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1 [The R.M.C. 803 session was called to order at 0921,  
2 27 January 2020.]

3 MJ [Col COHEN]: This military commission is called to  
4 order. Good morning, everyone. Good to see everyone. Good  
5 to see everyone back for week two of open session testimony.

6 Good morning, General Martins. Would you like to  
7 account for members of the prosecution who are here?

8 CP [BG MARTINS]: Your Honor, all members of the  
9 prosecution who were here on Friday are here, including  
10 Mr. Swann and Mr. Ryan.

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

12 CP [BG MARTINS]: I'm sorry. Your Honor, I apologize.  
13 Mr. Trivett is not here and won't be here this week. He's out  
14 on commissions business in the National Capital Region.

15 MJ [Col COHEN]: Okay.

16 CP [BG MARTINS]: Your Honor, the proceedings are being  
17 transmitted to the closed circuit television sites approved by  
18 the commission and the commission's order.

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

21 Mr. Sowards, good morning.

22 LDC [MR. SOWARDS]: Good morning, Your Honor. How are  
23 you?

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1 MJ [Co] COHEN]: Doing well. How about yourself.

2 LDC [MR. SOWARDS]: Fine, thank you, sir.

3 MJ [Co] COHEN]: Good.

4 LDC [MR. SOWARDS]: Gary Sowards, David Nevin, Rita  
5 Radostitz, Denise LeBoeuf appearing on behalf of Mr. Mohammad,  
6 who is present in court. And we're also joined at counsel  
7 table by Melanie Partow.

8 MJ [Co] COHEN]: All right. Thank you, sir. Appreciate  
9 it.

10 Ms. Bormann, good morning.

11 LDC [MS. BORMANN]: Good morning, Judge. Thank you for  
12 delaying for 15 minutes the start of this morning.

13 I just want to put on the record what occurred. When  
14 I arrived at the ELC compound at approximately 8:15, expecting  
15 to be in my office by 8:25, there was a huge crane, a big  
16 piece of machinery, being hauled up the hill and it stopped  
17 everybody from coming in for a significant period of time. I  
18 know some of the court reporter staff got stuck as well.

19 MJ [Co] COHEN]: Okay.

20 LDC [MS. BORMANN]: Then when we got in, I was able to  
21 watch Dr. Mitchell and his lawyers walk through the gate that  
22 you come in through, which seemed to be pretty breezy and easy  
23 to do. I, as defense counsel, cleared defense counsel, have

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1 to drive around, park at the Washington gate and go in with  
2 the media and the NGOs, which I did. And then there was a  
3 huge line getting in through there. It does not appear that  
4 there's any sort of expedited way for cleared defense counsel  
5 to get in, so I apologize.

6 MJ [Co] COHEN: Okay.

7 LDC [MS. BORMANN]: I had things I had to do in my office  
8 that I had prepared to do in -- for today's hearing, and I  
9 appreciate the accommodation.

10 MJ [Co] COHEN: Yes, ma'am. And it looks like  
11 Mr. Bin'Attash is here as well. All right.

12 Mr. Harrington, good morning.

13 LDC [MR. HARRINGTON]: Judge -- Judge, on behalf of  
14 Mr. Binalshibh, James Harrington, Army Captain John  
15 Balouziyeh, Wyatt Feeler, and Navy Lieutenant Clayton  
16 Lawrence; and also with us is Vivian Hernandez, who will be --  
17 will be filing today her detailing papers and asking for her  
18 acceptance to the court tomorrow.

19 MJ [Co] COHEN: Okay. Thank you, sir. Good to know and  
20 I see that Mr. Binalshibh is here as well. All right.

21 Mr. Connell, good morning.

22 LDC [MR. CONNELL]: Good morning, Your Honor. On behalf  
23 of Mr. al Baluchi are myself, James Connell; Alka Pradhan; and

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1 Mark Andreu of the United States Air Force. Mr. Farley will  
2 not be on the commission this week. He's working on other  
3 commissioned-related business.

4 MJ [Co] COHEN]: All right. Thank you, sir.

5 LDC [MR. CONNELL]: Your Honor, may I have the court's  
6 indulgence to make a brief comment on the situation  
7 Mr. Bin'Attash's counsel raised?

8 MJ [Co] COHEN]: You may.

9 LDC [MR. CONNELL]: It -- as the record does not yet  
10 reflect, but it will now, there's been substantial  
11 construction around the Colorado gate, the other way to enter  
12 the ELC, which has resulted in significant security  
13 improvements, including, in the not too distant future, a  
14 turnstile that will control access to that.

15 I have always thought that it would be a very easy way  
16 for the military commission to reduce congestion at the  
17 Washington gate as well as to make things a little bit easier  
18 for the parties if both prosecution and defense were allowed  
19 to enter the Colorado gate as well as the Washington gate.

20 I know there is an issue that there's no -- the only  
21 issue seems to be that there's no x-ray machine at the  
22 Colorado gate, so that an attorney has to submit to a search  
23 of their materials if they go through that gate. But it seems

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1 to me that that's a decision that the attorney could make,  
2 whether they prefer to go through a place with an x-ray  
3 machine because, for example, they have privileged papers, or  
4 whether they only have a pen and a blank piece of paper and  
5 would -- could go through the other gate.

6 So this is not, in my opinion -- I was interested to  
7 hear about the witnesses, but it's not, in my opinion, a  
8 quality of arms issue. General Martins and I have both been  
9 turned away from the Colorado gate at the same time sometimes,  
10 and -- but it does seem like a change that would be worth  
11 looking into.

12 MJ [Col COHEN]: Okay. Thank you, sir. And Mr. Ali is  
13 absent today. All right.

14 Mr. Ruiz, good morning.

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

16 MJ [Col COHEN]: Good morning.

17 LDC [MR. RUIZ]: So, Judge, we're the same except  
18 Lieutenant Colonel Williams has left and Ms. Suzanne Lachelier  
19 has joined us.

20 MJ [Col COHEN]: Okay. Excellent. Mr. al Hawsawi is also  
21 absent this morning. All right. Thank you, sir.

22 Is there a witness with respect to the absences of  
23 Mr. Ali and Mr. al Hawsawi? Mr. Swann.

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

2 MJ [Col COHEN]: I recognize this male major as the same  
3 major who testified the first two times last week with respect  
4 to the absences.

5 I remind you that you are still under oath.

6 WIT: Yes, sir.

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

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

10 DIRECT EXAMINATION

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

12 Q. Major, did you have occasion to advise Mr. Ali of his  
13 right to attend today's proceeding?

14 A. Yes, sir.

15 Q. What about Mr. al Hawsawi?

16 A. I did, sir.

17 Q. I have in front of me what's been marked Appellate  
18 Exhibit 700I and J, each consisting of three pages. Do you  
19 have the originals?

20 A. I do, sir.

21 Q. Let's take Ali first. Did you advise him in English  
22 or in Arabic?

23 A. In English, as his preference was.

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1 Q. Did you use the form that you have in front of you?

2 A. Yes, sir.

3 Q. And is that his signature that appears on page 2 of  
4 this document?

5 A. It is, sir.

6 Q. With respect to al Hawsawi, did you advise him in  
7 English or in Arabic?

8 A. I advised him in English, and when I was completed  
9 doing so, a translator also advised him in Arabic.

10 Q. Is that his signature that appears on page 3, the  
11 Arabic version of this document?

12 A. It is, sir.

13 Q. Did they indicate they wished to attend or not attend  
14 today's proceeding?

15 A. Not attend.

16 Q. And do you believe that decision was voluntary?

17 A. Yes, sir.

18 TC [MR. SWANN]: Nothing further, Judge.

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

20 Noting the standing objection by the AAA team with  
21 respect to identity, Mr. Connell, have you had the opportunity  
22 to review AE 700I (AAA), and do you have any questions of the  
23 witness?

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1 LDC [MR. CONNELL]: Your Honor, I have had the opportunity  
2 to review AE 700I, and I have no questions of the witness.

3 MJ [Co] COHEN]: All right. Thank you, sir.  
4 Mr. Ruiz, same questions to you with respect to 700J.

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

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

8 Having reviewed 700 -- AE 700I and 700J and having  
9 heard the testimony of the witness, I find that Mr. Ali and  
10 Mr. al Hawsawi have knowingly and intelligently waived their  
11 right to be here at this morning's sessions.

12 Thank you very much for your testimony.

13 WIT: Thank you, Your Honor.

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

15 MJ [Co] COHEN]: Mr. Nevin, are you ready to proceed? All  
16 right.

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

18 MJ [Co] COHEN]: Mr. Sowards.

19 LDC [MR. SOWARDS]: May I have one moment of your  
20 time ----

21 MJ [Co] COHEN]: You may.

22 LDC [MR. SOWARDS]: ---- for a scheduling thing?

23 MJ [Co] COHEN]: Mr. Nevin, not so -- not so fast.

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1 Mr. Sowards.

2 LDC [MR. SOWARDS]: Yes. And he knew I was going to do  
3 this. Thank you, Your Honor.

4 Just very quickly -- and that was just for your  
5 planning purposes going ahead. With respect to the point  
6 Mr. Connell raised on Friday, it -- it is, actually to be  
7 explicit for the record, our preference that, for purposes of  
8 continuity after we finish with Dr. Mitchell's open session  
9 testimony, we would proceed to a closed session.

10 MJ [Co] COHEN]: Okay.

11 LDC [MR. SOWARDS]: Both in terms of just continuity and  
12 flow and working off of his open answers, but also we don't  
13 know how the -- obviously the commission will rule on our  
14 recent motion about Mr. Mohammad's participation in a closed  
15 session, but at least we would be able to be on island with  
16 him and have ready access to the extent there's -- that the  
17 closed session goes more than one session, to consult with him  
18 and follow up. So for those reasons, we would like to  
19 maintain the normal order of business and go in that fashion.

20 MJ [Co] COHEN]: Yeah, I -- I've received the motion. I  
21 think I'm probably going to have some oral argument on that  
22 motion. And so I think what I will do is I'm going to defer  
23 the -- the closed sessions because I -- I -- I do think that's

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1 an important issue that I don't want to play -- pay short  
2 thrift [sic] to, and so I -- I'd like to have some oral  
3 argument, which I may take up at the next session ----

4 LDC [MR. SOWARDS]: Okay.

5 MJ [Co] COHEN]: ---- on that very issue ----

6 LDC [MR. SOWARDS]: Right.

7 MJ [Co] COHEN]: ---- with respect to the presence of an  
8 accused on issues that directly affect that accused in which  
9 the -- so I understand normally that's what we would do, but  
10 I -- I -- I don't want to quick turn a -- quick turn a ruling  
11 on that one.

12 LDC [MR. SOWARDS]: Okay. And -- and -- and we also, as  
13 we mentioned in the motion, part of the motion was based on  
14 answers from Dr. Mitchell last week, but also it's based on  
15 the standing rule as we understood it of the commission.

16 So if it would enable the -- the commission to resolve  
17 that before we get to what would be the closed session of  
18 Dr. Mitchell this week, we're also happy to have the -- the --  
19 the commission treat that as an objection and so the -- the  
20 court could -- could rule on it more -- more promptly ----

21 MJ [Co] COHEN]: Okay.

22 LDC [MR. SOWARDS]: ---- so as not to disrupt the ----

23 MJ [Co] COHEN]: I appreciate that.

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

2 MJ [Co] COHEN: Let me -- let me think about that today  
3 as well.

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

5 MJ [Co] COHEN: All right. Thank you.

6 LDC [MS. BORMANN]: Judge, are you interested in the  
7 positions of the other parties with respect to this or do you  
8 want to wait?

9 MJ [Co] COHEN: I've internally tabled that for right now  
10 because I definitely know we've got at least three more days  
11 of -- of open session testimony for sure, and I was inclined  
12 to -- at least generally, as we discussed last Friday, to take  
13 Dr. Jessen's, at least from Mr. Ali, at that point. But let  
14 me go back and look at the motion in light of what he just  
15 told me and see if that changes my position.

16 Mr. Ruiz.

17 LDC [MR. RUIZ]: Judge, I just want to make a quick  
18 comment.

19 MJ [Co] COHEN: Yes.

20 LDC [MR. RUIZ]: Is that while Mr. Mohammad's motion is --  
21 seems to be specific to him, we believe the automatic joinder  
22 rule continues to apply. And on this specific issue I want to  
23 be explicit that Mr. al Hawsawi also very much is interested

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1 in having the same access.

2 MJ [Co] COHEN]: No, I -- I assumed as much. Whether --  
3 whether the joinder specifically applied to the motion or not,  
4 I figured that it -- at a minimum, I would -- I would  
5 either -- either it would or I would be getting five different  
6 motions asking for the same relief, so ----

7 LDC [MR. RUIZ]: Understood. And with respect to  
8 Mr. Sowards' statement in terms of order of testimony, we  
9 concur with his -- with his preference as well.

10 MJ [Co] COHEN]: Okay.

11 LDC [MR. RUIZ]: Thank you.

12 LDC [MS. BORMANN]: As -- as do we. That's what I was  
13 going to tell you.

14 MJ [Co] COHEN]: No, I understand. I understand. Once  
15 again, we find ourselves where -- where the parties are not  
16 all completely aligned, which is not to be unexpected. All  
17 right.

18 Like I said, individualized justice is definitely on  
19 my mind. I will take all these matters under consideration  
20 and, like I said, the -- the inclination of the -- of the  
21 commission at this point is to allow Mr. Connell to ask a  
22 couple days of questions of Dr. Jessen and to take oral  
23 argument on this issue.

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1 I think it's important, an important issue that -- I  
2 don't want to just -- although I can treat it as an objection,  
3 it's something that -- on this particular issue, I -- I want  
4 to take -- go back and look at the way past practices have --  
5 have been and then adopt. It's one thing if it's -- if it's a  
6 witness who's not testifying about direct interactions with  
7 the -- with the accused versus one who's testifying about  
8 direct interactions with the accused.

9 And how I would -- how I would even formulate that,  
10 and maybe one accused whose testimony is being directly  
11 addressed could be -- could be present for that while the  
12 others wouldn't necessarily need to be there because it wasn't  
13 directing -- it was talking specifically about their  
14 information, but those are all things I think we all need to  
15 discuss, so -- all right.

16 That being said, I think we're at least ready to take  
17 open session testimony this morning, Mr. Nevin. If you'll  
18 please call the witness.

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

20 MJ [Col COHEN]: Sir, please -- thanks for your patience  
21 this morning. If you'll please take your seat. We're down to  
22 your last couple days -- couple being the operative word -- of  
23 your testimony and Mr. Nevin now has you on the stand.

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1 WIT: Okay. Thank you.

2 MJ [Co] COHEN]: All right.

3 CDC [MR. NEVIN]: May we approach the witness?

4 MJ [Co] COHEN]: You may. Both of you.

5 WIT: Both of you?

6 CDC [MR. NEVIN]: [Counsel away from podium; no audio.]

7 MJ [Co] COHEN]: The mic's hot.

8 WIT: Is that ----

9 MJ [Co] COHEN]: You may.

10 [Counsel conferred with the witness.]

11 MJ [Co] COHEN]: All right. I allowed a side bar between  
12 Mr. Groharing and Mr. Nevin with -- with the witness to  
13 explain, just in general details, how some physical evidence  
14 would be -- would -- would be discussed while protecting some  
15 information that may or may not be on those items.

16 CDC [MR. NEVIN]: All right. Thank you, Your Honor.

17 MJ [Co] COHEN]: You're welcome.

18 DIRECT EXAMINATION

19 Questions by the Civilian Defense Counsel [MR. NEVIN]:

20 Q. Dr. Jessen, good morning.

21 A. My name is Mitchell.

22 Q. Oh, sure it is. Dr. Mitchell, good morning.

23 A. Uh-huh. Good morning. Glad to be here. I've been

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1 looking forward to this.

2 Q. Yeah. And my name is David Nevin, I'm one of the  
3 lawyers that represents Mr. Mohammad. And let me begin by  
4 asking you -- I know you saw Mr. Mohammad in court last week.  
5 When was the last time before last week that you saw him?

6 A. Probably 2006, shortly before he was transferred to  
7 GTMO, although I don't remember exactly. I saw ----

8 Q. Okay.

9 A. I'm sure I saw him in 2006.

10 Q. And where did you see him on that occasion?

11 A. I'll have to look on the site list.

12 Q. Can you do that?

13 A. Sure. I don't remember exactly, but I think it was  
14 probably Location Number 8.

15 Q. Okay. And do you remember the month in 2006?

16 A. No, but I'm sure you have a piece of paper that has  
17 all of my substantial contact with him, and I'd be happy to  
18 look at it to refresh my memory.

19 Q. All right. I appreciate that.

20 But then -- now let's back up in time and let me ask  
21 you, where is the first time that you ever saw him?

22 A. I think you call it Location Number 4, but let me just  
23 double check. Location Number 4.

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1 Q. And when was that?

2 A. Early March 2003.

3 Q. Do you have a particular day?

4 A. I ----

5 [Counsel conferred.]

6 CDC [MR. NEVIN]: Okay. I got it.

7 Q. Okay. So if you knew the day, I am nonetheless not  
8 permitted to ask you to say what the day is, so let's just go  
9 with early March of 2003, and that was at Location 4.

10 And in 2003, can you tell us how old you were and how  
11 old Mr. Mohammad was?

12 A. I'm 68 years old, so I think you can probably do the  
13 math. As for the age of Mr. Mohammad, I don't -- I don't  
14 recall.

15 Q. Yeah. So you were in your early to mid fifties, let's  
16 say, at that time?

17 A. 2000 -- this is 2019. That's 2000 -- so it was 20  
18 years ago.

19 Q. All right. So it would be ----

20 A. 19 years ago -- 17 years ago.

21 Q. We've gotten to 2020. So -- and you say you're 68  
22 now?

23 A. Uh-huh.

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1 Q. So something like 51 or so in 2003?

2 A. I think that's young, but possibly.

3 Q. Yeah, I think it's young, too.

4 A. No, I mean I think it's young -- I think I was older  
5 than that, but -- at least I felt older than that. So -- but  
6 I'll go with whatever math you have.

7 Q. All right. And -- but you don't know Mr. Mohammad's  
8 age at that time?

9 A. I'm sure I was told, I just don't recall.

10 Q. Okay. So you ----

11 CDC [MR. NEVIN]: Do we need to pause in any way for that,  
12 Your Honor?

13 MJ [Col COHEN]: We're going to take care of that. I  
14 think the phone in my chambers is ringing.

15 Q. So you then saw Mr. Mohammad in Location 4 at the  
16 outset, and -- and the last time -- place you saw him was at  
17 Location 8?

18 A. That's my recollection.

19 Q. Right. And you also saw him in between those two  
20 times; isn't that true?

21 A. Yes, sir.

22 Q. Yeah. And you saw him at Location 7?

23 A. I'd have to look.

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1 Q. Okay.

2 A. Yes, sir.

3 Q. And then at Location 8?

4 A. Yes, sir.

5 Q. Okay. Now, when you were seeing -- let's start with  
6 Location 4 and just talk about timing in general.

7 When you're seeing Mr. Mohammad at Location 4, were  
8 you there for the entire time that he was at Location 4?

9 A. Again, I don't recall specifically. I was there for  
10 the entire time that enhanced interrogations were being used,  
11 and then I was there, I think, for a few weeks after that.

12 Q. Uh-huh.

13 A. But I do know that in August of that year, I got moved  
14 by the agency to something else. I don't know if I went home  
15 between then and there. You know, I just don't recall. But  
16 I'm sure, like I said, you have a piece of paper, and I'd be  
17 happy to respond to it.

18 Q. No, I'm just really interested in your -- in your  
19 recollection at this point.

20 But -- so in August of 2003, you go to another  
21 assignment or another place?

22 A. Another assignment that didn't have anything to do  
23 with EITs.

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1 Q. Okay. And so you are then at Location 4 [REDACTED]

2 [REDACTED]

3 A. I don't recall that I -- that I was there the whole  
4 time, but I was -- I think I was back again in August for a  
5 little while.

6 Q. Uh-huh.

7 A. Or I was there the whole time, I just don't recall.  
8 It's -- it's not -- it's a long time ago and, you know, where  
9 I was and what I was doing is just one great big ----

10 Q. Blur?

11 A. Not a blur as much as just all mixed up and mashed  
12 together. And so it wouldn't surprise me if I was there until  
13 August, and it wouldn't surprise me if I got redirected to go  
14 somewhere else and came back.

15 Q. Okay. Now, did you see Mr. Mohammad again at  
16 Location 4 after you left in August? Did you ----

17 A. Yes ----

18 Q. ---- go back and ----

19 A. ---- I'm sure I did.

20 Q. At Location 4?

21 A. I think so. I mean, I saw him off and on for a long  
22 period -- for, you know, substantial periods of time  
23 throughout the time that he was at 4 and whatever the other

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1 two are.

2 Q. 7 and 8?

3 A. Hmm.

4 Q. Yeah. So you saw him off and on the entire time he  
5 was at Location 4?

6 I guess what I'm getting at is this: Was there a  
7 period -- does there come a time when Mr. Mohammad stays at 4  
8 and you leave and you don't see him at 4 ----

9 A. Yes.

10 Q. ---- anymore?

11 A. Anymore. I'm sure there -- I wasn't with him on the  
12 rendition aircraft when he was moved to a new place.

13 Q. Right.

14 A. So I'm certain there was a time when I didn't see him  
15 anymore at Location 4.

16 Q. But you just don't remember when it was?

17 A. I just don't recall.

18 Q. Okay. Now, let's -- let's talk Location 7. Need to  
19 look at the key again?

20 A. Okay.

21 Q. Okay. So did you see him at Location 7?

22 A. I believe I did.

23 Q. Do you remember how many times you saw him at

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1 Location 7?

2 A. I don't remember how many times I saw any of these  
3 folks. You may recall from Bin'Attash that I -- that I -- I  
4 saw him 40-something times and thought I saw him two. So, you  
5 know, I just don't recall these things.

6 Q. Uh-huh.

7 A. It's not something I tracked. It's not something I  
8 kept track of.

9 Q. Right. And so the answer would be you don't remember.

10 A. I don't remember.

11 Q. But you -- do you know that you did see him at  
12 Location 7?

13 A. If he was at 7, it seems reasonable that I would have  
14 seen him, so I'm -- you're just asking me to speculate. I'll  
15 speculate all day, if that's what you'd like me to do, but I  
16 don't have any clear recollection that tags me seeing him at  
17 7.

18 Q. Okay.

19 A. Or 6.

20 Q. All right.

21 A. If you see my point.

22 Q. Or 6?

23 A. Well, I'm sure I saw him at 6.

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1 Q. I'm sorry. Did you mean 4?

2 A. Oh, I'm sure I saw him at 4, yes.

3 Q. Yeah. So then the last one was Location 8. That was  
4 the last time you saw him?

5 A. Again, I'll have to ----

6 Q. At least that's what you said earlier this morning.

7 A. I believe that's true.

8 Q. Okay. And did you see him on more than one occasion  
9 at Location 8?

10 A. I would have checked in with him on more than one  
11 occasion if I was there. I wouldn't have necessarily been  
12 part of a debriefing because we had other interrogators there  
13 that would sit in on the debriefings.

14 Q. And do you have an estimate or a recollection of how  
15 many times you would have seen him at Location 8?

16 A. No. Many times.

17 Q. And do you have a -- so more than -- more than ten?

18 A. That's possible.

19 Q. More than 20?

20 A. I don't know about that.

21 Q. Okay. So do you remember the last time that you saw  
22 him at Location 8?

23 A. No. Again, we could cut to the chase. It's ----

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1 Q. That's fine. It's a yes-or-no question. It's all  
2 good. But the answer is no?

3 A. I don't recall the last time I saw him.

4 Q. Okay. So you testified previously that the -- that at  
5 some point in time, you start what you call fireside  
6 chats ----

7 A. Yes, sir.

8 Q. ---- is that -- yeah. So when -- when did you start  
9 doing fireside chats?

10 A. It would have been Location 4.

11 Q. That's -- that's a where. Do you remember when?

12 A. Shortly after the -- well, I think we started them  
13 during the EITs. I don't remember the -- it would have been  
14 sometime in March.

15 Q. So you consider March to be the time of the EITs?

16 A. Yes, because I was shown a document the other day in  
17 testimony that said sometime around the 28th or 21st of March,  
18 we didn't use any waterboarding, we didn't use any EITs. That  
19 means he would have been transitioning out of those.

20 Q. So the -- who showed you that document? You mean when  
21 you were here on the witness stand before?

22 A. Yes.

23 Q. Okay. And so you were -- the fireside chats began

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1 before ----

2 A. We would have -- we would have started those early in  
3 the EIT session, Dr. Jessen and I would have.

4 Q. All right. So again, the fireside chats would come at  
5 the end of all of the activity of the day; is that correct?

6 A. Well, not at the end of all of the activity of the  
7 day. It would be at the end of that session, right, if it  
8 was -- if it was -- now, there were some logistical issues  
9 that sometimes you couldn't do it and sometimes you could.

10 Q. Right.

11 A. But given our preference, the preferred way to do it  
12 is to simply say that is over, the interrogation is over, now  
13 let's just talk about your reaction to what happened.

14 Q. And would you leave the room before having that  
15 conversation?

16 A. Sometimes, sometimes not, you know.

17 Q. So on some occasions, you would do the interrogation  
18 and then the interrogation would come to an end, referring to  
19 the use -- or the possible use of EITs, the interrogation  
20 would come to an end, and then you would have the fireside  
21 chat right then?

22 A. Well, we would literally tell him, "That's over.  
23 We're not going to do any more of that" ----

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1 Q. Uh-huh.

2 A. ---- you know, "Let's talk about your response to it."

3 Q. Right. And would you have done -- that fireside chat  
4 with Mr. Mohammad, would you have done that every day?

5 A. Probably not. Possibly so. I don't recall. But we  
6 tried to do it every time, Bruce and I did -- Dr. Jessen and I  
7 did.

8 Q. Yeah.

9 A. Sometimes early on, that wasn't possible because of  
10 his resistance posture.

11 Q. By which you mean that you -- he was resistant and  
12 wouldn't deal with you or wouldn't talk to you?

13 A. Very early on. But we would talk to him after it was  
14 over. You know, we would say, "You have to help us. You  
15 know, Washington is not going to accept this."

16 Q. Right.

17 A. "You need to work with us."

18 Q. Right.

19 A. So we would attempt to have one. Whether or not he  
20 chose to participate or not was a different story.

21 Q. Right. Okay. And how long would your typical  
22 fireside chat last?

23 A. It varied from just a -- from just a few minutes, say

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1 ten minutes, to much longer. Like when he described  
2 dismembering Daniel Pearl, that took a long time.

3 Q. So from a few minutes to ----

4 A. However long it took, driven by their willingness to  
5 talk to us.

6 Q. What do you suppose was the longest one you did?

7 A. Probably the one involving Daniel Pearl.

8 Q. And how long was that?

9 A. I can't say. I don't recall. But it was just -- it's  
10 the one that stands out.

11 Q. On the order of an hour or ----

12 A. I don't recall.

13 Q. Okay. No -- no -- could it have been as long as an  
14 hour?

15 A. I don't recall.

16 Q. Okay. So -- and did you do those fireside chats only  
17 with Mr. Mohammad or was it -- or with other detainees who  
18 were present?

19 A. We routinely -- we routinely did those after  
20 debriefings and interrogations, Dr. Jessen and I did.

21 Q. Uh-huh.

22 A. So we did that with Abu Zubaydah. I didn't do any of  
23 the EITs on -- neither did, I think, Dr. Jessen, on any of the

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1 other detainees who are defendants here today.

2 Q. Uh-huh.

3 A. So I don't know what their interrogators did, but we  
4 would sit and have fireside chats with them after their  
5 debriefing sessions.

6 Q. Yes, sir. And I wasn't referring to just the other  
7 defendants in the case, I was referring to other detainees in  
8 general. You did fireside chats with ----

9 A. A lot of them.

10 Q. With a lot of them.

11 So when you're doing the fireside chat with -- with  
12 the -- the -- the fireside chat procedure with Mr. Mohammad,  
13 how would he be -- what would -- what would -- what would the  
14 setting be for him as he ----

15 A. It would be sitting down in a chair. You know, we'd  
16 give him some water or something, some tea if it was -- if it  
17 happened to be in that phase where those sort of refreshments  
18 were made available. We would tell him, "Hey, that section is  
19 over, the interrogation is over. We're not going to  
20 interrogate you anymore. We're not even going to ask you any  
21 questions. We just want to know what your reaction to being  
22 questioned was."

23 Q. Right.

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1 A. And then we'd talk about how he responded, how he  
2 felt, and make comments about whether or not he looked like he  
3 was hesitant to say something or nervous at times and that  
4 sort of stuff.

5 Q. Would he be restrained?

6 A. I don't recall. I think he probably had on a pair of  
7 shackles.

8 Q. Would he be clothed?

9 A. He was at some phase. When we -- when we did the  
10 fireside chat, we talked about Daniel Pearl, I think he had on  
11 sweatpants and a sweatshirt, but I can't recall.

12 Q. But you -- if you're doing this essentially every day  
13 or every so often, you did many, many fireside chats with  
14 Mr. Mohammad?

15 A. I think so. We spent a lot of time talking about  
16 various things he was interested in.

17 Q. Right. So was there a time that you did the fireside  
18 chats when he was naked?

19 A. Yes, I'm sure that happened during the -- during the  
20 early stages of the EITs.

21 Q. Would you have a fireside chat with him when he was in  
22 standing sleep deprivation?

23 A. Probably not.

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1 Q. Would you not have any kind of conversation like that  
2 when he was in standing sleep deprivation?

3 A. Well, that sort of thing would have happened between  
4 interrogation sessions, and the fireside chat would already be  
5 over if we were going to have one.

6 Q. Yes, but in -- he, of course, as we know starting  
7 in -- on March the 18th, he goes -- he's in standing sleep  
8 deprivation for seven days. Did you hold fireside chats with  
9 him during that period?

10 A. I don't recall.

11 Q. Okay.

12 A. But he's not standing for seven days. My recollection  
13 is the physicians thought that he should have an opportunity  
14 to sit down because I think his feet swelled, and so they  
15 wanted him to -- to sit down and -- and to have a chance to  
16 catch some catnaps. I don't -- the -- the agency tended to  
17 use "sleep deprivation" and "sleep disruption" as the same  
18 term.

19 Q. Well, let me make sure I understand what you're  
20 saying. Your recollection is that he was not kept  
21 continuously awake for 180 hours in the third week in March of  
22 2003; is that correct?

23 A. Yeah. It's a vague recollection, but it's -- I could

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1 be incorrect, but it seems like a long time.

2 Q. Right. And when you say "vague recollection," I take  
3 it you have not reviewed reports or anything that would ----

4 A. No. But if you have a report, I'd be happy to review  
5 it ----

6 Q. I ----

7 A. ---- and we can discontinue this back-and-forth that  
8 doesn't seem to be getting anywhere.

9 Q. No, I think it's -- I think it's doing fine. Don't  
10 worry. Just don't -- just feel free to say you don't know.

11 A. I don't know.

12 Q. Okay. So your -- your book, *Enhanced Interrogation*,  
13 which is there in front of you ----

14 A. Uh-huh.

15 Q. ---- at page 183, you say that you spent thousands of  
16 hours with Mr. Mohammad. Do you recall that?

17 A. I recall writing that, yes.

18 Q. Yeah. Is that accurate to the best of your knowledge?

19 A. I think I probably spent a little -- I don't know. If  
20 you do the math on it, it -- I mean, it easily comes to more  
21 than a thousand hours, and it might be a bit of hyperbole, but  
22 not much.

23 Q. So I -- just a little quick math, 2,000 hours, eight

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1 hours a day, gets you 250 days. I don't think you ever spent  
2 an entire eight-hour day with him, did you?

3 A. No. And I think what I said -- did I say thousands  
4 with him or thousands with the detainees?

5 Q. You said thousands with him.

6 A. Oh. Well, my intent ----

7 Q. You can look, if you want.

8 A. My intent was to say with the detainees, because over  
9 the time I did spend lots and lots of time with him.

10 Q. Okay. And you may have already answered this  
11 question, but let me just be clear about it: Did you ever  
12 travel with Mr. Mohammad when -- when he went from one  
13 location to another?

14 A. I don't recall.

15 Q. Specifically, you did not travel with him from  
16 Location 2 to Location 4, did you?

17 A. Oh, no. I didn't.

18 Q. Someone else was on the plane with him or someone else  
19 traveled with him coming from Location 2 to Location 4,  
20 correct?

21 A. Correct.

22 Q. All right. And do you know that person?

23 A. I know one of the people.

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1 Q. Could you give me a UFI for that person, please?

2 A. ZQ5.

3 Q. And is that person a medical officer or a ----

4 A. [REDACTED]

5 Q. [REDACTED]

6 A. He's not [REDACTED] if that's what you're asking.

7 Q. [REDACTED]

8 A. [REDACTED]

9 Q. He's not. Was there a medical doctor on that -- in  
10 that travel arrangement?

11 A. I don't recall.

12 Q. So you have described several times when you are  
13 brought in to speak to detainees who have been in a  
14 cooperating mode but for whatever reason are not being  
15 cooperative for a while. And you are brought in to have a  
16 conversation with them and say, "Hey, what's going on?"

17 A. I think of it as being an ombudsman, really.

18 Q. Really?

19 A. Really.

20 Q. What do you mean by that?

21 A. Most of the time we sided with the detainees.

22 Q. And how many times would you estimate you did that?

23 A. Oh ----

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1 Q. Many times?

2 A. Many times.

3 Q. All right. And with -- not only with Mr. Mohammad,  
4 but with other detainees as well, right?

5 A. Ramzi.

6 Q. Yeah. You did it with -- you did it with Ramzi?

7 A. Uh-huh.

8 Q. And ----

9 MJ [Co] COHEN]: Affirmative response.

10 Q. ---- you were involved in the application of the  
11 coercive techniques against Ramzi?

12 A. No, that was a mistake. I -- my recollection in the  
13 book was wrong. I wasn't involved in the -- he was -- he --  
14 he had that at Site 2, and I wasn't at Site 2. When he --  
15 when he came to Site 3, I was -- I'm sorry, Site 4, I was sent  
16 there to consult with the person who was doing his  
17 interrogations. And so for some reason, I remembered it as  
18 being involved with his EITs, but EITs were over then.

19 Q. His EITs were over or all the EITs were over?

20 A. His EITs were over.

21 Q. Uh-huh. And do you remember when that was?

22 A. Probably February of 2003.

23 Q. Okay. How many times do you think you came to talk to

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1 Mr. Mohammad to be an ombudsman for Mr. Mohammad over the --  
2 over the years?

3 A. I recall we came to talk to him when he complained  
4 about not getting his favorite slices of bread.

5 Q. Hang on. Let me -- and I'm -- I'm glad to have this  
6 detail come out, but could we just start with how many times  
7 you -- you -- you would have been flown in to -- to see him to  
8 act as an ombudsman?

9 A. Probably less than eight.

10 Q. Less than eight?

11 A. It's a guess.

12 Q. Okay.

13 A. For the ombudsman piece of it.

14 Q. Well, what -- what is -- what is -- is there another  
15 piece other than ombudsman?

16 A. Right. As I mentioned -- as I testified earlier,  
17 there are routine things that take place inside of these  
18 places where they're held that don't necessarily show up in  
19 cable traffic, check in with them in the morning to see how  
20 things are going, give them a sense of what they can expect  
21 that day, sitting with them, talking with them about whatever  
22 they're interested in.

23 I spent a lot of time doing that sort of stuff, and

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1 that wouldn't necessarily show up in the -- in the cable  
2 traffic unless there was some intelligence that came out of it  
3 because it was just a routine part of what was happening.

4 Q. Hmm. But I'm referring to times when you specifically  
5 come to deal with a problem that's arisen.

6 A. Well, I offered to count them up on my fingers, and  
7 you wanted me to guess, so I just guessed.

8 Q. No, no, I know you did. I'm not complaining about  
9 that, but I -- you started talking about the -- the day-to-day  
10 traffic, and I just wanted to be clear, I want to stay on  
11 these times that you referred to where you come in for the  
12 purpose of dealing with a problem.

13 And -- and you thought that was somewhere less than  
14 eight but in that ballpark, right?

15 A. Close to it.

16 Q. Okay.

17 A. Plus or minus two or three.

18 Q. Now, those -- those times when you interacted in the  
19 way we're talking about now, sometimes those had with them the  
20 suggestion that, if the person didn't cooperate, that if  
21 Mr. Mohammad didn't continue to cooperate, he could go back to  
22 the hard times, right?

23 A. Suggestions from whom?

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1 Q. You.

2 A. Well, I think the way I would have probably phrased  
3 that to him, if there was that sort of a suggestion, was that,  
4 "Hey, you have to help me convince Washington that you're  
5 willing to cooperate. You have to do something. You have to  
6 work with me. It's hard for me to keep them from wanting to  
7 go back to the hard times if you're not willing to work with  
8 me."

9 Q. Right. And particularly if you're Mr. Mohammad, "hard  
10 times" would have a -- would have a very clear meaning to him,  
11 right?

12 A. I agree. I wouldn't want to go back.

13 Q. Right. And -- and it would particularly have that  
14 meaning coming out of your mouth?

15 A. True. But we're also the ones -- I'm also the ones,  
16 Dr. Jessen is also the ones that put ourselves between him and  
17 Washington several times to stop that from happening.

18 Q. Right.

19 A. So much so -- so much so, sir, to finish my answer,  
20 that he would specifically ask for me when there was an issue.

21 Q. Right. And I didn't mean to cut you off. I  
22 understood that you had done that, and -- but I -- I -- my --  
23 I guess my point was, you were the primary person who applied

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1 the coercive physical techniques to Mr. Mohammad?

2 A. I'm one of three.

3 Q. Yeah, but you're -- come on. You're the primary  
4 person, right?

5 A. I don't know that I would say that because I didn't do  
6 all of them.

7 Q. You think somebody else was as active as you were in  
8 applying the coercive techniques to Mr. Mohammad?

9 A. There were three people waterboarding him; all of them  
10 participated. There were three people walling him at times;  
11 all of them did that. You know, what we did was divide up  
12 the -- the sessions so that one person, you know, wasn't in  
13 there doing it all the time. It was one of the things that we  
14 wanted to do to prevent accidents, you know, where you get  
15 tired and you make a mistake and -- and you don't handle him  
16 properly or something to that effect.

17 Q. Okay. For a period of time, you conducted  
18 psychological assessments of Mr. Mohammad and of others  
19 and ----

20 A. I don't recall doing one on Mr. Mohammad.

21 Q. Oh, okay. Well, that should have been my question.  
22 Because you have spoken of this issue of the conflict  
23 situation where you are doing the coercive techniques and then

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1 also assessing the person to determine how they're reacting to  
2 the techniques. And you have acknowledged -- I believe you  
3 acknowledge in your book that that was not a good thing for  
4 you to do.

5 But let me ask you specifically, first, are you saying  
6 you never did a psychological assessment of Mr. Mohammad?

7 A. I'm saying I don't recall. I -- I might have did a  
8 how's he doing sort of response in one of the cables, but I  
9 don't recall doing one. There was an operational psychologist  
10 that was assigned to him, the one I gave you the name of; and  
11 that person and the physicians stayed with him during the  
12 entire EITs. And anytime there was any chance that they were  
13 going to go back to EITs, those people would show up.

14 And so the psychological assessment about whether or  
15 not Mr. Mohammad was mentally stable enough to endure EITs was  
16 done by probably the man that I gave you the unique identifier  
17 for ----

18 Q. Uh-huh.

19 A. ---- at Site 2. That person accompanied him to  
20 Site 4, stayed with us the entire time, and probably did  
21 follow-up assessments of him.

22 Q. Okay.

23 A. It would surprise me -- he would have had to have been

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1 out of EITs for a long time for them to have asked me to do  
2 that, so I just don't think -- I don't think they did. In  
3 fact, I can recall at that particular point, they were  
4 bringing in other operational psychologists to do these kinds  
5 of periodic assessments and Dr. Jessen and I in the summer of  
6 2003 were telling them that we didn't want to do those and  
7 didn't actually think it was appropriate.

8 Q. The -- you mentioned that there was a medical doctor,  
9 a physician, who was sort of assigned to Mr. Mohammad?

10 A. Assigned to the site.

11 Q. Assigned to the site?

12 A. Yeah, when the EITs were in place.

13 Q. Who was that?

14 A. You know, I don't recall.

15 Q. You don't recall the person's -- in other words,  
16 looking at the key wouldn't help you?

17 A. I doubt it. I'll look if you want me to.

18 Q. Sure.

19 A. There are 19 medical officers on this list. I don't  
20 recall which of those 19 it was.

21 Q. Okay. Well thank you for looking. When Mr. Mohammad  
22 came from Location 2 and arrived at Location 4, was there a  
23 debriefer with him?

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1           A. I don't recall. He had an entourage. There was a  
2 group of people with him. I just didn't, you know, scope out  
3 who they were because really I had no interest. I wanted to  
4 be sure the psychologist was there because I wanted an update  
5 on his resistance posture and what had happened to him when he  
6 was there. But I -- but I don't recall if there was a  
7 debriefer.

8           Q. What were you told about what happened to him while he  
9 was at Location 2?

10          A. I was told by the [REDACTED]  
11 psychologist that was at Site 2 and watched the man that I've  
12 referred to as the new sheriff question him that KSM got into  
13 a battle of wills with that person and won; that the person  
14 became obsessed with getting him to call him "sir" and that  
15 KSM dug in his heels and refused to do it. And, in doing  
16 that, controlled the -- the entire interrogation, essentially  
17 derailed any kind of question and answer that was going on. I  
18 also believe and that -- that officer told me that he thought  
19 they used excessive water on him ----

20          Q. Excessive ----

21          A. ---- that he was watered -- that -- water dousing, and  
22 it seemed like there was a lot of water involved.

23          Q. Did he tell you anything else?

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1 A. I'm sure he did, I just don't recall it.

2 Q. Okay. But what you do recall now is that Mr. Mohammad  
3 dug in his heels, wouldn't comply with calling the guy "sir,"  
4 and that ended up derailing everything. And that they -- at  
5 some point poured water on him and -- and, this person  
6 thought, excessively?

7 A. Right. There should be an interrogation table that  
8 lists the actual things they did to him, which I'd be happy to  
9 look at if you wanted ----

10 Q. Yeah.

11 A. ---- to give it to me.

12 Q. We may get there.

13 A. Okay. I look forward to it.

14 Q. Okay. And so who was [REDACTED]  
15 [REDACTED] to whom you spoke?

16 A. That same unique identifier I gave you a few minutes  
17 earlier.

18 Q. ZQ5?

19 A. Yes, sir.

20 Q. Okay. So that person was at Location 2 and -- and, as  
21 you said before, traveled with Mr. Mohammad to Location 4?

22 A. Correct.

23 Q. All right. So ----

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1 A. And the physician may have, too. I just don't know.  
2 I don't remember.

3 Q. So let's -- there -- there has been a fair amount of  
4 debate about your -- or discussion about your -- whether you  
5 were trained as an interrogator or not, whether you had  
6 conducted interrogations before. You're familiar with that  
7 debate, I take it?

8 A. I am familiar with that debate.

9 Q. Yeah. And I've -- I read in your book that you had  
10 served on a bomb squad; that you had worked on emergencies  
11 involving explosive devices; that you had dropped into air --  
12 aircraft crashes to disarm missiles; you'd been on a Hostage  
13 Negotiation Team and had been called out to work on barricaded  
14 gunmen and attempted suicides; that you'd been in acute  
15 psychiatric emergencies and calls to deal with everything from  
16 mass shootings to homicidal psychiatric patients.

17 A. That's a partial listing. I -- you know, one of the  
18 things that ----

19 Q. Part of an Air Force Special Operations unit as well.

20 A. Yes. One of the -- one of the things that -- going  
21 to -- I went to the Army Chemical School, where they teach you  
22 to investigate chemical accidents and chemical weapons. I  
23 went to the EOD School, where they teach you to investigate

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1 those sorts of things.

2 I had two short courses in interrogation for  
3 intelligence. One was -- at which I've listed into the -- in  
4 the "reasons why" memo from, I think, sometime in 2003. I --  
5 the country that provided those is classified. And if you --  
6 if you look at what the agency was asking me to do, they were  
7 not asking me to do law enforcement interrogations.

8 Q. Right.

9 A. They had done that and it wasn't successful, in their  
10 view. And I'm a trained psychologist. Guess what  
11 psychologists are taught to do? They're taught to ask  
12 questions, to get the people who are reluctant to talk about  
13 topics to talk about those topics, to look for malingering, to  
14 learn to frame questions in such a way that the person may be  
15 forthcoming about things they'd rather not talk about; so --  
16 and my -- and -- and to use rapport and to use other social  
17 influence.

18 So if you're going to suggest that a law enforcement  
19 officer or even an FBI officer is better trained at  
20 establishing rapport and asking questions than a Ph.D.  
21 psychologist who's been a psychologist for 20-something years,  
22 I think that would be a hard point to make.

23 Q. Okay. Well, I'm -- I don't plan to make it with you,

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1 in any event. But I -- I guess it is true that, in terms of  
2 just law enforcement investigation where you have a subject in  
3 custody and you show up to ask them questions about what  
4 happened and try to get information from them, that was not  
5 something that you had done?

6 A. I had not done those, but I had studied those  
7 techniques.

8 Q. Right.

9 A. Mainly around how they elicit false confessions by  
10 various means in law enforcement, and around the way that  
11 those things tend to get used in terms of the techniques that  
12 they use, the catch them in the big lie and the -- the other  
13 things that I observed for three months when the FBI was doing  
14 it, with a briefing about how it was done, the observation of  
15 what they did, and then a debriefing of how they did it.

16 Q. So this is you talking now about Abu Zubaydah?

17 A. Yes.

18 Q. Right. And so you had learned something about  
19 interrogation when you were observing Abu Zubaydah, correct?

20 A. I think if -- in my view, you know, as a psychologist  
21 who is trained as a psychologist, watching FBI agents do  
22 interrogations every day for three months and being briefed on  
23 what they're doing and watching the impact of how they did it

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1 was actually quite helpful in getting me to understand how  
2 they would go about doing their interrogations.

3 Q. Right. But you didn't interrogate Abu Zubaydah  
4 yourself?

5 A. No, I did not.

6 Q. Okay.

7 A. No.

8 Q. So -- and you -- you write in your book, "I was not  
9 your typical mental-health-focused psychologist." And  
10 that's -- that's true, right?

11 A. Well, yeah, I would agree with that.

12 Q. Yeah. And ----

13 A. I wrote it, I guess I have to agree with it.

14 Q. Yeah, you wrote it. Well, you don't -- I guess you  
15 could -- you already disagreed with something you wrote this  
16 morning so far, so -- but -- but -- and then you said, though,  
17 when one of the other lawyers was questioning you that you had  
18 been the chief resident at a teaching hospital dealing with --  
19 on a psychology floor, I gather, correct?

20 A. I was not the chief resident. After the residency was  
21 over, I was kept on staff, and I was the chief of outpatient  
22 psychology, adult psychology, and the acting chief of  
23 neuropsychology.

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1 Q. Yeah. And when was that?

2 A. '86, '87, '88.

3 Q. For three years?

4 A. Uh-huh.

5 Q. Yeah. And did you see patients during that time?

6 A. Yes.

7 Q. And conduct, shall we say, talk therapy?

8 A. Well, yes. But -- and that wasn't my primary job, but  
9 I did do that.

10 Q. What was your primary job?

11 A. My primary job there was I saw eight to ten patients a  
12 day. And as the chief of adult outpatient psychology, what  
13 would happen is we would get people as walk-ins who had  
14 various kinds of problems.

15 Q. Uh-huh.

16 A. I would do an assessment of their -- you know, what  
17 was going on with their problems ----

18 Q. Uh-huh.

19 A. ---- and then make the appropriate referral so that  
20 they got whatever care they needed. That was primarily my  
21 task.

22 Another task that I had was to supervise the  
23 psychology residents and, to some extent, though not medically

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1 supervise, the psychiatry students for ER walk-ins, people who  
2 came in in acute psychological distress.

3 I was on the Hostage Negotiation Team, as you know. I  
4 ran the first H -- HIV groups and HIV studies that the Air  
5 Force did so that we could keep pilots flying until they got  
6 to Walter Reed Stage 3. Because prior to that, they just  
7 discharged them or put them in -- medically retired them. But  
8 we were wasting millions of dollars and robbing people of a  
9 career that they fought long and hard for.

10 I did occasionally do crisis intervention where there  
11 was some talk therapy.

12 Q. Okay. You never went into practice -- private  
13 practice as a psychologist, simply put out a shingle and --  
14 and accept patients, though, did you?

15 A. No. I -- you can't do that in the military.

16 Q. So you were -- you stayed in the military your entire  
17 career as a psychologist until the -- until the end?

18 A. Yes.

19 Q. Okay. So I'd like to just show ----

20 A. Well, yes. I ----

21 Q. Okay.

22 A. ---- I thought you were discounting the EOD portion of  
23 the thing, but yes.

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1 CDC [MR. NEVIN]: So, Your Honor, I'd like to display  
2 the -- a page from the Senate Select Committee on Intelligence  
3 report. It is AE 630U Attachment B, and it is unclassified.

4 MJ [Co] COHEN: You may do so.

5 CDC [MR. NEVIN]: Thank you. So -- excuse me for -- I  
6 gather this may present a problem, zooming like that.

7 MJ [Co] COHEN: You may publish.

8 Q. But can you read that there at that ----

9 A. Let me get my glasses.

10 Q. Do you want me to zoom in?

11 A. No, you don't need to zoom in. What am I supposed to  
12 read?

13 Q. So I want to direct your attention down to the bottom  
14 of the page there at -- it's part of footnote 138 -- and  
15 direct your attention about six or seven lines from the bottom  
16 on the left, and it says, "Drs. Swigert and Dunbar." Do you  
17 see that?

18 A. Sure.

19 Q. I'm going to zoom in a little more just to -- maybe  
20 that will help. Do you see that?

21 A. I see it.

22 Q. Okay. And so are you Swigert or Dunbar?

23 TC [MR. GROHARING]: No objection to the question.

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1 A. I believe I was Swigert.

2 Q. Okay. You're either Swigert or Dunbar in any case?

3 A. I believe I was Swigert.

4 Q. Okay. So it says that you had the closest -- the  
5 CIA's responding -- responding to an inquiry here, and they  
6 are saying that -- that you and Dr. Jessen had the most -- the  
7 closest proximate expertise they were looking for at this  
8 time, right?

9 A. I see where that's written, yes.

10 Q. Right. And they say that "At the beginning of the  
11 program, that this was specifically in the area of nonstandard  
12 means of interrogation." Do you see that?

13 A. I see those words.

14 Q. And so it goes on to say that "Experts on traditional  
15 interrogation methods didn't meet this requirement and that  
16 nonstandard interrogation methodologies were not an area of  
17 expertise of CIA officers or of the government generally."

18 And it goes on to say that they think -- they thought  
19 your expertise was so unique that they would have been  
20 derelict to -- not to have brought you in. You see all that?

21 A. I did see all that.

22 Q. Yeah. And it makes the point then in the last  
23 sentence in -- in that footnote, in footnote 138, that they

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1 didn't seek you out after a decision was made to use coercive  
2 interrogation techniques, rather you and -- and Dr. Jessen  
3 played a role in convincing them to adopt that policy.

4 A. Had they bothered to interview me, I would have  
5 corrected that misperception.

6 Q. Why is that a mis -- excuse me, a misperception?

7 A. Because I believe they had already made the decision  
8 to use coercive techniques.

9 Q. Right. And you've said several ----

10 A. As -- as is reflected in their back-and-forth about  
11 the use of SERE techniques in the documents they've released  
12 talking to the Justice Department.

13 Q. Right. And you've said several times that you're -- I  
14 believe you were in a meeting in one place or another and it  
15 appears to you that people are intent on -- I mean, maybe the  
16 term "getting rough" is used, something like that. You see  
17 that happening, and you think to yourself, I'm going to  
18 suggest that they use these SERE techniques that we have --  
19 that we've been using over the years, correct?

20 A. I would characterize it slightly differently. What I  
21 suggested is if you intend to use physical coercion, then you  
22 should consider using the SERE techniques, because they've  
23 been used for 50 years and haven't produced significant

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1 injuries against our own war fighters.

2 Q. Have not produced significant injuries against our own  
3 war fighters?

4 A. Right.

5 Q. You told them that?

6 A. I'm sure that's what I said.

7 Q. Okay. And so this is just wrong then that ----

8 A. There's many things in that report that is wrong.

9 Q. I know, but I'm asking you about this one. So you  
10 and -- you and Jessen played a role in convincing the CIA to  
11 adopt a policy of using coercive interrogation techniques?

12 A. Yeah, that's not how I would characterize that.

13 Q. All right. Sir, and I'm -- some of the time when I  
14 ask these questions, I just want to -- just want to establish  
15 for the record what your position is. I'm not trying to ----

16 A. I don't feel like you're trying to argue with me. I'm  
17 just trying to answer your question as clearly and completely  
18 as I can.

19 Q. And I appreciate that.

20 A. Because I'd like to help you out in this.

21 Q. All right. So -- but let's go back to the nonstandard  
22 means of interrogation. That reference to nonstandard means  
23 of interrogation -- well, that's what the CIA said.

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1       A. Right, but I didn't write this document. I don't know  
2 who wrote this document. I don't know where -- where the  
3 nonstandard interrogation technique came from. I didn't see  
4 the document where they wrote that in. I have no idea. I --  
5 I would -- I would concur that EIT -- the use of EITs and SERE  
6 techniques in intelligence interrogation is nonstandard. But  
7 you're asking me to endorse their use of their language and I  
8 just don't know because I -- I can't read their minds.

9       Q. Well, no. I'm not asking you to read their minds,  
10 but -- but you've been a proponent of the CIA's position. I  
11 mean, this is the CIA's response, right?

12      A. This is -- no.

13      Q. Oh.

14      A. This is the biased response of a Senate staffer who  
15 has framed the argument in a way that supports his position,  
16 and who knows how it was taken in or out of context.

17      Q. No. But, sir, it says, "The CIA's June 2013 response  
18 provides the following explanation," and then it's the stuff  
19 that -- it's quoted, and it's the stuff that I just read to  
20 you.

21      A. Okay. I'm not arguing that.

22      Q. Okay. So in other words, this is what the CIA said.

23      A. Well, I'm not arguing that.

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1 Q. Okay. But -- but do you agree that it's a nonstandard  
2 method -- that what your expertise was in was nonstandard  
3 means of interrogation?

4 A. Yes.

5 Q. Okay.

6 A. I just said that, yes.

7 Q. All right. Yes, I -- I heard you. I just -- I wanted  
8 to just clarify what your objection was.

9 A. My objection is to -- to this entire report when it's  
10 read independent -- since you've asked me, when it's read  
11 independent of the Senate Select Committee Minority Report  
12 which debunks most of this analysis.

13 Q. Right. No, I -- I understand you -- you disagree with  
14 it. And we'll -- we'll be talking about it more as we go  
15 along here, and -- so -- but I just -- another question, too,  
16 on this nonstandard means of interrogation, what does -- what  
17 does that term mean to you?

18 A. I have no idea how they intended to use that term.

19 Q. Okay. And what non -- is there anything in your  
20 background -- I take it maybe your involvement in SERE -- that  
21 constitutes nonstandard means of interrogation?

22 A. I think that's how they interpret it.

23 Q. Okay.

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1 A. That's the word -- the phrase they chose to use, but  
2 there -- there's no commonly accepted definition of that  
3 phrase that I'm aware of.

4 CDC [MR. NEVIN]: And with the court's permission, I'll  
5 just put that back up again ----

6 MJ [Co] COHEN]: You may.

7 CDC [MR. NEVIN]: ---- and ask a question about a  
8 different part of the document.

9 Q. So now directing your attention, not to the footnote,  
10 but to the -- but to the last two sentences of the main body  
11 of the text. It said that you and Dr. Jessen -- it says that  
12 you and Dr. Jessen had never participated in a real-world  
13 interrogation. And I take it that refers to -- I take it that  
14 that refers to your involvement in SERE, which is simulated  
15 interrogation. And it says that your interrogation experience  
16 was limited to the paper you authored with Dr. Jessen -- or  
17 that he authored with you and your work at the U.S. Air Force  
18 SERE School.

19 You see that language?

20 A. I do see that language.

21 Q. Okay. And this touches on the same things we talked  
22 about before. You -- you have in your mind -- in your view of  
23 it, you had a -- quite a lot of relevant experience, it just

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1 wasn't in your sort of standard law enforcement-type  
2 interrogation and -- but -- but you had -- but -- but the idea  
3 of nonstandard interrogation comes out of the SERE School,  
4 correct?

5 A. I would agree with that, although I would -- again, I  
6 disagree with the way they have framed this because what they  
7 do is discount a lot of similar experience applied to other  
8 things.

9 For example, I did numerous friend of the court  
10 assessments of people who were kidnappers or child rapists, of  
11 which they did not want to discuss what had actually happened,  
12 and so I had to use my social influence skills to get them to  
13 first reveal what they had done and -- because they were  
14 essentially denying it.

15 Q. Right.

16 A. So I think that -- I think that if you just think  
17 about it from the terms of -- you know, you guys gave me a  
18 list where everybody who asked a question was an interrogator  
19 and now it appears to me that what you're trying to do is  
20 change the definition so that it's a very narrow  
21 law-enforcement-focused interrogation, rather than the  
22 question and answer stuff, the -- that the -- the -- whoever  
23 made that list and agreed to that list decide were

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1 interrogators.

2 Q. The list -- when you say the list, you're referring to  
3 the key that you have up there?

4 A. Yes.

5 Q. Okay.

6 A. I don't think you can have it both ways.

7 Q. Okay. All right. I'm going to remove -- sir, in your  
8 book, it comes up a lot ----

9 A. What page is that?

10 Q. Well, I'm -- I'm getting there. It comes up a lot,  
11 and I'll -- I'll point you to some particular pages that  
12 you -- at the time that you and Dr. Jessen got involved in  
13 this, this business, you felt very strongly that you were  
14 defending the United States and you were trying to protect the  
15 American homeland, for -- for want of a better way of putting  
16 it.

17 You're familiar with that sentiment which appears  
18 frequently in your book, correct?

19 A. Specifically what I wanted to do was stop them from  
20 killing thousands of other people.

21 Q. Right.

22 A. If that's defending the homeland, I won't argue with  
23 it.

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1 Q. And so as an example, at page 298 of your book -- and  
2 feel free to look at it, but, you know, you -- you say, "We  
3 pitched in when our homeland was in a street battle with  
4 cowards who blindsided us, trying to decapitate our way of  
5 life by simultaneously attacking our most important financial  
6 district, our center of military power, and our seat of  
7 government," right?

8 A. I did write that, and I think that's a good sentence.

9 Q. Yeah. And -- and then it -- and -- and this was  
10 upsetting to you personally, wasn't it, that -- that this  
11 attack occurred?

12 A. Yes.

13 Q. Well, I mean, I'm referring to page 20 of your book  
14 where you say that you "felt a blood fever that made me want  
15 to get up right then, find the cowards who had ordered this,  
16 and fix it so that they could never do it again."

17 A. That's absolutely true.

18 Q. Right. And similarly, at page 21, the next page, you  
19 say, "I was all in."

20 A. I was all in.

21 Q. Right. And you understood, quoting now from page 13,  
22 that "The gloves were off. There was pressure from Congress,  
23 and there was pressure from the President"?

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1 A. Correct.

2 Q. Okay. And you write at page 127 of your book that you  
3 knew you -- you said, "I knew I would be required to do  
4 things, harsh things, that some would view as unethical, maybe  
5 even monstrous." Remember that?

6 A. I remember that.

7 Q. Do you stand by that?

8 A. All you have to do is look at the way the press has  
9 treated me, and you'll see that I was absolutely prescient in  
10 making that statement.

11 MJ [Col COHEN]: Counsel, keep -- keep going until you  
12 feel there's a proper break point, but when you are there, let  
13 me know and we'll take a -- the midmorning break.

14 CDC [MR. NEVIN]: Another couple of questions?

15 MJ [Col COHEN]: Absolutely.

16 CDC [MR. NEVIN]: Okay.

17 MJ [Col COHEN]: No, like I said, you -- you've got your  
18 own rhythm. I don't want to completely throw you off that, so  
19 you just let me know when you're ready to take a break.

20 CDC [MR. NEVIN]: Thank you, Your Honor.

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

22 Q. Well, I just wanted to circle back to that, the way  
23 the press has treated you? Because -- oh, because you feel

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1 like some people view what you did as monstrous?

2 A. Correct.

3 Q. Okay. And you -- and so the ----

4 A. Not most Americans. I've traveled all over this  
5 country, and I can tell you that the bulk of Americans are  
6 grateful for the sacrifices that Dr. Jessen and I made to keep  
7 them safe.

8 Q. Yeah.

9 A. If not, just ask the families back there.

10 Q. Yeah. No, no, I -- I'm -- I'm really asking you --  
11 I'm really -- really just literally asking you about the  
12 things you wrote in your book right now.

13 A. Okay.

14 Q. That's all. Okay.

15 So -- and -- and that sense of urgency that we've just  
16 been referring to, that infected everything -- as you say in  
17 your book, that infected everything that you were doing at  
18 this time.

19 A. Everything that I was doing at this time?

20 Q. Well, literally everything that you were doing, right?  
21 I mean, you ----

22 A. Well, there was a sense that -- and accurately, that  
23 KSM had another second wave of attacks in the works, if you

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1 follow what happened with Hambali. And there was evidence or  
2 intelligence to suggest that UBL had a more advanced nuclear  
3 program than he actually turned out to have.

4 Q. Right.

5 A. And so, you know, the President had said, "We're not  
6 going to let them set off an atomic bomb in one of our  
7 cities." And so there was this sense of urgency, particularly  
8 since Congress had chewed out the folks for being risk  
9 assessment ----

10 Q. Yeah.

11 A. ---- I mean risk averse ----

12 Q. Averse.

13 A. ---- and blamed them for 9/11, not staying on top of  
14 it.

15 Q. Right.

16 A. And so there was a sense of urgency like there was  
17 this looming, impending -- maybe not imminent, but there was  
18 this impending, looming attack that could come out of the blue  
19 from just about anywhere.

20 Q. Hmm.

21 A. And that -- I wasn't the only one who felt that way.  
22 I think most of the people in the business of saving American  
23 lives felt the same way.

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1 Q. Right. And so it did. It -- it was part of  
2 everything that you were doing at the time. I mean, like  
3 literally ----

4 A. You use the word "everything," and that's what I'm  
5 objecting to.

6 Q. Yeah, I saw your hesitation about that. But I was  
7 thinking of you going and getting on an airplane without even  
8 being able to go home and pack clothes or tell your wife what  
9 you were doing. I mean -- and so that's what -- that's what I  
10 was thinking of. It was just this all kind of heavy ----

11 A. I was willing to make whatever sacrifices and do  
12 whatever was necessary to stop the next impending attack. I  
13 wouldn't characterize it as everything. There were things I  
14 wasn't willing to do.

15 Q. Oh, I see what you were -- I see. You read ahead.  
16 That's really not where I was going, but anyway, I hear you.

17 CDC [MR. NEVIN]: And, Your Honor, with that, that would  
18 be a fine place to take a break.

19 MJ [Co] COHEN]: Okay. We'll take a 15-minute recess.

20 [The R.M.C. 803 session recessed at 1035, 27 January 2020.]

21 [The R.M.C. 803 session was called to order at 1055,  
22 27 January 2020.]

23 MJ [Co] COHEN]: The military commission is called to

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1 order. Parties are present. Please call the witness, and  
2 then we're waiting for -- Mr. Binalshibh will be returning  
3 momentarily.

4 Mr. Harrington, are -- are we okay proceeding and then  
5 letting him come in just in a couple minutes?

6 LDC [MR. HARRINGTON]: I think so, Judge. But I think  
7 maybe ----

8 **[The accused, Mr. Binalshibh, returned to the courtroom.]**

9 MJ [Co] COHEN: Oh, he's now back. Perfect.

10 LDC [MR. HARRINGTON]: ---- it might be helpful to have an  
11 admonition or a ----

12 MJ [Co] COHEN: I'll do that.

13 Mr. Mohammad, Mr. Bin'Attash, Mr. Binalshibh, I am  
14 trying to make things a little bit easier for the three of you  
15 to use the restroom during a hearing or to, if you need to  
16 take a break, those types of things and just letting you leave  
17 without us formally recessing the court. I understand that  
18 you -- obviously because of your current confinement  
19 situation, you can't come and go as easy as -- as some of the  
20 other members of the court.

21 So I'll ask you each individually, if you're using the  
22 restroom and I ask your learned counsel -- whether that's  
23 Mr. Sowards or Ms. Bormann or Mr. Harrington -- if it's okay

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1 for us to -- to start while we wait for you to go -- come back  
2 from perhaps a restroom break or a slight break, do I have  
3 your permission to go ahead and start, with the understanding  
4 that you can just come straight back in when that's done?

5 I'll start with Mr. Mohammad. Sir, do I have your  
6 permission to do so?

7 ACC [MR. MOHAMMAD]: **[Speaking in English]** Yes.

8 MJ [Co] COHEN]: Okay. Mr. Bin'Attash, do I have your  
9 permission to do so?

10 ACC [MR. BIN'ATTASH]: **[No audible response.]**

11 MJ [Co] COHEN]: And, Mr. Binalshibh, do I have your  
12 permission?

13 ACC [MR. BINALSHIBH]: **[No audible response.]**

14 MJ [Co] COHEN]: Okay. All three have given their  
15 permission. Mr. Ruiz and Mr. Connell, I'll ask the same of  
16 Mr. Ali and Mr. al Hawsawi the next time I see them. All  
17 right. Excellent.

18 Sir, please take your seat.

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

20 MJ [Co] COHEN]: Mr. Nevin, your witness.

21 **DIRECT EXAMINATION CONTINUED**

22 **Questions by the Civilian Defense Counsel [MR. NEVIN]:**

23 CDC [MR. NEVIN]: Thank you, Your Honor.

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1 Q. Dr. Jessen [sic], you have the key in front of you  
2 again, I think. You don't need to open it up now. I just  
3 wanted to make sure you had it.

4 CDC [MR. NEVIN]: The -- and I guess I should say just for  
5 the record, Your Honor, that that's a key that's provided by  
6 the government, by the prosecution, and it's -- and that  
7 defense counsel, me, and I think the rest of defense counsel  
8 also are not allowed to see it.

9 MJ [Col COHEN]: That is correct. Yeah. The only thing  
10 the defense has, sir -- just so you're understanding how the  
11 key exists, the government has created that key, the only  
12 thing the defense counsel know are whether someone has been  
13 referred to as, for example, Interrogator SG1 or whatever; but  
14 they have not been able to independently go out and  
15 investigate and verify whether or not SG1, for example, was an  
16 interrogator or not an interrogator.

17 So they are relying entirely on that provision of  
18 information by the government. So like, for example, earlier  
19 when you were clarifying for them, hey, I think this is  
20 inaccurate, the defense would have had no way of knowing that  
21 but for your testimony.

22 WIT: Thank you, sir.

23 TC [MR. GROHARING]: Could I be heard, Your Honor?

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1 MJ [Co] COHEN]: You may.

2 TC [MR. GROHARING]: I don't believe that's accurate.

3 MJ [Co] COHEN]: Okay.

4 TC [MR. GROHARING]: We've provided significant discovery  
5 to the defense that explained the roles and responsibilities  
6 of the individuals on the key.

7 MJ [Co] COHEN]: Okay.

8 TC [MR. GROHARING]: The only reason they were described  
9 using the term "interrogator" was at Judge Pohl's -- as a  
10 result of Judge Pohl's order approving those designations  
11 years ago.

12 MJ [Co] COHEN]: Approving the government requested  
13 designations, correct.

14 TC [MR. GROHARING]: Based on the designation process that  
15 was used in the al Nashiri case, we -- we followed through and  
16 used the same designation and didn't differentiate between  
17 interrogator and debriefer or translator with regard to people  
18 who would have been talking with an accused.

19 Having said that, the defense has an awful lot of  
20 discovery that describes, including a -- we've discussed the  
21 paragraph d. product that describes the role that each  
22 individual had in the program so they would know whether or  
23 not, in fact, the person was an interrogator or a debriefer or

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1 a translator.

2 MJ [Col COHEN]: Okay. Well, now we're going to argue  
3 about this. So let me just put it this way: A name has been  
4 attached to something -- and, sir, I'll just rephrase it this  
5 way: A name has been attached to something, and it's up  
6 for -- but if you think the someone, for example, was a  
7 debriefer role as opposed to an interrogator role, your  
8 clarification is always appreciated.

9 WIT: Thank you, sir.

10 MJ [Col COHEN]: All right.

11 Mr. Connell.

12 LDC [MR. CONNELL]: I do want it to be on the record that  
13 I do not concur with counsel's description, and our position  
14 is fully briefed in AE 534 and AE 562.

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

16 Mr. Nevin ----

17 CDC [MR. NEVIN]: Okay.

18 MJ [Col COHEN]: ---- sorry to take some of your time.

19 CDC [MR. NEVIN]: Thank you, Your Honor.

20 **DIRECT EXAMINATION CONTINUED**

21 **Questions by the Civilian Defense Counsel [MR. NEVIN]:**

22 Q. Dr. Mitchell, just a couple of quick things. One --  
23 another theme that appears frequently in your book is that you

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1 were doing intel, not law enforcement investigation. Are you  
2 familiar with that ----

3 A. Yes.

4 Q. ---- idea?

5 A. I made that point several times.

6 Q. Right. And this -- you -- you specifically drew a  
7 distinction at page 27 from the FBI, especially Ali Soufan,  
8 who was focused on obtaining evidence from which a criminal  
9 case could be made?

10 A. Not solely focused.

11 Q. Did I say "solely focused"?

12 A. No, but you said "focused," and I think that that --  
13 it would be unfair to him for me to allow a characterization  
14 that didn't point out that he was actually interested in both.

15 Q. Yeah. Right. But -- but he was focused on  
16 obtaining -- well, why don't you look at page 27. It's at the  
17 bottom of the first full paragraph.

18 A. Correct. I read that. I -- I think that what you  
19 said was accurate but incomplete.

20 Q. Okay. Well, that's fine. I mean, let -- let's just  
21 look at this -- this language. We're it -- at page 27 of the  
22 book.

23 CDC [MR. NEVIN]: And I can put it on the presenter, if

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1 the military commission would like.

2 MJ [Col COHEN]: We're good. We're okay. You're going to  
3 read it.

4 Q. Okay. But you say, "The CIA officers were focused  
5 exclusively on obtaining actionable information to stop  
6 potential upcoming terror attacks. In contrast, the FBI  
7 seemed interested -- especially Soufan seemed interested in  
8 obtaining a confession of wrongdoing and building a criminal  
9 case. Soufan seemed more interested in following his own line  
10 of questioning than on focusing on intelligence requirements  
11 coming from CIA Headquarters."

12 A. I stand by that, yes.

13 Q. Okay. And -- and one -- one result of this is that  
14 you -- you encouraged the detainees to tell you anything, and  
15 you said, "As long as you're truthful, there won't be  
16 punishment for it," correct?

17 A. Are you -- do you have a time period in mind? I mean,  
18 that would be something that I would have said.

19 Q. Yeah.

20 A. I don't know specifically when I would have said that.  
21 It sounds like something I would say.

22 Q. Yes, sir. I'll show you a document in the closed  
23 session, when we have a closed session, that -- that -- that

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1 will -- I don't know if it will tie it to a particular time or  
2 not. It's complicated. But -- but I can show you -- I can  
3 show you this.

4 CDC [MR. NEVIN]: And, Your Honor, this would -- this is  
5 2C-1034, pages 1034 and -35, and it's unclassified and it has  
6 been provided in discovery.

7 MJ [Co] COHEN]: Okay.

8 CDC [MR. NEVIN]: May I put it -- put it on the ----

9 MJ [Co] COHEN]: You may.

10 CDC [MR. NEVIN]: ---- camera?

11 MJ [Co] COHEN]: Counsel, let me see the top real quick.

12 CDC [MR. NEVIN]: Yeah.

13 MJ [Co] COHEN]: Yep, we're good. You may publish.

14 CDC [MR. NEVIN]: Thank you.

15 WIT: Atmospherics.

16 Q. So, Dr. Mitchell, can you see that okay?

17 A. Yes.

18 Q. Okay. And take what time you need to read it and just  
19 tell me when you're -- when you're finished. And I'll move it  
20 if you want to read the whole thing.

21 A. Could you move it?

22 Q. Yeah. And we're going to go over to the next page in  
23 a minute.

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1 A. Okay. Do you want to go to the next page ----

2 Q. Sure.

3 A. ---- or do you want to talk about this one?

4 Q. Well, let's talk about this one, and this is fairly  
5 simple. Halfway through that first full paragraph that's  
6 labeled with the letter A., you see a sentence that begins  
7 right in there, and it says, "Mohammad said he had been  
8 promised that he would not be punished for the murder if he  
9 would confess, so he felt he had nothing to lose."

10 And that would be consistent with the approach that  
11 you all took to the distinction between forensic and ----

12 A. No.

13 Q. No?

14 A. No. Not even close.

15 Q. Well ----

16 A. What he was told was that the CIA wouldn't punish him  
17 for telling us something like this, not that he wouldn't be  
18 punished for it.

19 Q. Oh.

20 A. We're not in the business of punishing prisoners.  
21 We're not in the business of deciding whether they're guilty  
22 or not guilty. We just wanted him to know that he could tell  
23 us anything, and we wouldn't take his clothes and we wouldn't

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1 put him back in EITs.

2 So when we used the word "punishment," that's what we  
3 meant. I can't account for what's in KSM's head or what KSM  
4 told that particular -- they called him an interrogator, but I  
5 can't account for what KSM told him.

6 Q. Okay. Let's go to the next page. And take what time  
7 you need to read it, and -- but tell me when you're ready and  
8 I'll direct your attention.

9 A. Is this a second one or is this -- is this the same --  
10 a continuation of the same one?

11 Q. A continuation of the same one. So the first one --  
12 I'll put the first one back here, okay? And it's -- at the  
13 lower right-hand corner, you see ----

14 A. I see the word "but." That's not what I was asking  
15 about. If you move that page, I'll show you -- I'll show you  
16 precisely what I was asking. There's another assessment.

17 Q. Yeah.

18 A. I'm just curious about why there would be two  
19 assessments in the -- because normally you do an atmospheric  
20 and then an assessment and ----

21 Q. Let's look at the first page again just for a second.

22 A. Oh, I don't -- you're right. I don't see an  
23 assessment there. So ----

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