

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

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SULEIMAN ABDULLAH SALIM, |
et al, |
 |
Plaintiffs, | Case Number:
 |
vs. | 2:15-cv-286-JLQ
 |
JAMES E. MITCHELL and |
JOHN JESSEN, |
 |
Defendants. |
-----+

Videotaped Deposition of Jose Rodriguez
Washington, D.C.
Tuesday, March 7, 2017
10:00 a.m.

Job No. 302803
Reported by: Laurie Bangart, RPR, CRR

1 Videotaped Deposition of
2 JOSE RODRIGUEZ

3
4 Held at the offices of:

5 Blank Rome, LLP
6 1825 Eye Street, NW
7 Washington, D.C. 20006
8 (202)772-5815

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17 Taken pursuant to notice, before
18 Laurie Bangart, Registered Professional
19 Reporter, Certified Realtime Reporter, and
20 Notary public in and for the District of
21 Columbia.

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A P P E A R A N C E S

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1 (Appearances continued)

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1 (Appearances continued)

2 ALSO PRESENT:

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4 Hina Shamsi, ACLU Foundation

5 Dror Ladin, ACLU

6 Megan Beckman, CIA

7 Heather Walcott, CIA

8 Cody Smith, CIA

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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: We are now on
3 the record. This begins videotape number 1
4 in the deposition of Jose Rodriguez in the
5 matter of Salim versus James Elmer Mitchell
6 and John Bruce Jessen, in the U.S. District
7 Court for the Eastern District of Washington
8 at Spokane, docket number 2:15-CV-286-JLP.

9 Today is Tuesday, March 7, 2017.
10 The time is 10:10 a.m. This deposition is
11 being taken at Blank Rome in Washington, D.C.
12 at the request of Gibbons P.C. I'm Jason
13 Fifield, the videographer, with Magna Legal
14 Services, and the court reporter is Laurie
15 Bangart of Magna Legal Services.

16 Will counsel and all parties
17 present state their appearance and who they
18 represent.

19 MR. LUSTBERG: We'll start with
20 plaintiffs. Lawrence S. Lustberg from
21 Gibbons P.C. on behalf of plaintiffs.

22 MS. JANUKOWICZ: Kate Janukowicz of
23 Gibbons P.C. on behalf of plaintiffs.

24 MS. SHAMSI: Hina Shamsi, the
25 American Civil Liberties Union, on behalf of

1 the plaintiffs.

2 MR. LADIN: Dror Ladin, the
3 American Civil Liberties Union, on behalf of
4 plaintiffs.

5 MR. MCGRADY: Daniel McGrady,
6 Gibbons P.C. on behalf of plaintiffs.

7 MR. FREY: Avram Frey of Gibbons
8 P.C. on behalf of plaintiffs.

9 MR. JAMES SMITH: Jim Smith on
10 behalf of the defendants.

11 MR. SCHUELKE: Hank Schuelke on
12 behalf of Drs. Mitchell and Jessen.

13 MS. QUERNS: Ann Querns on behalf
14 of the defendants.

15 MR. LUSTBERG: Why don't we do the
16 government?

17 MR. JOHNSON: Jim Johnson with the
18 Department of Justice on behalf of the United
19 States.

20 MR. CODY SMITH: Cody Smith of the
21 CIA on behalf of the government.

22 MS. WALCOTT: Heather Walcott, CIA,
23 on behalf of the government.

24 MS. BECKMAN: Megan Beckman, CIA,
25 on behalf of the government.

1 MR. BENNETT: Bob Bennett on behalf
2 of the witness, Jose Rodriguez.

3 MR. HANNER: Brooks Hanner on
4 behalf of Mr. Rodriguez.

5 MR. UNRUH: David Unruh on behalf
6 of Mr. Rodriguez.

7 THE VIDEOGRAPHER: Would the court
8 reporter please swear in the witness.

9 (Witness duly sworn.)

10 MR. LUSTBERG: Before we begin,
11 Mr. Johnson has a statement on behalf of the
12 government.

13 MR. JOHNSON: Yes. Thank you,
14 everyone, and good morning.

15 As mentioned, I'm Timothy Johnson
16 with the Department of Justice. I'm
17 representing the United States government in
18 connection with this case. As noted, with me
19 here today are Cody Smith and Heather
20 Walcott, attorneys with the CIA Office of
21 General Counsel, and Megan Beckman, a
22 paralegal at the CIA Office of General
23 Counsel.

24 Although the United States
25 government is not a party in this case, we're

1 here today to protect the interests of the
2 United States that may be implicated by
3 today's deposition of Mr. Jose Rodriguez. We
4 understand the questions in this deposition
5 will cover topics related to his career with
6 the CIA.

7 Given the sensitive nature of
8 Mr. Rodriguez's positions and the information
9 he acquired in those positions, we're here
10 today to ensure that no classified, protected
11 or privileged information is disclosed.

12 To guide the witness and parties in
13 this deposition, the government has provided
14 them with the Classification Guidance from
15 the CIA, which we have marked as Government
16 Exhibit G-1 for the record.

17 (Exhibit G-1 was marked for
18 identification.)

19 MR. JOHNSON: This CIA Guidance was
20 previously produced in this litigation on
21 May 20, 2016, and is marked as US Bates
22 number 22 through 24. It provides a list of
23 categories of information about the CIA's
24 previous Detention and Interrogation Program
25 that remain classified, as well as a list of

1 categories of information that are now
2 unclassified.

3 I'd like to now issue a continuing
4 instruction on behalf of the government to
5 Mr. Rodriguez that, consistent with his
6 nondisclosure agreement with the government,
7 he not answer any question with information
8 identified as classified in the CIA
9 Classification Guidance marked as Government
10 Exhibit 1, or that is otherwise protected or
11 privileged by the government.

12 The United States also reserves its
13 right to object to any question posed to
14 Mr. Rodriguez that would tend to call for the
15 disclosure of classified, protected or
16 privileged government information, and to
17 specifically instruct Mr. Rodriguez not to
18 answer any such questions.

19 With these caveats, the United
20 States government has no objection to the
21 deposition proceeding.

22 MR. LUSTBERG: Thank you,
23 Mr. Johnson.

24

25 / / /

1 JOSE RODRIGUEZ,
2 having been first duly sworn, testified
3 upon his oath as follows:

4 EXAMINATION BY COUNSEL FOR PLAINTIFFS
5 BY MR. LUSTBERG:

6 Q Good morning, Mr. Rodriguez. As I said,
7 my name is Larry Lustberg. I represent the
8 plaintiffs in this matter. I'll be asking you
9 questions today.

10 Sir, have you ever been in a civil
11 deposition before?

12 A Never have.

13 Q Okay, so I'm going to just give you some
14 basic instructions with regard to this. If you
15 have any questions about them or anything else,
16 please stop me.

17 A Okay.

18 Q You have been sworn to tell the truth,
19 and that oath is just the same as if you were in a
20 court of law.

21 Do you understand that?

22 A I understand that.

23 Q So you've noticed that there's a court
24 reporter here. It's important, so that she can
25 get all the words down, that you let me finish my

1 questions before you answer, even if you
2 absolutely know how I'm going to finish the
3 question.

4 A Okay.

5 Q And I'll let you finish your answer
6 before I ask the next question.

7 Okay?

8 A Very good.

9 Q If you don't understand anything about a
10 question I ask, please feel free to ask me, and
11 I'll clarify it. If you answer it, we'll all
12 assume that you understood the question --

13 A Okay.

14 Q -- okay?

15 So that was an example of your answering
16 before I was finished with my question.

17 And if you need any breaks at any time,
18 feel free to take them. You can consult with your
19 counsel, Mr. Bennett, with regard to that, and is
20 it clear there?

21 A Okay.

22 Q Okay. Any questions then before we
23 start?

24 A No.

25 Q Okay, thank you.

1 So Mr. Rodriguez, you recall that you
2 were originally supposed to be deposed back in
3 January?

4 A Yes.

5 Q And that deposition was canceled because
6 you were -- you signed a declaration.

7 Do you remember that?

8 A Yes.

9 Q Okay.

10 We're going to mark this declaration as
11 Exhibit 36.

12 (Exhibit 36 was marked for
13 identification.)

14 BY MR. LUSTBERG:

15 Q Mr. Rodriguez, if you could take a quick
16 look at that declaration, and in particular, look
17 at page 20, I believe it is, and let me ask you:
18 Is that your signature at the bottom of --

19 A Yes, it is.

20 Q -- the page? Okay. Again, let me just
21 finish the questions.

22 A Okay.

23 Q I understand it's not how human beings
24 converse, but that's how we do this in
25 depositions.

1 And it's dated January 24, 2017,
2 correct?

3 A Correct.

4 Q Okay. That was the date that you signed
5 it?

6 A Yes.

7 Q And before you signed it, did you read
8 every paragraph?

9 A Yes.

10 Q And it's entirely true?

11 A True.

12 Q Okay. Who drafted this declaration?

13 A My lawyer.

14 Q And what was the arrangement pursuant to
15 which you signed it? That is, what, what -- why
16 did you sign it?

17 A I signed it because it was the truth as
18 I know it over the years.

19 Q And does it include all the information
20 of which you are aware that pertains to these
21 subjects?

22 A Yes.

23 Q The -- was your understanding when you
24 signed it that as a result of your signing it, you
25 would not have to be deposed at that time?

1 A I thought that was the case.

2 Q Did you get anything else in return as a
3 result of signing the declaration?

4 A What do you mean?

5 Q Was there any kind of deal that you
6 would sign the declaration and get something in
7 return?

8 A No.

9 Q Okay. Some very quick background on
10 you.

11 You used to work at the CIA, correct?

12 A Correct.

13 Q And if you could, just very briefly --
14 we're not going to spend a lot of time on this --
15 provide your -- when did you start at the CIA?

16 A I started at the CIA November of 1976.

17 Q Okay, and what was your first position
18 there?

19 A I first -- the first two years was
20 training, and then after that I was ready to go
21 overseas, and I went overseas six or seven times.

22 Q And before you worked at the CIA, you
23 went to law school, correct?

24 A Correct.

25 Q Did you ever practice law?

1 A No.

2 Q Do you still have your law license?

3 A No.

4 Q Did you have your law license in 2002?

5 A No.

6 Q When did you give up your law license?

7 A I never got a law license. I just
8 graduated from law school. I went to law school
9 to get a job at the CIA, actually.

10 Q So did you study let's say criminal law
11 in particular?

12 A Yes.

13 Q And just general courses in law school
14 regarding criminal law?

15 A Yes.

16 Q At any point did you study the
17 definition of "torture" in Title 18 of the United
18 States Code?

19 A At some point, perhaps, back then.

20 Q Back when?

21 A Back when I was in law school, but more
22 recently when I was involved in running the
23 Counter-Terrorism Center.

24 Q Okay. Let's talk about that. When did
25 you begin, begin at the Counter-Terrorism Center?

1 A I began in September of 2001.

2 Q So right after 9/11?

3 A About ten days after 9/11 or so.

4 Q What was your first position at the
5 Counter-Terrorism Center?

6 A I was the chief operating officer for
7 the Counter-Terrorism Center.

8 Q So if your Wikipedia page says that you
9 were chief of staff, is that incorrect?

10 A That is incorrect.

11 Q Your title was chief operating officer?

12 A Yes.

13 Q And then --

14 A It's the title I gave myself, because
15 there was no position for me there.

16 Q Okay. How did that happen that you gave
17 yourself that title?

18 A I was asked to support and help -- Cofer
19 Black was the head of the Counter-Terrorism
20 Center, and to go help him out, so I got there and
21 I had to give myself a title, find an office, and
22 become essentially the number 3 person.

23 Q And how long were you the chief
24 operating officer of the --

25 A Until May 2002.

1 THE REPORTER: I didn't get the end
2 of your question.

3 BY MR. LUSTBERG:

4 Q So we just need to both be better about
5 that, so let's start -- so you became -- I'm
6 sorry. You were chief operating officer until
7 May 2002; is that what you said?

8 A Yes.

9 Q And then what position did you assume?

10 A I became the director of the
11 Counter-Terrorism Center.

12 Q What is the Counter-Terrorism Center?

13 A The Counter-Terrorism Center is the
14 organization within the agency that carries out
15 covert action, foreign intelligence operations,
16 analysis on counter-terrorism for the agency, for
17 the director.

18 Q I just want to make sure I understand
19 that. So is it okay if I call the
20 Counter-Terrorism Center "CTC"?

21 A Yes.

22 Q In fact, it's commonly referred to as
23 "CTC," right?

24 A Correct.

25 Q So the CTC carries out covert action,

1 correct?

2 A Correct.

3 Q It does foreign intelligence operation
4 analysis, right?

5 A Foreign intelligence operations.

6 Q Okay, and you said for the director; is
7 that right?

8 A And analysis -- separate -- for the
9 director of the CIA.

10 Q So you reported directly to the director
11 of the CIA?

12 A I had a reporting channel to the
13 director of the CIA, yes, in addition to other
14 people.

15 Q Did the functions of the CTC change
16 after 9/11?

17 A Yes.

18 Q In what way generally?

19 A Overnight we were overwhelmed with
20 requirements to go out and get Al-Qaeda and
21 protect the country and save American lives.

22 Q At that time -- and when we say "at that
23 time," let's focus on the time period in 2002, did
24 you know anything about the Air Force's Survival,
25 Evasion, Resistance and Escape, which we refer to

1 as "SERE," program?

2 A Not early on. Later.

3 Q Okay. When did you learn about the SERE
4 program?

5 A When we started to figure out what to do
6 to get Abu Zubaydah to tell us what were the
7 pending attacks on the country.

8 Q So before you tried to figure out what
9 to do to get Abu Zubaydah to tell us what were the
10 pending attacks on the country, you did not know
11 anything about the SERE program?

12 A I didn't know what -- I did not know
13 anything.

14 Q Had you heard of it?

15 A No.

16 Q You mentioned that you have a law
17 degree. Have you had any training in psychology?

18 A No.

19 Q Have you studied or know anything about
20 post-traumatic stress disorder?

21 A No.

22 Q Have you heard of that?

23 A Yes.

24 Q What have you heard about it?

25 A What I hear on TV.

1 Q Just from TV?

2 A Just TV, mm-hmm.

3 Q Have you heard about post-traumatic
4 stress disorder anywhere other than on TV?

5 A No.

6 Q Have you studied at any point the
7 long-term effects of torture?

8 A No.

9 Q Have you spoken to people about the
10 long-term effects of torture?

11 A No.

12 Q Okay. I want to direct your attention
13 to the time period in which Drs. Mitchell and
14 Jessen were hired.

15 A Mm-hmm.

16 Q And for the record, Drs. Mitchell and
17 Jessen are here today.

18 At the time that Dr. Mitchell was hired,
19 what was he doing; do you recall?

20 A He was hired by the CIA in December of
21 2001 by the Office of Technical Services to
22 provide psychological support, applied psychology
23 and research, and he came to CTC in April of 2002
24 to help us out with Abu Zubaydah.

25 Q Okay. Just to break that down a little

1 bit, what was -- the Office of Technical Services;
2 what is that?

3 A It's an office within the Directorate of
4 Science and Technology that does this type of
5 stuff.

6 Q What type of stuff?

7 A Like hire the psychologist.

8 Q So when Dr. Mitchell was working at the
9 Office of Technical Services, you said he provided
10 "psychological support."

11 What does that mean?

12 A He provided research and applied
13 psychological support to the agency.

14 Q So he did research?

15 A I assume so.

16 Q You don't know?

17 A No.

18 Q Do you know anything about the applied
19 psychological research that he did?

20 A No.

21 Q Okay. Do you know, beyond what you
22 said, anything more about what his activities were
23 at OTS?

24 A No.

25 Q And when I say "OTS," just so that the

1 record is clear, I'm referring to the Office of
2 Technical Services.

3 Do you know anything about any
4 psychological, applied psychological papers that
5 he did or --

6 A No.

7 Q Okay. How did it come about that
8 Dr. Mitchell was -- left OTS and began to work for
9 CTC?

10 A He was recommended to us by someone in
11 CTC that he should be someone to accompany a team
12 that was going overseas to debrief Abu Zubaydah.

13 Q I just want to make sure I understand.
14 You said he was recommended by someone in CTC?

15 A Yes.

16 Q Okay. Just because these, these details
17 are important, if you could take a look at, at
18 paragraph 12 of your declaration. It's on page 2.

19 A Page 12 or --

20 Q Paragraph 12, page 2. Sorry.

21 A Mm-hmm.

22 Q Do you see that at the bottom of the
23 page?

24 A Yes.

25 Q Paragraph 12 says, "OTS then recommended

1 Dr. Mitchell to CTC Legal, and CTC hired him."

2 A Okay.

3 Q Was it OTS that recommended Dr. Mitchell
4 to CTC Legal?

5 A OTS recommended him to CTC, and CTC
6 recommended that he be a person -- that he should
7 be hired by us.

8 Q Okay. So CTC Legal recommended to you
9 to hire Dr. Mitchell?

10 A Yes.

11 Q You were responsible for that hiring
12 decision?

13 A No.

14 Q Who was responsible for that hiring
15 decision?

16 A Whoever hires people at CIA.

17 MR. JOHNSON: Objection. Sorry.

18 MR. LUSTBERG: I'll withdraw the
19 question.

20 MR. JAMES SMITH: Just so the
21 record is clear, can we have the basis for
22 the objection?

23 MR. JOHNSON: We've been asked for
24 a full recitation of the objection, so I read
25 the whole thing.

1 THE REPORTER: You need to speak
2 louder. You've been asked for --

3 MR. JOHNSON: We have been asked
4 for a full objection, so I will go ahead and
5 articulate.

6 MR. JAMES SMITH: Before you go on,
7 if the contention is that it would require
8 the witness to reveal classified information,
9 you can just say that for the record, and
10 that will be fine with me, I'm sure fine with
11 everyone in the room.

12 MR. JOHNSON: Certainly. I just
13 want to make sure, since you asked for a full
14 recitation.

15 The government objects to the
16 degree that the question would call for
17 classified information or information subject
18 to -- and that therefore subject to an
19 assertion of the State Secrets Privilege or
20 protected from disclosure by the CIA Act, 50
21 U.S.C. Section 3507, or the National Security
22 Act, 50 U.S.C. Section 3024.

23 The witness, however, may answer
24 the question if he is confident he can do so
25 on the basis of unclassified and

1 non-privileged information without reference
2 to any of the classified categories of
3 information in Government Exhibit 1.

4 MR. BENNETT: Well, hold it.
5 Excuse me.

6 MR. JOHNSON: The question was
7 withdrawn.

8 MR. BENNETT: I do not want
9 Mr. Rodriguez to have to make that judgment.
10 That's why the government is here. At this
11 point in time it's impossible for us to know
12 what is classified and what isn't classified.
13 So if he gives a name, are you saying it's
14 okay or not okay?

15 MR. JOHNSON: He can't give a name.
16 Cannot.

17 MR. LUSTBERG: I have withdrawn the
18 question, so we're okay.

19 MR. BENNETT: Okay.

20 THE WITNESS: I was not going to
21 reveal a name.

22 MR. BENNETT: Well, you just be
23 quiet until you are asked a question. Okay?

24 BY MR. LUSTBERG:

25 Q When, when Dr. Mitchell was hired by CTC

1 on the recommendation of OTS and then CTC Legal,
2 he got a new contract, correct?

3 A Correct.

4 Q Okay, and the terms of that contract
5 were that he, instead of making \$10,000, it was
6 now a contract for \$101,600.

7 Do you recall that?

8 A I've seen the contract.

9 Q Okay. If you want -- if you need to
10 take a look, it's Exhibit, Exhibit A and B. His
11 original contract is Exhibit A, and the subsequent
12 contract was Exhibit B to your declaration.

13 A Okay.

14 THE VIDEOGRAPHER: We need to go
15 off the record for a technical reason. The
16 time is 10:33 a.m.

17 (Whereupon, a short recess was
18 taken.)

19 THE VIDEOGRAPHER: The time is
20 10:37 a.m. We're back on the record.

21 BY MR. LUSTBERG:

22 Q Mr. Rodriguez, did you have a chance to
23 look at Exhibits A and B?

24 A Yes.

25 Q And was I right that the value of the

1 contract went from \$10,000 to \$101,600?

2 A Correct, but you should know that he was
3 paid by the hour, so what the contracts people do
4 is they put money into the kitty, and they
5 withdraw as he does his work.

6 Q Okay. So what's the significance of
7 those, of the, of the press -- so it looks like --
8 look at Exhibit A. I'm sorry. I don't want to
9 ask multiple questions at once. Let's make this
10 the question. It says "Price: Not to exceed
11 \$10,000."

12 Do you see that? Exhibit A, the first
13 contract.

14 A Yeah, what page?

15 Q Page 1.

16 A Okay. Yes, I see it.

17 Q And if you look at Exhibit B, it says
18 "Price: Not to exceed \$101,600," correct?

19 A Correct.

20 Q So it could be less, but it couldn't be
21 more; is that correct?

22 A Yes.

23 Q Okay. Thank you for that clarification.

24 Other than that, Exhibit B makes clear
25 that all other terms and conditions remain in full

1 force and effect, right?

2 A Correct.

3 Q And in particular, the services that
4 Dr. Mitchell was to provide was -- and I'm looking
5 at -- let's look at A. It says, "The Contractor
6 shall provide consultation and research on
7 counter-terrorism and special ops."

8 Do you see that?

9 A Let me find it.

10 Q Take your time.

11 A Yes, I get it. I see it.

12 Q Okay. So just to be clear, in
13 Dr. Mitchell's first contract, it described the
14 services as: "The Contractor shall provide
15 consultation and research on counter-terrorism and
16 special ops. Special taskings are identified in
17 the previously provided Statement of Work."

18 Do you see that?

19 A Yes, I see it.

20 Q And if you look -- bless you -- to the
21 statement of work, which is several pages later in
22 your exhibit.

23 A Okay.

24 Q I want to ask you about a couple of
25 these, these entries.

1 It says "Project Objectives," and it
2 says "Provide consultation to the Professional
3 Standards Advisory Committee."

4 Do you know what that is?

5 A No.

6 Q And it says, "Regarding applied research
7 in high-risk operational settings."

8 Do you know what research in high-risk
9 operational settings Dr. Mitchell was doing?

10 A No.

11 Q Under "Deliverables" it says, "Provide
12 consultation and recommendations for applying
13 research methodology to meet OTS goals and
14 objectives on a level of effort basis."

15 Do you know what research methodology
16 Dr. Mitchell was consulting and making
17 recommendations about?

18 A The only thing that I know is that he
19 was supporting the team that went out there to
20 debrief Abu Zubaydah.

21 Q So do you know anything about what
22 research he was doing in connection with that?

23 A No.

24 Q Just to fast-forward a bit, if you can
25 look at Exhibit H, this is Dr. Jessen's contract.

1 And again, just for the record, this is Exhibit H
2 to Exhibit 36, right?

3 Sorry, Mr. Rodriguez. Do you recognize
4 this as Dr. Jessen's contract?

5 A It looks like it. I hadn't seen it
6 before.

7 Q You had not seen it before?

8 A Hadn't seen it before I was shown this,
9 this exhibit.

10 Q I'm sorry. You had not seen it before
11 today?

12 A No, before -- I was shown this exhibit
13 in preparation for this meeting.

14 Q Okay. This exhibit was attached to your
15 declaration.

16 A Correct. I saw it then.

17 Q Okay, and before that, you had not seen
18 it?

19 A No.

20 Q Do you know whether it's Dr. Jessen's
21 contract?

22 A It looks like it.

23 Q Based on your information, did he
24 fulfill the terms of his contract?

25 A Yes.

1 Q And if you turn to the top of the second
2 page of it, it says "Services."

3 Do you see that?

4 A Yes.

5 Q And the services are, "Task 1, Provide
6 consultation and recommendations for applying
7 research methodology."

8 Do you see that?

9 A Yes.

10 Q Then it says "CONUS." What does "CONUS"
11 stand for?

12 A CONUS is the US.

13 Q And then it says, "Conduct specified
14 applied research projects."

15 Do you see that?

16 A Yes.

17 Q And your testimony is that Dr. Jessen
18 fulfilled the terms of the contract by providing
19 those services; is that right?

20 A Correct.

21 Q So back to Dr. Mitchell for a second,
22 did you select Dr. Mitchell to work with CTC?

23 A Once he was recommended and I met
24 Dr. Mitchell, yes, I recommended him to continue
25 working with us.

1 Q I want to read you a passage from your
2 book, and when I say "your book," I'm referring to
3 the book Hard Measures.

4 Do you see that there?

5 A Yes.

6 Q That looks like you?

7 A That looks like me.

8 Q Yeah, and, and --

9 MR. BENNETT: Ill stipulate that
10 that's him.

11 MR. LUSTBERG: You're so
12 reasonable.

13 MR. BENNETT: Thank you.

14 BY MR. LUSTBERG:

15 Q I'm going to just -- we're going to just
16 mark this as Exhibit 37, yeah. We'll mark
17 passages for now.

18 (Exhibit 37 was marked for
19 identification.)

20 BY MR. LUSTBERG:

21 Q So if you could take a look at page 55,
22 which is the first page. Do you see that?

23 A Yes.

24 Q And in the second full paragraph is the
25 sentence, "Within two days of AZ's capture, we

1 tracked down the contractor and asked if he would
2 accompany a team of CTC officers to the black site
3 where we hoped Abu Zubaydah would be
4 interrogated."

5 Do you see that?

6 A Yes.

7 Q First of all, the reference to "AZ" is
8 Abu Zubaydah, correct?

9 A Correct.

10 Q And the reference to "the contractor" is
11 Dr. Mitchell; is that correct?

12 A Correct.

13 Q Okay. So how did you reach him within
14 two days of AZ's capture?

15 A Well, I assume that he was at
16 headquarters. Somebody, you know, somebody
17 reached him. I did not reach him myself.
18 Somebody in the Counter-Terrorism Center reached
19 him.

20 Q Did you know him at that time?

21 A I did not know him.

22 Q So that was the first time that you had
23 met Dr. Mitchell?

24 A I met him, yes, for the first time.

25 Q Mm-hmm. Ultimately, though, you were

1 the one who made the decision to hire him at CTC?

2 A Yes.

3 Q Why did you think he was qualified?

4 A Because of his experience with SERE and
5 because we needed to do something different than
6 what had been done before, and he looked like the
7 right person to do it.

8 Q Why did he look like the right person to
9 do it?

10 A Because he had a tremendous expertise,
11 and he had a good vision for what needed to be
12 done.

13 Q What did he have "tremendous expertise"
14 in?

15 A In SERE.

16 Q What was his SERE experience, to your
17 knowledge, at that time?

18 A He had spent many years with the Air
19 Force working on SERE.

20 Q Did he have -- was there any other
21 source of his tremendous expertise?

22 A The expertise I was interested in was
23 SERE.

24 Q When you said "he had a good vision for
25 what needed to be done," what was that good

1 vision?

2 A That good vision was the use of enhanced
3 interrogations to get Abu Zubaydah to cooperate
4 with us.

5 Q Was that his idea?

6 A It was a recommendation. I don't
7 remember exactly who the recommendation came from,
8 but I assume he was part of that recommendation.

9 Q I'm sorry. He was -- you're saying that
10 he was recommended to you?

11 A That was a recommendation from him
12 regarding the use of the enhanced interrogation
13 techniques.

14 Q I see, okay, and that's -- so his -- the
15 recommendation from him to use enhanced
16 interrogation techniques was what you mean when
17 you said he had "a good vision"?

18 A Yes.

19 Q Okay.

20 A He had a good vision for how to get this
21 person to tell us about the pending attacks on the
22 US.

23 Q Other than Dr. Mitchell's experience at
24 SERE, did he have any other qualifications that
25 you were aware of at that time?

1 A Well, he came with a Ph.D., highly
2 regarded, and then the SERE experience is the one
3 that I was interested in.

4 Q How did you know he was highly regarded?

5 A I was told.

6 Q The Senate Select Committee On
7 Intelligence report, which I know you have some
8 concerns about, says that "neither Dr. Mitchell
9 nor Dr. Jessen," quote, "had any experience as an
10 interrogator, nor did either have specialized
11 knowledge of Al-Qaeda, a background in
12 counter-terrorism, or any relevant cultural or
13 linguistic experience."

14 You've read that before, right?

15 A I've read that before.

16 Q And what's your response to that?

17 A My response to that is that at some
18 time -- sometimes it is important to do something
19 different, because what's traditionally been done
20 hasn't worked, and this was something different,
21 and it worked very well.

22 Q So Dr. Mitchell was proposing --
23 "recommending" was your word -- something
24 different, right?

25 A Yes.

1 Q And that something different, that
2 "thinking outside the box," as you say, was
3 something that made him attractive to you,
4 correct?

5 A Correct.

6 Q And when you say "outside the box," I
7 take it that that was different than sort of the
8 standard approaches that other people might have
9 been recommending to you?

10 A Correct.

11 Q How about the fact that -- well, let's
12 break down the SSCI statement.

13 It says that "neither Dr. Mitchell nor
14 Dr. Jessen had any experience as an interrogator."
15 Was of that of concern to you?

16 A They had experience with SERE, they had
17 experience with counter, countering
18 interrogations, and I thought that was a very
19 important issue to understand and to use, to
20 reverse-engineer it, to use it to our advantage.

21 Q Did they -- was it your idea to
22 reverse-engineer SERE, or was that Dr. Mitchell's
23 idea?

24 A Well, the idea -- I don't know where it
25 came from. The idea was to use that experience

1 offensively to try to get information out of Abu
2 Zubaydah.

3 Q And again, though, that was what was
4 proposed to you by Dr. Mitchell?

5 A And the group of people who were working
6 with me.

7 Q Okay. Did it concern you that neither
8 Dr. Mitchell nor Dr. Jessen had any relevant
9 cultural or linguistic experience, as the SSCI
10 report says?

11 A Well, I don't know about that. I think
12 they had a lot more experience in all of this than
13 the record shows, and if you have read his recent
14 book, you will see the expertise that he had,
15 dealing with all of these people from that part of
16 the world.

17 Q So your view is that when the SSCI
18 report says that he did not have, that he nor
19 Jessen had any "relevant cultural or linguistic
20 experience," that's incorrect?

21 A Incorrect.

22 Q Did the -- you mentioned that there were
23 a number of people that you were discussing
24 Dr. Mitchell's proposal with?

25 A Correct.

1 Q Did any of those other people who were
2 working with you have experience with SERE?

3 A No.

4 Q Okay. I want to show you -- so this is
5 what was previously marked as Exhibit 9. Make
6 sure you give a copy to Mr. Bennett. Thank you.

7 (Discussion was held off the
8 record.)

9 BY MR. LUSTBERG:

10 Q Mr. Rodriguez, do you recognize this
11 document?

12 A No.

13 Q You've never seen it before?

14 A I don't think so.

15 Q Okay. For the record, it's a document
16 entitled "Recognizing and Developing
17 Counter-Measures to Al-Qaeda Resistance to
18 Interrogation Techniques, a Resistance Training
19 Perspective," authored by Dr. Mitchell and
20 Dr. Jessen.

21 You see that, correct?

22 A Yes.

23 Q Okay. At the bottom of the executive
24 summary, Drs. Mitchell and Jessen write, "We are
25 not experts in Arab culture or the organizational

1 structure of Al-Qaeda."

2 Do you see that?

3 A Yes.

4 Q "However, we have found that while
5 culture does affect perception and behavior, the
6 cardinal dynamics of resistance to interrogation
7 and exploitation are not culturally dependent."

8 Do you see that?

9 A Yes.

10 Q Do you agree with that?

11 A I agree with that.

12 Q Did you, did you have any questions of
13 them when you met them? Let's take them one at a
14 time.

15 When you first met Dr. Mitchell, did you
16 ask him any questions about his background in
17 terms of expertise in Arab culture or the
18 organizational structure of Al-Qaeda?

19 A No. I just observed him in his work.

20 Q I want to make sure I understand. So
21 you -- did you observe him in his work before you
22 met him?

23 A I would -- as you know from Hard
24 Measures, I went out to the first site and had a
25 chance to meet him and talk to him and understand

1 what his views were.

2 Q So you had not met him before you went
3 out to the site?

4 A No, no. I don't remember meeting him
5 before that.

6 Q And reading Hard Measures and actually
7 Dr. Mitchell's book as well, Dr. Mitchell says
8 that when he eventually has a meeting with, with
9 you and with Director Tenet and with Mr. Rizzo,
10 that there were a lot of questions asked of him.

11 Is that correct?

12 A I don't remember that.

13 Q Okay. Do you remember whether any
14 questions were asked about his expertise as either
15 an interrogator or in terms of --

16 A I don't remember that.

17 Q Just let me finish my question first
18 before you answer.

19 A Okay.

20 Q Thank you.

21 I can play this for you if you wish, but
22 on one of the interviews that you did on CBS This
23 Morning, you said the following: "These people,"
24 referring to Drs. Mitchell and Jessen, "were
25 experts on the SERE program, which is a military

1 training program that trains our people how to
2 withstand interrogation tactics. They had
3 knowledge and background on Islamic extremism."

4 What knowledge and background on Islamic
5 extremism do you believe that Drs. Mitchell and
6 Jessen had?

7 A Well, first of all, their knowledge of
8 psychology, human behavior was one that, as he
9 points in his paper here, translates into all
10 cultures. I saw him, how he dealt with the Arab
11 culture, and I thought, you know, this is a person
12 who understands it and can deal with it.

13 Q So your belief that they had knowledge
14 and background on Islamic extremism came about as
15 a result of your observations of them during the
16 course of interrogations; is that correct?

17 A Correct.

18 Q Do you have any other knowledge with
19 regard to their knowledge and background on
20 Islamic extremism?

21 A No.

22 Q Okay. Does it -- how do you feel about
23 the fact that Dr. Mitchell and Dr. Jessen in
24 their, what I just read to you, say that they
25 didn't have knowledge about -- and background on

1 Islamic extremism?

2 A I have no feeling about it.

3 Q I want to ask you for your response to a
4 couple other statements that have been made about
5 Dr. Mitchell and Dr. Jessen's background.

6 In her book, *The Dark Side*, Jane Mayer
7 says that "according to one colleague who is an
8 interrogator, Mitchell had not even observed an
9 interrogation," referring to prior to, to this,
10 this assignment.

11 Do you know whether that's true or not?

12 A I do not.

13 Q And Ali Soufan from the FBI says the
14 same thing.

15 To your knowledge, is it true that
16 Dr. Mitchell had never even observed an
17 interrogation prior to his assignment?

18 A I do not know.

19 Q Okay. I want to ask you to turn to
20 paragraph 42 of your declaration, and that's on
21 page 7, Mr. Rodriguez.

22 A Okay.

23 Q In paragraph 42(a) you say, "Before
24 September 11, 2001, the CTC had no resident
25 expertise in interrogation"; is that correct?

1 A True.

2 Q When I say "is that correct," it's not
3 just that you said it; that was a true fact?

4 A True.

5 Q Okay, and it says in (b), "To be used
6 effectively, interrogation skills must be
7 developed over years" and that "interrogation was
8 not a part of the CTC's core counter-terrorism
9 mission."

10 Is that true?

11 A True.

12 Q So were you -- did you have expertise in
13 interrogation?

14 A No.

15 Q That is not something that you had done
16 in your prior assignments with the CIA?

17 A No.

18 Q And were you in a position to evaluate
19 then whether somebody was doing a good job at
20 interrogation or not?

21 A Only in terms of results.

22 Q But it's not an area that you had any
23 training or experience in?

24 A At the CIA, many times we take on new
25 jobs, and we don't have any training or

1 experience. Like myself, I came to CTC. I had
2 never done any CTC work. You come and you learn
3 it, and you very quickly become pretty
4 knowledgeable about it.

5 Q Okay. I really want to focus here on
6 paragraph 42(c), the next, the next subparagraph
7 down.

8 Do you see that?

9 A Yes.

10 Q And that says, "Having been referred to
11 the CTC by the OTS, Drs. Mitchell and Jessen were
12 eminently qualified to assist the CTC in
13 developing and applying EITs."

14 Do you see that?

15 A Yes.

16 Q The fact that Drs. Mitchell and
17 Jessen -- well, first of all, it says -- strike
18 that. Let me start over, try to ask a decent
19 question.

20 As you point out, that they were
21 referred -- Drs. Mitchell and Jessen were referred
22 to the CTC by the OTS; is that correct?

23 A Yes.

24 Q Is it true that Dr. Jessen was referred
25 to the CTC by the OTS?

1 A Jessen was -- Mitchell was referred.
2 Mitchell was referred. Jessen was referred by
3 Mitchell.

4 Q So is the fact that they were referred
5 to the CTC by the OTS one of the reasons why you
6 believe they were, quote, "eminently qualified to
7 assist the CTC in developing and applying EITs"?

8 A Yes.

9 Q What about the reference from the OTS
10 led you to conclude that they were eminently
11 qualified?

12 A I just took it for granted that they
13 knew what they were doing.

14 Q And you took it for granted based upon
15 the referral from the OTS; is that right?

16 A Yes.

17 Q You mentioned a few minutes ago that,
18 that Dr. Jessen was referred to you by
19 Dr. Mitchell; is that right?

20 A Yes.

21 Q What -- did you make the decision to
22 hire Dr. Jessen?

23 A Yes.

24 Q What did you do to vet him? Anything?

25 A Nothing.

1 Q You just took Dr. Mitchell's word for
2 it?

3 A Well, you know, there's a whole vetting
4 process that takes place at the agency, and the
5 contract people and the security people, they take
6 care of that.

7 Q If you look at paragraph 39, that same
8 page, right before where we were.

9 Do you see that? Page 7? You got that?

10 A Yes, I see it.

11 Q Thank you.

12 You say, "At or about the conclusion of
13 this meeting," and you're referring to a meeting
14 in July of 2002?

15 A Mm-hmm.

16 Q If you want to look back and make sure
17 I'm right about that. This was a meeting that you
18 had with, at headquarters that Dr. Mitchell
19 attended in July of 2002?

20 A Correct.

21 Q Okay, and you say at the conclusion of
22 the meeting that you, "on behalf of the CTC, asked
23 Dr. Mitchell to consider working with the CIA to
24 use some or all of the EITs to interrogate
25 Zubaydah," right?

1 A True.

2 Q And then the next paragraph says, "At or
3 about this same time, Dr. Mitchell requested that
4 Dr. Jessen be hired by the CTC to assist
5 Dr. Mitchell with the CTC's request."

6 Do you see that?

7 A Yes.

8 Q Was there any discussion about why
9 Dr. Jessen should be hired?

10 A He just needed him to work with him.

11 Q Did he explain why he needed him?

12 A No.

13 Q And did you ask any questions about
14 Dr. Jessen?

15 A I don't remember.

16 Q You may have?

17 A I don't remember.

18 Q So you don't remember whether or not you
19 asked any questions?

20 A I don't remember.

21 Q Which means you may have, but you just
22 don't recall?

23 A I don't remember.

24 Q Would you agree that, as Dr. Mitchell's
25 book describes him, he was, quote, "the architect

1 of the CIA interrogation program"?

2 A Who, who describes him?

3 Q We're going to show you what has been
4 previously marked as Exhibit 4 in this case.

5 A Okay.

6 MR. JAMES SMITH: Can I ask that
7 the question be read back? Is there a
8 pending question, Mr. Lustberg?

9 MR. LUSTBERG: I tell you what.
10 Why don't I -- I'll withdraw whatever
11 question was pending and just ask another
12 one --

13 MR. JAMES SMITH: Perfect. Thank
14 you.

15 MR. LUSTBERG: -- just so it's
16 clear.

17 BY MR. LUSTBERG:

18 Q If you look at the cover page, it says
19 "Interrogating the Enemy, The Story of the CIA's
20 Interrogation of Top al-Qa'ida Terrorists (Working
21 Title) by James E. Mitchell, Ph.D.," and then it
22 says "Architect of the CIA Interrogation Program,"
23 and my question is: Do you agree with the
24 characterization of James E. Mitchell, Ph.D. as
25 the "Architect of the CIA Interrogation Program"?

1 MR. JAMES SMITH: Objection.

2 THE WITNESS: Yes.

3 THE REPORTER: You objected? I
4 couldn't hear you.

5 MR. JAMES SMITH: I did.

6 MR. BENNETT: You objected?

7 MR. JAMES SMITH: Yes.

8 BY MR. LUSTBERG:

9 Q So I didn't at the beginning talk to
10 you, as I should have, about objections.

11 MR. BENNETT: I did.

12 BY MR. LUSTBERG:

13 Q Okay, so since your attorney has
14 instructed you, when there's an objection, unless
15 your attorney directs you not to answer, you
16 should answer anyway, which you did.

17 So your answer to that question was yes?

18 A Yes.

19 Q So you agree that Dr. Mitchell was the
20 architect of the CIA interrogation program?

21 A Yes.

22 Q I'm going to direct your attention to a
23 couple other passages from, from this book.

24 MR. JAMES SMITH: Objection.

25 Mr. Lustberg, just so we're clear, this is

1 not the book. This is a draft.

2 MR. LUSTBERG: That's correct.

3 BY MR. LUSTBERG:

4 Q So just to be clear, what I've shown you
5 is a, is a manuscript that was submitted. It's --
6 we're not using the final version of the book. I
7 don't think there's any differences, but okay.

8 MR. JAMES SMITH: Well,
9 Mr. Lustberg, you know that that passage was
10 removed that you just read to the witness.

11 MR. LUSTBERG: Right.

12 MR. JAMES SMITH: So saying for the
13 record that there aren't any differences, I
14 don't think you mean to do that.

15 MR. LUSTBERG: Okay. I asked him
16 about whether he agreed with the
17 characterization, and he said yes.

18 MR. JAMES SMITH: I hear you.

19 BY MR. LUSTBERG:

20 Q Directing your attention to pages 54 and
21 55 of the manuscript -- actually, page 54
22 describes the meeting that we were just
23 discussing.

24 Do you see that?

25 A What paragraph?

1 Q Page 54.

2 A 54?

3 Q Mm-hmm.

4 A Okay.

5 Q Looking at the first full paragraph on
6 page 55, Dr. Mitchell writes, "A day or so later
7 Rodriguez asked me if I would help put together an
8 interrogation program using EITs."

9 Do you see that?

10 A Yes.

11 Q Is that true?

12 A True.

13 Q It's true that you did ask him to do
14 that?

15 A Yes.

16 Q To put together an interrogation
17 program?

18 A Correct.

19 Q Okay, and in particular, if you go a
20 little further down that paragraph, it says, "Jose
21 not only wanted me to help them craft the program,
22 he wanted me to conduct the interrogations using
23 EITs myself."

24 Was it correct that you wanted him to
25 craft the program?

1 A Correct.

2 Q Okay, and just going back to -- going
3 back to the excerpts from your own book,
4 Mr. Rodriguez -- and, and by the way, just let me
5 backtrack.

6 In, in the passages I read to you from
7 Dr. Mitchell's manuscript, when it talked about
8 "Mr. Rodriguez" or "Rodriguez" and "Jose," those
9 refer to you?

10 A Yes.

11 Q I mean when, if when -- if his
12 description of what occurred was accurate, if --
13 that, that was you, Jose Rodriguez, who was being
14 referred to, correct?

15 MR. BENNETT: Unless it was the
16 barber downstairs that I told you about
17 before.

18 BY MR. LUSTBERG:

19 Q Do you have any --

20 A I was the only Jose Rodriguez at the
21 agency, I think, at the time, so . . .

22 Q The barber downstairs wasn't --

23 A He wasn't there.

24 Q He wasn't at those meetings?

25 MR. BENNETT: I'm sorry.

1 MR. LUSTBERG: No, no. We need
2 that.

3 BY MR. LUSTBERG:

4 Q Okay. Just directing your attention in
5 your own book to page 62 --

6 MR. JAMES SMITH: For the record,
7 the witness has Exhibit 37 before him?

8 MR. LUSTBERG: Yes. Yes, sir.
9 Thanks.

10 BY MR. LUSTBERG:

11 Q Page 62, which is the second page. In
12 the first full paragraph on page 62, the -- you
13 write, "I asked the contractor," and the
14 contractor refers to Dr. Mitchell, correct? Does
15 the contractor refer to Dr. Mitchell?

16 A Yes.

17 Q Okay. "How long it would take, if we
18 employed more aggressive, but legal, techniques,
19 before he would know whether a detainee was
20 willing to cooperate or was so dedicated that he
21 would take any secrets he had with him to the
22 grave. 'Thirty days' was his estimate. I thought
23 about it overnight, and the next morning asked the
24 contractor if he would be willing to take charge
25 of creating and implementing such a program."

1 Do you see that?

2 A Yes.

3 Q So is it correct that you asked
4 Dr. Mitchell if he would take charge of creating
5 and implementing a program?

6 A Yes.

7 Q And that program was the program of
8 enhanced interrogation techniques; is that right?

9 A Correct.

10 Q And you were under instructions at that
11 time from Director Tenet to develop a, an
12 interrogation program; is that right?

13 A Correct.

14 Q So I just want to make sure I understand
15 what happened then, and I direct your attention
16 for purposes of that to paragraph 46 of your
17 declaration, which is Exhibit 36, on page 8 of the
18 declaration.

19 A Yes.

20 Q Do you see that?

21 So this refers to a meeting on July 8,
22 2002, at headquarters with Drs. Mitchell and
23 Jessen, if you look at paragraph 44.

24 Do you see that?

25 A Yes.

1 Q In paragraph 46 it says, "At the
2 conclusion of this meeting, I requested that
3 Drs. Mitchell and Jessen provide me with a written
4 list identifying the potential EITs, describing
5 how they would be implemented and identifying
6 their intended effects upon Zubaydah."

7 Do you see that?

8 A Yes.

9 Q And they, in fact, did that, correct?

10 A Correct.

11 Q If you look at Exhibit J to your, to
12 your declaration, is that the list of EITs that,
13 that they provided as a result of your request?

14 A Yes.

15 Q And that -- let me just withdraw it.

16 If you go to the next page, paragraph 49
17 of your declaration, page 9, paragraph 49. Sorry.
18 Thanks.

19 I want to ask you about paragraph 49.
20 It says, "During July 2002, with Drs. Mitchell and
21 Jessen's input only as requested, the CTC began
22 devising an interrogation plan for Zubaydah
23 utilizing some or all of the EITs (hereinafter,
24 the 'EIT Program')."

25 So was the EIT program based upon the

1 list that Dr. Mitchell had provided to you?

2 A Yes.

3 Q And you discussed in many places the
4 fact that, however, you wouldn't implement that
5 until you got approval --

6 A Correct. I'm sorry.

7 Q No, no, that's okay, but you sought
8 permission for all of those techniques, correct?

9 A Correct.

10 Q Okay, and just so that the record is
11 clear, the techniques for which you sought
12 approval were -- and we can follow along, if you
13 want to, on Exhibit J -- were the attention grasp,
14 walling, facial hold, facial slap, cramped
15 confinement, wall standing, stress positions,
16 sleep deprivation, waterboard, use of diapers,
17 insects, and mock burial.

18 Now, I'm not asking what got approved.
19 I'm asking whether those were the techniques for
20 which you requested approval.

21 A Yes.

22 Q And again those are the techniques that
23 are set forth in the list that was provided by
24 Dr. Mitchell and Dr. Jessen, correct?

25 A Yes.

1 Q Did you request approval for techniques
2 other than those that were set forth on the list
3 provided by Drs. Mitchell and Jessen?

4 A I don't recall that.

5 Q Okay, and this became, this became the
6 formal interrogation -- ultimately when there was
7 approval granted for at least some of them, this
8 became the formal interrogation plan of CTC; is
9 that correct?

10 A Yes.

11 MR. JAMES SMITH: Objection.

12 THE REPORTER: Did you object?

13 MR. JAMES SMITH: Yes.

14 BY MR. LUSTBERG:

15 Q Okay, and in particular, if you look at,
16 in your declaration --

17 MR. BENNETT: Don't worry about it.

18 MR. LUSTBERG: Yeah, don't worry
19 about that.

20 THE WITNESS: I'm just asking.

21 MR. LUSTBERG: Oh, about the
22 objection?

23 THE WITNESS: The objection, yeah.

24 MR. BENNETT: I have no idea.

25 MR. LUSTBERG: To be honest,

1 neither do I, but he knows. That's good.

2 BY MR. LUSTBERG:

3 Q If you look at paragraph 58 on page 10
4 of your declaration.

5 A Mm-hmm.

6 Q This talks about the Zubaydah formal
7 interrogation plan, and there's a cable, which is
8 Exhibit M, if you could pull out Exhibit M. "M"
9 as in Mary.

10 In your declaration you state that the
11 cable constituted Zubaydah's formal interrogation
12 plan, and just referring to that exhibit, if you
13 look at the second page, paragraph 4, do you see
14 where it says "Background"?

15 A Yes.

16 Q Do you see the list of enhanced
17 interrogation techniques that are listed there?

18 A Correct.

19 Q It's a fact, isn't it, that those are
20 the same interrogation techniques -- let me try
21 that again. They're the same enhanced
22 interrogation techniques as are set forth in
23 Dr. Mitchell and Dr. Jessen's memo to you, other
24 than the mock burial, right?

25 A I believe that's right.

1 Q Okay. It's important, it's an important
2 fact, so if you could take a look and see if
3 that's --

4 A I mean mock burial was definitely out,
5 and I think that's the only one.

6 Q So is it fair to say, Mr. Rodriguez,
7 that Drs. Mitchell and Jessen's proposal became
8 the enhanced interrogation techniques program for
9 the CIA?

10 A Yes.

11 Q And if you look at Exhibit I to your
12 declaration, what is that? What is Exhibit I?

13 A Are you asking me?

14 Q Yes.

15 A A cable? A cable, do you mean?

16 Q Mm-hmm.

17 A I have to read it.

18 Q Take your time.

19 (Witness peruses document.)

20 BY MR. LUSTBERG:

21 Q I'm going to eventually direct your
22 attention to paragraph 5, which is on the second
23 page of the cable, which has a list of pressure
24 techniques.

25 (Witness peruses document.)

1 THE WITNESS: No date?

2 BY MR. LUSTBERG:

3 Q Well, it says "date" -- 7 with no date,
4 2002, so July 2002?

5 A I don't know if it's July.

6 Q Right.

7 A The date matters, but . . .

8 Q Okay. Well, let me ask you this: Where
9 it says here --

10 A Let me finish here.

11 Q I'm sorry. I apologize. Take as much
12 time as you need.

13 (Witness peruses document.)

14 BY MR. LUSTBERG:

15 Q Take your time. Let me know when you're
16 ready.

17 A Yeah, what's your question?

18 Q My question is: Under 5 it says, "The
19 below techniques are the menu of the preapproved
20 interrogation techniques."

21 When it says "preapproved," who
22 preapproved them?

23 MR. JOHNSON: Objection.

24 MR. LUSTBERG: Okay, let me -- I'll
25 withdraw the question.

1 BY MR. LUSTBERG:

2 Q Were you the person who preapproved
3 them?

4 A No.

5 Q Did you approve these techniques that
6 Drs. Mitchell and Jessen proposed, though?

7 A I mean the cable went out under my name,
8 I did, but I don't remember it.

9 Q So you don't recall whether you approved
10 them?

11 A If the cable went out under my name, it
12 meant I approved it, so I take responsibility for
13 it, but I don't recall this specific cable here.

14 Q Just to go back to what I was asking you
15 about before, if you look through 5, it's the same
16 exact list, other than the mock burial, that we
17 were talking about before, right?

18 Do you see that?

19 A Mm-hmm.

20 Q And that was the list that was provided
21 by Drs. Mitchell and Jessen?

22 A Correct.

23 Q Do you -- did you -- did anybody other
24 than -- and don't say who. Did anybody other than
25 Drs. Mitchell and Jessen propose other techniques

1 to you?

2 A I don't recall.

3 Q There may have been others?

4 A I don't recall.

5 Q Did, did you propose any other list
6 other than this list to Mr. Rizzo or to the
7 department --

8 A No.

9 Q Let me finish my question, okay? Let's
10 stop there, though.

11 So you never proposed any other list
12 other than this list to Mr. Rizzo?

13 A No.

14 Q Did you propose any other list other
15 than this list to the Department of Justice?

16 A No.

17 Q And is it true that the reason that you
18 used Dr. Mitchell and Dr. Jessen's list was
19 because they were the experts that you trusted to
20 come up with such a list?

21 A True.

22 Q And in fact, you believed them when they
23 said, for example, that 30 days was the amount of
24 time it would take to figure out whether the
25 techniques were working?

1 A Yes.

2 Q And because that was what they said, the
3 techniques would, in fact, be applied for up to 30
4 days, correct?

5 A Correct.

6 Q Do you agree that at that time -- that
7 is, the time that Drs. Mitchell and Jessen
8 proposed the enhanced interrogation techniques --
9 that Dr. Mitchell had acquired, quote-unquote,
10 "tremendous influence" in the process?

11 A Well, he was highly respected for his
12 knowledge on SERE, and we all respected him, yes.

13 Q So would you agree that he had
14 tremendous influence?

15 A He had tremendous respect.

16 Q Certainly in, in terms of what occurred,
17 his views were taken into account, right?

18 A Correct.

19 Q And the -- I just want to -- if you turn
20 to your declaration at page -- at paragraph 77.
21 And that refers to an Exhibit P.

22 A Okay.

23 Q It says, paragraph 77 says, "Thereafter,
24 EIT program procedures used on Zubaydah were
25 formalized in various documents," and when you

1 state, when you use the phrase "EIT program
2 procedures used on Zubaydah," you're referring to
3 the EITs that were, that were provided by
4 Drs. Mitchell and Jessen?

5 A Yes.

6 MR. LUSTBERG: I'm just going to --
7 can we just take a brief break for one
8 second?

9 MR. BENNETT: Sure.

10 MR. JAMES SMITH: No, no breaks.

11 THE VIDEOGRAPHER: The time is
12 11:31 a.m. Going off the record.

13 (Whereupon, a short recess was
14 taken.)

15 THE VIDEOGRAPHER: The time is
16 11:44 a.m. We're back on the record.

17 MR. LUSTBERG: Thank you.

18 BY MR. LUSTBERG:

19 Q Mr. Rodriguez, when we stopped we were
20 talking about whether, as you said in paragraph 77
21 of your declaration, whether the EIT program that
22 was designed by Drs. Mitchell and Jessen "were
23 formalized in various documents."

24 Do you see that?

25 A Yes.

1 Q And you said "yes," and I just wanted to
2 understand about -- when you said "formalized in
3 various documents," is that what the CIA tends to
4 do is to formalize policies into, in various
5 documents?

6 A The formal document on the enhanced
7 interrogation techniques comes from the Justice
8 Department, the 1 August comprehensive memo that
9 outlined those enhanced interrogation techniques
10 that had been approved by the Justice Department.
11 That's the, that's the bottom line.

12 Q Right, and, and those techniques -- if I
13 recall correctly, those were the techniques that
14 were presented to Justice were the techniques
15 that, that Drs. Mitchell and Jessen had proposed,
16 right?

17 A Correct.

18 Q And Justice did not -- well, maybe you
19 can remind me. Justice didn't approve the mock
20 burial, right?

21 A We took the mock burial off the list,
22 because they had told us that they would require
23 more extensive research and work, and we decided
24 we would just take it off.

25 Q Okay, but all the other techniques were

1 the techniques that have been proposed by
2 Drs. Mitchell and Jessen, right?

3 A Yes.

4 Q I want to show you Exhibit 38.
5 (Exhibit 38 was marked for
6 identification.)

7 BY MR. LUSTBERG:

8 Q Mr. Rodriguez, let me know when you've
9 had a chance to take a look at this.

10 A Read the whole thing?

11 Q Well, just -- I'll ask you -- I'll
12 direct you to certain places.

13 A Okay.

14 Q So let's start here. It says -- it's
15 dated January 31, 2003, right?

16 A Correct.

17 Q Do you recognize this, by the way?

18 A No.

19 Q It says "DCI Guidelines for the Conduct
20 of Interrogations."

21 What does "DCI" stand for?

22 A Director of Central Intelligence.

23 Q Okay. Given -- and you can take a look
24 at the content of it. The Director of Central
25 Intelligence at that time was Mr. Tenet; is that

1 right?

2 A Yes.

3 Q Okay. Would he have issued this
4 directly, or would you have been involved in that?

5 A He would have issued it based on our
6 input.

7 Q And if you look at the third, at the
8 second and third pages, do you see where it --
9 bless you -- where it says "Permissible
10 Interrogation Techniques"?

11 A Yes.

12 Q And it has a paragraph there about
13 "standard techniques."

14 Do you see that?

15 A Yes.

16 Q And then if you go to the next page,
17 which for the record is Bates 1172, it has a list
18 of "enhanced techniques"?

19 A Yes.

20 Q And if you look at that list of enhanced
21 techniques, which are described as "techniques
22 that do incorporate physical or psychological
23 pressure beyond standard techniques," it has, down
24 below, the same list, right?

25 So again -- I'm sorry. I don't mean to

1 be mysterious. These techniques are attention
2 grasp, walling, facial hold, facial slap,
3 abdominal slap, cramped confinement, wall
4 standing, stress positions, sleep deprivation
5 beyond 72 hours, use of diapers for prolonged
6 periods, use of harmless insects, the waterboard,
7 and this says "and such other techniques as may be
8 specifically approved."

9 Do you see that?

10 A Yes, I see that.

11 Q That's the same list as was developed --

12 A Yes.

13 Q Let me --

14 A I'm sorry. Yes.

15 Q Let me make it clear. Those are the
16 same techniques as were developed by Drs. Mitchell
17 and Jessen, right?

18 A Yes.

19 Q And if you go to the first page, you can
20 see that this was sent around to other, to other
21 black sites, right?

22 A Only one.

23 Q To Cobalt?

24 A Yes.

25 Q Okay. Cobalt was a -- so these

1 techniques were applied at Cobalt; is that right?

2 A I assume so.

3 Q And when you say you "assume so," if
4 this went to Cobalt and these were the approved
5 techniques for Cobalt, then they would have been
6 the ones that would have been allowed to be used
7 there, correct?

8 A I just don't know if they were used in
9 that precise location.

10 Q Okay. You don't know if they were used,
11 but you know that they were approved for use
12 there?

13 A They were approved for use, yes.

14 Q Okay. So just to make it clear, the
15 techniques that Dr. Mitchell and Dr. Jessen had
16 proposed were formalized in certain documents,
17 correct?

18 A Yes.

19 Q And this is one of those documents that
20 formalized the use of those techniques, right?

21 A Yes.

22 Q And, and then they were approved for use
23 at Cobalt, correct?

24 A And beyond.

25 Q Okay, but for purposes of -- you can

1 tell that, from this, that they were used for,
2 they were approved for Cobalt, correct?

3 A Correct.

4 Q And you say they were also approved for
5 other sites?

6 A Once the enhanced interrogation
7 techniques were approved, we used them at
8 different sites.

9 Q Okay. That's because that was -- that
10 became the enhanced interrogation program for the
11 CIA, right?

12 A True.

13 Q You don't know -- you are aware that two
14 of the plaintiffs here are Salim and Soud. Do you
15 know those names?

16 A Yes.

17 Q You know that just from, by virtue of
18 this case?

19 A By virtue of this case, yes.

20 Q Do you know whether these techniques
21 were used on Salim -- any of these techniques were
22 used on Salim and Soud?

23 A They were not.

24 Q They were -- you know that they were
25 not?

1 A They were not. They didn't use any
2 enhanced interrogation techniques, as I understand
3 it, on those two individuals.

4 Q Okay. So this is a long document, and
5 what I want to do is -- this is very challenging,
6 but I want to direct your attention to the very
7 last page of Exhibit 11.

8 Before --

9 MR. BENNETT: Familiarize yourself.

10 BY MR. LUSTBERG:

11 Q Yeah. No, the -- no --

12 A This one?

13 Q Yes, in the very small print.

14 First of all, have you ever seen this
15 document before?

16 A No.

17 Q Okay. Do you recognize it at all?

18 A No.

19 Q Okay. This is entitled "A Chronology of
20 CIA High-Value Detainee Interrogation Techniques."

21 Do you see that?

22 A Yes.

23 Q Is that the kind of thing that normally
24 you would have received?

25 A This document?

1 Q Yes.

2 A I assume so.

3 Q Mm-hmm, okay, and the last page is
4 entitled "EITs Used With CIA Detainees."

5 Do you see that?

6 A Yes.

7 Q And you see there's a list across the
8 top of the, of the enhanced interrogation
9 techniques?

10 A Correct.

11 Q And you see that it has a couple of
12 names, and it has check boxes as to which of the
13 enhanced interrogation techniques were used?

14 A I see that.

15 Q These would seem to indicate that with
16 regard to Salim and Soud that the -- those various
17 techniques were used.

18 Do you agree with that?

19 A I, I assume so. I had never seen this.

20 Q Okay. When you said a few minutes ago
21 that those techniques were not used on Salim and
22 Soud, what was that based upon?

23 A It's based on the fact that we used the
24 enhanced interrogation techniques on high-value
25 targets, and these individuals were not high-value

1 targets.

2 Q Okay. The -- just directing your
3 attention back to Exhibit 38. That was the one
4 right before, the January 31, 2003.

5 A Okay.

6 Q And you had testified that, that this
7 was a list of the techniques that were approved
8 for Cobalt?

9 A Yes.

10 Q And you are aware that Salim and Soud
11 was, were at Cobalt?

12 A I assume so. I didn't know.

13 Q Okay. You don't know --

14 MR. BENNETT: Excuse me.

15 THE WITNESS: Okay.

16 MR. BENNETT: If you know, you tell
17 them.

18 THE WITNESS: I don't know.

19 BY MR. LUSTBERG:

20 Q You don't know whether they were at
21 Cobalt?

22 A No.

23 Q But you know that the, that the enhanced
24 interrogation techniques were not applied to them?

25 A They were not applied to them, because

1 they were not high-value targets.

2 Q Do you know, as you sit here now,
3 whether, regardless of what value targets they
4 were, whether they actually were applied to them?

5 A I don't know that, but they were not
6 supposed to have been used on them.

7 Q Okay. So the -- just directing your
8 attention back to Exhibit 38, is there anywhere in
9 this document where it says that those techniques
10 are not supposed to be applied to medium-value
11 detainees?

12 A I don't know.

13 Q Okay. Take a look.

14 MR. BENNETT: Read it.

15 BY MR. LUSTBERG:

16 Q Take your time.

17 (Witness peruses document.)

18 BY MR. LUSTBERG:

19 Q You shouldn't mark on the -- well, you
20 can do it, and then we'll just ask about it.

21 A I just want to --

22 MR. BENNETT: Yeah, I know. Use
23 your shirt.

24 (Witness peruses document.)

25

1 BY MR. LUSTBERG:

2 Q While you're reading this, for the
3 record, this is a -- one of many cables that we
4 have discussed today --

5 MR. JAMES SMITH: You say "this."

6 MR. LUSTBERG: Exhibit 38, I'm
7 sorry, and Mr. Smith and I have discussed
8 that these cables are admissible as business
9 records. That is, they satisfy the hearsay
10 section of the business records.

11 MR. JAMES SMITH: Yes.

12 MR. LUSTBERG: So they can be used
13 for purposes of these proceedings and in the
14 future without waiving any right to object to
15 hearsay, hearsay and the like. You have that
16 right?

17 MR. JAMES SMITH: We also agree
18 that they are authentic, despite the
19 redactions by the government and the
20 insertions by the government.

21 MR. LUSTBERG: Correct.

22 MR. JAMES SMITH: Okay. So we
23 don't have to ask any witness any questions
24 about --

25 MR. LUSTBERG: Right.

1 MR. JAMES SMITH: -- those
2 foundational matters?

3 MR. LUSTBERG: Mm-hmm.

4 MR. JAMES SMITH: Good. Thank you,
5 Mr. Lustberg.

6 MR. LUSTBERG: Thank you.

7 BY MR. LUSTBERG:

8 Q You good?

9 A Yes.

10 Q You took some notes?

11 A Yes.

12 Q What did you write?

13 A Why don't you ask the question?

14 Q That's my question. What did you write?

15 A Well, I wrote that the enhanced
16 interrogation program required must be approved by
17 headquarters in advance. The standard techniques,
18 whenever feasible, must have advanced approval for
19 the use of the standard techniques, and it needs
20 to be documented in cable traffic.

21 Q When you say "documented," that's the,
22 that's that last page where it says
23 "recordkeeping," where it says "in each
24 interrogation session in which an enhanced
25 technique is employed, a contemporaneous record

1 shall be created, setting forth the nature and
2 duration of each such technique" and so forth?

3 A It says -- it's paragraph 4.

4 Q Yeah, go ahead.

5 A "Whenever feasible, advance approval is
6 required for the use of standard techniques by an
7 interrogation team. In all instances, their use
8 shall be documented in cable traffic."

9 MR. BENNETT: Now give me your pen.

10 MR. LUSTBERG: You have a fine
11 lawyer.

12 MR. JAMES SMITH: The witness was
13 reading from Bates page 1173, the US
14 government Bates label of Exhibit 38.

15 MR. LUSTBERG: Actually, 1172 and
16 1173.

17 MR. JAMES SMITH: Okay. Thank you
18 for that clarification.

19 BY MR. LUSTBERG:

20 Q So did you find -- my original question
21 had been: "Did you find anything specific in this
22 guidance that was being sent to the field" -- and
23 you said "to Cobalt and beyond" -- "that limited
24 the use of the enhanced interrogation techniques
25 to high-value detainees?"

1 A No.

2 Q The -- I showed you before on Exhibit
3 11, it was that very small print that had the list
4 of, of techniques that had been -- that seem to
5 represent had been applied to those two detainees.

6 Do you remember that?

7 A Yes. Where is that?

8 Q Sorry. Exhibit 11, yeah, the last page.

9 A Yes.

10 Q So really a very simple question: Is
11 there any reason why somebody from the CIA would
12 state that a technique had been used when it had
13 not?

14 A No reason, but I wonder -- is this part
15 of this document?

16 MR. JAMES SMITH: For the record,
17 "this" is referring to --

18 THE WITNESS: It's just out of
19 line, totally out of line.

20 MR. LUSTBERG: Exhibit 11, Bates
21 number 1609.

22 BY MR. LUSTBERG:

23 Q So I understand your question, so the
24 format here is that I get to ask the questions,
25 and my question really is just the one I asked

1 you, which is: Is there any reason why, to your
2 knowledge, based upon your years at the CIA,
3 somebody from the CIA would state that an enhanced
4 interrogation technique had been used when, in
5 fact, it was not?

6 MR. JAMES SMITH: Objection.

7 MR. BENNETT: Go ahead and answer
8 as best you can.

9 THE WITNESS: Please ask again.

10 BY MR. LUSTBERG:

11 Q Okay, I'm just going to read you.

12 "Is there any reason why, to your
13 knowledge, based upon your years at the CIA,
14 somebody from the CIA would state that an enhanced
15 interrogation technique had been used when, in
16 fact, it had not?"

17 A No.

18 MR. JAMES SMITH: Objection.

19 BY MR. LUSTBERG:

20 Q In any event, when you asked me
21 questions about that document, what you were, what
22 you were asking was, was whether -- let me strike
23 that.

24 You don't know what techniques were or
25 were not actually used on those detainees,

1 correct?

2 A No.

3 Q You weren't there?

4 A Correct.

5 Q And, and you have no idea what actually
6 occurred with regard to them?

7 A Correct.

8 Q Okay.

9 A My question, if I can -- or my statement
10 is: It doesn't look like this is part of this
11 document. Something added to it from somewhere.

12 Q Okay, thank you.

13 For the record, it's a redacted
14 spreadsheet, but we can deal with that later.

15 Okay. I'm going to move on. Paragraph
16 38 -- I just want to explore some confusion I have
17 with regard to one issue. In paragraph 38 of your
18 declaration, you're describing a meeting that took
19 place at headquarters the first week of July 2002?

20 A Mm-hmm.

21 Q Correct?

22 A Yes.

23 Q And Dr. Mitchell attended that meeting.
24 Do you see that?

25 A Yes.

1 Q And in paragraph 38 you write,
2 "Dr. Mitchell explained that the particular goal
3 of EITs would be to dislocate the subject's
4 expectations and overcome his resistance and
5 thereby motivate him to provide the information
6 the CIA was seeking. Dr. Mitchell further
7 explained that in working to achieve this goal,
8 the interrogation could produce a range of mental
9 states in the subject, including, but not limited
10 to, fear, learned helplessness, compliancy, or
11 false hope."

12 My question to you is: What did you
13 mean by the term "learned helplessness" there?

14 A I do not know. All I heard was
15 Dr. Mitchell explaining these psychological terms.
16 Frankly, my interest was in getting results, not
17 in, you know, the psychological state of people.

18 Q So, so when you, when you signed this
19 declaration that it's all true, what you were
20 saying is that Dr. Mitchell used that phrase
21 "learned helplessness"; is that right?

22 A Yes.

23 Q Okay, and I guess my question is -- in
24 paragraph 45, which is two pages later, you say,
25 "I do not recall a specific discussion about

1 'learned helplessness' during this period, and it
2 was not something I focused on," which is what you
3 just said, "though I may have heard the term." So
4 I'm trying to understand how those two paragraphs
5 fit together.

6 Did Dr. Mitchell, in fact, use the
7 phrase "learned helplessness"?

8 A I assumed that he did.

9 MR. BENNETT: Don't assume.

10 THE WITNESS: He did, he used it,
11 and I didn't pay much attention to it.

12 BY MR. LUSTBERG:

13 Q Okay, so what you're saying is he used
14 it, but there was not -- there was no real
15 discussion of it?

16 A There may have been a discussion. I did
17 not focus on it.

18 Q Okay. Do you understand what the, what
19 "learned helplessness" is?

20 A No.

21 Q You've never heard of a psychologist
22 named Martin Seligman?

23 A No.

24 Q And you have no knowledge of experiments
25 in the --

1 A No.

2 Q -- area of learned helplessness?

3 A No.

4 Q Thank you.

5 Okay. I want to -- I want to move on to
6 the issue of, that you've discussed a few times,
7 about how these techniques got authorized.

8 A Okay.

9 Q You have written on a number of
10 occasions and said that you wanted to make sure,
11 before any of this happened, that it was legal,
12 right?

13 A Correct.

14 Q And let me ask you -- yeah, that's a
15 memo. The -- why were you so concerned about
16 that?

17 A Because I had worked in other programs
18 where we came back -- they came back to haunt us
19 regarding the legality and the authorities, and I
20 wanted to make sure that that did not happen
21 again.

22 Q Did you have particular doubts as to
23 whether this program was legal?

24 A No, no.

25 Q So when you were -- and as you write

1 many times, that you really wanted to make sure it
2 got approval, and I think what you specifically
3 said was -- and actually, let's just go through it
4 if you don't mind.

5 So in your, in your book -- and this is
6 page 63 of Exhibit 37, so in the full paragraph in
7 the middle of that page, you write, Mr. Rodriguez,
8 "We had two priorities. Any interrogation program
9 we developed had to be effective and legal.
10 Assuring ourselves of the latter proved
11 time-consuming, but as critically important as we
12 felt it to be to get information that might help
13 us thwart impending attacks, I insisted that we
14 take no action unless and until we were assured,
15 in writing, by the senior-most legal authorities,
16 that we were not crossing [legal] red lines," and
17 you insisted on a, in the last sentence of that
18 paragraph, quote, "a binding legal opinion from
19 the Department of Justice."

20 And I guess my question for you is, just
21 to make sure I understand: That was motivated by
22 prior experience that you had had?

23 A Correct.

24 Q It was not motivated by any concern that
25 you harbored at that time that this was at all

1 close to the line in terms of legality?

2 A Yes.

3 Q Yes?

4 A I, I was concerned that we needed to
5 have that approval, not necessarily because we
6 were close to the line.

7 Q Then we can play this for you if you
8 want, but on 60 Minutes you said, quote, "We went
9 to the border of legality. We went to the border
10 that was within legal bounds."

11 A Yes, I remember.

12 Q What did you mean by, by that? What did
13 you mean by "went to the border of legality"?

14 A Well, we went -- you know, the CIA is
15 empowered by the President to go further than law
16 enforcement or the military can go, so we went
17 much farther, closer to the line, but did not pass
18 it.

19 Q And the reason that you're, you feel
20 confident that you didn't pass it was because you
21 got these assurances that you've, that you've
22 previously described?

23 A Because we got a binding legal opinion
24 in writing from Justice Department.

25 Q I'm not going to ask you a lot about

1 this, but just quickly on the issue of the
2 destruction of the tapes, did you think that
3 destroying -- that ordering the tapes to be
4 destroyed went to the "border of legality," to use
5 your phrase?

6 A I wanted to make sure that it was legal,
7 and that's why I called my lawyers in and asked
8 them if it was legal.

9 Q So, and with regard to that, so again
10 you got assurance from your lawyers that
11 destroying the tapes was legal?

12 A Correct.

13 Q But my question is: Do you think that
14 that went right to the border of legality?

15 A I didn't think about it that way.

16 Q It took a long time -- with respect to
17 each of these things, let's take them one at a
18 time.

19 With regard to getting the binding
20 opinion you were requesting, that took a while,
21 right?

22 A It took weeks.

23 Q And the fact that it took a long time,
24 did that give you any concern that what you were
25 doing was going right up to the line of legality?

1 A No, it didn't give me any concern at
2 all. It was just bureaucracy working slowly
3 through the process.

4 Q Same, same with regard to the tapes?

5 A Yes.

6 Q So from your perspective, the reason
7 that it took so long to make a decision with
8 regard to both EITs and then the tapes was because
9 in each case, there was just -- it was the slow
10 pace of bureaucracy?

11 A Correct.

12 Q Can I ask with regard to the tapes -- we
13 might as well do it this way.

14 What was the reason why you felt that it
15 was important to have the tapes destroyed?

16 A I felt it was important to have the
17 tapes destroyed, because I needed to protect the
18 people who were there on the black sites, and they
19 were not just my people, but they were also people
20 from other directorates that were involved with
21 our team conducting the enhanced interrogation
22 program.

23 Q And when you say "protect" them, you
24 wanted to make sure that their identities did not
25 get released, because that could endanger them; is

1 that right?

2 A Correct.

3 Q Was there any consideration given to the
4 fact that, you know, there's technology that can
5 pixelate the, you know, the photographs or
6 otherwise obscure who the identities of the people
7 on the tapes are?

8 A I was not about to take that chance.

9 Q So you thought that it would be too
10 risky to try some other technology, that the only
11 safe way to do it was to actually destroy the
12 tapes?

13 A True.

14 Q Was there any other reason at all that
15 you wanted the tapes destroyed?

16 A Well, that was the primary reason.

17 Q Was there a secondary reason?

18 A Well, a secondary reason, as I have said
19 publicly, was that the public, the media would not
20 make a distinction, once the tapes were released,
21 between a legally approved program, that this was,
22 and the Abu Ghraib scandal that involved illegal
23 activity.

24 Q So let me make sure I understand that.

25 You were concerned that the media would, would use

1 the tapes in a way that would make the CIA look
2 bad?

3 A It would make the CIA look bad, and it
4 would actually, in my view, you know, almost
5 destroy the clandestine service because of it.

6 Q Do you recall whether Dr. Mitchell
7 recommended to you that the tapes be destroyed?

8 A All of us were concerned about the
9 tapes. I'm sure that Mitchell and Jessen were
10 concerned, as I was and everybody else who worked
11 around me, we were very concerned about it, and
12 had been trying to get them destroyed for years.

13 Q Okay. So let me just unpack that a
14 little.

15 So first of all, with regard to
16 Drs. Mitchell and Jessen, do you have a
17 recollection as to whether they discussed the
18 destruction of the tapes with you?

19 A I don't have a recollection of them
20 discussing it with me.

21 Q You said that they were concerned about
22 it?

23 A Yes.

24 Q How do you know that?

25 A They talked to other people that I know.

1 Q Okay, but, but they did not talk to you
2 about it?

3 A I don't recall.

4 Q Okay. They may have?

5 A By that time I was on the seventh floor,
6 and I was out of the chain of command.

7 Q Okay. I mean do you recall Dr. Mitchell
8 recommending to you that the tapes be destroyed
9 because of how, how ugly they were?

10 A No.

11 Q When you say you don't, is that because
12 you don't recall or because that's --

13 A I don't recall him ever talking to me
14 about that.

15 Q If he had talked to you about that, do
16 you think you would recall it?

17 A Maybe not.

18 Q So it's possible that you had that
19 conversation and you just don't remember it?

20 MR. BENNETT: Object. I think he's
21 answered your question.

22 MR. JAMES SMITH: Objection.

23 BY MR. LUSTBERG:

24 Q Just back to the question of the
25 legality of the enhanced interrogation techniques,

1 were you involved in any effort to obtain a
2 representation from the Department of Justice that
3 there would be no criminal prosecution based upon
4 using the enhanced interrogation techniques?

5 A I think what we were seeking from the
6 Justice Department was a legal opinion, in
7 writing, that said that everything was legal.

8 Q Beyond the opinion in writing, which you
9 certainly requested, was there an effort to gain
10 some sort of immunity from prosecution for anybody
11 who had been involved in, in the enhanced
12 interrogation techniques?

13 A I think you probably need to talk to our
14 lawyers about that.

15 Q Let me show you a document previously
16 marked as Exhibit 25.

17 (Witness peruses document.)

18 BY MR. LUSTBERG:

19 Q Do you recognize this?

20 A No.

21 Q Have you ever seen it before?

22 A No.

23 Q Okay. In the very last paragraph on the
24 second page of it, which is Bates C06541505, it
25 has the language, "I respectfully request that you

1 grant a formal declination of prosecution, in
2 advance, for any employees of the United States,
3 as well as any other personnel acting on behalf of
4 the United States, who may employ methods in the
5 interrogation of Abu Zubaydah that otherwise might
6 subject those individuals to prosecution under
7 Section 2340A of Title 18 of the United States
8 Code as well as under any other applicable U.S.
9 law."

10 Do you have any knowledge of that
11 request?

12 A Well, this is from the Office of General
13 Counsel, so I assume they made that request.

14 Q Oh, you're saying that you were not
15 aware of it?

16 A I probably was aware of it, but I don't
17 recall. I don't have any specific recollection.

18 Q Okay. So let's go back to your -- you
19 can just put it there -- the, um, your effort to
20 gain approval from the Department of Justice for
21 these techniques. You -- in doing, in seeking
22 that approval, you explained to the Department of
23 Justice, didn't you, that the techniques were
24 based on experience with the SERE program, right?

25 A Our lawyers did.

1 Q Mm-hmm. Let's -- in your -- if you go
2 to your declaration and turn, if you would, to
3 Exhibit L.

4 MR. BENNETT: Can we take a minute?

5 MR. LUSTBERG: Absolutely, yes.

6 THE VIDEOGRAPHER: The time is
7 12:24 p.m. Off the record.

8 (Whereupon, the lunch recess was
9 taken.)

10 THE VIDEOGRAPHER: The time is
11 1:03 p.m. We're back on the record.

12 MR. LUSTBERG: Thank you.

13 BY MR. LUSTBERG:

14 Q Mr. Rodriguez, before the lunch break,
15 we were discussing the process whereby you sought
16 and obtained legal authorization for the, for the
17 enhanced interrogation technique program.

18 Do you remember that?

19 A Yes.

20 Q And when you sought that, that approval,
21 it was based upon what you had learned from
22 Drs. Mitchell and Jessen with regard to the SERE
23 program, correct?

24 A Correct.

25 Q Okay, and what exactly were you told

1 about the applicability of the SERE program to
2 these, to these techniques?

3 MR. JAMES SMITH: Objection.

4 BY MR. LUSTBERG:

5 Q Let me be clear -- the question is
6 withdrawn. It's a good objection.

7 What were you told by Drs. Mitchell and
8 Jessen about the applicability of the SERE program
9 to these techniques?

10 A That there was a good chance it could
11 work.

12 Q Were you told -- was there any
13 discussion of whether the differences between the
14 SERE program which is applied to students, what
15 the differences would be between that program and
16 applying these to detainees in captivity?

17 A Well, I don't remember a particular
18 discussion about that, but I'm sure that it was
19 considered --

20 MR. BENNETT: You answered the
21 question.

22 BY MR. LUSTBERG:

23 Q You don't remember a discussion of that?

24 A I don't remember a discussion about
25 that.

1 Q Okay. So --

2 MR. BENNETT: Don't speculate.
3 Don't assume. He's entitled to full answers
4 but not speculation or guesswork.

5 MR. LUSTBERG: I'm happy with
6 speculation or guesswork.

7 MR. BENNETT: I know you are.

8 BY MR. LUSTBERG:

9 Q Let me know when you've had a chance to
10 look at that (Exhibit 18).

11 A Okay.

12 (Witness peruses document.)

13 BY MR. LUSTBERG:

14 Q I'm actually just going to ask you about
15 a sentence on the first and into the second page,
16 but feel free to read the whole document if you
17 want.

18 A Okay.

19 Q Just let me know when you're ready.

20 A Okay.

21 (Witness peruses document.)

22 THE WITNESS: Okay.

23 BY MR. LUSTBERG:

24 Q Just directing your attention to the
25 bottom of the first page -- well, first of all,

1 have you ever seen this document before?

2 A I don't recollect seeing this document.

3 Q At the bottom of the first page it says,
4 "A bottom line in considering the new measures
5 proposed for use at (blank) is that subject is
6 being held in solitary confinement, against his
7 will, without legal representation, as an enemy of
8 our country, our society and our people.
9 Therefore, while the techniques described in
10 headquarters meetings and below are administered
11 to student volunteers in the U.S. in a harmless
12 way, with no measurable impact on the psyche of
13 the volunteer, we do not believe we can assure the
14 same here for a man forced through these processes
15 and who will be made to believe this is the future
16 course of the remainder of his life. Station
17 (blank) COB and (blank) personnel will make every
18 effort possible to ensure that subject is not
19 permanently physically or mentally harmed, but we
20 should not say at the outset of this process that
21 there is no risk."

22 Did you ever -- have you ever -- you
23 haven't seen that before?

24 A I don't think I've seen it.

25 Q Okay. Did you have discussions along

1 those lines with Drs. Mitchell or Jessen?

2 A I don't remember having any discussions
3 with them on that.

4 Q When you sought approval for their
5 enhanced interrogation technique program, was, was
6 this information that was provided, by you at
7 least, to the Department of Justice?

8 A What information?

9 Q This, what I just read, the fact that
10 there was -- "we should not state at the outset of
11 this process that there is no risk" because this
12 is different than the CO program.

13 A I don't recall that.

14 Q Okay. Do you have any recollection at
15 all of either Dr. Mitchell or Dr. Jessen having a
16 discussion with you about the distinctions between
17 the application of these techniques in the context
18 of the SERE program versus in the context of a
19 detainee?

20 A I don't recall that.

21 Q Okay. I'm going to read you -- and I
22 can show it to you if you wish, but I'm going to
23 read you a page from the CIA Office of Inspector
24 General report.

25 You've seen that report, right?

1 A Yes.

2 Q You've seen that report?

3 A I saw that report many years ago.

4 Q I just want to get your reaction to this
5 sentence.

6 "Finally, the Agency presented OLC" --
7 that's Office of Legal Counsel -- "with a
8 psychological profile of Abu Zubaydah with the
9 conclusions of officials and psychologists
10 associated with the SERE program, that the use of
11 EITs would cause no long-term mental harm. OLC
12 relied on these representations to support its
13 conclusion that no physical harm or prolonged
14 mental harm would result from the use on him of
15 the EITs, including the waterboard."

16 Do you agree with that?

17 A Yes.

18 MR. JAMES SMITH: Before you answer
19 that question, could you favor us with an
20 exhibit number and page that you're reading
21 from?

22 MR. LUSTBERG: Certainly. So it
23 was, it was previously Exhibit 10.

24 MR. JAMES SMITH: Okay.

25 MR. LUSTBERG: And it's paragraph

1 43 of what was previously marked as Exhibit
2 10.

3 MR. JAMES SMITH: Thank you.
4 That's on page 20.

5 THE WITNESS: The question was do I
6 agree the assertion that the enhanced
7 interrogation techniques would not cause
8 permanent harm, correct?

9 BY MR. LUSTBERG:

10 Q Do you agree that that was the
11 information that was provided to OLC by the CIA?

12 A I don't know that.

13 Q Mm-hmm, so you don't, you don't know
14 whether, whether that was the representation that
15 was made to the, to OLC?

16 A I do not know that.

17 Q Okay. Were you involved in putting
18 together the submission to the Department of
19 Justice?

20 A I was not.

21 Q Just actually -- sorry. Okay. I read
22 you a passage from that OLC report, and there's a
23 footnote that I'm now going to read you and see
24 what your reaction is to that. And again I'm
25 happy to show it to you if it's easier.

1 MR. SMITH: Larry, you said the OLC
2 report?

3 MR. LUSTBERG: No. You're right,
4 you're right. It's the -- you're correct.
5 It's the OIG's report. I apologize.

6 MR. JAMES SMITH: This is Exhibit
7 10 you're talking about?

8 MR. LUSTBERG: Correct. That is
9 what it is, right? Exhibit 10? I just want
10 to make sure you're following.

11 MR. JAMES SMITH: As long as you
12 tell me the exhibit and page, I'll be able to
13 follow.

14 MR. LUSTBERG: It is Exhibit 10.

15 BY MR. LUSTBERG:

16 Q I'm now reading from footnote 26 on page
17 21 of Exhibit 10.

18 "According to the Chief Medical
19 Services, OMS was neither consulted nor involved
20 in the initial analysis of the risk and benefits
21 of EIT, nor provided with the OTS report cited in
22 the OLC opinion. In retrospect, based on the OLC
23 abstracts of the OTS report, OMS contends that the
24 reported sophistication of the preliminary EIT
25 review was exaggerated, at least as it related to

1 the waterboard, and that the power of the EIT was
2 appreciably overstated in the report.
3 Furthermore, OMS contends that the expertise of
4 the SERE psychologist interrogators on the
5 waterboard was probably misrepresented at that
6 time, as the SERE waterboard experience was so
7 different from the subsequent agency usage as to
8 make it almost irrelevant. Consequently,
9 according to OMS, there was no a priori reason to
10 believe that applying the waterboard with the
11 frequency and intensity with which it was used by
12 the psychologist interrogators was either
13 efficacious or medically safe."

14 What's your reaction to that?

15 MR. JAMES SMITH: Objection.

16 MR. BENNETT: Well, I object to the
17 form of the question. I don't know what you
18 mean by "reaction."

19 BY MR. LUSTBERG:

20 Q Fair enough. I'll, I'll restate it.

21 Let me break it down.

22 Do you believe in retrospect that, that
23 the -- let's take it piece by piece -- that --
24 withdrawn.

25 It says, "OMS contends that the

1 expertise of the SERE psychologist interrogators
2 on the waterboard was probably misrepresented at
3 the time, as the SERE waterboard experience is so
4 different from the subsequent agency usage as to
5 make it almost irrelevant."

6 Was that a matter that was discussed
7 with you?

8 A The OIG report?

9 Q No. The idea that the waterboard
10 experience is so different from the subsequent
11 agency -- the SERE waterboard experience is so
12 different from the subsequent agency usage.

13 A No.

14 Q It was not discussed with you?

15 A No.

16 Q So let me make sure I understand.
17 Drs. Mitchell and Jessen advocated for a
18 particular set of enhanced interrogation
19 techniques based upon their SERE experience,
20 correct?

21 A Correct.

22 Q But there was never a discussion about
23 whether that experience was actually relevant to
24 the experience of detainees; is that correct?

25 A Perhaps there was a discussion somewhere

1 in the agency. I am sure there was.

2 Q Fair enough. With you?

3 A Not with me that I recall.

4 Q Okay. Have you done any analysis
5 yourself of whether there is a difference between
6 the application of these techniques in the SERE
7 school setting versus in the setting of a detainee
8 in captivity?

9 A No.

10 Q Have you asked anybody any questions
11 about that because -- well, did you have -- have
12 you had -- do you have any concerns about that as
13 you sit here right now?

14 A No.

15 Q Why is that?

16 A There's no reason for it.

17 Q So you have no concerns at all that
18 there's a -- that the experience in the SERE
19 setting might be so different from the experience
20 in the detainee setting that it would be wrong to
21 draw conclusions about the harmfulness or
22 harmlessness of the technique based upon what
23 happened in the SERE school?

24 A No, I don't.

25 Q And again why is that?

1 A I just don't.

2 Q And you don't because you don't think
3 that the differences are germane?

4 A I just don't have any, any idea. I mean
5 I assume that --

6 MR. BENNETT: Don't assume.

7 THE WITNESS: I believe that the
8 experiences actually worked very well and
9 therefore were successful, so the classroom
10 instruction at SERE helped us tremendously.

11 BY MR. LUSTBERG:

12 Q So let me just break that down.

13 You think that the, the classroom
14 setting in SERE is close enough to what happened
15 to somebody in captivity, that those experiences
16 are a good way of measuring whether there's harm?

17 A Yes.

18 Q Okay, and again did you ever raise,
19 yourself raise that question with anybody?

20 A No.

21 Q And when you say that, that all -- that
22 this was successful, what you mean is that, from
23 your perspective, it got good results?

24 A It got good results.

25 Q Mm-hmm, and so the fact that it got good

1 results leads you to believe that it was worth
2 doing even if there were differences between the
3 SERE classroom and, and the detainee in captivity?

4 A To be perfectly honest, I've never
5 thought about it.

6 Q I think you said before you had no, you
7 have no personal experience yourself with SERE; is
8 that right?

9 A True.

10 Q You've never been to a SERE classroom?

11 A No.

12 Q Just a couple more questions on this
13 subject.

14 Many of the -- tell me if this is
15 correct. Many of the detainees that were
16 captured, including Abu Zubaydah, were wounded or
17 injured at the time, right?

18 A Not true.

19 Q That is not true?

20 A That is not true, and most of the things
21 we're discussing so far is Abu Zubaydah, not
22 others.

23 Q Right. I'm asking you the question
24 of -- so Abu Zubaydah was, was wounded at this
25 time?

1 A He was, yes.

2 Q Okay, and other detainees -- were there
3 other detainees, in your knowledge, who were
4 wounded at the time they were taken into
5 captivity?

6 A Perhaps, but most of them were not
7 wounded.

8 Q Okay. For someone who was wounded,
9 would that be a different experience than what
10 they had, to your knowledge, that had occurred in
11 the SERE setting?

12 A I do not know.

13 Q So you don't know whether SERE students
14 were, were wounded or injured at the time that --

15 A I assumed they were not.

16 THE REPORTER: I'm sorry. I didn't
17 hear the end of the question. "You didn't
18 know whether they were wounded or" -- "or
19 injured," something, "at the time" or
20 something.

21 BY MR. LUSTBERG:

22 Q So you don't know whether SERE students,
23 at the time they were, they were experiencing
24 these techniques, were wounded or injured; do you
25 know?

1 A I do not know.

2 Q Okay.

3 Let me ask you this: Were you concerned
4 at all that some, some of the CIA officials who
5 were, or others working with them who were
6 applying these techniques, would sometimes go
7 beyond what they were permitted to do?

8 A Yes.

9 Q And how did -- what did you do with
10 respect to that concern?

11 A When we found out, we reported it,
12 self-reported, and turned it over to the IG, the
13 Inspector General.

14 Q Mm-hmm. Why were you concerned that
15 that would happen?

16 A In every endeavor of this sort, people
17 do stupid things and don't follow regulation, and
18 eventually some people did.

19 Q When you say "an endeavor of this sort,"
20 an endeavor of what sort?

21 A A big covert-action complex program
22 involving so many moving parts.

23 Q So in a big complex program with many
24 moving parts, some people are going to step over
25 the line, correct?

1 A Some people are going to do stupid
2 things, yes.

3 Q Do you have any view of whether that
4 would be likely to happen in the SERE school?

5 A I have no view.

6 Q Okay. The SERE school participants were
7 there voluntarily. Are you aware of that?

8 A Yes.

9 Q Do you think that that makes a
10 difference in terms of whether they were likely to
11 suffer -- strike that.

12 So they could leave at any time, right?

13 A Correct.

14 Q Do you think that makes a difference in
15 terms of the psychological damage that they would
16 suffer as opposed to detainees who could not leave
17 whenever they wanted to?

18 A The detainees could stop it if they
19 wanted to.

20 Q So your answer is that because the
21 detainees could stop it by giving the answers that
22 you wanted them to give, they were there
23 voluntarily as well?

24 A If that's the way you want to put it,
25 yes.

1 Q Well, that's not the way -- I'm asking
2 you. Were they there voluntarily?

3 A They were not there voluntarily, but
4 they could stop the interrogation if they agreed
5 to comply.

6 Q Let's talk about Abu Zubaydah for a
7 second. Even after he began to comply, he was
8 still waterboarded, right?

9 A Yes.

10 Q And even though Drs. Mitchell and Jessen
11 recommended that he not be waterboarded anymore,
12 it continued, right?

13 A Correct.

14 Q And that was because it was still within
15 that 30-day period, right?

16 A No.

17 Q That's not true?

18 A No.

19 Q Okay. So if you could -- you have
20 Exhibit 4, which is the manuscript. It's this big
21 one.

22 A This one?

23 Q Yes, the manuscript of Dr. Mitchell's
24 book.

25 MR. BENNETT: Page 4?

1 MR. LUSTBERG: Page 88, Exhibit 4.

2 MR. BENNETT: Exhibit 4, page 88.

3 MR. LUSTBERG: Mm-hmm. Actually,
4 let's go to -- bear with me.

5 BY MR. LUSTBERG:

6 Q Okay. On page 88, line 15, it says, "As
7 Abu Zubaydah began to offer up information that
8 the targeters and analysts on site judged valuable
9 and wanted more of, we asked for permission to
10 stop using EITs, especially the waterboard."

11 Do you see that?

12 A Yes.

13 Q "To our surprise, however, headquarters
14 ordered us to continue waterboarding him."

15 Do you see that?

16 A Yes.

17 Q Is that true?

18 A Yes.

19 Q Were you involved in ordering
20 Drs. Mitchell and Jessen to continue to waterboard
21 Abu Zubaydah?

22 A Yes.

23 Q Why?

24 A Well, I was the head of it, and my
25 analysts were concerned that perhaps he was not

1 compliant.

2 Q It says, "For several days" -- starting
3 on line 18, "For several days in a row,"
4 Dr. Mitchell writes, "we questioned the necessity
5 of continuing the EITs, but every day we received
6 cables, phone calls or emails instructing us to
7 continue waterboarding Abu Zubaydah. At one point
8 Bruce and I pushed back hard and threatened to
9 quit. We were told, quote, 'He's turning you.
10 You are not turning him.' The officers we were
11 dealing with, mid-level CTC officials, really
12 pissed us off by saying, 'You've lost your
13 spines.' They insisted that if we didn't keep
14 waterboarding Abu Zubaydah and another attack
15 happened in the United States, it would be 'your
16 fault.'"

17 Is that, to your knowledge, true?

18 A I, I don't know what mid-level officials
19 were telling Mitchell.

20 Q Did you direct any mid-level officials
21 to say that kind of thing to Mitchell?

22 A No.

23 Q So if you turn, if you turn to page 90,
24 middle of the page, line 10, it says -- it refers
25 to a videoconference, and it says, "Jose Rodriguez

1 chaired the videoconference. My take was that he
2 was trying to be an honest arbitrator of the
3 issue. He seemed focused on preventing another
4 attack inside the United States and wanted to do
5 it in the most straightforward way possible. He
6 was being assailed by advocates on both sides of
7 the argument but seemed objective and not locked
8 in on any one approach. We showed the videotape
9 and voiced our opinion that we didn't need to
10 continue using EITs, especially waterboarding.
11 Not surprisingly, some in the room with Rodriguez
12 objected. One or two objected vigorously. They
13 insisted we continue waterboarding Abu Zubaydah
14 for at least 30 days. That's when it dawned on me
15 that my answer months before to Jose Rodriguez's
16 question about how long it would take for me to
17 believe a person subjected to EITs 'either didn't
18 have the information or was going to take it to
19 the grave with them' had come back to haunt us. I
20 pointed out that comment was made before
21 waterboarding was incorporated into the list of
22 potential EITs and didn't apply anymore."

23 My question is: Is Dr. Mitchell
24 correct, that the reason he was ordered to
25 continue waterboarding was because it was still

1 within the 30-day period?

2 A No.

3 Q He's wrong about that?

4 A Yes.

5 Q To your knowledge, were the long-term
6 effects of the use of SERE techniques ever
7 studied?

8 A Not to my knowledge.

9 Q Were -- how about are you aware of any
10 studies on the use of those techniques with regard
11 to people who are being held against their will?

12 A No.

13 Q Do you have any knowledge about whether
14 the use of the enhanced interrogation techniques
15 would be expected to produce post-traumatic stress
16 disorder?

17 A No.

18 Q Did you ever ask anybody whether the
19 effects of -- whether the use of the enhanced
20 interrogation techniques would, would be expected
21 to produce post-traumatic stress disorder?

22 A No.

23 MR. LUSTBERG: This is going to be
24 Exhibit 39.

25

1 (Exhibit 39 was marked for
2 identification.)

3 BY MR. LUSTBERG:

4 Q It's a long document, and I'm going to
5 be asking about a section on the page that has the
6 number Bates stamp 001763 at the bottom. It's the
7 second to the last page. Let me know when you
8 want me to ask the question.

9 A Let me look and see what else --

10 Q Yeah, take your time.

11 (Witness peruses document.)

12 MR. LUSTBERG: While you're doing
13 that, for the record -- Mr. Smith and I
14 discussed this as well. In my representation
15 before lunch about those documents that we
16 regarded as business records, I may have been
17 too narrow in just limiting them to cables.
18 This is a memo, and our, our agreement that
19 these are -- as to business records
20 encompasses this whole set of documents,
21 correct?

22 MR. JAMES SMITH: Just so we're
23 clear, the "this" that you're making
24 reference to is Exhibit 39?

25 MR. LUSTBERG: Correct.

1 MR. JAMES SMITH: Okay, but I
2 thought that what we had contemplated was all
3 of the documents produced by the government.

4 MR. LUSTBERG: 100 percent.

5 MR. JAMES SMITH: We're going to
6 stipulate that they're authentic, and we're
7 going to stipulate that we don't need to call
8 a custodian to qualify them as business
9 records.

10 MR. LUSTBERG: Correct, and that
11 you don't need to -- none of us need to
12 question Mr. Rodriguez as to their -- whether
13 they satisfy the requirements of business
14 records.

15 MR. JAMES SMITH: I thought you
16 wanted to question Mr. Bennett about that.

17 MR. LUSTBERG: That would be much
18 more fun.

19 MR. BENNETT: And then you'll have
20 my witness fee.

21 MR. LUSTBERG: We'll come up with
22 that quickly.

23 (Discussion held off the record.)

24 THE WITNESS: Okay. Go ahead.

25

1 BY MR. LUSTBERG:

2 Q Thank you.

3 On the page I referenced, which is Bates
4 number 001763, there is a paragraph 7, and under
5 paragraph 7 there's a subsection that says, "The
6 absence of any specific intent to inflict severe
7 physical or mental pain or suffering. In a letter
8 dated 13 July 2002, OLC advised CIA that 'specific
9 intent can be negated by a showing of good faith
10 . . . If, for example, efforts were made to
11 determine what long-term impact, if any, specific
12 conduct would have, and it was learned that the
13 conduct would not result in prolonged mental harm,
14 any actions taken relying on that advice would
15 have to be undertaken in good faith. Due
16 diligence to meet this standard might include such
17 actions as surveying professional literature,
18 consulting with experts, or evidence gained from
19 past experience.'"

20 Do you see that?

21 A Yes.

22 Q Was -- to your knowledge, were efforts
23 made to determine what long-term impact, if any,
24 specific conduct would have? And the specific
25 conduct I'm referring to here is Dr. Mitchell and

1 Dr. Jessen's enhanced interrogation techniques.

2 A I do not know.

3 Q Okay. This is referencing a letter from
4 July 13, 2002, from OLC to CIA.

5 Do you remember such a letter?

6 A No.

7 Q Okay. So do you, do you have any
8 recollection of the Office of Legal Counsel at DoJ
9 advising CIA that, that "due diligence to meet the
10 standard might include such actions as surveying
11 professional literature, consulting with experts,
12 or evidence gained from past experience"?

13 A No, no. I don't have any recollection
14 of that.

15 Q Okay. So did you, in your capacity as
16 the director of CTC at that time, order or request
17 anyone to conduct the type of research or due
18 diligence that's described in that paragraph?

19 A No.

20 Q Would you agree that, that the long-term
21 effects of the enhanced interrogation techniques
22 was never explored in real depth?

23 A I do not know.

24 Q Do you think it should have been?

25 A I don't know.

1 Q Do you think it's possible that the
2 enhanced interrogation techniques could result in
3 long-term harm?

4 MR. JAMES SMITH: Objection.

5 MR. BENNETT: Objection.

6 THE WITNESS: May I answer it,
7 or --

8 MR. BENNETT: Well, I object to the
9 word "possible," but go ahead if you can.

10 THE WITNESS: Go ahead. Can you
11 repeat the question, please?

12 BY MR. LUSTBERG:

13 Q Yes. I understand. Let me try to
14 reword it in a way which will satisfy Mr. Bennett,
15 which is really what I want to do here.

16 MR. BENNETT: Thank you very much.

17 BY MR. LUSTBERG:

18 Q Do you think that the enhanced
19 interrogation techniques could result in long-term
20 harm?

21 A No.

22 Q Why is that?

23 A It never did. I don't think any of the
24 individuals that we held in captivity has suffered
25 any long-term effects.

1 Q And what do you base that on?

2 A Just what I've known from the project
3 and from what I've been told.

4 Q So you've received information that all
5 of the detainees who were subjected to the
6 enhanced interrogation techniques are fine and
7 have not suffered long-term harm?

8 A I have not received information on all.
9 On some.

10 Q So have you received any information
11 that any of them are suffering any long-term
12 physical or psychological effects?

13 A No.

14 Q I'm, I'm sure you will remember this
15 back-and-forth with Lesley Stahl on 60 Minutes
16 where you analogized the stress positions to
17 working out in a gym.

18 A Correct.

19 Q Yeah. Do you think that's a good
20 analogy to what the, the kind of discomfort that
21 the stress positions cause?

22 A I can only imagine.

23 Q So you "don't know" is the answer?

24 A I don't know.

25 Q And how about sleep deprivation; do you

1 really think sleep deprivation is a lot like jet
2 lag?

3 A Having suffered from jet lag and not
4 being able to sleep for two or three days, I can
5 imagine it being a very devastating thing to go
6 through.

7 Q How is, to your knowledge, sleep
8 deprivation effected? That is, how were people
9 deprived of sleep under -- using the enhanced
10 interrogation techniques?

11 A They get confused. They, they have a
12 harder time trying to figure out what they said in
13 the past. They become disoriented. It's just
14 very difficult to keep up lying when you are
15 sleep-deprived.

16 Q Okay. So I asked that question poorly,
17 because what I really meant to ask you was: What
18 did people there do to deprive the detainees of
19 sleep?

20 A Didn't let them sleep.

21 Q How did they, how did they not let them
22 sleep? What did they do to not let them sleep?

23 A I assume that they woke them up.

24 MR. BENNETT: Don't assume.

25

1 BY MR. LUSTBERG:

2 Q You observed some interrogations, right?

3 A No.

4 Q You never observed any?

5 A No.

6 Q How about on videotape?

7 A No.

8 Q You never saw one once?

9 A No. There was a little videotape one
10 time, but it was just a -- but it was not a, a
11 videotape of anything that happened.

12 Q So do you have any direct knowledge of
13 the way in which people were kept awake?

14 A No.

15 Q So not, for example, pouring water on
16 them or, or any other techniques? You don't know
17 what was used to keep them awake?

18 A No.

19 Q No idea?

20 A No.

21 Q One moment. I'm getting close to being
22 done here.

23 In your -- in what you've written about
24 Drs. Mitchell and Jessen, you have talked about
25 the fact that they were not the ones who would

1 decide who these techniques would be used on; is
2 that right?

3 A Correct.

4 Q Who -- well, never mind, because that's
5 going to get an objection.

6 Were they -- did you tell them that they
7 were not, that they were not the ones to decide
8 who the enhanced interrogation techniques would be
9 used on?

10 A They were contractors, independent
11 contractors. Everybody knows that independent
12 contractors don't make decisions, that the staff
13 people are the ones making decisions.

14 Q So even though they designed the
15 program, they were not the ones to decide who it
16 would be used on; is that right?

17 A Correct.

18 Q And to your knowledge, based upon your
19 interaction with them, did they know that their
20 techniques would be used on people that they did
21 not select?

22 A I don't know that.

23 Q At the end of your declaration,
24 Mr. Rodriguez, you have a section on the SSCI
25 report, beginning on page 19.

1 So beginning on paragraph 121 -- in
2 paragraph 122 you say that "The SSCI Report is an
3 errant, one-sided assault on the CIA's EIT Program
4 that reaches numerous unsupportable and baffling
5 conclusions."

6 Then you give an example on paragraph --
7 in paragraph 125 where you say that "the SSCI
8 Report states that on July 17, 2002, National
9 Security Advisor Condoleezza Rice requested a
10 delay in the approval of the interrogation
11 techniques. In fact, on that date, Rice approved
12 the CIA's use of EITs subject to DoJ approval."

13 Do you see that?

14 A Yes.

15 Q How -- is that the only example -- it's
16 the only example you give of ways in which the
17 SSCI report is "errant and one-sided." Are there
18 other examples?

19 A Of course.

20 Q Can you provide another one?

21 A The allegation that the enhanced
22 interrogation program did not work and that no
23 value came from them is totally erroneous. It's a
24 travesty.

25 Q So you believe that the, that what the

1 SSCI report says is that the enhanced
2 interrogation program did not work and that no
3 value came from it?

4 A Correct.

5 Q Let me ask you this: The CIA wrote a
6 response to the SSCI report, right?

7 A Correct.

8 Q Did you read that?

9 A Yes, I did.

10 Q Did you participate in assisting to
11 draft that?

12 A No.

13 Q Is that -- would you say that that
14 response was also "errant" or "one-sided"?

15 A I don't think so, but I don't, I don't
16 remember it.

17 Q Okay. Let me show you a couple of
18 conclusions from that report. It's Exhibit 21,
19 already marked.

20 A What page?

21 Q Page 25.

22 Sorry. There's two different page 25s.
23 At least two. Toward the end of the report, the
24 page numbers go again, and -- hold on one second.
25 I'm sorry. Just give us one minute to make sure

1 we have the right page.

2 A Okay.

3 Q Sorry. I got it.

4 Okay. So there's numerous -- this
5 number a couple of different times. The second
6 page 25, which is sort of -- of course, these are
7 not Bates-numbered, so this is not that easy to
8 work with, but it's about halfway through. It's
9 part of conclusion 10.

10 A Conclusion 10?

11 MR. JAMES SMITH: The second series
12 of numbers?

13 MR. LUSTBERG: That's what I'm
14 looking.

15 MR. JAMES SMITH: Exhibit 21?

16 MR. LUSTBERG: Correct. So let me,
17 let me see -- Mr. Schuelke maybe has a good
18 way to do it.

19 BY MR. LUSTBERG:

20 Q So yes, this is the second series of
21 numbers, so if you look, you'll see it goes 1
22 through 20 -- it goes -- it starts and then it
23 renumbers again.

24 You're responsible for this confusing
25 document, aren't you?

1 A I had nothing do with it.

2 MR. SCHUELKE: Larry, does this
3 page have Title 12 --

4 MR. LUSTBERG: No. It starts at
5 the top of the page, page 25, the very top of
6 the page, starts with "CIA remains grateful."

7 MR. BENNETT: Okay. Here it is
8 here.

9 (Discussion was held off the
10 record.)

11 MR. BENNETT: We got it here.

12 MR. LUSTBERG: You got it.

13 BY MR. LUSTBERG:

14 Q Anyway, you got it.

15 What I wanted to ask you about was -- it
16 says "we agree" -- in the first bullet point it
17 says, "We agree with the study, however, that
18 they," being Drs. Mitchell and Jessen, "were
19 heavily reliant on views of the" -- I'm sorry. It
20 says, "CIA remains grateful to (blank) and (blank)
21 who applied" -- let me. Yeah, I know. Oh, I see.
22 Withdrawn.

23 The second bullet point: "As discussed
24 in our response to conclusion 17, we agree that
25 CIA should have done more from the beginning of

1 the program to ensure there was no conflict of
2 interest, real or potential, with regard to the
3 contractor psychologists who designed and executed
4 the techniques, while also playing a role in
5 evaluating their effectiveness as well as other
6 closely related tasks."

7 Do you see that?

8 A Yes, I see it.

9 Q First of all, do you -- first of all, I
10 mean obviously you agree that the contractor
11 psychologists that we're talking about are
12 Drs. Mitchell and Jessen, right?

13 A Yes.

14 Q And that they were the ones -- and the
15 reason you say that is because they were, in fact,
16 the ones who designed and executed the techniques,
17 but do you also agree that their company or they
18 played a role in evaluating their effectiveness?

19 MR. JAMES SMITH: Objection.

20 MR. BENNETT: Go ahead if you know.

21 THE WITNESS: Yes.

22 BY MR. LUSTBERG:

23 Q They did?

24 A They played a role, yes.

25 Q And do you think, do you think that's

1 problematic?

2 A No, because we also -- the agency played
3 a role in assessing their effectiveness.

4 Q The agency also assessed their
5 effectiveness?

6 A Yes.

7 Q Were you involved in that?

8 A Not formally, but in, in measuring their
9 accomplishments I was.

10 Q Later on -- let me see if I have the
11 right numbers here. On page 48, same series, if
12 you look at conclusion 17 on the top of page 48,
13 it says, "The CIA improperly used two private
14 contractors with no relevant experience to
15 develop, operate and assess the CIA detention
16 interrogation program. In 2005 the contractors
17 formed a company specifically for the purpose of
18 expanding their detention and interrogation work
19 with the CIA. Shortly thereafter, virtually all
20 aspects of the CIA detention interrogation program
21 were outsourced to the company. By 2006 the value
22 of the base contract with the company, with all
23 options exercised, was in excess of \$180 million.
24 In 2007 the CIA signed a multi-year
25 indemnification agreement protecting the company

1 and its employees from legal liability."

2 That's the language from the SSCI
3 report, right?

4 A This is from the CIA response.

5 Q So they're, they're responding to that?

6 A Right.

7 Q And on the next page it says, "We
8 acknowledge that the agency erred in permitting
9 the contractors to assess the effectiveness of
10 enhanced techniques."

11 Do you see that?

12 A The next --

13 Q Next page.

14 A Page 49?

15 Q 49, yes, at the very top.

16 "They should not have been considered
17 for such a role, given their financial interest in
18 continued contracts with the CIA."

19 Do you agree with that?

20 A Yes.

21 Q During the time period that the enhanced
22 interrogation techniques were being used, were
23 they being evaluated?

24 A The techniques or --

25 Q Yeah, the effectiveness of them.

1 A Yes, they were.

2 Q And was -- were Drs. Mitchell and Jessen
3 involved in that evaluation?

4 A The evaluation was based on results.

5 Q And the results were -- and you felt
6 that the results were positive and so that
7 therefore the techniques were good?

8 A The results was incredible, very
9 valuable intelligence that came to us that we
10 didn't have before.

11 Q And in assessing the results, was there
12 any consideration at all given to the physical or
13 psychological harm that was being inflicted upon
14 the detainees?

15 A We didn't think that any was, was being
16 inflicted.

17 Q My question is: So that was, so that
18 was evaluated as part of the program?

19 A No.

20 Q It was not?

21 A No.

22 Q I was reading through the cables from
23 Abu Zubaydah's interrogation, and time after time
24 they talk about how the result is "no new threat
25 information." I can show those to you if you

1 wish.

2 Do you remember those cables?

3 A It's been 15 years.

4 Q Okay. Let's show them to him.

5 Let's start with 1758, because that's
6 also -- I tell you what. Let's do this. Look at
7 your declaration, Exhibit N.

8 This is a cable regarding the
9 interrogation of Abu Zubaydah, correct?

10 A Yes.

11 Q And it, it goes through a number of, of
12 the application of -- I'm sorry -- the application
13 of a number of enhanced interrogation techniques,
14 right?

15 A Yes.

16 Q It describes walling, and it describes
17 the confinement box, and in paragraph 9 it says
18 that "the subject has not provided any new threat
19 or elaborated on any old threat information."

20 Do you see that?

21 A Yes.

22 Q When you read that kind of thing, was
23 there any sense that the enhanced interrogation --
24 that their enhanced interrogation techniques were
25 not being effective?

1 A At that point.

2 Q At that point what?

3 A At that point they were not being
4 effective. Eventually they were.

5 Q Okay. In any event, so at any given
6 point, if there was not any new intelligence, that
7 wasn't really the point; the real point was you
8 wanted to look at it overall, right?

9 A What do you mean?

10 Q You wanted to see whether it was
11 successful overall.

12 A My objective was to obtain intelligence
13 to protect the homeland and to save American
14 lives, and this program produced it. That was my,
15 the way I measured it.

16 Q Okay. So the way you measured the
17 program was by virtue of whether it provided the
18 intelligence that you were looking for?

19 A Not only provided intelligence, but
20 allowed us to go and capture other people and stop
21 plots and protect the homeland.

22 Q I understand.

23 Okay. Just one or two other areas that
24 I really just a little bit that I want to go into.
25 I want to talk about the particular plaintiffs in

1 this case, and I want to -- so take a look at your
2 report. I'm sorry. Your declaration. Let's
3 start with paragraph, paragraph -- I'm sorry --
4 90, nine zero, page 15.

5 And, um, the -- one of the things it
6 says in paragraph 90 is that, under subsection 3,
7 it says, "Rahman was declared an 'enemy
8 combatant.'"

9 Do you see that?

10 A Yes.

11 Q And you say that that is your
12 understanding?

13 A Correct.

14 Q Where did you get that understanding?

15 A He was an -- he was declared an enemy
16 combatant.

17 Q So if the judge in this case has held
18 that the defendants have presented no evidence
19 that Gul Rahman was determined to be an enemy
20 combatant prior to his death, is the judge wrong?

21 MR. JAMES SMITH: Objection. Come
22 on, Mr. Lustberg.

23 MR. LUSTBERG: That's a perfectly
24 appropriate question.

25 MR. JAMES SMITH: How would he know

1 if the judge is wrong?

2 MR. LUSTBERG: I'm asking him if --

3 MR. JAMES SMITH: Why don't we ask
4 the government if they gave us all the
5 documents we're entitled to?

6 MR. LUSTBERG: You'll have an
7 opportunity to ask your questions.

8 THE WITNESS: I don't know.

9 BY MR. LUSTBERG:

10 Q Your understanding from somewhere was
11 that he was an enemy combatant?

12 A Yes.

13 Q Did you ever see a piece of paper that
14 said that?

15 A I don't recall.

16 Q In paragraph 91 it talks about how
17 Mr. Salim, the plaintiff here, was designated as
18 an enemy combatant.

19 Do you see that?

20 A Yes.

21 Q Let me show you Exhibit 40.

22 (Exhibit 40 was marked for
23 identification.)

24 BY MR. LUSTBERG:

25 Q Have you ever seen this before?

1 A No.

2 Q So this was not, certainly not something
3 that you had seen before you signed the
4 declaration saying that, that Mr. Salim was not an
5 enemy combatant, right?

6 A I don't remember these individuals,
7 Salim or Soud.

8 Q You don't remember any of them?

9 A I don't.

10 Q And when you go through -- so do you
11 have any personal knowledge as to whether he was
12 or was not an enemy combatant?

13 A No.

14 Q And is that true with regard to
15 Mr. Rahman and Mr. Soud as well?

16 A It's my understanding, but I don't have
17 personal direct knowledge.

18 Q Okay. I see where you say, for example,
19 in paragraph 102, "It is my understanding that
20 Dr. Mitchell came in brief contact with Rahman
21 even though he was not classified as an HVD."

22 Do you see that?

23 A Yes.

24 Q When you say it's your "understanding,"
25 that means you don't have personal knowledge,

1 right?

2 A Correct.

3 Q And when you say in paragraph 105, "It
4 is my understanding that Dr. Mitchell observed
5 Rahman one evening at Cobalt while Dr. Mitchell
6 was traveling with Abd Al-Nashiri as he was
7 rendered to black-site Green," that was also not
8 based on your personal knowledge, it was based
9 upon your understanding?

10 A Correct.

11 Q When you say it's based on your
12 understanding, that's an understanding you got by
13 speaking to somebody else?

14 A By seeing these and seeing some of
15 the --

16 Q By seeing "these" being?

17 A Exhibits, exhibits here.

18 Q Okay. What, what exhibit were you
19 looking at in order to come to the conclusion that
20 Dr. Mitchell came in brief contact with Rahman
21 even though he was not classified as an HVD?

22 A I'll have to go through it. I don't
23 remember.

24 Q But you, you think you saw a piece of
25 paper that said that?

1 A Yes.

2 Q Okay, and likewise with regard to your
3 understanding that Dr. Mitchell observed Rahman,
4 you got that from some document?

5 A Yes.

6 Q You just don't --

7 A I think, I think it was the Gul, the
8 Rahman investigation.

9 Q Okay. You think you learned that from
10 the Rahman investigation?

11 A I think so. The report, the last -- the
12 IG report.

13 Q If you take a look, just generally look
14 at paragraphs -- so I don't have to do this with
15 each one -- 102, 105 through 108, 110 and 114,
16 those are all paragraphs that begin "it is my
17 understanding."

18 In each case, is your understanding
19 based upon the investigation of the Rahman death?

20 A 102, 103?

21 Q 102, 105 through 108, 110 --

22 A Yes.

23 Q -- and 114.

24 A Yes.

25 Q Those are all based upon the report or

1 other documents that you saw?

2 A Correct.

3 Q Nothing that you have your own personal
4 knowledge of?

5 A True.

6 Q Is that right?

7 A Mm-hmm.

8 Q Okay. There's one last area.

9 I have read articles -- you probably
10 have as well -- where you're quoted as saying that
11 you want to bring back some form of now legal
12 interrogation measures like waterboarding, sleep
13 deprivation, and other so-called enhanced
14 interrogation methods approved by the Bush White
15 House.

16 Is that the position that you've taken?

17 A No.

18 Q So those -- I'm sorry.

19 A What I'm saying is that they need to
20 have something that goes beyond the Army Field
21 Manual. I, I don't think that some of those
22 enhanced interrogation things can ever be brought
23 back. They have already been, you know, given
24 away. There's too much controversy. Some other
25 form of techniques that goes beyond the Army Field

1 Manual.

2 Q Have you consulted with President Trump
3 or members of his administration with regard to,
4 quote-unquote, "bringing back torture"?

5 A No. Well, we never brought -- we never
6 used torture, so I don't know what you're talking
7 about.

8 Q Okay. How about bringing back enhanced
9 interrogation techniques?

10 A No.

11 Q Have you spoken with any such people
12 about bringing back black sites?

13 A No.

14 Q Have you spoken to the, any
15 representatives of the new administration or
16 transition team about resuming a CIA interrogation
17 program?

18 A No.

19 Q Have you spoken to anybody about joining
20 the administration?

21 A No.

22 MR. LUSTBERG: That's all I have.

23 That's it. Thank you very much.

24 THE WITNESS: You're welcome.

25 MR. LUSTBERG: I think Mr. Smith

1 probably wants to ask some questions.

2 MR. JAMES SMITH: I do.

3 (Discussion was held off the
4 record.)

5 THE VIDEOGRAPHER: It's 2:05 p.m.
6 We'll go off the record for technical
7 reasons.

8 (Whereupon, a short recess was
9 taken.)

10 THE VIDEOGRAPHER: The time is
11 2:07. Back on the record.

12 EXAMINATION BY COUNSEL FOR DEFENDANTS

13 BY MR. JAMES SMITH:

14 Q My name again still is Jim Smith, and as
15 you know, I represent Drs. Mitchell and Jessen in
16 this case.

17 Mr. Rodriguez, are you familiar with the
18 plaintiffs' theory in this case?

19 A Of enhanced interrogation?

20 Q Yeah, what the plaintiffs' theory is in
21 this case; are you familiar with it?

22 A Can you run it by me?

23 Q Okay. Let me do a little background,
24 and then we'll get to it.

25 A Okay.

1 Q You mentioned, in your testimony with
2 Mr. Lustberg, a "high-value target."

3 Do you remember you used those words?

4 A Yes.

5 Q Is that synonymous with "a high-value
6 detainee"?

7 A Correct.

8 Q Can you tell us for the record what a
9 high-value detainee is?

10 A A high-value detainee is someone who is
11 believed to have intelligence involving threats to
12 the United States, its people or its interests
13 overseas.

14 Q And are you familiar with the concept of
15 a medium-value detainee?

16 A Yes.

17 Q Can you tell us what a medium-value
18 detainee is?

19 A Someone involved in war against us but
20 who may not have that level of intelligence that
21 represents an immediate threat to our country.

22 Q And are you familiar with the concept of
23 a low-value detainee?

24 A Yes.

25 Q Can you tell us what a low-value

1 detainee is?

2 A A lesser combatant, a facilitator person
3 who is not as dangerous as a medium-level
4 detainee.

5 Q And I take it that high-value detainees,
6 medium-value detainees and low-value detainees
7 were all considered enemies to the United States
8 of America.

9 A Yes.

10 Q Now, in 2001 when you started working
11 with CTC, did you start using those words,
12 high-value detainee, medium-value detainee and
13 low-value detainee?

14 A I don't recall.

15 Q Can you approximate when you started
16 using those terms?

17 A When we captured Abu Zubaydah.

18 Q Okay. Now, let's, let's talk about that
19 for a second.

20 Was Zubaydah -- strike that.

21 Which one of the three categories did
22 Zubaydah fall within?

23 A High-value.

24 Q And why did the government believe that
25 Mr. Zubaydah was a high-value detainee?

1 A Because he had come across our screen in
2 2000 regarding the millennium plots and his
3 dispatching of a terrorist to come into the US
4 through Canada to blow up LAX in California.

5 Q So the government, at the time of his
6 capture, believed that there was information that
7 he was directly involved in a plan to blow up the
8 Los Angeles airport?

9 A Correct.

10 Q Now, did the government also have any
11 beliefs about what relationship, if any,
12 Mr. Zubaydah had with Osama bin Laden?

13 A Yes.

14 Q Can you tell us what it is.

15 A Well, at one point we thought he was the
16 chief of operations, but we knew he was a senior
17 al-Qa'ida operative.

18 Q Now, at the time that Mr. Zubaydah was
19 captured by the United States government, what
20 relationship, if any, did the CTC believe that
21 Zubaydah had with Osama bin Laden?

22 A As far as I can recall, we, we assumed
23 that he had a close relationship with Osama bin
24 Laden.

25 Q Was he considered Osama bin Laden's

1 first lieutenant, or one of them, at least?

2 A He was considered chief of operations at
3 one point. It was either him or Khalid Sheikh
4 Mohammed, but we knew him to be a senior person in
5 the organization.

6 Q Now, when was, when was Zubaydah
7 captured?

8 A March 2002.

9 Q Now, in March of 2002, he was captured
10 and he was taken to I think what's referred to as
11 a "black site," right?

12 A Correct.

13 Q And I'm not asking you to tell me where
14 that black site was. Let me just make that clear.
15 Okay?

16 A Good.

17 MR. BENNETT: He wouldn't tell you
18 anyway.

19 BY MR. JAMES SMITH:

20 Q Understood and that's good.

21 Now, do you know, sir, if that black
22 site was a site for high-value detainees?

23 A We made it a site for Zubaydah at first,
24 and then Nashiri second, so it became a site for
25 high-value detainees.

1 Q Now, let's talk about Nashiri for a
2 second. Al-Nashiri was who?

3 A Nashiri was responsible for blowing up
4 the U.S.S. Cole.

5 Q And Nashiri was captured when?

6 A Sometime in the fall of 2002.

7 Q And he was taken to the same black site
8 where Zubaydah was kept?

9 A If I recall correctly, yes.

10 Q And he was considered a high-value
11 detainee?

12 A Yes.

13 Q I want to go back for a second.

14 There was a period of time, was there
15 not, when Zubaydah was maintained in a black site
16 and being interrogated by FBI agents and CIA
17 agents; is that correct?

18 A Yes.

19 Q And that was before Dr. Mitchell had any
20 involvement; is that correct?

21 A No. He had some involvement in that
22 first interrogation. He was there to support and
23 to make recommendations to the team.

24 Q Now, let me back up for a second.

25 I think -- at the time that Dr. Mitchell

1 was hired by the CTC, were you essentially the
2 captain of the ship of the black sites?

3 A I was the captain of the ship of -- when
4 Abu Zubaydah was captured in March, I was not the
5 director of CTC.

6 Q Okay.

7 A But I was involved in everything related
8 to CTC, and I had a special interest in making
9 sure that this program got off the ground and got
10 off the ground well.

11 Q Now, you became the director of CTC
12 when?

13 A In May of 2002.

14 Q Now, when Dr. Mitchell was originally
15 brought on to "the team," if you will, why was
16 that decision made?

17 A The decision was made because we had
18 impending threats of all kinds of attacks, anthrax
19 and nuclear and a second wave of attacks, and we
20 needed to do something different, because we were
21 not getting information through traditional
22 interrogation of Abu Zubaydah.

23 Q Okay. So let's talk about that for a
24 minute.

25 As of the time that Dr. Mitchell was

1 brought on, is it fair to say that the traditional
2 forms of interrogation that were being utilized by
3 the FBI and the CIA were not giving or producing
4 results about what the government was concerned
5 about regarding impending threats?

6 A They had produced two results, two
7 pieces of information that were significant, but
8 once he regained his strength, he stopped talking.

9 Q Okay, and when was that that he stopped
10 talking?

11 A April/May time frame, 2002.

12 Q And are you able to tell us about those
13 two pieces of information?

14 A I think so.

15 MR. JOHNSON: Can we have a
16 consultation?

17 MR. JAMES SMITH: Absolutely.

18 MR. BENNETT: Let's step outside.

19 MR. LUSTBERG: Let's go off the
20 record.

21 THE VIDEOGRAPHER: The time is 2:15
22 p.m. We're off the record.

23 (Whereupon, a short recess was
24 taken.)

25 THE VIDEOGRAPHER: The time is

1 2:17 p.m. We're back on the record.

2 MR. JAMES SMITH: Would you repeat
3 the question, Madam Court Reporter?

4 (Whereupon, reporter reads
5 requested material.)

6 THE WITNESS: The two pieces of
7 information that Abu Zubaydah had divulged
8 during the first phase of that interrogation
9 was that he confirmed for us that Mukhtar --
10 and we have seen Mukhtar in all kinds of
11 different intercepts -- was actually Khalid
12 Sheikh Mohammed.

13 The second one, it was very vague
14 information regarding an individual who was
15 supposed to go to the U.S. to detonate a WMD
16 type of device. We -- he gave us enough
17 where our overseas installations were able to
18 identify the individual as Jose Padilla, and
19 we found where he was, and we tracked him all
20 the way back to Chicago where we alerted the
21 FBI and he was arrested.

22 He actually was -- had a plan and
23 had been given \$10,000 by Khalid Sheikh
24 Mohammed to blow up apartments, residential
25 apartments in different parts of the U.S.

1 using natural gas, and have them go off at
2 the same time.

3 BY MR. JAMES SMITH:

4 Q Now, you mentioned Khalid Sheikh
5 Mohammed. Can you tell us who Khalid Sheikh
6 Mohammed is?

7 A Khalid Sheikh Mohammed was the chief of
8 operations of al-Qa'ida who actually devised the
9 9/11 plot and sold it to Osama bin Laden.

10 Q Okay. Now let's go back.

11 In the late spring/early summer of 2002,
12 Zubaydah is regaining his health, correct?

13 A Correct.

14 Q And he clams up?

15 A Correct.

16 Q And at that time -- is that around or
17 about the time that the decision is made to enlist
18 the service of Dr. Mitchell?

19 A Dr. Mitchell was already at the site.
20 He was providing recommendations and observing
21 what was going on, but that was about the time
22 that we knew that we had to do something
23 different.

24 Q Okay.

25 Now, you identified, in your direct

1 examination with Mr. Lustberg, documents that were
2 marked as Exhibits J and K to the declaration that
3 you signed that's marked as Exhibit 36 in this
4 case. Could I ask you to get out those, please.

5 A Which one?

6 MR. BENNETT: J and K.

7 BY MR. JAMES SMITH:

8 Q Exhibit 36. Let's go to item Exhibit J
9 within Exhibit 36.

10 A Exhibit 36?

11 MR. LUSTBERG: That's the
12 declaration.

13 THE WITNESS: Oh, okay.

14 BY MR. JAMES SMITH:

15 Q Are you there, sir?

16 A Yes. So paragraph 36 of the
17 declaration?

18 Q No, no. Exhibit 36 is your declaration.

19 A Okay, okay.

20 Q Okay. If you go to Exhibit J --

21 A Okay.

22 Q -- within Exhibit 36 --

23 A Okay.

24 Q -- you will come to a document.

25 A Okay.

1 Q Do you recognize this document?

2 A It's a document that lists the different
3 techniques.

4 Q For the record, is it fair to say that
5 Exhibit J, at least in part, represents a memo
6 that was prepared by Dr. Mitchell dated July 8,
7 2002?

8 A I assume that's correct.

9 MR. BENNETT: Don't assume.

10 THE WITNESS: Okay. I believe it's
11 correct. I don't know.

12 BY MR. JAMES SMITH:

13 Q Well, turn to the third page where you
14 can see "Hope this helps. Jim Mitchell."

15 Do you see that?

16 A Okay.

17 Q Okay. You've seen this document before
18 today, obviously, right?

19 A Yes.

20 Q Okay. Do you recognize this as the
21 document that was put together by Dr. Mitchell
22 regarding enhanced interrogation techniques?

23 A I believe that's right.

24 Q Okay. Now, were you the person that
25 asked Dr. Mitchell to put this document together?

1 A Yes.

2 Q And just tell us, so the record is
3 clear, why you wanted him to prepare this
4 document.

5 A We were searching for a new way of doing
6 things, and this seemed like the appropriate way
7 to go, and we needed to have more specific
8 information regarding what were the techniques
9 that he was talking about.

10 Q And these are interrogation techniques
11 that are set forth in Exhibit J, right?

12 A Correct.

13 Q Okay, and if you look at the first page
14 of Exhibit J, you'll see that there's a thread of
15 emails. Most of the information is redacted out.
16 Do you see that?

17 A Where is that?

18 Q Go to the first page. See the "from"
19 and the "office" and the "reference" and the like?

20 A Mm-hmm.

21 Q The government has redacted out that
22 information in the production to us.

23 A Okay.

24 Q Okay. Now, do you -- you recognize
25 these as the 12 interrogation techniques that you

1 asked Dr. Mitchell to give to the CIA; is that
2 correct?

3 A Yes.

4 Q Okay, and then so we're clear, item
5 number 12 makes reference to the mock burial,
6 right?

7 A Yes.

8 Q And that interrogation technique was
9 removed?

10 A True.

11 Q Now, let's go forward for a second.

12 When Dr. Mitchell was hired by the CIA,
13 what specifically was he tasked to do in addition
14 to creating this method?

15 A He was hired in December of 2001 to be a
16 consultant, to provide advice, to do applied
17 psychology. When he -- when CTC hired him in
18 July, we had hired him before to go to the black
19 site, but when we decided that we wanted do this,
20 we hired him to do this and to help us with
21 implementation of the techniques.

22 Q Okay, the implementation of the
23 techniques on whom?

24 A On Abu Zubaydah.

25 Q Okay. So is it fair to say --

1 MR. BENNETT: Excuse me. I object.
2 Both counsel have used the phrase "is it fair
3 to say," and I don't know what that means.
4 It means different things to different
5 people, so could you rephrase that?

6 MR. JAMES SMITH: I could.

7 MR. BENNETT: Thank you.

8 MR. JAMES SMITH: And if I do it
9 again, it's not intentional. It's just an
10 old habit that, now that you tell me I should
11 get rid of it, I'll work hard to do it.

12 MR. BENNETT: I don't believe it's
13 that intentional, but go ahead. Give it your
14 best shot.

15 MR. JAMES SMITH: All right.

16 BY MR. JAMES SMITH:

17 Q The -- so the engagement, Dr. Mitchell's
18 engagement started with OTC, was it?

19 A Yes.

20 Q And then it changed to CTC in the summer
21 of 2002?

22 A I believe we gave, we, we paid for his
23 services when he went to the first location with
24 the FBI, and that was in April of 2002.

25 Q But by the time he created the memo

1 dated July of 2002, he was working for CTC, right?

2 A Correct. Yes.

3 Q Okay, and this memo was created solely
4 for the purpose of interrogating Zubaydah; is that
5 correct?

6 A Yes.

7 Q Now, did there come a point thereafter
8 when Dr. Mitchell -- well, let me back up for a
9 second.

10 I think you testified on direct
11 examination that at Dr. Mitchell's request, the
12 CIA also agreed to engage Dr. Jessen; is that
13 correct?

14 A Yes, yes.

15 Q And when did that happen?

16 A July 2002.

17 Q Okay, around or about the time of this
18 memo?

19 A Yes.

20 Q And was that solely to assist in the
21 interrogation of Zubaydah?

22 A Yes.

23 Q Now, did there come a time thereafter
24 when Drs. Jessen and Dr. Mitchell started
25 assisting in the interrogation of Abu Zubaydah?

1 A Yes.

2 Q Now, I want to go to a statement that
3 you made. You said -- if I wrote it down
4 correctly -- that Dr. Mitchell and Dr. Jessen were
5 "independent contractors."

6 A Yes.

7 Q You remember you said that?

8 A Yes.

9 Q And then you said, if I wrote it down
10 correctly, "Independent contractors do not make
11 decisions."

12 Do you remember you said that?

13 A Yes.

14 Q Tell us what you know about that.

15 A Independent contractors are subject
16 matter experts. They give us knowledge that we
17 don't possess, they make recommendations, but the
18 ultimate decision-makers were the staff people,
19 the leadership of the Counter-Terrorism Center.

20 Q Now, who were those decision-makers?

21 MR. JOHNSON: Objection.

22 MR. JAMES SMITH: Fair point, fair
23 point. I'll withdraw.

24 Am I permitted to ask the witness
25 if he was the decision-maker?

1 MR. JOHNSON: Yes, as long as we
2 avoid names and identifying information of
3 other individuals.

4 MR. JAMES SMITH: What about
5 titles?

6 MR. JOHNSON: Titles? It depends
7 on the exact title.

8 MR. JAMES SMITH: Let me see if I
9 can do it a different way.

10 BY MR. JAMES SMITH:

11 Q Can you get out Exhibit 38, please?

12 A Number 38?

13 Q Exhibit 38, yes.

14 A What is that?

15 Q What is it or where is it? It's in your
16 pile of information, because Mr. Lustberg showed
17 it to you.

18 MR. BENNETT: Can you describe the
19 document?

20 MR. JAMES SMITH: Yes, I can.

21 BY MR. JAMES SMITH:

22 Q It is a -- it looks like a government
23 cable. It bears Bates number United States 1170
24 through 1174. I'll stop there.

25 Do you have Exhibit 38 before you?

1 A I have it.

2 Q Do you remember that you were asked
3 questions about this document in your direct
4 examination?

5 A Yes.

6 Q Okay. Now, I want to just direct your
7 attention to again the first page where it says
8 "DCI Guidelines for the Conduct of Interrogation."
9 Do you see that?

10 A Yes, I do.

11 Q And do you recognize Exhibit 38 as being
12 the Guidelines for Interrogation?

13 A Yes.

14 Q Okay. Now, turn, if you would, to the
15 second page of the document. In the paragraph
16 marked 3, you see where it says "Begin Text of DCI
17 Guidelines"?

18 A Yes.

19 Q I'm going to ask you to jump down two
20 sentences in the paragraph. Do you see where it
21 says, quote, "These guidelines address the conduct
22 of interrogations of persons who are detained
23 pursuant to the authorities set forth in the
24 Memorandum of Notification of 17 September 2001."

25 A I see that.

1 Q Are you familiar with that memorandum?

2 A The 17 September memorandum?

3 Q The 2001 memorandum.

4 A Yes.

5 Q Are you familiar with it?

6 A I am familiar with it.

7 Q Are you able to talk about it without
8 violating any obligation for classified
9 information?

10 MR. JOHNSON: We need to consult.

11 Depends on what you need to ask.

12 MR. JAMES SMITH: Got it.

13 MR. JOHNSON: Break to consult?

14 THE VIDEOGRAPHER: The time is

15 2:30 p.m.

16 (Whereupon, a short recess was
17 taken.)

18 THE VIDEOGRAPHER: 2:34 p.m. We're
19 back on record.

20 BY MR. JAMES SMITH:

21 Q Do you remember the question,
22 Mr. Rodriguez?

23 A Yes. You were talking -- you were
24 asking about the 17 September MON.

25 Q Yes.

1 A And after discussing it, I'm only
2 authorized to talk about the capture and detain
3 portion of that authority.

4 Q Okay. Can you tell me whatever you're
5 permitted to tell.

6 A I'm telling you. The capture and detain
7 portion of it is that the CIA has the authority to
8 go forth and capture and detain terrorists.

9 Q Okay. When you say "capture and detain
10 terrorists," do you mean low-value, medium-value
11 and high-value, high-detainee-value terrorists?

12 A I don't think they make a determination
13 there on that document.

14 Q When, when is the determination made?

15 A The determination is made upon capture.

16 Q Okay.

17 A I mean in many cases we knew who we were
18 going after, so we already -- if we were going
19 after a high-value target, we already knew.

20 Q Okay.

21 A But sometimes other people -- people
22 were captured in different ways, and at the time,
23 depending on their knowledge that they had, a
24 determination was made.

25 Q Okay. Thank you, Mr. Rodriguez.

1 Could I ask you to go back to Exhibit 38
2 and turn to the third page of the document. I
3 want to focus on the paragraph, the first full
4 paragraph on that page.

5 Do you have it before you?

6 A Yes.

7 Q Now, let's just back up for a second.

8 Did I hear you say earlier today that
9 enhanced interrogation techniques were only to be
10 used on high-value detainees?

11 A Yes.

12 Q And that was your understanding of the
13 policy and procedures that were in place starting
14 in 2002 in the fall, correct?

15 A Correct.

16 Q So to the extent that Dr. Mitchell
17 created that memo that listed those 12 items, it
18 was only contemplated to be used on high-value
19 detainees; is that correct?

20 A Yes, yes.

21 Q Okay. Now, I want to talk about the
22 concept of control, okay? Go back to this
23 paragraph again, and we're going to read it
24 together.

25 Do you see where it says, quote,

1 "Enhanced techniques are techniques that do
2 incorporate physical or psychological pressure
3 beyond standard techniques."

4 Do you see that?

5 A Yes.

6 Q Reading on, it says, "The use of each
7 specific enhanced technique must be approved by
8 headquarters in advance."

9 Now, let me stop right there.

10 What headquarters is being referenced
11 there? Is that Langley?

12 A That's CTC.

13 Q CTC. Where was, where was CTC located?

14 A CIA headquarters.

15 Q And where is that?

16 A In Langley.

17 Q Okay. So according to the procedures
18 that were in place, no enhanced interrogation
19 could take place unless Langley signed off on it
20 and approved it; is that correct?

21 A Yes.

22 Q And that was your understanding as the
23 person who was in charge of that program?

24 A Yes.

25 Q And then it says, in addition to being

1 headquarters approval, it must be approved by
2 whom?

3 A In some cases, if it was like
4 waterboarding, I believe we had to go to the
5 director to get his approval.

6 Q The director was who?

7 A George Tenet at the time.

8 Q Okay. So anytime, for example, Zubaydah
9 was waterboarded, the director had to sign off on
10 it; is that correct?

11 A I don't think he -- I think the director
12 provided approval to do, to do waterboarding. I
13 don't think that he approved it every time, but
14 I'm not sure. I don't think that was the case.

15 Q Okay. Did you have to approve it?

16 A The chain of command -- you know, the
17 cable would come to me, and I would have to sign
18 off on it myself, so I would be part of the
19 approval process.

20 Q Who else was part of the approval
21 process?

22 A I don't think I'm allowed --

23 MR. JOHNSON: Objection.

24 BY MR. JAMES SMITH:

25 Q Got it. Sorry, sorry. Okay, but there

1 were others within the chain of command at Langley
2 that were part of the approval process?

3 A Yes.

4 Q Okay.

5 Now, why did the CIA -- well, strike
6 that.

7 Why was this process put in place that
8 before there could be any enhanced interrogation
9 techniques, officials at Langley had to sign off
10 on it? Why was that?

11 A Well, because this was serious business,
12 and we wanted to make sure that it was not done
13 without the approval of the highest levels of the
14 agency.

15 Q Okay, and what happens if it wasn't
16 approved? Would that mean no enhanced
17 interrogation techniques?

18 A No. No enhanced interrogation
19 techniques.

20 Q Okay. Reading on, it says, "and may be
21 employed only by approved interrogators for use
22 with the specific detainee."

23 Do you see that?

24 A Yes.

25 Q Okay. Why was that part of the process

1 or procedure that was in place?

2 A We just wanted to make sure that each
3 detainee had his own approval process.

4 Q Okay. So with respect to any detainee
5 for which enhanced interrogation techniques would
6 be used, it had to be specifically approved by or
7 for that particular detainee?

8 A Correct.

9 Q Okay, and reading on, it says "with
10 appropriate medical and psychological
11 participation in the process."

12 Do you see that?

13 A Where are we again?

14 Q Yeah, we're in that same --

15 A Same paragraph?

16 Q -- sentence in the same paragraph --

17 A Yes.

18 Q -- where it says -- see where it says
19 "with appropriate medical and psychological
20 participation in the process"?

21 A Yes.

22 Q Do you see that?

23 A Mm-hmm.

24 Q Can you tell me what that means?

25 A With the appropriate -- I don't know. I

1 don't know what it means.

2 Q Let me be more precise in my question.

3 A Okay.

4 Q I'll withdraw the one that's pending.

5 A Okay.

6 Q As part of the process that was
7 implemented by the CIA, was it necessary to have a
8 psychologist and a medical doctor in the room
9 while enhanced interrogation techniques were being
10 used on a detainee?

11 A Yes.

12 Q And why was that process put in place?

13 A It was put in place to make sure that no
14 harm came to the detainee, and, and if there was a
15 medical emergency, that there would be someone
16 there that could treat it.

17 Q Now, I'd like you to turn to the last
18 page of this document. Actually, it starts on the
19 preceding page. I apologize.

20 Do you see where, in the second sentence
21 in the paragraph marked 4, "Approvals Required,"
22 do you see where it says, "In all instances, their
23 use shall be documented in cable traffic. Prior
24 approval in writing (e.g., by written memorandum
25 or in cable traffic) from the director, DCI

1 Counter-Terrorism Center, with the concurrence of
2 the chief, CTC legal group, is required for the
3 USF of any enhanced techniques."

4 Let me stop right there. Do you see
5 that?

6 A Yes, I do.

7 Q Was that the procedure that was in place
8 in the years 2002 through 2004?

9 A Yes.

10 Q So, for example, if a plaintiff in this
11 case contends that they were waterboarded, if
12 procedure was followed, you would expect to see
13 cables authorizing the waterboarding; is that
14 correct?

15 A Yes.

16 Q And in the absence of the cables, it
17 would suggest to you, would it not, that either
18 there was no waterboarding or it was done in an
19 unauthorized fashion at the site?

20 A Yes.

21 Q Okay. Have you ever seen any cables
22 authorizing any enhanced interrogation techniques
23 on plaintiff Soud in this case?

24 A No.

25 Q In your capacity as the director, would

1 you have had to authorize those enhanced
2 interrogation techniques if, in fact, they were
3 done according to procedure?

4 A What year were those captures?

5 Q '03 and '04.

6 A Yes.

7 Q Okay. Did you ever authorize any
8 enhanced interrogation techniques on plaintiff
9 Soud?

10 A No.

11 Q Did you ever authorize any enhanced
12 interrogation techniques on plaintiff Salim?

13 A No.

14 Q Did you ever authorize any enhanced
15 interrogation techniques on Rahman?

16 A No.

17 Q Have you ever seen any cables, as
18 contemplated by the procedure that I'm reviewing
19 here, indicating that enhanced interrogation
20 techniques were utilized on any of these three
21 plaintiffs?

22 A No.

23 Q Now, I want to go back for a second, and
24 I want to talk a little bit more about process,
25 okay? And I want to focus on the period of time

1 where enhanced interrogation techniques were used
2 on Abu Zubaydah.

3 Are you with me?

4 A Yes.

5 Q And if I recall in the record, that's
6 approximately two weeks in August when those
7 enhanced interrogation techniques were used.

8 Does that sound right to you?

9 A That's true.

10 Q Okay. Now, I want to talk about
11 process.

12 There was this memo that we reviewed
13 that Mr., Mr. Mitchell or Dr. Mitchell put
14 together with the 12 and ultimately 11 enhanced
15 interrogation techniques, right?

16 A Right.

17 Q Okay.

18 Now, who decided which techniques were
19 going to be used on Zubaydah?

20 A I think that initially -- the way this
21 worked was there was a gradual escalation of
22 techniques.

23 Q But let's just -- who ultimately decided
24 whether or not those techniques were going to be
25 used on Zubaydah?

1 MR. JOHNSON: Objection to the
2 extent the question calls for names or
3 identifying information.

4 MR. JAMES SMITH: Careful.

5 BY MR. JAMES SMITH:

6 Q Did Dr. Mitchell decide or did the
7 United States government decide that enhanced
8 interrogation techniques were going to be used on
9 Zubaydah?

10 A The US government decided.

11 Q Okay, and so we're clear, to the extent
12 that Zubaydah was waterboarded, was it the
13 government who decided when he was going to be
14 waterboarded?

15 A Yes.

16 Q Was it the government who decided how he
17 was going to be waterboarded?

18 A Yes.

19 Q Was it -- is it fair to say that --

20 MR. BENNETT: Objection to "fair to
21 say."

22 MR. JAMES SMITH: Oh, sorry.

23 BY MR. JAMES SMITH:

24 Q Is it correct to say that the government
25 decided everything about any of the enhanced

1 interrogation techniques that were used on Abu
2 Zubaydah?

3 A Yes.

4 Q Now, I want to go back to -- several
5 times today, my esteemed adversary made reference
6 to the program.

7 Do you remember that?

8 A Yes.

9 Q And who designed the program. Do you
10 remember that?

11 A Right.

12 Q And I want to make sure that we're all
13 clear about exactly what that means.

14 A Okay.

15 Q Isn't it true that the only thing that
16 Drs. Mitchell and Dr. Jessen did was to give the
17 government a memo with 12 suggested enhanced
18 interrogation techniques?

19 Isn't that true?

20 A True.

21 Q And isn't it also true that everything
22 past that, meaning who it was done to, when it was
23 done, how long it was done, was a decision of the
24 United States government?

25 A True.

1 Q And isn't it also true that at every
2 time, every instance that Drs. Mitchell and Jessen
3 were involved with Abu Zubaydah, it was at the
4 direction of the United States government?

5 A Yes.

6 Q And isn't it also true that there came a
7 time during that two-week period when they
8 suggested to you and the other decision-makers to
9 stop waterboarding?

10 A Yes.

11 Q And isn't it also true that you directed
12 them to continue the waterboarding?

13 A Yes.

14 Q And if I recall your testimony, you said
15 that your analysts were concerned that Zubaydah
16 was not complying.

17 A Yes.

18 Q Can you tell me what you mean by that?

19 A When Abu Zubaydah was captured, in the
20 safe house where he was captured, the location
21 where he was captured, we discovered tapes,
22 interrogation tapes -- not interrogation tapes,
23 but tapes that he had prerecorded to celebrate yet
24 another major attack on the US, and we feared that
25 he had done that in anticipation of an attack that

1 was being planned, and because he had not provided
2 that information during interrogation, we felt
3 that he was not being compliant.

4 Q And who made the decision to continue
5 the waterboarding?

6 MR. JOHNSON: Objection.

7 MR. JAMES SMITH: Strike that,
8 strike that.

9 BY MR. JAMES SMITH:

10 Q Are you able to tell me who, in addition
11 to yourself, made the decision to continue the
12 waterboarding?

13 A People who work with me.

14 Q Was the director of the CIA involved in
15 that decision?

16 A I don't recall.

17 Q Okay. Now I want to go back.

18 As of August of 2002, the only
19 high-value detainee that was in custody was
20 Zubaydah, right?

21 A Yes.

22 Q And then that changed, right?

23 A Yes.

24 Q Al-Nashiri was captured?

25 A Yes.

1 Q Now, I think you said he was a
2 high-value detainee, right?

3 A Yes.

4 Q And then sometime thereafter, Khalid
5 Sheikh Mohammed was captured.

6 A Yes.

7 Q Right?

8 A Mm-hmm.

9 Q Were there any other high-value
10 detainees?

11 A Yes.

12 Q Who? Let me just ask: Were there any
13 others that Mitchell and Jessen were involved
14 with?

15 A I believe that --

16 MR. JOHNSON: Objection.

17 MR. JAMES SMITH: He can answer the
18 question yes or no, I think.

19 MR. JOHNSON: Okay.

20 THE WITNESS: Yes.

21 MR. JOHNSON: He can answer the
22 question yes or no. We object to the degree
23 he discusses details.

24 BY MR. JAMES SMITH:

25 Q Are you able to identify for the record

1 the other high-value detainees?

2 A Yes.

3 Q Can you tell me their names?

4 MR. JOHNSON: Objection.

5 MR. JAMES SMITH: Hold that
6 thought.

7 MR. JOHNSON: To clarify, just to
8 redirect to the classification guidance
9 indicating which detainee, the detainees that
10 can be discussed, so the 119 --

11 MR. JAMES SMITH: They were not all
12 high-value detainees.

13 (Discussion held off the record.)

14 MR. BENNETT: The name he has he
15 says is publicly known.

16 MR. JOHNSON: One minute to
17 consult.

18 MR. JAMES SMITH: Of course.

19 THE VIDEOGRAPHER: 2:51 p.m., we're
20 off the record.

21 (Whereupon, a short recess was
22 taken.)

23 THE VIDEOGRAPHER: 2:53 p.m., back
24 on record.

25 MR. JOHNSON: Thank you.

1 With the chance to consult, the
2 government will object. In part we'll
3 object. We have instructed the witness not
4 to discuss any involvement of Drs. Mitchell
5 and Jessen with particular detainees beyond
6 Khalid Sheikh Mohammed, Abu Zubaydah,
7 Al-Nashiri and Gul Rahman.

8 MR. JAMES SMITH: Okay. So let's
9 just -- can we agree that there were other
10 detainees, high-value detainees?

11 MR. JOHNSON: Yes.

12 BY MR. JAMES SMITH:

13 Q Can we call them "Mr. X"?

14 A If you want.

15 Q Is that fair?

16 A Yes.

17 Q Just -- here's the point that I'm trying
18 to understand.

19 MR. BENNETT: Or Miss -- Mr. or
20 Mrs. X. I'm just trying to be --

21 MR. JAMES SMITH: You're making
22 trouble.

23 BY MR. JAMES SMITH:

24 Q So let me ask you: We, we went through,
25 Mr. Rodriguez, the process that was used for

1 Zubaydah when enhanced interrogations were
2 utilized, right?

3 A Correct.

4 Q And that there were cables, the
5 procedure was followed, correct?

6 A Correct.

7 Q And the government decided when to do
8 it, how long to do it, which days to do it, et
9 cetera, and directed the team; is that fair?

10 A That is fair.

11 Q Was the same process utilized for the
12 other high-value detainees?

13 A Yes.

14 Q Okay. So we would expect to see, for
15 Al-Nashiri, the same cables and the like to the
16 extent that he was waterboarded or other enhanced
17 interrogation techniques were used, correct?

18 A Yes.

19 Q Okay, and in all of those instances,
20 Dr. Mitchell and Dr. Jessen acted under the
21 direction of the CIA; is that correct?

22 A That is correct.

23 Q They exercised no independent judgment;
24 they did what they were told?

25 A That is correct.

1 Q Okay.

2 Now, is it correct to say that
3 Dr. Jessen and Dr. Mitchell only supported the CIA
4 with respect to high-value detainees?

5 A That was their contract. That's what
6 they were supposed to do was to support the CTC
7 with high-value detainees.

8 Q Okay, and is that, in fact, what they
9 did?

10 A Yes, except there is some evidence that
11 apparently, en route to another black site, they
12 were asked to look at a detainee.

13 Q And this is Rahman?

14 A That's right.

15 Q And I'm going to come back to Rahman in
16 a bit. Let me just get a little background in
17 case the jury watches this tape.

18 I think Site Green was where Zubaydah
19 and the other high-value detainees was kept; is
20 that right?

21 A Correct.

22 Q There were other what we call "black
23 sites," right?

24 A Right.

25 Q And were they for medium and low-value

1 detainees?

2 A No.

3 Q Who were they for?

4 A High-value detainees.

5 Q High-value detainees, so if you go back
6 to Exhibit 38 -- yes -- do you remember
7 Mr. Lustberg asked you why this memo was sent to
8 Cobalt?

9 A Yes.

10 Q Okay, and for the record, so that
11 everybody understands, Cobalt was a name for one
12 of the black sites, right?

13 A Yes.

14 Q And is it fair -- is it correct to say
15 that the reason why these procedures were sent to
16 Cobalt is because there were high-value detainees
17 in Cobalt?

18 A I guess. I don't know.

19 Q You don't know?

20 A I don't know. I'm surprised by it.

21 Q Okay. All right.

22 Now, let me, let me go back to -- you
23 said that Drs. Mitchell and Jessen designed the
24 program; remember?

25 A Yes.

1 Q And then I think you even said that they
2 were the architects of the program?

3 A Yes.

4 Q Okay, and I want to make sure that the
5 record is crystal clear on that.

6 What you really meant by that was they
7 prepared a memo with 12 enhanced interrogation
8 techniques, right?

9 A Yes.

10 Q That was the, that was the extent of
11 their "architecture," if you will?

12 A Yes.

13 Q And after that, every decision about
14 when and how to use those techniques was a
15 decision that was made by the United States
16 government; isn't that right?

17 A That's right.

18 Q Okay.

19 Now, were enhanced interrogation
20 techniques that are a part of that memo intended
21 to be used on low-value detainees?

22 A No.

23 Q Were they intended to be used on
24 medium-value detainees?

25 A No.

1 Q Are you aware in your capacity as the
2 director of CTC during the period of time 2002
3 through 2004, when you ever authorized enhanced
4 interrogation techniques, as they're contemplated
5 by that Mitchell memo, to be used on a low or
6 medium-value detainee?

7 A No.

8 Q And if that would have been done, is it
9 your testimony that that was directly against your
10 orders?

11 A Yes.

12 Q Okay.

13 A Not just my orders, but the, the whole
14 regulation, the whole guidance, everything that we
15 had.

16 Q Now, you remember I asked you about the
17 plaintiffs' theory of the case?

18 A Yes.

19 Q Are you aware that the plaintiffs
20 contend that the program that was designed by
21 Drs. Mitchell and Jessen was used on all of the
22 detainees?

23 A The philosophy?

24 Q Let's go back.

25 A Okay.

1 Q Distilled to its essence, the plan that
2 was, that was designed by Drs. Mitchell and Jessen
3 was that two-page memo with 12 enhanced
4 interrogation techniques, right?

5 A Correct.

6 MR. BENNETT: Objection.

7 MR. LUSTBERG: Objection.

8 MR. JAMES SMITH: Can you tell me
9 the basis of that objection? I want to cure
10 it.

11 MR. LUSTBERG: The question was
12 completely compound and confusing.

13 MR. JAMES SMITH: It was compound
14 and confusing? Okay. I'll keep the question
15 then.

16 BY MR. JAMES SMITH:

17 Q And so we're clear, that plan, that
18 two-page memo was never intended to be used on
19 anyone other than high-value detainees?

20 A That is correct.

21 Q Okay. Now, I want to ask you about
22 these three plaintiffs. I think I have a document
23 that you authored, and we're going to find out in
24 a second.

25 What's the next exhibit number?

1 THE REPORTER: Exhibit 41.

2 (Exhibit 41 was marked for
3 identification.)

4 BY MR. JAMES SMITH:

5 Q For the record, Mr. Rodriguez, we have
6 marked as Exhibit 41 a document produced by the
7 United States government, and it carries Bates
8 label 001542 through 1544. Take a moment and look
9 at this document. Most of it's redacted, and then
10 tell me when you're ready to go.

11 A Okay. Let me read it.

12 (Witness peruses document.)

13 THE WITNESS: Okay.

14 BY MR. JAMES SMITH:

15 Q Have you read the document, sir?

16 A Yes.

17 Q Do you recognize this document?

18 A No.

19 Q Okay. If you turn to the third page of
20 the document, do you see where it says "Sincerely,
21 Jose A. Rodriguez, Jr." --

22 A Yes.

23 Q -- "Director DCI Counterterrorist
24 Center"?

25 A Yes.

1 Q That's you, isn't it?

2 A Yes, but do you know how many of these I
3 signed? That's why I couldn't remember.

4 Q Okay. I'm not being critical.

5 A I'm just telling you.

6 Q I want to see if I can refresh your
7 recollection.

8 A Okay.

9 Q All right. So let's go back for a
10 second.

11 MR. BENNETT: Do you want a Xanax
12 or something? Zoloft? I got a whole
13 collection of pills.

14 MR. JAMES SMITH: All right.
15 Mr. Bennett, are you okay?

16 MR. BENNETT: As well as usual.

17 BY MR. JAMES SMITH:

18 Q Sir, tell me what this document is.

19 A The fact that we were turning over an
20 individual to the military, to me it means that
21 the value is not one of a high-value detainee.

22 Q Right.

23 A That it's someone who we don't need in
24 our possession, that we needed to turn over to the
25 military.

1 Q So in effect this document is, if you
2 will, a transition memo about a subject that's
3 being turned over from custody by the CIA to the
4 military?

5 A Correct.

6 Q U.S. military?

7 A Yes.

8 Q And are you aware of the name
9 S-U-L-E-I-M-A-N Abdullah? Do you know who that
10 is?

11 A No. Now I do. Now I know, but I --

12 Q Okay. Do you know him to be a plaintiff
13 in this case?

14 A Yes.

15 Q Okay. Now, I want to ask you: You
16 prepared this document?

17 A No.

18 Q Someone under your direction prepared
19 it?

20 A Yes.

21 Q Okay, and it was necessary to prepare a
22 document like this in order to transfer custody of
23 a subject from the CIA control to the military
24 control?

25 A Yes.

1 Q Now, do you see where it says in the
2 document, quote, "We request that the military
3 service in Bagram take immediate custody and
4 control of these individuals, accord the ICRC
5 appropriate access to them, and hold them in an
6 appropriate detention facility until the US
7 government determines otherwise. We believe this
8 transfer of detainees to DOD control will assist
9 the USG in addressing some of the concerns raised
10 by the ICRC, while ensuring these individuals are
11 removed from the battlefield."

12 Do you see that?

13 A Yes.

14 Q Do you have a memory of what the
15 concerns were by the ICRC as they applied to
16 Mr. Salim?

17 A I do not have a memory regarding as they
18 apply to Mr. Salim. I remember in general that
19 they wanted access to the detainees.

20 Q And do you know why access was wanted?

21 A They wanted to do what they do, which is
22 check them in and make sure that they're okay.

23 Q Do you know why Salim was taken into
24 custody by the CIA?

25 A I assume he was, he was picked up

1 somewhere.

2 Q Let's take -- take a look at the second
3 page if you will.

4 Do you see where it says "Suleiman
5 Abdullah is a Tanzanian national suspected of
6 involvement in al-Qa'ida's East Africa cell,
7 specifically as a (Page 3) facilitator of
8 al-Qa'ida's 1998 attacks against the US embassies
9 in Nairobi, Kenya and Dar Es Salaam, Tanzania."

10 Let me stop right there.

11 Was that true?

12 A Yes.

13 Q And reading on, it says, "Abdullah first
14 came to Kenya in 1993 and stayed in Mombasa with
15 East African embassy bombing fugitive Fahid
16 Mohamed Ally Msalam, with whom he later trained in
17 Afghanistan."

18 Do you see that?

19 A Yes.

20 Q Was that true, too?

21 A I assume so.

22 MR. BENNETT: Don't assume, please.

23 THE WITNESS: I don't know.

24 MR. BENNETT: Okay.

25

1 BY MR. JAMES SMITH:

2 Q Let me see if I can cut to the quick
3 here, sir.

4 Was Suleiman held in custody by the CIA
5 because he was believed to be a part of terrorist
6 activity?

7 A Yes.

8 Q Take a look at the footnote. It may not
9 be a footnote, actually. There's a space, and
10 then there's information on the bottom of the
11 page.

12 Do you see that?

13 A I see it.

14 Q Do you see where it says "Legal Basis
15 For Detention"?

16 "The Law of Armed Conflict is a
17 sufficient but not the sole legal basis for
18 detention of the Subjects. Under that theory,
19 parties to the hostilities have the right to
20 target enemy combatants engaged in active
21 hostilities, including the right to capture and
22 detain."

23 Do you see that?

24 A Yes.

25 Q Is that why Suleiman was detained by the

1 CIA, because he was considered an enemy combatant?

2 A Yes.

3 Q Okay. Reading on, it says, "This is
4 especially true where such detention is necessary
5 to prevent an individual from further engaging in
6 hostilities."

7 Do you see that?

8 A Yes.

9 Q Was that a concern of the United States
10 government --

11 A Yes.

12 Q -- that we continue detention?

13 A Yes.

14 Q Reading on, it says, "A 'combatant' can
15 also be an individual affiliated with an
16 organization engaging in hostilities or one
17 actively support or facilitating such attacks.
18 Each of these individuals is linked to al-Qa'ida
19 members and known terrorists or was captured
20 engaging in active attacks against coalition
21 forces."

22 Do you see that?

23 A Yes.

24 Q Is that why Suleiman was detained?

25 A Yes.

1 Q Is there any doubt in your mind that the
2 CIA considered him an enemy combatant?

3 A No.

4 Q Let's move on then to Rahman. We're
5 going to mark the next exhibit as Exhibit 41
6 [sic].

7 MR. BENNETT: Could I have just a
8 second with him?

9 (Exhibit 42 was marked for
10 identification.)

11 MR. BENNETT: Thank you. I'm
12 sorry.

13 MR. JAMES SMITH: No problem.

14 BY MR. JAMES SMITH:

15 Q Do you have Exhibit 42 before you, sir?

16 A I do.

17 Q For the record, let me identify this is
18 a document produced by the United States
19 government. It bears Bates label 001061 through
20 63.

21 Have you seen this document before
22 today, sir?

23 A I do not know.

24 Q Okay. Let me just direct your attention
25 to the subject. Do you see where it says "Eyes

1 Only - Gul Rahman: Chronology of Events"?

2 Do you see that?

3 A Yes, I do.

4 Q And this document was obviously created
5 by the United States government.

6 Do you agree with that?

7 A Yes.

8 Q And because of the redactions that have
9 been made by the United States government, it's
10 difficult to tell who created this document.

11 Would you agree with that?

12 A Yes.

13 Q Would you agree with me that the
14 document was created by the CIA?

15 A It appears to be have been created by
16 the CIA. I have no way of knowing.

17 Q Okay.

18 Now, do you see where it says, sir, in
19 paragraph 2, "The following chronology of events
20 relating to the death of enemy combatant Gul
21 Rahman," and let me stop right there.

22 Do you see that?

23 A Yes.

24 Q Does that in any way refresh your
25 recollection whether or not Gul Rahman was

1 considered by the CIA, at the time that he was
2 taken into custody, to be an enemy combatant?

3 A He was an enemy combatant.

4 Q And can you tell us why the CIA believed
5 that Gul Rahman was an enemy combatant?

6 A He was captured in battle.

7 Q Can you -- so that if a jury watches
8 this tape, tell us what you know about how he was
9 captured and why he was taken into custody.

10 A I do not remember the specifics, but I
11 do know that he was captured in battle.

12 Q Okay. Who was he battling with?

13 A He was battling the US government.

14 Q So he was not supporting the United
15 States flag; is that correct?

16 A No.

17 Q In fact, he was against it, right?

18 A He was.

19 Q And was he part of another al-Qa'ida
20 cell?

21 A Yeah, he was the, part of the -- I
22 forget the name of the cell itself, but it was
23 supportive of al-Qa'ida.

24 Q And do you know or have any knowledge of
25 whether or not, while Rahman was in custody with

1 the CIA, he threatened to kill every CIA officer
2 in that facility if and when he got out?

3 A Do I know why?

4 Q Do you know if he did that?

5 A Yes.

6 Q Okay, and the circumstances of his
7 death, are you familiar with them?

8 A Yes.

9 Q Okay. Now, let me back up for a second.
10 Was Gul Rahman considered a high-value
11 detainee?

12 A No.

13 Q So is it fair to say that he should not
14 have been subjected to any enhanced interrogation
15 techniques?

16 A Yes.

17 Q That is fair to say?

18 A Yes.

19 Q Okay.

20 Now, you said earlier today, if I heard
21 you correctly, that you have some knowledge about
22 Drs. Mitchell and Jessen having some contact with
23 Gul Rahman.

24 A Yes.

25 Q Did I hear you correctly?

1 A Yes.

2 Q Okay. Let's start with Dr. Mitchell.
3 Are you aware -- well, let me back up for a
4 second.

5 Gul Rahman was in custody for
6 approximately two weeks; is that right?

7 A I do not know.

8 Q Okay. Do you remember if he was in
9 custody for a relatively short period of time?

10 A Yes.

11 Q Okay, and he died in his cell; is that
12 correct?

13 A Yes.

14 Q Now, that was at Cobalt? Is that where
15 he was kept or detained?

16 A Yes.

17 Q Okay.

18 Now, were you familiar with who the
19 guards were, the night guards who maintained
20 control over the Cobalt facility?

21 MR. JOHNSON: Objection. Let me
22 consult.

23 MR. JAMES SMITH: Yes.

24 MR. JOHNSON: Can we have a moment
25 to discuss with the witness?

1 MR. JAMES SMITH: Got it. Anytime
2 you need it, just say so.

3 THE VIDEOGRAPHER: 3:15 p.m. We're
4 off the record.

5 (Whereupon, a short recess was
6 taken.)

7 THE VIDEOGRAPHER: 3:26 p.m. We're
8 back on record.

9 BY MR. JAMES SMITH:

10 Q Are you ready to proceed, sir?

11 A Yes.

12 Q Okay, and while we were off the record,
13 the court reporter read back the question that was
14 pending.

15 Do you recall the question?

16 A Was I familiar with the guards that were
17 guarding the facility?

18 Q The night guards for the facility.

19 A No.

20 Q Okay.

21 Now, I want to talk to you about your
22 testimony earlier today about Rahman, and in
23 particular your knowledge of any involvement that
24 Dr. Mitchell had with Rahman.

25 Are you with me?

1 A Yes.

2 Q Now, do you have any knowledge of any
3 involvement that Dr. Mitchell had with Rahman?

4 A Understanding, and the difference is I
5 don't have any direct knowledge. Understanding
6 from reading the materials.

7 Q Okay. So you read certain materials and
8 learned that Dr. Mitchell had some contact with,
9 with Mr. Rahman; is that right?

10 A Correct.

11 Q Okay, and do you remember what the
12 source of your information is?

13 A I'm not sure if it's the document, the
14 investigation that was done by the IG.

15 Q Okay. All right.

16 A I think that was it.

17 Q And did you familiarize yourself with
18 this information as part of your duties and
19 responsibilities with the CIA?

20 A Yes.

21 Q Okay, so can you tell me as best you
22 recall your understanding of any contact that
23 Dr. Mitchell had with Mr. Rahman.

24 A Dr. Mitchell was passing through, and he
25 was asked to take a look at the prisoner, and he

1 did, and his suggestion was that he probably
2 needed to see a doctor, and that was about the
3 extent of the contact.

4 Q Okay. So let me just make sure the
5 record is clear. When you say "passing through,"
6 Dr. Mitchell had occasion to be at Cobalt?

7 A He had occasion to be at that location
8 in this instance, because he was escorting someone
9 else.

10 Q He was escorting another high-value
11 detainee?

12 A Yes.

13 Q And they had a brief layover at Cobalt?

14 A Yes.

15 Q Okay, and in the course of that brief
16 layover, at least your understanding is someone
17 asked him to what; look into Mr. Rahman?

18 A For an assessment of his view of how he
19 was doing or what could be done.

20 Q Okay, and do you know who asked
21 Dr. Mitchell to make that assessment?

22 A No.

23 Q Okay, and you're aware that
24 Dr. Mitchell, in fact, did make the assessment?

25 A Yes.

1 Q And how much time did he spend with
2 Rahman?

3 A Not very long.

4 Q Was it some matter of minutes? Hours?

5 A I do not know.

6 Q Would you agree with me that there was
7 no interrogation that was done?

8 A No.

9 Q No, you would not agree with me or no,
10 there was no interrogation?

11 A There was no interrogation.

12 Q Okay. So he was checking in on him to
13 check his medical condition?

14 A He was checking on him to see what he
15 thought of the detainee. Apparently the detainee
16 had been acting out, he was very tough, he was
17 hard to handle, and he was asked to get his
18 opinion.

19 Q Okay, and let's develop that for a
20 second. Were you made aware of how Mr. Rahman was
21 acting out?

22 A He apparently had thrown his food and
23 his bucket of waste at guards and was very
24 difficult and very confrontational and
25 threatening.

1 Q He was threatening to kill the guards,
2 right?

3 A He was threatening to kill everybody, I
4 think.

5 Q To kill everybody, and he was throwing
6 his human waste at the guards?

7 A Yes, yes.

8 Q Okay. So you asked Mitchell or someone
9 asked Mitchell to go and do some form of
10 assessment?

11 A Correct.

12 Q Okay, and Dr. Mitchell did the
13 assessment?

14 A Correct.

15 Q And he reported back to men under your
16 command at the CIA?

17 A Yes.

18 Q Okay, and you came to learn that
19 Dr. Mitchell advised men at Cobalt, CIA
20 operatives, that doctor -- that Mr. Rahman needed
21 to see a doctor?

22 A Yes.

23 Q And what did the CIA do in response to
24 Dr. Mitchell's suggestion that Rahman see a
25 doctor?

1 A I do not know.

2 Q Are you familiar with Dr. Mitchell's
3 testimony in this case about that?

4 A No.

5 Q Are you aware that, that a doctor at the
6 facility said in words or substance that he's "not
7 going to spend his time with F-ing terrorists" in
8 response to Mr. Mitchell or Dr. Mitchell's
9 observation that he needed to see a doctor?

10 A No.

11 Q Okay. You never heard that before
12 today?

13 A No.

14 Q And are you aware of any other
15 involvement that Dr. Mitchell had with Rahman
16 other than what you told me?

17 A No.

18 Q Now, let's turn to Dr. Jessen. Are you
19 aware that Dr. Jessen had some involvement with
20 Mr. Rahman?

21 A It is my understanding that he had some
22 involvement.

23 Q And is the source of your information
24 the same as it was with respect to Dr. Mitchell's
25 involvement?

1 A Yes.

2 Q So this was information that you would
3 read as part of your duties and responsibilities
4 as the director of CTC?

5 A Yes.

6 Q Okay, and what is it that you recall
7 about Dr. Jessen's involvement with Mr. Rahman?

8 A That he also was asked to take a look at
9 him, and that he did, and that he said that no
10 enhanced interrogation techniques should be used
11 on him, and that -- and then he proceeded to give
12 them some suggestions as to what kind of
13 interrogation they should undertake with this
14 prisoner.

15 Q So your understanding is that Dr. Jessen
16 explicitly told CIA operatives at Cobalt not to
17 use enhanced interrogation techniques --

18 A That is my understanding.

19 Q -- with Rahman?

20 A That is my understanding.

21 Q And in the course of reviewing all the
22 information that you've reviewed about Rahman, did
23 you find any evidence to the contrary, that being
24 anything to suggest that Dr. Jessen didn't say
25 don't use enhanced interrogation techniques?

1 A My understanding is he said do not use
2 enhanced interrogation techniques.

3 Q And do you -- did you come to learn why
4 Dr. Jessen had given that advice?

5 A He assessed that they would not work on
6 this detainee.

7 Q Now, let's talk about -- strike that.
8 Did you come to understand why
9 Dr. Jessen was of that, of that opinion?

10 A No.

11 Q No? Okay.

12 Let's talk about plaintiff Soud. You're
13 familiar with plaintiff Soud?

14 A My understanding -- again, I didn't
15 remember him from my time at CTC.

16 Q During the period of time that you were
17 the director of CTC, how many detainees were
18 maintained at these black sites?

19 MR. JOHNSON: Objection. One
20 moment. Sorry.

21 (Discussion was held off the
22 record.)

23 MR. JAMES SMITH: You know, in the
24 spirit of moving things along, I withdraw the
25 question.

1 BY MR. JAMES SMITH:

2 Q I'm going to hand to you what we're
3 going to mark as the next exhibit, which is
4 Exhibit 43, Mr. Rodriguez.

5 A Okay.

6 (Exhibit 43 was marked for
7 identification.)

8 BY MR. JAMES SMITH:

9 Q For the record, Exhibit 43 bears United
10 States Bates labels 001496 to 001500. Take a
11 moment and look at this document if you would,
12 please, sir.

13 A Okay.

14 (Witness peruses document.)

15 THE WITNESS: Okay.

16 BY MR. JAMES SMITH:

17 Q Are you ready to proceed, sir?

18 A Quite.

19 Q Okay. So do you recognize this
20 document -- it's obviously heavily redacted by the
21 government -- as a document from the CIA?

22 A It looks like one.

23 Q Okay. Now, you know that there's a
24 plaintiff in this case called Ben Soud; you're
25 aware of that?

1 A Yes, yes.

2 Q And are you aware he has other names
3 that he goes by, or previously went by other
4 names?

5 A No.

6 Q Okay. Let me just ask you to turn to
7 the second page. Do you see where it says, "We
8 have included an assessment of" -- I'll spell it
9 -- "A-B-D," next word, "A-L, hyphen, K-A-R-I-M
10 below."

11 Do you see that?

12 A Yes.

13 Q Do you recognize that name?

14 A No.

15 Q Do you know that name to be also Ben
16 Soud?

17 A No.

18 Q Okay. Well, let me ask you about the
19 information about the names that do appear here.

20 You see where it says "HQS/ALEC"? "HQS"
21 is headquarters, right?

22 A Correct.

23 Q And "ALEC" is Alec Station?

24 A Yes.

25 Q Okay, and for the record, that, that

1 station was devoted exclusively to finding Osama
2 bin Laden?

3 A Yes.

4 Q Okay. It says, "HQS/ALEC assesses that
5 Libyan Islamic Fighting Group detainee."

6 Do you see that?

7 A Yes.

8 Q Let me stop right there. I'm looking to
9 see if this document has a date on it. It may
10 have been redacted out by the government.

11 Do you see a date on the document?

12 A I don't think so. I don't see a date.

13 Q No date on the document, which is fine.
14 Let's do it this way then.

15 In 2003 and 2004, were you familiar with
16 an organization called the Libyan Islamic Fighting
17 Group?

18 A Yes.

19 Q Can you tell us what you understood that
20 group to be?

21 A It was an al-Qa'ida, al-Qa'ida
22 affiliate.

23 Q Okay, and tell me what you mean by "an
24 al-Qa'ida affiliate."

25 A Islamic terrorists that were partners

1 with al-Qa'ida.

2 Q Okay, and is it correct to say that
3 during that period of time, that these al-Qa'ida
4 and affiliated groups were planning action against
5 the United States of America?

6 A Yes.

7 Q Okay. So reading on the second page of
8 Exhibit 43, it says that "Libyan Islamic Fighting
9 Group detainee Abd," next word "Al-Karim," next
10 word "Al-Libi, a/k/a" -- I assume that means "also
11 known as"?

12 A Yes.

13 Q "M-U-H-A-M-M-A-D," next word
14 "A-H-M-A-D," next word "A-L, hyphen, S-H-U-R-U,
15 apostrophe, I-Y-A." Reading on, "a/k/a," so
16 therefore "also known as "M-U-H-A-M-M-A-D," next
17 word "A-H-M-A-D," next word "Z-A-B-A-N-D-A-R, was
18 one of the LIFG figures responsible for the Abu,"
19 next word "Y-A-H-Y-A camp in Afghanistan."

20 Do you see that?

21 A Yes.

22 Q Can you tell me what the Abu Yahya --
23 how do you pronounce that, Y-A-H-Y-A?

24 A Your guess is as good as mine.

25 Q All right. So let's just call it

1 Y-A-H-Y-A camp. What is that camp?

2 A A military camp used by this group for
3 training purposes.

4 Q Training, training for terrorist
5 purposes?

6 A Training for terrorist purposes.

7 Q Okay. Reading on in the document, it
8 says, "He was one of the chief LIFG members
9 responsible for running the camp."

10 Do you see that?

11 A Yes.

12 Q Was this man considered an enemy
13 combatant by the United States government?

14 A I do not know.

15 Q You don't know?

16 A No.

17 Q Okay. So if you're one of the chief
18 LIFG members running a camp where there's
19 terrorist activity in Afghanistan, is that enough
20 to conclude that you're an enemy combatant, or do
21 you need more information?

22 A Yes.

23 Q Yes?

24 A Yes.

25 Q Is that why this man was taken into

1 custody?

2 MR. LUSTBERG: Objection.

3 THE WITNESS: Yes.

4 BY MR. JAMES SMITH:

5 Q Okay. Reading on, it says on the next
6 page, "Belief that A-B-D," next word "A-L, hyphen,
7 K-A-R-I-M was a member of the LIFG's military
8 committee."

9 Do you see that?

10 A Yes.

11 Q What's the military committee?

12 A I do not know.

13 Q Okay. All right. Would you agree with
14 me that if, in fact, Ben Soud is also the person
15 identified in this document by these various names
16 in Exhibit 43, that the CIA, at the time he was
17 taken into custody, also considered him to be an
18 enemy combatant?

19 A Yes.

20 Q Now, I want to go back to the
21 plaintiffs' theory. Isn't it true that if, in
22 fact, the enhanced interrogation techniques were
23 used on one or both or all three of these
24 plaintiffs, that that was exactly what wasn't
25 supposed to happen?

1 A Yes.

2 Q Because if procedure was followed, there
3 would have been sign-offs, correct?

4 A Correct.

5 Q And isn't it also true that Dr. Mitchell
6 and Dr. Jessen had absolutely nothing to do with
7 anything that may have happened to these three
8 plaintiffs?

9 A That is correct.

10 MR. LUSTBERG: Objection.

11 THE WITNESS: That is correct.

12 BY MR. JAMES SMITH:

13 Q So this program, that 12-step memo that
14 they had prepared had absolutely nothing to do
15 with these three men; isn't that correct?

16 A That is correct.

17 Q Okay. Now, did you ever come to learn
18 whether or not these three men were subjected to
19 the, the actions that they complained about in
20 their complaint?

21 A What are those?

22 Q Oh, you don't know? You haven't read
23 the complaint?

24 A I think I did, but can you refresh my
25 mind?

1 Q They, they -- I can. I'm just not sure
2 that I need to. Let me withdraw that question.
3 I'll talk to my partners at the break.

4 Isn't it also true, Mr. Rodriguez, that
5 neither Dr. Jessen nor Dr. Mitchell had anything
6 to do with the capture of these three plaintiffs?

7 A That is true.

8 Q And isn't it also true that neither
9 Dr. Mitchell nor Dr. Jessen had anything to do
10 with the rendition of these three plaintiffs?

11 A That is true.

12 MR. JAMES SMITH: Let's go off the
13 record for a couple minutes.

14 THE WITNESS: Sure.

15 THE VIDEOGRAPHER: 3:45 p.m. Off
16 the record.

17 (Whereupon, a short recess was
18 taken.)

19 THE VIDEOGRAPHER: 3:56 p.m. We're
20 back on the record.

21 BY MR. JAMES SMITH:

22 Q Just a few more questions,
23 Mr. Rodriguez, and then we'll let you go, or at
24 least I'll pass the witness back to Mr. Lustberg.

25 Could you place before yourself what was

1 marked as Exhibit 11 during your direct
2 examination.

3 A It was right on top.

4 Q Do you have it before you?

5 A Yes.

6 Q Do you remember that you were asked
7 questions about this document?

8 A Yes.

9 Q And I just want to turn to the very last
10 page of the document.

11 For the record, Exhibit 11 bears
12 government Bates labels 001595 through 1609.

13 Could I ask you to turn to Bates page 1609,
14 please.

15 A Yes.

16 Q Now, I think if I heard you correctly on
17 your direct examination, you suggested that
18 perhaps Bates page 1609 didn't belong to this
19 document.

20 Did I hear you right?

21 A Yes.

22 Q Okay. Tell me why you're thinking that.

23 A It's just out of place. To me, it looks
24 out of place for a document like this.

25 Q Okay, and do you recognize this document

1 as a CIA document?

2 A The one on the right?

3 Q No. Pages 1 through 14.

4 A Yes.

5 Q Okay. Now, do you see on the bottom of
6 Bates page 1608, it says "14 of 15" --

7 A Yes.

8 Q -- right? But on the next page there is
9 no 15 of 15, right?

10 A That's right.

11 Q Is that another reason why you thought
12 this page didn't belong with this document?

13 A Now that, now that you mention it, I
14 just thought it was out of place.

15 Q Okay, and to the extent that this last
16 page is a part of this document, is it fair to say
17 you don't know what the heck it is?

18 A That is fair to say.

19 Q You don't know if this is a request, if
20 this was -- you just don't know, in fairness, what
21 it represents?

22 A I just don't know.

23 Q Okay, and did you ever see this matrix
24 in this form as it appears on 1609?

25 A No.

1 Q No? It's not something that at least
2 your office of the CIA used with respect to
3 detainees?

4 A This is not familiar to me.

5 Q Okay. All right. Let's move on then.

6 Earlier today you were asked about the
7 first time that you actually were person to person
8 with Dr. Mitchell.

9 Do you remember that?

10 A Yes.

11 Q Sometimes when you go through hours of
12 questioning, it refreshes your recollection about
13 things, so let me ask you again.

14 You testified, I think earlier today
15 during Mr. Lustberg's examination, that the first
16 time you remember meeting Dr. Mitchell is at a
17 black site.

18 A Correct.

19 Q Okay. Having talked through a number of
20 things over as many hours as we've been together,
21 do you have any memory of meeting Dr. Mitchell in
22 April of 2002 at Langley?

23 A Perhaps I did. I just have a vivid
24 memory of talking to him at the black site.

25 Q At the black site?

1 A Yes.

2 Q But if you met him before, you just
3 don't have any memory of it?

4 A I just don't have any memory.

5 Q Okay. One more subject. You said --
6 excuse me for one second.

7 So here is a question for Mr. Mitchell.
8 How did he get deployed if you didn't approve his
9 deployment?

10 A I approved the deployment of a lot of
11 people, so -- and that doesn't mean that I talked
12 to him.

13 Q Got it. Okay.

14 A I may have. I just don't have a memory
15 of it.

16 Q Fair enough.

17 Let me move on to what I think is the
18 final part today for me, which is: If I heard you
19 during your direct examination, you suggested that
20 one of the reasons why you took issue with the
21 report prepared by Senator Feinstein and the group
22 that assisted her was your belief that the
23 enhanced interrogation technique program was an
24 effective one.

25 A Yes.

1 Q Now, let's just make sure we're all on
2 the same page. By "enhanced interrogation
3 technique program," can we all agree now that that
4 means that's the program for high-value detainees,
5 following the procedures that were in place by the
6 United States government?

7 A Yes.

8 Q Okay, and that's what you mean by "the
9 program," right?

10 A Yes.

11 Q Now, do you think it was an effective
12 program?

13 A Yes.

14 Q And in the event that members of the
15 jury watch this tape, can you explain to them why
16 you believe it was an effective program?

17 A When 9/11 happened, we had sources that
18 were telling us that there was going to be an
19 attack, but we didn't have any specifics as to
20 when, where, how, and the reason why was because
21 we did not have the sources in the leadership of
22 al-Qa'ida to be able to give us that information.

23 The enhanced interrogation program gave
24 us the intelligence that we needed in order to
25 understand the organization better, to understand

1 their logistics, their finances, their methods of
2 attacks, their leaders, who were they, their plans
3 and intentions. In addition, it gave us
4 information that allowed us to -- to give us a
5 blueprint on how to go after other al-Qa'ida
6 members, which allowed us to disrupt plots.

7 So in a quick conclusion, it was
8 incredibly helpful, and at some point in the
9 future, in history, a lot of the intelligence that
10 was acquired from Abu Zubaydah and Khalid Sheikh
11 Mohammed will be declassified. Unfortunately it
12 doesn't happen now. It should happen, in my view,
13 now, because there's nothing else to protect, and
14 then you will be able to judge for yourself the
15 thousands of intelligence reporting that came from
16 this, just these two sources, that came from the
17 enhanced interrogation program that allowed us to
18 protect the homeland. That's why, and I feel very
19 strongly about it, because I was a participant.

20 Q Mr. Rodriguez, you mentioned earlier
21 today, in examination by me, two instances where
22 information was learned by Zubaydah, and it
23 allowed the government to take action to protect
24 the country.

25 Do you remember that?

1 A Yes.

2 Q Are you able to tell us today about any
3 other information that was learned that allowed
4 the government to disrupt contemplated terrorist
5 activity? Are you able to tell us anything else
6 about it?

7 A Well, I mean there's a lot of
8 information that came from Zubaydah that allowed
9 us to then capture other people that gave us
10 information regarding potential attacks against
11 Heathrow, for example, sleeper cells in the US
12 that were getting ready, that were taking
13 direction from Khalid Sheikh Mohammed to bring
14 down the Brooklyn Bridge, for example, a second
15 wave of attacks that was being planned against our
16 country, and we were able to get enough
17 information that allowed us to track the people
18 who were training the Carrabba cell that was
19 involved in plotting, which allowed us to take
20 them all down, arrest them all, and take care of
21 that plot.

22 So what the program did was that within
23 three years, the al-Qa'ida organization that
24 attacked us on 9/11 was crippled, and the
25 information coming from the black sites related to

1 Osama bin Laden eventually led us to him from the
2 courier, so all of this as a result mostly from
3 this program. That's how valuable it was.

4 Q Mr. Rodriguez, is there any doubt in
5 your mind that this country would have been
6 attacked but for the program that was put in place
7 by the CIA?

8 MR. LUSTBERG: Objection for the
9 record. Go ahead.

10 THE WITNESS: I have no doubt that
11 we would have been whacked again had it not
12 been for this program.

13 BY MR. JAMES SMITH:

14 Q Now, during the period of time that this
15 program was in place -- and by "the program,"
16 again, I want to make sure we're crystal clear.
17 It's the enhanced interrogation techniques for
18 high-value detainees, utilizing procedures and at
19 the direction of the CIA.

20 Are you with me?

21 A Yes.

22 Q Was there ever a question in your mind
23 about what you were doing and whether or not it
24 was legal?

25 A There was never a question in my mind.

1 Q And why was there never a question in
2 your mind?

3 A Because we had received the proper
4 authorities from the Justice Department. Those
5 authorities, by the way -- they had given us
6 verbal authorities. We said no, we want a written
7 authority, and we got those. We thought that
8 legally we were covered, and we went to work, so I
9 never had any issue with it.

10 Q And was there ever any question in your
11 mind that the direction that you gave to
12 Drs. Mitchell and Jessen was legal at all material
13 times?

14 A It was, it was legal, and we were basing
15 this legality on binding legal opinions from our
16 own Justice Department.

17 This was not just the CIA lawyers
18 telling us. This was, you know, our government.
19 The OLC, as you know, is the organization in
20 government that provides this type of opinion, and
21 that's what we got. Some people have asked me,
22 well, did you feel like you needed to consult
23 other people? I said, you know, are we supposed
24 to go hire a lawyer to get a different point of
25 view? We are operators. We're clandestine

1 operators. We rely on the government to tell us
2 what's legal and what's not. When we got the
3 opinion that it was legal, we went to work.

4 MR. JAMES SMITH: Thank you,
5 Mr. Rodriguez. We have no further questions
6 of you at this time.

7 THE WITNESS: Thank you.

8 MR. LUSTBERG: I have just a few
9 questions. Can I get the mic back?

10 MR. JAMES SMITH: You can't have it
11 back. You don't need it.

12 FURTHER EXAMINATION BY COUNSEL FOR PLAINTIFFS
13 BY MR. LUSTBERG:

14 Q Okay. Just a few questions for you,
15 Mr. Rodriguez, and then we'll be finished.

16 First, mostly what I'm going to ask you
17 about is the individual plaintiffs here.

18 A Okay.

19 Q With regard to Mr. Salim --

20 A Okay.

21 Q -- do you have any personal knowledge of
22 what his activities were prior to his being
23 captured?

24 A No.

25 Q Do you have any personal knowledge

1 regarding the circumstances of his capture?

2 A No.

3 Q Do you have any personal knowledge
4 regarding his treatment in captivity?

5 A No.

6 Q Second, with respect to plaintiff Ben
7 Soud, do you have any personal knowledge of his
8 activities prior to capture?

9 A No.

10 Q Do you have any personal knowledge about
11 the circumstances of his capture and/or rendition?

12 A No.

13 Q Do you have any personal knowledge at
14 all with regard to the way he was treated in
15 captivity?

16 A No.

17 Q With regard to Rahman, you said you've
18 read materials with regard to that?

19 A Correct.

20 Q You have no personal knowledge, however,
21 with regard to it; is that correct?

22 A I was not there. I was -- I was not
23 there.

24 Q Right. You didn't observe anything
25 yourself?

1 A Correct.

2 Q And did you, by the way, have any
3 conversations with regard to Rahman with either
4 Dr. Mitchell or Dr. Jessen?

5 A I don't recall any.

6 Q They didn't report to you about what was
7 happening there?

8 A They, they didn't. You know, once that
9 investigation -- once something like this happens,
10 the IG takes over and there are referrals to
11 Justice, and that's the end of it. We wait for
12 them to come back and tell us what happened.

13 Q So with regard to, to Mr. Rahman, you,
14 whatever inquiries you might have made, you didn't
15 make, because it was under investigation by the
16 authorities, correct?

17 A Yes.

18 Q Let me show you Exhibit 44.

19 (Exhibit 44 was marked for
20 identification.)

21 BY MR. LUSTBERG:

22 Q This won't take you that long to read.

23 A I was looking for a trick.

24 Q I'll direct you.

25 Okay. Let me direct your attention

1 first to the page that's -- do you have yours,
2 Jim?

3 MR. JAMES SMITH: I do, all these
4 redacted pages.

5 MR. LUSTBERG: Well, I'm not going
6 to ask about the redacted pages.

7 MR. JAMES SMITH: I hope not.

8 BY MR. LUSTBERG:

9 Q But let me direct your attention to the
10 page that has the Bates number 001567 at the
11 bottom.

12 A 1567?

13 Q 1567. About halfway back, I believe.
14 Just take a quick read of that. It won't take you
15 too long.

16 (Witness peruses document.)

17 THE WITNESS: Okay.

18 BY MR. LUSTBERG:

19 Q Tell me when you have read that
20 paragraph.

21 A Yes, I have.

22 Q Thank you, Mr. Rodriguez.

23 At the conclusion of that description,
24 it says the following: "Abdullah" -- and this
25 is -- you understand that this is Mister -- this

1 is plaintiff Salim, you understand, from the
2 previous question, correct?

3 A Right.

4 Q "Underwent the following EITs," standing
5 for "enhanced interrogation techniques," right?

6 "Sleep deprivation, water dousing,
7 cramped confinement, facial slap, attention grasp,
8 belly slap and walling."

9 Do you see that?

10 A Yes, I do.

11 Q Mr. Smith asked you a number of
12 questions about the fact that the enhanced
13 interrogation technique program was not supposed
14 to be used on, on Mr. Salim, right?

15 A Correct.

16 Q It appears to you that at least elements
17 of it were, correct?

18 A It looks like that from this redaction.

19 Q And we don't you don't have any personal
20 knowledge, but based upon this, right?

21 A Yes.

22 Q Is it your testimony that with regard to
23 any -- let me strike that.

24 We've gone over the fact that the
25 enhanced interrogation techniques were from that

1 list that was provided by Drs. Mitchell and
2 Jessen, right?

3 A Correct.

4 Q And that -- but that program was only
5 supposed to be applied to high-value detainees;
6 that's what you said?

7 A That is correct.

8 Q Right, so is it your testimony that,
9 that it was only ever applied to high-value
10 detainees?

11 A My understanding is that it was only
12 applied to high-value. That was, that was what it
13 was designed for.

14 Q Okay, and the documents that we looked
15 at earlier show that, for example, the protocol
16 for enhanced interrogation techniques was sent to
17 Cobalt, right?

18 A Yes.

19 Q And at Cobalt, other than Al-Nashiri,
20 there were no high-value detainees, were there?

21 A That is correct.

22 Q Let me direct your attention to
23 paragraph 115, which is on Bates 001580.

24 A Can we understand what document this is?
25 Do we know?

1 Q Do you recognize it?

2 A No, no. I'm just trying to figure out
3 what --

4 Q It's a little bit hard to. It's a
5 document provided by the government.

6 Does it appear to be a CIA document to
7 you, just from what you --

8 A It's hard to tell when everything is
9 blank except that one --

10 Q Right.

11 A So I'm not in a position to make that
12 conclusion.

13 Q Okay. So you don't know whether what's
14 in this report is accurate or not?

15 A I do not know.

16 Q And you don't know whether this is a CIA
17 report or not?

18 A I do not know.

19 Q Okay. With regard to Mr. Ben Soud, who
20 is also known as Abdul Karim, also known as
21 Muhammad al-Sharu'iya, do you see the description
22 on page 115? I'm sorry. In paragraph 115, pages
23 001580, 001581; do you see that?

24 A Yes, yes.

25 Q Among the things it says is that "while

1 in CIA custody, Abdul Karim underwent the
2 following EITs: Nudity, sleep deprivation, insult
3 slap, abdominal slap, attention grasp, cramped
4 confinement, water dousing, walling, stress
5 positions."

6 Do you see that?

7 A Yes.

8 Q And those are described in this report
9 as "EITs," correct?

10 A Yes.

11 Q And if that was done, that was not
12 supposed to be, to your mind, what the program was
13 supposed to be for?

14 A That is correct.

15 Q And that's because, to your mind, he was
16 not a high-value detainee?

17 A That is correct.

18 Q And if, and if these EITs were applied
19 to anybody other than high-value detainees, you're
20 saying that that was not what was supposed to have
21 occurred?

22 A Correct.

23 Q Other than water dousing, which was not
24 on the list, all the rest of these techniques
25 which are described here as "enhanced

1 interrogation techniques" were on the list that
2 was part of the Mitchell and Jessen program,
3 right?

4 A That is correct.

5 Q Okay. Let me -- okay, so we're going to
6 go back to Exhibit 5, which is the -- this is the
7 Senate Select Committee on Intelligence report,
8 SSCI report.

9 (Discussion was held off the
10 record.)

11 BY MR. LUSTBERG:

12 Q We're on page 103 of 499, footnote 603.
13 I don't think you need to read the whole report.

14 A No. Please.

15 Q You probably have, though.

16 If you could direct your attention to
17 page 103, footnote 603. I'm sorry. Yeah, 603,
18 and then we're going to talk about 607.

19 A 103?

20 Q Mm-hmm. Do you see that?

21 A Okay, 103.

22 Q Page 103 and in the footnotes, let's
23 first look at footnote number 603.

24 A 603.

25 Q Do you see it? So it's halfway down the

1 page, page 103 of 499, it should be.

2 A Okay, 103 of 499.

3 Q Right, and if you go to footnote 603,
4 halfway down the page.

5 MR. BENNETT: Here is 603 here.

6 BY MR. LUSTBERG:

7 Q Okay. That footnote says, "al-Karim,
8 who suffered from a foot injury incurred during
9 his capture, was subjected to cramped confinement,
10 stress positions, and walling despite CIA
11 Headquarters having not approved their use."

12 Do you see that?

13 A Yes, I do.

14 Q Okay. Then it says "See Director," and
15 it has some redactions. Do you have an
16 understanding about, when it says "see director,"
17 what that refers to?

18 A Well, that's a cable.

19 Q It's a cable to the director?

20 A It's a cable from the director.

21 Q The director being you?

22 A No. The director of CIA.

23 Q Okay. Would it have been -- and so a
24 cable --

25 A From headquarters, from headquarters --

1 it's hard to tell from this.

2 Q Were you aware that, that this detainee,
3 who's plaintiff Ben Soud here, was subject to
4 cramped confinement, stress positions and walling?

5 A No.

6 Q Did you ever see any cables to that
7 effect?

8 A No.

9 Q Let's look at footnote 607 down below.
10 It's the very bottom.

11 A Okay.

12 Q It says, "Interrogators requested
13 approvals to use the CIA's enhanced interrogation
14 techniques on Suleiman Abdullah, including water
15 dousing."

16 Do you see that?

17 A Yes.

18 Q Now, Abdullah, which is plaintiff Salim,
19 was -- it then says, "CIA Headquarters then
20 approved other techniques, but not water dousing."

21 A Right. We don't know what other
22 techniques.

23 Q So you don't read that as being enhanced
24 interrogation techniques?

25 A I don't know.

1 Q You have no idea?

2 A No idea.

3 Q And, and that was not something that you
4 have any, have any knowledge of or recollection?

5 A No.

6 Q Okay. We're going to go back just for a
7 second to Exhibit 21, page 57.

8 A What page?

9 Q 57.

10 A Okay.

11 Q Toward the bottom of that page, in the
12 last paragraph before the bullet point, you can
13 see where it says -- a few names, and then it
14 says, "and Abd al-Karim," which we've discussed is
15 plaintiff Ben Soud, "appear(s) to have been
16 subjected to cramp confinement without prior
17 Headquarters approval."

18 Do you see that?

19 A Yes.

20 Q Okay, but then below, in the bullet
21 point, it says, "In the cases involving Abu Hazim
22 and Abd al-Karim, Headquarters approved the
23 techniques the following month as components of
24 revised interrogation plans."

25 Now, do you have any knowledge of that?

1 A I have no knowledge of that, and I don't
2 understand what it means.

3 Q Okay. When you say you don't understand
4 what it means, it says, it says here that al-Karim
5 appeared "to have been subjected to camped
6 confinement without prior Headquarters approval,"
7 and then it says "Headquarters approved the
8 techniques" -- okay, I'm sorry. Then the sentence
9 after that talks about facial hold technique. "In
10 these cases, other previously approved enhanced
11 techniques were also used."

12 And then in the paragraph below that, it
13 says Abd Al-Karim -- "in the cases involving Abd
14 al-Karim, Headquarters approved the techniques the
15 following months as components of revised
16 interrogation plans."

17 Do you see that?

18 A Yes, I see that.

19 Q Okay. To your knowledge, did
20 Headquarters ever approve the use of enhanced
21 interrogation techniques on people like this who
22 were not high-value detainees?

23 A To my knowledge, no.

24 Q Okay. If Headquarters did that, would
25 you have known?

1 A I should have known.

2 Q And so this is the --

3 A What, what is the date of this?

4 Q This is from the CIA --

5 A Yeah, but I mean what is the date they
6 are going back to?

7 Q Oh, I don't know.

8 A Well, that's key.

9 Q Okay.

10 A Because it depends on where I was.

11 Q This is in 2003.

12 A 2003?

13 Q To your -- so in your view, the enhanced
14 interrogation techniques program being limited
15 only to high-value detainees was a rule that was
16 followed 100 percent of the time?

17 A Yes.

18 Q Okay.

19 A In my team.

20 Q It was supposed to --

21 A Mm-hmm.

22 Q It was supposed to be followed 100
23 percent?

24 A Yes, mm-hmm.

25 Q And to your knowledge, Headquarters,

1 notwithstanding this, never improved the use of
2 enhanced interrogation techniques on anything
3 other than high-value detainees?

4 A To my knowledge. To my knowledge.

5 Q Okay, so every single time enhanced
6 interrogation techniques were applied to someone
7 other than a high-value detainee, that would have
8 been without authorization of Headquarters?

9 A Maybe somebody at Headquarters approved
10 it, but I do not have any knowledge of that.

11 Q Okay. So it's possible that somebody
12 from Headquarters approved it?

13 MR. BENNETT: Objection.

14 MR. JAMES SMITH: Objection.

15 MR. BENNETT: Anything is possible.

16 BY MR. LUSTBERG:

17 Q Was there ever any discussion in your
18 presence about the use of enhanced interrogation
19 techniques on someone other than high-value
20 detainees?

21 A No.

22 Q That's something you never heard about?

23 A I never heard about that.

24 Q And so if that happened, that was
25 something that was completely unknown to you,

1 notwithstanding you were the head of CTC at that
2 time?

3 A Yes.

4 Q I have a few other questions. Just give
5 me one minute.

6 Just one more question about, on that
7 issue. The CIA has acknowledged that 39 detainees
8 have been subjected to enhanced interrogation
9 techniques, of whom 25 are not high-value
10 detainees.

11 Is it your testimony that every single
12 one of those was done without authorization?

13 A Where have they acknowledged that?

14 Q I'm just asking you. So you have no
15 knowledge of that?

16 A No, no.

17 Q So do you have any idea of how many, how
18 many detainees were subject to enhanced
19 interrogation techniques?

20 A About 30 or something.

21 Q Okay, so, and, and of those 30, all of
22 them, to your knowledge, were high-value
23 detainees?

24 A Yes.

25 Q You have no knowledge of any medium or

1 low-value --

2 A No.

3 Q -- detainees who were subjected to that?

4 A No.

5 Q Did Drs. Mitchell or Jessen select which
6 detainees were high-value detainees?

7 Do you need to -- you want to take that?

8 MR. BENNETT: Let me just take one
9 minute.

10 MR. LUSTBERG: Yeah, do what you
11 got to do.

12 MR. BENNETT: This is very urgent.
13 Just give me one minute.

14 THE VIDEOGRAPHER: 4:29 p.m. We
15 are off the record.

16 (Whereupon, a short recess was
17 taken.)

18 THE VIDEOGRAPHER: 4:33 p.m. We're
19 back on the record.

20 BY MR. LUSTBERG:

21 Q Just one last follow-up question.

22 I had asked you about footnote, a
23 footnote that said that "interrogators requested
24 approvals to use the CIA's enhanced interrogation
25 techniques on defendant Salim. CIA Headquarters

1 then approved other techniques, but not water
2 dousing."

3 If CIA Headquarters had approved it,
4 would that necessarily have gone through you?

5 A I don't, I don't know. I don't think
6 so.

7 Q It could have gone to somebody else at
8 Headquarters?

9 A Perhaps. I really don't know.

10 Q Just in terms of the process that
11 Mr. Smith was talking to you about earlier --

12 A Yeah.

13 Q -- first with regard to designated who
14 was a high-value detainee, who made that decision?

15 A The high-value detainees, usually we
16 knew who the high-value detainees were, so before
17 we ever captured them, we, we knew that. That was
18 our assessment. That, that was usually the way
19 that we went at it. I'm talking about the top
20 leadership, and that's the part that I was focused
21 on. I assume -- or I can't say that word
22 "assume," but I --

23 Q He's happy about his win right now.

24 MR. BENNETT: Yeah, the hell with
25 you.

1 (Laughter.)

2 THE WITNESS: Where was I?

3 BY MR. LUSTBERG:

4 Q So just my specific question is: A
5 detainee is captured, there's a decision made
6 about whether they're a high-value, medium-value
7 or low-value detainee; do you make that decision?

8 A Usually before we even capture them, we
9 know that they're high-value. Khalid Sheikh
10 Mohammed, some of the other ones, all of them, we
11 knew that they were high-value.

12 I can't think of a single case where we
13 started to debrief and we recognized that this was
14 a high-value that we didn't know about, so in most
15 instances we went into it already knowing who the
16 high-value targets were.

17 Q So all 30 -- you used the number 30 a
18 little while ago. I know it's approximation. You
19 think all 30 of those you knew, before they were
20 captured, were going to be high-value --

21 A Myself, I knew most of them. I didn't
22 know all of them, but I knew most of them.

23 Q But in every case they were identified
24 as high-value detainees before their capture; is
25 that right?

1 A Upon capture -- I don't know. I don't
2 know if there was a label that was put on that
3 says, okay, this is it, you know, but we, we knew
4 who they were, and they immediately were sent to a
5 black site.

6 Q As between medium-value and low-value
7 detainees, you said those were in two other
8 categories. Who made the decision as to whether
9 somebody was a medium-value versus a low-value
10 detainee?

11 MR. JOHNSON: Just note, we're not
12 waiving the question itself, but no names or
13 identifying information.

14 MR. LUSTBERG: Right.

15 BY MR. LUSTBERG:

16 Q Just so it's clear, did you make the
17 decision as to who was a medium-value versus
18 low-value detainee?

19 A No.

20 Q Somebody else at the CIA did?

21 A I think the definition was if they had
22 information that was threatening to the US
23 government or persons, that that was the standard.

24 Q But somebody would have to assess that,
25 and so I'm asking whether that person was you.

1 A The CTC is a huge vast place with a lot
2 of people making decisions like this, made
3 somewhere else.

4 Q Dr. Mitchell and Dr. Jessen did not
5 select which detainees were high-value --

6 A No.

7 Q -- detainees, did they?

8 A No.

9 Q So they designed a program for the CIA
10 to get prisoners to talk, but the CIA would decide
11 which prisoners to apply it to; is that right?

12 A That is correct.

13 Q And Dr. Mitchell and Dr. Jessen
14 consulted continuously for the CIA the entire time
15 that enhanced interrogation techniques were used
16 by the CIA, right?

17 A Correct.

18 Q And they continued to consult on the
19 EITs for years after Abu Zubaydah, right?

20 A Yes. There were a couple times when
21 they were stopped altogether because of legal
22 action or because of whatever, so there were a
23 number of times when there was a hiatus in the use
24 of any techniques.

25 Q Okay. Hiatus in the use of any enhanced

1 interrogation --

2 A Yes. For example, the 2004 Office of
3 Inspector General report came out. Because of the
4 allegations in that report, I think a decision was
5 made to stand down until we were able to get
6 clarification from Justice Department, and then
7 when the '05 -- there was the Hamden case, and
8 there was something else in 2005 in December where
9 again we had to suspend it, because we felt that
10 the legal, the legal ground that we had was being
11 eroded, and we were concerned that our officers
12 were not being protected.

13 Q Okay. So there were times when the
14 program was suspended because there was concern
15 with its legality later on?

16 A Because of the OIG report and because of
17 the, the watering down of the legal authorities
18 that we had received back in 2002.

19 Q When you say "watering down," what do
20 you mean?

21 A The solid legal ground that we had in
22 2002, that memo that we received from Justice
23 Department in August of 2002, telling us that the
24 ten techniques were legal, they began to erode
25 legally.

1 Q Just three more questions.

2 So the whole time, Dr. Mitchell and
3 Dr. Jessen's role was to consult, and the CIA's
4 role was to decide which detainees would be
5 subject to the enhanced interrogation techniques;
6 is that right?

7 A We, we were the ones that provided them
8 the plan. We were the ones that told them, look,
9 we can use these interrogation techniques on these
10 individuals.

11 Q With respect to specific individuals?

12 A Yes.

13 Q So the last question has to do with your
14 discussion that you had with Mr. Smith regarding
15 the success of the program.

16 A Correct.

17 Q First of all, with regard to Mukhtar,
18 that's Khalid Sheikh Mohammed.

19 A Yes.

20 Q And Padilla, that was all before the
21 enhanced interrogation --

22 A Correct.

23 Q -- techniques, right?

24 A Correct.

25 Q So those successes are not attributable

1 to the enhanced interrogation techniques, are
2 they?

3 A No, they are not, and I think I was
4 clear on that.

5 Q Yeah, and you said when you were
6 testifying with regard to this, that this is
7 important to you, it's an important part of --

8 A Right.

9 Q -- what you were involved in and what
10 your --

11 A Correct.

12 Q -- legacy is, right?

13 A Yes.

14 Q And that's one of the reasons why you
15 react so strongly to the SSCI report, right?

16 A Well, in addition to the fact that it's
17 factually wrong and it's, it's not right, what
18 they allege.

19 MR. BENNETT: Can we go off the
20 record for just one second.

21 THE VIDEOGRAPHER: 4:40 p.m., off
22 the record.

23 (Whereupon, a short recess was
24 taken.)

25 THE VIDEOGRAPHER: 4:41 p.m., we're

1 back on the record.

2 BY MR. LUSTBERG:

3 Q Just to follow up on that point, but
4 leaving aside that whatever the factual
5 inaccuracies are, one of the things that bothers
6 you is that the SSCI report says that this program
7 didn't work when you say it did work, right?

8 A Exactly right.

9 Q And to the extent that this lawsuit is
10 an attack -- do you view this lawsuit as an attack
11 on those techniques?

12 A Well, I just, I just think it's very
13 unfair to have Jim and Bruce sued on cases where
14 they were not even involved, you know, so in that
15 case I just think it's unfair.

16 Q Okay, so you think it's unfair because
17 they were not involved with --

18 A They were not -- they have been charged
19 with something that they were not even involved
20 in.

21 Q And, and they were not involved in it
22 because your position is that the enhanced
23 interrogation techniques that they designed were
24 not used on those detainees?

25 A They were not involved, because they

1 don't even know these people. They were not
2 involved in their interrogation. They had nothing
3 to do with them.

4 (Comment off the record.)

5 MR. LUSTBERG: Mr. Bennett has some
6 good ideas for your answers.

7 MR. BENNETT: I do. I'm sorry.

8 MR. LUSTBERG: Okay. I think I
9 understand.

10 I don't have any further questions
11 at this time.

12 MR. JAMES SMITH: Just a few
13 cleanup questions.

14 FURTHER EXAMINATION BY COUNSEL FOR DEFENDANTS
15 BY MR. JAMES SMITH:

16 Q Just a couple of questions. The report,
17 the SSCI report, Mr. Rodriguez, did anyone --
18 you're familiar with who prepared that report,
19 right?

20 A Yeah, the Senate Select Committee on
21 Intelligence.

22 Q Did anyone from that organization ever
23 ask to speak to you?

24 A They didn't speak to me or anybody else
25 that was involved in running it.

1 Q And does that strike you as odd?

2 A It's crazy.

3 Q One other thing, because I want to make
4 sure the record is clear here.

5 My adversary, my worthy adversary, I
6 should say, Mr. Lustberg, said that during the
7 period of time that Drs. Mitchell and Jessen were
8 involved, that they consulted continuously.

9 Do you remember that?

10 A Yes.

11 Q Okay. Just so we're clear, anytime they
12 were involved in an enhanced interrogation
13 technique, the US government picked the person,
14 picked the procedures that would be used, picked
15 the number of times it would be done, everything
16 about it, correct?

17 A That is correct.

18 Q Okay, and they simply followed orders?

19 A That is correct.

20 MR. JAMES SMITH: Okay. No further
21 questions.

22 THE VIDEOGRAPHER: 4:44 p.m. This
23 concludes the deposition.

24 THE REPORTER: Who wants a copy of
25 the transcript?

1 MR. LUSTBERG: Yeah, the original.

2 MR. JAMES SMITH: Of course.

3 MR. JOHNSON: I don't know yet. I
4 have to ask the higher-ups.

5 (Signature having not been
6 waived, the video deposition
7 of JOSE RODRIGUEZ was concluded
8 at 4:44 p.m.)

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ACKNOWLEDGEMENT OF WITNESS

I, Jose Rodriguez, do hereby
acknowledge that I have read and examined the
foregoing testimony, and the same is a true,
correct and complete transcription of the
testimony given by me, and any corrections
appear on the attached Errata sheet signed by
me.

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CERTIFICATE OF SHORTHAND REPORTER -- NOTARY PUBLIC

I, Laurie Bangart, Registered Professional Reporter, Certified Realtime Reporter, the officer before whom the foregoing deposition was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my supervision; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 18th day of March, 2017.

My commission expires: March 14th, 2021

LAURIE BANGART
NOTARY PUBLIC IN AND FOR
THE DISTRICT OF COLUMBIA

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