

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

SULEIMAN ABDULLAH SALIM,)
et al.,)
)
Plaintiffs,)
)No. 2:15-cv-286-JLQ
v.)
)
JAMES E MITCHELL and)
JOHN JESSEN,)
)
Defendants.)

~~~~~

VIDEOTAPED DEPOSITION OF JOHN RIZZO

March 20, 2017

10:06 a.m.

Blank Rome LLP  
1825 Eye Street, Northwest  
Washington, D.C. 20006

Reported by: Lori J. Goodin, RPR, CLR, CRR  
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12 Also Present,

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24 (Original Exhibits included with the  
 25 original transcript.)

## 1 DEPOSITION OF JOHN RIZZO

2 March 20, 2017

3

4 THE VIDEOGRAPHER: We are now on the  
5 record. This is the beginning of Videotape  
6 Number 1 in the deposition of John Rizzo in  
7 the matter of Suleiman Abdullah Salim versus  
8 James Elmer Mitchell and John Bruce Jessen in  
9 the United States District Court for the  
10 Eastern District of Washington at Spokane,  
11 Case Number 2:15-CV-286-JLQ.

12 Today is Monday March the 20, 2017,  
13 the time now is 20 -- sorry, 10:06 a.m.

14 This deposition is being taken in  
15 the office of Blank Rome LLP, 1825 Eye  
16 Street, Northwest, Washington, D.C., 20006 at  
17 the Blank Rome LLC firm.

18 My name is Frank Sayers, the  
19 videographer with Magna Legal Services, and  
20 the court reporter is Lori Goodin, also with  
21 Magna Legal Services.

22 Will counsel and all parties present  
23 state their appearance and whom they  
24 represent.

25 MR. BENNETT: My name is Bob

1 Bennett. I represent the witness, John  
2 Rizzo.

3 MR. LADIN: My name is Dror Ladin.  
4 I represent the plaintiffs.

5 MR. FREY: Avram Frey, with  
6 plaintiffs.

7 MR. LUSTBERG: Lawrence Lustberg on  
8 behalf of plaintiffs.

9 MS. SHAMSI: Hina Shamsi, on behalf  
10 of the plaintiffs.

11 MR. WATT: Steven Watt on behalf of  
12 the plaintiffs.

13 MR. HANNER: Brooks Hanner, on  
14 behalf of Mr. Rizzo.

15 MR. UNRUH: David Unruh, on behalf  
16 of Mr. Rizzo.

17 MS. QUERNS: Ann Querns, on behalf  
18 of the defendants.

19 MR. SMITH: Jim Smith on behalf of  
20 the defendants.

21 MR. SCHUELKE: Hank Schuelke on  
22 behalf of the defendants.

23 MR. MITCHELL: James Mitchell, I am  
24 the defendant.

25 MR. WARDEN: I am Andrew Warden,

1 from the Department of Justice, and I  
2 represent the United States government in  
3 connection with this case. On behalf of the  
4 United States government, I have with me here  
5 today Joseph Sweeney, Cody Smith, Heather  
6 Walcott and Meagan Beckman.

7 Although the United States  
8 government is not a party to this case. We  
9 are here today in order to represent the  
10 interests of the United States.

11 We understand the questions in this  
12 deposition will cover topics related to  
13 Mr. Rizzo's career as an attorney with the  
14 Central Intelligence Agency.

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

22 To guide the parties in the  
23 deposition, we provided the parties with  
24 classification guidance from the CIA, which  
25 we premarked as Exhibit 1.

1 THE VIDEOGRAPHER: Okay. Will the  
2 court reporter please swear in the witness.

3 JOHN RIZZO,  
4 a witness called for examination, having been  
5 first duly sworn, was examined and testified as  
6 follows:

7 (United States Exhibit Number 1  
8 premarked for identification.)

9 MR. WARDEN: What I have disclosed  
10 is, marked as Exhibit 1, classification  
11 guidance from the Central Intelligence Agency  
12 that provides a list of categories of  
13 information about the CIA's detention and  
14 interrogation program that remains  
15 classified, and a list of categories of  
16 information that is now unclassified.

17 The government would issue a  
18 continuing instruction at the outset of this  
19 deposition that in response to any questions,  
20 the government instructs the witness,  
21 Mr. Rizzo, not to answer with reference to  
22 any of the information identified as  
23 classified in the guidance.

24 And we reserve the right to object  
25 to any questions posed to Mr. Rizzo

1 consistent with his nondisclosure agreements  
2 with the government, and instruct Mr. Rizzo  
3 not to answer any questions that would tend  
4 to call for the disclosure of classified,  
5 protected, or privileged government  
6 information.

7 MR. SMITH: Just as a point of  
8 order, Mr. Warden, in the past with these  
9 depositions, we had an understanding that if  
10 the government had any concern about the  
11 question that was asked, and the anticipated  
12 answer, to just simply raise your hand. That  
13 will signal to the witness that the  
14 government may have a concern, and until you  
15 tell us how you want to proceed, the room  
16 will be quiet.

17 MR. WARDEN: We appreciate that,  
18 Mr. Smith. Thank you.

19 MR. SMITH: Great.

20 EXAMINATION

21 BY MR. LADIN:

22 Q. All right. Good morning, Mr. Rizzo.

23 A. Good morning.

24 Q. My name is Dror Ladin. I am an  
25 attorney with the ACLU. Here with me are my

1 colleagues, Mr. Frey, Mr. Lustberg, Ms. Shamsi  
2 and Mr. Watt. And we represent the plaintiffs in  
3 the matter Salim v. Mitchell.

4 You are represented by counsel  
5 today. And I'm sure you have been prepared, but  
6 just so we are clear, I'm going to go through  
7 some of the instructions on the deposition.

8 Have you ever been deposed before?

9 A. No, not at deposition, no.

10 Q. Okay. As you see, we have a  
11 stenographer here, and she will transcribe  
12 everything that is said today.

13 We also have a videographer, who  
14 will be recording your testimony. If this case  
15 goes to trial in the future, it is possible that  
16 your testimony could be introduced through the  
17 transcript or video.

18 Do you understand that?

19 A. Yes.

20 Q. And, I'm going to be asking you  
21 questions today. And you will be providing  
22 responses. Your responses are under oath, and  
23 you should treat it just as if you were  
24 testifying in court. It is the same solemn oath  
25 that would apply, even though we are in a less

1 formal setting.

2 Do you understand?

3 A. Yes.

4 Q. Thank you. Mr. Bennett will be  
5 defending you. And if he has any objections, he  
6 will state those. And if he does, please wait  
7 until his objection is finished before you  
8 respond.

9 Also, please wait until I'm finished  
10 asking questions before you respond. I will  
11 extend the same courtesy to you. It is important  
12 that we not speak over one another.

13 If you don't understand a question  
14 or any part of a question, please ask me to  
15 rephrase, and I will be glad to do so.

16 If you do answer a question, I will  
17 assume you understood it. Is that fair?

18 A. That is fair.

19 Q. I will ask you to verbalize your  
20 answers, just because nods of the head or  
21 gestures won't show up on the transcript.

22 Are you on any drugs or medications  
23 or anything that would impair your ability to  
24 testify truthfully today?

25 A. No.

1 Q. All right. And, understand that you  
2 can take a break at any time. Just let me know,  
3 and we will halt it. Do you have any questions  
4 of me before we begin?

5 A. No.

6 Q. All right.

7 So, you had a deposition scheduled  
8 in January in this case, correct?

9 A. I don't remember.

10 MR. BENNETT: You've answered it.

11 BY MR. LADIN:

12 Q. All right. Do you remember having a  
13 deposition scheduled in this case at some point  
14 before today?

15 A. Oh, before today.

16 Q. Yes.

17 A. It was scheduled two weeks ago.

18 Q. And before that time, were you asked  
19 to provide a declaration for the defendants in  
20 this case?

21 A. Oh, yes, yes.

22 Q. How did that declaration come about?

23 A. Well, I worked with my attorneys  
24 here. They, I believe at that point, the  
25 defendants saw the declaration. So, I worked

1 with my attorneys in putting together a  
2 declaration that covered the subject matters the  
3 defendants were interested in.

4 Q. And was there some offer that you  
5 would get anything in return for this declaration?

6 A. No. No. Not as such, no.

7 Q. Did you understand that if you gave  
8 the declaration you might not need to be deposed?

9 A. Yes.

10 Q. And did you read every paragraph of  
11 the declaration?

12 A. Yes.

13 Q. Is every paragraph in that  
14 declaration truthful?

15 A. Yes.

16 Q. Did you omit anything from the  
17 declaration at the request of the defendants?

18 A. Not that I recall, no.

19 Q. Okay. So, you were an attorney at  
20 the CIA for how many years?

21 A. Thirty-four.

22 Q. Thirty-four years. And at that time  
23 did you maintain a law license?

24 A. Yes.

25 Q. Do you have one now?

1 A. Yes.

2 Q. Did you ever practice criminal law?

3 A. No.

4 Q. And you, I think you stated you  
5 hadn't had any occasion to look at, for example,  
6 the criminal code's definition of torture before  
7 2001 or 2002; is that correct?

8 A. Before 2002, yes.

9 Q. Had you ever studied the Geneva  
10 Convention prior to 2002?

11 A. Not really, no.

12 Q. That is not really something that  
13 was looked at a lot at the CIA at the time,  
14 right?

15 A. No, no.

16 Q. The CIA didn't really deal with  
17 captivity or the law that was associated with it  
18 before 2002?

19 MR. BENNETT: Well, excuse me. You  
20 say the CIA. That is a big organization.  
21 So, could you be more specific?

22 MR. LADIN: Sure.

23 BY MR. LADIN:

24 Q. In your experience in the -- was it  
25 the Office of General Counsel?

1 A. For my career?

2 Q. Yes.

3 A. Yes, I spent one year in the Office  
4 of Inspector General and two years in the Office  
5 of Congressional Affairs.

6 But, other than that, my entire  
7 career was in the Office of General Counsel, yes.

8 Q. And, in that office, to the best of  
9 your knowledge, during your time there, no one  
10 dealt, prior to 2002, with questions of captivity?

11 A. No. Certainly not in my time there.

12 Q. What about any training in  
13 psychology? Did you ever study psychology?

14 A. No.

15 Q. Okay. And you've never studied  
16 posttraumatic stress disorder?

17 A. No.

18 Q. So, how did you come to know that  
19 the CIA was considering the use of an enhanced  
20 interrogation program?

21 A. Well, in early 2002, I say early,  
22 late March, early April, the, kind of some people  
23 from the Counter Terrorism Center came to my  
24 office and this was a few months after the  
25 capture of, the CIA capture of Abu Zubaydah, the

1 first high value EKD that was captured.

2 They came to my office with a, over  
3 a briefing, and told me about some proposed  
4 interrogation techniques, new ones, that were  
5 being contemplated.

6 Q. And when you say some people, was  
7 that José Rodriguez and James Mitchell?

8 A. I don't -- no, I don't believe so.  
9 These were people -- well, José, I guess was  
10 Chief Counter Terrorism Center. I'm sure, I'm  
11 sure he wasn't there. And I don't believe  
12 Mr. Mitchell was there.

13 Q. Did there come a time when you did  
14 meet with José Rodriguez and Jim Mitchell about  
15 the EITs?

16 A. Yes, there came a time. Yes.

17 Q. Do you remember roughly when that  
18 was?

19 A. Well, I met with José almost  
20 immediately after first being told about these  
21 proposed techniques and why the people in the CTC  
22 thought they were necessary.

23 I don't recall meeting Mr. Mitchell  
24 for some months after that, actually.

25 Q. Had the people in CTC informed you

1 of the origin of the techniques they were  
2 considering?

3 A. We are talking about 15 years ago.  
4 But I believe in that initial briefing there was  
5 some reference made to them being based on the  
6 SERE techniques, which also I had no prior  
7 knowledge of, so --

8 Q. And what did you understand, or what  
9 do you now understand SERE training to be?

10 A. Well, it is survival --

11 Q. Yes, we don't need the acronym.

12 A. But, it is training that special  
13 forces, Navy officers take to prepare them for  
14 possible capture by terrorists or other  
15 extra-national organizations.

16 Q. And, what did you understand at the  
17 time about the use of SERE techniques in  
18 training?

19 A. Well, that they had been a staple of  
20 these training programs for some period of time.

21 Q. And did you understand that the  
22 techniques that you were considering were  
23 identical to the techniques that were used in  
24 SERE training?

25 A. No, my recollection is that I was

1 told that these were based on the SERE training  
2 techniques, but there was some variation.

3 Q. And, when did you first meet  
4 Dr. Mitchell?

5 A. Well, to the best of my recollection  
6 I met the, Dr. Mitchell and Dr. Jessen several  
7 months later.

8 Again, sorry to go back in time now,  
9 but I would say maybe six, seven,  
10 eight months later, somewhere along those  
11 lines.

12 Q. So, you are saying after the  
13 techniques had already been used?

14 A. Uh-huh.

15 Q. So, you don't --

16 A. Yes.

17 Q. -- you don't recall a meeting with  
18 George Tenet and José Rodriguez, in which James  
19 Mitchell presented the techniques?

20 A. No, I don't recall that.

21 Q. Okay. Did you know that neither  
22 Mitchell nor Jessen had ever conducted an  
23 interrogation prior to the instigation of Abu  
24 Zubaydah?

25 A. Did I know that?

1 Q. At the time, yes.

2 A. No.

3 Q. Would it have made any difference to  
4 you?

5 A. No. I mean, I wasn't in a position  
6 to judge their qualifications and experience. I  
7 was the legal advisor.

8 Q. And, they were presented to you as  
9 experts on interrogation?

10 A. I don't know if the word, experts,  
11 was used. But, they certainly -- again, I  
12 didn't -- I don't recall meeting any of them for  
13 several months.

14 But I believe the CTC presenters,  
15 who presented the techniques said that the, that  
16 these were experienced psychologists in this  
17 area.

18 Q. All right. I'm going to show you a  
19 document that has previously been marked  
20 Exhibit 17.

21 (Whereupon, previously marked  
22 Exhibit 17, first referral.)

23 THE WITNESS: Okay.

24 BY MR. LADIN:

25 Q. Are these the enhanced interrogation

1 techniques that were presented to you?

2 MR. SMITH: Objection.

3 THE WITNESS: Do I answer?

4 MR. BENNETT: Yes, you can answer.

5 THE WITNESS: They appear to be some  
6 of them. Not all of them.

7 BY MR. LADIN:

8 Q. So, which ones --

9 A. At least the part that isn't  
10 redacted.

11 Q. So, this lists 12 techniques. We  
12 can just go through them, and you can tell me  
13 whether those are different than the  
14 techniques --

15 A. You know, how many pages is this?  
16 Because I've only got two, and it starts in the  
17 middle of a sentence.

18 Q. That is certainly odd.

19 A. Am I missing something?

20 Q. Is that how -- that is not how my  
21 version looks? Well, here, why don't you use  
22 mine.

23 A. Oh, I'm sorry. I'm sorry. My  
24 mistake -- no.

25 MR. BENNETT: They just didn't copy

1 the back page here.

2 THE WITNESS: All right. Okay.

3 Here we go.

4 BY MR. LADIN:

5 Q. I see. So, now it makes sense why  
6 you said techniques were missing.

7 Well, looking at this now, are these  
8 12 techniques, the techniques that were presented  
9 to you?

10 MR. SMITH: Objection.

11 MR. BENNETT: Go ahead.

12 THE WITNESS: Yes, they appear to  
13 be.

14 BY MR. LADIN:

15 Q. Okay. You said in your book that  
16 some of the techniques sounded sadistic and  
17 terrifying to you.

18 Do you stand by that  
19 characterization?

20 A. At the time they were described to  
21 me for the first time, that was my immediate  
22 reaction.

23 No. I mean, as I got to know more  
24 about the way the techniques were to be  
25 administered and controlled, no, I wouldn't use

1 those adjectives any longer.

2 Q. How would you describe them now?

3 A. Very tough and very harsh, some of  
4 them.

5 Q. Which ones are those?

6 A. Which ones I think now are that, or  
7 which ones did I think at the time?

8 Q. Why don't you tell me both.

9 A. Well, at the time -- when I say at  
10 the time, at the time these proposed techniques  
11 were first presented to me, the waterboard and  
12 the mock burial struck me as the harshest. Some  
13 of the others far less so.

14 And, so, putting forth, yes, moving  
15 forth to the present, or at least at the time  
16 while I was still at the agency, I still consider  
17 waterboarding a very harsh technique.

18 MR. SMITH: Mr. Rizzo, could I ask  
19 if you could keep your voice up so we could  
20 hear you down here.

21 THE WITNESS: Oh, I'm sorry.

22 MR. SMITH: Thank you.

23 BY MR. LADIN:

24 Q. So, Dr. Mitchell recalls a meeting  
25 that I completely understand if you don't recall,

1 but he says that you and the Director Tenet were  
2 very interested in the fact that the techniques  
3 that you were discussing had been used on  
4 thousands of U.S. military personnel over the  
5 years.

6 Was that important to your legal  
7 analysis of these techniques?

8 MR. SMITH: Objection.

9 MR. BENNETT: Go ahead.

10 THE WITNESS: Well, the fact that  
11 they had been employed previously, sure, that  
12 had an impact on the way I viewed them from a  
13 potential legal standpoint.

14 BY MR. LADIN:

15 Q. And what was your understanding in  
16 the ways the techniques differed from their use  
17 in training?

18 A. Oh, I can't remember that. I can't  
19 recall.

20 Q. So, you don't remember, you don't  
21 remember what you were told about how the  
22 techniques compared to their use in SERE  
23 training?

24 A. No. Not specifically.

25 Q. Did Mitchell or Jessen ever tell you

1 that SERE techniques were based on techniques  
2 used by German, Japanese, Korean and North  
3 Vietnamese militaries in past conflicts?

4 A. Not that I recall, no.

5 Q. Were you ever told by Mitchell or  
6 Jessen that SERE was based on techniques that had  
7 been used to extract false confessions from  
8 American prisoners of war?

9 A. No.

10 Q. Was that something that you were  
11 independently aware of?

12 A. Was what, the false confessions?

13 Q. That that SERE training was based on  
14 interrogation programs that had extracted false  
15 confessions from American prisoners of war?

16 A. I subsequently learned of those  
17 allegations.

18 But, at the time, I don't recall  
19 doctors Mitchell or Jessen or actually anyone in  
20 the CTC telling me that.

21 Q. And was your understanding that  
22 someone in CTC, aside from Mitchell or Jessen,  
23 had experience in the SERE program?

24 A. No, I don't recall that.

25 Q. So, after the techniques were

1 presented to you, did you have an opinion as to  
2 their legality?

3 A. Well, as I say, I thought, having  
4 had no previous experience with the torture  
5 statute, I had less of a rudimentary  
6 understanding of what the legal lines were.

7 But, hearing about the waterboard,  
8 which I had never heard of before, and the mock  
9 burial technique, I thought whatever the legal  
10 line was, these two in particular were close  
11 to it.

12 Q. And what did you do to determine  
13 whether they were, in fact, legal?

14 A. Well, I mean, keep in mind the time  
15 was of the essence. Then the, our, CTC people  
16 were convinced that Abu Zubaydah was holding back  
17 information. That he was not responding to less  
18 coercive interrogation techniques. And that, you  
19 know, this was a few months after 9/11 that, you  
20 know, there was a great sense of fear and threat  
21 that another major attack was coming on the  
22 homeland.

23 So, I decided rather than conduct a  
24 legal analysis by our office, that I would refer  
25 the matter immediately to the Office of Legal

1 Counsel at the Department of Justice.

2 Q. And were you aware that during this  
3 period in which you were told that there was a  
4 great deal of urgency to question Abu Zubaydah,  
5 Abu Zubaydah was in fact not questioned for over  
6 a month?

7 MR. BENNETT: I might object to the  
8 form of the question, because you assume  
9 things that are not, not really, are you  
10 aware that.

11 I don't mind you asking him if he  
12 knew of something.

13 But, your questions seem to be  
14 predicated on something as an established  
15 fact.

16 MR. LADIN: Sure.

17 MR. BENNETT: So, I would appreciate  
18 it if you could reword your objections --

19 MR. LADIN: Sure.

20 MR. BENNETT: -- your questions.

21 BY MR. LADIN:

22 Q. Have you heard of an isolation phase  
23 in Abu Zubaydah's interrogation?

24 A. I have heard of an isolation phase,  
25 yes.

1 Q. Do you know whether Abu Zubaydah was  
2 asked any questions during the isolation phase?

3 A. Again, do I know?

4 Q. Do you know now.

5 A. Do I know now? Yes, I've come to  
6 learn that there was a period of time where he  
7 was not asked questions.

8 Q. And at the time did you know that?

9 A. At the very beginning that the  
10 techniques were being described to me, at that  
11 point in time?

12 Q. At the time when you were seeking  
13 the Department of Justice's opinion on the  
14 techniques.

15 A. No, I don't believe so.

16 Q. Do you recall when you became aware  
17 of the fact that he wasn't being questioned  
18 during that period?

19 A. I believe it was some months later.  
20 It was a while.

21 Q. So, what was the extent of the  
22 internal CIA process to determine the legality of  
23 the techniques before you turned the matter over  
24 to OLC?

25 A. I asked our lawyers in the Counter

1 Terrorism Center to see what they could come up  
2 with, in terms of initial legal precedents,  
3 legislative history about the torture statute,  
4 what they could find in the legal literature.

5 And so they did some of that.

6 Q. And do you remember any conclusion  
7 that they reached?

8 A. No, I wasn't -- again, I was  
9 determined from the beginning to seek definitive  
10 word from the Office of Legal Counsel.

11 As I recall, this was more of a  
12 legal research, not a, you know, legal conclusion.

13 Q. So, as far as you were concerned,  
14 was the legality of the techniques an open  
15 question when you referred the matter to the  
16 Office of Legal Counsel?

17 A. Yes.

18 Q. Now, one aspect of that referral was  
19 that the Office of Legal Counsel came back to  
20 your office with requests for further  
21 information. Is that correct?

22 A. That is correct.

23 Q. And in your declaration, you point  
24 to a particular OTS memo that you provided to OLC  
25 to ensure that the CIA was not overselling, that

1 SERE was identical, or the certainty that there  
2 would be no harm. Is that -- so, just to make  
3 sure --

4 MR. BENNETT: Is that a question or  
5 a statement? You made a statement.

6 MR. LADIN: I did, you are right.  
7 Let me rephrase.

8 BY MR. LADIN:

9 Q. And, just to sort of smooth this  
10 along I'm just going to give you a copy of your  
11 declaration. So, we will mark that exhibit. And  
12 this one thankfully is copied on both sides.

13 MR. LADIN: So, Ms. Court Reporter,  
14 could you please mark this exhibit.

15 What number are we up to? Do you  
16 know.

17 Please mark this as Exhibit 45.

18 (Exhibit Number 45  
19 marked for identification.)

20 BY MR. LADIN:

21 Q. So, I'm going to ask you about  
22 Paragraphs 38 and 39, which are on Page 6 and 7  
23 of your declaration.

24 A. Okay.

25 Q. So, you see the statement there that

1 you say you provided to the Office of Legal  
2 Counsel to ensure that the CIA was not  
3 overselling the significance of the EITs used  
4 during SERE training.

5 MR. BENNETT: Which paragraph are  
6 you?

7 THE WITNESS: Uh-huh, correct.

8 MR. LADIN: That is Paragraph 39.

9 BY MR. LADIN:

10 Q. And that was part of a back and  
11 forth with OLC in which you provided them with  
12 information to allow them to assess legality; is  
13 that correct?

14 A. That's correct.

15 Q. I would like to show you a document  
16 that has been previously marked Exhibit  
17 Number 18.

18 (Whereupon, previously marked  
19 Exhibit 18, first referral.)

20 MR. BENNETT: Which paragraph does  
21 that refer to? Do you know? Or is it  
22 outside the declaration?

23 MR. LADIN: Sorry, I didn't  
24 understand the question.

25 MR. BENNETT: Well, is this an

1 exhibit to his declaration?

2 MR. LADIN: No, this was not an  
3 exhibit to your declaration.

4 MR. BENNETT: Okay, thank you.  
5 Thank you.

6 BY MR. LADIN:

7 Q. It has previously been marked in a  
8 different deposition. At least that is what I  
9 believe. It may -- I don't believe this was part  
10 of your declaration. If it was, I apologize.

11 MR. BENNETT: That is all right.

12 BY MR. LADIN:

13 Q. There is very similar text in  
14 this --

15 A. Let me read this, because I don't  
16 believe that I've seen this before.

17 Q. Sure.

18 A. Okay.

19 Q. So, this appears to be a cable in  
20 which recommendations and responses to questions  
21 are being provided by IC SERE psychologists; is  
22 that right?

23 A. It appears to be.

24 Q. And, the IC SERE psychologists,  
25 those are Mitchell and Jessen, correct?

1           A.       Yes, I assume so.

2           MR. BENNETT:   Well, don't assume.

3           THE WITNESS:   Okay. I don't know.

4           MR. BENNETT:   He is entitled to full  
5           and complete answers, but not assumptions.

6 BY MR. LADIN:

7           Q.       Do you know of any other independent  
8           contractor SERE psychologists who were involved  
9           in the Abu Zubaydah interrogation?

10          A.       Not that I recall.

11          Q.       So, here it says, the paragraph that  
12          begins on Page 1, once it is not redacted,  
13          appears to be the same as the OTS memo that you  
14          provided to the Department of Justice; is that  
15          right?

16                   MR. SMITH:   Objection.

17                   THE WITNESS:   I would need to look  
18                   at the OTS memo to compare.

19 BY MR. LADIN:

20          Q.       Sure. All right. I won't ask you  
21          to do that.

22                   But, what I do want to ask you is,  
23          was there, as far as you were aware, a back and  
24          forth process in which feedback was solicited  
25          from the IC SERE psychologists about the safety

1 and necessity of different techniques?

2 A. Yes, well, there -- yes, there was a  
3 iterative process back and forth, yes.

4 Q. And that process resulted in  
5 feedback like the feedback presented here in  
6 Paragraphs 4, 5, and 6, that is identified as IC  
7 SERE psychologists' feedback?

8 MR. SMITH: Objection.

9 THE WITNESS: I can't say, I'm just,  
10 again, reading this for the first time so I  
11 can't --

12 MR. BENNETT: You have answered the  
13 question.

14 THE WITNESS: Okay.

15 BY MR. LADIN:

16 Q. Do you remember any aspects of the  
17 iterative process by which information was  
18 communicated to the Office of Legal Counsel in  
19 their evaluation of the techniques?

20 A. I'm sorry, you have to clarify. In  
21 the aspects of the iterative?

22 Q. Sure. I believe you said there was  
23 an iterative process in which OLC would ask CIA  
24 for further information.

25 A. Right.

1 Q. Would that flow through your office?

2 A. It would -- well, it certainly  
3 would flow -- some of it flowed to me from OLC  
4 directly.

5 As I recall, other times OLC people  
6 would call the lawyers in CTC, and I wouldn't be  
7 directly involved in that.

8 Q. And, if information flowed from CTC  
9 in response to DOJ's requests, would that  
10 response go through you or might it go -- would  
11 that response go through you?

12 A. As I recall, a lot of it did, but I  
13 can't say all of it. I mean, there are times I  
14 weren't there -- I wasn't there, or I was  
15 involved in other things.

16 So, I can't say all of it.

17 MR. BENNETT: Your hand.

18 THE WITNESS: Okay.

19 BY MR. LADIN:

20 Q. And you've said you've not seen this  
21 cable before?

22 A. I can't say I've never seen it. I  
23 just haven't seen it in a long time, if I've seen  
24 it at all.

25 Q. So, to be clear, when you say that

1 Drs. Mitchell and Jessen were not involved -- let  
2 me just get to exactly what you said.

3 So, just to return to your  
4 declaration.

5 MR. BENNETT: Which paragraph are we  
6 talking about now?

7 MR. LADIN: Sure.

8 BY MR. LADIN:

9 Q. So, take Paragraph 22 of your  
10 declaration on Page 4.

11 A. Okay.

12 Q. So, when you say, "To my knowledge,  
13 Drs. Mitchell and Jessen had no role in OLC's  
14 assessment of these techniques' legality," that  
15 is not incorporating, for example, your review of  
16 the cable you've just looked at; is that correct?

17 A. No. I mean I -- Drs. Mitchell and  
18 Jessen, to my knowledge, had no role in the OLC's  
19 assessment.

20 The only people who had  
21 communications back and forth with OLC were  
22 either myself or the, to my knowledge, the CTC  
23 attorneys.

24 So, that is what I was trying to get  
25 at there.

1 Q. So, is what you mean that as far as  
2 you know Drs. Mitchell and Jessen didn't directly  
3 speak with OLC?

4 A. As far as I know.

5 Q. But you are not saying that they  
6 did not provide information that was considered  
7 by OLC?

8 A. At this point in time, I can't  
9 remember what they provided and what they didn't.

10 Q. Sure. Let's look at, I think this  
11 was Exhibit J to your declaration.

12 MR. BENNETT: Here, let's go to J  
13 here.

14 MR. LADIN: Court Reporter, could  
15 you please mark this as 46.

16 (Exhibit Number 46  
17 marked for identification.)

18 MR. BENNETT: Take that book. That  
19 is your declaration and your exhibits. We  
20 are talking about J.

21 BY MR. LADIN:

22 Q. And, what I'm going to ask you about  
23 is on the page marked Bates 1763.

24 A. Okay.

25 Q. So, here it appears to say in

1 Paragraph 7 that the Office of Legal Counsel  
2 advised that the statute would not prohibit the  
3 methods proposed by the interrogation team in  
4 light of the specific facts and circumstances of  
5 the interrogation process.

6 A. I'm sorry. Can you just tell me  
7 where on that page you are reading from?

8 Q. Sure. It is in the middle. It is  
9 Paragraph 7. And it -- well, take your time.

10 A. So, the question is?

11 Q. Sure. So, it says, "The legal  
12 conclusion turns upon the following factors."  
13 And then it lists a series of factors, correct?

14 A. Correct.

15 Q. And if you look at the bottom  
16 paragraph, it says, "We understand from OTS," and  
17 there is something redacted, "OMS and the SERE  
18 psychologists on the interrogation team that the  
19 procedures described above should not, repeat  
20 not, produce severe mental or physical pain and  
21 suffering."

22 Do you see that?

23 A. Yes.

24 Q. And so when they say we understand  
25 from the SERE psychologists on the interrogation

1 team, that is Drs. Mitchell and Jessen, correct?

2 A. Again, I don't know specifically.

3 MR. BENNETT: You answered it.

4 BY MR. LADIN:

5 Q. Okay. And, just before we are done,  
6 it also says, "Nor would they be expected to  
7 produce prolonged mental harm, continuing from a  
8 period of months or years, such as the creation  
9 of persistent posttraumatic stress disorder."

10 Do you see that?

11 A. I do, yes.

12 Q. So, this says that the Office of  
13 Legal Counsel considered it important in their  
14 determination as to legality, feedback that they  
15 received about whether these techniques would  
16 cause posttraumatic stress disorder?

17 MR. BENNETT: Well, I -- look, I  
18 object, because the document speaks for  
19 itself.

20 MR. LADIN: I understand.

21 MR. BENNETT: Okay, so --

22 THE WITNESS: That is what it says.

23 MR. BENNETT: He says he doesn't  
24 remember seeing this.

25 THE WITNESS: So, your question is?

1 BY MR. LADIN:

2 Q. So, my question is, I -- let me  
3 phrase it correctly.

4 You don't have specific knowledge  
5 that Mitchell and Jessen did not provide their  
6 views on the likelihood that posttraumatic stress  
7 disorder would result to the Office of Legal  
8 Counsel, do you?

9 A. That is a double negative. I do  
10 not -- I'm sorry.

11 Q. You don't have specific knowledge --

12 A. Right.

13 Q. -- that Mitchell and Jessen did not  
14 provide their views on the likelihood of PTSD to  
15 the Office of Legal Counsel?

16 A. I do not have specific knowledge of  
17 that.

18 Q. And when you say in Paragraph 22 of  
19 your declaration that Mitchell and Jessen were  
20 not involved in OLC's assessment of the legality  
21 of the techniques, that is because you don't  
22 specifically recall Mitchell and Jessen speaking  
23 to OLC?

24 A. No -- I mean, yes.

25 Q. Sorry?

1           A.     I don't recall. I don't recall that  
2     ever happening, no.

3           Q.     Okay. But you don't have a specific  
4     recollection that information provided by  
5     Mitchell and Jessen was not considered by OLC?

6           A.     No.

7           Q.     Okay. Thank you.

8           MR. LADIN: Let's take a break for  
9     just a moment, if that is all right.

10          THE WITNESS: All right.

11          THE VIDEOGRAPHER: The time is  
12     10:50 a.m. we are going off the record.

13                    (Recess taken -- 10:50 a.m.)

14                    (After recess -- 10:57 a.m.)

15          THE VIDEOGRAPHER: 10:57 a.m., on  
16     the record.

17     BY MR. LADIN:

18           Q.     So, I just want to return to the  
19     cable we have been discussing that was Exhibit J  
20     to your declaration.

21           A.     Right.

22           Q.     So, you describe that as a  
23     conversion of the August 1, 2002, Bybee memo in  
24     Paragraph 44 of your declaration --

25           A.     Yes.

1 Q. -- that you had sent to Green, the  
2 black site identified as Green.

3 A. Correct.

4 MR. BENNETT: Keep your voice up,  
5 please.

6 BY MR. LADIN:

7 Q. So, you have seen this cable before?

8 A. I'm sure I did.

9 Q. Well, who drafted this paragraph of  
10 your declaration?

11 A. I did.

12 Q. And, in doing so, did you examine  
13 the cable at Exhibit J?

14 A. Yes.

15 Q. So, turning to that cable, I would  
16 just like to walk through it. On the page we  
17 were looking at stamped Bates 1763, the cable you  
18 had sent to the black site that refers to SERE  
19 psychologists on the interrogation team, do you  
20 know who those SERE psychologists are?

21 MR. BENNETT: Then or now?

22 BY MR. LADIN:

23 Q. Do you now know who those SERE  
24 psychologists are?

25 A. I believe so, yes.

1 Q. And is that Drs. Mitchell and  
2 Jessen?

3 A. Yes.

4 Q. So, in this cable is there an  
5 indication that Drs. Mitchell and Jessen made a  
6 representation about whether these techniques  
7 could cause severe mental or physical pain or  
8 suffering?

9 MR. BENNETT: I'm going to object on  
10 the basis that the document speaks for  
11 itself. He has identified it as an exhibit,  
12 so --

13 MR. LADIN: I understand. I just  
14 want to get his take on the document.

15 MR. BENNETT: Go ahead, over my  
16 objection, go ahead.

17 THE WITNESS: I'm sorry, could  
18 you --

19 BY MR. LADIN:

20 Q. Sure. In this document that you had  
21 sent to the black site, does it indicate that the  
22 SERE psychologists on the interrogation team,  
23 which means Mitchell and Jessen, gave an  
24 indication of whether their techniques would  
25 produce severe mental or physical pain or

1 suffering?

2 MR. BENNETT: And where are you  
3 referring to?

4 MR. SMITH: Objection.

5 MR. LADIN: So that is the bottom  
6 paragraph.

7 MR. BENNETT: Objection.

8 Go ahead.

9 THE WITNESS: I'm just reading it  
10 again. Yes, that is what it says, yes.

11 BY MR. LADIN:

12 Q. Okay. And, with that in mind, do  
13 you still maintain that Mitchell and Jessen had  
14 no role in the OLC's consideration of the  
15 legality of the techniques?

16 MR. SMITH: Objection. You can  
17 answer.

18 THE WITNESS: Well, as I indicated  
19 earlier, what I meant to say in that  
20 paragraph that I was trying to get across, is  
21 that they had no, to my knowledge, they had  
22 no interactions with the OLC during the  
23 course of the OLC deliberation.

24 BY MR. LADIN:

25 Q. But, in fact, they did provide

1 information that OLC considered in assessing the  
2 legality of the techniques?

3 A. Appears to be the case, yes.

4 Q. Now, when you initiated the process  
5 with OLC, to review the legality of the  
6 techniques, did you ask for evaluations of all of  
7 the techniques that Mitchell and Jessen  
8 recommended?

9 A. Yes, all of the 12 original  
10 techniques, yes, asked for a collective  
11 evaluation.

12 Q. And did you ask for the evaluation  
13 of any other techniques?

14 A. No. Just the ones that, the 12 that  
15 had become part of the record.

16 Q. And these 12 techniques were  
17 recommended by Mitchell and Jessen?

18 A. Well, they were recommended by CTC  
19 management.

20 Q. And as far as you know, was someone  
21 besides Mitchell and Jessen involved in selecting  
22 the techniques?

23 MR. SMITH: Objection.

24 THE WITNESS: Yes, I think, my  
25 recollection was there were a number of

1 people in CTC involved in that process.

2 BY MR. LADIN:

3 Q. Now, once you turned over the  
4 assessment process to OLC, would it be correct to  
5 say that you wanted legal cover from OLC?

6 MR. BENNETT: Well, I'm going to  
7 object. What do you mean by cover?

8 MR. LADIN: I'm actually trying to  
9 use a term from your book. So, maybe it is  
10 just easiest if we, if we distribute those  
11 pages.

12 MR. BENNETT: But I want to be sure  
13 his use of the term and yours is the same.  
14 That is my concern.

15 MR. LADIN: I appreciate that. And  
16 I think the best way will probably be to have  
17 Mr. Rizzo explain it.

18 MR. HANNER: Could you tell us which  
19 pages?

20 MR. LADIN: Sure. It is on  
21 Page 188.

22 MR. HANNER: Thank you.

23 MR. LADIN: And it is the paragraph  
24 at the middle of the page.

25 MR. BENNETT: Beginning with, "I

1 arrived at the meeting"?

2 BY MR. LADIN:

3 Q. No, it says, "Above all I," on  
4 Page 188.

5 A. 188. This looks familiar.

6 Q. Yes.

7 A. I'm sorry. So, what paragraph are  
8 we talking to, about here?

9 Q. So, the one that begins, "Above  
10 all."

11 A. Okay, I see, okay. Yes. "Above all  
12 I wanted a written OLC opinion in order to give  
13 the agency, for lack of a better term, legal  
14 cover."

15 Q. So, what do you mean by that?

16 A. The, well, I wanted to, the only  
17 reason I went to OLC was to get the agency  
18 definitive categorical legal guidance, either  
19 that the techniques did not violate the torture  
20 statute, or if any of them did.

21 Because I wanted the CIA, my  
22 clients, to be protected, and be covered, if you  
23 will, down the road, if there were any, any  
24 political retribution, because of either course  
25 that the CIA was going to take, either to proceed

1 with the program or scrub it before it began.

2 Q. And, would you say that you were  
3 agnostic as to the outcome of OLC's process?

4 MR. BENNETT: I'm going to object to  
5 the word, agnostic. I don't know what that  
6 means in terms of --

7 MR. LADIN: Sure.

8 BY MR. LADIN:

9 Q. Did you have a preference -- you are  
10 suggesting or, if I'm understanding you  
11 correctly, you are saying you gave the process  
12 over to OLC.

13 Did you have a preferred outcome in  
14 terms of their decision?

15 A. No, not really. I just wanted  
16 something definitive in writing, one way or the  
17 other, so the agency would have that.

18 Q. And, did you have the sense that  
19 others at the agency also had no particular view,  
20 one way or the other, as to what the outcome of  
21 that process should be?

22 A. Well, I think it is fair to say that  
23 the people in the CTC thought these techniques  
24 were absolutely necessary and vital.

25 So, I'm sure they wanted an outcome

1 that would, that would come out in favor of these  
2 things being able to be carried out lawfully.

3 Q. Let's take a look at Bates 1160.

4 MR. LADIN: Let's mark this as, I  
5 think, Exhibit 47, please.

6 MR. LADIN: Oh, I believe we forgot  
7 to mark your book. I'm sorry.

8 Thank you.

9 (Exhibit Number 47  
10 marked for identification.)

11 MR. BENNETT: Okay. So, we are on  
12 48, then?

13 MR. LADIN: Yes.

14 MR. BENNETT: Right?

15 MR. LADIN: Sorry, let's mark the  
16 book as 47, or the book excerpt as 47.

17 (Exhibit Number 48  
18 marked for identification.)

19 BY MR. LADIN:

20 Q. Yes. What I'm going to ask you  
21 about is Paragraph 7.

22 A. Right.

23 Q. So, here it says that a formal  
24 declination of prosecution might be sought for  
25 any specific methods which the team believes

1 would be effective, but which might not otherwise  
2 be permissible.

3 Do you remember being involved in  
4 a process seeking a formal declination of  
5 prosecution?

6 A. You mean in the context of this, do  
7 I remember this being part of this cable or just  
8 part of a process to seek declination?

9 Q. Well, let's start with the cable.  
10 Have you seen this cable before?

11 A. Ever? I, I can't remember.

12 Q. Do you remember CTC legal being  
13 involved in a back and forth with the black site  
14 that was considering different interrogation  
15 strategies for Abu Zubaydah?

16 A. I'm generally aware of it. I'm  
17 generally aware of that.

18 Q. Were you consulted during that  
19 process?

20 A. I'm sure I was.

21 Q. And do you remember the guidance  
22 being given that the interrogation team should  
23 rule out nothing whatsoever that they believed  
24 may be effective, but instead they should come on  
25 back to CTC legal, which will get them the

1     approvals?

2             A.     No, I don't remember that.

3             Q.     Do you remember that there was a  
4     suggestion made that a formal declination of  
5     prosecution could be used to provide further  
6     legal cover for the interrogation team?

7             A.     Well, what I remember is in one of  
8     my meetings with the Justice Department and the  
9     OLC, leading up to this opinion, I posed the  
10    question whether declination of prosecution was  
11    feasible.

12                    And, the assistant Attorney General  
13    Criminal Division, Michael Chertoff, immediately  
14    told me it was not. And that was the end of  
15    that.

16             Q.     Had you ever sought a formal  
17    declination of prosecution prior to that?

18             A.     No.

19             Q.     Have you ever sought one  
20    subsequently?

21             A.     No.

22             Q.     So, do you agree it is a fairly  
23    extraordinary thing to seek?

24                    MR. BENNETT: I object to the form  
25    of the question. The word, extraordinary,

1 means different things to different people.

2 THE WITNESS: Should I answer?

3 MR. BENNETT: Go ahead. Over my  
4 objection.

5 THE WITNESS: Well, it was  
6 extraordinary times.

7 BY MR. LADIN:

8 Q. Did Chertoff tell you why he would  
9 not provide a declination of prosecution?

10 A. He said they never do that.

11 Q. And it was your idea to seek it from  
12 him?

13 A. Well, it was my idea to ask about  
14 the possibility, yes.

15 Q. And was that because there was a  
16 possibility that this might transgress criminal  
17 law?

18 A. No. I mean, I was just asking  
19 because I wanted to secure maximum legal  
20 protection for the agency, in any feasible and  
21 legitimate form.

22 Q. And you don't read -- let me take  
23 that back.

24 Now, a declination of prosecution is  
25 a request that even if a criminal law is

1 violated, the Justice Department not prosecute;  
2 is that correct?

3 A. That was my understanding, yes.

4 Q. So, if no criminal law is violated,  
5 the declination of prosecution would not serve  
6 any particular function?

7 A. That is correct.

8 Q. Eventually OLC came back and  
9 authorized all of the Mitchell and Jessen  
10 techniques, except for mock burial, right?

11 A. Correct.

12 Q. Did you have an understanding as to  
13 why mock burial was being treated differently?

14 A. Well, my understanding was several  
15 days prior to the issuance of the OLC memo of  
16 August 1, 2002, John Yoo, Y-O-O, called me to say  
17 that they were having, I believe he said a  
18 difficulty getting there, in terms of the torture  
19 statute on mock burial. And was it, did we  
20 consider it absolutely necessary to have, because  
21 it was -- he said it might slow down the rest of  
22 the completion of the memo, OLC memo.

23 Q. When you say difficulty getting  
24 there, what do you mean?

25 A. Well, I didn't say it. He did. I'm

1 just quoting to you what he said to me.

2 Q. So, what did you understand him to  
3 mean?

4 A. Well, I understood him to mean that  
5 they were not sure legally that they could  
6 authorize, justify the use of that particular  
7 technique.

8 Q. And did they say we won't approve  
9 it, or did they say it might take more time?

10 A. He didn't say we will not approve  
11 it. He said it would take more time. And they  
12 were having trouble getting there, I believe is  
13 the phrase he used.

14 And did we actually have to have  
15 that particular technique.

16 Q. And then you relayed that holdup to  
17 the interrogation team; is that right?

18 A. Yes, I basically asked the question,  
19 is this technique something in your experience  
20 and expertise that is absolutely a must-have.

21 Q. And if they had said yes, you would  
22 have gone back to John Yoo?

23 A. Yes.

24 Q. But they didn't say they needed it?

25 A. No, they said they did not need it

1 and they wanted -- they didn't want that to hold  
2 up the completion of the rest of the memo.

3 Q. And did they have a different view  
4 of the necessity of the waterboard that was  
5 communicated to you?

6 MR. BENNETT: Well, I'm going to  
7 object to the form. I don't know who they is.

8 MR. LADIN: Sure. Thank you.

9 MR. BENNETT: Would you be specific.

10 BY MR. LADIN:

11 Q. Yes. Did the interrogation team  
12 have a different view that they communicated to  
13 you as to the necessity for the waterboard?

14 MR. SMITH: Objection.

15 THE WITNESS: No. I mean, the  
16 waterboard, that particular technique, OLC  
17 didn't, never expressed the same hesitation  
18 as they did about the mock burial.

19 So, all of the techniques that were  
20 proposed were deemed important by the CTC.

21 We never got to the point where I  
22 had to ask them whether or not they needed to  
23 have the waterboard, because again, John Yoo,  
24 only indicated the mock burial technique was  
25 posing problems for them.

1 BY MR. LADIN:

2 Q. Well, if we could go back to  
3 Exhibit 18.

4 A. All right.

5 Q. I'm going to ask you about  
6 Paragraph 4.

7 A. Okay.

8 Q. So, this is feedback that the IC  
9 SERE psychologists are providing as part of the  
10 OLC approval process.

11 A. Yes.

12 Q. And if you look, they say, "IC SERE  
13 psychologists recommend using an escalating  
14 interrogation strategy that has a high  
15 probability of overwhelming subjects' ability to  
16 resist. To accomplish this, the escalation must  
17 employ" -- excuse me. "The escalation must  
18 culminate with pressure which is absolutely  
19 convincing."

20 And then it says, "The plan hinges  
21 on the use of an absolutely convincing technique.  
22 The waterboard meets this need."

23 A. Correct.

24 Q. Is it your understanding that OLC  
25 had some concerns about the waterboard, that this

1 is feedback that is responsive to those concerns?

2 A. At this point I can't, I can't  
3 remember. I mean, they asked questions about  
4 many of the techniques. I'm sure they asked  
5 questions about the waterboard, but I can't  
6 remember what they are at this point.

7 Q. Would you have been aware of any  
8 techniques, aside from these 12 that were  
9 submitted to OLC for approval?

10 A. I'm sorry, I don't -- could you, was  
11 I aware at the time, or have I ever been aware,  
12 or what?

13 Q. Sure. Let me ask it in all of those  
14 forms.

15 So, are you aware right now of any  
16 other techniques that had been submitted to OLC  
17 in this 2002 period for approval?

18 A. No.

19 MR. BENNETT: Let him finish his  
20 question before you answer.

21 BY MR. LADIN:

22 Q. And, would you have been aware at  
23 the time if CIA was seeking legal advice from OLC  
24 about the use of different techniques?

25 A. Yes.

1 Q. Would it have been possible for the  
2 CIA to make a decision to use other physically  
3 coercive techniques without you knowing about it  
4 in 2002?

5 MR. SMITH: Objection.

6 MR. BENNETT: I object to that  
7 possible. I mean, anything is possible.

8 MR. LADIN: Sure.

9 BY MR. LADIN:

10 Q. As far as your understanding of the  
11 way the CIA operated, once a decision was made to  
12 use a physically coercive technique, it would go  
13 to your office for approval?

14 A. Yes. For approval for the legality,  
15 yes.

16 Q. So, as far as you know, bearing in  
17 mind your experience in the CIA, they could not  
18 have made a decision about using physically  
19 coercive techniques without going through your  
20 office?

21 A. They, being CTC?

22 Q. CTC.

23 A. They could not have made a  
24 decision -- well, they would have had to go  
25 through our office to secure legal approval.

1 Q. And no techniques were submitted by  
2 your office to CTC, except for those 12  
3 techniques in 2002?

4 A. Those were the 12 techniques that  
5 were submitted to me, yes.

6 Q. And the only techniques that OLC  
7 evaluated and approved in 2002 were these  
8 Mitchell and Jessen techniques?

9 MR. SMITH: Objection. You can  
10 answer.

11 THE WITNESS: Yes, as best I can  
12 recall.

13 BY MR. LADIN:

14 Q. Okay. Turning back to your  
15 declaration.

16 So, at Paragraph 50 on Page 9.

17 A. Wait a second. Yes.

18 Q. You say within a few months of the  
19 August 1, 2002 Bybee memo --

20 MR. BENNETT: Which paragraph?

21 THE WITNESS: 50.

22 MR. LADIN: 50.

23 MR. BENNETT: Okay, I'm sorry. Go  
24 ahead.

25 BY MR. LADIN:

1 Q. You say the OLC confirmed that the  
2 EITs could be used on other HVDS.

3 How did that work?

4 MR. BENNETT: I am not sure what  
5 that means. I object to the form.

6 MR. LADIN: Sure. Let me ask it  
7 another way.

8 BY MR. LADIN:

9 Q. You say that the OLC confirmed that  
10 EITs could be used on other HVDS within a few  
11 months of the Bybee memo; is that correct?

12 A. That's correct.

13 Q. How did the OLC confirm that?

14 A. I asked them if they could. A few  
15 months after the Bybee memo, the CIA captured and  
16 detained Khalid Sheikh Mohammed. He was the --  
17 well, he was, at that point in time, at least,  
18 the biggest capture.

19 And, the CTC people, again,  
20 determined he was not cooperating, would not  
21 cooperate. And, so, they wanted to explore the  
22 possibility of using similar techniques that had  
23 been used on Zubaydah on KSM.

24 Q. You said similar techniques. Were  
25 they not identical?

1           A.     I don't think they were absolutely  
2 identical. That is my recollection.

3           Q.     Do you recall any differences?

4           A.     I don't believe that the so-called  
5 bug in the box scenario. That was tailored for  
6 Zubaydah.

7                     I don't believe that that was ever  
8 under consideration for Khalid Sheikh Mohammed.

9           Q.     And when you say tailored to  
10 Zubaydah, in what way was it tailored to  
11 Zubaydah?

12          A.     Well, the assessments of Zubaydah at  
13 the time concluded that he was very afraid of  
14 insects.

15                     So, this is part of his  
16 psychological makeup. So, that is why this  
17 particular technique was put together for him.

18          Q.     Now, in the next paragraph of your  
19 declaration, you point to Exhibit N, which are  
20 specific guidance for the interrogations of  
21 detainees --

22          A.     Right.

23          Q.     -- held at the black sites. This  
24 has been marked as Exhibit 38.

25                     (Whereupon, previously marked

1 Exhibit 38, first referral.)

2 BY MR. LADIN:

3 Q. This is 38.

4 And so, you said, I believe, that  
5 these are the guidelines for interrogations at  
6 the black sites; is that correct?

7 A. Yes.

8 Q. And so this is the instructions as  
9 to the black sites as to how they are to conduct  
10 interrogations in compliance with the legal  
11 authorization; is that right?

12 A. Yes, as I recall, yes.

13 Q. And this appears to have been sent  
14 to Cobalt; is that right?

15 A. That is what it says on the  
16 document. The word, Cobalt, is contained there.

17 Q. So, does this document describe the  
18 EIT program in 2003?

19 A. Yes.

20 Q. And it lists, it lists on Page 1172  
21 the enhanced techniques that were part of the EIT  
22 program in 2003?

23 A. Correct.

24 Q. And these techniques are, except  
25 for -- well, actually it does have the bug in the

1 box. So, these techniques are the 12 Abu  
2 Zubaydah techniques -- sorry. The 11, minus mock  
3 burial?

4 A. Appear to be.

5 Q. So, was the EIT program a  
6 duplication of the techniques that were  
7 authorized for Abu Zubaydah that could now be  
8 used on other detainees?

9 MR. SMITH: Objection.

10 THE WITNESS: Well, they say the Abu  
11 Zubaydah, the techniques developed for Abu  
12 Zubaydah proved to serve as a template for  
13 the enhanced interrogation techniques that  
14 were used on a number of subsequent high  
15 value detainees.

16 BY MR. LADIN:

17 Q. Do you see any technique listed here  
18 that is different than the ones that were  
19 approved on Abu Zubaydah?

20 A. No, they appear to be the ones.

21 Q. Okay. And these were the techniques  
22 that are contained in Exhibit 17?

23 A. Well, again you gave me the one with  
24 the blank page.

25 Q. Oh, I do apologize for that.

1           A.     Get rid of this one.  Yes.

2           Q.     And, eventually, the programs, the  
3 techniques that were part of the EIT program  
4 changed; is that correct?

5           A.     Yes.

6           Q.     But, certain of the core enhanced  
7 interrogation techniques persisted throughout the  
8 life of the interrogation program; is that  
9 correct?

10          A.     I don't know what you mean by core.

11          Q.     Were there a number of techniques  
12 that were present in the enhanced interrogation  
13 program for the lifetime of that program?

14          A.     Yes.

15          Q.     And other of the techniques were  
16 dropped?

17          A.     That's correct.

18          Q.     Had you kept up with Drs. Mitchell  
19 and Jessen during the years of the program?

20          A.     Had I kept up with them?

21          Q.     Did you consult with them  
22 periodically?

23          A.     I would, as the years went on, sure,  
24 I talked to them.  And they talked to me.  Yes.

25          Q.     And did you get reports about their

1 activities in the program?

2 A. I'm sure they told me what they were  
3 doing at any particular time, yes.

4 Q. Do you have -- so, on the, on  
5 Frontline I believe you said that, later in the  
6 program, Mitchell and Jessen were training CIA  
7 people to conduct the interrogations. They were  
8 skilled trainers and patient teachers.

9 Do you stand by that?

10 A. I do.

11 Q. So, your understanding was that they  
12 taught other interrogators how to use their  
13 techniques?

14 A. Yes.

15 Q. How do, they trained other CIA  
16 interrogators in the program?

17 A. That was my understanding, yes.

18 Q. And over the years you dealt with  
19 different permutations of the EIT program, all of  
20 the way up until 2007, when Secretary of State  
21 Rice wanted a personal briefing on the program?

22 A. Well, that is correct. I mean, I  
23 was involved in it after that point, too.

24 Q. All right. We will get there, but  
25 let's start with that meeting with Secretary Rice.

1                   So, in your book, I don't know  
2    which, I don't know what Exhibit Number it is, I  
3    think it is maybe 47. Is that?

4                   A.     Okay.

5                   Q.     So, if you look at the end of the  
6    excerpt, it is Pages 269 to 270. If you want to  
7    take a look.

8                   A.     All right.

9                   Q.     So, it should be the, right by the  
10   end of the copy.

11                  A.     Right, right, right. Right.  
12   Beginning with a failed nomination. Yes. I  
13   remember that. Yes.

14                  Q.     Yes. So, you write there,  
15   "Secretary of State Rice wanted a personal  
16   briefing on the newly refined slimmed down set of  
17   techniques, and she wanted to get it directly  
18   from the original architects of the program, two  
19   outside psychologists the agency had hired under  
20   contract more than five years earlier."

21                                When you write two outside  
22   psychologists, are you referring to Drs. Mitchell  
23   and Jessen?

24                  A.     Yes.

25                  Q.     And you said Secretary of State Rice

1 wanted a personal briefing on the EIT program?

2 A. Yes.

3 Q. And she wanted to get it directly  
4 from the original architects?

5 A. Yes.

6 Q. And those original architects are  
7 Drs. Mitchell and Jessen?

8 A. Yes.

9 Q. And then on Page 270, you write,  
10 just at the very top, "The two EIT architects,"  
11 and then you describe the meeting. And then you  
12 say, "They talked about their backgrounds," in  
13 the second sentence, "the genesis of the original  
14 techniques they came up with, the safeguards  
15 built into the program, the way the program  
16 evolved and had been refined over the years," and  
17 so on.

18 Do you stand by that account?

19 A. Yes. Based on my recollection, as I  
20 was writing, yes.

21 Q. So, Drs. Mitchell and Jessen  
22 described the genesis of the original techniques  
23 they came up with?

24 A. That was my recollection.

25 Q. And they described the safeguards?

1 A. Yes.

2 Q. Do you remember what those  
3 safeguards were?

4 A. Well, I'm sure it included the  
5 presence of medical personnel. You will need to  
6 come back to headquarters for approvals for each  
7 technique. Things of that nature.

8 Q. And some of those safeguards changed  
9 over the years, correct?

10 A. No. I'm not aware of that. Could  
11 you be more specific?

12 Q. Sure. There came a time when the  
13 Office of Medical Services made recommendations  
14 as to how the use of the waterboard should be  
15 different than it was early on in the program.

16 Do you recall that?

17 A. Yes, vaguely, yes.

18 Q. Okay. There were also changes to  
19 the amount of time sleep deprivation was  
20 authorized for?

21 A. That's correct, that's correct.

22 Q. So, you write here that they  
23 described the way the program had evolved and  
24 been refined over the years.

25 A. Correct.

1 Q. What did you mean by that?

2 A. Well, by late 2006, the program had  
3 been refined, as we talked about earlier. Some  
4 of the techniques were no longer being used like  
5 the waterboard.

6 Others like sleep deprivation. The  
7 periods of authorized sleep deprivation beginning  
8 in late 2006 were shrunk. There was less  
9 duration. That kind of thing.

10 Q. And, do you know what Drs. Mitchell  
11 and Jessen role was in the refinement of the  
12 program at that time?

13 A. No, no. At the time I was talking  
14 to our CTC lawyers and the head of CTC at the  
15 time. So, those were the people that I was  
16 communicating with.

17 Q. And what were the techniques  
18 Secretary Rice was concerned about during this  
19 meeting?

20 MR. BENNETT: Well, I object.

21 Because you are assuming she was concerned.

22 MR. LADIN: Sure.

23 BY MR. LADIN:

24 Q. Was Secretary Rice concerned about  
25 any techniques at this meeting?

1           A.     I don't, I don't recall any specific  
2 techniques. As I said in the book, my  
3 recollection was she was highly complimentary of  
4 the way the program had been conducted and  
5 managed.

6                     She had previously expressed  
7 concerns about the use of nudity on the detainees.

8           Q.     Uh-huh. What did you --

9           A.     I don't, I don't recall -- what I  
10 was starting to say was I don't recall that  
11 specific, her specifically bringing that up at  
12 the meeting, though.

13          Q.     Do you remember what her concern  
14 about nudity was?

15          A.     Nudity? No, she had expressed it in  
16 various principal committee meetings for the  
17 previous two years. I mean my impression was she  
18 just thought it was unduly undignified and  
19 insulting to do that.

20          Q.     If you look at what was Exhibit U to  
21 your declaration, which you identified in your  
22 declaration as an e-mail memorializing the  
23 content of that meeting.

24          A.     Right.

25                     MR. LADIN: And we can mark that

1           one. Oh, sorry, it has already been marked  
2           as Exhibit 35.

3                               (Whereupon, previously marked  
4                               Exhibit 35, first referral.)

5                               THE WITNESS: Okay.

6 BY MR. LADIN:

7           Q.       So, is this a contemporaneous record  
8           of the meeting that took place with Secretary Rice?

9           A.       It appears to be, yes.

10          Q.       And if you look on the second page,  
11         it says that the Secretary expressed her concern  
12         about a particular sleep deprivation method.

13                               MR. BENNETT: Where are you  
14         referring to?

15                               MR. LADIN: Sure, sorry. So, the  
16         paragraph begins on the second page.

17 BY MR. LADIN:

18          Q.       It says, "During the discussion of  
19         the sleep deprivation EIT, the Secretary of  
20         State made it clear that her concern did not  
21         center on depriving a detainee of sleep, but the  
22         specific method of implementation and the image  
23         the EIT evoked. She expressed concern that this  
24         image was reminiscent of images associated with  
25         Abu Ghraib."

1                   Is that accurate?

2           A.       Yes, it refreshes my recollection.  
3   Yes. I believe I remember something, a  
4   discussion along those lines, yes.

5           Q.       And her concern was that a detainee  
6   who was nude and shackled in a standing sleep  
7   deprivation posture evoked images of Abu Ghraib?

8           A.       That it what it says, yes.

9           Q.       And that is what you recall being  
10   expressed in the meeting?

11          A.       Yes, I do now. But I didn't when I  
12   was writing my book, because I didn't have  
13   contemporaneous documents to look at.

14          Q.       Now having refreshed your  
15   recollection, do you recall whether the Secretary  
16   of State asked for some change to be made in the  
17   sleep deprivation technique?

18          A.       No, I don't recall that.

19          Q.       Okay. Well, if you look at the last  
20   couple of paragraphs on the page, it says that  
21   Doctors Jessen and Mitchell indicated the  
22   possibility of devising alternative methods to  
23   deprive sleep.

24                   And then, at the very bottom of the  
25   page it says, "Jessen and Mitchell will work on

1 alternative methods for implementing sleep  
2 deprivation EIT and proposed courses of action."

3 Does that refresh your recollection?

4 A. Vaguely, vaguely. I mean, I  
5 certainly don't deny that that came up. I have  
6 no reason to dispute it.

7 I just don't really remember that  
8 part of the conversation.

9 Q. Do you know why it would be Mitchell  
10 and Jessen who would be tasked with devising a  
11 new form of sleep deprivation?

12 A. Well, they were the, you know, it  
13 was Dr. Mitchell, Dr. Jessen and me representing  
14 the CIA at the meeting.

15 So, I mean, it was a colloquy among  
16 us and Secretary Rice. With them being there and  
17 them being the experts, she asked them.

18 Q. And as far as you are aware, there  
19 would not be other people in the CIA who would be  
20 more appropriately tasked with devising new EITs?

21 A. No, I -- there could well have been.  
22 They just didn't, were not in the room with the  
23 Secretary at the time.

24 Q. And that is because the Secretary  
25 wanted the architects of the program there?

1 A. Yes.

2 Q. I would like to show you the Office  
3 of Professional Responsibility report.

4 A. Okay.

5 MR. LADIN: So, if we could mark  
6 this as Exhibit 49. It is quite long.

7 (Exhibit Number 49  
8 marked for identification.)

9 THE WITNESS: Yes, I remember it.

10 BY MR. LADIN:

11 Q. You've seen the, this report before,  
12 correct?

13 A. Yes, I have.

14 Q. And you were interviewed as part of  
15 it?

16 A. I submitted to a voluntary  
17 interview, yes.

18 Q. If you look on Page 126?

19 MS. QUERNS: Are you marking this?

20 MR. LADIN: Yes, I am sorry. I  
21 think it has been marked.

22 What is the exhibit number? I'm  
23 sorry. Did you --

24 THE REPORTER: 49.

25 MR. LADIN: 49.

1 MR. BENNETT: What page?

2 BY MR. LADIN:

3 Q. If you look at the bottom paragraph,  
4 this refers to an interview with Dan Levin. Do  
5 you remember Dan Levin?

6 A. Oh, sure, sure.

7 Q. Did you interact with him as part of  
8 your --

9 MS. QUERNS: What page are you on?

10 MR. LADIN: 126.

11 BY MR. LADIN:

12 Q. Did you interact with Mr. Levin as  
13 part of your work in the General Counsel's Office?

14 A. Sure.

15 Q. So, if you look at the last  
16 paragraph here on 126, it says that he asked CIA  
17 for information about how sleep deprivation was  
18 administered. Do you see that?

19 A. I see it.

20 Q. And he says he was surprised to  
21 learn that no one at OLC had previously asked the  
22 CIA about the methods used to keep prisoners  
23 awake.

24 A. Yes, I see that.

25 Q. Is that your recollection as well

1 that no one at OLC had asked CIA for information  
2 about how sleep deprivation was administered?

3 A. No, I just have no recollection one  
4 way or the other about that.

5 Q. Okay. It says that he learned that  
6 detainees were typically shackled in a standing  
7 position naked, except for a diaper, with their  
8 hands handcuffed at head level to a chain bolted  
9 to the ceiling.

10 Is that your understanding of how  
11 the sleep deprivation EIT was administered?

12 A. As I recall, yes.

13 Q. Now, do you think sleep deprivation  
14 is fairly similar to jet lag?

15 MR. BENNETT: I object.

16 MR. LADIN: Sure.

17 MR. BENNETT: But, if you can,  
18 answer that.

19 THE WITNESS: I have no idea. I  
20 have no idea. I don't --

21 BY MR. LADIN:

22 Q. Okay. And just finally on that  
23 meeting with Secretary Rice, if you look back at  
24 the last page of the e-mail that was described in  
25 the meeting.

1           A.     Oh, wait.  I've got to go back.  Are  
2 we done with this or should I keep it?

3           Q.     You should keep it.

4           A.     Okay.  That is exhibit what, what  
5 was that?

6                   MR. BENNETT:  U.

7                   THE WITNESS:  Okay.  I'm back there.  
8           Go ahead.

9 BY MR. LADIN:

10           Q.     Sure.  So, it says Dr. Mitchell --  
11 this is on the second page near the bottom.

12           A.     Uh-huh.

13           Q.     It says, "Dr. Mitchell raised the  
14 issue of nudity.  While the Secretary of State  
15 was polite, she was firm.  She had already made  
16 her decision on nudity, so there was no need for  
17 discussion on that issue."

18                   Do you recall that?

19           A.     Yes.  I mean, you know, I indicated  
20 a few minutes ago, I do recall her concerns about  
21 nudity being a subject there.

22                   I couldn't remember the exact way it  
23 came up, until reading this.

24           Q.     And so when her decision was firm,  
25 that means she was saying no more nudity?

1           A.       That is correct.

2           Q.       And had the idea, going into the  
3 meeting with Drs. Mitchell and Jessen, had you  
4 discussed the nudity EIT?

5           A.       I don't recall whether -- you mean  
6 we discussed, that I discussed it with Drs.  
7 Mitchell and Jessen?

8           Q.       That's right.

9           A.       We had a, you know, a preparatory --  
10 that is not the word.

11                    We had a discussion about how the  
12 meeting, we were going to do the briefing. I  
13 don't recall whether we specifically talked about  
14 us raising the issue of nudity.

15                    But it had been a concern of hers  
16 for some time.

17           Q.       And was your understanding that  
18 unless she eliminated it -- let me rephrase that.

19                    Was your understanding that  
20 Dr. Mitchell wanted to preserve nudity as an  
21 enhanced interrogation technique?

22           A.       As I recall, again it was CTC that  
23 thought nudity was a valuable and important  
24 feature of the program.

25           Q.       Okay. So, getting back to that

1 guidance we looked at, that was Exhibit N to your  
2 declaration, marked as Exhibit 38.

3 A. Okay.

4 Q. You said that the, this guidance  
5 appears to have been sent to Cobalt in January of  
6 2003. Is that right?

7 A. Well, I'm just reading the word,  
8 Cobalt, that are typed here.

9 So, I'm just -- again, this is a  
10 document that was, that is what, 14 years old. I  
11 can't specifically remember where it was sent.  
12 But I was just reacting to it being these words,  
13 Cobalt, on there.

14 Q. Do you have a reason to believe this  
15 document was not sent to Cobalt?

16 A. No.

17 Q. And you've identified this as the  
18 guidance that went out to black sites, right?

19 A. That's correct, yes.

20 (Whereupon, previously marked  
21 Exhibit 21, first referral.)

22 BY MR. LADIN:

23 Q. So, I would like to show you what  
24 we've previously marked as Exhibit Number 21  
25 which is, this is a document the CIA produced in

1 response to the Senate report, the Senate  
2 Subcommittee on Intelligence.

3 A. Okay.

4 MR. LADIN: Here is one for you.

5 MR. BENNETT: Thank you.

6 BY MR. LADIN:

7 Q. Have you seen that document before?

8 A. No.

9 Q. Okay. I would like to direct your  
10 attention to Page 58. And it is confusing,  
11 because this document is paginated multiple  
12 times. But, we will get there.

13 The 58 that I'm referring to begins  
14 with the words, "However, nine of the study's  
15 examples."

16 A. Yes, I've got it.

17 MR. SMITH: Give us a second.

18 MR. LADIN: Sure.

19 BY MR. LADIN:

20 Q. I'm going to ask you about the  
21 second paragraph here.

22 MR. SMITH: The paragraph that  
23 begins with "We also believe"?

24 MR. LADIN: That's correct.

25 THE WITNESS: Okay, I see it.

1 BY MR. LADIN:

2 Q. Okay. So, it says, "After the  
3 standard was approved and communicated in  
4 January 2003, interrogation operations at,"  
5 redacted, "were generally in line with the  
6 guidance, with some isolated exceptions  
7 identified in the study and described elsewhere  
8 in the response."

9 And you said you have not seen this  
10 document before; is that right?

11 A. No, no.

12 Q. All right. Well, let's -- well, let  
13 me first ask, is it your understanding that after  
14 January 2003, interrogation operations at Cobalt  
15 were generally in line with the guidance that was  
16 sent to Cobalt, that is your Exhibit N?

17 A. That was my understanding, yes.

18 (Whereupon, previously marked  
19 Exhibit 10, first referral.)

20 BY MR. LADIN:

21 Q. Okay. I would like to also show you  
22 what has been previously marked as Exhibit 10.

23 You've seen this report before I  
24 think; is that right?

25 A. That is the IG report.

1 Q. Yes.

2 A. Yes, I've seen that.

3 Q. And you were interviewed as part of  
4 it?

5 A. I must have been. I was being  
6 interviewed a lot in those days.

7 Q. Yes. If you go to the page marked  
8 Bates 1392.

9 A. 1392. That doesn't compute.

10 Q. Sorry, there is multiple Bates  
11 stamps.

12 There is the D series, in which this  
13 would be D63. But below that, there a U.S. Bates  
14 number.

15 A. Okay. So, if I go to D63, I will  
16 find it --

17 Q. You will. Unless this is also  
18 multiply paginated.

19 And the paragraph I'm asking you  
20 about is 122.

21 A. Okay, I've got it. Okay.

22 Q. And it says, the word, Cobalt, is  
23 sort of inserted there, above a redaction.

24 A. Right.

25 Q. And it says, "The employment of EITs

1 is now reportedly well codified. Written  
2 interrogation plans are prepared and sent to  
3 headquarters for each detainee."

4 Is that your understanding of how  
5 the EIT program worked?

6 A. Yes.

7 Q. So, written interrogation plans  
8 would be prepared for different detainees, sent  
9 to headquarters for approval, and then that  
10 approval would flow back to the black site?

11 A. If there was an approval, yes, that  
12 is how it would work.

13 Q. And this appears to indicate that  
14 that process was in place at Cobalt?

15 A. Well, could we define our terms?  
16 The Cobalt was not a site where the high value  
17 detainees that were subjected to the enhanced  
18 interrogation program were housed.

19 Those are, when I say black sites,  
20 what I mean to say is those secret prisons where  
21 the high value detainees, beginning with Abu  
22 Zubaydah, were detained.

23 Q. So, is it your understanding that  
24 EITs were not authorized at Cobalt?

25 A. That's correct.

1 Q. So, when it says, "At Cobalt the  
2 employment of EITs is now reportedly well  
3 codified," you understand that to mean that in  
4 fact no EITs were authorized at Cobalt?

5 A. That is my recollection.

6 Q. What is your recollection based on?

7 A. My memory. I mean. Is that --

8 Q. So, to return to Exhibit N to your  
9 declaration, that is the guidance that went out  
10 to black sites, correct?

11 A. Right, right. January, yes, '03.

12 Q. And that guidance went out to  
13 Cobalt; is that correct?

14 A. It appears to have been.

15 Q. And it describes the process whereby  
16 detainees at Cobalt could be subjected to  
17 enhanced interrogation techniques; is that  
18 correct?

19 MR. BENNETT: Well, it speaks for  
20 itself. So I object.

21 BY MR. LADIN:

22 Q. Well, to the extent that, Mr. Rizzo,  
23 to the extent that you are testifying about  
24 whether EITs were used at Cobalt or not, I'm  
25 hoping to refresh your recollection with the

1 exhibit to your declaration.

2 A. Yes. No, I mean I think my  
3 recollection remains what I said, was that no  
4 EITs were carried out at Cobalt.

5 I, I would direct your attention to  
6 Page 2 of Exhibit N, which describes so-called  
7 standard techniques.

8 Q. Uh-huh.

9 A. So, those, for lack of detailed  
10 terms, my understanding was standard techniques  
11 were those, at least the authorized techniques  
12 were to be, the standard techniques were to be  
13 carried out at Cobalt, not the enhanced  
14 interrogation techniques.

15 Q. Well, let's take a look at Tab 13.  
16 Now your understanding is that if EITs were used  
17 on a -- let me rephrase that.

18 You said on Frontline that there  
19 were abuses in the program, but that every such  
20 abuse would be reported internally by CIA either  
21 to the IG or to the Criminal Division of the  
22 Department of Justice; is that right?

23 A. Yes. What I've said, yes.

24 Q. And the use of EITs in an  
25 unauthorized fashion would result in such a

1 report?

2 A. Sure, it would be unauthorized.

3 MR. BENNETT: Keep your voice up.

4 MR. LADIN: So, let's mark this

5 as -- is this 50?

6 THE REPORTER: 50.

7 (Exhibit Number 50

8 marked for identification.)

9 BY MR. LADIN:

10 Q. Okay. So, this is Exhibit 50. And  
11 these referrals to the IG, they would be even for  
12 people who are in the EIT program but had  
13 unauthorized EITs used on them; is that correct?

14 A. They were people in the EIT program  
15 that were administered techniques that were not  
16 part of the EIT program. Is that what you are  
17 saying?

18 Q. Yes. Or that weren't authorized for  
19 that particular detainee.

20 A. Right, right.

21 Q. Does this appear to be one of those  
22 investigations?

23 A. I have no idea. I don't know what  
24 this is. Disposition Memorandum. Is this an  
25 Inspector General document? I don't know.

1 Q. Yes.

2 A. Okay.

3 Q. All right. So, if you turn to the  
4 second page -- actually, I think there is -- why  
5 don't you turn to Page 10. So, in that first  
6 paragraph, 26, on Page 10 --

7 A. Okay.

8 Q. -- does that describe the approval  
9 process for EITs that you are familiar with in  
10 that CTC RDG, "Received a cable requesting  
11 authorizations to use EITs on a detainee"?

12 MR. SMITH: Objection.

13 THE WITNESS: Yes.

14 BY MR. LADIN:

15 Q. And then there was a response with  
16 authorization to use the EITs?

17 A. In this particular case, or just as  
18 a procedural matter?

19 Q. Yes. I'm not asking about the facts  
20 of this case, but I'm asking if it describes the  
21 EIT program procedures as you understand them?

22 A. Yes, it describes the process.

23 Q. And so, if you turn to Page 11, it  
24 says that a cable describes the interrogation of  
25 Abd al-Karim on April 2003. The cable states

1 that improved enhanced techniques of walling and  
2 water dousing were used.

3 And then they redact the names of  
4 the participants. Is that a description of a  
5 detainee receiving EITs in the EIT program?

6 A. Let me see if I can make sense of  
7 this paragraph. Yes, I mean that sounds about  
8 right. Again, it is a little difficult to parse  
9 what they are talking about.

10 But, yes, that sounds about right.

11 Q. Well, let's --

12 MR. SMITH: Could we ask you to keep  
13 your voice up, please?

14 THE WITNESS: I'm sorry. I am a  
15 quiet guy. I will try to talk louder.

16 BY MR. LADIN:

17 Q. So, actually, let's just turn back  
18 to the CIA response, which is, I think,  
19 Exhibit 21 over there in your pile.

20 A. Oh, the one I haven't seen, okay.  
21 Right?

22 Q. Yes. Right below the special  
23 review.

24 A. Okay. Okay.

25 Q. And if you go to Page 56.

1 MR. SMITH: Which one?

2 MR. LADIN: Sure. It is 21. And  
3 it's page 56. And if there is multiple 56s,  
4 this is the one that begins, "We agree."

5 BY MR. LADIN:

6 Q. So, I just want to ask you about  
7 that paragraph.

8 A. Uh-huh.

9 Q. So, it says, "CIA used enhanced  
10 techniques which could have exacerbated injuries  
11 sustained by detainees during capture. As  
12 acknowledged in our response to Conclusion 20,  
13 techniques that had not been previously approved  
14 by headquarters were applied to two Libyan  
15 detainees who had foot injuries. In cases  
16 involving these detainees, headquarters  
17 ultimately approved the techniques the following  
18 months as components of revised interrogation  
19 plans."

20 Does headquarters' approval of an  
21 interrogation plan that involves enhanced  
22 interrogation techniques follow the procedures  
23 that you said the EIT program -- let me rephrase  
24 that.

25 Does this appear to describe two

1 detainees in the EIT program?

2 MR. SMITH: Objection.

3 THE WITNESS: It appears to.

4 BY MR. LADIN:

5 Q. In your view, if headquarters  
6 approved the use of EITs on a detainee, was that  
7 detainee part of the EIT program?

8 A. Yes, if the EITs were approved on a  
9 detainee, yes, that would be part of the EIT  
10 program.

11 Q. Okay. So, I would like to show you  
12 Tab 16, which was previously marked as Exhibit  
13 Number 44.

14 (Whereupon, previously marked  
15 Exhibit 44, first referral.)

16 BY MR. LADIN:

17 Q. And, a large amount of this document  
18 is redacted, but I'm going to ask you about Bates  
19 1580 to 81.

20 MR. SMITH: Sorry?

21 MR. LADIN: 1580 to 81.

22 THE WITNESS: Okay.

23 BY MR. LADIN:

24 Q. And it says, "While in CIA custody  
25 Abd al-Karim underwent the following EITs:

1 nudity, sleep deprivation, insult slap, abdominal  
2 slap, attention grasp, cramped confinement, water  
3 dousing, walling, and stress positions."

4 A. I see that, yes.

5 Q. Would the CIA have a reason to lie  
6 about using techniques on a detainee that it  
7 didn't actually use EITs on?

8 MR. BENNETT: I'm going to object to  
9 that.

10 THE WITNESS: They would have no  
11 reason to lie about that.

12 BY MR. LADIN:

13 Q. In your experience did the CIA keep  
14 records about which EITs were used on detainees  
15 in the EIT program?

16 A. That is my understanding, yes.

17 Q. And in your understanding, those  
18 records were accurate?

19 A. I can't guarantee that every one of  
20 them were accurate, but ...

21 Q. Do you have any reason to suspect  
22 that the CIA's records were inaccurate?

23 MR. SMITH: Objection.

24 THE WITNESS: No, I have no  
25 particular reason to believe that. I just

1           can't, you know, sit here now and say for  
2           certain everything that was put down was  
3           absolutely accurate, that is all.

4 BY MR. LADIN:

5           Q.       Sure. And your understanding is  
6           that if the CIA used EITs on a detainee who was  
7           not authorized for the use of those EITs, that  
8           would generate an investigation?

9           A.       Yes.

10          Q.       And is it your understanding that  
11          there were many such cases in which the CIA used  
12          EITs on unauthorized detainees?

13                   MR. BENNETT: I'm going to object to  
14          the word, many, because that means different  
15          things to different people.

16                   MR. LADIN: Sure.

17                   THE WITNESS: I would use the word,  
18          occasionally.

19 BY MR. LADIN:

20          Q.       Occasionally.

21          A.       Yes.

22          Q.       And in the absence of such an  
23          investigation, would you assume that a detainee  
24          had been approved for techniques -- let me  
25          rephrase that to avoid the word, assume.

1 MR. BENNETT: Good. You read my  
2 mind.

3 BY MR. LADIN:

4 Q. Yes. Would the lack of -- I've  
5 learned from you.

6 MR. BENNETT: Thank you. Any time.

7 BY MR. LADIN:

8 Q. Appreciate it. Would the lack of an  
9 investigation as to the use of EITs on a detainee  
10 indicate that the EITs had been approved for use  
11 on that detainee?

12 A. Yes, I mean, if there was no  
13 investigation, then of course that means the  
14 techniques were approved, had been approved.

15 Q. So, on the basis of this document,  
16 does this document indicate to you that Abd  
17 al-Karim a/k/a Mohamed Ahmed al-Shoroeyiya was  
18 part of the CIA's EIT program?

19 MR. SMITH: Objection.

20 THE WITNESS: I'm sorry?

21 BY MR. LADIN:

22 Q. That is page 1580.

23 A. I thought we were done with this  
24 one. 1580, okay.

25 Yes, I don't know what this document

1 is, honestly, it is so redacted. Like, I can't  
2 tell what it is. I can't tell if this is an  
3 investigation or just a statement and a memo or  
4 what?

5 Q. Oh, this document was provided in  
6 response to a discovery request asking about  
7 which EITs were used on particular individuals.

8 And it is a document that you are  
9 absolutely right is very redacted. It begins  
10 with bios, and it appears to list the biographies  
11 of different detainees?

12 MR. SMITH: Object to the  
13 characterization of the document.

14 THE WITNESS: Right.

15 MR. BENNETT: And what is the  
16 question?

17 BY MR. LADIN:

18 Q. The question is, on the basis of  
19 this document that was provided by the CIA, does  
20 it indicate to you that this individual was part  
21 of the EIT program?

22 MR. SMITH: Objection.

23 THE WITNESS: Well, it indicates he  
24 underwent the following EITs. That is what  
25 it says.

1 BY MR. LADIN:

2 Q. And does that indicate to you that  
3 this individual was part of the EIT program?

4 MR. SMITH: Objection.

5 THE WITNESS: Not necessarily. I,  
6 you know, it doesn't say he underwent the  
7 following approved EITs.

8 BY MR. LADIN:

9 Q. Well, if we can go back to the  
10 document you were just looking at which was the  
11 CIA's response.

12 A. Okay. Okay. Direct me to a page.

13 Q. Sure. It is Page 56. It is the  
14 document we were just looking at.

15 A. Right.

16 Q. And it says, "In the cases involving  
17 those detainees, Abu Hazim and Abd al-Karim,  
18 headquarters ultimately approved the techniques.

19 A. That's correct, right.

20 Q. Does that indicate to you that those  
21 two detainees were part of the CIA's EIT program?

22 MR. SMITH: Objection.

23 THE WITNESS: If headquarters  
24 ultimately approved the techniques, I would  
25 say they were part of the EIT program.

1 BY MR. LADIN:

2 Q. So, specifically, you would say on  
3 the basis of the CIA's documents that you have  
4 been provided, Abd al-Karim was part of the CIA's  
5 EIT program?

6 MR. SMITH: Objection.

7 THE WITNESS: That is what it seems  
8 to indicate.

9 BY MR. LADIN:

10 Q. Do you have any reason to doubt that  
11 he was part of the CIA's EIT program?

12 MR. SMITH: Objection.

13 THE WITNESS: I have no  
14 understanding either way. I honestly don't  
15 remember this case.

16 BY MR. LADIN:

17 Q. And turning back to the document  
18 with the biographies, which is Exhibit Number 44.  
19 If you could just turn to page 1567.

20 A. Okay. Got it.

21 Q. And do you see there a description  
22 of another detainee was subjected to a list of  
23 EITs?

24 A. Give me a second.

25 Q. Sure.

1           A.       Yes, I see where it says he  
2 underwent the following EITs.

3           Q.       And those EITs are the EITs of the  
4 CIA's EIT program?

5           A.       They look like it. Yes, they appear  
6 to be.

7           Q.       Do you have any reason to believe  
8 that this person was not part of the CIA's EIT  
9 program?

10                   MR. SMITH: Objection.

11                   THE WITNESS: I have no reason to  
12 dispute it or confirm it. Again, I don't  
13 remember this name or this case.

14 BY MR. LADIN:

15           Q.       Did the defendants ask you when you  
16 were preparing the declaration about additional  
17 detainees, beyond Gul Rahman, who you wrote about  
18 specifically in your declaration?

19                   MR. BENNETT: I'm going to object.  
20 There is no basis that the defendants had  
21 nothing to do with the preparation of the  
22 declaration.

23                   MR. LADIN: Did the defendants see  
24 the declaration before it was finalized?

25                   MR. BENNETT: I don't know. I don't

1 think so.

2 BY MR. LADIN:

3 Q. Well, did you, did you speak with  
4 the defendants about your declaration?

5 A. The defendants?

6 Q. Yes.

7 A. No.

8 Q. Did you speak with their attorneys  
9 about the declaration?

10 A. No.

11 Q. How did you decide what your  
12 declaration would include?

13 A. Well, my attorneys indicated the  
14 areas that I should try to cover in the  
15 declaration and --

16 MR. BENNETT: I'm going to object  
17 beyond that.

18 MR. LADIN: And that would be on the  
19 basis of privilege?

20 MR. BENNETT: Well, I don't think  
21 you have any right to ask him why I decided  
22 to include certain things in his declaration.

23 MR. LADIN: Sure. And --

24 MR. BENNETT: And, you have been  
25 operating on the assumption that the

1 defendants participated in that. And I'm  
2 saying that he says that is not correct.

3 So, go ahead and ask your next  
4 question.

5 BY MR. LADIN:

6 Q. Sure, I'm not looking to pry. I'm  
7 purely curious about whether -- so, your  
8 declaration makes a statement about whether Gul  
9 Rahman was part of the EIT program.

10 A. Right.

11 Q. Your declaration makes no statements  
12 about the other plaintiffs in this case. Your  
13 declaration was provided as part of this case.

14 A. Right.

15 Q. What I'm trying to ask you, and  
16 perhaps you can't answer, is whether the  
17 defendants asked you to declare something about  
18 the other plaintiffs in this case?

19 A. No.

20 Q. Okay. Did you ever seek OLC  
21 guidance for a separate EIT program that was  
22 distinct from the EIT program we have been  
23 discussing?

24 A. No. I mean we discussed earlier the  
25 fact that the EIT program as the years went on

1 was changed or refined. And I sought guidance  
2 on -- well, I sought guidance throughout the  
3 course of the program for OLC.

4 But, a, you are asking about a  
5 separate, another EIT program separate and apart  
6 from that?

7 Q. Yes.

8 A. No.

9 Q. And did you ever promulgate any  
10 guidance within the CIA about the use of a  
11 separate EIT program than the ones that Mitchell  
12 and Jessen had recommended for Abu Zubaydah and  
13 were later standardized?

14 A. No recollection of doing any such  
15 thing.

16 Q. Did you ever hear about  
17 investigations of EIT use on either Salim  
18 Abdullah or Mohamed al-Karim?

19 A. You know, sitting here today, I  
20 don't remember that. But I'm not saying it, I  
21 was not told about these things at the time.

22 Q. Okay.

23 MR. SCHUELKE: I'm told that the  
24 staff has got lunch outside. Is this a good  
25 time?

1 MR. LADIN: Sure. Yes, let's break  
2 right here.

3 THE VIDEOGRAPHER: Off the record at  
4 12:12.

5 (Recess taken -- 12:12 p.m.)

6 (After recess -- 12:57 p.m.)

7 THE VIDEOGRAPHER: We are now on the  
8 record. This is the beginning of Videotape 2  
9 in the deposition of John Rizzo. The time  
10 now is 12:57 p.m.

11 BY MR. LADIN:

12 Q. Mr. Rizzo, I would like to direct  
13 your attention to document that we will mark --

14 MR. LADIN: Is this 51?

15 (Exhibit Number 51  
16 marked for identification.)

17 BY MR. LADIN:

18 Q. And this is an Inspector General  
19 report from the CIA about the death of Gul  
20 Rahman. And I'm going to ask you about  
21 Page 1287.

22 A. Okay, I'm there.

23 Q. Okay. So, do you see it says at the  
24 top of the page, "This cable written by Jessen  
25 for a different detainee requested permission to

1 apply the following moderate value target  
2 interrogation pressures as deemed appropriate by  
3 Jessen: isolation, sleep deprivation, sensory  
4 deprivation, facial slap, body slap, attention  
5 grasp, and stress positions."

6 Do you see that?

7 A. I do.

8 Q. Is it your understanding that stress  
9 positions are an enhanced interrogation  
10 technique?

11 A. I don't believe they were -- I don't  
12 believe they were listed as such.

13 Q. Maybe we can compare it to Exhibit N  
14 to your declaration, which is the interrogation  
15 guidance.

16 A. Okay.

17 Q. Do you see where it lists the  
18 enhanced techniques?

19 A. Let's see. Is that Paragraph 2? I  
20 know I've looked at them before. I just can't  
21 remember --

22 MR. BENNETT: Try not to mumble. As  
23 your thought process is, she has got -- she  
24 doesn't know what to take down and what not  
25 to take down.

1 THE WITNESS: I see, okay.

2 MR. BENNETT: Do you see what I  
3 mean?

4 THE WITNESS: Yes, I understand.

5 MR. BENNETT: Okay.

6 THE WITNESS: Yes, I see in the, on  
7 Page 1172, in the first full paragraph, a  
8 reference to stress positions as part of the  
9 enhanced interrogation technique.

10 BY MR. LADIN:

11 Q. And do you see sleep deprivation  
12 listed there?

13 A. I do.

14 Q. What about facial slap?

15 A. Yes.

16 Q. So, does this, turning back to the  
17 table that is described on Page 17 of the IG  
18 report, would that appear to be proposing the use  
19 of enhanced interrogation techniques on a medium  
20 value detainee?

21 MR. SMITH: Objection.

22 THE WITNESS: Yeah. I mean, it  
23 would, that is what it says.

24 BY MR. LADIN:

25 Q. Okay. And it is saying, "Additional

1 interrogation methods for Cobalt detainees."

2 Do you see that at the top?

3 A. Yes.

4 Q. Okay. Do you have any reason to  
5 doubt that the CIA IG report is accurate?

6 MR. SMITH: Objection.

7 THE WITNESS: Honestly, it has been  
8 a long time since I looked at this. In my  
9 experience IG reports, sometimes they are  
10 totally accurate. Other times there are  
11 things in it that are not accurate.

12 So, I just can't judge at this  
13 point.

14 BY MR. LADIN:

15 Q. Have you ever encountered an IG  
16 report that made up, say, a cable from whole  
17 cloth?

18 A. No.

19 Q. As part of your job, would you  
20 review the IG reports that were created as part  
21 of the interrogation program?

22 A. Well, sure. Yes. I'm sure I read  
23 this one when it was completed, yes.

24 Q. And if you thought at the time that  
25 it had misstatements in it, would it have been

1 part of your job to bring that to the attention  
2 of the IG?

3 A. Sure.

4 Q. Do you have any recollection of  
5 identifying misstatements in this report?

6 A. I don't.

7 Q. Okay. I would like to turn your  
8 attention to what has been previously marked as  
9 Exhibit Number 34.

10 (Whereupon, previously marked  
11 Exhibit 34, first referral.)

12 BY MR. LADIN:

13 Q. And I'm going to ask you about the  
14 second page of this cable.

15 A. Okay, I've read it.

16 Q. Okay. So, do you see at the end of  
17 Paragraph Number 3, it says, "There is no  
18 indication he suffers from any psychopathology,  
19 nor that he would be profoundly or permanently  
20 affected by continuing interrogations to include  
21 HVT enhanced measures."

22 A. That is correct.

23 Q. Do you know what HVT stands for?

24 A. I believe it is high value  
25 terrorist.

1 Q. So, this person who is being  
2 evaluated is being evaluated for techniques  
3 including HVT enhanced measures?

4 A. That is what it says, yes.

5 Q. And then the next paragraph makes  
6 the recommendation that employing enhanced  
7 measures is not the first or best option to yield  
8 positive results?

9 A. Wait a minute. Let me -- I have to  
10 read that next paragraph.

11 Okay, yes.

12 Q. Does this cable appear to set forth  
13 an assessment of whether to employ enhanced  
14 measures on the subject of the cable?

15 A. It appears to, yes.

16 Q. Now, you wrote in your declaration  
17 that Gul Rahman was not part of the high value  
18 detainee enhanced interrogation technique  
19 program.

20 A. That's correct.

21 Q. Why did you write that?

22 A. Because he was, while I remember the  
23 Gul Rahman case, he had not been approved, to the  
24 best of my recollection and knowledge, for  
25 inclusion in the enhanced interrogation program.

1 Q. And by not been approved, you mean  
2 that a cable had been sent to headquarters and  
3 had been denied? Or, what do you mean by that?

4 A. Well, I just didn't have any  
5 recollection that, certainly not details about  
6 whether a cable had been sent to headquarters or  
7 not. My recollection is simply that he was not  
8 part of the HVT -- sorry, the enhanced  
9 interrogation program.

10 Q. And, do you have a sense of why he  
11 would be evaluated for HVT techniques by an HVT  
12 interrogator if he were not part of the HVT  
13 program?

14 A. I don't, I don't know. I just don't  
15 know.

16 Q. And beyond your recollection that no  
17 enhanced interrogation techniques were approved  
18 for his use, do you have any other knowledge on  
19 which you based your statement that he was not  
20 part of the EIT program?

21 A. Well, as I said earlier, my  
22 recollection was that detainees at Cobalt were  
23 not part of the enhanced interrogation program.

24 Q. And that continues to be your  
25 understanding, in spite of the document you just

1 looked at that said that -- well, we can look at  
2 the document.

3 If you turn back --

4 A. I'm sorry. Which document?

5 Q. This was just the exhibit that we  
6 just marked. I believe it was Exhibit 51.

7 A. Oh, the IG report. Okay. Refer me  
8 to the paragraph you want me to look at again.

9 Q. Sure. So, it is Bates 1287.

10 A. Okay. You are talking about the  
11 paragraph at the top. Correct?

12 Q. Yes, which says, which talks about  
13 additional interrogation methods for Cobalt  
14 detainees.

15 A. Yes.

16 Q. And it suggests using interrogation  
17 pressures that you've identified as enhanced  
18 interrogation techniques?

19 A. Well, it says it requested  
20 permission to apply these certain EITs, yes.

21 Q. Yes. Does that change at all your  
22 recollection of whether enhanced interrogation  
23 techniques were used at Cobalt?

24 A. Not really. All this says is that  
25 Mr. -- Dr. Jessen -- I can't, honestly, I can't

1 tell from this paragraph. This is confusing to  
2 me. This cable written by Jessen for a different  
3 detainee.

4 So, I can't -- honestly I can't,  
5 just looking at it in isolation, I can't tell  
6 what this cable is talking about.

7 But, it is requesting permission,  
8 whoever it is, to do it.

9 Q. And, earlier you identified the  
10 guidance as the enhanced interrogation techniques  
11 as being sent to Cobalt.

12 Did you have an understanding of why  
13 that guidance was sent, if enhanced interrogation  
14 techniques were not authorized for use at Cobalt?

15 A. No, as I said earlier, there is a  
16 section in there, in the guidance about standard  
17 interrogation techniques. Perhaps that was why  
18 it was sent.

19 Q. All right. Let's return to the  
20 larger IG report, which --

21 MR. LADIN: Do you remember what  
22 exhibit that is? Yes, I previously marked as  
23 Exhibit 10.

24 MR. SMITH: 10?

25 THE WITNESS: This?

1 BY MR. LADIN:

2 Q. Yes.

3 A. Okay. Just one second. So, if you  
4 go to page --

5 MR. LADIN: Bless you.

6 MR. BENNETT: Thank you.

7 BY MR. LADIN:

8 Q. If you go to either Page D63 or  
9 U.S. Bates 1392. And if you look again at  
10 Paragraph 122.

11 A. All right. I see it.

12 Q. This seems to describe a change in  
13 the use of EIT at Cobalt after the promulgation  
14 of the guidance. Is that accurate?

15 A. It appears to be what it says.

16 Q. And it says that there are  
17 procedures for using EITs, and that written  
18 interrogation plans are prepared and sent to  
19 headquarters for each detainee.

20 A. That is what it says.

21 Q. Do you have a reason to believe that  
22 is not accurate?

23 A. No.

24 Q. When you look at this, does it  
25 change at all your recollection as to whether

1 enhanced interrogation techniques were used at  
2 Cobalt?

3 A. Well, no. I mean my recollection  
4 remains the same. This speaks for itself.

5 Q. Okay. But you don't have a reason  
6 to believe that this is inaccurate?

7 A. That this paragraph -- no, I don't  
8 have any reason to believe it is inaccurate.

9 Q. Okay. Do you think that there was a  
10 separate interrogation program that Gul Rahman  
11 was part of?

12 A. Separate interrogation program?

13 Q. Separate from the CIA's.

14 A. Enhanced interrogation program?

15 Q. Yes.

16 A. Well, he wasn't -- as I say, my  
17 recollection is he wasn't part of the enhanced  
18 interrogation program.

19 So, and he wasn't a CIA detainee.  
20 So, I guess he was in a separate program, yes.

21 Q. What would that program be?

22 A. What is the name of it? I mean --

23 Q. What do you understand to be the  
24 contours of the program that was not the EIT  
25 program in which Mr. Rahman was evaluated for the

1 use of enhanced measures?

2 A. Well, it was the use of measures  
3 that didn't, that were not part of the EIT menu  
4 of techniques.

5 It was, since I mentioned earlier,  
6 this so-called standard interrogation.

7 Q. Well, if we can just return to that  
8 cable we were looking at, which is U.S. Bates  
9 1057. It has been marked Exhibit 34.

10 A. Okay, I've got it.

11 Q. If you look at the end of  
12 Paragraph 3, when it says HVT enhanced measures,  
13 is your understanding that those are enhanced  
14 interrogation techniques?

15 A. That says enhanced measures.

16 Q. Do you have an understanding of what  
17 that term means?

18 A. Actually I don't. As I say, I refer  
19 to it, I've always referred to --

20 MR. BENNETT: Keep your voice up.

21 THE WITNESS: I've always referred  
22 to the program as enhanced interrogation  
23 program.

24 BY MR. LADIN:

25 Q. Okay. Do you, sitting here today,

1 do you have any understanding of HVT enhanced  
2 measures as including something different than  
3 the enhanced interrogation techniques?

4 A. Something different than the  
5 enhanced interrogation? No, I don't -- honestly  
6 that phrase means, is puzzling to me.

7 I don't know what it, honestly what  
8 it entails.

9 Q. Okay. All right. Well, let's go  
10 back to the CIA's response to the Senate report,  
11 which --

12 MR. LADIN: What is that one marked?

13 BY MR. LADIN:

14 Q. Marked as 21. This is the one that  
15 begins with, "Memorandum for."

16 A. Yes. Okay.

17 Q. And you said you had not previously  
18 read this document; is that correct?

19 A. That's correct, I have not.

20 Q. Do you have any reason to believe  
21 that the CIA's comments to the Senate were  
22 inaccurate?

23 MR. SMITH: Objection.

24 THE WITNESS: I have no reason for  
25 believing that, no.

1 BY MR. LADIN:

2 Q. In your experience, would the CIA  
3 make misrepresentations to members of Congress  
4 about this enhanced interrogation program?

5 A. No.

6 Q. Okay. If you turn to Page 25. Do  
7 you see there the --

8 MR. SMITH: Give us a second.

9 THE WITNESS: Hold it.

10 BY MR. LADIN:

11 Q. Sure. This is the Page 25 that  
12 begins, "CIA remains grateful."

13 A. All right, I have it.

14 Q. Okay. Do you see the second bullet  
15 point?

16 A. I do.

17 Q. It says, "We agree that CIA should  
18 have done more from the beginning of the program  
19 to ensure there was no conflict of interest, real  
20 or potential, with regard to the contractor  
21 psychologists who designed and executed those  
22 techniques while also playing a role in  
23 evaluating their effectiveness as well as other  
24 closely related tasks."

25 Did you have an understanding that

1 the contractor psychologists who designed and  
2 executed the techniques played a role in  
3 evaluating the techniques' effectiveness?

4 A. I believe I had that impression,  
5 yes.

6 Q. And did that suggest to you the  
7 existence of a conflict of interest?

8 A. No, it did not.

9 Q. Do you disagree with the CIA's  
10 conclusion that there should have been more done  
11 to prevent a conflict of interest from arising  
12 with regard to the contractor psychologists?

13 A. Do I believe that now, or at the  
14 time?

15 Q. Yes, do you disagree with the CIA's  
16 statement here?

17 A. No. No.

18 Q. So, you would agree that the CIA  
19 should have done more to ensure there was no  
20 conflict of interest when the contractor  
21 psychologists evaluated their own techniques?

22 A. Yes, I think that is a fair, a fair  
23 suggestion.

24 Q. If you look back at the IG report.

25 A. This is a big one?

1 Q. Actually, sorry. Never mind, we  
2 don't really need to do that.

3 Let's go back to the office, or  
4 professional responsibility report instead.

5 A. Okay.

6 Q. I'm going to ask you about a  
7 statement on Page 100.

8 A. Okay.

9 Q. So, it says there that you had an  
10 MFR of a March 24, 2003, meeting?

11 MR. SMITH: What exhibit is before  
12 the witness?

13 MR. FREY: This is 239.

14 MR. SMITH: What page?

15 THE WITNESS: What page is this?

16 MR. LADIN: Page 100.

17 THE WITNESS: I don't see that.

18 BY MR. LADIN:

19 Q. Sorry. It might begin on the  
20 previous page. I'm finding it myself. Sorry,  
21 I've pointed you to the wrong page.

22 Did you ever voice any concerns  
23 about representations that the United States  
24 government had made that all detainees held by  
25 the United States were to be treated humanely?

1           A.       I'm sorry.  Could you rephrase?  Are  
2 you, am I supposed to be looking at a document  
3 here, or --

4           Q.       Well, first, just as to your own  
5 recollection.

6                    Do you ever recall there being a  
7 concern about a statement made by the United  
8 States -- and I see what the issue is here.

9                    The issue is that this is not the  
10 most recent version of the OPR, so this still  
11 contains classification markings, so it is not  
12 going to be in this OPR.

13                   But, to turn to the question, was  
14 there ever a time when the administration made a  
15 public statement that all detainees held by the  
16 U.S. government were being treated humanely, and  
17 a meeting was held to discuss whether that  
18 representation was accurate as to detainees being  
19 held by the CIA?

20           A.       Yes, yes, I generally remember that  
21 episode, yes.

22           Q.       Do you remember what happened?

23                    MR. SMITH:  Objection.

24                    THE WITNESS:  I remember there was  
25 a, the issue was, I believe, a statement the

1 White House was putting out as part of  
2 National Day of -- I mean it was some  
3 ceremonial announcement.

4 And it contained a statement that  
5 the United States treated detainees humanely  
6 or should treat, believed in humane treatment  
7 of detainees. Something like that.

8 And there was an issue, if my memory  
9 is correct, Scott Moller was the General  
10 Counsel at that time. And he and the General  
11 Counsel of the Department of Defense and the  
12 White House Counsel engaged in a discussion  
13 about whether that statement was accurate.

14 BY MR. LADIN:

15 Q. And do you remember what the  
16 conclusion was?

17 A. I believe the statement was allowed  
18 to stand. Although, honestly, I wasn't, as I say  
19 it was more the General Counsel than I who was  
20 involved in that episode.

21 So, I'm just giving you the extent  
22 of my recollection of it.

23 Q. Do you remember the statement having  
24 to be clarified so that it referred only to  
25 Department of Defense detainees?

1 A. I don't remember that.

2 Q. Okay.

3 A. I don't remember that.

4 Q. Well, let's look at a letter written  
5 by John Bellinger, so this would be Exhibit 52.

6 (Exhibit Number 52  
7 marked for identification.)

8 BY MR. LADIN:

9 Q. And the question I'm going to ask  
10 you about is on Page 3.

11 A. Okay, I'm at 3.

12 Q. And so here John Bellinger writes  
13 that "Nudity combined with shackling a person in  
14 order to prevent sleep would be viewed as  
15 inconsistent with Paragraph 1C of Common  
16 Article 3." And specifically that his  
17 understanding is that "A reasonable person, as  
18 well as world opinion, would consider such acts  
19 to constitute humiliation and degradation of a  
20 level to be considered an outrage upon personal  
21 dignity."

22 A. Yes, I see that.

23 Q. Sitting here today, do you think a  
24 reasonable person would agree that shackling a  
25 prisoner to the ceiling while they are naked or

1 in a diaper is humiliating?

2 MR. SMITH: Objection.

3 MR. BENNETT: I'm going to object in  
4 that.

5 THE WITNESS: Do I answer or no?

6 MR. BENNETT: Yes.

7 THE WITNESS: Yes, I think it can be  
8 humiliating.

9 BY MR. LADIN:

10 Q. Do you think it could be considered  
11 degrading?

12 MR. SMITH: Objection.

13 THE WITNESS: I think humiliating  
14 is, again, is a definitional term. I don't  
15 know about degrading.

16 BY MR. LADIN:

17 Q. So, you don't think it would be  
18 degrading treatment to have someone shackled to  
19 the ceiling in a diaper?

20 A. I don't know. If you, if I were  
21 just to say offhand, I would say it was  
22 humiliating. That would be the term I would use  
23 to best describe it.

24 Q. Are you aware that the U.S. courts  
25 have found solitary confinement in dark cells

1 with no opportunity for cleanliness to be  
2 degrading?

3 MR. BENNETT: Objection. Go ahead,  
4 if you know.

5 THE WITNESS: I don't know, I don't  
6 know that.

7 BY MR. LADIN:

8 Q. Would it make a difference to you if  
9 you did know that?

10 MR. SMITH: Objection.

11 MR. BENNETT: Objection, don't  
12 answer that.

13 THE WITNESS: No, okay.

14 MR. BENNETT: Well, how can you  
15 answer that?

16 MR. LADIN: Well, I don't know. I  
17 would like to --

18 MR. BENNETT: Repeat the question.

19 BY MR. LADIN:

20 Q. Would it make a difference to you if  
21 you knew -- let me perhaps, let me rephrase it  
22 better?

23 MR. BENNETT: Okay.

24 BY MR. LADIN:

25 Q. Would it make a difference to you in

1 your assessment of whether this was degrading  
2 whether U.S. courts had found the keeping of  
3 prisoners in dark cells in solitary with no  
4 opportunity to clean themselves to be degrading?

5 MR. SMITH: Objection.

6 MR. BENNETT: Objection. Go ahead,  
7 if you can.

8 THE WITNESS: Yes, that would. I  
9 mean that would have an impact if the courts  
10 had held that, sure.

11 BY MR. LADIN:

12 Q. Okay. Now, the way the program was  
13 presented to you, EITs would only be used so long  
14 as the detainee was using resistance techniques;  
15 is that correct?

16 A. That's correct.

17 Q. And that is the information that you  
18 relayed to OLC?

19 A. I believe it was, yes.

20 Q. And, the premise was that the EITs  
21 would stop once the detainee became compliant?

22 A. Correct.

23 Q. And so the detainee could make the  
24 EITs stop at any time by complying?

25 A. Correct.

1 Q. Okay. Turning back to the CIA  
2 Inspector General's report. I'm going to ask you  
3 about --

4 A. This is the big one, the special  
5 review?

6 Q. That's correct. And that is  
7 Exhibit 10.

8 A. All right.

9 Q. And I'm going to ask you about Bates  
10 1422, which is Paragraph 206.

11 A. I am sorry. Could you give me the D  
12 number? That is easy for me to find that.

13 Q. Sure. But that might take me just a  
14 moment.

15 MR. SMITH: 226?

16 BY MR. LADIN:

17 Q. 1422.

18 A. Oh, I see.

19 Q. Yes, so, Paragraph D93. Thank you.

20 A. Okay, D93.

21 Q. Okay. So, at Paragraph 206, do you  
22 see it says, "When a detainee did not respond to  
23 a question posed to him, the assumption at  
24 headquarters was that the detainee was holding  
25 back and knew more. Consequently headquarters

1 recommended resumption of EITs."

2 A. I see that, yes.

3 Q. Have you ever heard of that concern?

4 A. I may have. I don't have any  
5 present recollection of hearing it.

6 Q. Okay. Let's take Abu Zubaydah's  
7 interrogation as an example. Can you get  
8 Bates 21 -- I'm sorry. It is at 21. It is  
9 Bates 2340.

10 A. Still in the IG report?

11 Q. No, sorry. I'm about to hand you a  
12 document.

13 MR. LADIN: So, let's, please mark  
14 this one.

15 (Exhibit Number 53  
16 marked for identification.)

17 BY MR. LADIN:

18 Q. And I'm going to ask you about  
19 Paragraph 4 on the second page of the cable.

20 A. Okay. Give me a second.

21 Yes, I see it.

22 Q. Okay. So it says that "At this  
23 stage it is unlikely -- highly unlikely according  
24 to the interrogation team that the subject has  
25 actionable --"

1 MR. SMITH: Paragraph 4.

2 MR. LADIN: Paragraph 4, yes.

3 BY MR. LADIN:

4 Q. "That the subject has actionable new  
5 information about current threats."

6 Do you see that?

7 A. Yes.

8 Q. And if you turn to the first page,  
9 you see a date of August 10th; is that right?

10 A. That's correct.

11 Q. Okay. If we turn to your book  
12 excerpts, which is, is that Exhibit 47?

13 MR. BENNETT: I'm sorry, where is  
14 the date August 10th?

15 MR. LADIN: At the top. Sorry.

16 THE WITNESS: In the middle there.

17 MR. BENNETT: Doesn't that say  
18 August 2nd.

19 MR. LADIN: No, that is August '02,  
20 2002.

21 THE WITNESS: Okay.

22 BY MR. LADIN:

23 Q. So, turning to your book excerpt,  
24 you wrote, on Page 193 --

25 A. Wait a minute. Is that part of the

1 book excerpts you handed me earlier?

2 MR. LADIN: Uh-huh.

3 BY MR. LADIN:

4 Q. I think one of your attorneys  
5 actually has the book, itself.

6 A. I'm sorry, I can't get used to these  
7 double sides. Okay, go ahead.

8 Q. So you wrote that, "Just days after  
9 the EIT's began, they ended. They ended as soon  
10 as Zubaydah's resistance ended. He had reached  
11 the stage of what our outside consultants called  
12 learned helplessness."

13 Do you see that?

14 A. On 192. Let's see.

15 Q. I think it is 193, actually.

16 MR. SMITH: Which paragraph?

17 BY MR. LADIN:

18 Q. Let's get there.

19 A. Yes, I see where that is now.

20 Q. Now, when you say "He had reached  
21 the stage are what our outside consultants called  
22 learned helplessness," the outside consultants  
23 are Drs. Mitchell and Jessen?

24 A. That's right.

25 Q. What did you understand the term

1 learned helplessness to me?

2 A. Well I'm a layman. My understanding  
3 is that the notion that the detainee would  
4 recognize that further resistance would be  
5 futile.

6 Q. And so, therefore, he wouldn't be  
7 holding anything back?

8 A. Yes, correct.

9 Q. Okay. So, we just looked at a cable  
10 on Day 6, in which the team had assessed that  
11 Abdullah Zubaydah was not holding back actionable  
12 new information about current threats to the  
13 United States. That is at Paragraph 4.

14 A. Right.

15 Q. But it says that, "The team plans to  
16 maintain the current level of pressures to  
17 develop and refine this preliminary assessment."

18 Do you see that?

19 A. I see that, yes.

20 Q. I would like you to look at another  
21 document.

22 MR. LADIN: So, let's mark this.

23 (Exhibit Number 54

24 marked for identification.)

25 BY MR. LADIN:

1 Q. If you turn to the second page.

2 A. Okay.

3 Q. It says, "Subject has continued to  
4 say he knows of no threats to the United States  
5 other than those he has already mentioned."

6 And then it says, "In short" -- that  
7 is at the very top.

8 And then right before Paragraph C,  
9 it says, "In short, however, no significant new  
10 details emerged from sessions, especially in  
11 regards to new threat information."

12 A. I see that.

13 Q. And you see that this is now Day 11  
14 of the aggressive interrogation phase -- sorry,  
15 that is still on the page you were on before.

16 A. Right. I wanted to look at the date  
17 of the cable, that is all. August 14th. Yes.

18 Q. And so this is now five days past  
19 the previous assessment, that he wasn't holding  
20 back information.

21 It says, "He seemed to display" --  
22 if you look at Paragraph 3, above the redaction.  
23 It says, "He seemed to display a desperate  
24 resignation at his inability to convince the  
25 interrogators that he was not holding back

1 information."

2 Do you see that?

3 A. Uh-huh.

4 Q. And do you see at the bottom, it  
5 says, "When the interrogators told him that his  
6 protest of ignorance regarding additional  
7 information about threats against the U.S. would  
8 not stop them from using the water board, subject  
9 eyes teared, his breathing increased, and he  
10 appeared desperate."

11 Do you see that?

12 A. Yes, I see that.

13 Q. Were you made aware during the  
14 process of Abu Zubaydah's interrogation that  
15 several days after he had been assessed as  
16 compliant he was still being subjected to  
17 advanced interrogation techniques?

18 A. I don't remember being told that,  
19 no.

20 MR. LADIN: Please mark this as  
21 Exhibit 55.

22 (Exhibit Number 55  
23 marked for identification.)

24 BY MR. LADIN:

25 Q. You can see that this cable is dated

1 August 19th --

2 A. Right.

3 Q. -- which is Day 16 of the aggressive  
4 interrogation phase. Now ten days past the, that  
5 first cable you looked at in which he was  
6 assessed to be compliant.

7 If you look at the comment, it says,  
8 "Subject stated he had no new or additional  
9 information to provide at which time the  
10 interrogation team" --

11 A. I'm sorry.

12 Q. Sorry.

13 A. Can you direct me to where you are  
14 reading from?

15 Q. Sure. It is the comment in the  
16 middle of the page.

17 A. "Subject was prepared for  
18 application of the waterboard." That one? Okay.

19 Q. Yes.

20 A. Okay, go ahead.

21 Q. And it says that, "He had no new or  
22 additional information to provide at which time  
23 the interrogation team brought in the waterboard.

24 "Said he was repeatedly pressed and  
25 instructed that revealing the requested

1 information would stop the procedure."

2 Do you see that?

3 A. Yes.

4 Q. "He again stated he had no  
5 information in addition to that which he had  
6 already been provided. And he alternatively  
7 begged and cried that the procedure be stopped."

8 Then it says, "He was strapped on to  
9 the board and once again given the opportunity to  
10 be responsive. After which he was waterboarded  
11 until, until he spasmed."

12 Then it says that, "The  
13 interrogation team grilled the subject on the  
14 issue of operations and identities," and that --

15 A. I'm sorry. I can't keep up with  
16 you.

17 Q. Sure.

18 A. Is it the same paragraph?

19 Q. Same paragraph.

20 A. Okay.

21 Q. It says that, "He continued to cry  
22 and claim ignorance of any additional  
23 information." And that, "This continued until he  
24 was distressed to the level that he was unable to  
25 effectively communicate."

1           A.     Right, I see that.

2           Q.     Did you know at the time that  
3 waterboarding was continuing ten days after Abu  
4 Zubaydah had been assessed as compliant?

5           A.     I don't recall being aware of how  
6 many specific days he had been waterboarded.

7                     My recollection was what I described  
8 in the book. My recollection was that the  
9 waterboarding lasted for about a week.

10          Q.     Yes. And this appears to indicate  
11 that he was still being waterboarded on Day 16;  
12 is that right?

13          A.     That is what it appears to say, yes.

14          Q.     And it says that he was instructed  
15 that revealing the requested information would  
16 stop the procedure?

17          A.     That is what it says.

18          Q.     That he begged and cried, but was  
19 not able to produce that information.

20          A.     That is what it says, yes.

21          Q.     And so he was waterboarded again?

22          A.     Yes.

23          Q.     Now, if we go back to the IG report,  
24 back to that page, which is Bates 1423. And that  
25 is D 94.

1           A.     Right, I got it.

2           Q.     And it says here on Paragraph 209,  
3     that, "The shortage of accurate and verifiable  
4     information available to the field to assess a  
5     detainee's compliance is evidenced in the final  
6     waterboard session of Abu Zubaydah.

7                     "According to Senior CTC officer,  
8     the interrogation team considered Abdullah  
9     Zubaydah to be compliant and wanted to terminate  
10    the EITs." But it looks like the CTC and  
11    headquarters believed that he continued to  
12    withhold information.

13                    MR. SMITH:  Objection.  That's not  
14    what it says.

15                    MR. LADIN:  Sorry.

16    BY MR. LADIN:

17           Q.     If you turn the page it says, "CTC  
18    believed that Abu Zubaydah continued to withhold  
19    information."

20                     And then if you turn the page, it  
21    says that, "This generated substantial pressure  
22    from headquarters to continue the use of EITs."

23           A.     Yes, I see that.

24           Q.     Were you aware that the  
25    interrogation team on the ground had repeatedly

1 recommended that the subject was compliant?

2 A. I don't remember that specifically.  
3 I remember there were occasions that the field  
4 and headquarters had disagreements about  
5 continuation of EITs on a given detainee.

6 But, I don't remember this specific  
7 case.

8 Q. Would it be accurate to say that Abu  
9 Zubaydah could have terminated the use of EITs at  
10 any time by complying?

11 A. Well, that was -- yeah, that was,  
12 that was the understanding. That was my  
13 understanding.

14 Q. And looking at these cables and at  
15 the IG report, do you believe that understanding  
16 to be correct?

17 A. I can't -- I'm just, you know, I'm  
18 just reading this. It has been a long time.

19 I really, am not -- I can't, I can't  
20 make a judgment on that.

21 Q. Well, let's, I mean let's look at  
22 Paragraph 209 again.

23 It says, "The shortage of accurate  
24 and verifiable information available to assess a  
25 detainee's compliance is evidenced in the final

1 waterboard session."

2 Do you see that?

3 A. Yes, I see that.

4 Q. Do you understand that to mean that  
5 his waterboarding was caused by a lack of ability  
6 to properly assess his compliance?

7 A. Let's see. I'm sorry. I didn't  
8 follow that. Could you just rephrase it just,  
9 I'm trying to read it here, okay. All right.

10 Okay, I'm sorry. Could you ask the  
11 question again?

12 Q. Sure. Is it your understanding  
13 reading this that Abu Zubaydah was capable of  
14 terminating the employance of EITs on him by  
15 complying?

16 MR. BENNETT: Well, I object because  
17 all you are asking him is to read things in  
18 the report.

19 MR. LADIN: Well, this is a report  
20 that Mr. Rizzo, part of the production of,  
21 this was part of his job to read this report  
22 and respond to the questions of the IG.

23 MR. BENNETT: But the report is the  
24 report, and it speaks for itself, so --

25 MR. LADIN: Well, I'm trying to

1 understand an aspect of the authorization  
2 here and I'm hoping --

3 MR. BENNETT: Okay, but I'm just --

4 MR. LADIN: I appreciate that.

5 MR. BENNETT: He is not confirming  
6 things. He is just saying he is just  
7 confirming these are the words that are in  
8 the report.

9 THE WITNESS: That is correct.

10 MR. BENNETT: Go ahead.

11 THE WITNESS: That is what it says  
12 here.

13 MR. BENNETT: Go ahead, over my  
14 objection, but go ahead.

15 BY MR. LADIN:

16 Q. Let's go to the legal guidance that  
17 was given from OLC. Tab 11.

18 MR. LADIN: Let's mark this exhibit,  
19 please.

20 (Exhibit Number 56  
21 marked for identification.)

22 BY MR. LADIN:

23 Q. Okay. Have you seen this document  
24 before?

25 A. I have.

1 Q. Okay. I'm going to ask you about a  
2 paragraph on Bates 319.

3 MR. SMITH: Have you marked the  
4 document as an exhibit?

5 MR. LADIN: Sure, I think it is  
6 marked.

7 THE WITNESS: 56?  
8 319?

9 BY MR. LADIN:

10 Q. Yes.

11 A. Okay, I have it.

12 Q. And do you see the last paragraph  
13 there?

14 MR. SMITH: I'm sorry. What page,  
15 please?

16 MR. LADIN: Sure, it is Bates 319,  
17 also marked as 262 on this document.

18 MR. SMITH: Is it U.S. 319?

19 MR. LADIN: Yes.

20 THE WITNESS: All right, okay.

21 BY MR. LADIN:

22 Q. So, this is a document from OLC to  
23 you; is that correct?

24 A. Correct.

25 Q. And this is based on the information

1 that CIA provided OLC on the use of the  
2 techniques?

3 A. Yes.

4 Q. And turning back to the CIA IG  
5 report.

6 A. Okay. What page?

7 Q. It is Bates 1443 to 1444.  
8 Paragraph 264.

9 A. 1443.

10 Q. To 1444. Do you see Paragraph 264  
11 at the bottom?

12 A. Are you talking about 44 or 43?

13 Q. At the bottom of 43.

14 A. The paragraph that begins, "Agency  
15 officers report"?

16 Q. Yep.

17 A. Okay. Right. I see that.

18 Q. Do you see that it says, "Some  
19 participants judged that CTC assessments, the  
20 effect that detainees are withholding information  
21 are not always supported by an objective  
22 evaluation of available information but are too  
23 heavily based on presumptions of what the  
24 individual might or should know"?

25 A. Yes, I see that.

1 Q. Does that seem to you consistent  
2 with the OLC guidance we were just looking at  
3 which says that CIA asked for already known  
4 information to gauge whether the detainee has  
5 reached the point at which he is no longer  
6 required to resist?

7 MR. SMITH: Objection.

8 THE WITNESS: Well, the paragraph of  
9 the OLC letter, memo you referred to is the  
10 policy as I recollect it.

11 The statement in the IG report from  
12 three years earlier that predated the OLC  
13 memo. So, I can't, actually I can't judge  
14 the relevance of the two.

15 BY MR. LADIN:

16 Q. Sure. I'm not asking you to judge  
17 the relevance. I'm just saying as a factual  
18 matter.

19 Leaving aside the difference in the  
20 timeline --

21 A. Yes, yes.

22 Q. -- the 2003 report is different than  
23 how the process is described in this 2007 OLC  
24 guidance, isn't it?

25 A. Well, according to -- well, some

1 agency officers reported that, yes.

2 Q. So, these agency officers would be  
3 the people on the ground using the techniques?

4 A. I have no idea who they are. They  
5 didn't --

6 Q. Well it says, doesn't it? It says  
7 that some participants in the program,  
8 particularly field interrogators. Field  
9 interrogators would be the people using the  
10 techniques, wouldn't they?

11 A. Yes.

12 Q. That is in --

13 A. That's correct.

14 Q. And so is what those field operators  
15 report inconsistent with the information that the  
16 OLC was describing here in the 2007 document?

17 A. It appears to be inconsistent, yes.  
18 It is their assertions.

19 Q. So, at least as far as those field  
20 interrogators were concerned, in that earlier  
21 2003 time period, detainees couldn't always avoid  
22 the use of EITs by complying, could they?

23 MR. SMITH: Objection.

24 THE WITNESS: Well, unless some  
25 participants in the program particularly

1 field interrogators apparently believed.

2 BY MR. LADIN:

3 Q. And do you know if the program  
4 changed as a result of the concerns that were  
5 written down in the IG report?

6 A. Well, I do recall the IG report,  
7 there were a number of recommendations that were  
8 acted upon. This was the first significant  
9 review of the interrogation program.

10 So, as a result of this report,  
11 there were changes made. I can't sit here today  
12 and tell you specifically whether this was one of  
13 them.

14 But, there were changes made. This  
15 report was taken very seriously by the agency.

16 Q. And you didn't yourself observe  
17 interrogations, right?

18 A. I never did, no.

19 Q. And OLC, did they observe  
20 interrogations?

21 A. I don't believe so. I don't believe  
22 so. Because they would have had to -- no. Not  
23 to my recollection.

24 Q. And as far as you were concerned,  
25 you were relying on what people in the field and

1 people in CTC were telling you about the program;  
2 is that right?

3 A. That's correct.

4 Q. And you relied on them to implement  
5 faithfully the legal guidance that you were  
6 sending?

7 A. Yes.

8 MR. LADIN: Let's see is this is in  
9 the version of the OPR that we have. It is  
10 not.

11 BY MR. LADIN:

12 Q. Did you ever hear a concern that the  
13 waterboard was overused on some detainees?

14 A. I probably, I probably did.

15 MR. BENNETT: Just don't guess.

16 Yes, no, full answer, but do you remember?

17 THE WITNESS: Repeat the question,  
18 I'm sorry.

19 BY MR. LADIN:

20 Q. Did you ever hear a concern that the  
21 waterboard was overused on some detainees?

22 A. Yes, I heard that.

23 Q. Do you remember the details of what  
24 you heard?

25 A. No. No. I can't remember which

1 detainees were being talked about.

2 Q. Well, staying with the IG report.  
3 If you look at Bates number 1360.

4 A. Okay, I'm on 1360.

5 Q. Do you see the Footnote Number 26?

6 A. I do.

7 Q. Now it says, "Consequently,  
8 according to OMS, there was no a priori reason to  
9 believe that applying the waterboard with the  
10 frequency and intensity with which it was used  
11 with the psychologists and interrogators was  
12 either efficacious or medically safe."

13 Do you see that?

14 A. I do.

15 Q. Do you remember that concern being  
16 communicated to you?

17 A. Well, I remember reading about it in  
18 the IG report.

19 Q. And did that lead to any changes in  
20 the program that you remember?

21 A. I believe so. Again, this report  
22 led to a number of changes. I can't remember  
23 specifically whether this particular concern was  
24 subsequently addressed or not.

25 I just remember there was, OMS took

1 this position.

2 Q. It also says that they were not  
3 consulted in the initial analysis of the risks  
4 and benefits of EITs.

5 And that they believed that the  
6 reported sophistication of the preliminary IT  
7 review was exaggerated to OLC. Do you see that?

8 A. Yes.

9 Q. Do you agree with that criticism?

10 A. I have no way of knowing. I didn't  
11 myself communicate with OMS at the beginning of  
12 the program.

13 As I told you, my discussions were  
14 with CTC.

15 Q. Did you ever communicate with OMS  
16 about the program?

17 A. I'm sure I must have, yes.

18 Q. Do you recall anything that OMS told  
19 you about their views on the program?

20 A. Actually what I remember is the OMS  
21 people I talked to about the program was  
22 worthwhile and professionally managed.

23 Q. Okay. Let's look at the OPR report.

24 A. Okay.

25 Q. On pages, on Page 140.

1 A. Okay, I have 140.

2 Q. Do you remember Mr. Philbin from the  
3 Office of Legal Counsel?

4 A. Pat Philbin, yes.

5 Q. Do you see here at the bottom of  
6 Page 140, there is a statement from Mr. Philbin?

7 A. Yes, I see that.

8 Q. He says that, "It had not been known  
9 in 2002 that detainees were kept in diapers,  
10 potentially for days at a time."

11 A. Yes, I see that.

12 Q. Do you remember whether CIA informed  
13 OLC that in 2002, that detainees were kept in  
14 diapers for potentially days at a time?

15 A. I can't remember. There were lots  
16 of discussions with OLC in 2002.

17 Q. Do you have any reason to doubt  
18 Mr. Philbin's account?

19 A. No, I mean, Mr. Philbin is a good  
20 attorney and an honorable man.

21 Q. So, on the next Page 141, when he  
22 says that, "All of these factors combined to  
23 create a picture of the interrogation process  
24 that was quite different than the one presented  
25 in 2002."

1                   Would you agree that that is an  
2 accurate statement?

3           A.     No, I would not agree with that  
4 statement.

5           Q.     So, what part of it do you disagree  
6 with?

7           A.     Well, there are references to the  
8 fact that Mr. Philbin says that all of these  
9 factors combined to create a picture that the  
10 interrogation process that was quite different  
11 from the one presented in 2002.

12                   I don't believe what the IG report  
13 found, its factual determinations were, I don't  
14 agree that they were, quote, quite different from  
15 the one CIA presented to OLC in 2002.

16           Q.     Well, it seems that he says  
17 specifically it had not been known that detainees  
18 were kept in diapers, potentially for days at a  
19 time.

20                   Do you contend that it was known by  
21 OLC?

22           A.     I told you, I don't know, I don't  
23 know what was told -- I can't remember everything  
24 that was told to OLC during 2002.

25           Q.     Right. And then he says that they

1 also didn't know that the sleep deprivation  
2 technique involved keeping detainees awake by  
3 shackling their hands to the ceiling.

4 A. Yes, on that one, my recollection is  
5 that we did tell OLC about the shackling.

6 Q. Okay. Do you have a specific  
7 recollection of that?

8 A. No.

9 Q. Okay. And then, "Dietary  
10 manipulation and water dosing," he says, "had not  
11 been described to OLC and were not considered in  
12 the classified Bybee memo." Is that accurate?

13 A. No, I would disagree with that.

14 The, again it is hard to locate a  
15 total accuracy, when we told something to justice  
16 in a period 15 years ago.

17 I have a firm recollection we told  
18 OLC at some point. I can't tell you when  
19 exactly, that the, that Ensure, you know, the  
20 liquid, was being provided to the detainees.

21 Q. Does it trouble you that Mr. Philbin  
22 had this reaction to the CIA's program?

23 MR. BENNETT: I'm going to object to  
24 that, but go ahead and answer, if you can.

25 THE WITNESS: No, it didn't trouble

1 me. I have a lot of respect for Mr. Philbin.  
2 So, he is certainly free to express his  
3 opinions.

4 BY MR. LADIN:

5 Q. And what about when John Bellinger  
6 said that "he viewed nudity combined with  
7 shackling a person to prevent sleep to be  
8 humiliation and degradation of a level that would  
9 be considered an outrage upon personal dignity."

10 Does that trouble you?

11 MR. BENNETT: Objection, go ahead.

12 MR. SMITH: Objection.

13 THE WITNESS: Does it trouble me  
14 that Bellinger said it?

15 BY MR. LADIN:

16 Q. Yes.

17 A. No. John was expressing his  
18 sincerely held opinions. As we discussed  
19 earlier, it also reflected the view of his  
20 superior, Secretary Rice.

21 Q. The data that you at CIA received  
22 about the safety of the SERE techniques was  
23 entirely about the use of SERE techniques on  
24 volunteers; is that correct?

25 A. Okay. We are going back now to the

1 beginning of the program, when it was first  
2 presented --

3 Q. At any point?

4 A. Well, what I remember about  
5 reference to the SERE program was mostly at the  
6 beginning, as we discussed earlier.

7 So, I'm sorry. Just repeat the  
8 question again.

9 Q. Sure. You were presented with a  
10 list of techniques.

11 A. Right.

12 Q. You were told they were based to  
13 some degree on SERE training.

14 A. Right.

15 Q. You were presented and you presented  
16 OLC with data as to the safety of those  
17 techniques in terms of SERE.

18 A. Uh-huh.

19 Q. All of that safety data, that was  
20 based on SERE training of volunteers; is that  
21 correct?

22 A. That was my understanding, yes.

23 Q. And, neither Mitchell nor Jessen nor  
24 anyone else pointed you to studies of prisoners  
25 of war; is that correct?

1 A. Not that I recall, no.

2 Q. And you didn't, yourself, review, as  
3 far as you recall, any studies of actual  
4 prisoners of war; is that correct?

5 A. I did not.

6 MR. LADIN: In fact, I believe,  
7 let's mark this as 52 -- oh, 57.

8 (Exhibit Number 57  
9 marked for identification.)

10 BY MR. LADIN:

11 Q. You were interviewed by the New York  
12 Times about the long-term effects of some people  
13 who had been subjected to enhanced interrogation  
14 techniques; is that correct?

15 A. Yes, right.

16 Q. And you told the Times that in  
17 hindsight --

18 MR. BENNETT: Where are you in the  
19 article?

20 MR. LADIN: Sure, you can review it.  
21 I will find out where I am in the article and  
22 then I will tell you.

23 I am on Page 6, but you can probably  
24 begin on Page 5.

25 Specifically, it says that, "General

1 Xenakis found decades of paper -- decades of  
2 papers on the effects of abusive practices."

3 Do you see that.

4 MR. SMITH: I don't.

5 THE WITNESS: Is it at the bottom.

6 BY MR. LADIN:

7 Q. Sure. It is on Page 5. It says,  
8 "Back home in Virginia."

9 A. General Xenakis, yes. Right. I see  
10 that.

11 Q. It says, "He found decades of papers  
12 on the issue, science that had not been  
13 considered when the government began crafting new  
14 interrogation policies after September 11th."

15 Do you see that?

16 A. I see that, yes.

17 Q. Do you remember any research into  
18 the effects of abusive practices at the time that  
19 these techniques were being considered?

20 A. Abusive --

21 Q. Abusive practices, rather than  
22 training on volunteers?

23 A. Yes. No, I don't recall that.

24 Q. And on the next page, there is a  
25 quote from you that says, "In hindsight, that

1 should have come to the floor."

2 Do you see that?

3 A. Yes.

4 Q. Do you stand by that statement?

5 A. Yes, that is what I said, in  
6 hindsight. Sure.

7 Q. And you are a lawyer, of course, not  
8 a psychologist, correct?

9 A. I am not a psychologist.

10 Q. And you were not aware of the body  
11 of social science research that existed about  
12 prisoners of war; is that correct?

13 A. I was not, no.

14 Q. And that research was not brought  
15 to your attention by either Dr. Jessen nor  
16 Dr. Mitchell; is that correct?

17 A. I don't recall, frankly, anyone  
18 bringing it to my attention.

19 Q. Okay. Later on Page 6, it says  
20 that, "There was little incentive or time to find  
21 contrary evidence."

22 A. Sorry. I thought we had left that,  
23 sorry.

24 Q. Sorry. It is the second to the last  
25 paragraph on that page.

1 A. Let's see. Yes, I see it. Right.

2 Q. And it says there was little  
3 incentive or time -- well, I will read the full  
4 sentence.

5 "With fear of another terrorist  
6 attack, there was little incentive or time to  
7 find contrary evidence. The government wanted a  
8 solution. They wanted a path to get these guys  
9 to talk."

10 A. Right.

11 Q. Do you stand by that assessment?

12 A. Well, I stand by the quote that is  
13 in quotes. I did say that.

14 With respect to the first sentence,  
15 you know, I don't recall telling the reporters  
16 that using that phrase, there was little  
17 incentive or time to find contrary evidence. I  
18 just don't remember saying those words.

19 But, the second, the second sentence  
20 is an accurate quote.

21 Q. And as to the first sentence,  
22 sitting here today, do you disagree with that?

23 A. Well, I disagree with, that there  
24 was little time to find contrary evidence. I  
25 would, I take issue with the idea of little

1 incentive.

2 Q. Okay. And what specifically do you  
3 take issue with?

4 A. Well, the word, incentive. As I  
5 say, I don't recall using that term when I was  
6 talking to the reporter.

7 Q. Okay.

8 A. It is clear, it was clear to me and  
9 I, this is what I thought I articulated to them,  
10 was that there was, there wasn't much time.

11 We didn't have the time to find  
12 contrary evidence because of the fear of a second  
13 attack, and that one of our detainees would, you  
14 know, was withholding back that information.

15 Q. Yes. So, you had an assessment that  
16 this detainee was employing resistance  
17 techniques, and that there were methods that  
18 would allow CIA to get through that resistance;  
19 is that right?

20 A. This detainee, being Abu Zubaydah.

21 Q. Abu Zubaydah, yes.

22 A. Yes.

23 Q. And there were experts who would  
24 employ those resistance techniques on Abu  
25 Zubaydah?

1           A.     Yes.

2           Q.     And would you say there was a lot of  
3 pressure to let these experts do what they said  
4 they could do?

5           A.     No. No. There was a lot, I mean  
6 there was a lot of pressure to expose, find out  
7 about a second attack on the homeland. But,  
8 there was no pressure to determine what these  
9 experts, to do what they wanted to do. I don't  
10 remember that.

11          Q.     Not what they wanted to do. But  
12 what they said they could do. They said they  
13 could figure out if he was withholding  
14 information.

15          A.     Yes, no, no, I mean, that was  
16 important to find those things out, sure.

17          Q.     Now, years later, a former POW gave  
18 his verdict on the program, and you write in your  
19 report that it affected you.

20                    On Page 242 of the excerpt.

21          A.     242. Oh, you talking about Senator  
22 McCain?

23          Q.     Yes. Well, you say you couldn't get  
24 his terse verdict to Porter, it is all torture,  
25 out of your head.

1 A. Yes.

2 Q. Why is that?

3 A. I mean a man with the background and  
4 the stature of Senator McCain, and the unique  
5 personal perspective and experience. For him, a  
6 man of that stature, and also a very powerful  
7 influential voice of the Senate to conclude, to  
8 say that that was all torture to him, that did  
9 have an impact on me, Because I knew that would  
10 be, his view would be influential.

11 Q. And part of that was because he had  
12 actually been tortured, right?

13 A. Right.

14 Q. Did you consult anyone else who had  
15 actually been tortured when you were evaluating  
16 the techniques?

17 MR. BENNETT: What, you imply that  
18 he consulted with McCain?

19 MR. LADIN: Sorry. That is a good  
20 clarification.

21 BY MR. LADIN:

22 Q. Did you consult with anyone who had  
23 been tortured when you evaluated the techniques?

24 A. No. No. This portion of the book  
25 refers to a talk that the then CIA Director,

1 Porter Goss, had with Senator McCain.

2 I was not present when Senator  
3 McCain made that remark I talk about in the book.  
4 Porter came back and told me that is what McCain  
5 said.

6 Q. And while he told you that, some  
7 version of the CIA's EIT program still existed;  
8 is that correct?

9 A. Yes.

10 Q. And after you heard that, that  
11 verdict from Senator McCain, did you then inquire  
12 with anyone who had been tortured what their  
13 views on EITs were?

14 MR. SMITH: Objection.

15 THE WITNESS: No.

16 BY MR. LADIN:

17 Q. And do you know whether anyone else  
18 in CIA reached out to people who had actually  
19 endured torture to see what they had thought  
20 about the EITs?

21 A. Not that I'm aware, no.

22 Q. Okay. As the years have passed, do  
23 you think that mistakes were made in approving  
24 the EITs?

25 A. Well, I think mistakes were made in

1 the program.

2 Q. And what are those mistakes?

3 A. I mean, there were, you know, there  
4 were well documented by now, occasional abuses of  
5 the program. People, people being subjected to  
6 techniques that were not approved. We made  
7 mistakes in terms of keeping the Congress  
8 informed.

9 We should have, in retrospect, been  
10 more open with the details of the program to many  
11 more members of Congress earlier. Things of that  
12 nature.

13 Q. I believe when you talk about  
14 abuses, you are also referring to what happened  
15 to Mr. Rahman; is that right?

16 A. Sure, yes.

17 Q. You've described isolation and  
18 freezing temperature as torture?

19 A. Isolation, no. I mean, freezing  
20 temperature, it could be. It could be considered  
21 torture.

22 MR. LADIN: Just let's have this  
23 marked as Exhibit 58.

24 (Exhibit Number 58

25 marked for identification.)

1 BY MR. LADIN:

2 Q. So, here it says that you identified  
3 freezing temperatures and long periods of  
4 isolation in complete darkness as torture. Is  
5 that, is that not a statement you stand by?

6 A. Sorry, I haven't seen this. Let me  
7 look at this.

8 Q. Sure.

9 A. Okay. So, what part of this?

10 Q. So, just that second and third  
11 paragraph.

12 A. Okay. Yes, I say in the second  
13 paragraph that exposing prisoners to freezing  
14 temperature and long periods of isolation in  
15 complete darkness were not legally sanctioned.  
16 That's correct. I would characterize them as  
17 torture.

18 Q. Do you stand by that as to long  
19 periods of isolation in darkness?

20 A. It could be considered torture.

21 Q. Would you consider it torture?

22 MR. SMITH: Objection.

23 THE WITNESS: Well, I know they  
24 weren't -- I know they were not improved  
25 interrogation techniques.

1                    Now, whether that crosses a legal  
2                    line to torture, I can't say.

3                    BY MR. LADIN:

4                    Q.            Well, what would your lay assessment  
5                    be?

6                    A.            Well, the third sentence, the third,  
7                    fourth paragraph, quotes me as saying, "So those  
8                    were clearly abuses."

9                    Q.            It does. And then it also says, "I  
10                   would characterize them as torture."

11                   A.            Yes.

12                   Q.            I just want to see whether you stand  
13                   by that.

14                   A.            I mean, yes, I could, I would live  
15                   with that, sure.

16                   Q.            Okay. Now, you are aware that the  
17                   President of the United States has said that he  
18                   believes torture works?

19                   A.            Yes.

20                   MR. BENNETT: Which president?

21                   MR. LADIN: The current one,  
22                   President Donald Trump. Are you just trying  
23                   to make me say that?

24                   MR. BENNETT: Yes, yes. That is  
25                   precisely what I was trying to do.

1 MR. LADIN: We still find that hard  
2 to say.

3 MR. BENNETT: You just got tight and  
4 you started to sweat.

5 MR. LADIN: I know.

6 THE WITNESS: Okay, can we get going  
7 here.

8 BY MR. LADIN:

9 Q. Absolutely. We are almost done.

10 MR. BENNETT: You are almost  
11 finished, right?

12 MR. LADIN: Absolutely.

13 BY MR. LADIN:

14 Q. So, President Trump has used the  
15 word torture in a positive way, hasn't he?

16 MR. BENNETT: Could you repeat the  
17 question?

18 BY MR. LADIN:

19 Q. President torture -- president  
20 torture. Sorry, we are almost done. We are  
21 almost done.

22 MR. SMITH: We've got to stop at  
23 3 o'clock. You know none of this is ever  
24 going to get into evidence. Why are we doing  
25 this? Okay.

1 MR. LADIN: We can have this  
2 conversation later.

3 MR. SMITH: Let's have it right now,  
4 so I can get some time with the witness.

5 MR. LADIN: Okay. Would you allow  
6 me to finish? I guarantee it will be  
7 quicker.

8 MR. SMITH: Well, I don't want to  
9 open my mouth, but it is quarter after 2.  
10 The witness wants to leave at 3 o'clock to go  
11 see his sick wife, and we are asking about  
12 his views about President Trump. What the  
13 hell are we doing?

14 MR. LADIN: Well, if you will allow  
15 me to finish, we will find out.

16 MR. BENNETT: All right. Let's go.

17 BY MR. LADIN:

18 Q. So, President Trump has said that he  
19 believes torture works.

20 A. I read that, yes.

21 Q. Have you ever spoken with President  
22 Trump about torture?

23 A. I have not.

24 Q. Okay. Do you think it is dangerous  
25 when the President of the United States says that

1 torture works?

2 MR. BENNETT: I object to that. And  
3 I'm going to instruct him not to answer that.

4 MR. LADIN: Based on what?

5 MR. BENNETT: He is in enough  
6 difficulty without -- what is the point of  
7 it? I mean --

8 MR. LADIN: Okay.

9 MR. BENNETT: Go ahead, if you want  
10 to answer it, if you can. I mean --

11 THE WITNESS: I'm sorry, repeat the  
12 question.

13 MR. BENNETT: Do you think it is  
14 dangerous that the President Trump --

15 MR. LADIN: Has endorsed the use of  
16 torture?

17 MR. SMITH: Objection.

18 THE WITNESS: Do I answer?

19 MR. BENNETT: Do you want to answer?

20 THE WITNESS: I wouldn't call it  
21 dangerous. I would say foolish.

22 BY MR. LADIN:

23 Q. Why is it foolish?

24 A. Well, I just, in my view, it  
25 doesn't, it doesn't, it doesn't do justice to a

1 complicated issue.

2 MR. LADIN: Okay. All right. I  
3 think, I think I am done.

4 MR. BENNETT: Your turn. You have  
5 43 minutes.

6 MR. SMITH: Who is counting?

7 MR. BENNETT: Me.

8 MR. SMITH: Okay.

9 MR. BENNETT: I don't have that  
10 authority, but I do appreciate it if you --

11 MR. SMITH: I will move quickly.

12 EXAMINATION

13 BY SMITH:

14 Q. Mr. Rizzo, good afternoon. My name  
15 is Jim Smith, and I have some questions that I  
16 want to ask you. The first thing I want to do is  
17 place before you what we are going to mark as  
18 Exhibit 45A.

19 And for the record I will identify  
20 45A as the declaration of John Rizzo. That was  
21 executed by Mr. Rizzo on January 23, 2017, but  
22 containing all of the exhibits.

23 (Exhibit Number 45A  
24 marked for identification.)

25 BY MR. SMITH:

1 Q. Do you have that document before  
2 you, sir?

3 A. I think so.

4 Q. And is that the declaration that you  
5 executed on January 23, 2017?

6 A. Yes.

7 Q. Okay. And, the exhibits that are  
8 attached, are they the exhibits that are  
9 referenced in your declaration and now attached  
10 thereto?

11 A. Yes.

12 Q. Okay. And, I think you testified  
13 previously that you, along with the assistance of  
14 your counsel, prepared this declaration?

15 A. That's correct.

16 Q. Have you ever met me before today?

17 A. No.

18 Q. Did you even know I existed before  
19 today?

20 A. No.

21 Q. Had you talked to any of the lawyers  
22 for Drs. Jessen and Mitchell before today --

23 A. No.

24 Q. -- about the particulars of the  
25 lawsuit? Or about anything for that matter?

1           A.     I never talked to you folks about  
2 anything.

3           Q.     Okay. During the lunch hour --

4           A.     I'm sorry, let me amend that. I've  
5 known Mr. Schuelke for a number of years. I have  
6 talked to him in the past, but --

7           Q.     But nothing about this lawsuit?

8           A.     Right.

9           Q.     Okay. During the lunch hour, we  
10 reached a stipulation. We, being counsel for the  
11 plaintiffs, Mr. Lustberg, on behalf of all  
12 plaintiffs counsel as I appreciate it, and  
13 myself, and we want to set the stipulation on the  
14 record.

15                         So, here it is.

16                         The parties stipulate that if the  
17 court permits this deposition transcript to be  
18 used at the trial, which is presently scheduled  
19 to proceed in June of this year, then we further  
20 stipulate that this declaration that you executed  
21 and the exhibits thereto are admissible as  
22 evidence, with the exception of Paragraphs 22,  
23 31, the last sentence of Paragraph 40, Paragraph  
24 48, Paragraph 69, Paragraph 70, Paragraph 77, and  
25 Paragraph 78.

1 MR. SMITH: Now, let me stop and ask  
2 Mr. Lustberg, did I accurately set forth the  
3 stipulation?

4 MR. LUSTBERG: Yes, you did.

5 BY MR. SMITH:

6 Q. Okay. So, let me go to the  
7 paragraphs for which we do not have a  
8 stipulation.

9 I'm going to ask you to turn to  
10 Exhibit Number 45, Paragraph 22.

11 45A has the exhibits. 45 doesn't  
12 have the exhibits. You can go to the one without  
13 the exhibits or the one with the exhibits. Pick  
14 any one that is easily before you.

15 A. Okay. And you want me to look at  
16 what?

17 Q. Page 24, Paragraph 22.

18 A. Yes, my declaration. Right, I see  
19 it.

20 Q. Do you see where it says in your  
21 declaration, "To my knowledge Drs. Mitchell and  
22 Jessen had no role in the OLC's assessment of  
23 these techniques' legality and had no contact  
24 with OLC personnel as they conducted their  
25 assessment."

1 Do you see that?

2 A. I do.

3 Q. Now, sir, is it true that Drs.  
4 Mitchell and Jessen had no role in determining  
5 the legality of the techniques?

6 A. That is true.

7 Q. Okay. And you know that they are  
8 not lawyers, right?

9 A. I know that, yes.

10 Q. And is it fair to say that when your  
11 legal counsel was sought, the people that were  
12 seeking legal counsel were Mr. Rodriguez and  
13 members from the office of the CIA?

14 A. Yes, members from the CIA, sure.  
15 CIA people.

16 Q. Okay. And then the other part of  
17 Paragraph 22 deals with contact. And is it true  
18 that Drs. Mitchell and Jessen had no contact with  
19 OLC personnel as they conducted their assessment?

20 A. To my knowledge, they did not.

21 Q. Okay. So Drs. Jessen and Mitchell  
22 weren't lobbying for the OLC to reach a  
23 particular conclusion, right?

24 A. No, no.

25 Q. Okay. Let's go to Paragraph 31.

1 That is on the next -- actually two pages later.  
2 Paragraph 31 looks to me to be almost identical  
3 to the language in Paragraph 22. Would you agree  
4 with that?

5 A. Yes.

6 Q. And I take it your testimony about  
7 the factual basis for Paragraph 31 wouldn't  
8 change if I asked you any questions about that.

9 A. That's correct, that's correct.

10 Q. So, let's go on to the last sentence  
11 of Paragraph 40, which is on the next page.

12 Now, do you remember that you were  
13 asked questions during your examination by  
14 counsel for the ACLU about possible psychological  
15 effects that result or could result from the use  
16 of EITs?

17 A. I remember that, yes.

18 Q. Okay. Now, in this Paragraph 40,  
19 you state in that last sentence, "The JPRA  
20 concluded no long-term psychological effects  
21 resulted from the use of the EITs."

22 Do you see that?

23 A. Yes.

24 Q. Tell us what the JPRA is?

25 A. It is, it is a DOD entity, and they

1 say in that paragraph, it is called the Joint  
2 Personnel Recovery Agency.

3 And, my understanding -- I was not  
4 familiar with it before 9/11, but my  
5 understanding became that they were responsible  
6 for overseeing all of the SERE programs,  
7 training, things of that nature.

8 Q. And, what was the source of your  
9 knowledge that the JPRA concluded no long-term  
10 psychological effects resulted from the use of  
11 the EITs --

12 A. My recollection is --

13 Q. -- as it appears in your  
14 declaration?

15 A. My recollection is I learned, that I  
16 got some piece of paper, I can't honestly recall  
17 whether it was the actual JPRA written  
18 conclusion, or if it was the DOD General Counsel,  
19 a man named Jim Haynes, who I dealt with  
20 regularly during these days, whether he conveyed  
21 that conclusion to me.

22 Q. And Drs. Mitchell and Jessen were  
23 not part of the JPRA, were they?

24 A. Not to my knowledge, no.

25 Q. Let me show you what we are going to

1 mark as the next exhibit in the case.

2 MR. SMITH: For the record, I will  
3 identify it as bearing U.S. government Bates  
4 label last four digits 1913 and 1914.

5 And we will mark this as Exhibit  
6 Number 59.

7 (Exhibit Number 59  
8 marked for identification.)

9 BY MR. SMITH:

10 Q. Do you have 59 before you, sir?

11 A. This is 59.

12 Q. It is the document --

13 A. Yes, I do.

14 Q. You have it in your hands?

15 A. Yes.

16 Q. Okay. I want to direct your  
17 attention. Well, let's identify it for the  
18 record first. This appears to be a cable of some  
19 sort, does it not?

20 A. It does.

21 Q. Okay. And I take it during the  
22 period of time that we are talking about here,  
23 when you were acting as Counsel for the CIA, you  
24 had occasion to see cables like this?

25 A. Yes.

1           Q.     I want to direct your attention to  
2 the third paragraph of the cable. Do you see it  
3 there?

4           A.     Yes.

5           Q.     And I want to go about five lines  
6 down, the sentence that starts with, "In an  
7 effort to help." Do you see that?

8           A.     Yes.

9           Q.     And let me read this into the  
10 record. It states, "In an effort to help HQS  
11 obtain the needed approvals so that base can  
12 begin the next phase of the interrogation  
13 process, request," and then there is a blank,  
14 "SERE, that is S-E-R-E, psychologist assistance."  
15                   Do you see that?

16          A.     Yes.

17          Q.     Okay.

18                 MR. SMITH: And, counsel, can we  
19 stipulate that to the extent that the  
20 government redacted information about who the  
21 SERE psychologists were, when it was Doctors  
22 Jessen or Mitchell, the government would type  
23 in their name. Can we agree with that?

24                 MR. LADIN: I'm not sure.

25                 MR. SMITH: Let me ask the

1 government.

2 MR. WARDEN: On the record, I don't  
3 know what this, I don't know what is  
4 underneath the redaction.

5 MR. SMITH: I'm not asking that.  
6 Here is what I'm asking him, so listen  
7 carefully. In the instances where the  
8 identity of a SERE psychologist was called  
9 out in the document, the names were redacted.

10 However, in the instances when the  
11 SERE psychologist was either Dr. Mitchell or  
12 Dr. Jessen, the government would type those  
13 names in, in the information that was  
14 produced to us in discovery.

15 Do you agree with that.

16 MR. WARDEN: Yes, if their names  
17 were as stated in the document.

18 MR. SMITH: Correct.

19 MR. WARDEN: Yes.

20 MR. SMITH: So, is it fair to assume  
21 then that the name that was redacted of the  
22 SERE psychologist was a name other than  
23 Dr. Mitchell or Dr. Jessen?

24 MR. LADIN: I'm going to object  
25 because it is not at all clear that this is

1 the name that is being redacted. It could be  
2 any other kind of identifier.

3 MR. WARDEN: If what was underneath  
4 those two redactions were either  
5 Dr. Mitchell's name, code name, or another  
6 identifier, we would have substituted it.

7 MR. SMITH: Okay.

8 MR. WARDEN: If that is not there  
9 then what is under the black is something  
10 other than those terms.

11 MR. SMITH: Okay. And I heard what  
12 you said, counsel. And I don't know what was  
13 redacted. I'm left to my own devices with  
14 these documents from the government.

15 BY MR. SMITH:

16 Q. But, do you recall looking at this  
17 document, if there were other opinions you got  
18 from other SERE psychologists as suggested by  
19 Exhibit Number 59?

20 A. Yes, I don't specifically recall  
21 this document, but not to say I didn't see it. I  
22 just don't remember at this point in time.

23 Q. So, even though you don't recall the  
24 document, what about the subject matter that I'm  
25 asking you about?

1                   Do you recall if there were SERE  
2 psychologists, other than Mitchell and Jessen,  
3 who provided opinions to the CIA relating to  
4 these enhanced interrogation techniques?

5           A.       No, to the best of my recollection  
6 the only SERE psychologists I knew that were  
7 providing advice were Drs. Mitchell and Jessen.

8           Q.       Okay. All right. Let's move on  
9 then. And to the extent that JPRA came to the  
10 conclusion that there were no long-term  
11 psychological effects resulting from the use of  
12 EITs, you don't know what the source of that  
13 agency's information was?

14          A.       No. Not specifically.

15          Q.       Okay. What about generally?

16          A.       You know, I did probably know at  
17 some point. I just can't remember now.

18          Q.       Okay. Turn, if you would, to  
19 Paragraph 48, which appears on the top of Page 9  
20 of your declaration marked as Exhibit Number 45.

21                   Tell me when you are there.

22          A.       I am there.

23          Q.       Paragraph 48 is one sentence. It  
24 states, "It is my understanding that all EITs  
25 were applied to Zubaydah consistent with the

1 August 1, 2002, Bybee memo."

2 Do you see that?

3 A. I do.

4 Q. What is the source of your  
5 information for Paragraph Number 48?

6 A. Well, a couple of things. We had  
7 sent one of our attorneys in the Office of  
8 General Counsel to review the videotapes of the  
9 interrogation of Zubaydah, many hours of  
10 videotapes. These were videotapes that were  
11 subsequently destroyed.

12 And he returned to say, as I am  
13 going through them carefully, that none of the  
14 EITs -- all of the EITs applied to Zubaydah were  
15 consistent with the Bybee memo. In other words,  
16 there were no unauthorized techniques.

17 Q. And just so we are clear, the Bybee  
18 memo was the memo that served as the legal  
19 authority to proceed with 11 of the 12  
20 techniques; is that correct?

21 A. Correct.

22 Q. Okay. And mock burials was the one  
23 that was removed?

24 A. That's correct.

25 Q. Okay. Now I want to ask you about

1 high value detainees.

2 You mentioned high value detainees  
3 in your testimony. Do you recall that?

4 A. Yes.

5 Q. And do you know, there were other  
6 types of detainees, right?

7 A. Right.

8 Q. There were medium value detainees,  
9 and low value detainees, right?

10 A. Yes.

11 Q. Did you, in your capacity as Counsel  
12 for the CIA, give advice to members in the field  
13 about low value detainees and medium value  
14 detainees?

15 A. I'm sure we did. I don't recall  
16 that I did myself, but I'm sure lawyers, my  
17 lawyers at CTC did.

18 Q. Okay. Now I want to focus in on  
19 Mitchell and Jessen.

20 Were Mitchell and Jessen involved  
21 with high value detainees?

22 A. Yes.

23 Q. Do you know if they had any role  
24 other than with respect to high value detainees?

25 A. No. My understanding was that they

1 were brought on and they were, and they were used  
2 exclusively on high value detainees.

3 Q. Okay. Now, you got this document  
4 which was previously marked in the case as  
5 Exhibit Number 17. Pull it out for a second if  
6 you would, please.

7 A. 17.

8 Q. 17.

9 A. Jim, if you could describe it, I  
10 could find it.

11 Q. It is the 12 techniques that is in  
12 the form of a cable, but it is a cut and paste of  
13 a memo that was put together by Dr. Mitchell.

14 MR. HANNER: It is Exhibit C to the  
15 declaration as well.

16 BY MR. SMITH:

17 Q. It was marked during your testimony  
18 today as Exhibit 17, so I want to be consistent.

19 A. Okay. All right.

20 Q. Do you have it there?

21 A. I've used the one as my exhibit. It  
22 starts --

23 Q. Okay.

24 A. -- unclassified for public release.

25 Q. Okay. Sometime in the summer of

1 2002, you were presented with this document, were  
2 you not?

3 A. Yes.

4 Q. And can you fix an approximate date  
5 when you were presented with this document?

6 A. I, it, you know, it is hard to tell  
7 with the redactions whether I was presented with  
8 it.

9 Q. Just give me your best estimate.

10 A. I was probably presented with it  
11 either right prior or right after August 1st. I  
12 see there is a reference to a July 8, 2002,  
13 meeting. So, it was some time after that.

14 But it was close. It was around, it  
15 was near, very near, I suspect, the time of the  
16 Bybee memo.

17 Q. So, Mr. Rizzo, Mr. Bennett is  
18 counting my minutes, and I see that he has  
19 signaled to me that I have 27 minutes left.

20 A. If you need to go over a little  
21 bit --

22 Q. You don't want to make that  
23 concession.

24 MR. BENNETT: You say that to a  
25 lawyer, you are out of your mind.

1 BY MR. SMITH:

2 Q. Mr. Rizzo, stay with me on this.

3 A. Okay.

4 Q. You were presented this memo in  
5 connection with Abu Zubaydah, correct?

6 A. Yes.

7 Q. And Abu Zubaydah was -- what was his  
8 category of detainee?

9 A. He was a high value detainee.

10 Q. And these, these 12 techniques were  
11 related to what kind of detainees?

12 A. High value detainees.

13 Q. And initially when you first looked  
14 at them and you were asked to opine on the  
15 legality of them, it was solely for Abu Zubaydah;  
16 isn't that right?

17 A. That's correct.

18 Q. And then I think you testified that  
19 you went to the Justice Department because you  
20 wanted to get an opinion from the Justice  
21 Department to protect people within the CIA about  
22 the legality, right?

23 A. Yes, yes.

24 Q. And you ultimately got that Bybee  
25 memo, right?

1           A.     I did.

2           Q.     And then thereafter, the, these  
3 techniques were expanded to be used on other high  
4 value detainees; is that correct?

5           A.     Correct.

6           Q.     During the period of time that you  
7 were at the CIA and acting as counsel, were these  
8 techniques that are set forth in Exhibit  
9 Number 17, ever expanded to be used on any  
10 detainees other than high value detainees?

11          A.     No.

12          Q.     Okay.

13          A.     I should note that Number 12 was a  
14 mock burial. That --

15          Q.     Right. And that was eliminated.  
16 And I think that was on the record.

17                   And I want to go to, I want to go to  
18 Exhibit Number 38.

19          A.     Okay.

20          Q.     And I want to talk about process.

21          Okay.

22                   MR. BENNETT: What is 38?

23                   MR. SMITH: 38 is, lays out the road  
24 map for, if we are going to use enhanced  
25 interrogation techniques and other standard

1 techniques, this is what the CIA wants  
2 everybody to do after.

3 BY MR. SMITH:

4 Q. Do you have that exhibit before you?

5 A. I'm looking. Is this the  
6 January '03?

7 MR. HANNER: Yes, it is Exhibit N to  
8 your declaration.

9 MR. BENNETT: N.

10 THE WITNESS: Okay, I have that.

11 BY MR. SMITH:

12 Q. And you are familiar with this  
13 document.

14 A. Yes.

15 Q. And the reason you are familiar with  
16 it in your capacity as Counsel for the CIA during  
17 the time in question?

18 A. Yes.

19 Q. Mr. Rizzo, I want to just make a  
20 couple of points here. First I want to talk  
21 about is architect. You, I think in your book  
22 said you are the legal architect of the enhanced  
23 interrogation program?

24 A. I think, yes, I think that is --  
25 yes.

1 Q. Can you tell me what you meant by  
2 that?

3 A. Well, I was the, yeah, I was the,  
4 certainly the primary lawyer at CIA in the  
5 position of leadership, frankly, the only lawyer  
6 who was involved in the program from its  
7 inception to its conclusion, seven years later.

8 Q. So, let me ask you.

9 When you went to the Justice  
10 Department to get their view on the legality of  
11 these enhanced interrogation techniques, if they  
12 would have said no, they are illegal, what would  
13 you have done?

14 A. I would have said thank you very  
15 much, and that would have been the end of that.  
16 We wouldn't be sitting here.

17 Q. Who was the architect then, them or  
18 you?

19 A. Well, I think I referred to myself  
20 as the CIA's legal architect.

21 Obviously the Justice Department is  
22 the ultimate legal arbiter.

23 Q. Okay. Now I want to talk about your  
24 understanding of process.

25 By January of 2003, obviously there

1 were procedures that were now in writing as  
2 embodiments in Exhibit 38; is that right?

3 A. Correct.

4 Q. Were these procedures actually being  
5 followed prior to the preparation of Exhibit  
6 Number 38?

7 A. Yes.

8 Q. Okay.

9 A. Yes.

10 Q. But someone made the decision to  
11 memorialize them in a document?

12 A. Yes, that's correct.

13 Q. Who made that decision?

14 A. I believe actually it was made by  
15 January 2003, we did have a new General Counsel,  
16 Mr. Moller.

17 Q. Okay.

18 A. I believe, to give him credit, he  
19 was the one, he had arrived shortly before that  
20 in November. He said we should get all of this,  
21 get the existing procedures down in writing.

22 Q. I see. So, it wasn't Dr. Mitchell  
23 who made this decision?

24 A. No.

25 Q. I see. So, let's go to the second

1 page of Exhibit Number 38.

2 Do you see where it talks about  
3 permissible interrogation techniques?

4 A. Right.

5 Q. And it says, "Unless otherwise  
6 approved by headquarters, CIA officer and other  
7 personnel acting on behalf of CIA may use only  
8 permissible interrogation techniques."

9 Do you see that?

10 A. Yes.

11 Q. Was Dr. Mitchell part of this  
12 approval process?

13 A. The approval process for the --

14 Q. Where it says, unless otherwise  
15 approved by headquarters, CIA officers, or other  
16 personnel acting on behalf of the CIA -- well  
17 actually I misread that. Let me start again.

18 "Unless otherwise approved by  
19 headquarters, CIA officers and other personnel  
20 acting on behalf of the CIA may use only  
21 permissible interrogation techniques."

22 Do you see that?

23 A. I do.

24 Q. So, headquarters had to approve the  
25 techniques, right?

1 A. That's correct.

2 Q. Okay. Dr. Mitchell didn't approve  
3 the techniques, right?

4 A. No.

5 Q. Dr. Jessen didn't approve the  
6 techniques, right?

7 A. No.

8 Q. Okay. And then if you read on, it  
9 says what the permissible techniques are. Do you  
10 see that?

11 A. I see that.

12 Q. Now, who decided what the standard  
13 techniques were that were permissible within the  
14 meaning of this memo?

15 A. Well, CTC did.

16 Q. Headquarters did, right?

17 A. Headquarters, CTC.

18 Q. Correct. Not Dr. Mitchell, right?

19 A. No, CTC.

20 Q. Right. When you say CTC, you mean  
21 that people that were responsible for running the  
22 day-to-day affairs of the Counter Terrorism  
23 Center, right?

24 A. Staff officers in the Counter  
25 Terrorism Center.

1 Q. And so the record is crystal clear,  
2 not Dr. Mitchell, right?

3 A. Correct.

4 Q. And not Dr. Jessen?

5 A. That's correct.

6 Q. Okay. And then if you look at the  
7 standard techniques, there are a series of them  
8 called out.

9 And I will mention some. Isolation,  
10 sleep deprivation, not to exceed 72 hours,  
11 reduced caloric intake, so long as the amount is  
12 calculated to maintain the general health of the  
13 detainee, deprivation of reading material, use of  
14 loud music or white noise. Let me stop right  
15 there.

16 You can read them as well as I can,  
17 right?

18 A. Right.

19 Q. Who determined that these techniques  
20 were the techniques that would be used as  
21 standard techniques?

22 Is this headquarters again?

23 A. It was headquarters. It wasn't me.  
24 But it was headquarters, yes.

25 Q. And who from headquarters can you

1 tell me was involved in this decision-making  
2 process?

3 A. Well again, it would be CTC officers  
4 and management.

5 Q. Not Dr. Mitchell, correct?

6 A. Not to my knowledge.

7 Q. And not Dr. Jessen, right?

8 A. That's correct.

9 Q. Okay. Now, reading on, it makes  
10 reference to enhanced techniques. Do you see  
11 that?

12 A. I do.

13 Q. And then you will see that there are  
14 a series of enhanced techniques that are  
15 identified in here, right?

16 A. Correct.

17 Q. And it says, just so the record is  
18 clear, "Enhanced techniques are techniques that  
19 do incorporate physical or psychological pressure  
20 beyond standard techniques. The use of each  
21 specific enhanced technique must be approved by  
22 headquarters in advance and may be employed only  
23 by approved interrogators for use with the  
24 specific detainee with appropriate medical and  
25 psychological participation in the process."

1 Do you see that?

2 A. I do.

3 Q. Who put this process in place?

4 A. Again, it would be CTC officers and  
5 management.

6 Q. Correct. Not Dr. Jessen, right?

7 A. No.

8 Q. Who would decide which medical  
9 doctor would participate in the enhanced  
10 interrogations? Headquarters?

11 A. Headquarters, yes.

12 Q. And would headquarters also decide  
13 which psychological doctor, whether it be a  
14 psychiatrist or a psychologist, would  
15 participate?

16 A. That is correct.

17 Q. I want to ask you further about --  
18 so, is it fair to say that every decision about  
19 when and how and to whom these techniques were  
20 going to be utilized was made by headquarters?

21 A. That is fair to say, yes.

22 Q. Okay. Now, in addition to that, if  
23 you read through this, because I only have about  
24 18 more minutes, it talks about process for who  
25 can stop the enhanced interrogation techniques.

1 Do you see it in there?

2 A. Yes, if you could direct me.

3 Q. Sure. Go to Paragraph 2.

4 A. Okay.

5 Q. And just read it to yourself. Have  
6 you read it?

7 A. Yes.

8 Q. And again this procedure was  
9 determined by headquarters, right?

10 A. That's correct.

11 Q. And if you look at interrogation  
12 personnel in Paragraph 3, all done by  
13 headquarters. Right?

14 A. That's correct.

15 Q. All controlled by headquarters,  
16 correct?

17 A. Correct.

18 Q. And then if you look at finally Item  
19 Number 4 and 5, 5 dealing with recordkeeping, and  
20 4 dealing with approvals required, all again  
21 directed and orchestrated by headquarters, right?

22 A. Correct.

23 Q. So, in fairness, was it your  
24 understanding that if enhanced interrogation  
25 techniques were to be used, one, they would be

1 done only on a high value detainee?

2 A. Correct.

3 Q. Two, they would be done only after  
4 headquarters decided which of the 11 techniques  
5 were to be used, on which day, for how many  
6 times; is that correct?

7 A. That's correct.

8 Q. And to the extent that the people  
9 out in the field, even if they wanted to stop  
10 doing the enhanced interrogation techniques, if  
11 headquarters directed that they continue,  
12 headquarters expected that direction to be  
13 followed?

14 A. That's correct.

15 Q. And it was always that way during  
16 the period of time 2002, whenever this started,  
17 right up through the end of 2004. Correct?

18 A. To the end of 2004, yes.

19 Q. Okay. In fairness --

20 MR. BENNETT: You know --

21 BY MR. SMITH:

22 Q. I will stop the in fairness.

23 MR. BENNETT: Yes.

24 BY MR. SMITH:

25 Q. It is true that Drs. Mitchell and

1     Jessen weren't the architect of this program at  
2     all, weren't they?

3             A.     No, it was CTC.  It was an agency  
4     program, the CTC program.

5             Q.     The agency directed every facet of  
6     it along the way; isn't that right?

7             A.     Yes.

8             Q.     Okay.  And those 12 techniques that  
9     are embodied in the memo that Mitchell, that was  
10    cut and pasted for Mitchell marked as  
11    Exhibit Number 17, do you know how long those  
12    techniques have been around?

13            A.     You mean at the agency?  Or, or --

14            Q.     Do you know if waterboarding was  
15    used during World War II?

16            A.     Apparently some forms of it were,  
17    yes.

18            Q.     Okay.  Do you know if these other  
19    techniques have been around for decades?

20            A.     I understand that a number of them  
21    have been, yes.

22            Q.     Okay.  Do you know which ones  
23    weren't?

24            A.     No.  No.

25            Q.     Okay.  Go back to Exhibit Number 45.

1 There is a couple of other paragraphs I just want  
2 to clean up.

3 A. What is 45?

4 Q. Yes.

5 MR. HANNER: It is the declaration.

6 MR. BENNETT: Of his declaration?

7 BY MR. SMITH:

8 Q. Yes, that is 45.

9 MR. SMITH: Thank you, Mr. Bennett.

10 I am working this clock hard, I want to  
11 report to you.

12 MR. BENNETT: I appreciate it very  
13 much.

14 BY MR. SMITH:

15 Q. Paragraph 69 appears on Page 12. Do  
16 you see where it says, "Gul Rahman ("Rahman") was  
17 not classified as an HVD."

18 Do you see that?

19 A. Yes.

20 Q. By way of background, Mr. Rahman  
21 died while in captivity in a black cell, right?

22 A. At Cobalt, yes.

23 Q. Okay. And are aware that his estate  
24 is a plaintiff in this action?

25 A. I guess I know that, yes.

1 Q. Okay. And is it correct that after  
2 Rahman died, you became knowledgeable about the  
3 facts and circumstances relating to Rahman's  
4 captivity because of the death?

5 A. Yes.

6 Q. And in the course of learning about  
7 those facts and circumstances, is that when you  
8 learned that he was not a high value detainee?

9 A. Yes.

10 Q. Okay. And is that the basis for the  
11 factual allegation that appears in Paragraph 69?

12 A. Yes.

13 Q. And, would the same be true with  
14 respect to Paragraph 70 which states, "Rahman was  
15 not part of the EIT program"?

16 A. That's correct.

17 Q. Okay. You learned that as a result  
18 of the inquiry that was done by you and others  
19 resulting from Rahman's death?

20 A. Correct.

21 Q. And then finally, Paragraphs 77 and  
22 78 make reference to a report that is entitled  
23 the Senate Select Committee on Intelligence's  
24 Study of the Central Intelligence Agency's  
25 Detention and Interrogation Program.

1 Do you see that?

2 A. I do.

3 Q. And we refer to it as the SSCI  
4 report, S-S-C-I. Can you call it that, too, for  
5 the purposes of this deposition?

6 A. I will call it that.

7 Q. Okay. Do you see in Paragraph 77  
8 you say, "The SSCI report is an errant,  
9 inaccurate, one-sided, unremitting, wholesale  
10 assault on the CIA's EIT program."

11 Do you see that?

12 A. I do.

13 Q. Can you tell us why you said that?

14 A. Well, in terms of one-sided, it was  
15 an investigation that took place over four years.  
16 Apparently reviewed millions of documents, but  
17 was conducted solely by the one side, one  
18 partisan side of the committee.

19 And during, at least for me, the  
20 biggest evidence of the one sidedness is that  
21 none of us who had been involved in the program,  
22 including me, not once during those four years  
23 was ever asked -- was ever interviewed by any of  
24 the SSCI investigators.

25 Q. And did you ever come to understand

1 why none of you were interviewed?

2 A. Well, I had my, my -- my conclusion  
3 was that they started off with their conclusions  
4 already in their head. That the program was  
5 worthless, immoral. And they, there was really  
6 no -- and the rest of the time they were building  
7 towards solidifying and supporting that forgone  
8 conclusion.

9 Q. I see. And are there instances in  
10 the report that you could cite where the  
11 information is, as you describe it, errant,  
12 inaccurate, one-sided?

13 A. Yes.

14 Q. Okay. And, is it fair to say --  
15 strike that.

16 Is it true that Paragraph 78 through  
17 83 cite some of the instances in the SSCI report  
18 where you believe that that report is inaccurate,  
19 errant, et cetera?

20 A. That's correct, correct.

21 Q. Okay. Let's change subject matters.  
22 You were asked questions about  
23 learned helplessness. Do you remember that?

24 A. Yes.

25 Q. Turn, if you would, to Paragraph 18

1 of Exhibit Number 46.

2 A. 46 is -- oh, here it is. I got it.

3 Q. Yes, it is the same document -- I'm  
4 sorry, I said 46. I meant 45. Forgive me.

5 A. Oh, my declaration. Okay. All  
6 right. I'm looking at what paragraph?

7 Q. Paragraph 18, which appears on  
8 Page 4. In that paragraph you talk about learned  
9 helplessness. Do you see that?

10 A. Right. Right.

11 Q. And if I'm reading it correctly,  
12 you attribute that theory to someone other than  
13 Drs. Mitchell and Jessen?

14 A. That's right.

15 Q. Okay. Tell me what you meant by  
16 that.

17 A. Well, I mean, first of all, as I --  
18 let me look. This is a meeting at the White  
19 House. Yes. This is a meeting at the White  
20 House.

21 Yes, well, I wasn't -- first of all,  
22 Dr. Mitchell and Dr. Jessen were not with me at  
23 that meeting at the White House. It was just  
24 strictly CTC attorneys.

25 And, my recollection is that they,

1 as I say here, outlined the theory of learned  
2 helplessness, and named a, named a psychologist  
3 whose name escapes me, but which, who I am  
4 certain is neither Dr. Mitchell nor Dr. Jessen.

5 Q. Okay. And do you remember what you  
6 were told about that theory by that doctor whose  
7 name you can't remember?

8 A. Well, as I said earlier, my layman's  
9 understanding is that when a detainee reaches the  
10 point of self-recognition that further resistance  
11 to questioning, further prevarication is useless,  
12 and that therefore he becomes compliant.

13 Q. Turn if you would to what has been  
14 marked previously as Exhibit 44.

15 A. 44.

16 Q. Yes.

17 A. Again, that is what? So I can --

18 Q. It is a, it is a document that  
19 Mr. Warden redacted so much of, that it is  
20 impossible for me to say what it is. Maybe he  
21 could be kind enough to tell us.

22 MR. HANNER: Here you go.

23 THE WITNESS: Okay, I've got it.

24 BY MR. SMITH:

25 Q. Now, you were asked a number of

1 questions about this document. Do you remember?

2 A. I do, yes.

3 Q. Did you ever see this document  
4 before today?

5 A. I have no idea whether I saw it or  
6 not. I mean, it is virtually unrecognizable.

7 Q. I understand. Well, it is good to  
8 know your lawyers are out there protecting your  
9 information.

10 But, looking at it in its present  
11 form, is it correct to say that you cannot  
12 identify this document?

13 A. Yes, that's correct.

14 Q. Okay. And you don't know the author  
15 of the document?

16 A. No.

17 Q. You don't know the reason the  
18 document was created?

19 A. No.

20 Q. You have no idea if the information  
21 that appears in the document is accurate?

22 A. No. Without any --

23 Q. You are not saying it is inaccurate,  
24 but you can't say that it is?

25 A. No. That's correct.

1 Q. Okay. You have no idea of the  
2 circumstances under which this document was  
3 created?

4 A. Correct.

5 Q. And if you turn to exhibit, sorry,  
6 the same exhibit but Bates page U.S. 1581, which  
7 is three or four from the back. You were asked  
8 questions about the individual that is identified  
9 there. Do you remember?

10 A. Yes.

11 Q. And, reference is made in this  
12 document to this individual undergoing EITs,  
13 right?

14 A. Right.

15 Q. And you don't know if that happened,  
16 correct?

17 A. Right. Yes.

18 Q. If it did, you don't know why,  
19 correct?

20 A. Correct.

21 Q. Okay. And the same would be true if  
22 you turned to Bates page 1567.

23 A. Yes, yes. The same.

24 Q. Okay. Let me ask you this because  
25 you may have alluded to this earlier in your

1 testimony.

2                   During the course of your  
3 participation in these black sites, and these  
4 various forms of detainees, did you learn from  
5 time to time that there were instances where  
6 people at black sites holding low or medium value  
7 detainees were using enhanced interrogation  
8 techniques without authorization and without  
9 following the procedure that had been laid out by  
10 the CIA?

11           A.       Yes. That came to my attention.  
12 That happened from time to time.

13           Q.       Okay. And were those, the people  
14 who did that, they were the people responsible  
15 for running the black sites?

16           A.       Well, running the prisons that they,  
17 the Cobalt and, as I said earlier, my vernacular  
18 black sites were the places where the EITs took  
19 place.

20           Q.       Okay. So these were prisons where  
21 medium value and low value detainees were kept?

22           A.       Correct.

23           Q.       And there were instances where EITs  
24 were applied to these detainees, but in direct  
25 violation of CIA orders?

1           A.     Yes, certainly unauthorized  
2 techniques, yes.

3           Q.     And isn't it true that Dr. Mitchell  
4 and Dr. Jessen had absolutely nothing to do with  
5 that?

6           A.     Not as far as I know.

7           Q.     Okay. Did you ever come across any  
8 evidence that they even knew about these actions  
9 being done, these unauthorized actions?

10          A.     I don't recall ever hearing that, no.

11          Q.     Okay. Turn, if you would, to what  
12 was previously marked as Exhibit Number 35.

13                 MR. SMITH: There is three minutes  
14 left on the disk, Mr. Rizzo.

15                 MR. BENNETT: Well, just remember,  
16 Abraham Lincoln's Gettysburg address was  
17 three minutes. So, if he can do it, you can.

18                 MR. SMITH: Thank you for reminding  
19 me.

20                 THE WITNESS: What is 35 again?

21 BY MR. SMITH:

22           Q.     Exhibit 35 is a memo about the  
23 meeting that you had with Secretary Rice.

24           A.     Oh, that, yes, yes.

25           Q.     Here is what I want to ask you

1 about. Do you remember that meeting?

2 A. Oh yes, vividly.

3 Q. Do you remember if Dr. Mitchell at  
4 that meeting said to Secretary Rice that he  
5 didn't believe in nudity?

6 A. That he, Dr. Mitchell, didn't  
7 believe in it?

8 Q. He did not believe in it, wanted it  
9 to stop?

10 A. I don't remember that, no.

11 Q. Okay. Just so the record is clear,  
12 can you sit here today and say if he were to  
13 testify to that under oath, can you say that you  
14 don't think that is true?

15 A. No, I just don't remember it, one  
16 way or the other.

17 Q. Okay.

18 MR. BENNETT: Any kind of nudity at  
19 all, Doctor?

20 MR. SMITH: Not by detainees in  
21 connection to the action brought by the ACLU.

22 BY MR. SMITH:

23 Q. Do you know, Mr. Rizzo, if the  
24 guards determined how long the prisoners would  
25 remain awake at the prison?

1           A.       That the guards would determine --

2           Q.       It was the guards who made that  
3 determination?

4           A.       I don't believe they did.  No.

5           Q.       Okay.  All right, let's go off the  
6 record for a second.

7                    THE VIDEOGRAPHER:  2:56 a.m., off  
8 the record.

9                    (Recess taken -- 2:56 p.m.)

10                   (After recess -- 3:00 p.m.)

11                   THE VIDEOGRAPHER:  We are now on the  
12 record, the beginning of Videotape Number 3  
13 of the deposition of John Rizzo.  The time  
14 now is 3:00 p.m.

15 BY MR. SMITH:

16           Q.       Mr. Rizzo, just a couple more areas,  
17 and we will have you out of here.

18                    You testified during your  
19 examination with counsel for the ACLU that there  
20 were refinements made to the program.  Do you  
21 remember that?

22           A.       Yes.

23           Q.       And the program we are talking about  
24 the is enhanced interrogation techniques that  
25 were used for high value detainees?

1 A. Correct.

2 Q. Okay. Now, who participated in the  
3 decision-making process with respect to those  
4 changes?

5 A. Well, I participated.

6 Q. Yes.

7 A. And, I, I actually took the lead for  
8 the agency in that effort, at the direction of  
9 the CIA Director at the time, Michael Hayden.

10 And I had the discussions with  
11 appropriate CTC personnel, I remember the Chief  
12 of the CTC, about, you know, what kind of  
13 techniques do they continue to deem essential.  
14 Things of that nature.

15 Q. Okay. And, how many times did you  
16 engage in that effort? Was it a periodic review?

17 A. Well, it was -- no, it was intense.  
18 I mean it was over a, I would say a six-month  
19 period, where this was all being reviewed from  
20 top to bottom.

21 Q. And is it correct to say that  
22 neither Dr. Mitchell nor Dr. Jessen were a part  
23 of the decision-making process about the  
24 refinements that were going to be made?

25 A. No, that is correct. I don't recall

1 actually talking to them about this.

2 Q. You didn't even confer with them?

3 A. I don't recall. I do remember  
4 talking to CTC people, yes.

5 Q. Sure. That would be Mr. Rodriguez  
6 and his staff?

7 A. And the, and the new head of CTC at  
8 the time.

9 Q. Okay. And then, finally, you said  
10 that there was a meeting that you had with  
11 Mr. Chertoff. Do you remember that?

12 A. Yes.

13 Q. And in the course of that meeting,  
14 you had raised the subject of advanced immunity,  
15 right?

16 A. Right.

17 Q. So, you get a declination from the  
18 government before conduct occurs as insulation,  
19 if you will, for the government being able to  
20 charge at a later date.

21 A. Yes.

22 Q. How many times did you have that  
23 discussion with him?

24 A. Once.

25 Q. Did you ever have the subject matter

1 of that discussion with anyone else from the  
2 Department of Justice?

3 A. No. I mean, Chertoff shot it down  
4 quite conclusively, so I just let it go.

5 Q. So, it came up one time, and it  
6 never came up again?

7 A. Yes, and it was my idea only.

8 Q. It was your idea only. Okay.

9 MR. SMITH: We have no further  
10 questions of the witness thank you Mr. Rizzo.

11 MR. LADIN: Can I just ask one final  
12 question?

13 MR. BENNETT: Oh, yes, sure. I  
14 didn't know I was a judge, but go ahead.

15 MR. LADIN: In a way you are.

16 EXAMINATION

17 BY MR. LADIN:

18 Q. So, you testified earlier that you  
19 did not personally speak with the defendants'  
20 lawyers crafting your declaration; is that right?

21 A. That's correct.

22 Q. But your declaration uses as  
23 exhibits documents that were produced as part of  
24 this litigation; is that right?

25 A. Well, they were produced -- they

1 were given to me by my counsel. I assume they  
2 came out of the litigation.

3 Q. And do you have any knowledge of  
4 whether Dr. Mitchell and Dr. Jessen's lawyers  
5 were part of the process of crafting your  
6 declaration, even if you didn't speak with them  
7 personally?

8 A. No. I mean, I relied on the  
9 guidance from my attorneys.

10 Q. Okay. So you don't know whether  
11 they were consulted?

12 A. No, I don't.

13 MR. LADIN: Okay. That is all.

14 MR. BENNETT: I very much  
15 appreciate.

16 THE VIDEOGRAPHER: This concludes  
17 the video deposition of John Rizzo. The time  
18 now is 3:04 p.m.

19 (Whereupon, signature having been waived,  
20 the deposition concluded at 3:04 p.m.)

21 \* \* \*

22

23

24

25

1 CERTIFICATE OF COURT REPORTER

2

3 UNITED STATES OF AMERICA )

4 DISTRICT OF COLUMBIA )

5 I, LORI J. GOODIN, the reporter before  
6 whom the foregoing deposition was taken, do  
7 hereby certify that the witness whose testimony  
8 appears in the foregoing deposition was sworn by  
9 me; that the testimony of said witness was taken  
10 by me in machine shorthand and thereafter  
11 transcribed by computer-aided transcription; that  
12 said deposition is a true record of the testimony  
13 given by said witness; that I am neither counsel  
14 for, related to, nor employed by any of the  
15 parties to the action in which this deposition  
16 was taken; and, further, that I am not a relative  
17 or employee of any attorney or counsel employed by  
18 the parties hereto, or financially or otherwise  
19 interested in the outcome of this action.

20

21

-----  
LORI J. GOODIN

22

Notary Public in and for the

23

District of Columbia

24

My Commission expires: May 14, 2021

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