -- given that both of them in my  
10 opinion at that time were cooperating and Nashiri was starting  
11 to provide information about the attacks that were planned for  
12 Riyadh, that being physically rough with them -- and by that I  
13 don't mean beating them. I mean moving them around and, you  
14 know, making -- putting shackles on them in a very rough way,  
15 and that sort of thing, I thought that was unnecessary given  
16 that they would have just stood there and let you shackle  
17 them.

18 Q. Okay. In early 2003, it's correct that detainees were  
19 held in isolation, correct?

20 TC [MR. GROHARING]: Objection, Your Honor, leading.

21 MJ [Col COHEN]: It is. I will -- I will allow it at this  
22 point to -- to the point of getting him to -- to the follow-on  
23 question. I will allow -- you are correct, Counsel. I will

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1 allow you the leading question to introduce it, and I'll allow  
2 the government the same. If you need to introduce an issue, I  
3 will allow you to initially lead, but then follow-on questions  
4 should be asked in open -- open format.

5 LDC [MR. RUIZ]: I understand.

6 MJ [Col COHEN]: All right.

7 A. I recall the question. I think they referred to it as  
8 isolation, but it wasn't true isolation because they  
9 interacted with physicians and guards and -- and other folks.

10 Q. Okay. And in your book, you actually indicate that  
11 very same fact, that detainees were held in isolation except  
12 with contact for guards, debriefers, medical personnel, and on  
13 occasion, the chief of base, correct?

14 A. Yes. That was the answer I was -- just provided you.

15 Q. Okay.

16 A. And it's in my book.

17 Q. That's right. How would you describe the typical  
18 interrogation room where interrogations were to be held?

19 TC [MR. GROHARING]: Objection, Your Honor. Form of the  
20 question.

21 MJ [Col COHEN]: In what sense, Counsel? "How would you  
22 describe"?

23 LDC [MR. RUIZ]: Well, Dr. Mitchell ----

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1 MJ [Col COHEN]: You don't need to respond. I'm making  
2 sure I understand the objection.

3 LDC [MR. RUIZ]: Oh, okay.

4 TC [MR. GROHARING]: It -- the typical -- I would suggest  
5 that focusing the question on a particular place where --  
6 where interrogation was held as opposed to just a typical  
7 interrogation room. I don't know that that's helpful to you  
8 or that every interrogation room was typical.

9 MJ [Col COHEN]: Okay.

10 LDC [MR. RUIZ]: Judge ----

11 MJ [Col COHEN]: So I'll sustain it and let you rephrase  
12 it. I guess the predicate question would be was there any  
13 standardization among -- among the ----

14 LDC [MR. RUIZ]: I'll tell you where I'm trying to go. In  
15 his book, Dr. Mitchell describes interrogation room or  
16 interrogations were to be held.

17 MJ [Col COHEN]: Okay.

18 LDC [MR. RUIZ]: That's the extent of the information I  
19 have. He then gives a description of what that room is like.  
20 And so I was going to -- if I -- if I led him, I would say --  
21 I would have said his words, right, in the book, and said is  
22 this an accurate description of how you described an  
23 interrogation room. But since we're going to get into

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1 the ----

2 MJ [Col COHEN]: I understand.

3 LDC [MR. RUIZ]: ---- being and all of that kind of stuff.

4 I would simply say on that end, Judge, that I  
5 understand Dr. Mitchell was called from Mr. Connell, but at  
6 the same time, this is a pretrial hearing, and it is a witness  
7 that to some extent may be aligned interest with the  
8 government.

9 So I do ask for a little bit of leeway. I think it  
10 will help facilitate the flow of -- of the information. And  
11 it is -- quite frankly, I'm going to ask him -- the vast  
12 majority of questions are based on things that he said in his  
13 book or in his deposition. And I'm going to try to introduce  
14 that into the record to -- to provide the commission with  
15 information which I think is important.

16 This particular instance is one example of that where  
17 he describes -- he gives a description of an interrogation  
18 room that I will later look to connect to some of the evidence  
19 that we have in terms of the interrogation rooms that  
20 Mr. al Hawsawi has been in and to -- and to draw those  
21 connections particularly to Mr. al Hawsawi.

22 MJ [Col COHEN]: All right.

23 LDC [MR. RUIZ]: I ----

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1 MJ [Col COHEN]: I understand.

2 LDC [MR. RUIZ]: I understand ----

3 MJ [Col COHEN]: No, I understand. Like I said, I think  
4 what trial counsel is getting at is, is that the form of the  
5 question implied that there was a typical interrogation room  
6 as opposed to asking the -- the more generic question is was  
7 there a typical, and so I see the use of the word typical as  
8 opposed to specific ----

9 LDC [MR. RUIZ]: Well, I wouldn't have asked that question  
10 but for the previous objection. I would have just said in the  
11 interrogation room where interrogations were held, there's a  
12 cheap white plastic table that is set up like a desk. Isn't  
13 that how you described it? And I think he would have said  
14 yes, and there would have been a more focused and direct  
15 question. But I understand----

16 MJ [Col COHEN]: Yeah, like I said, I don't think we're --  
17 I think we're talking contrary to one another. Like I said, I  
18 understand -- I understand your position. I'm -- I'll give  
19 you a little leeway, but at the same time, you know, it is --  
20 it is beneficial.

21 Now, with respect -- I will say this, just with  
22 respect to -- to the book, if the parties intend to -- if --  
23 if the -- if the book in and of itself is -- is -- is that --

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1 is critical, the parties can offer a book into evidence and  
2 ask the witness if the information in that book is true. In  
3 which case it will then -- then the parties may cite to the  
4 book as -- as something for me to -- for me to consider as  
5 statements by -- by the witness that are in there.

6           So I don't want you to feel -- the parties to feel  
7 like you have to go line by line of a book.

8           LDC [MR. RUIZ]: Well, I'm not going line by line of the  
9 book. Quite frankly, I think there's some -- some important  
10 examples, and we've had three days of that.

11           As -- as I've indicated a number of times, I represent  
12 an individual client. And while I understand some of that  
13 testimony will -- will be considered by Your Honor in the  
14 context of all of the motions, I do feel the obligation to  
15 develop some of these individual facts and ----

16           MJ [Col COHEN]: Absolutely. And I'm not -- I don't want  
17 to preclude you from doing that. I was -- really what I was  
18 throwing out was if -- if it's beneficial to you and to other  
19 parties to say, look, the majority of the book is actually  
20 pretty relevant to his statements and I'd like him to admit  
21 that the information in there is true and you want to ask that  
22 question, then I can consider it as prior statements of the  
23 witness.

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1           So I'm not saying you should, I'm just saying ----

2           LDC [MR. RUIZ]: I -- I understand you're trying to  
3 facilitate the flow. I understand that. But I also do have  
4 an interest in eliciting this information ----

5           MJ [Col COHEN]: Absolutely.

6           LDC [MR. RUIZ]: ---- for the record.

7           MJ [Col COHEN]: And you may do so. Like I said, to the  
8 form of the question that implied that there was a typical, I  
9 just ask you to rephrase the question.

10          LDC [MR. RUIZ]: All right. So I'm just going to ask my  
11 questions, the -- I would have asked him otherwise ----

12          MJ [Col COHEN]: All right.

13          LDC [MR. RUIZ]: ---- which is typically what I should  
14 have done. And if they want to object based on leading, we  
15 can do that all day long.

16          MJ [Col COHEN]: Okay.

17                               **DIRECT EXAMINATION CONTINUED**

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

19           Q. So, Dr. Mitchell, in *Enhanced Interrogations* book, you  
20 described an interrogation room where interrogations were held  
21 and you indicated it had a cheap white plastic table that had  
22 been set up like a desk facing the center of the room with  
23 three flimsy lawn chairs that were positioned behind it. Is

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1 that an accurate description of interrogation room?

2 A. Can you show me where in the book I said that so that  
3 I can ----

4 Q. Absolutely. It would be page 111. And it's at the  
5 bottom of the -- of that particular page.

6 A. Yeah.

7 MJ [Col COHEN]: And no issue with -- with what you just  
8 did, Counsel. That makes -- I mean, prefacing into a section  
9 and asking a question makes sense.

10 LDC [MR. RUIZ]: Okay.

11 Q. I'm sorry. Did you have an opportunity to look at  
12 that?

13 A. Yes, sir.

14 Q. Okay. And was that an accurate description of the  
15 room where interrogations were to be held?

16 A. It's an accurate description of the room where that  
17 interrogation was held. My experience has been the rooms are  
18 set up differently.

19 Q. Sure.

20 A. And sometimes they have tables, sometimes they don't.

21 Q. Okay.

22 A. Sometimes they have chairs, sometimes they don't.

23 Q. Okay.

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1       A. And with the exception -- now, debriefing, they  
2 frequently have tables and chairs; but interrogations, they  
3 typically -- for me, anyway, they don't -- they don't  
4 typically because that's just another thing in the room that  
5 you've got to take care of.

6               Sometimes during interrogations, if a -- if a  
7 debriefer felt like she needed it, the guards would move a  
8 table in for her. And the only instance I can clearly  
9 remember of that for me was Abu Yasir al Jaza'iri, the one  
10 brief interrogation I had with him. So I would not say that  
11 in my experience it was typical that there were plastic  
12 chairs ----

13       Q. Right.

14       A. ---- and tables, although there were plastic chairs  
15 for the detainee to sit in once they started talking with us,  
16 we could move them -- move them from the wall to the seat. So  
17 there was frequently a plastic chair, but tables ----

18       Q. Right.

19       A. ---- I didn't like something between me and the person  
20 I was talking to.

21       Q. I understand. But at least in -- in this description,  
22 there was a cheap white plastic table that had been set up  
23 with three flimsy white lawn chairs, correct?

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1 A. That's true.

2 Q. All right. And was that based on your personal  
3 observation?

4 A. Yes, it was. I -- it was based on my personal  
5 observation.

6 Q. And then you go on to discuss in page 112 the  
7 positioning of the -- the positioning of the personnel within  
8 the room. And you indicate that the chief interrogator and  
9 his two recent graduates were sitting in chairs with the chief  
10 in the middle and the other two flanking him. Yes?

11 A. Yes.

12 Q. And there was a fourth interrogator who moved around  
13 the room ready to pitch in when the chief interrogator gave  
14 directions. Yes?

15 A. Yes.

16 Q. And then Mr. Nashiri was brought in hooded and  
17 shackled?

18 A. Yes.

19 Q. Okay. Now, you personally have no -- no personal or  
20 direct knowledge of how Mr. al Hawsawi was brought in to his  
21 interrogations, correct, because you weren't involved?

22 A. I don't know what the room looked like, and I don't  
23 know how he was brought in.

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1 Q. Understood. All right. But at least in this  
2 instance, that was your experience. Yes?

3 A. That was a statement. Yes, it was.

4 Q. Okay. In your view, in the way you approached this,  
5 were -- were debriefing rooms meant to be a constant reminder  
6 of the interrogation, interrogation room?

7 A. No.

8 Q. All right. If someone had said that, would you agree  
9 or disagree with that?

10 A. I would wonder what they were talking about.

11 Q. Very well. Okay. In terms of your previous work,  
12 you've indicated that some of the work that you did previously  
13 was psychological assessments?

14 A. Yes, sir.

15 Q. All right. And this is -- in fact, and I'm going back  
16 a little bit further in your career, right? There was a time  
17 in your career where you did a lot of psychological  
18 assessments of the type that psychologists normally do,  
19 correct?

20 A. Are you going back to 1985?

21 Q. I'm going back to much earlier in your career, yes.  
22 [The accused, Mr. al Hawsawi, withdrew from the courtroom.]

23 A. I was the chief of outpatient psychology at Wilford

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1 Hall. I had ten psychology residents that were -- worked for  
2 me that I supervised their psychologist assessments. I  
3 probably saw eight or nine patients a day; and in the context  
4 of doing that, if they required an assessment, I would do  
5 them. Also, I supervised the psychiatry residents on the  
6 psychological aspects of what they were doing.

7 Then I became the chief of -- the acting chief of  
8 neuropsychology for Wilford Hall, which is a 1,000-bed  
9 teaching hospital. And in that context, I did a lot of  
10 neuropsychological testing.

11 [The accused, Mr. al Hawsawi, returned to the courtroom.]

12 Q. Can you tell me in terms of a psychological  
13 assessment -- and I realize this may be a kind of a broad  
14 question, but you can narrow it if it's necessary. What --  
15 what type of background information or what type of  
16 observation would you typically utilize to provide a  
17 psychological assessment?

18 A. Well, that would depend on what kind of assessment I  
19 was asked. If I was asked to give an assessment of the  
20 person's current mental state, then I would use what I observe  
21 and what they say and the way they put their speech together.  
22 Because if you were interested, for example, in determining  
23 whether or not a person was having a psychotic episode, there

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1 are clear behavioral indicators, like clinging, like  
2 derailment, like extreme delusional kinds of things, like --  
3 there are lots of indicators that a person's having a  
4 psychotic episode.

5           You don't really need to understand -- you may need to  
6 understand their past to understand why it's happening now,  
7 but you don't necessarily need to know their past to be able  
8 to assess whether or not it's true. Same is true for a --  
9 something like depression, you know, or anxiety or an  
10 adjustment disorder with depressed mood or anxious mood or  
11 whatever that is. What you're interested in is the behavioral  
12 indices of whatever emotional state they're experiencing at  
13 the time.

14           So if you ask me about the state, I'm going to focus  
15 on what's happening now. If you ask me about the etiology of  
16 that state, then I'm going to be interested in what happened  
17 before.

18           Q. So there are different types of assessments. Yes?

19           A. I would say there are many different types of  
20 assessments.

21           Q. Okay. [REDACTED] what type -- because I know  
22 you've indicated that you were dual-hatted. [REDACTED]

23 [REDACTED] what type of assessments were you asked to

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1 perform?

2 A. They wanted to know how he was doing emotionally, what  
3 his emotional state was in the moment.

4 Q. Okay. And in order to do that, what did you do to --  
5 to provide or to present that type of assessment? What was  
6 your preparation for that?

7 A. I observed him when he didn't know he was being  
8 observed, when he thought he was by himself, to see what kind  
9 of affective displays were available, that you could see. I  
10 sat and talked with him. I listened to the process as well as  
11 the content of what he had to say, to see whether or not there  
12 were any indicators of thought disorder or mood disorder or  
13 whatever. I listened to the adjectives that he -- that he  
14 used, the verbs that he used, whether or not he was hopeful or  
15 not hopeful, those sorts of things.

16 Q. Okay.

17 A. I didn't ask him for his psychiatric history.

18 Q. So you were not -- you were not aware of any prior  
19 psychiatric history?

20 A. I -- I became aware of some medical problems that he  
21 was having that were physiological, and that those had  
22 affected his mood and those sorts of things. But I -- I  
23 didn't -- I didn't perform an analysis to determine whether or

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1 not he had been psychotic in the past or something else. I  
2 just didn't.

3 Q. So in terms of -- it wasn't a full-on clinical  
4 psychological assessment, in other words, is what you're  
5 saying, yes?

6 A. Well, I wouldn't characterize it that way.

7 Q. And how would you characterize it?

8 A. Well, I don't know what a full-on clinical  
9 psychological assessment means to you. It means -- to me, it  
10 means that as a guy who had often -- who had often been  
11 deployed in situations to determine what the emotional state  
12 of the person was and whether or not they could continue to do  
13 what they were doing with war fighters, it was in extremis the  
14 sort of thing I would do.

15 If you're asking me if I gave him psychological  
16 testing and did Rorschach kinds of things and then examined  
17 his -- his relationship with his mom and dad and, you know,  
18 talked about his educational history, I didn't do that.

19 Q. You didn't do that?

20 A. No.

21 Q. Okay. Just from the lay perspective, I think that's  
22 what I would view as a full-on psychological assessment, one  
23 where you provide testing instruments and have him do some

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1 testing ----

2 A. I ----

3 Q. You didn't do that, correct?

4 A. I didn't believe there was any need for that.

5 Q. Okay.

6 A. And besides, at that particular point, I was being  
7 weeded out of that process, and they were sending in clinical  
8 psychologists that were functioning more as mental health  
9 workers. I don't know if he saw one while he was at  
10 [REDACTED] or not, but he certainly would have seen one later.

11 Q. So in terms of -- and did Dr. Jessen assist you with  
12 that as well?

13 A. I wouldn't -- I wouldn't -- I wouldn't call Dr. Jessen  
14 my assistant.

15 Q. No, I said did he assist you?

16 A. He had duties. I had duties. Sometimes we did those  
17 duties together. Sometimes we helped each other out.

18 Q. Very well. But he was in the room with you?

19 A. You're asking me -- as you looked at this piece of  
20 paper you gave me, you saw that I had many, many, many, many  
21 opportunities to have contact with your client; and you're  
22 asking me if he is in the room with me, which makes no sense  
23 to me.

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1 Q. So if you take a look at your -- the chart that I  
2 provided to you, Dr. Jessen would be Interrogator 1.

3 A. Yes, sir. I know that.

4 Q. Okay.

5 A. What I'm saying is sometimes we -- we would stop in  
6 and say "How's it going" together, sometimes we wouldn't.

7 Q. So sometimes he would ----

8 A. Sometimes he would do things and I would do things.  
9 We didn't do a, what I considered an update on the -- the  
10 detainees' emotional state, right, every time that we saw them  
11 because the -- it was a periodic thing that headquarters asked  
12 for, "How's Hawsawi doing?" We'd go sit in Hawsawi's cell  
13 and -- and talk with him.

14 Q. So -- and during that time frame of November 2003 to  
15 April of 2004, you were both conducting or facilitating  
16 debriefs and performing psychological assessments; is that  
17 right?

18 A. Not simultaneously.

19 Q. Okay, but you were asked at different times to do each  
20 of these individual options, so one day you would be doing a  
21 debrief and the next day you would be doing a psychological  
22 assessment, yes?

23 A. No. 99 percent of the time, I would be doing a

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1 debrief. One percent of the time, they would ask about how  
2 the person is doing.

3 Q. So with respect to Mr. al Hawsawi, you did a number of  
4 debriefs with him, correct?

5 A. I'm certain I did. I don't recall what they were or  
6 when they were.

7 Q. Well, that's why I didn't ask you how many or which  
8 ones. I just said you did a number of, correct?

9 A. I did some, for sure.

10 Q. Right. But you also did a psychological assessment of  
11 Mr. al Hawsawi?

12 A. I don't know specifically whether I did or not. If  
13 you know that for a fact, I'd appreciate finding ----

14 Q. Sure.

15 A. ---- finding that out.

16 Q. I understand.

17 A. If -- but if they had asked me to, I would have.

18 Q. Understood.

19 So in your chart, I'm going to direct your attention  
20 to the December [REDACTED] 2003 entry. Again, this is at  
21 AE 632Y (MAH), pages 459 to 463. Do you see that there?

22 A. The [REDACTED] entries?

23 Q. Yes. And you see two documents next to that,

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1 MEA-10011-9894 and MEA-10011-2889. Do you see that?

2 A. I do.

3 [Counsel conferred.]

4 LDC [MR. RUIZ]: Judge, I'm going to ask to display to the  
5 witness MEA-10011-2889. This is found at AE 632W, page 2194.

6 It is an UNCLASSIFIED//FOR OFFICIAL USE ONLY document.

7 MJ [Col COHEN]: You may. You may publish this.

8 LDC [MR. RUIZ]: Yes. Can I have the overhead camera,  
9 please.

10 MJ [Col COHEN]: You may.

11 WIT: Whoa.

12 Q. Have you had an opportunity to review that document?

13 A. I did.

14 Q. Okay. So that is a [REDACTED] December 2003 -- excuse me,

15 [REDACTED] December 2003, indicates that a psychologist completed an  
16 updated psychological assessment?

17 A. Correct.

18 Q. Okay. Was that you?

19 A. It would have been me and Dr. Jessen.

20 Q. Okay. So it would have been the -- you -- that's what  
21 I was referring to in terms of did you do that with Mr. --  
22 with Dr. Jessen together.

23 A. I understand that you asked me that, and I think ----

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1 Q. Sure.

2 A. ---- my reply was sometimes we did it together,  
3 sometimes we didn't, and I couldn't tell because I couldn't  
4 remember the specific instance.

5 Q. Gotcha.

6 A. So this is not inconsistent with my testimony.

7 Q. Absolutely. Does that refresh your recollection in  
8 terms of performing a psychological assessment on ----

9 A. Well ----

10 Q. ---- behalf of Mr. al Hawsawi?

11 A. I'm looking at the document that we wrote, so yes,  
12 sir.

13 Q. Very good. Now, you indicate in there that this  
14 assessment is based on interviews of Mr. al Hawsawi as well as  
15 discussions with Mr. al Hawsawi during intelligence  
16 interviews, correct?

17 A. Yes.

18 Q. So the information that is contained in your  
19 assessment was based both on interviews as well as  
20 interactions during intelligence debriefings, correct?

21 A. Correct. Let me -- if I can, it would -- it would  
22 have been unprofessional not to include the observations  
23 during the debriefings since what they were asking is can he

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1 continue to be debriefed. And the best source of evidence for  
2 whether that's possible or not possible or -- or in our  
3 judgment appropriate or inappropriate would be how he acted  
4 actually in the debrief and not how he acted sitting in his  
5 cell when nobody was watching him.

6 Q. Right. But -- you make it very clear, and I  
7 understand -- I understand what you're saying, but it's very  
8 clear from this document that the psychological assessment  
9 that you performed included information derived from the  
10 intelligence interviews that you also were performing or  
11 assisting in, since -- that's a fact, right?

12 A. Yeah, that's a fact. I'm not arguing that fact.  
13 Although it could have been Dr. -- I don't believe I wrote  
14 this. I believe Dr. Jessen wrote it with my input, but I  
15 don't know for certain. It's not my style of writing. So I  
16 could have written it and for some reason written differently  
17 than I normally do. But in terms -- we would have certainly  
18 put this together -- we would have certainly put this document  
19 together after a discussion.

20 Q. Okay.

21 A. So he would have observed him, I would have observed  
22 him. We'd have paid particular attention to whether there  
23 were any discrepancies in our observations.

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1           He also -- the court also, I think, should know is  
2 that they routinely asked the debriefers, the person who was  
3 in charge of the site, not to do psychological assessments but  
4 essentially to comment on these same kinds of things because  
5 they were tremendously interested in preventing these --  
6 prolonged mental harm piece of this thing.

7           Q. I appreciate that. What I'd like to try to do is  
8 stick to the questions that are asked. I'm trying to  
9 formulate those as precisely as I can. And I understand that  
10 there are times where you want to give additional, amplifying  
11 information; but I would appreciate it if we could just stick  
12 to the question that I've asked. I think you've answered it  
13 and ----

14          A. I'll answer the question precisely as you ask it if  
15 that's what you would like me to do.

16          Q. Understood. Yes. That would be good.

17                So in this psychological assessment, which you based  
18 on both your intelligence interviews and your interview for  
19 psychological status, you indicate that Mr. al Hawsawi  
20 discussed medical problems with you, correct?

21          A. That's what it says in the document that you showed  
22 me, and I have no reason to doubt that.

23          Q. All right. And do you remember what those medical

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1 problems were?

2 A. He had a prolapsed anus -- or rectum, I guess you  
3 would call it, and he was in some discomfort.

4 Q. You indicate that he was mildly anxious?

5 A. Yes.

6 Q. And that his interaction was consistently amicable,  
7 consistent with what you said here today?

8 A. Correct.

9 Q. He was anxious to please?

10 A. It came across that way.

11 Q. And he had a markedly deferential interaction?

12 A. Yes.

13 Q. What is -- what is -- is that a term of art, "markedly  
14 deferential," or is that just a common, everyday usage  
15 description?

16 A. Common, everyday uses.

17 Q. Did you -- did you discuss with him -- did he tell you  
18 how he came to have a prolapsed anus?

19 A. I don't recall that discussion.

20 Q. Was it important to you at that point to understand  
21 how Mr. Hawsawi may have sustained that injury?

22 A. What was important to me was what might be irritating  
23 it.

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1 Q. Okay.

2 A. My assumption was he had spoken with the physicians  
3 about what caused it.

4 Q. Now, in [REDACTED] December of 2003, you were, in fact,  
5 present during a medical evaluation of Mr. al Hawsawi; isn't  
6 that correct?

7 A. I would have been on site. It doesn't mean that I was  
8 present for the evaluation.

9 Q. Okay. In your key, I'm going to refer you to the  
10 December [REDACTED] 2003 entry in the left-hand column, and  
11 specifically MEA-10011-2888. Do you see that?

12 A. Yes.

13 Q. Okay. Do you see that according to that entry on that  
14 particular date, there was a Medical Provider Number 1, an  
15 Interrogator Number 1, Interrogator Number 2, and a person  
16 described as NY7 who were present at Location 6 and had direct  
17 and substantial contact with Mr. al Hawsawi?

18 A. I see that they were present. I don't know that this  
19 indicates that they had direct and substantial contact.

20 Q. I understand. That's not my terminology, it's the  
21 government's, and this is the information that we've been  
22 provided. But you -- you do concur that at least that's what  
23 this document says?

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1 A. Correct.

2 LDC [MR. RUIZ]: Okay. May I have the overhead camera,  
3 please?

4 MJ [Col COHEN]: You may. Counsel, is that ----

5 LDC [MR. RUIZ]: Judge, this document can also be found at  
6 AE 632W, page 2193.

7 MJ [Col COHEN]: What is the classification of the  
8 document?

9 LDC [MR. RUIZ]: This is U//FOUO.

10 MJ [Col COHEN]: Trial Counsel, do you concur?

11 LDC [MR. RUIZ]: Sorry, Judge, I didn't hear you.

12 MJ [Col COHEN]: I was asking trial counsel if they  
13 concur. It's unmarked.

14 TC [MR. GROHARING]: Just one moment, Your Honor.

15 MJ [Col COHEN]: Oh, never mind. If you can show me the  
16 top. Okay, never mind. That's what I needed to see. We're  
17 good.

18 LDC [MR. RUIZ]: All right.

19 MJ [Col COHEN]: You may publish.

20 Thank you, Counsel. Yeah, if you'll just show me  
21 initially that, then I'll tell them they can hit the button to  
22 publish ----

23 LDC [MR. RUIZ]: Sorry about that, I ----

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1 MJ [Col COHEN]: That's all right. We're good.

2 Mr. Ruiz, just for planning purposes, we'll take our  
3 midmorning recess in five to ten minutes, depending on where  
4 you tell me is a good spot.

5 LDC [MR. RUIZ]: We can take it after he finishes reading  
6 or while he is reading now.

7 MJ [Col COHEN]: I'll let you get through this series of  
8 questions, and then we'll take a break.

9 WIT: I'm finished.

10 LDC [MR. RUIZ]: Okay. All right.

11 **DIRECT EXAMINATION CONTINUED**

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

13 Q. Do you -- do you recall being present at  
14 Mr. al Hawsawi's medical evaluation on [REDACTED] December 2003?

15 A. I don't recall being in the room when he was doing it.

16 Q. Okay. Is it possible that -- were there times where  
17 you would be present in the room where a medical assessment  
18 was being conducted?

19 A. That would be unusual for me.

20 Q. Okay. So what you're saying is that this information  
21 in terms of your -- about your presence is incorrect? You  
22 being present on the 10th of December ----

23 A. The information about ----

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1 Q. ---- 2003 ----

2 A. ---- me being present on the site is not incorrect.

3 Whether or not I was in this meeting or a separate meeting on  
4 that same day, this does not address.

5 Q. Okay. You see that in this document, it indicates  
6 that Mr. al Hawsawi complains of headaches, yes?

7 A. I do see that.

8 Q. All right. He also complains of left ear pain?

9 A. I see that.

10 Q. All right. And it indicates here that there was a  
11 two-year problem with hemorrhoids and/or prolapse, as you've  
12 discussed it; is that right?

13 A. I think it developed into prolapse after this, based  
14 on things that I've learned subsequently. I have a tendency  
15 to compress things when people ask me about it.

16 Q. Uh-huh.

17 A. But certainly I knew that he complained of  
18 hemorrhoids.

19 Q. Okay. So at the time that -- December [REDACTED] when you  
20 performed the psychological assessment, you had some  
21 knowledge, some background regarding Mr. al Hawsawi's medical  
22 conditions, correct?

23 A. I'm -- I'm certain we would have, yeah. The physician

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1 would have told us.

2 LDC [MR. RUIZ]: Okay. Judge, I can stop now.

3 MJ [Col COHEN]: Okay. All right. We'll take a 15-minute  
4 recess. Sir, the same instructions.

5 [The R.M.C. 803 session recessed at 1016, 24 January 2020.]

6 [The R.M.C. 803 session was called to order at 1042,  
7 24 January 2020.]

8 MJ [Col COHEN]: The military commission is called to  
9 order. Parties are present. Sir, go ahead and return to your  
10 seat. Thank you very much.

11 [The witness resumed the witness stand.]

12 MJ [Col COHEN]: Defense Counsel, your witness.

13 **DIRECT EXAMINATION CONTINUED**

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

15 Q. Sir, we've talked about your psychological assessment  
16 of Mr. al Hawsawi and the fact that during that psychological  
17 assessment, he discussed medical problems with you.

18 The question I have for you is: Were you aware that  
19 in March of 2003, Mr. al Hawsawi had received a medical  
20 assessment and had been given an assessment of a relatively  
21 healthy -- as a relatively healthy individual? Were you aware  
22 of that in discussing his medical background or his medical  
23 history?

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1           A. As I told you, I didn't really discuss his medical  
2 history with him. I got in-the-moment updates from the  
3 physician who -- who examined him. So I don't know what his  
4 previous one was.

5           Q. Okay. So in your discussions with Mr. al Hawsawi, you  
6 did not talk about previous health issues or lack thereof?

7           A. I don't -- I don't recall the content of our thing.  
8 On those kinds of evaluations, it's primarily driven by the  
9 detainee in terms of what they want to talk about, what's  
10 important to them, what's on their mind, what they're  
11 concerned about. It could have come up, it couldn't have come  
12 up. I don't know.

13                 And just to answer your question explicitly, if -- I  
14 don't know that he would have known what the medical  
15 assessment was that he was healthy and good to go from  
16 whatever day you said. I don't know that the physician would  
17 have told him that, so I don't know.

18           Q. Did -- did the medical -- did the medical physician  
19 you spoke with tell you that in 2003 in March, Mr. al Hawsawi  
20 had been given a rectal exam and it had been normal?

21           A. I don't recall that.

22           Q. Okay.

23           A. I mean, I think not.

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1 Q. Do you recall seeing any documents that indicated that  
2 Mr. al Hawsawi had, in fact, a normal rectal exam in March of  
3 2003?

4 A. No.

5 LDC [MR. RUIZ]: May I have the overhead camera, please?

6 MJ [Col COHEN]: You may. Is this government-provided  
7 discovery?

8 LDC [MR. RUIZ]: Yes, sir.

9 MJ [Col COHEN]: Okay. You may -- thank you. You may  
10 publish.

11 Q. If I may have you just review this document and ----

12 MJ [Col COHEN]: One second, Counsel.

13 TC [MR. GROHARING]: The Bates number on this document?

14 MJ [Col COHEN]: Go ahead -- just go ahead and pull it up.  
15 We can see it there. MEA-10011-0002869.

16 TC [MR. GROHARING]: Thank you.

17 LDC [MR. RUIZ]: It's also contained at AE 632W, page  
18 21 -- 22175 [sic].

19 MJ [Col COHEN]: Thank you, Counsel. Counsel, I believe  
20 you asked him to briefly review it?

21 Q. If you could please review the document or read --  
22 read the document.

23 A. I've read it.

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1 Q. Okay. Do you see down there at the bottom where it  
2 says Mr. al Hawsawi is a healthy young male with no  
3 significant medical problems?

4 A. I read that. I ----

5 Q. Had you ever seen this document before?

6 A. No.

7 Q. And right above that, where it says he had a normal  
8 rectal examination ----

9 A. I see that.

10 Q. ---- had you ever seen that in any medical  
11 documentation from Mr. al Hawsawi?

12 A. No.

13 Q. Okay. So when you assessed Mr. al Hawsawi in December  
14 of 2003, you -- as you've indicated, I think, and very  
15 clearly, you had no -- no background or really no information  
16 in terms of his previous medical history because you were  
17 focused on the assessment at that time. Is that fair -- or is  
18 that right?

19 A. I would concur with that assessment.

20 Q. Okay. Now, if you wanted to do a -- if a -- if a  
21 professional in your field wanted to do a more in-depth  
22 assessment, would it be beneficial for them to have an  
23 understanding of the person's medical history?

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1       A. Well, I was getting briefings from a physician who had  
2 just examined him, so I don't know that I would -- and I'm not  
3 medically qualified to make decisions about his previous  
4 medical history, so ----

5       Q. I understand.

6       A. ---- I think what's beneficial for me is what the  
7 physician was saying about the exam he just did. Because I'm  
8 asked to provide an opinion about going forward, not about  
9 status in the past.

10      Q. Okay. So ----

11      [Counsel conferred with paralegal.]

12      MJ [Col COHEN]: Okay. FOUO, and then just show the  
13 government the MEA, ending in 2888.

14      LDC [MR. RUIZ]: Judge, this document is also contained at  
15 632W, page 2193.

16      MJ [Col COHEN]: Thank you.

17      LDC [MR. RUIZ]: This is the 10 December medical  
18 evaluation at -- that we have ----

19      MJ [Col COHEN]: Thank you.

20      LDC [MR. RUIZ]: ---- just recently discussed.

21      Q. Dr. Mitchell, what I want to draw your attention to is  
22 the middle of the document. Actually, I'll let you read it  
23 and then I'll ask you the question.

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1           A. Do you want me to read the whole document or do you  
2 want me to read the middle? And if you want me to read the  
3 middle, please tell me where to start.

4           Q. Sure. Do you see where it says, "He also has a  
5 two-year problem"?

6           A. I do.

7           Q. Okay. You can read from there, there down.

8                   So this medical assessment from [REDACTED] December 2003  
9 indicates that Mr. al Hawsawi has a two-year problem with  
10 hemorrhoids, correct?

11          A. That's what it says in the document.

12          Q. Right. And this is the person who would have been  
13 providing you with background information on Mr. al Hawsawi's  
14 medical status, correct?

15          A. Correct.

16          Q. And you've also seen the document I showed you from  
17 March of 2003 that indicates that Mr. al Hawsawi had a normal  
18 rectal examination?

19          A. Okay.

20          Q. Okay. Those two would seem to be inconsistent; isn't  
21 that right?

22          A. Not to me.

23          Q. Okay. Explain.

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1       A. Okay. Hemorrhoids come and go. If you asked a  
2 physician whether or not they're displayed at a point in time,  
3 they may or may not be. So he could have had a normal rectal  
4 examination that didn't have hemorrhoids showing, and then  
5 later because of diarrhea have those hemorrhoids come out.  
6 But I'm not a physician. I'm probably not the best guy to ask  
7 that. That just makes common sense to me.

8       Q. And in your -- and your assessment would also say that  
9 about the prolapse itself, the piece of tissue hanging out  
10 from Mr. al Hawsawi's rectum that he had to reinsert every  
11 time he went to the bathroom, is that something that you think  
12 would also come and go? I'm asking.

13      A. I find that question offensive. Let me ----

14      Q. I'm sorry.

15      A. --- be clear.

16      Q. How so? How so?

17      A. I don't recall ----

18      Q. No, sir, let me -- let me -- I asked you a question.

19      TC [MR. GROHARING]: Your Honor, let the witness -- I  
20 would ask that the witness be allowed to answer the question.

21      MJ [Col COHEN]: He said "how so," so he can explain now.  
22 You may answer why -- why you found it offensive.

23      A. Well, the suggestion is that I'm indifferent to his

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1 discomfort and that he had that prolapsed rectum at the time.  
2 And I believe firmly that if that had been present -- I know  
3 it developed later, I'm aware that that happened later. But I  
4 think if it had been a problem at the time, the physicians who  
5 were going --

6           They get better medical care than citizens of the  
7 United States, than men in the military. If he had been  
8 suffering from a prolapsed rectum at the time of that  
9 examination, either one of those two examinations, I'm willing  
10 to bet that the physician would have put it in the report.

11       Q. Of course, that's your opinion, correct?

12       A. Whose opinion did you ask for?

13       Q. I asked for your opinion. That's right.

14           But you're betting that the physician put that in his  
15 report.

16       A. No. I said he would have put it in the report if it  
17 had been there.

18       Q. All right. You are aware that the Senate Select  
19 Intelligence Committee indicated that Mr. al Hawsawi had been  
20 diagnosed with tears to his anal cavity, yes?

21       A. I believe I read that.

22       Q. All right. And the prolapse that we've just been  
23 discussing?

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1       A. Right. I don't remember the timeline for that  
2 diagnosis.

3       Q. Okay. So just to be 100 percent clear, at the time of  
4 your psychological assessment of Mr. al Hawsawi, it was your  
5 belief that he was only suffering from a case of hemorrhoids?

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

7       MJ [Col COHEN]: Counsel, it seems to have been asked and  
8 answered.

9       LDC [MR. RUIZ]: I'll move on, Judge.

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

11      Q. You did not know at that time that Mr. al Hawsawi had  
12 tears to his rectal cavity?

13      A. I can't be certain of when I learned of that, but I  
14 eventually did.

15      Q. And you've indicated you think the rectal prolapse  
16 came after?

17      A. What I intended to indicate, if I said it inartfully,  
18 was that it was hard for me to believe that two independent  
19 physicians would have examined this guy and gone into the  
20 level of detail that they went into about his medical history  
21 and for some reason missed that or faked it or tried to be  
22 deceptive.

23      Q. So you've talked about a situation where you asked a

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1 physician's assistant to look at Gul Rahman after you had seen  
2 him and thought that he really needed to be looked at, and you  
3 were basically told, "I don't have time for fucking  
4 terrorists." Isn't that right?

5 A. That's an exact quote.

6 Q. Yes. And that was a medical professional who was on  
7 station and whose ethical and otherwise duties were to provide  
8 adequate medical care for somebody who was detained under our  
9 custody, correct?

10 A. That's true.

11 Q. And they basically told you to go pound sand?

12 A. That person did.

13 Q. Right. So it is not inconceivable that another person  
14 may also have the same indifference towards a person who was  
15 in Mr. al Hawsawi's situation; isn't that right?

16 A. I think that is unlikely enough to be improbable.

17 Q. Okay. There was another situation where you also  
18 turned to medical professionals to see if they would stop an  
19 interrogation that you were witnessing. And you indicated  
20 that they just looked at you, kind of shrugged their  
21 shoulders, and didn't do anything to stop what was happening;  
22 isn't that right?

23 A. That's correct.

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1 Q. All right. So that was another example of medical  
2 professionals' indifference in a situation where you would  
3 expected them to do otherwise; isn't that right?

4 A. I would concur with what you just said.

5 Q. All right. At the time that you psychologically  
6 assessed Mr. al Hawsawi, were you aware that he had been  
7 waterboarded at Location Number 2?

8 A. No.

9 Q. Did you ask?

10 A. I asked about it. He described water dousing, not  
11 waterboarding.

12 Q. Do you have a recollection as to how he described  
13 that?

14 A. I think he said he was put on the -- a table that  
15 would tilt and they poured water on him.

16 Q. Okay.

17 A. I mean, that's my recollection.

18 Q. Did he tell you that the water was cold?

19 A. I believe he did say he found it cold.

20 Q. Okay. Did he tell you that they waterboarded him for  
21 a specific or an indeterminate period of time? Do you  
22 remember that?

23 A. I don't remember a timeline.

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1 Q. Do you remember any other details that were recounted  
2 to you about his waterboarding at Location Number 2?

3 TC [MR. GROHARING]: Objection, Your Honor, form of the  
4 question. Counsel again referred to waterboarding. The  
5 witness indicated that he didn't believe he was waterboarded.

6 MJ [Col COHEN]: Okay.

7 TC [MR. GROHARING]: So it assumes facts not in evidence.

8 MJ [Col COHEN]: All right. Counsel, he is correct. He's  
9 used the word "water dousing."

10 LDC [MR. RUIZ]: Okay.

11 MJ [Col COHEN]: I'll allow -- you may answer the question  
12 using the term that you chose.

13 A. Water dousing? Would you repeat the question?

14 Q. Do you recall any additional details that he related  
15 to you about the water dousing?

16 A. I have a vague recollection but I can't be 100 percent  
17 certain that a tarp was somehow involved.

18 LDC [MR. RUIZ]: Okay. Judge, I have a series of  
19 photographs I would like to publish. These should be  
20 published only to the witness and to the parties ----

21 MJ [Col COHEN]: Okay.

22 LDC [MR. RUIZ]: ---- as they are Secret -- classified at  
23 the Secret level.

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

2 LDC [MR. RUIZ]: Judge, these are AE 632W, pages 2476,  
3 2477, 2485. And it's FAC-14, 15, and 23, is the series of the  
4 pictures that I'm going to ----

5 MJ [Col COHEN]: Thank you, Counsel.

6 Q. You've seen this photograph before?

7 A. Yes.

8 Q. The -- the waterboard in the photograph, does that  
9 apparatus bear any of the characteristics that Mr. al Hawsawi  
10 described in terms of where he was placed when he was doused  
11 with water?

12 A. He said he was placed on a flat surface that could be  
13 tilted, so to the extent that that thing sticking up in the  
14 air that I can't quite see is a flat surface, it appears to  
15 be -- to be capable of tilting.

16 Q. Okay. I think you've indicated you have not seen this  
17 personally?

18 A. No.

19 Q. And it did not look like one of the surfaces or  
20 waterboards that you utilized when you were applying those  
21 methods, correct?

22 A. Correct.

23 LDC [MR. RUIZ]: Judge, MAA -- MEA-FAC-23.

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1 Q. It's a different angle, I believe, of the same  
2 picture, but do you -- do you recognize that picture?

3 A. I've never seen this picture.

4 Q. All right. Does this waterboard resemble one that you  
5 would have utilized in your applications of the waterboarding?

6 A. Isn't it a picture of the device you just showed  
7 me ----

8 Q. Different angle.

9 A. ---- from a different angle?

10 Q. Sure.

11 A. No.

12 Q. Okay. MEA-FAC-15. I believe you indicated that  
13 Mr. al Hawsawi mentioned something of -- he was laid on a tarp  
14 or some kind of -- could you elaborate?

15 A. Not much. I -- I think if you recall my answer, it  
16 was that I have a vague recollection that he did, that he  
17 mentioned it. And that's it. I just have a vague  
18 recollection that it was mentioned that -- that a tarp was  
19 involved, that he was laying on a tarp when they poured water  
20 on him.

21 Q. What I can't recall myself is if you said the color of  
22 the tarp.

23 A. I don't know if he said the color of the tarp.

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1 Q. Okay.

2 A. I don't recall it.

3 Q. Understood. Okay. The next document I want to show  
4 you is JDM-207. It's at AE 632W, page 2341.

5 LDC [MR. RUIZ]: Judge, this is a Secret document. Do you  
6 have that?

7 [Counsel conferred.]

8 LDC [MR. RUIZ]: Judge, this document is not displayable  
9 to the accused, I am informed.

10 MJ [Col COHEN]: Okay. I'll let you show it to the  
11 witness, and you have -- the record reflects what it is.

12 LDC [MR. RUIZ]: I'm sorry, Judge?

13 MJ [Col COHEN]: You can still show it to the witness.

14 LDC [MR. RUIZ]: Okay. Do you guys want to see it? It's  
15 JDM-207, and it's in our filing at page 2341. And  
16 specifically, I'm going to refer to -- actually, it's a  
17 four-page document -- excuse me, five-page document. I'm  
18 going to be referring to -- the witness to page 209 of that  
19 document.

20 MJ [Col COHEN]: Okay. As indicated on the -- on the --  
21 on the page you're showing me, it says 209. Is that what  
22 you're saying?

23 LDC [MR. RUIZ]: Correct.

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1 MJ [Col COHEN]: Okay.

2 LDC [MR. RUIZ]: It's a five-page document, but this  
3 particular page is 209.

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

5 LDC [MR. RUIZ]: Okay. Actually, scratch that. I need to  
6 show him the first picture. Let's start with 207.

7 MJ [Col COHEN]: You may.

8 Q. Can you see that okay?

9 MJ [Col COHEN]: Counsel, if you could back it out just a  
10 little bit, it will make it easier to see the whole paragraph.

11 LDC [MR. RUIZ]: I can't see it on my screen, so I'm not  
12 sure what it's looking like.

13 MJ [Col COHEN]: Can we back out just a little bit on the  
14 size? Perfect. Thank you.

15 LDC [MR. RUIZ]: Better? Okay.

16 A. What am I supposed to do with this document?

17 Q. Well, review it for one. Just read it so that you can  
18 know what the document is, and then I'm going to ask you some  
19 questions.

20 A. Do you want me to read the whole five pages?

21 Q. Well, why don't you just read the first two  
22 paragraphs. That will orient you as to what the document is  
23 and how it relates to you.

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1 A. I've read those two paragraphs.

2 Q. Great. So you understand what the document is. I'm  
3 not asking you to say, but you know what the document -- how  
4 it relates to you, correct?

5 A. Correct.

6 Q. All right. I'm showing you JDM-209, and I'm  
7 just going to ask you to read the very first paragraph at the  
8 top of that document.

9 A. Okay.

10 Q. Do you see that?

11 A. Uh-huh.

12 Q. Okay. Without telling me the substance of the  
13 document, having reviewed this document, does it change your  
14 answer in terms of whether Mr. al Hawsawi had told you he was  
15 water doused or waterboarded?

16 A. Clearly, I believed the latter when I answered this  
17 question.

18 Q. Understood. Having had an opportunity to review this  
19 document, does that refresh your recollection that  
20 Mr. al Hawsawi, in fact, told you ----

21 A. I would have to say it does.

22 Q. Okay. Thank you. Okay. Just to pinpoint the -- the  
23 timing of that, at the time that you -- were you aware of --

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1 of that information at the time you performed Mr. al Hawsawi's  
2 psychological assessment or did that information come to your  
3 attention after the psychological assessment?

4 A. It's impossible for me to put a place in that time.  
5 It's impossible for me ----

6 Q. I understand.

7 A. ---- for me to do it. I suspect I knew it before  
8 because headquarters was very interested.

9 And to clarify my previous answer, what I intended to  
10 say is what he described to me sounded more like water dousing  
11 than waterboarding, right? If -- it's entirely possible he  
12 called it waterboarding, but it -- what he described sounded  
13 to me like water dousing instead of waterboarding because of  
14 some differences between the two.

15 Q. And you -- can you elaborate on -- on what those  
16 differences are to the best of your recollection between what  
17 he described and how you would have done it in your  
18 applications?

19 A. Well, if -- if we were waterboarding person -- the  
20 person was put back at a 45-degree angle, and their face was  
21 covered with a cloth, and the water was poured on the cloth.  
22 I don't recall him mentioning anybody covering his face with a  
23 cloth or pouring water specifically on the cloth right here at

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1 the point between the nose and the lip, which is where you're  
2 supposed to do it.

3 My recollection is there was a lot of water involved  
4 in it, they sort of poured it all over him, and some of it was  
5 on his face.

6 Q. And from what I understand in having listened to your  
7 testimony, in your view, if somebody were waterboarding or  
8 attempting to waterboard someone, that would not be the  
9 appropriate way of doing that?

10 A. I don't think it would be an appropriate way of water  
11 dousing a person either. I don't think it's an appropriate  
12 thing to do.

13 Q. I understand. Of course, I -- I recognize you weren't  
14 there, but thank you.

15 At the time that you assessed Mr. al Hawsawi, did --  
16 were you aware that he had been subjected to sleep deprivation  
17 in excess of 72 hours in a standing position?

18 A. I was probably told that. I don't recall that at the  
19 time. You know, if they subjected him to standard enhanced  
20 interrogation techniques, as they were called then -- I mean  
21 standard interrogation techniques, as they were called then,  
22 or enhanced interrogation techniques, I would have been told  
23 that that happened. I just don't recall the details of it.

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1           Q. I understand. You're saying standard in the sense  
2 that they were the ones that had been identified, but you're  
3 not saying that they actually applied it in the standards that  
4 you have described?

5           A. No. It sounds to me like you don't really understand  
6 the way the CIA differentiated different forms of -- there  
7 were things they called standard interrogation techniques that  
8 had to do with sleep deprivation less than 72 hours or  
9 something like that, and some food restrictions and other  
10 stuff that I don't recall right offhand. And you did not have  
11 to specifically request, I think, headquarters' permission to  
12 use those things initially, although you did have to report it  
13 if you did.

14          Q. Okay. The -- the point being, however, is that you  
15 did not have a knowledge of exactly how long Mr. al Hawsawi or  
16 how he had been subjected to sleep deprivation, correct?

17          A. I think the answer that I gave you was that I would  
18 have been told at the time but I don't recall now.

19          Q. Okay. And would you have thought that that  
20 information was important to include in a psychological  
21 assessment, meaning the, my word, traumatic experiences that  
22 the person you were assessing had experienced a few months  
23 back?

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1           A. They asked me to determine what his status was at the  
2 time, they didn't ask me to provide a psychosocial history.  
3 So I probably wouldn't have included that.

4           Q. Would his status not have been dependent at least in  
5 part on what he had experienced very recently leading up to  
6 your assessment?

7           A. And it would have been displayed in the moment.

8           Q. I see. So as I understand it, my word, this was more  
9 like a drive-by assessment as opposed to a comprehensive  
10 assessment. In other words, you're giving them a snapshot of  
11 what you see on that particular day as opposed to the overall  
12 state of Mr. Hawsawi; is that accurate?

13          A. Well, I would disagree with your initial  
14 characterization. There was nothing drive-by about it in the  
15 sense that we just going to touch and go, you know. But in  
16 terms of your later characterization of it being an assessment  
17 of his mental state at the moment, like a snapshot in time,  
18 with the full expectation that there were those before them  
19 and others to come afterwards so that they could get a  
20 longitudinal view of that, I would concur with what you said.

21          Q. Well, I guess the reason I say is drive-by because I  
22 think it's been determined that you didn't really have a clear  
23 picture of what his previous medical history was, for one,

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1 correct? I mean, you didn't sit down and review medical  
2 documentation prior to conducting a psychological assessment  
3 on Mr. al Hawsawi, right?

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

5 MJ [Col COHEN]: Counsel, response?

6 LDC [MR. RUIZ]: Judge, this is in the context of the --  
7 the psychological assessment and how comprehensive or not it  
8 was. The witness has just indicated, based on my  
9 characterization, that it was not a drive-by psychological  
10 assessment. He's indicated why. I'm essentially affirming  
11 the fact that, as I understand it, he has not reviewed the  
12 medical of Mr. al Hawsawi.

13 MJ [Col COHEN]: Okay. If you want to ask him what he  
14 reviewed prior to -- to doing that assessment on that day,  
15 I'll allow that question.

16 LDC [MR. RUIZ]: Sure.

17 Q. Rather than repeating it, can you -- can you answer  
18 that question?

19 A. Sure. I got -- we got updates from the physicians. I  
20 didn't feel like it was necessary to go back and -- they  
21 compartmentalized their medical records into a compartment  
22 that folks can't have access to ordinarily. So I didn't feel  
23 like it was -- well, I don't even know if I could have gone

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1 back and read his -- you know, his medical reports.

2 But I had the physician sitting there talking to me,  
3 so I didn't feel like it was my place to second guess the  
4 physician. They're physicians.

5 Q. Did you know at the time of your psychological  
6 assessment of Mr. al Hawsawi that he had received an ice bath  
7 while at Location 2 by NX2?

8 A. I heard that at some point. I don't know if I knew it  
9 at the time.

10 Q. Okay. And now in terms of your understanding of what  
11 a -- a bath, your experience with what you saw as a bath was  
12 what you described in terms of the bath that Mr. al Nashiri  
13 was administered, correct?

14 A. That was the bath that I observed at the time. I make  
15 no implication that that was the bath that NX2 did ----

16 Q. Right.

17 A. ---- with Hawsawi.

18 Q. Right. But what I'm asking you is: In the context  
19 that you understood, the bath that you had seen was one where  
20 they took a brush, and I think you described it very vividly  
21 and graphically, where they would scrub the ass, scrub the  
22 balls, and then scrub the face of Mr. Nashiri; is that right?

23 A. That's what -- that's what I observed. That's what I

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1 wrote in the book. That's what I reported to the IG.

2 Q. That's right. So that was at least how somebody had  
3 described that procedure, they described it as a bath. I  
4 think you said that's BS or something to that effect.

5 A. I did say that, yes.

6 Q. Okay. Did you know that Mr. al Hawsawi had also been  
7 walled at the time of your psychological assessment?

8 A. Well, I don't know -- again, I can't recall whether  
9 they told me before or after. I knew he had been walled.  
10 They would have -- and most likely the way the procedures  
11 worked is I would have gotten a briefing on that, so I'm  
12 willing to speculate and concede that I probably heard about  
13 it before.

14 Q. Well, it certainly is not anything that is referenced  
15 in your assessment of Mr. al Hawsawi.

16 A. We didn't. The point of the assessment was not to  
17 list every EIT that he had been exposed to, if he had been  
18 exposed to them, because that's already in the record.

19 Q. I'm sorry. Which record?

20 A. In his interrogation reports that came out of Site 2.  
21 It should be there.

22 Q. Okay. But you had not reviewed those intel --  
23 intelligence reports before conducting the psychological

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1 assessment of Mr. al Hawsawi, correct?

2 A. No.

3 Q. You didn't feel like you needed to do that?

4 A. No.

5 Q. You didn't feel like you needed to have that history  
6 to inform the assessment you were performing?

7 A. I looked at the way he was in the moment, and the way  
8 he was in the moment was accurately reported in our  
9 assessment.

10 Q. I understand. Did you know that Mr. al Hawsawi at  
11 that time had been hung nude from the ceiling for extended  
12 periods of time? Did you know that at the time of your  
13 assessment?

14 A. No, and I don't know that now. I know he made the  
15 assertion that he had been, but I don't know that to be a  
16 fact.

17 Q. Okay. So as I'm understanding your -- and the reason  
18 I'm taking you through each -- each individual one, is because  
19 I want to make sure on the record under oath that I get your  
20 answer in terms of your specific knowledge. So I understand  
21 that, you know, you may be wondering why, but that's why I'm  
22 doing it. And also on the off chance that one of them you may  
23 recall and say, yeah, I didn't know that at the time, okay?

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1 So that's where we're going.

2 Did you know that he had been slapped in the face at  
3 the time you performed your assessment?

4 A. Again, if that had been used as an EIT, I would have  
5 been told about it.

6 Q. Okay. Well, let me ask you this: What -- what did  
7 you know in terms of the methods that had been employed on  
8 Mr. al Hawsawi while at Location 2?

9 Because you're saying that -- excuse me -- you would  
10 have been told about it, so what have you been told about  
11 Mr. al Hawsawi prior to your psychological assessment as to  
12 what he had been subjected to?

13 A. I'm sure that I would have been told that he'd been  
14 subjected to EITs and a list of what they were.

15 Q. Okay. So you would have been provided a list of  
16 everything that he was subjected to?

17 A. Someone would have told me that, yes.

18 Q. Okay.

19 A. I would have got a briefing on him.

20 Q. All right. Forehead against the wall, as has been --  
21 as you described earlier in the week, did you know  
22 Mr. al Hawsawi had been subjected to extended periods of  
23 having his head forced up against a wall and to hold that

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1 position?

2 A. Same answer. If it had -- if it had happened to him,  
3 I'm sure that I would have heard about it.

4 Q. Did you -- did you have any sense of -- was it not  
5 important in the assessment how all of these tortures that he  
6 had endured ----

7 TC [MR. GROHARING]: Objection, argumentative.

8 Q. You haven't -- you haven't ----

9 LDC [MR. RUIZ]: I haven't finished the question.

10 MJ [Col COHEN]: Yeah. Finish your question and I'll ----

11 LDC [MR. RUIZ]: Sure.

12 MJ [Col COHEN]: ---- I'll hear the objection.

13 Q. Did you have any sense of how all these tortures  
14 Mr. al Hawsawi had endured impacted him psychologically?  
15 Doesn't that matter?

16 MJ [Col COHEN]: The question ----

17 TC [MR. GROHARING]: Argumentative as to characterization  
18 of torture, assumes facts not in the record. That's a legal  
19 conclusion that the judge would be required to make if -- if  
20 relevant, Your Honor.

21 MJ [Col COHEN]: Understanding that I have made no  
22 conclusion that it is or it is not, can you answer the  
23 question? I'll let him answer the question. If he chooses

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1 to -- to disagree with your -- with your -- with your use of  
2 the word "torture," he -- he may do so, and then you may  
3 rephrase the question.

4 LDC [MR. RUIZ]: Well, I'm going ----

5 MJ [Col COHEN]: But his opinion is not binding on me.

6 LDC [MR. RUIZ]: And I understand he doesn't have to agree  
7 with that, so I ----

8 MJ [Col COHEN]: Right.

9 LDC [MR. RUIZ]: ---- understand your ruling, Judge.

10 MJ [Col COHEN]: All right.

11 LDC [MR. RUIZ]: Thank you.

12 MJ [Col COHEN]: Sir, you may answer the question, if you  
13 think you can, based on the use of that word. But your  
14 opinion on whether it is or it isn't has no bearing on me.

15 WIT: Understood. I -- repeat your question.

16 LDC [MR. RUIZ]: Okay. It may be slightly different.

17 Q. The essence of what I'm asking you is: Did it matter  
18 in your assessment that Mr. al Hawsawi had been tortured in  
19 these many, many ways? Did it matter at all in assessing his  
20 mental state at the time or not? Did it matter to you?

21 A. Okay. Let me answer that.

22 First off, I reject your characterization as the use  
23 of EITs as torture because it had been approved by the

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1 President, briefed to the National Security Council, judged by  
2 the OLC of the Department of Justice to be legal, approved by  
3 the Director of the CIA, carefully monitored by medical  
4 physicians when these things were occurring. And they had to  
5 have a psychologist, not me or Bruce, during the  
6 administration of these EITs when he was at Site 2.

7 Q. If you did the same thing today, would it be torture?

8 A. I don't -- I'm not going to get into that.

9 TC [MR. GROHARING]: Objection, Your Honor. The witness  
10 is still answering the question. I'd ask that he be allowed  
11 to finish.

12 Q. I'm sorry. I thought you were ----

13 A. No, I'm not finished with the question.

14 Q. Okay.

15 A. We would have been told at the time about what he had  
16 experienced, and certainly what he had experienced would have  
17 been factored into my assessment of how he was doing at the  
18 moment. However, I would not necessarily have written that  
19 into the document because those data are already in the  
20 system.

21 Q. Did you take notes?

22 A. No.

23 Q. Why not?

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1           A. The CIA prohibits me taking personal notes.

2           Q. Well, I wasn't asking about personal notes. I was  
3 asking about notes about a psychological assessment of a  
4 person who had been systemically tortured for the past five  
5 months. Did you take notes to reference what assessment you  
6 were conducting, yes or no?

7           TC [MR. GROHARING]: Same -- same objection, Your Honor,  
8 as to the characterization and the use of "torture."

9           MJ [Col COHEN]: The witness has definitely indicated that  
10 he does not accept that characterization, Counsel. You're --  
11 at the end of the day, if we're going to fight that fight back  
12 and forth with him with this characterization, you're probably  
13 not going to be ----

14          LDC [MR. RUIZ]: My question was about notes.

15          MJ [Col COHEN]: The real question you want to know is did  
16 he did he take notes about -- at the time he did his  
17 assessment, right?

18          LDC [MR. RUIZ]: But here's the thing, Judge. I know  
19 "torture" is a dirty word and nobody wants to say it.

20          MJ [Col COHEN]: I'll say it all day long with you,  
21 Counsel. We can say "torture," but ----

22          LDC [MR. RUIZ]: My question was did you take notes of  
23 this torture. The answer can be yes or no.

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1 MJ [Col COHEN]: That wouldn't even be a proper question.  
2 Of course he didn't take notes of the torture. He's already  
3 told you he didn't consider it torture. So do you want to  
4 know ----

5 LDC [MR. RUIZ]: Is it torture or not?

6 MJ [Col COHEN]: Well, ultimately I guess I'll have to  
7 rule on that, won't I?

8 LDC [MR. RUIZ]: And my question is "did you take notes,"  
9 right?

10 MJ [Col COHEN]: That's what you want to know, did he take  
11 notes and did he include these things.

12 LDC [MR. RUIZ]: I'm not asking Dr. Mitchell to agree that  
13 this is torture. I understand that he's got his -- his view  
14 on that.

15 MJ [Col COHEN]: He definitely has his opinion.

16 LDC [MR. RUIZ]: I'm asking it, and if he doesn't want to  
17 address that part of it, I get why he doesn't. But at least  
18 we can get to the ultimate portion.

19 MJ [Col COHEN]: Which is really did you include these  
20 things in -- in -- take notes of these things that --  
21 that ----

22 LDC [MR. RUIZ]: Well ----

23 MJ [Col COHEN]: My question is: What are you asking him?

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1 Did he take notes ----

2 LDC [MR. RUIZ]: Yes.

3 MJ [Col COHEN]: ---- at the time he did the assessment?

4 LDC [MR. RUIZ]: Yes.

5 MJ [Col COHEN]: Okay.

6 LDC [MR. RUIZ]: That was the question.

7 MJ [Col COHEN]: Answer the question.

8 LDC [MR. RUIZ]: My question is did he take notes and did

9 those notes make reference to the torture Mr. Hawsawi endured.

10 He can say no -- yes, I took notes. No, I didn't take notes.

11 I took notes but I didn't call it torture. That's fine.

12 MJ [Col COHEN]: Then that's asked and answered because he

13 already told you that he did not include that in the notes and

14 that he would not have under those circumstances because the

15 EITs had already been included, torture, whatever you want to

16 call them. Like I said, I'll let you guys call it what you

17 want to call it, but ----

18 LDC [MR. RUIZ]: The -- the next portion of my question

19 wasn't just about the -- I was moving on from the EITs in

20 terms of the way a psychologist normally would take notes

21 during a psychological assessment of their observations, of

22 their impressions of the person they're assessing, so that in

23 the future they can either refer back to them so we don't have

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1 to sit here and say, well, I don't remember anything. I don't  
2 remember ----

3 MJ [Col COHEN]: You are absolutely right. I mean, if  
4 that's -- yeah, if that's where you want to go, I mean, those  
5 are -- you -- you may ask those questions.

6 LDC [MR. RUIZ]: Just without the word "torture"?

7 MJ [Col COHEN]: Well, Counsel ----

8 LDC [MR. RUIZ]: I ----

9 MJ [Col COHEN]: You can use it, but then we're going to  
10 end up fighting for the next 25 minutes with the witness about  
11 whether or not it's torture.

12 LDC [MR. RUIZ]: I'll tell you what, Judge. I'm not going  
13 to sanitize this for their convenience. You know, I know that  
14 that ----

15 MJ [Col COHEN]: Go ahead, Counsel. We're going to see  
16 what information you actually get by continuing to use the  
17 word "torture."

18 LDC [MR. RUIZ]: Sure.

19 MJ [Col COHEN]: As opposed to the real question you want  
20 to know is did you include any of this information in notes.  
21 Did you take notes, I mean, I think of a million things.

22 LDC [MR. RUIZ]: I get the utility, Judge, I understand.  
23 I totally understand what you're saying ----

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1 MJ [Col COHEN]: Because at the end of the day that's what  
2 this should be about.

3 LDC [MR. RUIZ]: I totally understand why it wasn't  
4 raised ----

5 MJ [Col COHEN]: And the only person's opinion that  
6 matters on any of these motions is mine, period.

7 LDC [MR. RUIZ]: I understand.

8 MJ [Col COHEN]: That goes for both sides. I understand  
9 the public is watching and I understand there are agendas on  
10 everyone's side, but the only agenda that matters to me is  
11 following the law and making the tough decisions.

12 LDC [MR. RUIZ]: I understand. My agenda is defending  
13 Mr. al Hawsawi to the best of my ability and not -- not  
14 glossing over what he experienced, which was torture. And as  
15 his advocate, that's the language I'm going to use.

16 I understand, Judge, if you want to -- if you want to  
17 sustain the objections, I'll move forward. I understand,  
18 Judge.

19 MJ [Col COHEN]: I told you you could ask if he took  
20 notes.

21 LDC [MR. RUIZ]: I'll move on. I'll move on.

22 MJ [Col COHEN]: I guess you don't want to know it then.

23 LDC [MR. RUIZ]: No, no, I was going to say I'll move

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1 on ----

2 MJ [Col COHEN]: All right.

3 LDC [MR. RUIZ]: ---- from our discussion.

4 **DIRECT EXAMINATION CONTINUED**

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

6 Q. Did you take notes?

7 A. I would have at times. I don't know if I did for this  
8 particular assessment.

9 Q. Okay. And what I'm asking and what I'm referring to  
10 is you -- there's a number of assessments you make in this  
11 psychological assessment. You talk about he's mildly anxious,  
12 you talked about having observed him for a period of days  
13 during intelligence interviews as well as during the  
14 debriefings. And so my -- my question goes to: Did you  
15 reference that? Did you take down those notes of those  
16 observations anywhere?

17 A. No.

18 Q. Okay. And is that because the CIA prohibited it or is  
19 that because you decided that you didn't need to do that?

20 A. It wasn't possible and it wouldn't have been  
21 appropriate for us to set up a mental health file off of the  
22 system some -- because of the classification of the thing.  
23 But when we did the key assessment that was necessary, we

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1 would have seen him, interviewed him, walked to the SCIF, and  
2 written the report. So the -- the sort of things that we  
3 would be interested in in terms of his mental health, though  
4 influenced by any observations that we may have -- have made  
5 wouldn't have been so long ago that it would have been  
6 difficult for us to remember.

7 Q. Were you aware that Mr. al Hawsawi was forced to a  
8 kneeling position for extended periods of time?

9 A. I'll answer the same way I've answered every one of  
10 these questions. If that had happened to him, it's likely  
11 that I would have been told.

12 Q. Okay. All right. So I think next -- next area is --  
13 it is painfully obvious, and there's a reason why -- why this  
14 is asked, but Mr. al Hawsawi's torture, right, my word, was in  
15 Location 2, right? Now, you've had -- you've given us some  
16 testimony about your experience with Location 2 and I want to  
17 ask you a couple more things about that, right, that haven't  
18 already been elicited, in my view.

19 So you've indicated during the deposition that you  
20 gave for the ACLU lawsuit that, in your view, the chief of RDI  
21 was, quote, off the reservation and wasn't coming back. He  
22 had been out at COBALT doing things he wasn't supposed to be  
23 doing. Correct?

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1       A. I'd have to look at the deposition to concur with  
2 that.

3       Q. I understand. So that would be at AE 632W, page 1461.

4       LDC [MR. RUIZ]: Judge, this document does not have any  
5 markings. It was a publicly released document, but I  
6 understand from speaking to the court security officer that we  
7 would have to, I think, just publish that to the witness as  
8 well as to the people here as well.

9       MJ [Col COHEN]: Okay. That's fine. Yeah, just don't  
10 publish is to the gallery since it hasn't been cleared.

11       LDC [MR. RUIZ]: All right.

12       Q. And, sir, if you can just review it. Just read the  
13 document and I'll -- I'll come back to it.

14       A. I've reviewed it.

15       Q. Okay. Do you recall saying that?

16       A. I'm sorry, I didn't hear your question.

17       Q. Just give me one second.

18       You see lines 15, 16, and 17 of that -- of that  
19 document? Actually beginning in 14.

20       A. I do see them.

21       Q. Okay. Does that refresh your recollection?

22       A. Would you put that back up?

23       Q. Sure.

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1 A. I'd like to have it up when I answer my question.

2 Q. Yep.

3 A. Okay. So when you ask the -- when you asked me the  
4 question -- and you feel free to repeat it if I misunderstood  
5 you, you asked me whether it was my assessment that he was off  
6 the reservation and doing things he shouldn't do.

7 If you read my answer, what I surmised is that the  
8 agency personnel had decided that he was off the reservation  
9 and doing things he shouldn't do, and they were looking for  
10 ways to adjust that.

11 Q. Okay. I mean, I understand that. Bottom line, he was  
12 gone?

13 A. I don't know that I'd characterize him as gone.

14 Q. Gone from -- from the position that he held.

15 A. At some point he was relieved for cause.

16 Q. Right. Because he was doing things he wasn't supposed  
17 to be doing?

18 A. Because he was doing things that the Justice  
19 Department had not approved.

20 Q. Things he was not supposed to be doing.

21 A. I would concur with that.

22 Q. Now, you've also talked about Dr. Jessen's actions in  
23 regard to Gul Rahman at Location Number 2. And you take issue

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1 with the SSCI report that indicates that Dr. Jessen didn't  
2 take any action in relation to the conditions in Location 2;  
3 isn't that right?

4 A. I could agree with that characterization.

5 Q. Sure. And, in fact, in your book, you indicate that  
6 the report leaves you with a false impression that Bruce did  
7 not raise concerns about the grim conditions or the brutal  
8 treatment of detainees at that site; isn't that right?

9 A. I'd have to look at the exact wording of the -- in the  
10 book but I don't need to do that to move us along because that  
11 sounds consistent with something I would have written.

12 Q. Sure.

13 A. And it's also easily checkable, so ----

14 Q. Page 91 ----

15 A. Yeah.

16 Q. ---- of your book if you wanted to take a look at it.  
17 But that's where you say -- you use the words "grim and brutal  
18 treatment," and that is your assessment based on you --  
19 everything that you knew about Location 2, correct?

20 A. At the time. Here's the important distinction that  
21 you seem to be glossing over. There were no trained  
22 interrogators there at Location 2 when -- when I was there.  
23 And by the time that your client arrived, some of those things

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1 had changed. So the -- my assessment of what was going on at  
2 Location 2 was a point in time. I have no idea what they did  
3 to change that later.

4 Q. Okay. You did not go back to Location 2, correct?

5 A. I never went back to Location 2. You would have had  
6 to put me in chains to get me there.

7 Q. Understood. So the last impression you had of  
8 Location 2 was in November of 2002, correct?

9 A. Yeah, it sounds accurate.

10 Q. All right. And did you know that Mr. al Hawsawi was  
11 captured and rendered to Location Number 2 in 2003?

12 A. I'm sure that I would have heard that. Sitting here  
13 right now, I can't confirm that, but it doesn't sound  
14 inconsistent with what happened.

15 Q. You also indicated that Dr. Jessen raised concerns  
16 about the unsupervised brutality.

17 A. Is that -- are those my words.

18 Q. Page 91 of your book, about middle of the way down.  
19 It's -- you're discussing the multipage report.

20 A. Okay.

21 Q. You described it as unsupervised brutality, correct?

22 A. At that time in November of 2002.

23 Q. When you -- based on your reference point.

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1 A. Yes.

2 Q. I understand.

3 A. This was before -- just to be clear, this was before  
4 the -- and the actual proximate cause of the CIA putting  
5 together the RDI program. This was the -- this was the reason  
6 that they did that, to stop these kinds of things. So I think  
7 it's a little -- a little misleading to suggest that the fixes  
8 that they had put in place to stop this kind of thing was a  
9 continuation of the same process.

10 Q. Well, you weren't there to see it.

11 A. No, sir.

12 Q. And neither was I.

13 A. I would concur.

14 Q. And so what we, I think, can agree on is that you  
15 wouldn't have gone back there even if -- unless they put you  
16 in chains?

17 A. I -- I thought the facility was poorly supervised and  
18 poorly run in November of 2002.

19 Q. I -- I took your answer to be that you just wouldn't  
20 have gone back there, whether it was 2002 or 2003 or 2004.  
21 You had no interest in going back to that facility.

22 A. I had no interest in going back to that facility, but  
23 my specific reference was to November-December 2002.

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1 Q. Oh, okay. During your time in these black sites,  
2 you've talked about a number of what you've called unapproved  
3 techniques, right, and -- such as interrogators putting  
4 broomsticks behind the knees.

5 A. Is there a place in my book that you're referring to?

6 Q. Well, sure. But you've -- I think you've also  
7 testified to that this week.

8 A. Okay. So you're going to read me a list of what I've  
9 already testified to?

10 Q. Well, I'm asking you what you have previously  
11 testified to in terms of unapproved techniques, yes.

12 A. Okay.

13 Q. Okay. Broomstick behind the knees?

14 A. Yes, sir.

15 Q. All right. Raised elbows behind the back?

16 A. Yes.

17 TC [MR. GROHARING]: Objection, Your Honor, asked and  
18 answered. I understand -- if there are follow-on questions, I  
19 could understand that, but, otherwise, this ground has been  
20 covered.

21 MJ [Col COHEN]: Defense Counsel, how do you respond?

22 LDC [MR. RUIZ]: I'm going to ask him one now that I don't  
23 think we've talked about.

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1 MJ [Col COHEN]: Okay. Perfect.

2 LDC [MR. RUIZ]: Okay.

3 MJ [Col COHEN]: Then I'll sustain as to -- as to those.  
4 I'm not indifferent to individualized justice.

5 LDC [MR. RUIZ]: I understand.

6 MJ [Col COHEN]: However, given the fact that it is -- it  
7 is a joint trial, you are always welcome to clarify something  
8 that you perhaps disagreed with when another counsel does  
9 that.

10 LDC [MR. RUIZ]: Sure.

11 MJ [Col COHEN]: So I'm being very cautious to try that,  
12 but -- but if you choose to -- the fact that someone has asked  
13 and answered, you're always welcome to use that exact --  
14 those -- those answers in -- in support of your defense.

15 LDC [MR. RUIZ]: Absolutely. Thank you.

16 MJ [Col COHEN]: All right. Thank you. All right. But  
17 if you have things that haven't been asked or you do need  
18 clarification, you most definitely may ask those questions.

19 LDC [MR. RUIZ]: Thank you.

20 MJ [Col COHEN]: But he did specifically give that in  
21 pretty -- in pretty good detail during Mr. Connell's  
22 examination, so ----

23 LDC [MR. RUIZ]: Got it.

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1 MJ [Col COHEN]: Like I said, don't want to cut you off,  
2 but just let you know that I am conscientious of the  
3 individualized justice as well.

4 LDC [MR. RUIZ]: Thank you.

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

6 LDC [MR. RUIZ]: And I would like you to know that I did  
7 go back and cut quite a bit of materials to try to ----

8 MJ [Col COHEN]: I anticipated that when you said that  
9 this would be a shorter exam.

10 LDC [MR. RUIZ]: I understand you don't have the -- you  
11 don't have my entire outline.

12 MJ [Col COHEN]: I don't.

13 LDC [MR. RUIZ]: And so one section, in theory at least,  
14 will lead to the next section and so on.

15 MJ [Col COHEN]: I understand.

16 LDC [MR. RUIZ]: So I get that you just have that ----

17 MJ [Col COHEN]: I'll give you -- like I said, I'm going  
18 to give you a little bit of leeway because, like I said, I  
19 realize it's a joint trial, but nonetheless, you are an  
20 individual defense counsel representing an individual client.  
21 But ----

22 LDC [MR. RUIZ]: And that's also why I'm now glad to be  
23 going second and not fifth ----

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1 MJ [Col COHEN]: Right.

2 LDC [MR. RUIZ]: ---- in this progression.

3 MJ [Col COHEN]: I understand.

4 LDC [MR. RUIZ]: But -- all right.

5 MJ [Col COHEN]: I'm going to help all the parties by  
6 splitting this up. There will be a regular rotation.

7 LDC [MR. RUIZ]: Right.

8 MJ [Col COHEN]: That's right.

9 **DIRECT EXAMINATION CONTINUED**

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

11 Q. And so one of the unauthorized techniques you've  
12 explained on page 115 of your book was also cigar smoke being  
13 blown in someone's face?

14 A. I do describe that, yes.

15 Q. Okay. And then on page 130, you describe the -- the  
16 threats with a handgun and a drill ----

17 A. I do describe those there.

18 Q. ---- at the bottom of the page.

19 So the -- I guess the -- the point is that you -- you  
20 recognize that despite the fact that there were all these  
21 procedures in place, as you've discussed, there were still  
22 people who were doing unauthorized things to the people who  
23 were being held in U.S. custody, correct?

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1           A. I would concur with that.

2           Q. All right. So it doesn't necessarily follow that  
3 simply because there was some system in place, that that would  
4 necessarily mean that things outside of that system weren't  
5 done to Mr. al Hawsawi, correct?

6           A. Could you put that in English?

7           Q. Sure. The reason I'm using "system" is because you  
8 seem to take issue with, you know, some of my -- my  
9 terminology.

10           So you've talked about a system being put in place.  
11 This is the detention -- detention/interrogation system,  
12 right?

13           A. A set of procedures.

14           Q. A set of procedures to govern that particular system.

15           And you seemed to be implying earlier that because  
16 those procedures have been put in place, that would  
17 necessarily mean that people hadn't stepped outside of  
18 those -- those systems and boundaries.

19           A. If that is what you took from what I said earlier ----

20           Q. Well, you were making a distinction between 2002  
21 and '3 and, yes, that seemed to be what you were implying. Is  
22 that what you're implying?

23           A. I can't account for what you surmise from what I said.

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1 Q. I understand.

2 A. Are you asking me if that's what I'm implying?

3 Q. Yes.

4 A. What I'm very explicitly saying is the only knowledge  
5 that I have about that place was from November of 2002.

6 Q. Yes.

7 A. And then beyond that, I would have been briefed on --  
8 in a very generic way about what EITs a person had been  
9 exposed to while that facility was still open, if that was  
10 somebody that I was dealing with.

11 So I don't -- I don't mean to imply one way or another  
12 that people can't operate outside of the system. Clearly they  
13 did.

14 Q. Okay. Thank you. All right. I want to ask you about  
15 the timing and the application of the -- of the techniques,  
16 okay?

17 Is it correct to say that the timing of the  
18 application of the techniques is critical to the state you're  
19 trying to induce?

20 A. Yes.

21 Q. Okay. That is you want to time the -- as you've  
22 indicated, the application of the EITs when the person is  
23 withholding information and stop when they begin to cooperate?

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1           A. Yes.

2           Q. All right. And in your deposition -- excuse me, in  
3 your book, page 155, you indicated that -- well, actually, let  
4 me read that. No, let me give you some time to -- page 155,  
5 basically, the top portion of that.

6           What I'm referring to is a statement that you make  
7 that indicates you got the impression that timing wasn't  
8 emphasized in the early CIA interrogation course.

9           A. That's what I wrote, and that's what I believe.

10          Q. Okay. And it was that training of that personnel --  
11 those were the personnel who would have been sent to locations  
12 such as Location 2 to staff those locations under the program,  
13 as you said, that was created, correct?

14          A. I don't know that those are the personnel that would  
15 have been sent there because that implies that I know  
16 something about how the agency did their scheduling. But I do  
17 know that those were the personnel that were sent there.

18          Q. Okay. But you're -- as you've indicated, your  
19 impression was that the timing wasn't emphasized?

20          A. My impression was that the training they gave the  
21 original people was inadequate and one of those inadequacies  
22 was the timing.

23          Q. Okay. Is the reason that -- is part of the reason

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1 that the timing is important, that you want to avoid I think  
2 what you've described as catastrophic learned helplessness or  
3 profound mental harm?

4 A. The short answer to that question is yes.

5 Q. Okay. And you've indicated that the relationship  
6 between learned helplessness and torture would also depend on  
7 the frequency, the intensity, and the duration of the  
8 applications?

9 A. Where did I indicate that?

10 Q. Yes. That would have been in your deposition, and  
11 I'll provide you that, if ----

12 A. Can you show me the actual context?

13 Q. Sure. Sure, I can. Page 1196. And this will be  
14 contained in AE 632W, page 1196.

15 LDC [MR. RUIZ]: Judge, this is another document that's  
16 not -- this is another document that is not a discovery  
17 document, and so I'll ask that it only be displayed to the  
18 witness and to the parties.

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

20 A. Okay.

21 Q. Okay. So is it accurate to say that the -- the  
22 relationship between torture and learned helplessness would  
23 depend on the frequency, the intensity, and the duration, and

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1 the ambiguity of the coercive pressure?

2 A. In part.

3 Q. Okay. All right.

4 A. Which requires an explanation. In order for learned  
5 helplessness to develop, there has to be no possible escape,  
6 not answering questions, not capitulating, not anything. So  
7 essentially, the person becomes helpless and profound --  
8 and -- so what happens is if you put them in the learned  
9 helplessness paradigm, which I think is what you're asking me,  
10 so that you understand, and the frequency, intensity,  
11 duration, and ambiguity is not very intense, so to speak --  
12 it's not very ambiguous, the pressure is not very intense, it  
13 doesn't happen quite often, then you -- it probably won't  
14 produce that profound level of -- of helplessness.

15 Q. All right. So what I'm -- what I was asking, I was  
16 focusing on the intensity, the frequency, and the duration  
17 because that's what I read when you testified about it, and so  
18 I thought I'd ask you about that.

19 And the -- I guess the question is, if it was more  
20 intense or if it was too long -lasting, that could also have  
21 severe consequences, right? So it's not an under-application  
22 but an over-application of the intensity and the duration and  
23 the frequency.

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1       A. Right. Let me -- let me clarify what I'm saying. You  
2 wouldn't have to have a person in a learned helplessness  
3 paradigm for these variables to be manipulated in such a way  
4 that it could produce trauma. And, in fact, I know from what  
5 I've observed of them using them and what I've observed --  
6 what I've subsequently learned is that they didn't really use  
7 a learned helplessness paradigm. But you -- these are the  
8 factors that primarily influence how, for lack of a better  
9 term, traumatic an experience is.

10       Q. Right. Okay. And so without knowing -- well, you  
11 don't know the intensity, frequency, or duration of the  
12 techniques that were applied to Mr. al Hawsawi, right?

13       A. Nor do I know the ambiguity. That's correct.

14       Q. I understand. And I asked you about the relationship  
15 between torture and learned helplessness. The next -- I don't  
16 know if you read the entire paragraph, but the next paragraph  
17 of that was the next question about the relationship between  
18 torture and PTSD. And if you like, I can put it back up  
19 there, but your answer was that it would also depend on  
20 intensity, the duration of the -- of the application, the  
21 frequency as well.

22       A. Intensity, duration ----

23       Q. And frequency.

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1       A. ---- frequency, and ambiguity. And the most important  
2 factor is actually, oddly enough, ambiguity.

3       Q. Can you elaborate a little bit more on that one?

4       A. On ambiguity?

5       Q. Yeah.

6       A. If you can't predict what's going to happen to you, it  
7 is much more difficult to adjust to it than if there's a  
8 steady rhythm of it happening.

9       Q. Uh-huh.

10      A. So if you never know what's going to happen, it tends  
11 to produce chronic stress, especially if the thing that you're  
12 going to encounter is an adverse event.

13      Q. Okay.

14      A. You know it's coming, you just don't know when.

15      Q. Does that also refer to the ambiguity of, well, I  
16 guess, long term what's coming? Not in the short term. I  
17 guess in the way I'm -- the way I'm kind of looking at it is,  
18 I'm in a cell, I'm wondering what's going to happen next, but  
19 not just that, but how long I'm going to be in this situation.  
20 Does that make sense?

21      A. Your question makes sense. I don't think it has the  
22 same impact.

23      Q. How so?

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1       A. Because what I was referring to is what's happening to  
2 you in the moment, right? That's what I'm referring to. I  
3 don't recall there being any long-term studies that I've ever  
4 looked at where they looked at the effects of these things  
5 long term.

6       You can imagine, since you've asked me to explain,  
7 that if a person thought that things might be ambiguous about  
8 they -- how -- whether or not they're likely to happen, they  
9 might try to structure their life in such a way to avoid that  
10 ambiguity. So there's no way to make a blanket statement like  
11 that.

12       But what I can tell you is that if you -- and it even  
13 happens, oddly enough, for good things, not just bad things.  
14 You can produce a sense of fruit -- of fruitlessness or a --  
15 not being -- not wanting to -- if what you do is randomly  
16 reward them and the reward is not contingent on their  
17 behavior, you get the same sort of -- not quite as intense,  
18 but you get the same kinds of problems.

19       Q. Oh. In terms of some of the -- some of the  
20 characteristics or some of the, for lack of a better term,  
21 symptoms of somebody who was experiencing profound learned  
22 helplessness, that would lead to depression, perhaps?

23       A. Well, the primary -- remember, the way that it's

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1 technically defined is that you have to take the person out of  
2 a situation in which they can't solve the problem, there is no  
3 way for them to solve the problem, put them in another  
4 situation where the problem is solvable, and then they don't  
5 attempt to solve the problem.

6           So if you're talking about depressed mood, depressed  
7 mood is like a fever. A lot of things can cause it. But the  
8 technical definition of learned helplessness focuses  
9 explicitly on removing them from a situation that they cannot  
10 possibly get out of, putting them into a situation which they  
11 can get out of, and they just simply don't even try.

12           And the reason I said I don't think that the detainees  
13 that I've observed are experiencing learned helplessness is  
14 because they answer the questions. Because if you're in a  
15 state of profound learned helplessness, you don't even bother  
16 trying to answer the questions because you know it won't do  
17 anything, it's of no value, it won't change what's happening  
18 to you.

19           Q. I've heard you say that. I guess what I was trying to  
20 get at is, what would be some of the symptoms, characteristics  
21 that you would expect in someone who has experienced learned  
22 helplessness? And in your deposition in the ACLU case, you  
23 indicated that profound helplessness could lead to things such

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1 as depression, impassivity. I'm happy to show you the ----

2 A. No, no, I'll take your word for it.

3 Q. All right.

4 A. I think what you're using is the definition of learned  
5 helplessness in the second way, what are the affective and  
6 behavioral indications while the person is in the ----

7 Q. Yeah.

8 A. ---- helplessness paradigm.

9 Q. Yes. And so what I'm saying is a person who was  
10 experiencing that could have depression?

11 A. They could -- they could be depressed. Not have  
12 depression, but be depressed. The two are not the same thing.

13 Q. They could exhibit passivity?

14 A. They could do passivity, they could -- they could be  
15 anxious, they could ----

16 Q. Have withdrawal?

17 A. They could get withdrawal.

18 Q. All right. They could also potentially behave as  
19 though they are psychotic?

20 A. I don't -- I don't necessarily think that that's  
21 accurate.

22 Q. Okay. Let me take a look.

23 A. I mean, in my -- in my review of the literature, I've

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1 never heard -- I've never seen a report of human beings acting  
2 psychotic because they were -- they were exposed to a learned  
3 helplessness paradigm.

4 Q. Okay. AE 632W at page 1388 ----

5 MJ [Col COHEN]: Counsel, did you say 1308?

6 LDC [MR. RUIZ]: 1388.

7 MJ [Col COHEN]: 88. All right. Thank you.

8 LDC [MR. RUIZ]: Yes. Judge, this document is not Bates  
9 stamped -- not Bates stamped, not provided in discovery, and  
10 hasn't been cleared for public release.

11 MJ [Col COHEN]: Okay.

12 LDC [MR. RUIZ]: So I would ask that this be provided to  
13 the witness and to the parties.

14 MJ [Col COHEN]: Definitely the witness. Let me just take  
15 a look real quick. Okay. The parties can see this too. This  
16 will be fine.

17 LDC [MR. RUIZ]: And I can actually show you the page  
18 before that too if ----

19 A. What am I looking at here?

20 Q. Well ----

21 A. I mean, I don't want you to tell me because you can't  
22 tell me, but is this ----

23 Q. Lines 1 through -- Lines 1 through 5 of your

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1 deposition. If you -- if you need to go back before that, I  
2 have the other page as well. But I would -- what I was asking  
3 you about was the -- the person who begins to look as though  
4 they're psychotic. And I was asking you if that could also be  
5 a symptom or a characteristic of someone.

6 A. My interpretation of the question that you asked me is  
7 whether or not a person could become psychotic.

8 Q. Oh, I see. As opposed to looking psychotic?

9 A. As opposed to demonstrate -- as opposed to  
10 demonstrating the kind of symptoms that you're seeing here.  
11 There are a lot of things that can make a person have trouble  
12 putting their thoughts together, like sleep deprivation, for  
13 example. They can have difficulty remembering things. I have  
14 difficulty remembering things virtually every time you asked a  
15 question. And they can profound -- become profoundly  
16 depressed.

17 So at the far end of a learned helplessness paradigm,  
18 those things can show up, but you -- it's like a fever.  
19 You -- those things in isolation don't tell you anything about  
20 what they were exposed to.

21 LDC [MR. RUIZ]: Judge, I just -- I notice we're two  
22 minutes before noon. Would you like me to proceed? It's up  
23 to you.

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1 MJ [Col COHEN]: If you have a couple more questions,  
2 Counsel, I mean, I definitely want you guys to use your time.  
3 But if you think this is a good breaking point, I -- I have no  
4 problem with that either.

5 LDC [MR. RUIZ]: I think it's a good breaking point.

6 MJ [Col COHEN]: Perfect. All right.

7 Just to make clear, Mr. Ruiz -- and I know you and I  
8 have had enough experience over the last seven months to know  
9 that we can banter about things and both of us realize that  
10 we're both just doing our jobs. But I think it's important  
11 for the parties to kind of understand kind of where my  
12 perspective is on this issue of -- of torture, right?

13 It can be a finding of the court eventually. You  
14 know, I look to 18 U.S.C. 2340, which is also referenced in  
15 the M.C.R.E. 304. We're talking about the derivative  
16 evidence, the suppression of issues and stuff like that.

17 But it's also possible that the court would -- or the  
18 commission, court, would never need to -- to make a specific  
19 finding because there is also the whole issue of cruel,  
20 inhuman, or degrading treatment. And there's a specific  
21 definition of that and the application of the Fifth, Eighth,  
22 and Fourteenth Amendments to the Constitution of the  
23 United States as defined by the United Nations Conventions

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1 Against Torture and Other Forms of Cruel, Inhumane, or  
2 Degrading Treatment or Punishment in New York, December 10th,  
3 1984. That is the -- those are the legal definitions that I  
4 must ultimately apply in this case.

5 I know people throw around terms in the vernacular.  
6 They all have their personal opinions. So -- but ultimately I  
7 will have to apply the legal definitions of things to the  
8 extent that they are required.

9 And so I don't mean to implicate in any way that I  
10 have made any finding one way or the other as to some way  
11 something is or is not torture or cruel, inhuman, or degrading  
12 treatment at this time. It would be premature for me to do  
13 so. In fact, the very issue that you are taking up right now  
14 will provide facts that ultimately one day will provide a  
15 basis for me making those legal conclusions.

16 So I only mention that because I wanted to make sure  
17 the parties understand that I understand what my role is.  
18 These are the legal definitions. It shouldn't be a surprise  
19 to -- to the parties but it's always good to remind them that  
20 when I say that it may or may not be, ultimately that's what  
21 I'm going to have to decide to -- if -- if necessary.

22 I mean, if I find that something is cruel, inhuman, or  
23 degrading then all the consequences that go with it being

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1 cruel, inhuman, and degrading apply regardless of whether or  
2 not it meets the legal definition of torture because that's  
3 what the law says that I do.

4 And so like I said, I just wanted to just kind of  
5 remind the -- the parties that -- you know, it's not important  
6 for me at this particular point as the judge to make those  
7 legal determinations. In fact, like I said, it's just  
8 premature for me to do that, so I just want to make sure that  
9 you and I are seeing -- seeing eye to eye.

10 I understand your position and I don't discount your  
11 position. I'm just not going to at this point either agree or  
12 disagree with that position. I don't think you took it that  
13 way, but I think it's just important to say it.

14 LDC [MR. RUIZ]: I appreciate -- I appreciate the -- the  
15 feedback, Judge. And I also -- I understand that is the  
16 impact of whether you choose to call it torture or techniques  
17 or applications. It is that -- ultimately that impact that  
18 matters, and I know that you -- we've had some time now where  
19 we've practiced before each other.

20 I am an advocate.

21 MJ [Col COHEN]: Yes, you are.

22 LDC [MR. RUIZ]: I'm an advocate for the defense.

23 MJ [Col COHEN]: And I expect you to do that.

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1 LDC [MR. RUIZ]: And I'm an advocate for those facts.

2 And I have a man back there who was tortured, and I  
3 feel that there is a responsibility not to gloss over that,  
4 not to utilize language that may be more digestible or  
5 acceptable. And I recognize that injecting that -- I knew  
6 that -- that at the time that word was injected into these  
7 proceedings would make this a much more difficult process.

8 But I understand your position, and I think you -- you  
9 understand mine, and -- and I appreciate that. And I'm  
10 certainly someone who -- when I step in here, I'm an advocate,  
11 and I don't take anything away from it. But I do appreciate  
12 your feedback.

13 MJ [Col COHEN]: Yeah, no, absolutely. Like I said, I'm  
14 not trying -- like I said, that's not intended in any way to  
15 say that you can't use certain words -- I mean, if -- because  
16 when -- it's just very -- I have to be very cautious as a  
17 judge to -- to start using terminology.

18 The one thing that I know the CIA called it was  
19 "enhanced interrogation techniques." That is -- that is a --  
20 that is a clear fact before the court. The fact that I even  
21 choose to use that terminology does not mean that I have  
22 adopted that it -- that, for example, the -- the opinion of  
23 the Department of Justice or the Attorney General and this

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1 President of the United States as to what this was or was not  
2 is not binding on me. That is my decision.

3 LDC [MR. RUIZ]: Absolutely.

4 MJ [Col COHEN]: And so I just want to make sure that you  
5 understand that when -- when -- when we have these discussions  
6 that that does not imply in any way that I have reached a  
7 decision as to what something is or is not.

8 LDC [MR. RUIZ]: I don't. And I didn't make that --  
9 that -- that wasn't my -- my issue. My issue was just simply  
10 having the opportunity to -- to ask the question in the manner  
11 in which I thought was fair to the evidence.

12 But also, I think the exchange was important because  
13 it sensitizes all of us to the fact that language matters.  
14 And this witness himself has testified about how you  
15 dehumanize, and one of the ways you dehumanize is by utilizing  
16 euphemisms ----

17 TC [MR. GROHARING]: Judge ----

18 LDC [MR. RUIZ]: ---- for different languages.

19 TC [MR. GROHARING]: I don't know how long this  
20 conversation is going to last, but we do still have the  
21 witness still sitting here in the chair.

22 MJ [Col COHEN]: I understand.

23 TC [MR. GROHARING]: I'm not sure where this is going ----

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1 MJ [Col COHEN]: I think that was it.

2 TC [MR. GROHARING]: -- but I don't think it's appropriate  
3 for that.

4 MJ [Col COHEN]: I just wanted to make sure that -- as we  
5 come back, that everyone knows kind of where -- where the  
6 court's position is, is that I -- I have reached no decisions.

7 LDC [MR. RUIZ]: Thank you, Judge.

8 MJ [Col COHEN]: All right. We're in a recess until 1315  
9 hours.

10 [The R.M.C. 803 session recessed at 1205, 24 January 2020.]

11 [The R.M.C. 803 session was called to order at 1322,  
12 24 January 2020.]

13 MJ [Col COHEN]: The military commission is called to  
14 order.

15 Parties are present. The witness is returning to the  
16 stand.

17 [The witness resumed the witness stand.]

18 MJ [Col COHEN]: Mr. al Hawsawi is still with us. My  
19 understanding is that Mr. Ali will be joining us here in a  
20 little bit. And that Mr. -- Mr. Binalshibh may as well.

21 Mr. -- Mr. Connell.

22 LDC [MR. CONNELL]: Yes, sir. That's right. I have one  
23 quick housekeeping matter. Doesn't matter if Dr. Mitchell is

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1 here for it. Yesterday there was interruption of the feed  
2 because of a question about how many cells were at BLUE, and  
3 there was an assertion that -- or there was a fear, perhaps,  
4 that that was classified.

5 I just wanted to let you know that the government has  
6 told me that that was not classified.

7 MJ [Col COHEN]: Okay.

8 LDC [MR. CONNELL]: So I didn't want it to be thought that  
9 I had inadvertently or the witness had inadvertently shared  
10 classified information. That was not classified.

11 MJ [Col COHEN]: Okay. Excellent. Thank you for letting  
12 me know, sir. I appreciate it. The answer was definitely  
13 caught by the reporters, so it should remain in the -- in the  
14 transcript if that's the case. All right. I am familiar with  
15 what the answer was. All right.

16 Mr. Ruiz, are you ready to proceed? And then just let  
17 the guards -- the guards can hear me, even though I'm not  
18 directly addressing them. Please, just if someone wants to  
19 come into the courtroom, one of the accused, please let them.

20 Mr. Ruiz, your witness. You may proceed.

21 [The accused, Mr. Binalshibh, returned to the courtroom.]

22 LDC [MR. RUIZ]: Thank you, Judge.

23

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**DIRECT EXAMINATION CONTINUED**

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

Q. Sir, during the course of your testimony earlier in the week, you had an opportunity to recount in fairly graphic, harrowing detail the shackling and the kneeling and bending of Mr. al Nashiri.

You described it as having two men actually hold him by the shoulders and forcibly force him -- his back to the ground while he had a broomstick behind his knees and hearing him scream in agony. Do you recall that?

A. I do recall it.

Q. Okay. And you were -- you were very upset by seeing that?

A. Yes.

Q. Okay. Would you call that torture?

A. You know, that's ----

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

MJ [Col COHEN]: What is his opinion on it? Why is that relevant?

LDC [MR. RUIZ]: Judge, may I address the commission outside the presence of the witness?

MJ [Col COHEN]: You may.

LDC [MR. RUIZ]: Thank you.

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1 MJ [Col COHEN]: Sir, I'll have you step down just for a  
2 second.

3 [The witness was temporarily excused and withdrew from the  
4 courtroom.]

5 LDC [MR. RUIZ]: Judge, we believe this goes to his  
6 credibility. It goes to his bias as well. You've heard two  
7 and a half, three days' now worth of testimony, very  
8 antiseptic-type testimony about this witness, about the kinds  
9 of torture -- he's calling them techniques that he  
10 administered during his time at black sites; he's  
11 characterized the nature of those techniques as well -- and in  
12 that sense has characterized the degree of force and the  
13 degree of coercion that has been given or -- or brought upon  
14 some of these men that is definitely before the commission.

15 His brutality barometer and where it falls on the  
16 brutality scale should be relevant or at least provide some  
17 guidance to the commission in terms of assessing his  
18 credibility and what bias he may have in the direction of  
19 putting that lower on the brutality scale than it actually  
20 was. So that's one point.

21 The second point: He has repeatedly testified that  
22 what he was doing was not torture. He's gone on to great  
23 lengths about the different laws and different opinions that

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1 existed as well, and he's testified that in his opinion, some  
2 of the questions he's been asked were not torture because of  
3 that.

4 I do have a clip that I would like to present where he  
5 is being interviewed and he tells the interviewer that the  
6 reason they don't use the word "torture" is because it's a  
7 crime. And that will directly contradict much of what he has  
8 said. Obviously, you can give it whatever weight it might --  
9 it needs. We think it's important. And that's where I intend  
10 to lead him with a series of questions.

11 MJ [Col COHEN]: It's one thing to ask the witness if --  
12 if -- if -- if the reason he doesn't want to refer to  
13 something as torture is because he -- because of potential  
14 criminal consequence out there. Okay. I'm with you. Maybe  
15 that's a 608(c) issue. But he definitely indicated earlier  
16 with his -- with his previous testimony that what happened to  
17 Mr. al Nashiri that he observed was clearly outside the limits  
18 of any legal parameters that were given to him by -- by the  
19 Department of Justice.

20 So whether it's torture or isn't torture, he  
21 definitely thought that it was -- that it was completely  
22 wrong, and I think he said he even reported that up the chain.  
23 So what I'm saying is, is his legal conclusion of whether

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1 something is or is not torture, I won't allow that.

2 But if you want to ask him that specific question, if  
3 you think the reason he refuses to even use the word "torture"  
4 is because of criminal implications, okay, that's a fair  
5 question under 608.

6 LDC [MR. RUIZ]: I'll ask him -- the question I'll ask him  
7 is: Isn't it a fact that the reason you don't use -- or one  
8 of the reasons you don't use the word "torture" is because  
9 it's a crime.

10 MJ [Col COHEN]: That's fair. Like I said, that's a 608  
11 question.

12 LDC [MR. RUIZ]: Sure. And -- okay. I was -- I had one  
13 or two questions removed from that, but that's fine.

14 MJ [Col COHEN]: No. Like I said, and everyone wants to  
15 get there, but let's just get to -- to the questions. I mean,  
16 608 bias, et cetera, let's just get there. But having him  
17 draw legal conclusions, I -- I'm -- we're just not going to go  
18 there.

19 LDC [MR. RUIZ]: I wasn't intending it as a legal  
20 conclusion. Like I said, I think it's important for the  
21 fact-finder -- and maybe not. Obviously you are free to  
22 reject or accept, whatever, but it's important for us in terms  
23 of how our advocacy goes.

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1           And also as you illustrated recently, we have -- on  
2 behalf of Mr. al Hawsawi, have filed an outrageous government  
3 conduct motion, so we do -- there is a dual purpose in my  
4 questions. The -- and as I said, the -- where this falls on  
5 his brutality scale and his barometer, we think is important.  
6 I understand the commission's ----

7           MJ [Col COHEN]: Right, but there is evidence already of  
8 that, that it was outside -- clearly it was outside his --  
9 his -- his barometer scale of what was appropriate.

10          LDC [MR. RUIZ]: I understand, and then that -- I'll ask  
11 the question as discussed.

12          MJ [Col COHEN]: All right. Thank you. You may re-call  
13 the witness. I'll sustain the objection to the question as  
14 asked.

15          [The witness resumed the witness stand.]

16          MJ [Col COHEN]: Sir, you may return to your seat. Thank  
17 you for your indulgence.

18                               **DIRECT EXAMINATION CONTINUED**

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

20           Q. Sir, the reason you don't use the word "torture" is  
21 because it's a crime, correct?

22          TC [MR. GROHARING]: Objection, leading.

23          MJ [Col COHEN]: I'll -- I'll allow that question to be

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1 leading. Overruled.

2 A. The reason I don't use the word "torture" is because  
3 in my training, that's a judgment that has to be made by a  
4 judge in court, just as the killing of a human being isn't  
5 necessarily murder until it's adjudicated in court.

6 Q. So your answer is no?

7 TC [MR. GROHARING]: He already answered the question,  
8 Your Honor.

9 LDC [MR. RUIZ]: Well, he elaborated. He didn't really  
10 answer that, but -- let me ask a follow-up, Judge.

11 MJ [Col COHEN]: All right.

12 LDC [MR. RUIZ]: Okay.

13 Q. Is the reason that you do not use the word "torture"  
14 the fact that you, in fact, face or fear criminal prosecution?

15 A. No.

16 LDC [MR. RUIZ]: Okay. Judge, at this time, I would like  
17 the -- to ask for the feed from Table 5.

18 MJ [Col COHEN]: You may.

19 LDC [MR. RUIZ]: And I will be referring to  
20 AE 628FFFFF (AAA) Attachment B, Video Number 50. This is from  
21 a program called Mike Drop. It's a podcast.

22 A. I'm familiar with the program.

23 Q. I understand. Dr. Mitchell, your book came out in

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1 2016, correct?

2 A. I think it was November of two thousand -- it was  
3 either '16 or '15. It's ----

4 LDC [MR. RUIZ]: I would ask permission to play the video  
5 clip.

6 MJ [Col COHEN]: This has been cleared. You may publish.  
7 [Video from AE 628FFFFF (AAA) Attachment B, Video Number 50  
8 played.]

9 LDC [MR. RUIZ]: Okay. So cut the feed. Thank you.

10 Q. I want to focus your attention now on the location  
11 where you debriefed Mr. al Hawsawi, okay? [REDACTED]

12 [REDACTED]

13 A. Yes, sir.

14 Q. Okay. And that was -- there was some discussion as to  
15 what the actual name of the place was, and I don't know that  
16 that's so important, but it was an enclosed compound?

17 A. I'm -- yes.

18 Q. All right. [REDACTED]

19 [REDACTED] correct?

20 A. I'm sorry. I couldn't follow what you just said. A  
21 number of different whats with rooms and whats?

22 Q. [REDACTED]

23 A. Yes.

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1 Q. Okay. Actually, can -- if you could describe it based  
2 on -- on your recollection, that would be helpful.

3 A. I think you did an adequate description.

4 Q. Okay.

5 A. The only thing I would add is that my recollection is

6 [REDACTED]  
7 [REDACTED] ---

8 Q. Okay.

9 A. --- [REDACTED]  
10 [REDACTED]

11 Q. Okay. I'm going to be referring to AE 632W (MAH),  
12 page 2509.

13 LDC [MR. RUIZ]: Judge, this is a Secret document.

14 MJ [Col COHEN]: Yes, only to -- do not publish to the  
15 members, but everyone else can see it.

16 Q. Actually, I'm going to put this on the slide here.  
17 It's MEA-FAC-58. Do you see that?

18 A. Yes.

19 Q. Okay. And I know you saw this the other day, but it  
20 wasn't directly tied to Mr. al Hawsawi. So the question I  
21 have for you is, does this picture accurately depict  
22 Mr. al Hawsawi's cell at the time that you would have  
23 interacted with him [REDACTED]

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1       A. Just so that I totally understand your question and  
2 can answer is accurately, are you asking me if this is his  
3 cell or does it look similar to his cell?

4       Q. No. Does it looks similar?

5       A. Yes.

6       Q. And in terms of does it accurately depict the general  
7 layout or this -- this particular piece of that -- of the  
8 layout?

9       A. Correct.

10      Q. Okay. All right. AE 632W (MAH), 2510.

11      LDC [MR. RUIZ]: This is also a Secret document, Judge.

12      Q. Do you see that? Does that look like an accurate  
13 depiction of the lobby area -- I think I've been told it was  
14 referred to as the lobby at one point -- of the cell in which  
15 Mr. al Hawsawi would have been held 2003, same time frame?

16      A. It looks similar to what I remember.

17      Q. Okay. And the -- the chair that is in that cell, does  
18 that look familiar to you?

19      A. You mean do I know what kind of chair it is? It's a  
20 metal folding chair.

21      Q. Yes, but were those the kinds of chairs that were  
22 utilized at the time that you were debriefing Mr. al Hawsawi?

23      A. I actually don't recall. I -- it wouldn't surprise me

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1 if they used a metal folding chair. Typically, there wasn't  
2 anything in that outer section; and when I went to visit him,  
3 I usually took whatever I needed. If I needed a chair, I  
4 carried a chair. Sometimes it was plastic, sometimes it was  
5 metal. I just ----

6 Q. Okay. Understand. If you took a metal chair, would  
7 it be a similar chair to this one or ----

8 A. Yeah. It would be a metal folding chair, yeah.

9 Q. Okay. So did that picture fairly and accurately  
10 represent the layout of Mr. al Hawsawi's cell [REDACTED]

11 [REDACTED]  
12 A. I don't know whether he had one that was reversed; but  
13 in terms of the general layout, there was an enclosed area  
14 [REDACTED] as you saw in that one, and then there  
15 was an open area, which I think you referred to as the lobby.

16 Q. Correct. All right. And Mr. al Hawsawi would have  
17 been debriefed in the open or lobby area?

18 A. Sometimes, sometimes not. Depended on how much time  
19 you were going to spend in there.

20 Q. Okay. So were there times where he was kept in the  
21 [REDACTED] portion of the cell?

22 A. If you just wanted to show him a picture and ask him a  
23 couple of questions about it, you wouldn't necessarily bring

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1 him out and put him through the hassle of hooding him and  
2 chaining him and having the guards move him because that  
3 always took a long time.

4 Q. Understand. So if you were moving him from the  
5 closed-off portion of his cell to the open area of his cell,  
6 the procedure I think you've just described is he would be  
7 shackled?

8 A. Yes. He would have put his hands through the --  
9 there's an opening there to put your hands through. He would  
10 have been shackled. Whether or not his feet would have been  
11 shackled, I don't recall. But they would have taken  
12 precautions to move him very similar to what you see here.

13 LDC [MR. RUIZ]: So the witness ----

14 A. Although I don't know if they shackled him here or  
15 not.

16 LDC [MR. RUIZ]: So the witness put both of his hands out  
17 in front close together to each other to demonstrate what the  
18 shackling of the hands would have been like.

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

20 Q. And would that have been chaining in the front or it  
21 would have been the -- the chains that come out from the back?  
22 Do you know what I'm saying? Was it like just a pair of  
23 handcuffs in the front or was it the chains that wrap around

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1 the back and come to the front?

2 A. I -- I'm trying to picture what you described to me.  
3 But I don't really need to, because in my experience they were  
4 using a standard pair of handcuffs in the front [indicated].

5 LDC [MR. RUIZ]: Okay. And the witness once again  
6 demonstrated putting both hands out in front, what the  
7 positioning of the hands would have been out in front of the  
8 body as opposed to behind.

9 Q. And you said they were hooded? Or he would have been  
10 hooded?

11 A. Well, it depends on -- on how far they were moving  
12 him. I just don't recall. Maybe he would have been hooded,  
13 maybe he wouldn't. It would just depend on what you were  
14 doing with him. I'm not sure that they would have hooded him  
15 if all they were doing was bringing him out of a cell in a  
16 place that he's familiar with and sitting him in a chair.  
17 That would have been a decision that was made by the --  
18 whoever the security person was at the time and -- and their  
19 concerns about him.

20 Q. But it's a possibility?

21 A. It's -- it's a possibility.

22 Q. It was certainly a procedure that would have been used  
23 if he was taken outside of the -- the room itself?

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1       A. You know, now that you've questioned me more closely  
2 about it, I'm not sure that that's the case. I don't -- I'm  
3 not -- I don't remember if -- you know, there was no reason to  
4 hide the exterior from them [REDACTED] because they saw the  
5 exterior sometimes. So I just -- at this particular point,  
6 I'd like to backtrack and say I just don't know.

7       Q. Okay. I understand. Now -- all right. Okay. I  
8 understand.

9             In your -- to your knowledge, would there have been a  
10 standard operating procedure document that governed those  
11 procedures?

12       A. Yes, sir. Security would have had a standard  
13 operating procedure.

14       Q. Okay. And that would have been [REDACTED]  
15 [REDACTED] would have ----

16       A. I don't know when it was published, but there was  
17 certainly a standard operating procedure in place at that  
18 place, so -- so I'm sure that there would have been something  
19 there.

20       Q. Did you ever have the opportunity to review that  
21 document or ----

22       A. No.

23       Q. Okay. All right.

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1 A. At least not that I recall.

2 Q. I understand. So if I understand correctly, you  
3 personally would not be the person who would chain or shackle  
4 Mr. al Hawsawi, hood him, and bring him out to be debriefed.  
5 It would have been somebody else?

6 A. It would have been a guard.

7 Q. Okay. Do you know how many personnel would have done  
8 that?

9 A. The CIA is weird about numbers.

10 Q. Okay. And I don't see an objection, so can you answer  
11 the question?

12 TC [MR. GROHARING]: Is the question just how many  
13 personnel moved him?

14 LDC [MR. RUIZ]: Yes.

15 TC [MR. GROHARING]: No objection to that particular  
16 question.

17 MJ [Col COHEN]: Okay. You may answer that specific  
18 question.

19 A. There would be at least two.

20 Q. Okay.

21 [Counsel conferred.]

22 Q. Okay. And when you say "guards," can you describe  
23 what type of attire they would have been wearing.

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1 A. I think at that point, they were wearing khakis.

2 Q. By that, you mean khaki pants?

3 A. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 Q. Okay. So they would have been dressed in their  
8 civilian clothes?

9 A. [REDACTED]

10 Q. Are you familiar with what the FBI uniform is normally  
11 referred to as?

12 A. No.

13 Q. Okay. So khaki pants and maybe like a polo shirt?

14 A. [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED] ---

18 Q. Yeah.

19 A. ---- pants. [REDACTED]

20 Q. [REDACTED]

21 A. And a -- and a shirt that was of a similar material  
22 with -- with that.

23 Q. Sure.

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1 A. [REDACTED]

2 [REDACTED]

3 Q. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 A. I was having a little trouble following the first part  
11 of what you said.

12 Q. Yeah.

13 A. Did you -- let me see if I understand it so you don't  
14 have to repeat it. Or you can repeat it.

15 Q. Go ahead.

16 A. [REDACTED]

17 [REDACTED]

18 ---

19 Q. Nope. What I'm asking you is if you saw anyone that

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 A. I did not.

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1 Q. Okay. All right. Do you recall what the lighting  
2 conditions were in Mr. al Hawsawi's cell?

3 A. No. There was ample light, but I don't recall. It  
4 wouldn't surprise me if there was some sort of illumination  
5 24 hours a day.

6 Q. All right. So that's what I was going to ask you  
7 about. Were you aware that there was a policy in place at the  
8 time that there would be no darkness in the cell?

9 A. That was a common procedure.

10 Q. Okay. To your recollection, was it a procedure that  
11 was utilized during Mr. al Hawsawi's stay [REDACTED]

12 A. I don't know specifically for him, but it wouldn't  
13 surprise me if it was.

14 Q. Were you familiar with any documentation that would  
15 include environmental factors, so any document that would  
16 contain a description of the environmental conditions in the  
17 cell? Did you have an opportunity to ever see a document like  
18 that?

19 A. The environmental conditions? You mean like the  
20 particulate levels and whether or not there's radon and that  
21 sort of stuff?

22 Q. No. I mean like lighting conditions, temperature, and  
23 anything like that?

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1       A. The -- the status of the cells were maintained by the  
2 administrative staff that was there and by the security  
3 guards. It's not something that I would have paid attention  
4 to unless I walked into it and it seemed extremely cold or  
5 extremely hot or, you know, extremely dusty or there was an  
6 odd smell.

7       Q. Okay.

8       A. So -- and I don't recall that happening, but it's just  
9 not something that I would track any more than I track what  
10 the atmosphere is like here in the courtroom.

11      Q. Understood.

12      LDC [MR. RUIZ]: Judge, I will be referring to 632W;  
13 page 2222.

14      MJ [Col COHEN]: Thank you.

15      LDC [MR. RUIZ]: And that's MEA-10011-9734.

16      MJ [Col COHEN]: Okay.

17      Q. Sir, I'm going to direct your attention to the key  
18 that you have, which is the MEA-10011-14370 document to the  
19 second page.

20      A. Bear with me.

21      Q. Sure. No worries.

22      A. Okay.

23      Q. Okay. All right. And if I can direct your attention

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1 down to -- on the left-hand column all the way down to the  
2 bottom to the entry which says 1/25/2004.

3 A. I see it.

4 [The accused, Mr. Ali, returned to the courtroom.]

5 Q. Okay. And all the way over to the right, do you see  
6 where it references personnel, who were, on that date,  
7 Interrogator Number 2, Interrogator Number 1, and Medical  
8 Provider Number 1?

9 A. I do.

10 Q. All right.

11 LDC [MR. RUIZ]: Judge, this is marked U//FOUO.

12 MJ [Col COHEN]: Okay.

13 Q. Sir, I'm going to ask you if you can read the  
14 portion ----

15 TC [MR. GROHARING]: Judge ----

16 Q. ---- just read the whole ----

17 TC [MR. GROHARING]: ---- can I just ask the Bates number  
18 of what's on the screen?

19 LDC [MR. RUIZ]: Sure. It's -- here you go.

20 TC [MR. GROHARING]: 9734 ----

21 LDC [MR. RUIZ]: Yeah.

22 TC [MR. GROHARING]: ---- I'm tracking.

23 LDC [MR. RUIZ]: Yep.

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1 Q. If you could read the paragraph that says, "Physical  
2 Environment."

3 A. "Hawsawi's cell has a sleeping area containing one bed  
4 pad, restroom sink, and shower. Hawsawi also has a pillow.  
5 His bedding consists of a pillowcase and a sheet. The  
6 florescent lights are always on in the room. There is no  
7 darkness."

8 Q. If you could stop there, sir. So this document -- are  
9 you familiar with this document? There was -- it's a document  
10 that was generated -- it says on the document [REDACTED] but  
11 based on the new information that we've been provided, we know  
12 from your key that it was [REDACTED] which is the time  
13 where you would have been there, correct?

14 A. If that's what it says on here, I have no reason to  
15 doubt it.

16 Q. Sure. I mean, if you want to take a look at it ----

17 A. No, I'm fine.

18 Q. Okay. It indicates that you, Interrogator Number 1 --  
19 which is your colleague -- and Medical Provider Number 1 were  
20 interacting with Mr. al Hawsawi on this particular date,  
21 correct?

22 A. It says that we had contact with him on that day, yes,  
23 sir.

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1 Q. And then in the middle column, it references this  
2 particular document which is 9734. And so my question to you  
3 is: Did you prepare this document or did you have input into  
4 the preparation of this document?

5 A. No.

6 Q. Do you have any idea who prepared it?

7 A. Yes.

8 Q. Okay. Is it a person with a UFI or someone that you  
9 can openly discuss in court?

10 A. When you asked me who prepared it, I assumed you meant  
11 a position title and not the person. If you mean a person,  
12 the answer will be no.

13 Q. Okay. You don't know the person, but you knew what  
14 the person's job would have been?

15 A. At the site, yes.

16 Q. Okay. Can -- can you -- can you elaborate on that?

17 A. Sure. It would have been the person who was the site  
18 manager reporting to headquarters what the conditions were  
19 that Hawsawi's cell was in.

20 Q. I understand. And was this a standard procedure that  
21 was required at the time, to have these periodic reports?

22 A. It's my belief that it was. That's -- this is not the  
23 first time I've heard that these kind of reports were

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1 generated.

2 Q. I understand. So having looked at this one in  
3 particular in reference to the physical environment, do you  
4 agree or disagree that Mr. al Hawsawi's cell, the lights were  
5 always on and there was no darkness in the cell?

6 A. I think I've already answered that question. It  
7 wouldn't surprise me if they were on. I -- I mean, I -- I  
8 know we didn't turn them off at that particular time.

9 Q. Okay. Was there a specific reason why the lights had  
10 to remain on the entire time?

11 A. I think they were concerned about self-harm on the  
12 part of the detainees and the fact that they may be trying to  
13 manufacture a shiv or something out of something they found in  
14 the cell. So my impression, it was primarily a security  
15 issue.

16 Q. Did you -- did you have any sense as to whether having  
17 the lights on all day, all night, was something that impacted  
18 Mr. al Hawsawi in a negative way?

19 A. I don't know whether it did or not.

20 Q. Sir, did you know that at that time -- and by that  
21 time, I'm -- when I say "that time," I'm referencing generally  
22 the -- the bookends of your time [REDACTED] right? So I'm  
23 talking about [REDACTED]

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1           In that period of time, did you know that  
2 Mr. al Hawsawi was provided with an extra pair of pants  
3 because his condition could result in soiled clothing? Were  
4 you aware that he had this?

5           A. Could do what with soiled clothing?

6           Q. His condition could result in soiled clothing.

7           A. No.

8           Q. Okay.

9           A. I didn't track what kind of clothes they had. It  
10 wouldn't surprise me if they had several pair of pants or just  
11 one. It's just not something I'd be tracking.

12          Q. Understood. The person who was providing the periodic  
13 updates including physical environment would have been the  
14 person who would also be tracking the clothing, correct?

15          A. It would be the site manager, whoever that was, or  
16 that site manager's assistant if they had -- if he or she had  
17 one.

18          Q. All right. And if the report I had just shown you  
19 indicated that Mr. al Hawsawi had an additional pair of pants  
20 because his condition could result in soiled clothing, would  
21 you have any reason to doubt that information?

22          A. No. They were just talking about how he suffers from  
23 periodic bouts of diarrhea, so I -- it would be a -- actually,

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1 I think that would be a kindness. To have an extra set of  
2 pants in there in case you soiled it because you had diarrhea  
3 would be a kindness.

4 Q. Were you aware that the reason was because he was --  
5 it was soiled with blood?

6 A. I have no idea what it was soiled with.

7 Q. Right. But you just indicated it was diarrhea.

8 A. I said if he was suffering from periodic -- the  
9 operative word there is "if."

10 Q. Okay. When Mr. Hawsawi was debriefed during the 2003  
11 to '4 time frame that I've described, I think you've indicated  
12 that there were different types of interactions: One where  
13 you would show him a photograph and ask him about -- specific  
14 questions about that person; and then perhaps a different one  
15 where there would be more involved questions, correct?

16 A. Correct.

17 Q. All right. So you described the guard personnel, and  
18 I know you've talked a little bit about the -- your knowledge  
19 of the Federal Bureau of Investigation. In -- are you aware

20

21

22

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1 A. Never heard that.

2 Q. Okay. Did you ever see that?

3 A. No.

4 Q. You testified that when you would debrief

5 Mr. al Hawsawi, at times you would use a linguist and at times  
6 you would not.

7 A. I said that I didn't recall. But if a linguist was  
8 required, we would have used one; if one wasn't required, we  
9 wouldn't have.

10 Q. Okay. So I guess my question is: In your mind, what  
11 would require a linguist or what would not require a linguist?

12 A. If the topic was so complicated that he either didn't  
13 understand it or his answers to me required the use of Arabic  
14 or some other language that I didn't understand.

15 Q. And based on your experience interacting with  
16 Mr. al Hawsawi -- when you said if the topic was so  
17 complicated, can you give me an example of a topic that was  
18 complicated would require translation?

19 A. Any subject that we were talking about where he  
20 indicated that he needed a linguist or he was -- he didn't  
21 know the correct words to answer the question. I'm giving you  
22 a sort of a general approach, not a specific memory.

23 Q. I understand. And I'm not asking you at this point

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1 exactly what topics they were, but I'm asking you if there  
2 were times when you debriefed Mr. al Hawsawi that he required  
3 a linguist.

4 A. And what I'm saying is I don't remember.

5 Q. Okay. Do you remember or -- Mr. al Hawsawi's  
6 proficiency in the use of the English language at that time?  
7 How would you characterize that?

8 A. I don't remember his proficiency sitting here today.

9 Q. Do you recall -- and I'm contrasting here. Do you  
10 have recollection as to any other detainee's proficiency in  
11 terms of like it's so good in the English language that it  
12 just -- you remember this person, hey, they really could speak  
13 English?

14 A. Are you asking me what other prisoners were there that  
15 spoke English?

16 Q. No. I'm asking you if you have recollection of the  
17 language proficiency of other detainees.

18 A. Yes.

19 Q. Okay. And is that because their command of the  
20 language was memorable in terms of good or bad?

21 A. No. It's because I've known them for some time and  
22 have spoken English with them before, and because we were  
23 discussing something that stands out in my mind, and I recall

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1 that the person spoke English.

2 Q. Understand. So this chart that I have provided you, I  
3 counted -- and you're welcome to count as well -- indicates  
4 that you had approximately -- or you had 40 contacts with  
5 Mr. al Hawsawi?

6 A. I had 40 opportunities to have contract [sic] with him  
7 because we were both in the same place at the same time.

8 Q. Well, no. The -- what this document is, the direct  
9 and substantial contacts, according to the government, that  
10 you had with Mr. al Hawsawi based on their records. And so  
11 what I'm saying to you is this document indicates that there  
12 were at least 40 of such instances, correct?

13 A. I'm trying to understand the document then, because  
14 apparently I don't understand the document the way it was  
15 briefed to me.

16 Q. Well, there are ----

17 A. What -- sir, if you -- if I could just finish my  
18 response.

19 Q. Sure. Go ahead.

20 A. When I was briefed on the document, not by you, but  
21 by -- a similar document that I was showed, what I -- what I  
22 walked away believing was all the document showed was that I  
23 was in that area at the same time that the detainee was; that

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1 it wasn't necessarily an indication that I had talked with the  
2 detainee.

3 Now, I -- I could have, right?

4 Q. Well ----

5 A. But I just don't recall having 40 meetings with him,  
6 but that -- I mean, I -- I'll take your word for it. I'm not  
7 going to argue with you.

8 Q. Well ----

9 A. I just -- my understanding of what the document  
10 indicates and what you just said are two different things.

11 Q. Well, you have the document in front of me and the --  
12 what I'm looking at is the number of documents that were --  
13 that were attributed to each particular day, so there were --  
14 as you see in the middle column, there's a number that have  
15 the same Bates numbers, but they're actually -- I don't know.  
16 This is the way it was produced, so it's -- it's ----

17 A. All right.

18 Q. I will admit it's confusing to me as well, but here's  
19 the -- the question I have based on what you just said.

20 You indicated somebody briefed you on this document?

21 A. I -- a similar document, not this particular document.  
22 It was a document that showed the dates that I was at various  
23 areas.

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1 Q. Okay. And it is -- it is your impression that what  
2 this document demonstrates is when you were in the area and  
3 not necessarily in direct contact with an individual?

4 A. I could have been mistaken about what the thing  
5 actually means, and I'm not arguing that I have a clear  
6 understanding of it. I'm just saying ----

7 Q. That's fine.

8 A. ---- when you asked me the question, I'm trying to  
9 give you an honest answer. And the honest answer is at the  
10 time that you asked me that question, it wasn't clear to me  
11 whether -- whether the document showed that I had had actual  
12 contact with that person that day or whether the document  
13 showed that I was just at that black site and could have had  
14 contact with that person that day.

15 Q. I understand. All right. Well, let me ask you this:  
16 How many contacts do you think -- you think you had more than  
17 a hundred? You think you had less than four or five? Do you  
18 have any real sense of how much interaction you had with  
19 Mr. al Hawsawi?

20 A. I'm willing to take this at face value. I don't want  
21 to estimate because I just don't know.

22 Q. Okay. Fair to say, though, you had the opportunity to  
23 speak with him?

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1           A. I did, and -- and not to quibble, but if I was there  
2 that day, my job would have been to check in and see how he  
3 was doing, so I would have done that.

4           Q. And you had an opportunity to, I think you indicated,  
5 observe him when he didn't know that you were watching him as  
6 well?

7           A. I think they had cameras in those cells at that time,  
8 yeah.

9           Q. Okay. All right. So -- okay.

10           You talked about the shifting of priorities? Yes?

11           A. That's a -- that was a statement, but yes.

12           Q. The -- as I understand it -- and what I'm trying to  
13 get is the full understanding of this -- of this concept.

14           One of your ultimate goals or your ultimate goal was  
15 to shift the priorities of the person you were interrogating,  
16 yes?

17           A. Yes.

18           Q. Okay. And to shift the priorities away, I think you  
19 said, from protecting information to a different priority,  
20 which would be getting better treatment, perhaps? Yes?

21           A. No. Oh, yes. Okay. I'd go along with that. That's  
22 part of it.

23           Q. Okay. What would you say? Go ahead.

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1           A. Well, what we really wanted to do is shift their  
2 priorities such that they would be more motivated to provide  
3 information, and sometimes that might include better  
4 treatment. Sometimes that might include an opportunity to  
5 have us intercede with Washington to present a better  
6 understanding.

7           It just varied from time to time. There was no  
8 standard theme that we were pushing. There were a variety of  
9 themes.

10          Q. And a person whose priorities had been shifted  
11 wouldn't necessarily be in a -- what you've described as  
12 the -- or what we've described as the catastrophic state of  
13 learned helplessness, right? So you could have shifted  
14 priorities, but that doesn't necessarily mean you're in this  
15 state of learned helplessness where you can't find a way out.

16          A. Well, if you were in a state of learned helplessness,  
17 you wouldn't have shifted your priorities. You would just  
18 accept whatever was happening.

19          Q. So that's a yes, a person who can have -- who have  
20 shifted priorities without having the learned helplessness?

21          A. A person can do that, yes.

22          Q. Great. And the question I have is: Some third-party  
23 observer who comes into contact with a person who has been

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1 through your program and whose priorities have been  
2 shifted ----

3 A. Uh-huh.

4 Q. ---- how would they know -- or would there be a way  
5 that they could tell ----

6 A. Would they know what, sir?

7 Q. How would they know that the person's priorities have  
8 been shifted through ----

9 A. They would be -- go ahead. I don't want to cut you  
10 off.

11 Q. How would they know that the priorities have been  
12 shifted to a state of compliance, where the person wants to  
13 protect themselves and wants to comply as opposed to protect  
14 information? Would there be something about the person that I  
15 could look at and say, well, this person -- this person has  
16 been through a -- through a process where they've been --  
17 their priorities have been shifted into compliance, for lack  
18 of a better term, and to providing information? Is there  
19 anything that would alert me to that?

20 A. Well, you use the term in there to protect themself,  
21 which is not a way that I would have characterized that.  
22 People can shift their priorities for a lot of reasons. They  
23 can shift their priorities -- for example, I'll give you an

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1 example.

2           When Khalid Shaikh Mohammad mentioned his interactions  
3 with Daniel Pearl, we were pressing him about WMD. My belief  
4 is he mentioned that to distract us from the WMD portion of  
5 what we were doing. So his priorities shifted in such a way  
6 that he was willing to provide that information to protect  
7 other information that he would prefer not to talk about.  
8 That has nothing to do with protecting himself.

9           Q. So there -- there are different reasons why a person  
10 may shift their priorities?

11          A. I ----

12          Q. Yes?

13          A. Yes.

14          Q. And one of those reasons can be the fact that they  
15 want to protect themselves from -- let's say from further  
16 application of enhanced interrogation techniques or whatever?

17          A. Well, it would be unreasonable to say that that's not  
18 possible.

19          Q. Right. So once that shift in priorities -- or let's  
20 say for -- has happened, and another person comes into contact  
21 with that individual. How does that person know why this  
22 person -- how they've shifted their priorities? Is it  
23 something that they can tell?

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1           A. Yeah. If they -- you know, what happens in a -- in a  
2 situation where I ask you a question or you asked me a  
3 question, you've asked me a question. So in the moment to  
4 seconds -- the moments that I have to consider that sec --  
5 that question, I have to put together a lot of stuff.

6           And one of those things are my priorities while I'm  
7 here, which is basically to tell the truth and give the judge  
8 the information that he needs to make an informed  
9 decision ----

10          Q. Uh-huh.

11          A. ---- right? And -- but you could do something to  
12 change that, right? You could shift my priorities. There's a  
13 variety of ways to do that.

14          So how could you tell? You could tell because the  
15 person is answering questions or the person is entertaining  
16 the questions or anywhere in that movement along that  
17 continuum from not -- not responding at all and outright  
18 resistance to complete compliance, you know, you could -- you  
19 could tell whether or not the person was entertaining the  
20 question and providing answers.

21          Q. Okay.

22          A. May I make one more comment? That wouldn't  
23 necessarily -- it's not that his priorities couldn't change

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1 again, since that happens in milliseconds and moments. His  
2 next -- you know, if you look at the -- the distribution of a  
3 detainee's responses along that continuum, there are some  
4 things he will protect, like the identity of the courier who's  
5 interacting with UBL; and then there are other things they're  
6 willing to give away, like names of low-level folks who happen  
7 to be in the United States.

8           So, you know, on that continuum, they don't respond to  
9 every question the same way. It's not like a switch is thrown  
10 and then you've got them broken so that you can ask them  
11 anything. It's that there are some questions they will  
12 respond to in -- with a more cooperative way and provide more  
13 details than others. And so it's just as likely that a person  
14 could be asked a question and their priority would shift so  
15 that it was more towards protecting the information instead of  
16 providing it.

17       Q. I think what I was -- maybe I'm missing it, but what I  
18 was trying to understand is how a person who comes into  
19 contact with someone who has gone through these interrogations  
20 as you've described them -- say for instance a future  
21 debriefer, right?

22           That person first meets the -- the individual who has  
23 gone through your program, they wouldn't -- they wouldn't be

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1 able to tell why this person is -- is talking with them,  
2 right? I mean, they wouldn't be able to identify if they're  
3 talking because they -- they -- they think it's a good thing,  
4 they want to do it, or because they're worried that if they  
5 don't do it, somebody else is going to take them back to the  
6 bad times or the harsh times. The debriefer wouldn't know  
7 that, right?

8 A. You're asking me to speculate about what some person  
9 that I don't know would think?

10 Q. Well, I'm asking you how somebody could tell, right?  
11 I mean, is -- like about the person going through the program,  
12 are there any outward characteristics, a person with no  
13 psychological training or no type of specialized training, is  
14 there anything they could look at that person to assess, say,  
15 for instance, their willingness to answer questions?

16 A. To assess the difference in their willingness to  
17 answer questions?

18 Q. Why they're willing to answer questions.

19 A. I have no idea what you're talking about.

20 Q. Okay. All right. So no?

21 A. I have no idea what you're talking about.

22 Q. All right.

23 MJ [Col COHEN]: Counsel, I actually want to know this, so

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1 I'm going to step in real quick.

2 So is there an outward manifestation of someone's  
3 internal motivation for answering questions?

4 WIT: What they say their motivations are would be an  
5 outward manifestation.

6 MJ [Col COHEN]: Any others?

7 WIT: Not that -- not that I can think of at the moment.

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

9 LDC [MR. RUIZ]: Thank you.

10 MJ [Col COHEN]: I wanted to know the answer to that one.

11 LDC [MR. RUIZ]: Thank you. Feel free to throw in  
12 any ----

13 MJ [Col COHEN]: I'm not trying to help. That was  
14 personal, because I needed the answer to that question.

15 LDC [MR. RUIZ]: I understand.

16 **DIRECT EXAMINATION CONTINUED**

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

18 Q. In terms of -- I think we've talked a little bit about  
19 documenting. During the time [REDACTED] did  
20 you have access to computer systems to document your  
21 interactions with Mr. al Hawsawi?

22 A. Yes, if it was required.

23 Q. Okay. And was that a computerized system that was

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1 provided for you?

2 A. You're asking me about the computer equipment that the  
3 CIA used to communicate with itself?

4 Q. Well, yes.

5 A. That's what I had.

6 Q. Okay. I wasn't -- I wasn't sure if somehow that was  
7 Top Secret. Okay. So you had access to the CIA's  
8 computerized system?

9 A. Yes.

10 Q. Okay. Did you have access to their database in order  
11 to review things such as intelligence reports?

12 A. Yes.

13 Q. Okay. And did you, in fact, review any intelligence  
14 reports with respect to Mr. al Hawsawi?

15 A. I don't recall.

16 Q. Okay. Was there any standard procedure that would  
17 have been utilized to -- prior to debriefing a detainee in  
18 terms of the information that was reviewed? So you've --  
19 you've talked a great deal about the protocol and the  
20 methodology before going into an interrogation and the  
21 planning that goes into that.

22 What I'm asking here is, before going into debriefing,  
23 is there some similar type of -- of planning, coordination

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1 that goes on between you as the interrogator and the person  
2 who's going to debrief Mr. al Hawsawi?

3 A. If I was going to be in the room with them, that  
4 person would normally pull the intel requirements off the  
5 computer and he or she and I would sit and discuss them. And  
6 they would tell me what kind of questions they were interested  
7 in asking and what kind of information they would like to get  
8 and sort of what they expected to hear if they knew ----

9 Q. Okay.

10 A. ---- right? On the situations where I debriefed him  
11 alone because it was holidays, are you also asking about that?

12 Q. Well, I'm interested in -- in your practice and your  
13 procedures prior to going into a debrief, so yes.

14 A. If I were there alone to do it, the intel requirements  
15 come in as a cable. First thing I would do when I got into  
16 the SCIF in the morning is get on my system, see what my  
17 orders were from headquarters, see what the -- they wanted me  
18 to do, look at the intel requirements, read any intels that  
19 are linked to those requirements, and then set about planning  
20 my day.

21 Q. And as far as -- as far as you're aware, those intel  
22 requirements came from the CIA?

23 A. That's the only place that I can recall getting intel

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1 requirements.

2 Q. Okay. So you never had anybody from the FBI provide  
3 requirements or topics or questions for Mr. al Hawsawi?

4 A. Not to me.

5 Q. Okay.

6 A. And I -- and I -- and by saying "not to me," I'm not  
7 implying they applied them to someone else. I'm just  
8 saying you asked if they ever did it to me, and I'm saying no.

9 Q. Okay. All right. So once -- once the debriefing --  
10 and I'm talking here a little bit about the longer debriefing  
11 sessions. Once a debriefing session is necessary,  
12 Mr. al Hawsawi is removed from his enclosed portion of his  
13 cell, he's shackled, he may or may not be hooded. And then  
14 he's brought into the open area or the lobby area that we've  
15 described of the structure that has been depicted in the  
16 photographs that you've seen, correct?

17 A. That's my assumption and recollection. I don't  
18 remember that specifically for -- it's not like it was a  
19 procedure for every -- everyone.

20 So if you're asking me what the typical procedure was,  
21 I have no idea. But if you're asking me what I would expect,  
22 that's what I would expect.

23 Q. Well, did you ever debrief Mr. al Hawsawi in anyplace

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1 other than the type of room that we have discussed today, the  
2 pictures you've seen, the lighting conditions? Did you ever  
3 debrief him in a different area, different building, different  
4 room, different structure?

5 A. I don't recall.

6 Q. Okay. And once Mr. al Hawsawi was brought out of that  
7 area, I think you mentioned that there was no furniture.  
8 Would he just be required to stand during the debriefing, if  
9 it was going to be a more involved debriefing, or how would  
10 that work? How did that work?

11 A. They brought in whatever I wanted them to bring in.  
12 If I wanted two chairs, they brought in two chairs. If I  
13 wanted one chair for him to sit in and me to stand, that would  
14 be okay. If a debriefer wanted two chairs and a table, that  
15 would be okay, too.

16 It just varied depending on what -- and I -- it  
17 wouldn't surprise me if some people left tables and chairs in  
18 there. You -- you asked me about my, you know, experience.  
19 My experience is I just prefer to have no barrier between me  
20 and who I'm debriefing. If I'm going to write -- and I  
21 typically do when we do intel reports -- I take -- I print off  
22 the intel requirements, I cut off the pieces of stuff that  
23 he's not supposed to see, I put it on a clipboard, I set it on

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1 my knee, I ask the question, I jot notes, right? So ----

2 Q. So I understand that you're saying that that's your  
3 preference?

4 A. Yes.

5 Q. Can you say that you never sat at a table with  
6 Mr. al Hawsawi during one of the debriefs?

7 A. Are you really asking me if I never did? Never? I  
8 have no idea whether I never did or I did. I don't remember.

9 Q. Okay. I think you testified that the substance of  
10 the -- of the debriefs was related to the *9/11 Commission*  
11 *Report*, that you were down here and you were collecting  
12 information that was related to that report; is that correct?

13 A. Not all of the debriefs, just some of them.

14 Q. Okay.

15 A. Most of the 9/11 debriefs were handled by debriefers.  
16 It was over a period when I was here over Christmas that I did  
17 those.

18 Q. Okay. So there were other debriefs that were not  
19 9/11 Commission-related debriefs?

20 A. If intel requirements came in, regardless of what they  
21 were, if they were directed at Hawsawi, either me or one of  
22 the others would debrief him.

23 Q. Do you have any specific recollection of intelligence

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1 requirements that you had that were related to Mr. al Hawsawi  
2 and that you would have debriefed him on?

3 A. I've been told that specific intelligence requirements  
4 are probably classified. But that aside, I don't recall any  
5 specific ones.

6 Q. I understand. Okay. Okay. So I'd like to show you a  
7 document that is marked MEA-STA-2103. It is found at AE 632W,  
8 page 2256.

9 LDC [MR. RUIZ]: Judge, this is UNCLASSIFIED//FOUO, and  
10 all of these documents are as well ----

11 MJ [Col COHEN]: Okay. Excellent.

12 LDC [MR. RUIZ]: ---- the ones that I'm going to ----

13 MJ [Col COHEN]: You may publish.

14 LDC [MR. RUIZ]: ---- utilize. Thank you.

15 Q. If you look on your key there, if you want to look on  
16 your key, the key you have ----

17 A. Okay.

18 Q. Okay. December [REDACTED] 2003.

19 A. I recall that I was present at the site.

20 Q. Okay. The -- on the [REDACTED] December 2003, if you  
21 take a look at that and look over to the right column, it  
22 indicates that you had direct and substantial contact with  
23 Mr. al Hawsawi on the [REDACTED] of December of 2003 along with

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1 Interrogator Number 1 and Interrogator NY7 and then the  
2 reference is MEA-STA-2103 as the document that associated with  
3 that date, and I'm showing you that document now.

4 Do you -- do you recognize this document?

5 A. No.

6 Q. Okay. It references in the document that on 42  
7 occasions on December [REDACTED] 2003 -- and I know this one says  
8 "late 2003," but we have the authority to tell you that it was  
9 December [REDACTED] 2003.

10 On 42 occasions late in 2003, Mr. al Hawsawi  
11 cooperated -- and I'm sorry. I'll let you ----

12 A. I'm looking up the ----

13 Q. ---- make sure.

14 A. ---- the other person that you say was an interrogator  
15 who I believe was a debriefer. But go ahead, you can keep  
16 talking.

17 Q. Oh, no. Go ahead. Go ahead.

18 A. That person was a debriefer, not an interrogator.

19 Q. You're talking about NY7?

20 A. Yes.

21 Q. Okay.

22 A. Sorry. That distracted me because I knew there  
23 weren't three interrogators there.

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1 Q. I shifted your priorities.

2 A. Exactly.

3 Q. Very good. I'm getting there. Okay.

4 So this document indicates that Mr. al Hawsawi was  
5 asked about recognition of the identity of persons, places, or  
6 materials of interest to the United States. Do you recall  
7 requirements in generally those categories or the subject  
8 areas that are described in this document and asking  
9 Mr. al Hawsawi about them?

10 A. I recall, as I said before, that we would have showed  
11 him pictures. We would have asked him about the folks. If --  
12 if this document from the CIA says it involved people in the  
13 United States, I have no reason to contest that.

14 Q. Okay.

15 A. I just don't recall specifically that I was given a  
16 picture of somebody in the United States and asked to get that  
17 information. We were given lots of pictures of people from  
18 all over the world, and I didn't make a discrimination.

19 Q. I think what it says is of interest to the  
20 United States, not in the United States.

21 A. Okay.

22 Q. But the -- what I'm trying to establish in this line  
23 of questioning is the general subject matter of the kinds of

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1 questions they were being asked of Mr. al Hawsawi during this  
2 period of time and from this document, it appears that he was  
3 asked about the identity of persons, places, or materials.  
4 And what I'm asking you is: Do you have any reason to contest  
5 that?

6 A. Not at all.

7 Q. Okay. And that particular document I just took off  
8 the screen, that did not relate to the 9/11 Commission  
9 category of debriefs, correct?

10 A. I wouldn't know because I don't know what photographs  
11 I was showing him. That thing doesn't say. It's entirely  
12 possible that there were photographs of people who were  
13 related to 9/11.

14 Q. Sure. Okay. All right. MEA-STA-2200, AE 632W,  
15 page 2291.

16 LDC [MR. RUIZ]: Also Unclassified, Judge.

17 MJ [Col COHEN]: You may publish.

18 Q. Sir, have you had an opportunity to review that?

19 A. Yes.

20 Q. Okay. So in your key, I'm going to direct you to the  
21 [REDACTED] and that would be MEA-STA-2200 at the bottom of  
22 the -- in the middle column.

23 A. Okay. I see it.

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1 Q. Okay. And then you see over there where it says  
2 "Interrogator Number 2"?

3 A. Yeah, it looks like I was the only person on site.

4 Q. Right. It's consistent with your holiday --  
5 description of your duties during the holidays?

6 A. Yes.

7 Q. So it indicates that on [REDACTED], you had direct and  
8 substantial contact with Mr. al Hawsawi in relation to AE --  
9 MEA-STA-2200. I want to ask you about that document -- is  
10 during that debrief in December [REDACTED] of 2003, it references  
11 that Mr. al Hawsawi answered all questions without hesitation,  
12 and he appeared to be forthcoming as he explained his  
13 responses, correct?

14 A. That's what it says.

15 Q. So would -- would this been -- would this have been  
16 something that you prepared since you were by yourself or  
17 who -- who would have typed up this -- I know it's probably  
18 not in the way you saw it, but who would have typed up this  
19 information if you ----

20 A. Probably a reports writer. They had a -- this is a --  
21 this is a job title we haven't discussed before.

22 Q. Okay. During ----

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

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1 MJ [Col COHEN]: Objection. All right, you may answer.

2 That's fine.

3 A. Okay. When they send a cretin like me out to a place,  
4 you know, who isn't familiar with the way the CIA puts  
5 together reports, they also have a pertinent person available  
6 who makes sure those reports are put together properly. And  
7 that person probably typed it up from my notes and then  
8 shredded my notes.

9 Q. And then you said then shredded your notes?

10 A. That would be what happened.

11 Q. Okay. And was that standard operating procedure?

12 A. Yes. Any notes you take get shredded on the spot.

13 And the reason I don't think I wrote this is because  
14 it's talking about 170 centimeters tall. I wouldn't have -- I  
15 didn't normally convert that to centimeters. But when --  
16 unless he said it specifically to me, I would have written it  
17 down.

18 Q. Okay.

19 A. But if he gave me the way we use it, 6 foot or  
20 whatever it is, 5-9, whatever, I would have written that  
21 instead.

22 Q. So it appears that in this particular interaction with  
23 Mr. al Hawsawi, you were asking him questions about a specific

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1 individual, Abu Muhammad?

2 A. That's what it -- that's what it says. I have no  
3 recollection of it, but I don't doubt it.

4 Q. All right. MEA-1011-9890, 632W, page 2240. My  
5 apologies. The Bates is 10011, not 1011 as I indicated. And  
6 it's at 632W page 2240, which is an unclassified document.

7 MJ [Col COHEN]: It may remain published.

8 LDC [MR. RUIZ]: Thank you.

9 Q. So I will refer your attention to [REDACTED] 2004 on your --  
10 on your key.

11 A. Can I look up the other person that you've identified  
12 as an interrogator on this -- or this document identifies as  
13 an interrogator?

14 Q. Absolutely. I did not identify them. I have no idea  
15 who they are ----

16 A. Sorry.

17 Q. ---- but, yes, absolutely.

18 And just while you do that, it does indicate that you  
19 and Interrogator KG5 had direct and substantial contact with  
20 Mr. al Hawsawi on February [REDACTED], 2004, correct?

21 A. Yes. But that person is a debriefer.

22 Q. Gotcha. Move this up a little bit there. Have you  
23 had an opportunity to review that document?

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1 A. I have.

2 Q. Okay. So do you recall this particular incident with  
3 Mr. al Hawsawi?

4 A. No.

5 Q. Okay. Do you have any reason to dispute the facts  
6 that are contained in this document?

7 A. I don't know whether I'm one of the people who was  
8 involved in this or whether it was the site manager and a  
9 security person. You know, it's not inconceivable and, in  
10 fact, it is highly probable that I was one of the people who  
11 did this.

12 Q. Okay.

13 A. But I just don't recall it, and so I can't say for  
14 certain that I was involved in it.

15 Q. I understand. So you don't recall Mr. al Hawsawi  
16 being visibly shaken or visibly shaking during that incident?

17 A. Not in this particular incident, no.

18 Q. Is there another incident that you would recall him  
19 physically shaking?

20 A. No. That's the problem with answering that question  
21 the way I answered it.

22 Q. Yes?

23 A. No.

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1 Q. Oh, okay. Understood. Well, you know, this is a  
2 little bit like pitching. They're not all strikes, so ----

3 A. Understood.

4 Q. Okay. To your knowledge ----

5 A. Can I make one more point about this last piece of  
6 paper before you put it away?

7 Q. Sure.

8 A. Here where it says "Interviewers" at the very  
9 bottom ----

10 Q. Yes.

11 A. ---- I think if I had been there, they would have said  
12 interrogator.

13 Q. Let's just say I believe you were there based on my  
14 knowledge, but obviously I can't testify. But okay.

15 So we talked a little bit before about the assessment  
16 you conducted on Mr. al Hawsawi, and I think you gave a  
17 general response that said you had not administered any  
18 testing instruments.

19 To your knowledge, was Mr. al Hawsawi, during --  
20 during the time that you were doing these psychological  
21 assessments, ever administered a -- what is called a PHQ-9,  
22 which I understand is a patient health questionnaire, which  
23 has a self-report of nine symptoms of depression? To your

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1 knowledge, was he ever administered that?

2 A. That would have been something the physician would  
3 have done, not me. So he would -- he would have told me the  
4 results or -- but I don't recall that being done.

5 Q. Okay. You personally did not administer a PHQ-9?

6 A. No. As I said, that's usually a test that a physician  
7 gives.

8 Q. And just briefly, could you -- could you -- my  
9 understanding of the PHQ-9 is that it's a multipurpose  
10 instrument for screening, diagnosing, monitoring, and  
11 measuring the severity of depression; is that accurate?

12 A. I'd have to see the test, you know. But in general,  
13 those screening tests are designed to do specifically that.

14 Q. Okay. Are you not familiar with the PHQ-9?

15 A. I am not familiar with the PHD-9 [sic]. That's the  
16 reason I knew I didn't administer it.

17 Q. Understand. What about the GAD-7, which is the  
18 Generalized Anxiety Disorder assessment?

19 A. No.

20 Q. You're not familiar with that test either?

21 A. These are tests -- these are quick-and-dirty tests  
22 that physicians give to -- to monitor that. If a psychologist  
23 is interested in assessing whether or not a person is anxious

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1 or depressed, they ask specific questions like what has your  
2 mood been like the last few days? How are you sleeping? They  
3 ask very specific questions which are usually covered by these  
4 instruments, but ----

5 Q. So -- so just to make sure I'm clear, you are familiar  
6 with this test or you're not familiar with this test?

7 A. I'm not familiar with that test.

8 Q. Okay. Because you said it's a quick-and-dirty test,  
9 so I was -- that kind of confused me.

10 A. If it's ten questions, it's quick and dirty.

11 Q. So it could be kind of utilized in a drive-by kind of  
12 evaluation?

13 A. I wouldn't call it a drive-by evaluation. The way  
14 those kinds of tests get used is as a screening test. So if  
15 you answer a lot of questions in the positive way and you look  
16 anxious, the physician goes into it and looks at it.

17 It's a little bit like a blood test. The blood test  
18 is quick and dirty until they see something that's wrong, and  
19 then they investigate further.

20 Q. Okay.

21 A. So those kinds of tests are designed to alert you to  
22 the possibility that something could be going on that needs to  
23 be investigated further.

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1 Q. The -- okay. You're talking generally now. You're  
2 not talking about the two I've mentioned because I thought you  
3 said you didn't -- or weren't familiar with them.

4 A. Yes. I don't know how to make it any more clear. I  
5 am not familiar with them, but I am familiar with the concept  
6 behind screening tests.

7 Q. Okay. All right. So you know that they are screening  
8 tests?

9 A. If they're ten questions long, they're screening  
10 tests.

11 Q. Gotcha. What about the PCL? Are you familiar with  
12 the PCL?

13 A. I have no idea what that is.

14 Q. Okay. What ----

15 A. Does it have a name beyond PCL?

16 Q. Well, it's a post-traumatic stress disorder test?

17 A. Checklist?

18 Q. It's a 5- to 20-item report measures to screen for  
19 post-traumatic stress disorder.

20 A. Okay. So it's a screening test.

21 Q. I mean, you tell me. You're the expert, right?

22 A. Didn't you just tell me it was a screening test?

23 Q. I'm -- I'm giving you the Google definition. I

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1 didn't ----

2 A. From my ----

3 Q. ---- think you'd wouldn't be familiar with it.

4 A. From my understanding of what you told me, the kind of  
5 test it is, a test like that would be given and then a  
6 clinician would sit down and explore each of those answers  
7 with the person.

8 Q. You did not give this test?

9 A. I did not.

10 Q. Okay. And to your knowledge, none of these screening  
11 tests were provided to Mr. al Hawsawi in the course of making  
12 an assessment of his psychological state?

13 A. To my knowledge, no.

14 Q. Okay. After December of 2003, this -- the date that  
15 you and Dr. Jessen conducted the psychological assessment, did  
16 you ever, to your -- to the best of your recollection, conduct  
17 another psychological assessment of Mr. al Hawsawi or was  
18 that -- was that the last one?

19 A. So what was the time period?

20 Q. It's the same time frame we've been referring to, but  
21 your initial one was in December of 2003, on December [REDACTED],  
22 and I'm asking if after that, you ever conducted another  
23 psychological assessment of Mr. al Hawsawi?

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1       A. I don't recall but I -- I would doubt it because in  
2 2003, we were desperately trying to get them to quit asking us  
3 to do that sort of stuff because I felt it put us in a  
4 conflict of interest.

5       Q. Okay. And the conflict of interest that you're  
6 referring to is the debriefer or interrogator/psychologist  
7 dual-hatted nature of what you were asked to do?

8       A. Correct.

9       Q. Okay. All right. Do you remember questioning  
10 Mr. al Hawsawi about things such as [REDACTED]  
11 [REDACTED] Do you  
12 remember any of those subject matters that were subject  
13 matters of Mr. al Hawsawi's debriefings when you were  
14 involved?

15       A. I don't recall. I wouldn't rule it out. If you've  
16 got a document that says I did that, then I won't contest it.

17       Q. I understand. So I'll direct your attention to  
18 December [REDACTED] 2003, in your key.

19       LDC [MR. RUIZ]: Judge, this will be ----

20       A. December the [REDACTED], you say?

21       Q. Yes, December [REDACTED], 2003. This will be at  
22 MEA-STA-2202, AE 632W, page 2293.

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

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1 LDC [MR. RUIZ]: Did you say something, Judge?

2 MJ [Col COHEN]: I said thank you.

3 LDC [MR. RUIZ]: Oh, okay. Understood.

4 MJ [Col COHEN]: Sorry about that. I was away from the  
5 microphone, so it may have been harder for you to hear. Sorry  
6 about that.

7 Q. Have you had an opportunity to review that?

8 A. Yes.

9 Q. Okay. So -- and have you had an opportunity to review  
10 the key on the date that I provided for you?

11 A. Yes.

12 Q. Okay. And did you see in there that it indicates  
13 Interrogator 2 was present, had direct and substantial contact  
14 with Mr. al Hawsawi on this date in relation to this document?

15 A. Yes.

16 Q. Okay. So looking at this document, does it refresh  
17 your recollection that on this date Mr. al Hawsawi was asked  
18 about hidden messages, embedding codes, broadcasting films,  
19 operational plans, that type of subject matter?

20 A. It doesn't refresh my recollection, but if it says is  
21 there and it's a CIA document and it's associated with the --  
22 the number down there, I have no reason to contest it. I  
23 don't recall every single question I ever asked every single

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1 detainee.

2 Q. Yes, sir, and I don't expect you to. What I'm trying  
3 to establish is that these general types of questions were  
4 being asked of Mr. al Hawsawi in this time frame, so it's  
5 important that we go through. And if you remember, great. If  
6 not, that's fine.

7 But just in terms of the general character and nature  
8 of these questions, would those have been those kind of  
9 questions that you would have asked?

10 A. I'm not trying be argumentative. I'm trying to agree  
11 with you. What I'm trying to say is if it says it in the  
12 document and I'm the only person there, there's only one  
13 person that's going to be asking these questions, and it would  
14 be me, and it would be about these topics.

15 Q. Okay. I'll take that. In -- in this particular  
16 document, Mr. al Hawsawi also talks about -- he said he ran  
17 errands, performed typing, copied CDs for al Qaeda's media  
18 committee, correct?

19 A. That's what it says there.

20 Q. Okay. All right. All right. Back to MEA-STA-2103,  
21 AE 632W, page 2256.

22 MJ [Col COHEN]: Counsel, didn't we already see this one?

23 LDC [MR. RUIZ]: Sir, do you have a copy of my -- of my

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1 key?

2 The -- do we have that for the judge?

3 MJ [Col COHEN]: I have the -- I have the -- I have the --  
4 the notice of exhibits with the 2,514 pages, and then I have  
5 the -- I have a copy of what he's been looking at with respect  
6 to dates and times of the interviews.

7 WIT: 2,000 pages?

8 LDC [MR. RUIZ]: Judge, it's Attachment F of 632Y.

9 MJ [Col COHEN]: Okay. I'm referring to page 2256 of  
10 632W. I have in my notes we just looked at that a few minutes  
11 go. Do we need to go back to it? I just want to make sure we  
12 had the right number.

13 LDC [MR. RUIZ]: I just want you to look at the key so I  
14 can kind of highlight for you what the issue is.

15 MJ [Col COHEN]: Okay. That's fine.

16 LDC [MR. RUIZ]: Let me help you locate that.

17 MJ [Col COHEN]: I'm there.

18 LDC [MR. RUIZ]: Do you have the key?

19 MJ [Col COHEN]: I have the key.

20 LDC [MR. RUIZ]: Okay. So -- so the issue -- the issue  
21 I'm trying to -- as you can see in the left-hand column  
22 there -- or in the middle column, there's quite a bit of the  
23 same STA entries.

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1 MJ [Col COHEN]: Correct.

2 LDC [MR. RUIZ]: But they're chronologically different in  
3 terms of the dates.

4 MJ [Col COHEN]: I see what you're saying.

5 LDC [MR. RUIZ]: And so even though I'm asking him about a  
6 document that has the same STA, it's a different date. And so  
7 I ----

8 MJ [Col COHEN]: So here's what I think happened. I won't  
9 talk about anything -- because this was probably a decision  
10 that was made before I got on this case, but just based on my  
11 experience with summaries and substitutions -- and the  
12 government can always correct this.

13 See where it says on 42 occasions in late 2003?

14 LDC [MR. RUIZ]: Sure.

15 MJ [Col COHEN]: What I suspect happened was that this  
16 whole time period got compressed into describing the 42  
17 occasions that you believe that there were the contacts  
18 between Interrogator 2 and your client.

19 And that then what they've said is that now these  
20 individual dates are all going back to the same summary, a/k/a  
21 substitution, and that these were the topics that were  
22 discussed generally during -- or some items that took place  
23 during that. That would be my ----

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1 LDC [MR. RUIZ]: I understand.

2 MJ [Col COHEN]: Because of the fact of the format that  
3 it's in is a summary and substitution, that's just based on my  
4 experience. But I'll hear from Mr. Groharing right now.

5 TC [MR. GROHARING]: Yes, Your Honor. That's correct.  
6 These are what colloquially we refer to as the non-recs. If  
7 you read the text of the summary, it says that he was  
8 either -- it said he was unable to recognize or identify  
9 persons, places or materials of interest to the United States.  
10 So what we did -- and these are summaries that were approved  
11 by -- it would have been Judge Pohl.

12 We collected all those in quarters of years and  
13 counted how many times and gave the defense for each quarter  
14 of each year, and then they show up on the index based on the  
15 day where the question was asked. And so 43 different times  
16 on this -- if you -- if you had an index that captured, in  
17 this case [REDACTED], there would be  
18 41 instances where MEA-STA-00002103 would show up, if that  
19 makes sense, Your Honor.

20 MJ [Col COHEN]: Right, because he was being asked about  
21 during those times of identities of persons, places, and  
22 materials of interest to the United States.

23 TC [MR. GROHARING]: Correct.

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1 MJ [Col COHEN]: Got it.

2 TC [MR. GROHARING]: And he did not recognize ----

3 MJ [Col COHEN]: Right.

4 TC [MR. GROHARING]: ---- the information. We were trying  
5 to capture that so the defense could use it for their own  
6 purposes to show that he cooperated and participated, but he  
7 didn't recognize it so it didn't result in an intelligence  
8 report which would have a longer summary which you've -- you  
9 see in the other documents.

10 MJ [Col COHEN]: He was asked questions but didn't have --  
11 he didn't have any information about it.

12 TC [MR. GROHARING]: Exactly, Your Honor.

13 MJ [Col COHEN]: Copy. All right.

14 LDC [MR. RUIZ]: Of course, the practical issue is when  
15 you have a jury, witness on the stand, right, and I'm trying  
16 to get him to a point where maybe refresh his recollection or  
17 establish that there's a chronology where there was this  
18 interaction ongoing with Mr. al Hawsawi, that's kind of the  
19 process I was going through. If ----

20 MJ [Col COHEN]: No, no. Like I said, I wanted to help  
21 you out, because when you pointed that out -- like I said, as  
22 you indicated, I was not involved with -- with this  
23 particular ----

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1 LDC [MR. RUIZ]: Yeah.

2 MJ [Col COHEN]: ---- one, so mine -- some of mine are  
3 still pending. But I didn't want -- I didn't -- I had a  
4 feeling I knew why you were confused because you would be if  
5 you're like how can this one document be used multiple times.  
6 And so when -- having read it, I was like let me -- let me  
7 clear this up. I don't think that's inappropriate to say,  
8 okay ----

9 LDC [MR. RUIZ]: Sure.

10 MJ [Col COHEN]: ---- look, here's why you're at ----

11 LDC [MR. RUIZ]: Well, actually we clearly understand that  
12 it was a reproduction. But in order to ask the witness what  
13 his activities on that day may have been, this is the only  
14 document that we have and, thus, it's the same number over and  
15 over ----

16 MJ [Col COHEN]: Okay.

17 LDC [MR. RUIZ]: ---- that I would show the witness. And  
18 so that's -- I think we understand. Let me ask one question  
19 real quick here.

20 [Counsel conferred with paralegal.]

21 LDC [MR. SOWARDS]: Excuse me, Your Honor. Sorry to  
22 interpret.

23 MJ [Col COHEN]: Mr. Sowards.

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1 LDC [MR. SOWARDS]: Yeah, I'm sorry. Just for those of us  
2 following at home, I was wondering with respect to the  
3 government's explanation of, I think, maybe confirming what  
4 Your Honor said with the benefit of knowing how these  
5 summaries are produced, you know, which ----

6 MJ [Col COHEN]: No, I was just anticipating how this  
7 particular one was ----

8 LDC [MR. SOWARDS]: No, I understand. Yes, sir. The only  
9 thing I was wondering was whether the -- I understood the  
10 government correctly to say that as to every one of these  
11 incidents, the indication is that every one of those subjects  
12 were discussed on each and every one of the dates, 42 of them.

13 MJ [Col COHEN]: I don't think that's what he meant. I  
14 think that this was the general nature of the types of  
15 questions that he was being asked but not that on each  
16 occasion each one of these was actually being asked.

17 TC [MR. GROHARING]: That's correct, Your Honor. And I'm  
18 happy to go offline with counsel if they have other questions  
19 about this discovery or other discovery.

20 MJ [Col COHEN]: Absolutely. Please do.

21 LDC [MR. SOWARDS]: Thank you, Your Honor.

22 MJ [Col COHEN]: Absolutely.

23 LDC [MR. RUIZ]: So I guess what I'm thinking is if there

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1 could be a stipulation or a finding of fact by the court that,  
2 on the dates that these entries appear, there were photographs  
3 that were shown to Mr. al Hawsawi and he was asked about the  
4 identities of persons, places ----

5 MJ [Col COHEN]: Yes, let me just ask the question since  
6 the court -- it is a court-approved summary. Let me just go  
7 ahead and ask if this -- and see if this is kind of where you  
8 need to go.

9 Sir, it would appear to me that, based on what you've  
10 previously testified, that is if this document indicates that  
11 on 42 occasions in late 2003 on the dates that you would have  
12 had interactions with Mr. al Hawsawi, your questions would  
13 have included things that included identity of persons,  
14 places, or materials of interest to the United States; is that  
15 correct?

16 WIT: Yes, sir.

17 MJ [Col COHEN]: Okay. I'll make that finding of fact,  
18 that those are the types of things that he would have been  
19 interacting with Mr. al Hawsawi about during the time periods  
20 in which he interacted with him.

21 LDC [MR. RUIZ]: Thanks. Thank you.

22 MJ [Col COHEN]: Now, if you want to ask him if he recalls  
23 any -- any names or something like that, that's a different

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1 issue.

2 LDC [MR. RUIZ]: Well, the -- the -- the categories that I  
3 have are -- are generally one or two. One is the photographs,  
4 which with that finding I feel comfortable that when they were  
5 showing him photographs, they were asking him those kinds of  
6 questions about the photographs.

7 But then the other category are where we have  
8 documents that have more specific questions about specific  
9 places and things. And there's -- and there's more in the  
10 document that recounts what information was extracted.

11 MJ [Col COHEN]: Okay.

12 LDC [MR. RUIZ]: For our purposes, it's important to  
13 establish that and ----

14 MJ [Col COHEN]: No, absolutely. And I don't want to  
15 deprive you of that. I just didn't -- like I said, the only  
16 reason I even asked is I wanted -- initially was just to make  
17 sure I had the right number, because I know we just looked at  
18 2256. If you have specific intel reports ----

19 LDC [MR. RUIZ]: Sure.

20 MJ [Col COHEN]: ---- for example, with more -- with more  
21 facts, I -- this -- I'm not in any way trying to preclude you.  
22 I was actually just trying to ----

23 LDC [MR. RUIZ]: No, this is helpful.

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1 MJ [Col COHEN]: ---- to help the parties.

2 LDC [MR. RUIZ]: No.

3 MJ [Col COHEN]: Having spent enough time over the last  
4 seven-plus months dealing with reviewing summaries and  
5 substitutions that have previously been done years before me,  
6 and understanding how the process worked, like I said, and I  
7 appreciate Mr. Groharing who is willing to stand up and say,  
8 yes, your understanding is correct.

9 LDC [MR. RUIZ]: To me, this is like a Rubik's Cube, but  
10 you have the right number, I have the right number and ----

11 MJ [Col COHEN]: And the witness has testified that he  
12 clearly was asking Mr. al Hawsawi about these types of pieces  
13 of information ----

14 LDC [MR. RUIZ]: Okay.

15 MJ [Col COHEN]: ---- during the time periods he  
16 interacted with him.

17 LDC [MR. RUIZ]: Great.

18 MJ [Col COHEN]: If that's not -- I'm not in any way  
19 trying to get you to move on ----

20 LDC [MR. RUIZ]: No, no, I think that's -- no, that's  
21 perfectly fine.

22 MJ [Col COHEN]: Okay.

23 LDC [MR. RUIZ]: I'm fine with doing that.

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1 MJ [Col COHEN]: I just didn't want you to -- I -- I felt  
2 obligated, since it was a judicial summary, to step in and say  
3 here -- here's what I think happened.

4 LDC [MR. RUIZ]: Absolutely, and I appreciate that.

5 MJ [Col COHEN]: No problem.

6 **DIRECT EXAMINATION CONTINUED**

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

8 Q. The next MEA-STA is 2167, and it is at AE 632W,  
9 page 2283.

10 MJ [Col COHEN]: You may publish.

11 LDC [MR. RUIZ]: Thank you, Judge.

12 Q. I will refer you to your key at -- for February 10th,  
13 2004. It's the first of those entries that says 2167 right  
14 next to it.

15 A. Yes.

16 Q. Okay. And if you look over on the far right-hand  
17 corner, on the far right-hand column it says Interrogator  
18 Number 2?

19 A. I see that.

20 Q. Okay. All right. So the -- the information in this  
21 particular document indicates that Mr. al Hawsawi was asked --  
22 just generally, I'm not going to go through every single  
23 one -- but he was asked about how operational decisions were

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1 made. He was asked in general -- or he communicated about  
2 whether ethnicity was a factor. And he then goes on and  
3 discusses Saudi and Egyptian and speculates about how they  
4 would utilize or not utilize particular individuals.

5 Do you recall having this discussion with  
6 Mr. al Hawsawi?

7 A. No. But I wouldn't contest it because these are the  
8 kinds of things the intel requirements -- if they came in, I  
9 would have -- I would have had this discussion with him.

10 Q. Okay. All right. So you -- you have no -- well,  
11 that's fine.

12 MJ [Col COHEN]: Counsel, we're about 13 minutes from the  
13 next recess.

14 LDC [MR. RUIZ]: Okay. Thank you, Judge.

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

16 Q. So ----

17 MJ [Col COHEN]: Mr. Groharing.

18 TC [MR. GROHARING]: Your Honor, I'm not sure where  
19 Mr. Ruiz is going, but to the extent he's just trying to  
20 establish that Dr. Mitchell was present during all of these  
21 interviews that are listed on the chart, we're happy to  
22 stipulate to that, and we'll represent that based on the  
23 records in the government's possession that he was, in fact,

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1 present.

2 I don't know if that's the only point that Mr. Ruiz is  
3 trying to make, but we're happy to agree with that.

4 MJ [Col COHEN]: Okay. So let me get this. So are you  
5 willing to stipulate, one, that consistent with his testimony  
6 that he has no reason to contest the government's records that  
7 he was present during the interviews and that the contents of  
8 these documents were, in fact, discussed with Mr. al Hawsawi  
9 during those -- during those interviews?

10 TC [MR. GROHARING]: Yes, Your Honor, that's correct.

11 MJ [Col COHEN]: Okay.

12 LDC [MR. RUIZ]: I would ask that they also stipulate to  
13 the fact that these were produced in the course of servicing  
14 intelligence requirements.

15 MJ [Col COHEN]: Will you stipulate to that? It seems to  
16 be consistent that they were based on intelligence  
17 requirements based on the witness' testimony.

18 TC [MR. GROHARING]: We'd stipulate to that, Your Honor.

19 MJ [Col COHEN]: Okay.

20 LDC [MR. RUIZ]: Okay. And to the -- all of the facts  
21 contained within the documents, that those were the subjects?

22 MJ [Col COHEN]: Right. Since you guys produced them,  
23 you -- you're willing to stand behind the contents, correct?

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1 TC [MR. GROHARING]: Yeah, that he -- Mr. al Hawsawi said  
2 everything that's in there? Is that what -- I'm not sure what  
3 he's asking, but ----

4 MJ [Col COHEN]: Here's what I understand the stipulation  
5 would be.

6 LDC [MR. RUIZ]: Sure.

7 MJ [Col COHEN]: One is that to the extent that the  
8 government records indicate that Dr. Mitchell was the one --  
9 was -- was -- was present and did these interviews, that the  
10 government stipulates that is -- that is true.

11 TC [MR. GROHARING]: Yes.

12 MJ [Col COHEN]: That -- that he would have been asking  
13 these questions consistent with his testimony here today based  
14 on intelligence requirements that would have been presented to  
15 him to ask these, and that the contents of these documents  
16 represent the -- the -- the topics of those intelligence  
17 requirements that were provided to Mr. al Hawsawi that day and  
18 the responses that he gave.

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

20 MJ [Col COHEN]: Mr. Ruiz, is there anything else that you  
21 were trying to achieve by this that -- because they may be  
22 willing to stipulate if there's something else that you  
23 believe you need in defense of your case.

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1 LDC [MR. RUIZ]: No, I think -- I think that's sufficient,  
2 Judge.

3 MJ [Col COHEN]: Okay.

4 TC [MR. GROHARING]: Judge, and just to be accurate too,  
5 we're willing to stipulate, as I said. But I do note that  
6 Dr. Mitchell mentioned 9/11 Commission requirements. I don't  
7 think those would technically be intelligence requirements but  
8 to the extent these ----

9 MJ [Col COHEN]: Okay. Let's stipulate to that. These  
10 were requirements that came from either the intelligence  
11 community or inquiries made by the 9/11 Commission.

12 LDC [MR. RUIZ]: Well ----

13 MJ [Col COHEN]: Does it matter if he was being asked by  
14 who was -- in other words, who was seeking it or is the fact  
15 that ----

16 LDC [MR. RUIZ]: Well, I don't have any documents that  
17 I've reviewed that indicate to me that Mr. al Hawsawi was  
18 queried on -- on matters that were directly related to the  
19 9/11 Commission. From my review, it appears that they were  
20 these types of intelligence requirements that seem very  
21 specific in some of the matters so ----

22 MJ [Col COHEN]: Okay. So maybe the stipulation will ----

23 LDC [MR. RUIZ]: I think ----

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1 MJ [Col COHEN]: Okay. That's fine.

2 LDC [MR. RUIZ]: I think just saying that they were, in  
3 fact, intelligence requirements and Dr. Mitchell was, in fact,  
4 servicing those requirements, that's -- that's fine with me.

5 MJ [Col COHEN]: And if these are the -- these -- these  
6 represent the specific things that he was asked about during  
7 each of those -- those interviews.

8 LDC [MR. RUIZ]: Yes.

9 MJ [Col COHEN]: Because they stipulated to that as well.

10 LDC [MR. RUIZ]: Yes.

11 MJ [Col COHEN]: Okay. Then I will let you proceed based  
12 on how that -- how that -- that changes anything you would do.  
13 I -- I do not make presumptions.

14 LDC [MR. RUIZ]: I had a -- I had two left.

15 MJ [Col COHEN]: All right.

16 LDC [MR. RUIZ]: So I'm happy to take that and -- and move  
17 on.

18 Actually, I think it would be a good time to break if  
19 you wanted to.

20 MJ [Col COHEN]: Perfect. All right. We'll go ahead  
21 and -- because we can start prayer just a few minutes early,  
22 right? Okay.

23 LDC [MR. SOWARDS]: I think 24 after.

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1 MJ [Col COHEN]: Great. Then we'll go ahead and take a  
2 30-minute recess. We'll see everyone back then.

3 [The R.M.C. 803 session recessed at 1507, 24 January 2020.]

4 [The R.M.C. 803 session was called to order at 1542,  
5 24 January 2020.]

6 MJ [Col COHEN]: The military commission is called to  
7 order. Parties are present. We'll note that Mr. Binalshibh  
8 and Mr. Ali did join us earlier in this -- in the session.

9 [The witness resumed the witness stand.]

10 MJ [Col COHEN]: Sir, you may have a seat. Thank you.

11 Mr. Trivett.

12 MTC [MR. TRIVETT]: Briefly, sir, the chief prosecutor has  
13 left to attend to other commission business along with Ed Ryan  
14 and Colonel Swann.

15 MJ [Col COHEN]: Okay.

16 MTC [MR. TRIVETT]: We also ask that at some point, a  
17 finding be made as to Mr. Ali and Mr. Binalshibh's presence  
18 during the afternoon. They came back. We're not certain if  
19 that was noted on the record. We would like that noted on the  
20 record if, in fact, you haven't.

21 MJ [Col COHEN]: Yes. Yes. I did make the -- the  
22 notation that earlier in the morning, their absence was -- was  
23 knowing and -- they knowingly and intelligently waived their

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1 right to be here. They obviously decided to come this  
2 afternoon, and shortly after we began both of the gentlemen  
3 entered the courtroom and were present for the majority of  
4 the -- of the session before the -- the prayer break.

5 And then we still did -- Mr. Bin'Attash and  
6 Mr. Mohammad did not show today, and I found that they had  
7 knowingly and intelligently waived their right to be here  
8 today.

9 Mr. Ruiz, the remainder of the time is yours, sir.

10 LDC [MR. RUIZ]: Thank you, Judge.

11 **DIRECT EXAMINATION CONTINUED**

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

13 Q. I think you testified that when you were looking at  
14 one of the documents I showed you earlier, that if that had  
15 been you, it would say interrogator instead of interviewer?

16 A. I didn't say that positively. I said it was my belief  
17 that it would have said interrogator instead of interviewer.

18 Q. Okay. And it would have said interrogator because you  
19 were acting in an interrogator role?

20 A. I wasn't an interviewer.

21 Q. Okay.

22 A. I mean, I would have been -- if I was debriefing, I  
23 would be debriefer. But the title they were using at that

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1 particular time, which I objected to and we quit using, was  
2 interrogator psychologist, not interviewer.

3 Q. Okay. All right. But your role, you would  
4 characterize as -- at that time as a debriefer or an  
5 interrogator ----

6 A. We weren't doing interrogations.

7 Q. ---- not what label ----

8 A. We weren't doing interrogations. The position that I  
9 occupied contractually was primarily as an interrogator and on  
10 rare occasions as a -- to do these -- these one-off  
11 psychological evaluations when there was no other psychologist  
12 in the area who could do it for whatever reason.

13 Q. Okay. As I understood in the times -- not all the  
14 times because we've obviously seen times where you go in and  
15 you questioned Mr. al Hawsawi.

16 The other times a person who you've indicated was not  
17 an interrogator, but a debriefer, would go in along with you  
18 and question Mr. al Hawsawi about particular requirements.

19 A. Or go in by themselves with the guards while I  
20 serviced requirements with somebody else. There was no  
21 requirement that the debriefer have me with them.

22 Q. I understand. But there were instances at least based  
23 on the information that we've been looking at, the chart we've

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1 referred to a great deal, that indicates that in some of the  
2 interactions with Mr. al Hawsawi, it was you as well as a  
3 person who you've clarified was actually a debriefer and not  
4 an interrogator, correct?

5 A. Correct.

6 Q. Okay. So there were those instances where the two of  
7 you were in the room, and I guess my question is: If there  
8 was already a debriefer in the room, why was your presence  
9 required as well as an interrogator?

10 A. There's -- sometimes there's two debriefers.  
11 Sometimes, you know, there was no -- there was no -- I mean,  
12 it seems like -- it seems like what you -- the question seems  
13 to imply to me that the reason they put me in there was so  
14 that I could function as an interrogator with that detainee.  
15 I reject that.

16 The social influence skills I had, which would be  
17 based on a lot of things, not just my role as an interrogator,  
18 were sometimes helpful in getting information out of the  
19 detainee through social influence because we weren't using any  
20 kind of EITs and didn't intend to and wasn't going to and it  
21 didn't happen.

22 Q. Sir, I wasn't implying anything with the question.  
23 The question was simply the question, is -- it seemed to me

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1 that one person was able to do the job. You obviously did it  
2 on some occasions. So I wondered if there was a particular  
3 reason for that. So please don't -- don't infer or -- that my  
4 question was ----

5 A. I can't but infer. You're talking to me.

6 Q. Okay.

7 A. It's part of the psychological process of give and  
8 take.

9 Q. Fair.

10 A. You ask me a question, I infer what you intend.

11 Q. I'll try to be as precise as I can with my questions,  
12 and, you know, if you can be as precise as you can with your  
13 answers ----

14 A. Will do.

15 Q. ---- I would appreciate that. But that was really all  
16 there was to that.

17 A. So your original question was why was I in there if  
18 there was a debriefer there?

19 Q. Yes.

20 A. I have no idea other than I just attended the  
21 debriefing because the debriefer either asked me or  
22 headquarters asked me to attend it.

23 Q. But your contractual role was as an interrogator.

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1 Your functional role and the way that you functioned at times  
2 was as a debriefer, right, based on the way you've defined  
3 those terms?

4 A. Yes.

5 Q. Okay.

6 A. Sometimes if it -- if the person wasn't under EITs, I  
7 could ask questions and do it in a debriefing way.

8 Q. As I -- as I've understood your -- your definitions,  
9 interrogator applies techniques, debriefer extracts the  
10 information, right? So that's -- that's why I was using that  
11 terminology.

12 For me, as a layperson, a person who's an interrogator  
13 asks questions. But I understand how you've indicated that  
14 the CIA defines it, so I get that. So okay. Those two I've  
15 got.

16 And then we've also established that you had the  
17 instances where you were performing the role of psychologist  
18 and performing psychological assessments, such as the one on  
19 December -- December [REDACTED], so -- correct?

20 A. You -- we've established that, yes.

21 Q. Sure. And you -- you indicated -- when I asked you if  
22 there was any psychological assessment after the [REDACTED]  
23 time frame, you indicated that it was highly unlikely because

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1 you were trying to get out of that performing the -- the dual  
2 role of a psychologist and an intelligence requirement  
3 debriefer, correct?

4 A. I think the actual answer I gave you was I don't  
5 recall specifically, but it wouldn't surprise me if I didn't  
6 because I was trying to -- I was trying to -- and they were  
7 trying to move me out of that position as well. So it could  
8 have happened again, but I just don't remember.

9 Q. Okay. And it was -- it was your belief, was it not,  
10 that by them putting you in that position, they were putting  
11 you in a position where you had a conflict or a conflict of  
12 interest potentially, at least?

13 A. I had the appearance of a conflict of interest. I did  
14 virtually -- I mean, I did everything I could do to avoid an  
15 actual conflict of interest.

16 Q. Correct. Because -- well, let me ask you this  
17 question: If the psychologist who was doing the assessment of  
18 a detainee indicated that there was a significant or a serious  
19 psychological condition, would the debriefings have been  
20 allowed to continue in the face of such a finding?

21 A. They would have been stopped and there would have been  
22 a more detailed assessment of the -- of the detainee's  
23 psychological or physical or whatever it was that was

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1 troublesome. And the determination would be made by the  
2 physicians or psychologists back at headquarters in  
3 conjunction with the senior folks back there, and I don't know  
4 what that decision would have been.

5 Q. Okay. In 2006, I believe, Dr. Mitchell, you withdrew  
6 your membership from the American Psychological Association?

7 A. I resigned, if that's what you mean.

8 Q. Okay. And is the reason you resigned because of the  
9 American Psychological Association's stance on psychologists  
10 who were performing the types of activities that you had  
11 performed? And by that, I mean the dual role of a  
12 psychological assessment as well as a person who was being  
13 questioned or interrogated.

14 A. The dual role part didn't have anything to do with it.  
15 I would expect them to object to a dual role. I mean,  
16 ethically, you shouldn't be put in that situation. That  
17 didn't have anything to do with it.

18 I disliked their position in general on the use of  
19 psychologists by the Department of Defense. At that  
20 particular time, they were saying that psychologists couldn't  
21 be involved in law enforcement, they couldn't be involved in  
22 any sort of situation where they would be participating or  
23 supporting the interrogation of virtually anyone. And I

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1 thought that that was wrong. I thought that was wrong.

2 Q. Okay. In fact, you thought that many, if not most, of  
3 the persons in your profession, psychologists, were pussies?

4 A. Did I say that somewhere?

5 Q. You did.

6 A. Then that was my opinion at the time.

7 Q. I can -- you -- I mean, you're welcome to look at the  
8 clip, but ----

9 A. No, I don't need to.

10 Q. Okay. And that was your opinion?

11 A. That my was opinion at the time.

12 Q. Okay.

13 A. I don't have an opinion right now because I haven't  
14 spent as much time with them.

15 Q. Understood. Now, [REDACTED], as you've --  
16 as you've indicated, you were functioning in the role of a  
17 contractor for the CIA, a green-badger, as you've indicated?

18 A. A subcontractor, yes.

19 Q. Okay. And let me ask you a little bit about that.

20 So you had a number of companies at that time, right?  
21 One of those companies that you had was Knowledge Works?

22 A. I don't remember the exact dates of the company, but I  
23 did have a company by that name.

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1 Q. Okay. As well as a company that was named What If?

2 A. Yeah. Very briefly. I didn't do much with that  
3 company, but yes.

4 Q. Now, What If became Mind Science, correct?

5 A. Correct.

6 Q. All right. And Mind Science was the -- the personal  
7 company that billed the CIA, correct?

8 A. No.

9 Q. Oh, you -- I'm sorry, you billed Mitchell, Jessen &  
10 Associates.

11 A. Probably, yes. That makes sense.

12 Q. So at that time, your Mind Science company was  
13 subcontracted with your individual company -- with the other  
14 company, Mitchell, Jessen & Associates, correct?

15 A. Yes. Mind Science consisted of one person.

16 Q. All right.

17 A. It was an LLC. And I used that to contract with the  
18 larger company.

19 Q. Which was Mitchell, Jessen & Associates?

20 A. That's correct.

21 Q. All right. And that was, in fact, how your contract  
22 at the time -- well, actually not at the time because  
23 Mitchell, Jessen & Associates came later, correct?

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1 A. Now you've lost me in the question.

2 Q. Sure.

3 A. It seems like you started a question, then you  
4 realized you had misstated it, and then you ----

5 Q. I did. You're correct. Let me go back.

6 At the time that you were questioning Mr. al Hawsawi,  
7 you were operating under a contract with the CIA, correct?

8 TC [MR. GROHARING]: Objection, Your Honor. That's asked  
9 and answered. But I would also object just to relevance of  
10 this line of inquiry.

11 MJ [Col COHEN]: Counsel, where are you going with this?

12 LDC [MR. RUIZ]: Judge, I would like to answer that, if  
13 permitted, outside the presence of the witness.

14 MJ [Col COHEN]: Sure. Sir, if you'll just step out for a  
15 minute.

16 [The witness withdrew from the courtroom.]

17 MJ [Col COHEN]: Okay. The witness has stepped out. Yes,  
18 sir.

19 LDC [MR. RUIZ]: Judge, this goes again to his  
20 credibility.

21 MJ [Col COHEN]: Okay.

22 LDC [MR. RUIZ]: But it's -- I've indicated also we have  
23 an outrageous government conduct motion pending before the

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1 commission. A significant part of our argument, I'm not sure  
2 if you've had an opportunity to review that, but it includes  
3 the financial incentives that were built into numerous  
4 contracts that went into promoting what became this enterprise  
5 of torture.

6           So the -- the foundation I'm trying to lay is, number  
7 one, for that, to establish the existence of these companies,  
8 the fact that some of those companies were subcontracted with  
9 individual companies that were his own companies, and to -- to  
10 lay the foundation for how that impacted the RDI program or  
11 how that went into the RDI program itself.

12           The fact that at the time that Mr. al Hawsawi was  
13 being assessed psychologically by him as well as debriefed is  
14 significant in terms of the financial incentives that he had,  
15 and I think it goes to bias and it goes to credibility because  
16 it ----

17           MJ [Col COHEN]: No, I understand the financial aspect.

18           LDC [MR. RUIZ]: Sure.

19           MJ [Col COHEN]: I guess the question I've got is, in  
20 light of his testimony yesterday that there was approximately  
21 \$81,000,000 of revenue that came through and there was a  
22 document that showed that he made over one-point-something  
23 million dollars that went to himself and

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1 one-point-something million dollars went to Dr. Jessen, is  
2 there something else that you -- that -- that you're looking  
3 for beyond -- beyond that or -- in other words, is the  
4 organizations of the company what's important or is it the  
5 financial -- is it the fact that he -- he -- he made  
6 significant -- well, depending on -- it depends on the eye of  
7 the beholder as to whether that's significant or not.

8 LDC [MR. RUIZ]: Sure.

9 MJ [Col COHEN]: But to the average person, making over a  
10 million dollars probably seems significant, so I'll use that  
11 word in that sense. Is that what you're looking for or is it  
12 the actual structure of the companies, I guess is what I'm  
13 trying to figure out.

14 LDC [MR. RUIZ]: No. The organizational structure is  
15 important but not critical. But we are attempting to provide  
16 a full picture of exactly how -- how these contracts operated.

17 One of the other questions -- and I can't remember if  
18 he's already been asked this because I must -- I may have  
19 missed it, but it's about how the contract was -- how it was  
20 contracted out, whether it was competed or a sole-source  
21 contract.

22 MJ [Col COHEN]: Right, yeah. Yesterday they were talking  
23 about the -- that it was a sole-source contract. And I think

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1 that -- that -- that was put up on the -- on the display for  
2 the public to see, that it was -- ultimately it ended up being  
3 a sole-source contract, the revenue was \$81,000,000. Then  
4 there was the joke, Mr. Connell said I'm not going to talk  
5 about revenue versus -- versus net, that he ----

6 LDC [MR. RUIZ]: That's right.

7 MJ [Col COHEN]: ---- that he declined to give, so that  
8 kind of gives you some context.

9 So that's kind of where we're sitting with the  
10 individual now. But like I said, individualized justice --  
11 that's what I'm saying. Just tell me what you need to defend  
12 your case so I can tell you like ----

13 LDC [MR. RUIZ]: Sure.

14 MJ [Col COHEN]: ---- the relevance.

15 LDC [MR. RUIZ]: It's important for us to highlight the  
16 fact that at the time that Dr. Jessen was assessing  
17 Mr. al Hawsawi, he was also -- had previously or recently  
18 submitted a statement of -- of -- I'm losing the -- statement  
19 of qualifications in view towards getting a contract.

20 MJ [Col COHEN]: Okay.

21 LDC [MR. RUIZ]: So the -- the importance of that for us  
22 is the fact that you have a person who's acting as a  
23 psychologist. He's acting as a debriefer. He's also

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1 potentially acting as an interrogator, although maybe not  
2 necessarily so clearly. He is also in the process of  
3 negotiating contracts with the CIA, and the quality of the  
4 information that comes out has to be assessed on whether  
5 it's -- whether the program works, whether it's something that  
6 they want to continue.

7           So from our perspective, this is a person who had a  
8 number of incentives and -- and conflicts and, in the face of  
9 that, continued to press forward.

10          MJ [Col COHEN]: Now.

11          LDC [MR. RUIZ]: And that's kind of what I was trying  
12 to ----

13          MJ [Col COHEN]: No, no, I got that. So I think, you  
14 know, your explanation right there, I mean, it makes sense.  
15 If you wanted to ask questions like that were you seeking a  
16 contract at the time you were doing this, those kinds of  
17 questions. I mean, I see 608(c), I get it, I mean, I see  
18 where you are going with that. And then if for some reason he  
19 disagrees, if he wanted to come back with the actual  
20 structures, hold on a second, aren't you part of this company,  
21 wasn't this company doing that, perhaps -- perhaps that might  
22 be the better route as opposed to just going through the  
23 organization of the companies before you ask those questions

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1 or ----

2 LDC [MR. RUIZ]: In terms of the -- I was actually  
3 almost -- I was pretty much done with ----

4 MJ [Col COHEN]: Okay.

5 LDC [MR. RUIZ]: ---- with the companies. Those are all  
6 the companies he had ----

7 MJ [Col COHEN]: Mr. Groharing keeps doing this to you  
8 every time you're almost done, right?

9 LDC [MR. RUIZ]: ---- that the company was subcontracted  
10 with his own company. And the -- and so that's ----

11 MJ [Col COHEN]: Okay.

12 LDC [MR. RUIZ]: That's where.

13 MJ [Col COHEN]: I'll tell you what. I -- I get the  
14 financial incentive. I totally do. Yes, you may ask about  
15 that. If you ask some additional information, especially  
16 that -- that would be a new fact that -- that he may have been  
17 actually applying for the contract at the time he's doing  
18 the -- the dual role of interviewing your client. So, yeah,  
19 that -- that's fair.

20 I think that's really kind of what counsel didn't see  
21 at first and neither did I is, is why -- how the organization  
22 itself met with that. So I'll give you some leeway. Like I  
23 said, if you want to ask about some of those financial

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1 incentives, absolutely.

2 LDC [MR. RUIZ]: I mean, I think we -- I appreciate that.

3 MJ [Col COHEN]: Yeah.

4 LDC [MR. RUIZ]: Again, we tie it back to some of the  
5 arguments that we've made in the outrageous government conduct  
6 motion ----

7 MJ [Col COHEN]: Makes sense ---- yep, I got it.

8 LDC [MR. RUIZ]: ---- how his whole infrastructure  
9 operated.

10 MJ [Col COHEN]: Okay.

11 LDC [MR. RUIZ]: I will ask that.

12 MJ [Col COHEN]: Okay. I'll overrule it for now.

13 Bring back the witness please.

14 Sir, if you'll please return to your seat.

15 [The witness resumed the witness stand.]

16 MJ [Col COHEN]: Counsel, you may proceed.

17 LDC [MR. RUIZ]: Thank you.

18 **DIRECT EXAMINATION CONTINUED**

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

20 Q. Dr. Mitchell, in February of 2003, you were -- you  
21 had, in fact, submitted a statement of -- to provide special  
22 mission interrogations consultation, correct? It was a  
23 statement of qualifications.

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1       A. Do you have -- do you have a copy of what you're  
2 talking about?

3       Q. I -- I can get it for you. It's at AE 632W at  
4 page 2145.

5       MJ [Col COHEN]: Thank you.

6       LDC [MR. RUIZ]: Judge, before we publish this, I'm going  
7 to show you the markings here. I think we're okay with it,  
8 but I just want to make sure.

9       MJ [Col COHEN]: Yeah, show it to counsel real quick. I  
10 know they downgraded some of these things, so sometimes what  
11 you filed isn't what we're currently at. Just make sure that  
12 this either falls within what they've downgraded or that the  
13 markings in the motion are correct.

14 [Counsel conferred.]

15       MJ [Col COHEN]: Okay. Counsel, what do you see? What --  
16 the one that you're wanting to display to -- to anyone,  
17 what -- what are the markings currently on there?

18       LDC [MR. RUIZ]: UNCLASSIFIED//FOUO.

19       MJ [Col COHEN]: Okay.

20       LDC [MR. RUIZ]: But on -- at the bottom, we also have an  
21 additional marking that says UNCLASSIFIED WHEN SEPARATED FROM  
22 AE 632W (MAH).

23       MJ [Col COHEN]: Copy.

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1 LDC [MR. RUIZ]: It is also a FOIA release document.

2 MJ [Col COHEN]: Okay. Excellent.

3 LDC [MR. RUIZ]: And I think that ----

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

5 LDC [MR. RUIZ]: ---- that covers it.

6 MJ [Col COHEN]: Like I said, I just wanted to make sure  
7 we're all ----

8 LDC [MR. RUIZ]: And I'll warn you ahead of time, it's not  
9 the best -- it's not the best quality of -- of copy.

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

11 LDC [MR. RUIZ]: But we'll ----

12 MJ [Col COHEN]: It is what it is.

13 LDC [MR. RUIZ]: I was telling ----

14 MJ [Col COHEN]: All right.

15 LDC [MR. RUIZ]: ---- the witness.

16 MJ [Col COHEN]: Counsel, you agree that this is  
17 UNCLASS//FOUO when separated from the document?

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

19 MJ [Col COHEN]: All right. Excellent. You may publish.

20 **DIRECT EXAMINATION CONTINUED**

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

22 Q. Sir, I would just ask you to just review the -- the  
23 date, the heading and if you'll -- do you recognize the

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1 document? You're welcome to read as much of it as you want.  
2 But my goal is to get you familiar with the document, orient  
3 you to the time where that document was prepared.

4 A. I recognize the document. I'm familiar with it, and  
5 if I'm not, it will be on the screen.

6 Q. Okay. Very well. So this particular document was the  
7 subject of qualifications to provide special missions  
8 interrogation consultation, correct?

9 A. Correct.

10 Q. And it was created in early 2003?

11 A. It was created at the request of the CIA. I didn't  
12 submit it. It wasn't like I went up and said, "Here's my  
13 document." They asked me for a document including these  
14 topics, and that's what I did.

15 Q. So -- and the purpose of this document was to further  
16 your -- your contractual relationship with the CIA?

17 A. No. The chief of one of the departments asked me to  
18 provide a document that outlined what my qualifications would  
19 be, and I gave it to them.

20 Q. Okay. At the time you weren't seeking another  
21 contract?

22 A. I had a contract. There wasn't any reason for me to  
23 seek another contract.

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1 Q. Right. That was the original contract that I think  
2 you indicated in your book you had written on a yellow piece  
3 of paper and you had actually written in the amounts?

4 A. It was not the contract. That was the contract  
5 proposal. In my book, I erroneously called it the contract,  
6 but it was actually the contract proposal.

7 Q. Right. And the contract proposal was one that you had  
8 written out on the -- I think you described it as a yellow  
9 sheet of paper?

10 A. It was a legal pad.

11 Q. Right. And that was for your involvement with the  
12 RDI -- well, at the time you didn't know it was the RDI  
13 program, but it was for the work you were going to go do on  
14 Mr. Zubaydah?

15 A. It was for the initial part of it. It was for a  
16 two-week TDY. In fact, if you look at the thing, there's a  
17 limit of \$15,000 on it, and there -- what they told me was  
18 that they were going to deploy me for two weeks. They ended  
19 up deploying me for months.

20 Q. Okay. So let me ask you -- let me ask you this  
21 question: At the time that you were debriefing, assessing --  
22 assessing Mr. al Hawsawi -- and I'm not saying they were side  
23 by side; we've established the timelines on that -- were you

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1 also seeking an additional contract?

2 A. I never really had to seek an additional contract  
3 because if -- if it came to the end of a contractual period,  
4 they came to me and asked me if I wanted to renew a contract  
5 or change a contract.

6 In -- I don't remember the exact date, but at some  
7 point, this was written -- or this was requested by a person  
8 in DS&T -- the Science and Technology Group. And the CTC  
9 folks said we don't want him in Science and Technology. We  
10 want to move him over to CTC, and I think there was a change  
11 of contracts at that point.

12 Q. Okay. So and I know you've testified that as a  
13 contractor, you were basically served at the pleasure of the  
14 CIA day to day?

15 A. Yes.

16 Q. Okay. So if the CIA was not pleased with the product  
17 you were providing, presumably they could let you go, correct?

18 A. Yes.

19 LDC [MR. RUIZ]: All right. May I have a moment, Judge?

20 MJ [Col COHEN]: Yes. Most definitely.

21 [Counsel conferred.]

22 LDC [MR. RUIZ]: That is all I have for the open session.

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

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1 All right. So we're going to be done with you for the day, so  
2 I will -- I'll release you to go about and do whatever you  
3 would like to do today.

4 WIT: Thank you, sir.

5 MJ [Col COHEN]: Absolutely.

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

7 MJ [Col COHEN]: All right. Mr. Ruiz, I'll give you a  
8 minute to -- to just gather your things. No rush. I need to  
9 talk with Mr. Nevin here momentarily.

10 [Pause.]

11 MJ [Col COHEN]: Sir, do you have a moment to chat just  
12 about the way forward, Mr. Nevin?

13 CDC [MR. NEVIN]: No, Your Honor. I'm busy. I have to  
14 go. Sir, of course.

15 MJ [Col COHEN]: All right, sir. I am aware of the motion  
16 that's out there for -- for the continuance. My calculations  
17 would be as of Monday morning, you'll be approximately ten  
18 days from the original guidance and then another six from --  
19 from those -- those -- those minor tweaks on Tuesday.

20 And so my question is, is: Where -- where are you as  
21 the counsel to question this witness on proceeding on -- on  
22 Monday morning?

23 CDC [MR. NEVIN]: And, Your Honor, I -- I can answer that

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1 question for you, but I know that Mr. Sowards was really  
2 responsible for arguing this motion.

3 MJ [Col COHEN]: Okay. Absolutely.

4 CDC [MR. NEVIN]: Would it be okay to have him kind of  
5 address that?

6 MJ [Col COHEN]: Oh, absolutely, sir. I didn't mean to  
7 kind of take it out. I just ----

8 CDC [MR. NEVIN]: Yeah.

9 MJ [Col COHEN]: Mr. Sowards, he's now making you argue  
10 it. Good afternoon, sir.

11 LDC [MR. SOWARDS]: Good afternoon, Your Honor. I'm  
12 sorry. What was the motion?

13 MJ [Col COHEN]: The ----

14 LDC [MR. SOWARDS]: At this point, Your Honor, I think as  
15 I indicated to you earlier in the week, some of this may  
16 been -- have been overtaken by events just in terms of the --  
17 what you just described, the passage of time.

18 MJ [Col COHEN]: Okay.

19 LDC [MR. SOWARDS]: What I would emphasize just in terms  
20 of the -- sort of the good faith of the -- of the motion, and  
21 it isn't so much to say neener-neener, but only to say that  
22 when Mr. Connell certainly considered the issue of the new  
23 guidance, he took the position that he could try to work

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1 around it and accommodate it into his examination.

2 We, for whatever reason, thought that that was not  
3 the best approach and did alert Your Honor to those three  
4 areas which actually came to fruition in pretty quick order  
5 and fashion the other day in terms of the conflicting guidance  
6 and the uncertainty of the guidance.

7 The bottom line for me was, because Mr. Nevin was  
8 actually on the -- on the firing line as the -- as the first  
9 up in terms of Dr. Mitchell, that whatever he felt was  
10 reasonable to try to accommodate that should be considered.  
11 And so that's why you recall at the 802, we were sort of  
12 trading off this same role.

13 MJ [Col COHEN]: Absolutely. That's why -- I just  
14 wanted -- I knew -- you had -- you had already told me he was  
15 going to do the questioning, which is why I called him up  
16 first to find out.

17 LDC [MR. SOWARDS]: No, that's fine. So I guess what my  
18 position, though, is -- and, of course, we didn't realize when  
19 we filed the motion that we would get yet a third corrected  
20 version, which I -- I believe Your Honor has referred to as a  
21 few tweaks.

22 But nevertheless, I mean, for instance, chapter -- I  
23 mean, paragraph 75, which morphed the guidance on the book as

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1 to saying everything in it is unclassified and therefore all  
2 of the information may be used, and changing that to only the  
3 specific language did kind of throw a wrench in the works.

4 But then mid-hearing, Your Honor clarified with the  
5 government, or at least I -- I believe elicited the  
6 stipulation that they would be agreeable to allowing us much  
7 wider latitude in terms of examining the witness with respect  
8 to the interior layout and -- and appearance of -- of the --  
9 of the black sites. That was one of our concerns. There are  
10 other concerns and we have to -- we have to look at that.

11 But -- and that, you know -- I didn't mean to prolong  
12 this, but what I'm saying is that's a long way of saying that  
13 on the one hand, if the -- if the commission needs a -- needs  
14 further argument in a -- in a -- to make a formal ruling on  
15 this, I'm prepared to do that. If the parties who have all  
16 joined it on behalf of the -- of the three defendants who have  
17 joined it, counsel are -- are comfortable now with the passage  
18 of time so that they can begin relatively early next week,  
19 then I think that as a practical matter answers it. Although  
20 I would still urge the -- the commission and certainly the  
21 government to mark this particular episode as a kind of a  
22 cautionary lesson of what happens.

23 And I'm -- I'm still not -- you know, and again, I

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1 don't mean to complain about something that may be have  
2 rendered -- been rendered moot, but it is just intolerable.  
3 At least from my perspective, I'm happy that other people are  
4 more nimble and can adjust, but I do not have ready access to  
5 a SCIF. I can't even look at the guidance. So that when  
6 someone says midweek -- or, I mean, not even midweek but the  
7 day that I'm supposed to start traveling to D.C. to then come  
8 down here, here's 30 pages of -- of new guidance, see if you  
9 can internalize that -- because I also have witnesses that I'm  
10 responsible for -- that's just intolerable. And so, you know,  
11 I would -- I would encourage you to change ----

12 MJ [Col COHEN]: I understand.

13 LDC [MR. SOWARDS]: And I know -- and I know you're  
14 sympathetic and empathetic to that, so I'm not at all  
15 criticizing the -- the position of the commission or  
16 suggesting you tolerate that. I'm just saying that this would  
17 be a good reminder for us going forward.

18 And -- and I think what it comes down to is to -- I  
19 would just urge that, because I have not discussed the  
20 specifics with Mr. Nevin or with Ms. Bormann or -- or  
21 Mr. Harrington, but perhaps look to them and see what it is,  
22 if anything, they need in terms of the timing for next week.

23 MJ [Col COHEN]: Here's -- here's kind of the way I'm

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1 currently looking at it, is -- is addressing this on a  
2 party-by-party basis. And so my -- my inclination, given the  
3 fact that there has already been numerous references to -- to  
4 Mr. Mohammad is to take you all next and to start at 0900 on  
5 Monday.

6 And so what I'm really looking for is, is -- and then  
7 as we're getting closer to you, then moving down to the next  
8 team. Most likely it would be either Mr. Harrington -- well,  
9 there's only two left, so it would be either be Mr. Harrington  
10 or Ms. Bormann that would -- that would need to address that.

11 Mr. Harrington has indicated that he didn't need --  
12 may not need but maybe a day or less to do that, and so might  
13 make sense to take him next to last, and then Mr. Montross,  
14 having shown up later, to give him some -- some additional  
15 time, especially given the fact that he was a little bit under  
16 the weather on his way down here. So that's my inclination.

17 I -- so I guess the -- the real question I have for  
18 you, sir, is -- as the lead counsel on the case, in  
19 consultation with your -- your former lead counsel on the case  
20 is, are you willing to give it a shot on Monday morning at  
21 9:00, or do I need -- where are we at?

22 I'll let you guys confer. Thank you.

23 LDC [MR. SOWARDS]: I know Mr. Nevin is always game, but

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1 just let me just ----

2 MJ [Col COHEN]: All right.

3 CDC [MR. NEVIN]: Yes, and I -- the short answer is yes.

4 MJ [Col COHEN]: Okay.

5 CDC [MR. NEVIN]: I'll be ready at 9:00 on Monday morning.

6 I wanted Mr. Sowards -- I think there was a sort of a policy

7 element ----

8 MJ [Col COHEN]: Absolutely.

9 CDC [MR. NEVIN]: ---- to the argument that I wanted

10 Mr. Sowards to make ----

11 MJ [Col COHEN]: No, no, no. Absolutely. And I -- I --

12 you are correct. I -- I didn't know how the -- how you all

13 had divvied that up. And so, yeah, I have no issue with that.

14 Thank you, sir.

15 CDC [MR. NEVIN]: Thank you.

16 MJ [Col COHEN]: All right. So KSM will definitely start

17 at 0900 on Monday.

18 CDC [MR. NEVIN]: Yes.

19 MJ [Col COHEN]: All right. Ms. Bormann.

20 LDC [MS. BORMANN]: Thank you, Judge. And I just want to

21 put on the record that, given the situation with Mr. Montross

22 arriving late, I am going to be examining ----

23 MJ [Col COHEN]: Oh, okay.

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1 LDC [MS. BORMANN]: ---- Dr. Mitchell, and Mr. Montross  
2 will be doing Dr. Jessen.

3 MJ [Col COHEN]: I understand.

4 LDC [MS. BORMANN]: So that's why you see me furiously  
5 working at the table.

6 MJ [Col COHEN]: I understand, ma'am. Where do you think  
7 you're going to be next week?

8 LDC [MS. BORMANN]: I'm going to be working all weekend,  
9 so I'm hoping to be prepared. I don't know how long ----

10 MJ [Col COHEN]: Okay.

11 LDC [MS. BORMANN]: ---- Mr. Nevin anticipates his ----

12 MJ [Col COHEN]: That's a great question.

13 Sir, how -- are we still at about a day you think at  
14 this point, or less?

15 CDC [MR. NEVIN]: Yes, I think not less than a day and not  
16 more than a day and a half.

17 MJ [Col COHEN]: Okay.

18 CDC [MR. NEVIN]: And -- and obviously a lot of water  
19 under the bridge now, and -- but on the other hand, I don't  
20 know -- I clearly -- I'm going to explore some things with the  
21 witness that haven't been explored or perhaps explore  
22 them ----

23 MJ [Col COHEN]: As I would expect. I mean, he obviously

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1 had significant interaction during EITs with your client, so I  
2 get that.

3 CDC [MR. NEVIN]: You bet. So my thought is maybe at --  
4 when we take our lunch break on Monday, I can give you a -- a  
5 more ----

6 MJ [Col COHEN]: That would be perfect.

7 CDC [MR. NEVIN]: ---- more refined estimate.

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

9 LDC [MS. BORMANN]: And I -- given that Mr. Harrington, I  
10 think, was planning on going after Mr. Nevin anyway, we should  
11 be good to go by Wednesday.

12 MJ [Col COHEN]: Okay. Perfect.

13 Mr. Harrington, how about you? Based on everything  
14 that has come out so far, understanding that things can change  
15 as we see in litigation all the time, kind of what's your time  
16 frame and -- and do you think you'll be ready to go either  
17 Tuesday morning or Tuesday afternoon?

18 LDC [MR. HARRINGTON]: Judge, Ms. Bormann's announcement  
19 that I was going after Mr. Nevin is news to me right now, but  
20 we can either flip a coin or work it out ourselves.

21 MJ [Col COHEN]: All right.

22 LDC [MR. HARRINGTON]: But I'll be ready by Tuesday to go,  
23 Judge, if ----

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1 MJ [Col COHEN]: All right. Perfect. All right. Then  
2 that's what we'll do.

3 LDC [MR. CONNELL]: Sir?

4 MJ [Col COHEN]: Mr. Connell.

5 LDC [MR. CONNELL]: This may be totally unnecessary and  
6 maybe even potentially obnoxious, but I just want to let you  
7 know that we're ready to proceed with Dr. Jessen whenever the  
8 military commission wants us to. So if you wanted us to go  
9 Monday and change up the order, it's at -- we're at your  
10 leisure.

11 MJ [Col COHEN]: Let me ask the parties this question.  
12 Here -- I've thought about this, right? I've thought about  
13 the desire to have them live, right? Here's my inclination  
14 and it's just an inclination. It is not an order in any way,  
15 shape, or form.

16 But given what you've just told me, my preference  
17 would be -- it is first and foremost your motion that -- for  
18 the -- that we primarily brought them down here for. In a  
19 closed session -- I haven't ruled on -- on -- on the  
20 third-party motion that's out there, but -- and this is not an  
21 inclination of how -- how I plan to rule on that.

22 But just as a general matter, the public does not come  
23 to a closed session because they -- they -- they definitely

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1 don't have the clearances and then -- et cetera. So my  
2 preference would be, since you're ready to go, is that at the  
3 conclusion of the open session testimony of Dr. Mitchell, that  
4 we begin the -- excuse me, open -- I meant to say open. I  
5 hope -- if I didn't, I need to correct that. Is that once  
6 Ms. Bormann is done, you can start your open session testimony  
7 of -- of Dr. Jessen.

8 LDC [MR. CONNELL]: Yes, sir. We're happy to do that.

9 MJ [Col COHEN]: All right. Trial Counsel, any objection?

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

11 MJ [Col COHEN]: All right. And I'll work with the  
12 parties -- because we can always do that even potentially  
13 remotely. We'll work it out as to how we do the closed  
14 session testimony, all right?

15 LDC [MR. CONNELL]: My only question, the government had  
16 mentioned cross.

17 MJ [Col COHEN]: That's true. Yeah, that's true. Yeah.

18 TC [MR. GROHARING]: I don't anticipate a lengthy cross of  
19 the witness at this point.

20 MJ [Col COHEN]: Okay.

21 TC [MR. GROHARING]: Obviously we haven't seen what is  
22 going to take place with the next couple of teams.

23 MJ [Col COHEN]: Okay.

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1 TC [MR. GROHARING]: But I don't anticipate -- certainly  
2 not more than a half a day, probably much less.

3 MJ [Col COHEN]: Okay, and I'm not -- just so the parties  
4 are aware, I'm not saying we won't bring them back or I won't  
5 say -- I just -- what I'm just saying is -- is while they are  
6 here, and, in particular, given the fact that it's your motion  
7 and you definitely want to get your stuff out in open session  
8 while they're both here -- that's part of that individualized  
9 justice.

10 And if you want that and you're ready to go, the  
11 closed session for -- for -- for benefit of -- of me and my --  
12 my reasoning, I'd rather have you have your open session on a  
13 day or two while we're here, so we'll do that.

14 So I'll work with the parties based on how we adjust  
15 this, and then we'll figure out when we -- when we do the  
16 closed session testimony.

17 Mr. Sowards?

18 LDC [MR. SOWARDS]: Yes, Your Honor, just for whatever it  
19 helps your calculations in thinking about this, we are  
20 actually -- based on the information as it was coming in this  
21 week, we are preparing a motion to allow Mr. Mohammad at least  
22 to be present during the closed session.

23 MJ [Col COHEN]: Okay. Then that will give me time to

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1 address that motion too, so it actually might -- it seems that  
2 might work out better that way, then.

3 LDC [MR. SOWARDS]: Okay. So that we're not -- we haven't  
4 decided as a fait accompli that we'll be up and -- up in D.C.  
5 or some other ----

6 MJ [Col COHEN]: No, no. Like I said, the location -- in  
7 fact, I'm not saying we couldn't do a closed session from down  
8 here via VTC, et cetera.

9 LDC [MR. SOWARDS]: Great.

10 MJ [Col COHEN]: So let me -- like I said, what I'm --  
11 what it sounds like Mr. Connell is wanting to do is -- and it  
12 doesn't sound like you guys -- that everyone is having a big  
13 heartburn over this, we will table the closed session  
14 testimony, both weeks now will be open session testimony, and  
15 we are going to get as far through even Dr. Jessen as we can  
16 before the end of this two weeks.

17 LDC [MR. SOWARDS]: Okay. Thank you very much.

18 MJ [Col COHEN]: All right. Trial Counsel, take as much  
19 time as you need on cross-examination, just like I would tell  
20 them. But we'll definitely roll in and get as much of  
21 Dr. Jessen as we can get towards the end of next week. All  
22 right.

23 Then with that said, we're going to end about an hour

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1 early today, which under the -- given the -- it's been a long  
2 week. It's probably not bad for all the parties. We'll be in  
3 recess until 0900 hours on Monday.

4 [The R.M.C. 803 session recessed at 1625, 24 January 2020.]

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