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1 [Video played.]

2 MJ [Co] COHEN]: Okay.

3 WIT: They've got some fat boy playing me.

4 CDC [MR. NEVIN]: I did my best to get somebody better for
5 you, but ----

6 MJ [Co] COHEN]: All right.

7 WIT: Thank you, sir.

8 MJ [Co] COHEN]: When you're ready at 59, let me know. We
9 are ready? You may -- rebroadcast, and play from the
10 59-second point.

11 [Video played.]

12 CDC [MR. NEVIN]: It can be stopped now. Yeah.

13 MJ [Co] COHEN]: All right.

14 CDC [MR. NEVIN]: All right. Thanks.

15 Q. Dr. Mitchell, have you seen that before? Have you
16 watched ----

17 A. Never. I haven't watched the show.

18 Q. Okay. So the reason that I asked to show it was to
19 ask you how that compares to the way waterboarding actually --
20 the way you actually did waterboarding, and so that's my
21 question now. And I know -- I think there are some things
22 that I see that were different from your testimony. So could
23 you explain that?

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1 A. Well, first off, we didn't wear masks. The water
2 wasn't poured out of a bucket. The person's head wasn't
3 moving around like that. Nobody had his head up off the --
4 the waterboard doing all this stuff with the rag where the --
5 you know, the kind of manhandling his head. That wasn't
6 happening. There wasn't a distance shot, so I couldn't tell
7 what they were actually doing, what they were actually
8 waterboarding him on.

9 I don't recall any conversation about this individual
10 that he -- you know, the shouting about the individual in --
11 in -- all that sort of stuff. I don't recall that. My -- my
12 guess would be that if he -- my recollection is if they
13 provide that kind of information, they usually provide it
14 during the bridging question just before the waterboarding
15 starts or during the bridging question the next time before
16 waterboarding starts, not during waterboarding. We're highly
17 suspicious of anything they say to us during waterboarding.

18 And as long as we're on that topic, I would -- I would
19 mention that the report writers, the -- the subject matter
20 experts and the interrogators, even if we don't believe the
21 person, we don't get to leave it out, it has to go into the
22 report. And somebody later on decides whether it's accurate
23 or if accurate. And if it's inaccurate, they remove it.

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1 There were other things. We're not shouting at him
2 like that. The -- I did say it wasn't poured out of a -- out
3 of a bucket. It's actually poured out of a one-liter saline
4 bottle with an opening about this size [indicated].

5 MJ [Co] COHEN]: You're referring to the -- the -- the
6 standard -- with the ----

7 WIT: Water bottle.

8 MJ [Co] COHEN]: Yeah, 20-ounce water bottle cap.

9 A. And so this idea that there's just buckets of water
10 being poured on the person is incorrect.

11 It seemed a heck of a lot rougher when the guy who was
12 supposed to be the preacher, I guess, or I don't know who the
13 person was -- there were three of us, not two of us -- grabbed
14 the person's head in the movie and sort of manhandled him
15 around to form that pool. That's not what actually happened.
16 The guy just actually just put his hands on his -- on his
17 face.

18 So it seemed to me -- it seemed to me that it didn't
19 look like what we did at all, with the exception that somebody
20 was pouring water on a cloth and the person was inclined at a
21 45-degree angle.

22 Q. Okay.

23 A. And let me just follow up with that. KSM didn't

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1 scream, grunt, do anything. He -- as you know from what the
2 medical officer said in those reports that you showed me, KSM
3 was actually surprisingly good at remaining calm. And he
4 would actually even count down the number of seconds left.

5 So -- and then -- and then he would do this
6 [indicated] when we started getting close to 20 seconds to
7 tell us that our time was up.

8 MJ [Col COHEN]: You're using your hand in the standard --
9 in the traditional way of going back and forth toward your
10 neck as in like -- as if in cut the time, that -- that we
11 traditionally see in U.S. society.

12 WIT: So -- sorry, Judge.

13 A. So I -- I wouldn't characterize that as what we did at
14 all. In fact, I've seen many videos on YouTube of people
15 waterboarding people. None of them look like what we did.

16 Q. There were, as we know, videotapes made of your
17 waterboarding of Abu Zubaydah.

18 A. [Indicated].

19 Q. But, of course, those were destroyed. Now, would
20 those videotapes have been -- would those have depicted the
21 way you did do waterboarding?

22 A. Well, they were videotapes of us waterboarding, so by
23 definition.

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1 Q. Sorry. Bad question. Did those -- would the
2 technique that you used with Abu Zubaydah that was videotaped
3 be the same as the technique you used for Mr. Mohammad that
4 was, as I understand, not videotaped?

5 A. Yes. In the -- in the -- except -- one exception.
6 Abu Zubaydah and al Nashiri were waterboarded on gurneys, a
7 gurney, a hospital gurney, because the physicians wanted them
8 on gurneys.

9 The location where he was waterboarded ----

10 Q. Referring to Mr. Mohammad?

11 A. Yes, for Mr. Mohammad -- well, KSM was boarded, didn't
12 allow to get a full-sized gurney in it.

13 Q. And -- I beg your pardon.

14 You were inclining your -- you were taking your hand
15 and placing it in -- in -- your -- your palm flat in a
16 horizontal position, but then you were -- you tipped one side
17 of your hand down to indicate that there was an incline. And
18 I believe we talked about this yesterday, the -- this is -- is
19 this the Trendelenburg position where the head is down?

20 A. Actually, the whole board tips.

21 Q. Uh-huh.

22 A. Not just the middle of the board, and it actually
23 stands upright too. So on the longer pours, we would stand it

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1 upright so that the person would be able to actually drain it.

2 I -- I didn't look up the word, whatever word you used.

3 Q. Hmm.

4 A. But the person's head is down.

5 MJ [Co] COHEN]: And using a water bottle that he has
6 there as a -- as a prop, he had his hand as a fulcrum, the
7 waterboard -- the waterboard being exemplified by the -- by
8 the bottle which he inverted to a 90-degree angle and then
9 also inverted at a 45-degree angle backwards?

10 WIT: Yes, sir.

11 MJ [Co] COHEN]: Okay.

12 Q. I believe I showed you portions of the -- the document
13 that was reflections of the chief of the Office of Medical
14 Services yesterday, and I pointed you to page 40, describing
15 abrasions on Mr. Mohammad's lower legs from struggling against
16 the restraining belts. Do you recall seeing that?

17 A. I recall seeing the -- what you showed me.

18 Q. The exhibit? Yeah. Okay. And are you saying that --
19 that that's not true; that he didn't struggle against the
20 belt?

21 A. No, I'm not saying that.

22 Q. Okay. And, in fact, at one point, there's a
23 description of Mr. Mohammad grabbing the clothes of the -- of

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1 the -- of -- of the waterboarders while the waterboarding is
2 occurring, grabbing hold of those. Do you remember that
3 incident?

4 A. No.

5 Q. The -- in the movie, the -- the person -- the person
6 playing Mr. Mohammad says -- refers to Issa al Britani. And
7 you -- I believe you said a moment ago that you didn't
8 recognize that name; is that correct?

9 A. I said I didn't recall him using that name while he
10 was being waterboarded, and I don't recall asking him that
11 question while he was being waterboarded.

12 Q. All right. Do you recall asking him the question at
13 another time?

14 A. I think he volunteered that information during the --
15 one of the bridging question events when he was not being
16 subjected to any EITs.

17 Q. I'm going to show you ----

18 CDC [MR. NEVIN]: And, Your Honor, this will be the SSCI,
19 AE 630U Attachment B, Bravo, and ----

20 MJ [Col COHEN]: You may publish.

21 CDC [MR. NEVIN]: Thank you.

22 Q. This will be page 259, and I want to direct -- and
23 I -- I have the -- the other page as well, but I'm interested

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1 in directing your attention to the part that's highlighted
2 here. But feel free to read anything you like and tell me
3 when you're ready to take a question.

4 A. Okay. I read the highlighted portions.

5 Q. Okay. Great. So it -- it says that there -- that the
6 investigation into the true identities of Abu Issa al Britani,
7 possibly also known as Dhiren Barot and Saajid Badat and by
8 other names, that that was a U.K.-led operation and that
9 sometimes the CIA had limited insight into U.K.-based
10 activities and that the U.K. was not sharing all their known
11 information, but that the FBI was working closely with -- with
12 a U.K. service on these matters.

13 My -- sorry. My question is: Did you ever receive --
14 first of all, did you ever -- at any of the black sites where
15 you were present, did you see personnel from the United
16 Kingdom in those black sites?

17 A. No.

18 Q. Did you ever have communications that you understood
19 were coming from United Kingdom officials, such as
20 requirements or information, anything like that?

21 A. No.

22 Q. Okay. Having looked at this, do you remember this
23 reference to Issa al Britani?

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1 A. Well, based on what I read earlier, I think the CIA
2 decided he had fabricated this information, so I -- I
3 recognized the reference to the name ----

4 Q. Yeah.

5 A. ---- but ----

6 Q. But not other -- you don't have additional
7 recollections of -- of that name, Issa al Britani, or any of
8 those aliases?

9 A. Well, I don't have additional -- I -- the name is
10 familiar, as you know.

11 Q. Right.

12 A. But whether or not I have specific additional
13 recollections that I'd be able to generate here on the spot, I
14 don't think so.

15 Q. Okay. Well, thank you. And -- and now I'm going to
16 direct your attention to page 97 of the same document.

17 CDC [MR. NEVIN]: Your Honor, that's the heading of it.
18 May I publish?

19 MJ [Co] COHEN]: You may. Yeah, we're still publishing.

20 Q. It's -- can you see that? It's page 97.

21 A. Sure.

22 Q. Okay. Good. So direct your attention again to the
23 highlighted portion, and this goes over to the other page, and

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1 I'll flip it when the time comes.

2 But it says that the U.S. ambassador to a country
3 wanted documents authorizing the program, referring to the CIA
4 program, and that the CIA sought the intervention of Deputy
5 Secretary Armitage -- I'm going to flip it now -- who once
6 again made strong remarks to the CIA about he -- how he and
7 the Secretary of State were cut out of the NSC clearance
8 coordination process and that Armitage questioned the efficacy
9 of the program. And it's -- the report goes on to say that it
10 was unclear how his concerns were resolved, but -- and there's
11 a reference to talking points.

12 But beginning with this sentence that starts with the
13 word "The" about six lines down from the top on the -- on the
14 right, "The presentation talking points did not describe the
15 enhanced interrogation techniques but represented that without
16 them we would not have succeeded in overcoming the resistance
17 of Khalid Shaikh Mohammad and other equally resistant HVDs."

18 And it says that the talking points included many of
19 the same inaccurate representations made to U.S. policymakers
20 and others attributing to the detainees critical
21 information ----

22 TC [MR. GROHARING]: Your Honor, this has been a very long
23 set-up to a question. I would just ask counsel to get to ----

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1 MJ [Col COHEN]: Yeah, Counsel, where are we going?

2 Because you had him read it. Now you're reading it to him.

3 CDC [MR. NEVIN]: Well, he didn't. I didn't have him read
4 this part of it.

5 MJ [Col COHEN]: Okay.

6 CDC [MR. NEVIN]: That's fine.

7 Q. I -- would you read it?

8 A. You want me to read the rest of it?

9 Q. Just read the -- the part that's highlighted.

10 A. I read the part that was highlighted.

11 Q. Oh, you did? Okay. All right.

12 Well then, the question is -- just to make sure we're
13 on the same page is, I -- I thought I heard you say yesterday
14 that your questioning of Mr. Mohammad had yielded information
15 about the arrest of -- that had led to the arrest of Hambali
16 and had broken up these -- the Second Wave plot and the
17 Heathrow plot and the Karachi plot, and the indication here is
18 that that's not how that occurred.

19 And so I -- you -- you are a -- you're an
20 interrogator, not a subject matter expert, not a targeter, not
21 a debriefer, as I understand it. Is your understanding
22 different from this?

23 A. My understanding is based on the Senate Select

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1 Committee Minority Report, which supports what I said, and the
2 CIA's 2013 response to this. In particular, what they did was
3 criticize the way they did this analysis and what they focused
4 on when they said -- I'm trying to find the actual word here,
5 but they -- they disagreed with the way they characterized
6 this.

7 Because what they did in a very narrow way was
8 operationally define useful information in such a way that
9 virtually nothing that the CIA did produced any useful
10 information, when the CIA foolishly thought that they -- that
11 using the information that they got really allowed them to
12 catch these folks and really allowed them to -- as if this
13 analyst who's portrayed in that movie is somehow brighter than
14 the men and women who did the targeting, and that by looking
15 backwards over a dozen years or so, he can divine things
16 and -- that they were too foolish to realize that the
17 information they actually used didn't work.

18 I would be happy at some point, if someone asks me, to
19 describe why I think it's more efficient or as effective. But
20 in this particular case, don't take my word for it, Judge.
21 Read what the CIA said. Read what the Senate Select Committee
22 Minority Report says. They debunked this thing thoroughly.

23 Q. And do you know what the -- this is the main committee

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1 report. Do you know what they were relying on when they came
2 to this conclusion?

3 A. If you read the analysis that was done by the Senate
4 Select Committee Minority Report, what you'll see happened is,
5 as I said -- you asked me ----

6 Q. Excuse me.

7 A. ---- a question. I'm trying to answer, sir.

8 Q. I'm asking you ----

9 A. If you want a different answer, ask a different
10 question.

11 Q. I'm asking you if you know what they relied on when
12 they wrote this sentence.

13 A. No.

14 Q. Okay. That's fine. "No" is a perfectly acceptable
15 answer.

16 Let me show you -- let's jump to page 481 of the same
17 document, and I'll direct your attention to the comment of the
18 Counterterrorism Center, Southeast Asia Branch, that the CIA
19 stumbled onto Hambali. They were in the process of arresting
20 someone else and when they got there, there was Hambali. They
21 really stumbled over it. It wasn't police work, it wasn't
22 good targeting, it was, we stumbled over it and it yielded up
23 Hambali.

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1 And I thought I heard -- and I'll put this back up if
2 you need to see it further, but I thought I heard you say
3 yesterday that -- that -- that your interrogation of
4 Mr. Mohammad led to the arrest of Hambali; is that true or not
5 or do I -- am I ----

6 A. I believe that's true. Again, I would encourage you
7 to read the Senate Select Committee Minority Report which
8 specifically addresses these allegations that are made in the
9 Senate Select Committee Majority Report and I would encourage
10 you to read the CIA's responses. I don't speak for the CIA.
11 I don't know who this person is who made this comment. So all
12 I can do is refer you to the sources that I think are more
13 accurate and you can decide to pursue it or not.

14 Q. Do you see who's quoted here?

15 A. I see the quote, yes.

16 Q. No, no. My question is, do you see who's quoted?
17 Chief of the CTC Southeast Asia branch.

18 A. So what?

19 Q. Isn't that a CIA -- isn't that person employed by the
20 CIA?

21 A. It's a CIA bureaucrat. I think you should -- I think
22 again, sir, that if you ----

23 Q. Wait. The chief of the CTC's Southeast Asia branch is

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1 a bureaucrat?

2 A. It's a bureaucratic position. It's a position that's
3 a supervisory position, not a person that's in the field.

4 Q. Okay. Got it.

5 You and I spoke briefly about the videotape issue, and
6 I just wanted to ask you this: During your -- during your
7 deposition, you said that you had a visceral reaction to the
8 tapes. "I thought they were ugly." These would be the tapes
9 of Abu Zubaydah being waterboarded. Do you stand by that ----

10 A. Yes.

11 Q. ---- characterization?

12 In your book -- in your book at page 265 ----

13 A. Do you have a copy of this I could look at?

14 CDC [MR. NEVIN]: May I approach?

15 MJ [Co] COHEN]: You may.

16 A. Thank you, sir. 265?

17 Q. I'm sorry. Yes. It actually is in the first
18 paragraph -- carry-over paragraph, and it's the sentence that
19 begins, "One of the last things I said to the base chief
20 was" -- as you were leaving on the rendition flight was,
21 "Don't forget to destroy those tapes."

22 A. Is there a question?

23 Q. Do you stand by that?

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1 A. Yes.

2 Q. Okay. And while you're there, look at pages 238 to
3 239. And my question is, you write there that you had
4 mentioned tape in a cable that was -- apparently you wrote to
5 headquarters, and someone from headquarters wrote back and
6 said, "Never use the word tape."

7 A. They didn't wrote [sic] back. They called me.

8 Q. And they said never do that again? Don't use?

9 A. Never use the word "tape" in a cable again.

10 Q. Never use the word "tape"? They were that sensitive
11 to it?

12 A. They were sensitive to it at that particular time,
13 yes.

14 Q. When was that time?

15 A. It was the last site, so it would have been probably
16 2006.

17 Q. And were -- and what site was that?

18 A. I can even tell you who told me that.

19 Q. Okay.

20 A. Site 10.

21 Q. In 2 -- do you remember ----

22 A. I'm sorry. Location Number 10.

23 Q. Can you say early, mid, or late 2006?

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1 A. I'm sorry. Did I say 2006?

2 Q. I thought you did.

3 A. If I did, that was an error. It was much later than
4 that. It was -- it was with the last detainee that they held,
5 and I can't remember whether that was 2008 -- I think that was
6 2008 or -- 2008 or 2007. I'd have to look at when that
7 detainee was held to be able to give you a hard date.

8 Q. Just represent to you that Mr. Mohammad and -- and a
9 number of other detainees were moved to Guantanamo in
10 September of 2006.

11 A. Right. It had nothing to do with them.

12 Q. Okay. So ----

13 A. In fact, I think I can -- the -- the detainee's name
14 is in my book.

15 Q. Well, my -- I guess my question is this: Were you
16 making videotapes of waterboarding there at that site?

17 A. Well, you know I wasn't.

18 Q. Right. And -- yes, but I need you to -- I just need
19 you to say it as opposed to me saying it.

20 So were you making videotapes of something else at
21 that site?

22 A. No. As you know ----

23 Q. Okay.

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1 A. ---- from reading the passage in the book, what I had
2 suggested was this particular jihadist was very concerned
3 about what his brothers thought about him, the ones who
4 remained at large, and he didn't want to appear to be
5 capitulating. And so what I suggested was that we threaten
6 him with making a tape that we would release, but just the
7 word "tape" made them crazy.

8 And I got this -- like I said, I got this phone call
9 on a secure line that just said, "Never mention the word tape
10 again," in a -- in a ----

11 Q. Ten pages later in your book, you say that you were
12 glad that unmasked senior CIA officers appeared on those
13 interrogation tapes along with us. Do you remember that?

14 A. I not only remember writing that, I remember thinking
15 that, and I think that to this day.

16 Q. Yeah. And that's because those were people that had
17 more -- that it would be harder to throw those people ----

18 A. I think the phrase you're looking for is "under the
19 bus."

20 Q. Yeah. Under the bus. I was thinking "to the dogs,"
21 but otherwise it would be harder to do that with them than it
22 would be with you?

23 A. I agree with that.

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1 Q. And -- and you say pretty much the same thing at
2 page 248, that "The CIA IG report was out there, inaccurate
3 and misleading, and so were those damn interrogation tapes."
4 Do you recall saying that?

5 A. Yes.

6 Q. All right. And this connects to the testimony we
7 discussed -- or it refers to your testimony yesterday that we
8 discussed that it -- your book makes the point about monstrous
9 things. This is -- these videotapes were extremely graphic
10 and revealing and you were very concerned about them being
11 made publicly available?

12 A. I didn't want them to be made publicly available.

13 Q. Right. Right. But, of course, you can appreciate
14 that they would have been useful in -- in these proceedings
15 and they're not available to us either.

16 A. [Indicated].

17 Q. Yeah. Not your matter, I guess, because someone else
18 destroyed them, not you. That would be Jose Rodriguez?

19 A. Correct.

20 Q. And at the time that he destroyed them, he was -- what
21 was his position?

22 A. Chief of Clandestine Services.

23 Q. For the Central Intelligence Agency?

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1 A. Correct.

2 Q. Yeah. So just to -- excuse me.

3 I know that Mr. Mohammad was shown pictures from time
4 to time. Do you recall that? And never mind what of, just do
5 you recall there ever being an occasion when Mr. Mohammad was
6 shown a photograph?

7 A. I think I've testified to that several times during
8 this hearing.

9 Q. So the answer is yes?

10 A. Yes.

11 Q. And do you recall him being shown pictures of this
12 Issa al Britani?

13 A. I don't recall that.

14 Q. Okay. All right. And just a somewhat unrelated
15 question. At page 82 of your book, you say that
16 "Word-for-word translations are critical because many
17 indicators of deception are flagged by how things are -- how
18 things are said as much as by what is said." Do you recall
19 writing that?

20 A. Yes.

21 Q. And do you stand by that?

22 A. Yes.

23 Q. And I will direct your attention to your testimony the

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1 other day, I believe -- and maybe I have -- would have this
2 wrong, but I believe you said, "I don't want to know what they
3 meant, I want to know what they said." Do you remember saying
4 that?

5 A. Yes.

6 Q. And that's to the same effect? That's the same idea,
7 right?

8 A. Right.

9 Q. That's the only way you can get accurate information
10 about people speaking in a language you don't speak ----

11 A. It's ----

12 Q. ---- about what they're saying, right?

13 A. It's one of the ways. I mean, another way, if you
14 depended on your interpreter, which you would sometimes do, is
15 he would say he's using a Yemeni slang that means this
16 particular thing, which a word-by-word translation wouldn't
17 mean anything to me because I don't know the slang. So it's
18 just one of the ways. There were other ways.

19 Q. Now, in your testimony last week, it came up many
20 times, the reference to Mr. Mohammad discussing with you the
21 murder of Daniel Pearl, and you -- you mentioned that on
22 numerous occasions.

23 And so first of all, you know what I'm referring

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1 to ----

2 A. I do.

3 Q. ---- of course. And I just wanted to ask you
4 something about the dynamics of that. You've spoken about it
5 in some detail. But this discussion about Daniel Pearl came
6 in a particular context, and I want to just direct your
7 attention to MEA-STA-2740.

8 CDC [MR. NEVIN]: And, Your Honor, I can -- I can give
9 you -- tell you where we noticed that, if that would be ----

10 MJ [Co] COHEN]: That would be great. Thank you.

11 CDC [MR. NEVIN]: Okay. This would be AE 630U
12 Attachment UU.

13 MJ [Co] COHEN]: Thank you.

14 CDC [MR. NEVIN]: And marked UNCLASSIFIED//FOUO.

15 MJ [Co] COHEN]: You may publish.

16 CDC [MR. NEVIN]: And the page number is 2740.

17 Q. Now, would you just take what time you want to read
18 over this, sir. And I really am directing your attention to
19 the -- really the paragraph beginning "Following," but any
20 part of it that you want to read is fine.

21 Are you good?

22 A. Yes.

23 Q. Okay. So first, directing your attention to -- to

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1 this part of the -- and I've marked the -- the lower seven or
2 eight lines of the middle paragraph that begins "Following his
3 last debriefing session." You again state that he won't be
4 punished by you for telling the truth, even when the truth
5 consists of operations, aspirations, intentions, et cetera,
6 against the U.S. And you say, "No matter how much progress
7 he's made, should he choose not to be honest or productive,
8 his status will immediately reverse and, if not corrected, he
9 will find himself in the same or worse conditions than those
10 he's experienced heretofore."

11 And the -- the paragraph below goes on to say that
12 "Mr. Mohammad assured the interrogator" -- and I -- that --
13 that refers to you, I take it?

14 A. I didn't write this. I -- I was in the room when he
15 discussed Daniel Pearl.

16 Q. Was anyone else in the room?

17 A. Yes.

18 Q. Who else was in the room?

19 A. Dr. Jessen was in the room and so was the CIA's most
20 prominent WMD expert. She was the one who was initially
21 questioning him. I can describe how this came about, if
22 it's -- if it's important, or not.

23 Q. No, just -- or, you know, maybe. But let me say, do

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1 you have a UFI for that person?

2 A. Maybe, but I don't recall the person's name.

3 Q. Okay. But you understood that the person was a
4 prominent WMD expert?

5 A. Oh, yes.

6 Q. And you say, "Oh, yes," let the record reflect, with a
7 certain inflection that means that -- I think means to convey
8 that's an understatement to say this person ----

9 A. Yes. The person was brilliant.

10 Q. Yeah. And would the person be identified as the
11 primary weapons of mass destruction person in the CIA?

12 A. I have no -- I have no idea what she was identified as
13 or not identified as within the agency. I was just told, this
14 is our top person on this particular issue.

15 Q. Okay. You -- but -- and that was your
16 understanding -- what I meant to ask was: That's your
17 under -- that was your understanding of who she was, right?

18 A. I think I answered it three times. Yes.

19 Q. Thanks. So it says, third -- sorry, fourth line down,
20 there's -- there is a ----

21 A. Fourth line down from where?

22 Q. Yeah. That last paragraph on the page begins,
23 "Mohammad assured," and there's a sentence that begins with

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1 the word -- there's a parenthetical and the word "Note"
2 appears. And it says, "Right prior to his admission of the
3 killing of Daniel Pearl, he asked the interrogator about his
4 progress so far, how am I doing so far? And the interrogator
5 replies on a scale of one to a hundred, you're at about
6 somewhere between 50 and 60, one being completely dishonest
7 and a hundred being completely honest." And he, Mr. Mohammad,
8 was distressed when he heard that. Do you remember that?

9 A. I remember he was very concerned about whether or not
10 we perceived him to being forthcoming, and so it -- it depends
11 on how much emphasis you put on the word "distressed" in terms
12 of -- you know, in terms of intensity. I -- I know he was --
13 I would have said he was concerned because he was trying very
14 hard to convince us that he was -- he was working with us.

15 Q. Okay. And -- and ----

16 A. Are we done with that page?

17 Q. We are.

18 A. Can I point one thing out?

19 Q. Sure.

20 A. Okay. So if you go down to where he talks about the
21 killing of Daniel Pearl, the way you read that could lead you
22 to believe that what happened in the previous paragraphs
23 happened just before he talked about killing Daniel Pearl.

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1 But that's not true. Note, it said, "He had asked." "He had
2 asked." That's a -- it points to another time.

3 And I just think it's important to point out that the
4 stuff that you -- is up here at the top of this particular
5 document did not occur in the room with me when Dr. Jessen and
6 I were initially there, about the killing of Daniel Pearl.

7 Q. Why don't you just read the sentence that begins
8 "Note."

9 A. Okay. "At that point, Mohammad stated he was
10 concerned about the interrogator's judgments of his progress
11 and asked if he had improved."

12 Q. Hang on one second, Dr. Mitchell.

13 A. So that's not the sentence you want me to read?

14 Q. The word "note."

15 A. That's a parenthetical statement ----

16 Q. Yes.

17 A. ---- inserted inside of a sentence. It's not a
18 sentence.

19 Q. Okay. All right. Would you read the parenthetical
20 comment inserted inside the parentheses that begins "Note"?

21 A. Sure. "Note: Immediately preceding Mohammad's
22 admission to killing of Daniel Pearl, he had asked the
23 interrogator about his progress" ----

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1 Q. You can stop there.

2 A. ---- "and the interrogator" ----

3 Q. I'm interested in that term, "immediately preceding
4 Mohammad's admission to the killing of Daniel Pearl." He is
5 asking about, "How am I doing," right?

6 A. Right.

7 Q. Okay. So I have now put 27 -- sorry, MEA-STA-2741 on
8 the presenter and it is the same exhibit. It's the next page,
9 so it came within the same AE 630U Attachment UU.

10 A. Okay.

11 Q. So, sir, just directing your attention to this first
12 full paragraph on this page that begins, "Interrogation,
13 transition, and debriefing," do you see that?

14 A. I do.

15 Q. And it says that "Mr. Mohammad is told that he's
16 currently making progress across the continuum but could
17 immediately be returned to his initial interrogation phase at
18 any time depending on his -- in his behavior" and so on.

19 And then there's a sentence that begins about halfway
20 down the paragraph that begins, "Mohammad stated his intent."
21 And it says that he stated his intent to tell the truth and
22 then asked if it was too early to ask about writing a letter
23 to his family. And someone, an interrogator, says to him,

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1 "That may never be a possibility, but it's too early now."
2 And he continued expressing concern about his two sons who
3 were with him at the time of his capture, asked if the
4 interviewer had any knowledge of their status and, if so, had
5 they been reunited with their mother. And the interrogator
6 replied that he didn't know that information.

7 First of all, do you remember that?

8 A. I know that this dialogue took place.

9 Q. Were you the interrogator that was referred to?

10 A. No.

11 Q. Who was?

12 A. I suspect it's Dr. Jessen, but ----

13 Q. Okay.

14 A. ---- you'd have to ask him if it was him.

15 Q. Yeah. We can do that.

16 The sequence of events is, first, he asks how he's
17 doing and he gets a 50 to 60 percent rating, and then he
18 confesses to the killing of Daniel Pearl, and then he asks
19 whether he can write a letter to his children?

20 A. No. You're talking about two separate answer --
21 incidents. This, as I tried to explain earlier, that
22 parenthetical statement where -- where he was going on about
23 Daniel Pearl happened before this. It happened before this

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1 event that he's describing -- whoever it is, is describing in
2 this thing. He just made a parenthetical statement referring
3 back to something that had happened earlier. You're choosing
4 to interpret it as the same interrogation session, and it's an
5 error to do that.

6 Q. Well, doesn't it say that right before he admitted to
7 killing -- immediately preceding his admission to killing
8 Daniel Pearl, he asked how his -- he was doing?

9 A. He often asked how he was doing. It didn't just
10 happen the one session. And it does say that, but he -- it
11 says that in referring to a past interrogation. You are
12 misunderstanding this document.

13 Q. What, the word "immediately preceding" ----

14 A. I -- I can't help you, sir. I don't appear to be able
15 to say anything to get my point across to you. There are two
16 separate -- that is a statement referring back in time to a
17 different interrogation session that I was part of and I was
18 there for. And I can tell you that this stuff that happened
19 up top I don't think occurred in that same session. I don't
20 remember that.

21 I can tell you what I remember about him talking about
22 killing Daniel Pearl. I do remember him asking about how he
23 was doing just before he acknowledged that -- or voluntarily

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1 told us that he had killed Daniel Pearl, but I don't remember
2 him asking about his family.

3 Q. Okay. Well ----

4 A. I think you're talking about two different things.

5 Q. It may well be that the document just speaks for
6 itself, but in any event, I won't continue to fence with you
7 over the meaning of "immediately preceding."

8 Is there a -- is there a Hippocratic Oath for a
9 psychologist?

10 A. I don't recall a Hippocratic Oath. There's a --
11 there's an ethical -- some ethical guidelines from the APA.

12 Q. And the -- and that essentially says do no harm to the
13 patient?

14 A. I'm sure it says do no harm to patients.

15 Q. Yeah. And that's because you -- you and all
16 psychologists have special training that's geared toward
17 understanding people's problems and helping them to get
18 better, right?

19 A. Okay.

20 Q. And isn't it true that in 2005, the APA Council of
21 Representatives voted 157 to 1 to forbid psychologists from
22 participating in national security investigations?

23 A. Yes.

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1 Q. And isn't it true that you allowed your psychology
2 license to lapse?

3 A. I didn't allow it to lapse. My psychology license?

4 Q. Yeah.

5 A. I never allowed that to lapse. I retired it when I
6 had reached 20 years, long after they had made that vote. But
7 I did resign from the APA, which may be what you're asking
8 about.

9 Q. No. I am talking about the ending of your licensing
10 to practice as a psychologist.

11 A. I retired it at some point. I didn't allow it to
12 lapse.

13 Q. So you at some point did not renew it?

14 A. No. You have to apply -- in Texas, you have to apply
15 for retirement. You have to retire the license.

16 Q. Okay.

17 A. If you allow it to lapse, it's lapsed. It means that
18 you're delinquent on your fees.

19 Q. And you withdrew from the APA, as you say?

20 A. Yes.

21 Q. And you did that over a dispute with -- with the APA
22 about their -- about various positions that they had taken;
23 would that be a fair way of putting it?

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1 A. I don't know about fair.

2 Q. Sorry. Would that be an accurate way of putting it?

3 A. The accurate way of putting it is I disagreed with
4 their position on psychologists helping national security.

5 Q. We spoke previously of your having been in a conflict
6 position of both interrogating detainees and also assessing
7 them psychologically to determine what effect the
8 interrogation was having on them. And you had withdrawn
9 from -- at some point, you withdrew from the -- the process of
10 conducting assessments, correct?

11 A. Right. I don't think that we were -- I don't think --
12 not to quibble with you, although I've been doing that, I
13 don't think we were asked at that time when we were doing the
14 assessment of -- who was it that we did? I can't remember --
15 oh, Hawsawi, I think we did an assessment on Hawsawi. -- what
16 the effect of enhanced interrogation was on him. We were
17 asked how is he doing now, right? I mean, they wanted to know
18 how he was doing. And by inference, if he was doing badly,
19 they would think it was due to enhanced interrogation or
20 some other -- some other thing. But it wasn't like they told
21 me go evaluate whether or not this guy has been harmed by
22 enhanced interrogation. They just asked me how's he doing,
23 you know.

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1 Q. Okay. And I mean, I didn't mean to -- I really didn't
2 mean to imply something that went beyond my question. I mean,
3 the point of -- of this is that you've at least been part of
4 designing and conducting an interrogation program. And -- and
5 then -- but one of the questions in the interrogation program
6 is whether it's being harmful to the people who are the
7 subjects of it. And there's a conflict in you working both
8 sides of that street ----

9 A. Well ----

10 Q. ---- right?

11 A. ---- there's at least the appearance of conflict. I
12 mean, what you try to do -- what the ethical guidelines --
13 since you asked me about it, what the ethical guidelines
14 require is that you alert the people to the conflict of
15 interest and if there's no way out of it, you do the best you
16 can do to ----

17 Q. Right.

18 A. ---- you know, stay on the right side of things.

19 Q. But you were very forthright in your book that --
20 that -- that that was not appropriate and you got out of that
21 business as soon as you could, right?

22 A. Yeah, I didn't want to be doing it.

23 Q. Right. So now just a question or two about some

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1 comments you made last week regarding psychological issues
2 surrounding the -- surrounding the interrogation program. And
3 you spoke of both classical conditioning and also operant
4 conditioning, and -- do you recall that?

5 A. I do recall.

6 Q. Yeah. And to -- just to orient us, if I understand
7 correctly, Pavlovian, or classical, conditioning has to do
8 with involuntary responses and ----

9 A. Autonomic nervous system responses, not necessarily
10 involuntary.

11 Q. Okay. But in other words, responses that are not
12 consciously decided upon and the -- of course, the example is
13 Pavlov and his dog, who is salivating around meat and he can't
14 control -- salivation is taking place below the conscious
15 level, and -- and there's the -- the business of the bell and
16 the -- after a while, he salivates in response to the bell or
17 to the light. And so there -- and -- and that is what is --
18 that is what is Pavlovian classical conditioning, correct?

19 A. That's the simplest explanation. It actually gets
20 considerably more complicated ----

21 Q. Yeah.

22 A. ---- than that when you start looking at the different
23 exposures and the -- you know, how contiguous the responses

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1 are and all that sort of stuff. But that would -- that's the
2 thumbnail description of it.

3 Q. So in operant conditioning, by contrast, this is
4 voluntary choices that, in this case, a person makes. And so
5 you provide a reward, which you might call positive
6 reinforcement, and that leads them to behave in a particular
7 way.

8 You could also provide an aversive consequence and --
9 which would lead -- which would change their behavior in
10 another way; in other words, do something that they don't
11 like.

12 A. Are you suggesting that an aversive consequence is
13 what most people refer to as negative reinforcement?

14 Q. Yeah.

15 A. Because if you're calling it that, that's an error.

16 Q. No, no. Actually, I'm not.

17 A. That's called punishment.

18 Q. Right. And negative reinforcement is removing the
19 aversive consequence, correct?

20 A. That's correct.

21 Q. Okay. So this is that process you were describing
22 before of making an effort to modify a person's behavior,
23 correct?

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1 A. Correct.

2 Q. All right. So -- and you talked about walling in this
3 context, and you -- you said that there is an unconditioned
4 stimulus, which is walling. It produces an involuntary, a --
5 not involuntary but -- what was the word that you used?

6 A. Well, I think most people would find it mildly
7 aversive.

8 Q. Yeah. You don't -- but you don't -- but it creates a
9 sense of fear or ----

10 A. Not fear. It -- I find it disorienting ----

11 Q. Okay.

12 A. ---- you know. And that disorientation goes away as
13 soon as the walling stops. But initially, you're being
14 bounced against the wall, so ----

15 Q. It's unpleasant?

16 A. I don't even -- I wouldn't even describe it as
17 unpleasant. I've had it happen to me many, many times. It's
18 just disruptive, you know. It disrupts your chain of thought.
19 It's disruptive and -- and disorienting.

20 Q. So are you saying it's positive reinforcement?

21 A. Is there anything in that sentence that suggested it
22 was positive reinforcement? I said most people find it mildly
23 aversive.

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1 Q. Yeah. I mean the part where I said it's unpleasant
2 and you said, no, you didn't agree with that.

3 A. Well, I personally didn't find it unpleasant. I --
4 well, I guess we're quibbling about what unpleasant means.
5 It's mildly aversive to most people.

6 Q. And what does -- and aversive means that you don't
7 like it?

8 A. Correct.

9 Q. Great. So that is performed -- that process is
10 performed with a towel, as we talked about yesterday.

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

12 MJ [Co] COHEN]: Counsel?

13 CDC [MR. NEVIN]: It's to orient him to the -- to
14 discussing this in psychological terms.

15 MJ [Co] COHEN]: Okay.

16 CDC [MR. NEVIN]: I'm not going ----

17 MJ [Co] COHEN]: Is this one of those opportunities where
18 you could simply say do you remember last week when we talked
19 about blah, blah, blah?

20 CDC [MR. NEVIN]: Yes, sir.

21 MJ [Co] COHEN]: Thank you.

22 Q. Do you remember last week when we talked about the
23 towel?

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1 A. Yes, sir.

2 Q. Okay. And I think maybe we talked about it yesterday
3 as well. But the towel is placed around the neck, the --
4 there's nothing aversive about a towel under normal
5 circumstances. It's -- it's an ----

6 A. I think the word you're looking for is neutral
7 stimulus.

8 Q. Yeah, but in -- but in the process of -- because --
9 because it's connected with the walling, it comes to be -- it
10 creates an involuntary response of -- of alarm and aversion,
11 correct?

12 A. Yes. It signals that -- to the autonomic nervous
13 system that, you know, that mildly aversive thing could
14 potentially happen.

15 Q. And you used the example of a towel, but anything in
16 the environment that is associated with the aversive event
17 could have the same effect. Chains, hoods, masks, any -- any
18 of the -- any of the accoutrements of the -- of the
19 environment where the aversion occurs could -- could have a
20 similar effect?

21 A. That's an unsophisticated understanding of it. I
22 could explain it. If it -- if -- if every time I saw you you
23 had on a red hat and you punched me in the nose, eventually I

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1 would become weary of that red hat, right?

2 Q. Yeah.

3 A. But if we eat there or we talked with our buddies
4 there or we gained comfort there or we watched movies there
5 with you with the hat on, that hat would just be a hat.
6 Sometimes you punched me in the nose, sometimes you didn't; it
7 wouldn't signal anything.

8 Q. Uh-huh. Okay. But you said also that having been --
9 having been classically conditioned to fear not being
10 cooperative, detainees would -- when they were making an
11 operant choice to cooperate, would somehow give you a tell or
12 a sign by looking nervous or fearful that would indicate to
13 you that they were lying. In other words, they were
14 connecting the classical conditioning in that moment, correct?

15 A. Yes.

16 Q. All right. So the -- they would have been able to
17 figure that out after a while too, correct, and make a double
18 effort to avoid appearing -- to avoid appearing frightful.

19 A. The -- the problem with that is that once you've
20 classically conditioned a -- you know, a conditioned stimulus,
21 the extinction goes [indicated], like this, as soon as the
22 contingencies change. And sometimes they lied to us and we
23 didn't do anything to them, as you well know; and sometimes

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1 they told the truth and we didn't realize it, as you well
2 know; and sometimes they told the truth and it was enough to
3 stop the next attack.

4 You know, so I don't -- I just don't think that -- I
5 think it's farfetched to think that the -- the reinforcement
6 contingencies that we had in place to -- to produce that
7 temporary state where they were willing to work with us ----

8 Q. Hmm.

9 A. ---- lasted for years. Because those reinforcement
10 contingencies went away for Khalid Shaikh Mohammad after about
11 21 days, and he was another [REDACTED] days or so smoking and joking
12 with us at times. Not smoking, really, just joking and
13 talking and ----

14 Q. Of course, the person might also just not know the
15 answer to a question you asked, and might ----

16 A. Absolutely true.

17 Q. ---- might be nervous about the possibility that you
18 were going to look at that and say, you're not being truthful,
19 and now ----

20 A. Actually, that's not what I would say.

21 Q. ---- trouble is going to start again.

22 A. No, that's not what I would say.

23 Q. Why not?

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1 A. Because it's fruitless. What I would say to the
2 person is, "Okay. I want to believe you. Help me understand
3 why it's not true. Give me something I can give to Washington
4 so they will take the pressure off." That's what -- pressure
5 off me or, you know, the urge to put him back into EITs.
6 That's the way that I talked to them. I don't talk to them
7 the way that you just described me talking to them.

8 Q. But we talked yesterday at some length about the fact
9 that you can't always -- you -- you weren't able -- none of
10 you were always able to tell when somebody was being truthful
11 or not, correct?

12 A. Correct.

13 Q. Right. So when you -- when the detainee says
14 something and it's apparent that you don't believe it or that
15 you don't know if it's true, you're not -- you're -- his 50 to
16 60 percent meter is moving down now. He's going to be nervous
17 about that, right? Because you don't -- not because he's
18 lying, but because there's no way for him to convince you that
19 it's true.

20 A. Well, there actually is a way for him to work with me
21 to get Washington to take the pressure off, right? Because
22 that's really what we want them to do. We don't want -- we
23 don't want to hear lies. We don't want people making stuff

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1 up. That's not very useful. And we don't want people so
2 scared that they'll say anything that they think they need to
3 say in order to satisfy it.

4 What we really want to do is ask a person a question
5 and have them do what KSM was nice enough to do once he
6 started working with us, and that is to say, "Here is the
7 answer to your question but here are some things that you
8 didn't ask that I think are important."

9 So that's what we wanted, more full and complete
10 answers. So I just don't -- I just don't think its very
11 fruitful to act like an interrogator acts, the way that they
12 were doing in that movie, where you're yelling at the guy and
13 you're accusing him of lying and you're doing all that other
14 stuff. Because in my experience as a psychologist and a
15 hostage negotiation guy and someone who has worked with, you
16 know, people who are homicidal and -- and other sorts of
17 things, that doesn't help.

18 What helps is when you say, "I'm here to help you.
19 Work with me," you know, "Help me convince them," that helps.

20 Q. You referred to this conditioning going away quickly.
21 You talked about that last week and -- and again just now.
22 The -- this is what's referred to as extinction, correct?

23 A. Yes, sir.

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1 Q. Yeah. And you said that if -- if extinction didn't
2 work, nobody -- no one would smoke, I believe was the example
3 you gave.

4 A. I actually didn't say it the way that you said it
5 because it makes no sense the way you said it.

6 Q. Well, how did you say it?

7 A. I said if classical conditioning worked every time,
8 nobody would be smoking because most people try to quit
9 smoking ----

10 Q. Yeah.

11 A. ---- right? But what happens is some of the --
12 they -- they don't allow enough time to pass for that
13 classical conditioned response. And I used to run smoking
14 cessation groups so I'm very familiar with smoking, people who
15 smoke. They don't allow enough time to pass for the
16 environmental and situational cues to become unattached to the
17 desire to smoke.

18 Q. Yeah. But, of course, you're not waterboarding people
19 in a smoking cessation program. So there's a whole
20 different ----

21 A. Are you suggesting that as a therapy technique?

22 Q. I don't know. I -- maybe -- maybe you are, I don't
23 know.

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1 A. I didn't suggest it. You did.

2 Q. Okay. But you're not -- you're not waterboarding. My
3 point is that the aversive stimulus in waterboarding is much
4 different from the aversive stimulus that's present in smoking
5 cessation.

6 A. It depends on whether you have lung cancer or not.

7 Q. Hmm.

8 A. There are people with lung cancer who would very much
9 like to stop smoking but can't.

10 Q. Right.

11 A. But I don't -- I don't need to quibble. Waterboarding
12 is -- waterboarding is more aversive than most things people
13 would experience.

14 Q. And it's familiar, isn't it, that people with PTSD,
15 veterans with PTSD years and years after they've served in
16 Vietnam or in any of the conflicts, will still react -- have a
17 strong reaction to an explosion. I know there -- you see
18 signs that say, 4th of July, be mindful of our veterans who
19 may be living in the neighborhood. That -- those kinds of
20 effects go on long after the original conditioning stimuli.

21 A. Are you suggesting that PTSD is a form of classical
22 conditioning?

23 Q. No. I'm just asking you, people continue these --

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1 these -- this -- this degree of -- of continuing to respond to
2 a stimulus in a -- in a -- in a way that relates to the past,
3 goes on for years, doesn't it?

4 A. It can go on for years. But here's what I would say
5 in response to that: I don't -- I haven't personally heard of
6 anybody who had PTSD that was responding to a chair or to a
7 room or to anything like that. Normally it's -- it's loud
8 noises or it's a sense of threat or it's something like that.
9 Not -- not necessarily a chair.

10 Q. How about an implicit feeling that you're about to be
11 waterboarded again if you don't cooperate? That got
12 Mr. Mohammad to give you a lot of information, didn't it? I
13 mean, when you were ----

14 A. I can't -- I can't speak for what he felt. I -- I
15 don't know what he felt ----

16 Q. Hmm.

17 A. ---- right? I mean, you'd just have to ask him where
18 he had an explicit feeling that we were about to put him on
19 waterboarding. If you knew how many times he lied to us after
20 that, you wouldn't think that. If you knew how many times he
21 quit working with us after that, you wouldn't think that.

22 Q. And can I ask, when he would quit working with you,
23 you wouldn't go back to him and say, "Look, we're going --

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1 we're going to have to go back to the hard times again if
2 you -- if you don't start working with us again"?

3 A. No. That may have been implicit in what we said and
4 somebody like the -- the station chief may have said something
5 like that.

6 Q. Uh-huh. But my point is, the -- the threat to return
7 to the hard times was either implicit or explicit, but it was
8 what -- the reminder of that was what drove Mr. Mohammad to
9 resume cooperation?

10 A. Most of the time, it was resolving whatever he was
11 complaining about. He -- he quit cooperating when they forced
12 him to take a vitamin. We talked them out of forcing him to
13 take a vitamin during -- when he was fasting. He quit
14 cooperating when they were interrupting his prayers. We
15 talked them out of not interpreting his prayers and he started
16 cooperating again. He quit cooperating when he didn't get his
17 favorite piece of bread. We talked them into giving him his
18 favorite piece of -- piece of bread and sent home the guard
19 who was picking the heels out and giving them to him.

20 So my experience of him wasn't that he was under some
21 involuntary control, but rather he chose to quit cooperating
22 at times and stuck with it until -- and he was mostly right
23 about the things that he said. The guard was really giving

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1 him the wrong pieces of bread deliberately and they were
2 really forcing him to take a vitamin during his fasting and
3 they really were interrupting his prayers, right? So once we
4 resolved those conflicts, he went back to working.

5 Q. But, sir, I'm not asking you about Mr. Mohammad's
6 complaints about food or anything. I'm -- I'm asking you
7 about these occasions when you left him and -- or -- and where
8 others left him with the impression he was going to go back to
9 the hard times if he didn't get around to cooperation. That
10 is a whole different thing.

11 A. Well, I'm sure that occurred.

12 Q. Okay.

13 CDC [MR. NEVIN]: And, Your Honor, I am at a quitting
14 place.

15 MJ [Co] COHEN]: Okay.

16 CDC [MR. NEVIN]: I'm sorry. I have -- I have additional
17 questions, but ----

18 MJ [Co] COHEN]: Okay.

19 CDC [MR. NEVIN]: ---- I see the time.

20 MJ [Co] COHEN]: All right.

21 Mr. Harrington, when we return from lunch, I don't
22 know how much longer Mr. Nevin will be, but we'll start your
23 testimony -- I mean your examination at that point.

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1 TC [MR. GROHARING]: Judge, it would be helpful to get an
2 idea of how much time Mr. Nevin has as well as the others. I
3 would also like to know whether or not anyone intends to use
4 the evidence that the FBI techs have brought. If not, they
5 can return it.

6 MJ [Co] COHEN: Okay. Sir, I'll temporarily excuse you.
7 You may start your lunch recess and then ----

8 WIT: Let me put this away.

9 MJ [Co] COHEN: They'll pick it up. I'll watch it for
10 you.

11 WIT: I would prefer to put it in the ----

12 MJ [Co] COHEN: Oh, yeah. Put it in the envelope.

13 WIT: Thank you, sir.

14 MJ [Co] COHEN: In fact, I'll take it right now. Thank
15 you. I got it. You're good. No, you're good, sir. All
16 right.

17 **[The witness withdrew from the courtroom.]**

18 MJ [Co] COHEN: All right. Does anyone else need the
19 physical evidence, first of all? If anyone does, speak now.

20 LDC [MR. CONNELL]: You mean for this witness, right, sir?

21 MJ [Co] COHEN: For this witness. All right. All right.
22 So once the pictures are taken, they can return it to the --
23 the evidence locker.

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1 TC [MR. GROHARING]: Judge, and I've spoken with counsel.

2 We have provided photos of all the evidence ----

3 MJ [Co] COHEN: Okay.

4 TC [MR. GROHARING]: ---- previously. I think we'll be
5 able to use those photos.

6 MJ [Co] COHEN: Okay.

7 TC [MR. GROHARING]: And ----

8 MJ [Co] COHEN: Make sure you coordinate that with the
9 court reporters and then I'm okay with whatever the court
10 reporters decide.

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

12 MJ [Co] COHEN: All right.

13 LDC [MR. SOWARDS]: To be clear, to follow up to
14 Mr. Connell's question, they would be needed for Dr. Jessen.

15 MJ [Co] COHEN: I understand.

16 LDC [MR. SOWARDS]: Okay.

17 MJ [Co] COHEN: They just won't need to be here the rest
18 of the day ----

19 LDC [MR. SOWARDS]: Thank you, Your Honor.

20 MJ [Co] COHEN: ---- or until he testifies.

21 Mr. Nevin, where are you at as far as timing?

22 CDC [MR. NEVIN]: I think approximately an hour.

23 MJ [Co] COHEN: Okay. Excellent.

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1 And then Mr. Harrington, how many hours or less or
2 more do you -- do you anticipate?

3 LDC [MR. HARRINGTON]: Certainly the rest of the
4 afternoon, Judge, and probably into tomorrow morning.

5 MJ [Co] COHEN]: Okay. And then Ms. Bormann?

6 LDC [MS. BORMANN]: Probably less than a full day.

7 MJ [Co] COHEN]: Okay. All right. So we should wrap up
8 sometime tomorrow with -- with all the defense. We'll see if
9 the government has any cross-examination at that point. And
10 my goal is to -- to start open session testimony of Dr. Jessen
11 on behalf of Mr. Ali on Thursday at some point.

12 LDC [MR. CONNELL]: Sir?

13 MJ [Co] COHEN]: Yes, sir.

14 LDC [MR. CONNELL]: That's my goal, too.

15 MJ [Co] COHEN]: Okay.

16 LDC [MR. CONNELL]: But I did want to tell you that I will
17 have some redirect whether the government has questions or
18 not, mostly in response to the questions that you asked the --
19 the witness.

20 MJ [Co] COHEN]: Okay.

21 LDC [MR. CONNELL]: So I just wanted you to be aware of
22 that.

23 MJ [Co] COHEN]: Okay. All right. Let's see where we're

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1 at then. At least at some point on Thursday then, we're going
2 to start with Dr. Jessen.

3 Yes, ma'am.

4 ADC [MS. RADOSTITZ]: Your Honor, we have discovered that
5 there is a bit of a conflict for our team around
6 classification guidance and asking of a question that we think
7 needs to be resolved in an ex parte with yourself. We could
8 come back a little bit early. It won't take very long. We
9 just need to explain to you what the conflict is and where we
10 are with it.

11 MJ [Co] COHEN]: Okay. Of this witness?

12 ADC [MS. RADOSTITZ]: Yes.

13 MJ [Co] COHEN]: Then that will be fine. I'll return at
14 1300 with you all.

15 ADC [MS. RADOSTITZ]: Okay.

16 MJ [Co] COHEN]: And everyone else please plan on entering
17 the courtroom around 1315. All right.

18 [The R.M.C. 803 session recessed at 1206, 28 January 2020.]

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