

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

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SULEIMAN ABDULLAH	:	
SALIM, MOHOMED AHMED	:	DOCKET NO.
BEN SOUD, OBAID ULLAH	:	
(as personal	:	2:15-CV-286-JLQ
representative of GUL	:	
RAHMAN),	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
JAMES ELMER MITCHELL	:	
and JOHN "BRUCE"	:	
JESSEN,	:	
	:	
Defendants.	:	

- - -

Monday, January 16, 2017

- - -

Videotaped deposition of JAMES E. MITCHELL taken pursuant to notice, was held at the law offices of Blank Rome, 130 N. 18th Street, Philadelphia, Pennsylvania 19103, beginning at 10:13 AM, on the above date, before Constance S. Kent, a Registered Professional Reporter and Notary Public in and for the Commonwealth of Pennsylvania.

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24

1 THE VIDEOGRAPHER: We are
2 now on the record.

3 This begins DVD No. 1 in the
4 deposition of James Elmer Mitchell
5 in the matter of Salim versus
6 James Elmer Mitchell and Bruce --
7 John Bruce Jessen in the United
8 States District Court for the
9 Eastern District of Washington.

10 Today is January 16th, 2017,
11 and the time is 10:19 AM.

12 This deposition is being
13 taken at 130 North 18th Street,
14 Philadelphia, Pennsylvania, at the
15 request of Gibbons, PC.

16 The videographer is Benjamin
17 Neate of Magna Legal Services and
18 the court reporter is Connie Kent
19 of Magna Legal Services.

20 All counsel and parties
21 present will be noted on the
22 stenographic record.

23 Will the court reporter
24 please swear in the witness.

1 JAMES E. MITCHELL, having
2 been first duly sworn, was
3 examined and testified as follows:

4 MR. WARDEN: Thank you. At
5 the outset I'd like to say that
6 I'm Andrew Warden from the United
7 States Department of Justice and I
8 represent the United States
9 government in this case.

10 On behalf of the United
11 States Government, I have here
12 with me today Joseph Sweeney,
13 attorney for CIA Office of General
14 Counsel, Cody Smith, an attorney
15 for the CIA Office of General
16 Counsel, Heather Walcott, an
17 attorney for the CIA Office of
18 General Counsel, Megan Beckman,
19 paralegal with the CIA Office of
20 General Counsel, Antoinette
21 Shiner, Information Review Officer
22 from the CIA.

23 On behalf of the Department
24 of Defense, have Richard Hatch, an

1 attorney with the Office of
2 General Counsel, and Thomas Ellis,
3 a senior program analyst with the
4 Joint Personnel Recovery Agency.

5 The Government is not a
6 party to this case, but we are
7 here today to represent the
8 interests of the United States.
9 We understand that the questions
10 in this deposition will cover
11 topics related to Dr. Mitchell's
12 career with the Department of
13 Defense and later as a contractor
14 with the CIA.

15 Given the sensitive nature
16 of the positions Dr. Mitchell held
17 with those agencies and the
18 information he acquired while in
19 those positions, we are here today
20 to protect against unauthorized
21 disclosure of classified,
22 protected or privileged government
23 information.

24 At the outset, I'd like to

1 mark as Exhibit 1 and 2 for the
2 record, and have them produced to
3 the parties, the classification
4 guidance we have given from the
5 CIA and the DOD.

6 (Exhibit No. 1, CIA
7 Classification Guidance, Bates USA
8 22 through 24, and No. 2,
9 Department of Defense
10 Classification Guidance, Bates USA
11 2169 through 2170, were marked for
12 identification.)

13 MR. WARDEN: I've marked as
14 Exhibit 1 and produced to the
15 parties the CIA guidance. It's
16 stamped as US Bates No. 22 to 24.
17 The production date of May 20,
18 2016. It provides a list of
19 categories of information about
20 the CIA's former detention and
21 interrogation program that remains
22 classified, and a list of
23 categories of information that is
24 now unclassified.

1 Exhibit 2 is the Department
2 of Defense Classification
3 Guidance. It's marked as Bates
4 2169 through 2170, production date
5 January 14, 2017. It provides a
6 list of categories of information
7 about DOD's survival, evasion,
8 resistance and escape training
9 program that remains classified
10 and categories of information
11 about that program that are now
12 unclassified.

13 The government issued --
14 would like to issue an instruction
15 to the witness continuing
16 throughout this deposition that in
17 response to any question, the
18 government instructs the witness
19 not to answer with any of the
20 information identified as
21 classified in our classification
22 guidance as Exhibit 1 and 2.

23 We reserve our right to
24 object any specific questions

1 posed to Dr. Mitchell consistent
2 with his nondisclosure agreements
3 with the Government and instruct
4 him not to answer more specific
5 questions that would tend to call
6 for disclosure of classified,
7 protected or privileged government
8 information.

9 MR. LUSTBERG: Thank you.

10 MR. SMITH: Before we --
11 just in furtherance of the
12 housekeeping, my name is Jim Smith
13 and I represent Dr. Mitchell at
14 this deposition today.

15 Mr. Warden, I want to make
16 sure that the record is plain
17 here, and in keeping with my prior
18 discussions with you, we intend to
19 do everything we -- in our
20 powers -- our client to protect
21 classified information, but I want
22 to make sure that you understand
23 that we -- we believe the onus is
24 on the government to advise the

1 witness if his answer may require
2 him to disclose classified
3 information and so instruct him,
4 so that simply handing Exhibits 1
5 and 2 to the witness, while he's
6 read them and he will do his best
7 to follow them, you should be
8 listening very carefully to these
9 questions and you'll know, because
10 I won't, whether or not his answer
11 may reveal classified information,
12 and if it does, put him on notice
13 of that. Because as you know, I
14 don't know what the classified
15 information is so I'm -- I'm
16 unable to assist in this regard.
17 So again, I'm just urging you to
18 do that.

19 And then just as another
20 housekeeping matter, we agreed
21 with the counsel for the ACLU that
22 for this deposition, and for all
23 depositions going forward as a
24 means to try to accelerate the

1 process, just stating objection on
2 the record will preserve any
3 argument at a later date as to the
4 basis for the objection.

5 MR. LUSTBERG: That's
6 correct. And you don't even have
7 to instruct your client, "you may
8 answer," just to save the time.
9 If you object, unless you direct
10 him not to answer, we'll assume
11 he's going to go ahead and answer.

12 MR. SMITH: Correct. Do you
13 understand that, Dr. Mitchell? I
14 may be objecting from time to
15 time. Even though I object,
16 unless I instruct you not to
17 answer, you should answer the
18 question.

19 THE WITNESS: Okay.

20 MR. SMITH: And I do think
21 we should put pauses between when
22 we think Counsel is finished
23 asking the question and before you
24 begin to answer it to give the

1 Government time to process the
2 scope of the question and allow
3 the Government to take whatever
4 position it needs to take on the
5 record.

6 MR. LUSTBERG: Yeah. I'll
7 instruct -- I'll give you some
8 quick instructions on that.

9 MR. SMITH: Okay.

10 MR. LUSTBERG: Thanks,
11 Mr. Smith.

12 MR. SMITH: Thank you.

13 - - -

14 E X A M I N A T I O N

15 - - -

16 BY MR. LUSTBERG:

17 Q. So good morning,
18 Dr. Mitchell. Nice to meet you.

19 My name is Larry Lustberg
20 and I work at a law firm called Gibbons,
21 PC, which is headquartered in Newark,
22 New Jersey. Along with my colleagues who
23 are here, there's a whole list, but I
24 won't make them all introduce themselves,

1 we represent the plaintiffs in this case.

2 You're represented by
3 Counsel today, and I'm sure you've been
4 well prepared, but I'm going to go
5 through some very quick instructions and
6 then Mr. Smith can clarify any that need
7 clarification.

8 First, there's a
9 stenographer here as you can see, as well
10 as a videographer. So you understand
11 that what they're doing is recording what
12 happens here today for potential future
13 use at a trial, correct?

14 A. Yes.

15 Q. Okay. One thing, let me
16 just say now, I'm going to speak and I'm
17 going to ask you questions. If you would
18 make sure to just let me finish before
19 you answer, and as Mr. Smith said, just
20 pause a bit so that anybody who needs to
21 object can, that would be better. Okay?

22 A. Okay.

23 Q. Well done. And I'll do the
24 same. I mean, I'll let you finish your

1 answers before I jump in with the next
2 question.

3 You've been sworn so that
4 oath is just the same as if you were at
5 trial to tell the truth. Mr. Smith will
6 be defending you and he will, as he just
7 said, object at times. Unless he directs
8 you not to answer, you should answer the
9 question.

10 Do you understand that?

11 A. Yes.

12 Q. Okay. One thing that's
13 important at depositions -- have you ever
14 been deposed before, sir?

15 A. Yes.

16 Q. Okay. More than once?

17 A. Yes.

18 Q. Okay. So a lot of this is
19 stuff that I'm telling that you know
20 already and so I apologize for that, but
21 just to make it clear. If you don't
22 understand a question, let me know. If
23 you answer the question, we'll assume
24 that you did understand it or at least

1 had an understanding of it.

2 Does that make sense to you?

3 A. Yes.

4 Q. Okay. It's important, as
5 you know, to verbalize your answers
6 because even though the videographer will
7 be able to pick up, you know, nods or
8 shaking of the head, the court reporter
9 can't. So if it's a yes, say yes; if
10 it's a no, say no. And try to avoid just
11 nodding or shaking your head, okay?

12 A. Yes.

13 Q. Are you on any drugs or
14 medication or anything like that that
15 would cause you to have any difficulty
16 understanding or answering questions
17 today?

18 A. No.

19 Q. Okay. You should feel free
20 to take a break for, we discussed as we
21 were both getting coffee, for a restroom
22 or whatever, any time you want. We --
23 we're here for the today, so take your
24 time and take whatever breaks you need.

1 Okay. So with that, I'll
2 get started?

3 MR. LUSTBERG: Unless,
4 Mr. Smith, do you have anything
5 you want to add or --

6 MR. SMITH: Not at this
7 time.

8 MR. LUSTBERG: Okay. Thank
9 you.

10 BY MR. LUSTBERG:

11 Q. So, Dr. Mitchell, what did
12 you do to prepare for this deposition?

13 A. I read through your
14 complaint, I read through some of the
15 documents the Government had released.
16 Obviously I spoke with my attorneys.

17 Q. Did you speak to anyone
18 else?

19 A. I'm not going to -- I did
20 within the -- within the umbrella of
21 attorney/client privilege, but I didn't
22 otherwise.

23 Q. Okay. So you didn't speak
24 to anybody other than counsel -- other

1 than your counsel?

2 A. And obviously my codefendant
3 because that's part of the process.

4 Q. Okay. So you spoke to your
5 codefendant as well? Okay.

6 A. You're talking about
7 specifically in preparation for this?

8 Q. Yes.

9 A. Yeah.

10 Q. When -- did you have a
11 meeting with your -- with your
12 codefendant?

13 A. I'm not going to go into
14 anything that we discussed with -- with
15 our attorney.

16 Q. So there were no meetings at
17 which your attorney was not present; is
18 that right?

19 A. Yes.

20 Q. Okay. Let's -- let's just
21 start then with your background.

22 A. Okay.

23 Q. If you could, just quickly
24 summarize what your educational

1 background is first.

2 A. I want to be sure I
3 understand the question.

4 Q. Okay.

5 A. Do you mean just with
6 respect to college?

7 Q. Yeah, well, that's a good
8 question. Let's just start with your --
9 you can start with college education and
10 post-college education, you know, that
11 kind of schooling education as opposed to
12 training, other trainings you may have
13 had.

14 A. Okay. I have a -- just a
15 two-year liberal arts degree from a
16 community college. I have a two-year
17 degree in explosive technology from a
18 community college. I have a four-year
19 degree in psychology.

20 Q. And what -- I'm sorry to
21 interrupt. Just if you could, what
22 schools are those?

23 A. The community college?

24 Q. You can start with the

1 four-year degree.

2 A. University of Alaska in
3 Anchorage.

4 Q. Uh-huh. Continue.

5 A. I have a master's degree in
6 psychology from the University of Alaska
7 in Anchorage, and I have a Ph.D. in
8 psychology from the University of South
9 Florida in Tampa.

10 Q. Okay. Focusing on your --
11 the Ph.D. first in psychology from South
12 Florida, when did you get that?

13 A. 19- -- well, 1985 is when I
14 completed everything except my
15 internship, and you know you have to
16 spend a year in internship, so I think
17 1986. It's been a while.

18 Q. Okay.

19 A. But 1986.

20 Q. Okay. And was -- did you
21 have any kind of specialty or focus of
22 your -- of your graduate education in
23 psychology?

24 A. The Ph.D. is in clinical

1 psychology.

2 Q. Okay.

3 A. I have a minor in behavioral
4 medicine.

5 Q. Okay. And just if you would
6 briefly describe for the record when
7 you -- a degree clinical psychology, what
8 do you learn in that kind of program?

9 A. I want to be comprehensive
10 and organized, so --

11 Q. Take your time.

12 A. You learn about personality
13 issues, you learn about issues related to
14 clinical diagnoses. I had a forensic
15 psychologist who was a professor at my
16 university and I spent quite a bit of
17 time with him learning about things like,
18 you know, police evaluations and the use
19 of psychological instruments for forensic
20 examinations.

21 You learn about
22 psychological testing, therapy, how to
23 ask questions, how to establish rapport,
24 how to -- it was a scientist practitioner

1 model under the APA example, so you learn
2 both the clinical piece of the thing as
3 well as the other skills, but you also
4 learn, you know, things like statistics
5 and how to educate yourself about other
6 topics and -- that's just a general list
7 of what comes to mind right now,
8 recognizing that there would be
9 undoubtedly other things that I'll
10 remember.

11 Q. Okay. You mentioned that
12 you learned about things like police
13 evaluations and the use of psychological
14 instruments for forensic examinations.

15 Could you just elaborate on
16 each of those?

17 A. Sure. One of them was the
18 use of psychological instruments in
19 interviewing for evaluations where you
20 look at a person who has committed a
21 crime and you question them about their
22 motives and beliefs around that crime
23 they've committed to determine whether or
24 not they meet the McNaughton rules for

1 admission -- McNaughton rules for an
2 insanity plea basically. That's one
3 piece of it.

4 The other piece of it had to
5 do with assessment and selections for
6 police officers, you know, who were going
7 to be hires, new hires for police
8 officers, and the kinds of psychological
9 characteristics that were likely to do
10 well as a police officer and likely to do
11 poorly as a police officer. That was
12 more of a -- because I knew the guy and
13 he needed help than part of the actual
14 core curriculum.

15 In fact -- not that you
16 would necessarily care, but you know when
17 you get a Ph.D., you have to take
18 comprehensive exams at the end of the
19 thing? The comprehensive exam from his
20 section of the school was all related to
21 forensic psychology, and I was the first
22 person to pass it in seven years so -- I
23 think seven, it could have been five.

24 Q. Congratulations.

1 So let me make sure I
2 understand, one of the things you said
3 was that you -- well, let me just back up
4 a second.

5 You said that the
6 comprehensive exam had to do with
7 forensic psychology?

8 A. Uh-huh.

9 Q. When you say forensic
10 psychology, what do you mean?

11 A. I mean he provided you with
12 real -- with sanitized, but real-life
13 psychological test data and interview
14 data, and they asked you for a diagnosis
15 and opinion that you provide.

16 Q. Okay. You mentioned that
17 you -- some of the training that you
18 received was in having -- in talking to
19 people and establishing rapport. Did I
20 get that right?

21 A. Not talking to people. You
22 know what a psychologist does. A
23 psychologist asks questions, establishes
24 rapport, you know, gets people to reveal

1 things about themselves that they would
2 rather not talk about, helps them
3 understand the impact of that on their
4 life and help make suggestions how about
5 they can improve their life.

6 Q. Okay. And is that something
7 that you would do practices on, you know,
8 sort of role playing or that kind of
9 thing during the course of your
10 education?

11 A. Are you talking about when I
12 was in college?

13 Q. Yeah. No, well, I'm talking
14 about for your graduate degree.

15 A. I worked at a private
16 psychiatric hospital almost the entire
17 time I was getting -- because I came in
18 with a Master's, so to receive grant
19 funding, the school hooked me up with a
20 private psychiatric hospital, and so I
21 worked at that private psychiatric
22 hospital doing some police selection
23 stuff in addition to making various
24 rotations in and around various wards.

1 Q. Just back to education for
2 just a couple more questions.

3 A. Uh-huh.

4 Q. Did you -- did you do -- did
5 you have any study in general about how
6 to talk to people or ask questions to
7 people from different cultures?

8 A. I don't remember that
9 specifically being covered.

10 Q. Okay. Did you take courses
11 in psychological experimentation?

12 A. Well, I took courses in
13 statistics and research, yeah.

14 Q. Okay. Have you been -- have
15 you engaged in psychological
16 experimentation during your career?

17 A. I've done research on HIV.
18 I was one of the first people to look at
19 the impact of AIDS on the performance of
20 pilots. I was one of many people who did
21 that study, but -- so yes.

22 Q. Other than the study that
23 you just mentioned on the effect of AIDS
24 on pilots, any other psychological

1 research that you've done?

2 A. Are you talking about
3 experimentation?

4 Q. Experimentation, research.

5 A. Well, see, experiment to me
6 means something different --

7 Q. Okay.

8 A. -- than it does to many
9 people. Experiment to me has a -- has a
10 group that is an experimental group and
11 it has other groups that are control
12 groups.

13 When I did my dissertation,
14 it had to be an experimental study in the
15 sense that I'm using the term. So I
16 looked at the effect of diet and exercise
17 on essential hypertension primarily
18 because that's the only way that I could
19 get a behavioral medicine degree because
20 you had to do it through the medical
21 school and so you had to get a professor
22 that was at the medical school and so I
23 had to do some of his research.

24 Q. You mentioned that in your

1 mind experimentation requires having a
2 testing group and a control group. In
3 the absence of that, you would not --
4 there's no other type of experimentation
5 in your mind?

6 A. No. I mean, not as I
7 understand it now. I mean, you could do
8 single subject experiments, right, but
9 they end up having to be their own
10 controls.

11 Q. So the study you did on
12 pilots and HIV, was there a control group
13 in that?

14 A. What you did in that
15 particular study was you -- you followed
16 them over the years and you looked at the
17 metabolites of AIDS as it occurred in
18 their cerebrospinal fluid and you
19 correlated the results of that with their
20 cognitive function.

21 Q. So that would not have been
22 study where there was actually literally
23 a control group the way you were
24 describing it before, right?

1 A. It would not have been,
2 you're right about that.

3 Q. How about ethics, did you
4 study psychological ethics during the
5 course of either -- either in your Ph.D.
6 program, your master's program, any,
7 like, ethics for psychologists?

8 A. Yes.

9 Q. Okay. And what were the
10 nature of those courses?

11 A. I don't remember a specific
12 course on -- you know, called ethics. I
13 remember in terms of, like, personality
14 testing, you know, the ethics of a
15 client/patient relationship and what you
16 could do with the testing and who you
17 could reveal the test results to, that
18 sort of stuff.

19 Q. Okay. Anything else that
20 you recall about -- so you're saying --
21 strike that.

22 So you're saying that you
23 did not take -- specifically recall
24 taking a course in ethics during your

1 Ph.D. program?

2 A. Not during the Ph.D.
3 program. I don't specifically recall,
4 I'd have to look at my transcript. I
5 haven't looked at that transcript since
6 the '80s so I don't specifically recall
7 it. It just doesn't stand out.

8 Q. And the ethics issues that
9 you just described had to do with the
10 ethics of a client/patient relationship.
11 Can you elaborate on that at all?

12 A. Yeah. One of the things
13 that you have to be sure to do is
14 understand who the client is. You know,
15 in some places the client is the person
16 who comes to you, and in other cases your
17 client is the Government or someone else,
18 and you have to be clear, you know, who's
19 the client and who's the patient, even if
20 it is a patient because it might not be a
21 patient. All right? So if you're doing
22 a police assessment, for example,
23 assessment and selection, the person is
24 not a patient.

1 Q. Right.

2 A. And your client is the
3 police department.

4 Q. And so what are the ethical
5 issues with regard to that?

6 A. Who owns the information.

7 Q. Okay. So for purposes of,
8 like, a privilege and that kind of thing?

9 A. Well, this debate, as you
10 know, about what's privileged and what's
11 not privileged. That's been going on for
12 quite some time with psychologists. So
13 in general most, at least the state that
14 I was in recognized it as a privilege as
15 long as you didn't believe that the
16 person was going to harm himself or harm
17 someone else, in which case you were
18 responsible for contacting -- you know,
19 alerting. You didn't necessarily have to
20 reveal a lot of details, but you had
21 to alert.

22 Q. Okay. During the course of
23 your education, and we'll come back to
24 this again in your practice, did you

1 study the long-term psychological impact
2 of trauma, for example, posttraumatic
3 stress disorder, anything along those
4 lines?

5 A. Yes.

6 Q. Okay. So what did you study
7 about that?

8 A. Well, my minor was in
9 behavioral medicine so what I was
10 interested in was human coping under
11 stressful situations and the impact it
12 has on the physiology of the body, immune
13 responses and their psychological and
14 mental responses.

15 Q. And in particular with
16 regard to coping with trauma?

17 A. I don't know -- well, in
18 psychology, trauma is one of those words
19 that gets tossed around a lot, so without
20 knowing what kind of trauma a person is
21 talking about. I mean, some people --
22 people report being traumatized by all
23 sorts of stuff. So if a person came in
24 and reported they were being traumatized

1 by something, you would do some kind of
2 assessment to determine what the
3 vocational personality impact of that
4 was.

5 Q. Okay. So let me just focus
6 more specifically, do you remember taking
7 courses during the course of your
8 education with regard to the effects of
9 trauma?

10 A. I don't remember a specific
11 course that had that as, like, a course
12 catalog feature of it, but it was spread
13 throughout. You know, it was a clinical
14 program, so it was spread throughout the
15 program.

16 Q. Okay. So you know what PTSD
17 or posttraumatic stress disorder is?

18 A. Yes.

19 Q. And do you agree that it's
20 been recognized by mental health
21 professionals for quite a long time,
22 since at least 1980?

23 A. I don't know whether it's
24 since 1980 or not, but in my military

1 career, I've actually done assessments of
2 people PTSD.

3 Q. So you recognize there is
4 such a thing as PTSD, right?

5 A. Well, I know that the
6 Diagnostic and Statistical Manual for
7 psychiatric disorders includes a
8 diagnosis of PTSD, so yes.

9 Q. And do you know how far --
10 how long it's been that PTSD has been
11 listed in the Diagnostic and Statistical
12 Manual, has it been throughout your
13 entire career?

14 A. I think -- you know, the
15 diagnosis has changed over the years, but
16 I think in the mid-'80s is when I first
17 ran into that.

18 Q. Okay. So thank you for
19 spending a little time on your
20 educational background. Let's talk now
21 about your -- the various jobs you've
22 had.

23 A. Okay.

24 Q. Because you mentioned -- you

1 started to talk about that before.

2 After you graduated from --
3 I think you said you graduated from South
4 Florida, right?

5 A. Right.

6 Q. What was -- what was the
7 first job that you had?

8 A. Okay. So my first job was
9 not when I graduated from South Florida.

10 Q. No, no. I'm -- okay.

11 A. So do you want to exclude
12 some --

13 Q. You can go back as far as
14 you want, but I'm interested in your
15 career as a psychologist.

16 A. Oh. Okay.

17 Q. So what was the first job
18 you had as a psychologist, sir?

19 A. I did my internship, which
20 the Air Force calls a residency, at
21 Wilford Hall Medical Center and I stayed
22 on staff there.

23 Q. Where is that?

24 A. Lackland Air Force Base in

1 Texas, San Antonio.

2 Q. And what was -- what was the
3 nature of your work there?

4 A. Well, during the internship
5 it covered a whole spectrum of things. I
6 mean, it covered everything from -- well,
7 I tested out of the clinical piece of it
8 because I've had so much clinical
9 experience. I doubled up on
10 neuropsychology. There's a -- there's a
11 whole lot of focus on the particular
12 kinds of examinations and investigations
13 you do inside of the military.
14 There's -- it's just basically the way a
15 clinical psychologist operates inside of
16 the military. You basically are a
17 functioning clinical psychologist under
18 the supervision and control of a person
19 who is, you know, on staff and licensed.

20 Q. And how long did that
21 internship last?

22 A. The internship was only a
23 year.

24 Q. Okay. And did you then --

1 did you stay at Lackland after that?

2 A. I did.

3 Q. And what position did you
4 have after your internship?

5 A. I had a variety of
6 positions. I was, I think, the chief of
7 outpatient adult psychology. I don't
8 remember the titles, but I was all over
9 the place.

10 Q. Uh-huh.

11 A. I was the acting chief of
12 neuropsychology.

13 Q. And so let's talk about each
14 of those two things. I think the first
15 thing you mentioned was the chief of
16 adult outpatient psychology, right?

17 What was -- what were your
18 responsibilities in that position?

19 A. Generally related to people
20 who either came into the ER complaining
21 of psychiatric emergencies or walked into
22 the clinic in the morning.

23 I was also the hostage
24 negotiator for the -- you know, for law

1 enforcement agency that was there.

2 Q. Okay. Let's just put that
3 on hold for one second. But what -- when
4 I hear chief, it sounds like you had a
5 supervisory role; is that correct?

6 A. I was on staff. There were
7 ten psychology residents and ten
8 psychiatry residents who I helped with
9 psychological issues around the sorts of
10 intakes they were doing for the military.

11 Q. Okay. And so how much of
12 what you did was supervising and how much
13 of what you did was actually treating
14 patients yourself?

15 A. Probably about -- and this
16 is a guess, 65/35.

17 MR. SMITH: Dr. Mitchell,
18 guessing is not a good thing at
19 your deposition.

20 THE WITNESS: I don't know.

21 MR. SMITH: You can
22 approximate, but a guess has no
23 evidentiary value.

24 THE WITNESS: Oh. Well, in

1 that case I would say
2 approximately 65 percent of the
3 time.

4 MR. SMITH: Approximations
5 are acceptable.

6 BY MR. LUSTBERG:

7 Q. Any experimentation while
8 you were at Wilford Hall?

9 A. Where we did that study on
10 HIV.

11 Q. Oh, that was there?

12 A. Uh-huh.

13 Q. Any others?

14 A. I think I applied for a --
15 human subjects to do a study of the
16 psychological effects of finding out that
17 you're HIV positive, but we never did the
18 actual study. But it really wasn't an
19 experiment. And again, it was one of
20 those things -- when I think of
21 experiment, to me that's different than
22 research. Research is where you look to
23 see what is there, and an experiment is
24 where you manipulate variables, which you

1 end up -- when you do that sort of
2 collective stuff that I'm talking about
3 where you correlate things, you don't
4 actually manipulate the variables in
5 real-life, you do it statistically. So
6 it's a -- you know, so it's a different
7 sort of thing.

8 Q. So you saw a distinction
9 between experimentation on one hand and
10 study on the other?

11 A. Research study, yeah.

12 Q. Okay. How long did you stay
13 at Wilford Hall?

14 A. Including my residency?

15 Q. Sure.

16 A. Four years.

17 Q. And what was your next
18 position after that?

19 A. I went to the Air Force
20 Survival School.

21 Q. And the -- you refer to that
22 as the SERE School? And just so the
23 record is clear, SERE stands for?

24 A. Survival, evasion,

1 resistance and escape.

2 Q. What was your -- what were
3 your responsibilities at the SERE school?

4 A. They were very varied. One
5 of -- one of the primary things that I
6 did was work in the resistance training
7 laboratory. I had two primary jobs
8 there: One was to make sure that the
9 instructors didn't engage in what we
10 called abusive drift, all right, and the
11 other one was to work with the students
12 to be sure that as many of them got
13 through their training as possible. But
14 I had other duties there as well.

15 Sometimes with JPRA, I would
16 help them when they wanted to debrief
17 returning POWs. Sometimes I would work
18 with their advanced training unit to help
19 them provide advanced SERE training to
20 groups who are at higher risk of capture
21 than ordinary military people.

22 Sometimes I would engage in
23 special projects that my commander
24 required me to do. Like, for example, I

1 helped them -- they asked me to study the
2 injury rates when they were restructuring
3 the school after the first desert war,
4 and so I got with JPRA, I don't know if
5 it was called that, and contacted the
6 other schools and asked about the
7 individual techniques in terms of their
8 injuries rates and what they expected.

9 He -- I mean, they
10 redeployed me to hurricane zones to do
11 things. They -- I mean, they asked me to
12 do a variety of different things. Like
13 for example, I was there when that B52
14 crashed. It crashed about 100 yards from
15 my office. We responded to the crash and
16 did the critical incident debriefing
17 stuff from all the families that were
18 there.

19 Because -- I responded
20 immediately after the shooting that was
21 there because that shooter killed a
22 psychiatric and psychologist and a bunch
23 of other people. And that person -- all
24 of their psychiatric patients were in

1 turmoil and we had to manage that.

2 I'm trying to think of other
3 stuff that I did. They loaned me out to
4 our counterterrorist unit about three
5 months of the year starting in 19- -- I
6 want to say '93 until a position was made
7 for me in that unit.

8 And I'm sure that's not all
9 of it because -- you know, my duties were
10 to get familiar with the different ways
11 that different organizations, different
12 approaches did interrogations, you know,
13 including foreign enemies and
14 domestically, law enforcement types.

15 Let's see that else we did.
16 I did some training working with JPRA. I
17 did another thing that wasn't training
18 called a -- the B52 pilots that flew
19 nukes, they would call it -- they would
20 capture them and then they would -- they
21 would actually interrogate them in a much
22 more realistic setting than you did
23 training, because they didn't actually
24 train them, it was some sort of a

1 readiness test. I think that's what it
2 was called. I did some interrogations
3 for the wing commander in those settings.

4 I did, throughout my Air
5 Force career and continued to do it at
6 survival -- at the survival school,
7 friend of the court evaluations,
8 investigations into whether or not a
9 person who had committed a crime who
10 was -- who was attempting to withhold
11 information, actually met the McNaghton
12 rules or not, and in the course of doing
13 that, I questioned rapists, kidnappers,
14 child molesters, you know, petty thieves,
15 people who had stolen \$100,000 worth of
16 gear, that sort of stuff.

17 The list goes on. It's
18 22 years. I'm not sure that I can recall
19 them all now.

20 Q. Fair enough.

21 A. But if you have a document
22 you'd like me to look at, I'd be happy to
23 look at something.

24 Q. Sure. We'll have plenty of

1 documents.

2 Let me just go back to a
3 couple of things that you said.

4 Did you say that you did
5 interrogations including foreign enemies?

6 A. No. Did I say that?

7 Q. I just want to make sure
8 because it looks like you said that. I
9 just --

10 A. No. I said my job was to
11 get familiar with how foreign enemies
12 interrogated people.

13 Q. Okay.

14 A. That's a very different
15 thing than what you just said.

16 Q. So you didn't actually do
17 interrogations of --

18 A. Of foreign enemies, no.

19 Q. Okay. I want to just go
20 back to a couple other things that you
21 said you did. One thing you talked about
22 was, when you talked about your two
23 primary responsibilities at the SERE
24 school, one of them was to avoid abusive

1 drift, and the other was to get the
2 students, I take it, through the program;
3 is that right?

4 A. Right. Though students are
5 not -- the high risk of capture war
6 practice.

7 Q. Right. When you say you
8 would -- you would help to get them
9 through, what do you mean by that?

10 A. Sometimes people who have
11 experienced trauma in the past, like, for
12 example, a person who had been raped or
13 robbed or beaten, in the course of what
14 they would call hard rounds at the
15 school, would re-experience some of the,
16 you know, emotional distress, and my job
17 was to help them get through the training
18 so that that did not ruin their career,
19 because for many people, in spite of the
20 fact that it's voluntary, meaning that
21 you can withdraw, it's a career ender,
22 it's over, you go do something else.

23 So the Air Force is, you
24 know -- and the other organizations I

1 worked for were highly committed to --
2 they don't want to spend \$10 million on a
3 person and then have them washout because
4 18 years earlier they were in some sort
5 of a, you know, altercation where they
6 got hurt.

7 Q. Okay. So what would -- so
8 what would you do to assist them to get
9 through so that there wasn't that waste
10 of resources by the Air Force?

11 A. Would you like me to give
12 you a specific example?

13 Q. You can if that would be
14 helpful.

15 A. It might be helpful. Mostly
16 it's social influence stuff, right? So
17 in the one case that I'm thinking about,
18 we had a female who, I don't remember
19 what kind of pilot she was, but she was
20 something, she might have been a steward
21 on the general's airplane or she could
22 have been a pilot, I just don't remember,
23 and she had been raped, and when the --
24 during the hard rounds when they were

1 yelling at her, she began to re-
2 experience her rape and she wanted to
3 quit, and if she quit, then her career
4 would be over.

5 So I met with her, I
6 listened to her story, and then I
7 reframed what she was experiencing for
8 her, because as you know, strong
9 experiences can sometimes impact how
10 things are remembered and then how
11 they're stored again.

12 So in her case I said, Isn't
13 it interesting that that SOB raped you
14 20 years ago, he's in jail, but he can
15 reach into your future and take your
16 future away from you, and which she said,
17 I'm not going to let him do that. And
18 then I was able to work with her because
19 she was committed to viewing the
20 emotional distress she was experiencing
21 more as a crucible for getting better
22 than an indication that she was brokem.

23 So in a lot of cases it's a
24 matter of taking -- emotions are

1 accompanied by an urge to act, and in a
2 lot of cases, what you have to do is
3 figure out what that urge to act is and
4 what they believe it means and reframe it
5 in a way that they can act on that urge
6 to act but it strengthens them because
7 you sometimes can't make that go away.

8 Q. Okay. So one of the
9 things -- one of the types of, I don't
10 know if you would call them patients, or
11 you know, the SERE trainees.

12 A. I don't think they think of
13 them as patients.

14 Q. Yeah. Let's call -- is
15 that -- a SERE trainee -- one of the
16 types of SERE trainee that you would
17 assist would be people who had something
18 in their background that made you -- that
19 you were aware of that you would help
20 them through, right? That you would
21 become aware of?

22 A. I would become aware of when
23 they acted out.

24 Q. Okay. How about just normal

1 people going through the SERE program.
2 They understood, right, that you were
3 available in the event that you were
4 needed, right?

5 A. I don't know if going into
6 the program, whether they knew a
7 psychologist was there or not. I don't
8 know. I know they knew afterwards. And
9 if they used a safe word like flight
10 surgeon, or whatever it was, I knew they
11 knew that during that, but they make a
12 point of having the medical personnel
13 dress and act like the other folks so
14 that -- I don't -- I don't think they're
15 aware going in that there is a
16 psychologist there or a PA because they
17 use -- well, they didn't use PAs.

18 Q. Okay. So your first
19 interaction with SERE trainees would then
20 be if there was some sort of reason for
21 you to assist them; is that right?

22 A. That would not be my first
23 interaction with them, that would be
24 their first interaction with me.

1 Q. What do you mean by that?

2 A. Meaning I'm there, I watch,
3 I'm there the whole time. They can't
4 distinguish me from another person in the
5 group, but if they have a problem, they
6 become aware of me.

7 Q. Okay. You talked about
8 abusive drift, and I've seen some other
9 writings that you've done on that.
10 Abusive -- if you could, just for the
11 record, explain what you mean by that.

12 A. Okay. In some instances
13 what happens is that people who are --
14 who are -- take on the roles of
15 interrogators in the case of the SERE
16 program forget what it was like to be a
17 student and they escalate the amount of
18 coercion they use, and that happens over
19 time, and the thing that the psychologist
20 that's present there is supposed to do,
21 along with the supervisors, is monitor
22 that and intervene in real time, and to
23 do annual assessments and to do special
24 assessments if that person's boss or the

1 wing commander or someone else wanted you
2 to do that.

3 And also to do some training
4 with them so that they understood what
5 the mechanisms were that would likely to
6 impact them, and I think that was -- that
7 was probably it.

8 Q. Uh-huh.

9 A. I mean, there's more, but I
10 can't remember it offhand.

11 Q. There's more?

12 A. With respect to what you do
13 to prevent abusive drift.

14 Q. One thing that you also
15 mentioned is that you would brief
16 returning POWs.

17 A. I didn't say brief.

18 Q. Okay. What did you --
19 debrief?

20 A. I said I would help JPRA
21 debrief some returning POWs.

22 Q. Debrief is what I meant to
23 say. Okay. And what was that? Explain
24 what that means?

1 A. Well, the time that came to
2 mind when you mentioned that was right
3 after the first desert war, there was a
4 brouhaha that occurred among the POWs and
5 they were unhappy with each other because
6 of some of the stuff that had occurred
7 inside of their holding cells and they
8 got me and Dr. Jessen and the SERE
9 psychologist from the Tier 1 units to
10 meet with those folks and to discuss --
11 you know, to take their story and to
12 discuss what was going on and try to get
13 rid of some of the tension that was among
14 them. That sort of stuff.

15 Q. Okay. Did you assist them
16 to overcome the trauma that being a POW
17 must have had?

18 A. I don't know if I assisted
19 those particular people in that
20 particular issue. Some of them -- they
21 were pretty hardy. I don't remember them
22 expressing a lot of -- you know, PTSD
23 symptoms. I don't remember that.

24 I do -- I do remember that,

1 you know, that there was a lot of
2 emotional distress and we certainly
3 talked about that. There was some
4 feelings of betrayal, and we certainly
5 talked about that.

6 I don't remember -- and that
7 would not have been something that I did
8 anyway, so...

9 Q. Who -- why is that not
10 something that you would do you?

11 A. Because I was on loan from
12 the Air Force SERE school, like the other
13 SERE psychologists were, to JPRA, and
14 JPRA has its own psychological --
15 director of psychology, and if they had
16 asked me to help with something like that
17 I would, but if they didn't ask, I
18 wouldn't.

19 Q. So if there had been issues
20 of trauma, then the JPRA psychologists
21 would have dealt with that, is that
22 what --

23 A. It really depends on the
24 service, doesn't it? So I don't recall.

1 I just don't recall that being an issue.

2 Q. Just -- my colleagues
3 remained me, just so that the record is
4 clear, JPRA stands for what?

5 A. Joint Personnel Recovery
6 Agency.

7 Q. And what is that?

8 A. That's the executive agent
9 that is tasked with making sure that the
10 various SERE schools and the various
11 other forms of advanced SERE training are
12 uniform and follow the policy guidance
13 established by the executive agency.

14 Q. Okay. With regard to -- so
15 you were at the SERE school then for how
16 long did you do that?

17 A. '89 to sometime in '96.

18 Q. Okay. And after that?

19 A. I went to a counterterrorist
20 unit.

21 Q. And what was that? Explain
22 what that position was, just what your
23 job was there?

24 MR. WARDEN: From the

1 Government's perspective, I would
2 instruct the witness not to
3 answer.

4 You can provide a
5 description of the
6 counterterrorist unit.

7 MR. LUSTBERG: Okay.

8 MR. WARDEN: Anything beyond
9 the job functionality is
10 classified.

11 MR. LUSTBERG: Okay. Fair
12 enough. Got it.

13 BY MR. LUSTBERG:

14 Q. So I guess you can provide a
15 brief discussion of what it was.

16 A. I did a variety of tasks for
17 them. The primary focus really was on
18 things like war criminals and terrorists.
19 I don't know how much more I can say than
20 that. I really don't.

21 MR. SMITH: Let me -- let me
22 pipe in here, Dr. Mitchell. I
23 don't want to do trial-and-error
24 here. If -- I don't know what

1 your answer is, but if you need to
2 confer with the Government to find
3 out what you're permitted to say,
4 I think that would probably be the
5 better way to handle a situation
6 like this.

7 MR. LUSTBERG: I have no
8 objection to that.

9 MR. SMITH: Okay. So why
10 don't we go off the record. We'll
11 give you the opportunity to confer
12 with the appropriate
13 governmental -- government
14 official over there and then we'll
15 go back on the record and you can
16 continue with answer. All right?

17 THE WITNESS: Okay.

18 MR. LUSTBERG: Thank you.

19 THE VIDEOGRAPHER: The time
20 is 11:10 PM. We are now off the
21 video record.

22 (Recess.)

23 THE VIDEOGRAPHER: The time
24 is 11:20 AM. We are now back on

1 the video record.

2 MR. LUSTBERG: How do you
3 want to handle that, Jim?

4 MR. SMITH: Well, we are in
5 the process of getting a resume
6 copied and if you have it --

7 MR. LUSTBERG: Yeah.

8 MR. SMITH: The Government
9 has allowed the witness to amplify
10 a little bit more in response to
11 the question. So let's mark it
12 and --

13 MR. LUSTBERG: Okay. So
14 let's mark this, as how about
15 JEM-1?

16 MR. SMITH: 3.

17 MR. LUSTBERG: We're up to
18 3.

19 MR. SMITH: Well, we already
20 marked 1 and 2.

21 MR. LUSTBERG: Okay. 3.
22 Fine.

23 THE WITNESS: Thank you,
24 sir.

1 (Exhibit No. 3, Resume of
2 James E. Mitchell, Ph.D., was
3 marked for identification.)

4 BY MR. LUSTBERG:

5 Q. Dr. Mitchell, let me know
6 when you've had a chance to look at that.

7 A. I'm just trying to sort out
8 where it came from.

9 Q. Yup.

10 A. Okay.

11 Q. Okay. The specific job
12 experience that we were talking about
13 was, if you look at the second page of
14 Exhibit 3.

15 A. Uh-huh.

16 Q. It was -- it looks like the
17 period 1996 to 2001?

18 A. Uh-huh.

19 Q. It says 24th Special Tactics
20 Squadron, USAF, Pope Air Force Base,
21 North Carolina.

22 Do you see that?

23 A. I do.

24 Q. And it lists there a number

1 of job responsibilities or functions that
2 you performed.

3 A. Uh-huh.

4 Q. Is that right?

5 A. These are the -- these are
6 the ones that were unclassified that I
7 could put on here because, as you know
8 when it comes to classification, there's
9 a need-to-know issue, so there are things
10 that I did for them that went beyond
11 what's here.

12 Q. Okay. So if we could,
13 though, let's just -- if you could just
14 talk about the ones that are here.

15 A. Okay.

16 Q. And we understand that this
17 is an incomplete list of your functions
18 because of what's classified so we all
19 understand that.

20 A. Okay.

21 Q. And appreciate that.

22 So let me just ask a couple
23 of questions about these specific areas,
24 and we'll try to stay within them so as

1 not to go into any classified
2 information.

3 One of the things it talks
4 about is performed critical incident
5 debriefings.

6 A. Uh-huh.

7 Q. Do you see that?

8 A. Uh-huh.

9 Q. What does that mean?

10 A. There's two things that come
11 to mind when we're discussing that.

12 Q. Thank you.

13 A. The first thing is when
14 there was a -- people died, I would meet
15 with the team leaders and the team and
16 the other people who were responsible to
17 help them -- to help them walk through
18 the issue -- you know, do a critical
19 incident timeline, walk through the
20 issue, figure out what each person had
21 done at each section, how it impacted the
22 other people, what the beliefs and
23 expectations were about what they were
24 supposed to do, and then try to defuse,

1 as you might imagine in one of those
2 units, the kind of high-spirited guys
3 that you're dealing, and gals in some
4 cases, that you're dealing with, any kind
5 of conflicts that are around, who's
6 blaming who for what happened when people
7 died.

8 Also there were other
9 incidents where something had happened
10 and they felt like it was necessary to
11 have someone, again, do some sort of a
12 timeline of what had occurred -- and you
13 know, I took a course in aircraft
14 accident investigation, so it's almost
15 the same sort of procedural template
16 where you try to set up a timeline of
17 what occurred, who was doing what and
18 what they were thinking and what they
19 were doing and try to work out the
20 details so the teams can function
21 smoothly.

22 Q. And was any of that work --
23 did any of that work have to do with
24 dealing with posttraumatic stress that

1 people might be experiencing as a result
2 of those events, either deaths or
3 accidents or whatever?

4 A. Yes. Go ahead.

5 Q. No, no. Sorry.

6 A. I'm done.

7 Q. And so would you provide
8 psychological counseling as a
9 psychologist to people who were
10 experiencing posttraumatic stress under
11 those circumstances?

12 A. Sometimes. It depended on
13 the classification of the problem and the
14 incident around it. So if it was a
15 highly classified setting when it
16 occurred and the person needed to talk
17 about the setting, I might do it. If it
18 was an incident like our guys were shot
19 up in Mogadishu, I would probably refer
20 that out to the hospital.

21 Q. And when you would refer it
22 out to the hospital, would you do it with
23 your recommendation as to a diagnosis of
24 PTSD, or would you be referring it -- if

1 you could just answer that?

2 A. You'd refer it for an
3 evaluation, you'd say, you know, rule out
4 PTSD.

5 Q. Okay. And do you recall
6 actually doing that in some
7 circumstances?

8 A. I recall back -- when I was
9 at Wilford Hall, I recall treating people
10 for PTSD who were in Desert 1. I don't
11 know if you're familiar with that.

12 Q. Pardon me?

13 A. Desert 1? That's when they
14 tried to rescue the hostages --

15 Q. Right.

16 A. -- that the Iranians had and
17 they were all those mishaps on those
18 planes. I worked with some of the flight
19 engineers off the C130s that had burned
20 up, and I did, you know, PTSD counseling
21 with those folks.

22 Q. And I guess just one -- just
23 one definitional thing. I was looking at
24 this resume. It says, chief

1 psychological applications.

2 A. Right.

3 Q. What -- what does that mean,
4 psychological applications?

5 A. That means anything your
6 boss tells you to do that at all brushes
7 up against psychology.

8 Q. That's what I thought it
9 might mean. Okay.

10 A. It means -- it doesn't
11 mean -- it's not a clinical position,
12 it's a special operations position.

13 Q. Uh-huh.

14 A. I was a clinical
15 psychologist with a background in special
16 duty that was assigned to this unit.

17 Q. Uh-huh. But you were not a
18 clinical psychologist in this position?

19 A. I was a clinical
20 psychologist in that position, but it
21 wasn't like a psychology clinic position
22 is what I'm saying. It's not the same
23 thing.

24 Q. I understand. Okay. So

1 let's move from that, and the next -- and
2 this will help us go through this. The
3 next position that's listed here, it says
4 in 2001 to present, Knowledge Works, LLC.

5 Before I ask you about
6 Knowledge Works, do you know, looking at
7 this resume, what "to present" means? In
8 other words, any idea when this resume
9 was written?

10 A. Well, it probably was
11 written for the Government so I don't
12 recall specifically when it was written,
13 you know. I don't recall specifically
14 when it was written.

15 Q. Okay. What did Knowledge
16 Works do?

17 A. Knowledge Works was an LLC
18 that did -- that did these sorts of
19 things, provided -- that provided
20 psychologists who would help with these
21 things that you see listed.

22 Q. Uh-huh. Who -- were you the
23 owner of Knowledge Works?

24 A. Yes.

1 Q. Were there any other owners
2 of Knowledge Works?

3 A. No.

4 Q. And --

5 A. Yeah, this is just my
6 functioning LLC.

7 Q. Uh-huh. And so leaving
8 aside these general descriptions, who
9 were your clients at Knowledge Works?

10 A. It would have been the
11 Government.

12 Q. Any other -- any private
13 enterprise?

14 A. If it was a private
15 enterprise, it would have been somebody
16 with a classified contract for the
17 Government.

18 Q. Okay. How many people
19 worked at Knowledge Works?

20 A. Me.

21 Q. One? Any -- so did you have
22 any other -- was that a full-time
23 position? Let me ask it that way.

24 A. It was my personal LLC.

1 Q. Right. Did you have
2 other -- did you have other -- working
3 for any other corporate entities at that
4 time? Let's start there.

5 A. I think I did do some -- I
6 don't know the date on this. So 2001? I
7 probably did do some work for some
8 corporations there who -- probably.

9 Q. I want to try to fill out
10 your job history quickly.

11 Beyond Knowledge Works.
12 This says 2001 to present, and as you
13 pointed out, you don't know exactly when
14 that was, but obviously we know that
15 there was Mitchell Jessen and Associates,
16 and I just want to make sure we have all
17 of the other corporate entities that you
18 may have been involved with since this
19 time.

20 Were there others, first of
21 all?

22 A. You mean my personal ones?

23 Q. Yes.

24 A. Yes. And I'm trying to

1 remember what they were called. I think
2 one of them was -- yes.

3 Q. Do you remember the names of
4 any of them?

5 A. I do.

6 Q. What were they?

7 A. What If and Mind Science.

8 Q. And, Dr. Mitchell, when did
9 those exist?

10 A. They're Florida
11 corporations, so it would have been after
12 I moved from Sanford, North Carolina.

13 Q. Could you give me a year,
14 approximately?

15 A. 2004? It's an
16 approximation. Circa 2004. If you've
17 got something that could refresh my
18 memory I would welcome it, because I
19 don't recall when I moved from --

20 Q. Yeah. I would -- if I had
21 something, I would show it to you.

22 When did Mitchell Jessen and
23 Associates form?

24 A. I think that -- I think the

1 original company formed sometime in 2005,
2 maybe late 2004. I don't recall exactly,
3 but to the best of my recollection, it
4 was sometime in 2005.

5 Q. And What If and Mind
6 Science, those two entities that you
7 mentioned before, did he -- they predated
8 Mitchell Jessen and Associates?

9 A. No, what if became Mind
10 Science.

11 Q. Okay.

12 A. I just changed the name.

13 Q. Okay.

14 A. And Mind Science was the --
15 was my personal LLC that I billed
16 Mitchell Jessen and Associates.

17 Q. That you billed? What --
18 I'm sorry, does that mean?

19 A. That means that we
20 subcontracted with my LLC.

21 Q. I see. So -- so Mitchell
22 Jessen and Associates subcontracted with
23 Mind Science?

24 A. Mind Science sub- -- was a

1 subcontractor of Mitchell Jessen and
2 Associates.

3 Q. Got it. And --

4 A. At least that's my
5 recollection.

6 Q. And what kind of work did
7 Mind Science and What If before it do?

8 A. It did the work for the CIA.

9 Q. So was there any distinction
10 between the work that it did and the work
11 that Mitchell Jessen and Associates did?

12 A. Yes, because if I had some
13 downtime, which wasn't a lot, I did some
14 stuff for the Department of Defense. And
15 so I would have used Mind Science to bill
16 the company that I did some
17 subcontracting for the Department of
18 Defense with as well, where -- you know.

19 Q. I'm sorry, just finish your
20 sentence.

21 A. I did.

22 Q. Okay. And was there --
23 strike that. We'll move on.

24 Let's just -- since we're on

1 this resume, I just want to ask you about
2 a couple of presentations. There's
3 several pages here of presentations and
4 publications.

5 A. I wish I would have seen
6 this earlier, I think I could have saved
7 you some time.

8 Q. Unfortunately it's just the
9 way we do it.

10 I'm not going to ask about
11 all of them, I promise. You did a lot of
12 presentations. But I want to ask about a
13 couple of them.

14 Just -- so directing your
15 attention to the, one, two, three,
16 four -- to the fourth page, there's -- I
17 want to ask you, at the bottom of the
18 fourth page, there's a presentation that
19 says, Mitchell James E., that's you,
20 "Captivity Familiarization and Learned
21 Helplessness."

22 Do you remember what that
23 was about?

24 A. Yeah, that -- I do remember

1 what that was about.

2 Q. Great. What was it?

3 A. Essentially when you -- when
4 you use the word helplessness, it gets
5 used by psychologists in at least two
6 different ways: One way is the outcome
7 of the experimental group in Martin
8 Seligman's learned helplessness research,
9 right? That's not how I'm referring to
10 it here. What I'm referring to is that
11 sometimes when people get in situations
12 where they can't -- they feel like they
13 don't have a way out of it, they begin to
14 experience a sense of -- that they can no
15 longer organize and execute the courses
16 of action necessary to, you know, get out
17 of the thing.

18 And the kind of acquired
19 helplessness, because learns means
20 acquired, that I'm talking about, exists
21 on a continuum from just being able to
22 perceive it all the way to the
23 debilitating end of this thing. And what
24 this focused on was the -- two things, as

1 I recall, it was the -- actually, I don't
2 know if it was two things. If you have
3 the paper, I'd be happy to answer any
4 questions you have about it.

5 Q. I don't.

6 A. But my belief right now,
7 without having the paper to look at to
8 refresh my memory, is that the focus
9 really was on two things: Was to ensure
10 that the training didn't produce the
11 catastrophic kind of learned helplessness
12 over here, because for the training to be
13 effective, you have to get a little bit
14 of helplessness going because what
15 happens then is the person begins to
16 search for a way out of it, and you want
17 that search for a way out of it piece of
18 it, but you don't want the profound
19 helplessness that leads to depression,
20 passivity and withdrawal and an inability
21 to sort of seek a solution, right?

22 Q. The Seligman type?

23 A. Yeah, the Seligman outcome
24 of the experimental thing.

1 Q. Right.

2 A. It's more consistent with
3 the control group, the escape group in
4 Seligman's research where what happens is
5 you have the exact same initial paradigm,
6 but when the person begins to experience
7 helplessness, one group is allowed to
8 escape and the other group isn't.

9 What happens in the escape
10 group is that they become much more
11 likely to use the same strategies to
12 escape the next time.

13 And so in order for training
14 to be realistic, the person really has to
15 experience disappointment in their
16 performance. They really do have to
17 experience some of the difficult emotions
18 so that they could learn to bounce back
19 and return with honor. And they have to
20 experience those real emotions in that
21 setting so that they can learn to use the
22 tools that they're being taught in the
23 presence of those emotions rather than
24 being overwhelmed by them.

1 And so what you have to do
2 is kind of carefully monitor where on
3 that continuum between just being able to
4 perceive it and being overwhelmed by it.
5 And I think that's what that paper was
6 about.

7 Q. Okay. So the phrase
8 "captivity familiarization," what does
9 that mean?

10 A. My -- to the best of my
11 recollection, there was -- SERE training
12 used to be conducted this way: You would
13 be a pilot, I would bring you -- you'd be
14 a fighter pilot. You would come to the
15 Air Force Survival School, we would give
16 you all the classes in resisting
17 interrogation and then we would put you
18 in the interrogation lab and we would see
19 how you did.

20 Q. Uh-huh.

21 A. The problem that they ran
22 into was that fighter pilots are little
23 bit cocky and they just don't think the
24 rules apply to them. And so what

1 captivity familiarization refers to is
2 the first thing you do is capture them
3 with no training -- I don't know if they
4 did this or not, but they did this after
5 the revision while I was there. You
6 capture them with no training, show them
7 what they're up against, and then they're
8 leaning forward in the seat when you're
9 teaching them how to beat these guys,
10 right? Beat them in the sense of employ
11 the resistance strategies, and so that's
12 what captivity familiarization is. It's
13 the first step in the overall teaching of
14 people to protect secrets.

15 Q. Uh-huh. So when it says,
16 captivity familiarization and learned
17 helplessness, what you're -- well, so how
18 do those two concepts go together?
19 Because this one lecture -- I mean, this
20 one presentation says captivity
21 familiarization and learned helplessness,
22 and then there's also a paper called --
23 from 1995, and you see in publications --
24 it's actually unpublished. There's an

1 unpublished manuscript at the bottom of
2 the second to the last page that says:
3 "Background paper on captivity
4 familiarization and learned
5 helplessness," which we also don't have
6 or I'd be happy to show it to you. So
7 that's why I'm asking it. How do those
8 two concepts go together?

9 A. There was some resistance in
10 this school to capture pilots before you
11 did the training and expose them to what
12 captivity was really going to be like
13 because the belief was, amongst some, as
14 I recall, Why are we wasting the money,
15 you know, why don't we train them and put
16 them in.

17 Well, the problem with that
18 was that our experience after Desert
19 Storm was that they were not as confident
20 in their ability to resist. So the point
21 of captivity familiarization was to show
22 them what they were up against and then
23 give them the tools to deal with it, and
24 then put them back into a laboratory

1 where they could have a more successful
2 experience. So that's how they relate.

3 Q. So the idea was to teach
4 them not to lapse all the way into the
5 Seligman type of learned helplessness
6 that --

7 A. Yeah. Well, the profound
8 piece of it, yeah.

9 Q. Right.

10 A. And also to caution people
11 not to, you know, go too far.

12 Q. At the time that you were
13 making these -- making this presentation,
14 writing this paper, did you focus at all
15 or discuss with anyone the idea of
16 inducing a state of learned helplessness
17 as an interrogation technique?

18 A. No.

19 Q. And is there any
20 relationship in your view between learned
21 helplessness and posttraumatic stress
22 disorder?

23 A. Yes.

24 Q. What is that relationship?

1 A. Again, you have to imagine
2 this continuum. On this end of it,
3 successfully dealing with acquired
4 helplessness, not Seligman's outcome,
5 right, but acquired helplessness would
6 help alleviate posttraumatic stress
7 disorder in my opinion. On that end of
8 it, it could actually induce it so....

9 Q. Did you study that at all?

10 A. In what way?

11 Q. Did you study the
12 relationship between posttraumatic stress
13 disorder and learned helplessness?

14 A. I reviewed them. I don't
15 recall.

16 Q. So what you just told --
17 what you just us told, which is that
18 along the spectrum there may be varying
19 degrees of -- and correct me -- I don't
20 mean to mischaracterize it, correct me if
21 I do, that as you reach the far extremes
22 of learned helplessness, that would
23 correlate, in your view, with
24 posttraumatic stress disorder.

1 Did I get that right?

2 A. It would likely correlate,
3 right? If by that you meant some people
4 would develop it and some people
5 wouldn't.

6 Q. More people would develop it
7 at the extreme than for the people who
8 experienced less learned helplessness,
9 right?

10 A. I would think that was true.

11 Q. Okay. Well, when you say
12 you would think that's true, I think
13 that's what you testified and I'm just
14 wondering what the scientific basis of
15 that was.

16 A. I believe, and again I don't
17 have it -- I mean, this is -- you're
18 talking about 1995.

19 Q. Yes.

20 A. So I believe one of the
21 theories of PTSD was learned
22 helplessness, and I believe that I
23 reviewed the writings on that. That's
24 what I believe but...

1 Q. We'll come back a little bit
2 to learned helplessness later, but one --
3 what relationship is there, in your view,
4 between torture and learned helplessness?

5 A. I would guess it would
6 depend on the frequency, intensity,
7 duration and ambiguity of the course of
8 pressure that was used and the
9 psychological resilience of the person.

10 Q. And would your answer be the
11 same if I asked you what the relationship
12 is between torture and posttraumatic
13 stress disorder?

14 A. It would be the same.

15 Q. Let me ask you about
16 another -- another paper. This one is
17 published, although I don't have it here.
18 This is on the second to the last page of
19 that resume. And it's a 1995 paper that
20 says -- written by you and by Dr. Jessen
21 called, "The Circle Concept, Its Use in
22 Resistance Training."

23 Do you see that one? It's
24 the second to the last page, it's the

1 third document down under Publications.

2 A. I see it. I'm going to need
3 to talk to the lawyers. Well, maybe not.
4 Go ahead and ask your question.

5 Q. I just -- well, why don't I
6 ask it in a very general way --

7 A. Okay.

8 Q. -- and see if you can answer
9 it in a way that would be appropriate.

10 A. Uh-huh.

11 Q. What was the paper about?
12 It's a published document.

13 A. It's a published in a
14 classified journal.

15 Q. Oh, that's a classified
16 journal. The SERE Instructor Bulletin is
17 classified?

18 A. The paper is about what the
19 title says.

20 Q. I don't know what the Circle
21 Concept means, so that's why I --

22 MR. WARDEN: I think at this
23 point, we'd ask the witness not to
24 answer the questions about the

1 Circle Concept.

2 THE WITNESS: Given that
3 you've retracted all of it from
4 that paper where we discussed it,
5 the CIA redacted the paper where
6 we used this metaphor, and you
7 guys redacted all of it.

8 BY MR. LUSTBERG:

9 Q. I'm going to read you a
10 quotation from a book. The book, so you
11 know, is The Dark Side by Jane Mayer.

12 Are you familiar with that
13 book?

14 A. I know she wrote the book, I
15 don't -- I didn't pay much attention to
16 it.

17 Q. Okay. So I'm going to read
18 you a quote and ask you your reaction to
19 it. The quote is:

20 "According to Steve
21 Kleinman, a Reserve Air Force colonel and
22 experienced interrogator who's known
23 Mitchell personally for years, learned
24 helplessness was his whole paradigm.

1 Mitchell, he said, draws a diagram
2 showing what he says is the whole cycle.
3 It starts with isolation, then they
4 eliminate the prisoner's ability to
5 forecast the future, when their next meal
6 is, when they can go to the bathroom. It
7 creates dread and dependency."

8 Is that an accurate
9 description of your, quote, whole
10 paradigm?

11 A. No.

12 Q. What's wrong with it?

13 A. It's just not my paradigm.

14 Q. In what sense?

15 A. In the sense that it's not
16 my paradigm.

17 Q. Okay. What's different
18 between your paradigm and what's
19 described in that book?

20 MR. SMITH: Objection.

21 BY MR. LUSTBERG:

22 Q. You can answer.

23 A. Oh. Read that quote again?

24 Q. Sure.

1 "According to Steve
2 Kleinman, a Reserve Air Force colonel and
3 experienced interrogator who's known
4 Mitchell professionally for years."

5 Let me stop right there. Do
6 you know Mr. Kleinman?

7 A. Yeah, I offered him a job in
8 2005 just before -- he asked me for a job
9 in 2005 just before this article and book
10 was published and we turned him down
11 because we thought he was a glory hound.

12 Q. You thought he was a?

13 A. He was seeking glory. He
14 wanted to be a talking head and he was
15 just trying to fill out his resume.

16 Q. Okay. Sorry, I interrupted
17 the sentence, I apologize:

18 "According to Steve
19 Kleinman, a Reserve Air Force colonel and
20 an experienced interrogator who's known
21 Mitchell for years, learned helplessness
22 was his whole paradigm. Mitchell, he
23 said, draws a diagram showing what he
24 says is the whole cycle. It starts with

1 isolation, then they eliminate the
2 prisoner's ability to forecast the
3 future, when their next meal is, when
4 they can go to the bathroom. It creates
5 dread and dependency."

6 And the question I had asked
7 was you had said that was not your
8 paradigm, and so my question had been,
9 what's different about that from your
10 paradigm.

11 A. Well, that's --

12 Q. And there was an objection.

13 MR. SMITH: There was an
14 objection.

15 THE WITNESS: Well, that's a
16 description of a paradigm that
17 some people in foreign countries
18 have used, and it's a description
19 of a paradigm that produces
20 increased dependence, but it
21 doesn't necessarily lead to
22 learned helplessness.

23 BY MR. LUSTBERG:

24 Q. Okay. When you say it

1 doesn't necessarily lead to learned
2 helplessness, it could lead to learned
3 helplessness; is that right?

4 A. I don't -- I don't know, you
5 know. I don't know. Because I don't
6 know that that condition is inescapable
7 or that the person has difficulty coping
8 with it, so I don't know. You'd have to
9 look at the situation and you'd have to
10 look at the person.

11 Q. Just a couple more I want to
12 ask you about that on this list of
13 presentations.

14 A. Sure.

15 Q. One of the presentations.
16 I'm sorry this doesn't have page numbers
17 on it, but it's from 1994, and it's
18 actually, if you go to the -- hold on.
19 The third to the last page, it's the one
20 right at the top. I know I see that's
21 another -- it's an annual meeting of the
22 Department of Defense SERE psychologists.
23 Does that mean that -- this one is
24 called, "Reducing Resistance Training-

1 Related Injury Rates."

2 A. Right.

3 Q. Do you see that?

4 A. Yes, sir.

5 Q. And my question is: What
6 kind of injuries were occurring in
7 resistance training?

8 A. I'm going to describe the
9 SERE-related techniques that have not
10 been discussed yet and have not been
11 cleared by the Government. So my
12 understanding is the individual SERE
13 techniques they use are not classified.

14 There was a process that
15 they used called man handling where you
16 essentially swing the person in a figure
17 eight.

18 If you guys are going to
19 object, this is the time. All right?

20 And what that did, it could,
21 if done improperly or done by a person
22 who was very strong, it could result in
23 whiplash injuries to the neck, especially
24 if they didn't use the special improvised

1 collar properly.

2 And the other kinds of
3 injuries had to do with orthopedic
4 injuries to the knee, I think, the knees,
5 because some folks use cramped
6 confinement. But the boxes at the SERE
7 school are really small and they have
8 special slots where they can make them
9 super small.

10 The other thing they do at
11 the SERE school, what they did to me, is
12 they'll put you in a 55-gallon drum and
13 fill it up with water and cover the lid
14 so that the water is just under your
15 nose, or at least they would do that when
16 I was there, so there were -- sometimes
17 there were injuries related to -- to
18 that.

19 There were some injuries but
20 they were -- and these were rare
21 injuries, right? I mean, I only found
22 one instance of a person who had a
23 herniated disc from a man handling,
24 right, but lower back strain was a little

1 bit more common, it was -- but it was
2 still in very low numbers.

3 Q. Any other -- any of the
4 other techniques cause injuries?

5 A. Occasionally a slap if it's
6 done improperly could injure an eardrum.
7 But again, that was really rare because
8 the way they do the slaps, it's with the
9 fingers and it's against the cheek really
10 if you aim it properly.

11 Walling didn't -- I don't
12 recall it producing any injuries. I
13 don't recall -- there's a technique
14 called the attention grab, I don't recall
15 it producing any injuries.

16 I don't recall any injuries
17 from the approved stress positions that
18 they use. Sometimes when instructors
19 made up their own stress positions there
20 could be injuries.

21 One time an instructor
22 decided to punish a student by having
23 them drink water and actually managed to
24 induce water intoxication.

1 I think -- I don't recall
2 that paper focusing on psychological
3 problems because we just didn't see a lot
4 of that coming out of training.

5 Q. I just want to make sure I
6 understand what you said. The paper been
7 focus on psychological problems because
8 you weren't seeing psychological problems
9 as a result of SERE training?

10 A. What I said was I don't
11 recall the paper doing that. If we had
12 the paper, I'd be happy to look at it and
13 explain any paragraphs or any comments or
14 any terms, but I don't have the paper.
15 So -- but I don't recall that. I would
16 have listed in that paper, since it dealt
17 factually with the kinds of -- I went to
18 the hospitals around and -- the military
19 ones and actually asked them what kind
20 of -- you know, we followed a group of
21 folks who would come to training and then
22 we followed them for some weeks
23 afterwards to see whether they reported
24 to the clinic, reported problems that

1 sort of stuff.

2 So we focused primarily on
3 the following the rules and following the
4 standard procedures and what would happen
5 if you didn't.

6 Q. Did you -- did you give any
7 presentations or do any writing with
8 regard to interrogation?

9 A. I did -- at this particular
10 point in-service training for
11 psychological technicians that worked for
12 me, we did quite a bit of self-study in
13 various kinds of -- but I didn't give
14 conference. I didn't give a conference.
15 So the answer is yes.

16 Q. Okay. And how about on --
17 did you give any presentations or do
18 any -- or write anything that you recall
19 on issues of trauma or posttraumatic
20 stress disorder?

21 A. Well, when I was at the
22 survival school, I actually did a series
23 of evaluations of pilots that reported
24 having posttraumatic stress disorder, and

1 I had to brief my commander about the
2 symptomatology they experienced and what
3 the probability was of being able to keep
4 them in -- you know, flying and that sort
5 of stuff, which is the primary goal.

6 Q. Just give me one second.
7 Just one more thing on -- just back to
8 learned helplessness for a second.

9 A. Uh-huh.

10 Q. You mentioned Dr. Seligman?

11 A. Yes, sir.

12 Q. If I recall correctly from
13 your book, you met with Dr. Seligman,
14 correct?

15 A. Before I was involved in the
16 interrogation program at all, yes.

17 Q. Uh-huh. And what was the
18 nature of your discussions with
19 Dr. Seligman?

20 A. Okay. Dr. Seligman held a
21 special meeting at his house for the FBI.
22 The FBI invited me, along with one
23 other -- actually, I guess the FBI
24 invited the CIA officer, and the officer

1 cleared it with the FBI and brought me as
2 well, right?

3 Q. Okay.

4 A. And so I attended that
5 conference at his house.

6 Q. Here in Philadelphia?

7 A. Uh-huh.

8 Q. And what was the subject of
9 the conference?

10 A. He had a variety of -- I
11 don't know what you would call them,
12 experts on various things, who talked
13 about how they thought their approaches
14 could affect the war on terror.

15 Q. Okay. So this was post
16 9/11, right?

17 A. It was post 9/11. Yeah, in
18 fact, it was in April of 2002.

19 Q. Okay.

20 A. It was late March, actually,
21 I think, probably.

22 Q. Okay. For some reason I
23 thought it was in December '01, but I
24 could be wrong.

1 A. No.

2 Q. Okay. And you said that
3 there were experts who talked about how
4 they thought the approaches could affect
5 the war on terror. What do you mean by
6 that?

7 A. They wanted to talk to the
8 FBI about how the various theories they
9 had, research they had, could be used to,
10 you know, convince terrorists that they
11 shouldn't commit terror attacks, or
12 address what some of them thought were
13 the inequalities in income and
14 opportunity that lead some people to
15 pursue, you know, jobs in terrorism or
16 how to make -- I'm trying to remember all
17 the topics. I'm having a little trouble
18 remembering, but I can tell you one topic
19 that wasn't discussed.

20 Q. I was about to ask you. I'm
21 sure. Go ahead.

22 A. Go ahead and ask me.

23 Q. Interrogation?

24 A. No interrogation, nor

1 learned helplessness.

2 Q. Uh-huh. So there was a
3 meeting with Dr. Seligman who's the
4 father of this learned helplessness
5 theory and there's no discussion with him
6 about learned helplessness?

7 A. No, because it wasn't that
8 kind of discussion. It was more of a
9 policy, things they wanted to get to the
10 brass kind of thing.

11 Q. And there was no discussion
12 of -- in terms of responses to terrorism
13 about interrogation of terrorists or --

14 A. I don't remember, to be
15 candid. Certainly none that involved
16 learned helplessness. There might have
17 been -- it was primarily focused on the
18 law enforcement efforts of the FBI, is
19 what the conference was primarily focused
20 on. And I think he published a -- I
21 think he put out some kind of a summary
22 of what they discussed there, so my
23 memory is not the right judge. I would
24 suggest you get a copy of that.

1 Q. Let me see what I have.

2 Following that meeting, you
3 invited Dr. Seligman to make a
4 presentation, correct?

5 A. Yes.

6 Q. Where was that?

7 A. It was in San Diego.

8 Q. Who was it for?

9 A. It was for the SERE
10 psychology conference for that year.

11 Q. And what did -- what did he
12 speak about?

13 A. I asked him to do a
14 presentation on learned optimism, which
15 is the opposite of learned helplessness.
16 It's what -- I was describing how when
17 you put a person in a situation where
18 they first begin to experience some
19 sensations of helplessness and then you
20 give them an opportunity to successfully
21 cope with it, it kinds of burns in the
22 optimism and increases the tendency of
23 the person to continue to try to resolve
24 the problem.

1 And I thought that what he
2 would do, and I think he actually did do,
3 is -- and I say I think he actually did
4 do it because I wasn't there, I was
5 deployed, was talk about how that relates
6 to POWs coming back.

7 Q. So if -- so Dr. Seligman is
8 quoted as saying that he was invited to
9 speak about how American personnel could
10 use what is known about learned
11 helplessness to resist torture and evade
12 successful interrogation by their
13 captures. This is what I spoke about.

14 Is that consistent with --
15 I'm just not sure if that's consistent
16 with what you just said.

17 MR. SMITH: Objection.

18 You can answer.

19 THE WITNESS: I don't know
20 what he said. I don't know what
21 was in his mind, all I know is
22 what I asked him to talk about,
23 and what I asked him to talk about
24 was other end of that, which is

1 his studies on learned optimism.

2 BY MR. LUSTBERG:

3 Q. Did you ever speak to him
4 about learned helplessness?

5 A. I think I might have
6 mentioned to him in that first meeting
7 that his theory was a useful way to think
8 about what happened in the SERE schools,
9 but I don't think we had an in-depth
10 conversation. I mean, he seemed pleased
11 that I was talking about it, but I don't
12 think --

13 Q. Okay. If you -- if you
14 would, just explain what you just said.
15 That his theory was a useful way to think
16 about what happened in the SERE schools.
17 What do you mean by that?

18 A. Well, you want to prevent
19 learned helplessness. You want them to
20 experience a sense of helplessness, but
21 you want to prevent that profound thing
22 that happens over here, right? So what
23 you really want to do is train them to be
24 optimistic about their ability to resist

1 to the best of their ability and then
2 bounce back, and the way that you do that
3 is literally evoke different kinds of
4 emotions, which would be different for
5 different people, you know, and give them
6 an opportunity to successfully cope in
7 the presence of those emotions, but they
8 have to be real emotions. And so his
9 learned optimism theory, which is kind of
10 the carbon -- the opposite side of the
11 other one is what I was talking about
12 here.

13 Q. So explain something to me
14 about this that I have not understood.
15 If -- if one experienced learned
16 helplessness in a setting where you were
17 a captive, if I understand the study of
18 the dog -- the dog study that
19 Dr. Seligman did, one would -- would just
20 capitulate, right? You would try to find
21 no way out, right?

22 MR. SMITH: Objection.

23 THE WITNESS: I don't

24 know -- I don't understand -- are

1 you asking me to describe his dog
2 study?

3 BY MR. LUSTBERG:

4 Q. No. I'm trying to
5 understand the application of that to a
6 human being in captivity and what it
7 would mean. So if -- yeah, is that
8 something that you have -- can explain or
9 do you want me to be more specific with
10 my question? I'm happy to try to be a --
11 it wasn't a particularly good question.

12 A. I would like you to be more
13 specific.

14 Q. Sure. Okay. So if a person
15 experienced learned helplessness, you
16 said the far end of the spectrum, and
17 they were in captivity, then under those
18 circumstances, presumably even if they
19 were given a way to remedy their
20 situation, they would do nothing about it
21 because that's what the dogs did in
22 Seligman's study, right?

23 A. No.

24 Q. Okay. So tell me why that's

1 wrong.

2 A. He found that you could
3 completely reverse what was going on for
4 most of his dogs by helping them escape
5 and that eventually they began to do that
6 again on their own.

7 Q. Okay.

8 A. That's my recollection of
9 the study.

10 Q. Okay. Because what I was
11 thinking is if somebody was experiencing
12 learned helplessness, then they would --
13 couldn't be induced to give any answers
14 or provide any information because they
15 would just accept the punishment that
16 they were being provided and be totally
17 passive in the face of that. Is that --

18 A. You're asking me to
19 speculate about that.

20 Q. I'm not -- I'm asking what
21 your understanding of Dr. Seligman's
22 studies were, and you were familiar with
23 them, right? You have to answer yes?

24 A. Yes.

1 MR. SMITH: Objection.

2 MR. LUSTBERG: No problem.

3 MR. SMITH: Is the question
4 were you familiar with them, was
5 that --

6 MR. LUSTBERG: That was the
7 last one.

8 MR. SMITH: That question
9 has been answered.

10 MR. LUSTBERG: I got it.

11 MR. SMITH: Wait for the
12 next one.

13 MR. LUSTBERG: Okay. So I'm
14 going to the prior one.

15 MR. SMITH: Okay.

16 BY MR. LUSTBERG:

17 Q. Which is: Based upon your
18 understanding of the studies, if a person
19 was experiencing learned helplessness,
20 then they would do nothing to remedy
21 their situation; is that right? Isn't
22 that what learned helplessness is?

23 A. What sense are you using
24 that?

1 Q. My understanding -- if I'm
2 misunderstanding learned helplessness,
3 you'll tell me. At that far end of
4 learned helplessness, where you're
5 completely passive and do nothing to
6 remedy your situation, under those
7 circumstances you would, for example, not
8 answer questions because you saw no way
9 out either way, right?

10 A. That's correct. And in
11 fact, that's what I warned the CIA about.
12 When -- early on when I discussed learned
13 helplessness, and in fact, there's a
14 document they have right now that I'm
15 trying to get cleared, where we -- where
16 we warned against that specific problem,
17 that if you were to induce profound
18 helplessness, you actually impair the
19 ability of a person to provide
20 intelligence.

21 Q. All right. We'll probably
22 come back to learned helplessness.

23 Before 9/11, did you ever
24 write or give any presentations on how

1 SERE resistance related training
2 techniques might be used in actual
3 interrogations?

4 A. No.

5 Q. Did you write anything about
6 that or have discussions with anybody
7 about that prior to 9/11?

8 A. No.

9 Q. Okay. I want to show you
10 some language from your book and just ask
11 about it. It might be easier if we --

12 A. Okay.

13 Q. You'll be familiar with it
14 because it's your book.

15 A. I might not remember every
16 word.

17 Q. I get it.

18 MR. LUSTBERG: We'll mark
19 this as 4, right?

20 (Exhibit No. 4,
21 Interrogating the Enemy, by James
22 E. Mitchell, Bates MJ22577 through
23 22942, was marked for
24 identification.)

1 THE WITNESS: Is this the
2 book as it went -- as it went to
3 press or --

4 BY MR. LUSTBERG:

5 Q. It's the book as we got it.

6 A. No, this is not the book
7 that went to press. This was an early
8 draft that was submitted to the CIA in
9 August of 2015.

10 Q. Well, let me point you to
11 some language and you can tell me
12 whether, to your knowledge, it's still
13 accurate or it got changed.

14 A. Sure.

15 Q. Actually, just so you know,
16 we're still on talking about your
17 background, you talked about your
18 background in the book.

19 A. Okay.

20 Q. And let me direct your
21 attention in that regard to page 59.

22 A. Okay.

23 Q. So the bottom paragraph
24 beginning on line 20. Do you see that?

1 A. Yes.

2 Q. So just to make this a
3 little bit easier, why don't you just
4 read that paragraph and then I'll ask
5 about it?

6 MR. SMITH: To himself or
7 into the record?

8 BY MR. LUSTBERG:

9 Q. No, no, no, you can read it
10 to yourself.

11 A. Okay.

12 Q. So I just want to ask you a
13 couple questions about this. It says:

14 "As a doctoral level
15 psychologist for 16 years, I had
16 extensive experience questioning hostile,
17 deceptive subjects for suitability for
18 continued duty assessments."

19 What -- what experience had
20 you had in questioning hostile deceptive
21 subjects for suitability for continued
22 duty assessments?

23 MR. SMITH: Just so the
24 record is clear, that's only part

1 of the sentence.

2 MR. LUSTBERG: I'm going
3 to -- I'm going to -- what I'll do
4 is go through each of those areas.

5 THE WITNESS: Well, when a
6 commander refers, either a special
7 operator or a survival instructor
8 or something like that, and asks
9 for my opinion about whether the
10 person can continue duty, very
11 often it occurs in the context of
12 some crime that they've committed
13 that they're either considering
14 judicial punishment or some sort
15 of -- I guess they wouldn't
16 consider it a crime if it was
17 non-judicial, but they're trying
18 to make a decision about that.

19 They're also trying to
20 decide whether or not the person
21 should continue in whatever duties
22 they're in, and so I had -- I had
23 that experience several times. I
24 don't know -- I don't know.

1 BY MR. LUSTBERG:

2 Q. You say extensive
3 experience.

4 A. Well, the extensive part
5 applies to the entire sentence.

6 Q. Got it.

7 A. Do you want me to parse each
8 piece?

9 Q. Yes. So I mean, just
10 briefly, you can do that, sure. But I
11 mean, so I'm trying to understand what
12 your doctoral level psychologist
13 experience had been on each of these
14 things: Questioning hostile, deceptive
15 subjects for suitability for continued
16 duty assessments, security evaluations,
17 psychological profiling, sanity
18 evaluations and forensic assessments for
19 people who had committed a number of
20 crimes.

21 A. Yup.

22 Q. So since you say you have --
23 you had extensive experience questioning
24 those people, I just trying to understand

1 what that experience was.

2 A. It was a cumulative -- I
3 wasn't trying to imply that I had
4 extensive experience with each one.

5 Q. Each one, I got it. Okay.
6 That's helpful.

7 A. We're talking --

8 Q. For each of those things.

9 A. We're talking -- it's the
10 same basic set of skills, all right?
11 Basically what you do is you try to put
12 together a timeline and you -- and you
13 try to determine the truth because
14 although they may call it an evaluation,
15 in many cases it's really an
16 investigation for the Government. The
17 person is not coming to me seeking
18 clinical care, they're being referred
19 because of some kind of an issue.

20 I'd be happy to give you an
21 example if you'd like.

22 Q. That would be great.

23 A. Okay. So let's talk about
24 the forensic assessments of individuals

1 who committed a variety of criminal
2 offenses.

3 When I was at Wilford Hall,
4 I got a referral for a man who had
5 stalked his wife. He had kidnapped her
6 from a parking garage, taken her to a
7 hotel, duct taped her to the bed, beat
8 her, raped her and then cut her eyelids
9 and her clitoris off. That person was
10 saying that he did that because the devil
11 was inside of her and he needed to let it
12 out. That was his thing.

13 The request I got was to
14 determine whether or not he understood
15 the wrongfulness of his behavior at the
16 time and whether he could participate in
17 his -- in his own defense, and in the
18 course of doing that, what I did was
19 spend several days putting together his
20 timeline, and asking him questions while
21 he continued to pretend that it had
22 something to do with the devil, but I
23 could -- I did his timeline out of order
24 so it was more difficult for him to

1 follow, and you know, sometimes I would
2 use a theme where it sounded like I was
3 understanding why he did the sort of
4 things that he did, because you know,
5 people can be difficult, and he was very
6 hostile towards me because he was busy --
7 he even threatened at one point to hit me
8 with a lamp, I think, that was in my
9 office.

10 And then finally when I told
11 him -- after I got the timeline completed
12 and walked him through it and said this
13 is what you were thinking at each stage
14 of this thing, he leaned forward and told
15 me why he really did what he did. And
16 I'm reluctant to tell you what that is,
17 but I will if you would like.

18 Q. Sure.

19 A. Because what he said was,
20 The bitch left me, so I knew I would
21 never get any more sleep so I took her
22 eyelids so she couldn't sleep either.
23 And I couldn't imagine her having sex
24 with another man, so I took her clitoris

1 so she wouldn't enjoy it.

2 In my mind, that didn't meet
3 the McNaughton rules, all right, because
4 he -- he clearly understood because he
5 had put off kidnapping her in the
6 presence of law enforcement officers, you
7 know, like if there was a security guard
8 or another person around. And there were
9 several other instances where it was
10 clear that he had planned that out.

11 Q. So who -- were you retained
12 by a prosecutor or something to do this
13 type of forensic --

14 A. I was retained by the court
15 to do it.

16 Q. And --

17 A. It was for a court-martial.

18 Q. It was for a court-martial.
19 And the meeting you had with him was --

20 A. Days.

21 Q. -- in your office?

22 A. Yes, for several days. He
23 was on release pending the trial. That's
24 just one example.

1 Q. And is that a typical
2 example in the sense of -- I mean not in
3 terms of the specific facts, but that's
4 the type of assessments that generally
5 you were doing that you're referring to
6 here?

7 A. I can give you another
8 example if you'd like.

9 Q. Sure. Give me -- because
10 two is better than one.

11 A. I got a request to do an
12 assessment of a person who had sexually
13 assaulted an eight-year-old girl with
14 spina bifida. Specifically what he had
15 been alleged to have done was have her
16 masturbate him up to the point of almost
17 ejaculating and then quitting.

18 And his position was that
19 he -- he couldn't control himself, but in
20 the course of the several days that I
21 talked to him putting together his
22 timeline where he lured her to the
23 basement and he did all this sort of
24 stuff, he indicated that he had stopped

1 just prior to ejaculation, and my
2 reasoning was that if he could stop at
3 that point, when most people would
4 concede that it would be difficult to
5 stop, he could have stopped anywhere down
6 that chain, you know, up to that point.

7 And again, he's another one
8 of those people who's trying to hide the
9 actual events that had occurred and why
10 he had done them.

11 And so you essentially have
12 to do -- it's very similar to the kinds
13 of investigations I learned to do in
14 psychological autopsies and airplane
15 crashes and when I was a bomb guy, I used
16 to be a bomb disposal guy, and we learned
17 to do those kinds of investigations
18 there. Similar sort of thing.

19 Q. When you used the phrase
20 "psychological autopsies," what does that
21 mean exactly?

22 A. In some federal --

23 THE VIDEOGRAPHER: Less than
24 two minutes.

1 MR. LUSTBERG: All right.

2 We'll get through the
3 psychological autopsies question.
4 I was hoping to get through this
5 whole line, but that's okay.

6 BY MR. LUSTBERG:

7 Q. Go ahead.

8 A. In some federal cases when a
9 person kills themselves (sic), you try to
10 recreate the last couple of days before
11 they killed themselves (sic), and you do
12 that by interviewing witnesses and by
13 looking over records and by asking
14 questions of people sometimes who are
15 trying to hide their complicity in what
16 occurred.

17 Q. Just one last question
18 before the break, which is: You said
19 that you did these analyses for purposes
20 of determining whether there might be
21 insanity defense. That's your reference
22 to McNaughton, right?

23 A. Right, that's one end of the
24 thing.

1 Q. But you mentioned earlier as
2 well that you did McNaughton, and
3 sometimes to determine whether they were
4 competent to stand --

5 A. To stand trial, and
6 sometimes to determine if they should
7 continue duty, sometimes to determine
8 whether they should be allowed special
9 access to something like nuclear weapons.
10 I mean, it varied.

11 Q. With regard to the
12 McNaughton-type analysis that you did,
13 did you ever find that somebody was, in
14 fact, insane under McNaughton?

15 A. Me personally?

16 Q. Yeah, on any of these that
17 you did the extensive examinations that
18 you did.

19 A. First off, insanity is a
20 decision that the judge makes, not me.

21 Q. Well, I know, but you're
22 being -- you're being asked to render an
23 opinion on that, right?

24 A. I don't -- I don't

1 specifically recall. I have a vague
2 recollection of this one woman who was
3 kidnapped and did a bunch of coke and
4 then kind of stayed away for a long
5 period of time and got involved in some
6 other stuff, and I thought that she had
7 some sort of diminished capacity because
8 of the things that had happened to her,
9 but I don't recall that specifically, the
10 details of it. It was a long time ago.

11 MR. LUSTBERG: I'm almost
12 done with this, but why don't --
13 it sounds like we're done with our
14 tape right now.

15 THE VIDEOGRAPHER: The time
16 is 12:24 PM. We are now off the
17 video record. This ends Disk No.
18 1.

19 (Lunch recess.)

20 THE VIDEOGRAPHER: The time
21 is 1:11 PM. We are now back on
22 the video record. We can proceed.

23 MR. SMITH: As a point of
24 clarification, it's not 1:11.

1 You've got to fix your clock
2 there. I think it's 1:04.

3 MR. LUSTBERG: I've been
4 going -- for purposes of keeping
5 time, I've been going with his
6 time as he says them.

7 MR. SMITH: All right.

8 MR. LUSTBERG: So -- I mean,
9 it doesn't matter as long as --
10 you know, however you want to do
11 it.

12 MR. SMITH: Not a problem.

13 MR. LUSTBERG: Yeah.

14 BY MR. LUSTBERG:

15 Q. Okay. Thanks, Dr. Mitchell.
16 And I didn't thank you initially for
17 coming here today. I do appreciate that.

18 So you have many years of
19 experience in the military, right?

20 MR. SCHUELKE: You have to
21 answer.

22 THE WITNESS: Yes. Sorry.
23 Yes.

24 BY MR. LUSTBERG:

1 Q. And during the time that
2 you've been in the military, have you
3 been trained on the Geneva Conventions?

4 A. Yes.

5 Q. Okay. What was the nature
6 of that training?

7 A. I was a military member of
8 the -- you know, so they trained you in
9 the Geneva Conventions and they also
10 train you in the Geneva Conventions at
11 the SERE school.

12 Q. And what's your
13 understanding of the Geneva Conventions?

14 A. That if you're a signatory
15 and you're a legal combatant that has
16 signed the Geneva Conventions, then they
17 apply to you. Although I think in 2006,
18 I can't remember -- never mind.

19 Q. I'm sorry, you were going to
20 say something happened in 2006?

21 A. No, I'll retract that.

22 Q. Well, I'm going to now ask
23 you about it. What's your understand
24 that -- is it your understanding that

1 something changed?

2 A. Wasn't there a Hamdan ruling
3 that -- where they required -- they
4 decided that the Geneva Conventions would
5 apply to some of the folks? I don't have
6 a clear recollection of that, but that's
7 what I was thinking of.

8 Q. Okay. Now, Dr. Mitchell, I
9 know that -- one second. Sorry.

10 You're aware that your name
11 has come up in a number of inquiries and
12 so forth, and so when I ask you
13 questions -- I'm going to ask you some
14 questions about things that other people
15 have said in various reports and so
16 forth, and I do that most respectfully.

17 So did you before you --
18 before Abu Zubaydah, did you ever conduct
19 any interrogations?

20 A. Law enforcement
21 interrogations?

22 Q. Yes.

23 A. No.

24 Q. And so when the Senate

1 Select Intelligence Committee and others
2 talk about how you had no experience as
3 an interrogator, would they be -- would
4 that have been true?

5 MR. SMITH: Objection.

6 THE WITNESS: The sentence
7 that you quote is out of context
8 and not complete. What the
9 sentence actually says is no
10 relevant experience, to which the
11 CIA pushes back and they said, We
12 would have been negligent in our
13 duty -- we would have been
14 derelict in our duty had we not
15 sought him out. So I think your
16 quote is incorrect.

17 BY MR. LUSTBERG:

18 Q. Okay. Well, let me give you
19 the exact quote and then you can respond.

20 In the Senate Select
21 Intelligence Report --

22 A. Do you have a copy that so I
23 can look at it?

24 Q. Sure, we can do that. Just

1 to let you know, this is just the
2 executive summary because that's all
3 that's publicly available.

4 MR. LUSTBERG: So we'll
5 mark -- yeah, if I slide it over,
6 I'll scratch your nice table.

7 MR. SCHUELKE: We'll put it
8 on the bill.

9 MR. LUSTBERG: Yeah.

10 MR. SCHUELKE: And this
11 is --

12 MR. LUSTBERG: We'll mark
13 this as -- mark at as 5; is that
14 right.

15 MR. SMITH: Correct. We're
16 up to 5.

17 (Exhibit No. 5, Senate
18 Select Committee on Intelligence
19 Detention and Interrogation
20 Program, was marked for
21 identification.)

22 MR. SCHUELKE: Is it 4 or 5?

23 MR. SMITH: It's 5.

24 BY MR. LUSTBERG:

1 Q. So I'm just going to point
2 you to -- it's obviously a very long
3 report, so why don't I just point you to
4 a couple of passages that I want to ask
5 you about.

6 Let's start with on page 11
7 of 19, and this refers to the findings, I
8 believe. So page 11 at the beginning.
9 Under No. 13, the first paragraph says:

10 "The CIA contracted with two
11 psychologists to develop, operate and
12 assess its interrogation operations. The
13 psychologists' prior experience was at
14 the US Air Force Survival Evasion,
15 Resistance and Escape (SERE) school.
16 Neither psychologists had any experience
17 as an interrogator nor did either have
18 specialized knowledge of Al-Qaeda, a
19 background in counterterrorism or any
20 relevant cultural or linguistic
21 expertise."

22 Do you agree or disagree
23 with that statement?

24 A. I disagree with that.

1 Q. Why?

2 A. Because I had over six
3 years' experience in counterterrorism.

4 Q. Okay.

5 MR. SMITH: Were you
6 finished your answer?

7 THE WITNESS: No.

8 BY MR. LUSTBERG:

9 Q. Oh, I'm sorry. Thank you.

10 A. I would -- the problem I
11 have with this thing is I don't have a
12 timeline. So are they talking 1995, are
13 they talking 2006? When are they
14 referring to? Do you follow?

15 Q. I completely understand your
16 question. As I read it, and you tell me
17 if you read it differently, I mean, the
18 words are what the words are. It says
19 the CIA contracted with two
20 psychologists. So my assumption is that
21 they're talking about as of the time of
22 those contracts.

23 A. As of the time that both of
24 us were contracted?

1 Q. I -- you have the same
2 access to the words as I do.

3 A. Well, if they're referring
4 to the time that both of us were
5 contracted to do what came to be known as
6 EITs, then I had spent 90, maybe 100 days
7 getting briefings every day on Al-Qaeda,
8 briefings on what the intelligence
9 requirements were, briefings on what was
10 known about the organization of
11 Al-Qaeda -- by the experts in the CIA.
12 If that's the time that they're referring
13 to.

14 Q. How about at the time that
15 you first began working with them?

16 A. I was aware of Al-Qaeda. I
17 did get a -- I did get briefings from
18 them when they asked us to take a look at
19 that Al-Qaeda training manual, that
20 resistance to interrogation training
21 manual, but nowhere near the depth that I
22 got when I deployed in April.

23 Q. Uh-huh. So prior to you
24 being asked to review the Manchester

1 manual, is that what you're referring to,
2 sir?

3 A. Yes.

4 Q. Prior to your being asked to
5 review that, did you have any, quote,
6 unquote, specialized knowledge of
7 Al-Qaeda?

8 A. Not Al-Qaeda specifically.

9 Q. What -- what generally?

10 A. A friend of mine by the name
11 of Don Hutchings was kidnapped in 1995
12 and killed by the same group -- well, not
13 the same group, but by a group that was
14 under the same spiritual leader that
15 kidnapped Daniel Pearl, and once he was
16 kidnapped by the Kashmiri separatists, I
17 became interested in that whole issue
18 around Islamic terrorism, and you know,
19 why they're wanting to kill westerners
20 and capture westerners.

21 So I had -- I had a probably
22 better than average familiarity with the
23 tenants of Islam that lead to that sort
24 of thing, but I wouldn't -- I wouldn't

1 compare myself -- I wouldn't say that I
2 was an expert on Al-Qaeda, because even
3 the CIA in their documents when they
4 explained this say that very little was
5 known about Al-Qaeda. I knew they had
6 done the attack. But beyond that I
7 didn't know much more.

8 Q. And how about the part where
9 it says, "Neither psychologist had any
10 experience as an interrogator"?

11 A. Can you explain what you
12 mean by interrogator?

13 Q. I'm reading -- I'm reading
14 the words on this page. So do you
15 disagree with that statement?

16 A. I didn't have any experience
17 as a law enforcement interrogator at all.
18 And if what you mean -- if what they mean
19 is law enforcement interrogator, the
20 answer is I didn't have any experience.
21 If what they mean is the A. Merriam
22 Webster definition of interrogator, which
23 is asking criminals, people who have been
24 charged with crimes, questions when they

1 might be seeking to, you know, withhold
2 information, then those things that I
3 discussed earlier I had skills that --
4 but no, in terms of law enforcement
5 interrogator.

6 Q. Had you had any law
7 enforcement interrogation training by
8 that time?

9 A. I had -- I had studied the
10 various methods that we used. Are we
11 still talking about when I wrote that
12 paper?

13 Q. I'm talking about when you
14 began your work for the --

15 A. I don't know -- I don't know
16 what that timeline is.

17 Q. Okay.

18 A. You've got to tell me again.

19 Q. So let's say late 2001,
20 early 2002.

21 A. Well, I -- I had been law
22 enforcement trained as a hostage
23 negotiator, all right, with the San
24 Antonio Police Department, they might

1 call it crisis negotiating now, but
2 that's what it was at the time.

3 I had, in the course of
4 getting familiar with the various
5 interrogation techniques that were used,
6 I had studied law enforcement
7 interrogation, including sort of the
8 standard list of things that, you know,
9 folks had used like establishing rapport,
10 that kind of stuff.

11 In addition, I, through
12 video studies, studied the Reid
13 technique, so I was familiar with those.

14 Q. And what is that?

15 A. The Reid technique is this
16 nine-step process that's used primarily
17 to elicit confessions.

18 Also, I had attended two
19 interrogation courses, and I know you
20 have two copies of that document, one of
21 which included the country that provided
22 the training and one of which doesn't.
23 But I had had two interrogation courses
24 on interrogation for intelligence

1 gathering.

2 Q. When did you get those?

3 A. '90s. Maybe early '90s.

4 Q. Had you ever actually
5 performed any intelligence gathering
6 interrogations before this?

7 A. No.

8 Q. So --

9 MR. SMITH: Were you
10 finished with your training?

11 THE WITNESS: I've actually
12 lost track of what I said.

13 MR. SMITH: We can have the
14 court reporter read it back?

15 THE WITNESS: Would you?

16 (Pertinent portion of the
17 record is read.)

18 THE WITNESS: Can you ask
19 your original question?

20 BY MR. LUSTBERG:

21 Q. I think you answered it.

22 A. I don't know if I answered
23 it completely, so with the reservation
24 that I don't know if I answered it

1 completely, we can move on.

2 Q. Okay. Take a look at page
3 424 --

4 A. 424?

5 Q. Yeah. In the executive
6 summary part.

7 THE VIDEOGRAPHER: Counsel,
8 do you need help with your
9 microphone?

10 MR. LUSTBERG: I'm going to
11 work on it. Okay now?

12 THE VIDEOGRAPHER: Yes.

13 MR. LUSTBERG: Thank you.

14 THE WITNESS: Okay.

15 BY MR. LUSTBERG:

16 Q. At the top of page 424, it
17 says that -- it says that -- I'm sorry,
18 that:

19 "CIA records indicate that
20 CIA officers and contractors who
21 conducted CIA interrogations in 2002 did
22 not undergo any interrogation training.
23 The first interrogator training course
24 did not begin until November 12th, 2002,

1 which time at least 25 detainees had been
2 taken into CIA custody."

3 Is that, to your knowledge,
4 correct?

5 A. I think if you want to know
6 what the CIA did, you should ask the CIA.

7 Q. I'm asking whether you -- to
8 your knowledge it's correct? If you
9 don't know, you don't know.

10 A. I have no idea how many they
11 trained or who they trained. I don't
12 have any idea how many people they took
13 into custody.

14 I do know that the first
15 interrogator training course began
16 sometime in November of 2002.

17 Q. And did you attend that
18 course?

19 A. I know the documents say I
20 did, but I did not.

21 Q. Before that, had you
22 attended any CIA course -- interrogation
23 course?

24 A. No. Although we had a law

1 enforcement interrogation specialist
2 deployed with us with Abu Zubaydah and he
3 conducted on-the-spot kind of seminars
4 around the law enforcement issues that
5 were involved.

6 Q. He conducted on-the-spot
7 seminars?

8 A. He was deployed with us at
9 the black site. And he would say, These
10 are the kinds of interrogation techniques
11 I would use with this guy and then we
12 would get feedback afterwards.

13 Q. Okay. And you said "we
14 would get feedback," so you took
15 advantage -- I don't mean in a bad way,
16 you availed yourself of his advice in
17 regard?

18 A. I think you couldn't avoid
19 it, but I did avail myself of his advice.

20 Q. Previously I mentioned to
21 you this book, The Dark Side, by Jane
22 Meyer. You said you had not really read
23 that. In that book it says, I'm just
24 going to quote you one sentence, I can

1 show it to you if you want, but it says:

2 "According to one colleague
3 who was an interrogator, Mitchell had not
4 even" -- "had not even observed an
5 interrogation."

6 Prior -- this is prior to --
7 to questioning Abu Zubaydah. Is that
8 true?

9 A. No. I was deployed --

10 MR. SMITH: You can finish
11 your answer.

12 THE WITNESS: You want me to
13 finish it?

14 MR. SMITH: Go ahead.

15 THE WITNESS: No, I was
16 deployed with the CIA and the FBI
17 and I was there every single day,
18 and with the exception of those
19 things that took place in the
20 hospital, I observed every single
21 interrogation that was done.
22 Literally by the time that that
23 man gave that piece of advice, I
24 had watched him do over 100

1 interrogations and he had watched
2 me do zero.

3 BY MR. LUSTBERG:

4 Q. That man?

5 A. Whoever gave you that piece
6 of advice. If he said that he was there
7 and I hadn't done any, then he -- hadn't
8 observed say, then he's not telling you
9 the truth.

10 Q. Okay. I'm going to mark
11 another exhibit. I'm going to show you
12 Exhibit 6.

13 A. Are we done with this?

14 Q. Keep it because we'll come
15 back to it. Thank you.

16 (Exhibit No. 6, Testimony of
17 Ali Soufan, was marked for
18 identification.)

19 THE WITNESS: Oh, Ali
20 Soufan. So I was right about --
21 is this one mine or yours.

22 MR. SMITH: Just so you
23 know, the court reporter marks the
24 official one for the record.

1 That's the one you should be
2 looking at.

3 BY MR. LUSTBERG:

4 Q. I'm showing you what's been
5 marked as Exhibit 6. Have you seen this
6 before?

7 A. No.

8 Q. Okay. Directing your
9 attention to page 3.

10 A. Okay.

11 Q. The very last paragraph on
12 the third page, it says:

13 "It is also important to
14 realize that those behind this
15 technique" -- if you want to -- that's a
16 little out of context, so if you want to
17 take a quick look at it.

18 MR. SMITH: Dr. Mitchell, in
19 fairness, you have the right to
20 review the whole document.

21 BY MR. LUSTBERG:

22 Q. 100 percent. Take as much
23 time as you need. Mr. Smith is
24 100 percent right.

1 But just to orient you, I'm
2 going to ask you about that paragraph
3 that I just --

4 A. Okay. I think I'm ready to
5 proceed.

6 Q. Okay. It says:
7 "It's also important to
8 realize that those behind this technique
9 are outside contractors with no expertise
10 in intelligence operations,
11 investigations, terrorism or Al-Qaeda,
12 nor did the contractors have any
13 experience in the art of interview and
14 interrogation. One of the contractors
15 told me this at the time and this lack of
16 experience has also now been recently
17 reported on by sources familiar with
18 their backgrounds."

19 Do you -- for purposes of
20 this discussion, assume that the
21 contractors are you and Dr. Jessen. If
22 that's true, what's your reaction to that
23 paragraph?

24 MR. SMITH: Objection.

1 You can answer.

2 THE WITNESS: That he's
3 incorrect.

4 BY MR. LUSTBERG:

5 Q. In what ways?

6 A. Well, the idea that I had no
7 expertise in intelligence operation by
8 the time we took over those
9 interrogations is incorrect; that I had
10 no -- no experience in investigations,
11 completely incorrect; that I had no
12 experience in terrorism, completely
13 incorrect; that I knew nothing about
14 Al-Qaeda by the time we took over those
15 interrogations, completely incorrect. He
16 and I sat in the same briefings over and
17 over and over and over for six months.
18 The briefings varied, the briefer varied,
19 but the fact is I received the same
20 briefings and the same intelligence
21 reports that he received, all right?

22 Any expertise in the art of
23 interview? My God, I'm a clinical
24 psychologist, interviews are what we do

1 and my entire career has been focused on
2 interviewing, so obviously that's
3 incorrect.

4 When he uses the word
5 interrogation here, he must mean law
6 enforcement interrogation, which is true
7 I don't have law enforcement
8 interrogation.

9 It is completely untrue that
10 I told him about any kind of lack of
11 experience. I know this couldn't have
12 been Dr. Jessen because he was still
13 working for the DOD at the time, so he
14 has to be referring to me. All right?

15 And these recently reported
16 sources familiar with their backgrounds,
17 I don't know who they would be, because
18 Kleinman claims that he knows me, but he
19 really knows squat about me. He knows
20 virtually nothing other than I refused to
21 give him a job.

22 So I would say that
23 paragraph, in and of itself, is
24 completely wrong.

1 Q. Okay.

2 A. Are we done with that
3 document?

4 Q. Yes, we are. We may come
5 back to it.

6 MR. SMITH: Do you need to
7 ask me a question?

8 MR. LUSTBERG: Do you want
9 to speak to your counsel? You
10 can.

11 MR. SMITH: Just slide over
12 here and put your hand over the
13 mic.

14 MR. LUSTBERG: Are you good?

15 MR. SMITH: Yes.

16 THE WITNESS: Let me put the
17 mic back on. I wanted to give you
18 more information, but...

19 BY MR. LUSTBERG:

20 Q. Okay. Now you can't say
21 that and not -- what additional
22 information do you want to give me?

23 A. That Ali Soufan heard me say
24 something to Jennifer Matthews, who was

1 an expert on Al-Qaeda. When Jennifer
2 asked me, What do you know about
3 Al-Qaeda, and I said, Next to you,
4 virtually nothing. This was several
5 weeks into me getting briefings every
6 day, but she was the foremost expert on
7 Al-Qaeda and he overheard that
8 conversation, and my belief is that he
9 has spun that into this.

10 Q. Okay.

11 MR. SMITH: Now, Dr.
12 Jessen, while there's no
13 question -- Dr. Mitchell, while
14 there's no question pending, your
15 job today is just to answer his
16 questions.

17 THE WITNESS: Got it.

18 MR. SMITH: Okay? You will
19 have an opportunity to tell your
20 story when we go to trial. Okay?

21 THE WITNESS: Got it.

22 MR. SMITH: So let's today
23 just answer his questions so we
24 can get on our way here, okay?

1 THE WITNESS: Got it.

2 MR. SMITH: Thank you.

3 BY MR. LUSTBERG:

4 Q. On the other hand, if you
5 feel like telling me stuff, I'm happy to
6 hear it.

7 A. Got it.

8 MR. SMITH: If you feel like
9 telling him stuff, you should ask
10 to speak to me outside so that I
11 can have a more pointed
12 conversation with you.

13 THE WITNESS: Got it.

14 MR. SMITH: Okay? Thank
15 you, sir.

16 BY MR. LUSTBERG:

17 Q. As of -- in May 2001,
18 according to your manuscript, you turned
19 down a CIA job. Do you recall that?

20 A. Yes.

21 Q. Okay. If you need it, I can
22 refer you to the page of your manuscript.

23 A. No, I believe you.

24 Q. Okay. But you said that you

1 wanted to focus on starting your own
2 business at that time; is that right?

3 A. Yes, sir.

4 Q. Why is that?

5 A. I didn't want to live in
6 Washington, D.C., I wanted to be a
7 contractor, I wanted to do more than, you
8 know, just one set of things.

9 Q. And -- and what were the --
10 what was your idea as to what kind of
11 business you were setting up at that
12 time?

13 A. I wanted to do some
14 consulting work for JPRA because those
15 opportunities were available, and I
16 wanted to be free to -- at that time I
17 was doing some consulting to
18 subcontractors with the FBI on things
19 like what to do if a hostage is wired
20 into a nuclear device where the galvanic
21 skin response of the person is part of
22 the firing system. I was interested in
23 continuing to do that sort of work.

24 Q. Did you view -- when 9/11

1 occurred, and I've heard you speak about
2 9/11, did you view that at all as a
3 business -- as creating a set of business
4 opportunities for you?

5 A. No.

6 Q. Okay. So if -- I'm going to
7 read you a quote from a New York Times
8 article and just ask you for your
9 reaction.

10 MR. SMITH: Could we see
11 a -- place a copy before the
12 witness, please?

13 MR. LUSTBERG: Of course.
14 Absolutely.

15 (Exhibit No. 7, New York
16 Times article, "US Architects of
17 Harsh Tactics in 9/11's Wake", was
18 marked for identification.)

19 BY MR. LUSTBERG:

20 Q. Dr. Mitchell, let me know
21 when you're ready.

22 A. Is there a particular
23 paragraph you're referring to?

24 Q. Yeah, I'm going to refer to

1 page 3, at the bottom -- towards the
2 bottom there's a section called "A Career
3 Shift," and it's the third paragraph from
4 the bottoming starting with "but for
5 someone." Let me read it.

6 "But for someone with
7 Dr. Mitchell's background, it was evident
8 that the campaign against Al-Qaeda would
9 produce opportunities. He began
10 networking in military and intelligence
11 circles where he had a career's worth of
12 connections."

13 Is that correct?

14 MR. SMITH: Objection.

15 THE WITNESS: I -- I have no
16 idea what he was referring to. I
17 didn't view the campaign against
18 Al-Qaeda as a business
19 opportunity, I viewed it as a
20 patriotic duty.

21 BY MR. LUSTBERG:

22 Q. Okay. I'm going to move on
23 to another topic, which has to do with
24 American Psychological Association.

1 Did you belong to the
2 American Psychological Association?

3 A. At what point?

4 Q. Did you ever belong to the
5 American Psychological Association?

6 A. Yes.

7 Q. You resigned at some point?

8 A. Yes.

9 Q. When was that?

10 A. I think it was 2006.

11 Q. And why did you resign?

12 A. I didn't like the stance
13 that they took on involvement of
14 psychologists in custodial interrogations
15 of detainees.

16 Q. And what in particular did
17 you not like?

18 A. They changed their rules and
19 it was negatively impacting the military,
20 you know, so I just thought it was -- I
21 just didn't like it and I didn't want to
22 support it.

23 Q. Okay. If you would, in what
24 way had they changed the rules?

1 A. It's been a long time. My
2 recollection, without looking at their
3 documents, is that initially they had
4 been more -- they had been more receptive
5 to psychologists participating in roles
6 of psychological oversight for the --
7 that's the wrong word, psychological
8 monitoring for things that happened in --
9 in interrogations at Guantanamo and other
10 places where the DOD was doing their
11 interrogations. And then it got to the
12 point where they -- people were saying
13 they shouldn't be involved at all -- at
14 all and there were other issues and so I
15 resigned.

16 Q. Okay. Let me show you --
17 MR. LUSTBERG: I'm going to
18 mark Exhibit 8.

19 (Exhibit No. 8, Resolution
20 adopted by APA on August 19, 2007,
21 was marked for identification.)

22 BY MR. LUSTBERG:

23 Q. I'm sorry for the very small
24 print. I can direct you to a particular

1 place I'm going to ask about if you want.
2 But I didn't want to -- you can read all
3 of it if you wish.

4 A. You can go ahead and ask me
5 what you want to ask me.

6 Q. Okay. Sure. I just want to
7 ask you about two provisions of this.
8 The first is: In the middle of that
9 first page there's, under the one, two,
10 three, the fourth be it resolved --
11 actually, the third says:

12 "Be it resolved that the
13 American Psychological Association
14 unequivocally condemns torture, cruel,
15 inhuman or degrading treatment or
16 punishment under any and all conditions,
17 including detention and interrogations of
18 both lawful and unlawful enemy combatants
19 as defined by the US Military Commissions
20 Act of 2006."

21 Do you see that?

22 A. Did you say under the third
23 whereas?

24 MR. SCHUELKE: The third be

1 it resolved.

2 BY MR. LUSTBERG:

3 Q. I'm sorry, no, the third be
4 it resolved.

5 A. Oh, okay.

6 Q. And then the one after that
7 says:

8 "Be it resolved that the
9 unequivocal condemnation includes an
10 absolute prohibition against
11 psychologists knowingly planning,
12 designing and assisting in the use of
13 torture and any form of cruel, inhuman or
14 degrading treatment or punishment."

15 And then the last one that I
16 wanted to address there is, it says:

17 "Be it resolved that this
18 unequivocal condemnation includes all
19 techniques considered torture or cruel,
20 inhuman or degrading treatment or
21 punishment under the United States
22 Convention against torture and other
23 cruel, inhuman or degrading treatment or
24 punishment, the Geneva conventions, the

1 principles of medical ethics relevant to
2 the role of health personnel,
3 particularly physicians, in the
4 protection of prisoners and detainees
5 against torture and other cruel, inhuman,
6 or degrading treatment or punishment, the
7 basic principles for the treatment of
8 prisoners or the World Medical
9 Association Declaration of Tokyo. An
10 absolute provision against the following
11 techniques therefore arises from, is
12 understood in the context of, and is
13 interpreted according to these texts:
14 Mock executions, waterboarding or any
15 form of simulated drowning or
16 suffocation, sexual humiliation, rape,
17 cultural or religious humiliation," and
18 it goes on.

19 And you can read for
20 yourself and please do. And my question
21 is: Is this the change in policy that
22 you're referring to that caused you to
23 resign from the American Psychological
24 Association?

1 A. This is in 2007. I resigned
2 in 2006.

3 Q. Okay. So if you go up above
4 in the fourth whereas clause, it says:

5 "Whereas in 2006, the
6 American Psychological Association
7 defined torture in accordance with
8 Article 1 of the United Nations
9 Declaration and Convention against
10 torture and other cruel, inhuman or
11 degrading treatment or punishment."

12 And then it defines torture
13 to mean:

14 "Any act by which severe
15 pain or suffering, whether physical or
16 mental, is intentionally inflicted," and
17 so forth.

18 A. Right. So I was not -- go
19 ahead.

20 Q. I'm sorry. So is that
21 the -- is that the -- what occurred in
22 2006 that caused you to resign?

23 MR. SMITH: Objection.

24 THE WITNESS: No.

1 BY MR. LUSTBERG:

2 Q. Okay. What -- okay. What
3 caused you to resign in 2006?

4 A. I spoke with my friends who
5 were SERE psychologists in the military
6 and they were complaining about the APA,
7 and you know, I didn't like what they
8 were telling me about what -- how they
9 were being constrained.

10 Q. Is it your view that this,
11 what I've just read, was a change in the
12 way the APA regarded the obligations of
13 psychologists?

14 MR. SMITH: Objection.

15 THE WITNESS: I don't know.
16 I don't know. This is the first
17 time I'm actually reading this,
18 so it's --

19 BY MR. LUSTBERG:

20 Q. Okay. So -- so you've
21 never -- you've never seen this before?

22 A. I haven't seen this.

23 Q. Okay.

24 MR. SMITH: For the record,

1 we're referring to Exhibit No. 8.

2 MR. LUSTBERG: 7. 8, thank
3 you.

4 BY MR. LUSTBERG:

5 Q. And do you -- sorry.

6 Do you know then whether the
7 paragraphs I've read reflect a change in
8 the APA's view of the obligations of
9 psychologists? Just do you know whether
10 it does or not?

11 A. It looks like it. I mean,
12 it looks like a change from the earlier
13 stuff that I was familiar with.

14 Q. Okay. What were you
15 familiar with before? What's the earlier
16 stuff that you were familiar with?

17 A. The basically you tried to
18 resolve whatever issues that you had and
19 balance your obligation to the law, and
20 if you were functioning as a
21 psychologist, your obligation to the
22 people that were involved.

23 But they had -- I think they
24 already had a prohibition against

1 torture, which was not something we did,
2 so...

3 Q. And the prohibition against
4 torture, did it define torture the same
5 way as this?

6 A. I don't know.

7 Q. Uh-huh.

8 A. If you give me the documents
9 I'll look and see for you, but I don't
10 recall.

11 Q. Okay. So this defines
12 torture as:

13 "Any act by which severe
14 pain or suffering, whether physical or
15 mental, is intentionally inflicted upon a
16 person," and so forth.

17 You can read the entire
18 definition. It's in the fourth whereas
19 clause.

20 A. Okay.

21 Q. Does that -- is it your
22 understanding that that reflected -- that
23 that was a definition that was the same
24 or that had changed?

1 A. I don't know. I don't
2 recall. I don't recall the documents.

3 Q. Okay. In the fourth -- one,
4 two, three -- I'm sorry, the fifth be it
5 resolved paragraph, it mentions a number
6 of techniques in which you engaged,
7 including waterboarding, stress
8 positions, physical assault, including
9 slapping or shaking, sensory deprivation
10 and sleep deprivation; is that correct?

11 MR. SMITH: Objection.

12 THE WITNESS: Are you asking
13 me if the paragraph includes it?
14 The paragraph includes those
15 items. What --

16 BY MR. LUSTBERG:

17 Q. And were those -- and were
18 those actions in which you engaged as
19 part of your -- as --

20 A. Under the direction --

21 MR. SMITH: You've got to
22 let him finish his question.

23 THE WITNESS: Oh, okay.

24 BY MR. LUSTBERG:

1 Q. That's fine you can go a
2 ahead.

3 A. No, I don't want to.

4 Q. What I was asking is are
5 those activities in which you engaged in
6 the course of your conduct with -- in
7 working with the CIA?

8 MR. SMITH: Objection.

9 THE WITNESS: I -- yes.

10 BY MR. LUSTBERG:

11 Q. And is it the fact that the
12 APA was essentially saying that that sort
13 of conduct was not appropriate that
14 caused you to resign from the APA?

15 MR. SMITH: Objection.

16 THE WITNESS: I actually
17 didn't see it in this level of
18 detail, so no, it wasn't this.

19 BY MR. LUSTBERG:

20 Q. Okay. It was just -- it was
21 the conversation you had with somebody
22 that you knew from the SERE school who
23 told you that things were changing?

24 A. Not just that change (sic)

1 was changing, but that the special
2 mission unit that he had deployed, that
3 they were routinely deploying people with
4 were no longer able to use psychologists
5 and they were pulling them out and
6 depriving the military of the use of
7 them.

8 Q. Uh-huh. Okay.

9 A. Do you want to have a
10 conversation?

11 MR. SMITH: No. Put that
12 down and wait for the next
13 question.

14 THE WITNESS: Okay.

15 BY MR. LUSTBERG:

16 Q. Okay. Let's -- let's talk
17 about your involvement -- I'm sorry.

18 Okay. Before the -- just to
19 turn to the period before the -- you
20 begin the -- your involvement in
21 observing and then interrogating Abu
22 Zubaydah.

23 A. That was the beginning --

24 Q. Well, you know, I don't

1 think these dates will be particularly --
2 we'll get to dates.

3 So first, starting in
4 August 2001, do you recall that you had a
5 professional services arrangement to
6 consult with the CIA?

7 A. Yes.

8 Q. Okay. And what was the
9 purpose of that arrangement? What did
10 you do for them? And don't discuss any
11 particular assets or anything, just, you
12 know, generally what did you do?

13 A. They were asking me to help
14 them revise the strategies they were
15 using for surreptitious validation of
16 potential assets.

17 Q. For surreptitious
18 validation? Does that mean just
19 assessing assets?

20 A. Without them necessarily
21 knowing.

22 Q. Got it. So then after 9/11,
23 I think you mentioned earlier that you
24 were commissioned to review the

1 Manchester manual?

2 A. Yes, sir.

3 Q. Is that right? Why were you
4 chosen for that, if you know?

5 A. Because of my background in
6 resistance training.

7 Q. Uh-huh. And in that
8 capacity, you worked with Mr. Hubbard?

9 A. I worked with Dr. Jessen.

10 Q. Uh-huh. Did you -- were you
11 approached by Mr. Hubbard to take that
12 position?

13 A. He was my contract manager.

14 Q. Which meant he did what?

15 A. Which means he was in OTS
16 and he managed my contract, he told me
17 what to do.

18 Q. And that's the same
19 Mr. Hubbard that worked for you
20 afterwards?

21 A. He eventually came to work
22 for us, yes.

23 Q. And you produced in
24 December 2009, a paper entitled

1 "Recognizing and Developing Counter-
2 measures to Al-Qaeda Resistance to
3 Interrogation Techniques, a Resistance
4 Training Perspective," right?

5 A. Sure.

6 Q. Do you remember that?

7 A. Yes, sir.

8 Q. And actually --

9 A. We have the document.

10 Q. I'm about to show it to you.
11 So if you could get that.

12 MR. LUSTBERG: So this is
13 Exhibit 9.

14 (Exhibit No. 9, Article
15 entitled Recognizing and
16 Developing Countermeasures to
17 Al-Qaeda Resistance to
18 Interrogation Techniques: A
19 Resistance Training Perspective,
20 was marked for identification.)

21 BY MR. LUSTBERG:

22 Q. Let me know when you're
23 ready. It's quite heavily redacted.

24 A. Yes.

1 Q. Are you ready?

2 A. Yes, sir.

3 Q. Thank you. So was this the
4 document that you produced after having
5 re- -- after having reviewed the
6 Manchester manual?

7 A. It wasn't just the
8 Manchester manual I reviewed, but yes.

9 Q. Okay. What else did you
10 review?

11 MR. WARDEN: Objection.
12 It's described in there, other
13 Al-Qaeda training --

14 MR. SMITH: Mr. Warden,
15 we're having trouble hearing you
16 down here.

17 MR. WARDEN: Objection. We
18 would instruct the witness not to
19 answer beyond what's in the scope
20 of the document, which I believe
21 describes it as the other Al-Qaeda
22 training.

23 MR. SMITH: Where is it
24 you're looking?

1 MR. LUSTBERG: Page 1.

2 MR. SMITH: Maybe I can help
3 out here. Do you mean where it
4 says:

5 "This paper discusses the
6 techniques and strategies for
7 resisting interrogation described
8 in captured Al-Qaeda training
9 manuals and other documents"?

10 MR. WARDEN: In fact, the
11 Manchester manual is one of those
12 documents. It's publicly
13 acknowledged unclassified fact.
14 Any further discussion of other
15 documents that form a part of
16 this, I instruct the witness not
17 to answer.

18 MR. LUSTBERG: No problem.

19 MR. SMITH: So the record is
20 clear: You have information, but
21 you're protecting the Government's
22 classified information, right?

23 THE WITNESS: Yes, sir.

24 MR. SMITH: Okay.

1 BY MR. LUSTBERG:

2 Q. It -- what you say is that
3 your paper suggest methods for
4 recognizing when sophisticated resistance
5 to interrogation technique --

6 A. Where are you reading?

7 Q. The second page, the next
8 sentence, the second sentence.

9 A. I'm sorry, the second
10 sentence.

11 Q. Okay. So we just read the
12 first sentence.

13 A. Okay.

14 Q. I'm sorry. I talk fast. So
15 slow me down whenever you want. It
16 suggests methods for recognizing when
17 sophisticated resistance to interrogation
18 techniques are being deployed by captured
19 Al-Qaeda operatives with special
20 terrorist cells, and outline strategies
21 for developing countermeasures."

22 Do you see that?

23 A. Yes, sir.

24 Q. And then it says:

1 "It does so by placing
2 Al-Qaeda resistance to interrogation
3 techniques within a metaphor that
4 illustrates their operational use."

5 What did you mean by
6 metaphor?

7 A. I meant the Circle Concept.

8 Q. Okay. So it's the same
9 Circle Concept that I take it we can't
10 talk about.

11 It says:

12 "Our perspective for
13 reviewing this material is based on
14 32 years of combined experience," by
15 which you mean combined meaning your
16 experience and Dr. Jessen's experience,
17 right?

18 A. Correct.

19 Q. Uh-huh. And then it says:

20 "We are not experts in Arab
21 culture or the organizational structure
22 of Al-Qaeda; however, we have found that
23 while culture does affect perception and
24 behavior, the cardinal dynamics of

1 resistance to interrogation and
2 exploitation are not culturally
3 dependent."

4 Is that correct?

5 A. It says that there.

6 Q. So if the FBI, including
7 Mr. Soufan says, that cultural aspects
8 are important to understanding how to
9 overcome resistance, you disagree with
10 that?

11 MR. SMITH: Objection.

12 You can answer.

13 THE WITNESS: I think he's
14 emphasizing the wrong piece of
15 that.

16 BY MR. LUSTBERG:

17 Q. And what --

18 A. I disagree -- I disagree
19 with -- I do disagree.

20 Q. Why do you disagree?

21 A. Because what I say here is
22 that while we found that culture does
23 affect perception and behavior, the
24 central dynamics of resistance to

1 interrogation and exploitation are not
2 culturally dependent. What that means is
3 it's going to look different, right,
4 they're going to act slightly different,
5 but the big picture presentation of
6 whether you're trying to be deceptive or
7 whether you're trying to use any of these
8 other resistance techniques that have
9 been redacted from this thing, will --
10 will be the same if you can step back
11 into the higher water and look at the way
12 that it's playing out.

13 It doesn't say anything
14 about -- so what we're cautioning is
15 culture does play a role, and in fact, it
16 affects how they perceive the situation
17 and it affects what they're going to look
18 like.

19 But you can still piece --
20 parse those things out that have to do
21 with resistance training. I mean, with
22 resistance to interrogation.

23 Q. I'm sorry. I just need to
24 go back over that again. I thought what

1 you said was that culture matters, but it
2 just doesn't matter that much or --

3 A. That's not what I said.

4 Q. So explain again.

5 A. I said -- I said what you
6 have to do is take into account the
7 culture of a person when you look at
8 their behavior and look for those
9 cardinal dynamics that apply in the
10 context of that culture and what they're
11 doing.

12 Q. So isn't that very important
13 to understanding what you would have to
14 do to overcome resistance training?

15 A. That's what we say here,
16 just exactly what you said.

17 Q. Okay. So -- okay. I
18 thought what you said here is that we
19 found while culture does affect
20 perception and behavior, the cardinal
21 dynamics are not culturally dependent?

22 A. The cardinal dynamics
23 aren't, but culture and perception does
24 change -- I mean, perception and behavior

1 does change across cultures.

2 But let me use -- let me
3 talk about a technique he used that isn't
4 classified.

5 Q. He --

6 A. Abu Zubaydah. Well, never
7 mind, I won't do that.

8 Q. So --

9 A. I'm telling you you're
10 mischaracterizing the sentence.

11 Q. I don't mean to
12 mischaracterize the sentence. Explain
13 the sentence so it's very clear for the
14 record because --

15 MR. SMITH: Objection.

16 THE WITNESS: The sentence
17 speaks for itself. The meaning of
18 the sentence is apparent in the
19 sentence. We found that while
20 culture does affect perception and
21 behavior, the cardinal dynamics of
22 resistance to interrogation and
23 exploitation are not culturally
24 dependent.

1 BY MR. LUSTBERG:

2 Q. And does that sentence
3 reflect, as you understood it, a
4 disagreement with the way the FBI
5 conducted --

6 A. I have no idea what the FBI
7 does.

8 Q. Weren't you present when --
9 to observe FBI interrogations of Abu
10 Zubaydah?

11 A. I was.

12 Q. Uh-huh. And did you notice
13 anything that would -- or did you speak
14 to anybody that would indicate to you
15 that they viewed culture as a more
16 important factor in conducting these
17 sorts of interrogations than you're
18 expressing today?

19 A. I don't -- no.

20 Q. Okay. You think -- you
21 think that your -- your view is that you
22 and the FBI -- that the FBI would also
23 agree with that sentence based on what --
24 your --

1 A. If they -- if they read this
2 document and they fully understood it in
3 the context that I mean it, and they
4 fully understood the words, I believe
5 they would agree that -- otherwise no
6 interrogation technique you employ ever
7 would move from culture to culture. So
8 their technique, like catching them in a
9 big lie, wouldn't go from culture to
10 culture. Do you see what I mean?

11 So while -- while culture
12 does affect the perception and behavior,
13 the cardinal dynamics of that resistance,
14 the propensity to withhold information
15 and want to be deceptive, that doesn't
16 change and you can -- you can observe
17 that.

18 Q. Okay. Let me ask you
19 about -- go to page -- so there's -- it's
20 a little hard to follow, but at the
21 bottom there are Bates numbers. You see
22 those Bates numbers?

23 A. I see them.

24 Q. Okay. Go to the one that is

1 #001153.

2 A. Okay.

3 Q. See where it says
4 Countermeasures?

5 A. Yes.

6 Q. There's a sentence there
7 that says:

8 "Skillfully crafted counter-
9 measures can be developed in such a way
10 that they do not violate the Geneva
11 Conventions."

12 A. Yes.

13 Q. What did you mean by that?

14 A. I meant you can craft the
15 countermeasures that we describe in the
16 rest of this paper that is blank in a way
17 that doesn't violate the Geneva
18 Conventions.

19 Q. Uh-huh. And so the
20 countermeasures without -- obviously we
21 don't know what they are, but the
22 counter-measures were -- your view is
23 that the countermeasures here were -- did
24 not violate the Geneva Conventions?

1 MR. SMITH: Objection. And
2 in fairness, the witness does know
3 what they are. They've been
4 redacted by the United States
5 Government --

6 MR. LUSTBERG: Right.

7 MR. SMITH: -- from this
8 document, and presumably the
9 Government is instructing the
10 witness not to disclose them.

11 MR. WARDEN: There's a -- if
12 there's a question about what the
13 countermeasures are, yes.

14 MR. LUSTBERG: Well, I'm not
15 asking what the countermeasures
16 are.

17 MR. SMITH: Well, I think
18 you may have misspoken when you
19 said we don't know them.

20 MR. LUSTBERG: Well, the
21 "we" was wrong.

22 MR. SMITH: He does know.

23 THE LUSTBERG: We --

24 MR. SMITH: "We" meaning me,

1 too.

2 MR. LUSTBERG: Yeah, I know.

3 MR. SMITH: The witness
4 does.

5 MR. LUSTBERG: Okay. I
6 understand.

7 BY MR. LUSTBERG:

8 Q. Without in any way
9 describing what the countermeasures were,
10 your view is that the countermeasures
11 that were set forth here did not violate
12 the Geneva Conventions; is that right?

13 A. My view is that the
14 countermeasures that were set forth could
15 be constructed in a way that they didn't
16 violate the Geneva Conventions.

17 Q. Why -- why were you writing
18 about the Geneva Conventions here?

19 A. Because at this particular
20 time -- I don't know that I can -- I
21 don't know that I can -- I'll need to
22 talk to the attorneys about that answer.

23 MR. LUSTBERG: Okay.

24 MR. SMITH: Could we just

1 repeat the question?

2 MR. LUSTBERG: Yeah.

3 MR. SMITH: Could you read
4 it back, Madam Court Reporter?

5 (Pertinent portion of the
6 record is read.)

7 THE WITNESS: Because a
8 customer of the CIA requested it.

9 BY MR. LUSTBERG:

10 Q. Because a customer of the
11 CIA requested that you write about the
12 Geneva Conventions?

13 A. No, this -- requested that
14 this particular manual be interpreted.

15 Q. So you had a specific --

16 A. I'm writing about this
17 because I was asked to write about it.

18 Q. And you were specifically
19 asked to write about whether the
20 countermeasures that are described and
21 that are redacted violated the Geneva
22 Conventions or not?

23 A. No, I'm writing about them
24 because I expect they will be applied in

1 a situation where the Geneva Conventions
2 apply.

3 Q. Okay. So you were concerned
4 that the Geneva Conventions would apply
5 and you were reassuring the reader that
6 the countermeasures that would follow did
7 not, in fact, violate the Geneva
8 Conventions?

9 A. That's not how I would
10 phrase that.

11 Q. Okay. Well, how would you
12 phrase it?

13 A. I would phrase it to say
14 that -- exactly what it says here. I'm
15 not saying that they couldn't be
16 constructed in a way that violated the
17 Geneva Conventions, because obviously you
18 can construct anything in a way that
19 violates the Geneva Conventions. I'm
20 saying that with care, you could remain
21 within the Geneva Conventions, and I
22 think I'm encouraging them to do so.

23 Q. Uh-huh.

24 MR. LUSTBERG: Exhibit 10.

1 (Exhibit No. 10, Document,
2 Counterterrorism Detention and
3 Interrogation Activities
4 (September 2001-October 2003),
5 Bates USA 1335 through 1493, was
6 marked for identification.)

7 THE WITNESS: Thank you,
8 ma'am.

9 BY MR. LUSTBERG:

10 Q. You have in front of you
11 Exhibit 10, which is a report of the CIA
12 Inspector General, dated May 7, 2004.

13 Do you see that?

14 A. Yes, sir.

15 Q. Have you seen this before?

16 A. Yes.

17 Q. Okay. Directing your
18 attention to page 13, paragraph 32.

19 MR. SMITH: The page of the
20 report 13 or the Bates page?

21 MR. LUSTBERG: The page of
22 the report 13, thank you. Thanks
23 for the clarification.

24 BY MR. LUSTBERG:

1 Q. Did you have a chance to
2 look at that, Dr. Mitchell?

3 A. I did.

4 Q. Thank you. So you can see
5 that that paragraph says that:

6 "Several months earlier, in
7 late 2001, CIA had tasked an independent
8 contractor psychologist who had 13 years
9 of experience in the US Air Force's
10 Survival, Evasion, Resistance and Escape
11 (SERE) training program to research and
12 correct a paper on Al-Qaeda's resistance
13 to interrogation techniques."

14 Is that a reference to you?

15 A. Well, the full sentence is,
16 "resisting training perspective."

17 Q. I'm sorry. Okay.

18 A. You left out part of the
19 sentence.

20 Q. Oh, I'm sorry, I didn't mean
21 to. Does that refer to you, though?

22 A. I believe it does?

23 Q. It says that:

24 "This psychologist

1 collaborated with a DOD psychologist,"
2 that would be Dr. Jessen?

3 A. I believe it is.

4 Q. And when you add the
5 19 years of his experience and the
6 13 years of yours, that gets you to those
7 32 years of experience that are described
8 in the report?

9 A. I believe it does.

10 Q. Sorry. That's how were we
11 lawyers do it.

12 So it says here:

13 "Subsequently, the two
14 psychologists developed a list of new and
15 more aggressive EITs that they
16 recommended for use in interrogations."

17 Do you agree with that
18 sentence?

19 A. The sentence -- I agree with
20 the sentence, but I want to comment.

21 Q. Go ahead.

22 A. The sentence is true, but
23 the way that the two are put together
24 here, it makes it seem as if that

1 document is somehow linked to this
2 request, and what the paragraph does is
3 mischaracterize the document.

4 Q. Which document?

5 A. The -- recognizing the
6 development countermeasures for Al-Qaeda
7 resistance to interrogation techniques
8 from a resistance training perspective.
9 It makes it seem like subsequently the
10 two psychologists developed a new list.
11 While that sentence is true, the
12 juxtaposition of those two sentences
13 together makes it appear that the manual
14 stuff was somehow related to the
15 development of these -- well, it's not
16 even development, it's -- we provided
17 them with a list. It makes it seem like
18 the two are related when the two, in
19 fact, are not related.

20 Q. Well, it sounds like to me,
21 tell me if this is wrong, that what
22 they're saying -- that it's saying is
23 that the second list is more aggressive
24 than what was in the original paper.

1 MR. SMITH: Objection.

2 BY MR. LUSTBERG:

3 Q. Is that correct?

4 MR. SMITH: In fairness,
5 there is no second list, right?

6 MR. LUSTBERG: Well, yes,
7 there is. It says -- well, let me
8 ask it. Thank you, let me lay a
9 foundation.

10 BY MR. LUSTBERG:

11 Q. "Subsequently, the two
12 psychologists developed a list of new and
13 more aggressive EITs that they
14 recommended for use in interrogations."

15 Did -- did you and
16 Dr. Jessen develop a list of new and more
17 aggressive EITs that they recommended for
18 use in interrogations later?

19 A. The answer to the question
20 as asked is no. But we did provide them
21 with a list of interrogation techniques
22 that we did not develop.

23 Q. You did not develop it,
24 somebody else developed it.

1 A. They were at the SERE
2 school. They had been at the SERE school
3 for 50 years.

4 Q. So then this sentence that
5 says that the two psychologists developed
6 the list is -- is incorrect?

7 A. Correct.

8 Q. Because of the use of the
9 word "developed"?

10 A. We provided them with a
11 list, we didn't develop a bunch of new
12 EITs.

13 Q. Okay. So what you did was
14 you took existing EITs that were being
15 used at the SERE school and you made a
16 list of them?

17 A. Yeah, we made a list of --
18 of the sorts of things that were done in
19 the SERE school.

20 Q. Uh-huh. Of the sorts of
21 things that were done at the SERE school.
22 All of them or some of them?

23 A. I don't -- I don't have a
24 comment on that. I don't think -- I

1 don't think there was anything on that
2 list that hadn't been done at the SERE
3 school.

4 Q. Okay. Was there -- were
5 there things done at the SERE school that
6 were not on that list, though?

7 A. An infinite number of
8 things.

9 Q. So the bottom -- so the
10 thing I'm focused on is was that list --
11 so you've said that the word developed,
12 you have trouble with. What about that
13 it's more aggressive than what was --
14 than what was recommended in the paper?

15 A. I don't know what he means
16 by aggressive. They were certainly more
17 coercive.

18 Q. Okay. So if the word was
19 changed from aggressive to coercive you
20 would agree with it?

21 A. Yes.

22 Q. So for this sentence to be
23 accurate it, from your perspective, would
24 have to say, Subsequently the two

1 psychologists listed more coercive
2 EITs than they recommended for use in
3 interrogations --

4 A. Well, they weren't called
5 EITs at the time.

6 Q. Okay.

7 A. All right? So this sentence
8 would have to be completely rewritten to
9 be accurate.

10 Q. Okay. How would you rewrite
11 it, sir?

12 A. I would say, Subsequently
13 the two psychologists provided a list of
14 interrogation techniques that have been
15 used at the SERE -- a more coercive list
16 of interrogation techniques that had been
17 used at the SERE school that eventually
18 became EITs, and we recommended that they
19 consider using them in interrogations.

20 Because my recollection of
21 that particular thing that you're talking
22 about is we said, Here's a list of the
23 sorts of things they do at the SERE
24 school, and if you guys are going to be

1 physically coercive with him, I suggest
2 that what you do is use these techniques
3 that have been shown over the last
4 50 years to not produce the kinds of
5 things you would like to avoid, like
6 severe pain and suffering and
7 long-term --

8 Q. So -- so your testimony is
9 that you were saying if they decided to
10 use more coercive techniques, these are
11 the ones that should be used?

12 A. No, what I said -- that's
13 not what I said.

14 Q. Okay. Tell me what you
15 said.

16 A. What I said was you should
17 consider using these. They -- my
18 expectation was that the choice to use
19 them or not was theirs, they should think
20 about it, they should decide if they
21 wanted to do it, they should do due
22 diligence on it, all right?

23 Q. Uh-huh.

24 A. And if they chose to do it,

1 they should do it.

2 Q. Uh-huh. And was that what
3 you said to them, that they should do due
4 diligence on it?

5 A. I told them that they would
6 need to -- that they should check with
7 the SERE schools to make sure -- I don't
8 know if I used the word due diligence,
9 but I told them that they needed to check
10 with.

11 Q. I'm sorry.

12 A. No, I'm done.

13 Q. So --

14 MR. SMITH: While there's no
15 question pending, may I just
16 confer with my client for a
17 minute, please?

18 MR. LUSTBERG: Of course.

19 (Discussion held off the
20 record.)

21 THE WITNESS: I need to make
22 a point of clarification.

23 BY MR. LUSTBERG:

24 Q. Okay. Go ahead, sir.

1 MR. SMITH: Hold that
2 thought.

3 BY MR. LUSTBERG:

4 Q. Let's wait until your lawyer
5 is ready.

6 Do you need more water?

7 A. I'm good. I need to make a
8 point of clarification.

9 Q. Sure. Go ahead. You've
10 been --

11 MR. SCHUELKE: I'm sorry --

12 MR. SMITH: We're on the
13 record.

14 MR. LUSTBERG: Thank you.

15 THE WITNESS: You probably
16 noticed in my sentence when I was
17 talking to you that I said,
18 recommended this list for
19 potential use with him.
20 Specifically I'm referring to Abu
21 Zubaydah.

22 In these early conversations
23 about the more coercive
24 SERE-related techniques were

1 solely focused on Abu Zubaydah.
2 There -- in my recollection there
3 was no discussion of a larger
4 program. They were discussing
5 only Abu Zubaydah.

6 And secondarily, I had come
7 to believe that because of the
8 comments that were made to me by
9 the CIA officers, both in the
10 field and at headquarters when we
11 had that meeting, that they had
12 already decided to use some form
13 of physical coercion on Abu
14 Zubaydah. And so my
15 recommendation was that if you're
16 thinking about using physical
17 coercion on Abu Zubaydah, then you
18 should consider using these
19 techniques.

20 BY MR. LUSTBERG:

21 Q. So let's just go to -- you
22 mentioned a meeting.

23 A. Several meetings, yes.

24 Q. Just in what you said a

1 minute ago, you said, I had come to
2 believe that because of the comments that
3 were made to me by the CIA officers, both
4 in the field and at headquarters when we
5 had that meeting, that they had already
6 decided to use some form of physical
7 coercion on Zubaydah.

8 Is -- was that -- is that
9 what you said?

10 A. Yes.

11 Q. Okay. When you said "that
12 meeting," what meeting were you referring
13 to?

14 A. A meeting early in July. I
15 don't remember the exact date, but it was
16 early in July of 2002.

17 Q. Okay. So let's go back a
18 little. But before we -- because I want
19 to go right to -- to Zubaydah, which
20 is -- so -- but before we do, just one
21 last question. In -- when we discussed
22 the -- what I've been calling the paper,
23 the countermeasures paper, that was the
24 one that talked about how -- there were

1 certain countermeasures that could be
2 taken, and if they were skillfully done,
3 they would not violate Geneva, right?

4 MR. SMITH: For the record,
5 that's Exhibit 9.

6 MR. LUSTBERG: Thank you.

7 THE WITNESS: Yeah. What it
8 actually says is skillfully
9 crafted countermeasures to be
10 developed in such a way that they
11 do not violate the Geneva
12 Conventions.

13 BY MR. LUSTBERG:

14 Q. Uh-huh. And without
15 discussing what the countermeasures were
16 that followed, the ones that followed in
17 the paper afterward to your mind did not
18 violate --

19 A. If crafted correctly.

20 Q. Well, we're talking about
21 the ones that you crafted that
22 followed -- that followed after that
23 statement.

24 A. I discussed principles in

1 this paper.

2 Q. So you didn't -- so this
3 paper did not propose certain
4 countermeasures?

5 A. I think what it says is it's
6 not possible to provide a detailed
7 cookbook, however it will provide a
8 flavor for how this might be
9 accomplished. So it's been a while since
10 I wrote this, but my recollection is we
11 probably provided a couple of examples.

12 Q. And the examples you
13 provided were not ones that violated
14 Geneva?

15 A. I don't think they did, no.

16 Q. Okay. But you've described
17 the ones that you then told them that
18 they should consider as more coercive,
19 right?

20 A. Yes.

21 Q. And is it your view that
22 those also did not violate Geneva?

23 A. No, that's not my view.

24 Q. Okay. So it's your view

1 that they did violate Geneva?

2 A. It's my view that they could
3 have and they were going to make a
4 determination about whether they were
5 legal or not and whether they could be
6 legally applied to the detainee. I
7 abstain -- I'm not a legal scholar, I'm
8 not a constitutional scholar, you know,
9 I'm not a -- so I'm not making a call on
10 whether something does or doesn't violate
11 the Geneva Conventions. That's the
12 bailiwick of the Office of the General
13 Counsel of CIA. I'm relying on them
14 completely, and the Department of
15 Justice, when it comes to a decision
16 about whether this is applicable to
17 someone or not.

18 Q. Did you have concerns that
19 they violated Geneva?

20 A. I didn't -- I don't know --

21 Q. I'm sorry. I'm sorry. I
22 just want to make sure that the question
23 is clear. I apologize for interrupting,
24 but when I say "they," what I was

1 referring to is the countermeasures that
2 you said that they should consider that
3 were more coercive.

4 And so my question was: Did
5 you have any concerns that those
6 countermeasures might violate Geneva.
7 And I'm sorry to interrupt. I just want
8 to be --

9 A. Well, I had been told that
10 the Geneva Conventions did not apply to
11 the captured detainees.

12 Q. Did not?

13 A. Did not apply to the
14 captured detainees by the attorneys at
15 the CIA. And so I don't think I thought
16 about Geneva Conventions. I was
17 concerned that they were legal.

18 Q. When were you told that?

19 A. We were told that in those
20 first meetings that -- I think it's -- it
21 might have been as early as March, April,
22 2002 that -- that Geneva Conventions
23 didn't apply to enemy combatants, illegal
24 enemy combatants that were detained by

1 the CIA, but they did if they were
2 detained by the Department of Defense.
3 That's my recollection.

4 Q. Okay.

5 A. And I know that was
6 discussed again in those meetings in
7 June, July.

8 Q. Okay. So let's talk --
9 let's go back before the meetings in June
10 and July to your first involvement with
11 Abu Zubaydah.

12 MR. SMITH: Let's take a
13 five-minute stretch.

14 MR. LUSTBERG: No worries.

15 MR. SMITH: Stretch break
16 and then we'll give the court
17 reporter a couple minutes --

18 MR. LUSTBERG: Yes, I see
19 her flexing her hands. We're off
20 the record.

21 THE VIDEOGRAPHER: The time
22 is 2:18 PM. The actual time on
23 the camera is 2:24 PM. We are off
24 the record.

1 (Recess.)

2 THE VIDEOGRAPHER: We are
3 now back on the video record. The
4 time is 2:29 PM.

5 MR. LUSTBERG: Thank you.

6 THE WITNESS: Before we get
7 on to your next question and move
8 entirely away from what it says
9 here in this IG report?

10 MR. SMITH: For the record,
11 the witness is looking at
12 Exhibit 10.

13 MR. LUSTBERG: Thank you.

14 THE WITNESS: I want to go
15 back to those two sentences that
16 you asked me about.

17 BY MR. LUSTBERG:

18 Q. Go ahead. In the -- in the
19 IG report?

20 A. In the IG report where it
21 says -- it describes how many years of
22 experience we had and that --

23 Q. Yeah, yeah.

24 A. And then subsequently the

1 two psychologists developed a list of new
2 and more aggressive EITs.

3 We discussed the way that I
4 would rewrite that sentence if I were the
5 author of the sentence to capture what I
6 actually thought, but what we didn't
7 address is that fact that those two
8 things not only are unrelated in terms of
9 temporally, but they're unrelated because
10 at the time that we wrote this paper, the
11 CIA didn't have an interrogation program,
12 wasn't thinking about having an
13 interrogation program, and it wasn't
14 written with the idea that the CIA would
15 ever have an interrogation program. I
16 just -- I wasn't even working for CTC, I
17 was doing something that I was asked to
18 do.

19 So it would be a mistake to
20 think that that paper was somehow the --
21 where I laid the groundwork for, you
22 know, this harsher program that came
23 later. In that kind of a context, that
24 would be inaccurate.

1 Q. Okay. I just want to make
2 one follow-up on that, maybe two.

3 So what you're saying just
4 so I'm clear is that what we're calling
5 the paper, the countermeasures paper, was
6 not written with an interrogation program
7 in mind?

8 A. It was not written for a
9 specific interrogation program. It was
10 written for integrations, but not for the
11 CIA's enhanced interrogation program or
12 any kind of interrogation program, and
13 I'm using quote marks here, that I was
14 aware that the CIA had. I knew that
15 interrogations were taking place, I knew
16 some things that I'm not allowed to say
17 about those interrogations, I looked at
18 some other documents that I'm not able to
19 describe, so I knew the information would
20 be used perhaps to craft countermeasures
21 for interrogations, which would be
22 entirely consistent with the Geneva
23 Conventions if done skillfully.

24 But it wasn't like it was

1 going to be -- like I even considered the
2 possibility that I would ever even end up
3 doing interrogations for the CIA when
4 this paper was written.

5 Q. Okay. So -- sorry, I just
6 need to -- but when you wrote it, you --
7 it was in your head, you understood that
8 it might be relevant to some
9 interrogations in some regard?

10 MR. SMITH: The "it" is?

11 BY MR. LUSTBERG:

12 Q. The "it" is the
13 countermeasures paper.

14 MR. LUSTBERG: What's our
15 exhibit number on that?

16 MR. SMITH: Exhibit No 9.

17 MR. LUSTBERG: Thank you.
18 You're an excellent paralegal.

19 MR. SMITH: Thank you.
20 Mr. Schuelke tells me that all the
21 time.

22 MR. LUSTBERG: Smart man.

23 BY MR. LUSTBERG:

24 Q. Do you want me to repeat the

1 question?

2 A. Yes.

3 MR. SMITH: You wrote it.

4 BY MR. LUSTBERG:

5 Q. When you wrote it, did you
6 understand that it might become relevant
7 in some regard to some interrogation at
8 some time?

9 A. Yes.

10 Q. Okay. You know how we
11 lawyers are. I'm just --

12 MR. SCHUELKE: Speak for
13 yourself.

14 BY MR. LUSTBERG:

15 Q. Yeah. And what you just
16 said was that what was in that paper, you
17 were comfortable did not violate the
18 Geneva Conventions?

19 A. What I said was -- go ahead
20 and ask your question, please.

21 Q. Okay. Did -- was that
22 right, though, that you --

23 A. You got half a sentence out
24 before I interrupted you. I apologize.

1 Q. Okay. No worries. So the
2 Exhibit 9, the -- your countermeasures
3 paper that you -- that you wrote after
4 reviewing the Manchester manual and other
5 documents, was -- included
6 countermeasures, which we can't discuss
7 specifically, but that you were
8 comfortable did not violate the Geneva
9 Conventions; is that right?

10 A. I was comfortable could be
11 crafted in a way that did not violate the
12 Geneva Conventions.

13 Q. Okay. And when you -- when
14 later on you provided potential more
15 coercive measures, and I say potential
16 because you said you were just providing
17 them for consideration, did -- did you
18 understand that those might violate the
19 Geneva Conventions?

20 A. I didn't take the Geneva
21 Conventions into consideration at all
22 because the CIA had already told me the
23 Geneva Conventions didn't apply to the --
24 you know, illegal enemy combatants

1 detained by the CIA. So I didn't
2 consider it one way or the other.

3 And the other thing that I
4 think I need to point out as long as
5 we're talking about that list, is that
6 although the final list that you have a
7 copy of that I wrote, we put on paper
8 after I had agreed, you know, at Jose
9 Rodriguez's request to help to do the
10 interrogation. The original list where I
11 described those things, I had no idea
12 that I was going to be the interrogator.

13 What I -- what I did was
14 basically I said -- I said, If you guys
15 are going to con- -- use physical
16 coercion against Abu Zubaydah, then you
17 should consider using some of these
18 things. And I was recommending, fully
19 thinking that they would do it or not do
20 it, but it wouldn't involve me.

21 Q. And did the list change once
22 you knew it would involve you or might
23 involve you?

24 A. The final list didn't

1 change. You've got to remember that at
2 that meeting -- I'm sorry, no.

3 Q. No, it did not change?

4 A. No.

5 Q. Okay. So let's now go to
6 these -- what these meetings were.

7 Abu Zubaydah is captured in
8 2002, March 2002, correct?

9 A. End of March, yes.

10 Q. Right. And at that point,
11 there was no CIA, I think you said,
12 interrogation program?

13 A. I don't know that that's the
14 case. There was no high valued detainee
15 interrogation program that I'm aware of.
16 I'm sure they were interrogating people.

17 Q. Do you know whether -- what
18 techniques were being used at that time?

19 A. No.

20 Q. Okay.

21 A. You're talking about March,
22 right?

23 Q. Yeah.

24 A. That's not true.

1 Q. What's not true?

2 A. Those documents that I can't
3 name --

4 Q. Well, I'm going to show you
5 one that you can.

6 A. Okay. What I just told you
7 I need to clarify because what I just
8 said is not accurate.

9 Q. Okay. I'm fine however you
10 want to do that.

11 MR. SMITH: Why don't you
12 just make your clarification? Go
13 ahead.

14 THE WITNESS: I was -- I was
15 familiar with some of the
16 interrogation techniques that were
17 being used.

18 MR. SMITH: As of what time?

19 BY MR. LUSTBERG:

20 Q. In March?

21 A. As of March. Because I had
22 written that paper.

23 Q. So let me show you --

24 MR. LUSTBERG: I'm sorry.

1 Where are we at?

2 MR. SMITH: 11.

3 MR. LUSTBERG: 11?

4 (Exhibit No. 11, Document
5 entitled, Chronology of CIA
6 High-Value Detainee Interrogation
7 Technique, was marked for
8 identification.)

9 BY MR. LUSTBERG:

10 Q. You don't have to go beyond
11 the very beginning of this document, No.
12 11, which is entitled, "Chronology of CIA
13 High-Value Detainee Interrogation
14 Technique." And if you look under the
15 first paragraph, it says:

16 "March 2002: Abu Zubaydah
17 is captured. Once stabilized, he was
18 rendered to a black site and treated by
19 agency-sponsored physicians."

20 The second bullet point
21 down, it says:

22 "At this point, there was no
23 CIA interrogation program and the only
24 techniques being used were sleep

1 deprivation, dietary manipulation and
2 loud music/white noise."

3 Was that your understanding
4 as of that time?

5 A. I knew those techniques were
6 being deployed.

7 Q. Did you know that they were
8 the only techniques that were being
9 deployed?

10 A. I think the person who that
11 wrote that -- no, I don't know that
12 that's the only techniques that were
13 being employed. They're the only --
14 they're the only coercive techniques that
15 were being employed, but they were using
16 the full range of other interrogation
17 techniques that law enforcement personnel
18 would use or a CIA officer would use.

19 So it's not true to say
20 those are the only techniques that one
21 employs.

22 Q. Fair enough. But they're
23 the only -- they were the only coercive
24 techniques that were being used?

1 A. Well, I don't know that they
2 were -- I would quibble a little about
3 the term how coercive they were, but
4 yeah, they were the techniques that were
5 being employed.

6 Q. I was using -- I think I was
7 using your word when you said -- when I
8 said coercive.

9 A. I know you were.

10 Q. So do you want to change
11 that word?

12 A. Well, they were more
13 coercive than question and answer. So as
14 long as you don't think I'm over here on
15 the continuum when I'm actually -- that
16 I'm on the right of the continuum where
17 they're highly coercive when they could
18 just be mildly coercive, I'm fine with
19 that.

20 Q. So is that how you would
21 describe sleep deprivation, dietary
22 manipulation and loud music/white noise
23 as being slightly coercive?

24 A. It's more coercive than

1 question and answer. But in terms of the
2 way that it was used at the CIA, it was,
3 I would say mildly coercive, because I
4 was there for the white noise and music
5 and I was there for the sleep deprivation
6 and I was there for the dietary
7 manipulation.

8 Q. And your -- and having been
9 there, your view is that, I just want to
10 make sure we have the right label, you
11 would describe those as mildly coercive
12 as compared to other techniques that come
13 into play later?

14 A. With a caveat.

15 Q. Okay.

16 A. Here's the caveat: He was
17 being fed beans and rice and it was a
18 dull, bland diet. He was getting
19 whatever number of calories the physician
20 said he had to get. I myself would not
21 like a diet of beans and rice, you know,
22 I don't know whether he liked it or not,
23 you know. And there was a point when he
24 was ill that he was being fed Ensure on

1 the recommendation of the doctors, and
2 some of the nurses were smuggling food
3 into him like chicken and that sort of
4 stuff.

5 So I don't -- I don't know
6 that I would -- when you hear dietary
7 manipulation you think they're starving
8 him, but that's not what they were doing.
9 They were restricting his food choices.
10 So, you know, I don't know -- I don't
11 know coercive compared to what, you know,
12 is what I'm trying to say.

13 Q. Well, I think my question
14 has to do with was it coercive, was it
15 mildly coercive as compared to the
16 techniques that came -- the EITs that
17 came later.

18 A. Oh. I think they were much
19 less coercive.

20 Q. So with regard to you, you
21 then are invited to a meeting at CIA
22 headquarters in April, correct?

23 A. I'm not invited, they told
24 me to turn around when I was going to

1 Dr. Seligman's house and come back
2 immediately. So inviting is kinder,
3 gentler word for what they demanded that
4 I do.

5 Q. Okay. So you were -- your
6 attendance was mandated, right?

7 MR. SCHUELKE: You have to
8 answer.

9 THE WITNESS: Yes, sir.

10 BY MR. LUSTBERG:

11 Q. I'm sorry, I didn't mean to
12 be rude.

13 A. No, I appreciate you
14 reminding me.

15 Q. And is it correct that you
16 were invited, requested, mandated,
17 whatever, to come to that meeting because
18 of your involvement in having written the
19 2001 -- the December 2001 paper?

20 A. I later came to understand
21 that was the case.

22 Q. And what was -- what were
23 you told was the reason why you were
24 being -- why you were -- why you were

1 mandated to come?

2 A. They asked me if I would
3 deploy with the interrogation team to
4 observe Abu Zubaydah's interrogations and
5 provide feedback to the interrogation
6 team on the resistance techniques that he
7 was using, and to help the agency
8 psychologist that was going, who was
9 actually the lead psychologist, develop
10 some countermeasures around what he might
11 be doing in terms of resisting.

12 Q. Countermeasures in terms
13 of -- what did you understand
14 countermeasures to mean in that regard?

15 A. Well, if he was lying, help
16 him figure out a way to get him to stop
17 lying.

18 Q. And I think at the time you
19 were already under contract with the CIA,
20 right?

21 A. I -- I did have a contract
22 with the CIA, yes.

23 Q. And did -- so did you amend
24 that contract?

1 A. That contract?

2 Q. The existing contract.

3 A. I think the contract that
4 they amended was the one -- a small one
5 where they had me do the -- I don't know
6 which contract they amended. That's a --
7 that's a matter of fact that can be found
8 out. But that was an amendment to the
9 contract, I think, which I wrote out a
10 proposal on a piece of yellow paper.

11 Q. Yeah, let's show that to you
12 and see if we've got it right.

13 A. Yeah, that was actually -- I
14 was calling that a contract for the
15 longest time, but it's actually a
16 proposal.

17 MR. LUSTBERG: Exhibit 12.

18 (Exhibit No. 12, Handwritten
19 Proposal dated April 3, 2002,
20 Bates USA 1001, was marked for
21 identification.)

22 THE WITNESS: Thank you,
23 ma'am.

24 BY MR. LUSTBERG:

1 Q. So is this the contract
2 modification you were talking about that
3 you wrote out on a yellow piece of paper?
4 It's obviously not yellow in this copy,
5 but --

6 A. It appears to be an accurate
7 copy of it, yes.

8 Q. Okay. And as I understand
9 it, just to -- so I can read your
10 writing, it's \$1,000 per day for -- I
11 can't see what that is, something
12 planning and prep time?

13 A. In conus.

14 Q. In conus planning and prep
15 time.

16 And then it's \$1,800 a day
17 for oconus operational activity related
18 to -- I'm sorry, I'm having trouble,
19 what's that say? Can you see where I'm
20 looking?

21 A. Yes.

22 Q. What's that word?

23 A. Quick.

24 Q. Quick reaction task, right?

1 A. Yes.

2 Q. And then travel 15,000?

3 A. Yes.

4 Q. Other direct costs related
5 to quick action task, \$1,500, right?

6 A. Yes.

7 Q. Okay. So that was the
8 contract modification that you entered
9 into, right?

10 A. That -- for that particular
11 deployment, yes.

12 Q. On April 3rd, 2002?

13 A. Yes.

14 Q. And again, the purpose was
15 to provide recommendations to overcome
16 Abu Zubaydah's resistance to
17 interrogation, right?

18 A. The purpose was to be part
19 of the interrogation team that as a whole
20 provided those recommendations to the
21 chief of base who was actually in charge.

22 Q. Did you know at that
23 time that you would be -- at that time
24 that would be engaged in interrogations

1 yourself?

2 A. No. In fact -- never mind.

3 Q. Go ahead, you can finish.

4 You were saying in fact something else?

5 A. You didn't ask me a
6 question. I was just trying to be a
7 good --

8 Q. Well, my question is: What
9 were you going to say after you said in
10 fact? That's my question.

11 A. Well, I know people have
12 quibbled about this \$1,800 a day. But in
13 fact, that was less than they were paying
14 other psychologist to deploy to do
15 behavioral -- behavioral consultation on
16 interrogations like at Gitmo.

17 So when this \$1,800 a day
18 was established, it wasn't for me to be
19 an interrogator, it was for me to provide
20 psychological consultation, you know, to
21 the interrogation team, and it's based on
22 what they paid other psychologists, not
23 based on a number that I pulled out of
24 the air.

1 Q. Okay. So these numbers were
2 the numbers that were basically told to
3 you by somebody at the CIA?

4 A. I asked other contract
5 psychologists what they were -- I mean, I
6 just wanted to know.

7 Q. I can understand. And some
8 of them were making even more than that,
9 you say?

10 A. Yes. Several of them were
11 making a couple thousand dollars. But
12 this was not -- this is not a lot of
13 money to a guy like me. I mean, some of
14 the contracts that I had, you could
15 easily make \$3,000 a day. I mean, there
16 was only five or six SERE psychologists
17 and they were in pretty high demand as
18 subcontractors. So \$1,800 is --

19 Q. So why did you agree to such
20 a low number?

21 A. Because it was -- we were in
22 the midst -- we were a couple of months
23 after 9/11, there had been a catastrophic
24 attack and the CIA when they brought me

1 into that room and asked me if I would do
2 it, Jennifer Matthews gave me a briefing
3 on the threat index, and she told me that
4 they had credible evidence that Al-Qaeda
5 was planning another catastrophic attack
6 and that could potentially involve a
7 nuclear weapon and that the country
8 needed me to go, so I went.

9 Q. So you charged \$1,800 a day,
10 which was less really as a matter of
11 patriotism, right?

12 A. Yes. I mean, I don't know
13 that it was a matter of patriotism, but
14 that's what I charged.

15 Q. So when you arrived, the FBI
16 was interrogating -- I mean, not
17 specifically at that moment, but they
18 were in the -- it was in the course of
19 the FBI interrogations of Abu Zubaydah,
20 correct?

21 MR. SMITH: Objection.

22 THE WITNESS: I don't know
23 what the FBI was doing at the time
24 when I arrived. You know, he

1 was -- I -- I rode over with an
2 contingent of people who included
3 a hospitalist. Abu Zubaydah was
4 dying. They were not conducting
5 routine interrogations of Abu
6 Zubaydah, they were snatching one
7 or two words while he was
8 conscious.

9 BY MR. LUSTBERG:

10 Q. So --

11 A. Because what you're
12 suggesting is -- here's what you're
13 suggesting: You're suggesting that the
14 FBI was interrogating a dying man.

15 Q. I wasn't suggesting
16 anything, I was just asking.

17 A. Okay.

18 Q. So you're saying that there
19 was no -- there was no real interrogation
20 going on at that time?

21 A. I think he was drifting in
22 and out of consciousness and it was very
23 difficult to ask him questions.

24 Q. Okay.

1 A. I know they did and they got
2 small pieces of information.

3 Q. During the -- your early
4 days when you arrived at the site,
5 wherever that was, the FBI was present as
6 well; is that right?

7 A. Yes.

8 Q. Okay. And was the FBI
9 getting information at that time from Abu
10 Zubaydah?

11 A. Abu Zubaydah -- yes.

12 Q. Okay. What was the
13 information that the FBI was getting?

14 A. They were getting -- Abu
15 Zubaydah, in my opinion and opinions of
16 others that were there, was just trying
17 to convince him that it was useful to
18 keep him alive. And so they had -- he
19 had identified himself as Abu Zubaydah
20 and he had said that Mukhtar was the
21 person behind 9/11, but they didn't
22 provide a lot of details.

23 Q. Okay. Let me just go back
24 to -- I'm sorry, I'm not going to get --

1 what number? Exhibit 5, which is the
2 Senate Select Committee on Intelligence
3 report. And in the executive summary
4 part of it, turn to page 4?

5 A. Okay.

6 Q. So I want to make sure we
7 have this part right, it says -- I think
8 this is consistent with what you said,
9 but you'll tell me if I'm wrong, on the
10 bottom of 24 onto 25, it says:

11 "After Abu Zubaydah was
12 rendered to Detention Site Green on March
13 {blank} 2002, he was questioned by
14 special agents from the Federal Bureau of
15 Investigation who spoke Arabic and had
16 experience interrogating members of
17 Al-Qaeda. Abu Zubaydah confirmed his
18 identity to the FBI officers, informed
19 the FBI officers he wanted to cooperate,
20 and provided background information on
21 his activities.

22 "That evening Abu Zubaydah's
23 medical condition deteriorated rapidly
24 and he required immediate

1 hospitalization," and so forth.

2 And then at the end of the
3 paragraph, it says:

4 "When Abu Zubaydah's
5 breathing tube was removed on April 8,
6 2002, Abu Zubaydah provided additional
7 intelligence and reiterated his intention
8 to cooperate."

9 Is that consistent with what
10 you understood at the time?

11 A. Well, those are very
12 general, very broad comments, so I don't
13 know, you know, if you -- if you want to
14 know the specifics of what Abu Zubaydah
15 provided, then you need to ask the CIA
16 debriefers and intel folks about the
17 specifics of it.

18 I know he provided his name,
19 I know that he said that Mukhtar was the
20 mastermind behind 9/11 without providing
21 a lot of details. I know he said over
22 and over that he would cooperate, which
23 actually didn't translate into
24 cooperation, after he got medical care,

1 and I don't know what additional
2 intelligence they're referring to.

3 Q. Go to the next paragraph.

4 A. Okay.

5 Q. And that paragraph indicates
6 that:

7 "On April 10th, Abu Zubaydah
8 revealed to FBI officers that, not only
9 Mukhtar was the mastermind, but then
10 identified a picture of him, which of
11 course was KSM."

12 Is that consistent with what
13 you understood?

14 A. I just said that previously.

15 Q. No, not -- the picture part.

16 A. Yeah, he identified a
17 picture of him.

18 Q. Okay. In your book, you say
19 that:

20 "At around that time, he,"
21 Abu Zubaydah, "progressively became less
22 responsive to questions. He played the
23 FBI and CIA interrogators off one
24 another."

1 Do you need to see -- do you
2 want to see that for context?

3 A. I don't need to see it, but
4 we're not talking about that specific
5 time.

6 Q. Okay.

7 A. I'm talking about over the
8 course of that whole period.

9 Q. Okay. When did that happen?

10 A. It started happening almost
11 immediately.

12 Q. So almost immediately after
13 this?

14 A. Yeah. I mean, I don't -- I
15 don't remember the specific day and time,
16 but as soon as he started feeling better,
17 he started employing resistance to
18 interrogation techniques, playing them
19 off each other.

20 Q. And how did he play them off
21 each other?

22 A. He would lead each one of
23 them to believe that he had a special
24 relationship with that person, that he

1 preferred talking to that person to the
2 exclusion of others, and that if he could
3 just spend more time with that person,
4 then, you know, he would -- you know, he
5 would provide additional information.
6 But then he never really did provide
7 additional information according to the
8 CIA analysts and subject matter experts
9 that were onsite. He provided bits and
10 pieces that were important put in the
11 larger matrix of things, but my
12 impression is that -- well, I know for a
13 fact, because they told me, that the CIA
14 was dissatisfied with what he was
15 providing.

16 Q. The CIA believed that he was
17 resisting, right?

18 A. That's what I would say.

19 Q. Uh-huh. And was that what
20 they -- I'm sorry. I'm sorry. I just
21 keep yanking this off.

22 Was that what was -- what
23 the CIA expected, that he would resist?

24 A. No, I don't think the CIA

1 cared one way or the other about whether
2 he would resist.

3 Q. Not whether they cared, but
4 what they expected?

5 A. I don't know what they
6 expected. If you want to know what the
7 CIA thought, you've got a whole shelf
8 full of them sitting over there.

9 Q. Yeah, I think I won't.
10 They're not being deposed today.

11 But let's take a look at
12 Exhibit 13.

13 A. Are we done with this?

14 Q. Just for now.

15 (Exhibit No. 13, Document,
16 Bates USA 1779 through 1787, was
17 marked for identification.)

18 THE WITNESS: Thank you,
19 ma'am. There's so much
20 information in these documents
21 that are --

22 BY MR. LUSTBERG:

23 Q. So -- yeah. Take a look at,
24 if you would, the one, two, three, four,

1 fifth page. It has the Bates No. 001783
2 at the bottom.

3 A. Okay.

4 Q. And it says in the middle of
5 that paragraph 2:

6 "Being that Zubaydah is a
7 senior Al-Qaeda member who has a long
8 history of commitment to Al-Qaeda and has
9 likely received some or a lot of counter-
10 interrogation training, the proposal put
11 forth takes the likely premises that the
12 complete interrogation of Zubaydah could
13 take a considerable amount of time and
14 resource. More than likely, Zubaydah
15 would divulge relevant information in
16 spurts followed by periods of slow
17 progress."

18 Does this tell you that
19 there was an expectation that he would
20 resist in some regard at that time?

21 A. Yeah.

22 MR. SMITH: Objection.

23 THE WITNESS: The first time
24 that I had seen this is when the

1 Government provided it. So I --
2 so certainly just on the basis of
3 what this document says, it looks
4 like the person who wrote it
5 believes that.

6 BY MR. LUSTBERG:

7 Q. Did you write this?

8 A. Of course not.

9 Q. So just so we can save time
10 going forward, I'm going to ask you as we
11 go through these whether you wrote any of
12 these and you can tell me if any of them
13 were written by you. But you're saying
14 this one for sure you didn't write?

15 A. I for sure didn't write it.

16 Q. Okay.

17 MR. SMITH: While there's no
18 question pending, just for a point
19 of clarification, Mr. Warden, how
20 should we describe these documents
21 for the record? Is this a cable?

22 MR. WARDEN: It's a document
23 at a general level and the Bates
24 number, but if you're asking what

1 category of government document
2 this is at Bates 1783, this is a
3 CIA cable.

4 MR. SMITH: Okay. Thank
5 you. That's helpful.

6 BY MR. LUSTBERG:

7 Q. Was, Dr. Mitchell, the
8 expectation that Abu Zubaydah would
9 resist that caused the CIA to deploy you
10 so that --

11 A. I don't know what caused --

12 MR. SMITH: You've got to
13 let him finish.

14 THE WITNESS: Sure.

15 BY MR. LUSTBERG:

16 Q. So that caused the CIA to
17 deploy you, question mark. Go ahead.

18 MR. SMITH: Objection.

19 You can answer.

20 THE WITNESS: I don't know
21 what the CIA decided to do. I
22 mean, I know they decided to
23 deploy me, but I don't know what
24 their reasoning was. You'd have

1 to ask the CIA what their
2 reasoning was.

3 BY MR. LUSTBERG:

4 Q. When you were deployed, you
5 did not understand that the reason you
6 were being deployed was because --

7 A. I --

8 Q. Because Abu Zubaydah was
9 resisting or likely to resist?

10 A. They didn't say that to me.
11 What they said is, Go there, see what
12 resistance techniques he's using, if any,
13 help the team put together
14 countermeasures.

15 Q. Okay. Let me just follow-up
16 on that. So they told you, go there, see
17 what resistance techniques -- I'm sorry,
18 he's using, if any, help the team put
19 together countermeasures.

20 So when you say "if any," it
21 was your understanding at that meeting,
22 not that he was resisting, but that you
23 were being sent over just in case he
24 resisted; is that right?

1 A. I believe -- I believe
2 that's a mischaracterization of it. To
3 the extent that what I said confuses it,
4 they said go over there and if he employs
5 resistance techniques, tell the team
6 which ones he's employing in your
7 opinion. There was no if he uses
8 them or -- no if, there's no, we expect
9 him to use it, we don't expect him to use
10 it, there was just the instructions to go
11 over there and do it.

12 Now, they did tell me that
13 they had had reason to believe -- I don't
14 know that that's true. I think they may
15 have mentioned that they had reason to
16 believe he had been resistant trained.

17 THE VIDEOGRAPHER: Excuse
18 me, Counsel, ten minutes on the
19 tape.

20 MR. LUSTBERG: Okay.

21 BY MR. LUSTBERG:

22 Q. Sure, because on Exhibit 13
23 that we just looked at, it said:

24 "Being that Zubaydah is a

1 senior Al-Qaeda member who has a long
2 history of commitment to Al-Qaeda and has
3 likely received some or a lot of counter-
4 interrogation training," it would make
5 sense that they would say to you that
6 they thought he had --

7 A. Had a potential to --

8 MR. SMITH: Objection.

9 BY MR. LUSTBERG:

10 Q. I'm sorry, had a potential
11 to -- just finish your -- his objection
12 knocked out your last word there.

13 A. His objection overrode my
14 over talking you?

15 Q. Yes. That he had the
16 potential to resist?

17 A. Yeah. I mean, that's the
18 way I would interpret it. Not that he
19 was going to.

20 Q. Okay. Shortly -- so let --
21 I just want again ask your reaction to
22 some statements in the SSCI report.
23 Let's go right to where we were, which
24 was page 26.

1 As we look at this document,
2 there's the name Grayson Swigert that's
3 used. That's the name that they used for
4 you, right, Dr. Mitchell?

5 A. Yes.

6 Q. And it says:

7 "Swigert had come to
8 someone's attention through {blank} who
9 worked in OTS."

10 And just so that the record
11 is clear, OTS is what?

12 A. Office of Technical
13 Services.

14 Q. Thank you.

15 "Shortly thereafter, CIA
16 headquarters formally proposed that
17 Zubaydah be kept in an all white room
18 that was lit 24 hours a day, that Abu
19 Zubaydah not be provided any amenities,
20 that his sleep be disrupted, that loud
21 noise be constantly fed into his cell and
22 only a small number of people interact
23 with him."

24 Was that a -- were those

1 conditions that you -- that you suggested
2 or proposed in any way?

3 A. I don't recall specifically
4 suggesting or proposing those, but I know
5 that those were recommendations that the
6 interrogation team as a whole put forward
7 to the CIA.

8 Q. My -- let me just make sure
9 I nail this down because I want to be
10 really clear.

11 So did you propose any of
12 those conditions?

13 A. I don't recall specifically
14 whether I was the one that proposed those
15 conditions or somebody else was. The OTS
16 psychologist that was there was, you
17 know, in charge of the behavioral side of
18 the interrogation.

19 Q. I'm just going to quickly
20 show you the complaint and the answer in
21 this case. The complaint is the document
22 that our side files and the answer is the
23 document that your side files.

24 MR. LUSTBERG: So do you

1 want those marked? So we'll call
2 the complaint Exhibit 14 and the
3 answer Exhibit 15.

4 And the reason I'm marking
5 them both is it's impossible to
6 understand the answer without
7 looking at the complaint.

8 THE WITNESS: Okay.

9 (Exhibit No. 14, Complaint,
10 and No. 15, Answer, were marked
11 for identification.)

12 BY MR. LUSTBERG:

13 Q. So the paragraph I'm going
14 to talk about is paragraph 34.

15 A. On which document?

16 Q. On both. It's on page 17 of
17 the complaint. So read that first. And
18 then of the answer.

19 A. Did you say page 17?

20 Q. Page 17 of the complaint and
21 page 12 of the answer.

22 A. Oh.

23 Q. It's paragraph 34. We do
24 these with paragraph numbers.

1 A. Okay.

2 Q. Okay. So take a look at
3 paragraph 34 and then I want to see if
4 this actually refreshes your recollection
5 in any regard or whether you disagree
6 with it. It says:

7 "Defendants admit that
8 Mitchell was advised that Zubaydah was
9 withholding information and that Mitchell
10 recommended that Zubaydah not be provided
11 with any amenities, his sleep be
12 disrupted and that noise be fed into
13 Zubaydah's cell."

14 Do you see that?

15 A. I do see that.

16 Q. Okay. The difference
17 between that and the complaint is the
18 part that the complaint also alleges that
19 you recommended that Abu Zubaydah be kept
20 in an all white room that was lit
21 24 hours a day.

22 Is that because you do not
23 admit that you recommended that?

24 A. I'm sorry, the

1 recommendations -- are you talking about
2 the white cell?

3 Q. Yes. Did you recommend
4 that?

5 A. I don't recall specifically
6 recommending that. I can recall the
7 discussion in which it was discussed,
8 what color should the cell be, should it
9 be black, should it be pink, you know,
10 should it be green, gray? The cell had
11 to be some color and he had a massive leg
12 wound and the team wanted him to be alert
13 and able to focus on the questions, and
14 so -- and he also -- that leg wound would
15 also make it easier for them to clean it
16 if it was a color you could see the --
17 you know, any discard that came from the
18 wound. So part of it was to focus his
19 attention on what the interrogation --
20 interrogators were asking, and part of it
21 was just a matter of you had to have some
22 color. And I think we'd be having the
23 same discussion if it was black, you
24 know.

1 Q. Uh-huh. So -- but was
2 that --

3 A. I don't recall specifically
4 me recommending that, but I'm -- I'm sure
5 I was part of the discussion and I was --
6 which is why -- I don't -- like I said, I
7 don't recall them telling me that he
8 was -- never mind. I was going to
9 address these other things, but go ahead.

10 Q. Please finish your sentence.

11 A. I don't recall them
12 specifically -- I see what it says here
13 about him withholding information. I
14 don't recall that I specifically said
15 that he was withholding information, just
16 that he could potentially be withholding
17 information. Probably a poor choice of
18 words.

19 Q. Okay.

20 THE VIDEOGRAPHER: Two
21 minutes.

22 MR. LUSTBERG: Okay.

23 BY MR. LUSTBERG:

24 Q. One more question about --

1 MR. LUSTBERG: You know
2 what? Let's break now then
3 because it's going to take more
4 than two minutes.

5 THE VIDEOGRAPHER: The time
6 is 3:10 PM. We are now off the
7 video record.

8 (Recess.)

9 THE VIDEOGRAPHER: We're now
10 back on the video record. The
11 time is 3:25 PM. You may proceed.

12 MR. LUSTBERG: Thank you.

13 THE VIDEOGRAPHER: This is
14 Disk No. 3.

15 BY MR. LUSTBERG:

16 Q. Okay. Real quick: Back to
17 the -- to the Senate Select Intelligence
18 report. If I could remember the number.
19 Five, it's Exhibit 5.

20 Okay. On page 30?

21 A. All right.

22 Q. I'm sorry. Okay. In the
23 middle paragraph, Dr. Mitchell, it says:

24 "At the end of April 2002,

1 the Detention Site Green interrogation
2 team provided CIA headquarters with three
3 integration strategies."

4 MR. SCHUELKE: Whoa, where
5 are you?

6 MR. LUSTBERG: Page 30.

7 THE WITNESS: That's not
8 what my --

9 MR. LUSTBERG: It's in the
10 middle.

11 MR. SMITH: Which paragraph?

12 MR. LUSTBERG: They don't
13 have paragraph numbers. In the
14 middle of page 30 of 499.

15 MR. SCHUELKE: In the
16 beginning of the paragraph?

17 MR. LUSTBERG: Right in the
18 middle.

19 THE WITNESS: Are you sure
20 it's page 30?

21 MR. SCHUELKE: The first
22 full paragraph in the middle?

23 MR. LUSTBERG: It starts
24 with, During the month of

1 April 2002"?

2 MR. SMITH: Yes.

3 THE WITNESS: Okay.

4 MR. LUSTBERG: Okay. And
5 then the second sentence begins at
6 the end, that's what I was
7 reading.

8 MR. SMITH: Okay. Sorry.

9 MR. SCHUELKE: Excuse me,
10 are you looking at the sentence
11 that begins, "At the end of
12 April"?

13 MR. LUSTBERG: Yup.

14 MR. SCHUELKE: Okay.

15 BY MR. LUSTBERG:

16 Q. "At the end of April 2002,
17 the Detention Site Green interrogation
18 team provided CIA headquarters with three
19 interrogation strategies. CIA
20 headquarters chose the most coercive
21 interrogation option, which was proposed
22 and supported by CIA contractor Swigert,"
23 which is you.

24 Is that true?

1 A. I don't know whether they
2 chose the most coercive strategy or not.
3 I mean, it is true that I'm Swigert, but
4 I don't know what the -- I don't have a
5 recollection of what the other strategies
6 were, so I don't know --

7 Q. Real quick, please. No. 13.

8 MR. SCHUELKE: You want him
9 to read through the rest of that
10 paragraph?

11 MR. LUSTBERG: He doesn't
12 have to.

13 MR. SCHUELKE: It appears to
14 me that the answer to the question
15 is in the rest of that paragraph.

16 MR. LUSTBERG: It isn't.
17 The -- he's saying he did not
18 recall recommending the most
19 coercive interrogation option.

20 MR. SMITH: That's not what
21 he said.

22 THE WITNESS: That's not
23 what I said.

24 BY MR. LUSTBERG:

1 Q. Okay. Did you?

2 MR. SMITH: Well, that
3 question he did answer.

4 MR. LUSTBERG: Okay.

5 MR. SMITH: He said he
6 didn't know what the other ones
7 were, so how can we know --

8 MR. LUSTBERG: I'm going to
9 show you what the other ones were.
10 That's what this next exhibit is.

11 MR. SMITH: 16.

12 MR. LUSTBERG: Uh-huh.

13 MR. SMITH: Okay.

14 (Exhibit No. 16, Document,
15 Bates USA 2015 through 2018, was
16 marked for identification.)

17 BY MR. LUSTBERG:

18 Q. Go to the top of the second
19 page, you'll see the three options.

20 MR. SMITH: So can we just
21 identify for the record what this
22 is that the witness is looking at?

23 MR. LUSTBERG: This is a
24 cable.

1 MR. SMITH: Okay. Undated?

2 MR. LUSTBERG: May 2002.

3 MR. SMITH: Okay. I see it
4 now.

5 BY MR. LUSTBERG:

6 Q. You see that?

7 A. I see that paragraph, yes,
8 sir.

9 Q. Okay. And option 2 was --
10 you see the three options?

11 A. I see three options.

12 Q. Option 2 is:

13 "Press AZ for threat
14 information only and employ immediate
15 countermeasures when he resists."

16 Do you see that?

17 A. Yes.

18 Q. That was the option that was
19 proposed?

20 A. Those three options were
21 proposed.

22 Q. The -- option 2 was the one
23 that was adopted?

24 A. Is there a document that

1 says that?

2 Q. Take a look at this
3 document.

4 So you don't know whether
5 that option was the option that was
6 adopted?

7 A. I've never seen this cable
8 until the Government produced it. So I
9 haven't spent any time --

10 Q. I understand?

11 A. -- parsing it, so I don't --
12 I'm not --

13 Q. Right below the three
14 options it says:

15 "HQ/Alex concurred for
16 {blank} for {blank} to follow option 2
17 and press AZ for threat-related
18 information.

19 Do you see that?

20 A. Okay. I see that.

21 Q. Was that your
22 recommendation?

23 A. I don't -- I don't have a
24 specific recollection of recommending

1 that, but it's not inconsistent with
2 something I could have recommended, I
3 just don't have a specific recollection
4 of it.

5 Q. Okay. After this time, and
6 beginning in June, Abu Zubaydah was held
7 in complete isolation for -- for a period
8 of time, right?

9 A. Not complete isolation.

10 Q. From June 18 to August 4th,
11 for 47 days, he was held in isolation?
12 Would you agree with that?

13 A. Yes.

14 Q. And during that time, the
15 members of the team, including you,
16 discussed what would occur next, right?

17 A. There was discussion, yes.

18 Q. And the -- and you were part
19 of the decision -- you were involved in
20 the decision to --

21 A. I wasn't involved in the
22 decision, I was involved in making
23 recommendations.

24 Q. Okay. What was -- what was

1 your recommendation?

2 A. I don't recall the specific
3 recommendation.

4 Q. You didn't -- you didn't
5 recommend that he be kept in isolation
6 for those 47 days while -- as a matter of
7 keeping him off balance?

8 A. I never recommended that he
9 be kept in isolation for 47 days.

10 Q. Did you -- did you recommend
11 that he been kept in isolation?

12 A. I don't recall specifically,
13 but it's not out of the possibility.

14 Q. As of that time, in July,
15 you had assessed Abu Zubaydah as
16 uncooperative; is that right?

17 A. It was my opinion that he
18 was cooperative on some things and
19 uncooperative on others.

20 Q. Had you -- did you assess
21 him overall as being uncooperative?

22 A. I assessed him as being
23 cooperative on some things and
24 uncooperative on others.

1 Q. I just want to make sure
2 under the -- if you look at the answer to
3 the complaint.

4 A. Sure.

5 Q. Exhibit 15 is the answer.
6 Wait a second, I'll get it. Paragraph
7 41.

8 A. 41?

9 Q. Uh-huh.

10 MR. SMITH: Page 20.

11 MR. LUSTBERG: Page 14 of
12 the answer and page 20 of the
13 complaint.

14 THE WITNESS: All right.

15 Okay.

16 BY MR. LUSTBERG:

17 Q. And if you'll notice in
18 paragraph 41 of the answer, it says:

19 "Defendants admit that in
20 July 2002, Mitchell and the CIA assessed
21 Zubaydah as uncooperative."

22 A. Okay.

23 Q. Is that correct?

24 A. Yes. And I don't think

1 that's inconsistent with what I said.

2 Q. I'm just asking whether you
3 and the CIA assessed Zubaydah as
4 uncooperative.

5 A. Yes.

6 Q. Okay. So in -- at that
7 time, did you -- were you involved in
8 several meetings at CIA headquarters to
9 discuss the Zubaydah interrogation?

10 MR. SMITH: Objection. At
11 what time?

12 BY MR. LUSTBERG:

13 Q. July 2002.

14 A. I think the -- yes.

15 Q. And what was the nature of
16 those meetings?

17 A. The entire interrogation
18 team minus the OTS psychologist that
19 stayed back there to monitor Abu Zubaydah
20 attended several meetings at CIA
21 headquarters where they talked about --
22 including the FBI, attended several
23 meetings where they talked about where he
24 was, what information they had gotten,

1 whether or not it addressed the concerns
2 about the potential attacks that could
3 occur, and you know, sort of next steps
4 of what they were willing to do. That's
5 my recollection.

6 Q. Okay. In your book you say
7 that you were asked by Jose Rodriguez,
8 which is who?

9 A. At the time he was the
10 director of CTC. He became the director
11 of Clandestine Services.

12 Q. You had -- "asked by him to
13 accompany other senior members of the
14 interrogation team back to the US to
15 attend a meeting at Langley," correct?

16 A. Yes, sir.

17 Q. "The agenda was to discuss
18 Abu Zubaydah's interrogation thus far and
19 what would be done to get him not only
20 talking again, but providing more full
21 and complete answers than he had provided
22 before." Is that --

23 A. Yes.

24 Q. Jose asked you to discuss

1 some of the resistance to interrogation
2 ploys that you had seen Abu Zubaydah use;
3 is that right?

4 A. Yes.

5 Q. What were those ploys?

6 A. Oh, he would go on for hours
7 about dead people without revealing that
8 they were dead. He would talk about --
9 endlessly about old Soviet plots -- plots
10 against the Soviet Union when they were
11 doing the Jihad.

12 He would, as I said before,
13 play one interrogator off of the other.
14 He would -- he would -- he would answer
15 in vague and misleading ways so that --
16 he talked for a great deal of time, but
17 he provided no real information, and he
18 would -- I don't remember the whole list.
19 I mean, there was a variety of things I
20 mentioned. I tried to be accurate in the
21 book and...

22 Q. Since -- at that point, did
23 you recommend that more coercive measures
24 be used against Abu Zubaydah?

1 A. I don't know that I
2 recommended it. I certainly know it was
3 part of the discussion, and I probably
4 weighed in on it.

5 Q. And when you weighed in,
6 what was your -- what was your
7 recommendation?

8 A. I think that was at the time
9 when I had already come to my own mind to
10 believe that they were going to use
11 coercive techniques, and if they were
12 going to use coercive techniques, they
13 should use the ones that had been used in
14 the SERE school.

15 Q. And so your view was that
16 because the SERE school techniques
17 hadn't -- did not cause any damage from
18 what you had seen, then those techniques
19 should apply to -- could be applied to
20 Abu Zubaydah as well without causing
21 harm; is that right?

22 MR. SMITH: Objection.

23 THE WITNESS: No.

24 BY MR. LUSTBERG:

1 Q. Okay. Tell me what's wrong
2 about that.

3 A. I never said they caused no
4 damage at all.

5 Q. Okay.

6 A. I said some of them did, and
7 you know, others could sometimes result
8 if they were misapplied. And I don't
9 remember the rest of this question.

10 Q. My question was tell me
11 what's wrong about that.

12 But what I asked -- so let's
13 break it down. You -- understanding that
14 the CIA apparently intended to use
15 coercion --

16 A. Uh-huh.

17 Q. -- you proposed that
18 techniques from the SERE school be used,
19 correct?

20 A. I recommended that they
21 consider using them.

22 Q. That they consider using
23 them. And that -- and by this time you
24 said you weighed in and you believed that

1 some coercive techniques should be used
2 by them?

3 A. I felt like he wasn't going
4 to provide the information that they were
5 looking for using rapport-based
6 approaches.

7 Q. Okay.

8 A. At least not in the time
9 period that we were talking about.

10 Q. Okay.

11 A. Because it's important to
12 remember that at this particular time,
13 although we didn't know it --
14 particularly who it was, there was a
15 great deal of information about this
16 upcoming threat that was going to occur.
17 You know, there was the suggestion in the
18 immediate aftermath of 9/11 that there
19 was a potential for a nuclear device, and
20 the CIA had reported in other places that
21 they already knew that UBL had met with
22 the Pakistanis who were passing out
23 nuclear technology to rogue states, and
24 the Pakistani scientist had said to UBL,

1 the hard part is getting the fissional
2 material, and UBL had said, What if we've
3 already got it.

4 And so there was this press
5 to do whatever was legal, whatever was
6 within the bounds to take it, as the
7 attorneys at the time said, that gloves
8 were off and we need to walk right up to
9 the line of what's legal.

10 Q. That was what the attorneys
11 at the time said to you?

12 A. Uh-huh.

13 Q. And -- but just back to what
14 you said before, that -- so I asked you
15 whether you recommended that in the event
16 they were going that way, that they
17 should consider -- they should consider
18 the SERE school techniques.

19 A. I did recommend that.

20 Q. And I asked you, and that
21 was because they weren't harmful and you
22 said, well, they could be harmful?

23 A. Yes.

24 Q. Okay. Now --

1 A. And again, at this
2 particular time, they had not yet asked
3 me if I would do the interrogations. I'm
4 thinking I'm providing a list that
5 they're going to go off and do whatever
6 they decide to do with, all right? I'm
7 not, you know...

8 Q. So in any event, you did
9 provide a list, right?

10 A. By then they had already
11 asked me -- the techniques I outlined
12 before they asked me. After they asked
13 me and they brought Dr. Jessen onboard,
14 we actually wrote out the list of things
15 I had suggested earlier on.

16 Q. Uh-huh. Okay. So let's
17 just -- let's just show you that list.
18 Just make sure we're working off the same
19 list.

20 A. Sure.

21 MR. LUSTBERG: This is
22 Exhibit 17.

23 (Exhibit No. 17, Document,
24 Bates USA 1109 through 1111, was

1 marked for identification.)

2 BY MR. LUSTBERG:

3 Q. Are you ready?

4 A. I need to ask for guidance
5 from the Government about something.
6 Sorry.

7 MR. LUSTBERG: Okay. No, no
8 worries.

9 THE WITNESS: I need to ask
10 you for some guidance.

11 THE VIDEOGRAPHER: We're off
12 the record?

13 MR. LUSTBERG: Yup, please.

14 THE VIDEOGRAPHER: The time
15 is 3:43 PM and we're now going off
16 the video record.

17 (Recess.)

18 THE VIDEOGRAPHER: The time
19 is 3:44 PM. We are now back on
20 the video record.

21 BY MR. LUSTBERG:

22 Q. Looking at Exhibit 17, is
23 that the list of enhanced interrogation
24 techniques that you provided to

1 Mr. Rodriguez?

2 A. They weren't called enhanced
3 interrogation techniques, but yes.

4 MR. SMITH: Could I just
5 confer while there's no question?

6 (Discussion held off the
7 record.)

8 THE WITNESS: It looks like
9 what somebody did is cut and paste
10 into a document that I provided
11 them into a bigger document. This
12 stuff was not on my document.

13 BY MR. LUSTBERG:

14 Q. I understand. Let's take a
15 look at the second and third page.

16 A. Okay.

17 Q. The third page ends, "Hopes
18 this helps. Jim Mitchell."

19 That's you, right?

20 A. Right. Obviously somebody
21 cut and pasted it, yeah.

22 Q. Somebody cut and -- so what
23 was cut and pasted?

24 A. The whole -- I didn't have

1 access to their system.

2 Q. Okay.

3 A. So I couldn't write a
4 classified document on their system. I
5 could write a classified document on a
6 stand-alone system. Someone else had to
7 take that document and cut and paste it
8 into one of their documents, which is
9 what this -- all these headers are.

10 Q. On the first page?

11 A. The original people who sent
12 this out.

13 Q. Okay. I'm just --

14 A. So I provided this
15 classified document that was on a
16 stand-alone computer, right, as a file to
17 a person, and that person cut and pasted
18 it into this.

19 Q. Looking at pages 2 -- the
20 second and third page.

21 A. Yes, sir.

22 Q. And if you need to, read the
23 whole thing from top to bottom on the
24 second and third page. Was -- are those

1 your words or have those been cut and
2 pasted in some way other than attaching
3 them to the first page?

4 A. No, these are my words.

5 Q. So the answer is that these
6 one, two -- these 12 techniques, which
7 we'll come back in a second what they
8 are, those -- these 12 techniques are
9 described in your words?

10 A. I wrote these words, yes.

11 Q. Right. And they were the,
12 according to the first paragraph -- by
13 the way, the first paragraph also at the
14 top of page 2 is your words?

15 A. Yes.

16 Q. So these are the
17 descriptions of potential physical and
18 psychological pressures that were
19 discussed in the July 8th, 2002 meeting;
20 is that right?

21 A. Yes.

22 Q. Okay. At the July 8, 2002
23 meeting, Mr. Rodriguez asked you to,
24 quote, unquote, craft the program, right?

1 A. No.

2 Q. Okay. Let's -- if you
3 could, let's just take a quick look at
4 your book. And pages 54 and 55, if you
5 have it. I believe that was Exhibit 4.

6 MR. SMITH: For the record,
7 I think you referred to this as
8 "his book," and I don't think the
9 witness --

10 MR. LUSTBERG: It's the
11 manuscript, you're right.

12 THE WITNESS: Yes. Well, in
13 fact, it's a work draft.

14 MR. SMITH: A draft.

15 THE WITNESS: You said 55
16 and 56?

17 BY MR. LUSTBERG:

18 Q. 54 and 55.

19 A. Okay.

20 Q. And on page -- actually top
21 of page 55.

22 A. Okay.

23 Q. The page before talks about
24 a meeting and then it says:

1 "A day or so later," so
2 maybe it was a day or so later,
3 "Rodriguez asked me if I would help put
4 together an interrogation program using
5 EITs."

6 A. A program for Abu Zubaydah.

7 Q. Okay.

8 "I told him I would,
9 thinking I would remain in the role I
10 occupied during the first few months,
11 pointing out resistance techniques
12 employed by the detainees and advising on
13 the psychological aspects of the
14 interrogation. But that's not what he
15 had in mind. Jose not only wanted me to
16 help them craft the program, he wanted me
17 to conduct the interrogations using EITs
18 myself."

19 Do you see that?

20 A. Right.

21 Q. Okay. Is that correct?

22 A. That sentence is correct,
23 yes.

24 Q. Okay. And is that sentence

1 appropriately read, that he wanted you to
2 craft --

3 A. No.

4 MR. SMITH: You've got to
5 let him finish.

6 THE WITNESS: Okay.

7 BY MR. LUSTBERG:

8 Q. Well, he did not want you to
9 help craft the program?

10 A. You're inserting the word
11 help now, but before you said wanted you
12 to craft.

13 Q. Help -- no, no, I'm using
14 your -- your word is help.

15 A. Sorry. When you're replying
16 to me, you were using the words that I
17 used. When you asked me the question,
18 you're leaving the word help out.

19 Q. Oh, I understand.

20 A. And you're just giving me
21 the entire onus of crafting that program.
22 He asked me to help him craft a program
23 for interrogating Abu Zubaydah. He was
24 the only detainee that was part of that

1 discussion. There was no discussion at
2 that time about a larger program
3 involving multiple detainees --

4 Q. No.

5 A. -- or any of that stuff.
6 Nor was it the case that he asked me to
7 craft the program independently, but
8 rather to help him craft a program.

9 Q. Okay.

10 A. And I think the word help is
11 important.

12 Q. Okay. When you drafted
13 Exhibit 17, what role did Mr. Rodriguez
14 play in drafting that?

15 A. He asked me to draft this
16 list of potential things for them to
17 consider.

18 Q. Okay.

19 A. But this is not the program.
20 This is a list of potential techniques
21 for them to consider.

22 Q. Okay. And we'll come back
23 in a second to what parts of that become
24 the program. But before we do, a few

1 minutes ago you said that, at this time,
2 you did not understand that you were
3 going to also be doing interrogations,
4 but in your book you say:

5 "Jose not only wanted me to
6 help them craft a program, he wanted me
7 to conduct the interrogations using EITs
8 myself."

9 A. You are, again, not
10 following what I said.

11 Q. Okay.

12 A. What I said was when I gave
13 them the oral list that included these
14 things, I didn't know that he wanted me
15 to do the thing. When I gave him the
16 written list, I did.

17 Q. Okay. And what was the
18 difference in time between those two
19 things?

20 A. Days.

21 Q. Okay. Couple days, right?

22 A. Yeah. I don't know how many
23 days, but days.

24 Q. Uh-huh. And other than --

1 so what parts of this list became the
2 program?

3 MR. SMITH: Objection.

4 THE WITNESS: You know, it
5 was --

6 BY MR. LUSTBERG:

7 Q. For Abu Zubaydah.

8 A. Right. But this was not the
9 whole program for Abu Zubaydah, so there
10 were -- it makes it sounds like this is
11 the program, but in fact, these -- these
12 techniques were really only to move into
13 a position where we could start using
14 social influence techniques again. So
15 it's incorrect to think that this the
16 whole program.

17 Q. Okay. How about the part of
18 the program involving using enhanced
19 interrogation techniques, was this --
20 this was your recommendation for the
21 enhanced interrogation techniques --

22 A. This is my recommendation
23 for the ones they consider.

24 Q. Okay. And of these -- my

1 question was which ones did they not
2 adopt. It would be a shorter list than
3 the ones that they did.

4 A. I didn't think they did --
5 they didn't do mock burial. I think
6 that's the only one -- I think mock
7 burial was the only one. No, I don't
8 recall insects either. I think they did
9 approve insects but -- I think it was
10 just mock burial. But if there's another
11 list, I'll be happy to refresh my memory,
12 I just --

13 Q. One -- one other question on
14 this page of your manuscript.

15 A. Sure.

16 Q. And if this doesn't appear
17 in the book or it's just part of the
18 manuscript, you'll tell me, but it says:

19 "I was surprised and
20 reluctant. I knew that if I agreed, my
21 life as I knew it would be over. I would
22 never again be able to work as a
23 psychologist."

24 Why is that?

1 A. Well, I think it was because
2 at the time I thought I just couldn't see
3 myself going back to, you know, treating
4 mental health patients after being an
5 interrogator. It just didn't seem like
6 something that I was going to do.

7 I also knew that there were
8 people -- psychologists in general are
9 quite liberal and they tend to be
10 primarily focused on who they perceive as
11 the patient rather than necessarily the
12 client. And I knew that the bulk of
13 psychologists would probably object, you
14 know. So what I thought was, it's highly
15 probable that I'm not going to go back
16 to, you know, doing mental health work.

17 Q. It wasn't because you
18 understood that the APA or any other
19 organization --

20 A. To be honest with you -- no.
21 I know it's -- it's easy and glib to say
22 that if someone who is the expert on
23 Al-Qaeda just told you they're getting
24 ready to set off a nuclear bomb, that you

1 can say, No, no, hands-off, I don't want
2 to participate. But that wasn't the way
3 it was for me. The way it was for me
4 was, Jennifer Matthews and the rest of
5 those folks, briefed me that there was
6 already intelligence suggesting there
7 were people inside of New York who were
8 smuggling explosives in and they were
9 going to smuggle in a nuclear bomb, and I
10 was willing to help. So if -- if what
11 happened as a result of that was that I
12 couldn't go back to doing marital
13 therapy, I was okay with that.

14 Q. On the next page, you're
15 talking about -- you were talking about
16 whether you had the qualifications to put
17 together a psychologically-based
18 interrogation program. What did you mean
19 by psychologically-based interrogation
20 program?

21 A. Well, I don't -- I don't
22 think that EITs themselves are what's
23 necessarily going to yield the
24 information. I think there's a lot of

1 misinformation about EITs. But -- what
2 came to be known as EITs, but the whole
3 point of those EITs was to move him into
4 a position where he would cooperate so
5 that you could then use social influence
6 stuff to get the greater details and the
7 more information.

8 So I think it's -- I think
9 that primarily, even if you're using
10 coercive measures, the point is to
11 produce a psychological effect.

12 Q. A sentence or two -- just a
13 little bit later, and I'm on the bottom
14 of page 56 of your manuscript?

15 A. Sure.

16 Q. You said that you knew that
17 it would need to be based on what is
18 called Pavlovian classical conditioning?

19 A. Right.

20 Q. In what regard was it --
21 were these techniques based on Pavlovian
22 classical conditioning?

23 A. Well, the techniques
24 themselves weren't, but the use of them

1 were, you know, particularly -- what you
2 wanted to do was to condition him so that
3 when he began to resist, he experienced
4 an adverse of consequence, right? And
5 when he started to cooperate, that
6 adverse of consequence went away, which
7 is straight Pavlovian conditioning.

8 Q. At the top of your -- on
9 page 2 of the -- of Exhibit 17, you talk
10 about:

11 "The aim of using these
12 techniques is to dislocate the subjects
13 expectations concerning how he's apt to
14 be treated instill fear and despair."

15 A. Right, that's the adverse
16 consequence.

17 Q. "The intent is to elicit
18 compliance by motivating him to provide
19 the required information while avoiding
20 permanent physical harm or profound and
21 pervasive personality change."

22 A. Yes.

23 Q. And the -- so what you're
24 trying to avoid is permanent physical

1 harm; is that right?

2 A. Well, what I'm trying to
3 do -- that's what I said here obviously,
4 but you don't want to have permanent or
5 profound, you know, mental harm, mental
6 or physical harm.

7 Q. Okay. What did you mean by
8 profound and pervasive personality
9 change?

10 A. One of the things that
11 happens if you use these techniques too
12 much, and going -- this is -- this is the
13 warning that I provided them about
14 Seligman's things. If you apply one of
15 these techniques -- the object -- it's
16 just the same -- it's the same template
17 that's used in the Army field manual
18 today for the use of helplessness. Same
19 template, different techniques, right?
20 You put the person in a situation that
21 they perceive to be helpless and then you
22 gave them a way out of that situation by
23 answering questions.

24 If you don't give them that

1 way out, then you run the risk of doing
2 the sorts of things where you -- where
3 instead of just talking about acquired
4 helplessness, now you're talking about
5 the experimental outcomes that Seligman
6 talks about, all right?

7 So what -- what you have to
8 be sure you do is once the person begins
9 to display a sense of whatever the
10 emotion is that you're using, for
11 example, anger. Anger would be another
12 one that you could use, or affinity for
13 the person would be one you could use, or
14 fear would be one you could use.

15 What you do is you evoke
16 that fear -- or that emotion, create it
17 somehow, the current Army field manual,
18 you can only use psychological pressures,
19 right, but you evoke that emotion, then
20 you give them a way to act on the impulse
21 that emotion creates by answering
22 questions. So if what you're using is
23 fear, you would give them a way to
24 dissipate the fear by answering

1 questions.

2 If it's anger and you think
3 they're angry at someone, you give them a
4 way to get back at that person by
5 answering questions. If it's -- if it's
6 that they sense they can no longer or
7 they're having trouble organizing and
8 executing the course of actions that are
9 required to -- if you want them to
10 believe that it's futile to continue to
11 resist, right, you engender a little
12 helplessness, or a sense of helplessness,
13 I think is the way that I've used the
14 term in the past, and then you give them
15 a way out of that situation by answering
16 questions.

17 So the thing that you're
18 trying to do is get that seeking to get
19 out of this situation, not the end
20 product, not the -- not the profound
21 helplessness, not the pervasive
22 personality change. Like for example --
23 it's called in Pavlovian conditioning,
24 condition neurosis, where a person

1 essentially begins to look as if they're
2 psychotic, have trouble putting thoughts
3 together, you know, have difficulty
4 remembering things, they become
5 profoundly depressed, that sort of stuff.
6 That's not what you're trying to achieve.
7 What you're trying to achieve is that
8 setting where they're looking to get out
9 of that situation and you have to be sure
10 that you don't let it go too far.

11 Q. So we'll come back a little
12 bit to letting it go too far, but before
13 we do that, let's move to, before you
14 actually implement these techniques, you
15 have a meeting with the director of the
16 CIA, George Tenet, correct?

17 A. Correct.

18 Q. And what was the purpose of
19 that meeting?

20 A. Well, if you want to know
21 what the CIA thought the purpose of that
22 meeting was for, you need to ask the CIA.

23 Q. Well, from you -- let me be
24 clear then. What happened at that

1 meeting?

2 A. Jose Rodriguez asked me to
3 accompany him to a meeting in the
4 director the CIA's office. In that
5 meeting, he laid out to the director of
6 the CIA that -- that they felt that it
7 was -- the CIA felt it was necessary to
8 increase the pressure. He told him that
9 I was going to help them put together
10 some techniques, I think he might have
11 even told him -- I don't remember whether
12 he told I was -- I think he must have
13 told him I was going to do it, so it
14 would have been after that point when he
15 asked me to.

16 Several days passed after he
17 asked me to do it and Bruce Jessen was
18 allowed to come onboard. So -- and then
19 he described the techniques or had me
20 describe the techniques, and they were
21 waiting for his approval to go ahead
22 before they did anything else on
23 determining the legality or doing the
24 other things that they were going to do

1 to check out whether or not they wanted
2 to go forward with it.

3 Q. Okay. During that meeting,
4 did you tell him that these techniques
5 were based upon techniques that had been
6 used in the SERE program?

7 A. Yes.

8 Q. Okay. And did he ask any
9 questions about that?

10 A. He asked me what they were
11 and I demonstrated what they were. I
12 think I demonstrated a couple of stress
13 positions, I demonstrated an attention
14 grab. I think -- I don't recall what --
15 I don't recall what some of the other
16 techniques were. Maybe it will refresh
17 my memory if I look at them.

18 Yeah, I think I showed him
19 what a facial hold was. I'm sure they
20 went over -- he clearly had been briefed
21 before as to specifically what they were
22 because he seemed to know.

23 Q. Okay. Is it -- during the
24 course of -- so let me just go back and

1 make sure I understand.

2 Was there a discussion in
3 that meeting of the fact that these were
4 SERE program techniques?

5 A. I believe so. I mean, I
6 don't know that I said it, but it was the
7 sort of thing that Jose or somebody else
8 would have said if I didn't.

9 Q. Was there any discussion in
10 the meeting about whether the use of
11 these SERE techniques -- strike that.

12 Was there any discussion
13 about whether they could be used safely,
14 whether the idea of this -- in other
15 words, what was the relevance of the fact
16 that they were SERE techniques, why was
17 that important?

18 A. Okay. That's two questions.

19 Q. Okay. Either one. Take
20 either one. What was the significance of
21 the fact that they were SERE techniques?
22 Why is that -- again, why is that an
23 important fact?

24 A. I think it's important

1 because they had been used for years
2 without, you know, producing significant
3 problems.

4 Q. Was there any discussion
5 about whether the application of SERE
6 techniques, which had been able to be
7 used for many years without producing
8 problems, might nonetheless produce
9 problems in a different setting where the
10 subject is not there voluntarily?

11 A. I don't recall that
12 discussion.

13 Q. Did you -- did you mention
14 that?

15 A. I don't recall mentioning
16 that.

17 Q. How about -- just going back
18 to the SERE techniques for a moment.

19 A. Are we still talking about
20 the meeting with Director Tenent?

21 Q. If you want to it be.

22 A. No, I'm just asking you,
23 when you say go back to the SERE
24 techniques.

1 Q. No, I'm asking -- I'm asking
2 whether -- I mean, I asked you whether at
3 that meeting it was discussed that
4 somebody who was -- let's be clear,
5 right? I mean, when these are used on
6 someone in the SERE program, that person
7 is there voluntarily, right?

8 A. In the sense that they can
9 pull the volunteer statement and leave.

10 Q. And they -- there's a safe
11 word, right?

12 A. There is a safe word, yes.

13 Q. And for Abu Zubaydah, he was
14 not there voluntarily, correct?

15 A. He was not there
16 voluntarily.

17 Q. And he did not have -- what
18 was the -- I think you said what the safe
19 word was, wasn't it?

20 A. Flight surgeon is the usual
21 one they use.

22 Q. Flight surgeon. Okay.
23 Right. He didn't have that available to
24 him?

1 A. He had the ability to say,
2 I'll answer that question, which would
3 have had the same effect as flight
4 surgeon.

5 Q. Okay. So the only -- now,
6 going to what occurred with respect to
7 Abu Zubaydah, you went back and you
8 applied these -- these techniques, right?

9 A. Yes.

10 Q. You did, right?

11 A. Yes.

12 Q. Uh-huh. Was it successful?

13 A. Yes.

14 Q. Okay. When was it
15 successful?

16 A. It was successful when he
17 began to provide information that the --
18 that the CIA analyst and targeters and
19 subject matter experts judged as
20 valuable.

21 Q. When was that?

22 A. It was as we were
23 tapering -- as we would be, as we were
24 taping it off, I think -- I think what

1 happened was he began to provide bits and
2 pieces of information, and as he did, we
3 dialed that stuff back.

4 Q. Uh-huh. Okay. This
5 phase -- by the way, let's talk about the
6 phases of -- I'm sorry.

7 There was -- with Abu
8 Zubaydah, at the beginning there's these
9 different phases that he goes through,
10 and this is the final phase, right, where
11 he's -- where he's -- where you're
12 applying these techniques. Before that
13 there was the isolation phase, before
14 that there was the phase where he was
15 being questioned with lesser techniques
16 as you described them, or lesser adverse
17 conditions, right?

18 A. You know, this whole concept
19 of phase, I've never seen that in the
20 cable traffic, but I don't remember at
21 that particular point calling them phases
22 like that. I mean, it wasn't -- that
23 wasn't something that -- I mean, I know
24 they called it the aggressive phase,

1 right?

2 Q. Right.

3 A. But I don't remember it
4 become orchestrated in the way that you
5 seem to be implying that it was.

6 Q. I'm -- I'm just asking. I'm
7 not implying anything, just take the
8 words as -- so there's this aggressive --
9 so would you agree with me that there's
10 this new aggressive phase when you go
11 back and apply these enhanced
12 interrogation techniques to Abu Zubaydah?

13 A. Yes, it's more aggressive.

14 Q. And does he -- does he
15 immediately respond and provide
16 information?

17 A. No.

18 Q. Does he -- does he respond
19 in -- within 72 hours and provide
20 information?

21 A. I think he started providing
22 information within 72 hours.

23 Q. And in what regard did you
24 then dial it back? Because I'm reading

1 these cables and it looks like for
2 17 days, he's being waterboarded and put
3 in confined -- in a confinement box and
4 put in stress positions and walled. Am I
5 wrong about that?

6 MR. SMITH: Objection.

7 THE WITNESS: You're wrong
8 in the sense that we don't have
9 all of the cable traffic around
10 that time because there came a
11 point when Dr. Jessen and I said,
12 We're not going to continue doing
13 this. We don't think it's
14 necessary to continue to
15 waterboard Abu Zubaydah. And the
16 CIA COB initially said, No, no,
17 no, we're going to do this for
18 30 days. And then in conjunction
19 with headquarters, they continued
20 to order those sessions done in
21 30 days so -- for 30 days.

22 And at some point, we
23 brought the COS, who is the chief
24 of station for the country, the

1 most senior CIA person in that
2 country, we asked him to visit the
3 site, showed him the process and
4 asked him if he could intercede
5 with headquarters to get them to
6 discontinue the use of --
7 particularly of waterboarding, but
8 of enhanced interrogations.

9 And eventually we ended up
10 in a video conference with Jose
11 Rodriguez and a bunch of folks,
12 and prior to that, Bruce and I had
13 said, We're not going to continue
14 doing this, and what they said
15 was, Well, you guys have lost your
16 spine. I think the word that was
17 actually used is that, You guys
18 are pussies, there was going to be
19 another attack in America and the
20 blood of dead civilians are going
21 to be on your hands. If you won't
22 follow through with this, then
23 we're going to send somebody out
24 there who will.

1 And Bruce and I were
2 concerned that they would send
3 somebody out there who would do
4 the sorts of things that we had
5 recommended that they not do in
6 terms of frequency, intensity,
7 that sort of stuff. And so we --
8 we administered the pours for an
9 average of about eight seconds,
10 which resulted in more pours, but
11 more opportunities to breathe,
12 and -- whereas our concern was if
13 they sent somebody out from
14 headquarters, the DOG (sic) -- DOJ
15 guidance said you could do it for
16 20 to 40 seconds, and that would
17 be multiple applications at 20 to
18 40 seconds, and we thought that
19 was not necessary, you know, and
20 could actually interfere with --
21 and we talked it over with the
22 COB, and the COB -- Chief of Base,
23 the person who was actually in
24 charge, and we were working under

1 that person's authority and
2 control, and just told him we
3 weren't going to continue to do
4 this, and -- so eventually we had
5 this videoconference and they
6 said, Send your most skeptical
7 person, who was the person that
8 was sending those cables --
9 actually, I don't think they were
10 cables, I think they were phone
11 calls and emails, and somebody who
12 has enough throw weight at the
13 CIA, somebody who is a high enough
14 SIS guy, that when he said, We
15 don't need to do this anymore, he
16 would be believed back home, and
17 they did.

18 So there was a period of
19 days there where we didn't do any
20 waterboarding, you know.

21 And the way the
22 authorization was written -- this
23 has been a while, but the way the
24 authorization was written, you

1 could have waterboarded several
2 times a day, and I think we had
3 one waterboard session in the
4 afternoon in the normal using I
5 think walling or something, which
6 we actually were able to get away
7 from pretty quickly then.

8 Does that answer your
9 question?

10 BY MR. LUSTBERG:

11 Q. I think so. I have to just
12 unpack it a little bit.

13 First of all, let's talk
14 just a bit about waterboarding.

15 A. Okay.

16 Q. In your book you discuss how
17 you actually forgot about waterboarding
18 and then the night before you made the
19 list, suddenly it came to you.

20 Do you remember that?

21 A. Yeah, it was the night
22 before -- I don't if it was the night
23 before we made the list, but it was the
24 night before one of those meetings that

1 we had. I mean, I could have the timing
2 off in the book or --

3 Q. And --

4 A. But still I was thinking
5 that I wasn't going to be the guy doing
6 it.

7 Q. At that time, you didn't
8 think you would be the guy doing it.

9 Why is that important? I
10 mean, you're recommending waterboarding
11 and you thought that that was -- I mean,
12 you thought waterboarding was a bad --
13 was a painful thing, right?

14 A. No, I thought -- I thought
15 it could be done safely. I thought he
16 would be uncomfortable. It sucks, you
17 know. I don't know that it's painful.

18 Q. Well, I saw an interview --

19 A. But it's distressing.

20 Q. I saw an interview with you
21 where you said it was -- as between
22 somebody breaking their leg and somebody
23 being waterboarded, most people would
24 chose to have their leg broken.

1 Do you remember saying that
2 in an interview?

3 A. No.

4 Q. Okay. Well, let's -- we can
5 play that.

6 A. It might have been
7 hyperbole. I mean, if you've got an
8 interview of me saying it, I'm willing to
9 concede that I could have said it, but it
10 sounds like hyperbole to me.

11 Q. So you exaggerated when you
12 said that --

13 A. I mean --

14 Q. -- if it's hyperbole?

15 A. I mean --

16 Q. Do you want to see the clip?

17 MR. SMITH: Yes.

18 THE WITNESS: Okay. Show me
19 the clip.

20 (Video played.)

21 THE WITNESS: Okay. Now,
22 you're using the word painful, I'm
23 using the word distressing.

24 BY MR. LUSTBERG:

1 Q. Okay.

2 A. The two things are not
3 synonymous in my mind.

4 Q. Okay. So you say that it
5 would be less distressing to break your
6 leg than to be waterboarded?

7 A. Well, I think I said most
8 people.

9 Q. All right. Let's play it
10 again.

11 (Video played.)

12 THE WITNESS: Okay. Right.
13 I've broken bones. For me it was
14 not -- I didn't like being
15 waterboarded. It wasn't
16 particularly painful, but it was
17 distressing.

18 BY MR. LUSTBERG:

19 Q. It's more distressing than
20 breaking your leg you're saying?

21 A. That was hyperbole.

22 Q. Okay. I want to -- I want
23 to -- take a look at page 88 of your
24 manuscript, please.

1 A. Sure.

2 Q. And the part I want to ask
3 about is right at the top where it
4 says -- on page 88.

5 A. Okay.

6 Q. I'm sorry, did I not give
7 you the page? Page 88.

8 "After about 72 hours," this
9 is when you come back and begin the --
10 this more aggressive phase, "after about
11 72 hours, Abu Zubaydah gradually started
12 answering our questions, but he did more
13 than that," and you go on to say, "Over
14 time he provided information."

15 A. Right.

16 Q. Why was he waterboarded
17 after he started cooperating?

18 A. You'd have to ask the CIA
19 why they wanted to continue doing that.
20 We -- Bruce and I recommended to them
21 that they dial that back, that they not
22 do that.

23 Q. I could be wrong, but I
24 thought I read in your book that you --

1 there was only one time that you
2 waterboarded him that you didn't want to,
3 that is to say, there was only one time
4 when you said you would waterboard him
5 one more time and -- am I right about
6 that?

7 A. Yes.

8 Q. Okay.

9 A. You're wrong about how you
10 characterized it.

11 Q. Okay. Just tell -- you
12 know, you tell it like it is then.

13 A. Well, we didn't think it was
14 necessary after about 72 hours. We knew
15 he was still withholding information, but
16 we thought social influence stuff and
17 walling or something like that would
18 probably get it. Or at least that's what
19 we surmised. I don't know -- you can't
20 say you knew, but you know, we surmised
21 that.

22 The CIA made it clear that
23 they were going to continue
24 waterboarding, and if we didn't do it,

1 somebody else was.

2 Q. Okay. So it's your
3 testimony that after 72 hours, you
4 recommended ceasing the waterboarding; is
5 that correct?

6 A. Yeah. Well, I don't know if
7 we recommended it right at 72 hours, but
8 it was in that first few days after he
9 began to cooperate.

10 Q. And would you agree that he
11 was waterboarded for 17 days?

12 A. No.

13 Q. Okay. How long was he
14 waterboarded for?

15 A. I'd have to see the cable
16 traffic to refresh my -- my memory, but
17 there were several days there when they
18 gave us permission to stop while they
19 were waiting for that team to come out,
20 right, and then that's when Bruce and I
21 said, We will waterboard him one more
22 time for you to watch it, but we're not
23 going to do it again.

24 Q. So you agreed to waterboard

1 him one more time that they could watch,
2 right?

3 A. So they could do their
4 assessment of whether or not they felt it
5 was necessary.

6 Q. And you wanted them to be
7 actually present in the room for that,
8 right?

9 A. Yes.

10 Q. And why is that?

11 A. Because I didn't want them
12 watching it on TV, I wanted them to see
13 what it was really like, you know? I
14 wanted them to hear the noises that he
15 made, and you know, see the water, and
16 you know, see the -- see the whole
17 incident. Because in my mind it's easy
18 for the people who have power and make
19 those decisions, to make those decisions
20 when they're at arm's length. It's a lot
21 harder for them to do it when they're
22 right there with you.

23 Q. Because being present, you
24 can see how much worse it is than just

1 looking at it on a video, right, on a
2 video screen?

3 A. Well, yes, how much more --
4 how much worse it is in terms of
5 distress, yes.

6 Q. Uh-huh. Uh-huh.

7 A. I don't think you're getting
8 enough notes.

9 Q. Yeah, I'm with you
10 100 percent.

11 Did you -- did you say
12 that -- did you ever describe
13 waterboarding as being, quote, unquote,
14 horrific?

15 A. Probably. I don't
16 specifically remember, but I -- I found
17 it distressing, you know?

18 Q. In your book you describe it
19 as --

20 A. In fact, I might have said
21 that to an attorney that wanted me to
22 waterboard her.

23 Q. Maybe. It seems like you've
24 enjoyed waterboarding attorneys.

1 A. Well, it's more of a prank
2 than anything else. It's not that I
3 enjoyed it, it's that -- it's that they
4 asked me to do it, and it seems like a --
5 you know, it seemed --

6 Q. Yeah. I saw in your book
7 where you said, you know, "Waterboarding
8 two attorneys in one day is a good
9 start."

10 A. I did say that.

11 Q. In your book you say that
12 waterboarding is, quote, Scary and
13 uncomfortable but not painful.

14 Do you agree with that?

15 A. I don't think -- I didn't --
16 I experienced it myself. I didn't find
17 it painful in the sense of pain.

18 Q. In the -- in the cables, Abu
19 Zubaydah cries and whimpers and
20 eventually completely capitulates to
21 waterboarding. If it's just scary and
22 uncomfortable but not painful, why is he
23 crying?

24 MR. SMITH: Objection.

1 THE WITNESS: He -- I know
2 that he taught resistance training
3 because he told me, and I know
4 some of the resistance training
5 and strategies that he told me,
6 and I know what I would do if I
7 were in his situation and I would
8 be whining and crying and moping.
9 Some of them I think were real,
10 some of them were fake.

11 But you know what I hear
12 when someone is making a noise
13 like that? I hear a clear airway,
14 which is what we're supposed to
15 really monitor, because what,
16 mattered is whether or not he can
17 breathe in the -- in the moment.
18 Do you know what I mean?

19 Long-term there were some
20 things that matter. But we've got
21 a psychologist and a physician and
22 other people out there monitoring
23 these things to be sure that they
24 don't go too far.

1 And so it's clear to me that
2 I really wanted those folks to --
3 I wanted them to hear what was
4 going on in the room.

5 BY MR. LUSTBERG:

6 Q. I mean, my question had to
7 do with whether -- so your testimony is
8 that when he's whimpering and crying that
9 way, that that's a resistance technique,
10 at least some of the time?

11 A. Some of the time, yes; some
12 of the time not.

13 Q. Uh-huh. Okay. And how
14 about when he would vomit after
15 waterboarding, was that also feigned?

16 A. He only vomited one time.

17 Q. Was it feigned?

18 A. Oh, no. The physicians had
19 said that you had to give him 12 hours
20 between the time that he ate his beans
21 and rice and when you waterboarded him,
22 this was early in the process, and the
23 COB waited 12 hours and then we
24 waterboarded him and he threw up the

1 beans and rice.

2 Q. I want to go back one more
3 second to the SERE program and its
4 application here. And let me show you
5 Exhibit --

6 MR. LUSTBERG: This is
7 number what, 18?

8 THE REPORTER: 18, yup.

9 (Exhibit No. 18, Document,
10 Bates USA 1770 through 1172, was
11 marked for identification.)

12 BY MR. LUSTBERG:

13 Q. This is a cable from July
14 2002. You can see that, right?

15 A. I can see that it's a cable
16 from July 2002, yes.

17 Q. I want to direct your
18 attention to the bottom of the page.

19 A. That page.

20 Q. Uh-huh. And here's -- and
21 it says this:

22 "We are a nation of laws and
23 we do not wish to parse words."

24 By the way, have you ever

1 seen this before?

2 A. No.

3 Q. You've never seen it before
4 this minute?

5 A. No, I've seen it when the
6 Government provided it, but I didn't see
7 it in real time when it was written.

8 Q. Okay.

9 "A bottom line in
10 considering the new measure" -- "new
11 measures proposed for use at {blank}, is
12 that subject is being held in solitary
13 confinement against his will, without
14 legal representation as an enemy of our
15 country, our society and our people.
16 Therefore, while the techniques described
17 in HQ's meetings and below are
18 administered to student volunteers in the
19 US in a harmless way with no measurable
20 impact on the psyche of the volunteer, we
21 do not believe we can assure the same
22 here for a man forced through these
23 processes and who will be made to believe
24 this is the future course of the

1 remainder of his life.

2 "Station {blank} COB and
3 {blank} personnel will make every effort
4 possible to ensure that subject is not
5 permanently physically or mentally
6 harmed, but we should not say at the
7 outset of this process that there is no
8 risk."

9 Do you agree with that?

10 A. I don't agree or disagree
11 with it. It's what the person wrote. I
12 mean, it's what they wrote and it speaks
13 for itself.

14 Q. Okay.

15 A. I agree --

16 Q. I'm sorry.

17 A. No, I'm done.

18 Q. Okay. Was this thought ever
19 communicated to you by anybody, that the
20 SERE program -- that conditions of the
21 SERE program are so different than the
22 conditions that Abu Zubaydah was under
23 that the fact that this was potentially
24 harmless or that this -- I guess you said

1 it could be harmful, that it was
2 potentially harmless in the SERE -- in
3 the context of the SERE program might not
4 mean that it would be harmless in the --
5 in the context of somebody like Abu
6 Zubaydah?

7 A. I'm trying to recall and I
8 don't recall that conversation.

9 Q. So you don't recall anybody
10 at any time ever distinguishing between
11 the application of these techniques in
12 the SERE context in contrast to the
13 application of these techniques to
14 somebody who was there involuntarily and
15 did not have a safe word, for example?

16 A. Well, the first time you
17 asked the question, you asked me about
18 this paragraph. This paragraph is
19 written in a way that is -- the
20 connotations of the words he used, you
21 know, makes it seem to me like what he's
22 trying to -- or she I think -- it's a he
23 I think that wrote this.

24 Q. Do you know who wrote this?

1 A. Yes.

2 Q. Okay. I don't know if I can
3 ask who wrote this. Can I ask who wrote
4 this?

5 A. You can ask, but I can't
6 answer.

7 MR. WARDEN: You can ask,
8 but I'll give an instruction.

9 BY MR. LUSTBERG:

10 Q. So I'm asking --

11 MR. WARDEN: You are asking?

12 BY MR. LUSTBERG:

13 Q. Who wrote it? Do you know
14 who wrote it?

15 A. Yes.

16 MR. WARDEN: We instruct the
17 witness not to answer that
18 question on the grounds of
19 classified information and
20 privilege.

21 MR. LUSTBERG: I understand.

22 MR. SMITH: Just as a point
23 of clarification, that was a yes
24 or no question. Right? Do you

1 know who wrote it.

2 MR. WARDEN: I thought he
3 answered yes. I thought that was
4 what the question was.

5 MR. SMITH: Did you answer
6 yes?

7 THE WITNESS: Yes.

8 MR. SMITH: Okay.

9 MR. LUSTBERG: Right. But
10 the next question was who, and
11 that's what Andrew is objecting
12 to.

13 MR. SMITH: Okay. Got it.

14 BY MR. LUSTBERG:

15 Q. Take a look at paragraph 5
16 on page 2 of this document.

17 A. Okay.

18 Q. It says:

19 "Effective use of the
20 waterboard overwhelms the individual's
21 ability to resist."

22 Do you believe that's true?

23 A. It can. I mean, I think
24 prior to KSM, I would have thought with

1 near certainty; after KSM, I don't know.

2 Q. In the middle of that
3 paragraph, it says:

4 "IC SERE psychologists are
5 not aware of any specific statistics
6 regarding long-term mental health
7 outcomes or consequences from use of
8 waterboarding in training."

9 Do you see that?

10 A. Yes.

11 Q. IC SERE psychologists in
12 these cables typically describes you and
13 Dr. Jessen?

14 A. Yes.

15 Q. Do you remember being asked
16 whether you were aware of whether there
17 were any significant long-term mental
18 health consequences of waterboarding?

19 A. I don't remember
20 specifically being asked, but it seems
21 like the sort of topic someone would have
22 asked me about. I don't remember a
23 specific instance, but it seems
24 reasonable that they would have asked me

1 if I knew of any.

2 Q. And if they had asked you if
3 you knew of any, what would you have
4 answered?

5 A. That I didn't know --
6 specifically what it says here, any
7 specific -- any long-term mental health
8 outcomes or consequences from the use of
9 the waterboarding in training.

10 Waterboarding was one of
11 those things I asked about when we were
12 doing the -- when we were doing the study
13 looking at injury rates. So I asked
14 about the use of water and waterboarding
15 specifically and was told both by the
16 Navy and by JPRA that they didn't have
17 any long-term statistics suggesting there
18 were long-term mental health outcomes
19 that were associated with it.

20 Q. And on the next page, it
21 says:

22 "The JPRA SERE
23 psychologists" -- I'm sorry, going a
24 sentence down. It says:

1 "Speaking directly to the
2 issue of inducing severe mental pain or
3 suffering, any physical pressure applied
4 to extremes can cause severe mental pain
5 or suffering, including the use of loud
6 music, sleep deprivation, controlling
7 darkness and light, slapping, walling, or
8 the use of stress positions taken to
9 extreme can have the same outcome."

10 Do you agree with that?

11 A. I agree with the next
12 sentence, too.

13 Q. That "The safety of any
14 technique lies primarily in how it is
15 applied and monitored" --

16 A. Yes, sir.

17 Q. -- is that right? Okay.
18 Bear with me for one moment.

19 MR. LUSTBERG: Can we just
20 take a quick break?

21 MR. SMITH: Sure.

22 THE VIDEOGRAPHER: We are
23 now off the video record. The
24 time is 4:33.

1 (Recess.)

2 THE VIDEOGRAPHER: We are
3 now back on the record. The time
4 is 4:45 PM.

5 BY MR. LUSTBERG:

6 Q. Dr. Mitchell, did you regard
7 the interrogation of Abu Zubaydah as a
8 success?

9 A. Yes.

10 Q. And you wrote, didn't you,
11 that it should be used as a template for
12 future interrogations?

13 A. No.

14 Q. Okay. Did you say -- you
15 did not write that?

16 A. I did not write that.

17 Q. Okay. Let me show you
18 Exhibit 19.

19 (Exhibit No. 19, Document,
20 Bates USA 2019 through 2023, was
21 marked for identification.)

22 BY MR. LUSTBERG:

23 Q. So just look at the -- the
24 section -- scribings on the last page.

1 A. Okay.

2 Q. So first of all, did you
3 write this?

4 A. No.

5 Q. Okay. So if the Senate
6 Select Intelligence Committee said that
7 you wrote it, that's incorrect?

8 A. That's incorrect.

9 Q. Okay. You're aware that
10 they said that you wrote this?

11 A. They could have asked me in
12 an interview but they chose not to.

13 Q. Okay. But my question was:
14 Were you -- are you aware that they --
15 they say that you wrote this?

16 A. No.

17 Q. Okay. Let's --

18 A. I mean, I believe you.
19 There's no reason to delay things by
20 doing that.

21 Q. Okay. Nonetheless, where it
22 says:

23 "The aggressive phase should
24 be read" -- "should be used as a template

1 for future interrogation of high value
2 captives," do you agree with that?

3 A. It depends on whether the
4 high value captive is cooperating or not.
5 If they're cooperating, I wouldn't
6 suggest you use it.

7 Q. I understand. So for
8 somebody who is not cooperating, your
9 view -- is your view that the program
10 that you deployed at -- with Abu Zubaydah
11 was appropriate for use with others?

12 MR. SMITH: Objection.

13 THE WITNESS: You refer to
14 it as a program.

15 BY MR. LUSTBERG:

16 Q. Uh-huh.

17 A. You know? I don't think it
18 was a program at that particular point.
19 You know, it was -- it was -- I helped
20 them craft what to do. And I may have
21 used the word program earlier. I recall
22 saying that to you. Craft what to do for
23 Abu Zubaydah.

24 It was certainly one of the

1 options they had if they chose to do it,
2 and so they could certainly -- whether
3 it's a template or not -- if by template
4 they mean more than just the use of EITs,
5 they also mean the social influence
6 strategies that we applied, if they
7 understood what we did in the context of
8 how we did it, then I would agree with
9 it.

10 If all they're talking about
11 is just the use of EITs until somebody
12 talks to them, I wouldn't agree with it.

13 Q. Okay. Would you agree that
14 it would be a template for other
15 circumstances in which somebody was --
16 where an aggressive phase was going to be
17 used?

18 MR. SMITH: Objection.

19 BY MR. LUSTBERG:

20 Q. Do you understand my
21 question?

22 A. I do. I think I answered
23 it.

24 Q. Okay. I'm not sure -- I'm

1 not sure you answered just that question,
2 so if you don't mind answering it again?

3 A. Ask it again?

4 Q. Okay. You got it. So for a
5 detainee who is not responding to, you
6 know, the -- you know, the sort of usual
7 questioning and so forth, and where an
8 aggressive phase is required, would you
9 agree that what you created --

10 A. I didn't create it.

11 MR. SMITH: Hold on. You've
12 got to let him finish, let me
13 object.

14 THE WITNESS: Okay.

15 MR. SMITH: And then you can
16 answer.

17 THE WITNESS: Okay.

18 MR. SMITH: Okay? So let's
19 go back to the question.

20 Can you read where we were
21 in the question?

22 MR. LUSTBERG: Actually, let
23 me -- let me withdraw the question
24 and start over.

1 MR. SMITH: Question

2 withdrawn.

3 MR. LUSTBERG: Uh-huh.

4 BY MR. LUSTBERG:

5 Q. For a -- for a detainee who
6 was uncooperative, would enhanced
7 interrogation techniques that you drafted
8 be -- would you view that as a template
9 for interrogating them?

10 MR. SMITH: Let me just
11 object. Are we talking about high
12 value detainees? Because that's
13 what Exhibit No. 19 -- or are we
14 talking about detainee generally.

15 MR. LUSTBERG: Well, it --
16 we can -- this talks about high
17 value captives. But -- so he
18 can -- he can -- you know, that's
19 respectfully suggesting the
20 answer, but okay.

21 MR. SMITH: I don't think it
22 is. I just want to make sure we
23 have a clear record here.

24 BY MR. LUSTBERG:

1 Q. So let's talk about high
2 value captives.

3 A. Okay. What about them?

4 Q. High value captives who are
5 not -- who are resisting, do you believe
6 that you created a template for --

7 A. No.

8 Q. -- how to -- you do not --
9 you did not?

10 A. You keep using the word
11 created. Created means to bring into
12 existence. A contractor, as these men
13 know, can do -- bring nothing into
14 existence inside of the CIA. A green
15 badger has zero capability of creating
16 something inside of the CIA. So if the
17 word create is the word that you're
18 interested in, I'm not the creator of
19 that.

20 Q. You suggested a series of
21 enhanced interrogation techniques that
22 were adopted by the CIA, right?

23 A. That part is true.

24 Q. Okay. And do you disagree

1 that it was used as a template for -- for
2 other interrogations of high value
3 captives?

4 A. The assumption that you're
5 making -- no, I don't agree.

6 Q. Why don't you agree?

7 A. Because the assumption that
8 you're making is that what we did
9 consisted entirely of the EITs. You're
10 leaving out all of the social influence
11 stuff that we did. So if -- if your
12 question includes the fact that we're,
13 you know, using these EITs to elicit
14 emotions, right, and then using social
15 influence to move them on, then I would
16 agree that for high value detainees, if
17 they were resisting and not responding,
18 you know, to social influence measures,
19 then the CIA could consider using that.
20 I don't know about template.

21 Q. Well, you're aware that --
22 that, for example, some or all of these
23 EITs were used at Cobalt, right?

24 A. I only am aware of that

1 because of the cable traffic after the
2 fact.

3 Q. Uh-huh. Uh-huh. Well, you
4 were present for at least some
5 interrogations at Cobalt, right?

6 A. No -- nothing that even
7 resembled EITs occurred while I was
8 there. I was present and observed one,
9 what I would call a custodial debriefing,
10 what they called an interrogation,
11 because no -- it was just question and
12 answer, question and answer. So I didn't
13 see any kind of coercive measure being
14 used at all with him.

15 Q. Uh-huh. You never saw any
16 walling or stress positions, or what
17 else? Let's take those, used at Cobalt?

18 A. No. I visited Cobalt one
19 time.

20 Q. What was the -- what was
21 that time?

22 A. November.

23 Q. Pardon me?

24 A. Sometime about November

1 the 12th, 2002.

2 Q. And do you remember who the
3 detainee was that you were observing?

4 A. I was there primarily for
5 al-Nashiri.

6 Q. Uh-huh. You said before
7 that you were aware from -- from cable
8 traffic that these -- some of these
9 enhanced interrogation techniques were
10 used on other high value detainees,
11 right?

12 MR. SMITH: Objection.

13 BY MR. LUSTBERG:

14 Q. Or did I misunderstand that?

15 A. I was aware because I used
16 them on other high value detainees. I
17 don't remember seeing cable traffic in
18 real time about that. I'm aware of it
19 after the fact when the Government
20 provides the documents to us. That's the
21 cables I'm referring to.

22 Q. Okay. Before we move off
23 that template issue.

24 MR. LUSTBERG: Can I have

1 exhibit --

2 (Exhibit No. 20, Fax,
3 Generic Description of the
4 Process, Bates DOJ OLC 1126
5 through 1144, was marked for
6 identification.)

7 BY MR. LUSTBERG:

8 Q. You can see that,
9 Dr. Mitchell, this is a fax dated
10 December 30th, 2004.

11 A. Okay.

12 Q. You can see it says -- it's
13 called a Generic Description of the
14 Process?

15 A. Okay.

16 Q. Take a look at it and see if
17 it's the program that you at least
18 assisted in creating?

19 MR. SMITH: Objection.

20 THE WITNESS: I --

21 BY MR. LUSTBERG:

22 Q. Were you the architect of
23 this?

24 A. Not this.

1 Q. Uh-huh. What were you the
2 architect of?

3 A. I don't really think I was
4 the architect of anything. I know it
5 says that on that.

6 Q. Uh-huh. Yes. When you
7 said, "It says that on that" -- yeah, the
8 cover page of your manuscript says: "By
9 James E. Mitchell, Ph.D., Architect of
10 the CIA interrogation program."

11 It says that, right?

12 A. Yes.

13 Q. What does that mean?

14 A. It's a -- it was a working
15 document. It was the -- it was written
16 by probably Bill Harlow.

17 When we put this thing
18 together, I had to send it to the CIA.
19 We were dealing with individual chapters
20 and he pieced everything together and put
21 a cover paper on it, and because they had
22 called me that a lot in the press, he
23 stuck that on there, and when I paid
24 attention to it, I asked him to take it

1 off.

2 Q. Uh-huh. So it's -- so it's
3 not there on the final?

4 A. It's not there on the final
5 or in the book.

6 Q. But when it went to CIA for
7 review, it said, "Architect of the CIA
8 interrogation program"?

9 A. It said whatever that said.

10 Q. Right. And did you just not
11 notice that at the time?

12 A. You know, I don't -- I
13 didn't pay attention to the cover page,
14 and you know, I didn't -- I didn't pay
15 attention to it.

16 Q. Okay. Well, let me ask --
17 let me ask you another thing. Let's look
18 at the CIA's response to the report.

19 (Exhibit No. 21, CIA
20 Comments on the Senate Select
21 Committee on Intelligence Report
22 on the Rendition, Detention and
23 Interrogation Program, was marked
24 for identification.)

1 BY MR. LUSTBERG:

2 Q. Let me direct your -- you've
3 seen this before?

4 A. I saw it after it was
5 released.

6 Q. Uh-huh. In -- and I think
7 you mentioned before that you -- at least
8 there were parts of it that you agreed
9 with wholeheartedly, right?

10 A. I'm sure I said something
11 like that, yes.

12 Q. Okay. Take a look at page
13 25.

14 A. Uh-huh.

15 Q. The second bullet point, it
16 says:

17 "As discussed in our
18 response to Conclusion 17, we agree that
19 CIA should have done more from the
20 beginning of the program to ensure there
21 was no conflict of interest, real or
22 potential, with regard to the contractor
23 psychologists who designed and executed
24 the techniques while also playing a role

1 in evaluating their effectiveness."

2 So I want to talk about each
3 of those things.

4 A. Sure.

5 Q. This is a reference to you
6 and to Dr. Jessen, right, the contractor
7 psychologists, right?

8 A. Yes.

9 Q. Okay. And it describes you
10 as having designed and executed the
11 techniques. You understand that to mean
12 the EITs, right?

13 A. Yes.

14 Q. Okay. And so do you
15 disagree with the characterization that
16 you designed and executed the EITs?

17 A. I didn't design walling.
18 Walling existed for years; I didn't
19 design attention grasp, that's existed
20 for centuries; I didn't design the stress
21 positions, they've existed since 1951 or
22 '52; I didn't design sleep deprivation,
23 that's been around as long as humans have
24 been, you know --

1 Q. Sleepless.

2 A. Yeah. I mean, so I don't
3 think I designed those stressors that
4 came to be called EITs.

5 Q. So you did -- what you're
6 saying is you didn't design each one of
7 those, you didn't make them up, but what
8 you did is you -- you know what they mean
9 by this, that you designed the list of
10 them as means of interrogation, right?

11 MR. SMITH: Objection.

12 BY MR. LUSTBERG:

13 Q. That's what they mean here,
14 don't they?

15 MR. SMITH: Objection.

16 THE WITNESS: I didn't
17 design a list, I provided a list.

18 BY MR. LUSTBERG:

19 Q. Uh-huh. Do you think the
20 CIA is wrong when it describes you as
21 having designed and executed the
22 techniques?

23 A. I think what they're doing
24 is conflating -- looking back in time and

1 conflating the whole thing. From -- I
2 can tell you only from my perspective. I
3 can't tell you what the CIA was thinking,
4 all right?

5 From my perspective they
6 asked me to apply a skill set that I had
7 to a situation. I applied that skill
8 set, they decided they wanted more of it,
9 and then they put together a program
10 trying to replicate the skill set in
11 total that Dr. Jessen and I had used.

12 The problem with that, in my
13 view, is that they focused on the EITs
14 and not on some of the other things.

15 Q. Okay. So with regard to the
16 specific -- withdrawn.

17 So with regard to the EIT
18 aspect of the program, those came --
19 those were designed and executed -- that
20 list at least was designed and executed
21 by you and Dr. Jessen; is that correct?

22 MR. SMITH: Objection.

23 THE WITNESS: You keep using
24 the word designed.

1 BY MR. LUSTBERG:

2 Q. I'm using -- that's --

3 A. I provide -- I'm not
4 accountable for what the CIA writes, you
5 know?

6 Q. Uh-huh.

7 A. I gave them a list. Whoever
8 wrote this document decided to use the
9 word designed. If -- I would suggest you
10 talk to them about what they meant by
11 that because I don't -- I don't -- I
12 don't know what's in that person's mind.

13 Q. Okay. It also says:

14 "While also playing a role
15 in evaluating their effectiveness."

16 What role did you play in
17 evaluating the effectiveness of the
18 techniques?

19 A. You know, I've been trying
20 to think of that because I've seen that
21 written in your complaint. I know
22 they've asked me whether or not I -- I
23 thought some of the techniques were
24 effective in overcoming the resistance

1 strategies, but I'm not the best guy to
2 decide whether or not they're effective
3 for producing actual intelligence.

4 We had with us the entire
5 time the subject matter experts who are
6 drafting the intel requirements and
7 interpreted what he said in the larger
8 matrix of what they needed to know.
9 Those are the people who are experts on
10 whether or not he's producing actual
11 intelligence, not me, and whether or not
12 they are effective, and not me, and I
13 relied on them to tell me if from their
14 perspective it was effective.

15 From my perspective as the
16 guy asking the questions, they're
17 effective if what occurred was he
18 entertained a question, he answered the
19 question, he appeared to not be using
20 sophisticated or even clumsy resistance
21 to interrogation techniques while he
22 answered the question, he provided more
23 full and complete details, he provided
24 details beyond what the question asked.

1 In my mind, that's how I
2 would judge the subject of being
3 effective. And so I'm certain -- I don't
4 have a specific recollection, but I'm
5 certain they probably asked me that.

6 Q. Okay. Is it correct or
7 incorrect that you played a role in
8 evaluating their effectiveness, they're
9 effectiveness being the techniques? Did
10 you play a role in evaluating their
11 effectiveness?

12 A. I'm sure, yes.

13 Q. Okay. What was that role?

14 A. I just told you. My
15 recollection is they would have asked me
16 about my opinion as to whether or not the
17 techniques were effective. I do not have
18 any recollection of me writing any kind
19 of a report or evaluation or
20 systematically looking at that. I think
21 they brought in high level people from
22 the outside to take a look at that sort
23 of stuff. I just don't -- I'm sure they
24 asked my opinion and I'm sure I provided

1 it.

2 Q. And -- and when you say
3 you're sure you provided it, do you
4 remember what your opinion was?

5 A. It would be different for
6 different detainees --

7 Q. Right.

8 A. -- in different settings, so
9 I don't know.

10 Q. Did you recommend that some
11 of the techniques be emphasized more than
12 others as time went along?

13 A. I -- I thought walling and
14 sleep deprivation were the two that they
15 should primarily focus on.

16 Q. And you -- and you expressed
17 that to them, right?

18 A. In, I can't remember, like
19 2005 or 2006, whenever they were kind of
20 restructuring the program.

21 Q. So when they were
22 restructuring the program, you provided
23 your recommendation for how the program
24 ought to be restructured, is that what

1 you're saying?

2 A. No, I provided my
3 recommendation into their deliberations
4 about how the program should be
5 restructured.

6 Q. You provided your
7 recommendations into their deliberations
8 about how the program should be
9 restructured.

10 What were those -- what was
11 your recommendation based upon?

12 A. My recommendation was based
13 on my experience.

14 Q. And your experience in -- in
15 executing the techniques?

16 A. My experience in applying
17 EITs.

18 Q. Uh-huh. So based upon your
19 experience in applying EITs, you
20 recommended that there be a change -- a
21 change in the program, an emphasis on
22 walling and sleep deprivation; is that
23 right?

24 A. No.

1 Q. Okay. Tell me what's wrong
2 with that.

3 A. You said I recommended a
4 change in the program.

5 Q. You didn't?

6 A. They were changing the
7 program. The change was already
8 occurring.

9 Q. Okay.

10 A. I didn't recommend that they
11 change the program.

12 Q. Uh-huh. Okay. So are you
13 saying you never -- you never recommended
14 that they change the program?

15 A. I participated in their
16 discussions about changing the program,
17 but the recommend -- the decision to
18 change it and the decision to look at
19 whether or not you're changing it came
20 from CIA headquarters, not from me.

21 Q. I understand that the
22 decision -- you've been very clear that
23 you don't make the decisions, that they
24 do. But the question I have is, let's

1 break it down: First, did you, based
2 upon your experience, recommend that the
3 program be changed?

4 A. Not changed.

5 Q. Okay. So -- so you never --
6 you never recommended that the program be
7 changed, all you did was when it had
8 already been decided that it be changed,
9 you made your recommendations as to how
10 it should be changed; is that what you're
11 saying?

12 A. That's my recollection. If
13 you've got a document that would refresh
14 my memory, I'd appreciate seeing it.

15 Q. Did you ever do any kind of
16 review of what other interrogators were
17 doing?

18 A. No.

19 Q. Did you ever gather
20 information about what was happening in
21 other interrogations?

22 A. No.

23 Q. Okay. Just a couple other
24 things.

1 In -- in his -- let me show
2 you -- I just want to show you a couple
3 other documents.

4 (Exhibit No. 22, Document,
5 Bates USA 1629 through 1630, was
6 marked for identification.)

7 BY MR. LUSTBERG:

8 Q. Let me show you what's been
9 marked as Exhibit 22, and directing your
10 attention to the third paragraph on the
11 first page.

12 So first of all, this
13 appears to be a cable. I don't see a
14 date on it. Have you ever seen this
15 before?

16 A. When they produced it for
17 us, but I don't think this is a cable.

18 Q. Okay. What is it?

19 A. It's looks like a memo.

20 Q. Okay. It says:

21 "Ph.D. psychologists Drs.
22 Mitchell and Jessen played a significant
23 and formative role in the development of
24 CTS's detention and interrogation program

1 and continue to lead in the development
2 of additional psychologically-based
3 strategies to collect threat and
4 actionable intelligence from HVDs in a
5 manner that does not violate any federal
6 law, the US Constitution or any US treaty
7 obligation."

8 Do you see that?

9 A. Yes.

10 Q. Okay. Do you agree that you
11 played -- you and Dr. Jessen played a
12 significant and formative role in the
13 development of CDC's detention and
14 interrogation program?

15 A. Yes.

16 Q. And did you agree -- do you
17 agree that you continued to -- whenever
18 this was, I mean, I don't know when it
19 was, to lead in the development of
20 additional psychologically-based
21 strategies to collect threat and
22 actionable intelligence and so on?

23 A. I, in fact, wrote an entire
24 interrogation manual that uses no

1 coercion at all, which they collected
2 from my house, which I wanted to produce
3 to you guys.

4 Q. Uh-huh. We'll come back to
5 what was collected from your house.

6 So -- so you're saying that
7 you did continue to lead in the
8 development of additional
9 psychologically-based strategies?

10 A. Yes.

11 MR. SMITH: So we're clear,
12 in the manner contemplated.

13 MR. LUSTBERG: Yeah, I
14 didn't finish the sentence.

15 THE WITNESS: Right. Within
16 the whole context of the sentence,
17 blah, blah, blah. Yeah.

18 BY MR. LUSTBERG:

19 Q. But again, you're
20 comfortable with the idea that you played
21 a significant and formative role in the
22 development of CTC's detention and
23 interrogation program?

24 A. I played a role in it, and I

1 provided a list that they eventually
2 ended up deciding to use, and since they
3 tried to replicate what Dr. Jessen and I
4 were doing by developing their own
5 training program, I would say yes.

6 Q. Okay. So you were aware
7 that they replicated what you and
8 Dr. Jessen had done in the form of the
9 training program that we looked at
10 earlier?

11 A. I -- that's not a training
12 program.

13 Q. Okay.

14 A. Right?

15 Q. So talk about the training
16 program. I'm sorry, what were you --
17 what was the training program you were
18 referring to?

19 A. I was referring to their,
20 what I consider -- in November 2002, they
21 had -- they ran their first interrogation
22 training course, and that course was put
23 together by a SERE guy, a SERE instructor
24 who -- a retired SERE instructor who was

1 a CIA officer on loan to OTS and then
2 essentially CTC from CIA university. He
3 put that program together I think working
4 with a man who eventually became the
5 chief interrogator for RDG, and they put
6 that program together and they ran that
7 program until the summer of 2003.

8 I think what they were
9 trying to do was replicate the successes
10 that Dr. Jessen and I had, and I think
11 they, again, overemphasized the use of
12 EITs. But that's just my personal
13 opinion.

14 Q. Were you involved in the
15 training program?

16 A. There were several efforts
17 to get me involved in the training
18 program, and at one point in 2003, I sat
19 through the training program,
20 participated in the training program,
21 meaning as a student, I sat through it,
22 but I objected to it because he was
23 teaching stuff that -- the chief
24 interrogator for RDG was teaching stuff

1 that wasn't authorized by the Justice
2 Department. I raised an objection. He
3 told me to mind my own fucking business.
4 I called his boss, his boss came out and
5 told him to knock that stuff off.

6 And so I was familiar with
7 what he was teaching and I was familiar
8 with what the other two folks were
9 teaching, and I can tell you who they are
10 if these guys don't object and maybe you
11 can talk to them.

12 And then my recollection is
13 there had been some efforts to get Bruce
14 and I involved in the training program,
15 and there had even been some discussion,
16 because we were trying to reduce the
17 amount of time we were doing
18 interrogations because we just -- we
19 thought they had trained all these
20 interrogators and we didn't think it was
21 necessary for us to still be doing
22 interrogations.

23 Q. Okay. Did you -- so you
24 actually didn't do any training in the --

1 in the training program?

2 A. Not -- when they ran their
3 training program in November, I think was
4 at Cobalt.

5 Q. You were at Cobalt?

6 A. I think so.

7 Q. And so the answer to that
8 is, no, you did not -- you were not a
9 trainer?

10 A. To the best of my -- oh, no.

11 Q. And did you have any input
12 into the curriculum for the training
13 program?

14 A. I don't recall seeing any of
15 the curriculum for the training program.

16 Q. Mr. Rizzo, whom I think
17 we've discussed, describes you and
18 Dr. Jessen in his book as the original
19 architects of the program. What's your
20 reaction to that?

21 A. You'd have to ask Mr. Rizzo
22 what he meant by that.

23 Q. Oh, no. Okay. I'm asking
24 do you disagree with that?

1 A. I disagree with the -- the
2 suggestion that we were architects
3 because we weren't breaking new ground,
4 you know, in the sense that architects
5 do.

6 What we did, regardless of
7 what phrase somebody else decides to use
8 to describe it, is we provided them with
9 a list of techniques that they should
10 consider in our view using if they were
11 going to use coercive techniques.

12 And then I'll just run
13 through the whole thing, they eventually
14 asked us if we would do them, we did
15 them, and then they wanted to replicate
16 that program.

17 So if that's what Mr. Rizzo
18 thinks is the original architect, he'll
19 have to explain why he thinks that label
20 applies, not me.

21 Q. When you -- if you just go a
22 little bit further down in that paragraph
23 we were just looking at.

24 A. Which one is that?

1 Q. This is the third
2 paragraph --

3 A. Is this Exhibit 22 still?

4 Q. Yes, sir.

5 A. Okay.

6 Q. So the -- we read through
7 where it talks about in the manner that
8 does not violate and so forth. The next
9 sentence says:

10 "They have been instrumental
11 in training and mentoring other CIA
12 interrogators and debriefers, and many of
13 the current successes in obtaining
14 information from detainees who are
15 actively trying to withhold or distort
16 it, but due to the interrogations
17 conducted by Drs. Mitchell and Jessen."

18 Do you see that?

19 A. Yes.

20 Q. So let's take the first part
21 of that sentence where it says:

22 "They have been instrumental
23 in training and mentoring other CIA
24 interrogators and debriefers; is that

1 correct?

2 A. After 2005 it is.

3 Q. Okay. What did you do after
4 2005?

5 A. After 2005 when the chief
6 interrogator for RDG got fired, for once
7 again using an unapproved technique, the
8 Chief of Special Missions came to me and
9 Bruce and asked us if we would help them
10 with their training program. So we
11 helped them with their training program.

12 You have a document that I
13 produced called something like Five
14 Things Interrogators Need to Know About
15 Memory. So -- interrogators and
16 debriefers I think it's called. They
17 produced it for us the last time they had
18 a big document dump.

19 And in that I go over some
20 of the key things that interrogators and
21 debriefers can expect, and that's the
22 sort of stuff we taught in the class with
23 the debriefers. You know, essentially
24 we -- by that point we were used to doing

1 custodial -- well, debriefings of the
2 detainees.

3 Like even with Abu Zubaydah,
4 under the worst case -- condition, he was
5 subjected to EITs for I think 14 days. I
6 know the document says 17, but they don't
7 take into account the days in the middle
8 that we weren't doing those.

9 And then for another
10 1,609 days, he was debriefed using the
11 social influence skills that we taught
12 their -- well, actually, it wouldn't have
13 been until after 2004, but you know,
14 using the social influence skills,
15 initially with our help sitting in there
16 with the debriefers.

17 And I think that's what they
18 mean by mentoring because each of these
19 detainees, these high value detainees
20 that I -- that I either interrogated or
21 helped in the debriefing of, all had
22 different personalities, they all had
23 different ways you had to approach them,
24 and the debriefers turned over and turned

1 over and turned over, and so it was nice
2 to have some consistency so that -- and I
3 think that's what they mean by mentoring.
4 I don't think they mean mentoring in the
5 formal sense of a, you know, a mentoring
6 program like you might see at a
7 university. I was not somebody's major
8 professor. They just meant that we sat
9 in there with them -- introduced them to
10 the detainee, sat in there with them
11 initially and then withdrew and monitored
12 from the outside.

13 And then we continued to do
14 these things, I call it fireside chats,
15 you know, which is basically when we go
16 in afterwards and say, How is it going,
17 what was that like for you, and then we
18 would give the debriefer feedback about
19 that, or they could watch and then we
20 would discuss it afterwards.

21 Q. Uh-huh. Are you saying the
22 mentoring and training you did only had
23 to do with the social influence skills
24 and --

1 A. Oh, no. No -- well, for the
2 debriefers it was only, all right,
3 because debriefers didn't use any EITs.
4 For the interrogators, we would show
5 them -- we didn't show them the
6 waterboard, but we would show them, you
7 know, the other techniques that were in
8 use primarily at that time. We would
9 show them walling, slapping. We didn't
10 show them sleep deprivation, although
11 their training included a section of
12 that. You know, we talked them through
13 the use of EITs, but we also tried to
14 talk them into the use of EITs for
15 conditioning compliance and cooperation
16 instead of the way it seemed to be used
17 primarily by some people in the CIA,
18 especially the chief interrogator for RDG
19 where he just wanted to use it the way
20 most people think of using physical
21 coercion, which is basically hurt them
22 until they tell you what they want to
23 hear and then hurt them a little bit more
24 to see if they change their story. We

1 tried to dissuade them away from that.

2 THE VIDEOGRAPHER: We have
3 about ten minutes left on the
4 disk.

5 MR. LUSTBERG: Okay.

6 (Exhibit No. 23, Email dated
7 5/28/03, Bates USA 1588, was
8 marked for identification.)

9 BY MR. LUSTBERG:

10 Q. So let me -- what's before
11 you is what's been marked as Exhibit 23.
12 You see that this is from May of 2003?
13 Do you see that, Mr. -- Dr. Mitchell?

14 A. Yes.

15 Q. And it talks about -- it
16 says that -- whoever writes this is
17 saying that he spent a good part of an
18 afternoon with you and Dr. Jessen talking
19 about the end game.

20 Do you know what that's a
21 reference to?

22 A. Yes.

23 Q. What is it?

24 A. They had a number of

1 detainees who were cooperating but they
2 were still holding them at black sites
3 without a lot of amenities. And the end
4 game for them was moving them to a place
5 where you could increase their amenities
6 and they could spend time together, and
7 you know, they wouldn't be subjugated --
8 or subjected to being rendered from site
9 to site as the sites changed.

10 So the end game for them was
11 essentially moving them to a place like
12 Guantanamo.

13 Q. Uh-huh. And then it says:

14 "As well as follow-on
15 training requirements, facilities design
16 and various program plans, et cetera."

17 What -- what is it that you
18 were being asked to do in that regard?

19 A. Show me the --

20 Q. I'm sorry, it's the
21 beginning of the second paragraph. I
22 apologize.

23 A. "More strategic consulting,
24 program development projects" --

1 Q. So this is the beginning of
2 the second paragraph. It says that:

3 "They spent a good part of
4 an afternoon talking about the end game
5 as well as follow-on training
6 requirements, facilities design and
7 various program plans."

8 A. Right.

9 Q. What did you do with regard
10 to follow-on training, facilities design
11 and various program plans?

12 A. Okay. So this was -- this
13 was when they were first beginning to
14 suspect that the chief of RDJ was off the
15 reservation and wasn't coming back on.
16 He had been out at Cobalt doing things
17 that he wasn't supposed to be doing, and
18 so they were getting together with us and
19 trying to figure out what was a better
20 use of us as a resource.

21 And we were -- we were
22 suggesting -- this is to the best of my
23 recollection, all right? We were
24 suggesting that you could not keep these

1 people in such austere conditions for
2 years, you know, a bare cell without
3 anything in it. We thought it was not
4 really productive. Even if you gave them
5 a prayer rug, we didn't think that was
6 productive.

7 And so they were asking us
8 for some input in terms of how do we put
9 together a program that -- not a program,
10 but like a facility, what sort of things
11 would people, in your opinion, need
12 recreationally, what sort of things would
13 they need in terms of social interaction,
14 what kind of -- you know, that sort of
15 stuff. The focus was primarily on
16 increasing the amenities in a way that
17 didn't cut down on the cooperation,
18 because this end game thing was only for
19 those people who they felt weren't
20 significantly resisting anymore.

21 THE VIDEOGRAPHER: Three
22 minutes left on the disk.

23 BY MR. LUSTBERG:

24 Q. Okay. At the very -- the

1 second to the last paragraph of this.

2 A. Sure.

3 Q. It says:

4 "A second project, which
5 they are writing a proposal for, is to
6 study how we can develop and apply even
7 less intrusive techniques without any
8 loss in the interrogation's psychological
9 impact. They believe this can be done
10 and we have much to gain by asking them
11 to try. They will draft a paper," I
12 assume that's "outlining the process, and
13 pending our approval, we will field test
14 it."

15 Do you recall putting
16 together a proposal to study --

17 A. I didn't put together a
18 proposal to study.

19 Q. Okay. Well, that's what
20 they said. They said, "Which they are
21 writing a proposal for, is to study."
22 I'm mean, I just -- I mean, I don't know
23 what happened. You tell me. But I'm
24 just --

1 A. Well, let me read the
2 paragraph.

3 Q. Yeah. Take your time.

4 A. "A second project, which
5 they are writing a proposal for, is to
6 study" -- well, the project they want us
7 to do is they want us to study how we can
8 develop and apply an even less intrusive
9 technique without the loss of
10 psychological impact. And what they mean
11 by psychological impact isn't the
12 distress, but the cooperation, right?

13 So this is where they're
14 asking us to look at what's out there in
15 the literature and what may be available
16 from other foreign liaisons that is
17 non-coercive physically, but still would
18 result in people providing information.

19 Q. It says that you were
20 offered the opportunity to present on
21 psychological topics to the debriefing
22 and interrogation courses.

23 Did that happen?

24 A. I was offered the

1 opportunity to, yes.

2 Q. Did you do it?

3 A. I don't recall doing it
4 because I was mostly deployed.

5 MR. LUSTBERG: All right.

6 We have to take a break while they
7 change the disk.

8 THE WITNESS: Okay.

9 THE VIDEOGRAPHER: The time
10 is 5:32 PM. We are now off the
11 record. This ends Disk No. 3.

12 (Recess.)

13 THE VIDEOGRAPHER: We are
14 now back on the video record. The
15 time is 5:42 PM. This begins Disk
16 No. 4.

17 MR. LUSTBERG: Disk No. 4.

18 BY MR. LUSTBERG:

19 Q. Okay. So we talked a little
20 bit about -- just before the break about
21 the -- to establish, ba, ba, ba, ba, I
22 just wanted to get the exact quote. But
23 we were talking about the fact that there
24 was this discussion about studying

1 potentially lesser, sort of
2 lesser techniques, right?

3 A. Yeah. What they -- yes.

4 Q. And what that means is an
5 adjustment so that it's less than the
6 EITs that had been utilized before,
7 right?

8 A. Less physical coercion.
9 Less coercion, yeah.

10 Q. Right. So it's an
11 adjustment in whatever the program was to
12 something that included, for example, you
13 thought that the most important
14 techniques were walling and sleep
15 deprivation?

16 A. This didn't address that,
17 this was no EITs at all.

18 Q. So -- okay. So this was --
19 this was a change in that program to go
20 to no EITs?

21 A. That's what the person who
22 wrote this was interested in.

23 Q. Uh-huh. And just to go back
24 for a second, did you -- was there --

1 were there discussions about just
2 reducing the EITs so that it was only
3 those two, what you viewed as the
4 essential EITs of sleep deprivation and
5 walling?

6 A. I remember in, I think 2005,
7 I think it was the Hamdan decision, I
8 can't remember exactly when, there was a
9 discussion about reducing EITs and
10 changing to a different -- the same EITs,
11 but a different selection of those EITs.
12 And -- and I remember they called all the
13 interrogators back to the headquarters
14 and they had us sit for three days or two
15 days, or whatever it was, and come up
16 with a list of recommendations, and it
17 was -- you know, it was pretty unanimous
18 that the only ones we thought we really
19 needed was, you know, walling and sleep
20 deprivation.

21 Q. And why those?

22 A. Because they were the
23 easiest to use. By easy -- that's the
24 wrong word. In order to do the initial

1 conditioning, you need a technique that
2 starts and stops and that you can control
3 the start and stop, right? So if you're
4 walling a person, you can take your hands
5 completely off the person any time they
6 make any kind of movement toward
7 cooperating. So it's easier to condition
8 the offering side of this thing where you
9 want to reward them for talking to you,
10 right? It's easier to condition that.
11 Whereas if you're trying to use something
12 like waterboarding, you know, you can
13 stop waterboarding the person, but the
14 person is still on the waterboard. So
15 it's much more difficult to logistically
16 orchestrate that and to adjust the
17 timing. Because it's always a timing
18 issue.

19 Q. Okay. I believe I've seen
20 where you have talked about the fact that
21 the way these techniques were supposed to
22 work, though, was that you were not
23 supposed to be trying to get answers
24 right then and there while you're going

1 through the process, the idea is to -- to
2 employ whatever the techniques were,
3 provide a bridge question and then try to
4 come back later before you applied
5 additional techniques to see if you
6 could -- if they were going to give you
7 the question to the bridge question.

8 Did I get that right more or
9 less?

10 A. I think you got that part of
11 the discussion almost correct.

12 Q. Okay. So go ahead and
13 correct me. I want to get it perfect.

14 A. Okay. So we had of all
15 these subject matter experts who gave us
16 intelligence reports, and we actually
17 asked them the questions they asked, and
18 if they provided information, then we
19 would stop using the EITs, and they would
20 take them any time, right, but my
21 thinking on the subject was that, much
22 like with a dental phobia, the time that
23 they're going to be most motivated to get
24 out of it is before the next time, and

1 that's when they're going to be most
2 clear headed as well.

3 And so what we would do is
4 to alert them to be particularly
5 cognizant during that period because we
6 think that's where the person is going to
7 be most likely looking for a way to
8 provide enough of an answer that we don't
9 go onto the EITs.

10 Q. And again, why is -- why was
11 walling considered one of the two that
12 you thought was the most optimal when
13 you -- in terms of reducing the EITs?

14 A. Because then what you could
15 do is you could have that in a much --
16 you could compress the time scale so that
17 you could ask them a question, and if
18 they started to lie to you or started to
19 answer in some vague way, you could ask
20 them, Is this thing that you're telling
21 me going to answer this question, in
22 which they would say no, right? And then
23 you could wall them and start over. You
24 bounce them off the wall two, maybe three

1 times, and then you can take your hands
2 completely off of them and start over.
3 And you've got like mini -- little mini
4 sessions of the larger thing because
5 they're not going to want the next
6 walling, but you can still work -- it's a
7 lot harder to do with some of the other
8 techniques.

9 Q. And why is -- why was
10 walling sufficiently uncomfortable or --

11 A. You know, I've been walled
12 hundreds, maybe thousands of times,
13 because the only way that I can be sure
14 that the people who we were training at
15 the SERE schools or the people that --
16 the interrogators back after, I don't
17 know, 2004 or whenever it was that we
18 started doing the training for the CIA,
19 knew when they were doing it correctly
20 was to let them do the techniques on me,
21 right? Because I'm a pretty good judge
22 of what it's like to be walled, and...

23 Q. Okay. So my question was:
24 So why is it -- why is it effective?

1 A. Oh, it's discombobulating.
2 It's not painful. My guess would be that
3 some of the people sitting here have been
4 walled. It stirs up your inner ears, and
5 it's like being on one of those whirly
6 gigs or something, you know, you move
7 around quite a bit, and you know, it's --
8 in fact, if it's painful, you're doing it
9 wrong.

10 (Exhibit No. 24, Independent
11 Review Relating to APA Ethics
12 Guidelines, National Security
13 Interrogations, and Torture, was
14 marked for identification.)

15 BY MR. LUSTBERG:

16 Q. Take a look. Have you seen
17 this -- this report before?

18 A. I have looked at the report.
19 I haven't read this particular page.

20 Q. Okay. So the question --
21 the sentence I want to focus on is sort
22 of halfway, a little bit more, down the
23 first paragraph.

24 A. Sure.

1 Q. Where it says:

2 "Mitchell said that he and
3 Jessen never intended to study the
4 effectiveness of the techniques
5 themselves, but rather that their role
6 was 'to find and pay an independent
7 researcher not involved with the program
8 to do the work.' "

9 Do you recall discussing
10 that with anybody?

11 A. I recall saying that
12 sentence.

13 Q. You do?

14 A. The way this paragraph is
15 written, it conflates a lot of times and
16 it conflates a lot of other things, so
17 the paragraph itself is -- is misleading.

18 Q. How is it misleading?

19 A. Well, "In July 2002,
20 Mitchell joined Jessen who had recently
21 retired and other former GI" -- "JPRA to
22 form Mitchell Jessen and Associates."

23 Mitchell Jessen and
24 Associates wasn't formed in 2002. The

1 data just is completely wrong.

2 "The CIA soon contracted the
3 newly formed company to support CIA's
4 fledgling program."

5 Again, not true for 2002.

6 "Mitchell's role under the
7 contract initially included conducting
8 interrogations and assessing the
9 detainees' fitness for interrogations and
10 assessing the effectiveness of particular
11 interrogation techniques."

12 I -- I know that they asked
13 me for my opinions in 2002 to around
14 2004, '5, whenever MJA came onboard, and
15 I know there's even some discussion in
16 these things of doing that.

17 Q. Of doing what?

18 A. Assessing the effectiveness
19 of the technique, but I don't believe
20 that was ever done. I have no
21 recollection of doing that. If you've
22 got a document that I wrote assessing the
23 techniques, I would appreciate the
24 opportunity to refresh my memory because

1 I have no recollection of ever writing a
2 document that -- or even, when people ask
3 me my opinion, I provide it, but I don't
4 recall ever writing it.

5 Q. Fair enough. I mean, what
6 it says here is that you said that you
7 and Jessen never intended to study the
8 effectiveness of the techniques
9 themselves, but rather that your work was
10 to find and pay an independent
11 researcher.

12 A. This was after 2005 when the
13 CIA -- in our contract included a
14 manpower slot, because we were basically
15 a manpower company, right? We provided
16 people to the CIA that were embedded in
17 their program under the direct
18 supervision and control of the CIA
19 officers, not under our control, and they
20 had said they wanted an independent
21 researcher to look at these -- to look at
22 this program.

23 So they created a slot in
24 the contract for it, but they never chose

1 to exercise that. Because what they get
2 to do is they say, We want this slot
3 filled and then they put money against
4 that slot and they -- and we fill that
5 slot and that person goes off and works
6 with the CIA. But we're just a manpower
7 place like Booz Allen, or somebody else
8 in that regard, right?

9 So when this sentence is
10 taken out of context and inserted in a
11 very poorly written paragraph that
12 doesn't reflect what actually happened,
13 so what I said to that person was, we
14 weren't -- we weren't the ones that were
15 intending to do the independent, whatever
16 this says here.

17 Q. Independent research.

18 A. Never intended to study --
19 right. That wasn't our role in the
20 contract. They weren't asking me and
21 Bruce to do that. They were saying, if
22 we chose to execute this particular
23 manpower requirement, because you have
24 the contract, we want you to go find a

1 person. That's what this refers to.

2 Q. Uh-huh. And what the person
3 was going to do was to study the
4 effectiveness of the techniques, though?

5 A. The person was going to do
6 whatever the CIA told them to do. No
7 study program had been set up, so I don't
8 know what the details are. If you want
9 to know what they think he should do, you
10 should ask the CIA.

11 Q. I understand. But you had
12 to find the person.

13 A. Right.

14 Q. Find and pay the person, and
15 you were -- and so to that extent, you
16 had to have at least some understanding
17 that -- as to what they were going to
18 do and --

19 A. No.

20 Q. No? You had no idea. You
21 were going to -- you were going to --

22 A. What we had to have was an
23 understanding of what the requirements
24 were, so the person had to be well-versed

1 in statistics, for example, they had to
2 be well-versed in doing -- you know, if a
3 person researches the restaurants here
4 in -- around One Logan Square, they're
5 not experimenting on the restaurants,
6 they're looking to see what's there.

7 So the person had to have
8 the capacity to do a literature review.
9 The person had to have the capacity to
10 take in a lot of different pieces of
11 information and put them into whatever
12 categories they had. What they would do
13 when they chose to execute something is
14 they would come to us and say, We need a
15 body to do this thing, this is how we
16 imagine this will happen. That's
17 different than putting a slot in the
18 contract, because once they decided that
19 they wanted that person, they would tell
20 us what specifically that person was to
21 do.

22 Q. Okay. But again, what the
23 person was to do, as far as you
24 understood, was to study the

1 effectiveness of the techniques
2 themselves, right? And so in order to do
3 that, they had to be capable of doing a
4 literature review, they had to be capable
5 of doing a statistical analysis.

6 A. In my mind, they also had to
7 have access to their databases.

8 Q. Uh-huh. Okay. And --
9 but -- and the purpose of all that, as
10 you understood it, the person you were
11 looking for would be somebody who would
12 have the necessary --

13 A. We weren't looking for
14 someone.

15 Q. Pardon me?

16 A. We weren't looking for
17 someone --

18 Q. Well --

19 A. Because they never executed
20 the -- that part of the contract.

21 Q. Okay. You -- okay. So it
22 never happened, but what -- you're saying
23 this never -- this part of the contract
24 never was fulfilled?

1 A. Exactly.

2 Q. Okay. But that the role
3 that you were looking for was to find and
4 pay an independent researcher to do the
5 work, which was to study the
6 effectiveness of the techniques, at least
7 that's what you said to this person at
8 that time?

9 A. Well, I think there's a --
10 you have the contract. I think there's a
11 manpower slot in the contract.
12 Whatever -- whatever the contract says is
13 what I was trying to convey. So rather
14 than me fumbling around on what I
15 remember now, the more simple thing to do
16 is just look at the contract and see
17 what's there. Because they released that
18 entire thing with several redactions, so
19 you can actually look and see what they
20 were --

21 Q. That entire?

22 A. The entire, was it a
23 statement of work? I think it might have
24 been a statement of work.

1 Q. Oh, I see. Uh-huh.

2 A. Or a technical proposal, or
3 it might have been statement of work and
4 then the technical proposal, but there
5 was a series of documents that they
6 redacted and released that explained
7 specifically what they were asking us to
8 do.

9 So like I said, my
10 recollection 15 years -- not 15 years,
11 nine years later is probably not as good
12 as the original contract.

13 Q. Okay. So I want to go back
14 to Exhibit 11.

15 A. Okay. I've got to find it
16 in this pile. Are we -- can I put
17 away --

18 Q. Yeah.

19 A. -- this exhibit? I don't
20 even know what Exhibit 11 is.

21 Q. Okay. So have you found
22 that yet? Because if not --

23 A. I have it.

24 Q. Okay. Great. This is

1 really going to test your eyesight. This
2 is the last page.

3 A. Okay.

4 Q. Okay. You see that little
5 chart with the Xs in it?

6 A. Yes.

7 Q. Have you seen anything like
8 this before, by the way?

9 A. No.

10 Q. This is -- you've never seen
11 any kind of chart like --

12 A. Well, I've seen it when they
13 released it, but I haven't seen it before
14 this.

15 Q. Okay. So you can see that
16 those are two of the plaintiffs in this
17 case?

18 A. Yes.

19 Q. And you can --

20 A. The one guy that was
21 involved in Al-Qaeda in East Africa and
22 participated in the blowing up of the
23 embassies, and the other guy that ran a
24 terrorist training camp in Afghanistan.

1 I see both of those guys on here.

2 Q. Uh-huh. And you can see the
3 EITs that were -- that were utilized with
4 them, right?

5 A. I see the Xs in these little
6 boxes, yes.

7 Q. Right. So -- but these --
8 if you go across the list of EITs, that's
9 basically your list, right?

10 MR. SMITH: Objection.

11 THE WITNESS: I don't think
12 this is my list. This is a list
13 that includes the techniques that
14 I recommended to them, but this is
15 someone else's list.

16 BY MR. LUSTBERG:

17 Q. Well, let's go through it.
18 I mean, isn't -- isn't each of these
19 items the same items that were on your
20 list?

21 A. No.

22 Q. What's not -- what's
23 different than what's on -- I mean, okay.
24 Sleep deprivation, that was on your list,

1 right?

2 A. Correct.

3 MR. SCHUELKE: What's the
4 first one?

5 MR. LUSTBERG: It says
6 destination.

7 THE WITNESS: Destination.

8 MR. SCHUELKE: See, my
9 eyesight failed your test.

10 MR. LUSTBERG: I hear you.

11 BY MR. LUSTBERG:

12 Q. It says -- then the next one
13 is nudity. That was on the list, right?

14 A. Correct.

15 Q. Initially?

16 Next one is dietary. We
17 talked about that. That was on the list?

18 A. Correct.

19 Q. Facial hold, that was on the
20 list?

21 A. Yes.

22 Q. Attention grasp, that was on
23 the list?

24 A. Yes.

1 Q. Abdominal slap, that was on
2 the list?

3 A. I'd have to look at the
4 list, but okay.

5 Q. Well, I mean, you don't --
6 you're not sure whether that was -- these
7 were on the list?

8 A. I think abdominal slap was
9 on the list, yeah.

10 Q. Facial slap, that was on the
11 list. We talked about that before.

12 A. Right.

13 Q. Stress positions, that was
14 on the list?

15 A. Yes.

16 Q. Cramped confinement, that
17 was on the list?

18 A. Yes.

19 Q. Water dousing, that was on
20 the list?

21 A. No.

22 Q. Okay. Water dousing was not
23 on the list?

24 A. No.

1 Q. Are you sure?

2 A. Absolutely.

3 Q. What -- walling, that was on
4 the list?

5 A. Yes.

6 Q. And waterboard, that was on
7 the list?

8 A. Yes.

9 Q. Okay. And -- and the Xs
10 show which of those enhanced
11 interrogation techniques were used with
12 each of these two -- two men, right?

13 MR. SMITH: Objection.

14 THE WITNESS: Yes.

15 BY MR. LUSTBERG:

16 Q. So --

17 MR. LUSTBERG: Did you get
18 the answer? Okay. Thank you.

19 BY MR. LUSTBERG:

20 Q. And you're saying that with
21 the -- with the exception of water
22 dousing, all of these other things were
23 on your list, right?

24 A. They were on the list that

1 we provided.

2 Q. That's what I mean. When I
3 say your list, you know that I'm
4 referring to the list that you provided
5 to the --

6 A. I actually don't know what
7 you're referring to.

8 Q. Okay. Well -- okay. I want
9 to -- just a couple other areas we want
10 to cover and then we'll be -- we'll be
11 done.

12 You mentioned earlier in our
13 conversation about a document that you --
14 was taken from your home and that you
15 wanted to provide but you haven't been
16 able to, right?

17 A. There's several of those
18 documents.

19 Q. Uh-huh. The documents, as a
20 general matter, don't -- nothing specific
21 because we haven't seen them, what types
22 of documents did you have at your home?

23 A. I had documents that were
24 unclassified if not associated with the

1 program, but might be classified if they
2 were.

3 Q. And what -- and how could
4 you have had documents that might be
5 classified in your home?

6 A. Well, they're unclassified
7 because I put them together from open --
8 open source material, and they didn't
9 mention the CIA, so by themselves, a
10 non-coercive interrogation manual
11 wouldn't be classified. But if you say,
12 this is the interrogation manual that was
13 provided the CIA, then they get to choose
14 whether or not it's classified.

15 Q. Uh-huh. Now, when did
16 they -- when did they come and get these
17 from your home?

18 A. Months ago. It's been
19 weeks.

20 Q. Mid-October?

21 MR. SCHUELKE: Two months.

22 THE WITNESS: Is it two
23 months? Yeah.

24 BY MR. LUSTBERG:

1 Q. Uh-huh. And did you have
2 any concern that you were -- that you had
3 materials that might be classified in
4 your home?

5 A. No, because they weren't
6 associated with the CIA at the time they
7 were there.

8 Q. Okay. And why were they not
9 associated with the CIA?

10 A. Because they don't say CIA
11 and I had a life before and after.

12 Q. Okay.

13 A. So there's no -- if I write
14 an interrogation manual and you find it
15 at my house, if it doesn't -- isn't
16 associated -- and I use open source
17 material, then...

18 Q. Uh-huh. Let's -- let's just
19 talk about some of the companies that we
20 talked about before.

21 A. Sure.

22 Q. So let's just -- just go
23 back. I'm -- I'm not recalling what the
24 first company was after you left --

1 before -- so just -- there was Mind
2 Science, there was What If, and there was
3 one before. What? Knowledge Works.
4 Thank you.

5 Do you have any documents
6 from Knowledge Works?

7 A. No.

8 Q. Why not?

9 A. Because I'm not required to
10 keep them and I don't keep those things.

11 Q. Uh-huh. There were
12 documents that had been destroyed?

13 A. No, I think they've been
14 destroyed. I mean, that company existed
15 in, what, 2001, through the time that I
16 left North Carolina. So I probably would
17 have got rid of those documents then --
18 around then when the company was shut
19 down and there was no need to keep them.

20 Q. Uh-huh. What kind of
21 documents were they that you didn't keep?

22 A. Well, they're the ones you
23 can find online if you go to North
24 Carolina and go to the Division of

1 Corporations, or whatever they call it.
2 The only documents I had were the
3 organizing documents, and then the -- I
4 think you're annually required or if
5 there's a name change, or whatever the --
6 you know, whatever the documents are that
7 set the company up.

8 Q. Uh-huh. Is that the same
9 with What If and Mind Science?

10 A. Yes.

11 Q. So for each of those,
12 there -- there are no documents that you
13 have anymore; is that right?

14 A. Uh-huh.

15 Q. And all that there ever
16 were, were the corporate founding
17 documents and whatever -- whatever other
18 filings you had to do?

19 A. They're my -- they're my
20 individual, independent LLCs that I used,
21 so yeah. There's no reason for me to
22 hold a shareholder meeting because it's
23 just me.

24 Q. Right. What about the

1 correspondence, reports, whatever the
2 business was. There was none of that?

3 A. No, I don't have any of
4 that, didn't have any.

5 Q. Uh-huh. And it's surprising
6 that we have not received any emails. Do
7 you not email?

8 A. You should have received a
9 lot of emails from me.

10 Q. Okay. Well, leaving aside
11 stuff that's undergoing review by the
12 Government, what -- what emails would
13 there be that would be -- would have been
14 responsive to our subpoenas?

15 A. You guys requested emails
16 from the publisher to me, all right? You
17 requested any emails I had I think in and
18 around my book, you know.

19 Q. Right.

20 A. I mean, I'd have to look at
21 the list but -- oh, I think you also
22 requested that email.

23 Q. This email?

24 A. Well, from them. But I

1 didn't have that email.

2 Q. Right.

3 A. Because here's the way I
4 handle emails: I keep them as long as I
5 need them and then I delete them, you
6 know?

7 Q. Okay. The only emails we
8 have are the ones related to the book.
9 You're saying that there are other emails
10 that existed, but that you've deleted?

11 A. Before your --

12 Q. Before the lawsuit?

13 A. Yeah.

14 Q. Uh-huh. And you haven't
15 deleted any emails since the lawsuit?

16 A. None that are responsive.

17 Q. Uh-huh. And with regard to
18 emails from this time period --

19 A. 2002?

20 Q. Yeah. Would they even
21 exist?

22 A. I'm sure they exist in the
23 ether somewhere, but they don't exist on
24 my -- they don't -- the thing that may be

1 difficult for you to understand is that
2 when you're in a clandestine program, you
3 don't send a lot of emails. You know,
4 you don't say, you know, I'm in this
5 foreign company at this black site and
6 this is what I'm doing. You don't have
7 those kind of emails. So you know, you
8 don't have that life that most
9 corporations have, you know, where you --
10 you just don't have it.

11 Q. Uh-huh. Were you able to
12 email when you were -- when you were on
13 location?

14 A. No, not usually.

15 Q. Uh-huh. Sometimes?

16 A. Rarely, but occasionally.

17 Q. Uh-huh. And when you
18 received our document requests, did you
19 work with your attorneys -- don't give me
20 any communications between them -- to
21 respond, or did you look for documents
22 yourself first, and who determined what
23 was responsive to our subpoena?

24 MR. SMITH: There's a lot of

1 questions in there.

2 MR. LUSTBERG: Yeah, yeah.

3 BY MR. LUSTBERG:

4 Q. Do the best you can, we're
5 late.

6 MR. SMITH: How about we
7 pick one and he answers that?

8 MR. LUSTBERG: That will do.

9 THE WITNESS: I don't know
10 what the question is now.

11 MR. LUSTBERG: There you go.

12 MR. SMITH: Did you work
13 with your lawyers?

14 THE WITNESS: No. I mean,
15 I'm not going to answer that.

16 MR. SMITH: You can answer
17 it yes or no.

18 THE WITNESS: Oh, yes.

19 BY MR. LUSTBERG:

20 Q. Okay. And -- and did you
21 take the first cut at what was responsive
22 to what we were requesting then -- and
23 then discuss it with your lawyers, or
24 did -- did you do it together?

1 A. We didn't sit down at the
2 machine together and do it, no.

3 Q. So you -- so you first
4 selected what was responsive and sent it
5 over to them for their review?

6 A. Of the stuff that's within
7 the last year or two, the stuff that's
8 within the time period that you're
9 talking about primarily, he had the
10 information from -- I can't remember his
11 name, the special prosecutor.

12 Q. Durham?

13 A. Durham. He had the
14 information that Durham had requested off
15 of my hard drive, and when that was
16 over -- I mean, I gave my computer to a
17 third party, they did whatever they do to
18 that, gave him the documents, he had
19 those documents, I didn't keep them. I
20 put a new hard drive into that machine,
21 and then when it came back to me, I
22 reformatted that hard drive and used it
23 to put audio books on.

24 Q. Speaking of Durham, one of

1 the things that he investigated was the
2 destruction of the -- of the videotapes
3 of the Abu Zubaydah interrogation; is
4 that right?

5 A. Yes.

6 Q. And did you have anything to
7 do with the -- with the destruction of
8 those videotapes?

9 A. No.

10 Q. Did you have any
11 conversations with anybody at any time
12 about the destruction of those videotapes
13 other than your lawyers?

14 A. Yes.

15 Q. Okay. And what were those
16 conversations?

17 A. I told, I forget what he's
18 called, I think the Chief of Clandestine
19 Service, that I thought those videotapes
20 should be destroyed.

21 Q. Uh-huh. Before they were
22 destroyed?

23 A. Yes.

24 Q. Uh-huh. Why did you want

1 them destroyed?

2 A. Because I -- I thought they
3 were ugly and they would, you know,
4 potentially endanger our lives by putting
5 our pictures out so that the bad guys
6 could see us.

7 Q. Uh-huh. And what was your
8 response to your statement that they
9 should be destroyed?

10 A. That that was a CIA decision
11 and that they were going to hold on to
12 them because they were still potentially
13 discoverable or something like that.

14 Q. Uh-huh. And do you know
15 how -- how it was under those
16 circumstances that they did get
17 destroyed?

18 A. I know what I read. I mean,
19 I know what I read and I know what the
20 CIA told me.

21 Q. What did the CIA tell you?

22 A. The CIA told me that Jose
23 Rodriguez had asked the lawyers if he had
24 the authority to destroy them. The

1 lawyers said yes. Jose then, I don't
2 know if he called or emailed the Chief of
3 Station where they were held and asked
4 that person to send him a cable
5 requesting permission to destroy them,
6 and then they sent that cable and they
7 were destroyed.

8 Q. Uh-huh. Did Jose discuss
9 this with you at any point?

10 A. He might -- he didn't
11 discuss it beforehand, but after he may
12 have.

13 Q. When you say "he may have,"
14 do you have a recollection of a
15 conversation?

16 A. I have a vague recollection
17 of me being in his office one time and
18 him telling me that he thought destroying
19 the tapes was the right thing to do and
20 that he did it. I don't recall that we
21 had a -- you and I have spent more time
22 talking about it than he and I spent.

23 Q. We can go longer, too, if
24 you want.

1 A. It's up to you.

2 Q. The -- so you -- so you
3 advised -- I'm sorry. You just said and
4 I don't recall. You advised somebody
5 that you thought that the tapes should be
6 destroyed; is that right?

7 A. I didn't advise them, I told
8 them.

9 Q. You told them. Okay. You
10 told them that you thought --

11 A. Yes.

12 Q. And -- and did you provide a
13 rationale for why you thought they should
14 be destroyed? You just told us that, you
15 know, that they were ugly.

16 A. I told them -- I told them
17 that they were ugly, that -- that if they
18 got out, and they would get out, that the
19 identities of the people on those tapes
20 would be revealed and that those tapes
21 would be taken out of context and played
22 over and over and over on the TVs.

23 Q. Uh-huh. Anything else that
24 you said?

1 A. I don't recall specifics of
2 it but...

3 Q. Uh-huh. Did you see any
4 other downsides to the potential --
5 potentially not destroying those tapes
6 other than that they might get out and be
7 played on TV over and over and over?

8 A. Well, just that the tapes
9 were -- they were ugly and that people
10 who weren't familiar -- I don't recall
11 saying this to him, all right, but in my
12 mind I recall thinking that looking at
13 those tapes without knowing specifically
14 that the Justice Department had
15 determined, not once, but several times,
16 that the things that had happened were
17 legal, right, then they could be taken
18 out of context.

19 Q. That's not -- that's what
20 I'm not understanding. If the Justice
21 Department had determined that they were
22 legal, why did the tapes have to be
23 destroyed?

24 A. Why don't we have tapes of

1 abortions? We don't have tapes of
2 abortion because they're not pleasant to
3 look at even though that they're legal.
4 And individual doctors wouldn't probably
5 want videotapes of them aborting babies
6 on You Tube even though it's legal.

7 Q. Okay. So that was the
8 reason, that they would make a bad
9 appearance even though it was lawful?

10 MR. SMITH: Objection.

11 BY MR. LUSTBERG:

12 Q. Is that what you're saying?

13 MR. SMITH: That's not what
14 he said.

15 MR. LUSTBERG: Okay. Then
16 he can say no.

17 MR. SMITH: Yeah, but he's
18 already answered the question
19 three times.

20 MR. LUSTBERG: Okay.

21 BY MR. LUSTBERG:

22 Q. So this will be the last
23 time.

24 A. Now I've lost the question.

1 Q. So that -- so that the
2 concern was that they would make a bad
3 appearance even though they were lawful?

4 MR. SMITH: Objection.

5 BY MR. LUSTBERG:

6 Q. That was the problem?

7 A. That was -- it's sort of a
8 shorthand version of one minuscule part
9 of what the issue was, yeah.

10 Q. I don't want -- I don't want
11 it to be a shorthand version and I don't
12 want to have to repeat, but -- so what am
13 I missing in that summary?

14 A. I didn't like the fact that
15 the tapes were out there. I had a
16 visceral reaction to the tapes. I
17 thought they were ugly.

18 Q. Had you seen them?

19 A. Of course I saw them.

20 Q. Uh-huh. You saw the tapes
21 of yourself?

22 A. Yeah.

23 Q. Uh-huh. When did you see
24 them?

1 A. When we were putting
2 together the videotape that we played to
3 Jose Rodriguez and the other people at --
4 at the CTC when we were asking them to
5 discontinue waterboarding. I saw -- I
6 think we showed them a videotape, a
7 standard videotape of one of his
8 waterboarding sessions, and then the law
9 enforcement expert that was with us had
10 pieced together into a single tape a
11 bunch of -- of the longer pours and we
12 showed them that because we wanted them
13 to get a sense of what was actually
14 happening.

15 Q. Just one more document.

16 MR. SMITH: Never believe
17 that from a lawyer.

18 THE WITNESS: Yeah, I don't.
19 That's what -- that's what we used
20 to do. We used to say the
21 interrogation is over and then
22 come and ask him --

23 BY MR. LUSTBERG:

24 Q. No, no. This is -- I'm

1 telling you just one more document. Oh,
2 no, well, we might have to refer back
3 to --

4 A. Yeah, I understand.

5 Q. We may -- we may have to
6 refer to one that you already have.

7 A. Okay.

8 (Exhibit No. 25, Request for
9 formal declination of prosecution,
10 was marked for identification.)

11 THE WITNESS: I don't know
12 what this is. It's mostly empty.

13 BY MR. LUSTBERG:

14 Q. Take a look. When you've
15 had a chance to look at it, let me know.

16 A. Okay, I've had a chance to
17 look at it.

18 Q. Uh-huh. Do you recall
19 making -- having a request made for a
20 formal declination of prosecution that
21 applied -- would apply to your activities
22 with regard to Abu Zubaydah?

23 A. I recall hearing some years
24 afterwards that one -- they had

1 considered doing that. There had been
2 some discussions among CTC -- Office of
3 General Counsel and CTC Legal, but I
4 didn't know about this at the time.

5 Q. Okay. So at the time -- so
6 your testimony under oath is that at the
7 time this was sent, you had no idea that
8 this letter was being sent?

9 A. I never saw this until they
10 produced it for us, so...

11 Q. Okay. So leaving aside
12 whether you saw it, did you know that a
13 request was being made to -- for a
14 formal --

15 A. You mean in real time?

16 Q. At the time it was
17 occurring.

18 A. I don't -- no, I don't
19 recall knowing that.

20 Q. Uh-huh. When you say you
21 don't recall knowing that, so it may be
22 that you did know it, but you just don't
23 remember?

24 A. I'm 99 percent confident

1 that I -- that that -- I didn't know it.

2 I mean, I just --

3 Q. Uh-huh. When did you find
4 out about it?

5 A. Months, years later and
6 probably in talking to a CTC attorney
7 about whether or not -- you know, I don't
8 know. I mean, I just -- I don't have a
9 specific recollection.

10 Q. Uh-huh. Do you have any
11 idea why a -- someone would have made a
12 request for a formal declination of
13 prosecution with regard to your
14 activities?

15 A. It was not necessarily my
16 activities, right?

17 Q. And -- yours and others.

18 A. Does it say this is for my
19 activities?

20 Q. So what this says is that
21 this -- you can see that this addresses
22 aggressive methods required to persuade
23 Abu Zubaydah to provide critical
24 information.

1 You were involved in that,
2 weren't you?

3 A. I'm looking at the -- I want
4 to -- okay, 07/08/02. So this would be
5 July. So clearly this was in
6 anticipation of that, just from the date.

7 Q. Okay. And so my -- my
8 question is: You had no -- do you have
9 any idea why a request would have been
10 made for a formal statement that you
11 would not be criminally prosecuted for
12 those actions?

13 A. I think if you wanted to
14 know what the CIA thought about why they
15 were doing this, you should ask the CIA.

16 Q. I'm asking --

17 A. I don't have -- I don't --
18 they didn't tell me their reasoning
19 behind doing it. And at the time I was
20 unaware that they did it. So I don't
21 have a thought about it.

22 Q. Uh-huh. Okay. So if the
23 SS -- if Senate Select Intelligence
24 Committee says -- and you can take a look

1 at this, Exhibit 5. That big Exhibit 5.
2 This is what I said that there might be
3 one other one --

4 A. Okay.

5 Q. -- that we go back to.
6 This -- on page 33. So, Dr. Mitchell,
7 just read the first full paragraph on
8 page 33.

9 MR. LUSTBERG: 33 of 499.

10 THE WITNESS: In May --

11 BY MR. LUSTBERG:

12 Q. No, it starts, "After the
13 July 2002." So -- yeah, I think the
14 other one is a run-over paragraph.

15 A. Okay. "After the July 2002
16 meeting" --

17 MR. SCHUELKE: Do you want
18 him to read this aloud?

19 MR. LUSTBERG: No, he
20 doesn't --

21 BY MR. LUSTBERG:

22 Q. You can read it yourself or
23 if you want to read it aloud, whichever.

24 MR. SMITH: Read it to

1 yourself.

2 THE WITNESS: I see it.

3 BY MR. LUSTBERG:

4 Q. So the last sentence says
5 this letter was circulated internally at
6 the CIA, including to you?

7 A. I see that.

8 Q. Uh-huh. Is that not true?

9 A. I don't recall that.

10 Q. Uh-huh. Do you think if
11 there was a letter requesting a
12 declination of prosecution, you would
13 remember it?

14 A. Not necessarily. The
15 lawyers were figuring out the lawyer part
16 of this thing, you know. I was -- I was
17 deployed to the site in July of 2002, so
18 I have no recollection of seeing a letter
19 that was circulated internally.

20 MR. LUSTBERG: One second.

21 BY MR. LUSTBERG:

22 Q. Is when did you -- when did
23 you first meet Dr. Jessen?

24 A. 1988.

1 Q. And when did you start
2 working with him?

3 A. 1989.

4 Q. What were you doing together
5 at that time?

6 A. He was -- he was the chief
7 of psychology for JPRA, and I was the
8 chief of SERE psychology at the survival
9 school.

10 Q. Uh-huh. And you know,
11 talk -- take us through how your
12 relationship with him developed.

13 A. He was the chief of
14 psychology at the survival school and I
15 was sent there, and you know, he briefed
16 me on what his duties were.

17 Q. And you became friends,
18 right?

19 A. Yes, we became friends.

20 Q. Right. And you hunt
21 together?

22 A. We don't hunt.

23 Q. Oh, you don't hunt together?

24 A. No.

1 Q. Okay. You hike together,
2 you do stuff --

3 A. We were mountain -- we were
4 alpine climbers and ice climbers and rock
5 climbers.

6 Q. Okay. And how did -- how
7 did it come about that you decided to go
8 into business with him in Mitchell -- at
9 Mitchell Jessen and Associates?

10 A. In 2005?

11 Q. Uh-huh. Whenever you did
12 it.

13 A. I think initially what we
14 were intending to do was to offer
15 continuing education credit to folks who
16 were in a position like we had been in
17 the military where it was hard to get
18 continuing education credit that actually
19 focused on your job -- your job stuff.
20 And so the company was initially put
21 together, and I think we used -- I had by
22 then retired and dissolved Knowledge
23 Works, and we decided to use that
24 company's name. I think it was organized

1 then in Delaware as that portion of it,
2 yeah.

3 Q. Uh-huh. Did -- in terms of
4 developing the list that you -- that was
5 provided to the CIA for their
6 consideration in terms of the EITs --

7 A. You're fascinated with the
8 word developing. I listed the -- I
9 listed the techniques.

10 Q. You did it, not Bruce?

11 A. Well, I actually provided
12 them with a verbal description of what
13 was on that list before he was ever cut
14 lose from the DOJ -- I'm sorry, from the
15 DOD, Department of Defense.

16 Then when he came onboard,
17 there was another meeting where we again
18 discussed what was on that list, and then
19 sometime around the 8th or 9th of July,
20 whatever date it says on that thing, we
21 actually -- I actually sat at a laptop
22 and typed up the list.

23 Q. Okay. I'm sorry, so did you
24 consult with him with regard to the list,

1 was that something that you talked about
2 before it was finalized and sent over?

3 A. We -- we talked about it in
4 that big meeting with CTC -- I had given
5 them a list, all right, and described the
6 techniques that were on the list. They
7 brought him in. There were an additional
8 meeting where we again discussed those
9 things without producing a list, so he
10 was involved in that meeting.

11 Q. Okay. And did -- did
12 Dr. Jessen -- did you have any
13 disagreements with him as to what should
14 be on the list or what the EITs ought to
15 be?

16 A. Well, they weren't called
17 EITs.

18 Q. I know that. So the list of
19 whatever they were called at that time.

20 A. I don't recall that there
21 was any disagreements about it.

22 Q. Uh-huh.

23 A. He was curious about a
24 couple things.

1 Q. What was he curious about?

2 A. Uh-huh. I think he was
3 curious about the mock burial thing.

4 Q. Uh-huh. Anything else?

5 A. I don't recall.

6 Q. Uh-huh. So you were
7 advocating for the mock burial and he was
8 against it or --

9 A. I wasn't advocating for the
10 mock burial.

11 Q. Well, you wanted to put it
12 on the list and he did not want it on the
13 list; is that right?

14 A. No.

15 Q. Okay. So what was -- what
16 were the conditions?

17 A. He was curious about why it
18 was there.

19 Q. Uh-huh. And what did you
20 say?

21 A. I said that I had -- that we
22 used those techniques at the SERE school
23 and that the FBI -- one of the FBI agents
24 and I had discussed a way to do a

1 hand-off to the FBI if, you know, the
2 approach that the CIA took didn't work,
3 and they were -- he was interested in
4 working with me to develop a realistic
5 threat and rescue kind of approach that
6 was believable, and the FBI agent and I
7 sat there and talked this thing out and
8 I -- and I wrote it up.

9 Q. I'm sorry, what's a --
10 what's a threat and rescue kind of
11 approach?

12 A. A threat and rescue is
13 where, in this particular case, we had
14 came -- had come up with the idea that it
15 would look as if -- as if the CIA was
16 washing their hands of Abu Zubaydah and
17 that they were wanting to just simply get
18 rid of him, you know, and the FBI could
19 show up and rescue Abu Zubaydah, and
20 because of that, you know, he might be
21 more willing to work with them.

22 Q. I'm sorry, I lost track.
23 What does all this have to do with the
24 mock burial part that you didn't -- that

1 he was asking you about?

2 A. Who was asking me about?

3 Q. I thought -- I thought you
4 said that Dr. Jessen asked you about --

5 A. He asked me why the mock
6 burial was on the thing and I explained
7 to him that we had worked out this threat
8 and rescue -- I had worked out this
9 threat and rescue idea with a -- with an
10 FBI agent who wanted to be sure that they
11 had some way to get back in that was
12 realistic if for some reason the CIA
13 opted out of it.

14 Q. Okay. And again, I'm just
15 trying to tie that to the mock burial.
16 What does that have to do with the mock
17 burial?

18 A. Well, it would obviously be
19 a threat if you walked a person out and
20 you --

21 Q. I see.

22 A. Right? And as you know from
23 looking at the cable traffic, that was
24 not done.

1 Q. Yes. Have you -- you've
2 been very public in discussing this
3 program as, you know --

4 A. After they released me from
5 some portion of my --

6 Q. Yup. So you can Goggle
7 yourself and see lots of interviews.

8 A. I don't --

9 Q. You're much more handsome in
10 real life.

11 A. I don't Google myself.

12 Q. Yeah. So -- but any -- any
13 reason that you know of why Dr. Jessen
14 doesn't do those -- those kinds of
15 interviews, doesn't speak up publicly?

16 A. You'd have to ask Dr. Jessen
17 about that. He's a more private person
18 than I am.

19 Q. Have you discussed that with
20 him?

21 A. I don't -- I asked him if he
22 wanted to -- to do an interview with me
23 at the 9/11 museum and he said he would
24 be interested in doing that. I asked him

1 if he would be willing to do a long-form
2 interview with Malcolm Gladwell. He
3 declined. So we've had a few discussions
4 about that.

5 Q. Uh-huh. Does it bother you
6 that he hasn't wanted to speak up?

7 A. No.

8 Q. Are you -- do you know -- do
9 you know whether anybody who was
10 subjected to any of the enhanced
11 interrogation techniques was damaged as a
12 result of the use of those techniques on
13 them?

14 A. I don't know that for a
15 fact.

16 Q. Uh-huh. Do you think
17 that -- do you think that people have
18 suffered long-term harm as a result of
19 that?

20 A. I don't know that for a
21 fact. It's one of those things that you
22 can establish. If they're out there and
23 that happened, then, you know, show me
24 the data.

1 Q. So do you think that it's --
2 do you think that that's possible? As a
3 psychologist, do you think that's
4 possible?

5 MR. SMITH: Objection.

6 THE WITNESS: Repeat the
7 question?

8 BY MR. LUSTBERG:

9 Q. Okay. You know what
10 occurred with regard to these enhanced
11 interrogation techniques, you know what
12 they were. Do you think it's possible,
13 as a psychologist, that an individual who
14 was subjected to them suffered long-term
15 physical or psychological harm?

16 MR. SMITH: Objection.

17 THE WITNESS: Not if they
18 were applied in the way that the
19 program recommended.

20 BY MR. LUSTBERG:

21 Q. So if -- if they were
22 subjected to those techniques in the way
23 that the program intended, your view was
24 that it was impossible that they would be

1 harmed?

2 A. My view is that it's so
3 unlikely so as to be impossible.

4 Q. Just one last question on
5 that and -- which is: I've seen you talk
6 about the fact that -- and I think it's
7 in some of the cables as well, that
8 you -- that there was always somebody
9 present who could stop one of these
10 interrogations at any time; is that
11 right?

12 A. Uh-huh.

13 Q. Do you -- is it your view
14 that that would be immediately apparent
15 if a technique was being used in a way
16 that would cause long-term psychological
17 or physical harm?

18 A. Yes.

19 Q. So if somebody was being
20 harmed, you would know it from watching
21 right then and there every time?

22 A. Well, it's impossible to
23 make that sort of a, you know,
24 speculation. The most you can do is

1 build in the safeguards to, you know,
2 attempt to prevent that. And so you had
3 physicians that were there who were
4 specifically charged with monitoring
5 that, you had psychologists that were
6 that had a role that was specifically
7 charged with monitoring for that, and you
8 had the Chief of Base, you had other
9 people who were there specifically
10 charged for monitoring that.

11 So the safeguards were built
12 in, but like any endeavor that includes
13 human beings, it's possible. You know, I
14 think it's remote, but possible.

15 Q. And in your experience, did
16 the doctors shut down interrogations?

17 A. I recall incidents -- and
18 incident when that happened.

19 Q. One time?

20 A. Uh-huh.

21 Q. What was that incident?

22 A. I think -- I can't remember
23 which detainee it was, but one of them
24 began to report early indication of

1 auditory hallucinations from sleep
2 deprivation and they recommended that he
3 get sleep.

4 Q. How about the psychologist,
5 did the psychologist there ever shut --
6 shut an interrogation?

7 A. Well, keep in mind, I only
8 did enhanced interrogation on five
9 people.

10 Q. Right.

11 A. All right? And I didn't do
12 any after 2003. So the only thing I can
13 speak to is my experience with those five
14 people, and I don't recall any of them
15 stepping in and stopping an
16 interrogation.

17 Q. So other than your own
18 experience, did you ever hear of other
19 circumstances in which interrogations
20 were stopped by doctors or psychologists?

21 A. I -- I remember me stopping
22 one.

23 Q. Uh-huh. Which one was that?

24 A. The one on Nashiri.

1 Q. What did you do?

2 A. I walked into the room and
3 said, You're doing things that aren't
4 authorized by the Justice Department, you
5 need to stop.

6 Q. Other than that, any other
7 times that you know about either directly
8 or somebody else told you?

9 A. I don't recall sitting here
10 right now of another time.

11 MR. LUSTBERG: Just give us
12 one minute. I think we're done,
13 but I just want to talk to our
14 team for a second. But I think
15 we're done.

16 Just go off the record for
17 literally a minute.

18 THE VIDEOGRAPHER: The time
19 is 6:37 PM. We are now off the
20 record.

21 (Recess.)

22 THE VIDEOGRAPHER: We are
23 now back on the record. The time
24 is 6:41 PM.

1 MR. LUSTBERG: And for the
2 record, no further questions at
3 this time.

4 - - -

5 E X A M I N A T I O N

6 - - -

7 BY MR. SMITH:

8 Q. Dr. Mitchell, I have just a
9 couple of questions.

10 Could I ask you to put
11 Exhibit 11 before you again, please?

12 A. Okay.

13 Q. Do you have it there?

14 A. Yes.

15 Q. When is the first time you
16 saw this document?

17 A. When it was released by the
18 Government.

19 Q. In connection with this
20 case?

21 A. Yes.

22 Q. This document was, across
23 the top the first page, top secret.

24 A. Uh-huh.

1 Q. Do you know what that means?

2 A. Yeah, it means it's -- that
3 the release of it could -- the release of
4 the information contained in the document
5 could result in grave damage to US
6 security. I think it's grave. I think
7 that's the right word. They would know.

8 Q. Who created this document,
9 do you know?

10 A. I don't know who created it.

11 Q. Do you know when it was
12 created?

13 A. No.

14 Q. Do you know what the purpose
15 was in creating it?

16 A. No.

17 Q. Turn if you would to the
18 last page of the document.

19 Do you remember you were
20 asked by counsel for the plaintiffs about
21 this last page?

22 A. Yes.

23 Q. Who created this page?

24 A. I don't know.

1 Q. Do you know when it was
2 created?

3 A. No.

4 Q. Do you know if any of the
5 information on this page is accurate?

6 A. No.

7 Q. Now, if you see, there are
8 two names that haven't been redacted.

9 A. Yes.

10 Q. And I think you testified
11 that they were two of the plaintiffs in
12 this case?

13 A. Yes.

14 Q. Do you know anything about
15 those plaintiffs?

16 A. No.

17 Q. And the X marks that are
18 placed in the boxes for the -- under the
19 various techniques --

20 A. I need to address that
21 answer that I gave you. I said I don't
22 know anything about those plaintiffs.

23 Q. Yes.

24 A. I didn't know anything about

1 those plaintiffs while they were in CIA
2 custody, but because of release of
3 documents that they had that established
4 who they were, I now know.

5 Q. Okay.

6 A. But I never heard of them at
7 all until that lawsuit showed up on my
8 doorstep.

9 Q. Okay. Thank you for that
10 clarification.

11 A. Sure.

12 Q. Where the X marks appear,
13 for example, under sleep dep and then
14 there's an X mark in the box for both of
15 the plaintiffs, do you know anything
16 about that?

17 A. I don't know whether they
18 actually had sleep dep or not. I can
19 look at the page and tell you there's an
20 X in it.

21 Q. Okay. Do you know why that
22 X is there?

23 A. I don't know why that X is
24 there, no.

1 Q. Did anyone ever consult with
2 you from the CIA about either of these
3 two plaintiffs at any time about
4 anything?

5 A. No.

6 Q. Did you know anything about
7 their treatment at any time that they
8 were detained?

9 A. No.

10 Q. All right. Now, you were
11 asked a number of questions about the
12 Zubaydah tapes of the interrogations.

13 Do you remember that?

14 A. Yes.

15 Q. It was just the Zubaydah
16 tapes?

17 A. There was only the Zubaydah
18 tapes.

19 Q. Okay. And you made a
20 recommendation that the Zubaydah tapes be
21 destroyed?

22 A. No.

23 Q. You didn't?

24 A. No.

1 Q. Okay. Did you have a
2 discussion about whether or not the
3 Zubaydah tapes should be destroyed?

4 A. Yes.

5 Q. Okay. And I think you
6 testified to that discussion, right?

7 A. I said I wanted them
8 destroyed.

9 Q. You wanted them destroyed.
10 And what was your primary reason in
11 wanting those Zubaydah tapes of the
12 interrogations destroyed?

13 A. I was concerned that it was
14 going to reveal our identities.

15 Q. Reveal whose identities?

16 A. The identities of the people
17 who were on the tape who were unmasked
18 and in plain view.

19 Q. Okay. And why were you
20 concerned that your identify would be --
21 and the others who participated, that the
22 identities of those folks would be
23 revealed?

24 A. Abu Zubaydah had threatened

1 to kill us several times.

2 Q. How many times did he
3 threaten to kill you?

4 A. About once a month he would
5 say, If I ever get out of here, you
6 know -- after the EITs were over, he
7 would joke with us that -- he'd say, In
8 here, we're friends; out there, I will
9 kill you if I see you.

10 Q. Okay.

11 A. All right? And in addition
12 to that, I was just concerned about not
13 having my face out there.

14 Q. Do you think if those tapes
15 would have been released, that your life
16 would have been in jeopardy?

17 A. Yes.

18 Q. Do you think the lives of
19 the other people who were participating
20 in this process, their lives would have
21 been in jeopardy as well?

22 A. Yes.

23 Q. And was that the primary
24 reason why you said what you said about

1 the tapes?

2 A. It was the most important
3 reason.

4 MR. SMITH: Okay. I have no
5 further questions for the witness.

6 THE VIDEOGRAPHER: The time
7 is 6:46 PM. We are now off the
8 video record. This ends Disk No.
9 4 and today's deposition.

10 (Witness excused.)

11 (Deposition concluded at
12 approximately 6:46 PM.)

13

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CERTIFICATE

I HEREBY CERTIFY that the witness was duly sworn by me and that the deposition is a true record of the testimony given by the witness.

It was requested before completion of the deposition that the witness, JAMES E. MITCHELL, have the opportunity to read and sign the deposition transcript.

Constance S. Kent



Constance S. Kent, CCR, RPR, CER
Certified Court Reporter
Registered Professional Reporter
Certified LiveNote Reporter
and Notary Public in and for the
Commonwealth of Pennsylvania
Dated: January 18, 2017

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1 INSTRUCTIONS TO WITNESS

2

3 Please read your deposition
4 over carefully and make any necessary
5 corrections. You should state the reason
6 in the appropriate space on the errata
7 sheet for any corrections that are made.

8 After doing so, please sign
9 the errata sheet and date it.

10 You are signing same subject
11 to the changes you have noted on the
12 errata sheet, which will be attached to
13 your deposition.

14 It is imperative that you
15 return the original errata sheet to the
16 deposing attorney within thirty (30) days
17 of receipt of the deposition transcript
18 by you. If you fail to do so, the
19 deposition transcript may be deemed to be
20 accurate and may be used in court.

21

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ACKNOWLEDGMENT OF DEPONENT

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4

I, _____, do

5

hereby certify that I have read the

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foregoing pages, 1 - 426, and that the

7

same is a correct transcription of the

8

answers given by me to the questions

9

therein propounded, except for the

10

corrections or changes in form or

11

substance, if any, noted in the attached

12

Errata Sheet.

13

14

15

16

JAMES E. MITCHELL_____
DATE

17

18

19

20

Subscribed and sworn

to before me this

21

_____ day of _____, 20____.

22

My commission expires:_____

23

24

Notary Public

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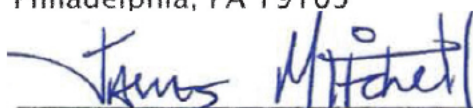
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5	51	22	brokem	broken	misspelled "broken"
6	143	17	six months	three months	date is incorrect
7	164	24	2009	2001	date is incorrect
8	171	11	water	order	wrong word written
9	239	17	discard	discharge	wrong word written
10	283	24	taping	tapering	wrong word written
11	363	1	data	date	wrong word written

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