

# **Exhibit 1**

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

- - -

SULEIMAN ABDULLAH :  
SALIM, MOHOMED AHMED : DOCKET NO.  
BEN SOUD, OBAID ULLAH :  
(as personal : 2:15-CV-286-JLQ  
representative of GUL :  
RAHMAN), :

Plaintiffs, :

v. :

JAMES ELMER MITCHELL :  
and JOHN "BRUCE" :  
JESSEN, :

Defendants. :

- - -

Monday, January 16, 2017

- - -

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

\* \* \*

MAGNA LEGAL SERVICES

(866) 624-6221

www.MagnaLS.com



Page 6

|    |            |  |      |
|----|------------|--|------|
| 1  | NO.        | DESCRIPTION  | PAGE |
| 2  | Exhibit 20 | Fax, Generic Description of the Process, Bates DOJ OLC 1126 through 1144   | 321  |
| 3  |            |  |      |
| 4  | Exhibit 21 | CIA Comments on the Senate Select Committee on Intelligence Report on the Rendition, Detention and Interrogation Program | 323  |
| 5  |            |  |      |
| 6  | Exhibit 22 | Document, Bates USA 1629 through 1630  | 335  |
| 7  |            |  |      |
| 8  | Exhibit 23 | Email dated 5/28/03, Bates USA 1588  | 348  |
| 9  |            |  |      |
| 10 | Exhibit 24 | Independent Review Relating to APA Ethics Guidelines, National Security Interrogations, and Torture                      | 361  |
| 11 |            |  |      |
| 12 | Exhibit 25 | Request for formal declination of prosecution  | 394  |
| 13 |            |  |      |
| 14 |            |  |      |
| 15 |            |  |      |
| 16 |            |  |      |
| 17 |            |  |      |
| 18 |            |  |      |
| 19 |            |  |      |
| 20 |            |  |      |
| 21 |            |  |      |
| 22 |            |  |      |
| 23 |            |  |      |
| 24 |            |  |      |

Page 8

1 THE VIDEOGRAPHER: We are  
 2 now on the record.  
 3 This begins DVD No. 1 in the  
 4 deposition of James Elmer Mitchell  
 5 in the matter of Salim versus  
 6 James Elmer Mitchell and Bruce --  
 7 John Bruce Jessen in the United  
 8 States District Court for the  
 9 Eastern District of Washington.  
 10 Today is January 16th, 2017,  
 11 and the time is 10:19 AM.  
 12 This deposition is being  
 13 taken at 130 North 18th Street,  
 14 Philadelphia, Pennsylvania, at the  
 15 request of Gibbons, PC.  
 16 The videographer is Benjamin  
 17 Neate of Magna Legal Services and  
 18 the court reporter is Connie Kent  
 19 of Magna Legal Services.  
 20 All counsel and parties  
 21 present will be noted on the  
 22 stenographic record.  
 23 Will the court reporter  
 24 please swear in the witness.

Page 7

1 - - -  
 2 DEPOSITION SUPPORT INDEX  
 3 - - -  
 4  
 5 Direction to Witness Not to Answer  
 6 Page Line Page Line Page Line  
 7 59 1 86 23 166 18  
 8 306 17  
 9  
 10  
 11 Request for Production of Documents  
 12 Page Line Page Line Page Line  
 13 None  
 14  
 15  
 16 Stipulations  
 17 Page Line Page Line Page Line  
 18 None  
 19  
 20  
 21 Question Marked  
 22 Page Line Page Line Page Line  
 23 None  
 24

Page 9

1 JAMES E. MITCHELL, having  
 2 been first duly sworn, was  
 3 examined and testified as follows:  
 4 MR. WARDEN: Thank you. At  
 5 the outset I'd like to say that  
 6 I'm Andrew Warden from the United  
 7 States Department of Justice and I  
 8 represent the United States  
 9 government in this case.  
 10 On behalf of the United  
 11 States Government, I have here  
 12 with me today Joseph Sweeney,  
 13 attorney for CIA Office of General  
 14 Counsel, Cody Smith, an attorney  
 15 for the CIA Office of General  
 16 Counsel, Heather Walcott, an  
 17 attorney for the CIA Office of  
 18 General Counsel, Megan Beckman,  
 19 paralegal with the CIA Office of  
 20 General Counsel, Antoinette  
 21 Shiner, Information Review Officer  
 22 from the CIA.  
 23 On behalf of the Department  
 24 of Defense, have Richard Hatch, an

1 background is first.  
 2 A. I want to be sure I  
 3 understand the question.  
 4 Q. Okay.  
 5 A. Do you mean just with  
 6 respect to college?  
 7 Q. Yeah, well, that's a good  
 8 question. Let's just start with your --  
 9 you can start with college education and  
 10 post-college education, you know, that  
 11 kind of schooling education as opposed to  
 12 training, other trainings you may have  
 13 had.  
 14 A. Okay. I have a -- just a  
 15 two-year liberal arts degree from a  
 16 community college. I have a two-year  
 17 degree in explosive technology from a  
 18 community college. I have a four-year  
 19 degree in psychology.  
 20 Q. And what -- I'm sorry to  
 21 interrupt. Just if you could, what  
 22 schools are those?  
 23 A. The community college?  
 24 Q. You can start with the

1 four-year degree.  
 2 A. University of Alaska in  
 3 Anchorage.  
 4 Q. Uh-huh. Continue.  
 5 A. I have a master's degree in  
 6 psychology from the University of Alaska  
 7 in Anchorage, and I have a Ph.D. in  
 8 psychology from the University of South  
 9 Florida in Tampa.  
 10 Q. Okay. Focusing on your --  
 11 the Ph.D. first in psychology from South  
 12 Florida, when did you get that?  
 13 A. 19- -- well, 1985 is when I  
 14 completed everything except my  
 15 internship, and you know you have to  
 16 spend a year in internship, so I think  
 17 1986. It's been a while.  
 18 Q. Okay.  
 19 A. But 1986.  
 20 Q. Okay. And was -- did you  
 21 have any kind of specialty or focus of  
 22 your -- of your graduate education in  
 23 psychology?  
 24 A. The Ph.D. is in clinical

1 psychology.  
 2 Q. Okay.  
 3 A. I have a minor in behavioral  
 4 medicine.  
 5 Q. Okay. And just if you would  
 6 briefly describe for the record when  
 7 you -- a degree clinical psychology, what  
 8 do you learn in that kind of program?  
 9 A. I want to be comprehensive  
 10 and organized, so --  
 11 Q. Take your time.  
 12 A. You learn about personality  
 13 issues, you learn about issues related to  
 14 clinical diagnoses. I had a forensic  
 15 psychologist who was a professor at my  
 16 university and I spent quite a bit of  
 17 time with him learning about things like,  
 18 you know, police evaluations and the use  
 19 of psychological instruments for forensic  
 20 examinations.  
 21 You learn about  
 22 psychological testing, therapy, how to  
 23 ask questions, how to establish rapport,  
 24 how to -- it was a scientist practitioner

1 model under the APA example, so you learn  
 2 both the clinical piece of the thing as  
 3 well as the other skills, but you also  
 4 learn, you know, things like statistics  
 5 and how to educate yourself about other  
 6 topics and -- that's just a general list  
 7 of what comes to mind right now,  
 8 recognizing that there would be  
 9 undoubtedly other things that I'll  
 10 remember.  
 11 Q. Okay. You mentioned that  
 12 you learned about things like police  
 13 evaluations and the use of psychological  
 14 instruments for forensic examinations.  
 15 Could you just elaborate on  
 16 each of those?  
 17 A. Sure. One of them was the  
 18 use of psychological instruments in  
 19 interviewing for evaluations where you  
 20 look at a person who has committed a  
 21 crime and you question them about their  
 22 motives and beliefs around that crime  
 23 they've committed to determine whether or  
 24 not they meet the McNaughton rules for

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

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

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

1 documents.

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

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

6 A. No. Did I say that?

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

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

13 Q. Okay.

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

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

18 A. Of foreign enemies, no.

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

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

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

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

20 Q. Fair enough.

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

24 Q. Sure. We'll have plenty of

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

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

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

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

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

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

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

5 A. Joint Personnel Recovery  
6 Agency.

7 Q. And what is that?

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

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

17 A. '89 to sometime in '96.

18 Q. Okay. And after that?

19 A. I went to a counterterrorist  
20 unit.

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

24 MR. WARDEN: From the

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

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

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

17 THE WITNESS: Okay.

18 MR. LUSTBERG: Thank you.

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

22 (Recess.)

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

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

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

7 MR. LUSTBERG: Okay.

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

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

13 BY MR. LUSTBERG:

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

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

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

1 the video record.

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

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

7 MR. LUSTBERG: Yeah.

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

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

16 MR. SMITH: 3.

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

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

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

23 THE WITNESS: Thank you,  
24 sir.

1 subcontractor of Mitchell Jessen and  
 2 Associates.  
 3 Q. Got it. And --  
 4 A. At least that's my  
 5 recollection.  
 6 Q. And what kind of work did  
 7 Mind Science and What If before it do?  
 8 A. It did the work for the CIA.  
 9 Q. So was there any distinction  
 10 between the work that it did and the work  
 11 that Mitchell Jessen and Associates did?  
 12 A. Yes, because if I had some  
 13 downtime, which wasn't a lot, I did some  
 14 stuff for the Department of Defense. And  
 15 so I would have used Mind Science to bill  
 16 the company that I did some  
 17 subcontracting for the Department of  
 18 Defense with as well, where -- you know.  
 19 Q. I'm sorry, just finish your  
 20 sentence.  
 21 A. I did.  
 22 Q. Okay. And was there --  
 23 strike that. We'll move on.  
 24 Let's just -- since we're on

1 what that was about.  
 2 Q. Great. What was it?  
 3 A. Essentially when you -- when  
 4 you use the word helplessness, it gets  
 5 used by psychologists in at least two  
 6 different ways: One way is the outcome  
 7 of the experimental group in Martin  
 8 Seligman's learned helplessness research,  
 9 right? That's not how I'm referring to  
 10 it here. What I'm referring to is that  
 11 sometimes when people get in situations  
 12 where they can't -- they feel like they  
 13 don't have a way out of it, they begin to  
 14 experience a sense of -- that they can no  
 15 longer organize and execute the courses  
 16 of action necessary to, you know, get out  
 17 of the thing.  
 18 And the kind of acquired  
 19 helplessness, because learns means  
 20 acquired, that I'm talking about, exists  
 21 on a continuum from just being able to  
 22 perceive it all the way to the  
 23 debilitating end of this thing. And what  
 24 this focused on was the -- two things, as

1 this resume, I just want to ask you about  
 2 a couple of presentations. There's  
 3 several pages here of presentations and  
 4 publications.  
 5 A. I wish I would have seen  
 6 this earlier, I think I could have saved  
 7 you some time.  
 8 Q. Unfortunately it's just the  
 9 way we do it.  
 10 I'm not going to ask about  
 11 all of them, I promise. You did a lot of  
 12 presentations. But I want to ask about a  
 13 couple of them.  
 14 Just -- so directing your  
 15 attention to the, one, two, three,  
 16 four -- to the fourth page, there's -- I  
 17 want to ask you, at the bottom of the  
 18 fourth page, there's a presentation that  
 19 says, Mitchell James E., that's you,  
 20 "Captivity Familiarization and Learned  
 21 Helplessness."  
 22 Do you remember what that  
 23 was about?  
 24 A. Yeah, that -- I do remember

1 I recall, it was the -- actually, I don't  
 2 know if it was two things. If you have  
 3 the paper, I'd be happy to answer any  
 4 questions you have about it.  
 5 Q. I don't.  
 6 A. But my belief right now,  
 7 without having the paper to look at to  
 8 refresh my memory, is that the focus  
 9 really was on two things: Was to ensure  
 10 that the training didn't produce the  
 11 catastrophic kind of learned helplessness  
 12 over here, because for the training to be  
 13 effective, you have to get a little bit  
 14 of helplessness going because what  
 15 happens then is the person begins to  
 16 search for a way out of it, and you want  
 17 that search for a way out of it piece of  
 18 it, but you don't want the profound  
 19 helplessness that leads to depression,  
 20 passivity and withdrawal and an inability  
 21 to sort of seek a solution, right?  
 22 Q. The Seligman type?  
 23 A. Yeah, the Seligman outcome  
 24 of the experimental thing.

1 Q. Right.

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

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

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

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

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

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

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

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

20 Q. Uh-huh.

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

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

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

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



1 third document down under Publications.  
 2 A. I see it. I'm going to need  
 3 to talk to the lawyers. Well, maybe not.  
 4 Go ahead and ask your question.  
 5 Q. I just -- well, why don't I  
 6 ask it in a very general way --  
 7 A. Okay.  
 8 Q. -- and see if you can answer  
 9 it in a way that would be appropriate.  
 10 A. Uh-huh.  
 11 Q. What was the paper about?  
 12 It's a published document.  
 13 A. It's a published in a  
 14 classified journal.  
 15 Q. Oh, that's a classified  
 16 journal. The SERE Instructor Bulletin is  
 17 classified?  
 18 A. The paper is about what the  
 19 title says.  
 20 Q. I don't know what the Circle  
 21 Concept means, so that's why I --  
 22 MR. WARDEN: I think at this  
 23 point, we'd ask the witness not to  
 24 answer the questions about the

1 Circle Concept.  
 2 THE WITNESS: Given that  
 3 you've retracted all of it from  
 4 that paper where we discussed it,  
 5 the CIA redacted the paper where  
 6 we used this metaphor, and you  
 7 guys redacted all of it.  
 8 BY MR. LUSTBERG:  
 9 Q. I'm going to read you a  
 10 quotation from a book. The book, so you  
 11 know, is The Dark Side by Jane Mayer.  
 12 Are you familiar with that  
 13 book?  
 14 A. I know she wrote the book, I  
 15 don't -- I didn't pay much attention to  
 16 it.  
 17 Q. Okay. So I'm going to read  
 18 you a quote and ask you your reaction to  
 19 it. The quote is:  
 20 "According to Steve  
 21 Kleinman, a Reserve Air Force colonel and  
 22 experienced interrogator who's known  
 23 Mitchell personally for years, learned  
 24 helplessness was his whole paradigm.

1 Mitchell, he said, draws a diagram  
 2 showing what he says is the whole cycle.  
 3 It starts with isolation, then they  
 4 eliminate the prisoner's ability to  
 5 forecast the future, when their next meal  
 6 is, when they can go to the bathroom. It  
 7 creates dread and dependency."  
 8 Is that an accurate  
 9 description of your, quote, whole  
 10 paradigm?  
 11 A. No.  
 12 Q. What's wrong with it?  
 13 A. It's just not my paradigm.  
 14 Q. In what sense?  
 15 A. In the sense that it's not  
 16 my paradigm.  
 17 Q. Okay. What's different  
 18 between your paradigm and what's  
 19 described in that book?  
 20 MR. SMITH: Objection.  
 21 BY MR. LUSTBERG:  
 22 Q. You can answer.  
 23 A. Oh. Read that quote again?  
 24 Q. Sure.

1 "According to Steve  
 2 Kleinman, a Reserve Air Force colonel and  
 3 experienced interrogator who's known  
 4 Mitchell professionally for years."  
 5 Let me stop right there. Do  
 6 you know Mr. Kleinman?  
 7 A. Yeah, I offered him a job in  
 8 2005 just before -- he asked me for a job  
 9 in 2005 just before this article and book  
 10 was published and we turned him down  
 11 because we thought he was a glory hound.  
 12 Q. You thought he was a?  
 13 A. He was seeking glory. He  
 14 wanted to be a talking head and he was  
 15 just trying to fill out his resume.  
 16 Q. Okay. Sorry, I interrupted  
 17 the sentence, I apologize:  
 18 "According to Steve  
 19 Kleinman, a Reserve Air Force colonel and  
 20 an experienced interrogator who's known  
 21 Mitchell for years, learned helplessness  
 22 was his whole paradigm. Mitchell, he  
 23 said, draws a diagram showing what he  
 24 says is the whole cycle. It starts with

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

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

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

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

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

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

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

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

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

1 sort of stuff.

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

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

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

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

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

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

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

9 A. Uh-huh.

10 Q. You mentioned Dr. Seligman?

11 A. Yes, sir.

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

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

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

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

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

3 Q. Okay.

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

6 Q. Here in Philadelphia?

7 A. Uh-huh.

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

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

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

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

19 Q. Okay.

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

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

1 A. No.

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

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

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

22 A. Go ahead and ask me.

23 Q. Interrogation?

24 A. No interrogation, nor

1 learned helplessness.

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

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

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

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

1 Q. Let me see what I have.

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

5 A. Yes.

6 Q. Where was that?

7 A. It was in San Diego.

8 Q. Who was it for?

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

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

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

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

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

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

17 MR. SMITH: Objection.

18 You can answer.

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

1 his studies on learned optimism.

2 BY MR. LUSTBERG:

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

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

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

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

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

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

22 MR. SMITH: Objection.

23 THE WITNESS: I don't  
24 know -- I don't understand -- are

1 you asking me to describe his dog  
2 study?

3 BY MR. LUSTBERG:

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

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

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

23 A. No.

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

1 wrong.  
 2 A. He found that you could  
 3 completely reverse what was going on for  
 4 most of his dogs by helping them escape  
 5 and that eventually they began to do that  
 6 again on their own.  
 7 Q. Okay.  
 8 A. That's my recollection of  
 9 the study.  
 10 Q. Okay. Because what I was  
 11 thinking is if somebody was experiencing  
 12 learned helplessness, then they would --  
 13 couldn't be induced to give any answers  
 14 or provide any information because they  
 15 would just accept the punishment that  
 16 they were being provided and be totally  
 17 passive in the face of that. Is that --  
 18 A. You're asking me to  
 19 speculate about that.  
 20 Q. I'm not -- I'm asking what  
 21 your understanding of Dr. Seligman's  
 22 studies were, and you were familiar with  
 23 them, right? You have to answer yes?  
 24 A. Yes.

1 MR. SMITH: Objection.  
 2 MR. LUSTBERG: No problem.  
 3 MR. SMITH: Is the question  
 4 were you familiar with them, was  
 5 that --  
 6 MR. LUSTBERG: That was the  
 7 last one.  
 8 MR. SMITH: That question  
 9 has been answered.  
 10 MR. LUSTBERG: I got it.  
 11 MR. SMITH: Wait for the  
 12 next one.  
 13 MR. LUSTBERG: Okay. So I'm  
 14 going to the prior one.  
 15 MR. SMITH: Okay.  
 16 BY MR. LUSTBERG:  
 17 Q. Which is: Based upon your  
 18 understanding of the studies, if a person  
 19 was experiencing learned helplessness,  
 20 then they would do nothing to remedy  
 21 their situation; is that right? Isn't  
 22 that what learned helplessness is?  
 23 A. What sense are you using  
 24 that?

1 Q. My understanding -- if I'm  
 2 misunderstanding learned helplessness,  
 3 you'll tell me. At that far end of  
 4 learned helplessness, where you're  
 5 completely passive and do nothing to  
 6 remedy your situation, under those  
 7 circumstances you would, for example, not  
 8 answer questions because you saw no way  
 9 out either way, right?  
 10 A. That's correct. And in  
 11 fact, that's what I warned the CIA about.  
 12 When -- early on when I discussed learned  
 13 helplessness, and in fact, there's a  
 14 document they have right now that I'm  
 15 trying to get cleared, where we -- where  
 16 we warned against that specific problem,  
 17 that if you were to induce profound  
 18 helplessness, you actually impair the  
 19 ability of a person to provide  
 20 intelligence.  
 21 Q. All right. We'll probably  
 22 come back to learned helplessness.  
 23 Before 9/11, did you ever  
 24 write or give any presentations on how

1 SERE resistance related training  
 2 techniques might be used in actual  
 3 interrogations?  
 4 A. No.  
 5 Q. Did you write anything about  
 6 that or have discussions with anybody  
 7 about that prior to 9/11?  
 8 A. No.  
 9 Q. Okay. I want to show you  
 10 some language from your book and just ask  
 11 about it. It might be easier if we --  
 12 A. Okay.  
 13 Q. You'll be familiar with it  
 14 because it's your book.  
 15 A. I might not remember every  
 16 word.  
 17 Q. I get it.  
 18 MR. LUSTBERG: We'll mark  
 19 this as 4, right?  
 20 (Exhibit No. 4,  
 21 Interrogating the Enemy, by James  
 22 E. Mitchell, Bates MJ22577 through  
 23 22942, was marked for  
 24 identification.)

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

5 MR. SMITH: Objection.

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

17 BY MR. LUSTBERG:

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

20 In the Senate Select  
21 Intelligence Report --

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

24 Q. Sure, we can do that. Just

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

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

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

9 MR. LUSTBERG: Yeah.

10 MR. SCHUELKE: And this  
11 is --

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

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

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

22 MR. SCHUELKE: Is it 4 or 5?

23 MR. SMITH: It's 5.

24 BY MR. LUSTBERG:

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

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

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

22 Do you agree or disagree  
23 with that statement?

24 A. I disagree with that.

1 Q. Why?

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

4 Q. Okay.

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

7 THE WITNESS: No.

8 BY MR. LUSTBERG:

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

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

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

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

1 we're referring to Exhibit No. 8.  
 2 MR. LUSTBERG: 7. 8, thank  
 3 you.  
 4 BY MR. LUSTBERG:  
 5 Q. And do you -- sorry.  
 6 Do you know then whether the  
 7 paragraphs I've read reflect a change in  
 8 the APA's view of the obligations of  
 9 psychologists? Just do you know whether  
 10 it does or not?  
 11 A. It looks like it. I mean,  
 12 it looks like a change from the earlier  
 13 stuff that I was familiar with.  
 14 Q. Okay. What were you  
 15 familiar with before? What's the earlier  
 16 stuff that you were familiar with?  
 17 A. The basically you tried to  
 18 resolve whatever issues that you had and  
 19 balance your obligation to the law, and  
 20 if you were functioning as a  
 21 psychologist, your obligation to the  
 22 people that were involved.  
 23 But they had -- I think they  
 24 already had a prohibition against

1 torture, which was not something we did,  
 2 so...  
 3 Q. And the prohibition against  
 4 torture, did it define torture the same  
 5 way as this?  
 6 A. I don't know.  
 7 Q. Uh-huh.  
 8 A. If you give me the documents  
 9 I'll look and see for you, but I don't  
 10 recall.  
 11 Q. Okay. So this defines  
 12 torture as:  
 13 "Any act by which severe  
 14 pain or suffering, whether physical or  
 15 mental, is intentionally inflicted upon a  
 16 person," and so forth.  
 17 You can read the entire  
 18 definition. It's in the fourth whereas  
 19 clause.  
 20 A. Okay.  
 21 Q. Does that -- is it your  
 22 understanding that that reflected -- that  
 23 that was a definition that was the same  
 24 or that had changed?

1 A. I don't know. I don't  
 2 recall. I don't recall the documents.  
 3 Q. Okay. In the fourth -- one,  
 4 two, three -- I'm sorry, the fifth be it  
 5 resolved paragraph, it mentions a number  
 6 of techniques in which you engaged,  
 7 including waterboarding, stress  
 8 positions, physical assault, including  
 9 slapping or shaking, sensory deprivation  
 10 and sleep deprivation; is that correct?  
 11 MR. SMITH: Objection.  
 12 THE WITNESS: Are you asking  
 13 me if the paragraph includes it?  
 14 The paragraph includes those  
 15 items. What --  
 16 BY MR. LUSTBERG:  
 17 Q. And were those -- and were  
 18 those actions in which you engaged as  
 19 part of your -- as --  
 20 A. Under the direction --  
 21 MR. SMITH: You've got to  
 22 let him finish his question.  
 23 THE WITNESS: Oh, okay.  
 24 BY MR. LUSTBERG:

1 Q. That's fine you can go a  
 2 ahead.  
 3 A. No, I don't want to.  
 4 Q. What I was asking is are  
 5 those activities in which you engaged in  
 6 the course of your conduct with -- in  
 7 working with the CIA?  
 8 MR. SMITH: Objection.  
 9 THE WITNESS: I -- yes.  
 10 BY MR. LUSTBERG:  
 11 Q. And is it the fact that the  
 12 APA was essentially saying that that sort  
 13 of conduct was not appropriate that  
 14 caused you to resign from the APA?  
 15 MR. SMITH: Objection.  
 16 THE WITNESS: I actually  
 17 didn't see it in this level of  
 18 detail, so no, it wasn't this.  
 19 BY MR. LUSTBERG:  
 20 Q. Okay. It was just -- it was  
 21 the conversation you had with somebody  
 22 that you knew from the SERE school who  
 23 told you that things were changing?  
 24 A. Not just that change (sic)

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

8 Q. Uh-huh. Okay.

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

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

14 THE WITNESS: Okay.

15 BY MR. LUSTBERG:

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

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

23 A. That was the beginning --

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

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

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

7 A. Yes.

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

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

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

20 A. Without them necessarily  
21 knowing.

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

1 Manchester manual?

2 A. Yes, sir.

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

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

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

9 A. I worked with Dr. Jessen.

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

13 A. He was my contract manager.

14 Q. Which meant he did what?

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

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

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

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

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

5 A. Sure.

6 Q. Do you remember that?

7 A. Yes, sir.

8 Q. And actually --

9 A. We have the document.

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

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

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

21 BY MR. LUSTBERG:

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

24 A. Yes.



1 Q. Did you have a chance to  
2 look at that, Dr. Mitchell?  
3 A. I did.  
4 Q. Thank you. So you can see  
5 that that paragraph says that:  
6 "Several months earlier, in  
7 late 2001, CIA had tasked an independent  
8 contractor psychologist who had 13 years  
9 of experience in the US Air Force's  
10 Survival, Evasion, Resistance and Escape  
11 (SERE) training program to research and  
12 correct a paper on Al-Qaeda's resistance  
13 to interrogation techniques."  
14 Is that a reference to you?  
15 A. Well, the full sentence is,  
16 "resisting training perspective."  
17 Q. I'm sorry. Okay.  
18 A. You left out part of the  
19 sentence.  
20 Q. Oh, I'm sorry, I didn't mean  
21 to. Does that refer to you, though?  
22 A. I believe it does?  
23 Q. It says that:  
24 "This psychologist

1 collaborated with a DOD psychologist,"  
2 that would be Dr. Jessen?  
3 A. I believe it is.  
4 Q. And when you add the  
5 19 years of his experience and the  
6 13 years of yours, that gets you to those  
7 32 years of experience that are described  
8 in the report?  
9 A. I believe it does.  
10 Q. Sorry. That's how were we  
11 lawyers do it.  
12 So it says here:  
13 "Subsequently, the two  
14 psychologists developed a list of new and  
15 more aggressive EITs that they  
16 recommended for use in interrogations."  
17 Do you agree with that  
18 sentence?  
19 A. The sentence -- I agree with  
20 the sentence, but I want to comment.  
21 Q. Go ahead.  
22 A. The sentence is true, but  
23 the way that the two are put together  
24 here, it makes it seem as if that

1 document is somehow linked to this  
2 request, and what the paragraph does is  
3 mischaracterize the document.  
4 Q. Which document?  
5 A. The -- recognizing the  
6 development countermeasures for Al-Qaeda  
7 resistance to interrogation techniques  
8 from a resistance training perspective.  
9 It makes it seem like subsequently the  
10 two psychologists developed a new list.  
11 While that sentence is true, the  
12 juxtaposition of those two sentences  
13 together makes it appear that the manual  
14 stuff was somehow related to the  
15 development of these -- well, it's not  
16 even development, it's -- we provided  
17 them with a list. It makes it seem like  
18 the two are related when the two, in  
19 fact, are not related.  
20 Q. Well, it sounds like to me,  
21 tell me if this is wrong, that what  
22 they're saying -- that it's saying is  
23 that the second list is more aggressive  
24 than what was in the original paper.

1 MR. SMITH: Objection.  
2 BY MR. LUSTBERG:  
3 Q. Is that correct?  
4 MR. SMITH: In fairness,  
5 there is no second list, right?  
6 MR. LUSTBERG: Well, yes,  
7 there is. It says -- well, let me  
8 ask it. Thank you, let me lay a  
9 foundation.  
10 BY MR. LUSTBERG:  
11 Q. "Subsequently, the two  
12 psychologists developed a list of new and  
13 more aggressive EITs that they  
14 recommended for use in interrogations."  
15 Did -- did you and  
16 Dr. Jessen develop a list of new and more  
17 aggressive EITs that they recommended for  
18 use in interrogations later?  
19 A. The answer to the question  
20 as asked is no. But we did provide them  
21 with a list of interrogation techniques  
22 that we did not develop.  
23 Q. You did not develop it,  
24 somebody else developed it.

1 A. They were at the SERE  
2 school. They had been at the SERE school  
3 for 50 years.

4 Q. So then this sentence that  
5 says that the two psychologists developed  
6 the list is -- is incorrect?

7 A. Correct.

8 Q. Because of the use of the  
9 word "developed"?

10 A. We provided them with a  
11 list, we didn't develop a bunch of new  
12 EITs.

13 Q. Okay. So what you did was  
14 you took existing EITs that were being  
15 used at the SERE school and you made a  
16 list of them?

17 A. Yeah, we made a list of --  
18 of the sorts of things that were done in  
19 the SERE school.

20 Q. Uh-huh. Of the sorts of  
21 things that were done at the SERE school.  
22 All of them or some of them?

23 A. I don't -- I don't have a  
24 comment on that. I don't think -- I

1 don't think there was anything on that  
2 list that hadn't been done at the SERE  
3 school.

4 Q. Okay. Was there -- were  
5 there things done at the SERE school that  
6 were not on that list, though?

7 A. An infinite number of  
8 things.

9 Q. So the bottom -- so the  
10 thing I'm focused on is was that list --  
11 so you've said that the word developed,  
12 you have trouble with. What about that  
13 it's more aggressive than what was --  
14 than what was recommended in the paper?

15 A. I don't know what he means  
16 by aggressive. They were certainly more  
17 coercive.

18 Q. Okay. So if the word was  
19 changed from aggressive to coercive you  
20 would agree with it?

21 A. Yes.

22 Q. So for this sentence to be  
23 accurate it, from your perspective, would  
24 have to say, Subsequently the two

1 psychologists listed more coercive  
2 EITs than they recommended for use in  
3 interrogations --

4 A. Well, they weren't called  
5 EITs at the time.

6 Q. Okay.

7 A. All right? So this sentence  
8 would have to be completely rewritten to  
9 be accurate.

10 Q. Okay. How would you rewrite  
11 it, sir?

12 A. I would say, Subsequently  
13 the two psychologists provided a list of  
14 interrogation techniques that have been  
15 used at the SERE -- a more coercive list  
16 of interrogation techniques that had been  
17 used at the SERE school that eventually  
18 became EITs, and we recommended that they  
19 consider using them in interrogations.

20 Because my recollection of  
21 that particular thing that you're talking  
22 about is we said, Here's a list of the  
23 sorts of things they do at the SERE  
24 school, and if you guys are going to be

1 physically coercive with him, I suggest  
2 that what you do is use these techniques  
3 that have been shown over the last  
4 50 years to not produce the kinds of  
5 things you would like to avoid, like  
6 severe pain and suffering and  
7 long-term --

8 Q. So -- so your testimony is  
9 that you were saying if they decided to  
10 use more coercive techniques, these are  
11 the ones that should be used?

12 A. No, what I said -- that's  
13 not what I said.

14 Q. Okay. Tell me what you  
15 said.

16 A. What I said was you should  
17 consider using these. They -- my  
18 expectation was that the choice to use  
19 them or not was theirs, they should think  
20 about it, they should decide if they  
21 wanted to do it, they should do due  
22 diligence on it, all right?

23 Q. Uh-huh.

24 A. And if they chose to do it,

1 they should do it.  
 2 Q. Uh-huh. And was that what  
 3 you said to them, that they should do due  
 4 diligence on it?  
 5 A. I told them that they would  
 6 need to -- that they should check with  
 7 the SERE schools to make sure -- I don't  
 8 know if I used the word due diligence,  
 9 but I told them that they needed to check  
 10 with.  
 11 Q. I'm sorry.  
 12 A. No, I'm done.  
 13 Q. So --  
 14 MR. SMITH: While there's no  
 15 question pending, may I just  
 16 confer with my client for a  
 17 minute, please?  
 18 MR. LUSTBERG: Of course.  
 19 (Discussion held off the  
 20 record.)  
 21 THE WITNESS: I need to make  
 22 a point of clarification.  
 23 BY MR. LUSTBERG:  
 24 Q. Okay. Go ahead, sir.

1 MR. SMITH: Hold that  
 2 thought.  
 3 BY MR. LUSTBERG:  
 4 Q. Let's wait until your lawyer  
 5 is ready.  
 6 Do you need more water?  
 7 A. I'm good. I need to make a  
 8 point of clarification.  
 9 Q. Sure. Go ahead. You've  
 10 been --  
 11 MR. SCHUELKE: I'm sorry --  
 12 MR. SMITH: We're on the  
 13 record.  
 14 MR. LUSTBERG: Thank you.  
 15 THE WITNESS: You probably  
 16 noticed in my sentence when I was  
 17 talking to you that I said,  
 18 recommended this list for  
 19 potential use with him.  
 20 Specifically I'm referring to Abu  
 21 Zubaydah.  
 22 In these early conversations  
 23 about the more coercive  
 24 SERE-related techniques were

1 solely focused on Abu Zubaydah.  
 2 There -- in my recollection there  
 3 was no discussion of a larger  
 4 program. They were discussing  
 5 only Abu Zubaydah.  
 6 And secondarily, I had come  
 7 to believe that because of the  
 8 comments that were made to me by  
 9 the CIA officers, both in the  
 10 field and at headquarters when we  
 11 had that meeting, that they had  
 12 already decided to use some form  
 13 of physical coercion on Abu  
 14 Zubaydah. And so my  
 15 recommendation was that if you're  
 16 thinking about using physical  
 17 coercion on Abu Zubaydah, then you  
 18 should consider using these  
 19 techniques.  
 20 BY MR. LUSTBERG:  
 21 Q. So let's just go to -- you  
 22 mentioned a meeting.  
 23 A. Several meetings, yes.  
 24 Q. Just in what you said a

1 minute ago, you said, I had come to  
 2 believe that because of the comments that  
 3 were made to me by the CIA officers, both  
 4 in the field and at headquarters when we  
 5 had that meeting, that they had already  
 6 decided to use some form of physical  
 7 coercion on Zubaydah.  
 8 Is -- was that -- is that  
 9 what you said?  
 10 A. Yes.  
 11 Q. Okay. When you said "that  
 12 meeting," what meeting were you referring  
 13 to?  
 14 A. A meeting early in July. I  
 15 don't remember the exact date, but it was  
 16 early in July of 2002.  
 17 Q. Okay. So let's go back a  
 18 little. But before we -- because I want  
 19 to go right to -- to Zubaydah, which  
 20 is -- so -- but before we do, just one  
 21 last question. In -- when we discussed  
 22 the -- what I've been calling the paper,  
 23 the countermeasures paper, that was the  
 24 one that talked about how -- there were

1 certain countermeasures that could be  
2 taken, and if they were skillfully done,  
3 they would not violate Geneva, right?

4 MR. SMITH: For the record,  
5 that's Exhibit 9.

6 MR. LUSTBERG: Thank you.

7 THE WITNESS: Yeah. What it  
8 actually says is skillfully  
9 crafted countermeasures to be  
10 developed in such a way that they  
11 do not violate the Geneva  
12 Conventions.

13 BY MR. LUSTBERG:

14 Q. Uh-huh. And without  
15 discussing what the countermeasures were  
16 that followed, the ones that followed in  
17 the paper afterward to your mind did not  
18 violate --

19 A. If crafted correctly.

20 Q. Well, we're talking about  
21 the ones that you crafted that  
22 followed -- that followed after that  
23 statement.

24 A. I discussed principles in

1 this paper.

2 Q. So you didn't -- so this  
3 paper did not propose certain  
4 countermeasures?

5 A. I think what it says is it's  
6 not possible to provide a detailed  
7 cookbook, however it will provide a  
8 flavor for how this might be  
9 accomplished. So it's been a while since  
10 I wrote this, but my recollection is we  
11 probably provided a couple of examples.

12 Q. And the examples you  
13 provided were not ones that violated  
14 Geneva?

15 A. I don't think they did, no.

16 Q. Okay. But you've described  
17 the ones that you then told them that  
18 they should consider as more coercive,  
19 right?

20 A. Yes.

21 Q. And is it your view that  
22 those also did not violate Geneva?

23 A. No, that's not my view.

24 Q. Okay. So it's your view

1 that they did violate Geneva?

2 A. It's my view that they could  
3 have and they were going to make a  
4 determination about whether they were  
5 legal or not and whether they could be  
6 legally applied to the detainee. I  
7 abstain -- I'm not a legal scholar, I'm  
8 not a constitutional scholar, you know,  
9 I'm not a -- so I'm not making a call on  
10 whether something does or doesn't violate  
11 the Geneva Conventions. That's the  
12 bailiwick of the Office of the General  
13 Counsel of CIA. I'm relying on them  
14 completely, and the Department of  
15 Justice, when it comes to a decision  
16 about whether this is applicable to  
17 someone or not.

18 Q. Did you have concerns that  
19 they violated Geneva?

20 A. I didn't -- I don't know --

21 Q. I'm sorry. I'm sorry. I  
22 just want to make sure that the question  
23 is clear. I apologize for interrupting,  
24 but when I say "they," what I was

1 referring to is the countermeasures that  
2 you said that they should consider that  
3 were more coercive.

4 And so my question was: Did  
5 you have any concerns that those  
6 countermeasures might violate Geneva.  
7 And I'm sorry to interrupt. I just want  
8 to be --

9 A. Well, I had been told that  
10 the Geneva Conventions did not apply to  
11 the captured detainees.

12 Q. Did not?

13 A. Did not apply to the  
14 captured detainees by the attorneys at  
15 the CIA. And so I don't think I thought  
16 about Geneva Conventions. I was  
17 concerned that they were legal.

18 Q. When were you told that?

19 A. We were told that in those  
20 first meetings that -- I think it's -- it  
21 might have been as early as March, April,  
22 2002 that -- that Geneva Conventions  
23 didn't apply to enemy combatants, illegal  
24 enemy combatants that were detained by

1 going to be -- like I even considered the  
2 possibility that I would ever even end up  
3 doing interrogations for the CIA when  
4 this paper was written.

5 Q. Okay. So -- sorry, I just  
6 need to -- but when you wrote it, you --  
7 it was in your head, you understood that  
8 it might be relevant to some  
9 interrogations in some regard?

10 MR. SMITH: The "it" is?

11 BY MR. LUSTBERG:

12 Q. The "it" is the  
13 countermeasures paper.

14 MR. LUSTBERG: What's our  
15 exhibit number on that?

16 MR. SMITH: Exhibit No 9.

17 MR. LUSTBERG: Thank you.  
18 You're an excellent paralegal.

19 MR. SMITH: Thank you.

20 Mr. Schuelke tells me that all the  
21 time.

22 MR. LUSTBERG: Smart man.

23 BY MR. LUSTBERG:

24 Q. Do you want me to repeat the

1 question?

2 A. Yes.

3 MR. SMITH: You wrote it.

4 BY MR. LUSTBERG:

5 Q. When you wrote it, did you  
6 understand that it might become relevant  
7 in some regard to some interrogation at  
8 some time?

9 A. Yes.

10 Q. Okay. You know how we  
11 lawyers are. I'm just --

12 MR. SCHUELKE: Speak for  
13 yourself.

14 BY MR. LUSTBERG:

15 Q. Yeah. And what you just  
16 said was that what was in that paper, you  
17 were comfortable did not violate the  
18 Geneva Conventions?

19 A. What I said was -- go ahead  
20 and ask your question, please.

21 Q. Okay. Did -- was that  
22 right, though, that you --

23 A. You got half a sentence out  
24 before I interrupted you. I apologize.

1 Q. Okay. No worries. So the  
2 Exhibit 9, the -- your countermeasures  
3 paper that you -- that you wrote after  
4 reviewing the Manchester manual and other  
5 documents, was -- included  
6 countermeasures, which we can't discuss  
7 specifically, but that you were  
8 comfortable did not violate the Geneva  
9 Conventions; is that right?

10 A. I was comfortable could be  
11 crafted in a way that did not violate the  
12 Geneva Conventions.

13 Q. Okay. And when you -- when  
14 later on you provided potential more  
15 coercive measures, and I say potential  
16 because you said you were just providing  
17 them for consideration, did -- did you  
18 understand that those might violate the  
19 Geneva Conventions?

20 A. I didn't take the Geneva  
21 Conventions into consideration at all  
22 because the CIA had already told me the  
23 Geneva Conventions didn't apply to the --  
24 you know, illegal enemy combatants

1 detained by the CIA. So I didn't  
2 consider it one way or the other.

3 And the other thing that I  
4 think I need to point out as long as  
5 we're talking about that list, is that  
6 although the final list that you have a  
7 copy of that I wrote, we put on paper  
8 after I had agreed, you know, at Jose  
9 Rodriguez's request to help to do the  
10 interrogation. The original list where I  
11 described those things, I had no idea  
12 that I was going to be the interrogator.

13 What I -- what I did was  
14 basically I said -- I said, If you guys  
15 are going to con- -- use physical  
16 coercion against Abu Zubaydah, then you  
17 should consider using some of these  
18 things. And I was recommending, fully  
19 thinking that they would do it or not do  
20 it, but it wouldn't involve me.

21 Q. And did the list change once  
22 you knew it would involve you or might  
23 involve you?

24 A. The final list didn't

1 mandated to come?  
 2 A. They asked me if I would  
 3 deploy with the interrogation team to  
 4 observe Abu Zubaydah's interrogations and  
 5 provide feedback to the interrogation  
 6 team on the resistance techniques that he  
 7 was using, and to help the agency  
 8 psychologist that was going, who was  
 9 actually the lead psychologist, develop  
 10 some countermeasures around what he might  
 11 be doing in terms of resisting.  
 12 Q. Countermeasures in terms  
 13 of -- what did you understand  
 14 countermeasures to mean in that regard?  
 15 A. Well, if he was lying, help  
 16 him figure out a way to get him to stop  
 17 lying.  
 18 Q. And I think at the time you  
 19 were already under contract with the CIA,  
 20 right?  
 21 A. I -- I did have a contract  
 22 with the CIA, yes.  
 23 Q. And did -- so did you amend  
 24 that contract?

1 A. That contract?  
 2 Q. The existing contract.  
 3 A. I think the contract that  
 4 they amended was the one -- a small one  
 5 where they had me do the -- I don't know  
 6 which contract they amended. That's a --  
 7 that's a matter of fact that can be found  
 8 out. But that was an amendment to the  
 9 contract, I think, which I wrote out a  
 10 proposal on a piece of yellow paper.  
 11 Q. Yeah, let's show that to you  
 12 and see if we've got it right.  
 13 A. Yeah, that was actually -- I  
 14 was calling that a contract for the  
 15 longest time, but it's actually a  
 16 proposal.  
 17 MR. LUSTBERG: Exhibit 12.  
 18 (Exhibit No. 12, Handwritten  
 19 Proposal dated April 3, 2002,  
 20 Bates USA 1001, was marked for  
 21 identification.)  
 22 THE WITNESS: Thank you,  
 23 ma'am.  
 24 BY MR. LUSTBERG:

1 Q. So is this the contract  
 2 modification you were talking about that  
 3 you wrote out on a yellow piece of paper?  
 4 It's obviously not yellow in this copy,  
 5 but --  
 6 A. It appears to be an accurate  
 7 copy of it, yes.  
 8 Q. Okay. And as I understand  
 9 it, just to -- so I can read your  
 10 writing, it's \$1,000 per day for -- I  
 11 can't see what that is, something  
 12 planning and prep time?  
 13 A. In conus.  
 14 Q. In conus planning and prep  
 15 time.  
 16 And then it's \$1,800 a day  
 17 for oconus operational activity related  
 18 to -- I'm sorry, I'm having trouble,  
 19 what's that say? Can you see where I'm  
 20 looking?  
 21 A. Yes.  
 22 Q. What's that word?  
 23 A. Quick.  
 24 Q. Quick reaction task, right?

1 A. Yes.  
 2 Q. And then travel 15,000?  
 3 A. Yes.  
 4 Q. Other direct costs related  
 5 to quick action task, \$1,500, right?  
 6 A. Yes.  
 7 Q. Okay. So that was the  
 8 contract modification that you entered  
 9 into, right?  
 10 A. That -- for that particular  
 11 deployment, yes.  
 12 Q. On April 3rd, 2002?  
 13 A. Yes.  
 14 Q. And again, the purpose was  
 15 to provide recommendations to overcome  
 16 Abu Zubaydah's resistance to  
 17 interrogation, right?  
 18 A. The purpose was to be part  
 19 of the interrogation team that as a whole  
 20 provided those recommendations to the  
 21 chief of base who was actually in charge.  
 22 Q. Did you know at that  
 23 time that you would be -- at that time  
 24 that would be engaged in interrogations

1 yourself?  
 2 A. No. In fact -- never mind.  
 3 Q. Go ahead, you can finish.  
 4 You were saying in fact something else?  
 5 A. You didn't ask me a  
 6 question. I was just trying to be a  
 7 good --  
 8 Q. Well, my question is: What  
 9 were you going to say after you said in  
 10 fact? That's my question.  
 11 A. Well, I know people have  
 12 quibbled about this \$1,800 a day. But in  
 13 fact, that was less than they were paying  
 14 other psychologist to deploy to do  
 15 behavioral -- behavioral consultation on  
 16 interrogations like at Gitmo.  
 17 So when this \$1,800 a day  
 18 was established, it wasn't for me to be  
 19 an interrogator, it was for me to provide  
 20 psychological consultation, you know, to  
 21 the interrogation team, and it's based on  
 22 what they paid other psychologists, not  
 23 based on a number that I pulled out of  
 24 the air.

1 Q. Okay. So these numbers were  
 2 the numbers that were basically told to  
 3 you by somebody at the CIA?  
 4 A. I asked other contract  
 5 psychologists what they were -- I mean, I  
 6 just wanted to know.  
 7 Q. I can understand. And some  
 8 of them were making even more than that,  
 9 you say?  
 10 A. Yes. Several of them were  
 11 making a couple thousand dollars. But  
 12 this was not -- this is not a lot of  
 13 money to a guy like me. I mean, some of  
 14 the contracts that I had, you could  
 15 easily make \$3,000 a day. I mean, there  
 16 was only five or six SERE psychologists  
 17 and they were in pretty high demand as  
 18 subcontractors. So \$1,800 is --  
 19 Q. So why did you agree to such  
 20 a low number?  
 21 A. Because it was -- we were in  
 22 the midst -- we were a couple of months  
 23 after 9/11, there had been a catastrophic  
 24 attack and the CIA when they brought me

1 into that room and asked me if I would do  
 2 it, Jennifer Matthews gave me a briefing  
 3 on the threat index, and she told me that  
 4 they had credible evidence that Al-Qaeda  
 5 was planning another catastrophic attack  
 6 and that could potentially involve a  
 7 nuclear weapon and that the country  
 8 needed me to go, so I went.  
 9 Q. So you charged \$1,800 a day,  
 10 which was less really as a matter of  
 11 patriotism, right?  
 12 A. Yes. I mean, I don't know  
 13 that it was a matter of patriotism, but  
 14 that's what I charged.  
 15 Q. So when you arrived, the FBI  
 16 was interrogating -- I mean, not  
 17 specifically at that moment, but they  
 18 were in the -- it was in the course of  
 19 the FBI interrogations of Abu Zubaydah,  
 20 correct?  
 21 MR. SMITH: Objection.  
 22 THE WITNESS: I don't know  
 23 what the FBI was doing at the time  
 24 when I arrived. You know, he

1 was -- I -- I rode over with an  
 2 contingent of people who included  
 3 a hospitalist. Abu Zubaydah was  
 4 dying. They were not conducting  
 5 routine interrogations of Abu  
 6 Zubaydah, they were snatching one  
 7 or two words while he was  
 8 conscious.  
 9 BY MR. LUSTBERG:  
 10 Q. So --  
 11 A. Because what you're  
 12 suggesting is -- here's what you're  
 13 suggesting: You're suggesting that the  
 14 FBI was interrogating a dying man.  
 15 Q. I wasn't suggesting  
 16 anything, I was just asking.  
 17 A. Okay.  
 18 Q. So you're saying that there  
 19 was no -- there was no real interrogation  
 20 going on at that time?  
 21 A. I think he was drifting in  
 22 and out of consciousness and it was very  
 23 difficult to ask him questions.  
 24 Q. Okay.

1 A. I know they did and they got  
2 small pieces of information.

3 Q. During the -- your early  
4 days when you arrived at the site,  
5 wherever that was, the FBI was present as  
6 well; is that right?

7 A. Yes.

8 Q. Okay. And was the FBI  
9 getting information at that time from Abu  
10 Zubaydah?

11 A. Abu Zubaydah -- yes.

12 Q. Okay. What was the  
13 information that the FBI was getting?

14 A. They were getting -- Abu  
15 Zubaydah, in my opinion and opinions of  
16 others that were there, was just trying  
17 to convince him that it was useful to  
18 keep him alive. And so they had -- he  
19 had identified himself as Abu Zubaydah  
20 and he had said that Mukhtar was the  
21 person behind 9/11, but they didn't  
22 provide a lot of details.

23 Q. Okay. Let me just go back  
24 to -- I'm sorry, I'm not going to get --

1 what number? Exhibit 5, which is the  
2 Senate Select Committee on Intelligence  
3 report. And in the executive summary  
4 part of it, turn to page 4?

5 A. Okay.

6 Q. So I want to make sure we  
7 have this part right, it says -- I think  
8 this is consistent with what you said,  
9 but you'll tell me if I'm wrong, on the  
10 bottom of 24 onto 25, it says:

11 "After Abu Zubaydah was  
12 rendered to Detention Site Green on March  
13 {blank} 2002, he was questioned by  
14 special agents from the Federal Bureau of  
15 Investigation who spoke Arabic and had  
16 experience interrogating members of  
17 Al-Qaeda. Abu Zubaydah confirmed his  
18 identity to the FBI officers, informed  
19 the FBI officers he wanted to cooperate,  
20 and provided background information on  
21 his activities.

22 "That evening Abu Zubaydah's  
23 medical condition deteriorated rapidly  
24 and he required immediate

1 hospitalization," and so forth.

2 And then at the end of the  
3 paragraph, it says:

4 "When Abu Zubaydah's  
5 breathing tube was removed on April 8,  
6 2002, Abu Zubaydah provided additional  
7 intelligence and reiterated his intention  
8 to cooperate."

9 Is that consistent with what  
10 you understood at the time?

11 A. Well, those are very  
12 general, very broad comments, so I don't  
13 know, you know, if you -- if you want to  
14 know the specifics of what Abu Zubaydah  
15 provided, then you need to ask the CIA  
16 debriefers and intel folks about the  
17 specifics of it.

18 I know he provided his name,  
19 I know that he said that Mukhtar was the  
20 mastermind behind 9/11 without providing  
21 a lot of details. I know he said over  
22 and over that he would cooperate, which  
23 actually didn't translate into  
24 cooperation, after he got medical care,

1 and I don't know what additional  
2 intelligence they're referring to.

3 Q. Go to the next paragraph.

4 A. Okay.

5 Q. And that paragraph indicates  
6 that:

7 "On April 10th, Abu Zubaydah  
8 revealed to FBI officers that, not only  
9 Mukhtar was the mastermind, but then  
10 identified a picture of him, which of  
11 course was KSM."

12 Is that consistent with what  
13 you understood?

14 A. I just said that previously.

15 Q. No, not -- the picture part.

16 A. Yeah, he identified a  
17 picture of him.

18 Q. Okay. In your book, you say  
19 that:

20 "At around that time, he,"  
21 Abu Zubaydah, "progressively became less  
22 responsive to questions. He played the  
23 FBI and CIA interrogators off one  
24 another."



1 Do you need to see -- do you  
2 want to see that for context?  
3 A. I don't need to see it, but  
4 we're not talking about that specific  
5 time.  
6 Q. Okay.  
7 A. I'm talking about over the  
8 course of that whole period.  
9 Q. Okay. When did that happen?  
10 A. It started happening almost  
11 immediately.  
12 Q. So almost immediately after  
13 this?  
14 A. Yeah. I mean, I don't -- I  
15 don't remember the specific day and time,  
16 but as soon as he started feeling better,  
17 he started employing resistance to  
18 interrogation techniques, playing them  
19 off each other.  
20 Q. And how did he play them off  
21 each other?  
22 A. He would lead each one of  
23 them to believe that he had a special  
24 relationship with that person, that he

1 cared one way or the other about whether  
2 he would resist.  
3 Q. Not whether they cared, but  
4 what they expected?  
5 A. I don't know what they  
6 expected. If you want to know what the  
7 CIA thought, you've got a whole shelf  
8 full of them sitting over there.  
9 Q. Yeah, I think I won't.  
10 They're not being deposed today.  
11 But let's take a look at  
12 Exhibit 13.  
13 A. Are we done with this?  
14 Q. Just for now.  
15 (Exhibit No. 13, Document,  
16 Bates USA 1779 through 1787, was  
17 marked for identification.)  
18 THE WITNESS: Thank you,  
19 ma'am. There's so much  
20 information in these documents  
21 that are --  
22 BY MR. LUSTBERG:  
23 Q. So -- yeah. Take a look at,  
24 if you would, the one, two, three, four,

1 preferred talking to that person to the  
2 exclusion of others, and that if he could  
3 just spend more time with that person,  
4 then, you know, he would -- you know, he  
5 would provide additional information.  
6 But then he never really did provide  
7 additional information according to the  
8 CIA analysts and subject matter experts  
9 that were onsite. He provided bits and  
10 pieces that were important put in the  
11 larger matrix of things, but my  
12 impression is that -- well, I know for a  
13 fact, because they told me, that the CIA  
14 was dissatisfied with what he was  
15 providing.  
16 Q. The CIA believed that he was  
17 resisting, right?  
18 A. That's what I would say.  
19 Q. Uh-huh. And was that what  
20 they -- I'm sorry. I'm sorry. I just  
21 keep yanking this off.  
22 Was that what was -- what  
23 the CIA expected, that he would resist?  
24 A. No, I don't think the CIA

1 fifth page. It has the Bates No. 001783  
2 at the bottom.  
3 A. Okay.  
4 Q. And it says in the middle of  
5 that paragraph 2:  
6 "Being that Zubaydah is a  
7 senior Al-Qaeda member who has a long  
8 history of commitment to Al-Qaeda and has  
9 likely received some or a lot of counter-  
10 interrogation training, the proposal put  
11 forth takes the likely premises that the  
12 complete interrogation of Zubaydah could  
13 take a considerable amount of time and  
14 resource. More than likely, Zubaydah  
15 would divulge relevant information in  
16 spurts followed by periods of slow  
17 progress."  
18 Does this tell you that  
19 there was an expectation that he would  
20 resist in some regard at that time?  
21 A. Yeah.  
22 MR. SMITH: Objection.  
23 THE WITNESS: The first time  
24 that I had seen this is when the

1 Government provided it. So I --  
 2 so certainly just on the basis of  
 3 what this document says, it looks  
 4 like the person who wrote it  
 5 believes that.  
 6 BY MR. LUSTBERG:  
 7 Q. Did you write this?  
 8 A. Of course not.  
 9 Q. So just so we can save time  
 10 going forward, I'm going to ask you as we  
 11 go through these whether you wrote any of  
 12 these and you can tell me if any of them  
 13 were written by you. But you're saying  
 14 this one for sure you didn't write?  
 15 A. I for sure didn't write it.  
 16 Q. Okay.  
 17 MR. SMITH: While there's no  
 18 question pending, just for a point  
 19 of clarification, Mr. Warden, how  
 20 should we describe these documents  
 21 for the record? Is this a cable?  
 22 MR. WARDEN: It's a document  
 23 at a general level and the Bates  
 24 number, but if you're asking what

1 category of government document  
 2 this is at Bates 1783, this is a  
 3 CIA cable.  
 4 MR. SMITH: Okay. Thank  
 5 you. That's helpful.  
 6 BY MR. LUSTBERG:  
 7 Q. Was, Dr. Mitchell, the  
 8 expectation that Abu Zubaydah would  
 9 resist that caused the CIA to deploy you  
 10 so that --  
 11 A. I don't know what caused --  
 12 MR. SMITH: You've got to  
 13 let him finish.  
 14 THE WITNESS: Sure.  
 15 BY MR. LUSTBERG:  
 16 Q. So that caused the CIA to  
 17 deploy you, question mark. Go ahead.  
 18 MR. SMITH: Objection.  
 19 You can answer.  
 20 THE WITNESS: I don't know  
 21 what the CIA decided to do. I  
 22 mean, I know they decided to  
 23 deploy me, but I don't know what  
 24 their reasoning was. You'd have

1 to ask the CIA what their  
 2 reasoning was.  
 3 BY MR. LUSTBERG:  
 4 Q. When you were deployed, you  
 5 did not understand that the reason you  
 6 were being deployed was because --  
 7 A. I --  
 8 Q. Because Abu Zubaydah was  
 9 resisting or likely to resist?  
 10 A. They didn't say that to me.  
 11 What they said is, Go there, see what  
 12 resistance techniques he's using, if any,  
 13 help the team put together  
 14 countermeasures.  
 15 Q. Okay. Let me just follow-up  
 16 on that. So they told you, go there, see  
 17 what resistance techniques -- I'm sorry,  
 18 he's using, if any, help the team put  
 19 together countermeasures.  
 20 So when you say "if any," it  
 21 was your understanding at that meeting,  
 22 not that he was resisting, but that you  
 23 were being sent over just in case he  
 24 resisted; is that right?

1 A. I believe -- I believe  
 2 that's a mischaracterization of it. To  
 3 the extent that what I said confuses it,  
 4 they said go over there and if he employs  
 5 resistance techniques, tell the team  
 6 which ones he's employing in your  
 7 opinion. There was no if he uses  
 8 them or -- no if, there's no, we expect  
 9 him to use it, we don't expect him to use  
 10 it, there was just the instructions to go  
 11 over there and do it.  
 12 Now, they did tell me that  
 13 they had had reason to believe -- I don't  
 14 know that that's true. I think they may  
 15 have mentioned that they had reason to  
 16 believe he had been resistant trained.  
 17 THE VIDEOGRAPHER: Excuse  
 18 me, Counsel, ten minutes on the  
 19 tape.  
 20 MR. LUSTBERG: Okay.  
 21 BY MR. LUSTBERG:  
 22 Q. Sure, because on Exhibit 13  
 23 that we just looked at, it said:  
 24 "Being that Zubaydah is a

1 senior Al-Qaeda member who has a long  
2 history of commitment to Al-Qaeda and has  
3 likely received some or a lot of counter-  
4 interrogation training," it would make  
5 sense that they would say to you that  
6 they thought he had --

7 A. Had a potential to --

8 MR. SMITH: Objection.

9 BY MR. LUSTBERG:

10 Q. I'm sorry, had a potential  
11 to -- just finish your -- his objection  
12 knocked out your last word there.

13 A. His objection overrode my  
14 over talking you?

15 Q. Yes. That he had the  
16 potential to resist?

17 A. Yeah. I mean, that's the  
18 way I would interpret it. Not that he  
19 was going to.

20 Q. Okay. Shortly -- so let --  
21 I just want again ask your reaction to  
22 some statements in the SSCI report.  
23 Let's go right to where we were, which  
24 was page 26.

1 As we look at this document,  
2 there's the name Grayson Swigert that's  
3 used. That's the name that they used for  
4 you, right, Dr. Mitchell?

5 A. Yes.

6 Q. And it says:

7 "Swigert had come to  
8 someone's attention through {blank} who  
9 worked in OTS."

10 And just so that the record  
11 is clear, OTS is what?

12 A. Office of Technical  
13 Services.

14 Q. Thank you.

15 "Shortly thereafter, CIA  
16 headquarters formally proposed that  
17 Zubaydah be kept in an all white room  
18 that was lit 24 hours a day, that Abu  
19 Zubaydah not be provided any amenities,  
20 that his sleep be disrupted, that loud  
21 noise be constantly fed into his cell and  
22 only a small number of people interact  
23 with him."

24 Was that a -- were those

1 conditions that you -- that you suggested  
2 or proposed in any way?

3 A. I don't recall specifically  
4 suggesting or proposing those, but I know  
5 that those were recommendations that the  
6 interrogation team as a whole put forward  
7 to the CIA.

8 Q. My -- let me just make sure  
9 I nail this down because I want to be  
10 really clear.

11 So did you propose any of  
12 those conditions?

13 A. I don't recall specifically  
14 whether I was the one that proposed those  
15 conditions or somebody else was. The OTS  
16 psychologist that was there was, you  
17 know, in charge of the behavioral side of  
18 the interrogation.

19 Q. I'm just going to quickly  
20 show you the complaint and the answer in  
21 this case. The complaint is the document  
22 that our side files and the answer is the  
23 document that your side files.

24 MR. LUSTBERG: So do you

1 want those marked? So we'll call  
2 the complaint Exhibit 14 and the  
3 answer Exhibit 15.

4 And the reason I'm marking  
5 them both is it's impossible to  
6 understand the answer without  
7 looking at the complaint.

8 THE WITNESS: Okay.

9 (Exhibit No. 14, Complaint,  
10 and No. 15, Answer, were marked  
11 for identification.)

12 BY MR. LUSTBERG:

13 Q. So the paragraph I'm going  
14 to talk about is paragraph 34.

15 A. On which document?

16 Q. On both. It's on page 17 of  
17 the complaint. So read that first. And  
18 then of the answer.

19 A. Did you say page 17?

20 Q. Page 17 of the complaint and  
21 page 12 of the answer.

22 A. Oh.

23 Q. It's paragraph 34. We do  
24 these with paragraph numbers.

1 MR. SMITH: Okay. Undated?  
 2 MR. LUSTBERG: May 2002.  
 3 MR. SMITH: Okay. I see it  
 4 now.  
 5 BY MR. LUSTBERG:  
 6 Q. You see that?  
 7 A. I see that paragraph, yes,  
 8 sir.  
 9 Q. Okay. And option 2 was --  
 10 you see the three options?  
 11 A. I see three options.  
 12 Q. Option 2 is:  
 13 "Press AZ for threat  
 14 information only and employ immediate  
 15 countermeasures when he resists."  
 16 Do you see that?  
 17 A. Yes.  
 18 Q. That was the option that was  
 19 proposed?  
 20 A. Those three options were  
 21 proposed.  
 22 Q. The -- option 2 was the one  
 23 that was adopted?  
 24 A. Is there a document that

1 says that?  
 2 Q. Take a look at this  
 3 document.  
 4 So you don't know whether  
 5 that option was the option that was  
 6 adopted?  
 7 A. I've never seen this cable  
 8 until the Government produced it. So I  
 9 haven't spent any time --  
 10 Q. I understand?  
 11 A. -- parsing it, so I don't --  
 12 I'm not --  
 13 Q. Right below the three  
 14 options it says:  
 15 "HQ/Alex concurred for  
 16 {blank} for {blank} to follow option 2  
 17 and press AZ for threat-related  
 18 information.  
 19 Do you see that?  
 20 A. Okay. I see that.  
 21 Q. Was that your  
 22 recommendation?  
 23 A. I don't -- I don't have a  
 24 specific recollection of recommending

1 that, but it's not inconsistent with  
 2 something I could have recommended, I  
 3 just don't have a specific recollection  
 4 of it.  
 5 Q. Okay. After this time, and  
 6 beginning in June, Abu Zubaydah was held  
 7 in complete isolation for -- for a period  
 8 of time, right?  
 9 A. Not complete isolation.  
 10 Q. From June 18 to August 4th,  
 11 for 47 days, he was held in isolation?  
 12 Would you agree with that?  
 13 A. Yes.  
 14 Q. And during that time, the  
 15 members of the team, including you,  
 16 discussed what would occur next, right?  
 17 A. There was discussion, yes.  
 18 Q. And the -- and you were part  
 19 of the decision -- you were involved in  
 20 the decision to --  
 21 A. I wasn't involved in the  
 22 decision, I was involved in making  
 23 recommendations.  
 24 Q. Okay. What was -- what was

1 your recommendation?  
 2 A. I don't recall the specific  
 3 recommendation.  
 4 Q. You didn't -- you didn't  
 5 recommend that he be kept in isolation  
 6 for those 47 days while -- as a matter of  
 7 keeping him off balance?  
 8 A. I never recommended that he  
 9 be kept in isolation for 47 days.  
 10 Q. Did you -- did you recommend  
 11 that he been kept in isolation?  
 12 A. I don't recall specifically,  
 13 but it's not out of the possibility.  
 14 Q. As of that time, in July,  
 15 you had assessed Abu Zubaydah as  
 16 uncooperative; is that right?  
 17 A. It was my opinion that he  
 18 was cooperative on some things and  
 19 uncooperative on others.  
 20 Q. Had you -- did you assess  
 21 him overall as being uncooperative?  
 22 A. I assessed him as being  
 23 cooperative on some things and  
 24 uncooperative on others.

1 Q. I just want to make sure  
2 under the -- if you look at the answer to  
3 the complaint.

4 A. Sure.

5 Q. Exhibit 15 is the answer.  
6 Wait a second, I'll get it. Paragraph  
7 41.

8 A. 41?

9 Q. Uh-huh.

10 MR. SMITH: Page 20.

11 MR. LUSTBERG: Page 14 of  
12 the answer and page 20 of the  
13 complaint.

14 THE WITNESS: All right.  
15 Okay.

16 BY MR. LUSTBERG:

17 Q. And if you'll notice in  
18 paragraph 41 of the answer, it says:  
19 "Defendants admit that in  
20 July 2002, Mitchell and the CIA assessed  
21 Zubaydah as uncooperative."

22 A. Okay.

23 Q. Is that correct?

24 A. Yes. And I don't think

1 that's inconsistent with what I said.

2 Q. I'm just asking whether you  
3 and the CIA assessed Zubaydah as  
4 uncooperative.

5 A. Yes.

6 Q. Okay. So in -- at that  
7 time, did you -- were you involved in  
8 several meetings at CIA headquarters to  
9 discuss the Zubaydah interrogation?

10 MR. SMITH: Objection. At  
11 what time?

12 BY MR. LUSTBERG:

13 Q. July 2002.

14 A. I think the -- yes.

15 Q. And what was the nature of  
16 those meetings?

17 A. The entire interrogation  
18 team minus the OTS psychologist that  
19 stayed back there to monitor Abu Zubaydah  
20 attended several meetings at CIA  
21 headquarters where they talked about --  
22 including the FBI, attended several  
23 meetings where they talked about where he  
24 was, what information they had gotten,

1 whether or not it addressed the concerns  
2 about the potential attacks that could  
3 occur, and you know, sort of next steps  
4 of what they were willing to do. That's  
5 my recollection.

6 Q. Okay. In your book you say  
7 that you were asked by Jose Rodriguez,  
8 which is who?

9 A. At the time he was the  
10 director of CTC. He became the director  
11 of Clandestine Services.

12 Q. You had -- "asked by him to  
13 accompany other senior members of the  
14 interrogation team back to the US to  
15 attend a meeting at Langley," correct?

16 A. Yes, sir.

17 Q. "The agenda was to discuss  
18 Abu Zubaydah's interrogation thus far and  
19 what would be done to get him not only  
20 talking again, but providing more full  
21 and complete answers than he had provided  
22 before." Is that --

23 A. Yes.

24 Q. Jose asked you to discuss

1 some of the resistance to interrogation  
2 ploys that you had seen Abu Zubaydah use;  
3 is that right?

4 A. Yes.

5 Q. What were those ploys?

6 A. Oh, he would go on for hours  
7 about dead people without revealing that  
8 they were dead. He would talk about --  
9 endlessly about old Soviet plots -- plots  
10 against the Soviet Union when they were  
11 doing the Jihad.

12 He would, as I said before,  
13 play one interrogator off of the other.  
14 He would -- he would -- he would answer  
15 in vague and misleading ways so that --  
16 he talked for a great deal of time, but  
17 he provided no real information, and he  
18 would -- I don't remember the whole list.  
19 I mean, there was a variety of things I  
20 mentioned. I tried to be accurate in the  
21 book and...

22 Q. Since -- at that point, did  
23 you recommend that more coercive measures  
24 be used against Abu Zubaydah?

1 A. I don't know that I  
2 recommended it. I certainly know it was  
3 part of the discussion, and I probably  
4 weighed in on it.

5 Q. And when you weighed in,  
6 what was your -- what was your  
7 recommendation?

8 A. I think that was at the time  
9 when I had already come to my own mind to  
10 believe that they were going to use  
11 coercive techniques, and if they were  
12 going to use coercive techniques, they  
13 should use the ones that had been used in  
14 the SERE school.

15 Q. And so your view was that  
16 because the SERE school techniques  
17 hadn't -- did not cause any damage from  
18 what you had seen, then those techniques  
19 should apply to -- could be applied to  
20 Abu Zubaydah as well without causing  
21 harm; is that right?

22 MR. SMITH: Objection.

23 THE WITNESS: No.

24 BY MR. LUSTBERG:

1 some coercive techniques should be used  
2 by them?

3 A. I felt like he wasn't going  
4 to provide the information that they were  
5 looking for using rapport-based  
6 approaches.

7 Q. Okay.

8 A. At least not in the time  
9 period that we were talking about.

10 Q. Okay.

11 A. Because it's important to  
12 remember that at this particular time,  
13 although we didn't know it --  
14 particularly who it was, there was a  
15 great deal of information about this  
16 upcoming threat that was going to occur.  
17 You know, there was the suggestion in the  
18 immediate aftermath of 9/11 that there  
19 was a potential for a nuclear device, and  
20 the CIA had reported in other places that  
21 they already knew that UBL had met with  
22 the Pakistanis who were passing out  
23 nuclear technology to rogue states, and  
24 the Pakistani scientist had said to UBL,

1 Q. Okay. Tell me what's wrong  
2 about that.

3 A. I never said they caused no  
4 damage at all.

5 Q. Okay.

6 A. I said some of them did, and  
7 you know, others could sometimes result  
8 if they were misapplied. And I don't  
9 remember the rest of this question.

10 Q. My question was tell me  
11 what's wrong about that.

12 But what I asked -- so let's  
13 break it down. You -- understanding that  
14 the CIA apparently intended to use  
15 coercion --

16 A. Uh-huh.

17 Q. -- you proposed that  
18 techniques from the SERE school be used,  
19 correct?

20 A. I recommended that they  
21 consider using them.

22 Q. That they consider using  
23 them. And that -- and by this time you  
24 said you weighed in and you believed that

1 the hard part is getting the fissional  
2 material, and UBL had said, What if we've  
3 already got it.

4 And so there was this press  
5 to do whatever was legal, whatever was  
6 within the bounds to take it, as the  
7 attorneys at the time said, that gloves  
8 were off and we need to walk right up to  
9 the line of what's legal.

10 Q. That was what the attorneys  
11 at the time said to you?

12 A. Uh-huh.

13 Q. And -- but just back to what  
14 you said before, that -- so I asked you  
15 whether you recommended that in the event  
16 they were going that way, that they  
17 should consider -- they should consider  
18 the SERE school techniques.

19 A. I did recommend that.

20 Q. And I asked you, and that  
21 was because they weren't harmful and you  
22 said, well, they could be harmful?

23 A. Yes.

24 Q. Okay. Now --

1 A. And again, at this  
2 particular time, they had not yet asked  
3 me if I would do the interrogations. I'm  
4 thinking I'm providing a list that  
5 they're going to go off and do whatever  
6 they decide to do with, all right? I'm  
7 not, you know...

8 Q. So in any event, you did  
9 provide a list, right?

10 A. By then they had already  
11 asked me -- the techniques I outlined  
12 before they asked me. After they asked  
13 me and they brought Dr. Jessen onboard,  
14 we actually wrote out the list of things  
15 I had suggested earlier on.

16 Q. Uh-huh. Okay. So let's  
17 just -- let's just show you that list.  
18 Just make sure we're working off the same  
19 list.

20 A. Sure.

21 MR. LUSTBERG: This is  
22 Exhibit 17.  
23 (Exhibit No. 17, Document,  
24 Bates USA 1109 through 1111, was

1 marked for identification.)

2 BY MR. LUSTBERG:

3 Q. Are you ready?

4 A. I need to ask for guidance  
5 from the Government about something.  
6 Sorry.

7 MR. LUSTBERG: Okay. No, no  
8 worries.

9 THE WITNESS: I need to ask  
10 you for some guidance.

11 THE VIDEOGRAPHER: We're off  
12 the record?

13 MR. LUSTBERG: Yup, please.

14 THE VIDEOGRAPHER: The time  
15 is 3:43 PM and we're now going off  
16 the video record.

17 (Recess.)

18 THE VIDEOGRAPHER: The time  
19 is 3:44 PM. We are now back on  
20 the video record.

21 BY MR. LUSTBERG:

22 Q. Looking at Exhibit 17, is  
23 that the list of enhanced interrogation  
24 techniques that you provided to

1 Mr. Rodriguez?

2 A. They weren't called enhanced  
3 interrogation techniques, but yes.

4 MR. SMITH: Could I just  
5 confer while there's no question?  
6 (Discussion held off the  
7 record.)

8 THE WITNESS: It looks like  
9 what somebody did is cut and paste  
10 into a document that I provided  
11 them into a bigger document. This  
12 stuff was not on my document.

13 BY MR. LUSTBERG:

14 Q. I understand. Let's take a  
15 look at the second and third page.

16 A. Okay.

17 Q. The third page ends, "Hopes  
18 this helps. Jim Mitchell."

19 That's you, right?

20 A. Right. Obviously somebody  
21 cut and pasted it, yeah.

22 Q. Somebody cut and -- so what  
23 was cut and pasted?

24 A. The whole -- I didn't have

1 access to their system.

2 Q. Okay.

3 A. So I couldn't write a  
4 classified document on their system. I  
5 could write a classified document on a  
6 stand-alone system. Someone else had to  
7 take that document and cut and paste it  
8 into one of their documents, which is  
9 what this -- all these headers are.

10 Q. On the first page?

11 A. The original people who sent  
12 this out.

13 Q. Okay. I'm just --

14 A. So I provided this  
15 classified document that was on a  
16 stand-alone computer, right, as a file to  
17 a person, and that person cut and pasted  
18 it into this.

19 Q. Looking at pages 2 -- the  
20 second and third page.

21 A. Yes, sir.

22 Q. And if you need to, read the  
23 whole thing from top to bottom on the  
24 second and third page. Was -- are those

1 your words or have those been cut and  
2 pasted in some way other than attaching  
3 them to the first page?

4 A. No, these are my words.

5 Q. So the answer is that these  
6 one, two -- these 12 techniques, which  
7 we'll come back in a second what they  
8 are, those -- these 12 techniques are  
9 described in your words?

10 A. I wrote these words, yes.

11 Q. Right. And they were the,  
12 according to the first paragraph -- by  
13 the way, the first paragraph also at the  
14 top of page 2 is your words?

15 A. Yes.

16 Q. So these are the  
17 descriptions of potential physical and  
18 psychological pressures that were  
19 discussed in the July 8th, 2002 meeting;  
20 is that right?

21 A. Yes.

22 Q. Okay. At the July 8, 2002  
23 meeting, Mr. Rodriguez asked you to,  
24 quote, unquote, craft the program, right?

1 A. No.

2 Q. Okay. Let's -- if you  
3 could, let's just take a quick look at  
4 your book. And pages 54 and 55, if you  
5 have it. I believe that was Exhibit 4.

6 MR. SMITH: For the record,  
7 I think you referred to this as  
8 "his book," and I don't think the  
9 witness --

10 MR. LUSTBERG: It's the  
11 manuscript, you're right.

12 THE WITNESS: Yes. Well, in  
13 fact, it's a work draft.

14 MR. SMITH: A draft.

15 THE WITNESS: You said 55  
16 and 56?

17 BY MR. LUSTBERG:

18 Q. 54 and 55.

19 A. Okay.

20 Q. And on page -- actually top  
21 of page 55.

22 A. Okay.

23 Q. The page before talks about  
24 a meeting and then it says:

1 "A day or so later," so  
2 maybe it was a day or so later,  
3 "Rodriguez asked me if I would help put  
4 together an interrogation program using  
5 EITs."

6 A. A program for Abu Zubaydah.

7 Q. Okay.

8 "I told him I would,  
9 thinking I would remain in the role I  
10 occupied during the first few months,  
11 pointing out resistance techniques  
12 employed by the detainees and advising on  
13 the psychological aspects of the  
14 interrogation. But that's not what he  
15 had in mind. Jose not only wanted me to  
16 help them craft the program, he wanted me  
17 to conduct the interrogations using EITs  
18 myself."

19 Do you see that?

20 A. Right.

21 Q. Okay. Is that correct?

22 A. That sentence is correct,  
23 yes.

24 Q. Okay. And is that sentence

1 appropriately read, that he wanted you to  
2 craft --

3 A. No.

4 MR. SMITH: You've got to  
5 let him finish.

6 THE WITNESS: Okay.

7 BY MR. LUSTBERG:

8 Q. Well, he did not want you to  
9 help craft the program?

10 A. You're inserting the word  
11 help now, but before you said wanted you  
12 to craft.

13 Q. Help -- no, no, I'm using  
14 your -- your word is help.

15 A. Sorry. When you're replying  
16 to me, you were using the words that I  
17 used. When you asked me the question,  
18 you're leaving the word help out.

19 Q. Oh, I understand.

20 A. And you're just giving me  
21 the entire onus of crafting that program.  
22 He asked me to help him craft a program  
23 for interrogating Abu Zubaydah. He was  
24 the only detainee that was part of that



1 discussion. There was no discussion at  
2 that time about a larger program  
3 involving multiple detainees --

4 Q. No.

5 A. -- or any of that stuff.

6 Nor was it the case that he asked me to  
7 craft the program independently, but  
8 rather to help him craft a program.

9 Q. Okay.

10 A. And I think the word help is  
11 important.

12 Q. Okay. When you drafted  
13 Exhibit 17, what role did Mr. Rodriguez  
14 play in drafting that?

15 A. He asked me to draft this  
16 list of potential things for them to  
17 consider.

18 Q. Okay.

19 A. But this is not the program.  
20 This is a list of potential techniques  
21 for them to consider.

22 Q. Okay. And we'll come back  
23 in a second to what parts of that become  
24 the program. But before we do, a few

1 minutes ago you said that, at this time,  
2 you did not understand that you were  
3 going to also be doing interrogations,  
4 but in your book you say:

5 "Jose not only wanted me to  
6 help them craft a program, he wanted me  
7 to conduct the interrogations using EITs  
8 myself."

9 A. You are, again, not  
10 following what I said.

11 Q. Okay.

12 A. What I said was when I gave  
13 them the oral list that included these  
14 things, I didn't know that he wanted me  
15 to do the thing. When I gave him the  
16 written list, I did.

17 Q. Okay. And what was the  
18 difference in time between those two  
19 things?

20 A. Days.

21 Q. Okay. Couple days, right?

22 A. Yeah. I don't know how many  
23 days, but days.

24 Q. Uh-huh. And other than --

1 so what parts of this list became the  
2 program?

3 MR. SMITH: Objection.

4 THE WITNESS: You know, it  
5 was --

6 BY MR. LUSTBERG:

7 Q. For Abu Zubaydah.

8 A. Right. But this was not the  
9 whole program for Abu Zubaydah, so there  
10 were -- it makes it sounds like this is  
11 the program, but in fact, these -- these  
12 techniques were really only to move into  
13 a position where we could start using  
14 social influence techniques again. So  
15 it's incorrect to think that this the  
16 whole program.

17 Q. Okay. How about the part of  
18 the program involving using enhanced  
19 interrogation techniques, was this --  
20 this was your recommendation for the  
21 enhanced interrogation techniques --

22 A. This is my recommendation  
23 for the ones they consider.

24 Q. Okay. And of these -- my

1 question was which ones did they not  
2 adopt. It would be a shorter list than  
3 the ones that they did.

4 A. I didn't think they did --  
5 they didn't do mock burial. I think  
6 that's the only one -- I think mock  
7 burial was the only one. No, I don't  
8 recall insects either. I think they did  
9 approve insects but -- I think it was  
10 just mock burial. But if there's another  
11 list, I'll be happy to refresh my memory,  
12 I just --

13 Q. One -- one other question on  
14 this page of your manuscript.

15 A. Sure.

16 Q. And if this doesn't appear  
17 in the book or it's just part of the  
18 manuscript, you'll tell me, but it says:  
19 "I was surprised and  
20 reluctant. I knew that if I agreed, my  
21 life as I knew it would be over. I would  
22 never again be able to work as a  
23 psychologist."

24 Why is that?

1 A. Well, I think it was because  
2 at the time I thought I just couldn't see  
3 myself going back to, you know, treating  
4 mental health patients after being an  
5 interrogator. It just didn't seem like  
6 something that I was going to do.

7 I also knew that there were  
8 people -- psychologists in general are  
9 quite liberal and they tend to be  
10 primarily focused on who they perceive as  
11 the patient rather than necessarily the  
12 client. And I knew that the bulk of  
13 psychologists would probably object, you  
14 know. So what I thought was, it's highly  
15 probable that I'm not going to go back  
16 to, you know, doing mental health work.

17 Q. It wasn't because you  
18 understood that the APA or any other  
19 organization --

20 A. To be honest with you -- no.  
21 I know it's -- it's easy and glib to say  
22 that if someone who is the expert on  
23 Al-Qaeda just told you they're getting  
24 ready to set off a nuclear bomb, that you

1 can say, No, no, hands-off, I don't want  
2 to participate. But that wasn't the way  
3 it was for me. The way it was for me  
4 was, Jennifer Matthews and the rest of  
5 those folks, briefed me that there was  
6 already intelligence suggesting there  
7 were people inside of New York who were  
8 smuggling explosives in and they were  
9 going to smuggle in a nuclear bomb, and I  
10 was willing to help. So if -- if what  
11 happened as a result of that was that I  
12 couldn't go back to doing marital  
13 therapy, I was okay with that.

14 Q. On the next page, you're  
15 talking about -- you were talking about  
16 whether you had the qualifications to put  
17 together a psychologically-based  
18 interrogation program. What did you mean  
19 by psychologically-based interrogation  
20 program?

21 A. Well, I don't -- I don't  
22 think that EITs themselves are what's  
23 necessarily going to yield the  
24 information. I think there's a lot of

1 misinformation about EITs. But -- what  
2 came to be known as EITs, but the whole  
3 point of those EITs was to move him into  
4 a position where he would cooperate so  
5 that you could then use social influence  
6 stuff to get the greater details and the  
7 more information.

8 So I think it's -- I think  
9 that primarily, even if you're using  
10 coercive measures, the point is to  
11 produce a psychological effect.

12 Q. A sentence or two -- just a  
13 little bit later, and I'm on the bottom  
14 of page 56 of your manuscript?

15 A. Sure.

16 Q. You said that you knew that  
17 it would need to be based on what is  
18 called Pavlovian classical conditioning?

19 A. Right.

20 Q. In what regard was it --  
21 were these techniques based on Pavlovian  
22 classical conditioning?

23 A. Well, the techniques  
24 themselves weren't, but the use of them

1 were, you know, particularly -- what you  
2 wanted to do was to condition him so that  
3 when he began to resist, he experienced  
4 an adverse of consequence, right? And  
5 when he started to cooperate, that  
6 adverse of consequence went away, which  
7 is straight Pavlovian conditioning.

8 Q. At the top of your -- on  
9 page 2 of the -- of Exhibit 17, you talk  
10 about:

11 "The aim of using these  
12 techniques is to dislocate the subjects  
13 expectations concerning how he's apt to  
14 be treated instill fear and despair."

15 A. Right, that's the adverse  
16 consequence.

17 Q. "The intent is to elicit  
18 compliance by motivating him to provide  
19 the required information while avoiding  
20 permanent physical harm or profound and  
21 pervasive personality change."

22 A. Yes.

23 Q. And the -- so what you're  
24 trying to avoid is permanent physical

1 harm; is that right?

2 A. Well, what I'm trying to  
3 do -- that's what I said here obviously,  
4 but you don't want to have permanent or  
5 profound, you know, mental harm, mental  
6 or physical harm.

7 Q. Okay. What did you mean by  
8 profound and pervasive personality  
9 change?

10 A. One of the things that  
11 happens if you use these techniques too  
12 much, and going -- this is -- this is the  
13 warning that I provided them about  
14 Seligman's things. If you apply one of  
15 these techniques -- the object -- it's  
16 just the same -- it's the same template  
17 that's used in the Army field manual  
18 today for the use of helplessness. Same  
19 template, different techniques, right?  
20 You put the person in a situation that  
21 they perceive to be helpless and then you  
22 gave them a way out of that situation by  
23 answering questions.

24 If you don't give them that

1 questions.

2 If it's anger and you think  
3 they're angry at someone, you give them a  
4 way to get back at that person by  
5 answering questions. If it's -- if it's  
6 that they sense they can no longer or  
7 they're having trouble organizing and  
8 executing the course of actions that are  
9 required to -- if you want them to  
10 believe that it's futile to continue to  
11 resist, right, you engender a little  
12 helplessness, or a sense of helplessness,  
13 I think is the way that I've used the  
14 term in the past, and then you give them  
15 a way out of that situation by answering  
16 questions.

17 So the thing that you're  
18 trying to do is get that seeking to get  
19 out of this situation, not the end  
20 product, not the -- not the profound  
21 helplessness, not the pervasive  
22 personality change. Like for example --  
23 it's called in Pavlovian conditioning,  
24 condition neurosis, where a person

1 way out, then you run the risk of doing  
2 the sorts of things where you -- where  
3 instead of just talking about acquired  
4 helplessness, now you're talking about  
5 the experimental outcomes that Seligman  
6 talks about, all right?

7 So what -- what you have to  
8 be sure you do is once the person begins  
9 to display a sense of whatever the  
10 emotion is that you're using, for  
11 example, anger. Anger would be another  
12 one that you could use, or affinity for  
13 the person would be one you could use, or  
14 fear would be one you could use.

15 What you do is you evoke  
16 that fear -- or that emotion, create it  
17 somehow, the current Army field manual,  
18 you can only use psychological pressures,  
19 right, but you evoke that emotion, then  
20 you give them a way to act on the impulse  
21 that emotion creates by answering  
22 questions. So if what you're using is  
23 fear, you would give them a way to  
24 dissipate the fear by answering

1 essentially begins to look as if they're  
2 psychotic, have trouble putting thoughts  
3 together, you know, have difficulty  
4 remembering things, they become  
5 profoundly depressed, that sort of stuff.  
6 That's not what you're trying to achieve.  
7 What you're trying to achieve is that  
8 setting where they're looking to get out  
9 of that situation and you have to be sure  
10 that you don't let it go too far.

11 Q. So we'll come back a little  
12 bit to letting it go too far, but before  
13 we do that, let's move to, before you  
14 actually implement these techniques, you  
15 have a meeting with the director of the  
16 CIA, George Tenet, correct?

17 A. Correct.

18 Q. And what was the purpose of  
19 that meeting?

20 A. Well, if you want to know  
21 what the CIA thought the purpose of that  
22 meeting was for, you need to ask the CIA.

23 Q. Well, from you -- let me be  
24 clear then. What happened at that

1 meeting?

2 A. Jose Rodriguez asked me to  
3 accompany him to a meeting in the  
4 director the CIA's office. In that  
5 meeting, he laid out to the director of  
6 the CIA that -- that they felt that it  
7 was -- the CIA felt it was necessary to  
8 increase the pressure. He told him that  
9 I was going to help them put together  
10 some techniques, I think he might have  
11 even told him -- I don't remember whether  
12 he told I was -- I think he must have  
13 told him I was going to do it, so it  
14 would have been after that point when he  
15 asked me to.

16 Several days passed after he  
17 asked me to do it and Bruce Jessen was  
18 allowed to come onboard. So -- and then  
19 he described the techniques or had me  
20 describe the techniques, and they were  
21 waiting for his approval to go ahead  
22 before they did anything else on  
23 determining the legality or doing the  
24 other things that they were going to do

1 to check out whether or not they wanted  
2 to go forward with it.

3 Q. Okay. During that meeting,  
4 did you tell him that these techniques  
5 were based upon techniques that had been  
6 used in the SERE program?

7 A. Yes.

8 Q. Okay. And did he ask any  
9 questions about that?

10 A. He asked me what they were  
11 and I demonstrated what they were. I  
12 think I demonstrated a couple of stress  
13 positions, I demonstrated an attention  
14 grab. I think -- I don't recall what --  
15 I don't recall what some of the other  
16 techniques were. Maybe it will refresh  
17 my memory if I look at them.

18 Yeah, I think I showed him  
19 what a facial hold was. I'm sure they  
20 went over -- he clearly had been briefed  
21 before as to specifically what they were  
22 because he seemed to know.

23 Q. Okay. Is it -- during the  
24 course of -- so let me just go back and

1 make sure I understand.

2 Was there a discussion in  
3 that meeting of the fact that these were  
4 SERE program techniques?

5 A. I believe so. I mean, I  
6 don't know that I said it, but it was the  
7 sort of thing that Jose or somebody else  
8 would have said if I didn't.

9 Q. Was there any discussion in  
10 the meeting about whether the use of  
11 these SERE techniques -- strike that.

12 Was there any discussion  
13 about whether they could be used safely,  
14 whether the idea of this -- in other  
15 words, what was the relevance of the fact  
16 that they were SERE techniques, why was  
17 that important?

18 A. Okay. That's two questions.

19 Q. Okay. Either one. Take  
20 either one. What was the significance of  
21 the fact that they were SERE techniques?  
22 Why is that -- again, why is that an  
23 important fact?

24 A. I think it's important

1 because they had been used for years  
2 without, you know, producing significant  
3 problems.

4 Q. Was there any discussion  
5 about whether the application of SERE  
6 techniques, which had been able to be  
7 used for many years without producing  
8 problems, might nonetheless produce  
9 problems in a different setting where the  
10 subject is not there voluntarily?

11 A. I don't recall that  
12 discussion.

13 Q. Did you -- did you mention  
14 that?

15 A. I don't recall mentioning  
16 that.

17 Q. How about -- just going back  
18 to the SERE techniques for a moment.

19 A. Are we still talking about  
20 the meeting with Director Tenent?

21 Q. If you want to it be.

22 A. No, I'm just asking you,  
23 when you say go back to the SERE  
24 techniques.

1 A. Sure.

2 Q. And the part I want to ask  
3 about is right at the top where it  
4 says -- on page 88.

5 A. Okay.

6 Q. I'm sorry, did I not give  
7 you the page? Page 88.

8 "After about 72 hours," this  
9 is when you come back and begin the --  
10 this more aggressive phase, "after about  
11 72 hours, Abu Zubaydah gradually started  
12 answering our questions, but he did more  
13 than that," and you go on to say, "Over  
14 time he provided information."

15 A. Right.

16 Q. Why was he waterboarded  
17 after he started cooperating?

18 A. You'd have to ask the CIA  
19 why they wanted to continue doing that.  
20 We -- Bruce and I recommended to them  
21 that they dial that back, that they not  
22 do that.

23 Q. I could be wrong, but I  
24 thought I read in your book that you --

1 there was only one time that you  
2 waterboarded him that you didn't want to,  
3 that is to say, there was only one time  
4 when you said you would waterboard him  
5 one more time and -- am I right about  
6 that?

7 A. Yes.

8 Q. Okay.

9 A. You're wrong about how you  
10 characterized it.

11 Q. Okay. Just tell -- you  
12 know, you tell it like it is then.

13 A. Well, we didn't think it was  
14 necessary after about 72 hours. We knew  
15 he was still withholding information, but  
16 we thought social influence stuff and  
17 walling or something like that would  
18 probably get it. Or at least that's what  
19 we surmised. I don't know -- you can't  
20 say you knew, but you know, we surmised  
21 that.

22 The CIA made it clear that  
23 they were going to continue  
24 waterboarding, and if we didn't do it,

1 somebody else was.

2 Q. Okay. So it's your  
3 testimony that after 72 hours, you  
4 recommended ceasing the waterboarding; is  
5 that correct?

6 A. Yeah. Well, I don't know if  
7 we recommended it right at 72 hours, but  
8 it was in that first few days after he  
9 began to cooperate.

10 Q. And would you agree that he  
11 was waterboarded for 17 days?

12 A. No.

13 Q. Okay. How long was he  
14 waterboarded for?

15 A. I'd have to see the cable  
16 traffic to refresh my -- my memory, but  
17 there were several days there when they  
18 gave us permission to stop while they  
19 were waiting for that team to come out,  
20 right, and then that's when Bruce and I  
21 said, We will waterboard him one more  
22 time for you to watch it, but we're not  
23 going to do it again.

24 Q. So you agreed to waterboard

1 him one more time that they could watch,  
2 right?

3 A. So they could do their  
4 assessment of whether or not they felt it  
5 was necessary.

6 Q. And you wanted them to be  
7 actually present in the room for that,  
8 right?

9 A. Yes.

10 Q. And why is that?

11 A. Because I didn't want them  
12 watching it on TV, I wanted them to see  
13 what it was really like, you know? I  
14 wanted them to hear the noises that he  
15 made, and you know, see the water, and  
16 you know, see the -- see the whole  
17 incident. Because in my mind it's easy  
18 for the people who have power and make  
19 those decisions, to make those decisions  
20 when they're at arm's length. It's a lot  
21 harder for them to do it when they're  
22 right there with you.

23 Q. Because being present, you  
24 can see how much worse it is than just

1 options they had if they chose to do it,  
2 and so they could certainly -- whether  
3 it's a template or not -- if by template  
4 they mean more than just the use of EITs,  
5 they also mean the social influence  
6 strategies that we applied, if they  
7 understood what we did in the context of  
8 how we did it, then I would agree with  
9 it.

10 If all they're talking about  
11 is just the use of EITs until somebody  
12 talks to them, I wouldn't agree with it.

13 Q. Okay. Would you agree that  
14 it would be a template for other  
15 circumstances in which somebody was --  
16 where an aggressive phase was going to be  
17 used?

18 MR. SMITH: Objection.

19 BY MR. LUSTBERG:

20 Q. Do you understand my  
21 question?

22 A. I do. I think I answered  
23 it.

24 Q. Okay. I'm not sure -- I'm

1 not sure you answered just that question,  
2 so if you don't mind answering it again?

3 A. Ask it again?

4 Q. Okay. You got it. So for a  
5 detainee who is not responding to, you  
6 know, the -- you know, the sort of usual  
7 questioning and so forth, and where an  
8 aggressive phase is required, would you  
9 agree that what you created --

10 A. I didn't create it.

11 MR. SMITH: Hold on. You've  
12 got to let him finish, let me  
13 object.

14 THE WITNESS: Okay.

15 MR. SMITH: And then you can  
16 answer.

17 THE WITNESS: Okay.

18 MR. SMITH: Okay? So let's  
19 go back to the question.

20 Can you read where we were  
21 in the question?

22 MR. LUSTBERG: Actually, let  
23 me -- let me withdraw the question  
24 and start over.

1 MR. SMITH: Question  
2 withdrawn.

3 MR. LUSTBERG: Uh-huh.

4 BY MR. LUSTBERG:

5 Q. For a -- for a detainee who  
6 was uncooperative, would enhanced  
7 interrogation techniques that you drafted  
8 be -- would you view that as a template  
9 for interrogating them?

10 MR. SMITH: Let me just  
11 object. Are we talking about high  
12 value detainees? Because that's  
13 what Exhibit No. 19 -- or are we  
14 talking about detainee generally.

15 MR. LUSTBERG: Well, it --  
16 we can -- this talks about high  
17 value captives. But -- so he  
18 can -- he can -- you know, that's  
19 respectfully suggesting the  
20 answer, but okay.

21 MR. SMITH: I don't think it  
22 is. I just want to make sure we  
23 have a clear record here.

24 BY MR. LUSTBERG:

1 Q. So let's talk about high  
2 value captives.

3 A. Okay. What about them?

4 Q. High value captives who are  
5 not -- who are resisting, do you believe  
6 that you created a template for --

7 A. No.

8 Q. -- how to -- you do not --  
9 you did not?

10 A. You keep using the word  
11 created. Created means to bring into  
12 existence. A contractor, as these men  
13 know, can do -- bring nothing into  
14 existence inside of the CIA. A green  
15 badger has zero capability of creating  
16 something inside of the CIA. So if the  
17 word create is the word that you're  
18 interested in, I'm not the creator of  
19 that.

20 Q. You suggested a series of  
21 enhanced interrogation techniques that  
22 were adopted by the CIA, right?

23 A. That part is true.

24 Q. Okay. And do you disagree

1 that it was used as a template for -- for  
2 other interrogations of high value  
3 captives?

4 A. The assumption that you're  
5 making -- no, I don't agree.

6 Q. Why don't you agree?

7 A. Because the assumption that  
8 you're making is that what we did  
9 consisted entirely of the EITs. You're  
10 leaving out all of the social influence  
11 stuff that we did. So if -- if your  
12 question includes the fact that we're,  
13 you know, using these EITs to elicit  
14 emotions, right, and then using social  
15 influence to move them on, then I would  
16 agree that for high value detainees, if  
17 they were resisting and not responding,  
18 you know, to social influence measures,  
19 then the CIA could consider using that.  
20 I don't know about template.

21 Q. Well, you're aware that --  
22 that, for example, some or all of these  
23 EITs were used at Cobalt, right?

24 A. I only am aware of that

1 because of the cable traffic after the  
2 fact.

3 Q. Uh-huh. Uh-huh. Well, you  
4 were present for at least some  
5 interrogations at Cobalt, right?

6 A. No -- nothing that even  
7 resembled EITs occurred while I was  
8 there. I was present and observed one,  
9 what I would call a custodial debriefing,  
10 what they called an interrogation,  
11 because no -- it was just question and  
12 answer, question and answer. So I didn't  
13 see any kind of coercive measure being  
14 used at all with him.

15 Q. Uh-huh. You never saw any  
16 walling or stress positions, or what  
17 else? Let's take those, used at Cobalt?

18 A. No. I visited Cobalt one  
19 time.

20 Q. What was the -- what was  
21 that time?

22 A. November.

23 Q. Pardon me?

24 A. Sometime about November

1 the 12th, 2002.

2 Q. And do you remember who the  
3 detainee was that you were observing?

4 A. I was there primarily for  
5 al-Nashiri.

6 Q. Uh-huh. You said before  
7 that you were aware from -- from cable  
8 traffic that these -- some of these  
9 enhanced interrogation techniques were  
10 used on other high value detainees,  
11 right?

12 MR. SMITH: Objection.

13 BY MR. LUSTBERG:

14 Q. Or did I misunderstand that?

15 A. I was aware because I used  
16 them on other high value detainees. I  
17 don't remember seeing cable traffic in  
18 real time about that. I'm aware of it  
19 after the fact when the Government  
20 provides the documents to us. That's the  
21 cables I'm referring to.

22 Q. Okay. Before we move off  
23 that template issue.

24 MR. LUSTBERG: Can I have

1 exhibit --

2 (Exhibit No. 20, Fax,  
3 Generic Description of the  
4 Process, Bates DOJ OLC 1126  
5 through 1144, was marked for  
6 identification.)

7 BY MR. LUSTBERG:

8 Q. You can see that,  
9 Dr. Mitchell, this is a fax dated  
10 December 30th, 2004.

11 A. Okay.

12 Q. You can see it says -- it's  
13 called a Generic Description of the  
14 Process?

15 A. Okay.

16 Q. Take a look at it and see if  
17 it's the program that you at least  
18 assisted in creating?

19 MR. SMITH: Objection.

20 THE WITNESS: I --

21 BY MR. LUSTBERG:

22 Q. Were you the architect of  
23 this?

24 A. Not this.

1 Q. Uh-huh. What were you the  
2 architect of?

3 A. I don't really think I was  
4 the architect of anything. I know it  
5 says that on that.

6 Q. Uh-huh. Yes. When you  
7 said, "It says that on that" -- yeah, the  
8 cover page of your manuscript says: "By  
9 James E. Mitchell, Ph.D., Architect of  
10 the CIA interrogation program."

11 It says that, right?

12 A. Yes.

13 Q. What does that mean?

14 A. It's a -- it was a working  
15 document. It was the -- it was written  
16 by probably Bill Harlow.

17 When we put this thing  
18 together, I had to send it to the CIA.  
19 We were dealing with individual chapters  
20 and he pieced everything together and put  
21 a cover paper on it, and because they had  
22 called me that a lot in the press, he  
23 stuck that on there, and when I paid  
24 attention to it, I asked him to take it

1 off.

2 Q. Uh-huh. So it's -- so it's  
3 not there on the final?

4 A. It's not there on the final  
5 or in the book.

6 Q. But when it went to CIA for  
7 review, it said, "Architect of the CIA  
8 interrogation program"?

9 A. It said whatever that said.

10 Q. Right. And did you just not  
11 notice that at the time?

12 A. You know, I don't -- I  
13 didn't pay attention to the cover page,  
14 and you know, I didn't -- I didn't pay  
15 attention to it.

16 Q. Okay. Well, let me ask --  
17 let me ask you another thing. Let's look  
18 at the CIA's response to the report.

19 (Exhibit No. 21, CIA  
20 Comments on the Senate Select  
21 Committee on Intelligence Report  
22 on the Rendition, Detention and  
23 Interrogation Program, was marked  
24 for identification.)

1 BY MR. LUSTBERG:

2 Q. Let me direct your -- you've  
3 seen this before?

4 A. I saw it after it was  
5 released.

6 Q. Uh-huh. In -- and I think  
7 you mentioned before that you -- at least  
8 there were parts of it that you agreed  
9 with wholeheartedly, right?

10 A. I'm sure I said something  
11 like that, yes.

12 Q. Okay. Take a look at page  
13 25.

14 A. Uh-huh.

15 Q. The second bullet point, it  
16 says:

17 "As discussed in our  
18 response to Conclusion 17, we agree that  
19 CIA should have done more from the  
20 beginning of the program to ensure there  
21 was no conflict of interest, real or  
22 potential, with regard to the contractor  
23 psychologists who designed and executed  
24 the techniques while also playing a role

1 in evaluating their effectiveness."

2 So I want to talk about each  
3 of those things.

4 A. Sure.

5 Q. This is a reference to you  
6 and to Dr. Jessen, right, the contractor  
7 psychologists, right?

8 A. Yes.

9 Q. Okay. And it describes you  
10 as having designed and executed the  
11 techniques. You understand that to mean  
12 the EITs, right?

13 A. Yes.

14 Q. Okay. And so do you  
15 disagree with the characterization that  
16 you designed and executed the EITs?

17 A. I didn't design walling.  
18 Walling existed for years; I didn't  
19 design attention grasp, that's existed  
20 for centuries; I didn't design the stress  
21 positions, they've existed since 1951 or  
22 '52; I didn't design sleep deprivation,  
23 that's been around as long as humans have  
24 been, you know --



1 Q. Sleepless.

2 A. Yeah. I mean, so I don't  
3 think I designed those stressors that  
4 came to be called EITs.

5 Q. So you did -- what you're  
6 saying is you didn't design each one of  
7 those, you didn't make them up, but what  
8 you did is you -- you know what they mean  
9 by this, that you designed the list of  
10 them as means of interrogation, right?

11 MR. SMITH: Objection.

12 BY MR. LUSTBERG:

13 Q. That's what they mean here,  
14 don't they?

15 MR. SMITH: Objection.

16 THE WITNESS: I didn't  
17 design a list, I provided a list.

18 BY MR. LUSTBERG:

19 Q. Uh-huh. Do you think the  
20 CIA is wrong when it describes you as  
21 having designed and executed the  
22 techniques?

23 A. I think what they're doing  
24 is conflating -- looking back in time and

1 conflating the whole thing. From -- I  
2 can tell you only from my perspective. I  
3 can't tell you what the CIA was thinking,  
4 all right?

5 From my perspective they  
6 asked me to apply a skill set that I had  
7 to a situation. I applied that skill  
8 set, they decided they wanted more of it,  
9 and then they put together a program  
10 trying to replicate the skill set in  
11 total that Dr. Jessen and I had used.

12 The problem with that, in my  
13 view, is that they focused on the EITs  
14 and not on some of the other things.

15 Q. Okay. So with regard to the  
16 specific -- withdrawn.

17 So with regard to the EIT  
18 aspect of the program, those came --  
19 those were designed and executed -- that  
20 list at least was designed and executed  
21 by you and Dr. Jessen; is that correct?

22 MR. SMITH: Objection.

23 THE WITNESS: You keep using  
24 the word designed.

1 BY MR. LUSTBERG:

2 Q. I'm using -- that's --

3 A. I provide -- I'm not  
4 accountable for what the CIA writes, you  
5 know?

6 Q. Uh-huh.

7 A. I gave them a list. Whoever  
8 wrote this document decided to use the  
9 word designed. If -- I would suggest you  
10 talk to them about what they meant by  
11 that because I don't -- I don't -- I  
12 don't know what's in that person's mind.

13 Q. Okay. It also says:

14 "While also playing a role  
15 in evaluating their effectiveness."

16 What role did you play in  
17 evaluating the effectiveness of the  
18 techniques?

19 A. You know, I've been trying  
20 to think of that because I've seen that  
21 written in your complaint. I know  
22 they've asked me whether or not I -- I  
23 thought some of the techniques were  
24 effective in overcoming the resistance

1 strategies, but I'm not the best guy to  
2 decide whether or not they're effective  
3 for producing actual intelligence.

4 We had with us the entire  
5 time the subject matter experts who are  
6 drafting the intel requirements and  
7 interpreted what he said in the larger  
8 matrix of what they needed to know.  
9 Those are the people who are experts on  
10 whether or not he's producing actual  
11 intelligence, not me, and whether or not  
12 they are effective, and not me, and I  
13 relied on them to tell me if from their  
14 perspective it was effective.

15 From my perspective as the  
16 guy asking the questions, they're  
17 effective if what occurred was he  
18 entertained a question, he answered the  
19 question, he appeared to not be using  
20 sophisticated or even clumsy resistance  
21 to interrogation techniques while he  
22 answered the question, he provided more  
23 full and complete details, he provided  
24 details beyond what the question asked.

1 then in Delaware as that portion of it,  
2 yeah.

3 Q. Uh-huh. Did -- in terms of  
4 developing the list that you -- that was  
5 provided to the CIA for their  
6 consideration in terms of the EITs --

7 A. You're fascinated with the  
8 word developing. I listed the -- I  
9 listed the techniques.

10 Q. You did it, not Bruce?

11 A. Well, I actually provided  
12 them with a verbal description of what  
13 was on that list before he was ever cut  
14 lose from the DOJ -- I'm sorry, from the  
15 DOD, Department of Defense.

16 Then when he came onboard,  
17 there was another meeting where we again  
18 discussed what was on that list, and then  
19 sometime around the 8th or 9th of July,  
20 whatever date it says on that thing, we  
21 actually -- I actually sat at a laptop  
22 and typed up the list.

23 Q. Okay. I'm sorry, so did you  
24 consult with him with regard to the list,

1 was that something that you talked about  
2 before it was finalized and sent over?

3 A. We -- we talked about it in  
4 that big meeting with CTC -- I had given  
5 them a list, all right, and described the  
6 techniques that were on the list. They  
7 brought him in. There were an additional  
8 meeting where we again discussed those  
9 things without producing a list, so he  
10 was involved in that meeting.

11 Q. Okay. And did -- did  
12 Dr. Jessen -- did you have any  
13 disagreements with him as to what should  
14 be on the list or what the EITs ought to  
15 be?

16 A. Well, they weren't called  
17 EITs.

18 Q. I know that. So the list of  
19 whatever they were called at that time.

20 A. I don't recall that there  
21 was any disagreements about it.

22 Q. Uh-huh.

23 A. He was curious about a  
24 couple things.

1 Q. What was he curious about?

2 A. Uh-huh. I think he was  
3 curious about the mock burial thing.

4 Q. Uh-huh. Anything else?

5 A. I don't recall.

6 Q. Uh-huh. So you were  
7 advocating for the mock burial and he was  
8 against it or --

9 A. I wasn't advocating for the  
10 mock burial.

11 Q. Well, you wanted to put it  
12 on the list and he did not want it on the  
13 list; is that right?

14 A. No.

15 Q. Okay. So what was -- what  
16 were the conditions?

17 A. He was curious about why it  
18 was there.

19 Q. Uh-huh. And what did you  
20 say?

21 A. I said that I had -- that we  
22 used those techniques at the SERE school  
23 and that the FBI -- one of the FBI agents  
24 and I had discussed a way to do a

1 hand-off to the FBI if, you know, the  
2 approach that the CIA took didn't work,  
3 and they were -- he was interested in  
4 working with me to develop a realistic  
5 threat and rescue kind of approach that  
6 was believable, and the FBI agent and I  
7 sat there and talked this thing out and  
8 I -- and I wrote it up.

9 Q. I'm sorry, what's a --  
10 what's a threat and rescue kind of  
11 approach?

12 A. A threat and rescue is  
13 where, in this particular case, we had  
14 come -- had come up with the idea that it  
15 would look as if -- as if the CIA was  
16 washing their hands of Abu Zubaydah and  
17 that they were wanting to just simply get  
18 rid of him, you know, and the FBI could  
19 show up and rescue Abu Zubaydah, and  
20 because of that, you know, he might be  
21 more willing to work with them.

22 Q. I'm sorry, I lost track.

23 What does all this have to do with the  
24 mock burial part that you didn't -- that

1 he was asking you about?

2 A. Who was asking me about?

3 Q. I thought -- I thought you  
4 said that Dr. Jessen asked you about --

5 A. He asked me why the mock  
6 burial was on the thing and I explained  
7 to him that we had worked out this threat  
8 and rescue -- I had worked out this  
9 threat and rescue idea with a -- with an  
10 FBI agent who wanted to be sure that they  
11 had some way to get back in that was  
12 realistic if for some reason the CIA  
13 opted out of it.

14 Q. Okay. And again, I'm just  
15 trying to tie that to the mock burial.  
16 What does that have to do with the mock  
17 burial?

18 A. Well, it would obviously be  
19 a threat if you walked a person out and  
20 you --

21 Q. I see.

22 A. Right? And as you know from  
23 looking at the cable traffic, that was  
24 not done.

1 if he would be willing to do a long-form  
2 interview with Malcolm Gladwell. He  
3 declined. So we've had a few discussions  
4 about that.

5 Q. Uh-huh. Does it bother you  
6 that he hasn't wanted to speak up?

7 A. No.

8 Q. Are you -- do you know -- do  
9 you know whether anybody who was  
10 subjected to any of the enhanced  
11 interrogation techniques was damaged as a  
12 result of the use of those techniques on  
13 them?

14 A. I don't know that for a  
15 fact.

16 Q. Uh-huh. Do you think  
17 that -- do you think that people have  
18 suffered long-term harm as a result of  
19 that?

20 A. I don't know that for a  
21 fact. It's one of those things that you  
22 can establish. If they're out there and  
23 that happened, then, you know, show me  
24 the data.

1 Q. Yes. Have you -- you've  
2 been very public in discussing this  
3 program as, you know --

4 A. After they released me from  
5 some portion of my --

6 Q. Yup. So you can Google  
7 yourself and see lots of interviews.

8 A. I don't --

9 Q. You're much more handsome in  
10 real life.

11 A. I don't Google myself.

12 Q. Yeah. So -- but any -- any  
13 reason that you know of why Dr. Jessen  
14 doesn't do those -- those kinds of  
15 interviews, doesn't speak up publicly?

16 A. You'd have to ask Dr. Jessen  
17 about that. He's a more private person  
18 than I am.

19 Q. Have you discussed that with  
20 him?

21 A. I don't -- I asked him if he  
22 wanted to -- to do an interview with me  
23 at the 9/11 museum and he said he would  
24 be interested in doing that. I asked him

1 Q. So do you think that it's --  
2 do you think that that's possible? As a  
3 psychologist, do you think that's  
4 possible?

5 MR. SMITH: Objection.

6 THE WITNESS: Repeat the  
7 question?

8 BY MR. LUSTBERG:

9 Q. Okay. You know what  
10 occurred with regard to these enhanced  
11 interrogation techniques, you know what  
12 they were. Do you think it's possible,  
13 as a psychologist, that an individual who  
14 was subjected to them suffered long-term  
15 physical or psychological harm?

16 MR. SMITH: Objection.

17 THE WITNESS: Not if they  
18 were applied in the way that the  
19 program recommended.

20 BY MR. LUSTBERG:

21 Q. So if -- if they were  
22 subjected to those techniques in the way  
23 that the program intended, your view was  
24 that it was impossible that they would be

1 harmed?  
 2 A. My view is that it's so  
 3 unlikely so as to be impossible.  
 4 Q. Just one last question on  
 5 that and -- which is: I've seen you talk  
 6 about the fact that -- and I think it's  
 7 in some of the cables as well, that  
 8 you -- that there was always somebody  
 9 present who could stop one of these  
 10 interrogations at any time; is that  
 11 right?  
 12 A. Uh-huh.  
 13 Q. Do you -- is it your view  
 14 that that would be immediately apparent  
 15 if a technique was being used in a way  
 16 that would cause long-term psychological  
 17 or physical harm?  
 18 A. Yes.  
 19 Q. So if somebody was being  
 20 harmed, you would know it from watching  
 21 right then and there every time?  
 22 A. Well, it's impossible to  
 23 make that sort of a, you know,  
 24 speculation. The most you can do is

1 build in the safeguards to, you know,  
 2 attempt to prevent that. And so you had  
 3 physicians that were there who were  
 4 specifically charged with monitoring  
 5 that, you had psychologists that were  
 6 that had a role that was specifically  
 7 charged with monitoring for that, and you  
 8 had the Chief of Base, you had other  
 9 people who were there specifically  
 10 charged for monitoring that.  
 11 So the safeguards were built  
 12 in, but like any endeavor that includes  
 13 human beings, it's possible. You know, I  
 14 think it's remote, but possible.  
 15 Q. And in your experience, did  
 16 the doctors shut down interrogations?  
 17 A. I recall incidents -- and  
 18 incident when that happened.  
 19 Q. One time?  
 20 A. Uh-huh.  
 21 Q. What was that incident?  
 22 A. I think -- I can't remember  
 23 which detainee it was, but one of them  
 24 began to report early indication of

1 auditory hallucinations from sleep  
 2 deprivation and they recommended that he  
 3 get sleep.  
 4 Q. How about the psychologist,  
 5 did the psychologist there ever shut --  
 6 shut an interrogation?  
 7 A. Well, keep in mind, I only  
 8 did enhanced interrogation on five  
 9 people.  
 10 Q. Right.  
 11 A. All right? And I didn't do  
 12 any after 2003. So the only thing I can  
 13 speak to is my experience with those five  
 14 people, and I don't recall any of them  
 15 stepping in and stopping an  
 16 interrogation.  
 17 Q. So other than your own  
 18 experience, did you ever hear of other  
 19 circumstances in which interrogations  
 20 were stopped by doctors or psychologists?  
 21 A. I -- I remember me stopping  
 22 one.  
 23 Q. Uh-huh. Which one was that?  
 24 A. The one on Nashiri.

1 Q. What did you do?  
 2 A. I walked into the room and  
 3 said, You're doing things that aren't  
 4 authorized by the Justice Department, you  
 5 need to stop.  
 6 Q. Other than that, any other  
 7 times that you know about either directly  
 8 or somebody else told you?  
 9 A. I don't recall sitting here  
 10 right now of another time.  
 11 MR. LUSTBERG: Just give us  
 12 one minute. I think we're done,  
 13 but I just want to talk to our  
 14 team for a second. But I think  
 15 we're done.  
 16 Just go off the record for  
 17 literally a minute.  
 18 THE VIDEOGRAPHER: The time  
 19 is 6:37 PM. We are now off the  
 20 record.  
 21 (Recess.)  
 22 THE VIDEOGRAPHER: We are  
 23 now back on the record. The time  
 24 is 6:41 PM.

CERTIFICATE

I HEREBY CERTIFY that the witness was duly sworn by me and that the deposition is a true record of the testimony given by the witness.

It was requested before completion of the deposition that the witness, JAMES E. MITCHELL, have the opportunity to read and sign the deposition transcript.

Constance S. Kent, CCR, RPR, CLM  
Certified Court Reporter  
Registered Professional Reporter  
Certified LiveNote Reporter  
and Notary Public in and for the  
Commonwealth of Pennsylvania  
Dated: January 18, 2017



(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)

INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

ACKNOWLEDGMENT OF DEPONENT

I, \_\_\_\_\_, do hereby certify that I have read the foregoing pages, 1 - 426, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

JAMES E. MITCHELL DATE

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. My commission expires: \_\_\_\_\_

Notary Public