

1 [The R.M.C. 803 session was called to order at 0901, 13 April 2023.]

2 MJ [COL ACOSTA]: The commission is called to order.

3 Government, account for who's here on behalf of the
4 government.

5 TC [MR. O'SULLIVAN]: Yes, good morning, Your Honor. I'd just
6 note that these proceedings are being transmitted via CCTV to public
7 viewing locations in the United States pursuant to the commission's
8 order in Appellate Exhibit 028M from 22 November 2019.

9 All of the following personnel have the requisite clearances
10 for being in the courtroom and Remote Hearing Room:

11 Present here at Guantanamo Bay are myself, Michael
12 O'Sullivan; Mr. John Wells; Staff Sergeant Maria Young; Mr. Forrest
13 Parker Smith; Mr. Louis Marmo; Ms. Joleen Sanders; and our linguist.

14 Present in the Remote Hearing Room in northern Virginia are
15 Lieutenant Commander Keven Schreiber, Major Michael Ross,
16 Major Stephen Romeo, Lieutenant Tess Schwartz, Captain Jonathan
17 Danielczyk, Mr. -- I'm sorry, Master Sergeant Laura Speranza,
18 Ms. Paige McLachlan; for the FBI, Supervisory Special Agent Mary
19 Sonnen. Also present is Mr. Hank Schuelke, Dr. Jessen's counsel.
20 Not present is Lieutenant Colonel James Garrett. He may be in later
21 in the day. He's at sick call.

22 MJ [COL ACOSTA]: I'm sorry. What was that last part?

23 TC [MR. O'SULLIVAN]: He may be later in the day. He's at

1 sick call.

2 MJ [COL ACOSTA]: Okay. Defense, good morning. Please do the
3 same.

4 LDC [MR. NATALE]: Good morning, Your Honor. Anthony Natale
5 on behalf of Mr. Nashiri.

6 Mr. Nashiri is -- will be observing in an external location.
7 He is present and he has asked me to advise the court that he's aware
8 of all of his rights but he waives his right to be physically present
9 in the room.

10 MJ [COL ACOSTA]: Okay.

11 LDC [MR. NATALE]: Also present here in the ELC is Ms. Carmon,
12 Lieutenant Commander Piette, LN1 Wood, and Staff Sergeant McGuire.

13 In the RHR, there will be Ms. Morgan, Lieutenant Colonel
14 Nettinga, Mr. Padilla, Mr. Roosevelt Roy. Mr. Marc Dolphin may be
15 coming in and out. Mr. David Bendernagel, Ms. Rachel Pinate.
16 Mr. Scott will be coming in and out. Mr. Lange and Tech
17 Sergeant Gause, as well as Manice Brown, paralegal, and Dr. Sandra
18 Crosby.

19 All of these people have the necessary clearances and
20 classifications to be present for these proceedings.

21 MJ [COL ACOSTA]: All right. Counsel, quickly before you step
22 down, the -- Mr. Nashiri, while he is present, is still absenting
23 himself from the physical proceedings and we're not getting

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1 the -- because he's coming, he's not -- we're not getting the waivers
2 signed, which I understand.

3 But I just want to make it clear on the record that he
4 under -- that you're asserting that he understands his right to be
5 present. He knows that just coming to the ELC doesn't mean he's
6 being present in the courtroom, even though he's able to see and hear
7 the proceedings from where he is; and that at any time if he wants to
8 come into the proceeding, he may; that his absence is voluntary; and
9 that you still have the ability to communicate with him on breaks,
10 correct?

11 LDC [MR. NATALE]: That is correct, Your Honor. And every
12 morning, I go through the same litany with him. And in the evening,
13 I tell him that in the event that he isn't going to show, to let us
14 know, and I go through the same litany with him.

15 We have actually even set up a way that if in the middle of
16 testimony, that if he wants our attention, where he would be able to,
17 through the guards, get our attention. So I don't think that the
18 court has to worry about his access to counsel. But I understand
19 your concerns, and I agree with what you said as far as what it means
20 that he's watching from a remote location.

21 MJ [COL ACOSTA]: Understood. And it's especially
22 important -- the reason I'm reemphasizing it today is I believe it's
23 especially important, as we're going to get to his treatment during

1 his initial detention today, that he be able to communicate with you.

2 So if there is a need for a stoppage or a break and somebody
3 from one of the rooms, either up north or down here, believes they
4 need to communicate with Mr. Nashiri or Mr. Nashiri needs to
5 communicate with you, then let me know. We'll take a break and you
6 can have that conversation.

7 Because now we're going to be talk -- we're going to be
8 talking about his treatment, and it is -- that is the type of thing,
9 particularly when we're talking about the motion to suppress his
10 statement as that is -- some of your bases is based upon some of the
11 treatment here, he might need to communicate that with you.

12 LDC [MR. NATALE]: Absolutely.

13 MJ [COL ACOSTA]: I'm trying to emphasize with you, if he can
14 come in, if he's willing -- you know, if he wants to come in, please
15 bring him in. Let him know -- and I know he can hear me now, and
16 I'm -- I will direct -- address him directly.

17 Mr. Nashiri, this is a critical portion of the -- of
18 receiving evidence on this issue regarding your -- the motion to
19 suppress your statement. Please communicate fully and as much as you
20 need to with your attorneys. All right.

21 LDC [MR. NATALE]: Thank you, Your Honor.

22 MJ [COL ACOSTA]: Thank you.

23 **[The witness, Dr. John Bruce Jessen, resumed the witness stand.]**

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1 MJ [COL ACOSTA]: All right. I see that Dr. Jessen has taken
2 his seat on the stand -- on the stand.

3 Good morning, Dr. Jessen.

4 WIT: Good morning, Judge.

5 MJ [COL ACOSTA]: I remind you that you remain under oath, and
6 I believe that defense counsel has a few more questions for you.

7 WIT: Okay.

8 **[Microphone feed not enabled; no audio.]**

9 MJ [COL ACOSTA]: Your microphone is not on. It is not on.

10 There we go. Now it's on.

11 ADC [MS. MORGAN]: Great.

12 MJ [COL ACOSTA]: Gotcha now.

13 ADC [MS. MORGAN]: All right.

14 MJ [COL ACOSTA]: Defense, you may proceed.

15 ADC [MS. MORGAN]: Thank you, Judge. All right. If you'd
16 just give me one moment to set up.

17 **DIRECT EXAMINATION CONTINUED**

18 **Questions by the Assistant Defense Counsel [MS. MORGAN]:**

19 Q. Okay. Good morning again, Dr. Jessen.

20 A. Good morning.

21 Q. Overnight, I spent some time thinking about your testimony
22 yesterday, and so I just wanted to follow up on some of the things
23 that I -- kind of caught my interest as we were talking.

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1 A. Okay.

2 Q. We talked a little bit about the Kubark program yesterday,
3 and I don't intend to go there. But I had mentioned a name,
4 Mr. Glenn Carle, and you mentioned that you didn't remember him from
5 the program. His name is unclassified. He's on the unclassified
6 list, just to allay any concerns from anyone who might be getting
7 nervous from an equity-holder here.

8 But it occurred to me that this may have been a larger
9 program, and so I just wanted to sort of get an understanding of the
10 universe of who was involved. And so to the best of your knowledge,
11 how many interrogators were involved in the CIA RDI program?

12 A. The one that I was in?

13 Q. Sure.

14 A. Well, I'll have to think on that a moment, and it will be
15 an approximate number.

16 So -- four -- of those who I know were trained, I think it's
17 under a dozen ----

18 Q. Okay.

19 A. ---- 8 to 12. Towards the end of my participation in the
20 program, there were people working that I didn't work with, so I
21 don't know what the exact number was. But that's my guess.

22 Q. And I'm going to -- I don't want to trip any classified
23 wires here, so I'm going to try to keep things generic, but only

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1 because I actually don't know what's classified in this area, so I'm
2 going to try to ask yes-or-no questions.

3 You mention the program that you worked with, and then
4 yesterday you alluded to another program that you didn't find out
5 about until later; is that correct?

6 A. That's correct.

7 Q. Yes or no, was that a CIA program?

8 A. Yes, I believe it was.

9 Q. And yes or no, was that a program that was also doing
10 detainee interrogations?

11 A. Yes. That's my understanding.

12 Q. And yes or no, was that a program that was running
13 contemporaneously with the CIA RDI program?

14 A. I don't know the exact dates, but that is my recollection,
15 that I found out it was running. And then I knew it was running
16 later at the same time. But I don't know when it started.

17 Q. To the best of your memory, when did you learn about this
18 other program?

19 A. I don't remember, but I'm pretty sure I didn't know until
20 after -- until after I had been to Location 2 the first time. That's
21 my recollection.

22 Q. I'm going to -- I'm going to give a relatively generic
23 date. Is that approximately late 2002? So after late 2002 you would

1 have learned that?

2 A. I guess. I don't know.

3 Q. Okay.

4 A. I mean, that -- that sounds right, but I just don't know.

5 Q. Okay. Were -- and that's very specific.

6 Was that other program at any point, to your knowledge,
7 involved with interrogating my client?

8 A. I don't know.

9 Q. At any point, to your knowledge, was that other program
10 involved with interrogating Walid Bin'Attash or Khallad?

11 A. I don't know that either. I don't know for sure. Because
12 there were disparate programs then -- and I didn't know about them
13 and then -- and efforts, even more than the one that you and I are
14 talking about right now.

15 Q. Correct.

16 A. It's kind of confusing to me. I don't know who was where
17 at what time and who saw whom. So I can't be more definitive.

18 You asked me if they had interrogated your client.

19 Q. Right.

20 A. So individuals who I know were associated with this other
21 program that we're talking about and who ran the training course that
22 we talked about that -- that Dr. Mitchell and I did not put together,
23 I do know that one, and others whose names I don't know, did

1 interrogate your client.

2 Q. Okay.

3 A. But whether at that time they were running this program
4 and in that program or that program was viable, I don't know.

5 Q. Okay. So I'm going to try and break this out, and bear
6 with me because -- because -- for my own, like, simplicity.

7 A. It's confusing to me ----

8 Q. Yeah.

9 A. ---- so I have empathy for you trying to sort it.

10 Q. I'm going to refer to them as Program A being your
11 program, and so ----

12 A. A is our program. Okay.

13 Q. A is your program, trying to follow the DoJ guidelines to
14 the T, okay? Is that ----

15 A. That's correct.

16 Q. And then I'm going to refer to Program B, the training
17 program you attend in November 2002, run by New Sheriff. Is
18 that ----

19 A. Okay.

20 Q. And then I'm going to talk about Program C is a program
21 you learn about later.

22 A. Program B is the program I learned about later.

23 Q. Later. Okay. So there is no program -- there is no

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1 Program C?

2 A. There were questionings going on at a location. I don't
3 believe it was a formal program. I think it was -- I know it was
4 initiated towards the beginning of the war, but it -- I don't believe
5 it was a formal CIA interrogation program. It was more like a
6 screening and passthrough program where people were kind of vetted
7 and sent to different places.

8 Q. Does that location have a number or a color?

9 A. Yes. When I was familiar with it, it was at Location
10 Number 2.

11 Q. Location 2.

12 And was that a joint CIA and another agency operation?

13 A. I didn't see any other service or agency when I was there,
14 but I don't know if -- I know -- I remember that military, DoD
15 services, particularly the Army, I think, were involved in transport
16 and moval **[sic]** of the individuals that were there. I didn't
17 interact with those people, but I'm -- but I'm pretty sure I remember
18 being told that that's how they were brought there and when they were
19 sent somewhere else, that's who transported them.

20 Q. Okay. That's incredibly helpful. So, then, I'm going to
21 get a little bit of clarity on Program B.

22 A. Yeah.

23 Q. So you have the list of UFIs in front of you, and I'm just

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1 asking for the best of your memory, on that list of UFIs, who you can
2 remember being associated with Program B in any capacity.

3 A. Is that -- is that this new list here that I have?

4 Q. The -- yeah, it should be the real name ----

5 A. Okay. Yeah. It says UFI on it.

6 Q. Yep. And so I'm just looking for their functional
7 identifier, and if they don't have a functional ----

8 A. You want me to give you the number of any individual I
9 recognize that in -- working in Program B?

10 Q. In any capacity. And so if you can give me their
11 three-digit functional identifier and then are they an interrogator,
12 are they a debriefer, are they an analyst.

13 A. Okay. I don't see three-digit identifiers.

14 Q. Okay.

15 A. I see number, then a name, then a rank, and then a UFI.

16 Q. Okay. So I'm looking for the UFI.

17 A. Okay.

18 **[The witness reviewed the evidence.]**

19 A. I don't -- let's see, there's one more. Wait a minute.
20 Is this a repeat? Yeah.

21 So there's -- I don't recognize any of the names.

22 Q. Okay. Is NX2 on there?

23 A. Pardon me?

1 Q. NX2?

2 A. Annex 2.

3 Q. I just want to make sure this list is actually correct.

4 A. I don't see anything that says Annex 2.

5 MJ [COL ACOSTA]: Sir, she -- NX2, not Annex 2. Sorry. There
6 was a mishearing.

7 Q. Sorry. November, X-Ray, 2.

8 A. Oh. You want me to look at that one?

9 Q. Yeah.

10 A. Are they in alphabetical order?

11 Q. I have -- I don't get to see these things. I wish I did.

12 A. I wish you did too.

13 **[The witness reviewed the evidence.]**

14 A. I don't see anything identified with an N. I see M's, but
15 I see no N.

16 ADC [MS. MORGAN]: And so, Judge, I don't know what we're
17 working off ----

18 MJ [COL ACOSTA]: Hold on one second.

19 Sir, if you could, if you could look at the third page of
20 the list of names, please.

21 WIT: Okay.

22 MJ [COL ACOSTA]: Do you see how it -- look at the third from
23 the bottom of that list, if you have the same list as me, which I'm

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1 not 100 percent sure you do.

2 WIT: I see the numbers ----

3 MJ [COL ACOSTA]: Do you see where it says -- it says NX2
4 right there?

5 WIT: No, it doesn't say that. It says the identifier, the
6 MOI officer says ----

7 MJ [COL ACOSTA]: No. I think you're looking in the wrong
8 folder.

9 WIT: It may very well be because I see no N anywhere.

10 MJ [COL ACOSTA]: Government up north, please confirm that
11 he's got the right folder, please. Everybody just break in place,
12 find the right folder.

13 ATC [MR. RYAN]: Yes, sir. Dr. Jessen, do you have the binder
14 you were using yesterday?

15 WIT: I do.

16 ATC [MR. RYAN]: I think that's where you want to be, sir.

17 MJ [COL ACOSTA]: You were looking in the wrong place.

18 WIT: Okay. I was looking in the wrong folder.

19 MJ [COL ACOSTA]: Yes. Go ahead and ----

20 WIT: All right. So now you want me to go back through the
21 names?

22 ADC [MS. MORGAN]: That was not your fault. You were given
23 the wrong folder.

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1 MJ [COL ACOSTA]: Okay. This is what I need you to do. She
2 asked you before to go ahead and look through the names and see if
3 any of those people were a part of Program B or 2 -- I can't remember
4 if she went with number or letter there ----

5 ADC [MS. MORGAN]: Yeah.

6 MJ [COL ACOSTA]: ---- on the second program -- and tell her
7 if any of those people only -- using only their identifiers were part
8 of that program. Take your time. Take a look at it.

9 WIT: Okay.

10 Q. Take as much time as you need, Dr. Jessen.

11 A. Okay. The qualification, in terms of part of that
12 program, the program was directed from headquarters. There may be
13 people who didn't actually participate in interrogations or weren't
14 even in the field that were associated with it. Do you want
15 those ----

16 Q. Yeah.

17 A. ---- people identified, too?

18 Q. Yeah. To the extent you knew they were identified with
19 that program, if you can please ----

20 A. Okay.

21 Q. ---- give me the UFI.

22 A. All right. Okay. The first one that I recognize is
23 interrogator N -- November, X-Ray, 2.

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1 Q. Okay.

2 A. The next one I recognize is interrogator MA2.

3 **[The witness reviewed the evidence.]**

4 A. Those are the only two names I recognize.

5 Q. Okay. Did you ever encounter SG1?

6 A. This is the UFI, correct ----

7 Q. Yeah.

8 A. ---- SG1?

9 Q. Sierra, Golf, 1.

10 A. I recognize that name, but I had no knowledge that that
11 person was involved in that program.

12 Q. Okay. How about November, Zulu, 7?

13 A. I recognize that name, but I had no idea the person was
14 involved in the program.

15 Q. Okay. All right. Helpful.

16 Would it be accurate to say that that program did not adhere
17 to the same standards of -- that your program did?

18 A. The best way that I can express it is that the program,
19 which we've established was separate from the program I worked in, I
20 do not know what their operating instructions and parameters were.

21 I do know that the two individuals at least, you know,
22 just -- the first individual that I identified, NX2, I am aware
23 engaged in interrogations that included measures that were not

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1 approved in the program I'm in. But I don't know that to be the case
2 for the other name that I identified.

3 Q. For NX2, you're also aware that he trained others on those
4 same types of techniques?

5 A. Yes.

6 Q. Are you aware of all of the black sites that those
7 individuals were located -- or that traveled to?

8 A. I don't know where they traveled. I know where I saw
9 them.

10 Q. Right.

11 A. But I don't know of other locations.

12 Q. And do you know all of the locations? And I -- I
13 recognize that I have to ask the question.

14 Do you know who all of the graduates of their training
15 programs were?

16 A. No.

17 Q. And were you at any point able to track where the
18 graduates of those training programs were in black sites?

19 A. No.

20 Q. Fair to say that your knowledge of, you know, what
21 procedures or what policies were in place was based on your
22 particularized experience in the black site you were in at the time
23 you were in it?

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1 A. You'll have to repeat that. I'm sorry. I didn't follow
2 you.

3 Q. Your experience was based on your -- the black site you
4 were in at the time you were there?

5 A. That's correct. Yes, that's correct.

6 Q. Oh, and I just wanted to clarify something. I had just
7 picked something up in the 9/11 record.

8 You testified in 9/11 that the first time you saw the FBI
9 was when you got to GTMO, and I remember yesterday you had mentioned
10 that you didn't remember running into FBI at the black sites. And so
11 I just wanted to ask what you remembered about the first time you saw
12 FBI getting involved.

13 A. It's a very vague memory. I think we established the name
14 of the person that I remembered. I don't remember if I met him here
15 in the States or if I saw him at the black site. I don't think
16 he -- I don't think he was there.

17 He wasn't there when I went there at first. I don't think I
18 saw him subsequent to that, so it must have been at CIA Headquarters
19 that I met him. But I heard his name mentioned often ----

20 Q. Okay.

21 A. ---- which kind of clouds the memory, but I do believe I
22 met him in person at Headquarters.

23 Q. Okay. So when you were working in the program, you would

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1 hear his name come up?

2 A. Initially, yes.

3 Q. Okay. And then when you say when you first got to GTMO,
4 was that -- do you remember when that was?

5 A. It was -- no, I don't remember. It was way late in the
6 program before everything was shut down.

7 Q. Okay.

8 A. Everyone had been transferred there. The detainees had
9 all been transferred there. I don't remember the date.

10 Q. Okay. So you -- the first time you come here is after
11 everybody has actually been moved here in 2006?

12 A. GTMO?

13 Q. Yeah.

14 A. That's correct.

15 Q. Okay. Great. We're going to talk about that. We're
16 actually going to walk through the black sites. But that's a very
17 helpful fact ----

18 A. Okay.

19 Q. ---- so we'll come back to that.

20 I wanted to talk -- oh, you met -- sorry. This is like when
21 you write notes on your notes.

22 You mentioned that before every interrogation you write an
23 interrogation plan?

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1 A. Correct.

2 Q. And so I just wanted to clarify. That is before you begin
3 to interrogate the detainee for the first time, you come up with a
4 master plan; is that -- is that -- is my understanding accurate?

5 A. Yes. So the permissions came in. We finalized the
6 initial guidelines for how things would be conducted, which I told
7 you evolved somewhat over time and improved. Then we wrote a plan
8 for specifically what was going to happen the first time that we went
9 in and interrogated Zubaydah, submitted that, and waited for
10 permission to proceed. And then every subsequent interrogation from
11 that time, a plan was written and approved.

12 Q. I understand.

13 A. However, you -- one plan might consist of more than one
14 visit on that particular day with the detainee, but it was still part
15 of the plan.

16 Q. You knew exactly where I was going, and that's what I was
17 trying to understand. So that plan covered multiple visits. And so
18 the briefing ----

19 A. Could, yeah.

20 Q. The briefings that you were talking about, the safety
21 briefings, hey, everybody understands this is how it works, that
22 happens as part of that initial plan?

23 A. It did, and it was repeated periodically. And eventually

1 it became institutionalized. There was a folder that everyone was
2 required to review before all interrogations.

3 Q. Okay. I wanted to pick up a little bit on abusive drift.
4 And just to touch on a concept, you've previously talked about the
5 relationship between abusive drift and moral disengagement, that
6 there's an association between abusive drift and moral disengagement.
7 Am I right when I say that?

8 A. Yes.

9 Q. Okay.

10 A. Those are -- moral disengagement is a complicated ----

11 Q. Okay.

12 A. ---- process, postulated by a famous psychologist whose
13 name escapes me right now, but -- so it's not just a simple ----

14 Q. Sure.

15 A. ---- A-to-B equation. But if you were involved in abusive
16 drift, you probably are morally disengaging from where you started.

17 Q. And am I -- is it accurate that moral disengagement is
18 another one of those human tendencies?

19 A. Yes ----

20 Q. You don't ----

21 A. ---- that's accurate.

22 Q. ---- you don't have to be a bad person, it's just a ----

23 A. Yes, that's a good way to say it.

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1 Q. And there are -- there are some signs of moral
2 disengagement, I think you've previously testified to, that you can
3 sort of recognize it might be going on and identify it; is that -- is
4 that accurate?

5 A. You are correct.

6 Q. One of the things that I think you've previously mentioned
7 is euphemistic language. Euphemistic language.

8 A. Yes.

9 Q. Can you explain that a little bit?

10 A. It's kind of like catcalling, using a pejorative term to
11 refer to someone or support some situation. What that does
12 cognitively, the theory is, is distances you from the intimacy that
13 you started the relationship with.

14 So if -- if I'm working with Hank Schuelke and eventually I
15 stop calling him Hank and I start calling him some name that's
16 somewhat pejorative, then the hypothesis is I have distanced myself
17 morally from him and made it easier for me to be less morally strict
18 in terms of my relationship with him. That's kind of a gross
19 definition, but that's what moral disengagement means.

20 Q. That makes sense. I mean, I've heard it called othering;
21 is that -- I've heard of it called othering. Is that a similar
22 concept?

23 A. I didn't understand what you said.

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1 Q. I've heard it called othering?
2 A. Othering?
3 Q. Yeah.
4 A. Yeah, I'm not familiar with that term ----
5 Q. Okay.
6 A. ---- but it sounds like it could be related.
7 Q. And you also previously talked about people can become
8 desensitized and that can be a sign of moral disengagement.
9 A. Yes. Yes ----
10 Q. You ----
11 A. ---- it's all part of the same stew or soup. These are
12 different -- these are different theories of cognition or, you know,
13 mental states that people have developed and written up and then were
14 used to explain behavior. But those that you've mentioned, they're
15 all related and move along the same continuum.
16 Q. And so is it accurate to say for, like, desensitization,
17 people that are exposed to violence or trauma, and even to the work
18 we do, like exposed to high level of stress or trauma, can eventually
19 just sort of lose that base normalcy and kind of not realize it's bad
20 anymore?
21 A. That's -- I think that's very close to what it is.
22 I -- not that I could give you a crisper definition, but I'll try.
23 Q. Uh-huh.

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1 A. So desensitization is basically a diminution of
2 apprehension, appreciation of the situation. It becomes less novel
3 and it becomes less poignant the more you're subjected to it. So
4 your attention starts to drift, not -- not necessarily moral drift,
5 but your attention starts to drift.

6 It's like listening to a boring speaker. You know, at first
7 you're pretty tuned in to everything they're saying, but if it gets
8 to the point where it becomes monotonous, then you're not attending
9 as much, and -- that's an analogy.

10 Q. That makes a lot of sense.

11 And then you talk about some of the signs that, you know,
12 you might see -- and I imagine you ran into this in the SERE School,
13 of people might become -- people might be not receptive to feedback.
14 That could be something to look out for?

15 A. Yes.

16 Q. You might see somebody push the limit. I think you used
17 to term "maverick"?

18 A. Yes.

19 Q. They might engage in some questionable behavior?

20 A. What kind of behavior?

21 Q. Questionable behavior.

22 A. Yeah.

23 Q. And that could be, you know, in their actual job

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1 performance, but that could also be -- you know, you might notice in
2 their personal life as well outside.

3 A. Yeah. It's a little harder to attach that to a specific
4 interaction between people. But that probably has more to do with
5 distraction than moral drift or desensitization if you're distracted
6 by some other thing, then you're not going to be as attentive.
7 That's different from just being fed up with or irritated or
8 frustrated or bored with the immediate interaction that's going on.

9 Q. Makes sense.

10 And you identified some high-risk situations. Specifically
11 new interrogators can be at high risk for this type of moral
12 disengagement and possible abusive drift?

13 A. Yes.

14 Q. I think that's why you said -- you know, you testified
15 yesterday about training being so important.

16 A. Yes.

17 Q. Fatigue?

18 A. Yes.

19 Q. High-stress situations?

20 A. Yes.

21 Q. Pressure from outside audiences?

22 A. Yes.

23 Q. Would it -- and this is a little bit obvious, but would it

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1 be accurate to say that in the CIA RDI program, all of those possible
2 factors -- all those risk factors were present?

3 A. Yes.

4 Q. Would you -- would it be accurate to say that the
5 importance of having an outside observer is to have someone who
6 remains objective who can watch for all those risk signs,
7 particularly in kind of that pressure-cooker environment?

8 A. Yes. It's absolutely critical.

9 Q. When -- sorry. I got a note, so I'm going to go back
10 because I got a note.

11 You mentioned that you heard Agent Gaudin's name early in
12 the program. In what context did you -- do you remember hearing it,
13 to the best of your memory?

14 A. I remember Dr. Mitchell telling me that he had worked with
15 him. He had a high regard for him ----

16 Q. Uh-huh.

17 A. ---- that he expressed to me. That's really the only
18 clear memory I have.

19 Q. Okay.

20 A. I have this vague memory that I actually met and talked to
21 him. I'm pretty sure I did. But beyond that, I don't have anything.

22 Q. That's fine. It's been a long time.

23 Talking about the interrogation plan that you worked on for

1 Abu Zubaydah, was your expectation that this was an interrogation
2 plan for one individual or that this would become a template for a
3 program?

4 A. It was our impression, Dr. Mitchell and my -- well, I
5 better speak for myself.

6 It was my impression that Abu Zubaydah would be the only
7 person that I would participate in interrogating. We certainly
8 constructed the plan based on parameters where it could -- it could
9 be used with anyone at anytime, but I had no expectation that I'd be
10 doing more.

11 In fact, I left CIA Headquarters with a self-understanding,
12 anyway, that this was a one-off operation. I had no intention to
13 continue, nor do it in the first place.

14 Q. Okay.

15 A. So that wasn't my expectation. However, as I said, we
16 constructed a plan that was utilitarian, so it would work for more
17 than one person, but ----

18 Q. Understood.

19 Yesterday -- and it was kind of a small comment, but you
20 mentioned that you interacted with Senator John McCain over the
21 lawsuit dealing with the academy student in SERE?

22 A. Yeah, I briefly had talked to his staff and office once.

23 Q. His staff?

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1 A. Yeah.

2 Q. And that may pre-answer my question, but I was just going
3 to wonder if you ever had any opportunity to interact with Senator
4 McCain at any point?

5 A. Not at a personal level one-on-one, no.

6 Q. Okay. And did you interact with his staff at any point in
7 the future, then?

8 A. I'm sorry, I didn't hear.

9 Q. Did you interact with his staff at any point after ----

10 A. Yes, I did.

11 Q. In what context?

12 A. It was in relation actually to two issues. One, which was
13 an ancillary issue, was that it -- unfortunate problem that occurred
14 at the Air Force Academy. Secondary to that, there was a lot of
15 concern about females in SERE training ----

16 Q. Uh-huh.

17 A. ---- whether they should go through the training, and I
18 was tasked to look at that. So I conducted a study and reported my
19 findings to a Senate committee in Washington somewhere.

20 And in conjunction with that report, we also met with the
21 Senator's staff to talk about a couple of issues related to the
22 executive agent oversight and Navy training and so forth.

23 Q. Okay. So you had an actual opportunity to meet with his

1 staff to talk about SERE and JPRA and what they did and the
2 techniques and things like that?

3 A. Yes.

4 Q. Okay. Did you ever meet with any of his staff during
5 the -- either the drafting or the passage of the Detainee Treatment
6 Act?

7 A. No.

8 Q. Okay. We talked a little bit about the differences
9 between interrogators, debriefers, and the roles they have in the
10 program. And I don't -- I have no idea what the universe of this
11 number is, but do you know how many debriefers existed -- I'll call
12 it between Program A and B?

13 A. Oh, no, I don't. Many. Many, many.

14 Q. Many?

15 Did they come from different agencies or were they all CIA?

16 A. I think they were all CIA, those that I was aware of.

17 Q. When you interacted with detainees, did you identify
18 yourself as CIA?

19 A. No. However, they knew eventually, so I -- on one
20 occasion, I know I said to someone, you know who we are. It's not
21 the same thing as saying I work for the CIA. But -- but as standard
22 practice, we didn't say -- say that. But it -- it wasn't a secret.
23 And some individuals probably did say it. Perhaps even I said it; I

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1 just don't remember that. But it wasn't -- it wasn't a part of a
2 protocol or a -- or a protocol. We just didn't go in and say we're
3 CIA.

4 Q. Was it -- so that was interrogators, or at least your
5 personal practice. Did you observe debriefers to ever identify
6 themselves as CIA?

7 A. That's a good question. I don't really know. I don't
8 remember whether they identified themselves that way or not. Because
9 it didn't seem to be a point of interest for me, I just don't know if
10 they did that or not.

11 Q. Would you have been aware if debriefers were from other
12 agencies?

13 A. Maybe not.

14 Q. It just wasn't a question you would have asked?

15 A. No. I just assumed they were all analysts or debriefers
16 from the agency.

17 Q. And my understanding, from looking through the documents,
18 is that when you would introduce a debriefer to a detainee, you would
19 use the friend -- the phrase, like, this is my friend.

20 A. Uh-huh.

21 Q. And ----

22 MJ [COL ACOSTA]: Affirmative response from the witness.

23 WIT: Yes. Yes, Judge.

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1 Q. We'll talk more about debriefings as we go on today, but
2 it seems like once someone had transitioned into debriefing phases,
3 they would happen pretty much daily? A debriefing would happen
4 pretty much daily? Or frequently?

5 A. Yeah, frequently. At times daily, but there were times
6 when debriefings didn't take place for a long time.

7 Q. Fair to say detainees met with lots of different
8 debriefers? They wouldn't meet with the same debriefer throughout
9 the entire program?

10 A. For the most part, the debriefers were kind of assigned to
11 specific detainees. And so I think it would be fair to say, for the
12 most part, they saw only a select small group of debriefers.

13 But debriefers weren't restricted, to my knowledge, from
14 going and talking to another detainee. And I, in fact, know
15 occasionally someone who was working on Detainee A would say, yeah, I
16 would like to go in and ask Detainee B about this, and that was not a
17 problem.

18 Q. So detainees were routinely seeing new faces, new people
19 in these contexts of ----

20 A. Yes.

21 Q. ---- debriefing sessions?

22 A. Yeah.

23 Q. All right. That gets us to today.

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1 You and -- so I want to pick up with memory. That was kind
2 of where I was going to start today.

3 A. Okay.

4 Q. You and Dr. Mitchell wrote a paper on how human memory
5 works. Do you remember that?

6 A. I remember we wrote it. I don't -- I probably don't
7 remember everything that's in it ----

8 Q. I ----

9 A. ---- but, yes, we did write that paper.

10 Q. What ----

11 A. We wrote that paper because we saw clearly that people had
12 an unrealistic expectation of what the detainees could remember and
13 how they would remember it, and so we wanted to help them learn what
14 memory is so they could question better and become less frustrated
15 when they were working with detainees.

16 Q. Yeah. I think it's an interesting paper, and so I just
17 want to spend a couple minutes talking about it.

18 ADC [MS. MORGAN]: I'm going to go ahead and show the witness
19 document number 7, Five Things Interrogators and Debriefers Must Know
20 About Human Memory.

21 Bear with me one moment, Your Honor. I'll give you a page
22 count. It's a 14-page document.

23 Hanging.

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1 WIT: Thank you.

2 MJ [COL ACOSTA]: All right, Counsel. It is marked as 467BB;
3 that is, 467-Bravo-Bravo.

4 Q. Now, Dr. Jessen, in this paper, I just want to kind of
5 walk through the points that you make. You talk about -- I'm going
6 to go ahead and put page 1 up on the screen.

7 ADC [MS. MORGAN]: And, Judge, do you need me to zoom in at
8 all for that or is that okay?

9 MJ [COL ACOSTA]: No. It's not even up on the screen that I
10 can see here.

11 ADC [MS. MORGAN]: Okay. I'll give it a minute.

12 MJ [COL ACOSTA]: Okay. Go ahead.

13 ADC [MS. MORGAN]: Is that good enough or do you need me to
14 zoom in at all?

15 MJ [COL ACOSTA]: No. I have a physical copy.

16 ADC [MS. MORGAN]: Okay.

17 Q. So I want to draw your attention to that first sentence in
18 the second paragraph: Incorrect notions about human memory
19 work -- how human memory works can derail intelligence
20 collective -- collection efforts and result in incomplete or
21 incorrect information being put into intelligence databases.

22 So I think ----

23 MJ [COL ACOSTA]: Counsel, you got the slow down warning.

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1 ADC [MS. MORGAN]: Oh, sorry about that.

2 Q. Let me say that again more slowly.

3 A. Okay.

4 Q. The first sentence in the second paragraph: Incorrect
5 notions about human memory -- how human memory works can derail
6 intelligence collection efforts and result in incomplete or incorrect
7 information being put into intelligence databases.

8 And I just wanted to ask a few questions that get to the
9 core of what motivated you to write this paper, because the date on
10 it is March 2004. So by the time you write this paper, you've been
11 in the program for about two years-ish; is that right?

12 A. Yeah. Yes, that's right.

13 Q. So what are you observing that motivates -- and I think
14 you started saying it earlier -- that motivates you to put out an
15 informative paper on how memory works for interrogators and
16 debriefers? What are you actually seeing go wrong?

17 A. In general, what we saw is a common misperception that
18 most people have about memory, and that is that memory
19 recall -- which is not true, but people think memory recall is like
20 replaying a video or a movie of what happened.

21 So people have an assumption -- some people -- that you can
22 cue into, oh, yeah, that was this day, that was this time, and then
23 that memory will play, like on a screen, with exact -- with an exact

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1 reproduction of what happened at that time. However, memory does not
2 work like that.

3 Memory comes after being associated with related categories
4 in the nervous system in a general context that has to be filled in
5 cognitively. So you have to think what about that and was this and
6 was that. And as that takes place, inevitably there are some
7 alterations in the original, unless the memory happened only
8 immediately before.

9 Or sometimes a memory can be relatively indelible if it's,
10 as I said, associated with a heightened physiological/emotional
11 arousal. Those memories tend to be more accurate. However, they
12 still do change and are altered over time as people re-remember.

13 So one of the main concerns we had was to keep the detainees
14 working with us, or was the main concern, and occasionally -- quite
15 often a debriefer, anxious to do their work, some of them, because
16 they hadn't been accustomed to being around detainees, approached
17 their work with a certain amount of anticipation, maybe a little
18 fear, and maybe a little bravado. And they had expectations that if
19 the detainee didn't reproduce a response that was similar to watching
20 a movie screen of what happened, that they were obfuscating or that
21 they were holding back.

22 So their expectation would lead them to be impatient with
23 the detainee, and the detainee would become impatient with them, and

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1 it was nonproductive and would take much longer to sort through what
2 was going on.

3 So we probably could have -- or we probably should have
4 written this paper earlier, but we were very busy. And though we
5 knew this was an issue, we were just trying to solve it one-on-one.

6 Jim was the one -- Dr. Mitchell was the one that actually
7 came up with the idea of doing this and authored most of the paper,
8 but we were in agreeance that, hey, this could really be helpful.
9 Because far and away, most of the debriefers were mission focused,
10 wanted to do the right thing, and they weren't inappropriate.

11 Some -- some were, and they were corrected soon or removed,
12 but this was a help for them to be more realistic about how -- and we
13 tried to give them cues about how to ask questions and how to frame
14 things so that it would be more reliable and easier for the detainee
15 to answer their questions.

16 Q. I don't want to skip ahead too much, but one of the ways
17 to do it, to make it more reliable is things like asking open-ended
18 questions?

19 A. Well, that's -- yeah, that's one way. One of the most
20 effective ways to evoke the kind of information that these debriefers
21 wanted is to use a timeline, because if you use a timeline, you start
22 to put a lot of context around the specific memory that you want
23 drawn. And the way we hypothesize memory stored in the nervous

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1 system is somewhat along the lines of how a computer stores memory
2 and there are related banks or books or fonts of information. So we
3 would give them suggestions like that.

4 Q. So if I hypothetically set up my examination in
5 chronological order, I did a good thing?

6 A. Yeah, exactly. It is.

7 Q. All right.

8 A. You've got it. That's the precise answer.

9 Q. Okay. I want to talk a little -- I'm going to retrieve
10 this page. I'm going to go ahead and put up page 2. Let me make
11 sure I'm pointing you to the right spot. Bear with me. I was trying
12 not to highlight on my copy.

13 All right. And so throughout this paper, you identify a
14 number of bullet points of just here's how we think you can make your
15 debriefing sessions more productive. And so one of those that you
16 start with is memory doesn't work the way -- and I'll draw your
17 attention to the bottom quarter of the page, the bullet one: Memory
18 doesn't work the way most of us think it does.

19 And in this in the second bullet point, you say: What we
20 remember is actually a composite, an emergent property of, A, the
21 stored memory fragments of an event, technically referred to as
22 memory engram; and, B, what the person trying to remember thinks,
23 feels emotionally, and believes at the time of recall.

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1 And so I guess, one, can you explain "composite" a little
2 bit and how that differs from what you observe people to think memory
3 works like?

4 A. Well, I tried to do that a moment ago ----

5 Q. Yeah, the videotape versus -- yeah.

6 A. Yeah, as opposed to a recording that can be played back
7 with absolute accuracy; it's just one stream.

8 The hypothesis about how the nervous system works with
9 memory is that memory is stored by -- in like categories. It's also
10 associated with like emotions and physical reactions.

11 And it's kind of like a library of books. So when you start
12 to remember something, you pull the first book that has the most
13 poignant memory that you have about a particular subject and as you
14 pull that, you ponder and you think about that, and it leads you to
15 other references that you would pull.

16 And eventually, if you're -- if you're patient enough with
17 yourself, you can collect a pretty good collection of information.
18 Will it be precisely what happened, every detail? It's unlikely. It
19 could happen, but it's unlikely. But you'll have a pretty good
20 composite of what that memory was.

21 Q. And then the second thing that caught me about this is
22 that your ability to recall is influenced by your -- your emotional
23 feelings at the time of recall. So not necessarily -- why

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1 does -- why -- what does the time of -- why does your emotional state
2 at the time of recall matter?

3 A. Well, actually, for all those things we talked about, just
4 about a -- just earlier today, if you're -- have hyperarousal, if
5 you're fearful, if you're physically distressed in some way, all
6 those things complicate your ability to recall accurately, because
7 you -- your nervous system is dealing with all kinds of pulls and
8 needs.

9 And typically as we -- as we observe in human behavior,
10 physiological and some emotional needs almost always trump higher
11 cognitive processes, if they're -- if they're strong. So that
12 complicates things.

13 Q. So I'm going to use the example we used yesterday. You
14 know, I was taken captive. For some reason, something about that
15 smell really stuck with me.

16 A. Uh-huh.

17 Q. I've since been released. And I smell something that
18 reminds me, and it triggers me.

19 If somebody asks me in that moment to recall things, is it
20 accurate to say that that state, that cue stimulus, could have an
21 impact on my ability to recall?

22 A. Yes, it is accurate. It could enhance your recall if
23 they're asking you about the situation that elicited the ----

1 Q. So about my captivity?

2 A. ---- reaction in the first place.

3 Q. Yeah.

4 A. But if they're asking you about how to solve an algebra
5 problem that you really didn't understand back when you were in grade
6 school, is it going to complicate your ability to do that.

7 Q. Yeah. So if they're asking about the -- the experience
8 that -- the cue stimulus experience itself might be heightened, but
9 tertiary details perhaps would be dulled?

10 A. They'd be obscured ----

11 Q. Obscured.

12 A. ---- or they wouldn't be collected with the same
13 efficiency that -- and that's probably a better way to say it. Your
14 central nervous system wouldn't collect those bits of memory with the
15 same efficiency it would things surrounding that olfactory sensation.

16 Q. That makes sense. All right. I am going to retrieve
17 page 2 and go on to page 3.

18 In here under bullet point 2, you talk about the fact that
19 we forget more quickly than we think we do, and worst yet, we may not
20 notice that we have forgotten or distorted important details.

21 And I think you touched on this a little bit yesterday
22 about, like, the limits of our memory, but here you say that we only
23 have about a week to provide near-verbatim recollection of an event.

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1 Would you still agree with that sort of timeline?

2 A. Uh-huh. Yes. Yes.

3 Q. And then you go on to say that if you're ----

4 A. Where are you reading? That would be helpful for me.

5 Q. Oh, I'm so sorry. That -- you -- thank you.

6 So I'll draw your attention to the first bullet point under

7 2.

8 A. Okay.

9 Q. It starts, "For about."

10 A. Uh-huh.

11 Q. And that's where I'm getting the: For about a week or

12 so ----

13 A. Okay.

14 Q. ---- after an experience, we can provide near-verbatim

15 recollection of what we attended to, processed, and stored after that

16 event.

17 And you'd agree that's still ----

18 A. Yes.

19 Q. ---- that's accurate?

20 A. Yes.

21 Q. And then you go on to say: After that, a rapid drop-off

22 in the accuracy and precision of what can be recalled occurs and then

23 levels off after about a month.

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1 And is that still accurate-ish? That's still accurate?

2 A. Yes.

3 Q. Okay. Then going on to the next bullet, you say: When
4 asked to recall precise information about events that happened more
5 than a few days in the past, we recall the gist of what happened and
6 then try to piece together specific details by inference and
7 guesswork.

8 Now, the question I have is: What is the problem with
9 trying to piece together details with inference and guesswork? Why
10 is -- why is that not helpful or why is that -- what does that do
11 to -- let me -- let me rephrase so I'm asking you a specific ----

12 What does inference and guesswork -- how does that impact
13 recall?

14 A. Okay. See if I can answer that.

15 Q. Uh-huh.

16 A. So there's not a problem with it. It's just how we
17 understand it works.

18 Q. Uh-huh.

19 A. So whether you willfully want to remember or you're being
20 forced to remember, that same process is involved.

21 But I gave you the analogy of the library and different
22 references and pieces. So after a week, particularly after about a
23 month, your memory about a particular event has settled somewhat, but

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1 it's not contained in one place, and it's not a push the button and
2 replay. It's still fragments of information that have to be pulled
3 together cognitively and stuck back together.

4 Does that answer your question?

5 Q. That does.

6 What does that -- how does that impact accuracy or do we
7 know?

8 A. Spoken like a scientist. That's a good question.

9 It impacts accuracy ----

10 ATC [MR. RYAN]: Your Honor, at this time I'd like to object.
11 This has gone far afield from 467 and 480.

12 MJ [COL ACOSTA]: Counsel, response?

13 ADC [MS. MORGAN]: Judge, this was specifically put out about
14 the accuracy of the information being collected in the RDI program.
15 And the defense contention in 467 is that this is -- and which has
16 come out in testimony from the agents involved in the LHM statements,
17 is that this information was then directly used to influence the
18 questioning of my client during his LHM statement.

19 MJ [COL ACOSTA]: Government, your response to -- that his
20 statements made during the RDI program were used to inform the
21 questions that were used during the LHM session?

22 ATC [MR. RYAN]: This witness was not present for the LHM, had
23 no part in the LHM, and can only be speaking to items -- to matters

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1 in which he was a direct participant and observer.

2 MJ [COL ACOSTA]: Defense, I don't -- I understand you're
3 talking about memory. This witness is not here to testify as an
4 expert witness. He's testifying ----

5 ADC [MS. MORGAN]: Judge, I'm happy to ----

6 MJ [COL ACOSTA]: Counsel ----

7 ADC [MS. MORGAN]: ---- I'm happy to have him qualified as an
8 expert.

9 MJ [COL ACOSTA]: Counsel, this witness is not testifying as
10 an expert. There's no expert -- there's no notice that he's
11 testifying as an expert on this.

12 He can testify about his qualifications and what he's done
13 and all of those things. But I don't see the ----

14 ADC [MS. MORGAN]: Judge, whether or not ----

15 MJ [COL ACOSTA]: These questions, Counsel, can be asked
16 about -- can be used to -- about his writings and his knowledge and
17 beliefs about the -- the accuracy of memory can be asked about in
18 general, when -- when talking about whatever information he got from
19 the accused.

20 But I don't think -- but you're -- the government is correct
21 that a -- going page by page through his treatise on memory is not
22 relevant at this time. The objection is sustained.

23 ADC [MS. MORGAN]: Well, then, Judge, I'd like to have access

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1 to the record to make a proffer.

2 MJ [COL ACOSTA]: I thought you just did, but I'll allow you
3 to make a further proffer.

4 ADC [MS. MORGAN]: Well, and, Judge, what this witness will go
5 on to say, and what is directly relevant for the purpose of our case,
6 is that what is thought in an event occurred can influence the
7 accuracy of what we call now; the way that an individual feels can
8 distort the recall of what happened then; that the way not everything
9 that looks like resistance -- which is a topic that will be touched
10 on consistently throughout the discussion in the black sites -- is an
11 active effort to avoid answering questions. Common memory
12 difficulties can interfere and time -- with timely and accurate
13 recall.

14 Specifically, that if questioning is not done ----

15 MJ [COL ACOSTA]: You've got to slow down. The slow-down
16 light is flashing right now.

17 ADC [MS. MORGAN]: Sure. Let me go back and then say it more
18 slowly.

19 MJ [COL ACOSTA]: No, you don't need to go back and say it
20 again. You just need to continue in a more slow manner.

21 ADC [MS. MORGAN]: People often don't know how their memory is
22 require -- is acquired. The simple act of telling a story over and
23 over again -- which is why this is directly relevant, Judge -- can

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1 distort the accuracy of what is recalled.

2 And as this witness has testified, detainees were debriefed,
3 if not daily, frequently. And being required to tell a story over
4 and over can distort the accuracy of what is recalled in the current
5 session and then what is subsequently recalled. Accurate details can
6 insidiously blend with details suggested by the question and the
7 subject can no longer distinguish between their original memories and
8 the information suggested.

9 Which is precisely what is at issue at 467, is
10 whether -- whether what is contained in that LHM is voluntary, based
11 on both classical and operant conditioning, but also it is necessary
12 to dissect how the program was run.

13 And as Dr. Jessen has so eloquently testified to, not every
14 interrogator and debriefer followed this methodology carefully. And
15 because it was not followed carefully and because not every debriefer
16 understood how memory is -- memory works, how memories are created,
17 how they're stored, how they're recalled, they didn't
18 understand -- doesn't need to be malicious -- that they were
19 potentially insidiously implanting memories in my client's brain and
20 my client's memory that would -- later he would be unable to parse
21 and that would get repeated.

22 And I believe Dr. Jessen, if he went on to testify, would
23 say the more times that you recount a story, the less likely you are

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1 to be able to unwind what has been implanted versus what is an
2 organic memory.

3 A person's confidence in their memory is not a reflection of
4 the accuracy of their memory. Environmental impact -- environmental
5 factors can impact memory. Dr. Jessen has testified in the
6 9/11 commission that stress can impact memory, things like lack of
7 sleep, caloric restriction, trauma, disorientation.

8 And so, Judge, when we're talking about whether this is a
9 voluntary statement, understanding what my client's capacity for
10 memory and recall is, is absolutely a relevant issue.

11 I recognize there may be a desire to move this along, but
12 I've got the witness on the stand, and we waited a long time for
13 this. We have a right to ask the questions. Inconvenience because
14 of calendars should not dictate this.

15 MJ [COL ACOSTA]: Counsel, that's not -- that is not
16 the -- the purpose of the objection nor my sustainment of it.

17 Government, do you wish to be heard?

18 ATC [MR. RYAN]: Your Honor, to the extent counsel wishes to
19 make points about Dr. Jessen's position regarding memory as it is
20 found in this article, the article is now part of the record.

21 What I would -- what I submit our objection and Your Honor's
22 sustaining of it is purely from a matter of proper, relevant
23 testimony at this time. Dr. Jessen wasn't present for the LHM. To

1 the extent the matters within the article are relevant to that, it
2 can still be argued. We don't have to go through it paragraph by
3 paragraph because so much of this is now far afield, as I said, from
4 467 and 480, specific motions to suppress.

5 ADC [MS. MORGAN]: And, Judge, what Dr. Jessen testified to is
6 that he saw debriefers do it incorrectly, which is why it had to be
7 corrected. And by this point my client was in the RDI program for 18
8 months.

9 MJ [COL ACOSTA]: Counsel, understood all of that. And while
10 that point can be made through asking questions about what they
11 learned from the accused during his sessions and how they changed
12 things based upon that to undercut the reliability of those, you can
13 ask them. But ----

14 ADC [MS. MORGAN]: But, Judge, I can't ask them.

15 MJ [COL ACOSTA]: ---- but a page-by-page -- a page-by-page
16 recitation or a deep dive into this paper is not relevant. The
17 objection is sustained.

18 ADC [MS. MORGAN]: And, Judge, I just -- I'd like to be heard.
19 I cannot ----

20 MJ [COL ACOSTA]: That's ----

21 ADC [MS. MORGAN]: ---- ask them because we are not being
22 given any other witnesses and neither -- not -- this commission is
23 not a psychologist. None of these parties are psychologists. This

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1 paper means nothing without an explanation from a psychologist.

2 And so the individual who actually wrote the paper, who
3 actually has the background to sit here and explain it -- I mean, I
4 think one of the -- one of the hallmarks of this entire program
5 is we've gone -- we've stood up here for 20 years now and said words
6 like "learned helplessness" because none of us are psychology majors
7 and don't know what we're talking about, and this is the first time
8 we're actually getting it on the record from somebody who has a
9 degree and knows what he's talking about, and we need to let him
10 talk.

11 And so to stand up here and say, well, we can just argue the
12 papers, well, we can't because I don't have a Ph.D. in psychology,
13 nor does anyone on my team. And so for us to actually provide
14 zealous representation to Mr. al Nashiri against capital charges, it
15 means we get the witness who has the degree.

16 Unless the government's going to suddenly cough up all the
17 debriefers and let us talk to them. But they don't know that they've
18 implanted memories because they don't know they were doing the
19 questioning wrong, and that's the point of the paper.

20 MJ [COL ACOSTA]: Counsel, I have the paper. The defense does
21 not have a psychologist on its -- on the defense team at all?
22 Anybody in psychology or psychiatry on the defense team?

23 ADC [MS. MORGAN]: Judge, I'm happy to call them in June.

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1 MJ [COL ACOSTA]: Then that would be an appropriate -- if you
2 choose to do so. I'm not saying that ----

3 ADC [MS. MORGAN]: Well, then ----

4 MJ [COL ACOSTA]: Hold on, Counsel. Again, the objection is
5 sustained. We're not going to go through a page-by-page deep dive on
6 this. The objection is sustained.

7 ADC [MS. MORGAN]: Copy all. I'm retrieving the document.

8 MJ [COL ACOSTA]: There's no -- the scope of my sustainment is
9 not that you cannot refer to it. If there's a point of it that comes
10 up, you can ask him. But isn't it -- when you're asking him about
11 something, and I'm not trying to tell you how to do the examination,
12 you can refer back to it and say isn't it true, though, that that is
13 something later either contradicted or supported by something that
14 you wrote.

15 ADC [MS. MORGAN]: Copy all, Judge. Retrieving the document
16 from the witness.

17 And, Judge, can we get a break for a comfort -- brief
18 comfort break? We've gone about 90 minutes.

19 MJ [COL ACOSTA]: We can. We will take a 15-minute recess.

20 Dr. Jessen, same warnings as always: Don't discuss your
21 testimony with anyone during this recess because you remain on the
22 stand.

23 **[The witness was warned, was temporarily excused and withdrew from**

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1 the RHR.]

2 MJ [COL ACOSTA]: The commission is in recess.

3 [The R.M.C. 803 session recessed at 1020, 13 April 2023.]

4 [The R.M.C. 803 session was called to order at 1039, 13 April 2023.]

5 MJ [COL ACOSTA]: The commission is called to order.

6 Government, all parties present as before?

7 TC [MR. O'SULLIVAN]: Yes, Your Honor.

8 MJ [COL ACOSTA]: Defense?

9 LDC [MR. NATALE]: Yes, Your Honor.

10 [The witness, Dr. John Bruce Jessen, resumed the witness stand.]

11 MJ [COL ACOSTA]: All right. Defense, you may proceed.

12 ADC [MS. MORGAN]: Thank you, Judge.

13 DIRECT EXAMINATION CONTINUED

14 Questions by the Assistant Defense Counsel [MS. MORGAN]:

15 Q. I want to take a minute to talk about the UFI list that
16 you have in front of you. And I don't know -- I don't know what this
17 list looks like. I'm basing it off the testimony that I've read
18 about the 9/11 case.

19 It seemed like in that case that along with the UFI, there
20 was a column that listed whether the person was an interrogator, an
21 analyst, or a debriefer. Is that present on yours?

22 A. That's correct.

23 Q. Okay. Now, the testimony in the 9/11 case was that almost

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1 everyone was listed as an interrogator and that many of those
2 indicators were incorrect, and I don't know if that's been corrected
3 since that testimony.

4 A. I don't know.

5 Q. Dr. Mitchell was able to in his testimony go through and
6 very helpfully correct several of what he was able to identify as
7 inaccuracies, was able to note those in our records. However, there
8 were some that he was unable to -- either he didn't know the
9 individual.

10 So I wanted to just go through those and see if you are able
11 to identify whether this individual was an interrogator, a debriefer,
12 or an analyst. So if we can just kind of walk through those UFIs,
13 and we can go slowly.

14 A. Okay.

15 Q. I'm going to start with EH1.

16 A. Okay. I see EH1. I don't know the person.

17 Q. Okay. F1G.

18 A. I see. I don't know the person.

19 Q. GK8.

20 A. I don't know the person.

21 Q. HL4.

22 A. Don't know the person.

23 Q. Hopefully I got this right. 12F, is that a ----

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1 A. Say again?

2 Q. Is there a -- is there an I2 -- I2F?

3 A. What was the first digit or number?

4 Q. Indigo.

5 A. Indigo.

6 Q. Yeah, sorry. I think I had a typo in my notes.

7 A. I ----

8 Q. 2F.

9 A. ---- 2F. Yes. I recognize the name, but I don't know the
10 context. But the name is familiar to me, so I unfortunately can't
11 tell you what their role was.

12 Q. Okay. X3L.

13 A. Don't know the person.

14 Q. X79.

15 A. Was that X7Q?

16 Q. Okay, maybe. Could be a typo on the record.

17 A. I don't know the person.

18 Q. I understand.

19 I'm sorry, you said no, X7Q?

20 A. I did. I don't know the person. Sorry.

21 Q. No, no. That's okay.

22 YP3.

23 A. Don't know the person.

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1 Q. Z2C.

2 A. I recognize the name, but I'm having a hard time placing
3 it contextually, and I don't want to misidentify ----

4 Q. Okay.

5 A. ---- who the person was. So, I'm sorry, I can't -- I
6 can't help you.

7 Q. Okay. JY8.

8 A. JY8?

9 Q. Yes.

10 A. Don't know the person.

11 Q. Okay. LY9.

12 A. Don't know the person.

13 Q. NE5.

14 A. Don't know the person.

15 Q. PU2.

16 A. Don't know the person.

17 Q. QY7.

18 A. Don't know the person.

19 Q. SD6.

20 A. I know a person who had the common name, but I can't match
21 it specifically to this surname, so I should refrain.

22 Q. Okay.

23 A. I'm sorry. I just don't ----

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1 Q. UB1.

2 A. Don't know the person.

3 Q. WC2.

4 A. Don't know the person.

5 Q. WU4.

6 A. Don't know the person.

7 Q. SG1.

8 A. I know that person. I did not know that he served as an

9 interrogator. He's identified as an interrogator?

10 Q. Yeah. And some of those are incorrect.

11 What was your understanding of what he was?

12 A. My first contact with him, he was, I believe, working with

13 analysts in a supervisory position.

14 Q. Yeah. And so you're unaware if he ever became certified

15 as an interrogator or not?

16 A. Correct.

17 Q. Okay.

18 MJ [COL ACOSTA]: Which identifier was that again, Counsel?

19 ADC [MS. MORGAN]: SG1.

20 MJ [COL ACOSTA]: Got it. Thank you.

21 Q. And then finally, NZ7.

22 A. I know the name. The person was an interrogator. Did not

23 go through the course that Dr. Jessen -- I mean Dr. Mitchell and I

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1 put together, but I'm pretty sure went through the other course, but
2 served as an interrogator prior to that; so he may have had training
3 before that that I don't know about.

4 Q. Was he an interrogator with the CIA previously or
5 interrogator with another agency?

6 A. The CIA.

7 Q. Just to put a cap on the debriefing conversation we were
8 having earlier, you talked about the fact that it's -- we talked
9 about it was different people.

10 Yesterday you testified that sometimes debriefing happened
11 in detainee cells.

12 A. Yes.

13 Q. But sometimes they happened in different locations?

14 A. Yes. Within the same complex, same building.

15 Q. Same complex.

16 Different interrogators had different interrogating styles;
17 is that -- that would be accurate?

18 A. Yes, that's accurate.

19 Q. I misspoke. Different debriefers had different
20 questioning styles?

21 A. That's also accurate.

22 Q. And debriefing -- is it accurate to say debriefing was
23 more of a rapport-building style?

1 A. It was more of the result of rapport building through
2 interrogation. And then the transition, the assumption was that the
3 rapport was already established.

4 Q. And ----

5 A. Occasionally, as I mentioned, it was interrupted by one
6 side or the other and had to be repaired or attempted to be repaired.

7 Q. Right.

8 A. But there was an assumption that there was already a
9 rapport and the person -- the debriefer could walk into the cell, ask
10 the questions, and have a civil dialogue.

11 Q. And so because you had established such excellent rapport,
12 essentially any friend that you could bring in would be able to ask
13 questions, then?

14 A. Yes. Occasionally, the friend was not extremely
15 proficient at asking questions ----

16 Q. Yeah.

17 A. ---- and needed some tutelage, but in most cases it worked
18 out fine eventually.

19 Q. And for those times it didn't work out, then you could be
20 brought back in to sort of right course things?

21 A. Yes.

22 Q. All right. I'm going to move on to the black sites. But
23 just before we get into them specifically, I want to spend a little

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1 bit of time talking about them generically.

2 We are working off a list of ten black sites.

3 A. I have a list ----

4 Q. Nine. Sorry.

5 A. Oh, nine. Okay.

6 Q. Right? Yeah, because Location 1 is not listed for my

7 client. 2 through 10 is what your list says.

8 But is it accurate to say there were other detention

9 facilities that were -- the CIA used between 2002 and 2009?

10 A. Besides what's on this list?

11 Q. Yes. Let me say -- I'm going to ask a very yes-or-no

12 question. Are you aware of detention facilities other than those

13 listed in 2 through 9 -- 2 through 10 that were used by the CIA

14 between 2002 and 2009?

15 A. No.

16 Q. Fair to say these black sites were not operational all at

17 the same time? That's accurate?

18 A. That's accurate.

19 Q. Is your understanding that GREEN was built -- I don't want

20 to say for Abu Zubaydah, but the facility was completed when it was

21 needed for the Abu Zubaydah interrogation?

22 A. Yes.

23 Q. At that time, there were -- as far as you're aware, there

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1 were no other black sites being used?

2 A. That's correct.

3 Q. That's your understanding.

4 Is it accurate to say that GREEN had to close and then

5 detainees had to move to BLUE?

6 A. Correct.

7 Q. And that was a short-notice move? I don't want to get

8 into why, but just yes or no.

9 A. That's correct, yep.

10 Q. And did that happen a couple times for reasons beyond your

11 control, that detainees had to move short notice?

12 A. Yes.

13 Q. Okay. And is it accurate to say that detainees had little

14 to no lead time before they were rendered? And when I use the term

15 "rendered," I'm talking about being moved between a black site.

16 A. Yes.

17 Q. So they weren't ----

18 A. Well, maybe a day.

19 Q. Okay. They weren't building orders in DTS to get on a

20 flight.

21 A. No.

22 Q. And is it accurate to say that sometimes a detainee -- and

23 I'm talking generically ----

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1 A. Uh-huh.

2 Q. ---- would stay in a black site for a few days or a week
3 or maybe it could be several months?

4 ATC [MR. RYAN]: Your Honor, I object to anything beyond the
5 two accused that are subject of the motions.

6 MJ [COL ACOSTA]: Counsel, is it relevant to ----

7 ADC [MS. MORGAN]: Well, Judge ----

8 MJ [COL ACOSTA]: ---- the treatment of other detainee -- is
9 the length of stays of other detainees relevant to the -- to the
10 detainees that we're talking about here, the accused and Khallad?

11 ADC [MS. MORGAN]: Judge, first of all, I mean, the SOPs for
12 the program and whether the -- it was actually being carried out
13 correctly because Dr. Jessen doesn't have eyes on my client at all
14 times -- and so, if we want to bring in every witness that had eyes
15 on my client for, you know, October of 2002 until September of 2006,
16 let's do that. Great. But we don't have those witnesses. To some
17 extent, we are going to have to talk about the SOPs in the program to
18 fill in the gaps. So we have to know.

19 But the other reason to talk about it in these terms is I'm
20 trying to stay on the right side of classified. So I am speaking
21 about things rather than saying my client was in X location for X
22 number of days.

23 MJ [COL ACOSTA]: I understand the -- the only portion

1 that's -- I don't think you're going to -- well, it's the
2 commission's belief that you can ask about not the frequency
3 but -- or -- and perhaps not even the locations. But you can ask if
4 Mr. Nashiri or Mr. Khallad had moves for days -- you know, after
5 stays of days, weeks, or months.

6 Objection is sustained as to the others.

7 Go ahead.

8 ADC [MS. MORGAN]: And, Judge, then I'd like to be heard on
9 the record because we have just had this fight out in discovery that
10 it is not just what my client's experience was. It is what was this
11 program, and now that we know it's two programs, what were these
12 programs set up to function like.

13 It is not -- and again, if we are going to try and limit
14 this to what was Mr. al Nashiri's experience, then we need a whole
15 lot more witnesses and the government isn't coughing them up, and
16 then we've got another legal issue on our hands.

17 But what the program policies were, whether it was intended
18 to -- you know, what -- whether -- the practical reality was they
19 were being moved frequently. This was disorienting. This served a
20 purpose or had the effect of doing these things psychologically that
21 played into whether a statement was voluntary matters. The
22 whole -- the system matters.

23 And so if we're going to try and limit this to just my

1 client or just Khallad, then we are not actually getting to the core
2 of this issue.

3 And we have finally started getting discovery on the whole
4 program. So to realize that we are entitled to this discovery and
5 then to say that we are not able to ask about the discovery that the
6 commission found that was discoverable and relevant and material to
7 give us in a motions hearing is just -- I mean, we're not ----

8 MJ [COL ACOSTA]: Okay.

9 ADC [MS. MORGAN]: We're not shooting far afield, Judge.

10 MJ [COL ACOSTA]: All right. Government?

11 ATC [MR. RYAN]: Counsel's answer ignores the fact that the
12 motions that are before the commission for which this witness has
13 been brought here to testify are specific to two individuals and
14 their experiences. Experiences of other persons not known, not in
15 the presence of the two accused are irrelevant to this witness'
16 testimony.

17 ADC [MS. MORGAN]: Judge, I would draw your attention to the
18 government's answer in 444L, where they said they didn't realize all
19 this stuff was relevant and material, and this is why they're now
20 giving us all this discovery. And they specifically cite 467 and
21 480. They filed that on the 20th of February 2023.

22 MJ [COL ACOSTA]: Counsel, if you -- if those things are of
23 impact, you can ask about -- that you've learned in the discovery,

1 right, are to inform you about the questions about how it impacted
2 the accused's voluntariness, because that's what 467 is about, as is
3 480, and if you can ask -- if the questions are was the -- were the
4 moves designed to create these conditions, then that's what you can
5 ask.

6 ADC [MS. MORGAN]: But, Judge, we have discovery that talks
7 about the fact that they had that impact, and what you're asking me
8 to ask is a nefarious question. What I'm asking is ----

9 MJ [COL ACOSTA]: No.

10 ADC [MS. MORGAN]: ---- whether or not this occurred. And it
11 is based on the discovery that we got in 631 and that's come since
12 then. I am asking it based on discovery that this commission
13 determined, and that the government conceded, was relevant and
14 material to exactly these two motions.

15 MJ [COL ACOSTA]: Government, you seem ready to stand; you're
16 not standing, however.

17 ATC [MR. RYAN]: Yes, sir. The fact that the prosecution has
18 turned over discovery as relevant to the case as a whole does not
19 make it specifically relevant to any one particular motion or, more
20 importantly, to any one specific witness as we have here. So my
21 objection stands, Your Honor.

22 MJ [COL ACOSTA]: Counsel, you can ask about whether or not
23 detainees were moved repeatedly and rapidly and for what purpose and

1 whether or not there was a purpose, was there a result of that. You
2 can ask that question. So and ----

3 ADC [MS. MORGAN]: I believe that's what I was doing, Judge.

4 MJ [COL ACOSTA]: Oh, I understand. However, the discovery is
5 done. We're not doing discovery now. You can ask -- the questions
6 you're -- you know, you would be asking now should be relevant to the
7 voluntariness of the accused's statements in 2007 and the
8 voluntariness of Khallad's statements that you're seeking to suppress
9 as well.

10 ADC [MS. MORGAN]: Well, Judge, I'm asking questions based on
11 discovery, but I would also make the point of the government has also
12 said discovery is not done. They've said that there's more discovery
13 forthcoming ----

14 MJ [COL ACOSTA]: No, I understand.

15 ADC [MS. MORGAN]: ---- so.

16 MJ [COL ACOSTA]: What my point is, this examination of a
17 witness is to present evidence, not to conduct discovery.

18 The objection is sustained in part and denied in part. You
19 can move on.

20 ADC [MS. MORGAN]: Okay.

21 Q. Dr. Jessen, I am not asking in a nefarious fashion about
22 the movement of detainees. That was not where I was going with this.
23 And so to the extent that was put into the aura, that was not where I

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1 was going.

2 Detainees, we had actually talked a little bit about it
3 yesterday, did not have control around their moves; is that accurate?

4 A. That's accurate.

5 Q. And it -- your -- is it accurate to say that it was
6 disorienting for detainees, these renditions, when they would land in
7 a new place, it -- it was disorienting? It would take a bit of time
8 to transition?

9 A. It is disorienting.

10 Q. Is it accurate to say -- I'm going to use the word
11 "comfort," which is probably not a word that gets associated with a
12 black site, but bear with me.

13 Is it accurate to say that the comfort of a black site was,
14 to some extent, leadership dependent? So who the chief of station or
15 who -- like, who the leadership was could control amenities or things
16 like that in a location?

17 A. Just in terms of a general statement; is that ----

18 Q. Yes.

19 A. Yes. The person in charge of the site was in charge of
20 everything that takes place at the site ultimately, so your statement
21 would be true. However, there wasn't a great latitude for such
22 person to make one site significantly different from another in terms
23 of amenities and those kinds of things. It was quite standardized.

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1 Q. Okay. But leadership changes did have the potential to
2 potentially have a negative impact on a site's functioning. And I'm
3 going to use the example of BLUE, Location 4.

4 A. Okay.

5 Q. So when there -- you were in Location 4 when there was a
6 leadership change, and is it accurate to say that a leadership change
7 did have -- your experience was a leadership change had a negative
8 effect on the site's functioning?

9 A. Okay. That's a complicated question, and I'll answer it
10 as best as I can.

11 After Dr. Mitchell left with the rendition team to go
12 to -- I want to make sure I do this right -- Site 4, I went home,
13 back to the States.

14 Sometime after that, and I don't remember exactly when, I
15 was called back to headquarters and asked to go to Site 4. I
16 received no specific mandate in terms of why I would go other than
17 what I typically did, and that was facilitate debriefings and, if
18 needed, do interrogations.

19 When I arrived at Site 4, the person in charge made me aware
20 of what had happened with your client. And then, after being aware
21 of that, I don't remember if I called back or just concluded that my
22 role was to try and ameliorate the results of what had happened.

23 So after being apprised of that, I went in to see your

1 client and spent -- I don't remember how long I was there, but I
2 spent quite a bit of time afterwards. Those individuals who had been
3 involved in what happened were gone, as was Dr. Mitchell. I don't
4 remember exactly when it happened, but the -- but the person in
5 charge of the site also left, and I think that was while I was there
6 and someone else came.

7 Did that answer your question?

8 Q. It did.

9 And just to sum it up, so would it be accurate to say that,
10 you know, who was in charge had an impact on the black site's
11 functioning at any particular time?

12 A. Yeah, that's an accurate statement. The person in charge
13 is in charge, so that's accurate.

14 Q. And is it accurate to say that some locations were better
15 than others in terms of amenities and just environmental conditions?

16 A. Hmm.

17 Q. And I'll use the example of COBALT has a reputation for
18 being particularly bad; is that accurate?

19 A. That is accurate.

20 Q. VIOLET has a reputation for being a bad location,
21 particularly from, you know, those that left from Guantanamo Bay and
22 went to VIOLET?

23 A. Actually, Location 8 was a very good location.

1 Q. Ah, I'm looking at -- I said VIOLET. I'm sorry. BLACK.

2 You're absolutely right, VIOLET was ----

3 A. That was -- I considered that a good location also.

4 Q. You did? Okay.

5 But you would agree with me on COBALT, COBALT being a

6 difficult location?

7 A. Yes.

8 Q. Okay.

9 A. It was primitive compared to the other locations.

10 Q. All right. So we're going to jump into

11 the -- Abu Zubaydah.

12 Now, you had been brought up to speed on the prior

13 interrogation of Abu Zubaydah? You had been brought up to speed on

14 the prior interrogation of Abu Zubaydah?

15 A. I had, yes.

16 Q. And you were aware that he had actually engaged in some

17 amount of communication with the FBI?

18 A. Yes.

19 ATC [MR. RYAN]: Your Honor, I'm going to raise an objection

20 to the interrogation of Abu Zubaydah as being irrelevant for this

21 witness for these motions.

22 MJ [COL ACOSTA]: Defense, how is Abu Zubaydah's

23 interrogations relevant?

1 ADC [MS. MORGAN]: Judge, this is the entire -- this is the
2 template, as Dr. Jessen -- this is how the template is made that is
3 then reproduced for my client, for KSM. It is -- it is interrogation
4 number 1 which then is modified. I mean, it ----

5 MJ [COL ACOSTA]: All right. I will allow some exploration of
6 it, but I -- of the creation of what you call the template and to lay
7 that foundation as to its relevance as it applies to Mr. Nashiri and
8 to -- and to Mr. Khallad.

9 Counsel, that's the ruling. You've laid your -- I've made
10 myself clear on what ----

11 ADC [MS. MORGAN]: And, Judge, I would just ----

12 MJ [COL ACOSTA]: And, Counsel -- Counsel, again, I've got it.
13 I understand. You can lay the foundation as to the creation of
14 it -- the creation of the template and how that's relevant. You may
15 proceed.

16 ADC [MS. MORGAN]: And, Judge, I would just like to, at least
17 for the record, point out that the -- this is an area that was
18 entirely explored during the 9/11 commission. And so to the extent
19 that it is relevant for those five defendants -- Abu Zubaydah, who is
20 most certainly not one of them -- it is certainly relevant here, and
21 once again say that I recognize that there are certain -- this is a
22 scheduling issue ----

23 MJ [COL ACOSTA]: No, Counsel -- Counsel, do not assume that

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1 that is the reasoning for the sustainment of the objection for
2 relevance. The sustain ----

3 ADC [MS. MORGAN]: But ----

4 MJ [COL ACOSTA]: The -- the -- I'm allowing you, as I said,
5 to lay the foundation in questions for relevance as to the creation
6 of this template on Abu Zubaydah as the questioning of the accused in
7 this case which immediately followed, and that's what we want to get
8 into.

9 I know that they're very closely related based upon prior
10 testimony and evidence presented and to your motions. I do want to
11 hear about how it -- how they're related, and I want you to present
12 that. It has nothing to do with scheduling on this issue. I want to
13 hear what the commission needs to hear on its impact on the
14 voluntariness of the 2007 statement.

15 ADC [MS. MORGAN]: Copy all, Judge.

16 MJ [COL ACOSTA]: You may proceed.

17 ADC [MS. MORGAN]: All right.

18 Q. Dr. Mitchell **[sic]** -- and just to sort of connect the two,
19 Abu Zubaydah and my client end up spending a significant amount of
20 time together in various sites ----

21 A. Slow down just a little.

22 Q. Abu Zubaydah and my client end up spending a significant
23 amount of time together in various black sites ----

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1 A. Yes.

2 Q. ---- is that correct?

3 A. That is correct.

4 Q. Okay. And so you are aware of the prior interrogation of
5 Abu Zubaydah, and you're aware that he has previously engaged in some
6 amount of conversation with the FBI; is that accurate?

7 A. I'm aware of that.

8 Q. Okay. Now, he was willing to engage in rapport building
9 with the FBI; is that your understanding?

10 A. To some degree ----

11 Q. Okay.

12 A. ---- yes, and then it went south.

13 Q. When they got hostile?

14 A. I think so. I believe so, yeah.

15 Q. Okay. Now, Dr. Mitchell in a podcast referred to rapport
16 building as it being a possible -- like a subject's willingness to
17 engage in rapport building as actually a possible resistance
18 technique. He used the phrase "smokin' and jokin'."

19 And so I wanted to just take a moment and talk about
20 you -- your getting into that. You land at GREEN, you're about to go
21 into this interrogation, and what you're immediately looking for in
22 terms of potential resistance techniques. That's one of them. But
23 I'm -- I just want to sort of understand what you're looking for in

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1 terms of resistance techniques.

2 A. In whom?

3 Q. In Abu Zubaydah.

4 ATC [MR. RYAN]: Your Honor, I must object again on the
5 grounds that Mr. Zubaydah's resistance techniques have no relevance
6 to either Mr. Bin'Attash or Mr. Nashiri's resistance techniques, if
7 there were any.

8 MJ [COL ACOSTA]: Defense?

9 ADC [MS. MORGAN]: Judge, these are themes that are developed
10 throughout each of these interrogations. So whether it is -- both
11 Mr. Abu -- I'm sorry, both -- Mr. Abu Zubaydah and both
12 Mr. al Nashiri, it is eventually determined, have no operational
13 threat information to provide, and so there are parallels between how
14 these interrogations are approached.

15 In both of these situations, Dr. Jessen and Dr. Mitchell
16 make a recommendation to headquarters that every -- that things need
17 to be stopped, that there is no information to be obtained. In both
18 of these situations, headquarters refuses to listen to the
19 doctors ----

20 MJ [COL ACOSTA]: Well ----

21 ADC [MS. MORGAN]: ---- continues to proceed.

22 And so how these parallels line up from the beginning is a
23 necessary indication to explore, particularly when you're testing the

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1 integrity of the program later and how headquarters was proceeding in
2 continuing to interrogate these two gentlemen and how they proceed
3 with Khallad.

4 MJ [COL ACOSTA]: Government?

5 ATC [MR. RYAN]: It is our position, sir, that ultimately, the
6 question before the commission in these two motions, and that this
7 witness is called to talk about, is what's inside the head of the
8 particular accused, and specifically what's in their head in early
9 2007 when they incriminate themselves to FBI agents.

10 The program and all its hills and valleys leading up to
11 those moments are not relevant except to the extent that it impacted
12 the voluntariness and reliability of statements made by
13 Mr. Bin'Attash and Mr. Nashiri in 2007.

14 MJ [COL ACOSTA]: All right. And, Defense, I do not want you
15 to think that it is lost on me the theme of what -- of your
16 examination, the total theme of the conditioning, et cetera, and as
17 it's gone.

18 And while that's not as addressed in full as you're doing
19 here in your motion -- right? -- and I understand you're expanding on
20 467 greatly, the theme of the conditioning, the treatment, and what
21 it means, all the -- you know, the -- the naive -- I understand the
22 SERE background and how that -- the individuals that were doing that
23 program were then doing interrogations ----

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1 ADC [MS. MORGAN]: Judge ----

2 MJ [COL ACOSTA]: Hold on. I'm not -- Counsel, me pausing for
3 you to get a note is not an invitation for you to fill the void.

4 The -- I understand the theme of where you're going with the
5 examination for -- for all of this. I am looking for the relevance
6 of the approach -- if there is relevance to the approach that was
7 taken with Abu Zubaydah with the approach to your client -- and I
8 understand that there is -- that they are close in time and have
9 potential links that you seek to exploit, that's what you need to
10 focus on.

11 ADC [MS. MORGAN]: So, Judge, a couple points to be made on
12 that. First of all, I truly do understand the government's point.
13 It's very convenient to try and lock my client into where he was in
14 March of 2007, except that misses ----

15 MJ [COL ACOSTA]: No, no.

16 ADC [MS. MORGAN]: ---- everything.

17 MJ [COL ACOSTA]: I apologize. I'm interrupting you now, but
18 that's kind of the prerogative.

19 The -- the issue is I understand that your point is that
20 they're connected, and I want to hear that. I understand that you're
21 saying -- that the defense's theory is that the treatment, the
22 conditioning, the things that are learned through these -- through
23 the techniques that were applied did not dissipate or disappear from

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1 his transfer of authority -- from his -- from the -- the earliest
2 interrogations through his confinement with the agency, to his
3 transfer and then his statement made in February. I understand that
4 that's your theory, and you can put that forward through the evidence
5 you're presenting.

6 But you've got to show that -- you need to show the link now
7 through what he was looking for -- if there is a link that you can
8 show from what he was looking for in Abu Zubaydah to what he was
9 looking for when he interrogated your client, then do so. If not,
10 then it's not relevant.

11 ADC [MS. MORGAN]: Well, and that's what we're doing, Judge,
12 but there's two, I mean, I think other points, is, one, my client's
13 not the Manchurian Candidate, right? Like, we're not saying he's the
14 guy who this one thing happened to and somehow we created this. What
15 we're saying is this was a, like, systematic program ----

16 MJ [COL ACOSTA]: Oh ----

17 ADC [MS. MORGAN]: ---- and that's why these other people are
18 relevant. And, again, we are cut off at the knees because the
19 government refuses to give us other witnesses. And so I have the
20 good doctor here, and so I have an opportunity to explore with him.

21 Look, I want nothing more than every person that I talk to
22 in -- that interacted with my client in the black site. I don't even
23 know who those people are because as of March 14th, 2023, the

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1 government, by the way, turns over nine-year-late discovery of
2 somebody who saw my client in the black site who had substantial
3 contact with who they were ordered to give me in 2014.

4 So it -- I would love nothing more than to be doing this the
5 right way like we would do in any real court in America, which is
6 have every witness lined up to actually present the evidence in a
7 systematic, chronological fashion and not be trying to do it through
8 one witness. Unfortunately, we don't get that.

9 So what I have is a witness who I can then draw a reasonable
10 inference from of this isn't just my client; this is actually
11 occurring with multiple people because there's a program that's set
12 up to do it this way, and I don't have some weird outlying crazy
13 theory. And that's the relevance.

14 The other relevance is you have this guy who travels with my
15 client through the entire program and, oh, who, by the way, is
16 actually used to convince my client to engage in certain behavior
17 when they get to GTMO in -- when it's a black site, a Location 6.
18 And so he's used to leverage against my client.

19 I mean, this -- we're put in this system. It is not the way
20 that we would prefer to present all of our evidence through one
21 witness; unfortunately, that's where we are. And it is most
22 certainly relevant to go here and talk through the logical steps of
23 how this program was created and then to fit my client within that

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1 program, not talk about my client and then make the program the
2 footnote.

3 MJ [COL ACOSTA]: Counsel, I -- again, as 467, again, right,
4 incorporates by reference the 459 which is the outrageous conduct,
5 which covers everything that -- I believe the defense would agree
6 covers many of the things that -- many if not everything that
7 happened to your client, but I do want to hear it from this witness.

8 Again, the commission is well aware that this was a program
9 that was design to get the information, as the witness has testified
10 to. What the commission needs to hear to resolve this motion is the
11 actions that were taken towards your client and what the result was
12 and why they were the -- and why they were done.

13 If you can tie that to your question of what expected
14 resistance methods he was going to see from Abu Zubaydah -- your
15 answer did not do that. I will -- so that objection is sustained.
16 You can talk about -- more about Abu Zubaydah as long as it's
17 relevant to Mr. Nashiri.

18 Go ahead.

19 Q. You arrive at GREEN in July of 2002. Is that ish,
20 like ----

21 A. Yeah.

22 Q. Okay.

23 A. Yes.

1 Q. He, at that point, is the only detainee, correct?

2 A. I'm sorry. I didn't hear that.

3 Q. No? I'll move closer to the microphone.

4 In 2002 -- in July 2002, he's the only detainee at that
5 location?

6 A. Correct.

7 Q. Okay. You have an opportunity, you said yesterday, to
8 spin up on the intelligence?

9 A. Yes.

10 Q. And you said that Dr. Mitchell had helped to design GREEN?

11 A. Had helped?

12 Q. Had helped to design GREEN?

13 A. Yes, correct.

14 Q. At the time that you get there, Abu Zubaydah has been in
15 solitary confinement for about eight weeks; is that correct?

16 A. I don't remember the time, but it was quite a spell, yeah.

17 Q. Okay. Does 47 days sound right?

18 A. I don't know the specifics.

19 Q. Okay. I want to take a minute to talk about the
20 environment of GREEN and what it looked like, so I'm just going to
21 ask from the best of your memory.

22 But ----

23 A. Could I qualify the last question?

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1 Q. Sure.

2 A. Just so I can answer completely for you.

3 This is my understanding -- I wasn't there, but I -- my
4 understanding was he was in solitary in terms of he was -- he was
5 never interrogated, questioned; however, as you know, he had
6 significant medical issues, particularly in his early confinement.
7 So he did interact with guards and with medical personnel and food
8 was delivered to him.

9 So he wasn't in solitary confinement, but he certainly
10 didn't have daily interactions with questioning. And if he asked to
11 speak to someone, they probably only would have let him talk to the
12 medical personnel.

13 Q. And do you know if medics were actually allowed to have
14 any verbal exchanges with him?

15 A. Who's that?

16 Q. Do you know if medics were allowed to have any verbal
17 exchanges with him?

18 A. I don't know that specifically, but I don't see how they
19 could do their job without it. They had to dress his wounds and they
20 had to assess, you know, how he was feeling in terms of pain and
21 other things.

22 Q. Just to describe the environment a little bit, at GREEN,
23 it's all-white cells. Does that sound right?

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1 A. Yes.

2 Q. There's no natural light?

3 A. No.

4 Q. There's no windows?

5 A. No.

6 Q. Fair to say -- accurate to say you can't tell what time of
7 day it is?

8 A. No.

9 Q. There are four bright halogen lights that point inwards
10 towards the cell?

11 A. Yes.

12 Q. And the -- someone had taken steps to actually sand down
13 the cell bars so that there was no sensory stimulus?

14 A. I don't know about that.

15 Q. The air-conditioning unit was used to maintain a cold room
16 temperature?

17 A. I don't know about that.

18 Q. Okay.

19 A. I don't ----

20 Q. Loud music was ----

21 A. I may have at the time, but I don't remember that. I
22 can -- I can submit that when you say cold, it's my understanding
23 that they weren't trying to use heat as some kind of deprivation for

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1 or some kind of technique to make him more pliable. And there were
2 specific standards, I think even at that time, in terms of what
3 temperature ranges could be.

4 Q. Do you remember loud music playing?

5 A. I remember it was either played before I got there or
6 maybe they played it while I was there. I don't think that continued
7 for long. But yes.

8 Q. And do you remember that once interrogations began, that
9 his hospital gurney was moved out of his cell completely?

10 A. What was moved out?

11 Q. His hospital gurney. So he was in a cell with no bed, no
12 sheets, just an empty cell.

13 A. I don't remember that. That was probably the case,
14 though.

15 Q. Okay. The security officers, my -- they were dressed in
16 all-black uniforms, black boots, black gloves; is that correct?

17 A. Yes.

18 Q. Black balaclavas covering their heads?

19 A. Yes.

20 Q. Black goggles?

21 A. Yes.

22 Q. So they were completely unidentifiable?

23 A. Yes.

1 Q. Is that how you dressed as well?

2 A. No.

3 Q. No.

4 For the security officers, were they CIA as well?

5 A. Yes.

6 Q. Do you know if they were the CIA guard force or were they
7 some kind of CIA ground branch?

8 ATC [MR. RYAN]: Objection. Relevance, Your Honor.

9 MJ [COL ACOSTA]: Defense?

10 ADC [MS. MORGAN]: I'm asking the difference of whether they
11 were typical security officers or whether they were a paramilitary
12 force, because that ----

13 MJ [COL ACOSTA]: Overruled. I'll allow it.

14 Go ahead, if you know the answer.

15 A. They were SPOs, security police officers, so that's
16 typical police force people, to my knowledge.

17 Q. Did you observe para -- CIA ground branch or paramilitary
18 security at any of the black sites?

19 A. Yes.

20 Q. Which black sites?

21 ATC [MR. RYAN]: Objection, Your Honor, again. Same -- same
22 stance.

23 MJ [COL ACOSTA]: Overruled. I'll allow it.

1 A. I can answer?

2 Q. You can answer that.

3 A. I saw them at Location 2 exclusively. I didn't see them
4 at other locations.

5 Q. I'm sorry. I couldn't hear that last part.

6 A. I didn't see them at any other locations.

7 Q. At any other locations. Okay.

8 Did they wear some type of other uniform or something that
9 made them -- I don't -- I'm just asking for a yes or no here.

10 Did they wear some type of other uniform or something that
11 made them identifiable?

12 A. They wore the standard non-uniform wartime kit. So they
13 probably had 5-9 cargo pants on, a vest, a baseball cap. They
14 weren't -- it wasn't a uniform, so they dressed somewhat differently.
15 But you could identify them easily enough because they always have
16 the same kind of sunglasses and -- you know, they just have a look.
17 But there was no specific uniform, and they didn't dress as the
18 guards did.

19 Q. Got it. Copy.

20 Now, the entire environmental manipulation that we were
21 talking about in the cell -- light, sounds, temperature -- has been
22 described as intended to cause psychological disorientation and
23 reduce psychological wherewithal for integration; is that accurate?

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1 A. I'm not sure -- integration?

2 Q. Let me say it again so I ----

3 It's intended to cause psychological disorientation and

4 reduced psychological wherewithal for integration.

5 A. Hmm.

6 Q. Would that be an accurate ----

7 A. Did I say that?

8 Q. You didn't, no. No, no, no, no.

9 A. Okay.

10 Q. It actually comes -- it comes from Biderman.

11 A. The first part of that tracks with my thinking. I suppose

12 whoever said that in terms of wherewithal means ability to orient and

13 resist and mobilize resistance ability. So that's my guess at what

14 that means.

15 Q. Okay.

16 A. And that is accurate, yes.

17 Q. So it's accurate?

18 A. Yep.

19 Q. So it reduces your ability to mobilize resistance. Is

20 that summary ----

21 A. Yes.

22 Q. Okay.

23 A. That's a better way to say it, I think.

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1 Q. Do you remember how long after arriving you meet with
2 Abu Zubaydah?

3 A. It was at least a month because we didn't have permission
4 to do anything for a month, I think, so.

5 Q. And at some point headquarters asked you about the
6 long-term physiological effects of waterboard and mock burial. Do
7 you remember that?

8 A. No. I don't remember anything to do with mock burial.

9 Q. Okay. You said that you did not support that technique.

10 A. I didn't exactly say ----

11 Q. I ----

12 A. ---- I didn't support it.

13 Q. I'll let you clarify.

14 A. I wasn't there when it was thought about, and I think it
15 was eliminated before I arrived, so I didn't have any input into it.

16 Q. I'll -- and I'll ask you the question right now.

17 Do you have an opinion -- as far as mock execution is
18 concerned, do you believe that is a technique that has the potential
19 for long-term psychological harm?

20 ATC [MR. RYAN]: Objection, Your Honor.

21 MJ [COL ACOSTA]: Overruled. I'll allow it.

22 A. Yes, I do.

23 Q. I'm going to show you a document. I think it has your

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1 name on it, but based on your commentary, you may not have
2 authored -- I would like to hear your thoughts.

3 A. Okay.

4 Q. So I think we've learned just because things have our name
5 on it, doesn't always mean that we did it, so ----

6 A. That's for sure.

7 Q. Okay. It's going to be document 10, Comments on Proposed
8 Interrogation Process. It is a cable dated 23 July 2023 [sic].

9 ADC [MS. MORGAN]: This is a three-page document, Judge. And
10 I'm handing a copy to the witness.

11 MJ [COL ACOSTA]: All right. It is marked as AE 467CC; that
12 is, AE 467-Charlie-Charlie.

13 Q. And, Dr. Jessen, I believe you said that in early July,
14 you did not have access to the CIA cable system?

15 A. That's correct. I couldn't get on and read what I wanted
16 to at will or send any information. But cables that they thought I
17 should see, they showed me.

18 Q. Now, I'm going to draw your attention -- it's the second
19 page. I'm going to go ahead and put the second page up here.

20 A. Okay.

21 Q. It's going to be paragraph 4 and 5.

22 So before I draw -- before I start asking questions about
23 this, if -- if headquarters -- I'm sorry.

1 If the -- if GREEN was sending a cable back to headquarters
2 and they needed your input, would you sit with them while they typed
3 the cable?

4 A. No.

5 Q. How would you provide input?

6 A. We would -- the room where the computers were was above
7 where the cells were, and it was quite a large area, so there was
8 a -- kind of like a common area with a lot of chairs and carrels to
9 do work. We'd sit there and have our discussions. And then whomever
10 was going to write the cable would go write the cable.

11 Q. Okay. So is it accurate to say that in July of 2002, you
12 wouldn't have written this cable?

13 A. Yes. I don't remember when they gave us access, but I'm
14 pretty sure it wasn't ----

15 Q. It wasn't first thing?

16 A. Yeah.

17 Q. Okay. So I'm going to draw your attention to paragraph 5.
18 It appears that whoever wrote this cable is talking about whether or
19 not -- the effective use of the waterboard and whether or not there
20 is a risk for long-term harm.

21 And so specifically, about halfway down that paragraph,
22 it -- in a sentence starting "IC SERE" -- and IC, I'm assuming
23 means -- he's referring to ----

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1 A. Independent contractor.

2 Q. Referring to you, independent contractor.

3 A. Yes.

4 Q. Independent contractor SERE psychologists are not aware of
5 any specific statistics regarding long-term mental health outcomes or
6 consequences from use of waterboard in training. IC SERE
7 psychologists do know that the Navy has not reported any significant
8 long-term mental health consequences from use of the waterboard in
9 training.

10 IC SERE psychologists are also aware that JPRA, which is the
11 OPR for executive oversight for all Department of Defense, DoD, SERE
12 Schools and charged with ensuring safety in techniques used in
13 training has not reported significant long-term mental health
14 consequences associated with the use of the waterboard.

15 Additional information concerning the use of the waterboard
16 in Navy SERE Schools -- and I'm going to go to the next page.
17 Retrieving page 2, putting down page 3 -- can be obtained
18 from -- redacted.

19 It goes on to say: The JPRA SERE psychologists
20 and -- blank -- the West Coast Navy SERE School psychologist speaking
21 directly on the issue -- to the issue of inducing severe mental pain
22 or suffering, any physical pressure applied to the extremes can cause
23 severe mental pain or suffering.

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1 And it goes on to talk about some different things.

2 So I'm going to go ahead and ask you a few questions just
3 about that paragraph. Do you remember being asked to opine on this
4 issue, to weigh in on this issue?

5 A. I don't remember the specific incident, but I know I would
6 have been asked.

7 Q. Okay. Was the question you were asked about the safety of
8 waterboarding in general or the safety of waterboarding in SERE
9 School?

10 A. Probably both. I don't remember specifically.

11 Q. Okay. Now, yesterday you mentioned that you were unaware
12 of studies that tracked long-term mental health issues from the SERE
13 Programs, from SERE graduates.

14 Do you remember if you would have consulted any when you
15 wrote this or is it your understanding that those studies don't
16 exist?

17 A. I don't know if they exist. What I know is, as I told you
18 yesterday, that the agency reached out to the executive agent.
19 Specifically the questions they asked or the data they gathered, I
20 don't know. But I know they also consulted experts on torture,
21 physiological duress and so forth. But that all had to be done and
22 then presented to the Justice Department before they made the ruling
23 that this could go ahead and that it didn't constitute torture.

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1 So I know those discussions took place. I wasn't part of
2 them or I -- you know, I was deployed. But I -- we did discuss that
3 at the site, and I don't have any objection to anything that you've
4 read in that paragraph.

5 Q. When you say they had discussions with experts on torture,
6 do you know who they discussed ----

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

8 Q. Okay. Are you familiar at all with the Istanbul Protocol?

9 A. Vaguely.

10 Q. Okay.

11 A. You know, I remember the name, but I couldn't cite
12 anything that's in it for you. I could guess at it.

13 Q. Do you remember either yourself reviewing that at the time
14 or if anybody else brought it up in discussions?

15 A. I don't know.

16 Q. Okay.

17 A. I don't know.

18 Q. When looking at studies to determine the safety of
19 waterboarding for this program, had anyone looked at studies at
20 long-term psychological effects on the POW community?

21 A. In terms of?

22 Q. So we had had American servicemembers who had been
23 waterboarded in prior conflicts, right? Coming back?

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1 A. I don't -- I don't know of any. They used -- the
2 waterboard has been used time immemorial, but ----

3 Q. Okay.

4 A. ---- I can't recall anyone I interviewed ----

5 Q. Okay.

6 A. ---- who was waterboarded, and I don't remember any
7 studies about that.

8 Q. Okay.

9 A. I know what it -- I know it was a technique. Like I said,
10 it's been around for a long, long time, but ----

11 Q. Okay.

12 A. In various forms.

13 Q. I sent over some studies on PTSD in POWs to the
14 prosecution. We may talk a little more about PTSD tomorrow. If you
15 don't mind looking at some of those studies, I think we could
16 probably have a really interesting conversation. It's not a gotcha.
17 I promise.

18 A. Yeah, I'm happy to look at them.

19 Q. Yeah. So that was just -- that was something that you
20 didn't have any personal experience working with PODs -- POWs who had
21 been waterboarded?

22 A. No.

23 Q. And that wasn't something that had come up in the

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1 conversations in the community that we were talking about the safety
2 and efficacy of this model?

3 A. I don't understand.

4 Q. Let me ask a better question.

5 Is it accurate to say when we -- when the CIA was weighing
6 whether or not to use the waterboard, the focus was on whether or not
7 this had been proven a safe method at the SERE School?

8 A. Yes.

9 Q. Okay. I'm going to go ahead and -- actually, one point.

10 You said you don't take any issue with anything in this. I
11 think you testified to this yesterday, but you would agree
12 that -- and with that last sentence in paragraph 5 that says, Putting
13 the use of loud music, sleep deprivation, controlling darkness and
14 light, slapping, walling, or the use of stress positions taken to the
15 extreme can cause severe mental pain or suffering?

16 A. Yes.

17 Q. Okay. I'm going to go ahead and retrieve that page.

18 ADC [MS. MORGAN]: Retrieving the exhibit from the witness.

19 Q. Were you ever made aware that the CIA was floating the
20 idea -- and I don't know who they were floating this for, so I'm
21 saying this as somebody who genuinely doesn't know.

22 But were you aware that the CIA was floating the idea of
23 advanced declination of prosecution for people in the CIA RDI

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1 program?

2 A. Advanced?

3 Q. Advanced declination of prosecution.

4 A. **[Indicated]**.

5 Q. Okay.

6 ATC [MR. RYAN]: Objection. Relevance, Your Honor.

7 MJ [COL ACOSTA]: He answered in the negative.

8 Defense, what's the relevance of the question?

9 ADC [MS. MORGAN]: It's bias.

10 MJ [COL ACOSTA]: Overruled.

11 Was that correct, Dr. Jessen? You just shook your head

12 "no." I didn't hear you verbally respond.

13 WIT: I wasn't aware of that, Judge.

14 MJ [COL ACOSTA]: Okay. Thank you.

15 WIT: Of course.

16 Q. Were you ever made aware of any of the CIA's plans or

17 discussions for what would happen if the Abu Zubaydah interrogation

18 had gone poorly? And what I mean by poorly is: Did anyone ever tell

19 you what would happen if Abu Zubaydah died?

20 ATC [MR. RYAN]: Objection. Relevance, Judge.

21 MJ [COL ACOSTA]: Defense?

22 ADC [MS. MORGAN]: And, Judge, again, this goes to bias.

23 There was a plan to essentially cremate him to hide the body and to

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1 hold him incommunicado. And so whether this witness knows that
2 there's a plan in advance to keep this clandestine for life or
3 whether this is something he, you know, enters that -- enters the
4 model under that, eyes wide open to that, or enters the model
5 thinking this is a contract to go and conduct an interrogation and to
6 leave ----

7 MJ [COL ACOSTA]: Okay.

8 ADC [MS. MORGAN]: ---- those are very different situations.

9 MJ [COL ACOSTA]: Overruled.

10 I'll allow you to answer the question. Go ahead.

11 A. I didn't know -- what I was told is they didn't know what
12 the endgame was.

13 Q. Okay.

14 A. That things had to progress, they had to move now, we had
15 to get the information, and they didn't know what the endgame would
16 be.

17 Q. Okay. So you were never brought into, like, we're going
18 to cremate him and hide the body or we're going to keep him
19 incommunicado for the rest of his life? No one was talking to you
20 about that?

21 A. I may have heard people conjecture about that ----

22 Q. Uh-huh.

23 A. ---- but I didn't ever receive an official statement from

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1 a CIA person saying, you know, this is what we're going to do. But
2 they did say before we left: We don't know what the endgame is yet.
3 Just go out there and do your job.

4 Q. Do your job. Nope, totally makes sense.

5 Eventually, Abu Zubaydah does become the template for what
6 is used in your program's interrogations?

7 A. Yes.

8 Q. Okay.

9 A. It was improved and modified over time, but it certainly
10 was the initial template.

11 Q. And overall, would you -- is your opinion that it was a
12 successful interrogation?

13 A. Yes.

14 That's certainly an independently defined variable.

15 Q. Yes.

16 A. I mean, there's question, isn't there, about whether it
17 was useful ----

18 Q. Uh-huh.

19 A. ---- in terms of gathering intelligence. But that wasn't
20 a question that Dr. Mitchell and I or other interrogators would or
21 could answer. That was for the analysts and the CIA to determine.

22 So when I say yes, we did the best we could following the
23 rules that we had, you know, given the permissions the government had

1 given us. And in that regard, I believe it -- I feel it was
2 successful.

3 Q. I think you bring up a really good point there. You know,
4 you weren't -- what I hear you saying -- and correct me if I'm
5 wrong -- what I hear you saying is that you weren't there to
6 determine if what Abu Zubaydah or Mr. al Nashiri or, you know,
7 Mr. Bin'Attash were saying was true. That wasn't your job.

8 A. That's correct. Well, yes. I mean, we weren't there to
9 determine if the intelligence was useful or not. We certainly
10 were -- were hopeful that we got some truthful information, but we
11 knew we didn't make that determination. That wasn't our -- our call.

12 Q. You're not a human lie detector?

13 A. Say?

14 Q. You're not a human lie detector?

15 A. No. No.

16 Q. And so you went in with the goal of getting these
17 individuals to talk to you; is that accurate?

18 A. Establish that unique kind of contract so that there was
19 the kind of rapport where -- that would allow these analysts and case
20 officers to come in, ask questions, and get useful intelligence.

21 Q. And so you're trying to get them to the point where you
22 can turn them over to the debriefers ----

23 A. Yes.

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1 Q. ---- and the analysts?

2 A. Yep.

3 Q. And ultimately, who is making the call about how long you
4 stay in the EIT phase? Is it -- do you get to say nope, I quit, I
5 had it, or is that a headquarters-level decision?

6 A. At the site, that's a group decision. There's always a
7 hotwash after every interrogation that's led by the person in charge;
8 everybody is there. And so the -- you go over what happened. Did it
9 happen correctly? You know, what direction do we need to go next
10 time? And so you ask the analysts, What do you think?

11 Initially with Abu Zubaydah, we were restricted to one
12 question really and that was: Where's the next attack going to
13 happen? So there wasn't a lot of debate right at the first about
14 that or direction in terms of what we should ask about.

15 Did that answer your question?

16 Q. That did.

17 And so were there -- there have been points -- you know, and
18 we'll get into a little more. But there are points where you and
19 Dr. Jessen [sic] believe that you have gotten all -- that the
20 individual's compliant, both Abu Zubaydah -- and this comes up again
21 with Mr. al Nashiri. The individual is compliant. They've given you
22 the information they're going to give you, and ultimately
23 headquarters tells you to keep going; is that correct?

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1 A. Not with Mr. Nashiri, but ----

2 Q. Okay.

3 A. ---- with Zubaydah, we reached a point where we believed

4 that he either didn't know or was not going to tell us.

5 Q. Okay.

6 A. And at that point, Dr. Mitchell and I concluded that we

7 shouldn't use the waterboard anymore. So we said -- we told them he

8 either doesn't know or he's not going to tell us and we're not going

9 to do that anymore.

10 Q. All right. And headquarters overruled?

11 A. They wanted to talk about that.

12 Q. Uh-huh.

13 A. And we had a conference call and a lot of -- I don't

14 remember everyone who was in the room, but the conclusion of that was

15 send out your senior people and your most skeptical analysts, and

16 we'll do this one more time. And that occurred, and we did do it one

17 more time.

18 By that time, the two people that were out there were

19 actually in concordance with us because they had asked him about

20 other questions and gotten useful information, and they -- I think

21 they realized that -- well, that's supposition on my part.

22 Anyway, it was done one more time, and then that was it.

23 Q. Okay. Let me not get too far ahead of myself.

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1 All right. So you finally get the approval from DoJ, you
2 can go ahead with the interrogation of Abu Zubaydah. Your
3 interrogation begins on August 4th. Does early August sound right?

4 A. Yeah.

5 ATC [MR. RYAN]: Objection, Your Honor. Based on Your Honor's
6 prior ruling, I believe we are now in testimony that is irrelevant to
7 the motions.

8 MJ [COL ACOSTA]: Defense, is this going to tie into the -- to
9 the interrogation of Mr. Nashiri?

10 ADC [MS. MORGAN]: Yes.

11 MJ [COL ACOSTA]: All right. Let's -- let's move in that
12 direction.

13 ADC [MS. MORGAN]: All right.

14 MJ [COL ACOSTA]: Overruled at this time.

15 ADC [MS. MORGAN]: I'm sorry, Judge? I didn't hear that.

16 MJ [COL ACOSTA]: I said the objection is overruled at this
17 time. You may proceed.

18 Sorry, I lean towards the television where I'm watching you,
19 which leans me away from the microphone, so I'm being
20 counterproductive. Go ahead.

21 Q. Now, prior to beginning any interrogation, in addition to
22 an interrogation plan, you also conduct what's called a psychological
23 assessment? Am I getting that right?

1 A. You are getting that right.

2 Q. All right.

3 A. Yeah.

4 Q. So can you -- I want to talk to you a little bit about
5 that, but go ahead.

6 A. Yeah, I will tell you about that. That -- I don't
7 remember exactly how this all fell out, but they obviously -- and we
8 wanted some assurance that we could go ahead from a psychological
9 standpoint. Dr. Mitchell and I are both psychologists, so we
10 rendered our opinion. But we also realized soon afterwards that that
11 is a dual role and that it wasn't the best course for us to do that
12 and be interrogators.

13 My recollection is I know from that time forth, that was
14 cleared up and that didn't happen. But my recollection is they did a
15 remote psychological assessment. A psychologist at headquarters did
16 a second assessment, but they did that remotely before we proceeded.

17 Q. Okay. So you actually don't do the psych assessment
18 on -- okay. That's helpful to know. Then I will not ask you about
19 Abu Zubaydah's psych assessment. I will get to that later.

20 At some point, you do start doing psych assessments on
21 detainees?

22 A. Never.

23 Q. You never do?

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1 A. **[Indicated]**.

2 Q. Interesting. Okay.

3 A. Well, I assess because I'm a psychologist.

4 Q. Yeah.

5 A. But there is a person designated ----

6 Q. To do the ----

7 A. ---- a psychologist there on-site who does the evaluation

8 because it's -- you know, you're dual purposes. If you're going to

9 be the person that interrogates and you also decide whether the

10 person is fit to be interrogated.

11 Q. Okay. And would you agree that it would be a conflict to

12 be the person who did the psych assessment and be the interrogator?

13 A. I do agree to that. And like I said, I explained to you

14 there was some confusion about that ----

15 Q. Yeah.

16 A. ---- at the start. There didn't happen to be any other

17 psychologists around, and I explained yesterday what the

18 environmental situation was at the time. Notwithstanding,

19 fortunately before things went too far, that was corrected and -- and

20 it was done ----

21 Q. And you were able to split it up, then?

22 A. ---- so you had a separation of ----

23 Q. Okay.

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1 A. ---- missions, yeah.

2 Q. I'm going to show you a document that I think maybe has
3 contributed to some of the confusion that's followed this ----

4 A. Okay.

5 Q. ---- case. And I don't know if you've seen it before, but
6 maybe -- maybe this will clear something up. It's document
7 number 12, Setting Up for Interrogations. It's a cable dated 22
8 September '02. All right.

9 ADC [MS. MORGAN]: Handing the document to the witness.

10 MJ [COL ACOSTA]: It is marked as 467-Delta-Delta; that's
11 467DD.

12 ADC [MS. MORGAN]: And just for the record, it is a five-page
13 exhibit.

14 Q. All right. I'm putting the first page on the overhead.

15 A. Okay.

16 Q. And I recognize this is dated September 19, 2002, so this
17 is after the Abu Zubaydah interrogation begins. But it is looking
18 for -- I'll draw your attention to the very first line of the very
19 first paragraph with: Redacted -- noting the psychological
20 assessment needs to be defensible. I will define this as an HVD
21 psychologist being able to reliably determine if detainee has a
22 psychopathological condition that precludes the interrogation
23 measures that were approved for use on AZ.

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1 And so my question is: Is this reflective of the change?

2 Have you seen this document before?

3 A. I don't think so.

4 Q. Okay. You are -- I will note on the very last paragraph
5 of the first page, you and Dr. Mitchell, and your particular schedule
6 is noted?

7 A. At the very bottom of this page?

8 Q. Yes.

9 A. I see my name there, yes.

10 Q. Yes. And so I didn't know if you had been -- so
11 obviously, we don't get to see the "to," "from," and "cc" lines. So
12 I didn't know if you had previously seen this document.

13 A. I don't remember it.

14 Q. Okay. And so are you aware of what is being meant
15 by -- well, and I'll show you a second -- I'm going to go to page 3
16 of the document.

17 ATC [MR. RYAN]: Judge, I object to the document being used.
18 The witness cannot identify it.

19 ADC [MS. MORGAN]: Judge, he just testified to a change in how
20 an initial evaluation is done versus a -- was done versus how it's
21 changed. His name is in the documents. I recognize he said he
22 doesn't remember seeing them, but asking him about whether this would
23 be reflective of the change is a relevant purpose.

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1 MJ [COL ACOSTA]: You can refresh his memory with anything,
2 obviously, as to whether or not he knows how the change occurred and
3 when it occurred. But I don't know what the relevant -- what
4 the -- if the document is relevant for that purpose. You can ask him
5 about it, and you can ask him about the change anymore.

6 So you can ask him about those topics, but just to read this
7 document that he's never seen before -- the other documents were
8 things he had written, et cetera, and you got his opinions on that.
9 This he hasn't written.

10 So the objection is sustained in part, but you can ask
11 anything you want about the change in the standards for who does the
12 psychological assessment, whether or not they're an interrogator or
13 an observing psychologist, psychiatrist, et cetera. You can ask
14 that.

15 Go ahead.

16 ADC [MS. MORGAN]: Okay. I'm going to remove the document.

17 Q. As far as what is meant by a ----

18 ADC [MS. MORGAN]: And I'll go ahead and retrieve the
19 document.

20 Q. What ----

21 A. Let me read that word because you're going to ask me about
22 it. I don't know. Okay.

23 Q. Where it referred to a psychological assessment needing to

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1 be defensible ----

2 A. Yes.

3 Q. ---- you just said about -- you'd raised the issue of a
4 conflict. So concern being that if there's a conflict, the
5 assessment's not going to be defensible.

6 What is your understanding of what the concern was, what
7 they were looking for?

8 A. Okay. I think I can clear it up for you.

9 So I've already told you that we were on the ground. We had
10 permissions. And before we started, we both knew that you don't do
11 things like that without at least doing a mental status exam, but you
12 need a psychological assessment of the individual. So I told you how
13 that fell out.

14 With Zubaydah, from that point on, my understanding is it
15 happened then. CTC identified psychologists to work in the program,
16 and they would have the role of doing the evaluation and also doing
17 the monitoring, as I had explained analogously in SERE training,
18 where the psychologist is separated from the process and watching
19 what's going on.

20 And my understanding is that's what happened with your
21 client. I don't know who that was. I'm -- I don't know where it
22 happened. I don't remember. But that was the process. Jim and I no
23 longer did that.

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1 So HVD just means high-value target, so a high-value target
2 psychologist means to me that it was that person who worked for CTC
3 who was a psychologist who filled that role.

4 Later on in the program after the -- we were not doing
5 interrogations anymore, I was asked several times to go and talk to
6 detainees and to get background information and find out, you know,
7 what had motivated you to do this. You know, what -- trying to put
8 together protocol for the path to jihadi-ism, I guess. Those aren't
9 psychological evaluations, but they're certainly a psychologist who's
10 collecting information, but that's patently different from an
11 evaluation to determine if a person can be waterboarded.

12 So does that clarify it for you or ----

13 Q. It does. And so -- and that's helpful. You bring up
14 something.

15 ADC [MS. MORGAN]: And, Judge, I am conscious of the time.
16 I'm getting close to a breaking point.

17 MJ [COL ACOSTA]: That's fine. You can keep -- please
18 continue.

19 Q. You -- you know, talking about, you know, suitability to
20 be waterboarded or, you know ----

21 A. Uh-huh.

22 Q. ---- so doing that initial assessment.

23 Part of what that document talks about is a defensible

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1 psychological assessment to determine whether someone has a
2 psychopathological condition.

3 A. Yeah, I -- those words weren't written by a psychologist
4 or a psychiatrist. I don't know who wrote them. And I don't know
5 what they meant by defensible.

6 Q. Yeah.

7 A. I don't know whether they were recoiling somewhat from
8 having to correct from the first one or whether they just meant we
9 have to have this done in a way that we can defend the credibility of
10 our effort to psychologically screen this person. I don't know what
11 they meant.

12 Q. Yeah. I ----

13 A. And psychopathological is a -- that's kind of
14 psychobabble. I don't know what that person meant.

15 My guess about what that person meant is we need to make
16 sure we have an HVT psychologist do a mental status evaluation on
17 Mr. Nashiri before he's waterboarded and that that's recorded. And
18 if someone questions us about that later, that's on record and
19 it's -- you know, has been a valid assessment. That's my guess at
20 what that means.

21 Q. I want to talk a little bit about mental status
22 evaluations, so -- let me stay in order.

23 I was curious about the word "psychopathology" because my

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1 understanding of major psychopathology is those words don't really
2 mean anything -- right? -- that they don't identify a particular
3 mental disease.

4 A. Yes. Psychopathology is a --

5 ATC [MR. RYAN]: Your Honor, excuse me. I object on the
6 grounds that these subject matters are not being tied to the actual
7 two accused.

8 MJ [COL ACOSTA]: Defense?

9 ADC [MS. MORGAN]: We're -- specifically have transitioned to
10 this is what was transitioned for my client.

11 MJ [COL ACOSTA]: What was transitioned? That there was going
12 to be a separate -- a separate psycho -- pardon me. A separate
13 psychological assessment, suitability assessment for these practices,
14 correct?

15 ADC [MS. MORGAN]: Yeah.

16 MJ [COL ACOSTA]: Then let's ask about that.

17 ADC [MS. MORGAN]: Well ----

18 MJ [COL ACOSTA]: It's not ----

19 ADC [MS. MORGAN]: ---- and understanding the terminology.

20 MJ [COL ACOSTA]: Right.

21 ADC [MS. MORGAN]: What does that mean?

22 MJ [COL ACOSTA]: I will -- I don't know that he tied it to
23 that -- that he tied it -- I know it's tied to the shift from

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1 something that had happened before, but if you could clarify what
2 you're asking about specifically, that that term means nothing, got
3 it. He said it doesn't mean anything in particular. And then get
4 into what was done for Mr. Nashiri.

5 Proceed.

6 Q. So you were just saying major psychopathology means a
7 broad swath.

8 A. Yes. Psychopathology means any psychiatric disease. But
9 I don't know how that person intended it. I don't think that person
10 was a mental health professional who wrote it, just based upon how it
11 was written.

12 But my guess at why they used that term was they didn't know
13 of a better one and they wanted to say we need to make sure that
14 we've ruled out mental deficits that would compromise this person if
15 they were waterboarded, make sure that's not the case; that they're
16 sound of psychological status.

17 Q. And do you -- we're going to talk about how you applied
18 it, but do you know how any of the behavioral psychologists that were
19 working within the CIA -- were they assigned to OMS?

20 A. I believe they were -- I believe they belonged to OMS and
21 were assigned to CTC. That's my guess.

22 Q. Okay. Do you know how any of them were running their
23 mental status evaluations?

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1 A. How they were running ----

2 ATC [MR. RYAN]: Again, Your Honor, objection, unless tied to
3 Mr. Nashiri or Mr. Bin'Attash.

4 MJ [COL ACOSTA]: Defense?

5 ADC [MS. MORGAN]: Again, Judge, I can't tie it to Mr. Nashiri
6 and Mr. Bin'Attash until I ask the predicate question about do you
7 know how it was happening, then do you know how it happened to them.
8 I mean ----

9 MJ [COL ACOSTA]: Counsel -- Counsel, the question can be how
10 was the mental assessment done on Mr. Nashiri and was that the
11 standard practice. It would -- it would help clarify and reduce the
12 confusion and the objections as to relevance. So please proceed.

13 ADC [MS. MORGAN]: Again, Judge, it's ----

14 MJ [COL ACOSTA]: No, Counsel, there's no more "again." Just
15 ask the questions. Go ahead.

16 Q. Do you know the standard practice?

17 ADC [MS. MORGAN]: And, Judge, he already said he wasn't there
18 for Mr. al Nashiri's, so you have to then ask the next question about
19 the standard practice, before I see Mr. Ryan jump up out of my
20 periphery.

21 MJ [COL ACOSTA]: I understand, Counsel. You can ask him what
22 the general practice was on how they conducted psychological
23 assessments and how the one was done to his -- if he knows how they

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1 were done and if he knows how the one was done on Mr. Nashiri.

2 Please proceed.

3 ADC [MS. MORGAN]: All right.

4 Q. What is the mental status evaluation screening for? What
5 specific mental health disorders is it screening for?

6 A. Well, a mental status evaluation assesses a person's
7 orientation to time, place, and person. It's to determine if their
8 cognitive abilities are intact, if they can relate to what's going on
9 around them, they have adequate memory of the past and can orient
10 themselves in terms of what time of day is it, what's the date, you
11 know, who am I speaking to. So it's general cognition.

12 Q. So detainees wouldn't necessarily -- detainees who were
13 rendered wouldn't know the time and the date and things like that.
14 So how was it done on a detainee?

15 A. That's a good question.

16 ATC [MR. RYAN]: Same objection, Judge.

17 A. I didn't conduct ----

18 MJ [COL ACOSTA]: Hold on. Hold on. There's an objection.

19 Repeat the question, Counsel.

20 Q. Detainees who are rendered do not know time and date,
21 things that are critical to a mental status evaluation. So how was
22 that mental status evaluation conducted on detainees?

23 MJ [COL ACOSTA]: All right. Doctor -- overruled.

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1 Doctor, do you know how that was done for detainees then?

2 WIT: I don't know how they asked the questions. I have an
3 idea how I would have asked it, but I wasn't present ----

4 MJ [COL ACOSTA]: No, no, no. That's okay. You don't know
5 how it was done. Go ahead.

6 Q. So, Doctor, what I hear you say is that I would need the
7 medical provider who conducted Mr. al Nashiri's mental status
8 evaluation in order to tell me how he or she asked these questions;
9 is that accurate?

10 ATC [MR. RYAN]: Objection, sir.

11 ADC [MS. MORGAN]: I don't know what the objection is, Judge.
12 I can't respond.

13 ATC [MR. RYAN]: I'm sorry, Judge. The objection is that it's
14 asking the witness to speculate about matters not known to him.

15 MJ [COL ACOSTA]: Sustained.

16 Q. Doctor, who is in the best position to -- can anyone other
17 than a patient's medical -- can anyone other than the provider answer
18 what occurred during a psychiatric evaluation?

19 ATC [MR. RYAN]: Same objection, Your Honor.

20 MJ [COL ACOSTA]: Overruled.

21 Q. Okay. You can answer the question.

22 A. Oh, okay. Okay. You said psychiatric evaluation. There
23 are different kinds. Are you talking ----

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1 Q. Mental status evaluations.
2 A. ---- for the detainee?
3 Q. Yeah.
4 A. Okay.
5 Q. Would I need to talk to that provider?
6 A. So they have to be a licensed, certified practitioner, and
7 that came from OMS, and this is something that they obviously know
8 how to do, you know, been trained clinically. They're not
9 operational -- they are operational psychologists but they're also
10 clinical psychologists.
11 Q. So I'm asking you a little more point of the question. If
12 I wanted to know what happened, I'd have to talk to them?
13 A. Yes.
14 Q. Okay.
15 A. But you could get a general and very accurate idea of the
16 content of that because they're all done in basically the same way.
17 Q. But I would still need to know, again ----
18 A. If you want to know specifically what that doctor asked
19 them, you'd have to talk to the doctor, yes.
20 Q. And how are -- how are medical records kept in the black
21 sites?
22 ATC [MR. RYAN]: Objection, Judge.
23 MJ [COL ACOSTA]: Basis?

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1 ATC [MR. RYAN]: Relevance, sir, and, again, not tied to the
2 specific detainees or accused at issue.

3 MJ [COL ACOSTA]: Defense?

4 ADC [MS. MORGAN]: I mean, Judge, like, at some point we've
5 got to just be able to ask the questions. How medical records are
6 kept is making -- is relevant to whether or not -- and I'll ask the
7 question about how Mr. al Nashiri's medical records are kept, and
8 then I'll ask if everyone else's are kept the same way. Fine, I'll
9 ask the first question.

10 But it's relevant to whether or not providers can make
11 informed medical decisions and diagnoses because are they making them
12 based on a -- in a -- in a limited or an expanded aperture? Is this
13 something that travels black site to black site? Are they
14 mental health professionals that are making it based on one
15 interaction like Dr. Jessen said yesterday? Is it appropriate or are
16 they making it based on ----

17 MJ [COL ACOSTA]: Okay, Counsel. Slow down. You're going too
18 fast. Again, my pausing, I'm not inviting -- I'm not inviting extra
19 proffer.

20 The -- you can ask him about what Mr. Nashiri's was, if he
21 knows, and what the result was and then what happened then ----

22 ADC [MS. MORGAN]: I mean ----

23 MJ [COL ACOSTA]: ---- and what happened next. That's what

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1 you can -- that's what you can ----

2 ADC [MS. MORGAN]: ---- is your position that nothing else in
3 the RDI program is relevant? Because if then, then the defense would
4 like to make a proffer as to -- it is inconsistent with the discovery
5 decisions that have been made in this case recently and the
6 government's own concessions as to relevancy.

7 MJ [COL ACOSTA]: Counsel, that is not -- that is not what the
8 commission's ruling on this objection is.

9 The -- your motion -- your request for discovery that
10 you -- that you referred to that was ordered was about the treatment
11 of the other individual to go towards the voluntariness of that
12 individual's statements. The motion -- and it is one of the two
13 motions that this witness is testifying about.

14 The overall system -- the overall program that has been
15 discussed has been discussed at length, and I have allowed great
16 latitude in discussing the creation of the program, the
17 implementation of the program in general.

18 And I've heard very little about the -- from this witness,
19 who was called to discuss the voluntariness of the statements of the
20 accused and Mr. Khallad -- I've heard almost nothing about those
21 individuals and their treatment in this program individually as we've
22 gone forward to receive evidence on those two topics.

23 That's where I'm trying to get. Those are the -- that's the

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1 answers that I need to know to rule upon the defense motion to
2 suppress those two statements -- to suppress one statement and to
3 keep out another. That's what I'm seeking to learn about, including
4 the conditions, yes, at the black sites, the movement at the black
5 sites, the interactions with people that this witness can provide, to
6 the extent that this witness can provide any of this
7 information -- again, the conditions, the temperature, the -- the
8 amount of time spent with others, solitary, for how many --

9 This individual you've talked about was in the -- pardon me,
10 Doctor -- I keep calling you this individual. Dr. Jessen, this
11 witness, was in the program or involved in the program from its
12 inception essentially to its conclusion, and essentially followed to
13 a large extent the -- the accused in this case, Mr. Nashiri, your
14 client, throughout it.

15 I very much want to hear about his observations and his
16 interactions with your client and those conditions while in custody
17 that you say in your motion 467 led to an involuntary statement being
18 made. That is what I want to hear about.

19 ADC [MS. MORGAN]: Certainly, Your Honor.

20 MJ [COL ACOSTA]: So, again, I'm not telling you that the
21 discovery you got is not relevant and cannot be used to formulate
22 questions about it. But I don't need -- but -- and that's what I
23 want to hear about.

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1 So if you can talk about the psychological assessments that
2 occurred to Mr. Nashiri and the -- and then the questioning and the
3 things that happened and -- from there, that is fine.

4 If this is about medical records, again, we're not
5 performing discovery here. We know that there -- I'm well aware ----

6 ADC [MS. MORGAN]: Judge, I ----

7 MJ [COL ACOSTA]: ---- of your questions about medical records
8 and the lack thereof that you've been able to achieve, I am aware of
9 that.

10 ADC [MS. MORGAN]: That's not the point, Judge. That's not
11 the point of where this is going.

12 MJ [COL ACOSTA]: Counsel, where we aren't going is anywhere
13 near the actions and the interactions of this witness with your
14 client. That's where I've not gotten yet.

15 ADC [MS. MORGAN]: Well, Judge, I think it's necessary, then,
16 to make a proffer because I think perhaps we are fundamentally
17 missing the point, which is -- and maybe that's -- maybe that is the
18 flaw of the last 20 years is that the torture program has been -- has
19 been misunderstood.

20 And -- and I recognize in 467 we really do focus on a lot of
21 the physical, and that's horrific in so many ways. But -- you know,
22 and you're right, we reference 459 and 467, and we incorporate it.
23 And what 459 focuses on is the institutionalization of this.

1 MJ [COL ACOSTA]: Yes. As I stated in an earlier colloquy
2 with you -- colloquy with you about I understand that that is the
3 point that you're making with this overall exam about the
4 psychological impact, the institutionalization, and the -- I believe
5 I know where you're ultimately going with this effort. And I want to
6 hear about it, but I need to hear about it as it applies to the
7 accused, so ----

8 ADC [MS. MORGAN]: But that's why I ----

9 MJ [COL ACOSTA]: ---- so ----

10 ADC [MS. MORGAN]: And, Judge, what I'm saying is I don't have
11 the -- I don't unfortunately have the doc who did the psych
12 assessment, but I can talk to this witness about how a mental status
13 evaluation is done, which is relevant to my client's mental state
14 while he is in black sites and what is occurring each and every time.

15 Unfortunately, I don't have the fact witness who can show up
16 every time my client's rendered. Wish I did. But what I do have is
17 the person who can speak to how it is typically done and can give the
18 program overview.

19 And that is what's important here, is because what is -- it
20 is the entire picture, it is the entire program, it is -- that
21 becomes coercive. And so these routine check-ins and
22 understanding -- the question I'm asking about medical records -- I'm
23 not hiding the ball, Judge. I'm not going to come back to you with a

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1 motion to compel discovery for some kind of medical records. I mean,
2 I probably will, but that's unrelated to the questions I'm asking
3 right now.

4 But what I'm actually doing in asking these questions is
5 trying to establish that what Dr. Jessen testified to yesterday is
6 you can really make a competent diagnosis if you have what he had in
7 residency, which is a litany of medical records in front of you from
8 the patient's history. And that maybe that, maliciously or -- or not
9 maliciously, that just wasn't available in the black site.

10 And so these providers who, let's just say, are doing their
11 level best to show up and evaluate somebody, just given the
12 pressures, given the environment they're in, and given the limits
13 they have, just can't quite do that.

14 MJ [COL ACOSTA]: Counsel, I agree that you can ask him about
15 the limitations of the information that may or may not have been
16 available to the extent that this witness knows it to the person
17 doing some remote, as it -- as he said was done -- potentially done
18 in one of the cases, for Abu Zubaydah, a remote psychological
19 assessment because Dr. Jessen's -- Drs. Jessen and Mitchell didn't
20 want to do it, and then conduct an interrogation because they felt
21 that would be a conflict.

22 You can ask him about if he knows who came in and did it,
23 what -- do you know what information they had, and how -- and

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1 you -- he explained just now what a assessment would be.

2 But right now we're spending more time with you
3 talking -- with you testifying to me than hearing evidence from the
4 witness, so what we need to do ----

5 ADC [MS. MORGAN]: I'm trying to get there, Judge.

6 MJ [COL ACOSTA]: Counsel, what we need to do is hear from the
7 witness about the treatment of the accused and what he knew about
8 those psychological -- and what this witness knows about the
9 psycho -- to the extent he knows it, about the psychological
10 assessment and if it was done and if he was provided with the result
11 before he began, completely relevant.

12 If he did one later, if he did one at every location, if one
13 was done before each interrogation, if one was done upon arrival
14 after each new rendition, completely relevant. Want to hear about
15 it. I really want to hear about the conditions at each one and the
16 status and the condition of the accused at each of these locations
17 throughout the four years that he was held in custody. Yes. That is
18 what I want to hear. But I need -- but we haven't gotten anywhere
19 near that yet.

20 So what we're going to do is we're going to recess until
21 1345, and when we come back, that's what I want to -- I want to hear
22 about these impacts on the accused.

23 Dr. Jessen, your same warning as before. Don't discuss your

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1 testimony with anyone, including counsel for either side. You can
2 step down.

3 **[The witness was warned, was temporarily excused and withdrew from**
4 **the RHR.]**

5 MJ [COL ACOSTA]: The commission is in recess.

6 **[The R.M.C. 803 session recessed at 1224, 13 April 2023.]**

7 **[The R.M.C. 803 session was called to order at 1347, 13 April 2023.]**

8 MJ [COL ACOSTA]: The commission is called to order.

9 Government, all parties present as before?

10 TC [MR. O'SULLIVAN]: Yes, Your Honor, except Staff Sergeant
11 Young, but I believe she'll be joining us presently.

12 MJ [COL ACOSTA]: Thank you, Counsel.

13 Government -- Defense, pardon me.

14 LDC [MR. NATALE]: Yes, Your Honor.

15 **[The witness, Dr. John Bruce Jessen, resumed the witness stand.]**

16 MJ [COL ACOSTA]: All right. Defense?

17 ADC [MS. MORGAN]: Thank you, Your Honor.

18 **DIRECT EXAMINATION CONTINUED**

19 **Questions by the Assistant Defense Counsel [MS. MORGAN]:**

20 Q. All right. Welcome back.

21 A. Thank you.

22 Q. I want to jump in and look at medical records.

23 A. All right.

1 Q. You mentioned that my client, Mr. al Nashiri, had a remote
2 mental status evaluation?

3 A. Yes. Psychological evaluation.

4 Q. Okay. So we'll go back to Abu Zubaydah, but I just wanted
5 to explore that a little bit before we lose the thread. So ----

6 A. Oh. I -- if I did say this, I misspoke. Not your client.

7 Q. Okay.

8 A. Zubaydah is the one that had the remote.

9 Q. Zubaydah had a remote psychological eval?

10 A. That's the way I remember it, yeah. But not Mr. Nashiri.

11 Q. Okay. So Mr. -- my client, Mr. al Nashiri, had an
12 in-person. There was actually someone at either GREEN or COBALT who
13 did it?

14 A. I don't know where it was done ----

15 Q. Oh.

16 A. ---- and I don't know who did it. But according to the
17 protocol, it would have been done.

18 Q. Did you ever see it?

19 A. I was trying to think of that. I don't know whether they
20 were included in cables or not. If they were -- if it was in a
21 cable, then I may have seen it, but I don't remember seeing it.

22 Q. Was it typical -- and so either in my client's case or if
23 you don't remember, was it typical to provide the behavioral

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1 psychologist the medical records for the detainee prior to that
2 mental status evaluation?

3 A. I would assume so. I wasn't part of that process, so I
4 can't ----

5 Q. Okay.

6 A. ---- confirm that, but I would assume so.

7 Q. Before the psychological evaluation for Abu Zubaydah,
8 recognizing that was remote, was that behavioral psychologist
9 provided any records?

10 A. I'm confident he was. Zubaydah had intense medical issues
11 when he was captured and leading up and continuing when he was
12 interrogated, there was a full medical team on-site that followed
13 him. So I would assume that all those records were available to
14 whoever did that evaluation.

15 Q. Okay. So that's your assumption but ----

16 A. That's my assumption. I don't know for sure.

17 Q. Okay. And so with my client, no robust medical experience
18 prior to the status evaluation; is that correct?

19 A. None that I know of, no.

20 Q. Okay. And so not aware of any transmission of medical
21 records to a behavioral psychologist?

22 A. No.

23 Q. Okay. And so we talked about yesterday in order to do

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1 a -- well, I'll ask the question because I certainly don't want to
2 get this wrong.

3 In order to do a status evaluation, what type of information
4 do you typically need as far as background?

5 A. To do a psychological evaluation?

6 Q. To do a mental status evaluation.

7 A. You know, that varies given the circumstance. If you have
8 access to prior medical, then it would be prudent to look at it. But
9 it's not necessary to do a mental status exam or an evaluation,
10 whether they had that or not, as I've already said, I don't know.

11 Q. Right.

12 A. And you're correct with your client. What I remember, he
13 was not in a place where he typically would have had a medical record
14 with him before he came into the custody. But the evaluation would
15 have been standard regardless of whether they had prior -- whether
16 they had that ancillary medical information or not.

17 Q. And when you say standard, standard for a mental status
18 evaluation would involve date, time, orientation, correct?

19 A. They would do a brief psychosocial history and ask
20 questions about -- they'd ask them if they'd had any problems in the
21 past. They would do -- a mental status is kind of an compartment
22 within an evaluation. So a mental status exam is kind of an
23 institutionalized protocol that you go through to test the things I

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1 mentioned earlier.

2 And you wouldn't have to know which was to your point -- you
3 wouldn't have to know exactly what the time was at the moment or even
4 the -- the exact date, but if -- because they could ask, well, what
5 was your date of birth, for example, if they knew that, and how long
6 were you here prior to being -- or there prior to being here. And so
7 they could still assess that even if they were in a situation like
8 Mr. Nashiri was in.

9 But they want to know cognitively if -- if they can process
10 current information, if that information is not distorted, if they're
11 oriented for where they're at, what their surroundings are and so
12 forth.

13 Q. And so it would be important to know if somebody suffered
14 from some type of intellectual disability?

15 A. It would be important to know.

16 Q. Okay.

17 A. Yeah.

18 Q. It would be important to know if somebody -- you mentioned
19 Abu Zubaydah had suffered some pretty serious injuries?

20 A. Yes.

21 Q. It would be important to know if that person was injured
22 when you were doing the mental status evaluation?

23 A. If they had current injuries at the time?

1 Q. Uh-huh.

2 A. Yeah, it would be important to know.

3 Q. Would it be important to know if they were currently under
4 any kind of duress?

5 A. Yes.

6 Q. Would you want to know -- because you're looking for a
7 psychopathology, would you want to know significant family
8 psychopathology?

9 A. You would definitely ask about that, yep.

10 Q. And is it accurate to say that the mental status
11 evaluation is a snapshot evaluation?

12 A. You mean not extensive and comprehensive or -- I'm not
13 sure.

14 Q. Correct. You can't make a diagnosis based on that
15 encounter.

16 A. Well, you can make a tentative diagnosis, and then, you
17 know, if you have concerns, then you can do other things, you know,
18 neurological testing and so forth.

19 But the standard of practice for most -- I'm not a
20 physician, so I don't know exactly how most physicians would proceed.
21 But the mental status would be part of their examination, too, and if
22 they thought that there was some cognitive or neurological problem,
23 then they would pursue that with further testing.

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1 So a psychologist is looking for any psychopathology, as you
2 said. And through assessing their history and through whatever
3 records or information they had, plus the current status of the
4 person's cognitive abilities, then they would make a determination.

5 Q. And maybe I'm misunderstanding. My understanding was that
6 the initial exam was more for identifying symptomology and then you
7 would meet a few more times to have a tentative diagnosis and then
8 continue to meet to then rule out or ----

9 A. No, that isn't what I intended.

10 What -- what -- this exam was to say at this time, based on
11 my professional knowledge, is this person psychologically impaired in
12 some way and should not be subjected to the waterboard. So they'd be
13 cleared, essentially.

14 Q. What psychopathology would eliminate suitability for the
15 waterboard?

16 A. Well, if someone already had PTSD, you definitely wouldn't
17 want to do that. If someone showed apparent neurological problems,
18 you wouldn't want to do that. If they were incapable of
19 communicating in a rational way and, you know, recognizing time,
20 space, and orientation, you wouldn't want to do that.

21 Q. You mentioned if someone already had PT -- excuse me.
22 Give me one moment.

23 A. Uh-huh.

1 **[Pause.]**

2 Q. You mentioned if somebody already had PTSD you wouldn't
3 want to administer a waterboard. How are you able to definitively
4 rule out PTSD during a mental status evaluation?

5 A. Well, that would be difficult to do. That would
6 probably -- that would be something that you would see in a medical
7 record. You could -- if the client was willing to give you the
8 information, you could probably determine that in a -- in an
9 evaluation. If they wanted to hide that from you, I think they
10 probably could successfully.

11 I only mentioned PTSD because that's your focus and it's a
12 good example, but there are many other reasons -- or there are other
13 reasons why you wouldn't do that.

14 Q. No, and that's really helpful. And I -- you're right, it
15 is my focus, and so I appreciate -- this is helpful.

16 A. Yeah.

17 Q. And so just to talk about PTSD a little bit more, you
18 mentioned if someone wanted to hide their PTSD, and I think that's
19 fair.

20 Is it -- would you also allow for the possibility that
21 someone may not be aware that they are suffering from PTSD?

22 A. That's always a possibility.

23 Q. Would you -- is it an accurate statement that PTSD

1 symptoms wax and wane?

2 A. Yes.

3 Q. And is it an accurate symptoms [sic] that PTSD symptoms
4 may not be readily observable to a third-party?

5 A. Yes.

6 Q. And you mentioned not wanting to administer a waterboard
7 to someone with PTSD. Is that because it would aggravate the
8 PT -- aggravate or worsen the PTSD?

9 A. Yes. You don't know that beforehand, but you would assume
10 that it would exacerbate the problem that they already have, so.

11 Q. And so -- I'm going to say this in a very simplistic way,
12 but more trauma, more PTSD? Is that generally a ----

13 A. That's an axiom that generally holds true.

14 Q. Okay. Are you familiar with the concept of complex PTSD?

15 A. No.

16 Q. Okay. Is it accurate to say that PTSD can be a lifelong
17 disorder?

18 A. I believe that's the case. I don't have a lot of
19 experience with PTSD, but I -- from what I recall, I think that is
20 the case.

21 Q. Appreciate that.

22 You mentioned the -- you know, one of the ways you would be
23 able to identify this is if it was in the medical records. When my

1 client traveled between -- I'll give you COBALT and GREEN, so 2 and
2 3.

3 A. Okay.

4 Q. When my client traveled -- or was rendered between those
5 black sites, did he travel with his medical records?

6 A. It's my belief he did because the protocol, as I remember
7 it, is everything that had to go, including, you know,
8 the -- whatever medical records there were, was always put in a
9 sealed envelope, put on the rendition plane, and went to the next
10 site. So I would assume that they would be in there, yes.

11 Q. So all of the -- all of their belongings, all the
12 documents, but do you know that medical records were in there?

13 A. No, I don't know for sure.

14 Q. Was there any way to access -- I'm not sure if the system
15 was there when you were Air Force, but we used to have AHLTA, like
16 the -- was there any system like that within the CIA database to
17 access? I don't need you to give me the name, before I make censors
18 nervous.

19 A. Okay.

20 Q. Was there any system within the CIA database to access
21 comprehensive medical records for my client?

22 A. I don't know.

23 Q. Okay. You're not aware of one. You didn't observe one?

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1 A. No.

2 Q. Was there anything in the protocol when you arrived at any
3 of the black sites that you recall that said you must review medical
4 records for this detainee before you interrogate, interact with him,
5 anything like that?

6 A. There was nothing -- I don't believe there was anything in
7 the words that you've used. And I'm pretty sure that the protocol
8 required whoever the OMS representative was on-site be involved in
9 everything that, you know, took place, the rendition, the reception,
10 the -- the interrogation plan. And so there was certainly an avenue
11 for the medical person to weigh in.

12 Q. Okay. So I would need to talk to them? It would be best
13 to talk to them?

14 A. Yes.

15 Q. Okay. Do you at any point remember reviewing my client's
16 medical records?

17 A. No.

18 Q. And the questions that I've asked you about medical
19 records, are those standard across your experiences in the program?

20 A. I'm not sure what you're ----

21 Q. Oh, you ----

22 A. ---- the questions you're referring to.

23 Q. Is that -- was that the same with all detainees; that, you

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1 know, you didn't review other detainees' medical records; you don't
2 have a specific memory of other detainees ----
3 A. Yeah, that's correct.
4 Q. All right.
5 A. Zubaydah would be the exception ----
6 Q. Okay.
7 A. ---- but -- yeah.
8 Q. But he had a rather unique situation coming into custody?
9 He had a unique situation ----
10 A. Yes.
11 Q. ---- coming into custody?
12 A. That's correct.
13 Q. Bear with me one moment.
14 So once you get the approval for Abu Zubaydah -- and I
15 apologize, I'm jumping backwards now. I will try and keep it
16 chronological to make more sense.
17 A. That's good.
18 Q. Once you get the approval to go ahead with the
19 interrogation of Abu Zubaydah, the records seem to indicate that he
20 was interrogated on what seems like a near-24-hour process. Is that
21 your memory or can you -- what is your best recollection of how
22 interrogations occur? Start with Abu Zubaydah. Let me start with
23 start. How do they start?

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1 ATC [MR. RYAN]: Objection as to Zubaydah, Your Honor.
2 Relevance.

3 MJ [COL ACOSTA]: Defense?

4 ADC [MS. MORGAN]: And again, Your Honor, we're setting up
5 this template scenario for how the initial interrogation is conducted
6 and then, as the doctor has testified just before the break, how it
7 was then modified for what becomes the very next detainee, my client.

8 MJ [COL ACOSTA]: All right. As I stated before, I'll allow
9 the exploration -- a brief exploration into how this template was
10 created and its application to Mr. Nashiri and Mr. Khallad.

11 Overruled at this time. Go ahead. You can answer the
12 question.

13 Q. Yeah. So how does it start? And, you know, I can
14 even -- I can -- how does it start?

15 A. Okay. I don't remember the particulars, it's been so
16 long. I'm sure there's a cable that tells you minute by minute what
17 happened. So I can guess at this or, if you really want to know, you
18 can just look at the record. I'm not being glib. I just -- I don't,
19 you know.

20 Q. You're not being glib.

21 A. There was a flurry of activity to start with. It was in
22 the cell for ten minutes, 20 minutes, an hour out of the cell,
23 confer, an hour or maybe five later or maybe ten minutes, go back in.

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1 So the initial few days were pretty hectic, and there was a lot of
2 activity. But there is a record of it.

3 Q. You're right, there is. I get summaries of those records,
4 so I appreciate -- let me ask -- let me ask better questions.

5 My understanding of your model -- and correct me, but my
6 understanding of your model is that first you attempt to get
7 Abu Zubaydah to cooperate in a neutral way.

8 A. That's correct.

9 Q. And you call that a neutral probe?

10 A. That's correct.

11 Q. What does a neutral probe consist of?

12 A. It is a brief dialogue between you and the detainee where
13 you tell them the rules of the road in terms of what your intentions
14 are and what their options are. So you say we're here to gather
15 information. We're not interested ----

16 Q. I think that was somebody clearing their throat. No,
17 you're good.

18 A. We're here to get information. We want you to cooperate,
19 you know, with our debriefers, with information about -- with
20 Zubaydah, it was the next attack. We don't expect you to know things
21 that you don't know, but we expect you to tell us what you do know.
22 And if you refuse to cooperate, we will make things difficult for
23 you. We don't want to do that, it's our preference not to do that,

1 but it will happen if you don't cooperate to some degree. So we'll
2 let you think about that.

3 And then we leave and let them think about it.

4 Q. Hypothetically, had Zubaydah just said I'll tell you
5 everything I know, would anything have happened?

6 A. No. In fact, that happened once with a person. So, no,
7 nothing would have happened.

8 Q. Okay. You let them ponder. You let them think about ----

9 A. Uh-huh.

10 Q. ---- what you said.

11 And then you return -- and I think when you're doing that,
12 you used the term that you're using, "social influence"?

13 A. Yes.

14 Q. What does that mean?

15 A. It's how humans interact. As I said yesterday -- this is
16 our second day, right?

17 Q. Sorry. You may have said it. I apologize, then.

18 A. You and I are having an interaction, okay ----

19 Q. Yeah.

20 A. ---- and ----

21 Q. That's right.

22 A. You have a goal. I have a goal.

23 Q. Uh-huh.

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1 A. And what we know about how people function and how
2 to -- how to get people to see things our way, we -- we use those
3 things. So you -- the judgment heuristics that you're aware of that
4 lead people to be more cooperative you try to employ. And if people
5 become obdurate, then you have to consider, well, how do I get around
6 this? Do I make a threat or do I make a plea? So the consideration
7 of all that myriad of things is social influence.

8 Q. Right. And now my understanding is, when you're going to
9 come back in, you will use sanctioned, authorized enhanced
10 interrogation techniques. But your model is to go from least to
11 most?

12 A. Least intrusive, start with least intrusive.

13 Q. You've said that your goal is not to hurt?

14 A. That's right.

15 Q. And fair to say what someone described as hurting them
16 might be different than when you say your goal is not to hurt?

17 A. Yes, that's a fair observation. So our goal was not to
18 harm people or, you know, cause permanent damage or sincerely
19 make -- make them -- who knows where that line is.

20 Because as your point you've made -- when I wall someone, I
21 think based on everything I know or I did -- I don't do it
22 anymore -- okay, I want this to be impactful. I want it to be
23 startling to a degree. I want it to kind of just shake the -- the

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1 tone and tenor that's going on right now so that the person will
2 focus and know that I'm serious, and I want to do it in a way that
3 doesn't harm them. So I'm going to do the kind of things I told you
4 yesterday, and then -- and then you -- and then you wall them.

5 So my perception of that is going to be different than the
6 person that's being walled. And that -- in terms of walling,
7 that's -- in order to accentuate the experience without any increase
8 of damage, you know, you know how the wall is constructed and so
9 forth.

10 So that's a long way of saying I agree with what you said,
11 that there's a difference in perception between how I think it is and
12 how they think it is.

13 Q. Right.

14 A. That's why you have protocols. That's why you practice
15 things. That's why you have a lot of people weigh in and make a
16 judgment. And in the end, you do your best.

17 Q. Understood.

18 And I'll even take it out of this context for a moment and
19 say: Accurate to say that students that go through SERE sometimes
20 say it hurts a whole lot?

21 A. Yeah, I thought it hurt a whole lot when it happened to
22 me.

23 Q. That's fair.

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1 A. But I didn't have -- I had no bruises that I remember, and
2 I didn't have any long-lasting -- but, yeah, it didn't feel good.

3 Q. It didn't feel good.

4 A. And it isn't meant to feel good. It's meant to feel
5 intrusive at the appropriate level.

6 Q. Understood.

7 And I think you have previously testified that, in fact, the
8 hurting for hurting's sake, like just the harm for harm's sake, can
9 actually be counterintuitive -- I'm sorry, counterproductive. Just
10 hurting somebody to hurt them?

11 A. Yes, absolutely. You don't want to do that.

12 Q. And you've ----

13 A. Gratuitous violence or -- yeah, it accomplishes nothing
14 but distances you from that person and makes it more difficult to do
15 what we were trying to do.

16 Q. And you have said that in your experience often harsh
17 techniques are not needed.

18 A. I just didn't quite hear that.

19 Q. Sure.

20 You've previously testified that often harsh techniques are
21 not needed.

22 A. Absolutely.

23 Q. You've also previously testified that you didn't want to

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1 use techniques if you didn't have to. You didn't want to have to
2 slap or wall or waterboard, even if these men were the enemy?

3 A. No, I didn't.

4 Q. Turning to the techniques you used on Abu Zubaydah, the
5 techniques you used were authorized by the Department of Justice?

6 A. Correct.

7 Q. You didn't string him up by the arms? You didn't hold his
8 arms over his head and string him up?

9 A. No.

10 Q. Okay. And just for the record ----

11 MJ [COL ACOSTA]: Counsel held her hands above her head with
12 her right hand grasping her left wrist.

13 Go ahead.

14 Q. You didn't short-chain him to a wall?

15 A. No.

16 Q. You didn't threaten him with guns and drills?

17 A. No.

18 Q. You didn't sodomize him?

19 A. No.

20 Q. You would find out that that was not the case for other
21 interrogations that were being conducted? You would find out that
22 that was not the case for other interrogations that were being
23 conducted? Those things did happen to other ----

1 A. I know of one case when those things happened.

2 Q. Yeah. And that's my client?

3 A. That's your client.

4 Q. Yeah. When you were with Abu Zubaydah in GREEN, were you
5 receiving intel requirements from headquarters?

6 A. I wasn't, but the base was.

7 Q. Okay. Were you reviewing those or was somebody else
8 reviewing those?

9 A. I didn't ever review them first, but the analysts would
10 review them and then say this is what we're trying to find out. Of
11 course, this is a little later on with Zubaydah, because, as I told
12 you at first, there was only one question.

13 Q. There was only one question.

14 A. But later on, yes. They would basically synthesize the
15 information they were looking for, and then we would ask questions
16 relevant to that.

17 Q. Were you aware that the intelligence that was being
18 shared -- related to Abu Zubaydah was being shared with the FBI?

19 A. No.

20 Q. Did you ever have a chance to review any of the cable
21 traffic related to the first 20 days of your interrogation with
22 Abu Zubaydah?

23 A. I didn't see any e-mail -- Lotus Note traffic.

1 Q. Okay.

2 A. But I did read cables, you know, finished cables in terms
3 of this is what happened and this -- so it was an account of the
4 interviews or the interrogations that took place.

5 Q. So would you have seen the "To" lines on those, which
6 agencies it was going to?

7 A. I didn't understand.

8 Q. Would you have seen the "To" line of those cables, the
9 finished cables? Would you have seen line -- which cable -- words.
10 Would you have seen which agencies those cables were going
11 to?

12 A. You know, I don't know. I wouldn't know how to recognize
13 that. I think -- at least I don't remember.

14 Q. All right.

15 A. My -- my assumption was that it -- the only -- it only
16 went to CTC from us, so.

17 Q. Would reviewing one of those cables help to review **[sic]**
18 your recollection if you had seen the "To" lines on those documents?

19 A. You mean if I look at one now and it says it's going to
20 someplace else?

21 Q. Yeah. If you look at one now, would it look like what you
22 had actually seen coming and going ----

23 A. Yeah.

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1 Q. ---- would it have been the finished document?

2 A. It would tell me something maybe I don't know now. I just
3 don't remember if they went anywhere else.

4 Q. Let's see if this looks like what you saw.

5 A. Okay.

6 Q. I'm purely looking at the "To" line. Document 13: On AZ
7 of -- as of 13 -- or, I'm sorry. On AZ as of 2300 hours, cable dated
8 4 August '02. And it is a two-page document. It is largely
9 redacted.

10 You know what? I am going to have to apologize because I
11 think I grabbed the wrong document. I'm going to put a pin in that.
12 I apologize. I will come back to that when I have the right
13 document.

14 A. You were in the Air Force, right?

15 Q. I was in the Air Force.

16 A. Did you ever hear that -- the saying: To err is human,
17 to forgive is not SAC's policy?

18 Q. No, I haven't, but that's pretty great.

19 A. That was when General LeMay was in charge.

20 Q. I might steal that. I will put a pin in that for later,
21 though. All right.

22 So in your -- to the best of your memory, you do run
23 through -- I'm going to call it the menu, for a better -- lack of a

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1 better term, the menu of authorized DoJ enhanced interrogation
2 techniques with Abu Zubaydah starting with -- what would you consider
3 the least -- when you say least to most, what would you consider the
4 least?

5 A. Well, there's still some latitude within that caveat. So
6 I think attention grasp -- or facial grasp and the facial slap are
7 probably the least intrusive. Or that's my personal opinion ----

8 Q. Uh-huh.

9 A. ---- as you've -- as we've just established; that may not
10 be someone else's. But you wouldn't start with the waterboard.

11 Q. Right.

12 A. Now, with Zubaydah, we went to the waterboard pretty
13 quickly, but we started, as I recall, with those less-intrusive
14 measures.

15 Did that answer your question?

16 Q. It does, yeah. It absolutely does.

17 And so it sounds like sort of what we demonstrated yesterday
18 was the least-intrusive ----

19 A. Yes.

20 Q. ---- measures? Okay.

21 And then where would you put stress positions and
22 confinement boxes in there?

23 A. They're kind of in the middle.

1 Q. Okay.

2 A. Some people, the confinement box is actually a safe place.
3 And actually, I believe my recollection is your client, Mr. Nashiri,
4 he was small enough of stature that he either remarked to us, or
5 somehow we drew a conclusion, that it was actually personally for him
6 better off to be in there sometimes than to be interrogated. But
7 someone else would have a different opinion of that.

8 I think stress positions are kind of equally uncomfortable
9 across the board, and that's -- but they're probably in the middle,
10 middle range.

11 Q. Okay.

12 A. It's a very subjective thing.

13 Q. And then fair to say the waterboard is the most extreme?

14 A. It was the most extreme of what we were -- what we did,
15 what we were allowed to do.

16 Q. Okay. And the regional medical officer, who I believe was
17 on-site with you for Abu Zubaydah's waterboarding, used the
18 description -- I just want to see if you think this is accurate:
19 Visually and psychologically very uncomfortable for all of those
20 involved. Would you think that's an accurate description?

21 A. Yes, that is an accurate description. Every time it was
22 used, it was that.

23 Q. And is it accurate to say it's because your brain believes

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1 you are drowning?

2 A. The individual that's on the waterboard, yes.

3 Q. Yes. And ----

4 A. You have -- you -- when you -- when your orifices are
5 filled with water, there's a limbic response that overrides your
6 cognition and just tells you if this doesn't stop, I'm going to
7 drown.

8 And I -- KSM got to the point where he knew what the
9 parameters and he knew what the limits were and the man actually
10 could relax on the waterboard. It became virtually ineffective for
11 him because he knew how long -- he just knew the parameters.

12 But the first time that happens, you don't know them, and so
13 that is what you think. It's what I thought, and it's the same
14 impulse that I had each time I was waterboarded. So you can override
15 that apparently, because I believe KSM did. I didn't. You know, I
16 was only waterboarded half a dozen times.

17 But that's an automatic autonomic response. It's not a
18 voluntary -- it's not a cognitive, oh, this is the circumstance I'm
19 in. I -- this is bad for me. I may drown. It's an autonomic
20 reaction.

21 Q. And you mentioned limbic system, and that's what you're
22 referring to when you say autonomic?

23 A. That's correct.

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1 Q. So I want to, if I can, take a moment to compare your
2 experience -- because I think you said just about a half a dozen
3 times.

4 A. Yeah.

5 Q. And I'll even tie it to my client to, you know, keep us
6 moving along.

7 But is it accurate to say, even with the safeguards you put
8 in place ----

9 A. Say that again, please.

10 Q. Is it accurate to say, even with the safeguards you put in
11 place for -- I'll use my client for a second -- that your experience
12 being waterboarded is still different because you knew that it was
13 voluntary?

14 A. Yes. That's a fair assessment, yeah. That's an accurate
15 assessment.

16 Q. And so ----

17 A. However, the reaction that you get from the limbic system
18 is the same.

19 Q. And that's ----

20 A. So once it happens, you can do what KSM learned to do,
21 cognitively gather yourself together and say, okay, these guys can
22 only do this. They're not actually trying to drown me. They're just
23 trying to make me feel really uncomfortable, and I can deal with

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1 this. But that -- it takes time to develop that kind of an ability
2 to resist.

3 Q. So well before you become [sic] to KSM, while you're still
4 you, and Mr. al Nashiri never developing those ----

5 A. Yeah.

6 Q. ---- you know, those skills, so -- and you make my precise
7 point of, even knowing intellectually I'm safe, I'm -- the
8 person -- this person's going to stop, I'm a volunteer, you are
9 unable to override that limbic system that says ----

10 A. You still have that thought.

11 Q. ---- I might die.

12 A. That's right. But it -- but I'm -- I take your point. If
13 I wasn't -- if I didn't know that people were doing this to me for a
14 demonstration so I knew, quote, what it felt like or when I was going
15 through training, I knew I was a student and this was not going to
16 last forever. Experientially it would be different if you didn't
17 know that, and it would be more impactful.

18 Q. I appreciate that.

19 And, you know, that brings me to the point that at some
20 point, you and Dr. Jessen [sic] did not want to waterboard -- excuse
21 me.

22 A. That's all right.

23 Q. I did it.

1 A. We're kind of like the siamese twins.

2 Q. I got this far and didn't do it yet, so all right.

3 You and Dr. Mitchell did not want to waterboard Abu Zubaydah
4 anymore?

5 ATC [MR. RYAN]: Objection to anything regarding -- objection,
6 Your Honor, to Mr. Zubaydah. Again, we had moved to Mr. Nashiri. I
7 object to going backwards.

8 ADC [MS. MORGAN]: Judge -- I apologize, Judge. I mean,
9 Judge, I'm not exactly sure what that objection was since it was a
10 talking objection.

11 MJ [COL ACOSTA]: No, it's -- I think it's relevance for the
12 decision to stop with -- I'm reading context clues here, trying
13 to -- as far as to relevance as to why they stopped with
14 Mr. Abu Zubaydah as opposed to what -- the relevance to Mr. Nashiri.

15 ADC [MS. MORGAN]: Well, Judge, one, I'm going parallel; and,
16 two, the point I'm making is why this was videotaped in the first
17 place, and that occurs with Abu Zubaydah.

18 ATC [MR. RYAN]: Objection to that, Judge. It's not relevant
19 to 467 and 480.

20 MJ [COL ACOSTA]: This is the first mention of the videotape
21 that you just mentioned there, Counsel. So what's the -- you hadn't
22 brought that up with the witness yet.

23 ADC [MS. MORGAN]: Judge, there was a policy of videotaping in

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1 GREEN, as we know. There was a material difference between -- what I
2 proffer the witness will testify to, and the witness is able to
3 disagree -- but what I proffer would be that the witness would say
4 that it was a material difference from reading sanitized words on a
5 page or hearing someone over a phone say we need to stop doing this
6 versus actually visually seeing it done.

7 Which when you're talking about whether or not this had a
8 psychological impact on my client, our ability to relay that to this
9 court is dulled at this point because we no longer have the best
10 evidence -- which is the point of being able to do a demonstration
11 yesterday, and I intend to do somewhat of a demonstration
12 today -- because we no longer have that. But in order to ----

13 MJ [COL ACOSTA]: But the question ----

14 ADC [MS. MORGAN]: ---- I need to ----

15 MJ [COL ACOSTA]: ---- the question was why did he stop and is
16 that ----

17 ADC [MS. MORGAN]: That's not the ----

18 MJ [COL ACOSTA]: That was your question that was objected to.

19 ADC [MS. MORGAN]: That was not my question.

20 MJ [COL ACOSTA]: No, the question was at some point you
21 decided to stop.

22 ADC [MS. MORGAN]: At some point you wanted to stop.

23 MJ [COL ACOSTA]: Right. Right.

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1 ADC [MS. MORGAN]: And so the follow-up is: You contacted
2 headquarters; they said no. So you wanted to send them a videotape,
3 and that wasn't going to be enough, so you had them come down ----

4 MJ [COL ACOSTA]: All right.

5 ADC [MS. MORGAN]: ---- because you had to be there in person.

6 MJ [COL ACOSTA]: All right. Okay. Counsel, I'll let -- a
7 little more latitude on this and then we'll get to Mr. Nashiri. Go
8 ahead.

9 ADC [MS. MORGAN]: Judge, I've been on Mr. Nashiri. We're
10 running this parallel.

11 MJ [COL ACOSTA]: Counsel, I'm just allowing you to go.
12 Please ask your -- re-ask your question.

13 Q. At some point, you and Dr. Mitchell wanted to stop
14 waterboarding Mr. Abu Zubaydah?

15 A. Correct.

16 Q. You did not want to do it anymore.

17 A. Correct.

18 Q. And you communicated that to headquarters?

19 A. Correct.

20 Q. In fact, I believe you go as far as to tell them that you
21 believe you're reaching the limits of what is legal. Does that sound
22 right?

23 A. I may have said that, yeah. I don't know. I felt that.

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1 Q. And so what -- my understanding is what you hear back
2 from -- what you hear back from headquarters is: Stay the course?

3 A. Basically.

4 Q. Yeah.

5 A. Wasn't as pretty as that.

6 Q. Churching it up a little bit. But, I mean, my
7 understanding is they insulted you ----

8 A. I'm sorry. That was an editorial comment.

9 Q. No, you're okay. We've been talking for a while, for a
10 long time.

11 You were told to continue? You were told to continue?

12 A. We were told they wanted us to continue, yeah.

13 Q. And so my understanding is it was important for you to
14 communicate to them the reality of the situation?

15 A. We wanted to stop because we believed that Zubaydah either
16 did not have the information or would not give it based on what
17 leverages we had to apply, and we weren't willing to increase the
18 leverage personally, Dr. Mitchell and I. And, frankly, I think it
19 was pretty unanimous at the location; everyone felt the same.

20 So we wanted them to understand that our -- our take was
21 it's not useful to do this because we don't think he has it, but even
22 if he has it, he's not going to give it given the constraints and
23 limitations, you know, that we've imposed upon ourselves that are

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1 legal. We're at the end of the road, so stop.

2 Q. And at some point, you actually asked headquarters to send
3 a team?

4 A. Yes.

5 Q. And they do?

6 A. Yes.

7 Q. And Dr. Mitchell has, well ----

8 A. It's not another podcast, is it?

9 Q. There is a lot on podcasts.

10 No, he has testified to the fact that you were called
11 cowards; is that accurate?

12 A. That's true.

13 Q. They threatened to replace you?

14 A. That's true.

15 Q. And I believe that was W87. And you can look through the
16 UFIs. I just want to make sure that's accurate.

17 A. I actually don't remember who it was. I'll -- I'll
18 find -- oh, yeah.

19 Q. W87?

20 A. That person was one of them that said that, yeah.

21 Q. Do you remember anyone else from the UFIs?

22 A. I just remember that the consensus back there in that
23 meeting was the same as that person.

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1 Q. That person.

2 A. I don't remember all the people that were in the room.

3 Q. Now, if I have this right, before the team actually comes
4 out, you -- and I say you -- someone in the -- someone on the team,
5 the interrogation team, makes a video of clips of various
6 interrogations of Abu Zubaydah?

7 A. Yes.

8 Q. It has some pieces of waterboarding but also some other
9 interrogation techniques?

10 A. Yes.

11 Q. Do you remember any of the other interrogation techniques
12 that were on the tape?

13 A. I don't. I didn't -- we didn't make the tape. I don't
14 remember who did it. You know, one of the staff did it. I looked at
15 it. I remember seeing it, but I don't remember what was on it.

16 Q. Was this, like, a VHS tape or ----

17 A. Yeah.

18 Q. Okay. And you send that back to headquarters for them to
19 review that before the team comes out; is that correct?

20 A. Yeah, I think they sent it to station first and then
21 station sent it to headquarters.

22 Q. Do you remember who you sent that tape to? Station,
23 but ----

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1 A. No, I didn't send it.

2 Q. Okay.

3 A. You know, the -- we were -- I was going to say
4 functionaries. I don't mean that in a demeaning way. We didn't
5 control or make those kinds of decisions. We certainly were
6 consulted, you know, but anything that goes -- anything that leaves
7 the base leaves with the approval of the chief of base.

8 Q. And do you know what happened to that videotape?

9 A. No.

10 Q. And just to kind of ask a -- kind of make an obvious
11 point: Everything at GREEN was videotaped?

12 A. I don't know what all was videotaped, but I know there
13 were videotapes.

14 Q. Okay. So there were more than just scenes from the
15 waterboard on the videotapes that you remember compiling?

16 A. I didn't compile them.

17 Q. I'm sorry. I'm using "you" in a global sense.
18 Whoever on staff made that videotape, it contained scenes of
19 more than just ----

20 A. From other tapes.

21 Q. From other tapes.

22 A. Yep.

23 Q. And it was of EITs of waterboarding and -- I'm sorry, it

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1 was -- it included scenes of waterboarding and other EITs?

2 A. The tapes were made because there were difficulties with
3 the language and making sure that they had a accurate transcript of
4 what's being said. At least that's what I was told.

5 So the tapes included when they were made -- and I don't
6 know if every session was taped, but it was the interrogation ----

7 Q. That's helpful.

8 A. ---- that also included measures at times. So it was
9 for -- it was -- they had people who could translate that and make
10 sure the analysts and the people who were disseminating the intel
11 knew for sure what was said.

12 Q. Understood. That's helpful. So it wasn't that they were
13 taping EITs, it was that they were taping interrogations ----

14 A. Right.

15 Q. ---- writ large, and then sometimes within that there
16 would be an EIT?

17 A. And then sometimes?

18 Q. And then sometimes within that there would be an EIT?

19 A. Yes. That's correct.

20 Q. And that system existed your entire time at GREEN? Do you
21 ever remember that changing?

22 A. It changed at GREEN, I'm pretty sure. Confident of that,
23 but I don't remember exactly when.

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1 Q. Okay. All right. So you send that back to headquarters,
2 and even watching it on videotape, was -- was that enough to convince
3 them or it didn't matter; you wanted them to come anyway?

4 A. We wanted them to come anyway.

5 Q. Okay. And let's see if you agree with this statement.
6 Dr. Mitchell has said that it was important for him to have people
7 come into the room where the waterboarding was occurring because, as
8 he put it: People watch so much TV that they become anesthetized to
9 it. So much -- it seems much more anesthetic than it actually is.

10 Would you agree with that statement?

11 A. Yes.

12 ATC [MR. RYAN]: Objection, Your Honor. Relevance.

13 MJ [COL ACOSTA]: Overruled.

14 Go ahead.

15 Q. He then goes on to say that people see violence in video
16 games or they watch shows like 24, and so they have this idea of what
17 waterboarding is; but there is no substitute for being in the room
18 with someone who is strapped on a table, urinating on themselves
19 while drowning.

20 Would you agree with that statement?

21 A. I probably wouldn't say it that way, but I understand, you
22 know, the emotion behind it, and I'd agree with it.

23 Q. Okay. And so what he's getting at there is -- and I think

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1 the point -- would you agree, is it an accurate statement to say
2 probably most of us in this room, most of us sitting down -- you
3 know, most of the individuals sitting down in GTMO, we may have seen
4 videos of waterboarding on TV or seen certain movies; but that is not
5 a realistic depiction of what waterboarding really is?

6 A. Well, by definition it's not realistic because you're not
7 there. But in terms of the emotional impact, it's also definitely
8 more vivid if you're there in person than if you're walking
9 it -- watching it on a film.

10 Q. The former chief of OMS writes a -- wrote a debrief, and
11 he actually talks about the emotional effect that being present for
12 the waterboard had on his staff while they were in GREEN.

13 A. Uh-huh.

14 Q. And he talks about day 4 interrogation of Abu Zubaydah,
15 and specifically how distraught and profoundly affected observing the
16 waterboard left OMS staff.

17 Was that your observation, that observing waterboarding had
18 a emotional impact on staff that was present?

19 A. Okay. I don't remember the OMS staff in particular, but
20 it did have an effect on the staff. That's why when I said everyone
21 at the site was basically -- as far as I knew, was basically in
22 agreement that, no, we would stop, so.

23 Q. The chief of OMS goes on to talk about how during those

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1 early days with Abu Zubaydah, the OMS mission went on to pivot and
2 actually supported -- started supporting staff counseling in addition
3 to detainee care.

4 Were you aware of that?

5 A. No.

6 Q. Is that something that you would have supported?

7 A. Well, yeah, if someone ----

8 ATC [MR. RYAN]: Objection, Your Honor. Not for the witness
9 to say.

10 ADC [MS. MORGAN]: And, Your Honor, the issue of bystander
11 trauma is certainly relevant here.

12 ATC [MR. RYAN]: And I submit it is not, sir. And once again,
13 we're way from the two accused that matter.

14 MJ [COL ACOSTA]: Objection sustained.

15 Go ahead.

16 Q. Are you aware of whether any staff have had to seek
17 treatment for PTSD after leaving the CIA RDI program?

18 ATC [MR. RYAN]: Same objection, sir.

19 ADC [MS. MORGAN]: Your Honor, the government quibbles with
20 whether my client's diagnosis is valid, whether or not an observer
21 has sought treatment as a result certainly ----

22 ATC [MR. RYAN]: I look forward to quibbling about whether her
23 client had PTSD. It's irrelevant as to others, sir.

1 MJ [COL ACOSTA]: I'll allow him to answer that question.

2 Go ahead. What's the answer, Doctor?

3 Q. Are you aware of whether any staff has ever sought
4 treatment for PTSD after being involved with the CIA RDI program?

5 A. No, I'm not.

6 Q. Okay. The delegation does arrive from headquarters
7 eventually? The team comes down from headquarters?

8 A. Yes.

9 Q. Do you -- can you spend a minute and look at the UFI list
10 and just tell me who you remember being on that team.

11 A. Okay. The last person you mentioned ----

12 Q. So W87 -- W87.

13 A. Let me double check it. What was it, again?

14 Q. W87?

15 A. Z87?

16 Q. I'm sorry, Whiskey.

17 A. Please say it again.

18 Q. W87.

19 A. Okay.

20 **[The witness reviewed the evidence.]**

21 A. Did you say W87?

22 Q. Yes.

23 A. Okay. Yes, that is one of the people.

1 Q. And is there anyone else you remember?

2 A. I think if I look through the names, I'll remember. I
3 don't have the name at hand at the moment.

4 Q. Nope, take your time.

5 A. Okay. That individual is S7V.

6 Q. Okay. And is there anyone else?

7 A. No.

8 Q. Was it only two individuals that came?

9 A. There was one other person that came from station.

10 Q. Okay. Was PJ1 there?

11 A. I think so. I think so. I don't remember with clarity
12 the other two, but I think so.

13 Q. Okay. And do you remember if W87 and PJ1 spent any time
14 debriefing -- debriefing Abu Zubaydah?

15 A. I don't remember PJ1 ever questioning him, but the other
16 individual did.

17 Q. And just for clarity's sake, W87 is female? I'm not
18 asking any other identifying characteristics.

19 A. Yes.

20 Q. All right. And at that point, Abu Zubaydah was still
21 being interrogated naked?

22 A. Yes.

23 Q. And after she debriefed him, you were instructed to

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1 waterboard him again; is that correct?

2 A. I don't remember what the sequence was.

3 ADC [MS. MORGAN]: If I can have one moment. I just want to
4 make sure I don't ----

5 MJ [COL ACOSTA]: You may. Oh, to talk to counsel?

6 Absolutely.

7 **[Counsel conferred.]**

8 ADC [MS. MORGAN]: Okay. I appreciate that, Your Honor.

9 We're good. I just wanted to make sure I was staying right of the
10 line.

11 MJ [COL ACOSTA]: Not a problem. Go ahead.

12 Q. Okay. After W87 conducts -- do you remember how long her
13 debriefing was?

14 A. No, but I think it was more than one visit.

15 Q. Okay. And she is the one that -- she is one of
16 them -- she is one of the people that was highly critical of you and
17 Dr. Mitchell not thinking that you were being tough enough; is that
18 accurate?

19 ATC [MR. RYAN]: Objection, Judge. Relevance.

20 MJ [COL ACOSTA]: Defense?

21 ADC [MS. MORGAN]: Judge, I intend to get into what I believe
22 is another unauthorized technique that was occurring within the black
23 sites.

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1 MJ [COL ACOSTA]: As applied to Mr. Nashiri?

2 ADC [MS. MORGAN]: It will be, yeah. It starts with
3 Abu Zubaydah and continues to Mr. Nashiri. I believe sexual
4 humiliation was used.

5 ATC [MR. RYAN]: The reason for the Zubaydah testimony, as I
6 understood it, was to show the template. If we are now into an
7 unauthorized use, we're already outside the template. To the extent
8 it refers to Mr. Nashiri, I ask that she go directly to Mr. Nashiri
9 for relevance purposes.

10 MJ [COL ACOSTA]: I'll allow you to ask the question if this
11 was a -- essentially to establish if this was a tactic that was
12 started with Mr. Abu Zubaydah and then moved on to Mr. Nashiri. Go
13 ahead. You may answer the question.

14 ADC [MS. MORGAN]: Yeah.

15 Q. And so certainly don't think that you and Dr. Mitchell
16 were part of it. Are you aware whether ----

17 A. What did you say first?

18 Q. Oh, I -- certainly I'm not alleging you and Dr. Mitchell
19 were in any way involved or were part of it, but are you aware of W87
20 using sexual humiliation during her debriefing of Abu Zubaydah?

21 A. No.

22 Q. Are you aware of her making comments related to his
23 genitalia?

1 A. No.

2 Q. Are you aware of any later points where female
3 interrogators used sexual humiliation as a interrogation or a
4 debriefing strategy -- let me use "debriefing strategy" -- as a
5 debriefing strategy with Mr. al Nashiri?

6 A. Are you talking about interrogators or debriefers?

7 Q. Debriefers.

8 A. No. It would be the same for interrogators too, but...

9 Q. Yeah. Did you observe the entire debriefing session with
10 W87 and Mr. Abu Zubaydah?

11 A. I'm sure I did.

12 Q. Do you remember?

13 A. I remember vaguely ----

14 Q. Okay.

15 A. ---- yes.

16 Q. Is sexual humiliation something that would stand out to
17 you?

18 A. No.

19 Q. Okay.

20 A. Probably it would stand out to me. I didn't see that.

21 Q. Okay.

22 A. I would remember that.

23 Q. All right. And then there's one last waterboarding

1 session of Abu Zubaydah after all of this, and the description of
2 it -- and I just want to see if this fits with your memory -- is that
3 Abu Zubaydah -- the waterboarding session resulted in immediate fluid
4 intake and involuntary leg, chest, and arm spasms and hysterical
5 pleas. Abu Zubaydah -- at least one waterboarding session,
6 Abu Zubaydah unresponsive with bubbles rising through his open full
7 mouth.

8 According to CIA records, Abu Zubaydah remained unresponsive
9 until medical intervention when he regained consciousness and
10 expelled copious amounts of liquid. And that record specifically
11 states that he needed a xyphoid thrust to expel water from his lungs.

12 Is that your memory?

13 A. I remember it was very unpleasant and I was concerned.
14 I -- that sounds like a medical report. I remember him throwing up
15 rice and beans, and that being the start of -- if someone's going to
16 be waterboarded, they need to be on fluid. You know, we used Ensure,
17 I think.

18 But it was -- it was startling to me. I was concerned about
19 it. But I was also of a mind that it was -- never mind. I'm
20 entering opinion. Never mind.

21 I'm aware -- I -- like I said, I wouldn't have described it
22 that way because I'm not a medical technician, but it did take him a
23 while. And I don't remember someone coming in and giving him an

1 abdominal thrust, but I don't dispute it. He was quite undone when
2 it was over with.

3 Q. Dr. Mitchell describes the event, and he describes people
4 crying during it.

5 Do you remember people crying during waterboarding sessions?

6 A. Only that one.

7 Q. Only that one. Okay.

8 Takes us to late August, and this is when Abu Zubaydah's
9 EITs end. And there's a report that says: Following 19 days in the
10 aggressive phase, team assessment is that we have successfully broken
11 subject's willingness to withhold threat and intelligence
12 information. He is presently in a state of complete subjugation and
13 total compliance.

14 I know you said you didn't write cables. It strikes me that
15 that may not be your language.

16 A. Definitely not my language, but I can see the person that
17 wrote it.

18 Q. You can see the person who wrote it?

19 A. I don't remember his name, but I was very unhappy with
20 that cable.

21 Q. Okay. Do you see a UFI for that individual?

22 A. I don't remember the name.

23 Q. You don't remember the name?

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1 A. I just don't remember.

2 Q. Okay. I'm unsurprised that you didn't write it. It
3 didn't strike me as you, given the, you know, "complete subjugation
4 and total compliance" language.

5 But what I would ask is: Was it your opinion at that point
6 that the classical conditioning/operant conditioning model was at
7 least -- had taken effect? And maybe that's not the right language
8 choice for it, but ----

9 A. Well, I'll try to articulate this in a way that's helpful
10 and accurate. Because trying to say at what point the classical and
11 operant conditioning combination resulted in this kind of behavior is
12 beyond my ability ----

13 ATC [MR. RYAN]: Your Honor, at this time I object. As it
14 pertains against to Mr. Zubaydah is no longer relevant.

15 MJ [COL ACOSTA]: Defense?

16 ADC [MS. MORGAN]: This is precisely the template and this is
17 going directly into the -- and this becomes the template, right?
18 This is the -- the -- you know, the penultimate question, Judge.

19 MJ [COL ACOSTA]: I will let him discuss -- I will let him
20 give his thoughts on what the condition -- whether or not the
21 operative and -- pardon me, the operant and -- the conditioning, what
22 the result on Mr. Abu Zubaydah was, what condition he was in.

23 Go ahead.

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1 A. Okay. So this is what Zubaydah told myself and
2 Dr. Mitchell about that later; that things had definitely been
3 difficult for him, but he was holding out because he was honor bound
4 to do so.

5 And in his religion, there are two ways to deal with a
6 situation like that. One is called rukhsa. One is called 'azima. I
7 don't know how to spell them. Rukhsa is -- or 'azima is you never
8 give in and you never give up and you endure whatever. Rukhsa is you
9 endure what you can and Allah will forgive you and then you take care
10 of yourself. Those are -- that's almost an exact quote.

11 And Zayn told us that at the end of that waterboarding
12 session, his decision was to choose rukhsa. And he said: I will be
13 your man. And he provided more intel than I think anybody else did
14 and probably more accurate intel. He still took us in the brier
15 patches and gave us names of dead people and he still did what a
16 warrior would do, try and hide the truth. But that was what he told
17 us about that day and that decision and what happened.

18 So what the academic precursors of classical and behavioral
19 conditioning have to do with that seemed to me not nearly as
20 important as what he said.

21 ADC [MS. MORGAN]: Okay. Judge, if I can have just one moment
22 to talk to counsel down south?

23 MJ [COL ACOSTA]: You may. What we'll do is we'll take a

1 15-minute recess for you to do so, and then we'll come back and
2 resume.

3 Dr. Jessen, same instructions as always. Don't discuss your
4 testimony with anybody during this recess.

5 Counsel, if you need longer than the 15 minutes for a
6 comfort break, just let the -- let your parties know up here so that
7 they can inform the bailiff to inform me when I'm back in chambers.
8 Thank you.

9 ADC [MS. MORGAN]: Judge ----

10 MJ [COL ACOSTA]: The commission is in recess.

11 **[The witness withdrew from the RHR.]**

12 **[The R.M.C. 803 session recessed at 1458, 13 April 2023.]**

13 **[The R.M.C. 803 session was called to order at 1525, 13 April 2023.]**

14 MJ [COL ACOSTA]: The commission is called to order.

15 Government, all parties again present?

16 TC [MR. O'SULLIVAN]: Yes, Your Honor.

17 MJ [COL ACOSTA]: Defense?

18 LDC [MR. NATALE]: Yes, Your Honor.

19 MJ [COL ACOSTA]: All right.

20 ATC [LT SCHWARTZ]: Your Honor, this is the government. I
21 have one timing matter I would like to bring up prior to us diving
22 into more of Jessen's testimony, if you don't mind.

23 MJ [COL ACOSTA]: Yes. Does Dr. Jessen's presence in the room

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1 curtail what you want to say?

2 ATC [LT SCHWARTZ]: It does not, Your Honor.

3 MJ [COL ACOSTA]: Okay. Go ahead.

4 ATC [LT SCHWARTZ]: It does not pertain.

5 ADC [MS. MORGAN]: Don't trip over ----

6 ATC [LT SCHWARTZ]: I don't want to trip over Ms. Morgan's
7 water.

8 Your Honor, I just wanted to bring up one timely matter
9 concerning the trauma history that you ordered ----

10 MJ [COL ACOSTA]: If you could slow down just a little bit.
11 You said a ----

12 ATC [LT SCHWARTZ]: The trauma ----

13 MJ [COL ACOSTA]: ---- a timing -- a timing matter or a timely
14 matter?

15 ATC [LT SCHWARTZ]: Timing.

16 MJ [COL ACOSTA]: Okay.

17 ATC [LT SCHWARTZ]: Pertain -- yes, sir.

18 The trauma history that was ordered last session after
19 Dr. Crosby testified, we received the written portions. Half of it
20 was redacted. It was about eight pages total; half was redacted, we
21 were told by privilege. And then the rest of it -- I would say
22 90 percent -- we can't read the handwriting.

23 And so we were told that she would type them up when she was

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1 here, but I was informed on the break that she would not be able to.
2 And we were wanting to use them with Dr. Welner, as she testified
3 heavily to the topic. And so our concern is we won't be able to use
4 them with our expert next week. And Dr. Crosby leaves
5 tonight -- that's why it's timely -- I was told.

6 MJ [COL ACOSTA]: Ah, okay.

7 ATC [LT SCHWARTZ]: I apologize. Yes, sir.

8 MJ [COL ACOSTA]: You're talking about the trauma history
9 compiled by -- okay. And you don't have -- she's unable to
10 transcribe that for you or ----

11 ATC [LT SCHWARTZ]: That's what I was told -- yeah, that's
12 what I was told, Your Honor. She was supposed to type it up, but I
13 was told she would be unable to before she leaves tonight. And our
14 concern is we won't have it now in time to use with Dr. Welner next
15 week for our expert testimony.

16 MJ [COL ACOSTA]: Okay. Is there a request anywhere in there?

17 ATC [LT SCHWARTZ]: That she -- that she would type it up
18 today before she leaves, because I believe -- as I'm aware, it needs
19 to be done in a SCIF. And from what I -- in speaking with defense,
20 it sounds like that she wouldn't be able to other than that until
21 June, which is obviously after Dr. Welner testifies.

22 MJ [COL ACOSTA]: Defense?

23 DDC [LCDR PIETTE]: Yes, Your Honor. So this has been a

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1 little bit of a logistical nightmare. The trauma history was mostly
2 hand -- well, entirely handwritten notes that, through the scanning
3 and Dr. Crosby's handwriting are somewhat unreadable -- or very
4 unreadable.

5 So the plan was to have Dr. Crosby come and type the notes
6 up when she had the chance. Because she was here, I thought she'd be
7 able to do it; however ----

8 MJ [COL ACOSTA]: When you say "here," you mean at the SCIF up
9 in ----

10 DDC [LCDR PIETTE]: Yes, Your Honor.

11 MJ [COL ACOSTA]: ---- where they're testifying from today?

12 DDC [LCDR PIETTE]: Yes, Your Honor. So I asked if she would
13 be able to do it. However, she's only available today. She has to
14 be in the courtroom to look at this testimony. And then her flight
15 leaves tonight at 8:30, so she has to be at the airport as soon as
16 we're done, especially if we go as late as we did yesterday, and it's
17 looking like that's going to happen.

18 So -- and then because Dr. Crosby teaches and has prior
19 commitments, I conferred with her over this break we just had, seeing
20 if we could get this knocked out. And it looks like because of
21 Dr. Crosby's scheduling, unfortunately the earliest she has available
22 to come up -- come up to the D.C. region, get in a SCIF and type the
23 notes up, is the end of May.

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1 MJ [COL ACOSTA]: I'm getting a lot of -- not a lot of
2 solutions presented by -- from counsel here.

3 ATC [LT SCHWARTZ]: The notes -- the notes, Your Honor -- I
4 apologize for interrupting. There are about eight pages on just
5 blank paper. It's not much text. It's kind of sporadic lines across
6 eight pages of blank sheets of paper, so there's not a lot of text.

7 So that's why we were hoping it would be able to be done
8 today and then half of it -- which we'll be filing a motion to compel
9 the unredacted versions as well, but half of it has been redacted, so
10 cut that in half of what right now defense believes they owe us.

11 MJ [COL ACOSTA]: And without getting into what the redactions
12 are, Defense, is that an accurate summary of how much material it is,
13 about four total pages of 8-1/2-by-11 blank paper with handwriting on
14 it? Is that accurate?

15 DDC [LCDR PIETTE]: Yes. Yes, sir.

16 MJ [COL ACOSTA]: And where she's sitting right there is a
17 SCIF, correct?

18 DDC [LCDR PIETTE]: Yes, Your Honor.

19 MJ [COL ACOSTA]: And do you own computers in the
20 Defense -- Military Commissions Defense Organization?

21 DDC [LCDR PIETTE]: Yes, we have everything there that she can
22 get on. The problem is, as I understand it, is -- and I spoke to her
23 so the -- and I'm just saying facts here. I did try to find

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1 solutions ----

2 MJ [COL ACOSTA]: I understand.

3 DDC [LCDR PIETTE]: ---- today. But my understanding is,
4 talking to her, she said it would take a couple hours, and we don't
5 have, unfortunately, that kind of time today.

6 MJ [COL ACOSTA]: All right. When did you receive the
7 illegible copies, Government?

8 ATC [LT SCHWARTZ]: About a -- about a week -- I would say
9 about a week and a half ago, maybe two -- maybe two weeks, max.

10 MJ [COL ACOSTA]: Okay. And I know that there was
11 about -- was there five weeks between our last session and this one?
12 Four weeks?

13 ATC [LT SCHWARTZ]: Five. I believe five, yes, sir.

14 MJ [COL ACOSTA]: Five weeks. So, again, this is issues that
15 should not come to the commission for resolution of timing your
16 own -- timing the discovery of things that are written and can't be
17 seen.

18 And again, I -- the requirement to provide them was known at
19 least five weeks ago. Then two weeks ago the government realized
20 they had illegible documents, and now one week before they're needed,
21 while we're in session, the commission is informed that they -- that
22 we have a -- we've reached some form of a timing impasse that will
23 not provide for these documents that are required that Dr. Crosby

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1 relied upon during her testimony.

2 Those should have been provided, frankly, before she
3 testified as well, right, Defense? That's what experts do, and what
4 you do is, at the very least, as they're going to testify, here's
5 everything that they relied upon, right?

6 DDC [LCDR PIETTE]: Yes, Your Honor.

7 MJ [COL ACOSTA]: We're arguably pretty late with that,
8 Defense.

9 The scheduling issue for Dr. Crosby, I understand that there
10 are -- that we all -- that there are conflicts and such, but
11 there -- what -- it's Thursday and Friday of next week is when
12 your -- Dr. Welner is going to testify, correct?

13 ATC [LT SCHWARTZ]: Yes, Your Honor. He gets here on Sunday
14 evening, but he's technically on the schedule for Wednesday afternoon
15 in case we have extra time. But yes, end of next week.

16 MJ [COL ACOSTA]: End of next week?

17 ATC [LT SCHWARTZ]: Uh-huh.

18 MJ [COL ACOSTA]: Dr. Crosby, you're in the northeast,
19 correct -- is in the northeast. You don't have to answer me,
20 Dr. Crosby. I'll do the defense -- the defense counsel will speak.

21 It's in the -- she's in the northeast, correct?

22 DDC [LCDR PIETTE]: Yes, Your Honor.

23 MJ [COL ACOSTA]: It's a couple of hours, right? I think,

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1 Defense, what -- there -- there's going to be some need to time
2 to -- you're going to need to carve out the time to get this done.

3 So in the back of my -- in the back recesses of my mind
4 while I'm here listening to the rest of this testimony, I will be
5 thinking of a proposed solution while you and your team behind the
6 scenes start working on a solution to get it done before next
7 week -- before the testimony next week.

8 And I'd say that if he's coming on Sunday and the testimony
9 is allegedly, you know -- well, at least tentatively scheduled for
10 Thursday-Friday time frame, that you'll need to have it done by
11 Tuesday, and to make the time, to carve -- to carve it out in some
12 way to where somebody is able to get the material to her to
13 transcribe it.

14 If it's four handwritten pages of what is not redacted, then
15 that's -- that should not take long to get done, and there's a way to
16 make that happen even for a couple of hours.

17 If that requires -- if you want me to tell you to have her
18 fly in in the evening, work on it in the evening at your office and
19 then leave after a few hours from whatever northeast location, I'm
20 not there yet. This is what I'm contemplating. This is -- I don't
21 know if it's what the government is requesting or not. But that's
22 the type of solution that you can come up with. This is -- there
23 should be a solution for this that you can work out.

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1 If you can't work it out by the end of today, a plan with
2 your paralegals working behind the scenes while we're in here for the
3 next couple of hours before her flight is due, then you need to let
4 me know. But this needs to be made time for.

5 This is a document that you have that you're able to
6 transcribe that you've -- we've had time throughout -- I don't know
7 when -- when did you inform the defense that it was illegible,
8 Government?

9 ATC [LT SCHWARTZ]: They acknowledged it whenever they sent
10 it.

11 MJ [COL ACOSTA]: Okay. So I don't know why this hasn't
12 happened on Monday, perhaps, when we did not have access to -- you
13 know, I know that there was -- there was computer access issues. We
14 weren't in session on Monday. And if you acknowledged it then,
15 Defense, how is this an issue? So make -- you will make the time to
16 do it between now and Tuesday to get it to the government expert to
17 have time to look at it.

18 And I understand the government says they're going to make a
19 motion to compel the rest of the redacted stuff. I don't know what
20 the redacted portion would be to -- that would be privileged and not
21 able to be turned over to the government. But now that you know that
22 they're going to make such a motion, I'd be prepared to answer that
23 question as well.

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1 DDC [LCDR PIETTE]: Yes, Your Honor.
2 MJ [COL ACOSTA]: So make it happen.
3 ATC [LT SCHWARTZ]: Thank you, Judge.
4 MJ [COL ACOSTA]: Make it happen.
5 DDC [LCDR PIETTE]: Thank you.
6 MJ [COL ACOSTA]: Just one second, Defense, before you get
7 started.
8 You can have a seat, Dr. Jessen.
9 **[The witness, Dr. John Bruce Jessen, resumed the witness stand.]**
10 MJ [COL ACOSTA]: All right. Dr. Jessen, I remind you that
11 you remain under oath.
12 Defense, you may proceed.
13 ADC [MS. MORGAN]: Thank you, Judge.
14 And just a point of clarification that maybe
15 Commander Piette isn't aware of. Dr. Crosby only flew in late last
16 night, arriving after 9:00 p.m., and she is departing -- I understand
17 that Mr. Natale announced her on the record. She arrived last night
18 in the NCR after 9:00 p.m. She will be departing the NCR at
19 8:30 p.m. tonight. So we are working on an abbreviated schedule here
20 with Dr. Crosby. Commander Piette may not have been aware of that
21 scheduling limitation.
22 MJ [COL ACOSTA]: Thank you for the clarification.
23 Commander Piette, the issue being if you turned over records

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1 that you knew they couldn't be read, I don't know that that was an
2 appropriate -- I understand that you have to turn it over, but at
3 that time, that's when it should have been transcribed, so --

4 And if she can -- if she can find a place to sit right now
5 or within the next period of time to dictate this to a paralegal to
6 type up and certify that that's the correct record,
7 there's -- there's multiple ways to do it. I -- me telling you the
8 mechanics of how to get a transcription done is not something that
9 should occur, and I believe that you will occur -- Mr. Natale is
10 signalling that he believes -- I believe, agreeance with my position
11 that it can happen and that you can make it happen. So make it so.

12 LDC [MR. NATALE]: Your Honor, I think that we're going to do
13 everything we can, and that's what we're trying. Because it's on the
14 P2P, and there's just a lot of other constraints. But we hear you
15 and we will take all action we can take.

16 MJ [COL ACOSTA]: Mr. Natale, here's -- here's -- here's the
17 commission's order. The transcript of what is there needs to be
18 provided to the government no later than close of business on Tuesday
19 of next week. That is an ample amount of time to get this done, all
20 right?

21 LDC [MR. NATALE]: We'll do what we can, Judge. Judge, I'm
22 going to follow your orders.

23 MJ [COL ACOSTA]: No, I understand. Doing what I ----

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1 LDC [MR. NATALE]: You know ----
2 MJ [COL ACOSTA]: The doing -- the doing what you can is the
3 caveat to we'll comply -- is not quite the we'll comply. I know you
4 will comply. But yes, by Tuesday of next week.
5 LDC [MR. NATALE]: And at least I don't have to go through
6 some, you know, CIA or some other group in order ----
7 MJ [COL ACOSTA]: Right.
8 LDC [MR. NATALE]: ---- to get permission, so ----
9 MJ [COL ACOSTA]: Yes.
10 LDC [MR. NATALE]: ---- I don't have that convenient excuse, I
11 guess, right?
12 MJ [COL ACOSTA]: No, you don't. You don't. You have them.
13 They're yours. They belong to your expert and your team. She relied
14 upon them in her prior testimony. And you can type up the records
15 and get -- have somebody type up those records and get them. Thank
16 you.
17 All right. I remind you, Dr. Jessen, you're under oath.
18 Ms. Morgan, you may continue.
19 WIT: Yes. Yes, I am.

20 **DIRECT EXAMINATION CONTINUED**

21 **Questions by the Assistant Defense Counsel [MS. MORGAN]:**

22 Q. All right, Dr. Jessen. I recognize I've put a large
23 distraction in front of you. Not my intent. I do intend to do a

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1 demonstration.

2 A. Okay.

3 Q. And I will prevent myself from forgetting a question
4 later.

5 You mentioned earlier my client was a small individual; is
6 that accurate?

7 A. That's my recollection.

8 Q. All right.

9 A. Yes.

10 Q. Would it be accurate to say or do you remember that my
11 client is actually the same size as I am?

12 A. No.

13 Q. All right. And I have some documentation I can show you,
14 but if I represent to you ----

15 A. I believe you.

16 Q. Okay.

17 A. I believe you.

18 Q. And for the purposes of the record, you know, I'll
19 represent to you that my client at -- in 2004, so once he'd gained a
20 little bit of weight, he'd been a little lighter earlier in the
21 program, but I'll give you 2004 numbers -- weighed 137 pounds and was
22 5 foot 5 inches. I'm -- 5 foot 5-1/2 inches. I'm 5 foot 7 and about
23 133 pounds.

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1 So giving you that representation, would you agree that my
2 client and I are ----

3 A. Sure. Sounds fine.

4 Q. ---- the same size? Okay.

5 So when we -- when I would talk through demonstrations with
6 my client, I just want to be able to have that kind of data point
7 that ----

8 A. Okay.

9 Q. ---- similar -- or same size, same data point.

10 A. All right.

11 Q. All right. I'm going to move into my client, but before I
12 do that, just to put a cap on Abu Zubaydah: You continued
13 to -- well, after Abu Zubaydah moved out of EITs, he moved into the
14 debriefing phase like we talked about.

15 A. Correct.

16 Q. And you previously have testified that during full
17 debriefing stage investigators -- I'm sorry, interrogators still came
18 in -- I have your name in here.

19 Dr. Mitchell previously testified that during full
20 debriefing stage, interrogators still came in every day. Was that
21 your experience? Was that your experience, that ----

22 A. To start with, yes.

23 Q. Yeah. All right. And then you continued to maintain a

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1 relationship with Abu Zubaydah for years?

2 A. Yes.

3 Q. Eventually, you moved away from being an interrogator and
4 we talked about you moved into some other roles.

5 A. I think I was still considered an interrogator, but
6 I -- but what I did was not interrogation. It was ----

7 Q. Okay.

8 A. ---- another role, yes.

9 Q. Better way -- you took on some other responsibilities. Is
10 that a better way to say it?

11 A. It was just a natural transition of the process.

12 Q. And so you had access to intelligence reporting?

13 A. Yes. I don't know what specific reporting you're talking
14 about, but I had access to ----

15 Q. So ----

16 A. I don't know what that means.

17 Q. It's a really vague term, isn't it?

18 A. Yeah.

19 Q. So did you ever have the opportunity to see requirements
20 come in from -- to actually service intel requirements?

21 A. I did on occasion, yes.

22 Q. Okay. And what does that phrase mean, "service intel
23 requirements"?

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1 A. It means you go in and question the detainee based on what
2 the requirements are and then write a report and send it back.

3 Q. Were those requirements ever from -- and I'm just looking
4 for a yes or no here.

5 Were those requirements ever from agencies outside of the
6 CIA?

7 A. Yes.

8 Q. And I'll ask a specific question: Did you service
9 requirements from the FBI?

10 A. I don't remember.

11 Q. Okay. Did you service requirements from something called
12 the HVD PTF at any point in time?

13 A. I don't remember.

14 Q. Do you remember when your last contact with Abu Zubaydah
15 was?

16 A. It would have been in Guantanamo, but I don't remember
17 the -- the date.

18 Q. But also after the transfer?

19 A. Yes.

20 Q. And then ----

21 MJ [COL ACOSTA]: Counsel, can I ask you -- Counsel, can I ask
22 a question?

23 When you said the transfer, were you talking about the 2006

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1 transfer?

2 ADC [MS. MORGAN]: Thanks for the clarification, Judge.

3 MJ [COL ACOSTA]: No, thank you.

4 WIT: Yes.

5 Q. And then the follow-on question is: You said this became
6 a template for future interrogations? The Abu Zubaydah interrogation
7 became a future -- a template for future interrogations?

8 A. It was the initial template, and it was used mostly intact
9 for future interrogations. But there were some changes made along
10 the way.

11 Q. At some point after interrogating Abu Zubaydah, you were
12 asked to prepare an HVT Behavioral Management Operation Guide. Do
13 you remember this?

14 A. No.

15 Q. Okay. I don't have a copy of it.

16 A. I think -- my recollection is that was the start of the
17 standard protocol that was there for everyone to read when they came
18 on-site. That's my guess.

19 Q. My follow-up question was going to be: Do you remember if
20 it was intended for GREEN or if it was going to be intended for some
21 follow-on site? Because my recollection is BLUE was being built at
22 that time.

23 A. Yeah, I -- because -- I mean, I wasn't aware until your

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1 client came in the picture that there was going to be any more
2 interrogations. And of course, I didn't know anything about BLUE
3 then.

4 Q. Okay. And that's actually the great transition point.

5 So you're in GREEN, and as far as you know, this starts and
6 ends with Abu Zubaydah. When generally do you become aware -- or how
7 do you become aware that there's going to be another person?

8 A. Okay. I was at Location 2, and I don't remember who told
9 me, but someone -- excuse me -- told me that your client would be
10 arriving there for a temporary stop and that I was going to be part
11 of the team and so I would leave with them. That's when I became
12 aware.

13 Q. Okay. And so you were in Location 2, which is also known
14 as COBALT, for reasons unrelated to my client?

15 A. Correct.

16 Q. And you were told my client had been captured and then
17 you're going to meet -- sorry, I missed the second part of your
18 answer.

19 You were going to meet him where?

20 A. I was going to join them. They were going to come where I
21 was.

22 Q. Okay.

23 A. And I was going to join them and then move on.

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1 Q. Okay. To where he had been captured?
2 A. Pardon me?
3 Q. To where he had been captured?
4 A. No. No. From where he was captured, they came to where I
5 was at ----
6 Q. Okay.
7 A. ---- I believe without interruption. And then from there,
8 we left and returned to Location 3.
9 Q. To GREEN, okay. That makes sense. All right.
10 So I'm going to spend just a few moments on my client, on
11 what you remember about my client.
12 How well do you remember Mr. al Nashiri?
13 A. Not extremely well.
14 Q. Okay.
15 A. But I remember him, and I remember, you know, a lot of the
16 interaction that I had with him.
17 Q. Okay. And the first time you meet him is en route to
18 GREEN?
19 A. The first time I met him was at ----
20 Q. COBALT?
21 A. ---- COBALT.
22 Q. COBALT. Okay.
23 And you said the last time you saw him was in Guantanamo

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1 Bay?

2 A. Correct.

3 Q. And it was after September 2006.

4 Beyond -- after September 2006, is there anything you could

5 use as a data point to sort of narrow that date down?

6 A. No.

7 Q. Okay.

8 A. Sorry. I'm sure there's a record of it somewhere.

9 Q. I wish I had them.

10 A. Okay.

11 Q. Maybe I do somewhere.

12 Do -- and I'll just ask this, and you may not know: Do you

13 remember if it was before or after the FBI had talked to my client?

14 A. No, I don't remember that.

15 Q. Okay. Do you remember knowing that the FBI was going to

16 try and talk to my client?

17 A. No.

18 Q. Okay. After my client was rendered to Guantanamo Bay, did

19 you continue to follow intelligence reporting about him?

20 A. No.

21 Q. I'm going to stay unclassified here, but I want to talk a

22 little bit about rendition.

23 A. Okay.

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1 Q. So I'm going to be careful so I don't flag any -- don't
2 make anyone nervous.

3 But when I use the term "rendition," I'm talking about
4 someone being turned over from third countries to the U.S. or being
5 moved between different black sites.

6 A. Okay.

7 Q. Is that an accurate description?

8 A. Yeah, that's the way I understand it.

9 Q. Is it accurate to say that the process for rendition was
10 unchanged throughout the program you were a part of?

11 A. I think so. I didn't know a lot about rendition. I
12 didn't know what their SOPs were. I was only with them maybe on one
13 or two occasions when that occurred, one of them being with your
14 client.

15 Q. Okay. So I'm going to only ask about your personal
16 observations, obviously.

17 A. All right.

18 Q. Is it accurate to say that the CIA did everything it could
19 to prevent detainees from knowing which country they were in at any
20 given time?

21 A. Yes, I think that's an accurate statement. I don't know
22 the specific measures they took, but that -- yeah.

23 Q. At one point they removed the labels from water bottles

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1 because they were concerned that detainees might know where they were
2 based on a label on a water bottle?

3 A. Correct, yeah.

4 Q. Now, we talked about detainees undergoing some kind of
5 medical examination during rendition. I want to see if -- based on
6 your observations of what happened when you were involved in
7 renditions, a detainee would undergo some type of medical examination
8 before they were put on the plane; is that accurate?

9 A. That's accurate.

10 Q. Okay.

11 A. I never witnessed one. I don't know what that consisted
12 of ----

13 Q. Okay.

14 A. ---- but ----

15 Q. Were you aware that the medical provider was not allowed
16 to talk to the detainee?

17 A. No.

18 Q. Do you know if medical providers were actual MDs or were
19 they PAs, or were they med techs or something else?

20 A. I don't know.

21 Q. Are you aware if detainees were ever allowed to ask any
22 questions about their medical status?

23 A. I don't know. You mean during a rendition?

1 Q. I guess there's two questions there. During a rendition
2 specifically, do you know?

3 A. I don't know about the rendition, but I know they were
4 able to ask about their medical condition when they were on-site ----

5 Q. On-site, okay.

6 A. ---- because, you know, we had dentists come in and
7 surgeons come in and -- so that dialogue certainly existed at the
8 sites.

9 Q. Okay. And that could be based on a patient -- that could
10 be based on a detainee request rather than a provider observation?

11 A. Both.

12 Q. Okay.

13 A. Both.

14 Q. Were you aware that rectal examinations were a
15 portion -- were a part of the rendition?

16 A. I heard that.

17 Q. Okay. And were you aware that they were unlubricated?

18 A. I didn't know that.

19 Q. Were you aware that -- then you weren't aware that
20 Dr. Mitchell had actually raised a complaint about that?

21 A. I think that's why I have a recollection of it. That's
22 probably how I knew.

23 Q. Okay. Were you ever made aware that detainees

1 were -- were being given some type of suppositories prior to travel?

2 A. No.

3 Q. Did any detainee -- were you aware of any detainees
4 reporting being involuntarily medicated for travel?

5 A. Voluntarily?

6 Q. Involuntarily medicated.

7 A. Oh. I don't know.

8 Q. For renditions, detainees were diapered
9 at -- diapers -- wore diapers and were dressed in sweat suits?

10 A. Yes.

11 Q. And then they wore hoods with additional covers over their
12 eyes and ears?

13 A. I think -- yeah, they definitely were covered.

14 Q. Are you aware at some point that that policy changed
15 because OMS had concerns about detainees' ability to breathe while
16 hooded during flight?

17 A. I remember it being changed, but what I remember was a
18 detainee, when he was being prepared to move, had an ear that was
19 down like this. And it was wrapped that way, and as a result, it was
20 very uncomfortable for him.

21 Q. Okay.

22 A. I didn't remember the issue about breathing.

23 Q. Okay. So you don't remember at some point that OMS

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1 switched to opaque goggles and headgear?

2 A. Yeah.

3 Q. Okay. Detainees were shackled?

4 A. Yeah, they had handcuffs.

5 Q. And all CIA personnel accompanying the flight were dressed

6 in full black uniforms?

7 A. Maybe the rendition staff. I wasn't.

8 Q. Okay.

9 A. Dr. Mitchell wasn't. The linguist wasn't.

10 Q. So the rendition staff?

11 A. Yeah, I don't know what their kit was. That was a better

12 answer.

13 Q. Do you remember that the rendition staff was dressed in

14 the same manner as the guards, so black head covering, black

15 uniforms, black gloves?

16 A. I just don't remember what they wore.

17 Q. Okay. And then detainees arrive at the rendition site and

18 are not told where they are, correct?

19 A. Correct.

20 Q. It's disorienting? It's disorienting?

21 A. It is.

22 Q. It's intended to be disorienting? It's intended to be

23 disorienting?

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1 A. It's intended to protect where the black sites are.
2 Q. Black sites are. At least the initial rendition.
3 So when you initially met my client, that rendition's
4 intended to be disorienting?
5 A. I don't know what their intent was.
6 Q. Okay.
7 A. But I see your point and he knew where he was, so ----
8 Q. Okay.
9 A. Yeah. I don't -- renditions ran their own branch and they
10 had their own protocols and they did their own thing.
11 Q. Okay. Did they also have psychologists on staff?
12 A. They had -- probably had access to the -- but this is a
13 guess.
14 Q. Yeah.
15 A. I don't know. They may have had access to the CTC
16 psychologist that was assigned, you know, to do the evals and to
17 watch what was going on. I don't know.
18 Q. Okay.
19 A. I mean, they're in the same unit, so that's just
20 supposition.
21 Q. There's been previous testimony that SOPs at different
22 black sites were different; is that accurate?
23 A. No, I would say that's inaccurate. There was a lot of

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1 stress put on standardization of the SOPs for the program that I
2 worked in.

3 Q. Okay. Was there a variance at all between the black sites
4 that you were in? Did you experience any variants?

5 A. Well, as I told you, this was an evolution.

6 Q. Okay.

7 A. So I don't know what the -- I don't remember specifically
8 what those differences were, but certainly, the way we did things
9 with Zubaydah, the first time, were changed somewhat over time. My
10 understanding was they were changed to make them better, more
11 efficient.

12 But they were standardized, and they didn't happen
13 initially, but at -- not long after the program started, as I said,
14 there was a protocol book that spelled out everything everyone did
15 and how they did it, and everyone had to review that when they came
16 on-site.

17 Q. Now, the CIA has admitted to
18 having approximately -- having 119 men in the CIA RDI program. Not
19 all of them subjected to enhanced interrogation techniques. But of
20 those men who were in the CIA RDI program, how many would you
21 estimate you interacted with?

22 A. Give me a minute. Maybe 15, maybe 20.

23 Q. All right. So you -- even if the intent -- and you said

1 you don't know the intent for the rendition group for -- whether it
2 was to keep detainees disoriented, that is the effect; is that
3 accurate?

4 A. It is disorienting, yes.

5 Q. And so fair to say or accurate to say that whatever
6 routine they developed at their last place of captivity was
7 disrupted?

8 A. I think I understand what you mean. So each time they're
9 moved ----

10 Q. Yeah.

11 A. ---- they don't know where they're going, and that's
12 disorienting.

13 Q. Yeah.

14 A. Yes.

15 Q. And so to some extent, whatever -- hey, I have been here
16 before; I know how to do this -- that they've built up is sort of
17 reset. Would that be accurate?

18 A. That's a fair comment, yeah. Although the setting that
19 they go to, because of the standardization of the program, that's
20 pretty predictable. The only thing that really changes is the
21 physical construction, which is still similar, and what the actual
22 location is.

23 Q. So like SERE training, it might reduce the capture shock,

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1 but the experience itself would still increase anxiety?

2 A. I mean, it's a fair statement. The movement, you mean the
3 rendition?

4 Q. Right.

5 A. Yeah.

6 Q. And it would be accurate to say that it is a reminder,
7 this -- that the captors are always in control?

8 A. Certainly of movement and where you're located.

9 Q. Thank you.

10 Now, you met my client, Mr. al Nashiri, at COBALT. You
11 mentioned Dr. Mitchell had already been with him, had met him where
12 he was, in fact, captured. I want to talk a little bit about what
13 you know of the capture, and I'm going to stay real right of the
14 line.

15 When -- Mr. al Nashiri was captured by a foreign government;
16 is that accurate?

17 A. Yes.

18 Q. All right. And you were aware that he was held by that
19 foreign government for a period of time before he was turned over to
20 the United States; is that accurate?

21 A. I believe that's true. I -- yeah.

22 Q. And he was interrogated by that foreign government for
23 some period of time before he was turned over to the United States;

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1 is that accurate?

2 A. I don't know. I would assume that they did, but I don't
3 know for sure.

4 Q. You would have been aware at the time the intelligence
5 that was gathered by that foreign government that had been
6 transmitted to the United States, correct?

7 A. Perhaps not. What I would have been aware of is whatever
8 information -- whatever information they brought with him. I don't
9 remember seeing cables from a foreign government explaining
10 interrogations or anything like that. I remember dialogue with
11 Dr. Mitchell about what had occurred, but that's all I remember.

12 Q. Do you remember Dr. Mitchell telling you that he had made
13 statements to a foreign government? Do you remember Dr. Mitchell
14 telling you that he -- that Mr. al Nashiri had made statements to a
15 foreign government?

16 A. No.

17 Q. All right. Now, I'm not ----

18 A. That doesn't mean he didn't. I just don't remember it.

19 Q. The foreign government that Mr. al Nashiri was captured in
20 has a reputation for harsh interrogation techniques; is that
21 accurate?

22 A. I don't know that.

23 Q. Are you aware if U.S. government agencies were involved in

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1 the -- were present for the interrogation of Mr. al Nashiri by a
2 foreign government?

3 A. I don't know.

4 Q. Some big-picture questions about Mr. al Nashiri. During
5 most of his time in the CIA black sites, a recurring complaint of
6 Mr. al Nashiri's was that his food was drugged. That his food was
7 drugged, do you remember this?

8 A. I remember him accusing us of not giving him halal food.
9 I don't remember the poison part, right.

10 Q. You don't remember a specific complaint about poisoning?

11 A. I don't. It doesn't mean it didn't happen; I just don't
12 remember it.

13 Q. Okay. Were you aware in your time in the CIA black sites
14 of a CIA program that was launched in -- I'll give you a
15 date -- September 2002 known as Project Medication?

16 A. No.

17 Q. And I'll represent to you that it was a project to explore
18 the use of medication-assisted interrogation.

19 A. I know nothing about that.

20 Q. At any point, did you learn that the CIA was exploring the
21 use of benzodiazepines or sodium pentothal for interrogation?

22 A. Not during the time I was working for them. I think I
23 remember in the past they had tried those things ----

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1 Q. Okay.

2 A. ---- but, no.

3 Q. Or did you ever hear any conversation about the use of the
4 drug Versed?

5 A. No. I mean, I'm familiar with Versed, but I -- no.

6 Q. Are you aware if any detainees were given medication to
7 encourage compliance during interrogations or debriefings?

8 A. No.

9 Q. Are you aware if there were any prohibitions in place
10 about involuntary medication?

11 A. No.

12 Q. There were no prohibitions or ----

13 A. I don't remember reading a protocol that says you cannot
14 involuntarily medicate someone.

15 Q. Mr. al Nashiri at times is described as paranoid. To your
16 knowledge, did anyone ever conduct any type of differential diagnosis
17 based on chronic symptomology of paranoia?

18 A. No.

19 Q. All right. So I want to start in COBALT. Actually, I'll
20 go back to my client's personality a little bit.

21 In some of the cable traffic, it describes my client ----

22 A. Did you say I described your client?

23 Q. No, it describes my client.

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1 A. Oh.

2 Q. ---- as prone to outbursts or, you know, irritable.

3 Dr. Mitchell uses the term "just Nashiri being Nashiri."

4 Is that something you observed, that my client had -- had
5 bouts of irritability or was prone to angry outbursts?

6 A. I saw him angry, and I saw him have an angry outburst.
7 They didn't seem to me disproportional to the situation he was in in
8 terms of some kind of compromised mental state. So I think his -- my
9 impression was his general temperament was not gregarious and
10 outgoing. He certainly wasn't pleased with the fact that he'd been
11 captured, and that's absolutely understandable. He was suspicious of
12 those who held him, which is reasonable and predictable.

13 He was, for me, a little more difficult to communicate with
14 than some, but -- but I spent times with him when we had quite
15 lengthy peaceable communication, and I didn't perceive him as being
16 compromised in terms of this anger and these outbursts. But he's
17 certainly capable of them. But, as I said, they seemed to me not to
18 be disproportional to the environment that he was in.

19 Q. And you were -- you were never seeing him in a clinical
20 setting?

21 A. No.

22 Q. Okay.

23 A. No, no. It was just my impression as an interrogator

1 observing and interacting with him.

2 Q. Absolutely. And fair to say to -- to -- in order to
3 assess him for any type of diagnoses purposes, you would have to see
4 him in a clinical environment?

5 A. That's correct. However, I am a psychologist, so I think
6 my observations carry some accepted validity.

7 Q. Sure.

8 A. But I wasn't doing a clinical evaluation on him. I was
9 looking at him in terms of what do we need to do to help him calm
10 down so that we can get information.

11 Q. Get the information that we need to get.

12 A. Right.

13 Q. I respect that.

14 COBALT -- would it be accurate -- so I'm going to put a
15 timestamp on this.

16 November 2002, you meet my client in COBALT?

17 A. Correct.

18 Q. Does that sound right?

19 A. Yep.

20 Q. Is it accurate to say that COBALT was poorly run and you
21 tried to raise your concerns about this location? It had some
22 problems, and you tried to raise your concerns?

23 A. What you say is accurate; however, I think it had minimal

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1 if no impact on your client. He was there very briefly.

2 Q. Sure. And that's -- I don't intend to get into too much,
3 but I do want to set the stage for where did he land first, what did
4 it look like, what did it feel like.

5 So just so we can talk a little bit about COBALT and what it
6 looked like there.

7 A. Okay.

8 Q. It was a newly established black site. Am I right about
9 that?

10 A. Yeah, I don't even know if it was considered a black site
11 at that time in terms of the rest of the program. It was certainly a
12 covert location.

13 Q. And my ----

14 A. It was relatively new.

15 Q. I apologize for cutting you off. I didn't mean to do
16 that.

17 A. Oh, no, that's okay.

18 Q. And my understanding is it was an inexperienced,
19 [REDACTED] officer who was in charge of the facility?

20 A. Well, he was doing the best he could. He had been a
21 [REDACTED], which were his strongest credentials
22 in terms of a detention facility. His primary job was [REDACTED]
23 [REDACTED] and then this was an ancillary assignment for him.

1 The impression I had was that he was doing the best he
2 could, but he had virtually no guidance or oversight and minimal
3 logistical support.

4 Q. Yeah, I think the phrase he uses is he showed up on-site
5 and someone said: Go with God.

6 A. Say again, please.

7 Q. I think the phrase he uses is he showed up on-site and
8 someone told him, more or less, go with God. Is that ----

9 A. Yeah.

10 Q. ---- my memory?

11 A. Yes, I think that's correct.

12 Q. Now, the site was [REDACTED]

13 [REDACTED]

14 A. The way I understand it is [REDACTED]

15 [REDACTED]

16 [REDACTED].

17 Q. Okay. And so I want to talk about sort of the
18 environmental -- the environment in COBALT.

19 A guard has been quoted as saying being in COBALT was its
20 own EIT. Do you find that -- and I think the point that that person
21 was making was it was a highly unpleasant place. Do you ----

22 A. Was this in reference to your client?

23 Q. No, in reference to the condition of the facility.

1 A. Because I think Mr. Nashiri was there one night or two.

2 Q. I don't want to get into specifics. It's a little longer
3 than that, but I don't want to get into specifics, at least not in an
4 open session.

5 A. Okay. All right.

6 Q. I will represent to you it's a little bit longer than
7 that.

8 A. It was certainly not as utilitarian and modern as the
9 subsequent sites were. It, to a degree, resembled a medieval prison.
10 You know, rough concrete and it was cold. Big rings cemented into
11 the walls to secure people. It was not a comely, inviting place for
12 sure.

13 Q. Understood. And so I just want to go through some
14 descriptors and see if this is consistent with your memory.

15 A. Okay.

16 Q. The windows were kept blacked out and detainees were kept
17 in total darkness.

18 A. I -- not all the -- I don't think all the cells were
19 totally dark, but certainly a lot of them were. When you shut the
20 door, there was no light in there.

21 Q. Indeed, it was ----

22 A. There were other -- besides the typical cells that they
23 were holding these transient people in, there were other rooms and

1 interrogation rooms and so forth that did have lighting and so forth.

2 Q. But where -- but where detainees were kept, it has been
3 described as so dark that the guards, in fact, had to monitor via
4 headlamp.

5 A. I think they did use headlamps.

6 Q. It's been described as so dark you couldn't see your hand
7 in front of your face.

8 A. I don't remember that, but it was gloomy and dark.

9 Q. There was absolutely no talking allowed? There was no
10 talking allowed in the facility?

11 A. No, I don't think so.

12 Q. Yeah. And loud music was played constantly in the
13 facility?

14 A. Not constantly, but most of the time.

15 Q. Detainees were shackled to the walls in their cells and
16 given a bucket for human waste?

17 A. Yes.

18 Q. And I ----

19 A. I don't know if they were all shackled in their cells. I
20 saw some that were ----

21 Q. Okay.

22 A. ---- a couple that were. But I don't know if they were
23 all shackled in their cells.

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1 Q. And I missed this back at GREEN, but GREEN also used a
2 bucket for human waste?

3 A. I believe so. I believe so, yeah. There was no -- there
4 was no toilet in there.

5 Q. Were you aware of rats at COBALT?

6 A. I didn't see any.

7 Q. All right. How about at other black sites? Were you ever
8 aware of any kind of vermin or insects?

9 A. Not inside the building.

10 Q. Okay. Outside the building, this was a ----

11 A. Outside the building, there were some critters, yeah.

12 Q. Okay. How about at Guantanamo Bay? Were you aware of
13 there ever being a snakes problem?

14 A. No.

15 Q. How about a scorpions problem?

16 A. Not -- I mean, I saw scorpions, but I didn't see any in
17 the facility, and none of the detainees talked to me about it.

18 Q. Okay. In addition to some of the -- some of the detainees
19 being shackled to the walls, at least some cells had bars across the
20 ceiling -- and I think you mentioned this earlier when we talked
21 about a little earlier, but at COBALT, some cells had bars across the
22 ceiling?

23 A. Yes, they did.

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1 Q. And detainees were shackled -- and I won't make the judge
2 say things again on the record, but shackled with their hands above
3 their head and held in that position for days?

4 A. I certainly saw one that was held that way.

5 MJ [COL ACOSTA]: Defense counsel raised her arms above her
6 head and grasped her left wrist with her right hand.

7 Q. And do you know how long that individual was left to hang
8 there?

9 A. I don't remember.

10 Q. Would it be accurate to say that that individual was
11 hanging in such a position that their feet were barely touching the
12 floor?

13 A. I didn't notice that. His body was certainly distended,
14 but I don't know if he was flatfooted or not.

15 Q. Bear with me one moment because I'd love to show you a
16 rendering and see if it's accurate with your memory.

17 A. I just looked at it during the break.

18 Q. Okay. Document 22, it's titled Rabbani Photo.

19 MJ [COL ACOSTA]: Defense, is this part of the items that you
20 had provided for him to look at before his testimony?

21 ADC [MS. MORGAN]: Yeah, Your Honor. Everything I provided
22 the government I had actually asked for him to have an opportunity to
23 look at beforehand.

1 MJ [COL ACOSTA]: Okay. Thank you. This is document 22.

2 ADC [MS. MORGAN]: Yes.

3 MJ [COL ACOSTA]: And I'm about to tell you what it's marked
4 as. You can provide a copy to the witness.

5 ADC [MS. MORGAN]: Oh, I can reach. I'm going to go
6 ahead -- I'll wait until you give me the number.

7 MJ [COL ACOSTA]: This is AE 467EE. That's 467-Echo-Echo.

8 ADC [MS. MORGAN]: All right. And I'm going to go ahead and
9 put it on the overhead display. I'm going to zoom out just a little.
10 I don't know if I'm giving anybody the ----

11 Q. All right. Is this a fair and accurate representation of
12 what you observed when you observed an individual hanging in COBALT?

13 A. I don't know about the tiptoe. I already stated that.

14 Q. Yeah.

15 A. My recollection was that his arms were not spread out, but
16 that they were together in the center. But maybe if they were using
17 shackles he could move his arms. I don't know that. This tends to
18 suggest that the individual is laying at an angle, but in -- the
19 individual I saw was standing vertically.

20 Q. Vertically. Okay.

21 ADC [MS. MORGAN]: I am retrieving the document from the
22 witness. Removing the image from the document camera.

23 Q. Were you in COBALT at any time with a detainee named Ahmed

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1 Rabbani?

2 A. I don't remember that name.

3 Q. Okay. Did you ever hear of a detainee being hung in that
4 position for approximately 17 days?

5 A. No.

6 Q. And were you ever told about a detainee being hung in that
7 position so long they attempted to chew through their own arm?

8 A. No.

9 Q. Okay. Now, in GREEN, you testified that there were
10 cameras everywhere. There were cameras 24/7 in the facility at
11 Location 3.

12 A. Yes.

13 Q. All right. As far as you remember, were there any cameras
14 in COBALT, Location 2?

15 A. I don't remember. I don't remember seeing any. I
16 remember recommending they get them, but I just don't remember.

17 They had interrogation huts, as I said, that weren't the
18 cells, but I don't think they were monitored by camera. I -- I don't
19 remember.

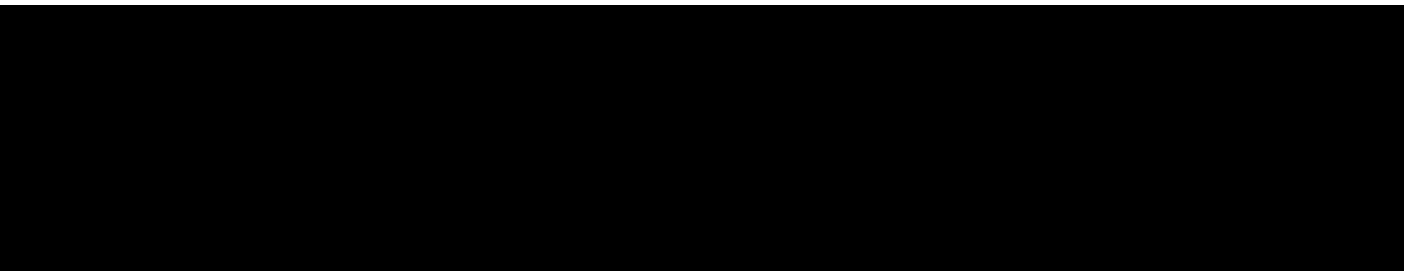
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[The security classification button was pushed in the courtroom which
caused the video feed to terminate at 1625, 13 April 2023.]

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1 [The Military Commission resumed at 1629, 13 April 2023.]

2 MJ [COL ACOSTA]: All right. We're good to go. You may
3 continue.

4 All right, Counsel. You can continue.

5 ADC [MS. MORGAN]: Thanks, Judge.

6 DIRECT EXAMINATION CONTINUED

7 Questions by the Assistant Defense Counsel [MS. MORGAN]:

8 Q. Anyway, when you were in COBALT you had observed some
9 things with Mr. Rahman that concerned you and you brought it to the
10 attention of the site leadership, correct?

11 A. Yes.

12 Q. And one of those things was that he was -- you were
13 concerned about hypothermia? Hypothermia?

14 A. Yes.

15 Q. You had observed him to be -- he received a cold -- let me
16 see if I get this right. He received a cold shower, he was cold and
17 shivering. You were concerned about him becoming hypothermic, so you
18 told the guards to get him blankets and insulation, told the chief of
19 base to get heaters, and they did nothing. And they did nothing.

20 A. Not while I was there.

21 Q. Okay.

22 A. Oh, I think I did see some heaters before I left, in the
23 hall.

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1 Q. And ultimately, Mr. Rahman died wearing just a sweatshirt
2 after being short-chained to a concrete floor due to hypothermia as
3 you had predicted?

4 A. Yes.

5 Q. And as far as you're aware, short-chaining to a concrete
6 floor is not an authorized technique?

7 A. Not in our program, no.

8 Q. You also observed a -- called a hard takedown. I'm going
9 to see if I get the description of this right. You saw three or four
10 guys precipitous -- went precipitously into Rahman's cell, picked him
11 up naked, hustled him outside, hollered and yelled, threw what
12 appeared to be cold punches at him as they ran up and down the
13 pitch-black corridor in the detention facility and they returned him
14 to his cell and locked him in.

15 So that was your testimony during the Salim v. Mitchell
16 case. Is that still an accurate description?

17 A. Yes.

18 ATC [MR. RYAN]: Objection, Your Honor. We're several
19 questions in on Rahman. On relevance grounds, I object.

20 MJ [COL ACOSTA]: Defense?

21 ADC [MS. MORGAN]: Well, Judge ----

22 MJ [COL ACOSTA]: I know it's the treatment of somebody at
23 that site. Can you put this in time frame to the accused's presence

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1 at that site?

2 ADC [MS. MORGAN]: Sure. This is within days of my client
3 being there, Judge.

4 MJ [COL ACOSTA]: All right. Then that's -- if -- then that's
5 what you need to elicit.

6 ADC [MS. MORGAN]: Sure.

7 Q. Just to tie that knot, how long before my client arrives
8 do you make these observations of Mr. Rahman?

9 A. Just a few days.

10 Q. Thank you.

11 So would you -- you testified to that description. Is that
12 still an accurate description of a hard takedown?

13 A. Yes.

14 Q. And you also testified -- you described the conditions at
15 COBALT and Location 3 as deplorable. Would you still use that as an
16 accurate description?

17 A. Yes.

18 Q. And I know you've previously said that you disagree with
19 some of the things in the Feinstein report, the SSCI Report.

20 A. Many things.

21 Q. And I respect that. I'm going to ask you about one
22 specific finding and give you an opportunity to agree or disagree
23 with it.

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1 One of the findings that that report made is that at
2 COBALT -- that COBALT failed to keep accurate records to include when
3 EITs were used, to include whether a waterboard was ever used there.
4 Do you agree or disagree with the finding that COBALT failed to keep
5 accurate records?

6 A. I don't know what records they kept.

7 Q. Okay. And that's fair.

8 You previously testified that when you observed the hard
9 takedown, I believe you said -- sorry.

10 You previously testified that you observed Ground Branch at
11 Location 2, at COBALT, the paramilitary force?

12 A. Okay. I didn't hear the very first part. Sorry.

13 Q. No, you're fine.

14 A. I previously testified that?

15 Q. That you observed the CIA's paramilitary force?

16 A. Oh, yeah, I -- there was a lot of Ground Branch there.
17 They had to come and rescue us a couple of times in hot pursuits, so
18 there were plenty of them there. I was glad they were.

19 Q. Were they involved in the hard takedown or was it typical
20 security?

21 A. I don't know who they were.

22 Q. Okay.

23 A. They were Anglos, [REDACTED]

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2 Q. Okay. Were the guards wearing -- in addition to uniforms,
3 were they wearing body gear?

4 ATC [MR. RYAN]: Objection, Judge. Relevance.

5 MJ [COL ACOSTA]: Defense?

6 ADC [MS. MORGAN]: Judge, in getting to understand this
7 technique, it's important to understand the details. And whether you
8 are picked up and punched by somebody wearing street clothes or
9 picked up and punched by somebody in full battle gear, that's a
10 significant detail.

11 MJ [COL ACOSTA]: Are you getting to a hard takedown of your
12 client?

13 ADC [MS. MORGAN]: Well, Judge, the comparison that I will
14 later make is whether this is consistent with an FCE, which
15 Commander Piette elicited from the med techs during closed testimony
16 a few months ago. So I recognize we've had this bifurcated over
17 several hearings, but there was quite detailed testimony regarding an
18 FCE. That description is already in the record.

19 That was occurring in the months and in the -- in the days
20 immediately preceding my client's LHM statement and Khallad's LHM
21 statement. Whether or not that is eerily similar to this and what
22 these individuals are wearing and how this is being accomplished is
23 relevant.

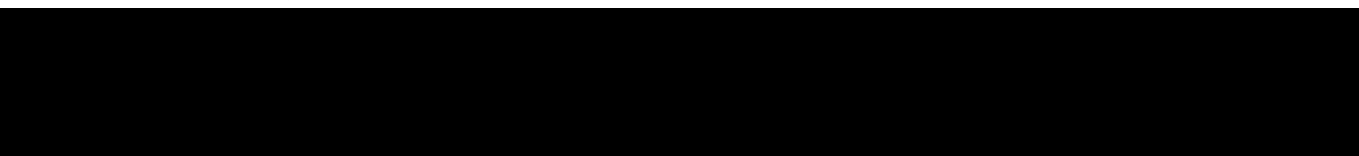
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1 MJ [COL ACOSTA]: Government, you're standing?

2 ATC [MR. RYAN]: Even if eerily similar, sir, a takedown of
3 another person years before, not the accused, is irrelevant to
4 whether -- the takedown of a client at a much later point in time.

5 ADC [MS. MORGAN]: And, Your Honor, I would submit that
6 there's going to be -- there's evidence in this record that will be
7 submitted with the defense's argument that I understand Dr. Jessen
8 can't place this paramilitary branch elsewhere. But when my client
9 is anally raped, it is actually paramilitary guards who hold him down
10 over a chair while an endo tube is inserted in his rectum.

11 And so that will be a part of our summation as part of this
12 argument, so it is not the only place that you see this paramilitary
13 branch show up. And so recognize -- the similarities here are
14 relevant. We get the facts to make our argument.



17 [The security classification button was pushed in the courtroom which
18 caused the video feed to terminate at 1638, 13 April 2023.]

19 [END OF PAGE]

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1 [The Military Commission resumed at 1642, 13 April 2023.]

2 MJ [COL ACOSTA]: All right, Counsel. You may resume.

3 ADC [MS. MORGAN]: Thank you, Judge.

4 DIRECT EXAMINATION CONTINUED

5 Questions by the Assistant Defense Counsel [MS. MORGAN]:

6 Q. All right. Is it accurate to say that the things we just
7 talked about, the hard takedowns, the short-shackling, things like
8 that, that -- it's accurate to say that those are not EITs?

9 A. Yes, it is accurate.

10 Q. And there -- would it be accurate to -- they've
11 just -- they've been called unauthorized techniques, but that seems
12 to me to be an example of euphemistic language, calling them
13 unauthorized techniques.

14 A. Well, the way we used those terms and in the context
15 you're talking about, we only used the techniques that were
16 authorized for our program. So if someone did something that wasn't
17 somewhere else, we would call that an unauthorized technique based on
18 what the parameters were for our program.

19 I don't know what the parameters were at that location at
20 that time. I remember asking if it was approved, and if it
21 wasn't -- first of all, I said I didn't think it was useful and that
22 if they were going to do it, they had to get it approved. So
23 that's -- that's why we'd use the term

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1 authorized -- unauthorized ----

2 Q. Unauthorized?

3 A. ---- technique.

4 Q. Is it fair to say that, at a minimum, it is just some form
5 of physically or psychologically coercive pressure?

6 A. Yes, it is.

7 Q. And would it be fair to say that making up some form of
8 coercive pressure can be a sign of that abusive drift that we talked
9 about?

10 A. If, in fact, that's what was done, yes.

11 Q. And I assume you would need some time to observe whether
12 that, in fact, was abusive drift, but would it be accurate to say
13 that this is sort of the "be on the lookout for" things?

14 A. Okay. I'm a little confused.

15 Q. Okay.

16 A. But if someone did anything, to include a hard takedown,
17 that wasn't authorized, that would definitely be a sign of abusive
18 drift.

19 Q. Got it.

20 A. I don't know whether -- I never received an answer in
21 terms of whether that was authorized or not. So ----

22 Q. Well, you knew it wasn't authorized from DoJ, right?

23 A. I knew I couldn't do it, and it wasn't authorized in our

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1 program.

2 Q. Okay. And thank you for clarifying that it is absolutely
3 abusive drift. I got that wrong.

4 Were you aware at the same time, so the same time period,
5 that mock executions were also occurring at COBALT?

6 A. No.

7 Q. Okay. But you were aware that mock execution later occurs
8 with my client at BLUE?

9 A. No.

10 Q. With the gun to his head?

11 A. Oh, that? Yes. Sorry. Yes.

12 Q. Have you ever been back to COBALT since you left when you
13 traveled to GREEN with my client?

14 A. Please say that again.

15 Q. Have you ever been back to COBALT since you left to travel
16 to GREEN with my client?

17 A. I don't think so, no.

18 Q. Did you -- are you -- do you have any reason to believe
19 that COBALT ever improved?

20 A. I don't know other than I did see some heaters before I
21 left.

22 Q. Okay. Did you continue to hear any rumors about COBALT
23 continuing to be a particularly bad location?

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1 ATC [MR. RYAN]: Objection, Your Honor. Relevance. It's
2 beyond the scope of the accused's presence there.

3 ADC [MS. MORGAN]: And, Your Honor, Khallad is later held
4 there for a significant period of time in July of 2003 -- I believe
5 July of 2003.

6 MJ [COL ACOSTA]: Overruled. I'll allow it.
7 Go ahead.

8 A. No, I didn't hear anything about that.

9 Q. At some point the CIA tells you they want -- they like the
10 results that you got with Abu Zubaydah, and so they want you to put
11 on your own course; is that accurate?

12 A. I didn't understand what you said. I'm sorry.

13 Q. This is a product of being tired in the afternoon.

14 At some point the CIA tells you that they like the results
15 that you and Dr. Mitchell are getting -- that you had gotten with
16 Abu Zubaydah, and they want you to put on your own training course
17 for interrogators?

18 A. Yes. It was actually, I think, significantly after we
19 were -- it still had started with Zubaydah. So it wasn't right like
20 when EITs quit and we started to do debriefings. It was later ----

21 Q. Okay.

22 A. ---- later on, but ----

23 Q. Well, then, I'll put a pin in that.

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1 Would you remember approximately when it was?

2 A. No, I don't.

3 Q. Okay. Was it ----

4 A. I don't.

5 Q. ---- before or after my client was interrogated?

6 A. Oh, after.

7 Q. After? Okay. Well, then, let's put a pin in that until

8 after we talk about my client.

9 A. All right.

10 Q. However, in November of 2002, you do travel back to the

11 States to observe a CIA interrogation course?

12 A. If this is the one Jim and I both went to, yes.

13 Q. Yes. Okay.

14 And so they put together a course, and is it accurate to say

15 that you don't have any input on the course that the CIA puts

16 together?

17 A. Correct.

18 Q. Okay. And you traveled back to the States to observe the

19 course? You don't need to tell me where you traveled ----

20 A. I do a lot of traveling ----

21 Q. Right.

22 A. ---- but I definitely specifically went back to that area

23 to observe the course.

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1 Q. Okay. And so that training is run, like we said, by NX2
2 and -- November, X-Ray, 2, and you said -- I believe it -- MA1. Am I
3 right on that second -- let me make sure I got it right.

4 A. NX2? What was the other?

5 Q. And you said -- I thought you said MA1, but double check
6 me on that.

7 A. It's A2. It's ----

8 Q. MA2?

9 A. Yeah. Yeah.

10 Q. Thank you, sir.

11 Now, you -- what is your relationship with NX2?

12 A. Practically nothing.

13 Q. Okay.

14 A. But what existed was in-amicable.

15 MJ [COL ACOSTA]: I'm sorry. Could you repeat that word?

16 WIT: Yeah. It wasn't friendly.

17 Q. And what about MA2?

18 A. I had known that person when he was a survival instructor
19 and had a good relationship with him.

20 Q. And you said when you attempt to -- you said you observed
21 them doing inappropriate -- conducting inappropriate training,
22 correct?

23 A. Correct. We observed them doing what we believe was

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1 inappropriate training.

2 Q. And you raised those alarms -- you raised those concerns?

3 A. We went right to the phone and called.

4 Q. And what was the effect of that?

5 A. More animosity. And I don't remember exactly how it
6 panned out, but the course continued at that iteration.

7 Q. Do you know if they continued to teach?

8 A. I don't know.

9 Q. Did you know they were going to be in the same black sites
10 as you were?

11 A. No.

12 Q. Okay. And when you said that you witnessed unauthorized
13 techniques, what specifically did you witness at that training
14 course?

15 A. I think it was the broomstick behind the ----

16 Q. The knees?

17 A. ---- knees.

18 Q. All right.

19 A. But I'm not positive.

20 Q. All right. So then you come back. You're at GREEN with
21 Mr. al Nashiri in November of 2002.

22 Are you present for the mental status evaluation at all?

23 A. No.

1 Q. Okay. How do you find out that he has been cleared for
2 the mental status evaluation?

3 A. I assume he's been cleared because we had permission to
4 interrogate him.

5 Q. Bear with me one second.

6 Do you know if the behavioral psychologist ----

7 ADC [MS. MORGAN]: Sorry, IT folks. I keep undoing my mic.

8 Q. Do you know if the behavioral psychologist had any
9 background in SERE training or in enhanced -- like, in the -- in
10 JPRA, in survival techniques, in SERE techniques, so that when
11 they're opining that the application of these techniques will not
12 cause any type of harm, they have a basis of knowledge to opine from?

13 A. I don't know that.

14 Q. Okay. I've just got a question, so I'm going to go back.

15 A. Yeah.

16 Q. All right. So I'm going to go back to Location 2 quickly.

17 I'm going to have you do some UIFs. So go back to Location 2,

18 COBALT.

19 Can I have you -- from COBALT, if you remember the COB, can

20 I have you identify that person by UOF **[sic]**? It's just 2, not 3.

21 UFI. Wow. Okay. UFI.

22 A. There wasn't a base.

23 Q. Okay.

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1 A. I think you're talking about the person that ran ----
2 Q. That ran it, yeah. You're right. I apologize. That was
3 a ----
4 A. That's okay. It's terminology, but ----
5 Q. Yeah, so the different ----
6 A. I think I am finding his name, but I don't want to
7 identify him incorrectly.
8 Q. To the best of your memory, and we all recognize that
9 we're slightly imperfect, so to the best of your memory.
10 A. Can you give me his number, and then I can tell you if I
11 recognize his ----
12 Q. Oh, I don't have it. That's the beauty of this job ----
13 A. Oh, you don't have it? That's the problem.
14 Q. ---- is I shoot blind most of the time.
15 A. Okay. It's up to me. Give me a moment.
16 **[The witness reviewed the evidence.]**
17 A. Okay. Before I divulge this identification, I would
18 appreciate some feedback because I don't want to falsely identify
19 someone, and I'm not absolutely positive that this is it. I think it
20 is, but I don't know for sure.
21 Q. There are documents that we have that can somewhat put it
22 in context. So if you're the only one that says it and it's an
23 outlier, that's a pretty good indicator that it's an outlier, so.

1 A. Having been the victim of ----

2 Q. Fair.

3 A. ---- misidentification, I know the consequences. And so
4 I'm just ----

5 Q. Okay.

6 A. ---- hypertensive to that. So are you telling me to go
7 ahead and proceed or asking me to?

8 Q. I would ask you to proceed and recognize that you are
9 caveating that with the -- an acknowledgment ----

10 A. Okay.

11 Q. ---- that you are not ----

12 MJ [COL ACOSTA]: And only give the unique identifying ----

13 ADC [MS. MORGAN]: Yes.

14 MJ [COL ACOSTA]: ---- the unique identifier. That's all
15 she's asking for is the three -- three-digit identifier, okay?

16 WIT: Okay, Judge. Then that identifier is Z2C.

17 Q. And then from COBALT, anyone else that you recognize from
18 that time period?

19 **[The witness reviewed the evidence.]**

20 A. No.

21 Q. Okay. And then I'm going to ask you the same question at
22 GREEN.

23 A. At GREEN? Anyone on the list that I ----

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1 Q. Yeah. So who -- so leadership and then anyone else that
2 you interacted with.

3 A. That I recognized at GREEN?

4 Q. Yeah.

5 ATC [MR. RYAN]: Your Honor, I object on relevance grounds.

6 ADC [MS. MORGAN]: And, Judge, I'm asking for time periods
7 that would be when he is traveling with my client, so I am going to
8 bookend -- and, frankly, when I get to BLUE, I am going to ask for
9 time periods that are relevant to my client and to Khallad.

10 But we are still well within -- he has been at COBALT, now
11 within either with my client or days of my client, and then
12 Dr. Jessen has been in GREEN -- I'll even narrow it down to with ----

13 MJ [COL ACOSTA]: Your question is who was -- who there from
14 the list was there with him at the same time that he was with
15 Mr. Nashiri?

16 ADC [MS. MORGAN]: My client, yeah.

17 MJ [COL ACOSTA]: Okay. You can go ahead and provide that.
18 The ones that you recall, just list their identifiers.

19 WIT: What was that, Judge?

20 MJ [COL ACOSTA]: The ones -- the individuals that are in the
21 list that were with you at the same time at site GREEN with
22 Mr. Nashiri, you can list their identifiers.

23 WIT: Okay. I'll do my best.

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1 A. Z9A.

2 Q. And that's [REDACTED]?

3 A. Come again?

4 Q. Is that [REDACTED]?

5 A. Correct.

6 Interrogator Number 2.

7 Those are the only two I recognize.

8 Q. Okay. And then I'm going to ask about the training, who

9 you recognized.

10 **[Counsel conferred.]**

11 Q. Oh, yeah, sorry. Let me clarify. I should have picked up

12 on that.

13 Interrogator Number 2 is Dr. Mitchell, correct?

14 A. Correct.

15 Q. Okay. Sorry. He's unmasked.

16 The same question from -- well, before I get to the

17 training, was Z9A present for the waterboarding of Abu Zubaydah, by

18 your recollection?

19 A. I've got to find him again.

20 ATC [MR. RYAN]: Objection. Relevance, Your Honor.

21 ADC [MS. MORGAN]: And, Your Honor, the presence of the motion

22 to compel Z9A as a witness is pending before the commission.

23 ATC [MR. RYAN]: I'm sorry, sir. I withdraw the objection.

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1 MJ [COL ACOSTA]: Objection has been withdrawn.

2 Was Z9A present for the waterboarding of Abu Zubaydah?

3 WIT: I'm working on it.

4 MJ [COL ACOSTA]: No, understood. First page.

5 WIT: Thank you.

6 A. No.

7 Q. Was Z9A present for the waterboarding of Mr. al Nashiri?

8 A. I'm pretty sure.

9 Q. Was Z9A in the interrogation room during the 23 days that
10 Mr. Abu Zubaydah was subjected to enhanced interrogation techniques?

11 A. No.

12 Q. Would [REDACTED] come into the interrogation room?

13 A. No.

14 Q. Would [REDACTED] watch through the video feed?

15 A. [REDACTED] wasn't even there.

16 Q. [REDACTED] wasn't there yet? Okay. So then I'm going to move to
17 Mr. al Nashiri.

18 During the period of time where Mr. al Nashiri was subjected
19 to EITs, did Z9A come into the interrogation room?

20 A. No.

21 Q. Would [REDACTED] watch through the control feed, the video feed
22 from the control room?

23 A. [REDACTED] could if [REDACTED] chose, but I don't know.

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1 Q. Did you ever discuss with [REDACTED] whether [REDACTED] was aware of
2 what you were doing or was [REDACTED] viewing the techniques?

3 A. I definitely discussed what we were doing, but I didn't
4 say: Were you watching?

5 Q. In any of the discussions you had with [REDACTED], were you left
6 with the impression that [REDACTED] was watching because [REDACTED] was
7 particularly aware of some fact?

8 A. No. But given [REDACTED] position, the probability that [REDACTED]
9 watched is high.

10 Q. In the video -- the way that the video feed was, was there
11 an ability to record the interrogation session? I'm assuming the
12 answer to this is yes based on now what you told me the purpose is.

13 Was there the ability to record the interrogation session so
14 that it could be rewatched later?

15 A. Not with al Nashiri.

16 Q. Not with al Nashiri.

17 You mentioned the purpose was to ensure that the
18 interpreters got it right. Did that go away at some point with
19 al Nashiri?

20 A. You mean the purpose ----

21 Q. Yeah.

22 A. ---- or the need?

23 I don't know. That decision was made somewhere else.

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1 Q. Okay.

2 A. After we sent those clips back and before -- I've always
3 called him Nashiri. Is it Nashiri? I don't know.

4 Q. Depends who you ask.

5 A. Oh, okay. I don't know what he prefers. But he didn't
6 object when I called it to him, so. But before Nashiri showed up at
7 that location, there was no more recording done.

8 Q. Okay. Did Z9A ever dress as a guard to come into the room
9 during any debriefings or any other time to disguise [REDACTED] appearance
10 but to still be in the room?

11 A. No. I don't think so. I think I know what you're
12 alluding to, but, no, I don't think [REDACTED] was part of that.

13 Q. Okay. Did Z9A conduct any debriefings?

14 A. Hmm. I don't think so.

15 Q. Was [REDACTED] in the room during debriefings?

16 A. I don't think so.

17 Q. What role did [REDACTED] play during Mr. al Nashiri's
18 waterboarding?

19 A. [REDACTED], so [REDACTED] was in charge of things, but [REDACTED]
20 didn't have a kinetic role.

21 Q. Okay. So just an observer?

22 A. If [REDACTED] observed. Yeah, I don't know. I don't know when
23 [REDACTED] was observing and not. I assume [REDACTED] observed at times at [REDACTED]

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1 discretion.

2 [REDACTED] certainly read all the intels and participated in the
3 debriefs during the time [REDACTED] was there. I don't remember
4 specifically the -- all the time that [REDACTED] was there, but one of
5 the -- or rather the span of time that [REDACTED] was there, but...

6 Q. Was [REDACTED] involved in Mr. al Nashiri's particular case?

7 A. With his what?

8 Q. Would you describe [REDACTED] as involved? At this point, GREEN
9 only has, you know, two detainees, correct?

10 A. Yeah.

11 Q. And at this point Abu Zubaydah has already reached full
12 debriefing stage, correct?

13 A. Correct.

14 Q. So is it accurate to say, as [REDACTED] attention
15 would have been likely focused on Mr. al Nashiri?

16 A. I think -- I mean, it's sufficient to say [REDACTED] was [REDACTED]
17 [REDACTED]. [REDACTED] was responsible for everything that goes on. The most
18 critical thing that was going on was Nashiri's interrogation. So I
19 would certainly suppose [REDACTED] was engaged and switched on in terms of
20 that.

21 Q. Did [REDACTED] provide ----

22 A. That's not the only thing the [REDACTED] has to take
23 care of, and they've got people coming in and out and all kinds of

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1 other things, but [REDACTED] ultimately responsible for it.

2 Q. Did [REDACTED] provide you any direction on how you should go
3 about your interrogation?

4 A. I don't remember any specific advice like that, but [REDACTED]
5 was part of every -- well, I don't know. [REDACTED] wasn't there all the
6 time. Sometimes [REDACTED] had to go other places. But when [REDACTED] was there,
7 [REDACTED] was part of the hotwashes, so [REDACTED] would discuss what went on with
8 us.

9 Q. At some point in the -- in the documents I've looked at,
10 there's a description, as part of an interrogation plan -- I think
11 for my client -- of doing a dry run before the actual interrogation,
12 of the EITs and whatnot, what it would all look like. Was [REDACTED] ever
13 part of that?

14 A. I don't think so.

15 Q. Okay.

16 A. I mean, that was done in preparation for Zubaydah.

17 Q. Okay.

18 A. There wasn't -- I don't believe that was done after that.
19 I mean, people had to be proficient in what they were going to do,
20 but I think that was the only time we did ----

21 Q. A full dress ----

22 A. ---- a trial ----

23 Q. ---- rehearsal for Zubaydah ----

1 A. Yeah.

2 Q. ---- and the interrogation plan just became the
3 slimmed-down interrogation plan?

4 A. I didn't ----

5 Q. And then -- it was a full dress rehearsal for Zubaydah,
6 and then it became the slimmed-down interrogation plan? No dress
7 rehearsal attached later?

8 A. I don't understand.

9 Q. You did a dress rehearsal before Zubaydah, and then you
10 didn't do that later?

11 A. Correct.

12 Q. Okay.

13 A. Yeah.

14 MJ [COL ACOSTA]: Counsel, if you're about to shift into
15 something else, I think it's about time for a break before we do
16 a ----

17 ADC [MS. MORGAN]: That would be fantastic, Judge.

18 MJ [COL ACOSTA]: ---- push into the early evening.

19 So same warning as always, Dr. Jessen: Don't discuss your
20 testimony with anyone during the recess.

21 **[The witness was warned, was temporarily excused and withdrew from**
22 **the RHR.]**

23 MJ [COL ACOSTA]: We're in recess for 15 minutes.

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1 **[The R.M.C. 803 session recessed at 1713, 13 April 2023.]**

2 **[The R.M.C. 803 session was called to order at 1730, 13 April 2023.]**

3 MJ [COL ACOSTA]: The commission is called to order.

4 Government, all parties still present?

5 TC [MR. O'SULLIVAN]: Yes, Your Honor.

6 MJ [COL ACOSTA]: Defense?

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

8 MJ [COL ACOSTA]: All right.

9 **[The witness, Dr. John Bruce Jessen, resumed the witness stand.]**

10 TC [MR. O'SULLIVAN]: Your Honor, just a note. The
11 Pentagon ----

12 MJ [COL ACOSTA]: Has turned off their feed?

13 TC [MR. O'SULLIVAN]: Yes, Your Honor.

14 MJ [COL ACOSTA]: Okay.

15 **DIRECT EXAMINATION CONTINUED**

16 **Questions by the Assistant Defense Counsel [MS. MORGAN]:**

17 Q. All right. So do you submit the interrogation plan to the
18 behavioral psychologist before they do the mental status evaluation?

19 A. No.

20 Q. Okay. So are they -- when they are approving EITs up to
21 the waterboard, is that just the generic or -- I'm saying request.
22 That may not be the right word -- but is that just the generic sort
23 of evaluation, thing that they're evaluating for, not based on a

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1 specific request?

2 A. So they do the evaluation with the assumption that any and
3 all of the pressures could be used. And I assume they also evaluate
4 not just for pressures but just, you know, can the person articulate
5 adequately and so forth. But mainly they are concerned with the
6 pressures.

7 Q. And so would it be accurate to say they go in with an
8 assumption that, yes, they can be applied unless shown otherwise? So
9 unless I see a major psychopathology, yes, you can use?

10 A. Yeah, so this is the way I remember it working. You know,
11 I didn't do the evals, but when the evals were completed, we received
12 the go-ahead from headquarters to do the interrogation and then the
13 psychologist was present watching the interrogations.

14 So they still have a mandate to stop if they see what they
15 think is inappropriate behavior or if they have a concern. So they
16 do the eval, but they also continue to monitor.

17 Q. Okay. And at some point -- so when you're -- do you get
18 the psychological evaluation or does someone just relate to you that
19 you are cleared hot, essentially?

20 A. Yeah, we touched on this earlier. They may have been
21 included in cables. I don't remember for sure. But they don't come
22 to us and say here's the results. They -- you know, I don't even
23 know if they came to us. They may go to the chief of base and say,

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1 okay, you know, we're good to go.

2 Q. Do you remember having information about Mr. al Nashiri's
3 background before you interrogated him?

4 A. Very little.

5 Q. Okay.

6 A. Just what Jim communicated to me.

7 Q. Okay. Do you remember -- so just some specific
8 questions -- having any information about his intelligence level
9 prior to interrogating him?

10 A. No.

11 Q. Do you remember -- would that have been something as an
12 interrogator you would want to know, somebody's -- is intelligence a
13 factor in resistance?

14 A. No, not unless someone was so incapacitated they can't
15 communicate.

16 Q. At some point, you know, earlier yesterday we talked about
17 kind of that continuum of resistance ----

18 A. Right.

19 Q. ---- right?

20 And so tell me if you -- if this is accurate: You know, at
21 some point, Mr. al Nashiri is described as somewhat of a
22 sophisticated resister. Is that consistent with your memory?

23 A. No. He certainly resisted, but I don't remember a

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1 sophisticated resistance stance. He was just a pretty tough guy.

2 And so I don't know. I don't think I made that statement.

3 Q. Okay. So that wouldn't be consistent with your assessment
4 of Mr. al Nashiri?

5 A. No.

6 Q. Okay.

7 A. No.

8 Q. So if a behavioral psychologist made that, then that would
9 just be their assessment?

10 Would that be something typically a behavioral psychologist
11 would say during the mental status evaluation? Do they do
12 resist -- do they assess just for mental status or are they assessing
13 for mental status plus looking for ----

14 A. Pathology.

15 Q. ---- pathology, vulnerability -- well, but also looking
16 for vulnerability?

17 A. Yes. All -- all of the above.

18 Q. All?

19 A. Yeah.

20 Q. Okay. So is it something you might see in a mental status
21 evaluation, to see, you know, a sophisticated resister or ----

22 A. Probably not because they typically are not resisting the
23 medical personnel.

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1 Q. Okay.

2 A. But they do watch the interrogations. So if -- if they
3 did a subsequent eval, and they might make that statement based on
4 their observations.

5 Q. Okay. And tell me if you think this is accurate: For
6 someone to be sophisticated in resistance, it would seem to me
7 logically that person would have to have somewhat of a sophisticated
8 level of intellect. Is that accurate?

9 A. That's a natural assumption, but it's not really -- it
10 doesn't really hold.

11 Q. Okay. Can you explain? I appreciate that.
12 Can you explain maybe what the reality is behind that?

13 A. Yeah. Someone who is less -- we're just talking in
14 generalities here, but someone who is, quote, less intelligent but
15 confident, strong-willed, and affable and not overly affected by the
16 situation could be a very strong resister.

17 Resistance is probably most effective when -- the more
18 relaxed and the more engaged the person is in the interrogation.

19 Q. Okay.

20 A. You know, refusal to speak is a resistance stance, but
21 it's not a very sophisticated one. But if you're not smart enough to
22 realize you need to keep your mouth shut but you don't know anything
23 really sensitive, you'll get through an interrogation pretty well.

1 Q. Okay. Okay. And so what would you have assessed
2 Mr. al Nashiri's resistance posture as, kind of understanding that
3 continuum?

4 A. I think right in the middle. I think he was a
5 typical -- for the people that we worked with, a typical resister.

6 Q. And just to put that into context, what are ways that
7 people -- I'll use my client specifically.

8 What did you observe from him that told you he was
9 resisting?

10 A. When we started asking him questions, he wouldn't respond.
11 And when he did respond -- boy, it's been a long time, so this is
12 really just a little hazy. But his responses weren't in-your-face
13 arrogant, but he had, I thought, quite a bit of composure and
14 self-restraint.

15 And yet what I remember is he projected quite a bit of
16 confidence. When we would contradict what he said, even if we had
17 pretty good information to contradict what he said, he would stick
18 with where he was at and basically say, no, that's not the case. You
19 know, I -- it's not -- I didn't do that.

20 He didn't -- he didn't have an overly affective style where,
21 you know, he's either angry because you won't believe him or he is
22 pleading that you believe him. He just had the composure that you
23 usually see in someone who's doing a fairly good job of resisting.

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1 Q. Is it accurate to say one mechanism of resistance is to
2 put information out that is already known?

3 A. Absolutely, it's called hiding in the truth. And if you
4 can give someone something they think they want and it's negligible
5 or is not going to damage anything you're trying to protect, that's a
6 smart thing to do.

7 Q. So providing names that are already known or ----

8 A. People that are dead or -- yeah.

9 Q. All right. So you said GREEN was no longer videotaped
10 24/7 when Nashiri got there, correct?

11 A. Correct.

12 Q. Okay. So the videotaping of his EIT was a -- was it an
13 unusual event, then?

14 A. I don't -- I recall no videotape of his EITs.

15 Q. Okay. So if other people recall videotaping of his EITs,
16 it would have just been unusual that it was videotaped?

17 A. I don't believe it was videotaped, but ----

18 Q. Okay.

19 A. ---- I know nothing about that.

20 Q. Okay. You just don't remember; fair to say?

21 A. I don't remember, and I'm pretty sure that -- that it
22 wasn't videotaped. I could be wrong, but I don't remember that.

23 Q. Okay. So I want to walk you through -- and we have the

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1 cable traffic.

2 By the time Nashiri is being interrogated in GREEN, do you
3 have access to the cable traffic -- are you actually able to write
4 cables or are you still sort of providing the input and someone else
5 is writing?

6 A. I don't remember.

7 Q. Okay.

8 A. I certainly had access to cables ----

9 Q. Okay.

10 A. ---- because we got a lot of information that, you know,
11 came in to look at while we were interrogating him.

12 Q. Okay. And so what's reflected in the cable traffic -- and
13 I just want to see if this jibes with your memory -- is the first day
14 you walk into the cell --

15 So, one, does it sound right -- is it consistent with your
16 memory that Mr. al Nashiri spends three weeks in enhanced
17 interrogation techniques at site GREEN?

18 A. Three weeks?

19 Q. Yes.

20 A. That seems long to me. That's because I'm thinking about
21 the waterboard, and that we curtailed that right away. But we could
22 have used the other pressures for that long. I don't know. It just
23 seems long to me, but I don't know. I don't remember accurately.

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1 Q. Okay. Fair to say it's been a long time?

2 A. Yes.

3 Q. All right. But cable traffic reflects about three weeks.

4 A. Okay.

5 Q. So -- and I'll represent this to you, and then, you know,

6 tell me if this is consistent with your memory of what you remember.

7 But you walk into the cell the first day, the interrogation team, and

8 do you remember who's on your interrogation team with Mr. al Nashiri?

9 A. Yeah. Dr. Mitchell and an interpreter.

10 Q. And do you have a SME -- do you have a -- a SME. Do you

11 have a targeter with you or an analyst?

12 A. I don't believe any of them were ever in the cell at

13 GREEN. I think they were all upstairs ----

14 Q. Okay.

15 A. ---- listening and writing.

16 Q. Do those individuals have UFIs?

17 A. Well, Dr. Mitchell has one.

18 Q. So -- sorry, not Dr. Mitchell. Do the targeter or the

19 analyst?

20 A. I don't remember their names.

21 Q. Okay.

22 A. Sorry.

23 Q. No. Understood.

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1 You walk in the cell. It's just the two of you then?

2 A. That would be ----

3 Q. And the linguist?

4 A. It would be the four of us ----

5 Q. Four.

6 A. ---- with Mr. Nashiri.

7 Q. Okay. And the cable traffic -- the cable traffic reflects
8 that Mr. Nashiri immediately says I'm ready to talk.

9 Is that consistent with your memory?

10 A. I don't remember that. What I -- this is what I remember.

11 Q. Sure.

12 A. I remember the initial probe was done at Location 2.

13 Q. Okay.

14 A. And then when we got to -- you think I could remember
15 this. I just don't want to make a mistake.

16 So when we got to Location 3, I assume shortly after that,
17 we went back in and after the initial probe, you go back in and ask
18 them if they're ready. So that may have been when he said that. I
19 don't remember him saying that.

20 Q. Okay. And that actually is helpful. Let me try and just
21 make sure I understand that.

22 So you do the initial probe at COBALT, and it sounds like
23 after that, then the behavioral psych evaluation may be done?

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1 A. I don't know.

2 Q. If you bear with me one second.

3 A. Sure.

4 Q. I may have a question about that tomorrow.

5 A. All right.

6 Q. I'll come back to that.

7 A. And Dr. Jessen -- or I mean -- you've got me doing it.

8 Dr. Mitchell did the initial probe.

9 Q. Okay.

10 A. And I'm pretty sure I remember it being at that location.

11 Q. Oh, I am not doubting that. Unfortunately, documents

12 aren't always dated as well as I would like them to be.

13 A. Yeah.

14 Q. And so I'm going to look this evening about the date of

15 the mental status evaluation ----

16 A. Okay.

17 Q. ---- about whether ----

18 A. All right.

19 Q. ---- it's between the two locations.

20 A. Yeah. I don't know when that took place.

21 Q. Full transparency.

22 A. All right.

23 Q. All right. So -- and if it's helpful, we can look through

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1 the cable traffic together. But what is -- so you don't remember
2 that he said I'm ready to talk, and we can look at that cable traffic
3 here in a moment.

4 What is it that you remember?

5 A. About?

6 Q. About your initial encounter with Mr. al Nashiri.

7 A. Well, you know, they're run together. So I remember that
8 we didn't get anywhere at first, which is predictable. But that
9 eventually, he did start to give us some information about the COLE
10 operation, and we were able to verify it, and -- unfortunately,
11 that's about all I remember.

12 Q. Okay.

13 A. I -- what I remember most, like I said, is the -- well,
14 that doesn't matter. You didn't ask me. I'll wait until you ask me
15 a question.

16 Q. Go ahead. What do you remember?

17 A. I was just going to say, I remember -- what I remember
18 about that was -- was the waterboard, and that it -- that it didn't
19 work, and I was concerned he was going to get hurt. And we stopped
20 that.

21 I don't know when that was in that three-week period, and I
22 don't know when that was in relation to when he started to give us
23 some information. But I judge it was after that.

1 Q. And so your memory is that he eventually gives you
2 information on the USS COLE?

3 A. Yes.

4 Q. And that he eventually gives you information -- do you
5 remember him giving you information on the MV Limburg?

6 A. On --

7 [The security classification button was pushed in the courtroom which
8 caused the video feed to terminate at 1748, 13 April 2023.]

9 [END OF PAGE]

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1 [The Military Commission resumed at 1750, 13 April 2023.]

2 MJ [COL ACOSTA]: I'm told that was a false alarm, so we're
3 good to go.

4 ADC [MS. MORGAN]: I'm aware, Judge. Sorry. That was not
5 directed at you, Judge. I apologize. That was directed at the fact
6 that it's 5:30 and I'm tired.

7 MJ [COL ACOSTA]: I'm only going to keep you -- well, it's
8 5:50. I'm planning on going to 1830, and then we'll have a
9 discussion at the end of that time.

10 ADC [MS. MORGAN]: Okay, Judge. I will tell you, Judge ----

11 MJ [COL ACOSTA]: Hold on. Hold on. We've got to let the 40
12 seconds run. You weren't going back into the witness. You were
13 talking to me?

14 ADC [MS. MORGAN]: I was talking to you, Judge.

15 MJ [COL ACOSTA]: Okay. Go ahead.

16 ADC [MS. MORGAN]: I will tell you that I'm actually burning
17 through much faster than expected, and I think -- I will not speak
18 for Mr. Ryan. I think I could be done by early afternoon tomorrow.
19 I will need a closed session. It would be short.

20 I do not want to speak for Mr. Ryan and what he would do
21 with cross, which means if we are willing to push late tomorrow, I
22 think we will be okay. But again, I do not know what Mr. Ryan has
23 for cross, and I do not want to speak for him or intrude on his time.

1 MJ [COL ACOSTA]: Mr. Ryan?

2 ATC [MR. RYAN]: Mr. Ryan can move at amazing speed when it's
3 in the witness' interest, sir.

4 MJ [COL ACOSTA]: It's not -- look, again, the scheduling
5 issue -- if you raise to me that we have scheduling issues for an
6 amount of time, I can build -- you know, we can -- could have built
7 the time in there -- or I would have. You know, that is something
8 that is within the --

9 If we want to go long tomorrow -- well, it appears that we
10 will be going long tomorrow. I understand that -- this is what I was
11 going to raise at the end of the day, which is to consult and see
12 whether or not -- I think I asked it to be communicated to the
13 parties that if we needed -- if it was possible or if it was required
14 and to consult with the witness about the possibility of, if we
15 needed to and he was available and willing to go either long tomorrow
16 or because of various people traveling on Saturday, to have a session
17 on Sunday as opposed to having to have the witness come back for
18 another time.

19 But if we're able to finish tomorrow, which defense counsel
20 after she rehydrates will be ready to go, and -- we'll be able to go.

21 So that is what I -- I proposed that, just to let you know,
22 Dr. Jessen, just so that -- to avoid a second trip. There's several
23 witnesses that have had to make multiple trips. We don't like to do

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1 it, and I like to get all the information on one session out of -- if
2 we can.

3 So that's what I proposed. But if you're willing to get it
4 done tomorrow, then that's what we'll do.

5 Do the parties agree that that is possible tomorrow or
6 likely?

7 ATC [MR. RYAN]: Yes, sir.

8 ADC [MS. MORGAN]: Yeah. And, Judge, if I can just say
9 earnestly, I think we'll be a lot more productive tomorrow if we
10 don't go as late tonight. And so it would, I think, be helpful to
11 wrap this session and give both the witness and the parties maybe
12 some time to regroup tonight and to actually push for a day tomorrow.

13 MJ [COL ACOSTA]: Do you want to start early tomorrow? Do the
14 parties want to start at 7:00 or 8:00 tomorrow?

15 ADC [MS. MORGAN]: No.

16 MJ [COL ACOSTA]: No?

17 ADC [MS. MORGAN]: Not even a little bit.

18 MJ [COL ACOSTA]: Not even a little bit. Okay. This 9:00
19 start is -- it is the normal -- well, it's normal in our -- in the
20 military system to start at the latest at 9:00. I know that other
21 courts in other jurisdictions, they keep more broad -- they start a
22 little bit later at times. And this is not disparaging on those
23 courts; they just have different hours.

1 The -- so are you saying you want to stop now?

2 ADC [MS. MORGAN]: Judge, I think it's been a really long day.
3 I think we'll all be a lot better off tomorrow if we can
4 take it -- yeah, if we can stop now and actually just push tomorrow.

5 MJ [COL ACOSTA]: I have a habit, like most trial judges, of
6 keeping our time on a little piece of paper up here. So we've been
7 going pretty well. We've almost got -- we've almost got eight hours
8 or so. We're less than eight hours on the record, but it's been a
9 longer day than that, I'm aware.

10 If we need to stop now, I will do that if we -- if you can
11 say, with a straight face, that we're going to -- that you've got a
12 feeling that if we go a little bit later tomorrow -- or as late as we
13 need to tomorrow -- to wrap up -- and I will give generous breaks, as
14 I do, to accomplish that.

15 WIT: Judge, can I say something?

16 MJ [COL ACOSTA]: You may.

17 WIT: I have family obligations that I have to get back
18 to ----

19 MJ [COL ACOSTA]: Understood. That's why I asked them to
20 consult with you before I said it.

21 WIT: ---- but I'm very -- but I'm very willing to work as
22 long as we need to tomorrow ----

23 MJ [COL ACOSTA]: Okay. Yes.

1 WIT: ---- into the wee -- midnight hours. I'll stay as long
2 as necessary.

3 MJ [COL ACOSTA]: Right. That is -- that is the -- a practice
4 that courts-martial have done repeatedly. I know that in my -- in my
5 youth that was done, and I don't think it helps anybody, so I don't
6 like to do that. Because nobody's -- nobody's advocacy skills get
7 better too late past dinner.

8 So we'll stop now. We're going to start again promptly at
9 9:00 tomorrow.

10 You're warned not -- the same warning as always, Dr. Jessen:
11 Don't discuss your testimony with anyone in the overnight. Of
12 course, you can look at the materials that they provided if that's
13 helpful and it might help be more efficient. And then we will start
14 back up at 9:00 tomorrow. You can step down, Dr. Jessen.

15 WIT: Okay.

16 **[The witness was warned, was temporarily excused and withdrew from**
17 **the RHR.]**

18 MJ [COL ACOSTA]: Great. The only other thing I wanted an
19 update on was I know that the paralegals -- while we work, while
20 we're in here, the paralegals are always working in the background
21 for both sides.

22 Was there any progress made on getting the notes or a plan
23 to get the notes transcribed from Dr. Crosby? Commander Piette?

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1 DDC [LCDR PIETTE]: Yes, Your Honor. My understanding is
2 we're actually either there or very close to being there. So I
3 consulted with the government, made sure they had the ability to take
4 TS material back with them tomorrow.

5 I just want to have a look at everything before. I don't
6 want to give them something that I don't have eyes on.

7 MJ [COL ACOSTA]: Outstanding. Take your time. I'm sure that
8 you can use the room once I leave for as long as you need to with the
9 headset. Take -- do whatever you need to.

10 Government, is there anything else before I recess for the
11 evening?

12 TC [MR. O'SULLIVAN]: No, Your Honor. Thank you.

13 MJ [COL ACOSTA]: Defense, anything else?

14 LDC [MR. NATALE]: No, Your Honor.

15 MJ [COL ACOSTA]: All right. The commission is in recess
16 until 0900.

17 **[The R.M.C. 803 session recessed at 1757, 13 April 2023.]**

18 **[END OF PAGE]**