

# **Exhibit 4**

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

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

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VIDEOTAPED DEPOSITION OF JOHN RIZZO

March 20, 2017

10:06 a.m.

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

Reported by: Lori J. Goodin, RPR, CLR, CRR  
 Realtime Systems Administrator

Assignment Number: 305772

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 MR. SMITH: Great.

20 EXAMINATION

21 BY MR. LADIN:

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

23 A. Good morning.

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

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

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

8 Have you ever been deposed before?

9 A. No, not at deposition, no.

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

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

18 Do you understand that?

19 A. Yes.

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

1 A. For my career?  
 2 Q. Yes.  
 3 A. Yes, I spent one year in the Office  
 4 of Inspector General and two years in the Office  
 5 of Congressional Affairs.  
 6 But, other than that, my entire  
 7 career was in the Office of General Counsel, yes.  
 8 Q. And, in that office, to the best of  
 9 your knowledge, during your time there, no one  
 10 dealt, prior to 2002, with questions of captivity?  
 11 A. No. Certainly not in my time there.  
 12 Q. What about any training in  
 13 psychology? Did you ever study psychology?  
 14 A. No.  
 15 Q. Okay. And you've never studied  
 16 posttraumatic stress disorder?  
 17 A. No.  
 18 Q. So, how did you come to know that  
 19 the CIA was considering the use of an enhanced  
 20 interrogation program?  
 21 A. Well, in early 2002, I say early,  
 22 late March, early April, the, kind of some people  
 23 from the Counter Terrorism Center came to my  
 24 office and this was a few months after the  
 25 capture of, the CIA capture of Abu Zubaydah, the

1 first high value EKD that was captured.  
 2 They came to my office with a, over  
 3 a briefing, and told me about some proposed  
 4 interrogation techniques, new ones, that were  
 5 being contemplated.  
 6 Q. And when you say some people, was  
 7 that José Rodriguez and James Mitchell?  
 8 A. I don't -- no, I don't believe so.  
 9 These were people -- well, José, I guess was  
 10 Chief Counter Terrorism Center. I'm sure, I'm  
 11 sure he wasn't there. And I don't believe  
 12 Mr. Mitchell was there.  
 13 Q. Did there come a time when you did  
 14 meet with José Rodriguez and Jim Mitchell about  
 15 the EITs?  
 16 A. Yes, there came a time. Yes.  
 17 Q. Do you remember roughly when that  
 18 was?  
 19 A. Well, I met with José almost  
 20 immediately after first being told about these  
 21 proposed techniques and why the people in the CTC  
 22 thought they were necessary.  
 23 I don't recall meeting Mr. Mitchell  
 24 for some months after that, actually.  
 25 Q. Had the people in CTC informed you

1 of the origin of the techniques they were  
 2 considering?  
 3 A. We are talking about 15 years ago.  
 4 But I believe in that initial briefing there was  
 5 some reference made to them being based on the  
 6 SERE techniques, which also I had no prior  
 7 knowledge of, so --  
 8 Q. And what did you understand, or what  
 9 do you now understand SERE training to be?  
 10 A. Well, it is survival --  
 11 Q. Yes, we don't need the acronym.  
 12 A. But, it is training that special  
 13 forces, Navy officers take to prepare them for  
 14 possible capture by terrorists or other  
 15 extra-national organizations.  
 16 Q. And, what did you understand at the  
 17 time about the use of SERE techniques in  
 18 training?  
 19 A. Well, that they had been a staple of  
 20 these training programs for some period of time.  
 21 Q. And did you understand that the  
 22 techniques that you were considering were  
 23 identical to the techniques that were used in  
 24 SERE training?  
 25 A. No, my recollection is that I was

1 told that these were based on the SERE training  
 2 techniques, but there was some variation.  
 3 Q. And, when did you first meet  
 4 Dr. Mitchell?  
 5 A. Well, to the best of my recollection  
 6 I met the, Dr. Mitchell and Dr. Jessen several  
 7 months later.  
 8 Again, sorry to go back in time now,  
 9 but I would say maybe six, seven,  
 10 eight months later, somewhere along those  
 11 lines.  
 12 Q. So, you are saying after the  
 13 techniques had already been used?  
 14 A. Uh-huh.  
 15 Q. So, you don't --  
 16 A. Yes.  
 17 Q. -- you don't recall a meeting with  
 18 George Tenet and José Rodriguez, in which James  
 19 Mitchell presented the techniques?  
 20 A. No, I don't recall that.  
 21 Q. Okay. Did you know that neither  
 22 Mitchell nor Jessen had ever conducted an  
 23 interrogation prior to the instigation of Abu  
 24 Zubaydah?  
 25 A. Did I know that?

1 Q. At the time, yes.  
 2 A. No.  
 3 Q. Would it have made any difference to  
 4 you?  
 5 A. No. I mean, I wasn't in a position  
 6 to judge their qualifications and experience. I  
 7 was the legal advisor.  
 8 Q. And, they were presented to you as  
 9 experts on interrogation?  
 10 A. I don't know if the word, experts,  
 11 was used. But, they certainly -- again, I  
 12 didn't -- I don't recall meeting any of them for  
 13 several months.  
 14 But I believe the CTC presenters,  
 15 who presented the techniques said that the, that  
 16 these were experienced psychologists in this  
 17 area.  
 18 Q. All right. I'm going to show you a  
 19 document that has previously been marked  
 20 Exhibit 17.  
 21 (Whereupon, previously marked  
 22 Exhibit 17, first referral.)  
 23 THE WITNESS: Okay.  
 24 BY MR. LADIN:  
 25 Q. Are these the enhanced interrogation

1 techniques that were presented to you?  
 2 MR. SMITH: Objection.  
 3 THE WITNESS: Do I answer?  
 4 MR. BENNETT: Yes, you can answer.  
 5 THE WITNESS: They appear to be some  
 6 of them. Not all of them.  
 7 BY MR. LADIN:  
 8 Q. So, which ones --  
 9 A. At least the part that isn't  
 10 redacted.  
 11 Q. So, this lists 12 techniques. We  
 12 can just go through them, and you can tell me  
 13 whether those are different than the  
 14 techniques --  
 15 A. You know, how many pages is this?  
 16 Because I've only got two, and it starts in the  
 17 middle of a sentence.  
 18 Q. That is certainly odd.  
 19 A. Am I missing something?  
 20 Q. Is that how -- that is not how my  
 21 version looks? Well, here, why don't you use  
 22 mine.  
 23 A. Oh, I'm sorry. I'm sorry. My  
 24 mistake -- no.  
 25 MR. BENNETT: They just didn't copy

1 the back page here.  
 2 THE WITNESS: All right. Okay.  
 3 Here we go.  
 4 BY MR. LADIN:  
 5 Q. I see. So, now it makes sense why  
 6 you said techniques were missing.  
 7 Well, looking at this now, are these  
 8 12 techniques, the techniques that were presented  
 9 to you?  
 10 MR. SMITH: Objection.  
 11 MR. BENNETT: Go ahead.  
 12 THE WITNESS: Yes, they appear to  
 13 be.  
 14 BY MR. LADIN:  
 15 Q. Okay. You said in your book that  
 16 some of the techniques sounded sadistic and  
 17 terrifying to you.  
 18 Do you stand by that  
 19 characterization?  
 20 A. At the time they were described to  
 21 me for the first time, that was my immediate  
 22 reaction.  
 23 No. I mean, as I got to know more  
 24 about the way the techniques were to be  
 25 administered and controlled, no, I wouldn't use

1 those adjectives any longer.  
 2 Q. How would you describe them now?  
 3 A. Very tough and very harsh, some of  
 4 them.  
 5 Q. Which ones are those?  
 6 A. Which ones I think now are that, or  
 7 which ones did I think at the time?  
 8 Q. Why don't you tell me both.  
 9 A. Well, at the time -- when I say at  
 10 the time, at the time these proposed techniques  
 11 were first presented to me, the waterboard and  
 12 the mock burial struck me as the harshest. Some  
 13 of the others far less so.  
 14 And, so, putting forth, yes, moving  
 15 forth to the present, or at least at the time  
 16 while I was still at the agency, I still consider  
 17 waterboarding a very harsh technique.  
 18 MR. SMITH: Mr. Rizzo, could I ask  
 19 if you could keep your voice up so we could  
 20 hear you down here.  
 21 THE WITNESS: Oh, I'm sorry.  
 22 MR. SMITH: Thank you.  
 23 BY MR. LADIN:  
 24 Q. So, Dr. Mitchell recalls a meeting  
 25 that I completely understand if you don't recall,

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

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

8 MR. SMITH: Objection.

9 MR. BENNETT: Go ahead.

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

14 BY MR. LADIN:

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

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

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

24 A. No. Not specifically.

25 Q. Did Mitchell or Jessen ever tell you

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

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

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

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

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

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

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

4 A. Not that I recall, no.

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

9 A. No.

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

12 A. Was what, the false confessions?

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

16 A. I subsequently learned of those  
17 allegations.

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

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

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

25 Q. So, after the techniques were

1 Counsel at the Department of Justice.

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

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

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

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

16 MR. LADIN: Sure.

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

19 MR. LADIN: Sure.

20 MR. BENNETT: -- your questions.

21 BY MR. LADIN:

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

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



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

3 A. Again, do I know?

4 Q. Do you know now.

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

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

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

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

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

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

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

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

25 A. I asked our lawyers in the Counter

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

5 And so they did some of that.

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

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

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

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

17 A. Yes.

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

22 A. That is correct.

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

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

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

6 MR. LADIN: I did, you are right.

7 Let me rephrase.

8 BY MR. LADIN:

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

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

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

17 Please mark this as Exhibit 45.

18 (Exhibit Number 45

19 marked for identification.)

20 BY MR. LADIN:

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

24 A. Okay.

25 Q. So, you see the statement there that

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

5 MR. BENNETT: Which paragraph are  
6 you?

7 THE WITNESS: Uh-huh, correct.

8 MR. LADIN: That is Paragraph 39.

9 BY MR. LADIN:

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

14 A. That's correct.

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

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

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

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

25 MR. BENNETT: Well, is this an

1 exhibit to his declaration?  
 2 MR. LADIN: No, this was not an  
 3 exhibit to your declaration.  
 4 MR. BENNETT: Okay, thank you.  
 5 Thank you.  
 6 BY MR. LADIN:  
 7 Q. It has previously been marked in a  
 8 different deposition. At least that is what I  
 9 believe. It may -- I don't believe this was part  
 10 of your declaration. If it was, I apologize.  
 11 MR. BENNETT: That is all right.  
 12 BY MR. LADIN:  
 13 Q. There is very similar text in  
 14 this --  
 15 A. Let me read this, because I don't  
 16 believe that I've seen this before.  
 17 Q. Sure.  
 18 A. Okay.  
 19 Q. So, this appears to be a cable in  
 20 which recommendations and responses to questions  
 21 are being provided by IC SERE psychologists; is  
 22 that right?  
 23 A. It appears to be.  
 24 Q. And, the IC SERE psychologists,  
 25 those are Mitchell and Jessen, correct?

1 A. Yes, I assume so.  
 2 MR. BENNETT: Well, don't assume.  
 3 THE WITNESS: Okay. I don't know.  
 4 MR. BENNETT: He is entitled to full  
 5 and complete answers, but not assumptions.  
 6 BY MR. LADIN:  
 7 Q. Do you know of any other independent  
 8 contractor SERE psychologists who were involved  
 9 in the Abu Zubaydah interrogation?  
 10 A. Not that I recall.  
 11 Q. So, here it says, the paragraph that  
 12 begins on Page 1, once it is not redacted,  
 13 appears to be the same as the OTS memo that you  
 14 provided to the Department of Justice; is that  
 15 right?  
 16 MR. SMITH: Objection.  
 17 THE WITNESS: I would need to look  
 18 at the OTS memo to compare.  
 19 BY MR. LADIN:  
 20 Q. Sure. All right. I won't ask you  
 21 to do that.  
 22 But, what I do want to ask you is,  
 23 was there, as far as you were aware, a back and  
 24 forth process in which feedback was solicited  
 25 from the IC SERE psychologists about the safety

1 and necessity of different techniques?  
 2 A. Yes, well, there -- yes, there was a  
 3 iterative process back and forth, yes.  
 4 Q. And that process resulted in  
 5 feedback like the feedback presented here in  
 6 Paragraphs 4, 5, and 6, that is identified as IC  
 7 SERE psychologists' feedback?  
 8 MR. SMITH: Objection.  
 9 THE WITNESS: I can't say, I'm just,  
 10 again, reading this for the first time so I  
 11 can't --  
 12 MR. BENNETT: You have answered the  
 13 question.  
 14 THE WITNESS: Okay.  
 15 BY MR. LADIN:  
 16 Q. Do you remember any aspects of the  
 17 iterative process by which information was  
 18 communicated to the Office of Legal Counsel in  
 19 their evaluation of the techniques?  
 20 A. I'm sorry, you have to clarify. In  
 21 the aspects of the iterative?  
 22 Q. Sure. I believe you said there was  
 23 an iterative process in which OLC would ask CIA  
 24 for further information.  
 25 A. Right.

1 Q. Would that flow through your office?  
 2 A. It would -- well, it certainly  
 3 would flow -- some of it flowed to me from OLC  
 4 directly.  
 5 As I recall, other times OLC people  
 6 would call the lawyers in CTC, and I wouldn't be  
 7 directly involved in that.  
 8 Q. And, if information flowed from CTC  
 9 in response to DOJ's requests, would that  
 10 response go through you or might it go -- would  
 11 that response go through you?  
 12 A. As I recall, a lot of it did, but I  
 13 can't say all of it. I mean, there are times I  
 14 weren't there -- I wasn't there, or I was  
 15 involved in other things.  
 16 So, I can't say all of it.  
 17 MR. BENNETT: Your hand.  
 18 THE WITNESS: Okay.  
 19 BY MR. LADIN:  
 20 Q. And you've said you've not seen this  
 21 cable before?  
 22 A. I can't say I've never seen it. I  
 23 just haven't seen it in a long time, if I've seen  
 24 it at all.  
 25 Q. So, to be clear, when you say that



1 Drs. Mitchell and Jessen were not involved -- let  
2 me just get to exactly what you said.  
3 So, just to return to your  
4 declaration.  
5 MR. BENNETT: Which paragraph are we  
6 talking about now?  
7 MR. LADIN: Sure.  
8 BY MR. LADIN:  
9 Q. So, take Paragraph 22 of your  
10 declaration on Page 4.  
11 A. Okay.  
12 Q. So, when you say, "To my knowledge,  
13 Drs. Mitchell and Jessen had no role in OLC's  
14 assessment of these techniques' legality," that  
15 is not incorporating, for example, your review of  
16 the cable you've just looked at; is that correct?  
17 A. No. I mean I -- Drs. Mitchell and  
18 Jessen, to my knowledge, had no role in the OLC's  
19 assessment.  
20 The only people who had  
21 communications back and forth with OLC were  
22 either myself or the, to my knowledge, the CTC  
23 attorneys.  
24 So, that is what I was trying to get  
25 at there.

1 Q. So, is what you mean that as far as  
2 you know Drs. Mitchell and Jessen didn't directly  
3 speak with OLC?  
4 A. As far as I know.  
5 Q. But you are not saying that they  
6 did not provide information that was considered  
7 by OLC?  
8 A. At this point in time, I can't  
9 remember what they provided and what they didn't.  
10 Q. Sure. Let's look at, I think this  
11 was Exhibit J to your declaration.  
12 MR. BENNETT: Here, let's go to J  
13 here.  
14 MR. LADIN: Court Reporter, could  
15 you please mark this as 46.  
16 (Exhibit Number 46  
17 marked for identification.)  
18 MR. BENNETT: Take that book. That  
19 is your declaration and your exhibits. We  
20 are talking about J.  
21 BY MR. LADIN:  
22 Q. And, what I'm going to ask you about  
23 is on the page marked Bates 1763.  
24 A. Okay.  
25 Q. So, here it appears to say in

1 Paragraph 7 that the Office of Legal Counsel  
2 advised that the statute would not prohibit the  
3 methods proposed by the interrogation team in  
4 light of the specific facts and circumstances of  
5 the interrogation process.  
6 A. I'm sorry. Can you just tell me  
7 where on that page you are reading from?  
8 Q. Sure. It is in the middle. It is  
9 Paragraph 7. And it -- well, take your time.  
10 A. So, the question is?  
11 Q. Sure. So, it says, "The legal  
12 conclusion turns upon the following factors."  
13 And then it lists a series of factors, correct?  
14 A. Correct.  
15 Q. And if you look at the bottom  
16 paragraph, it says, "We understand from OTS," and  
17 there is something redacted, "OMS and the SERE  
18 psychologists on the interrogation team that the  
19 procedures described above should not, repeat  
20 not, produce severe mental or physical pain and  
21 suffering."  
22 Do you see that?  
23 A. Yes.  
24 Q. And so when they say we understand  
25 from the SERE psychologists on the interrogation

1 team, that is Drs. Mitchell and Jessen, correct?  
2 A. Again, I don't know specifically.  
3 MR. BENNETT: You answered it.  
4 BY MR. LADIN:  
5 Q. Okay. And, just before we are done,  
6 it also says, "Nor would they be expected to  
7 produce prolonged mental harm, continuing from a  
8 period of months or years, such as the creation  
9 of persistent posttraumatic stress disorder."  
10 Do you see that?  
11 A. I do, yes.  
12 Q. So, this says that the Office of  
13 Legal Counsel considered it important in their  
14 determination as to legality, feedback that they  
15 received about whether these techniques would  
16 cause posttraumatic stress disorder?  
17 MR. BENNETT: Well, I -- look, I  
18 object, because the document speaks for  
19 itself.  
20 MR. LADIN: I understand.  
21 MR. BENNETT: Okay, so --  
22 THE WITNESS: That is what it says.  
23 MR. BENNETT: He says he doesn't  
24 remember seeing this.  
25 THE WITNESS: So, your question is?

1 BY MR. LADIN:  
 2 Q. So, my question is, I -- let me  
 3 phrase it correctly.  
 4 You don't have specific knowledge  
 5 that Mitchell and Jessen did not provide their  
 6 views on the likelihood that posttraumatic stress  
 7 disorder would result to the Office of Legal  
 8 Counsel, do you?  
 9 A. That is a double negative. I do  
 10 not -- I'm sorry.  
 11 Q. You don't have specific knowledge --  
 12 A. Right.  
 13 Q. -- that Mitchell and Jessen did not  
 14 provide their views on the likelihood of PTSD to  
 15 the Office of Legal Counsel?  
 16 A. I do not have specific knowledge of  
 17 that.  
 18 Q. And when you say in Paragraph 22 of  
 19 your declaration that Mitchell and Jessen were  
 20 not involved in OLC's assessment of the legality  
 21 of the techniques, that is because you don't  
 22 specifically recall Mitchell and Jessen speaking  
 23 to OLC?  
 24 A. No -- I mean, yes.  
 25 Q. Sorry?

1 A. I don't recall. I don't recall that  
 2 ever happening, no.  
 3 Q. Okay. But you don't have a specific  
 4 recollection that information provided by  
 5 Mitchell and Jessen was not considered by OLC?  
 6 A. No.  
 7 Q. Okay. Thank you.  
 8 MR. LADIN: Let's take a break for  
 9 just a moment, if that is all right.  
 10 THE WITNESS: All right.  
 11 THE VIDEOGRAPHER: The time is  
 12 10:50 a.m. we are going off the record.  
 13 (Recess taken -- 10:50 a.m.)  
 14 (After recess -- 10:57 a.m.)  
 15 THE VIDEOGRAPHER: 10:57 a.m., on  
 16 the record.  
 17 BY MR. LADIN:  
 18 Q. So, I just want to return to the  
 19 cable we have been discussing that was Exhibit J  
 20 to your declaration.  
 21 A. Right.  
 22 Q. So, you describe that as a  
 23 conversion of the August 1, 2002, Bybee memo in  
 24 Paragraph 44 of your declaration --  
 25 A. Yes.

1 Q. -- that you had sent to Green, the  
 2 black site identified as Green.  
 3 A. Correct.  
 4 MR. BENNETT: Keep your voice up,  
 5 please.  
 6 BY MR. LADIN:  
 7 Q. So, you have seen this cable before?  
 8 A. I'm sure I did.  
 9 Q. Well, who drafted this paragraph of  
 10 your declaration?  
 11 A. I did.  
 12 Q. And, in doing so, did you examine  
 13 the cable at Exhibit J?  
 14 A. Yes.  
 15 Q. So, turning to that cable, I would  
 16 just like to walk through it. On the page we  
 17 were looking at stamped Bates 1763, the cable you  
 18 had sent to the black site that refers to SERE  
 19 psychologists on the interrogation team, do you  
 20 know who those SERE psychologists are?  
 21 MR. BENNETT: Then or now?  
 22 BY MR. LADIN:  
 23 Q. Do you now know who those SERE  
 24 psychologists are?  
 25 A. I believe so, yes.

1 Q. And is that Drs. Mitchell and  
 2 Jessen?  
 3 A. Yes.  
 4 Q. So, in this cable is there an  
 5 indication that Drs. Mitchell and Jessen made a  
 6 representation about whether these techniques  
 7 could cause severe mental or physical pain or  
 8 suffering?  
 9 MR. BENNETT: I'm going to object on  
 10 the basis that the document speaks for  
 11 itself. He has identified it as an exhibit,  
 12 so --  
 13 MR. LADIN: I understand. I just  
 14 want to get his take on the document.  
 15 MR. BENNETT: Go ahead, over my  
 16 objection, go ahead.  
 17 THE WITNESS: I'm sorry, could  
 18 you --  
 19 BY MR. LADIN:  
 20 Q. Sure. In this document that you had  
 21 sent to the black site, does it indicate that the  
 22 SERE psychologists on the interrogation team,  
 23 which means Mitchell and Jessen, gave an  
 24 indication of whether their techniques would  
 25 produce severe mental or physical pain or

| Page 46                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Page 48                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 suffering?</p> <p>2 MR. BENNETT: And where are you</p> <p>3 referring to?</p> <p>4 MR. SMITH: Objection.</p> <p>5 MR. LADIN: So that is the bottom</p> <p>6 paragraph.</p> <p>7 MR. BENNETT: Objection.</p> <p>8 Go ahead.</p> <p>9 THE WITNESS: I'm just reading it</p> <p>10 again. Yes, that is what it says, yes.</p> <p>11 BY MR. LADIN:</p> <p>12 Q. Okay. And, with that in mind, do</p> <p>13 you still maintain that Mitchell and Jessen had</p> <p>14 no role in the OLC's consideration of the</p> <p>15 legality of the techniques?</p> <p>16 MR. SMITH: Objection. You can</p> <p>17 answer.</p> <p>18 THE WITNESS: Well, as I indicated</p> <p>19 earlier, what I meant to say in that</p> <p>20 paragraph that I was trying to get across, is</p> <p>21 that they had no, to my knowledge, they had</p> <p>22 no interactions with the OLC during the</p> <p>23 course of the OLC deliberation.</p> <p>24 BY MR. LADIN:</p> <p>25 Q. But, in fact, they did provide</p>                                                                                                                           | <p>1 people in CTC involved in that process.</p> <p>2 BY MR. LADIN:</p> <p>3 Q. Now, once you turned over the</p> <p>4 assessment process to OLC, would it be correct to</p> <p>5 say that you wanted legal cover from OLC?</p> <p>6 MR. BENNETT: Well, I'm going to</p> <p>7 object. What do you mean by cover?</p> <p>8 MR. LADIN: I'm actually trying to</p> <p>9 use a term from your book. So, maybe it is</p> <p>10 just easiest if we, if we distribute those</p> <p>11 pages.</p> <p>12 MR. BENNETT: But I want to be sure</p> <p>13 his use of the term and yours is the same.</p> <p>14 That is my concern.</p> <p>15 MR. LADIN: I appreciate that. And</p> <p>16 I think the best way will probably be to have</p> <p>17 Mr. Rizzo explain it.</p> <p>18 MR. HANNER: Could you tell us which</p> <p>19 pages?</p> <p>20 MR. LADIN: Sure. It is on</p> <p>21 Page 188.</p> <p>22 MR. HANNER: Thank you.</p> <p>23 MR. LADIN: And it is the paragraph</p> <p>24 at the middle of the page.</p> <p>25 MR. BENNETT: Beginning with, "I</p>                                                                     |
| <p>Page 47</p> <p>1 information that OLC considered in assessing the</p> <p>2 legality of the techniques?</p> <p>3 A. Appears to be the case, yes.</p> <p>4 Q. Now, when you initiated the process</p> <p>5 with OLC, to review the legality of the</p> <p>6 techniques, did you ask for evaluations of all of</p> <p>7 the techniques that Mitchell and Jessen</p> <p>8 recommended?</p> <p>9 A. Yes, all of the 12 original</p> <p>10 techniques, yes, asked for a collective</p> <p>11 evaluation.</p> <p>12 Q. And did you ask for the evaluation</p> <p>13 of any other techniques?</p> <p>14 A. No. Just the ones that, the 12 that</p> <p>15 had become part of the record.</p> <p>16 Q. And these 12 techniques were</p> <p>17 recommended by Mitchell and Jessen?</p> <p>18 A. Well, they were recommended by CTC</p> <p>19 management.</p> <p>20 Q. And as far as you know, was someone</p> <p>21 besides Mitchell and Jessen involved in selecting</p> <p>22 the techniques?</p> <p>23 MR. SMITH: Objection.</p> <p>24 THE WITNESS: Yes, I think, my</p> <p>25 recollection was there were a number of</p> | <p>Page 49</p> <p>1 arrived at the meeting"?</p> <p>2 BY MR. LADIN:</p> <p>3 Q. No, it says, "Above all I," on</p> <p>4 Page 188.</p> <p>5 A. 188. This looks familiar.</p> <p>6 Q. Yes.</p> <p>7 A. I'm sorry. So, what paragraph are</p> <p>8 we talking to, about here?</p> <p>9 Q. So, the one that begins, "Above</p> <p>10 all."</p> <p>11 A. Okay, I see, okay. Yes. "Above all</p> <p>12 I wanted a written OLC opinion in order to give</p> <p>13 the agency, for lack of a better term, legal</p> <p>14 cover."</p> <p>15 Q. So, what do you mean by that?</p> <p>16 A. The, well, I wanted to, the only</p> <p>17 reason I went to OLC was to get the agency</p> <p>18 definitive categorical legal guidance, either</p> <p>19 that the techniques did not violate the torture</p> <p>20 statute, or if any of them did.</p> <p>21 Because I wanted the CIA, my</p> <p>22 clients, to be protected, and be covered, if you</p> <p>23 will, down the road, if there were any, any</p> <p>24 political retribution, because of either course</p> <p>25 that the CIA was going to take, either to proceed</p> |

1 with the program or scrub it before it began.

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

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

7 MR. LADIN: Sure.

8 BY MR. LADIN:

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

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

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

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

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

25 So, I'm sure they wanted an outcome

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

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

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

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

8 Thank you.

9 (Exhibit Number 47  
10 marked for identification.)

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

13 MR. LADIN: Yes.

14 MR. BENNETT: Right?

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

17 (Exhibit Number 48  
18 marked for identification.)

19 BY MR. LADIN:

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

22 A. Right.

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

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

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

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

9 Q. Well, let's start with the cable.

10 Have you seen this cable before?

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

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

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

18 Q. Were you consulted during that  
19 process?

20 A. I'm sure I was.

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

1 approvals?

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

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

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

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

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

18 A. No.

19 Q. Have you ever sought one  
20 subsequently?

21 A. No.

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

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

1 means different things to different people.  
 2 THE WITNESS: Should I answer?  
 3 MR. BENNETT: Go ahead. Over my  
 4 objection.  
 5 THE WITNESS: Well, it was  
 6 extraordinary times.  
 7 BY MR. LADIN:  
 8 Q. Did Chertoff tell you why he would  
 9 not provide a declination of prosecution?  
 10 A. He said they never do that.  
 11 Q. And it was your idea to seek it from  
 12 him?  
 13 A. Well, it was my idea to ask about  
 14 the possibility, yes.  
 15 Q. And was that because there was a  
 16 possibility that this might transgress criminal  
 17 law?  
 18 A. No. I mean, I was just asking  
 19 because I wanted to secure maximum legal  
 20 protection for the agency, in any feasible and  
 21 legitimate form.  
 22 Q. And you don't read -- let me take  
 23 that back.  
 24 Now, a declination of prosecution is  
 25 a request that even if a criminal law is

1 just quoting to you what he said to me.  
 2 Q. So, what did you understand him to  
 3 mean?  
 4 A. Well, I understood him to mean that  
 5 they were not sure legally that they could  
 6 authorize, justify the use of that particular  
 7 technique.  
 8 Q. And did they say we won't approve  
 9 it, or did they say it might take more time?  
 10 A. He didn't say we will not approve  
 11 it. He said it would take more time. And they  
 12 were having trouble getting there, I believe is  
 13 the phrase he used.  
 14 And did we actually have to have  
 15 that particular technique.  
 16 Q. And then you relayed that holdup to  
 17 the interrogation team; is that right?  
 18 A. Yes, I basically asked the question,  
 19 is this technique something in your experience  
 20 and expertise that is absolutely a must-have.  
 21 Q. And if they had said yes, you would  
 22 have gone back to John Yoo?  
 23 A. Yes.  
 24 Q. But they didn't say they needed it?  
 25 A. No, they said they did not need it

1 violated, the Justice Department not prosecute;  
 2 is that correct?  
 3 A. That was my understanding, yes.  
 4 Q. So, if no criminal law is violated,  
 5 the declination of prosecution would not serve  
 6 any particular function?  
 7 A. That is correct.  
 8 Q. Eventually OLC came back and  
 9 authorized all of the Mitchell and Jessen  
 10 techniques, except for mock burial, right?  
 11 A. Correct.  
 12 Q. Did you have an understanding as to  
 13 why mock burial was being treated differently?  
 14 A. Well, my understanding was several  
 15 days prior to the issuance of the OLC memo of  
 16 August 1, 2002, John Yoo, Y-O-O, called me to say  
 17 that they were having, I believe he said a  
 18 difficulty getting there, in terms of the torture  
 19 statute on mock burial. And was it, did we  
 20 consider it absolutely necessary to have, because  
 21 it was -- he said it might slow down the rest of  
 22 the completion of the memo, OLC memo.  
 23 Q. When you say difficulty getting  
 24 there, what do you mean?  
 25 A. Well, I didn't say it. He did. I'm

1 and they wanted -- they didn't want that to hold  
 2 up the completion of the rest of the memo.  
 3 Q. And did they have a different view  
 4 of the necessity of the waterboard that was  
 5 communicated to you?  
 6 MR. BENNETT: Well, I'm going to  
 7 object to the form. I don't know who they is.  
 8 MR. LADIN: Sure. Thank you.  
 9 MR. BENNETT: Would you be specific.  
 10 BY MR. LADIN:  
 11 Q. Yes. Did the interrogation team  
 12 have a different view that they communicated to  
 13 you as to the necessity for the waterboard?  
 14 MR. SMITH: Objection.  
 15 THE WITNESS: No. I mean, the  
 16 waterboard, that particular technique, OLC  
 17 didn't, never expressed the same hesitation  
 18 as they did about the mock burial.  
 19 So, all of the techniques that were  
 20 proposed were deemed important by the CTC.  
 21 We never got to the point where I  
 22 had to ask them whether or not they needed to  
 23 have the waterboard, because again, John Yoo,  
 24 only indicated the mock burial technique was  
 25 posing problems for them.



1 BY MR. LADIN:  
 2 Q. Well, if we could go back to  
 3 Exhibit 18.  
 4 A. All right.  
 5 Q. I'm going to ask you about  
 6 Paragraph 4.  
 7 A. Okay.  
 8 Q. So, this is feedback that the IC  
 9 SERE psychologists are providing as part of the  
 10 OLC approval process.  
 11 A. Yes.  
 12 Q. And if you look, they say, "IC SERE  
 13 psychologists recommend using an escalating  
 14 interrogation strategy that has a high  
 15 probability of overwhelming subjects' ability to  
 16 resist. To accomplish this, the escalation must  
 17 employ" -- excuse me. "The escalation must  
 18 culminate with pressure which is absolutely  
 19 convincing."  
 20 And then it says, "The plan hinges  
 21 on the use of an absolutely convincing technique.  
 22 The waterboard meets this need."  
 23 A. Correct.  
 24 Q. Is it your understanding that OLC  
 25 had some concerns about the waterboard, that this

1 is feedback that is responsive to those concerns?  
 2 A. At this point I can't, I can't  
 3 remember. I mean, they asked questions about  
 4 many of the techniques. I'm sure they asked  
 5 questions about the waterboard, but I can't  
 6 remember what they are at this point.  
 7 Q. Would you have been aware of any  
 8 techniques, aside from these 12 that were  
 9 submitted to OLC for approval?  
 10 A. I'm sorry, I don't -- could you, was  
 11 I aware at the time, or have I ever been aware,  
 12 or what?  
 13 Q. Sure. Let me ask it in all of those  
 14 forms.  
 15 So, are you aware right now of any  
 16 other techniques that had been submitted to OLC  
 17 in this 2002 period for approval?  
 18 A. No.  
 19 MR. BENNETT: Let him finish his  
 20 question before you answer.  
 21 BY MR. LADIN:  
 22 Q. And, would you have been aware at  
 23 the time if CIA was seeking legal advice from OLC  
 24 about the use of different techniques?  
 25 A. Yes.

1 Q. Would it have been possible for the  
 2 CIA to make a decision to use other physically  
 3 coercive techniques without you knowing about it  
 4 in 2002?  
 5 MR. SMITH: Objection.  
 6 MR. BENNETT: I object to that  
 7 possible. I mean, anything is possible.  
 8 MR. LADIN: Sure.  
 9 BY MR. LADIN:  
 10 Q. As far as your understanding of the  
 11 way the CIA operated, once a decision was made to  
 12 use a physically coercive technique, it would go  
 13 to your office for approval?  
 14 A. Yes. For approval for the legality,  
 15 yes.  
 16 Q. So, as far as you know, bearing in  
 17 mind your experience in the CIA, they could not  
 18 have made a decision about using physically  
 19 coercive techniques without going through your  
 20 office?  
 21 A. They, being CTC?  
 22 Q. CTC.  
 23 A. They could not have made a  
 24 decision -- well, they would have had to go  
 25 through our office to secure legal approval.

1 Q. And no techniques were submitted by  
 2 your office to CTC, except for those 12  
 3 techniques in 2002?  
 4 A. Those were the 12 techniques that  
 5 were submitted to me, yes.  
 6 Q. And the only techniques that OLC  
 7 evaluated and approved in 2002 were these  
 8 Mitchell and Jessen techniques?  
 9 MR. SMITH: Objection. You can  
 10 answer.  
 11 THE WITNESS: Yes, as best I can  
 12 recall.  
 13 BY MR. LADIN:  
 14 Q. Okay. Turning back to your  
 15 declaration.  
 16 So, at Paragraph 50 on Page 9.  
 17 A. Wait a second. Yes.  
 18 Q. You say within a few months of the  
 19 August 1, 2002 Bybee memo --  
 20 MR. BENNETT: Which paragraph?  
 21 THE WITNESS: 50.  
 22 MR. LADIN: 50.  
 23 MR. BENNETT: Okay, I'm sorry. Go  
 24 ahead.  
 25 BY MR. LADIN:



1 Q. You say the OLC confirmed that the  
2 EITs could be used on other HVDs.  
3 How did that work?  
4 MR. BENNETT: I am not sure what  
5 that means. I object to the form.  
6 MR. LADIN: Sure. Let me ask it  
7 another way.  
8 BY MR. LADIN:  
9 Q. You say that the OLC confirmed that  
10 EITs could be used on other HVDs within a few  
11 months of the Bybee memo; is that correct?  
12 A. That's correct.  
13 Q. How did the OLC confirm that?  
14 A. I asked them if they could. A few  
15 months after the Bybee memo, the CIA captured and  
16 detained Khalid Sheikh Mohammed. He was the --  
17 well, he was, at that point in time, at least,  
18 the biggest capture.  
19 And, the CTC people, again,  
20 determined he was not cooperating, would not  
21 cooperate. And, so, they wanted to explore the  
22 possibility of using similar techniques that had  
23 been used on Zubaydah on KSM.  
24 Q. You said similar techniques. Were  
25 they not identical?

1 A. I don't think they were absolutely  
2 identical. That is my recollection.  
3 Q. Do you recall any differences?  
4 A. I don't believe that the so-called  
5 bug in the box scenario. That was tailored for  
6 Zubaydah.  
7 I don't believe that that was ever  
8 under consideration for Khalid Sheikh Mohammed.  
9 Q. And when you say tailored to  
10 Zubaydah, in what way was it tailored to  
11 Zubaydah?  
12 A. Well, the assessments of Zubaydah at  
13 the time concluded that he was very afraid of  
14 insects.  
15 So, this is part of his  
16 psychological makeup. So, that is why this  
17 particular technique was put together for him.  
18 Q. Now, in the next paragraph of your  
19 declaration, you point to Exhibit N, which are  
20 specific guidance for the interrogations of  
21 detainees --  
22 A. Right.  
23 Q. -- held at the black sites. This  
24 has been marked as Exhibit 38.  
25 (Whereupon, previously marked

1 Exhibit 38, first referral.)  
2 BY MR. LADIN:  
3 Q. This is 38.  
4 And so, you said, I believe, that  
5 these are the guidelines for interrogations at  
6 the black sites; is that correct?  
7 A. Yes.  
8 Q. And so this is the instructions as  
9 to the black sites as to how they are to conduct  
10 interrogations in compliance with the legal  
11 authorization; is that right?  
12 A. Yes, as I recall, yes.  
13 Q. And this appears to have been sent  
14 to Cobalt; is that right?  
15 A. That is what it says on the  
16 document. The word, Cobalt, is contained there.  
17 Q. So, does this document describe the  
18 EIT program in 2003?  
19 A. Yes.  
20 Q. And it lists, it lists on Page 1172  
21 the enhanced techniques that were part of the EIT  
22 program in 2003?  
23 A. Correct.  
24 Q. And these techniques are, except  
25 for -- well, actually it does have the bug in the

1 box. So, these techniques are the 12 Abu  
2 Zubaydah techniques -- sorry. The 11, minus mock  
3 burial?  
4 A. Appear to be.  
5 Q. So, was the EIT program a  
6 duplication of the techniques that were  
7 authorized for Abu Zubaydah that could now be  
8 used on other detainees?  
9 MR. SMITH: Objection.  
10 THE WITNESS: Well, they say the Abu  
11 Zubaydah, the techniques developed for Abu  
12 Zubaydah proved to serve as a template for  
13 the enhanced interrogation techniques that  
14 were used on a number of subsequent high  
15 value detainees.  
16 BY MR. LADIN:  
17 Q. Do you see any technique listed here  
18 that is different than the ones that were  
19 approved on Abu Zubaydah?  
20 A. No, they appear to be the ones.  
21 Q. Okay. And these were the techniques  
22 that are contained in Exhibit 17?  
23 A. Well, again you gave me the one with  
24 the blank page.  
25 Q. Oh, I do apologize for that.

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

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

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

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

12 A. As I recall, yes.

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

15 MR. BENNETT: I object.

16 MR. LADIN: Sure.

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

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

21 BY MR. LADIN:

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

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

3 Q. You should keep it.

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

6 MR. BENNETT: U.

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

9 BY MR. LADIN:

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

12 A. Uh-huh.

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

18 Do you recall that?

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

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

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

1 A. That is correct.

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

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

8 Q. That's right.

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

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

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

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

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

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

25 Q. Okay. So, getting back to that

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

3 A. Okay.

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

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

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

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

16 A. No.

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

19 A. That's correct, yes.

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

22 BY MR. LADIN:

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

1 response to the Senate report, the Senate  
2 Subcommittee on Intelligence.  
3 A. Okay.  
4 MR. LADIN: Here is one for you.  
5 MR. BENNETT: Thank you.  
6 BY MR. LADIN:  
7 Q. Have you seen that document before?  
8 A. No.  
9 Q. Okay. I would like to direct your  
10 attention to Page 58. And it is confusing,  
11 because this document is paginated multiple  
12 times. But, we will get there.  
13 The 58 that I'm referring to begins  
14 with the words, "However, nine of the study's  
15 examples."  
16 A. Yes, I've got it.  
17 MR. SMITH: Give us a second.  
18 MR. LADIN: Sure.  
19 BY MR. LADIN:  
20 Q. I'm going to ask you about the  
21 second paragraph here.  
22 MR. SMITH: The paragraph that  
23 begins with "We also believe"?  
24 MR. LADIN: That's correct.  
25 THE WITNESS: Okay, I see it.

1 BY MR. LADIN:  
2 Q. Okay. So, it says, "After the  
3 standard was approved and communicated in  
4 January 2003, interrogation operations at,"  
5 redacted, "were generally in line with the  
6 guidance, with some isolated exceptions  
7 identified in the study and described elsewhere  
8 in the response."  
9 And you said you have not seen this  
10 document before; is that right?  
11 A. No, no.  
12 Q. All right. Well, let's -- well, let  
13 me first ask, is it your understanding that after  
14 January 2003, interrogation operations at Cobalt  
15 were generally in line with the guidance that was  
16 sent to Cobalt, that is your Exhibit N?  
17 A. That was my understanding, yes.  
18 (Whereupon, previously marked  
19 Exhibit 10, first referral.)  
20 BY MR. LADIN:  
21 Q. Okay. I would like to also show you  
22 what has been previously marked as Exhibit 10.  
23 You've seen this report before I  
24 think; is that right?  
25 A. That is the IG report.

1 Q. Yes.  
2 A. Yes, I've seen that.  
3 Q. And you were interviewed as part of  
4 it?  
5 A. I must have been. I was being  
6 interviewed a lot in those days.  
7 Q. Yes. If you go to the page marked  
8 Bates 1392.  
9 A. 1392. That doesn't compute.  
10 Q. Sorry, there is multiple Bates  
11 stamps.  
12 There is the D series, in which this  
13 would be D63. But below that, there a U.S. Bates  
14 number.  
15 A. Okay. So, if I go to D63, I will  
16 find it --  
17 Q. You will. Unless this is also  
18 multiply paginated.  
19 And the paragraph I'm asking you  
20 about is 122.  
21 A. Okay, I've got it. Okay.  
22 Q. And it says, the word, Cobalt, is  
23 sort of inserted there, above a redaction.  
24 A. Right.  
25 Q. And it says, "The employment of EITs

1 is now reportedly well codified. Written  
2 interrogation plans are prepared and sent to  
3 headquarters for each detainee."  
4 Is that your understanding of how  
5 the EIT program worked?  
6 A. Yes.  
7 Q. So, written interrogation plans  
8 would be prepared for different detainees, sent  
9 to headquarters for approval, and then that  
10 approval would flow back to the black site?  
11 A. If there was an approval, yes, that  
12 is how it would work.  
13 Q. And this appears to indicate that  
14 that process was in place at Cobalt?  
15 A. Well, could we define our terms?  
16 The Cobalt was not a site where the high value  
17 detainees that were subjected to the enhanced  
18 interrogation program were housed.  
19 Those are, when I say black sites,  
20 what I mean to say is those secret prisons where  
21 the high value detainees, beginning with Abu  
22 Zubaydah, were detained.  
23 Q. So, is it your understanding that  
24 EITs were not authorized at Cobalt?  
25 A. That's correct.

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

5 A. That is my recollection.

6 Q. What is your recollection based on?

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

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

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

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

14 A. It appears to have been.

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

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

21 BY MR. LADIN:

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

1 exhibit to your declaration.

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

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

8 Q. Uh-huh.

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

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

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

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

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

1 report?

2 A. Sure, it would be unauthorized.

3 MR. BENNETT: Keep your voice up.

4 MR. LADIN: So, let's mark this  
5 as -- is this 50?

6 THE REPORTER: 50.

7 (Exhibit Number 50  
8 marked for identification.)

9 BY MR. LADIN:

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

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

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

20 A. Right, right.

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

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

1 Q. Yes.

2 A. Okay.

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

7 A. Okay.

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

12 MR. SMITH: Objection.

13 THE WITNESS: Yes.

14 BY MR. LADIN:

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

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

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

22 A. Yes, it describes the process.

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

1 can't, you know, sit here now and say for  
2 certain everything that was put down was  
3 absolutely accurate, that is all.  
4 BY MR. LADIN:  
5 Q. Sure. And your understanding is  
6 that if the CIA used EITs on a detainee who was  
7 not authorized for the use of those EITs, that  
8 would generate an investigation?  
9 A. Yes.  
10 Q. And is it your understanding that  
11 there were many such cases in which the CIA used  
12 EITs on unauthorized detainees?  
13 MR. BENNETT: I'm going to object to  
14 the word, many, because that means different  
15 things to different people.  
16 MR. LADIN: Sure.  
17 THE WITNESS: I would use the word,  
18 occasionally.  
19 BY MR. LADIN:  
20 Q. Occasionally.  
21 A. Yes.  
22 Q. And in the absence of such an  
23 investigation, would you assume that a detainee  
24 had been approved for techniques -- let me  
25 rephrase that to avoid the word, assume.

1 MR. BENNETT: Good. You read my  
2 mind.  
3 BY MR. LADIN:  
4 Q. Yes. Would the lack of -- I've  
5 learned from you.  
6 MR. BENNETT: Thank you. Any time.  
7 BY MR. LADIN:  
8 Q. Appreciate it. Would the lack of an  
9 investigation as to the use of EITs on a detainee  
10 indicate that the EITs had been approved for use  
11 on that detainee?  
12 A. Yes, I mean, if there was no  
13 investigation, then of course that means the  
14 techniques were approved, had been approved.  
15 Q. So, on the basis of this document,  
16 does this document indicate to you that Abd  
17 al-Karim a/k/a Mohamed Ahmed al-Shoroeyiya was  
18 part of the CIA's EIT program?  
19 MR. SMITH: Objection.  
20 THE WITNESS: I'm sorry?  
21 BY MR. LADIN:  
22 Q. That is page 1580.  
23 A. I thought we were done with this  
24 one. 1580, okay.  
25 Yes, I don't know what this document

1 is, honestly, it is so redacted. Like, I can't  
2 tell what it is. I can't tell if this is an  
3 investigation or just a statement and a memo or  
4 what?  
5 Q. Oh, this document was provided in  
6 response to a discovery request asking about  
7 which EITs were used on particular individuals.  
8 And it is a document that you are  
9 absolutely right is very redacted. It begins  
10 with bios, and it appears to list the biographies  
11 of different detainees?  
12 MR. SMITH: Object to the  
13 characterization of the document.  
14 THE WITNESS: Right.  
15 MR. BENNETT: And what is the  
16 question?  
17 BY MR. LADIN:  
18 Q. The question is, on the basis of  
19 this document that was provided by the CIA, does  
20 it indicate to you that this individual was part  
21 of the EIT program?  
22 MR. SMITH: Objection.  
23 THE WITNESS: Well, it indicates he  
24 underwent the following EITs. That is what  
25 it says.

1 BY MR. LADIN:  
2 Q. And does that indicate to you that  
3 this individual was part of the EIT program?  
4 MR. SMITH: Objection.  
5 THE WITNESS: Not necessarily. I,  
6 you know, it doesn't say he underwent the  
7 following approved EITs.  
8 BY MR. LADIN:  
9 Q. Well, if we can go back to the  
10 document you were just looking at which was the  
11 CIA's response.  
12 A. Okay. Okay. Direct me to a page.  
13 Q. Sure. It is Page 56. It is the  
14 document we were just looking at.  
15 A. Right.  
16 Q. And it says, "In the cases involving  
17 those detainees, Abu Hazim and Abd al-Karim,  
18 headquarters ultimately approved the techniques.  
19 A. That's correct, right.  
20 Q. Does that indicate to you that those  
21 two detainees were part of the CIA's EIT program?  
22 MR. SMITH: Objection.  
23 THE WITNESS: If headquarters  
24 ultimately approved the techniques, I would  
25 say they were part of the EIT program.



1 BY MR. LADIN:  
 2 Q. So, specifically, you would say on  
 3 the basis of the CIA's documents that you have  
 4 been provided, Abd al-Karim was part of the CIA's  
 5 EIT program?  
 6 MR. SMITH: Objection.  
 7 THE WITNESS: That is what it seems  
 8 to indicate.  
 9 BY MR. LADIN:  
 10 Q. Do you have any reason to doubt that  
 11 he was part of the CIA's EIT program?  
 12 MR. SMITH: Objection.  
 13 THE WITNESS: I have no  
 14 understanding either way. I honestly don't  
 15 remember this case.  
 16 BY MR. LADIN:  
 17 Q. And turning back to the document  
 18 with the biographies, which is Exhibit Number 44.  
 19 If you could just turn to page 1567.  
 20 A. Okay. Got it.  
 21 Q. And do you see there a description  
 22 of another detainee was subjected to a list of  
 23 EITs?  
 24 A. Give me a second.  
 25 Q. Sure.

1 A. Yes, I see where it says he  
 2 underwent the following EITs.  
 3 Q. And those EITs are the EITs of the  
 4 CIA's EIT program?  
 5 A. They look like it. Yes, they appear  
 6 to be.  
 7 Q. Do you have any reason to believe  
 8 that this person was not part of the CIA's EIT  
 9 program?  
 10 MR. SMITH: Objection.  
 11 THE WITNESS: I have no reason to  
 12 dispute it or confirm it. Again, I don't  
 13 remember this name or this case.  
 14 BY MR. LADIN:  
 15 Q. Did the defendants ask you when you  
 16 were preparing the declaration about additional  
 17 detainees, beyond Gul Rahman, who you wrote about  
 18 specifically in your declaration?  
 19 MR. BENNETT: I'm going to object.  
 20 There is no basis that the defendants had  
 21 nothing to do with the preparation of the  
 22 declaration.  
 23 MR. LADIN: Did the defendants see  
 24 the declaration before it was finalized?  
 25 MR. BENNETT: I don't know. I don't

1 think so.  
 2 BY MR. LADIN:  
 3 Q. Well, did you, did you speak with  
 4 the defendants about your declaration?  
 5 A. The defendants?  
 6 Q. Yes.  
 7 A. No.  
 8 Q. Did you speak with their attorneys  
 9 about the declaration?  
 10 A. No.  
 11 Q. How did you decide what your  
 12 declaration would include?  
 13 A. Well, my attorneys indicated the  
 14 areas that I should try to cover in the  
 15 declaration and --  
 16 MR. BENNETT: I'm going to object  
 17 beyond that.  
 18 MR. LADIN: And that would be on the  
 19 basis of privilege?  
 20 MR. BENNETT: Well, I don't think  
 21 you have any right to ask him why I decided  
 22 to include certain things in his declaration.  
 23 MR. LADIN: Sure. And --  
 24 MR. BENNETT: And, you have been  
 25 operating on the assumption that the

1 defendants participated in that. And I'm  
 2 saying that he says that is not correct.  
 3 So, go ahead and ask your next  
 4 question.  
 5 BY MR. LADIN:  
 6 Q. Sure, I'm not looking to pry. I'm  
 7 purely curious about whether -- so, your  
 8 declaration makes a statement about whether Gul  
 9 Rahman was part of the EIT program.  
 10 A. Right.  
 11 Q. Your declaration makes no statements  
 12 about the other plaintiffs in this case. Your  
 13 declaration was provided as part of this case.  
 14 A. Right.  
 15 Q. What I'm trying to ask you, and  
 16 perhaps you can't answer, is whether the  
 17 defendants asked you to declare something about  
 18 the other plaintiffs in this case?  
 19 A. No.  
 20 Q. Okay. Did you ever seek OLC  
 21 guidance for a separate EIT program that was  
 22 distinct from the EIT program we have been  
 23 discussing?  
 24 A. No. I mean we discussed earlier the  
 25 fact that the EIT program as the years went on



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

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

7 Q. Yes.

8 A. No.

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

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

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

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

22 Q. Okay.

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

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

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

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

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

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

11 BY MR. LADIN:

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

14 MR. LADIN: Is this 51?

15 (Exhibit Number 51  
16 marked for identification.)

17 BY MR. LADIN:

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

22 A. Okay, I'm there.

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

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

6 Do you see that?

7 A. I do.

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

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

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

16 A. Okay.

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

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

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

1 THE WITNESS: I see, okay.

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

4 THE WITNESS: Yes, I understand.

5 MR. BENNETT: Okay.

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

10 BY MR. LADIN:

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

13 A. I do.

14 Q. What about facial slap?

15 A. Yes.

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

21 MR. SMITH: Objection.

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

24 BY MR. LADIN:

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

1 in a diaper is humiliating?  
 2 MR. SMITH: Objection.  
 3 MR. BENNETT: I'm going to object in  
 4 that.  
 5 THE WITNESS: Do I answer or no?  
 6 MR. BENNETT: Yes.  
 7 THE WITNESS: Yes, I think it can be  
 8 humiliating.  
 9 BY MR. LADIN:  
 10 Q. Do you think it could be considered  
 11 degrading?  
 12 MR. SMITH: Objection.  
 13 THE WITNESS: I think humiliating  
 14 is, again, is a definitional term. I don't  
 15 know about degrading.  
 16 BY MR. LADIN:  
 17 Q. So, you don't think it would be  
 18 degrading treatment to have someone shackled to  
 19 the ceiling in a diaper?  
 20 A. I don't know. If you, if I were  
 21 just to say offhand, I would say it was  
 22 humiliating. That would be the term I would use  
 23 to best describe it.  
 24 Q. Are you aware that the U.S. courts  
 25 have found solitary confinement in dark cells

1 with no opportunity for cleanliness to be  
 2 degrading?  
 3 MR. BENNETT: Objection. Go ahead,  
 4 if you know.  
 5 THE WITNESS: I don't know, I don't  
 6 know that.  
 7 BY MR. LADIN:  
 8 Q. Would it make a difference to you if  
 9 you did know that?  
 10 MR. SMITH: Objection.  
 11 MR. BENNETT: Objection, don't  
 12 answer that.  
 13 THE WITNESS: No, okay.  
 14 MR. BENNETT: Well, how can you  
 15 answer that?  
 16 MR. LADIN: Well, I don't know. I  
 17 would like to --  
 18 MR. BENNETT: Repeat the question.  
 19 BY MR. LADIN:  
 20 Q. Would it make a difference to you if  
 21 you knew -- let me perhaps, let me rephrase it  
 22 better?  
 23 MR. BENNETT: Okay.  
 24 BY MR. LADIN:  
 25 Q. Would it make a difference to you in

1 your assessment of whether this was degrading  
 2 whether U.S. courts had found the keeping of  
 3 prisoners in dark cells in solitary with no  
 4 opportunity to clean themselves to be degrading?  
 5 MR. SMITH: Objection.  
 6 MR. BENNETT: Objection. Go ahead,  
 7 if you can.  
 8 THE WITNESS: Yes, that would. I  
 9 mean that would have an impact if the courts  
 10 had held that, sure.  
 11 BY MR. LADIN:  
 12 Q. Okay. Now, the way the program was  
 13 presented to you, EITs would only be used so long  
 14 as the detainee was using resistance techniques;  
 15 is that correct?  
 16 A. That's correct.  
 17 Q. And that is the information that you  
 18 relayed to OLC?  
 19 A. I believe it was, yes.  
 20 Q. And, the premise was that the EITs  
 21 would stop once the detainee became compliant?  
 22 A. Correct.  
 23 Q. And so the detainee could make the  
 24 EITs stop at any time by complying?  
 25 A. Correct.

1 Q. Okay. Turning back to the CIA  
 2 Inspector General's report. I'm going to ask you  
 3 about --  
 4 A. This is the big one, the special  
 5 review?  
 6 Q. That's correct. And that is  
 7 Exhibit 10.  
 8 A. All right.  
 9 Q. And I'm going to ask you about Bates  
 10 1422, which is Paragraph 206.  
 11 A. I am sorry. Could you give me the D  
 12 number? That is easy for me to find that.  
 13 Q. Sure. But that might take me just a  
 14 moment.  
 15 MR. SMITH: 226?  
 16 BY MR. LADIN:  
 17 Q. 1422.  
 18 A. Oh, I see.  
 19 Q. Yes, so, Paragraph D93. Thank you.  
 20 A. Okay, D93.  
 21 Q. Okay. So, at Paragraph 206, do you  
 22 see it says, "When a detainee did not respond to  
 23 a question posed to him, the assumption at  
 24 headquarters was that the detainee was holding  
 25 back and knew more. Consequently headquarters

1 me. I have a lot of respect for Mr. Philbin.  
 2 So, he is certainly free to express his  
 3 opinions.  
 4 BY MR. LADIN:  
 5 Q. And what about when John Bellinger  
 6 said that "he viewed nudity combined with  
 7 shackling a person to prevent sleep to be  
 8 humiliation and degradation of a level that would  
 9 be considered an outrage upon personal dignity."  
 10 Does that trouble you?  
 11 MR. BENNETT: Objection, go ahead.  
 12 MR. SMITH: Objection.  
 13 THE WITNESS: Does it trouble me  
 14 that Bellinger said it?  
 15 BY MR. LADIN:  
 16 Q. Yes.  
 17 A. No. John was expressing his  
 18 sincerely held opinions. As we discussed  
 19 earlier, it also reflected the view of his  
 20 superior, Secretary Rice.  
 21 Q. The data that you at CIA received  
 22 about the safety of the SERE techniques was  
 23 entirely about the use of SERE techniques on  
 24 volunteers; is that correct?  
 25 A. Okay. We are going back now to the

1 beginning of the program, when it was first  
 2 presented --  
 3 Q. At any point?  
 4 A. Well, what I remember about  
 5 reference to the SERE program was mostly at the  
 6 beginning, as we discussed earlier.  
 7 So, I'm sorry. Just repeat the  
 8 question again.  
 9 Q. Sure. You were presented with a  
 10 list of techniques.  
 11 A. Right.  
 12 Q. You were told they were based to  
 13 some degree on SERE training.  
 14 A. Right.  
 15 Q. You were presented and you presented  
 16 OLC with data as to the safety of those  
 17 techniques in terms of SERE.  
 18 A. Uh-huh.  
 19 Q. All of that safety data, that was  
 20 based on SERE training of volunteers; is that  
 21 correct?  
 22 A. That was my understanding, yes.  
 23 Q. And, neither Mitchell nor Jessen nor  
 24 anyone else pointed you to studies of prisoners  
 25 of war; is that correct?

1 A. Not that I recall, no.  
 2 Q. And you didn't, yourself, review, as  
 3 far as you recall, any studies of actual  
 4 prisoners of war; is that correct?  
 5 A. I did not.  
 6 MR. LADIN: In fact, I believe,  
 7 let's mark this as 52 -- oh, 57.  
 8 (Exhibit Number 57  
 9 marked for identification.)  
 10 BY MR. LADIN:  
 11 Q. You were interviewed by the New York  
 12 Times about the long-term effects of some people  
 13 who had been subjected to enhanced interrogation  
 14 techniques; is that correct?  
 15 A. Yes, right.  
 16 Q. And you told the Times that in  
 17 hindsight --  
 18 MR. BENNETT: Where are you in the  
 19 article?  
 20 MR. LADIN: Sure, you can review it.  
 21 I will find out where I am in the article and  
 22 then I will tell you.  
 23 I am on Page 6, but you can probably  
 24 begin on Page 5.  
 25 Specifically, it says that, "General

1 Xenakis found decades of paper -- decades of  
 2 papers on the effects of abusive practices."  
 3 Do you see that.  
 4 MR. SMITH: I don't.  
 5 THE WITNESS: Is it at the bottom.  
 6 BY MR. LADIN:  
 7 Q. Sure. It is on Page 5. It says,  
 8 "Back home in Virginia."  
 9 A. General Xenakis, yes. Right. I see  
 10 that.  
 11 Q. It says, "He found decades of papers  
 12 on the issue, science that had not been  
 13 considered when the government began crafting new  
 14 interrogation policies after September 11th."  
 15 Do you see that?  
 16 A. I see that, yes.  
 17 Q. Do you remember any research into  
 18 the effects of abusive practices at the time that  
 19 these techniques were being considered?  
 20 A. Abusive --  
 21 Q. Abusive practices, rather than  
 22 training on volunteers?  
 23 A. Yes. No, I don't recall that.  
 24 Q. And on the next page, there is a  
 25 quote from you that says, "In hindsight, that

1 Do you see that?  
 2 A. I do.  
 3 Q. Now, sir, is it true that Drs.  
 4 Mitchell and Jessen had no role in determining  
 5 the legality of the techniques?  
 6 A. That is true.  
 7 Q. Okay. And you know that they are  
 8 not lawyers, right?  
 9 A. I know that, yes.  
 10 Q. And is it fair to say that when your  
 11 legal counsel was sought, the people that were  
 12 seeking legal counsel were Mr. Rodriguez and  
 13 members from the office of the CIA?  
 14 A. Yes, members from the CIA, sure.  
 15 CIA people.  
 16 Q. Okay. And then the other part of  
 17 Paragraph 22 deals with contact. And is it true  
 18 that Drs. Mitchell and Jessen had no contact with  
 19 OLC personnel as they conducted their assessment?  
 20 A. To my knowledge, they did not.  
 21 Q. Okay. So Drs. Jessen and Mitchell  
 22 weren't lobbying for the OLC to reach a  
 23 particular conclusion, right?  
 24 A. No, no.  
 25 Q. Okay. Let's go to Paragraph 31.

1 That is on the next -- actually two pages later.  
 2 Paragraph 31 looks to me to be almost identical  
 3 to the language in Paragraph 22. Would you agree  
 4 with that?  
 5 A. Yes.  
 6 Q. And I take it your testimony about  
 7 the factual basis for Paragraph 31 wouldn't  
 8 change if I asked you any questions about that.  
 9 A. That's correct, that's correct.  
 10 Q. So, let's go on to the last sentence  
 11 of Paragraph 40, which is on the next page.  
 12 Now, do you remember that you were  
 13 asked questions during your examination by  
 14 counsel for the ACLU about possible psychological  
 15 effects that result or could result from the use  
 16 of EITs?  
 17 A. I remember that, yes.  
 18 Q. Okay. Now, in this Paragraph 40,  
 19 you state in that last sentence, "The JPRA  
 20 concluded no long-term psychological effects  
 21 resulted from the use of the EITs."  
 22 Do you see that?  
 23 A. Yes.  
 24 Q. Tell us what the JPRA is?  
 25 A. It is, it is a DOD entity, and they

1 say in that paragraph, it is called the Joint  
 2 Personnel Recovery Agency.  
 3 And, my understanding -- I was not  
 4 familiar with it before 9/11, but my  
 5 understanding became that they were responsible  
 6 for overseeing all of the SERE programs,  
 7 training, things of that nature.  
 8 Q. And, what was the source of your  
 9 knowledge that the JPRA concluded no long-term  
 10 psychological effects resulted from the use of  
 11 the EITs --  
 12 A. My recollection is --  
 13 Q. -- as it appears in your  
 14 declaration?  
 15 A. My recollection is I learned, that I  
 16 got some piece of paper, I can't honestly recall  
 17 whether it was the actual JPRA written  
 18 conclusion, or if it was the DOD General Counsel,  
 19 a man named Jim Haynes, who I dealt with  
 20 regularly during these days, whether he conveyed  
 21 that conclusion to me.  
 22 Q. And Drs. Mitchell and Jessen were  
 23 not part of the JPRA, were they?  
 24 A. Not to my knowledge, no.  
 25 Q. Let me show you what we are going to

1 mark as the next exhibit in the case.  
 2 MR. SMITH: For the record, I will  
 3 identify it as bearing U.S. government Bates  
 4 label last four digits 1913 and 1914.  
 5 And we will mark this as Exhibit  
 6 Number 59.  
 7 (Exhibit Number 59  
 8 marked for identification.)  
 9 BY MR. SMITH:  
 10 Q. Do you have 59 before you, sir?  
 11 A. This is 59.  
 12 Q. It is the document --  
 13 A. Yes, I do.  
 14 Q. You have it in your hands?  
 15 A. Yes.  
 16 Q. Okay. I want to direct your  
 17 attention. Well, let's identify it for the  
 18 record first. This appears to be a cable of some  
 19 sort, does it not?  
 20 A. It does.  
 21 Q. Okay. And I take it during the  
 22 period of time that we are talking about here,  
 23 when you were acting as Counsel for the CIA, you  
 24 had occasion to see cables like this?  
 25 A. Yes.

1 Q. I want to direct your attention to  
2 the third paragraph of the cable. Do you see it  
3 there?  
4 A. Yes.  
5 Q. And I want to go about five lines  
6 down, the sentence that starts with, "In an  
7 effort to help." Do you see that?  
8 A. Yes.  
9 Q. And let me read this into the  
10 record. It states, "In an effort to help HQS  
11 obtain the needed approvals so that base can  
12 begin the next phase of the interrogation  
13 process, request," and then there is a blank,  
14 "SERE, that is S-E-R-E, psychologist assistance."  
15 Do you see that?  
16 A. Yes.  
17 Q. Okay.  
18 MR. SMITH: And, counsel, can we  
19 stipulate that to the extent that the  
20 government redacted information about who the  
21 SERE psychologists were, when it was Doctors  
22 Jessen or Mitchell, the government would type  
23 in their name. Can we agree with that?  
24 MR. LADIN: I'm not sure.  
25 MR. SMITH: Let me ask the

1 government.  
2 MR. WARDEN: On the record, I don't  
3 know what this, I don't know what is  
4 underneath the redaction.  
5 MR. SMITH: I'm not asking that.  
6 Here is what I'm asking him, so listen  
7 carefully. In the instances where the  
8 identity of a SERE psychologist was called  
9 out in the document, the names were redacted.  
10 However, in the instances when the  
11 SERE psychologist was either Dr. Mitchell or  
12 Dr. Jessen, the government would type those  
13 names in, in the information that was  
14 produced to us in discovery.  
15 Do you agree with that.  
16 MR. WARDEN: Yes, if their names  
17 were as stated in the document.  
18 MR. SMITH: Correct.  
19 MR. WARDEN: Yes.  
20 MR. SMITH: So, is it fair to assume  
21 then that the name that was redacted of the  
22 SERE psychologist was a name other than  
23 Dr. Mitchell or Dr. Jessen?  
24 MR. LADIN: I'm going to object  
25 because it is not at all clear that this is

1 the name that is being redacted. It could be  
2 any other kind of identifier.  
3 MR. WARDEN: If what was underneath  
4 those two redactions were either  
5 Dr. Mitchell's name, code name, or another  
6 identifier, we would have substituted it.  
7 MR. SMITH: Okay.  
8 MR. WARDEN: If that is not there  
9 then what is under the black is something  
10 other than those terms.  
11 MR. SMITH: Okay. And I heard what  
12 you said, counsel. And I don't know what was  
13 redacted. I'm left to my own devices with  
14 these documents from the government.  
15 BY MR. SMITH:  
16 Q. But, do you recall looking at this  
17 document, if there were other opinions you got  
18 from other SERE psychologists as suggested by  
19 Exhibit Number 59?  
20 A. Yes, I don't specifically recall  
21 this document, but not to say I didn't see it. I  
22 just don't remember at this point in time.  
23 Q. So, even though you don't recall the  
24 document, what about the subject matter that I'm  
25 asking you about?

1 Do you recall if there were SERE  
2 psychologists, other than Mitchell and Jessen,  
3 who provided opinions to the CIA relating to  
4 these enhanced interrogation techniques?  
5 A. No, to the best of my recollection  
6 the only SERE psychologists I knew that were  
7 providing advice were Drs. Mitchell and Jessen.  
8 Q. Okay. All right. Let's move on  
9 then. And to the extent that JPRA came to the  
10 conclusion that there were no long-term  
11 psychological effects resulting from the use of  
12 EITs, you don't know what the source of that  
13 agency's information was?  
14 A. No. Not specifically.  
15 Q. Okay. What about generally?  
16 A. You know, I did probably know at  
17 some point. I just can't remember now.  
18 Q. Okay. Turn, if you would, to  
19 Paragraph 48, which appears on the top of Page 9  
20 of your declaration marked as Exhibit Number 45.  
21 Tell me when you are there.  
22 A. I am there.  
23 Q. Paragraph 48 is one sentence. It  
24 states, "It is my understanding that all EITs  
25 were applied to Zubaydah consistent with the



1 August 1, 2002, Bybee memo."  
 2 Do you see that?  
 3 A. I do.  
 4 Q. What is the source of your  
 5 information for Paragraph Number 48?  
 6 A. Well, a couple of things. We had  
 7 sent one of our attorneys in the Office of  
 8 General Counsel to review the videotapes of the  
 9 interrogation of Zubaydah, many hours of  
 10 videotapes. These were videotapes that were  
 11 subsequently destroyed.  
 12 And he returned to say, as I am  
 13 going through them carefully, that none of the  
 14 EITs -- all of the EITs applied to Zubaydah were  
 15 consistent with the Bybee memo. In other words,  
 16 there were no unauthorized techniques.  
 17 Q. And just so we are clear, the Bybee  
 18 memo was the memo that served as the legal  
 19 authority to proceed with 11 of the 12  
 20 techniques; is that correct?  
 21 A. Correct.  
 22 Q. Okay. And mock burials was the one  
 23 that was removed?  
 24 A. That's correct.  
 25 Q. Okay. Now I want to ask you about

1 high value detainees.  
 2 You mentioned high value detainees  
 3 in your testimony. Do you recall that?  
 4 A. Yes.  
 5 Q. And do you know, there were other  
 6 types of detainees, right?  
 7 A. Right.  
 8 Q. There were medium value detainees,  
 9 and low value detainees, right?  
 10 A. Yes.  
 11 Q. Did you, in your capacity as Counsel  
 12 for the CIA, give advice to members in the field  
 13 about low value detainees and medium value  
 14 detainees?  
 15 A. I'm sure we did. I don't recall  
 16 that I did myself, but I'm sure lawyers, my  
 17 lawyers at CTC did.  
 18 Q. Okay. Now I want to focus in on  
 19 Mitchell and Jessen.  
 20 Were Mitchell and Jessen involved  
 21 with high value detainees?  
 22 A. Yes.  
 23 Q. Do you know if they had any role  
 24 other than with respect to high value detainees?  
 25 A. No. My understanding was that they

1 were brought on and they were, and they were used  
 2 exclusively on high value detainees.  
 3 Q. Okay. Now, you got this document  
 4 which was previously marked in the case as  
 5 Exhibit Number 17. Pull it out for a second if  
 6 you would, please.  
 7 A. 17.  
 8 Q. 17.  
 9 A. Jim, if you could describe it, I  
 10 could find it.  
 11 Q. It is the 12 techniques that is in  
 12 the form of a cable, but it is a cut and paste of  
 13 a memo that was put together by Dr. Mitchell.  
 14 MR. HANNER: It is Exhibit C to the  
 15 declaration as well.  
 16 BY MR. SMITH:  
 17 Q. It was marked during your testimony  
 18 today as Exhibit 17, so I want to be consistent.  
 19 A. Okay. All right.  
 20 Q. Do you have it there?  
 21 A. I've used the one as my exhibit. It  
 22 starts --  
 23 Q. Okay.  
 24 A. -- unclassified for public release.  
 25 Q. Okay. Sometime in the summer of

1 2002, you were presented with this document, were  
 2 you not?  
 3 A. Yes.  
 4 Q. And can you fix an approximate date  
 5 when you were presented with this document?  
 6 A. I, it, you know, it is hard to tell  
 7 with the redactions whether I was presented with  
 8 it.  
 9 Q. Just give me your best estimate.  
 10 A. I was probably presented with it  
 11 either right prior or right after August 1st. I  
 12 see there is a reference to a July 8, 2002,  
 13 meeting. So, it was some time after that.  
 14 But it was close. It was around, it  
 15 was near, very near, I suspect, the time of the  
 16 Bybee memo.  
 17 Q. So, Mr. Rizzo, Mr. Bennett is  
 18 counting my minutes, and I see that he has  
 19 signaled to me that I have 27 minutes left.  
 20 A. If you need to go over a little  
 21 bit --  
 22 Q. You don't want to make that  
 23 concession.  
 24 MR. BENNETT: You say that to a  
 25 lawyer, you are out of your mind.



1 BY MR. SMITH:  
 2 Q. Mr. Rizzo, stay with me on this.  
 3 A. Okay.  
 4 Q. You were presented this memo in  
 5 connection with Abu Zubaydah, correct?  
 6 A. Yes.  
 7 Q. And Abu Zubaydah was -- what was his  
 8 category of detainee?  
 9 A. He was a high value detainee.  
 10 Q. And these, these 12 techniques were  
 11 related to what kind of detainees?  
 12 A. High value detainees.  
 13 Q. And initially when you first looked  
 14 at them and you were asked to opine on the  
 15 legality of them, it was solely for Abu Zubaydah;  
 16 isn't that right?  
 17 A. That's correct.  
 18 Q. And then I think you testified that  
 19 you went to the Justice Department because you  
 20 wanted to get an opinion from the Justice  
 21 Department to protect people within the CIA about  
 22 the legality, right?  
 23 A. Yes, yes.  
 24 Q. And you ultimately got that Bybee  
 25 memo, right?

1 A. I did.  
 2 Q. And then thereafter, the, these  
 3 techniques were expanded to be used on other high  
 4 value detainees; is that correct?  
 5 A. Correct.  
 6 Q. During the period of time that you  
 7 were at the CIA and acting as counsel, were these  
 8 techniques that are set forth in Exhibit  
 9 Number 17, ever expanded to be used on any  
 10 detainees other than high value detainees?  
 11 A. No.  
 12 Q. Okay.  
 13 A. I should note that Number 12 was a  
 14 mock burial. That --  
 15 Q. Right. And that was eliminated.  
 16 And I think that was on the record.  
 17 And I want to go to, I want to go to  
 18 Exhibit Number 38.  
 19 A. Okay.  
 20 Q. And I want to talk about process.  
 21 Okay.  
 22 MR. BENNETT: What is 38?  
 23 MR. SMITH: 38 is, lays out the road  
 24 map for, if we are going to use enhanced  
 25 interrogation techniques and other standard

1 techniques, this is what the CIA wants  
 2 everybody to do after.  
 3 BY MR. SMITH:  
 4 Q. Do you have that exhibit before you?  
 5 A. I'm looking. Is this the  
 6 January '03?  
 7 MR. HANNER: Yes, it is Exhibit N to  
 8 your declaration.  
 9 MR. BENNETT: N.  
 10 THE WITNESS: Okay, I have that.  
 11 BY MR. SMITH:  
 12 Q. And you are familiar with this  
 13 document.  
 14 A. Yes.  
 15 Q. And the reason you are familiar with  
 16 it in your capacity as Counsel for the CIA during  
 17 the time in question?  
 18 A. Yes.  
 19 Q. Mr. Rizzo, I want to just make a  
 20 couple of points here. First I want to talk  
 21 about is architect. You, I think in your book  
 22 said you are the legal architect of the enhanced  
 23 interrogation program?  
 24 A. I think, yes, I think that is --  
 25 yes.

1 Q. Can you tell me what you meant by  
 2 that?  
 3 A. Well, I was the, yeah, I was the,  
 4 certainly the primary lawyer at CIA in the  
 5 position of leadership, frankly, the only lawyer  
 6 who was involved in the program from its  
 7 inception to its conclusion, seven years later.  
 8 Q. So, let me ask you.  
 9 When you went to the Justice  
 10 Department to get their view on the legality of  
 11 these enhanced interrogation techniques, if they  
 12 would have said no, they are illegal, what would  
 13 you have done?  
 14 A. I would have said thank you very  
 15 much, and that would have been the end of that.  
 16 We wouldn't be sitting here.  
 17 Q. Who was the architect then, them or  
 18 you?  
 19 A. Well, I think I referred to myself  
 20 as the CIA's legal architect.  
 21 Obviously the Justice Department is  
 22 the ultimate legal arbiter.  
 23 Q. Okay. Now I want to talk about your  
 24 understanding of process.  
 25 By January of 2003, obviously there

1 were procedures that were now in writing as  
 2 embodiments in Exhibit 38; is that right?  
 3 A. Correct.  
 4 Q. Were these procedures actually being  
 5 followed prior to the preparation of Exhibit  
 6 Number 38?  
 7 A. Yes.  
 8 Q. Okay.  
 9 A. Yes.  
 10 Q. But someone made the decision to  
 11 memorialize them in a document?  
 12 A. Yes, that's correct.  
 13 Q. Who made that decision?  
 14 A. I believe actually it was made by  
 15 January 2003, we did have a new General Counsel,  
 16 Mr. Moller.  
 17 Q. Okay.  
 18 A. I believe, to give him credit, he  
 19 was the one, he had arrived shortly before that  
 20 in November. He said we should get all of this,  
 21 get the existing procedures down in writing.  
 22 Q. I see. So, it wasn't Dr. Mitchell  
 23 who made this decision?  
 24 A. No.  
 25 Q. I see. So, let's go to the second

1 page of Exhibit Number 38.  
 2 Do you see where it talks about  
 3 permissible interrogation techniques?  
 4 A. Right.  
 5 Q. And it says, "Unless otherwise  
 6 approved by headquarters, CIA officer and other  
 7 personnel acting on behalf of CIA may use only  
 8 permissible interrogation techniques."  
 9 Do you see that?  
 10 A. Yes.  
 11 Q. Was Dr. Mitchell part of this  
 12 approval process?  
 13 A. The approval process for the --  
 14 Q. Where it says, unless otherwise  
 15 approved by headquarters, CIA officers, or other  
 16 personnel acting on behalf of the CIA -- well  
 17 actually I misread that. Let me start again.  
 18 "Unless otherwise approved by  
 19 headquarters, CIA officers and other personnel  
 20 acting on behalf of the CIA may use only  
 21 permissible interrogation techniques."  
 22 Do you see that?  
 23 A. I do.  
 24 Q. So, headquarters had to approve the  
 25 techniques, right?

1 A. That's correct.  
 2 Q. Okay. Dr. Mitchell didn't approve  
 3 the techniques, right?  
 4 A. No.  
 5 Q. Dr. Jessen didn't approve the  
 6 techniques, right?  
 7 A. No.  
 8 Q. Okay. And then if you read on, it  
 9 says what the permissible techniques are. Do you  
 10 see that?  
 11 A. I see that.  
 12 Q. Now, who decided what the standard  
 13 techniques were that were permissible within the  
 14 meaning of this memo?  
 15 A. Well, CTC did.  
 16 Q. Headquarters did, right?  
 17 A. Headquarters, CTC.  
 18 Q. Correct. Not Dr. Mitchell, right?  
 19 A. No, CTC.  
 20 Q. Right. When you say CTC, you mean  
 21 that people that were responsible for running the  
 22 day-to-day affairs of the Counter Terrorism  
 23 Center, right?  
 24 A. Staff officers in the Counter  
 25 Terrorism Center.

1 Q. And so the record is crystal clear,  
 2 not Dr. Mitchell, right?  
 3 A. Correct.  
 4 Q. And not Dr. Jessen?  
 5 A. That's correct.  
 6 Q. Okay. And then if you look at the  
 7 standard techniques, there are a series of them  
 8 called out.  
 9 And I will mention some. Isolation,  
 10 sleep deprivation, not to exceed 72 hours,  
 11 reduced caloric intake, so long as the amount is  
 12 calculated to maintain the general health of the  
 13 detainee, deprivation of reading material, use of  
 14 loud music or white noise. Let me stop right  
 15 there.  
 16 You can read them as well as I can,  
 17 right?  
 18 A. Right.  
 19 Q. Who determined that these techniques  
 20 were the techniques that would be used as  
 21 standard techniques?  
 22 Is this headquarters again?  
 23 A. It was headquarters. It wasn't me.  
 24 But it was headquarters, yes.  
 25 Q. And who from headquarters can you

1 tell me was involved in this decision-making  
2 process?  
3 A. Well again, it would be CTC officers  
4 and management.  
5 Q. Not Dr. Mitchell, correct?  
6 A. Not to my knowledge.  
7 Q. And not Dr. Jessen, right?  
8 A. That's correct.  
9 Q. Okay. Now, reading on, it makes  
10 reference to enhanced techniques. Do you see  
11 that?  
12 A. I do.  
13 Q. And then you will see that there are  
14 a series of enhanced techniques that are  
15 identified in here, right?  
16 A. Correct.  
17 Q. And it says, just so the record is  
18 clear, "Enhanced techniques are techniques that  
19 do incorporate physical or psychological pressure  
20 beyond standard techniques. The use of each  
21 specific enhanced technique must be approved by  
22 headquarters in advance and may be employed only  
23 by approved interrogators for use with the  
24 specific detainee with appropriate medical and  
25 psychological participation in the process."

1 Do you see that?  
2 A. I do.  
3 Q. Who put this process in place?  
4 A. Again, it would be CTC officers and  
5 management.  
6 Q. Correct. Not Dr. Jessen, right?  
7 A. No.  
8 Q. Who would decide which medical  
9 doctor would participate in the enhanced  
10 interrogations? Headquarters?  
11 A. Headquarters, yes.  
12 Q. And would headquarters also decide  
13 which psychological doctor, whether it be a  
14 psychiatrist or a psychologist, would  
15 participate?  
16 A. That is correct.  
17 Q. I want to ask you further about --  
18 so, is it fair to say that every decision about  
19 when and how and to whom these techniques were  
20 going to be utilized was made by headquarters?  
21 A. That is fair to say, yes.  
22 Q. Okay. Now, in addition to that, if  
23 you read through this, because I only have about  
24 18 more minutes, it talks about process for who  
25 can stop the enhanced interrogation techniques.

1 Do you see it in there?  
2 A. Yes, if you could direct me.  
3 Q. Sure. Go to Paragraph 2.  
4 A. Okay.  
5 Q. And just read it to yourself. Have  
6 you read it?  
7 A. Yes.  
8 Q. And again this procedure was  
9 determined by headquarters, right?  
10 A. That's correct.  
11 Q. And if you look at interrogation  
12 personnel in Paragraph 3, all done by  
13 headquarters. Right?  
14 A. That's correct.  
15 Q. All controlled by headquarters,  
16 correct?  
17 A. Correct.  
18 Q. And then if you look at finally Item  
19 Number 4 and 5, 5 dealing with recordkeeping, and  
20 4 dealing with approvals required, all again  
21 directed and orchestrated by headquarters, right?  
22 A. Correct.  
23 Q. So, in fairness, was it your  
24 understanding that if enhanced interrogation  
25 techniques were to be used, one, they would be

1 done only on a high value detainee?  
2 A. Correct.  
3 Q. Two, they would be done only after  
4 headquarters decided which of the 11 techniques  
5 were to be used, on which day, for how many  
6 times; is that correct?  
7 A. That's correct.  
8 Q. And to the extent that the people  
9 out in the field, even if they wanted to stop  
10 doing the enhanced interrogation techniques, if  
11 headquarters directed that they continue,  
12 headquarters expected that direction to be  
13 followed?  
14 A. That's correct.  
15 Q. And it was always that way during  
16 the period of time 2002, whenever this started,  
17 right up through the end of 2004. Correct?  
18 A. To the end of 2004, yes.  
19 Q. Okay. In fairness --  
20 MR. BENNETT: You know --  
21 BY MR. SMITH:  
22 Q. I will stop the in fairness.  
23 MR. BENNETT: Yes.  
24 BY MR. SMITH:  
25 Q. It is true that Drs. Mitchell and

1 why none of you were interviewed?  
 2 A. Well, I had my, my -- my conclusion  
 3 was that they started off with their conclusions  
 4 already in their head. That the program was  
 5 worthless, immoral. And they, there was really  
 6 no -- and the rest of the time they were building  
 7 towards solidifying and supporting that forgone  
 8 conclusion.

9 Q. I see. And are there instances in  
 10 the report that you could cite where the  
 11 information is, as you describe it, errant,  
 12 inaccurate, one-sided?

13 A. Yes.

14 Q. Okay. And, is it fair to say --  
 15 strike that.

16 Is it true that Paragraph 78 through  
 17 83 cite some of the instances in the SSCI report  
 18 where you believe that that report is inaccurate,  
 19 errant, et cetera?

20 A. That's correct, correct.

21 Q. Okay. Let's change subject matters.  
 22 You were asked questions about  
 23 learned helplessness. Do you remember that?

24 A. Yes.

25 Q. Turn, if you would, to Paragraph 18

1 of Exhibit Number 46.

2 A. 46 is -- oh, here it is. I got it.

3 Q. Yes, it is the same document -- I'm  
 4 sorry, I said 46. I meant 45. Forgive me.

5 A. Oh, my declaration. Okay. All  
 6 right. I'm looking at what paragraph?

7 Q. Paragraph 18, which appears on  
 8 Page 4. In that paragraph you talk about learned  
 9 helplessness. Do you see that?

10 A. Right. Right.

11 Q. And if I'm reading it correctly,  
 12 you attribute that theory to someone other than  
 13 Drs. Mitchell and Jessen?

14 A. That's right.

15 Q. Okay. Tell me what you meant by  
 16 that.

17 A. Well, I mean, first of all, as I --  
 18 let me look. This is a meeting at the White  
 19 House. Yes. This is a meeting at the White  
 20 House.

21 Yes, well, I wasn't -- first of all,  
 22 Dr. Mitchell and Dr. Jessen were not with me at  
 23 that meeting at the White House. It was just  
 24 strictly CTC attorneys.

25 And, my recollection is that they,

1 as I say here, outlined the theory of learned  
 2 helplessness, and named a, named a psychologist  
 3 whose name escapes me, but which, who I am  
 4 certain is neither Dr. Mitchell nor Dr. Jessen.

5 Q. Okay. And do you remember what you  
 6 were told about that theory by that doctor whose  
 7 name you can't remember?

8 A. Well, as I said earlier, my layman's  
 9 understanding is that when a detainee reaches the  
 10 point of self-recognition that further resistance  
 11 to questioning, further prevarication is useless,  
 12 and that therefore he becomes compliant.

13 Q. Turn if you would to what has been  
 14 marked previously as Exhibit 44.

15 A. 44.

16 Q. Yes.

17 A. Again, that is what? So I can --

18 Q. It is a, it is a document that  
 19 Mr. Warden redacted so much of, that it is  
 20 impossible for me to say what it is. Maybe he  
 21 could be kind enough to tell us.

22 MR. HANNER: Here you go.

23 THE WITNESS: Okay, I've got it.

24 BY MR. SMITH:

25 Q. Now, you were asked a number of

1 questions about this document. Do you remember?

2 A. I do, yes.

3 Q. Did you ever see this document  
 4 before today?

5 A. I have no idea whether I saw it or  
 6 not. I mean, it is virtually unrecognizable.

7 Q. I understand. Well, it is good to  
 8 know your lawyers are out there protecting your  
 9 information.

10 But, looking at it in its present  
 11 form, is it correct to say that you cannot  
 12 identify this document?

13 A. Yes, that's correct.

14 Q. Okay. And you don't know the author  
 15 of the document?

16 A. No.

17 Q. You don't know the reason the  
 18 document was created?

19 A. No.

20 Q. You have no idea if the information  
 21 that appears in the document is accurate?

22 A. No. Without any --

23 Q. You are not saying it is inaccurate,  
 24 but you can't say that it is?

25 A. No. That's correct.

1 Q. Okay. You have no idea of the  
2 circumstances under which this document was  
3 created?  
4 A. Correct.  
5 Q. And if you turn to exhibit, sorry,  
6 the same exhibit but Bates page U.S. 1581, which  
7 is three or four from the back. You were asked  
8 questions about the individual that is identified  
9 there. Do you remember?  
10 A. Yes.  
11 Q. And, reference is made in this  
12 document to this individual undergoing EITs,  
13 right?  
14 A. Right.  
15 Q. And you don't know if that happened,  
16 correct?  
17 A. Right. Yes.  
18 Q. If it did, you don't know why,  
19 correct?  
20 A. Correct.  
21 Q. Okay. And the same would be true if  
22 you turned to Bates page 1567.  
23 A. Yes, yes. The same.  
24 Q. Okay. Let me ask you this because  
25 you may have alluded to this earlier in your

1 testimony.  
2 During the course of your  
3 participation in these black sites, and these  
4 various forms of detainees, did you learn from  
5 time to time that there were instances where  
6 people at black sites holding low or medium value  
7 detainees were using enhanced interrogation  
8 techniques without authorization and without  
9 following the procedure that had been laid out by  
10 the CIA?  
11 A. Yes. That came to my attention.  
12 That happened from time to time.  
13 Q. Okay. And were those, the people  
14 who did that, they were the people responsible  
15 for running the black sites?  
16 A. Well, running the prisons that they,  
17 the Cobalt and, as I said earlier, my vernacular  
18 black sites were the places where the EITs took  
19 place.  
20 Q. Okay. So these were prisons where  
21 medium value and low value detainees were kept?  
22 A. Correct.  
23 Q. And there were instances where EITs  
24 were applied to these detainees, but in direct  
25 violation of CIA orders?

1 A. Yes, certainly unauthorized  
2 techniques, yes.  
3 Q. And isn't it true that Dr. Mitchell  
4 and Dr. Jessen had absolutely nothing to do with  
5 that?  
6 A. Not as far as I know.  
7 Q. Okay. Did you ever come across any  
8 evidence that they even knew about these actions  
9 being done, these unauthorized actions?  
10 A. I don't recall ever hearing that, no.  
11 Q. Okay. Turn, if you would, to what  
12 was previously marked as Exhibit Number 35.  
13 MR. SMITH: There is three minutes  
14 left on the disk, Mr. Rizzo.  
15 MR. BENNETT: Well, just remember,  
16 Abraham Lincoln's Gettysburg address was  
17 three minutes. So, if he can do it, you can.  
18 MR. SMITH: Thank you for reminding  
19 me.  
20 THE WITNESS: What is 35 again?  
21 BY MR. SMITH:  
22 Q. Exhibit 35 is a memo about the  
23 meeting that you had with Secretary Rice.  
24 A. Oh, that, yes, yes.  
25 Q. Here is what I want to ask you

1 about. Do you remember that meeting?  
2 A. Oh yes, vividly.  
3 Q. Do you remember if Dr. Mitchell at  
4 that meeting said to Secretary Rice that he  
5 didn't believe in nudity?  
6 A. That he, Dr. Mitchell, didn't  
7 believe in it?  
8 Q. He did not believe in it, wanted it  
9 to stop?  
10 A. I don't remember that, no.  
11 Q. Okay. Just so the record is clear,  
12 can you sit here today and say if he were to  
13 testify to that under oath, can you say that you  
14 don't think that is true?  
15 A. No, I just don't remember it, one  
16 way or the other.  
17 Q. Okay.  
18 MR. BENNETT: Any kind of nudity at  
19 all, Doctor?  
20 MR. SMITH: Not by detainees in  
21 connection to the action brought by the ACLU.  
22 BY MR. SMITH:  
23 Q. Do you know, Mr. Rizzo, if the  
24 guards determined how long the prisoners would  
25 remain awake at the prison?



1 were given to me by my counsel. I assume they  
2 came out of the litigation.

3 Q. And do you have any knowledge of  
4 whether Dr. Mitchell and Dr. Jessen's lawyers  
5 were part of the process of crafting your  
6 declaration, even if you didn't speak with them  
7 personally?

8 A. No. I mean, I relied on the  
9 guidance from my attorneys.

10 Q. Okay. So you don't know whether  
11 they were consulted?

12 A. No, I don't.

13 MR. LADIN: Okay. That is all.

14 MR. BENNETT: I very much  
15 appreciate.

16 THE VIDEOGRAPHER: This concludes  
17 the video deposition of John Rizzo. The time  
18 now is 3:04 p.m.

19 (Whereupon, signature having been waived,  
20 the deposition concluded at 3:04 p.m.)

21 \* \* \*

1 CERTIFICATE OF COURT REPORTER

2  
3 UNITED STATES OF AMERICA )  
4 DISTRICT OF COLUMBIA )

5 I, LORI J. GOODIN, the reporter before  
6 whom the foregoing deposition was taken, do  
7 hereby certify that the witness whose testimony  
8 appears in the foregoing deposition was sworn by  
9 me; that the testimony of said witness was taken  
10 by me in machine shorthand and thereafter  
11 transcribed by computer-aided transcription; that  
12 said deposition is a true record of the testimony  
13 given by said witness; that I am neither counsel  
14 for, related to, nor employed by any of the  
15 parties to the action in which this deposition  
16 was taken; and, further, that I am not a relative  
17 or employee of any attorney or counsel employed by  
18 the parties hereto, or financially or otherwise  
19 interested in the outcome of this action.

20  
21 \_\_\_\_\_  
22 LORI J. GOODIN  
23 Notary Public in and for the  
24 District of Columbia

25 My Commission expires: May 14, 2021