

Exhibit 3

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

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SULEIMAN ABDULLAH SALIM,
et al,

Plaintiffs,

vs.

JAMES E. MITCHELL and
JOHN JESSEN,

Defendants.
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Case Number:

2:15-cv-286-JLQ

Videotaped Deposition of Jose Rodriguez

Washington, D.C.

Tuesday, March 7, 2017

10:00 a.m.

Job No. 302803

Reported by: Laurie Bangart, RPR, CRR

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

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

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

7 THE VIDEOGRAPHER: Would the court
8 reporter please swear in the witness.
9 (Witness duly sworn.)

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

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

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

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

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

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

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

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

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

1 categories of information that are now
2 unclassified.

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

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

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

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

24
25 ///

1 JOSE RODRIGUEZ,
2 having been first duly sworn, testified
3 upon his oath as follows:
4 EXAMINATION BY COUNSEL FOR PLAINTIFFS
5 BY MR. LUSTBERG:

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

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

12 A Never have.

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

17 A Okay.

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

21 Do you understand that?

22 A I understand that.

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

1 A No.
 2 Q Do you still have your law license?
 3 A No.
 4 Q Did you have your law license in 2002?
 5 A No.
 6 Q When did you give up your law license?
 7 A I never got a law license. I just
 8 graduated from law school. I went to law school
 9 to get a job at the CIA, actually.
 10 Q So did you study let's say criminal law
 11 in particular?
 12 A Yes.
 13 Q And just general courses in law school
 14 regarding criminal law?
 15 A Yes.
 16 Q At any point did you study the
 17 definition of "torture" in Title 18 of the United
 18 States Code?
 19 A At some point, perhaps, back then.
 20 Q Back when?
 21 A Back when I was in law school, but more
 22 recently when I was involved in running the
 23 Counter-Terrorism Center.
 24 Q Okay. Let's talk about that. When did
 25 you begin, begin at the Counter-Terrorism Center?

1 A I began in September of 2001.
 2 Q So right after 9/11?
 3 A About ten days after 9/11 or so.
 4 Q What was your first position at the
 5 Counter-Terrorism Center?
 6 A I was the chief operating officer for
 7 the Counter-Terrorism Center.
 8 Q So if your Wikipedia page says that you
 9 were chief of staff, is that incorrect?
 10 A That is incorrect.
 11 Q Your title was chief operating officer?
 12 A Yes.
 13 Q And then --
 14 A It's the title I gave myself, because
 15 there was no position for me there.
 16 Q Okay. How did that happen that you gave
 17 yourself that title?
 18 A I was asked to support and help -- Cofer
 19 Black was the head of the Counter-Terrorism
 20 Center, and to go help him out, so I got there and
 21 I had to give myself a title, find an office, and
 22 become essentially the number 3 person.
 23 Q And how long were you the chief
 24 operating officer of the --
 25 A Until May 2002.

1 THE REPORTER: I didn't get the end
 2 of your question.
 3 BY MR. LUSTBERG:
 4 Q So we just need to both be better about
 5 that, so let's start -- so you became -- I'm
 6 sorry. You were chief operating officer until
 7 May 2002; is that what you said?
 8 A Yes.
 9 Q And then what position did you assume?
 10 A I became the director of the
 11 Counter-Terrorism Center.
 12 Q What is the Counter-Terrorism Center?
 13 A The Counter-Terrorism Center is the
 14 organization within the agency that carries out
 15 covert action, foreign intelligence operations,
 16 analysis on counter-terrorism for the agency, for
 17 the director.
 18 Q I just want to make sure I understand
 19 that. So is it okay if I call the
 20 Counter-Terrorism Center "CTC"?
 21 A Yes.
 22 Q In fact, it's commonly referred to as
 23 "CTC," right?
 24 A Correct.
 25 Q So the CTC carries out covert action,

1 correct?
 2 A Correct.
 3 Q It does foreign intelligence operation
 4 analysis, right?
 5 A Foreign intelligence operations.
 6 Q Okay, and you said for the director; is
 7 that right?
 8 A And analysis -- separate -- for the
 9 director of the CIA.
 10 Q So you reported directly to the director
 11 of the CIA?
 12 A I had a reporting channel to the
 13 director of the CIA, yes, in addition to other
 14 people.
 15 Q Did the functions of the CTC change
 16 after 9/11?
 17 A Yes.
 18 Q In what way generally?
 19 A Overnight we were overwhelmed with
 20 requirements to go out and get Al-Qaeda and
 21 protect the country and save American lives.
 22 Q At that time -- and when we say "at that
 23 time," let's focus on the time period in 2002, did
 24 you know anything about the Air Force's Survival,
 25 Evasion, Resistance and Escape, which we refer to

1 as "SERE," program?
 2 A Not early on. Later.
 3 Q Okay. When did you learn about the SERE
 4 program?
 5 A When we started to figure out what to do
 6 to get Abu Zubaydah to tell us what were the
 7 pending attacks on the country.
 8 Q So before you tried to figure out what
 9 to do to get Abu Zubaydah to tell us what were the
 10 pending attacks on the country, you did not know
 11 anything about the SERE program?
 12 A I didn't know what -- I did not know
 13 anything.
 14 Q Had you heard of it?
 15 A No.
 16 Q You mentioned that you have a law
 17 degree. Have you had any training in psychology?
 18 A No.
 19 Q Have you studied or know anything about
 20 post-traumatic stress disorder?
 21 A No.
 22 Q Have you heard of that?
 23 A Yes.
 24 Q What have you heard about it?
 25 A What I hear on TV.

1 Q Just from TV?
 2 A Just TV, mm-hmm.
 3 Q Have you heard about post-traumatic
 4 stress disorder anywhere other than on TV?
 5 A No.
 6 Q Have you studied at any point the
 7 long-term effects of torture?
 8 A No.
 9 Q Have you spoken to people about the
 10 long-term effects of torture?
 11 A No.
 12 Q Okay. I want to direct your attention
 13 to the time period in which Drs. Mitchell and
 14 Jessen were hired.
 15 A Mm-hmm.
 16 Q And for the record, Drs. Mitchell and
 17 Jessen are here today.
 18 At the time that Dr. Mitchell was hired,
 19 what was he doing; do you recall?
 20 A He was hired by the CIA in December of
 21 2001 by the Office of Technical Services to
 22 provide psychological support, applied psychology
 23 and research, and he came to CTC in April of 2002
 24 to help us out with Abu Zubaydah.
 25 Q Okay. Just to break that down a little

1 bit, what was -- the Office of Technical Services;
 2 what is that?
 3 A It's an office within the Directorate of
 4 Science and Technology that does this type of
 5 stuff.
 6 Q What type of stuff?
 7 A Like hire the psychologist.
 8 Q So when Dr. Mitchell was working at the
 9 Office of Technical Services, you said he provided
 10 "psychological support."
 11 What does that mean?
 12 A He provided research and applied
 13 psychological support to the agency.
 14 Q So he did research?
 15 A I assume so.
 16 Q You don't know?
 17 A No.
 18 Q Do you know anything about the applied
 19 psychological research that he did?
 20 A No.
 21 Q Okay. Do you know, beyond what you
 22 said, anything more about what his activities were
 23 at OTS?
 24 A No.
 25 Q And when I say "OTS," just so that the

1 record is clear, I'm referring to the Office of
 2 Technical Services.
 3 Do you know anything about any
 4 psychological, applied psychological papers that
 5 he did or --
 6 A No.
 7 Q Okay. How did it come about that
 8 Dr. Mitchell was -- left OTS and began to work for
 9 CTC?
 10 A He was recommended to us by someone in
 11 CTC that he should be someone to accompany a team
 12 that was going overseas to debrief Abu Zubaydah.
 13 Q I just want to make sure I understand.
 14 You said he was recommended by someone in CTC?
 15 A Yes.
 16 Q Okay. Just because these, these details
 17 are important, if you could take a look at, at
 18 paragraph 12 of your declaration. It's on page 2.
 19 A Page 12 or --
 20 Q Paragraph 12, page 2. Sorry.
 21 A Mm-hmm.
 22 Q Do you see that at the bottom of the
 23 page?
 24 A Yes.
 25 Q Paragraph 12 says, "OTS then recommended

1 Dr. Mitchell to CTC Legal, and CTC hired him."
 2 A Okay.
 3 Q Was it OTS that recommended Dr. Mitchell
 4 to CTC Legal?
 5 A OTS recommended him to CTC, and CTC
 6 recommended that he be a person -- that he should
 7 be hired by us.
 8 Q Okay. So CTC Legal recommended to you
 9 to hire Dr. Mitchell?
 10 A Yes.
 11 Q You were responsible for that hiring
 12 decision?
 13 A No.
 14 Q Who was responsible for that hiring
 15 decision?
 16 A Whoever hires people at CIA.
 17 MR. JOHNSON: Objection. Sorry.
 18 MR. LUSTBERG: I'll withdraw the
 19 question.
 20 MR. JAMES SMITH: Just so the
 21 record is clear, can we have the basis for
 22 the objection?
 23 MR. JOHNSON: We've been asked for
 24 a full recitation of the objection, so I read
 25 the whole thing.

1 THE REPORTER: You need to speak
 2 louder. You've been asked for --
 3 MR. JOHNSON: We have been asked
 4 for a full objection, so I will go ahead and
 5 articulate.
 6 MR. JAMES SMITH: Before you go on,
 7 if the contention is that it would require
 8 the witness to reveal classified information,
 9 you can just say that for the record, and
 10 that will be fine with me, I'm sure fine with
 11 everyone in the room.
 12 MR. JOHNSON: Certainly. I just
 13 want to make sure, since you asked for a full
 14 recitation.
 15 The government objects to the
 16 degree that the question would call for
 17 classified information or information subject
 18 to -- and that therefore subject to an
 19 assertion of the State Secrets Privilege or
 20 protected from disclosure by the CIA Act, 50
 21 U.S.C. Section 3507, or the National Security
 22 Act, 50 U.S.C. Section 3024.
 23 The witness, however, may answer
 24 the question if he is confident he can do so
 25 on the basis of unclassified and

1 non-privileged information without reference
 2 to any of the classified categories of
 3 information in Government Exhibit 1.
 4 MR. BENNETT: Well, hold it.
 5 Excuse me.
 6 MR. JOHNSON: The question was
 7 withdrawn.
 8 MR. BENNETT: I do not want
 9 Mr. Rodriguez to have to make that judgment.
 10 That's why the government is here. At this
 11 point in time it's impossible for us to know
 12 what is classified and what isn't classified.
 13 So if he gives a name, are you saying it's
 14 okay or not okay?
 15 MR. JOHNSON: He can't give a name.
 16 Cannot.
 17 MR. LUSTBERG: I have withdrawn the
 18 question, so we're okay.
 19 MR. BENNETT: Okay.
 20 THE WITNESS: I was not going to
 21 reveal a name.
 22 MR. BENNETT: Well, you just be
 23 quiet until you are asked a question. Okay?
 24 BY MR. LUSTBERG:
 25 Q When, when Dr. Mitchell was hired by CTC

1 on the recommendation of OTS and then CTC Legal,
 2 he got a new contract, correct?
 3 A Correct.
 4 Q Okay, and the terms of that contract
 5 were that he, instead of making \$10,000, it was
 6 now a contract for \$101,600.
 7 Do you recall that?
 8 A I've seen the contract.
 9 Q Okay. If you want -- if you need to
 10 take a look, it's Exhibit, Exhibit A and B. His
 11 original contract is Exhibit A, and the subsequent
 12 contract was Exhibit B to your declaration.
 13 A Okay.
 14 THE VIDEOGRAPHER: We need to go
 15 off the record for a technical reason. The
 16 time is 10:33 a.m.
 17 (Whereupon, a short recess was
 18 taken.)
 19 THE VIDEOGRAPHER: The time is
 20 10:37 a.m. We're back on the record.
 21 BY MR. LUSTBERG:
 22 Q Mr. Rodriguez, did you have a chance to
 23 look at Exhibits A and B?
 24 A Yes.
 25 Q And was I right that the value of the

1 contract went from \$10,000 to \$101,600?
 2 A Correct, but you should know that he was
 3 paid by the hour, so what the contracts people do
 4 is they put money into the kitty, and they
 5 withdraw as he does his work.

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

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

14 A Yeah, what page?

15 Q Page 1.

16 A Okay. Yes, I see it.

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

19 A Correct.

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

22 A Yes.

23 Q Okay. Thank you for that clarification.

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

1 force and effect, right?

2 A Correct.

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

8 Do you see that?

9 A Let me find it.

10 Q Take your time.

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

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

18 Do you see that?

19 A Yes, I see it.

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

23 A Okay.

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

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

4 Do you know what that is?

5 A No.

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

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

10 A No.

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

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

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

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

23 A No.

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

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

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

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

7 Q You had not seen it before?

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

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

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

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

16 A Correct. I saw it then.

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

19 A No.

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

22 A It looks like it.

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

25 A Yes.

1 Q And if you turn to the top of the second
2 page of it, it says "Services."
3 Do you see that?
4 A Yes.
5 Q And the services are, "Task 1, Provide
6 consultation and recommendations for applying
7 research methodology."
8 Do you see that?
9 A Yes.
10 Q Then it says "CONUS." What does "CONUS"
11 stand for?
12 A CONUS is the US.
13 Q And then it says, "Conduct specified
14 applied research projects."
15 Do you see that?
16 A Yes.
17 Q And your testimony is that Dr. Jessen
18 fulfilled the terms of the contract by providing
19 those services; is that right?
20 A Correct.
21 Q So back to Dr. Mitchell for a second,
22 did you select Dr. Mitchell to work with CTC?
23 A Once he was recommended and I met
24 Dr. Mitchell, yes, I recommended him to continue
25 working with us.

1 Q I want to read you a passage from your
2 book, and when I say "your book," I'm referring to
3 the book Hard Measures.
4 Do you see that there?
5 A Yes.
6 Q That looks like you?
7 A That looks like me.
8 Q Yeah, and, and --
9 MR. BENNETT: Ill stipulate that
10 that's him.
11 MR. LUSTBERG: You're so
12 reasonable.
13 MR. BENNETT: Thank you.
14 BY MR. LUSTBERG:
15 Q I'm going to just -- we're going to just
16 mark this as Exhibit 37, yeah. We'll mark
17 passages for now.
18 (Exhibit 37 was marked for
19 identification.)
20 BY MR. LUSTBERG:
21 Q So if you could take a look at page 55,
22 which is the first page. Do you see that?
23 A Yes.
24 Q And in the second full paragraph is the
25 sentence, "Within two days of AZ's capture, we

1 tracked down the contractor and asked if he would
2 accompany a team of CTC officers to the black site
3 where we hoped Abu Zubaydah would be
4 interrogated."
5 Do you see that?
6 A Yes.
7 Q First of all, the reference to "AZ" is
8 Abu Zubaydah, correct?
9 A Correct.
10 Q And the reference to "the contractor" is
11 Dr. Mitchell; is that correct?
12 A Correct.
13 Q Okay. So how did you reach him within
14 two days of AZ's capture?
15 A Well, I assume that he was at
16 headquarters. Somebody, you know, somebody
17 reached him. I did not reach him myself.
18 Somebody in the Counter-Terrorism Center reached
19 him.
20 Q Did you know him at that time?
21 A I did not know him.
22 Q So that was the first time that you had
23 met Dr. Mitchell?
24 A I met him, yes, for the first time.
25 Q Mm-hmm. Ultimately, though, you were

1 the one who made the decision to hire him at CTC?
2 A Yes.
3 Q Why did you think he was qualified?
4 A Because of his experience with SERE and
5 because we needed to do something different than
6 what had been done before, and he looked like the
7 right person to do it.
8 Q Why did he look like the right person to
9 do it?
10 A Because he had a tremendous expertise,
11 and he had a good vision for what needed to be
12 done.
13 Q What did he have "tremendous expertise"
14 in?
15 A In SERE.
16 Q What was his SERE experience, to your
17 knowledge, at that time?
18 A He had spent many years with the Air
19 Force working on SERE.
20 Q Did he have -- was there any other
21 source of his tremendous expertise?
22 A The expertise I was interested in was
23 SERE.
24 Q When you said "he had a good vision for
25 what needed to be done," what was that good

1 vision?
 2 A That good vision was the use of enhanced
 3 interrogations to get Abu Zubaydah to cooperate
 4 with us.
 5 Q Was that his idea?
 6 A It was a recommendation. I don't
 7 remember exactly who the recommendation came from,
 8 but I assume he was part of that recommendation.
 9 Q I'm sorry. He was -- you're saying that
 10 he was recommended to you?
 11 A That was a recommendation from him
 12 regarding the use of the enhanced interrogation
 13 techniques.
 14 Q I see, okay, and that's -- so his -- the
 15 recommendation from him to use enhanced
 16 interrogation techniques was what you mean when
 17 you said he had "a good vision"?
 18 A Yes.
 19 Q Okay.
 20 A He had a good vision for how to get this
 21 person to tell us about the pending attacks on the
 22 US.
 23 Q Other than Dr. Mitchell's experience at
 24 SERE, did he have any other qualifications that
 25 you were aware of at that time?

1 A Well, he came with a Ph.D., highly
 2 regarded, and then the SERE experience is the one
 3 that I was interested in.
 4 Q How did you know he was highly regarded?
 5 A I was told.
 6 Q The Senate Select Committee On
 7 Intelligence report, which I know you have some
 8 concerns about, says that "neither Dr. Mitchell
 9 nor Dr. Jessen," quote, "had any experience as an
 10 interrogator, nor did either have specialized
 11 knowledge of Al-Qaeda, a background in
 12 counter-terrorism, or any relevant cultural or
 13 linguistic experience."
 14 You've read that before, right?
 15 A I've read that before.
 16 Q And what's your response to that?
 17 A My response to that is that at some
 18 time -- sometimes it is important to do something
 19 different, because what's traditionally been done
 20 hasn't worked, and this was something different,
 21 and it worked very well.
 22 Q So Dr. Mitchell was proposing --
 23 "recommending" was your word -- something
 24 different, right?
 25 A Yes.

1 Q And that something different, that
 2 "thinking outside the box," as you say, was
 3 something that made him attractive to you,
 4 correct?
 5 A Correct.
 6 Q And when you say "outside the box," I
 7 take it that that was different than sort of the
 8 standard approaches that other people might have
 9 been recommending to you?
 10 A Correct.
 11 Q How about the fact that -- well, let's
 12 break down the SSCI statement.
 13 It says that "neither Dr. Mitchell nor
 14 Dr. Jessen had any experience as an interrogator."
 15 Was that of concern to you?
 16 A They had experience with SERE, they had
 17 experience with counter, countering
 18 interrogations, and I thought that was a very
 19 important issue to understand and to use, to
 20 reverse-engineer it, to use it to our advantage.
 21 Q Did they -- was it your idea to
 22 reverse-engineer SERE, or was that Dr. Mitchell's
 23 idea?
 24 A Well, the idea -- I don't know where it
 25 came from. The idea was to use that experience

1 offensively to try to get information out of Abu
 2 Zubaydah.
 3 Q And again, though, that was what was
 4 proposed to you by Dr. Mitchell?
 5 A And the group of people who were working
 6 with me.
 7 Q Okay. Did it concern you that neither
 8 Dr. Mitchell nor Dr. Jessen had any relevant
 9 cultural or linguistic experience, as the SSCI
 10 report says?
 11 A Well, I don't know about that. I think
 12 they had a lot more experience in all of this than
 13 the record shows, and if you have read his recent
 14 book, you will see the expertise that he had,
 15 dealing with all of these people from that part of
 16 the world.
 17 Q So your view is that when the SSCI
 18 report says that he did not have, that he nor
 19 Jessen had any "relevant cultural or linguistic
 20 experience," that's incorrect?
 21 A Incorrect.
 22 Q Did the -- you mentioned that there were
 23 a number of people that you were discussing
 24 Dr. Mitchell's proposal with?
 25 A Correct.

1 not the book. This is a draft.

2 MR. LUSTBERG: That's correct.

3 BY MR. LUSTBERG:

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

8 MR. JAMES SMITH: Well,

9 Mr. Lustberg, you know that that passage was
10 removed that you just read to the witness.

11 MR. LUSTBERG: Right.

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

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

18 MR. JAMES SMITH: I hear you.

19 BY MR. LUSTBERG:

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

24 Do you see that?

25 A What paragraph?

1 Q Page 54.

2 A 54?

3 Q Mm-hmm.

4 A Okay.

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

9 Do you see that?

10 A Yes.

11 Q Is that true?

12 A True.

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

15 A Yes.

16 Q To put together an interrogation
17 program?

18 A Correct.

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

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

1 A Correct.

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

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

10 A Yes.

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

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

18 BY MR. LUSTBERG:

19 Q Do you have any --

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

22 Q The barber downstairs wasn't --

23 A He wasn't there.

24 Q He wasn't at those meetings?

25 MR. BENNETT: I'm sorry.

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

3 BY MR. LUSTBERG:

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

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

8 MR. LUSTBERG: Yes. Yes, sir.

9 Thanks.

10 BY MR. LUSTBERG:

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

16 A Yes.

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

1 Do you see that?
 2 A Yes.
 3 Q So is it correct that you asked
 4 Dr. Mitchell if he would take charge of creating
 5 and implementing a program?
 6 A Yes.
 7 Q And that program was the program of
 8 enhanced interrogation techniques; is that right?
 9 A Correct.
 10 Q And you were under instructions at that
 11 time from Director Tenet to develop a, an
 12 interrogation program; is that right?
 13 A Correct.
 14 Q So I just want to make sure I understand
 15 what happened then, and I direct your attention
 16 for purposes of that to paragraph 46 of your
 17 declaration, which is Exhibit 36, on page 8 of the
 18 declaration.
 19 A Yes.
 20 Q Do you see that?
 21 So this refers to a meeting on July 8,
 22 2002, at headquarters with Drs. Mitchell and
 23 Jessen, if you look at paragraph 44.
 24 Do you see that?
 25 A Yes.

1 Q In paragraph 46 it says, "At the
 2 conclusion of this meeting, I requested that
 3 Drs. Mitchell and Jessen provide me with a written
 4 list identifying the potential EITs, describing
 5 how they would be implemented and identifying
 6 their intended effects upon Zubaydah."
 7 Do you see that?
 8 A Yes.
 9 Q And they, in fact, did that, correct?
 10 A Correct.
 11 Q If you look at Exhibit J to your, to
 12 your declaration, is that the list of EITs that,
 13 that they provided as a result of your request?
 14 A Yes.
 15 Q And that -- let me just withdraw it.
 16 If you go to the next page, paragraph 49
 17 of your declaration, page 9, paragraph 49. Sorry.
 18 Thanks.
 19 I want to ask you about paragraph 49.
 20 It says, "During July 2002, with Drs. Mitchell and
 21 Jessen's input only as requested, the CTC began
 22 devising an interrogation plan for Zubaydah
 23 utilizing some or all of the EITs (hereinafter,
 24 the 'EIT Program')."
 25 So was the EIT program based upon the

1 list that Dr. Mitchell had provided to you?
 2 A Yes.
 3 Q And you discussed in many places the
 4 fact that, however, you wouldn't implement that
 5 until you got approval --
 6 A Correct. I'm sorry.
 7 Q No, no, that's okay, but you sought
 8 permission for all of those techniques, correct?
 9 A Correct.
 10 Q Okay, and just so that the record is
 11 clear, the techniques for which you sought
 12 approval were -- and we can follow along, if you
 13 want to, on Exhibit J -- were the attention grasp,
 14 walling, facial hold, facial slap, cramped
 15 confinement, wall standing, stress positions,
 16 sleep deprivation, waterboard, use of diapers,
 17 insects, and mock burial.
 18 Now, I'm not asking what got approved.
 19 I'm asking whether those were the techniques for
 20 which you requested approval.
 21 A Yes.
 22 Q And again those are the techniques that
 23 are set forth in the list that was provided by
 24 Dr. Mitchell and Dr. Jessen, correct?
 25 A Yes.

1 Q Did you request approval for techniques
 2 other than those that were set forth on the list
 3 provided by Drs. Mitchell and Jessen?
 4 A I don't recall that.
 5 Q Okay, and this became, this became the
 6 formal interrogation -- ultimately when there was
 7 approval granted for at least some of them, this
 8 became the formal interrogation plan of CTC; is
 9 that correct?
 10 A Yes.
 11 MR. JAMES SMITH: Objection.
 12 THE REPORTER: Did you object?
 13 MR. JAMES SMITH: Yes.
 14 BY MR. LUSTBERG:
 15 Q Okay, and in particular, if you look at,
 16 in your declaration --
 17 MR. BENNETT: Don't worry about it.
 18 MR. LUSTBERG: Yeah, don't worry
 19 about that.
 20 THE WITNESS: I'm just asking.
 21 MR. LUSTBERG: Oh, about the
 22 objection?
 23 THE WITNESS: The objection, yeah.
 24 MR. BENNETT: I have no idea.
 25 MR. LUSTBERG: To be honest,

1 to you?
 2 A I don't recall.
 3 Q There may have been others?
 4 A I don't recall.
 5 Q Did, did you propose any other list
 6 other than this list to Mr. Rizzo or to the
 7 department --
 8 A No.
 9 Q Let me finish my question, okay? Let's
 10 stop there, though.
 11 So you never proposed any other list
 12 other than this list to Mr. Rizzo?
 13 A No.
 14 Q Did you propose any other list other
 15 than this list to the Department of Justice?
 16 A No.
 17 Q And is it true that the reason that you
 18 used Dr. Mitchell and Dr. Jessen's list was
 19 because they were the experts that you trusted to
 20 come up with such a list?
 21 A True.
 22 Q And in fact, you believed them when they
 23 said, for example, that 30 days was the amount of
 24 time it would take to figure out whether the
 25 techniques were working?

1 A Yes.
 2 Q And because that was what they said, the
 3 techniques would, in fact, be applied for up to 30
 4 days, correct?
 5 A Correct.
 6 Q Do you agree that at that time -- that
 7 is, the time that Drs. Mitchell and Jessen
 8 proposed the enhanced interrogation techniques --
 9 that Dr. Mitchell had acquired, quote-unquote,
 10 "tremendous influence" in the process?
 11 A Well, he was highly respected for his
 12 knowledge on SERE, and we all respected him, yes.
 13 Q So would you agree that he had
 14 tremendous influence?
 15 A He had tremendous respect.
 16 Q Certainly in, in terms of what occurred,
 17 his views were taken into account, right?
 18 A Correct.
 19 Q And the -- I just want to -- if you turn
 20 to your declaration at page -- at paragraph 77.
 21 And that refers to an Exhibit P.
 22 A Okay.
 23 Q It says, paragraph 77 says, "Thereafter,
 24 EIT program procedures used on Zubaydah were
 25 formalized in various documents," and when you

1 state, when you use the phrase "EIT program
 2 procedures used on Zubaydah," you're referring to
 3 the EITs that were, that were provided by
 4 Drs. Mitchell and Jessen?
 5 A Yes.
 6 MR. LUSTBERG: I'm just going to --
 7 can we just take a brief break for one
 8 second?
 9 MR. BENNETT: Sure.
 10 MR. JAMES SMITH: No, no breaks.
 11 THE VIDEOGRAPHER: The time is
 12 11:31 a.m. Going off the record.
 13 (Whereupon, a short recess was
 14 taken.)
 15 THE VIDEOGRAPHER: The time is
 16 11:44 a.m. We're back on the record.
 17 MR. LUSTBERG: Thank you.
 18 BY MR. LUSTBERG:
 19 Q Mr. Rodriguez, when we stopped we were
 20 talking about whether, as you said in paragraph 77
 21 of your declaration, whether the EIT program that
 22 was designed by Drs. Mitchell and Jessen "were
 23 formalized in various documents."
 24 Do you see that?
 25 A Yes.

1 Q And you said "yes," and I just wanted to
 2 understand about -- when you said "formalized in
 3 various documents," is that what the CIA tends to
 4 do is to formalize policies into, in various
 5 documents?
 6 A The formal document on the enhanced
 7 interrogation techniques comes from the Justice
 8 Department, the 1 August comprehensive memo that
 9 outlined those enhanced interrogation techniques
 10 that had been approved by the Justice Department.
 11 That's the, that's the bottom line.
 12 Q Right, and, and those techniques -- if I
 13 recall correctly, those were the techniques that
 14 were presented to Justice were the techniques
 15 that, that Drs. Mitchell and Jessen had proposed,
 16 right?
 17 A Correct.
 18 Q And Justice did not -- well, maybe you
 19 can remind me. Justice didn't approve the mock
 20 burial, right?
 21 A We took the mock burial off the list,
 22 because they had told us that they would require
 23 more extensive research and work, and we decided
 24 we would just take it off.
 25 Q Okay, but all the other techniques were

1 tell that, from this, that they were used for,
2 they were approved for Cobalt, correct?
3 A Correct.
4 Q And you say they were also approved for
5 other sites?
6 A Once the enhanced interrogation
7 techniques were approved, we used them at
8 different sites.
9 Q Okay. That's because that was -- that
10 became the enhanced interrogation program for the
11 CIA, right?
12 A True.
13 Q You don't know -- you are aware that two
14 of the plaintiffs here are Salim and Soud. Do you
15 know those names?
16 A Yes.
17 Q You know that just from, by virtue of
18 this case?
19 A By virtue of this case, yes.
20 Q Do you know whether these techniques
21 were used on Salim -- any of these techniques were
22 used on Salim and Soud?
23 A They were not.
24 Q They were -- you know that they were
25 not?

1 A They were not. They didn't use any
2 enhanced interrogation techniques, as I understand
3 it, on those two individuals.
4 Q Okay. So this is a long document, and
5 what I want to do is -- this is very challenging,
6 but I want to direct your attention to the very
7 last page of Exhibit 11.
8 Before --
9 MR. BENNETT: Familiarize yourself.
10 BY MR. LUSTBERG:
11 Q Yeah. No, the -- no --
12 A This one?
13 Q Yes, in the very small print.
14 First of all, have you ever seen this
15 document before?
16 A No.
17 Q Okay. Do you recognize it at all?
18 A No.
19 Q Okay. This is entitled "A Chronology of
20 CIA High-Value Detainee Interrogation Techniques."
21 Do you see that?
22 A Yes.
23 Q Is that the kind of thing that normally
24 you would have received?
25 A This document?

1 Q Yes.
2 A I assume so.
3 Q Mm-hmm, okay, and the last page is
4 entitled "EITs Used With CIA Detainees."
5 Do you see that?
6 A Yes.
7 Q And you see there's a list across the
8 top of the, of the enhanced interrogation
9 techniques?
10 A Correct.
11 Q And you see that it has a couple of
12 names, and it has check boxes as to which of the
13 enhanced interrogation techniques were used?
14 A I see that.
15 Q These would seem to indicate that with
16 regard to Salim and Soud that the -- those various
17 techniques were used.
18 Do you agree with that?
19 A I, I assume so. I had never seen this.
20 Q Okay. When you said a few minutes ago
21 that those techniques were not used on Salim and
22 Soud, what was that based upon?
23 A It's based on the fact that we used the
24 enhanced interrogation techniques on high-value
25 targets, and these individuals were not high-value

1 targets.
2 Q Okay. The -- just directing your
3 attention back to Exhibit 38. That was the one
4 right before, the January 31, 2003.
5 A Okay.
6 Q And you had testified that, that this
7 was a list of the techniques that were approved
8 for Cobalt?
9 A Yes.
10 Q And you are aware that Salim and Soud
11 was, were at Cobalt?
12 A I assume so. I didn't know.
13 Q Okay. You don't know --
14 MR. BENNETT: Excuse me.
15 THE WITNESS: Okay.
16 MR. BENNETT: If you know, you tell
17 them.
18 THE WITNESS: I don't know.
19 BY MR. LUSTBERG:
20 Q You don't know whether they were at
21 Cobalt?
22 A No.
23 Q But you know that the, that the enhanced
24 interrogation techniques were not applied to them?
25 A They were not applied to them, because

1 they were not high-value targets.
 2 Q Do you know, as you sit here now,
 3 whether, regardless of what value targets they
 4 were, whether they actually were applied to them?
 5 A I don't know that, but they were not
 6 supposed to have been used on them.
 7 Q Okay. So the -- just directing your
 8 attention back to Exhibit 38, is there anywhere in
 9 this document where it says that those techniques
 10 are not supposed to be applied to medium-value
 11 detainees?
 12 A I don't know.
 13 Q Okay. Take a look.
 14 MR. BENNETT: Read it.
 15 BY MR. LUSTBERG:
 16 Q Take your time.
 17 (Witness peruses document.)
 18 BY MR. LUSTBERG:
 19 Q You shouldn't mark on the -- well, you
 20 can do it, and then we'll just ask about it.
 21 A I just want to --
 22 MR. BENNETT: Yeah, I know. Use
 23 your shirt.
 24 (Witness peruses document.)
 25

1 BY MR. LUSTBERG:
 2 Q While you're reading this, for the
 3 record, this is a -- one of many cables that we
 4 have discussed today --
 5 MR. JAMES SMITH: You say "this."
 6 MR. LUSTBERG: Exhibit 38, I'm
 7 sorry, and Mr. Smith and I have discussed
 8 that these cables are admissible as business
 9 records. That is, they satisfy the hearsay
 10 section of the business records.
 11 MR. JAMES SMITH: Yes.
 12 MR. LUSTBERG: So they can be used
 13 for purposes of these proceedings and in the
 14 future without waiving any right to object to
 15 hearsay, hearsay and the like. You have that
 16 right?
 17 MR. JAMES SMITH: We also agree
 18 that they are authentic, despite the
 19 redactions by the government and the
 20 insertions by the government.
 21 MR. LUSTBERG: Correct.
 22 MR. JAMES SMITH: Okay. So we
 23 don't have to ask any witness any questions
 24 about --
 25 MR. LUSTBERG: Right.

1 MR. JAMES SMITH: -- those
 2 foundational matters?
 3 MR. LUSTBERG: Mm-hmm.
 4 MR. JAMES SMITH: Good. Thank you,
 5 Mr. Lustberg.
 6 MR. LUSTBERG: Thank you.
 7 BY MR. LUSTBERG:
 8 Q You good?
 9 A Yes.
 10 Q You took some notes?
 11 A Yes.
 12 Q What did you write?
 13 A Why don't you ask the question?
 14 Q That's my question. What did you write?
 15 A Well, I wrote that the enhanced
 16 interrogation program required must be approved by
 17 headquarters in advance. The standard techniques,
 18 whenever feasible, must have advanced approval for
 19 the use of the standard techniques, and it needs
 20 to be documented in cable traffic.
 21 Q When you say "documented," that's the,
 22 that's that last page where it says
 23 "recordkeeping," where it says "in each
 24 interrogation session in which an enhanced
 25 technique is employed, a contemporaneous record

1 shall be created, setting forth the nature and
 2 duration of each such technique" and so forth?
 3 A It says -- it's paragraph 4.
 4 Q Yeah, go ahead.
 5 A "Whenever feasible, advance approval is
 6 required for the use of standard techniques by an
 7 interrogation team. In all instances, their use
 8 shall be documented in cable traffic."
 9 MR. BENNETT: Now give me your pen.
 10 MR. LUSTBERG: You have a fine
 11 lawyer.
 12 MR. JAMES SMITH: The witness was
 13 reading from Bates page 1173, the US
 14 government Bates label of Exhibit 38.
 15 MR. LUSTBERG: Actually, 1172 and
 16 1173.
 17 MR. JAMES SMITH: Okay. Thank you
 18 for that clarification.
 19 BY MR. LUSTBERG:
 20 Q So did you find -- my original question
 21 had been: "Did you find anything specific in this
 22 guidance that was being sent to the field" -- and
 23 you said "to Cobalt and beyond" -- "that limited
 24 the use of the enhanced interrogation techniques
 25 to high-value detainees?"

1 Q Okay, but, but they did not talk to you
2 about it?
3 A I don't recall.
4 Q Okay. They may have?
5 A By that time I was on the seventh floor,
6 and I was out of the chain of command.
7 Q Okay. I mean do you recall Dr. Mitchell
8 recommending to you that the tapes be destroyed
9 because of how, how ugly they were?
10 A No.
11 Q When you say you don't, is that because
12 you don't recall or because that's --
13 A I don't recall him ever talking to me
14 about that.
15 Q If he had talked to you about that, do
16 you think you would recall it?
17 A Maybe not.
18 Q So it's possible that you had that
19 conversation and you just don't remember it?
20 MR. BENNETT: Object. I think he's
21 answered your question.
22 MR. JAMES SMITH: Objection.
23 BY MR. LUSTBERG:
24 Q Just back to the question of the
25 legality of the enhanced interrogation techniques,

1 were you involved in any effort to obtain a
2 representation from the Department of Justice that
3 there would be no criminal prosecution based upon
4 using the enhanced interrogation techniques?
5 A I think what we were seeking from the
6 Justice Department was a legal opinion, in
7 writing, that said that everything was legal.
8 Q Beyond the opinion in writing, which you
9 certainly requested, was there an effort to gain
10 some sort of immunity from prosecution for anybody
11 who had been involved in, in the enhanced
12 interrogation techniques?
13 A I think you probably need to talk to our
14 lawyers about that.
15 Q Let me show you a document previously
16 marked as Exhibit 25.
17 (Witness peruses document.)
18 BY MR. LUSTBERG:
19 Q Do you recognize this?
20 A No.
21 Q Have you ever seen it before?
22 A No.
23 Q Okay. In the very last paragraph on the
24 second page of it, which is Bates C06541505, it
25 has the language, "I respectfully request that you

1 grant a formal declination of prosecution, in
2 advance, for any employees of the United States,
3 as well as any other personnel acting on behalf of
4 the United States, who may employ methods in the
5 interrogation of Abu Zubaydah that otherwise might
6 subject those individuals to prosecution under
7 Section 2340A of Title 18 of the United States
8 Code as well as under any other applicable U.S.
9 law."
10 Do you have any knowledge of that
11 request?
12 A Well, this is from the Office of General
13 Counsel, so I assume they made that request.
14 Q Oh, you're saying that you were not
15 aware of it?
16 A I probably was aware of it, but I don't
17 recall. I don't have any specific recollection.
18 Q Okay. So let's go back to your -- you
19 can just put it there -- the, um, your effort to
20 gain approval from the Department of Justice for
21 these techniques. You -- in doing, in seeking
22 that approval, you explained to the Department of
23 Justice, didn't you, that the techniques were
24 based on experience with the SERE program, right?
25 A Our lawyers did.

1 Q Mm-hmm. Let's -- in your -- if you go
2 to your declaration and turn, if you would, to
3 Exhibit L.
4 MR. BENNETT: Can we take a minute?
5 MR. LUSTBERG: Absolutely, yes.
6 THE VIDEOGRAPHER: The time is
7 12:24 p.m. Off the record.
8 (Whereupon, the lunch recess was
9 taken.)
10 THE VIDEOGRAPHER: The time is
11 1:03 p.m. We're back on the record.
12 MR. LUSTBERG: Thank you.
13 BY MR. LUSTBERG:
14 Q Mr. Rodriguez, before the lunch break,
15 we were discussing the process whereby you sought
16 and obtained legal authorization for the, for the
17 enhanced interrogation technique program.
18 Do you remember that?
19 A Yes.
20 Q And when you sought that, that approval,
21 it was based upon what you had learned from
22 Drs. Mitchell and Jessen with regard to the SERE
23 program, correct?
24 A Correct.
25 Q Okay, and what exactly were you told

1 A He was, yes.
 2 Q Okay, and other detainees -- were there
 3 other detainees, in your knowledge, who were
 4 wounded at the time they were taken into
 5 captivity?
 6 A Perhaps, but most of them were not
 7 wounded.
 8 Q Okay. For someone who was wounded,
 9 would that be a different experience than what
 10 they had, to your knowledge, that had occurred in
 11 the SERE setting?
 12 A I do not know.
 13 Q So you don't know whether SERE students
 14 were, were wounded or injured at the time that --
 15 A I assumed they were not.
 16 THE REPORTER: I'm sorry. I didn't
 17 hear the end of the question. "You didn't
 18 know whether they were wounded or" -- "or
 19 injured," something, "at the time" or
 20 something.
 21 BY MR. LUSTBERG:
 22 Q So you don't know whether SERE students,
 23 at the time they were, they were experiencing
 24 these techniques, were wounded or injured; do you
 25 know?

1 A I do not know.
 2 Q Okay.
 3 Let me ask you this: Were you concerned
 4 at all that some, some of the CIA officials who
 5 were, or others working with them who were
 6 applying these techniques, would sometimes go
 7 beyond what they were permitted to do?
 8 A Yes.
 9 Q And how did -- what did you do with
 10 respect to that concern?
 11 A When we found out, we reported it,
 12 self-reported, and turned it over to the IG, the
 13 Inspector General.
 14 Q Mm-hmm. Why were you concerned that
 15 that would happen?
 16 A In every endeavor of this sort, people
 17 do stupid things and don't follow regulation, and
 18 eventually some people did.
 19 Q When you say "an endeavor of this sort,"
 20 an endeavor of what sort?
 21 A A big covert-action complex program
 22 involving so many moving parts.
 23 Q So in a big complex program with many
 24 moving parts, some people are going to step over
 25 the line, correct?

1 A Some people are going to do stupid
 2 things, yes.
 3 Q Do you have any view of whether that
 4 would be likely to happen in the SERE school?
 5 A I have no view.
 6 Q Okay. The SERE school participants were
 7 there voluntarily. Are you aware of that?
 8 A Yes.
 9 Q Do you think that that makes a
 10 difference in terms of whether they were likely to
 11 suffer -- strike that.
 12 So they could leave at any time, right?
 13 A Correct.
 14 Q Do you think that makes a difference in
 15 terms of the psychological damage that they would
 16 suffer as opposed to detainees who could not leave
 17 whenever they wanted to?
 18 A The detainees could stop it if they
 19 wanted to.
 20 Q So your answer is that because the
 21 detainees could stop it by giving the answers that
 22 you wanted them to give, they were there
 23 voluntarily as well?
 24 A If that's the way you want to put it,
 25 yes.

1 Q Well, that's not the way -- I'm asking
 2 you. Were they there voluntarily?
 3 A They were not there voluntarily, but
 4 they could stop the interrogation if they agreed
 5 to comply.
 6 Q Let's talk about Abu Zubaydah for a
 7 second. Even after he began to comply, he was
 8 still waterboarded, right?
 9 A Yes.
 10 Q And even though Drs. Mitchell and Jessen
 11 recommended that he not be waterboarded anymore,
 12 it continued, right?
 13 A Correct.
 14 Q And that was because it was still within
 15 that 30-day period, right?
 16 A No.
 17 Q That's not true?
 18 A No.
 19 Q Okay. So if you could -- you have
 20 Exhibit 4, which is the manuscript. It's this big
 21 one.
 22 A This one?
 23 Q Yes, the manuscript of Dr. Mitchell's
 24 book.
 25 MR. BENNETT: Page 4?

1 MR. LUSTBERG: Page 88, Exhibit 4.
 2 MR. BENNETT: Exhibit 4, page 88.
 3 MR. LUSTBERG: Mm-hmm. Actually,
 4 let's go to -- bear with me.
 5 BY MR. LUSTBERG:
 6 Q Okay. On page 88, line 15, it says, "As
 7 Abu Zubaydah began to offer up information that
 8 the targeters and analysts on site judged valuable
 9 and wanted more of, we asked for permission to
 10 stop using EITs, especially the waterboard."
 11 Do you see that?
 12 A Yes.
 13 Q "To our surprise, however, headquarters
 14 ordered us to continue waterboarding him."
 15 Do you see that?
 16 A Yes.
 17 Q Is that true?
 18 A Yes.
 19 Q Were you involved in ordering
 20 Drs. Mitchell and Jessen to continue to waterboard
 21 Abu Zubaydah?
 22 A Yes.
 23 Q Why?
 24 A Well, I was the head of it, and my
 25 analysts were concerned that perhaps he was not

1 compliant.
 2 Q It says, "For several days" -- starting
 3 on line 18, "For several days in a row,"
 4 Dr. Mitchell writes, "we questioned the necessity
 5 of continuing the EITs, but every day we received
 6 cables, phone calls or emails instructing us to
 7 continue waterboarding Abu Zubaydah. At one point
 8 Bruce and I pushed back hard and threatened to
 9 quit. We were told, quote, 'He's turning you.
 10 You are not turning him.' The officers we were
 11 dealing with, mid-level CTC officials, really
 12 pissed us off by saying, 'You've lost your
 13 spines.' They insisted that if we didn't keep
 14 waterboarding Abu Zubaydah and another attack
 15 happened in the United States, it would be 'your
 16 fault.'"
 17 Is that, to your knowledge, true?
 18 A I, I don't know what mid-level officials
 19 were telling Mitchell.
 20 Q Did you direct any mid-level officials
 21 to say that kind of thing to Mitchell?
 22 A No.
 23 Q So if you turn, if you turn to page 90,
 24 middle of the page, line 10, it says -- it refers
 25 to a videoconference, and it says, "Jose Rodriguez

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

1 within the 30-day period?
 2 A No.
 3 Q He's wrong about that?
 4 A Yes.
 5 Q To your knowledge, were the long-term
 6 effects of the use of SERE techniques ever
 7 studied?
 8 A Not to my knowledge.
 9 Q Were -- how about are you aware of any
 10 studies on the use of those techniques with regard
 11 to people who are being held against their will?
 12 A No.
 13 Q Do you have any knowledge about whether
 14 the use of the enhanced interrogation techniques
 15 would be expected to produce post-traumatic stress
 16 disorder?
 17 A No.
 18 Q Did you ever ask anybody whether the
 19 effects of -- whether the use of the enhanced
 20 interrogation techniques would, would be expected
 21 to produce post-traumatic stress disorder?
 22 A No.
 23 MR. LUSTBERG: This is going to be
 24 Exhibit 39.
 25

1 (Exhibit 39 was marked for
2 identification.)
3 BY MR. LUSTBERG:
4 Q It's a long document, and I'm going to
5 be asking about a section on the page that has the
6 number Bates stamp 001763 at the bottom. It's the
7 second to the last page. Let me know when you
8 want me to ask the question.
9 A Let me look and see what else --
10 Q Yeah, take your time.
11 (Witness peruses document.)
12 MR. LUSTBERG: While you're doing
13 that, for the record -- Mr. Smith and I
14 discussed this as well. In my representation
15 before lunch about those documents that we
16 regarded as business records, I may have been
17 too narrow in just limiting them to cables.
18 This is a memo, and our, our agreement that
19 these are -- as to business records
20 encompasses this whole set of documents,
21 correct?
22 MR. JAMES SMITH: Just so we're
23 clear, the "this" that you're making
24 reference to is Exhibit 39?
25 MR. LUSTBERG: Correct.

1 MR. JAMES SMITH: Okay, but I
2 thought that what we had contemplated was all
3 of the documents produced by the government.
4 MR. LUSTBERG: 100 percent.
5 MR. JAMES SMITH: We're going to
6 stipulate that they're authentic, and we're
7 going to stipulate that we don't need to call
8 a custodian to qualify them as business
9 records.
10 MR. LUSTBERG: Correct, and that
11 you don't need to -- none of us need to
12 question Mr. Rodriguez as to their -- whether
13 they satisfy the requirements of business
14 records.
15 MR. JAMES SMITH: I thought you
16 wanted to question Mr. Bennett about that.
17 MR. LUSTBERG: That would be much
18 more fun.
19 MR. BENNETT: And then you'll have
20 my witness fee.
21 MR. LUSTBERG: We'll come up with
22 that quickly.
23 (Discussion held off the record.)
24 THE WITNESS: Okay. Go ahead.
25

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

1 Dr. Jessen's enhanced interrogation techniques.
2 A I do not know.
3 Q Okay. This is referencing a letter from
4 July 13, 2002, from OLC to CIA.
5 Do you remember such a letter?
6 A No.
7 Q Okay. So do you, do you have any
8 recollection of the Office of Legal Counsel at DoJ
9 advising CIA that, that "due diligence to meet the
10 standard might include such actions as surveying
11 professional literature, consulting with experts,
12 or evidence gained from past experience"?
13 A No, no. I don't have any recollection
14 of that.
15 Q Okay. So did you, in your capacity as
16 the director of CTC at that time, order or request
17 anyone to conduct the type of research or due
18 diligence that's described in that paragraph?
19 A No.
20 Q Would you agree that, that the long-term
21 effects of the enhanced interrogation techniques
22 was never explored in real depth?
23 A I do not know.
24 Q Do you think it should have been?
25 A I don't know.

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

4 MR. JAMES SMITH: Objection.

5 MR. BENNETT: Objection.

6 THE WITNESS: May I answer it,

7 or --

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

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

12 BY MR. LUSTBERG:

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

16 MR. BENNETT: Thank you very much.

17 BY MR. LUSTBERG:

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

21 A No.

22 Q Why is that?

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

1 Q And what do you base that on?

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

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

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

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

13 A No.

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

18 A Correct.

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

22 A I can only imagine.

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

24 A I don't know.

25 Q And how about sleep deprivation; do you

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

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

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

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

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

20 A Didn't let them sleep.

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

23 A I assume that they woke them up.

24 MR. BENNETT: Don't assume.
25

1 BY MR. LUSTBERG:

2 Q You observed some interrogations, right?

3 A No.

4 Q You never observed any?

5 A No.

6 Q How about on videotape?

7 A No.

8 Q You never saw one once?

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

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

14 A No.

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

18 A No.

19 Q No idea?

20 A No.

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

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

1 decide who these techniques would be used on; is
2 that right?
3 A Correct.
4 Q Who -- well, never mind, because that's
5 going to get an objection.
6 Were they -- did you tell them that they
7 were not, that they were not the ones to decide
8 who the enhanced interrogation techniques would be
9 used on?
10 A They were contractors, independent
11 contractors. Everybody knows that independent
12 contractors don't make decisions, that the staff
13 people are the ones making decisions.
14 Q So even though they designed the
15 program, they were not the ones to decide who it
16 would be used on; is that right?
17 A Correct.
18 Q And to your knowledge, based upon your
19 interaction with them, did they know that their
20 techniques would be used on people that they did
21 not select?
22 A I don't know that.
23 Q At the end of your declaration,
24 Mr. Rodriguez, you have a section on the SSCI
25 report, beginning on page 19.

1 So beginning on paragraph 121 -- in
2 paragraph 122 you say that "The SSCI Report is an
3 errant, one-sided assault on the CIA's EIT Program
4 that reaches numerous unsupportable and baffling
5 conclusions."
6 Then you give an example on paragraph --
7 in paragraph 125 where you say that "the SSCI
8 Report states that on July 17, 2002, National
9 Security Advisor Condoleezza Rice requested a
10 delay in the approval of the interrogation
11 techniques. In fact, on that date, Rice approved
12 the CIA's use of EITs subject to DoJ approval."
13 Do you see that?
14 A Yes.
15 Q How -- is that the only example -- it's
16 the only example you give of ways in which the
17 SSCI report is "errant and one-sided." Are there
18 other examples?
19 A Of course.
20 Q Can you provide another one?
21 A The allegation that the enhanced
22 interrogation program did not work and that no
23 value came from them is totally erroneous. It's a
24 travesty.
25 Q So you believe that the, that what the

1 SSCI report says is that the enhanced
2 interrogation program did not work and that no
3 value came from it?
4 A Correct.
5 Q Let me ask you this: The CIA wrote a
6 response to the SSCI report, right?
7 A Correct.
8 Q Did you read that?
9 A Yes, I did.
10 Q Did you participate in assisting to
11 draft that?
12 A No.
13 Q Is that -- would you say that that
14 response was also "errant" or "one-sided"?
15 A I don't think so, but I don't, I don't
16 remember it.
17 Q Okay. Let me show you a couple of
18 conclusions from that report. It's Exhibit 21,
19 already marked.
20 A What page?
21 Q Page 25.
22 Sorry. There's two different page 25s.
23 At least two. Toward the end of the report, the
24 page numbers go again, and -- hold on one second.
25 I'm sorry. Just give us one minute to make sure

1 we have the right page.
2 A Okay.
3 Q Sorry. I got it.
4 Okay. So there's numerous -- this
5 number a couple of different times. The second
6 page 25, which is sort of -- of course, these are
7 not Bates-numbered, so this is not that easy to
8 work with, but it's about halfway through. It's
9 part of conclusion 10.
10 A Conclusion 10?
11 MR. JAMES SMITH: The second series
12 of numbers?
13 MR. LUSTBERG: That's what I'm
14 looking.
15 MR. JAMES SMITH: Exhibit 21?
16 MR. LUSTBERG: Correct. So let me,
17 let me see -- Mr. Schuelke maybe has a good
18 way to do it.
19 BY MR. LUSTBERG:
20 Q So yes, this is the second series of
21 numbers, so if you look, you'll see it goes 1
22 through 20 -- it goes -- it starts and then it
23 renumbers again.
24 You're responsible for this confusing
25 document, aren't you?

1 A I had nothing do with it.
 2 MR. SCHUELKE: Larry, does this
 3 page have Title 12 --
 4 MR. LUSTBERG: No. It starts at
 5 the top of the page, page 25, the very top of
 6 the page, starts with "CIA remains grateful."
 7 MR. BENNETT: Okay. Here it is
 8 here.
 9 (Discussion was held off the
 10 record.)
 11 MR. BENNETT: We got it here.
 12 MR. LUSTBERG: You got it.
 13 BY MR. LUSTBERG:
 14 Q Anyway, you got it.
 15 What I wanted to ask you about was -- it
 16 says "we agree" -- in the first bullet point it
 17 says, "We agree with the study, however, that
 18 they," being Drs. Mitchell and Jessen, "were
 19 heavily reliant on views of the" -- I'm sorry. It
 20 says, "CIA remains grateful to (blank) and (blank)
 21 who applied" -- let me. Yeah, I know. Oh, I see.
 22 Withdrawn.
 23 The second bullet point: "As discussed
 24 in our response to conclusion 17, we agree that
 25 CIA should have done more from the beginning of

1 the program to ensure there was no conflict of
 2 interest, real or potential, with regard to the
 3 contractor psychologists who designed and executed
 4 the techniques, while also playing a role in
 5 evaluating their effectiveness as well as other
 6 closely related tasks."
 7 Do you see that?
 8 A Yes, I see it.
 9 Q First of all, do you -- first of all, I
 10 mean obviously you agree that the contractor
 11 psychologists that we're talking about are
 12 Drs. Mitchell and Jessen, right?
 13 A Yes.
 14 Q And that they were the ones -- and the
 15 reason you say that is because they were, in fact,
 16 the ones who designed and executed the techniques,
 17 but do you also agree that their company or they
 18 played a role in evaluating their effectiveness?
 19 MR. JAMES SMITH: Objection.
 20 MR. BENNETT: Go ahead if you know.
 21 THE WITNESS: Yes.
 22 BY MR. LUSTBERG:
 23 Q They did?
 24 A They played a role, yes.
 25 Q And do you think, do you think that's

1 problematic?
 2 A No, because we also -- the agency played
 3 a role in assessing their effectiveness.
 4 Q The agency also assessed their
 5 effectiveness?
 6 A Yes.
 7 Q Were you involved in that?
 8 A Not formally, but in, in measuring their
 9 accomplishments I was.
 10 Q Later on -- let me see if I have the
 11 right numbers here. On page 48, same series, if
 12 you look at conclusion 17 on the top of page 48,
 13 it says, "The CIA improperly used two private
 14 contractors with no relevant experience to
 15 develop, operate and assess the CIA detention
 16 interrogation program. In 2005 the contractors
 17 formed a company specifically for the purpose of
 18 expanding their detention and interrogation work
 19 with the CIA. Shortly thereafter, virtually all
 20 aspects of the CIA detention interrogation program
 21 were outsourced to the company. By 2006 the value
 22 of the base contract with the company, with all
 23 options exercised, was in excess of \$180 million.
 24 In 2007 the CIA signed a multi-year
 25 indemnification agreement protecting the company

1 and its employees from legal liability."
 2 That's the language from the SSCI
 3 report, right?
 4 A This is from the CIA response.
 5 Q So they're, they're responding to that?
 6 A Right.
 7 Q And on the next page it says, "We
 8 acknowledge that the agency erred in permitting
 9 the contractors to assess the effectiveness of
 10 enhanced techniques."
 11 Do you see that?
 12 A The next --
 13 Q Next page.
 14 A Page 49?
 15 Q 49, yes, at the very top.
 16 "They should not have been considered
 17 for such a role, given their financial interest in
 18 continued contracts with the CIA."
 19 Do you agree with that?
 20 A Yes.
 21 Q During the time period that the enhanced
 22 interrogation techniques were being used, were
 23 they being evaluated?
 24 A The techniques or --
 25 Q Yeah, the effectiveness of them.

1 A Yes, they were.
 2 Q And was -- were Drs. Mitchell and Jessen
 3 involved in that evaluation?
 4 A The evaluation was based on results.
 5 Q And the results were -- and you felt
 6 that the results were positive and so that
 7 therefore the techniques were good?
 8 A The results was incredible, very
 9 valuable intelligence that came to us that we
 10 didn't have before.
 11 Q And in assessing the results, was there
 12 any consideration at all given to the physical or
 13 psychological harm that was being inflicted upon
 14 the detainees?
 15 A We didn't think that any was, was being
 16 inflicted.
 17 Q My question is: So that was, so that
 18 was evaluated as part of the program?
 19 A No.
 20 Q It was not?
 21 A No.
 22 Q I was reading through the cables from
 23 Abu Zubaydah's interrogation, and time after time
 24 they talk about how the result is "no new threat
 25 information." I can show those to you if you

1 wish.
 2 Do you remember those cables?
 3 A It's been 15 years.
 4 Q Okay. Let's show them to him.
 5 Let's start with 1758, because that's
 6 also -- I tell you what. Let's do this. Look at
 7 your declaration, Exhibit N.
 8 This is a cable regarding the
 9 interrogation of Abu Zubaydah, correct?
 10 A Yes.
 11 Q And it, it goes through a number of, of
 12 the application of -- I'm sorry -- the application
 13 of a number of enhanced interrogation techniques,
 14 right?
 15 A Yes.
 16 Q It describes walling, and it describes
 17 the confinement box, and in paragraph 9 it says
 18 that "the subject has not provided any new threat
 19 or elaborated on any old threat information."
 20 Do you see that?
 21 A Yes.
 22 Q When you read that kind of thing, was
 23 there any sense that the enhanced interrogation --
 24 that their enhanced interrogation techniques were
 25 not being effective?

1 A At that point.
 2 Q At that point what?
 3 A At that point they were not being
 4 effective. Eventually they were.
 5 Q Okay. In any event, so at any given
 6 point, if there was not any new intelligence, that
 7 wasn't really the point; the real point was you
 8 wanted to look at it overall, right?
 9 A What do you mean?
 10 Q You wanted to see whether it was
 11 successful overall.
 12 A My objective was to obtain intelligence
 13 to protect the homeland and to save American
 14 lives, and this program produced it. That was my,
 15 the way I measured it.
 16 Q Okay. So the way you measured the
 17 program was by virtue of whether it provided the
 18 intelligence that you were looking for?
 19 A Not only provided intelligence, but
 20 allowed us to go and capture other people and stop
 21 plots and protect the homeland.
 22 Q I understand.
 23 Okay. Just one or two other areas that
 24 I really just a little bit that I want to go into.
 25 I want to talk about the particular plaintiffs in

1 this case, and I want to -- so take a look at your
 2 report. I'm sorry. Your declaration. Let's
 3 start with paragraph, paragraph -- I'm sorry --
 4 90, nine zero, page 15.
 5 And, um, the -- one of the things it
 6 says in paragraph 90 is that, under subsection 3,
 7 it says, "Rahman was declared an 'enemy
 8 combatant.'"
 9 Do you see that?
 10 A Yes.
 11 Q And you say that that is your
 12 understanding?
 13 A Correct.
 14 Q Where did you get that understanding?
 15 A He was an -- he was declared an enemy
 16 combatant.
 17 Q So if the judge in this case has held
 18 that the defendants have presented no evidence
 19 that Gul Rahman was determined to be an enemy
 20 combatant prior to his death, is the judge wrong?
 21 MR. JAMES SMITH: Objection. Come
 22 on, Mr. Lustberg.
 23 MR. LUSTBERG: That's a perfectly
 24 appropriate question.
 25 MR. JAMES SMITH: How would he know

1 other documents that you saw?
 2 A Correct.
 3 Q Nothing that you have your own personal
 4 knowledge of?
 5 A True.
 6 Q Is that right?
 7 A Mm-hmm.
 8 Q Okay. There's one last area.
 9 I have read articles -- you probably
 10 have as well -- where you're quoted as saying that
 11 you want to bring back some form of now legal
 12 interrogation measures like waterboarding, sleep
 13 deprivation, and other so-called enhanced
 14 interrogation methods approved by the Bush White
 15 House.
 16 Is that the position that you've taken?
 17 A No.
 18 Q So those -- I'm sorry.
 19 A What I'm saying is that they need to
 20 have something that goes beyond the Army Field
 21 Manual. I, I don't think that some of those
 22 enhanced interrogation things can ever be brought
 23 back. They have already been, you know, given
 24 away. There's too much controversy. Some other
 25 form of techniques that goes beyond the Army Field

1 Manual.
 2 Q Have you consulted with President Trump
 3 or members of his administration with regard to,
 4 quote-unquote, "bringing back torture"?
 5 A No. Well, we never brought -- we never
 6 used torture, so I don't know what you're talking
 7 about.
 8 Q Okay. How about bringing back enhanced
 9 interrogation techniques?
 10 A No.
 11 Q Have you spoken with any such people
 12 about bringing back black sites?
 13 A No.
 14 Q Have you spoken to the, any
 15 representatives of the new administration or
 16 transition team about resuming a CIA interrogation
 17 program?
 18 A No.
 19 Q Have you spoken to anybody about joining
 20 the administration?
 21 A No.
 22 MR. LUSTBERG: That's all I have.
 23 That's it. Thank you very much.
 24 THE WITNESS: You're welcome.
 25 MR. LUSTBERG: I think Mr. Smith

1 probably wants to ask some questions.
 2 MR. JAMES SMITH: I do.
 3 (Discussion was held off the
 4 record.)
 5 THE VIDEOGRAPHER: It's 2:05 p.m.
 6 We'll go off the record for technical
 7 reasons.
 8 (Whereupon, a short recess was
 9 taken.)
 10 THE VIDEOGRAPHER: The time is
 11 2:07. Back on the record.
 12 EXAMINATION BY COUNSEL FOR DEFENDANTS
 13 BY MR. JAMES SMITH:
 14 Q My name again still is Jim Smith, and as
 15 you know, I represent Drs. Mitchell and Jessen in
 16 this case.
 17 Mr. Rodriguez, are you familiar with the
 18 plaintiffs' theory in this case?
 19 A Of enhanced interrogation?
 20 Q Yeah, what the plaintiffs' theory is in
 21 this case; are you familiar with it?
 22 A Can you run it by me?
 23 Q Okay. Let me do a little background,
 24 and then we'll get to it.
 25 A Okay.

1 Q You mentioned, in your testimony with
 2 Mr. Lustberg, a "high-value target."
 3 Do you remember you used those words?
 4 A Yes.
 5 Q Is that synonymous with "a high-value
 6 detainee"?
 7 A Correct.
 8 Q Can you tell us for the record what a
 9 high-value detainee is?
 10 A A high-value detainee is someone who is
 11 believed to have intelligence involving threats to
 12 the United States, its people or its interests
 13 overseas.
 14 Q And are you familiar with the concept of
 15 a medium-value detainee?
 16 A Yes.
 17 Q Can you tell us what a medium-value
 18 detainee is?
 19 A Someone involved in war against us but
 20 who may not have that level of intelligence that
 21 represents an immediate threat to our country.
 22 Q And are you familiar with the concept of
 23 a low-value detainee?
 24 A Yes.
 25 Q Can you tell us what a low-value

1 detainee is?
 2 A A lesser combatant, a facilitator person
 3 who is not as dangerous as a medium-level
 4 detainee.
 5 Q And I take it that high-value detainees,
 6 medium-value detainees and low-value detainees
 7 were all considered enemies to the United States
 8 of America.
 9 A Yes.
 10 Q Now, in 2001 when you started working
 11 with CTC, did you start using those words,
 12 high-value detainee, medium-value detainee and
 13 low-value detainee?
 14 A I don't recall.
 15 Q Can you approximate when you started
 16 using those terms?
 17 A When we captured Abu Zubaydah.
 18 Q Okay. Now, let's, let's talk about that
 19 for a second.
 20 Was Zubaydah -- strike that.
 21 Which one of the three categories did
 22 Zubaydah fall within?
 23 A High-value.
 24 Q And why did the government believe that
 25 Mr. Zubaydah was a high-value detainee?

1 A Because he had come across our screen in
 2 2000 regarding the millennium plots and his
 3 dispatching of a terrorist to come into the US
 4 through Canada to blow up LAX in California.
 5 Q So the government, at the time of his
 6 capture, believed that there was information that
 7 he was directly involved in a plan to blow up the
 8 Los Angeles airport?
 9 A Correct.
 10 Q Now, did the government also have any
 11 beliefs about what relationship, if any,
 12 Mr. Zubaydah had with Osama bin Laden?
 13 A Yes.
 14 Q Can you tell us what it is.
 15 A Well, at one point we thought he was the
 16 chief of operations, but we knew he was a senior
 17 al-Qa'ida operative.
 18 Q Now, at the time that Mr. Zubaydah was
 19 captured by the United States government, what
 20 relationship, if any, did the CTC believe that
 21 Zubaydah had with Osama bin Laden?
 22 A As far as I can recall, we, we assumed
 23 that he had a close relationship with Osama bin
 24 Laden.
 25 Q Was he considered Osama bin Laden's

1 first lieutenant, or one of them, at least?
 2 A He was considered chief of operations at
 3 one point. It was either him or Khalid Sheikh
 4 Mohammed, but we knew him to be a senior person in
 5 the organization.
 6 Q Now, when was, when was Zubaydah
 7 captured?
 8 A March 2002.
 9 Q Now, in March of 2002, he was captured
 10 and he was taken to I think what's referred to as
 11 a "black site," right?
 12 A Correct.
 13 Q And I'm not asking you to tell me where
 14 that black site was. Let me just make that clear.
 15 Okay?
 16 A Good.
 17 MR. BENNETT: He wouldn't tell you
 18 anyway.
 19 BY MR. JAMES SMITH:
 20 Q Understood and that's good.
 21 Now, do you know, sir, if that black
 22 site was a site for high-value detainees?
 23 A We made it a site for Zubaydah at first,
 24 and then Nashiri second, so it became a site for
 25 high-value detainees.

1 Q Now, let's talk about Nashiri for a
 2 second. Al-Nashiri was who?
 3 A Nashiri was responsible for blowing up
 4 the U.S.S. Cole.
 5 Q And Nashiri was captured when?
 6 A Sometime in the fall of 2002.
 7 Q And he was taken to the same black site
 8 where Zubaydah was kept?
 9 A If I recall correctly, yes.
 10 Q And he was considered a high-value
 11 detainee?
 12 A Yes.
 13 Q I want to go back for a second.
 14 There was a period of time, was there
 15 not, when Zubaydah was maintained in a black site
 16 and being interrogated by FBI agents and CIA
 17 agents; is that correct?
 18 A Yes.
 19 Q And that was before Dr. Mitchell had any
 20 involvement; is that correct?
 21 A No. He had some involvement in that
 22 first interrogation. He was there to support and
 23 to make recommendations to the team.
 24 Q Now, let me back up for a second.
 25 I think -- at the time that Dr. Mitchell

1 was hired by the CTC, were you essentially the
2 captain of the ship of the black sites?

3 A I was the captain of the ship of -- when
4 Abu Zubaydah was captured in March, I was not the
5 director of CTC.

6 Q Okay.

7 A But I was involved in everything related
8 to CTC, and I had a special interest in making
9 sure that this program got off the ground and got
10 off the ground well.

11 Q Now, you became the director of CTC
12 when?

13 A In May of 2002.

14 Q Now, when Dr. Mitchell was originally
15 brought on to "the team," if you will, why was
16 that decision made?

17 A The decision was made because we had
18 impending threats of all kinds of attacks, anthrax
19 and nuclear and a second wave of attacks, and we
20 needed to do something different, because we were
21 not getting information through traditional
22 interrogation of Abu Zubaydah.

23 Q Okay. So let's talk about that for a
24 minute.

25 As of the time that Dr. Mitchell was

1 brought on, is it fair to say that the traditional
2 forms of interrogation that were being utilized by
3 the FBI and the CIA were not giving or producing
4 results about what the government was concerned
5 about regarding impending threats?

6 A They had produced two results, two
7 pieces of information that were significant, but
8 once he regained his strength, he stopped talking.

9 Q Okay, and when was that that he stopped
10 talking?

11 A April/May time frame, 2002.

12 Q And are you able to tell us about those
13 two pieces of information?

14 A I think so.

15 MR. JOHNSON: Can we have a
16 consultation?

17 MR. JAMES SMITH: Absolutely.

18 MR. BENNETT: Let's step outside.

19 MR. LUSTBERG: Let's go off the
20 record.

21 THE VIDEOGRAPHER: The time is 2:15
22 p.m. We're off the record.

23 (Whereupon, a short recess was
24 taken.)

25 THE VIDEOGRAPHER: The time is

1 2:17 p.m. We're back on the record.

2 MR. JAMES SMITH: Would you repeat
3 the question, Madam Court Reporter?

4 (Whereupon, reporter reads
5 requested material.)

6 THE WITNESS: The two pieces of
7 information that Abu Zubaydah had divulged
8 during the first phase of that interrogation
9 was that he confirmed for us that Mukhtar --
10 and we have seen Mukhtar in all kinds of
11 different intercepts -- was actually Khalid
12 Sheikh Mohammed.

13 The second one, it was very vague
14 information regarding an individual who was
15 supposed to go to the U.S. to detonate a WMD
16 type of device. We -- he gave us enough
17 where our overseas installations were able to
18 identify the individual as Jose Padilla, and
19 we found where he was, and we tracked him all
20 the way back to Chicago where we alerted the
21 FBI and he was arrested.

22 He actually was -- had a plan and
23 had been given \$10,000 by Khalid Sheikh
24 Mohammed to blow up apartments, residential
25 apartments in different parts of the U.S.

1 using natural gas, and have them go off at
2 the same time.

3 BY MR. JAMES SMITH:

4 Q Now, you mentioned Khalid Sheikh
5 Mohammed. Can you tell us who Khalid Sheikh
6 Mohammed is?

7 A Khalid Sheikh Mohammed was the chief of
8 operations of al-Qa'ida who actually devised the
9 9/11 plot and sold it to Osama bin Laden.

10 Q Okay. Now let's go back.

11 In the late spring/early summer of 2002,
12 Zubaydah is regaining his health, correct?

13 A Correct.

14 Q And he clams up?

15 A Correct.

16 Q And at that time -- is that around or
17 about the time that the decision is made to enlist
18 the service of Dr. Mitchell?

19 A Dr. Mitchell was already at the site.
20 He was providing recommendations and observing
21 what was going on, but that was about the time
22 that we knew that we had to do something
23 different.

24 Q Okay.

25 Now, you identified, in your direct

1 examination with Mr. Lustberg, documents that were
 2 marked as Exhibits J and K to the declaration that
 3 you signed that's marked as Exhibit 36 in this
 4 case. Could I ask you to get out those, please.
 5 A Which one?
 6 MR. BENNETT: J and K.
 7 BY MR. JAMES SMITH:
 8 Q Exhibit 36. Let's go to item Exhibit J
 9 within Exhibit 36.
 10 A Exhibit 36?
 11 MR. LUSTBERG: That's the
 12 declaration.
 13 THE WITNESS: Oh, okay.
 14 BY MR. JAMES SMITH:
 15 Q Are you there, sir?
 16 A Yes. So paragraph 36 of the
 17 declaration?
 18 Q No, no. Exhibit 36 is your declaration.
 19 A Okay, okay.
 20 Q Okay. If you go to Exhibit J --
 21 A Okay.
 22 Q -- within Exhibit 36 --
 23 A Okay.
 24 Q -- you will come to a document.
 25 A Okay.

1 Q Do you recognize this document?
 2 A It's a document that lists the different
 3 techniques.
 4 Q For the record, is it fair to say that
 5 Exhibit J, at least in part, represents a memo
 6 that was prepared by Dr. Mitchell dated July 8,
 7 2002?
 8 A I assume that's correct.
 9 MR. BENNETT: Don't assume.
 10 THE WITNESS: Okay. I believe it's
 11 correct. I don't know.
 12 BY MR. JAMES SMITH:
 13 Q Well, turn to the third page where you
 14 can see "Hope this helps. Jim Mitchell."
 15 Do you see that?
 16 A Okay.
 17 Q Okay. You've seen this document before
 18 today, obviously, right?
 19 A Yes.
 20 Q Okay. Do you recognize this as the
 21 document that was put together by Dr. Mitchell
 22 regarding enhanced interrogation techniques?
 23 A I believe that's right.
 24 Q Okay. Now, were you the person that
 25 asked Dr. Mitchell to put this document together?

1 A Yes.
 2 Q And just tell us, so the record is
 3 clear, why you wanted him to prepare this
 4 document.
 5 A We were searching for a new way of doing
 6 things, and this seemed like the appropriate way
 7 to go, and we needed to have more specific
 8 information regarding what were the techniques
 9 that he was talking about.
 10 Q And these are interrogation techniques
 11 that are set forth in Exhibit J, right?
 12 A Correct.
 13 Q Okay, and if you look at the first page
 14 of Exhibit J, you'll see that there's a thread of
 15 emails. Most of the information is redacted out.
 16 Do you see that?
 17 A Where is that?
 18 Q Go to the first page. See the "from"
 19 and the "office" and the "reference" and the like?
 20 A Mm-hmm.
 21 Q The government has redacted out that
 22 information in the production to us.
 23 A Okay.
 24 Q Okay. Now, do you -- you recognize
 25 these as the 12 interrogation techniques that you

1 asked Dr. Mitchell to give to the CIA; is that
 2 correct?
 3 A Yes.
 4 Q Okay, and then so we're clear, item
 5 number 12 makes reference to the mock burial,
 6 right?
 7 A Yes.
 8 Q And that interrogation technique was
 9 removed?
 10 A True.
 11 Q Now, let's go forward for a second.
 12 When Dr. Mitchell was hired by the CIA,
 13 what specifically was he tasked to do in addition
 14 to creating this method?
 15 A He was hired in December of 2001 to be a
 16 consultant, to provide advice, to do applied
 17 psychology. When he -- when CTC hired him in
 18 July, we had hired him before to go to the black
 19 site, but when we decided that we wanted do this,
 20 we hired him to do this and to help us with
 21 implementation of the techniques.
 22 Q Okay, the implementation of the
 23 techniques on whom?
 24 A On Abu Zubaydah.
 25 Q Okay. So is it fair to say --

1 MR. BENNETT: Excuse me. I object.
2 Both counsel have used the phrase "is it fair
3 to say," and I don't know what that means.
4 It means different things to different
5 people, so could you rephrase that?

6 MR. JAMES SMITH: I could.

7 MR. BENNETT: Thank you.

8 MR. JAMES SMITH: And if I do it
9 again, it's not intentional. It's just an
10 old habit that, now that you tell me I should
11 get rid of it, I'll work hard to do it.

12 MR. BENNETT: I don't believe it's
13 that intentional, but go ahead. Give it your
14 best shot.

15 MR. JAMES SMITH: All right.

16 BY MR. JAMES SMITH:

17 Q The -- so the engagement, Dr. Mitchell's
18 engagement started with OTC, was it?

19 A Yes.

20 Q And then it changed to CTC in the summer
21 of 2002?

22 A I believe we gave, we, we paid for his
23 services when he went to the first location with
24 the FBI, and that was in April of 2002.

25 Q But by the time he created the memo

1 A Yes.

2 Q Now, I want to go to a statement that
3 you made. You said -- if I wrote it down
4 correctly -- that Dr. Mitchell and Dr. Jessen were
5 "independent contractors."

6 A Yes.

7 Q You remember you said that?

8 A Yes.

9 Q And then you said, if I wrote it down
10 correctly, "Independent contractors do not make
11 decisions."

12 Do you remember you said that?

13 A Yes.

14 Q Tell us what you know about that.

15 A Independent contractors are subject
16 matter experts. They give us knowledge that we
17 don't possess, they make recommendations, but the
18 ultimate decision-makers were the staff people,
19 the leadership of the Counter-Terrorism Center.

20 Q Now, who were those decision-makers?

21 MR. JOHNSON: Objection.

22 MR. JAMES SMITH: Fair point, fair
23 point. I'll withdraw.

24 Am I permitted to ask the witness
25 if he was the decision-maker?

1 dated July of 2002, he was working for CTC, right?

2 A Correct. Yes.

3 Q Okay, and this memo was created solely
4 for the purpose of interrogating Zubaydah; is that
5 correct?

6 A Yes.

7 Q Now, did there come a point thereafter
8 when Dr. Mitchell -- well, let me back up for a
9 second.

10 I think you testified on direct
11 examination that at Dr. Mitchell's request, the
12 CIA also agreed to engage Dr. Jessen; is that
13 correct?

14 A Yes, yes.

15 Q And when did that happen?

16 A July 2002.

17 Q Okay, around or about the time of this
18 memo?

19 A Yes.

20 Q And was that solely to assist in the
21 interrogation of Zubaydah?

22 A Yes.

23 Q Now, did there come a time thereafter
24 when Drs. Jessen and Dr. Mitchell started
25 assisting in the interrogation of Abu Zubaydah?

1 MR. JOHNSON: Yes, as long as we
2 avoid names and identifying information of
3 other individuals.

4 MR. JAMES SMITH: What about
5 titles?

6 MR. JOHNSON: Titles? It depends
7 on the exact title.

8 MR. JAMES SMITH: Let me see if I
9 can do it a different way.

10 BY MR. JAMES SMITH:

11 Q Can you get out Exhibit 38, please?

12 A Number 38?

13 Q Exhibit 38, yes.

14 A What is that?

15 Q What is it or where is it? It's in your
16 pile of information, because Mr. Lustberg showed
17 it to you.

18 MR. BENNETT: Can you describe the
19 document?

20 MR. JAMES SMITH: Yes, I can.

21 BY MR. JAMES SMITH:

22 Q It is a -- it looks like a government
23 cable. It bears Bates number United States 1170
24 through 1174. I'll stop there.

25 Do you have Exhibit 38 before you?

1 A I have it.
 2 Q Do you remember that you were asked
 3 questions about this document in your direct
 4 examination?
 5 A Yes.
 6 Q Okay. Now, I want to just direct your
 7 attention to again the first page where it says
 8 "DCI Guidelines for the Conduct of Interrogation."
 9 Do you see that?
 10 A Yes, I do.
 11 Q And do you recognize Exhibit 38 as being
 12 the Guidelines for Interrogation?
 13 A Yes.
 14 Q Okay. Now, turn, if you would, to the
 15 second page of the document. In the paragraph
 16 marked 3, you see where it says "Begin Text of DCI
 17 Guidelines"?.
 18 A Yes.
 19 Q I'm going to ask you to jump down two
 20 sentences in the paragraph. Do you see where it
 21 says, quote, "These guidelines address the conduct
 22 of interrogations of persons who are detained
 23 pursuant to the authorities set forth in the
 24 Memorandum of Notification of 17 September 2001."
 25 A I see that.

1 Q Are you familiar with that memorandum?
 2 A The 17 September memorandum?
 3 Q The 2001 memorandum.
 4 A Yes.
 5 Q Are you familiar with it?
 6 A I am familiar with it.
 7 Q Are you able to talk about it without
 8 violating any obligation for classified
 9 information?
 10 MR. JOHNSON: We need to consult.
 11 Depends on what you need to ask.
 12 MR. JAMES SMITH: Got it.
 13 MR. JOHNSON: Break to consult?
 14 THE VIDEOGRAPHER: The time is
 15 2:30 p.m.
 16 (Whereupon, a short recess was
 17 taken.)
 18 THE VIDEOGRAPHER: 2:34 p.m. We're
 19 back on record.
 20 BY MR. JAMES SMITH:
 21 Q Do you remember the question,
 22 Mr. Rodriguez?
 23 A Yes. You were talking -- you were
 24 asking about the 17 September MON.
 25 Q Yes.

1 A And after discussing it, I'm only
 2 authorized to talk about the capture and detain
 3 portion of that authority.
 4 Q Okay. Can you tell me whatever you're
 5 permitted to tell.
 6 A I'm telling you. The capture and detain
 7 portion of it is that the CIA has the authority to
 8 go forth and capture and detain terrorists.
 9 Q Okay. When you say "capture and detain
 10 terrorists," do you mean low-value, medium-value
 11 and high-value, high-detainee-value terrorists?
 12 A I don't think they make a determination
 13 there on that document.
 14 Q When, when is the determination made?
 15 A The determination is made upon capture.
 16 Q Okay.
 17 A I mean in many cases we knew who we were
 18 going after, so we already -- if we were going
 19 after a high-value target, we already knew.
 20 Q Okay.
 21 A But sometimes other people -- people
 22 were captured in different ways, and at the time,
 23 depending on their knowledge that they had, a
 24 determination was made.
 25 Q Okay. Thank you, Mr. Rodriguez.

1 Could I ask you to go back to Exhibit 38
 2 and turn to the third page of the document. I
 3 want to focus on the paragraph, the first full
 4 paragraph on that page.
 5 Do you have it before you?
 6 A Yes.
 7 Q Now, let's just back up for a second.
 8 Did I hear you say earlier today that
 9 enhanced interrogation techniques were only to be
 10 used on high-value detainees?
 11 A Yes.
 12 Q And that was your understanding of the
 13 policy and procedures that were in place starting
 14 in 2002 in the fall, correct?
 15 A Correct.
 16 Q So to the extent that Dr. Mitchell
 17 created that memo that listed those 12 items, it
 18 was only contemplated to be used on high-value
 19 detainees; is that correct?
 20 A Yes, yes.
 21 Q Okay. Now, I want to talk about the
 22 concept of control, okay? Go back to this
 23 paragraph again, and we're going to read it
 24 together.
 25 Do you see where it says, quote,

1 "Enhanced techniques are techniques that do
2 incorporate physical or psychological pressure
3 beyond standard techniques."
4 Do you see that?
5 A Yes.
6 Q Reading on, it says, "The use of each
7 specific enhanced technique must be approved by
8 headquarters in advance."
9 Now, let me stop right there.
10 What headquarters is being referenced
11 there? Is that Langley?
12 A That's CTC.
13 Q CTC. Where was, where was CTC located?
14 A CIA headquarters.
15 Q And where is that?
16 A In Langley.
17 Q Okay. So according to the procedures
18 that were in place, no enhanced interrogation
19 could take place unless Langley signed off on it
20 and approved it; is that correct?
21 A Yes.
22 Q And that was your understanding as the
23 person who was in charge of that program?
24 A Yes.
25 Q And then it says, in addition to being

1 headquarters approval, it must be approved by
2 whom?
3 A In some cases, if it was like
4 waterboarding, I believe we had to go to the
5 director to get his approval.
6 Q The director was who?
7 A George Tenet at the time.
8 Q Okay. So anytime, for example, Zubaydah
9 was waterboarded, the director had to sign off on
10 it; is that correct?
11 A I don't think he -- I think the director
12 provided approval to do, to do waterboarding. I
13 don't think that he approved it every time, but
14 I'm not sure. I don't think that was the case.
15 Q Okay. Did you have to approve it?
16 A The chain of command -- you know, the
17 cable would come to me, and I would have to sign
18 off on it myself, so I would be part of the
19 approval process.
20 Q Who else was part of the approval
21 process?
22 A I don't think I'm allowed --
23 MR. JOHNSON: Objection.
24 BY MR. JAMES SMITH:
25 Q Got it. Sorry, sorry. Okay, but there

1 were others within the chain of command at Langley
2 that were part of the approval process?
3 A Yes.
4 Q Okay.
5 Now, why did the CIA -- well, strike
6 that.
7 Why was this process put in place that
8 before there could be any enhanced interrogation
9 techniques, officials at Langley had to sign off
10 on it? Why was that?
11 A Well, because this was serious business,
12 and we wanted to make sure that it was not done
13 without the approval of the highest levels of the
14 agency.
15 Q Okay, and what happens if it wasn't
16 approved? Would that mean no enhanced
17 interrogation techniques?
18 A No. No enhanced interrogation
19 techniques.
20 Q Okay. Reading on, it says, "and may be
21 employed only by approved interrogators for use
22 with the specific detainee."
23 Do you see that?
24 A Yes.
25 Q Okay. Why was that part of the process

1 or procedure that was in place?
2 A We just wanted to make sure that each
3 detainee had his own approval process.
4 Q Okay. So with respect to any detainee
5 for which enhanced interrogation techniques would
6 be used, it had to be specifically approved by or
7 for that particular detainee?
8 A Correct.
9 Q Okay, and reading on, it says "with
10 appropriate medical and psychological
11 participation in the process."
12 Do you see that?
13 A Where are we again?
14 Q Yeah, we're in that same --
15 A Same paragraph?
16 Q -- sentence in the same paragraph --
17 A Yes.
18 Q -- where it says -- see where it says
19 "with appropriate medical and psychological
20 participation in the process"?
21 A Yes.
22 Q Do you see that?
23 A Mm-hmm.
24 Q Can you tell me what that means?
25 A With the appropriate -- I don't know. I

1 don't know what it means.
 2 Q Let me be more precise in my question.
 3 A Okay.
 4 Q I'll withdraw the one that's pending.
 5 A Okay.
 6 Q As part of the process that was
 7 implemented by the CIA, was it necessary to have a
 8 psychologist and a medical doctor in the room
 9 while enhanced interrogation techniques were being
 10 used on a detainee?
 11 A Yes.
 12 Q And why was that process put in place?
 13 A It was put in place to make sure that no
 14 harm came to the detainee, and, and if there was a
 15 medical emergency, that there would be someone
 16 there that could treat it.
 17 Q Now, I'd like you to turn to the last
 18 page of this document. Actually, it starts on the
 19 preceding page. I apologize.
 20 Do you see where, in the second sentence
 21 in the paragraph marked 4, "Approvals Required,"
 22 do you see where it says, "In all instances, their
 23 use shall be documented in cable traffic. Prior
 24 approval in writing (e.g., by written memorandum
 25 or in cable traffic) from the director, DCI

1 Counter-Terrorism Center, with the concurrence of
 2 the chief, CTC legal group, is required for the
 3 USF of any enhanced techniques."
 4 Let me stop right there. Do you see
 5 that?
 6 A Yes, I do.
 7 Q Was that the procedure that was in place
 8 in the years 2002 through 2004?
 9 A Yes.
 10 Q So, for example, if a plaintiff in this
 11 case contends that they were waterboarded, if
 12 procedure was followed, you would expect to see
 13 cables authorizing the waterboarding; is that
 14 correct?
 15 A Yes.
 16 Q And in the absence of the cables, it
 17 would suggest to you, would it not, that either
 18 there was no waterboarding or it was done in an
 19 unauthorized fashion at the site?
 20 A Yes.
 21 Q Okay. Have you ever seen any cables
 22 authorizing any enhanced interrogation techniques
 23 on plaintiff Soud in this case?
 24 A No.
 25 Q In your capacity as the director, would

1 you have had to authorize those enhanced
 2 interrogation techniques if, in fact, they were
 3 done according to procedure?
 4 A What year were those captures?
 5 Q '03 and '04.
 6 A Yes.
 7 Q Okay. Did you ever authorize any
 8 enhanced interrogation techniques on plaintiff
 9 Soud?
 10 A No.
 11 Q Did you ever authorize any enhanced
 12 interrogation techniques on plaintiff Salim?
 13 A No.
 14 Q Did you ever authorize any enhanced
 15 interrogation techniques on Rahman?
 16 A No.
 17 Q Have you ever seen any cables, as
 18 contemplated by the procedure that I'm reviewing
 19 here, indicating that enhanced interrogation
 20 techniques were utilized on any of these three
 21 plaintiffs?
 22 A No.
 23 Q Now, I want to go back for a second, and
 24 I want to talk a little bit more about process,
 25 okay? And I want to focus on the period of time

1 where enhanced interrogation techniques were used
 2 on Abu Zubaydah.
 3 Are you with me?
 4 A Yes.
 5 Q And if I recall in the record, that's
 6 approximately two weeks in August when those
 7 enhanced interrogation techniques were used.
 8 Does that sound right to you?
 9 A That's true.
 10 Q Okay. Now, I want to talk about
 11 process.
 12 There was this memo that we reviewed
 13 that Mr., Mr. Mitchell or Dr. Mitchell put
 14 together with the 12 and ultimately 11 enhanced
 15 interrogation techniques, right?
 16 A Right.
 17 Q Okay.
 18 Now, who decided which techniques were
 19 going to be used on Zubaydah?
 20 A I think that initially -- the way this
 21 worked was there was a gradual escalation of
 22 techniques.
 23 Q But let's just -- who ultimately decided
 24 whether or not those techniques were going to be
 25 used on Zubaydah?

1 MR. JOHNSON: Objection to the
2 extent the question calls for names or
3 identifying information.
4 MR. JAMES SMITH: Careful.
5 BY MR. JAMES SMITH:
6 Q Did Dr. Mitchell decide or did the
7 United States government decide that enhanced
8 interrogation techniques were going to be used on
9 Zubaydah?
10 A The US government decided.
11 Q Okay, and so we're clear, to the extent
12 that Zubaydah was waterboarded, was it the
13 government who decided when he was going to be
14 waterboarded?
15 A Yes.
16 Q Was it the government who decided how he
17 was going to be waterboarded?
18 A Yes.
19 Q Was it -- is it fair to say that --
20 MR. BENNETT: Objection to "fair to
21 say."
22 MR. JAMES SMITH: Oh, sorry.
23 BY MR. JAMES SMITH:
24 Q Is it correct to say that the government
25 decided everything about any of the enhanced

1 interrogation techniques that were used on Abu
2 Zubaydah?
3 A Yes.
4 Q Now, I want to go back to -- several
5 times today, my esteemed adversary made reference
6 to the program.
7 Do you remember that?
8 A Yes.
9 Q And who designed the program. Do you
10 remember that?
11 A Right.
12 Q And I want to make sure that we're all
13 clear about exactly what that means.
14 A Okay.
15 Q Isn't it true that the only thing that
16 Drs. Mitchell and Dr. Jessen did was to give the
17 government a memo with 12 suggested enhanced
18 interrogation techniques?
19 Isn't that true?
20 A True.
21 Q And isn't it also true that everything
22 past that, meaning who it was done to, when it was
23 done, how long it was done, was a decision of the
24 United States government?
25 A True.

1 Q And isn't it also true that at every
2 time, every instance that Drs. Mitchell and Jessen
3 were involved with Abu Zubaydah, it was at the
4 direction of the United States government?
5 A Yes.
6 Q And isn't it also true that there came a
7 time during that two-week period when they
8 suggested to you and the other decision-makers to
9 stop waterboarding?
10 A Yes.
11 Q And isn't it also true that you directed
12 them to continue the waterboarding?
13 A Yes.
14 Q And if I recall your testimony, you said
15 that your analysts were concerned that Zubaydah
16 was not complying.
17 A Yes.
18 Q Can you tell me what you mean by that?
19 A When Abu Zubaydah was captured, in the
20 safe house where he was captured, the location
21 where he was captured, we discovered tapes,
22 interrogation tapes -- not interrogation tapes,
23 but tapes that he had prerecorded to celebrate yet
24 another major attack on the US, and we feared that
25 he had done that in anticipation of an attack that

1 was being planned, and because he had not provided
2 that information during interrogation, we felt
3 that he was not being compliant.
4 Q And who made the decision to continue
5 the waterboarding?
6 MR. JOHNSON: Objection.
7 MR. JAMES SMITH: Strike that,
8 strike that.
9 BY MR. JAMES SMITH:
10 Q Are you able to tell me who, in addition
11 to yourself, made the decision to continue the
12 waterboarding?
13 A People who work with me.
14 Q Was the director of the CIA involved in
15 that decision?
16 A I don't recall.
17 Q Okay. Now I want to go back.
18 As of August of 2002, the only
19 high-value detainee that was in custody was
20 Zubaydah, right?
21 A Yes.
22 Q And then that changed, right?
23 A Yes.
24 Q Al-Nashiri was captured?
25 A Yes.

1 Q Now, I think you said he was a
2 high-value detainee, right?
3 A Yes.
4 Q And then sometime thereafter, Khalid
5 Sheikh Mohammed was captured.
6 A Yes.
7 Q Right?
8 A Mm-hmm.
9 Q Were there any other high-value
10 detainees?
11 A Yes.
12 Q Who? Let me just ask: Were there any
13 others that Mitchell and Jessen were involved
14 with?
15 A I believe that --
16 MR. JOHNSON: Objection.
17 MR. JAMES SMITH: He can answer the
18 question yes or no, I think.
19 MR. JOHNSON: Okay.
20 THE WITNESS: Yes.
21 MR. JOHNSON: He can answer the
22 question yes or no. We object to the degree
23 he discusses details.
24 BY MR. JAMES SMITH:
25 Q Are you able to identify for the record

1 the other high-value detainees?
2 A Yes.
3 Q Can you tell me their names?
4 MR. JOHNSON: Objection.
5 MR. JAMES SMITH: Hold that
6 thought.
7 MR. JOHNSON: To clarify, just to
8 redirect to the classification guidance
9 indicating which detainee, the detainees that
10 can be discussed, so the 119 --
11 MR. JAMES SMITH: They were not all
12 high-value detainees.
13 (Discussion held off the record.)
14 MR. BENNETT: The name he has he
15 says is publicly known.
16 MR. JOHNSON: One minute to
17 consult.
18 MR. JAMES SMITH: Of course.
19 THE VIDEOGRAPHER: 2:51 p.m., we're
20 off the record.
21 (Whereupon, a short recess was
22 taken.)
23 THE VIDEOGRAPHER: 2:53 p.m., back
24 on record.
25 MR. JOHNSON: Thank you.

1 With the chance to consult, the
2 government will object. In part we'll
3 object. We have instructed the witness not
4 to discuss any involvement of Drs. Mitchell
5 and Jessen with particular detainees beyond
6 Khalid Sheikh Mohammed, Abu Zubaydah,
7 Al-Nashiri and Gul Rahman.
8 MR. JAMES SMITH: Okay. So let's
9 just -- can we agree that there were other
10 detainees, high-value detainees?
11 MR. JOHNSON: Yes.
12 BY MR. JAMES SMITH:
13 Q Can we tall them "Mr. X"?
14 A If you want.
15 Q Is that fair?
16 A Yes.
17 Q Just -- here's the point that I'm trying
18 to understand.
19 MR. BENNETT: Or Miss -- Mr. or
20 Mrs. X. I'm just trying to be --
21 MR. JAMES SMITH: You're making
22 trouble.
23 BY MR. JAMES SMITH:
24 Q So let me ask you: We, we went through,
25 Mr. Rodriguez, the process that was used for

1 Zubaydah when enhanced interrogations were
2 utilized, right?
3 A Correct.
4 Q And that there were cables, the
5 procedure was followed, correct?
6 A Correct.
7 Q And the government decided when to do
8 it, how long to do it, which days to do it, et
9 cetera, and directed the team; is that fair?
10 A That is fair.
11 Q Was the same process utilized for the
12 other high-value detainees?
13 A Yes.
14 Q Okay. So we would expect to see, for
15 Al-Nashiri, the same cables and the like to the
16 extent that he was waterboarded or other enhanced
17 interrogation techniques were used, correct?
18 A Yes.
19 Q Okay, and in all of those instances,
20 Dr. Mitchell and Dr. Jessen acted under the
21 direction of the CIA; is that correct?
22 A That is correct.
23 Q They exercised no independent judgment;
24 they did what they were told?
25 A That is correct.

1 Q Okay.
 2 Now, is it correct to say that
 3 Dr. Jessen and Dr. Mitchell only supported the CIA
 4 with respect to high-value detainees?
 5 A That was their contract. That's what
 6 they were supposed to do was to support the CTC
 7 with high-value detainees.
 8 Q Okay, and is that, in fact, what they
 9 did?
 10 A Yes, except there is some evidence that
 11 apparently, en route to another black site, they
 12 were asked to look at a detainee.
 13 Q And this is Rahman?
 14 A That's right.
 15 Q And I'm going to come back to Rahman in
 16 a bit. Let me just get a little background in
 17 case the jury watches this tape.
 18 I think Site Green was where Zubaydah
 19 and the other high-value detainees was kept; is
 20 that right?
 21 A Correct.
 22 Q There were other what we call "black
 23 sites," right?
 24 A Right.
 25 Q And were they for medium and low-value

1 detainees?
 2 A No.
 3 Q Who were they for?
 4 A High-value detainees.
 5 Q High-value detainees, so if you go back
 6 to Exhibit 38 -- yes -- do you remember
 7 Mr. Lustberg asked you why this memo was sent to
 8 Cobalt?
 9 A Yes.
 10 Q Okay, and for the record, so that
 11 everybody understands, Cobalt was a name for one
 12 of the black sites, right?
 13 A Yes.
 14 Q And is it fair -- is it correct to say
 15 that the reason why these procedures were sent to
 16 Cobalt is because there were high-value detainees
 17 in Cobalt?
 18 A I guess. I don't know.
 19 Q You don't know?
 20 A I don't know. I'm surprised by it.
 21 Q Okay. All right.
 22 Now, let me, let me go back to -- you
 23 said that Drs. Mitchell and Jessen designed the
 24 program; remember?
 25 A Yes.

1 Q And then I think you even said that they
 2 were the architects of the program?
 3 A Yes.
 4 Q Okay, and I want to make sure that the
 5 record is crystal clear on that.
 6 What you really meant by that was they
 7 prepared a memo with 12 enhanced interrogation
 8 techniques, right?
 9 A Yes.
 10 Q That was the, that was the extent of
 11 their "architecture," if you will?
 12 A Yes.
 13 Q And after that, every decision about
 14 when and how to use those techniques was a
 15 decision that was made by the United States
 16 government; isn't that right?
 17 A That's right.
 18 Q Okay.
 19 Now, were enhanced interrogation
 20 techniques that are a part of that memo intended
 21 to be used on low-value detainees?
 22 A No.
 23 Q Were they intended to be used on
 24 medium-value detainees?
 25 A No.

1 Q Are you aware in your capacity as the
 2 director of CTC during the period of time 2002
 3 through 2004, when you ever authorized enhanced
 4 interrogation techniques, as they're contemplated
 5 by that Mitchell memo, to be used on a low or
 6 medium-value detainee?
 7 A No.
 8 Q And if that would have been done, is it
 9 your testimony that that was directly against your
 10 orders?
 11 A Yes.
 12 Q Okay.
 13 A Not just my orders, but the, the whole
 14 regulation, the whole guidance, everything that we
 15 had.
 16 Q Now, you remember I asked you about the
 17 plaintiffs' theory of the case?
 18 A Yes.
 19 Q Are you aware that the plaintiffs
 20 contend that the program that was designed by
 21 Drs. Mitchell and Jessen was used on all of the
 22 detainees?
 23 A The philosophy?
 24 Q Let's go back.
 25 A Okay.

1 Q Distilled to its essence, the plan that
2 was, that was designed by Drs. Mitchell and Jessen
3 was that two-page memo with 12 enhanced
4 interrogation techniques, right?

5 A Correct.

6 MR. BENNETT: Objection.

7 MR. LUSTBERG: Objection.

8 MR. JAMES SMITH: Can you tell me
9 the basis of that objection? I want to cure
10 it.

11 MR. LUSTBERG: The question was
12 completely compound and confusing.

13 MR. JAMES SMITH: It was compound
14 and confusing? Okay. I'll keep the question
15 then.

16 BY MR. JAMES SMITH:

17 Q And so we're clear, that plan, that
18 two-page memo was never intended to be used on
19 anyone other than high-value detainees?

20 A That is correct.

21 Q Okay. Now, I want to ask you about
22 these three plaintiffs. I think I have a document
23 that you authored, and we're going to find out in
24 a second.

25 What's the next exhibit number?

1 THE REPORTER: Exhibit 41.
2 (Exhibit 41 was marked for
3 identification.)

4 BY MR. JAMES SMITH:

5 Q For the record, Mr. Rodriguez, we have
6 marked as Exhibit 41 a document produced by the
7 United States government, and it carries Bates
8 label 001542 through 1544. Take a moment and look
9 at this document. Most of it's redacted, and then
10 tell me when you're ready to go.

11 A Okay. Let me read it.

12 (Witness peruses document.)

13 THE WITNESS: Okay.

14 BY MR. JAMES SMITH:

15 Q Have you read the document, sir?

16 A Yes.

17 Q Do you recognize this document?

18 A No.

19 Q Okay. If you turn to the third page of
20 the document, do you see where it says "Sincerely,
21 Jose A. Rodriguez, Jr." --

22 A Yes.

23 Q -- "Director DCI Counterterrorist
24 Center"?

25 A Yes.

1 Q That's you, isn't it?

2 A Yes, but do you know how many of these I
3 signed? That's why I couldn't remember.

4 Q Okay. I'm not being critical.

5 A I'm just telling you.

6 Q I want to see if I can refresh your
7 recollection.

8 A Okay.

9 Q All right. So let's go back for a
10 second.

11 MR. BENNETT: Do you want a Xanax
12 or something? Zolof? I got a whole
13 collection of pills.

14 MR. JAMES SMITH: All right.

15 Mr. Bennett, are you okay?

16 MR. BENNETT: As well as usual.

17 BY MR. JAMES SMITH:

18 Q Sir, tell me what this document is.

19 A The fact that we were turning over an
20 individual to the military, to me it means that
21 the value is not one of a high-value detainee.

22 Q Right.

23 A That it's someone who we don't need in
24 our possession, that we needed to turn over to the
25 military.

1 Q So in effect this document is, if you
2 will, a transition memo about a subject that's
3 being turned over from custody by the CIA to the
4 military?

5 A Correct.

6 Q U.S. military?

7 A Yes.

8 Q And are you aware of the name
9 S-U-L-E-I-M-A-N Abdullah? Do you know who that
10 is?

11 A No. Now I do. Now I know, but I --

12 Q Okay. Do you know him to be a plaintiff
13 in this case?

14 A Yes.

15 Q Okay. Now, I want to ask you: You
16 prepared this document?

17 A No.

18 Q Someone under your direction prepared
19 it?

20 A Yes.

21 Q Okay, and it was necessary to prepare a
22 document like this in order to transfer custody of
23 a subject from the CIA control to the military
24 control?

25 A Yes.

1 Q Now, do you see where it says in the
2 document, quote, "We request that the military
3 service in Bagram take immediate custody and
4 control of these individuals, accord the ICRC
5 appropriate access to them, and hold them in an
6 appropriate detention facility until the US
7 government determines otherwise. We believe this
8 transfer of detainees to DOD control will assist
9 the USG in addressing some of the concerns raised
10 by the ICRC, while ensuring these individuals are
11 removed from the battlefield."

12 Do you see that?

13 A Yes.

14 Q Do you have a memory of what the
15 concerns were by the ICRC as they applied to
16 Mr. Salim?

17 A I do not have a memory regarding as they
18 apply to Mr. Salim. I remember in general that
19 they wanted access to the detainees.

20 Q And do you know why access was wanted?

21 A They wanted to do what they do, which is
22 check them in and make sure that they're okay.

23 Q Do you know why Salim was taken into
24 custody by the CIA?

25 A I assume he was, he was picked up

1 somewhere.

2 Q Let's take -- take a look at the second
3 page if you will.

4 Do you see where it says "Suleiman
5 Abdullah is a Tanzanian national suspected of
6 involvement in al-Qa'ida's East Africa cell,
7 specifically as a (Page 3) facilitator of
8 al-Qa'ida's 1998 attacks against the US embassies
9 in Nairobi, Kenya and Dar Es Salaam, Tanzania."

10 Let me stop right there.

11 Was that true?

12 A Yes.

13 Q And reading on, it says, "Abdullah first
14 came to Kenya in 1993 and stayed in Mombasa with
15 East African embassy bombing fugitive Fahid
16 Mohamed Ally Msalam, with whom he later trained in
17 Afghanistan."

18 Do you see that?

19 A Yes.

20 Q Was that true, too?

21 A I assume so.

22 MR. BENNETT: Don't assume, please.

23 THE WITNESS: I don't know.

24 MR. BENNETT: Okay.

25

1 BY MR. JAMES SMITH:

2 Q Let me see if I can cut to the quick
3 here, sir.

4 Was Suleiman held in custody by the CIA
5 because he was believed to be a part of terrorist
6 activity?

7 A Yes.

8 Q Take a look at the footnote. It may not
9 be a footnote, actually. There's a space, and
10 then there's information on the bottom of the
11 page.

12 Do you see that?

13 A I see it.

14 Q Do you see where it says "Legal Basis
15 For Detention"?

16 "The Law of Armed Conflict is a
17 sufficient but not the sole legal basis for
18 detention of the Subjects. Under that theory,
19 parties to the hostilities have the right to
20 target enemy combatants engaged in active
21 hostilities, including the right to capture and
22 detain."

23 Do you see that?

24 A Yes.

25 Q Is that why Suleiman was detained by the

1 CIA, because he was considered an enemy combatant?

2 A Yes.

3 Q Okay. Reading on, it says, "This is
4 especially true where such detention is necessary
5 to prevent an individual from further engaging in
6 hostilities."

7 Do you see that?

8 A Yes.

9 Q Was that a concern of the United States
10 government --

11 A Yes.

12 Q -- that we continue detention?

13 A Yes.

14 Q Reading on, it says, "A 'combatant' can
15 also be an individual affiliated with an
16 organization engaging in hostilities or one
17 actively support or facilitating such attacks.
18 Each of these individuals is linked to al-Qa'ida
19 members and known terrorists or was captured
20 engaging in active attacks against coalition
21 forces."

22 Do you see that?

23 A Yes.

24 Q Is that why Suleiman was detained?

25 A Yes.

1 Q Is there any doubt in your mind that the
2 CIA considered him an enemy combatant?
3 A No.
4 Q Let's move on then to Rahman. We're
5 going to mark the next exhibit as Exhibit 41
6 [sic].
7 MR. BENNETT: Could I have just a
8 second with him?
9 (Exhibit 42 was marked for
10 identification.)
11 MR. BENNETT: Thank you. I'm
12 sorry.
13 MR. JAMES SMITH: No problem.
14 BY MR. JAMES SMITH:
15 Q Do you have Exhibit 42 before you, sir?
16 A I do.
17 Q For the record, let me identify this is
18 a document produced by the United States
19 government. It bears Bates label 001061 through
20 63.
21 Have you seen this document before
22 today, sir?
23 A I do not know.
24 Q Okay. Let me just direct your attention
25 to the subject. Do you see where it says "Eyes

1 Only - Gul Rahman: Chronology of Events"
2 Do you see that?
3 A Yes, I do.
4 Q And this document was obviously created
5 by the United States government.
6 Do you agree with that?
7 A Yes.
8 Q And because of the redactions that have
9 been made by the United States government, it's
10 difficult to tell who created this document.
11 Would you agree with that?
12 A Yes.
13 Q Would you agree with me that the
14 document was created by the CIA?
15 A It appears to be have been created by
16 the CIA. I have no way of knowing.
17 Q Okay.
18 Now, do you see where it says, sir, in
19 paragraph 2, "The following chronology of events
20 relating to the death of enemy combatant Gul
21 Rahman," and let me stop right there.
22 Do you see that?
23 A Yes.
24 Q Does that in any way refresh your
25 recollection whether or not Gul Rahman was

1 considered by the CIA, at the time that he was
2 taken into custody, to be an enemy combatant?
3 A He was an enemy combatant.
4 Q And can you tell us why the CIA believed
5 that Gul Rahman was an enemy combatant?
6 A He was captured in battle.
7 Q Can you -- so that if a jury watches
8 this tape, tell us what you know about how he was
9 captured and why he was taken into custody.
10 A I do not remember the specifics, but I
11 do know that he was captured in battle.
12 Q Okay. Who was he battling with?
13 A He was battling the US government.
14 Q So he was not supporting the United
15 States flag; is that correct?
16 A No.
17 Q In fact, he was against it, right?
18 A He was.
19 Q And was he part of another al-Qa'ida
20 cell?
21 A Yeah, he was the, part of the -- I
22 forget the name of the cell itself, but it was
23 supportive of al-Qa'ida.
24 Q And do you know or have any knowledge of
25 whether or not, while Rahman was in custody with

1 the CIA, he threatened to kill every CIA officer
2 in that facility if and when he got out?
3 A Do I know why?
4 Q Do you know if he did that?
5 A Yes.
6 Q Okay, and the circumstances of his
7 death, are you familiar with them?
8 A Yes.
9 Q Okay. Now, let me back up for a second.
10 Was Gul Rahman considered a high-value
11 detainee?
12 A No.
13 Q So is it fair to say that he should not
14 have been subjected to any enhanced interrogation
15 techniques?
16 A Yes.
17 Q That is fair to say?
18 A Yes.
19 Q Okay.
20 Now, you said earlier today, if I heard
21 you correctly, that you have some knowledge about
22 Drs. Mitchell and Jessen having some contact with
23 Gul Rahman.
24 A Yes.
25 Q Did I hear you correctly?

1 A My understanding is he said do not use
2 enhanced interrogation techniques.
3 Q And do you -- did you come to learn why
4 Dr. Jessen had given that advice?
5 A He assessed that they would not work on
6 this detainee.
7 Q Now, let's talk about -- strike that.
8 Did you come to understand why
9 Dr. Jessen was of that, of that opinion?
10 A No.
11 Q No? Okay.
12 Let's talk about plaintiff Soud. You're
13 familiar with plaintiff Soud?
14 A My understanding -- again, I didn't
15 remember him from my time at CTC.
16 Q During the period of time that you were
17 the director of CTC, how many detainees were
18 maintained at these black sites?
19 MR. JOHNSON: Objection. One
20 moment. Sorry.
21 (Discussion was held off the
22 record.)
23 MR. JAMES SMITH: You know, in the
24 spirit of moving things along, I withdraw the
25 question.

1 BY MR. JAMES SMITH:
2 Q I'm going to hand to you what we're
3 going to mark as the next exhibit, which is
4 Exhibit 43, Mr. Rodriguez.
5 A Okay.
6 (Exhibit 43 was marked for
7 identification.)
8 BY MR. JAMES SMITH:
9 Q For the record, Exhibit 43 bears United
10 States Bates labels 001496 to 001500. Take a
11 moment and look at this document if you would,
12 please, sir.
13 A Okay.
14 (Witness peruses document.)
15 THE WITNESS: Okay.
16 BY MR. JAMES SMITH:
17 Q Are you ready to proceed, sir?
18 A Quite.
19 Q Okay. So do you recognize this
20 document -- it's obviously heavily redacted by the
21 government -- as a document from the CIA?
22 A It looks like one.
23 Q Okay. Now, you know that there's a
24 plaintiff in this case called Ben Soud; you're
25 aware of that?

1 A Yes, yes.
2 Q And are you aware he has other names
3 that he goes by, or previously went by other
4 names?
5 A No.
6 Q Okay. Let me just ask you to turn to
7 the second page. Do you see where it says, "We
8 have included an assessment of" -- I'll spell it
9 -- "A-B-D," next word, "A-L, hyphen, K-A-R-I-M
10 below."
11 Do you see that?
12 A Yes.
13 Q Do you recognize that name?
14 A No.
15 Q Do you know that name to be also Ben
16 Soud?
17 A No.
18 Q Okay. Well, let me ask you about the
19 information about the names that do appear here.
20 You see where it says "HQS/ALEC"? "HQS"
21 is headquarters, right?
22 A Correct.
23 Q And "ALEC" is Alec Station?
24 A Yes.
25 Q Okay, and for the record, that, that

1 station was devoted exclusively to finding Osama
2 bin Laden?
3 A Yes.
4 Q Okay. It says, "HQS/ALEC assesses that
5 Libyan Islamic Fighting Group detainee."
6 Do you see that?
7 A Yes.
8 Q Let me stop right there. I'm looking to
9 see if this document has a date on it. It may
10 have been redacted out by the government.
11 Do you see a date on the document?
12 A I don't think so. I don't see a date.
13 Q No date on the document, which is fine.
14 Let's do it this way then.
15 In 2003 and 2004, were you familiar with
16 an organization called the Libyan Islamic Fighting
17 Group?
18 A Yes.
19 Q Can you tell us what you understood that
20 group to be?
21 A It was an al-Qa'ida, al-Qa'ida
22 affiliate.
23 Q Okay, and tell me what you mean by "an
24 al-Qa'ida affiliate."
25 A Islamic terrorists that were partners

1 with al-Qa'ida.
 2 Q Okay, and is it correct to say that
 3 during that period of time, that these al-Qa'ida
 4 and affiliated groups were planning action against
 5 the United States of America?
 6 A Yes.
 7 Q Okay. So reading on the second page of
 8 Exhibit 43, it says that "Libyan Islamic Fighting
 9 Group detainee Abd," next word "Al-Karim," next
 10 word "Al-Libi, a/k/a" -- I assume that means "also
 11 known as"?
 12 A Yes.
 13 Q "M-U-H-A-M-M-A-D," next word
 14 "A-H-M-A-D," next word "A-L, hyphen, S-H-U-R-U,
 15 apostrophe, I-Y-A." Reading on, "a/k/a," so
 16 therefore "also known as "M-U-H-A-M-M-A-D," next
 17 word "A-H-M-A-D," next word "Z-A-B-A-N-D-A-R," was
 18 one of the LIFG figures responsible for the Abu,"
 19 next word "Y-A-H-Y-A camp in Afghanistan."
 20 Do you see that?
 21 A Yes.
 22 Q Can you tell me what the Abu Yahya --
 23 how do you pronounce that, Y-A-H-Y-A?
 24 A Your guess is as good as mine.
 25 Q All right. So let's just call it

1 Y-A-H-Y-A camp. What is that camp?
 2 A A military camp used by this group for
 3 training purposes.
 4 Q Training, training for terrorist
 5 purposes?
 6 A Training for terrorist purposes.
 7 Q Okay. Reading on in the document, it
 8 says, "He was one of the chief LIFG members
 9 responsible for running the camp."
 10 Do you see that?
 11 A Yes.
 12 Q Was this man considered an enemy
 13 combatant by the United States government?
 14 A I do not know.
 15 Q You don't know?
 16 A No.
 17 Q Okay. So if you're one of the chief
 18 LIFG members running a camp where there's
 19 terrorist activity in Afghanistan, is that enough
 20 to conclude that you're an enemy combatant, or do
 21 you need more information?
 22 A Yes.
 23 Q Yes?
 24 A Yes.
 25 Q Is that why this man was taken into

1 custody?
 2 MR. LUSTBERG: Objection.
 3 THE WITNESS: Yes.
 4 BY MR. JAMES SMITH:
 5 Q Okay. Reading on, it says on the next
 6 page, "Belief that A-B-D," next word "A-L, hyphen,
 7 K-A-R-I-M was a member of the LIFG's military
 8 committee."
 9 Do you see that?
 10 A Yes.
 11 Q What's the military committee?
 12 A I do not know.
 13 Q Okay. All right. Would you agree with
 14 me that if, in fact, Ben Soud is also the person
 15 identified in this document by these various names
 16 in Exhibit 43, that the CIA, at the time he was
 17 taken into custody, also considered him to be an
 18 enemy combatant?
 19 A Yes.
 20 Q Now, I want to go back to the
 21 plaintiffs' theory. Isn't it true that if, in
 22 fact, the enhanced interrogation techniques were
 23 used on one or both or all three of these
 24 plaintiffs, that that was exactly what wasn't
 25 supposed to happen?

1 A Yes.
 2 Q Because if procedure was followed, there
 3 would have been sign-offs, correct?
 4 A Correct.
 5 Q And isn't it also true that Dr. Mitchell
 6 and Dr. Jessen had absolutely nothing to do with
 7 anything that may have happened to these three
 8 plaintiffs?
 9 A That is correct.
 10 MR. LUSTBERG: Objection.
 11 THE WITNESS: That is correct.
 12 BY MR. JAMES SMITH:
 13 Q So this program, that 12-step memo that
 14 they had prepared had absolutely nothing to do
 15 with these three men; isn't that correct?
 16 A That is correct.
 17 Q Okay. Now, did you ever come to learn
 18 whether or not these three men were subjected to
 19 the, the actions that they complained about in
 20 their complaint?
 21 A What are those?
 22 Q Oh, you don't know? You haven't read
 23 the complaint?
 24 A I think I did, but can you refresh my
 25 mind?

1 Q They, they -- I can. I'm just not sure
2 that I need to. Let me withdraw that question.
3 I'll talk to my partners at the break.

4 Isn't it also true, Mr. Rodriguez, that
5 neither Dr. Jessen nor Dr. Mitchell had anything
6 to do with the capture of these three plaintiffs?

7 A That is true.

8 Q And isn't it also true that neither
9 Dr. Mitchell nor Dr. Jessen had anything to do
10 with the rendition of these three plaintiffs?

11 A That is true.

12 MR. JAMES SMITH: Let's go off the
13 record for a couple minutes.

14 THE WITNESS: Sure.

15 THE VIDEOGRAPHER: 3:45 p.m. Off
16 the record.

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

19 THE VIDEOGRAPHER: 3:56 p.m. We're
20 back on the record.

21 BY MR. JAMES SMITH:

22 Q Just a few more questions,
23 Mr. Rodriguez, and then we'll let you go, or at
24 least I'll pass the witness back to Mr. Lustberg.
25 Could you place before yourself what was

1 marked as Exhibit 11 during your direct
2 examination.

3 A It was right on top.

4 Q Do you have it before you?

5 A Yes.

6 Q Do you remember that you were asked
7 questions about this document?

8 A Yes.

9 Q And I just want to turn to the very last
10 page of the document.

11 For the record, Exhibit 11 bears
12 government Bates labels 001595 through 1609.
13 Could I ask you to turn to Bates page 1609,
14 please.

15 A Yes.

16 Q Now, I think if I heard you correctly on
17 your direct examination, you suggested that
18 perhaps Bates page 1609 didn't belong to this
19 document.

20 Did I hear you right?

21 A Yes.

22 Q Okay. Tell me why you're thinking that.

23 A It's just out of place. To me, it looks
24 out of place for a document like this.

25 Q Okay, and do you recognize this document

1 as a CIA document?

2 A The one on the right?

3 Q No. Pages 1 through 14.

4 A Yes.

5 Q Okay. Now, do you see on the bottom of
6 Bates page 1608, it says "14 of 15" --

7 A Yes.

8 Q -- right? But on the next page there is
9 no 15 of 15, right?

10 A That's right.

11 Q Is that another reason why you thought
12 this page didn't belong with this document?

13 A Now that, now that you mention it, I
14 just thought it was out of place.

15 Q Okay, and to the extent that this last
16 page is a part of this document, is it fair to say
17 you don't know what the heck it is?

18 A That is fair to say.

19 Q You don't know if this is a request, if
20 this was -- you just don't know, in fairness, what
21 it represents?

22 A I just don't know.

23 Q Okay, and did you ever see this matrix
24 in this form as it appears on 1609?

25 A No.

1 Q No? It's not something that at least
2 your office of the CIA used with respect to
3 detainees?

4 A This is not familiar to me.

5 Q Okay. All right. Let's move on then.

6 Earlier today you were asked about the
7 first time that you actually were person to person
8 with Dr. Mitchell.

9 Do you remember that?

10 A Yes.

11 Q Sometimes when you go through hours of
12 questioning, it refreshes your recollection about
13 things, so let me ask you again.

14 You testified, I think earlier today
15 during Mr. Lustberg's examination, that the first
16 time you remember meeting Dr. Mitchell is at a
17 black site.

18 A Correct.

19 Q Okay. Having talked through a number of
20 things over as many hours as we've been together,
21 do you have any memory of meeting Dr. Mitchell in
22 April of 2002 at Langley?

23 A Perhaps I did. I just have a vivid
24 memory of talking to him at the black site.

25 Q At the black site?

1 Q Just three more questions.
 2 So the whole time, Dr. Mitchell and
 3 Dr. Jessen's role was to consult, and the CIA's
 4 role was to decide which detainees would be
 5 subject to the enhanced interrogation techniques;
 6 is that right?
 7 A We, we were the ones that provided them
 8 the plan. We were the ones that told them, look,
 9 we can use these interrogation techniques on these
 10 individuals.
 11 Q With respect to specific individuals?
 12 A Yes.
 13 Q So the last question has to do with your
 14 discussion that you had with Mr. Smith regarding
 15 the success of the program.
 16 A Correct.
 17 Q First of all, with regard to Mukhtar,
 18 that's Khalid Sheikh Mohammed.
 19 A Yes.
 20 Q And Padilla, that was all before the
 21 enhanced interrogation --
 22 A Correct.
 23 Q -- techniques, right?
 24 A Correct.
 25 Q So those successes are not attributable

1 to the enhanced interrogation techniques, are
 2 they?
 3 A No, they are not, and I think I was
 4 clear on that.
 5 Q Yeah, and you said when you were
 6 testifying with regard to this, that this is
 7 important to you, it's on important part of --
 8 A Right.
 9 Q -- what you were involved in and what
 10 your --
 11 A Correct.
 12 Q -- legacy is, right?
 13 A Yes.
 14 Q And that's one of the reasons why you
 15 react so strongly to the SSCI report, right?
 16 A Well, in addition to the fact that it's
 17 factually wrong and it's, it's not right, what
 18 they allege.
 19 MR. BENNETT: Can we go off the
 20 record for just one second.
 21 THE VIDEOGRAPHER: 4:40 p.m., off
 22 the record.
 23 (Whereupon, a short recess was
 24 taken.)
 25 THE VIDEOGRAPHER: 4:41 p.m., we're

1 back on the record.
 2 BY MR. LUSTBERG:
 3 Q Just to follow up on that point, but
 4 leaving aside that whatever the factual
 5 inaccuracies are, one of the things that bothers
 6 you is that the SSCI report says that this program
 7 didn't work when you say it did work, right?
 8 A Exactly right.
 9 Q And to the extent that this lawsuit is
 10 an attack -- do you view this lawsuit as an attack
 11 on those techniques?
 12 A Well, I just, I just think it's very
 13 unfair to have Jim and Bruce sued on cases where
 14 they were not even involved, you know, so in that
 15 case I just think it's unfair.
 16 Q Okay, so you think it's unfair because
 17 they were not involved with --
 18 A They were not -- they have been charged
 19 with something that they were not even involved
 20 in.
 21 Q And, and they were not involved in it
 22 because your position is that the enhanced
 23 interrogation techniques that they designed were
 24 not used on those detainees?
 25 A They were not involved, because they

1 don't even know these people. They were not
 2 involved in their interrogation. They had nothing
 3 to do with them.
 4 (Comment off the record.)
 5 MR. LUSTBERG: Mr. Bennett has some
 6 good ideas for your answers.
 7 MR. BENNETT: I do. I'm sorry.
 8 MR. LUSTBERG: Okay. I think I
 9 understand.
 10 I don't have any further questions
 11 at this time.
 12 MR. JAMES SMITH: Just a few
 13 cleanup questions.
 14 FURTHER EXAMINATION BY COUNSEL FOR DEFENDANTS
 15 BY MR. JAMES SMITH:
 16 Q Just a couple of questions. The report,
 17 the SSCI report, Mr. Rodriguez, did anyone --
 18 you're familiar with who prepared that report,
 19 right?
 20 A Yeah, the Senate Select Committee on
 21 Intelligence.
 22 Q Did anyone from that organization ever
 23 ask to speak to you?
 24 A They didn't speak to me or anybody else
 25 that was involved in running it.

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1 Q And does that strike you as odd?
 2 A It's crazy.
 3 Q One other thing, because I want to make
 4 sure the record is clear here.
 5 My adversary, my worthy adversary, I
 6 should say, Mr. Lustberg, said that during the
 7 period of time that Drs. Mitchell and Jessen were
 8 involved, that they consulted continuously.
 9 Do you remember that?
 10 A Yes.
 11 Q Okay. Just so we're clear, anytime they
 12 were involved in an enhanced interrogation
 13 technique, the US government picked the person,
 14 picked the procedures that would be used, picked
 15 the number of times it would be done, everything
 16 about it, correct?
 17 A That is correct.
 18 Q Okay, and they simply followed orders?
 19 A That is correct.
 20 MR. JAMES SMITH: Okay. No further
 21 questions.
 22 THE VIDEOGRAPHER: 4:44 p.m. This
 23 concludes the deposition.
 24 THE REPORTER: Who wants a copy of
 25 the transcript?

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1 MR. LUSTBERG: Yeah, the original.
 2 MR. JAMES SMITH: Of course.
 3 MR. JOHNSON: I don't know yet. I
 4 have to ask the higher-ups.
 5 (Signature having not been
 6 waived, the video deposition
 7 of JOSE RODRIGUEZ was concluded
 8 at 4:44 p.m.)
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 6 ACKNOWLEDGEMENT OF WITNESS
 7 I, Jose Rodriguez, do hereby
 8 acknowledge that I have read and examined the
 9 foregoing testimony, and the same is a true,
 10 correct and complete transcription of the
 11 testimony given by me, and any corrections
 12 appear on the attached Errata sheet signed by
 13 me.
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 (DATE) (SIGNATURE)
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1 E R R A T A S H E E T
 2 IN RE: SALIM, ET AL, VS. MITCHELL AND JESSEN
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 5 CERTIFICATE OF SHORTHAND REPORTER -- NOTARY PUBLIC
 6 I, Laurie Bangart, Registered
 7 Professional Reporter, Certified Realtime
 8 Reporter, the officer before whom the
 9 foregoing deposition was taken, do hereby
 10 certify that the foregoing transcript is a
 11 true and correct record of the testimony
 12 given; that said testimony was taken by me
 13 stenographically and thereafter reduced to
 14 typewriting under my supervision; and that I
 15 am neither counsel for, related to, nor
 16 employed by any of the parties to this case
 17 and have no interest, financial or otherwise,
 18 in its outcome.
 19 IN WITNESS WHEREOF, I have hereunto
 20 set my hand and affixed my notarial seal this
 21 18th day of March, 2017.
 22 My commission expires: March 14th, 2021
 23
 24
 25 _____
 LAURIE BANGART
 NOTARY PUBLIC IN AND FOR
 THE DISTRICT OF COLUMBIA