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

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

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

Q You had not seen it before?

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

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

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

Q Okay. This exhibit was attached to your declaration.

A Correct. I saw it then.

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

A No.

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

A It looks like it.

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

A Yes.
And if you turn to the top of the second page of it, it says "Services."
Do you see that?
Yes.
And the services are, "Task 1, Provide consultation and recommendations for applying research methodology."
Do you see that?
Yes.
Then it says "CONUS." What does "CONUS" stand for?
CONUS is the US.
And then it says, "Conduct specified applied research projects."
Do you see that?
Yes.
And your testimony is that Dr. Jessen fulfilled the terms of the contract by providing those services; is that right?
Correct.
So back to Dr. Mitchell for a second, did you select Dr. Mitchell to work with CTC?
Once he was recommended and I met Dr. Mitchell, yes, I recommended him to continue working with us.
Q   I want to read you a passage from your
book, and when I say "your book," I'm referring to
the book Hard Measures.

Do you see that there?

A   Yes.

Q   That looks like you?

A   That looks like me.

Q   Yeah, and, and --

MR. BENNETT:  Ill stipulate that

MR. BENNETT:  That's him.

MR. LUSTBERG:  You're so
reasonable.

MR. BENNETT:  Thank you.

BY MR. LUSTBERG:

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

(Exhibit 37 was marked for
identification.)

BY MR. LUSTBERG:

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

A   Yes.

Q   And in the second full paragraph is the
sentence, "Within two days of AZ's capture, we
tracked down the contractor and asked if he would accompany a team of CTC officers to the black site where we hoped Abu Zubaydah would be interrogated."

Do you see that?

A Yes.

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

A Correct.

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

A Correct.

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

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

Q Did you know him at that time?

A I did not know him.

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

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

Q Mm-hmm. Ultimately, though, you were
the one who made the decision to hire him at CTC?

A Yes.

Q Why did you think he was qualified?

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

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

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

Q What did he have "tremendous expertise" in?

A In SERE.

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

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

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

A The expertise I was interested in was SERE.

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

Q How did you know he was highly regarded?
A I was told.

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

You've read that before, right?
A I've read that before.

Q And what's your response to that?
A My response to that is that at some time -- sometimes it is important to do something different, because what's traditionally been done hasn't worked, and this was something different, and it worked very well.

Q So Dr. Mitchell was proposing -- "recommending" was your word -- something different, right?
A Yes.
training program that trains our people how to withstand interrogation tactics. They had knowledge and background on Islamic extremism."

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

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

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

A Correct.

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

A No.

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

A    I have no feeling about it.

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

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

Do you know whether that's true or not?

A    I do not.

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

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

A    I do not know.

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

A    Okay.

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

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

A: True.

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

Is that true?

A: True.

Q: So were you -- did you have expertise in interrogation?

A: No.

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

A: No.

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

A: Only in terms of results.

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

A: At the CIA, many times we take on new jobs, and we don't have any training or
experience. Like myself, I came to CTC. I had never done any CTC work. You come and you learn it, and you very quickly become pretty knowledgeable about it.

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

Do you see that?

A Yes.

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

Do you see that?

A Yes.

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

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

A Yes.

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

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

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

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

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

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

What did you do to vet him? Anything?

Nothing.
of the CIA interrogation program"?

A Who, who describes him?

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

A Okay.

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

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

MR. JAMES SMITH: Perfect. Thank you.

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

BY MR. LUSTBERG:

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

THE WITNESS: Yes.

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

MR. JAMES SMITH: I did.

MR. BENNETT: You objected?

MR. JAMES SMITH: Yes.

BY MR. LUSTBERG:

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

MR. BENNETT: I did.

BY MR. LUSTBERG:

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

So your answer to that question was yes?

A Yes.

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

A Yes.

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

MR. JAMES SMITH: Objection.

Mr. Lustberg, just so we're clear, this is
not the book. This is a draft.

MR. LUSTBERG: That's correct.

BY MR. LUSTBERG:

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

MR. JAMES SMITH: Well,

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

MR. LUSTBERG: Right.

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

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

MR. JAMES SMITH: I hear you.

BY MR. LUSTBERG:

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

Do you see that?

A    What paragraph?
Looking at the first full paragraph on page 55, Dr. Mitchell writes, "A day or so later Rodriguez asked me if I would help put together an interrogation program using EITs." Do you see that?

A Yes.

Q Is that true?

A True.

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

A Yes.

Q To put together an interrogation program?

A Correct.

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

Q Was it correct that you wanted him to craft the program?
A    Correct.

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

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

A    Yes.

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

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

BY MR. LUSTBERG:

Q    Do you have any --

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

Q    The barber downstairs wasn't --

A    He wasn't there.

Q    He wasn't at those meetings?

MR. BENNETT:  I'm sorry.
BY MR. LUSTBERG:

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

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

MR. LUSTBERG:  Yes.  Yes, sir.

Thanks.

BY MR. LUSTBERG:

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

A    Yes.

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

So is it correct that you asked Dr. Mitchell if he would take charge of creating and implementing a program?
A  Yes.

And that program was the program of enhanced interrogation techniques; is that right?
A  Correct.

And you were under instructions at that time from Director Tenet to develop a, an interrogation program; is that right?
A  Correct.

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

Do you see that?
A  Yes.

So this refers to a meeting on July 8, 2002, at headquarters with Drs. Mitchell and Jessen, if you look at paragraph 44.
Q In paragraph 46 it says, "At the conclusion of this meeting, I requested that Drs. Mitchell and Jessen provide me with a written list identifying the potential EITs, describing how they would be implemented and identifying their intended effects upon Zubaydah."

Do you see that?

A Yes.

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

A Correct.

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

A Yes.

Q And that -- let me just withdraw it.

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

Thanks.

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

So was the EIT program based upon the
list that Dr. Mitchell had provided to you?

A Yes.

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

A Correct. I'm sorry.

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

A Correct.

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

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

A Yes.

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

A Yes.
1      Q      Did you request approval for techniques
2    other than those that were set forth on the list
3 provided by Drs. Mitchell and Jessen?
4    A      I don't recall that.
5      Q      Okay, and this became, this became the
6 formal interrogation -- ultimately when there was
7 approval granted for at least some of them, this
8 became the formal interrogation plan of CTC; is
9 that correct?
10    A      Yes.
11               MR. JAMES SMITH:  Objection.
12               THE REPORTER:  Did you object?
13               MR. JAMES SMITH:  Yes.
14 BY MR. LUSTBERG:
15      Q      Okay, and in particular, if you look at,
16 in your declaration --
17               MR. BENNETT:  Don't worry about it.
18               MR. LUSTBERG:  Yeah, don't worry
19 about that.
20               THE WITNESS:  I'm just asking.
21               MR. LUSTBERG:  Oh, about the
22 objection?
23               THE WITNESS:  The objection, yeah.
24               MR. BENNETT:  I have no idea.
25               MR. LUSTBERG:  To be honest,
neither do I, but he knows. That's good.

BY MR. LUSTBERG:

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

A    Mm-hmm.

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

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

A    Yes.

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

A    Correct.

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

A    I believe that's right.
Okay. It's important, it's an important fact, so if you could take a look and see if that's --

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

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

Yes.

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

Are you asking me?

Yes.

A cable? A cable, do you mean?

Mm-hmm.

I have to read it.

Take your time.

(Witness peruses document.)

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

(Witness peruses document.)
THE WITNESS: No date?

BY MR. LUSTBERG:

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

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

Q    Right.

A    The date matters, but . . .

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

A    Let me finish here.

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

(Witness peruses document.)

BY MR. LUSTBERG:

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

A    Yeah, what's your question?

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

When it says "preapproved," who preapproved them?

MR. JOHNSON: Objection.

MR. LUSTBERG: Okay, let me -- I'll withdraw the question.
the techniques that have been proposed by Drs. Mitchell and Jessen, right?

A Yes.

Q I want to show you Exhibit 38.

(Exhibit 38 was marked for identification.)

BY MR. LUSTBERG:

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

A Read the whole thing?

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

A Okay.

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

A Correct.

Q Do you recognize this, by the way?

A No.

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

What does "DCI" stand for?

A Director of Central Intelligence.

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

A  Yes.

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

A  He would have issued it based on our input.

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

A  Yes.

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

A  Do you see that?

A  Yes.

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

A  Yes.

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

So again -- I'm sorry. I don't mean to
be mysterious. These techniques are attention grasp, walling, facial hold, facial slap, abdominal slap, cramped confinement, wall standing, stress positions, sleep deprivation beyond 72 hours, use of diapers for prolonged periods, use of harmless insects, the waterboard, and this says "and such other techniques as may be specifically approved."

Do you see that?

A  Yes, I see that.

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

A  Yes.

Q  Let me --

A  I'm sorry. Yes.

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

A  Yes.

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

A  Only one.

Q  To Cobalt?

A  Yes.

Q  Okay. Cobalt was a -- so these
techniques were applied at Cobalt; is that right?
A    I assume so.
Q    And when you say you "assume so," if
this went to Cobalt and these were the approved
techniques for Cobalt, then they would have been
the ones that would have been allowed to be used
there, correct?
A    I just don't know if they were used in
that precise location.
Q    Okay. You don't know if they were used,
but you know that they were approved for use
there?
A    They were approved for use, yes.
Q    Okay. So just to make it clear, the
techniques that Dr. Mitchell and Dr. Jessen had
proposed were formalized in certain documents,
correct?
A    Yes.
Q    And this is one of those documents that
formalized the use of those techniques, right?
A    Yes.
Q    And, and then they were approved for use
at Cobalt, correct?
A    And beyond.
Q    Okay, but for purposes of -- you can
1 tell that, from this, that they were used for,
2 they were approved for Cobalt, correct?
3 A Correct.
4 Q And you say they were also approved for
5 other sites?
6 A Once the enhanced interrogation
7 techniques were approved, we used them at
8 different sites.
9 Q Okay. That's because that was -- that
10 became the enhanced interrogation program for the
11 CIA, right?
12 A True.
13 Q You don't know -- you are aware that two
14 of the plaintiffs here are Salim and Soud. Do you
15 know those names?
16 A Yes.
17 Q You know that just from, by virtue of
18 this case?
19 A By virtue of this case, yes.
20 Q Do you know whether these techniques
21 were used on Salim -- any of these techniques were
22 used on Salim and Soud?
23 A They were not.
24 Q They were -- you know that they were
25 not?
1 correct?

2 A No.

3 Q You weren't there?

4 A Correct.

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

6 A Correct.

7 Q Okay.

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

9 Q Okay, thank you.

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

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

12 A Mm-hmm.

13 Q Correct?

14 A Yes.

15 Q And Dr. Mitchell attended that meeting.

16 Do you see that?

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

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

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

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

Yes.

Okay, and I guess my question is -- in paragraph 45, which is two pages later, you say, "I do not recall a specific discussion about
'learned helplessness' during this period, and it was not something I focused on," which is what you just said, "though I may have heard the term." So I'm trying to understand how those two paragraphs fit together.

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

A I assumed that he did.

MR. BENNETT: Don't assume.

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

BY MR. LUSTBERG:

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

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

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

A No.

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

A No.

Q And you have no knowledge of experiments in the --
1      A    No.
2      Q    -- area of learned helplessness?
3      A    No.
4      Q    Thank you.
5      A    Okay. I want to -- I want to move on to
6      Q    the issue of, that you've discussed a few times,
7      A    about how these techniques got authorized.
8      Q    Okay.
9      A    You have written on a number of
10     Q    occasions and said that you wanted to make sure,
11     A    before any of this happened, that it was legal,
12     Q    right?
13     A    Correct.
14     Q    And let me ask you -- yeah, that's a
15     A    memo. The -- why were you so concerned about
16     Q    that?
17     A    Because I had worked in other programs
18     A    where we came back -- they came back to haunt us
19     A    regarding the legality and the authorities, and I
20     A    wanted to make sure that that did not happen
21     A    again.
22     Q    Did you have particular doubts as to
23     A    whether this program was legal?
24     A    No, no.
25     Q    So when you were -- and as you write
A    No, it didn't give me any concern at all. It was just bureaucracy working slowly through the process.

Q    Same, same with regard to the tapes?

A    Yes.

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

A    Correct.

Q    Can I ask with regard to the tapes -- we might as well do it this way. What was the reason why you felt that it was important to have the tapes destroyed?

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

Q    And when you say "protect" them, you wanted to make sure that their identities did not get released, because that could endanger them; is
that right?
A Correct.
Q Was there any consideration given to the fact that, you know, there's technology that can pixelate the, you know, the photographs or otherwise obscure who the identities of the people on the tapes are?
A I was not about to take that chance.
Q So you thought that it would be too risky to try some other technology, that the only safe way to do it was to actually destroy the tapes?
A True.
Q Was there any other reason at all that you wanted the tapes destroyed?
A Well, that was the primary reason.
Q Was there a secondary reason?
A Well, a secondary reason, as I have said publicly, was that the public, the media would not make a distinction, once the tapes were released, between a legally approved program, that this was, and the Abu Ghraib scandal that involved illegal activity.
Q So let me make sure I understand that. You were concerned that the media would, would use
the tapes in a way that would make the CIA look bad?

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

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

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

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

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

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

Q You said that they were concerned about it?

A Yes.

Q How do you know that?

A They talked to other people that I know.
Q Okay, but, but they did not talk to you about it?

A I don't recall.

Q Okay. They may have?

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

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

A No.

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

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

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

A Maybe not.

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

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

MR. JAMES SMITH: Objection.

BY MR. LUSTBERG:

Q Just back to the question of the legality of the enhanced interrogation techniques,
grant a formal declination of prosecution, in
advance, for any employees of the United States,
as well as any other personnel acting on behalf of
the United States, who may employ methods in the
interrogation of Abu Zubaydah that otherwise might
subject those individuals to prosecution under
Section 2340A of Title 18 of the United States
Code as well as under any other applicable U.S.
law."

Do you have any knowledge of that
request?

A  Well, this is from the Office of General
Counsel, so I assume they made that request.
Q  Oh, you're saying that you were not
aware of it?
A  I probably was aware of it, but I don't
recall. I don't have any specific recollection.
Q  Okay. So let's go back to your -- you
can just put it there -- the, um, your effort to
gain approval from the Department of Justice for
these techniques. You -- in doing, in seeking
that approval, you explained to the Department of
Justice, didn't you, that the techniques were
based on experience with the SERE program, right?
A  Our lawyers did.
Q Mm-hmm. Let's -- in your -- if you go
to your declaration and turn, if you would, to
Exhibit L.

MR. BENNETT: Can we take a minute?
MR. LUSTBERG: Absolutely, yes.

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

(Whereupon, the lunch recess was
taken.)

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

MR. LUSTBERG: Thank you.

BY MR. LUSTBERG:

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

Do you remember that?

A Yes.

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

A Correct.

Q Okay, and what exactly were you told
about the applicability of the SERE program to these, to these techniques?

MR. JAMES SMITH: Objection.

BY MR. LUSTBERG:

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

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

A    That there was a good chance it could work.

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

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

MR. BENNETT: You answered the question.

BY MR. LUSTBERG:

Q   You don't remember a discussion of that?

A    I don't remember a discussion about that.
Q      Okay. So --

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

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

MR. BENNETT: I know you are.

BY MR. LUSTBERG:

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

A    Okay.

(Witness peruses document.)

BY MR. LUSTBERG:

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

A    Okay.

Q    Just let me know when you're ready.

A    Okay.

(Witness peruses document.)

THE WITNESS: Okay.

BY MR. LUSTBERG:

Q    Just directing your attention to the bottom of the first page -- well, first of all,
1 problematic?

2 A No, because we also -- the agency played
3 a role in assessing their effectiveness.
4 Q The agency also assessed their
5 effectiveness?
6 A Yes.
7 Q Were you involved in that?
8 A Not formally, but in, in measuring their
9 accomplishments I was.
10 Q Later on -- let me see if I have the
11 right numbers here. On page 48, same series, if
12 you look at conclusion 17 on the top of page 48,
13 it says, "The CIA improperly used two private
14 contractors with no relevant experience to
15 develop, operate and assess the CIA detention
16 interrogation program. In 2005 the contractors
17 formed a company specifically for the purpose of
18 expanding their detention and interrogation work
19 with the CIA. Shortly thereafter, virtually all
20 aspects of the CIA detention interrogation program
21 were outsourced to the company. By 2006 the value
22 of the base contract with the company, with all
23 options exercised, was in excess of $180 million.
24 In 2007 the CIA signed a multi-year
25 indemnification agreement protecting the company
1 and its employees from legal liability."
2 That's the language from the SSCI
3 report, right?
4 A This is from the CIA response.
5 Q So they're, they're responding to that?
6 A Right.
7 Q And on the next page it says, "We
8 acknowledge that the agency erred in permitting
9 the contractors to assess the effectiveness of
10 enhanced techniques."
11 Do you see that?
12 A The next --
13 Q Next page.
14 A Page 49?
15 Q 49, yes, at the very top.
16 "They should not have been considered
17 for such a role, given their financial interest in
18 continued contracts with the CIA."
19 Do you agree with that?
20 A Yes.
21 Q During the time period that the enhanced
22 interrogation techniques were being used, were
23 they being evaluated?
24 A The techniques or --
25 Q Yeah, the effectiveness of them.
A    Yes, they were.

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

A    The evaluation was based on results.

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

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

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

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

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

A    No.

Q    It was not?

A    No.

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

MR. LUSTBERG: I'm asking him if --

MR. JAMES SMITH: Why don't we ask

the government if they gave us all the
documents we're entitled to?

MR. LUSTBERG: You'll have an

opportunity to ask your questions.

THE WITNESS: I don't know.

BY MR. LUSTBERG:

Q Your understanding from somewhere was

that he was an enemy combatant?

A Yes.

Q Did you ever see a piece of paper that

said that?

A I don't recall.

Q In paragraph 91 it talks about how

Mr. Salim, the plaintiff here, was designated as

an enemy combatant.

Do you see that?

A Yes.

Q Let me show you Exhibit 40.

(Exhibit 40 was marked for

identification.)

BY MR. LUSTBERG:

Q Have you ever seen this before?
A No.
Q So this was not, certainly not something that you had seen before you signed the declaration saying that, that Mr. Salim was not an enemy combatant, right?
A I don't remember these individuals, Salim or Soud.
Q You don't remember any of them?
A I don't.
Q And when you go through -- so do you have any personal knowledge as to whether he was or was not an enemy combatant?
A No.
Q And is that true with regard to Mr. Rahman and Mr. Soud as well?
A It's my understanding, but I don't have personal direct knowledge.
Q Okay. I see where you say, for example, in paragraph 102, "It is my understanding that Dr. Mitchell came in brief contact with Rahman even though he was not classified as an HVD."
A Do you see that?
Q Yes.
A When you say it's your "understanding," that means you don't have personal knowledge,
1 right?

2 A Correct.

3 Q And when you say in paragraph 105, "It is my understanding that Dr. Mitchell observed Rahman one evening at Cobalt while Dr. Mitchell was traveling with Abd Al-Nashiri as he was rendered to black-site Green," that was also not based on your personal knowledge, it was based upon your understanding?

4 A Correct.

5 Q When you say it's based on your understanding, that's an understanding you got by speaking to somebody else?

6 A By seeing these and seeing some of the --

7 Q By seeing "these" being?

8 A Exhibits, exhibits here.

9 Q Okay. What, what exhibit were you looking at in order to come to the conclusion that Dr. Mitchell came in brief contact with Rahman even though he was not classified as an HVD?

10 A I'll have to go through it. I don't remember.

11 Q But you, you think you saw a piece of paper that said that?
Q And why was there never a question in your mind?

A Because we had received the proper authorities from the Justice Department. Those authorities, by the way -- they had given us verbal authorities. We said no, we want a written authority, and we got those. We thought that legally we were covered, and we went to work, so I never had any issue with it.

Q And was there ever any question in your mind that the direction that you gave to Drs. Mitchell and Jessen was legal at all material times?

A It was, it was legal, and we were basing this legality on binding legal opinions from our own Justice Department.

This was not just the CIA lawyers telling us. This was, you know, our government. The OLC, as you know, is the organization in government that provides this type of opinion, and that's what we got. Some people have asked me, well, did you feel like you needed to consult other people? I said, you know, are we supposed to go hire a lawyer to get a different point of view? We are operators. We're clandestine
operators. We rely on the government to tell us what's legal and what's not. When we got the opinion that it was legal, we went to work.

MR. JAMES SMITH: Thank you, Mr. Rodriguez. We have no further questions of you at this time.

THE WITNESS: Thank you.

MR. LUSTBERG: I have just a few questions. Can I get the mic back?

MR. JAMES SMITH: You can't have it back. You don't need it.

FURTHER EXAMINATION BY COUNSEL FOR PLAINTIFFS BY MR. LUSTBERG:

Q Okay. Just a few questions for you, Mr. Rodriguez, and then we'll be finished.

First, mostly what I'm going to ask you about is the individual plaintiffs here.

A Okay.

Q With regard to Mr. Salim --

A Okay.

Q -- do you have any personal knowledge of what his activities were prior to his being captured?

A No.

Q Do you have any personal knowledge
regarding the circumstances of his capture?

A    No.

Q    Do you have any personal knowledge regarding his treatment in captivity?

A    No.

Q    Second, with respect to plaintiff Ben Soud, do you have any personal knowledge of his activities prior to capture?

A    No.

Q    Do you have any personal knowledge about the circumstances of his capture and/or rendition?

A    No.

Q    Do you have any personal knowledge at all with regard to the way he was treated in captivity?

A    No.

Q    With regard to Rahman, you said you've read materials with regard to that?

A    Correct.

Q    You have no personal knowledge, however, with regard to it; is that correct?

A    I was not there. I was -- I was not there.

Q    Right. You didn't observe anything yourself?
1      A    Correct.
2      Q    And did you, by the way, have any
3 conversations with regard to Rahman with either
4 Dr. Mitchell or Dr. Jessen?
5      A    I don't recall any.
6      Q    They didn't report to you about what was
7 happening there?
8      A    They, they didn't. You know, once that
9 investigation -- once something like this happens,
10 the IG takes over and there are referrals to
11 Justice, and that's the end of it. We wait for
12 them to come back and tell us what happened.
13      Q    So with regard to, to Mr. Rahman, you,
14 whatever inquiries you might have made, you didn't
15 make, because it was under investigation by the
16 authorities, correct?
17      A    Yes.
18      Q    Let me show you Exhibit 44.
19            (Exhibit 44 was marked for
20            identification.)
21 BY MR. LUSTBERG:
22      Q    This won't take you that long to read.
23      A    I was looking for a trick.
24      Q    I'll direct you.
25      Okay. Let me direct your attention
A Upon capture -- I don't know. I don't know if there was a label that was put on that says, okay, this is it, you know, but we, we knew who they were, and they immediately were sent to a black site.

Q As between medium-value and low-value detainees, you said those were in two other categories. Who made the decision as to whether somebody was a medium-value versus a low-value detainee?

MR. JOHNSON: Just note, we're not waiving the question itself, but no names or identifying information.

MR. LUSTBERG: Right.

BY MR. LUSTBERG:

Q Just so it's clear, did you make the decision as to who was a medium-value versus low-value detainee?

A No.

Q Somebody else at the CIA did?

A I think the definition was if they had information that was threatening to the US government or persons, that that was the standard.

Q But somebody would have to assess that, and so I'm asking whether that person was you.
The CTC is a huge vast place with a lot of people making decisions like this, made somewhere else.

Dr. Mitchell and Dr. Jessen did not select which detainees were high-value --

No.

-- detainees, did they?

No.

So they designed a program for the CIA to get prisoners to talk, but the CIA would decide which prisoners to apply it to; is that right?

That is correct.

And Dr. Mitchell and Dr. Jessen consulted continuously for the CIA the entire time that enhanced interrogation techniques were used by the CIA, right?

Correct.

And they continued to consult on the EITs for years after Abu Zubaydah, right?

Yes. There were a couple times when they were stopped altogether because of legal action or because of whatever, so there were a number of times when there was a hiatus in the use of any techniques.

Okay. Hiatus in the use of any enhanced
interrogation --

A   Yes. For example, the 2004 Office of Inspector General report came out. Because of the allegations in that report, I think a decision was made to stand down until we were able to get clarification from Justice Department, and then when the '05 -- there was the Hamden case, and there was something else in 2005 in December where again we had to suspend it, because we felt that the legal, the legal ground that we had was being eroded, and we were concerned that our officers were not being protected.

Q   Okay. So there were times when the program was suspended because there was concern with its legality later on?

A   Because of the OIG report and because of the, the watering down of the legal authorities that we had received back in 2002.

Q   When you say "watering down," what do you mean?

A   The solid legal ground that we had in 2002, that memo that we received from Justice Department in August of 2002, telling us that the ten techniques were legal, they began to erode legally.
Q  Just three more questions.

So the whole time, Dr. Mitchell and Dr. Jessen's role was to consult, and the CIA's role was to decide which detainees would be subject to the enhanced interrogation techniques; is that right?

A  We, we were the ones that provided them the plan. We were the ones that told them, look, we can use these interrogation techniques on these individuals.

Q  With respect to specific individuals?

A  Yes.

Q  So the last question has to do with your discussion that you had with Mr. Smith regarding the success of the program.

A  Correct.

Q  First of all, with regard to Mukhtar, that's Khalid Sheikh Mohammed.

A  Yes.

Q  And Padilla, that was all before the enhanced interrogation --

A  Correct.

Q  -- techniques, right?

A  Correct.

Q  So those successes are not attributable
to the enhanced interrogation techniques, are they?

A No, they are not, and I think I was clear on that.

Q Yeah, and you said when you were testifying with regard to this, that this is important to you, it's on important part of --

A Right.

Q -- what you were involved in and what your --

A Correct.

Q -- legacy is, right?

A Yes.

Q And that's one of the reasons why you react so strongly to the SSCI report, right?

A Well, in addition to the fact that it's factually wrong and it's, it's not right, what they allege.

MR. BENNETT: Can we go off the record for just one second.

THE VIDEOGRAPHER: 4:40 p.m., off the record.

(Whereupon, a short recess was taken.)

THE VIDEOGRAPHER: 4:41 p.m., we're
BY MR. LUSTBERG:

Q    Just to follow up on that point, but leaving aside that whatever the factual inaccuracies are, one of the things that bothers you is that the SSCI report says that this program didn't work when you say it did work, right?

A    Exactly right.

Q    And to the extent that this lawsuit is an attack -- do you view this lawsuit as an attack on those techniques?

A    Well, I just, I just think it's very unfair to have Jim and Bruce sued on cases where they were not even involved, you know, so in that case I just think it's unfair.

Q    Okay, so you think it's unfair because they were not involved with --

A    They were not -- they have been charged with something that they were not even involved in.

Q    And, and they were not involved in it because your position is that the enhanced interrogation techniques that they designed were not used on those detainees?

A    They were not involved, because they
CERTIFICATE OF SHORTHAND REPORTER -- NOTARY PUBLIC

I, Laurie Bangart, Registered Professional Reporter, Certified Realtime Reporter, the officer before whom the foregoing deposition was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my supervision; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 18th day of March, 2017.

My commission expires: March 14th, 2021

_____________________________
LAURIE BANGART
NOTARY PUBLIC IN AND FOR
THE DISTRICT OF COLUMBIA