

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

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UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Criminal No.
)	09-10030
vs.)	Peoria, Illinois
)	October 28, 2009
ALI SALEH KAHLAH AL-MARRI,)	
)	
Defendant.)	

SENTENCING HEARING
VOLUME 1 OF 2

BEFORE:

HONORABLE MICHAEL M. MIHM
United States District Judge

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Proceedings recorded by mechanical stenography, transcript
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1 THE COURT: Good morning. This is the case of
2 the United States of America vs. Ali Saleh Kahlah
3 al-Marri, criminal number 09-10030. I would like counsel
4 to please stand and identify yourselves, that is anyone
5 who is of record in the case. Let's start with the
6 Government.

7 MS. BALTES: Good morning, Your Honor. Joanna
8 Baltès on behalf of the United States.

9 MR. RISLEY: David Risley from the U.S.
10 Attorney's Office on behalf of the United States.

11 MR. SMITH: Lee Smith on behalf of the
12 defendant.

13 MR. LUSTBERG: Good morning, Your Honor.
14 Lawrence S. Lustberg on behalf of the defendant.

15 MR. SAVAGE: Good morning, Your Honor. Andrew
16 Savage on behalf of the defendant.

17 THE COURT: Good morning. We are here today
18 because Mr. al-Marri previously entered a plea of guilty
19 to Count 1 of an indictment charging conspiracy to provide
20 material support and resources to a foreign terrorist
21 organization, that being al-Qaeda.

22 At the time of the plea, the Court directed the
23 probation office to prepare a pre-sentence report. That
24 was done. Copies were made available to everyone,
25 including the defendant.

1 Let me ask some representative from defense
2 counsel, have you had an adequate opportunity to read this
3 report and review it with your client?

4 MR. LUSTBERG: Yes, Your Honor.

5 THE COURT: Based on your reading and review, do
6 I understand correctly that you have identified formally
7 two objections to the report?

8 MR. LUSTBERG: Yes, Judge. Just to flesh this
9 out a bit, we had fairly extensive contact with the
10 probation officer, Ms. Kennedy in particular, who was
11 extremely instructive and productive, and as a result of
12 the conference calls that we had we were able to resolve
13 all other objections that we initially filed and so those
14 two are the only ones that remain.

15 THE COURT: Okay. And I do want to comment on
16 that, too, because I had spoken with the probation office
17 and I want to thank her for her good work and also counsel
18 for both sides because I believe we started out with about
19 30 objections and it's now down to two, so that's very
20 good.

21 MR. LUSTBERG: Good progress.

22 THE COURT: Okay. Now, Mr. al-Marri, have you
23 had a reasonable opportunity to read this report and
24 review it with your attorneys?

25 MR. AL-MARRI: Yes, Your Honor.

1 THE COURT: Based on your reading and review, is
2 it correct that you have identified the objections that
3 your attorney has referred to?

4 MR. AL-MARRI: Yes, Your Honor.

5 THE COURT: And we will resolve those during the
6 course of this hearing. And also you understand you will
7 have an opportunity to present evidence in mitigation and
8 will also have the opportunity to make a statement to the
9 Court on your own behalf before I impose sentence. Do you
10 understand that?

11 MR. AL-MARRI: Yes, Your Honor.

12 THE COURT: Thank you.

13 MR. AL-MARRI: I will.

14 THE COURT: Let me ask the Government, are you
15 aware of anything in the report that is inaccurate?

16 MR. RISLEY: No, Your Honor.

17 THE COURT: Let me make a few introductory
18 comments here and then tell you how I think we should
19 proceed. I'm certainly open to input from everyone on
20 this.

21 But I know that there have been two formal
22 objections filed. One is an objection to page 16,
23 paragraph 56, claiming that there's no evidence that the
24 defendant contributed material support with the intent,
25 knowledge or reason to believe that that would be used to

1 commit or assist in the commission of a violent act and
2 that involves guideline 2M5.3(b)(1)(E).

3 The second objection is an objection to page 16,
4 paragraph 58, claiming that the defendant should have been
5 given a downward adjustment for what is claimed as his
6 minimal or minor role in the offense and that involves
7 guideline number 3B1.2.

8 In reading over all of this material that has
9 been presented, it seems to me that while they perhaps
10 have not been stated formally as objections as they
11 sometimes are in pre-sentence reports, it seems to me that
12 there are two other objections that the defense is
13 pursuing here.

14 One: That there should be a downward departure
15 because the criminal history VI overstates the criminal
16 history and the defendant's likelihood to recidivate. Is
17 that correct?

18 MR. LUSTBERG: Yes, Your Honor. We, as the
19 Court is aware, filed that as a departure application
20 because that's the way 4A1.3 is styled and we discussed
21 that, both of our departures, with probation and thought
22 that would be most helpful to the Court, but we're happy
23 to deal with it any way Your Honor wishes.

24 THE COURT: The other item is a claim that there
25 should be a downward departure because of the length and

1 harshness of conditions of confinement. Correct?

2 MR. LUSTBERG: Correct, Judge.

3 THE COURT: Well, what I would like to do here,
4 I would suggest what we do is this. I understand that
5 each side has one or two witnesses and are they available
6 now?

7 MR. RISLEY: Yes. For the Government we have
8 one, Your Honor.

9 THE COURT: How many witnesses do you have?

10 MR. LUSTBERG: We have two, Judge, and they are
11 available.

12 THE COURT: What I was going to suggest is that
13 we take the witness testimony first and then we'll go
14 through and address each of the objections, then the
15 Government will have -- if in addition to the witness you
16 have any other evidence in aggravation, you'll have the
17 opportunity to present that. The defense can present any
18 additional evidence in mitigation. Then I'll hear
19 statements from counsel as to what the sentence should be
20 and from the defendant and then the sentencing will occur.
21 Is that procedure acceptable to both sides?

22 MR. LUSTBERG: Yes, I think it is, Judge. We
23 spoke to the Government before this and given the nature,
24 really the thrust of the defense's presentation, which is
25 that we're requesting this departure and given in

1 particular the nature of the testimony that we're going to
2 present, I think both sides were in agreement that it
3 might make sense -- of course it's up to Your Honor -- for
4 the defense witnesses to go first.

5 THE COURT: That's fine.

6 MR. LUSTBERG: Because the Government's witness
7 is more in the nature of rebuttal, I think, of our
8 presentation. I don't mean to speak for them.

9 THE COURT: That's fine. Are you prepared to
10 present a witness now?

11 MR. LUSTBERG: Mr. Savage will present our first
12 witness, Your Honor.

13 THE COURT: Thank you.

14 MR. SAVAGE: Good morning, Judge.

15 THE COURT: Good morning.

16 MR. SAVAGE: Judge, I did have some remarks I
17 would like to make if that is permissible for the Court at
18 this time.

19 THE COURT: If they are involved specifically
20 with your positions, yes.

21 MR. SAVAGE: Judge, I first would like to thank
22 the Court for the courtesies that were extended by both
23 the magistrate court and the district court during our
24 representation of Mr. al-Marri.

25 In today's presentation we have striven as best

1 we could to properly prepare ourselves to give the Court
2 an idea of the life of Mr. al-Marri over the past eight
3 years. In considering the complicating factors of that,
4 such as the distance between the witnesses who are now
5 scattered about the country, the volume of information
6 which is literally thousands and thousands of pages, both
7 handwritten documents and more recently electronic
8 documents, however which did not have a search capability,
9 it was not an easy task. We have also attempted to speak
10 to a number of witnesses which the Government has made
11 available in the past month, primarily those who were
12 concerned with the custody of Mr. al-Marri at the facility
13 in Charleston, and we have been successful in doing that
14 and today we will present two witnesses who supervised his
15 custody. One is a civilian witness, Sandy Seymour, the
16 highest ranking civilian at the Brig at that time, and
17 also one of the last commanders of the Brig who supervised
18 his custody.

19 In the last month, just on September 21, we got
20 the first production of documents. Those were, as you
21 might recall, the electronic log documents from the Brig.
22 I think they consisted of some 36,000 entries. In
23 addition to that there were 15 handwritten logs maintained
24 at the Brig, five for each of the detainees that were
25 there, consisting of thousands of pages. In addition to

1 that there were videos that were maintained 24 hours a
2 day, 7 days a week, some of which became available just
3 this past week.

4 Having given us that information, we -- for
5 instance, the videos were in five different formats, none
6 of which were compatible with each other, so we have had
7 to review them, edit them, sift them to put them together
8 for this presentation. I say that only because we're
9 going to do our best effort to make this a smooth and
10 hopefully persuasive application to this Court.

11 There are, however, some things which I think
12 the Court should note that we have not received all the
13 information that we would like to present to the Court.
14 By way of example is the computer which was taken from
15 Mr. al-Marri at or about the time of his initial detention
16 was examined by the United States Government and certain
17 opinions were rendered regarding the contents of that
18 computer.

19 Months ago we asked the Government if we could
20 interview the examiner of that computer. That request was
21 denied. We were -- then it was suggested to us that we
22 submit a series of questions to the Government regarding
23 the examination of that computer and we did so. Those
24 submissions were offered to the Government in August. We
25 have not received a response.

1 I say that only to give you background because
2 we have offered in part of our submission to the Court for
3 sentencing purposes opinions of various computer experts,
4 former head of the FBI forensic computer lab, that the
5 information that was rendered by the Government regarding
6 the content of that computer, regarding the ability of
7 that computer and regarding the research conducted in that
8 computer was false. Nonetheless we don't have -- we have
9 not had an opportunity to speak to that examiner to see
10 what we may have missed.

11 Additionally we have sought permission to speak
12 with a federal agent by the name of Tim Kirkham who was,
13 as I'm understanding, the head of the anti-terrorism and
14 counter-terrorism in this district for several years. He
15 had an opportunity, along with another Government
16 representative, to speak to Mr. al-Marri on the evening of
17 his guilty plea and spoke to him for some eight hours. We
18 were told that he was out of the country and unavailable.
19 We were recently told that he's back in the country, but
20 we have not had an opportunity to speak to him. We
21 thought it would be important for the Court to know the
22 attitude, transformation that Mr. al-Marri underwent the
23 past eight years.

24 Having said that, we do have available Mr. Sandy
25 Seymour. We would ask him to come to the witness stand at

1 this time.

2 MR. RISLEY: Your Honor, before that happens,
3 may the Government have an opportunity to respond to some
4 of the allegations that were made that are unrelated to
5 the testimony of this witness?

6 THE COURT: Go ahead, but please be brief.

7 MR. RISLEY: I will. Your Honor, I'm a bit
8 perplexed, also a bit offended by some of these
9 accusations. Let's take the computer first for example.

10 There was a stipulation as part of the factual
11 basis for the plea agreement as to the pertinent contents
12 on the computer, including the fact that there was
13 evidence of research into cyanides and sulphuric acid.
14 Those were the pertinent facts. Those are the only facts
15 of which I'm aware that the Government has been asserting
16 about the computer other than the fact that it had -- the
17 uncontroversial fact that it had an anonymizing program on
18 it.

19 Now for the defense to now assert that they have
20 had examiners who have looked at the computer and
21 determined that those facts to which the defendant
22 stipulated and personally admitted to the Court at the
23 time of his guilty plea are false surprises me for two
24 reasons. Number one: They were stipulated. Number two:
25 My reading of the reports of their forensic examiners

1 confirmed those two facts, not denied it. They did
2 contest all sorts of allegations that the Government has
3 never asserted, kind of paper tiger sort of or strawman
4 sort of arguments, but at no time has the defense ever
5 asserted to the Government up until now that the facts
6 stipulated in the plea agreement were false. That raises
7 some issues in itself.

8 Now as to the examination of the computer, there
9 were questions that were posed to us about subjects that
10 the Government was not asserting and in the course of our
11 conversations there was never any suggestion that there
12 was still a lingering need for those to be answered. We
13 have done everything we could to accommodate the defense
14 in its independent examination of the computer.

15 Now, secondly, as to Tim Kirkham, Tim Kirkham is
16 a Government witness. He's an FBI agent. There are
17 procedures which we pointed out from the beginning -- in
18 fact, we made reference to them at the time of the change
19 of plea hearing, as I recall, or one of the subsequent
20 hearings -- that the defense has to comply with. There
21 are federal regulations before a federal employee,
22 especially an FBI agent with a security clearance as
23 Mr. Kirkham does and with access to sensitive information
24 that he has, there are certain procedures the defense has
25 to go through. Most recently when this request for his

1 testimony was renewed, we again pointed out they have yet
2 to comply with those regulations. I cited them to the
3 defense. I told them there was an affidavit that has to
4 be filed, that there are approvals that have to be
5 obtained, and also pointed out that we were not trying to
6 be obstructionist. It simply is that we are required by
7 federal regulations to obtain that approval before he can
8 testify. We then received an e-mail that the defense did
9 not want to call him as a witness. Now those I think are
10 the facts. I'm a little surprised by these allegations.

11 THE COURT: All right. Well, I'm going to
12 comment on this briefly and then we're going to get to the
13 point.

14 I first of all want to say that I think if my
15 math is correct, the Court has reviewed approximately a
16 thousand pages of briefs and exhibits that have been
17 submitted by one side or the other in preparation for
18 today's hearings. Concerning this accusation about the
19 computer, the bottom line on this is the defense has never
20 come to the Court to my knowledge or at least in recent
21 days or recent weeks and asked me to force the Government
22 to do something. I would normally expect if you tried to
23 get something from them, as in any other case, and they
24 don't want to comply or can't comply or whatever that you
25 would come to the Court and the Court would resolve that

1 dispute. The same thing is true with the FBI agent. This
2 is the first I've heard about an issue with him. No
3 request was made of me to intervene in that.

4 So one last comment concerning the computer.
5 One of the items that I read in all these exhibits was the
6 defendant's forensic examiner who looked at the
7 information from the computer and my understanding was he
8 did not say that the facts the Government was asserting
9 were false, but rather their conclusions from the facts
10 were not supported by what was contained on the computer.
11 Having said that, call your witness. Who is your witness?

12 MR. SAVAGE: Sandy Seymour.

13 **SANFORD SEYMOUR,**

14 Having been first duly sworn, was examined and
15 testified under oath as follows:

16 **DIRECT EXAMINATION**

17 BY MR. SAVAGE:

18 Q Good morning, Mr. Seymour.

19 A Good morning.

20 Q Mr. Seymour, if you would introduce yourself to the
21 Court in terms of your name, which you've already given,
22 but your address and where you work?

23 A My name is Sanford Edwin Seymour, S-E-Y-M-O-U-R. I'm
24 the former technical director and currently a contractor
25 at the Naval Consolidated Brig in Charleston, South

1 Carolina.

2 Q How long have you been at the Naval Brig in South
3 Carolina?

4 A Twenty years, sir.

5 Q And is that since the day it opened?

6 A Yes, sir, since the day it opened.

7 Q In terms of the management of the Brig, can you
8 identify for the Court where you fit in the management
9 scheme?

10 A I'm the direct advisor and consultant to the
11 commanding officer.

12 Q Are you the senior civilian there?

13 A Yes, sir, I am the senior civilian, or was the senior
14 civilian.

15 Q And you were in that position from 2003 through 2009,
16 earlier this year?

17 A Yes, sir.

18 Q And you were in that position at all times that
19 Mr. al-Marri was present at the facility?

20 A Yes, sir.

21 Q Prior to your engagement at the Brig, what was your
22 background?

23 A I was with the South Carolina Department of
24 Corrections as a deputy warden for approximately 15 years.

25 Q And how many years in total have you been in

1 corrections?

2 A Approximately 35, sir.

3 Q Your presence here today is by request of the
4 defense?

5 A Yes, sir.

6 Q And the Government -- excuse me -- the defense has
7 paid you for your presence here today in terms of
8 transportation, what-not; is that correct?

9 A Yes, sir. That's correct.

10 Q Now let's take a look at this document 131-01.
11 Actually it's a photograph and I would ask you to identify
12 that.

13 A Sir, that's an overhead shot of the Naval
14 Consolidated Brig in Charleston, South Carolina.

15 Q And the mission of the Consolidated Brig prior to
16 2001 was what?

17 A By and large the mission was to return the most
18 people that we could back to active service after doing
19 their time and also preparing those people that could not
20 be taken back to active service to be good citizens when
21 they were released from the Brig.

22 Q So the inmates that were housed at the Brig were all
23 military members; is that correct?

24 A Yes, sir.

25 Q Where it says "consolidated", that represents that it

1 was a joint forces mission; that is the Air Force, the
2 Coast Guard, the Navy, Marine Corps all participated in
3 terms of employees and inmates?

4 A Yes, sir.

5 Q And, in addition, there are also Army detainees there
6 or UCMJ?

7 A Yes, sir.

8 Q If you look over at the overhead, there appears to be
9 like triangular pods. Is that what they are?

10 A Yes, sir. Those are housing units.

11 Q And the one that has just come into view now is known
12 as the special housing unit?

13 A Yes, sir.

14 Q And tell the Court, if you would, what that mission
15 was within the mission of the Consolidated Naval Brig?

16 A That was to house enemy combatants as designated by
17 the President of the United States.

18 Q And during the course of that mission you were in
19 that same position? The position you held covered the
20 special housing unit as it did the UCMJ function; is that
21 correct?

22 A Yes, sir. That's correct.

23 Q Now on June 13 -- do you recognize this photograph?
24 That's June 13 -- or excuse me -- the 23rd of June of
25 2003?

1 A Yes, sir. I recognize that as Mr. al-Marri.

2 Q Is that his booking, if you will, photograph?

3 A Yes, sir, that is.

4 Q And at that time the UCMJ side of the house mission
5 had the same cell structure and cell block structure as we
6 saw in the overhead as the SHU; is that correct?

7 A Yes, sir. That's correct.

8 Q Now let's look at photograph 116-01 and tell us what
9 this is.

10 A That's a standard configuration cell in the special
11 quarters area of the Navy Brig at Charleston, South
12 Carolina.

13 Q Now in the SHU, that cell looked differently. And
14 let's put up a photograph of the SHU cell.

15 A Yes, sir. That's a SHU cell.

16 Q The photograph, for the Court's knowledge, on the
17 left is the standard cell which would include a mattress,
18 which would include a nightstand --

19 MS. BALTES: Objection, Your Honor. I would ask
20 Mr. Savage to ask the witness the questions, please.

21 THE COURT: Sustained. Also, what's the exhibit
22 number on the one on the right? Does that have an exhibit
23 number?

24 MR. SAVAGE: I think they were all one exhibit
25 number.

1 THE COURT: It's all one?

2 MR. SAVAGE: It's all one exhibit number.

3 THE COURT: All group exhibit what? 131-01?

4 MR. SAVAGE: The exhibit on the right is Exhibit
5 No. 132.

6 THE COURT: Thank you.

7 Q Mr. Seymour, if you would, distinguish a standard
8 cell from the operational detainee cell as existed in June
9 of '03.

10 A The difference would be that there is no mattress in
11 the detainee cell and there's no desk and adjoined seat.

12 THE COURT: We have a pointer if you want to use
13 that. It's right there. Go ahead.

14 A That's the bed configuration in the detainee cell and
15 as you see in this photo there is a desk with an adjoined
16 seat.

17 Q On the upper left-hand picture, describe what's in
18 that wall.

19 A Are you speaking of the window?

20 Q Yes, sir.

21 A Yes, sir. That's a window in that standard cell.

22 Q And can you see in and out of that window?

23 A Yes, sir.

24 Q Tell us about the window in the detainee cell.

25 A The window in the detainee cell was blacked out where

1 it could not be seen out of.

2 Q If you would, describe the material of the bed in the
3 detainee cell.

4 A That's a steel high security bunk.

5 Q Where you see these black images on that, what are
6 those?

7 A That's a checkerboard -- those are blank areas in
8 that bunk.

9 Q So that on the right-hand side, is that a smooth
10 surface or is that a -- is it a smooth piece of metal?

11 A No, sir. It's -- those are cut-outs where you see
12 those dark places or spots there.

13 Q Now in the photograph on the left, the UCMJ side of
14 the house, who was in charge of the environmental factors
15 on that side?

16 A That was the Defense Investigation Service.

17 Q The question I repeat on the standard cell.

18 A I apologize, sir. That's -- the Navy Consolidated
19 Brig was in charge of those cells.

20 Q So the commander of the Brig had total decision
21 process in accordance with the rules and protocol of the
22 Brig to make decisions there about environmental factors?

23 A Yes, sir.

24 Q Next, please, 124-001. In terms of the detainee
25 area, who was in charge of that?

1 A That would be the Defense Intelligence Investigation
2 Service.

3 Q 132-001, please. During the stay at the Brig, during
4 its mission for the detainees, how many detainees were
5 there?

6 A Three, sir.

7 Q And were they named or were they used by call
8 letters?

9 A Both. Detainee number 1, detainee number 2, detainee
10 number 3.

11 Q Does that represent when they arrived? Is that what
12 the 1, 2 and 3 would be?

13 A Pretty much, yes, sir.

14 Q So Padilla was there first, along comes al-Marri,
15 then Hamdi was the last one to arrive?

16 A Yes, sir.

17 Q And on certain times they were all there at the same
18 time?

19 A For a period of time, yes, sir.

20 Q Now while they were there, did you keep records of
21 their conduct and of their environment on a regular basis?

22 A Yes, sir.

23 Q 133-01, please. Were those handwritten, at least in
24 2003, in several different logs for each detainee?

25 A Yes, sir.

1 Q There was a general log book?

2 A Yes, sir.

3 Q And that had entries and handwriting for every 15
4 minutes or so?

5 A Yes, sir.

6 Q And there was a passdown log which was information
7 from one shift to the next?

8 A Yes, sir.

9 Q And then there was a separate recreation log, shower
10 log, visitation log, medical log and meal log?

11 A Yes, sir.

12 Q So for each detainee you had those handwritten
13 entries?

14 A Yes, sir.

15 Q In addition to that, 134-001, the Brig staff kept the
16 detainees under 24-hour-a-day, 7-day-a-week surveillance?

17 A Yes, sir.

18 Q And during your review of the records it appears that
19 the video data records between June of '03 and sometime in
20 the spring of '04 were destroyed?

21 A They would have been taped over.

22 Q No longer exist to the best of your knowledge?

23 A Yes, sir.

24 Q Then from the spring of 2004 forward there is
25 sporadic availability? Some exist, some don't?

1 A Yes, sir.

2 Q I say that only to set the stage for the Court's
3 review of the following documents and video. Now as by
4 way of example, 135-001, there would be a handwritten
5 entry into a large book and it would have information as
6 diverse as on the 8th of July somebody told EC -- and this
7 would be EC 2 because they were to each inmate --

8 THE COURT: Is that a name on that document? I
9 thought the names were all going to be --

10 MR. SAVAGE: Judge, the names that you see up
11 here are military employees that are not relevant. This
12 PDL, which is the passdown log, was reviewed by an
13 enlisted supervisor in the cell. What we did was try to
14 redact everyone that was pertinent to this information.

15 THE COURT: Thank you.

16 Q So the log would indicate then on the 8th of July of
17 2003 what?

18 A That Mr. al-Marri was told that he was not to -- that
19 he would not be getting his Quran.

20 Q On the 8th of July on the passdown log entry later,
21 in entry 136-001 --

22 THE COURT: Let me interrupt. These numbers
23 you're using, are those exhibit numbers? Are they page
24 numbers? Are they Bate stamp numbers? What are they?

25 MR. SAVAGE: These are the internal numbers I

1 have used with our audio visual fellow, but that whole
2 thing has been submitted to the Court.

3 THE COURT: I appreciate that, but the record --
4 just for the record, I don't have any problem when you
5 cite one of these numbers of just making that the exhibit
6 number, but the record has to be clear for reference
7 purposes. I would suggest that would be the easiest
8 thing.

9 MR. SMITH: We have paper copies of these, Your
10 Honor.

11 THE COURT: That's fine. For the record, why
12 don't we just say the number and --

13 MR. SAVAGE: And just give --

14 THE COURT: -- use that as the exhibit number.

15 MR. SAVAGE: Thank you, Your Honor.

16 Q Mr. Seymour, Exhibit No. 136-001 is also a passdown
17 log entry for July of '03; is that correct?

18 A Yes, sir.

19 Q What does that indicate?

20 A It indicates that the individual was told that he
21 would not be given toilet paper unless it was needed for
22 bowel movement.

23 Q Now as a general principle at this time, you've
24 already indicated that DIA was in charge of the
25 environmental factors, and were these decisions made by

1 the Defense Intelligence Administration?

2 A The decision would have -- or the request would have
3 been made by the DIA.

4 Q Now on the 10th of July in document 137-001, EC 2,
5 which is the defendant al-Marri, was visited by somebody
6 whose name has been redacted and what was he told?

7 A The log reflects that he was told that he did not
8 have rights.

9 Q Now on the 13th -- the 15th of July, document
10 138-001, he was visited by somebody and he made a request.

11 A It's a question about whether he would have socks or
12 not.

13 Q And the answer was? Do you recall?

14 A I don't recall, sir.

15 Q Do you recall whether or not at this time he had
16 socks?

17 A No, sir. I don't recall.

18 Q Do you recall whether or not there was a pattern of
19 concern regarding the air conditioning and the level of
20 air conditioning in the Brig?

21 A Mr. al-Marri expressed that he was cold.

22 Q Take a look at Exhibit 2-001, please, and,
23 Mr. Seymour, would you tell us the date of this exhibit
24 and what happened that day based on the log entries?

25 A It appears to be September 12, 2003. The first entry

1 says that EC was out of his cell for interview and that he
2 was returned. He left at 16:42 and was returned at -- or
3 was placed in the interview room at 16:46 and the
4 interview began at 16:48. The second entry is at 17:45.

5 Q Those of course are military times that are used in
6 the Brig. Judge, if I may. Mr. Seymour, have you had
7 recent eye surgery?

8 A Yes, and scheduled for more.

9 Q So I just wanted to --

10 THE COURT: Can you read that, sir?

11 A If I could -- if it could be magnified just a little
12 more, please.

13 THE COURT: I'm not sure they can do that.
14 Maybe they can. Does that help?

15 A Yes, sir. The second entry is the end of the
16 interview and he was escorted out of the interview room.

17 Q So the logs included the documentation of when he was
18 taken out of his cell on every occasion and the logs
19 actually include everything he did within his cell whether
20 it was meals or walking or bodily functions or what-not?

21 A Yes, sir.

22 Q And on 12 September he was taken out for interviews?

23 A Yes, as the log says, sir.

24 Q And let's look at 123-001. Does this represent
25 accurately the interview room where he was interrogated?

1 A Yes, sir.

2 Q Does it represent the way he would be earmuffed,
3 goggled, belly chained, handcuffed and leg ironed?

4 A Yes, sir.

5 Q And was he also -- his leg irons were buckled to the
6 floor?

7 A Yes, sir.

8 Q And in that position was he able to say scratch his
9 nose?

10 A Probably not, sir.

11 Q Does that accurately represent where these interviews
12 took place?

13 A Yes, sir.

14 Q Now on Exhibit 03-001, was he again taken out on the
15 13th of September? Your Honor, if I may have the Court's
16 permission to lead him on issues that are not --

17 THE COURT: It think that would be wise under
18 the circumstances. Go ahead.

19 Q I'm looking at document number 400 -- excuse me --
20 3-001, Mr. Seymour, and does it indicate on the 13th of
21 September he was removed from his cell, taken to the
22 interview room for an interview and returned between the
23 hours of 11:04 and 11:23?

24 A Yes, it does.

25 Q And looking at Exhibit No. 04-001, this would be the

1 passdown log which would include information from shift to
2 shift?

3 A Yes, sir.

4 Q And is it directed there that the interrogators asked
5 that until the time -- "We are to take note of all emotion
6 and every little movement of EC 2 per" -- whoever that
7 person was giving the order?

8 A Yes, sir.

9 Q Does it also reflect disparity in the treatment of
10 the enemy combatants who are housed at the Brig in
11 September of '03? For example, EC 1 Padilla was receiving
12 news magazines as a gift from one of the interrogators?

13 A Yes, sir.

14 Q And EC 2 was shaking going to and coming from the
15 interview room?

16 A As it reflects in the log, sir.

17 Q And in Exhibit No. 05-001, which again is a passdown
18 log, there was a continuing complaint of Mr. al-Marri that
19 he was not receiving sufficient food?

20 A Yes, sir.

21 Q And while we don't have the documents before you,
22 were you aware of the weight loss of Mr. al-Marri between
23 June of '03 and June of '04?

24 A Yes, sir.

25 Q Approximately 40 pounds; is that correct?

1 A Approximately, sir.

2 Q Were there further instructions given to you by those
3 in control of his environment as reflected in document
4 006-001? Were the instructions very clear that the Brig
5 staff, the Brig staff now, those under the authority of
6 the commander, were to watch every slightest movement and
7 document it?

8 A Yes, sir.

9 Q And that was done?

10 A Yes, sir, it was.

11 Q As represented in the general logs? For example, in
12 007-000, it's documented once again that he was taken into
13 custody, removed from his cell and taken to the interview
14 room?

15 A Yes, sir, and returned.

16 Q And the same thing is documented in 008-001 on the
17 22nd of October, '03?

18 A Yes, sir.

19 Q And, again, at this time the interrogators were
20 coming into the Brig on a daily or weekly basis,
21 interrogating Mr. al-Marri and they would leave
22 instructions for the Brig staff as represented in 009-001,
23 and on that day Mr. Padilla and Mr. Hamdi were given
24 recreation call and allowed to shower and Mr. al-Marri was
25 denied prayer call?

1 A Yes, sir.

2 Q And while it's not documented here, it's documented
3 throughout those logs that deprivation of religious items
4 such as the Quran, refusal to tell him prayer times,
5 refusal to tell him which direction Mecca was in, was
6 constantly employed by Brig staff at the direction of the
7 DIA?

8 A Yes, sir.

9 Q Now let's talk also at this time, if we could stop
10 and take a look at some of the environmental factors,
11 you've already indicated that the windows to the outside
12 world were blackened. In a prison is there a window
13 looking into the prison from the cell?

14 A Yes, sir. There's a slot window approximately 6 or
15 8 inches wide and approximately 16 inches, 18 inches long.

16 Q We've previously seen photographs. The Court has
17 reviewed what the special unit cell looked like. One of
18 the differences between the UCMJ side and the special unit
19 cell was that the windows, the exterior, were blackened.
20 Let's take a look at the interior window. Do you have
21 that one, the video?

22 (Video played)

23 Q The video that you've just seen, does that give a
24 fair representation of how Mr. al-Marri was isolated from
25 the prison itself during the time period we're addressing?

1 A There was a magnet for periods of time placed over
2 the windows.

3 Q And the -- I'm sorry. I wanted to ask you a question
4 that might call for an opinion, so I won't ask it. Let's
5 look at document 10-001. You have stated that there was
6 some employment techniques directed by DIA, including that
7 which is documented in the passdown log on the 25th of
8 October that EC 2 will not be told when Ramadan starts.

9 A Yes, sir. That's what is reflected in the log.

10 Q And you can compare that with how Padilla and Hamdi
11 were treated on the same day at the same time.

12 A Yes, sir.

13 Q Now in your experience with Mr. al-Marri, your
14 observations of him, of the three detainees who were
15 present at any time at the Brig was Mr. al-Marri the most
16 religious?

17 A Yes.

18 Q Now in document 11-001 reflecting the passdown log on
19 the 28th of October of '03, there are really five things
20 on here I would like you to look at. The first one is
21 that EC 2 was to be blindfolded everywhere, blackout
22 goggles and ear protection?

23 A Yes, sir. That's what the log reflects.

24 Q And when he had those goggles and earmuffs on,
25 theoretically at least he could not see or hear?

1 A Yes, sir.

2 Q And compare that to the treatment of Hamdi at the
3 same time where Mr. Hamdi was given a watch.

4 A Yes, sir. The log reflects he was given a watch.

5 Q Same day, same time?

6 A Yes, sir.

7 Q And the log also reflects that Hamdi was watching
8 movies and if he wanted to watch them he could, if he
9 didn't want to watch them he didn't have to?

10 A Yes, sir.

11 Q It also reflects that when EC 1 and 3 were doing
12 their recreation they didn't have to wear leg irons, but
13 EC 2 did?

14 A Yes, sir.

15 Q And that's al-Marri?

16 A Yes, sir.

17 Q All at the direction of those in charge of his
18 custody and confinement, the DIA?

19 A Yes, sir.

20 Q Now document 13-001, part of what appears to be the
21 DIA directive was to manipulate Mr. al-Marri's sense of
22 self worth and on that date they told him he had to be
23 shaved and have a haircut?

24 A Yes, sir.

25 Q And that he would have to have the mirror removed

1 from his cell?

2 A Yes, sir.

3 Q And I know you've read the summaries of the sheets
4 that the DIA prepared about their interrogations, but in
5 that they reflect that was an intentional act to remove it
6 from his cell and they caught him looking at a reflecting
7 glass of some type.

8 A Yes, sir.

9 Q And again we go back to the daily logs on 14-001
10 where again it documents the interviews by DIA and others?

11 A Yes, sir, it does.

12 Q And then the hand down logs, among other things,
13 identify who was present in the interviews and it would
14 indicate that on some occasions there were up to seven
15 interrogators present?

16 A I believe, sir, there was only one interrogator and
17 the rest were observers.

18 Q But there were up to seven on occasion?

19 A Yes, sir.

20 Q And then there would be instructions given such as
21 indicated in 14-002 on the 9th of December that no one is
22 to talk to EC 2 at all?

23 A Yes, sir.

24 Q And that included all of the Brig staff?

25 A That's what the intent was.

1 Q That's what DIA's intent was?

2 A Yes, sir.

3 Q And, again, we go back to he was in that spartan cell
4 at that time, the windows outside and the windows inside
5 were blocked and he couldn't talk to anyone. Also at that
6 time the Brig staff had their name tags covered with duct
7 tape at the direction of DIA?

8 A Yes, sir.

9 Q Now in document 14-0001, 18 December, interviewers
10 were present and on that occasion six months into his
11 confinement he was given a Quran?

12 A Yes, sir, by the interviewer.

13 Q Not by the Brig staff?

14 A No, sir.

15 Q Because the Brig staff had been prohibited from
16 providing him one?

17 A Yes, sir.

18 Q And he did not have his glasses in that time and on
19 this occasion for the first time the Brig staff -- or
20 excuse me -- the interrogators gave him a pair of glasses?

21 A Yes, sir.

22 Q On that date, 18 December, in document 019-001 we
23 learn that EC 2 received a shower at the direction of the
24 interrogators?

25 A Yes, sir.

1 Q And then we also see on that same document that the
2 Brig staff was making an inquiry to the interrogators, or
3 the contractors as they called them, whether or not he
4 should be allowed outdoor recreation and the answer was
5 no?

6 A Yes, sir. That's what the log reflects.

7 Q And all this does is to support the conditions of his
8 confinement which were at the direction of the Defense
9 Intelligence Agency?

10 A Yes, sir.

11 Q Document 018-001 again talks about him being removed
12 from his cell for interviews, as it does on 18-002, 001,
13 again documentation of the interviews which appear now to
14 be on multiple occasions on the same day?

15 A Yes, sir, as the log reflects.

16 Q And, again, the log will reflect that on 020-001
17 multiple interviews on the 19th of December, 021-001 on
18 the 20th of December, 022-001 on the 21st of December,
19 then on 023-001 in the passdown log the gift of the Quran
20 on the 23rd of December was removed per the DIA
21 representative?

22 A Yes, sir.

23 Q And on the 24th of December, again it reminds the
24 staff that EC 2 is no longer to have his Quran, but he was
25 asking for it?

1 A Yes, sir.

2 Q And then on the day after Christmas in 2003, one of
3 the interrogators called the Brig staff and asked how
4 Mr. al-Marri was doing without his Quran?

5 A Yes.

6 Q Then in document number 025-001 as we get into
7 January of '03, we again see that there are multiple
8 interviews on a daily basis. And as reflected in 027-001,
9 the Quran again is used as an interrogation tool and is in
10 the top drawer of the safe?

11 A Yes, sir.

12 Q And in the document 028-001 on 10 January, again it
13 documents the interview process. Same with 028-002 in the
14 passdown log.

15 THE COURT: I would appreciate it if at least
16 the witness would say something. Otherwise it's just you.

17 Q I'm sorry.

18 A Yes, sir, as reflected in the log.

19 Q 029-001, 11 January?

20 A Could I see that again, please?

21 Q 029-001, the general ledger for 11 January?

22 A Yes, sir.

23 Q Again, thorough documentation of all the activities
24 of Mr. al-Marri including his interviews?

25 A Yes, sir.

1 Q At about this time do you recall in reading the
2 summaries from the DIA that was provided to the Court that
3 in December Mr. al-Marri saw daylight for the first time?
4 Let's look at the video 103D.

5 (Video played)

6 Q Can you stop that, please? The orange paint and the
7 black paint you see on the windows, that lasted much
8 longer than December of '03; is that correct?

9 A Yes, sir. That's correct.

10 Q Now going back to the logs -- and of course the
11 magnet on the interior side of the door, that lasted much
12 longer than just December of 2003?

13 A Yes, sir.

14 Q The logs of 11 January, represented by 030-001, again
15 document multiple interviews?

16 A Yes, sir.

17 Q Same with 032-001, 12 January '04?

18 A Yes, sir.

19 Q Now, again, as an exemplar of the passdown logs,
20 document 033-001, the instruction being given by the
21 interrogators, the entry reads: "Do not talk, I repeat,
22 do not talk to EC 2." Is it proper to assume that's the
23 direction given to the Brig staff?

24 A Yes, sir.

25 Q And the instruction includes: "He will start asking

1 a lot of questions according to what the interviewers told
2 him. Whatever he asks for, say 'noted'. Say nothing
3 else, not 'yes' or 'no', just say 'noted'."

4 A Yes, sir.

5 Q Another indication of the directives of the DIA on
6 that day: "For this watch and the next watch, EC 2 can
7 have Quran only on the 14th and 15th. Will EC 2 be given
8 his Quran by order of one of the interrogators?"

9 A Yes, sir.

10 Q Again, the use of the Quran was at the direction of
11 the interrogators, given to him only by the interrogators
12 for a length of time?

13 A Yes, sir.

14 Q Look at document 034-001. Again, instructions from
15 DIA to the staff?

16 A Yes, sir.

17 Q 14 January '04. "Make sure you observe EC 2 closely
18 and log any strange behavior. Also, if he asks about
19 Saddam" -- I imagine that's Saddam -- "and if he was
20 captured, just say 'noted'."

21 A Yes, sir. That's what the log reflects.

22 Q During this time frame and for months, in fact years
23 thereafter, did he have access to a radio, a television or
24 a newspaper?

25 A After a period of time.

1 Q At this time and during the time that the DIA
2 controlled his environment, did he have any access to any
3 outside information?

4 A I don't believe so, sir, no.

5 Q Did he have any access to International Committee of
6 the Red Cross?

7 A No.

8 Q Did he have access to any family members?

9 A No, sir.

10 Q Did he have access to any civilians working outside
11 of the Brig?

12 A No, sir.

13 Q Did he have any legal representation?

14 A No, sir.

15 Q His source of information was limited to who?

16 A The interrogators, sir.

17 Q Again, another entry on the 14th of January in the
18 passdown log. It instructs that he may have the Quran.

19 I'm sorry. I'm looking at 034-001.

20 A 14 January '04?

21 Q Yes, sir.

22 A Yes, sir. It gives instructions to the guards to say
23 "noted" when asked questions.

24 Q And it also says that he could have his Quran to be
25 passed through the food slot?

1 A Yes, sir.

2 Q Generally speaking, you were aware at this time that
3 Mr. al-Marri was very concerned about the Quran and how it
4 was handled?

5 A Mr. al-Marri was always concerned about handling his
6 Quran, sir.

7 Q Now 035-001 indicates several interviews around the
8 14th of January?

9 A Yes, sir. The log date is 14 January.

10 Q We saw in an earlier video, the Court saw how he was
11 transported from his cell to the interview room with the
12 goggles, the belly chains, the handcuffs, the leg irons
13 and what-not.

14 THE COURT: Is that a question?

15 Q Yes, sir. It was a statement. I'm sorry. I meant
16 to ask a question. The Court has already seen a video
17 that we would not have to show again of how he was taken
18 from his cell to the interrogation room?

19 A Yes, sir. That's how he was moved.

20 Q And is that how he was moved on every occasion?

21 A Yes, sir.

22 Q And on this occasion on the 14th of January we know
23 by the logs, perhaps not before the Court now, who was
24 there in the interrogation room? It's not reflected,
25 Mr. Seymour. Yours is redacted. But the logs would

1 indicate that?

2 A Yes, sir.

3 Q And when he was returned to his cell, he was strip
4 searched?

5 A Yes, sir.

6 Q And that would have been at the direction of DIA?

7 A In those instances, sir, it could have been procedure
8 or it could have been at the direction of the DIA.

9 Q On the 14th of January he was strip searched twice?
10 Each time he was interrogated he was returned and then
11 strip searched as indicated on 036-001?

12 A Yes, sir. Each time he left the cell he was strip
13 searched.

14 Q And again the logs would indicate that he was
15 interviewed on multiple occasions on the 15th of January,
16 037-001 and 038-001?

17 A The log that I'm looking at reflects 15 January '04,
18 correct.

19 Q And this pattern of interview went on for some time
20 and was intense at this time as reflected in 039-000,
21 039-001?

22 A The 16 January '04 date does reflect that in the log.

23 Q 042-000 on the 17th, 042-000 and 042-001?

24 A Yes, sir.

25 Q Three separate interviews on the same day?

1 A Yes, sir, on the 17th.

2 Q Same procedure employed. On the 17th of January in
3 the passdown log on 041-001, the Brig received a direction
4 for interview interrogation preparation?

5 A Yes, sir.

6 Q To leave al-Marri in the interview room for an hour
7 after they left?

8 A Yes, sir. That's what the log reflects.

9 Q And as the photograph we had earlier in the
10 interrogation room reflected, that's how he was left?

11 A I don't know that I can say that's how he was left.
12 That would have been the procedure.

13 Q Again, on the 18th of January as reflected 043-001,
14 further interviews?

15 A Yes, sir, on the 18th of January.

16 Q And 044-001, in the passdown log on 20 January, a
17 reminder per order of whoever it was that there is to be
18 no contact or conversations with EC 2?

19 A Yes, sir. That's the 20th of January. That's what
20 the log reflects.

21 Q Now, Mr. Seymour, in all your experience in your
22 35 years in corrections, have you ever known anybody in
23 solitary confinement to be placed in isolation where they
24 could have no contact with humans and no conversation with
25 humans?

1 A No, sir, not from my experience.

2 Q And this lasted for months and months and months on
3 end?

4 A It lasted for a number of months.

5 Q Now let's compare that to Jose Padilla. On the same
6 date that there was a reminder not to have any contact
7 with al-Marri, Mr. Padilla was worried about his Doritos
8 and the logs reflect that Mr. Padilla -- Doritos are all
9 gone and that he needs more?

10 A Yes, sir.

11 Q Did Mr. al-Marri ever get a bag of Doritos?

12 A I don't recall that he ever received a bag of
13 Doritos.

14 Q In 045-001, the passdown log for 23 February '04
15 again denotes the difference between the treatment of the
16 three. Hamdi gets a little trim. Al-Marri, shave
17 everything. Padilla, who had a goatee I believe, gets a
18 shave down.

19 A Yes, sir. That's what the log reflects.

20 Q Then we go back to the same boring, repeated log
21 entries such as 047-001 on the date of 26 February 2004?

22 A That appears to be the 25th of February, '04, sir.

23 Q I apologize. That's 047-001?

24 A That's the 26th of February, 2004.

25 Q And 047-002 are multiple interviews on the same day?

1 A Yes, sir.

2 Q And 048-001, 28th of February, same thing, same
3 procedure, same daily activity?

4 A Yes, sir. That's what the log reflects.

5 Q 09-001, a week later on the 8th of March?

6 A That's the 8th of March, 2004.

7 Q 051-001, 9th of March?

8 A Yes, sir. That's the 9th of March, 2004.

9 Q 052-001 and 002, 10th of March, multiple interviews?

10 A Yes, sir. That's the 10th of March.

11 Q And 054-001?

12 A It appears to be the 10th of March, sir.

13 Q This is apparently when he was shown photographs of
14 his family by the interviewers?

15 MS. BALTES: Objection. Lack of knowledge.

16 THE COURT: I'm sorry. What's the objection?

17 MS. BALTES: Objection. Lack of knowledge.

18 He's asking about what happened during the interrogation.

19 THE COURT: What was the question?

20 Q The document 054-001 -- beg the Court's indulgence a
21 moment, please. As reflected in the summary that the
22 Court has dated 11 March, and the information contained
23 therein before the Court is part of the record, during
24 this session other physical contact between the
25 interrogators and al-Marri included patting al-Marri's

1 face with both hands, turning al-Marri's face to look at
2 pictures of his family on the wall, pressing two fingers
3 under al-Marri's chin, placing hands on his shoulders,
4 rubbing his shoulders and sitting on his lap, and this is
5 when it appears to be reflected in the logs that he was
6 shown pictures.

7 THE COURT: Well, I don't want you testifying,
8 with all due respect, please --

9 MR. SAVAGE: Your Honor, I'll rephrase it.

10 THE COURT: I don't really want to hear a
11 closing argument. Save that for closing argument. You
12 certainly can use leading questions to assist the witness,
13 but let's do it that way.

14 Q In 045-001, would you please read the highlighted
15 entry?

16 A It appears to say: "When he was being moved from the
17 interview room, EC stated 'Can I say good-bye to the
18 guys?' MA 2 said, 'Okay.' Then the EC stated, 'I will
19 see you in heaven.'"

20 Q And so that was reported by the Brig staff?

21 A Yes, sir.

22 Q The 055-001, 056-001 would be the entries for
23 activity that took place on the 11th of March in terms of
24 interviews?

25 A Yes, sir.

1 THE COURT: Is it your intention to go through
2 every day?

3 MR. SAVAGE: Judge, we're skipping many, many,
4 many days.

5 THE COURT: Go ahead.

6 Q 058-001, there is a passdown log entry on 11 March?

7 A It's a reminder that the staff is to keep a close eye
8 on Mr. al-Marri and to do proper 509 logs.

9 Q 059-001, 060-001?

10 A 12 March 2004.

11 Q Again reflects the times of the interviews?

12 A Yes, sir.

13 Q 060-002, 061-001?

14 A 14 March '04.

15 Q Again, it's the same repeated process?

16 A Repeated process of moving him to and from the
17 interview room.

18 Q Passdown log entry 062-001, a reminder?

19 A A reminder that only one person was to talk to
20 Mr. al-Marri.

21 Q And an entry on the 16th of March?

22 A A reminder that Mr. al-Marri was on a 15-minute
23 visual check.

24 Q Log entry on 063-001?

25 A 18 March '04.

1 Q "EC 2 is now on MREs. Make sure you keep one of the
2 trays empty when fixing the other ones."

3 A When fixing the other meals, yes, sir.

4 Q Can we surmise from that the other ones were getting
5 hot meals and he was not?

6 A Sir, I can't testify to that.

7 Q But we do know that even in the MREs, the directive
8 from the DIA was to take the candy out of the MREs for
9 EC 2. Next entry. That would be 063-001.

10 A That's 18 March '04. Is that the same entry that we
11 just looked at?

12 Q Yes.

13 A Yes, sir. It says to remove the candy from the MREs.

14 Q 065-001 again is the general ledger indicating times
15 of the interview?

16 A Yes, sir.

17 Q 066-001, 13 April, again the times of the interview?

18 A Yes, sir.

19 Q Passdown log 067-001, entry date 16 April, what are
20 the instructions from DIA that day?

21 A It says the MREs are to be served cold.

22 Q At that time he was restricted from having any warm
23 meals?

24 A As the log reflects, the staff were ordered to serve
25 the meals cold.

1 Q And on 16 April '04 as reflected in 068-001, that's
2 reaffirmed?

3 A Yes, sir.

4 Q "As of 09:00 stop heating the MREs for EC 2 for all.
5 Meals."

6 A Yes, sir.

7 Q And in the passdown log 069-001, it reflects what he
8 has in his cell?

9 A Yes, sir. It says he does not have any items in his
10 cell.

11 Q So ten months after his admission to the Brig, the
12 spartan conditions of his cell are as they were reflected
13 in the comparative photograph the Court had earlier seen;
14 is that correct?

15 A Yes, sir.

16 Q Let's take a look at some of the video. Your Honor,
17 you will recall the video before the spring of '04 was not
18 available. Mr. Seymour, we want to take a look at May 2
19 of 2004.

20 (Video played)

21 Q Can we stop that? Is that Mr. al-Marri, cell
22 number 119? I think we need to help the Court tell what
23 this is and if I may lead you, this video was removed from
24 a 4-cell shot including the cells of two other detainees
25 and an empty cell and is 119 reflective of Mr. al-Marri's

1 cell?

2 A Yes, sir.

3 Q Now this is coming on 11 months after he had been
4 there. No mattress and no items in his cell other than a
5 suicide blanket?

6 A He does appear to have something under his head and
7 he does have his slippers in there too, sir.

8 Q Well, let's roll the video.

9 (Video played)

10 Q Now, Mr. Seymour, going back, I have some questions
11 about that video. Has that video been manipulated in any
12 way? I mean, where it looks like he's running around,
13 what do you call that? Time delay? Is the surveillance
14 video, the surveillance camera in the cell itself, taking
15 pictures every second or something?

16 A It's a number of frames every second, sir. It
17 appears to be speeded up in that film footage.

18 Q But that -- were you present when we received that
19 from the Brig staff?

20 A Yes, sir.

21 Q And is that what we received from the Brig staff?

22 A I believe so, sir.

23 Q And that depicts the conditions that he was existing
24 in on that particular day?

25 A Yes, sir.

1 Q About the same time in document 073-001 on 13 May,
2 again toilet paper was removed from his cell?

3 A Sir, what I see is on 12 May and it's a reference to
4 "EC 2 does not receive Quran any more until further
5 notice."

6 Q And right above that as per one of the interrogators,
7 the toilet paper has been returned to him. Well, if you
8 could just tell us if that is an actual reflection of the
9 log 073-001?

10 A Yes, that's an actual reflection.

11 Q Let's look at the end of May now, coming up on nearly
12 a year in the video.

13 (Video played)

14 Q So that's Mr. al-Marri in cell 119?

15 A Yes, sir.

16 Q And we notice no chair, no desk, no mattress, no
17 pillow, no glasses, no Quran?

18 A Yes, sir.

19 Q Nobody socializing with him, painted windows looking
20 outside, magnetized metal on the inside. All he has is a
21 toilet, a sink and a metal bed with holes in it?

22 A That's what the footage reflects.

23 Q And that was at the directive of the interrogators?

24 A Yes, sir.

25 Q And this is how he lived his days?

1 A I believe for periods of time, sir.

2 Q And this reflects approximately three minutes of that
3 day in that cell?

4 A Yes, sir.

5 Q And that's an accurate representation from the
6 Government's files of how he spent his time?

7 A It's an accurate representation of how he spent his
8 time in this film, yes, sir.

9 Q With toilet paper as a pillow?

10 A I actually can't discern what he has under his head,
11 sir.

12 Q It's pretty clear from that video that there are no
13 distractions from the boredom of his existence in that
14 cell, nothing?

15 A Yes, sir.

16 Q When the rack becomes uncomfortable, he lays down on
17 the concrete floor?

18 MS. BALTES: Objection. Lack of personal
19 knowledge.

20 THE COURT: Sustained unless you can lay a
21 foundation.

22 Q Is that an accurate film in the Government's files,
23 the surveillance camera in Mr. al-Marri's cell?

24 A Yes, sir, I believe it is.

25 Q What do you call the opposite of the ceiling, the

1 thing that is under his bed?

2 A I believe that would be a floor, sir.

3 Q And what is he doing?

4 A For periods of time it appears he lays on the floor,
5 sir.

6 Q Thank you, sir. Can we move on to the next video?

7 (Video played)

8 Q 77, please. This is another day in the life of
9 Mr. al-Marri in the spring of 2004. He's in 119; is that
10 correct?

11 A Yes, sir. That appears to be Mr. al-Marri.

12 Q So when he wakes up at 7:15 that morning he actually
13 had a pillow and a blanket?

14 A Yes, sir. He had a pillow and a blanket at that
15 time.

16 Q And what did he have to do with the pillow and the
17 blanket?

18 A It appears he turned it over to a staff member on the
19 outside of the cell.

20 Q And then the rest of the day, other than what he
21 appears to be doing now, he's back in that same cell with
22 the same conditions, the same environmental factors?

23 A Yes, sir.

24 Q On this particular day where did he spend his time?

25 A Yes, sir.

1 Q Where did he spend his time in the cell that day? I
2 can't see him. Do we see him go under his rack?

3 A Yes, sir.

4 Q Now in June of '04 did the complaints of Mr. al-Marri
5 about the environmental conditions of heat and cold
6 continue? I'm just asking you that question.

7 A I believe so.

8 Q Let's look at a video from June of '04, video 078.

9 (Video played)

10 Q Is that Mr. al-Marri in 112?

11 A Yes, sir.

12 Q That's the cell he was in on that date?

13 A Yes, sir.

14 Q What is he doing?

15 A He appears to be either shaving or brushing his teeth
16 or something in front of the mirror.

17 Q Well, could it be he's stuffing his underwear in the
18 vents?

19 A Yes, sir, that could be.

20 Q To keep the cold air from coming through the vents?

21 MS. BALTES: Objection. Lack of personal
22 knowledge. Asking for an opinion.

23 THE COURT: Well, yes, but based on his
24 experience I think he's probably in a position to say
25 whether that appears to be what's happening.

1 Q Again at this time, if you can tell, does he have
2 socks on or not? If it's impossible to tell, it's
3 impossible to tell.

4 A I can't see, sir, whether he has or has not.

5 Q The passdown log in June of '04, particularly in
6 document number 082-001, there's a request made by
7 Mr. al-Marri, EC 2?

8 A Yes, sir. He requested to wear his glasses in the
9 cell.

10 Q And again in document 083-001?

11 A Yes, sir. He was requesting his glasses there also.

12 Q Do you have knowledge of the necessity that he has
13 for wearing glasses?

14 A He had difficulty with his eyesight that I'm aware
15 of.

16 Q Did you know that he visited the optometrist? Let's
17 take a look at the June 30 video, please, the 085 video.
18 This is over a year after he had been there now.

19 (Video played)

20 Q Now, Mr. Seymour, he's belly chained there?

21 A Yes, sir.

22 Q He's leg ironed and he's fastened to the floor?

23 A Yes, sir.

24 Q And his range of motion for his hands, he can't lift
25 his hand up to his head; is that correct?

1 A It would be difficult for him to do so, sir.

2 (Video played)

3 THE COURT: Unless this shows something else,
4 move along.

5 MR. SAVAGE: It does, Your Honor. Your Honor,
6 we just received this video last week.

7 THE COURT: I'm just asking. If it shows
8 something else, fine.

9 MR. SAVAGE: It shows plenty, Your Honor.

10 (Video played)

11 MR. SAVAGE: Judge, I believe the rest of this
12 video shows his removal from the interrogation room. I
13 think that's sufficient.

14 BY MR. SAVAGE:

15 Q Can we look at document 086-001?

16 A Yes, sir. It's a reference from 2 July '04 saying
17 that he received his Quran and glasses.

18 Q Now at this time, Mr. Seymour, did the Brig staff,
19 the medical staff, the command of the Brig staff as well
20 as the fleet in Norfolk Four Star start to exert more
21 control over the conditions of confinement?

22 A Yes, sir.

23 Q And this decision to return the Quran and the glasses
24 to Mr. al-Marri was at whose directive?

25 A The Admiral, sir.

1 Q And do you know whether or not that was consistent
2 with or contrary to the interests of the DIA?

3 A Sir, I think that's a conclusion. I don't have the
4 information.

5 Q But the Court does have the summaries of the DIA's
6 interrogations and their opinion of that decision?

7 A Yes, sir.

8 Q The document 087-001, the entry on the 5th of July?

9 A Yes, sir. It says that EC 1 and 3 received prayer
10 schedules.

11 Q Well, that's, I believe, the 7th of July. Above
12 that, the 5th of July entry, in terms of Mr. al-Marri, was
13 he provided with his glasses on that day at 09:01?

14 A Yes, sir. He received his glasses.

15 Q Without going into every day and every entry, would
16 it be fair to say that, generally speaking, from that day
17 on he had his glasses?

18 A Generally speaking, yes, sir.

19 Q I notice in entry number 088-001 the other ECs were
20 given MP3 players?

21 A Yes, sir.

22 Q At that time on 19th of July did Mr. al-Marri have
23 access to anything in his cell other than his glasses and
24 his Quran?

25 A Not at that time, sir.

1 Q On the same page, 088-001, again a reminder about the
2 instructions to the Brig staff regarding his glasses?

3 A Yes, sir. It says that they were reminded that he
4 was able to keep his glasses in the cell.

5 Q In 089-001 there's passdown information that he could
6 receive something, a suicide blanket?

7 A Yes, sir.

8 MR. SAVAGE: May I approach, Your Honor?

9 THE COURT: You may. Do you know what number
10 you want to give it?

11 MR. SMITH: Demonstrative Exhibit No. 1.

12 THE COURT: Just mark your own exhibits. Let's
13 just go ahead.

14 BY MR. SAVAGE:

15 Q Mr. Seymour, is this a suicide blanket?

16 A Yes, sir.

17 Q Is this a suicide blanket issued in the Brig?

18 A I believe it is, sir. We turned -- gave you one,
19 yes, sir.

20 Q And the entry in the passdown log, the PDL about
21 providing him with a suicide blanket, is that the type of
22 blanket that was provided?

23 A The type of blanket, yes, sir.

24 Q On the same date he received a clock in his window?
25 1st of August, '04, third line down?

1 A Yes, sir, received a clock.

2 Q And for the Court's edification, what would that
3 purpose be for?

4 A So he would be able to tell the time of the day and
5 time of his prayers.

6 Q Now in document 091-001, under the entry of
7 11 August, EC 1 was receiving five new CDs?

8 A Yes, sir.

9 Q Did Mr. al-Marri ever receive any CDs?

10 A Not at that time, sir.

11 Q In document 092-001 --

12 A 25 August.

13 Q 25 of August. If you would read that entry. Or I
14 could read it for you if you're not able to.

15 A I can't discern all of it.

16 THE COURT: Go ahead and read it, please.

17 Q "Per blank, contractors" -- contractors is another
18 name for DIA or FBI; is that correct?

19 A Yes, sir.

20 Q "Are allowed to be in the SHU control while the
21 chaplain is making his visits."

22 A Yes, sir.

23 Q And in the SHU control you have both audio and visual
24 ability to record and observe any conversation, any
25 interaction of the parties in that interview room?

1 A We have the capability of recording and hearing the
2 conversation from inside the cell.

3 Q And what this appears to address is that the
4 contractors were party to those conversations?

5 A It appears so, sir.

6 Q 094-001, 10 September, 15 months into Mr. al-Marri's
7 stay at the Brig, the chain of command, not DIA, but the
8 chain of command issued an order and that is that he would
9 receive regular chow?

10 A Yes, sir, regular chow being halal or a Muslim
11 friendly meal from the chow hall.

12 Q And on 096-001, 23 September, EC 3 was granted
13 permission to be out of his cell at any time. He can
14 watch all channels on TV at any time except for breaking
15 news and news with the instructions that he was told to
16 change the channels with his remote if the news came on.

17 A Yes, sir. That's what the log reflects.

18 Q So this enemy combatant Hamdi had his own clicker to
19 change TV channels to watch whatever he wanted at this
20 time?

21 A Yes, sir.

22 Q And of course he could go out for recreation at any
23 time he wanted as indicated in the log of that day?

24 A Yes, sir.

25 Q And the log entry on 098-002, EC 3 was authorized a

1 10-minute telephone call to his father in a foreign
2 country provided he spoke English and it was monitored?

3 A Yes, sir.

4 Q Now Mr. al-Marri, do you know when he received his
5 first phone call in the SHU?

6 A When we had information that his father had in fact
7 passed on I believe.

8 Q And that was in 2008, several years later?

9 A Yes, sir.

10 Q Actually logs 100-002, 001, in addition to EC 3
11 watching T.V. until 11:00 o'clock at night on Friday and
12 Saturday, he was authorized a 10-minute phone call every
13 day to his father?

14 A Yes, sir.

15 Q Now October of 2004, that's when the game changed for
16 Mr. al-Marri. This was the time that the DIA ended their
17 interrogations of him, October of 2004?

18 A Yes, sir.

19 Q And that pursuant to the United States Supreme Court
20 order in the Hamdi decision of June of '04, he was allowed
21 to have attorneys?

22 A I'm sorry. Allowed to have --

23 Q Attorneys to represent his interests?

24 A Yes, sir.

25 Q And prior to that date of October of '04 Mr. al-Marri

1 had not seen anyone other than his interrogators and Brig
2 staff?

3 A Yes, sir.

4 Q Including representatives of the International
5 Committee of the Red Cross?

6 A Yes, sir.

7 Q That changed in October of '04?

8 A Yes, sir. He was given access to attorneys and the
9 Red Cross was given access to him.

10 Q Were you present on the day that his attorneys first
11 visited with him?

12 A Yes, sir.

13 Q And did you participate in that visitation?

14 A I was there and talked to you and other attorneys I
15 believe.

16 Q Let's take a look at 101-001. Is that the secure
17 booth that the visit took place in?

18 A Yes, sir. That's the Brig non-contact visitation
19 booth.

20 Q And that steel stool you see in the foreground, is
21 that the seating for the three attorneys who visited him
22 that day?

23 A I believe so, sir.

24 Q Who else was in that room? And I mean the room where
25 that stool is.

1 A I believe there was a Navy representative.

2 Q Was there a DIA agent in that room?

3 A There was someone else in the room. I don't recall.

4 It could have in fact been a DIA agent.

5 Q And if I visually in the courtroom today stretched my
6 arms out wide, being in that room, could I touch wall to
7 wall?

8 A Yes, sir.

9 Q And if I turned perpendicular, could I touch wall to
10 wall?

11 A Yes, sir.

12 Q In addition to the three attorneys and the
13 representative that you're not sure of his identification,
14 was there a video camera in that room?

15 A Yes, sir.

16 Q Was there audio recording devices in that room?

17 A Yes, sir.

18 Q Were the attorneys prohibited from bringing any
19 paper, pens, anything into that room?

20 A On that day, yes, sir.

21 Q And the room through that window where we see the
22 door knob, is that a room of the same measurements as the
23 one on the foreground?

24 A Yes, sir.

25 Q And was Mr. al-Marri sitting on a stool similar to

1 what we see in the foreground?

2 A Yes, sir.

3 Q Was he handcuffed?

4 A Yes, sir.

5 Q Was he belly chained?

6 A I believe so, sir.

7 Q Was he leg ironed?

8 A Yes, sir.

9 Q And was the leg iron fastened to the floor?

10 A Yes, sir.

11 Q Did he have military members in black gloves standing
12 guard?

13 A There were members there. I don't necessarily recall
14 the black gloves, sir, but there were military members
15 there in uniform.

16 Q Were there also representatives in that confined
17 space from Washington?

18 A Yes, sir, I believe so.

19 Q And that's where he had the opportunity to speak to
20 his attorneys?

21 A Yes, sir, that day.

22 Q Now let's look at 127-001.

23 THE COURT: Mr. Savage, pick some convenient
24 time in the next five minutes or so to stop for lunch.
25 I'll leave that up to you.

1 MR. SAVAGE: This would be fine, Your Honor.

2 THE COURT: Great. Let me ask -- the witness
3 may step down. Thank you. How much direct do you have
4 left of this witness?

5 MR. SAVAGE: 30 minutes at most, Your Honor.

6 THE COURT: Okay. This blanket, I think we can
7 probably mark that. If you have other exhibits -- either
8 side, if you have other exhibits, get stickers and you can
9 mark those yourself. Okay. So, sir, you'll have to be
10 back here at a little bit before 1:15, okay? So we'll be
11 in recess until 1:15. Thank you.

12

13

(Noon Recess)

14

15 THE COURT: I think we're ready to proceed. Is
16 there some reason the defense exhibits are in front of me?
17 Is there a specific reasons for that?

18 MS. BALTES: Yes, Your Honor. The Government
19 would request Exhibit 48 and 54 be sealed and the defense
20 has no objection.

21 MR. LUSTBERG: That's correct, Your Honor.

22 THE COURT: All right. Well, they will
23 effectively be removed from where they are now. And the
24 reason for them being sealed is?

25 MS. BALTES: There are active duty service

1 member names in the records.

2 THE COURT: I'll grant the motion. Is it 48 and
3 54? Is that the only two?

4 MS. BALTES: Yes, Your Honor.

5 THE COURT: Thank you. Mr. Savage, are we ready
6 to continue? Would the witness come back up, please?
7 Come back up, sir. You're still under oath.

8 **SANFORD SEYMOUR,**
9 Having been previously sworn, was examined and
10 testified under oath as follows:

11 **CONTINUED DIRECT EXAMINATION**

12 BY MR. SAVAGE:

13 Q May it please the Court. Good afternoon,
14 Mr. Seymour.

15 A Good afternoon.

16 Q When we recessed for lunch hour, I believe we were
17 looking at the facilities at the Brig that were provided
18 for legal counsel access in the fall or autumn months of
19 2004 and I believe that you have described the photograph
20 on the right-hand side which is labeled "secure no contact
21 visitation area".

22 A Yes, sir.

23 Q And these displays and the writing on the display
24 before the Court at this time was provided by the
25 Consolidated Naval Brig?

1 A Yes, sir.

2 Q Including the writing that's on the photographs?

3 A Yes, sir.

4 Q Now following the initial meeting of Mr. al-Marri
5 with his defense counsel, were you aware that there were
6 revised procedures for counsel access to Ali Saleh Kahlah
7 al-Marri at the Naval Consolidated Brig at Charleston,
8 rules which were called SAMs, Special Administrative
9 Measures, imposed on the 10th to the 13th of December of
10 2004, as shown in 126-100, 1008, which is the date they
11 were signed, which included, among other things, the
12 regulations that counsel for the defendant in Section 6 --
13 which established the procedures and policies that the
14 Department of the Defense would impose regarding
15 attorney/client communications and visits?

16 A Yes, sir.

17 Q Now going back to 126-001, you had earlier described
18 that in the right-hand side in the secure no contact
19 visitation area that parties were present -- of course
20 this was before the SAMs -- and that there was audio and
21 visual recording in those visitation booths?

22 A Yes, sir.

23 Q And at a subsequent time a secure contact visitation
24 area was proposed for meetings between counsel and
25 Mr. al-Marri?

1 A Yes, sir.

2 Q And when Mr. al-Marri was present at that time in
3 those meetings, he was dressed and he was secured in
4 accordance with some earlier photographs that the Court
5 has seen as he was in the interrogation room?

6 A Yes, sir.

7 Q Of course when he got in the room his goggles and
8 earmuffs were removed; otherwise he was restrained in a
9 similar fashion?

10 A Yes, sir. He was restrained with the handcuffs, leg
11 irons and belly chain.

12 Q Now in those meetings, as in your wording in the
13 document prepared by DoD, there was a video camera in that
14 room?

15 A Yes, sir. That's the video camera.

16 Q And that camera was connected to the operations
17 center of the SHU so that there was visual observation of
18 the meetings, at least initially, between legal counsel
19 and Mr. al-Marri?

20 A The camera was actually capable of being monitored in
21 the office next to the room.

22 Q By whoever had access to that area?

23 A Yes, sir.

24 Q And whoever was in that area was not necessarily
25 counsel or counsel representatives for Mr. al-Marri?

1 Government representatives were there?

2 A Yes, government representatives were there.

3 Q And the circle on the right-hand side at the bottom
4 of the wall, if you could look from the top towards the
5 ceiling down to where it's circled, there was a conduit
6 wire protecting an audio microphone?

7 A Yes, sir.

8 Q Now in those -- and that's the room in which the
9 attorneys met Mr. al-Marri at least initially?

10 A Yes, sir.

11 Q The SAMs that were signed by the government, as
12 indicated on document number 126-005, that those meetings
13 between counsel and the detainee will not be subject to
14 audio recordings or monitoring?

15 A Yes, sir.

16 Q Now later Mr. al-Marri was told that he could prepare
17 communication to counsel and that paper would be
18 allocated, a certain number of pieces of paper to him for
19 that purpose?

20 A Yes, sir.

21 Q As evidenced in the SAMs 126-004, "Detainee will be
22 provided with paper to prepare communications to counsel"?

23 A Yes, sir.

24 Q Following the imposition of those SAMs, that became
25 an issue in terms of Mr. al-Marri's compliance to the

1 rules and directives of the Brig. Let me show you this
2 video. I think it's 102C, Mr. Rosen.

3 (Video played)

4 Q Now not knowing what Mr. al-Marri meant then by the
5 court order, from June of 2004 the United States Supreme
6 Court had issued an order or an opinion that Mr. al-Marri
7 was entitled to counsel. Do you recall that?

8 A Yes, sir.

9 Q And this recording, although it's not dated, from
10 your observation of the recordings that were provided to
11 us last week at the Brig, this recording comes from 2005;
12 is that correct?

13 A Yes, sir. That's correct.

14 Q Well after the decision of the Supreme Court, well
15 after the signing of the SAMs by the government and
16 defense counsel?

17 A Yes, sir.

18 Q In 2005 did Mr. al-Marri have the benefit of
19 competent Brig-provided medical care?

20 A Yes, sir.

21 Q And those visits were by corpsmen as well as medical
22 physicians?

23 A Yes, sir.

24 Q And as a result of those examinations, were certain
25 medically necessitated recommendations made regarding his

1 environment?

2 A Yes, sir.

3 Q Let's look at the video of the medical visit on
4 January 4 of 2005.

5 (Video played)

6 Q If we could stop there. Are those the complaints
7 that were documented throughout the logs and throughout
8 the medical reports?

9 A Yes, sir, those were.

10 Q And at least at this time -- let's continue, please.

11 (Video played)

12 Q Mr. Seymour, based on your familiarity with the
13 personnel at the Brig, did you recognize the medical
14 provider that was there?

15 A Yes, sir.

16 Q And who is that?

17 A He was a captain who at that time was the Brig -- one
18 of the Brig physicians.

19 Q His rank was an 06?

20 A Yes.

21 Q And he visited with Mr. al-Marri where?

22 A In his cell or in another area that was designated as
23 a treatment room.

24 Q And as I understood his recommendations, they would
25 have included, among other things, an examination by an

1 eye physician?

2 A Yes, sir.

3 Q That he would be permitted to have a mattress in his
4 cell and that he had recommended some x-rays, but, perhaps
5 more importantly, a chair. Now we have seen earlier
6 videos today regarding Mr. al-Marri's cell. Did he have a
7 chair in his cell?

8 A Not at that time.

9 Q Did he have a mattress in his cell?

10 A Not for the full time, all time during the day.

11 Q And his mattress was given to him at what time?

12 A Afternoon I believe.

13 Q Would 10:00 p.m. sound more exact?

14 A Yes, sir.

15 Q And it was received back from him at 5:00 a.m.?

16 A Yes, sir.

17 Q So between the hours of 5:00 a.m. and 10:00 p.m. he
18 was on the steel bunk?

19 A Yes, sir.

20 Q Now this is in 2005, correct?

21 A Yes, sir.

22 Q Now in the winter months of 2005, in the 20 months or
23 so that he had been present, in the 20th month or so of
24 his presence at the Brig, did he complain of headaches?

25 A I believe so, yes, sir.

1 Q Let's take a look at a video which I believe was a
2 hand-held video by one of the officers at the Brig
3 regarding Mr. al-Marri's conditions of confinement in the
4 winter of 2005.

5 (Video played)

6 Q Now based on the conversation you heard, your
7 familiarity with al-Marri's conditions at that time, also
8 his communications with you and others at the Brig, he
9 refers to this headache and a smell?

10 A Yes, sir.

11 Q Do you know what his beliefs were at that time about
12 the smell?

13 A I believe -- this is opinion, so I don't know.

14 Q Did he tell you?

15 A He told me that -- told me and others that he thought
16 this was an attempt to cause him discomfort.

17 Q And that was documented?

18 A Yes, sir, I believe so.

19 Q And in response to that, what did he do to prevent
20 the smell from coming into his cell?

21 A He would place things into or over the vent.

22 Q So this would be the vent where the incoming air
23 circulation would come from?

24 A Right. I believe also he would place stuff in front
25 of the door.

1 Q And as a result of that, was he viewed by the Brig
2 management as being in non-compliance with the rules and
3 regulations of the Brig?

4 A He was told to remove it, yes, sir.

5 Q And at this time the windows were still painted, the
6 magnet was on the door and there was basically nothing in
7 his cell?

8 A I believe he had received something. He was getting
9 his mattress at least in the evening. He had blankets.

10 Q Did he ever complain about a fan and the noise and
11 what it was doing to his psyche?

12 A Yes, sir, he did.

13 Q Could we play, please, 103E?

14 (Video played)

15 Q Can you tell us what that video is?

16 A That's of Mr. al-Marri during a check where he was
17 asking questions and there was a fan in the background.

18 Q Were you able to hear the questions or the answers?

19 A No, I was not.

20 Q And was the reason for that not an audio problem but
21 because of the location of the fan?

22 A I believe it was the location of the fan in close
23 proximity to the video camera.

24 Q Now in that time frame did Mr. al-Marri -- was he
25 permitted to correspond with family members?

1 A No, he was not.

2 Q Did there come a time where the Brig staff, through
3 the Admiral in Norfolk, obtained permission from him to
4 obtain and write correspondence from the family?

5 A Yes, sir, we did.

6 Q Generally speaking, do you know how long it would
7 take for correspondence from his family to arrive at the
8 Brig and correspondence from the Brig to arrive in his
9 homeland?

10 A Yes, sir. It could be up to several months.

11 Q In fact, it was often over a year. In the letters
12 that he received --

13 THE COURT: Just a moment. He didn't answer
14 that. Was it over a year?

15 A Sir, I don't know the exact time frame. It was
16 months. It could have been 12 months. Some letters came
17 faster than others.

18 Q When letters came, they often looked like
19 Exhibit 142?

20 A Yes, sir. They were redacted.

21 Q And that particular exhibit is not an exaggeration,
22 but is typical of the correspondence that he received at
23 that time?

24 A It would be typical of the correspondence that I
25 recall seeing.

1 Q Now during that time frame did he ever receive or was
2 he allowed to receive photographs of his family?

3 A He did receive photographs of his family. I can't
4 tell you the exact date.

5 Q Was he ever allowed to send a photograph of himself
6 to his family?

7 A Much later.

8 Q Before 2009?

9 A No, sir.

10 Q Before February of 2009?

11 A No, sir.

12 Q Now at the same time that these restrictions were
13 still being imposed, EC 1, Mr. Jose Padilla, was still
14 present at the Brig; is that correct?

15 A I couldn't tell you the exact date that he was --
16 when Mr. Padilla left.

17 Q And when he left, he went into civilian custody much
18 like Mr. al-Marri did years later?

19 A Yes, sir.

20 Q And prior to his leaving the Brig, while he was at
21 the Brig did he have visitation with his mother?

22 A He had one visitation with his mother.

23 Q Could he have had as many as he wanted?

24 A He could have had additional visits. I don't know
25 that I would characterize it as many as he wanted.

1 Q But he was not limited? He was not limited by the
2 Brig or DIA? He was limited by his own choice?

3 A Yes, sir.

4 Q Was Mr. al-Marri in the total time he was at the Brig
5 ever allowed to have visitors other than his lawyers or
6 ICRC?

7 A No, sir, excluding Brig staff.

8 Q Yes, sir. Begging the Court's indulgence a moment.

9 THE COURT: Take your time. Turn the microphone
10 off. Go ahead.

11 Q Thank you, Your Honor. Now conditions of confinement
12 for Mr. al-Marri clearly improved?

13 A Yes, they did.

14 Q He was permitted to have his glasses at all times?

15 A Yes, sir.

16 Q He was permitted to have reading materials beyond the
17 Quran?

18 A Yes.

19 Q He was permitted to have a large volume of religious
20 materials?

21 A Hundreds of volumes, sir.

22 Q Which actually he had his own library at the
23 permission of the Brig?

24 A Yes, sir, he did.

25 Q He was given prompt and competent medical treatment?

1 A Yes, sir, he did.

2 Q He was allowed to correspond with his attorney at
3 will?

4 A Yes, sir.

5 Q He was eventually allowed to make phone calls to
6 counsel?

7 A Yes, sir.

8 Q Which were unmonitored?

9 A Yes, sir, unmonitored.

10 Q He was allowed to have visitation with his attorney
11 in an open, clean, safe, comfortable environment unlike
12 what we've seen in the previous photographs?

13 A Yes, sir.

14 Q He was at least on one or two occasions allowed to
15 have an outdoor meal with his attorneys in the recreation
16 area?

17 A Yes, sir.

18 Q All those --

19 A Sir, that would be in the secure recreation area.

20 Q All those being incentives not by national security
21 members, but by the Brig staff itself?

22 A Yes, sir.

23 Q Recommendations that Brig staff members made to
24 higher authorities?

25 A Yes, sir.

1 Q There were, however, some things that were never
2 changed. For instance, when he went to the dentist in
3 late 2007, December of 2007 -- let's take a look at that
4 video.

5 (Video played)

6 Q Mr. Seymour, did you recognize that video?

7 A Yes, sir.

8 Q Where it was filmed?

9 A Yes, sir.

10 Q Where was that, sir?

11 A That was in the dental area of the R and R area
12 inside the Brig.

13 Q Other than one occasion for medical treatment, did
14 Mr. al-Marri ever leave the Brig?

15 A No, sir.

16 Q Emergent medical treatment? In other words, it was a
17 procedure that couldn't be handled at the Brig?

18 A Yes, sir.

19 Q To the day that the marshals came and took control
20 and custody of Mr. al-Marri at the Brig, were all interior
21 moves, that is moves Mr. al-Marri inside the Brig in the
22 high security area, in accordance with the video we just
23 saw?

24 A Yes, sir. Inside the areas, in particular the high
25 security area, if he was leaving the housing unit he would

1 have the goggles and the hearing protection.

2 Q As well as the handcuffs, the belly chains and what
3 we heard, I believe, on that audio was his leg irons as he
4 walked down the hall?

5 A Yes, sir.

6 Q From the day he arrived in June 23 of 2003 until on
7 or about March 1 of 2009, was he ever told how long he
8 would be there?

9 A No, sir.

10 Q Was he ever permitted in that time frame to have any
11 socialization with members who were not Brig staff or
12 interrogators, legal members or the ICRC?

13 A No, sir.

14 MR. SAVAGE: Mr. Seymour, thank you for your
15 testimony. Kindly answer any questions the prosecution
16 might have.

17 THE COURT: All right. You may proceed. Are
18 you going to be using exhibits?

19 MS. BALTES: No, Your Honor.

20 **CROSS EXAMINATION**

21 BY MS. BALTES:

22 Q Good afternoon, Mr. Seymour.

23 A Good afternoon, ma'am.

24 Q Mr. Seymour, the defense asked you a couple of
25 questions about the difference in treatment between

1 Mr. al-Marri and the other two enemy combatants at the
2 Brig. Were you at the Brig the entire time that the enemy
3 combatants were housed there?

4 A Yes, ma'am.

5 Q And was it your job, or anyone at the Brig's job, to
6 determine the relative threat assessment for each of the
7 three enemy combatants?

8 A It was determined from outside the facility.

9 Q So that wasn't your job?

10 A We would make a basic determination, yes, ma'am.

11 Q And were there any differences in behavior between
12 Mr. al-Marri and the other two enemy combatants that were
13 at the Brig?

14 A Yes, ma'am.

15 Q Could you describe the behavior that you witnessed
16 for Mr. Padilla?

17 A Mr. Padilla was quiet. He had no issues with the
18 staff. He never showed staff any disrespect. He always
19 followed all the regulations and anything and everything
20 he was told when he was told to do it.

21 Q And what about with Mr. Hamdi?

22 A Mr. Hamdi was even more compliant in those matters
23 than Mr. Padilla.

24 Q And if there were any incidents, were they reported
25 to you?

1 A I would have heard almost everything, yes, ma'am.

2 Q And would those incidents have included behavior that
3 would have been considered non-compliance by the Brig
4 staff?

5 A Yes, sir.

6 Q And would you -- how would you characterize
7 Mr. al-Marri's behavior?

8 A It varied greatly from period to period. He could be
9 reasonably compliant or he could -- his behavior could
10 take extreme terms.

11 Q Could you describe some of the extreme terms that you
12 witnessed or that were reported to you?

13 A Defecation on trays, food trays, shoving food trays
14 back out under the door, urination on the walls and on the
15 food trays and the floor, shoving food into the air vents
16 in the cell, on occasion throwing substances at and on the
17 staff.

18 Q How did your staff react during those incidents?

19 A They reacted extremely professionally.

20 Q And were they required to clean up Mr. al-Marri's
21 cell when he defecated on his tray and urinated all over
22 his cell?

23 A Yes, ma'am.

24 Q Could you approximate how many times that happened?

25 A I couldn't give you a close approximation, but in one

1 instance it occurred for months.

2 Q Did you ever witness that type of behavior from any
3 of the other enemy combatants at the Brig?

4 A No, ma'am.

5 Q Now did you have certain standard operating
6 procedures at the Brig, specifically for enemy combatants?

7 A Yes, ma'am.

8 Q And were those for security purposes?

9 A Yes, ma'am.

10 Q The video that was shown to you with Mr. al-Marri in
11 leg shackles and irons when he was transported out of the
12 SHU, was that a standard operating procedure?

13 A Yes, ma'am.

14 Q Was that put in place for the protection of
15 Mr. al-Marri?

16 A For the protection of Mr. al-Marri and the staff.

17 Q The video that you were shown of the optometrist
18 visit, was Mr. al-Marri in the SHU during that visit?

19 A No. Well, he was in fact outside the SHU in the
20 reception and release area of the Brig in the dental and
21 medical treatment area.

22 Q Any time he was taken out of the SHU, was he taken
23 out in those -- pursuant to those standards?

24 A Yes, ma'am.

25 Q For various -- during his times of non-compliance,

1 were there certain privileges that were suspended by the
2 Brig?

3 A Yes, ma'am.

4 Q Now you had an opportunity to review some of the
5 other factual allegations made in the defense sentencing
6 memo before your testimony today?

7 A Yes, ma'am.

8 Q I believe you reviewed an allegation that for 35 days
9 straight the defendant was not allowed access to the
10 outside for recreation?

11 A Yes, ma'am.

12 Q Do you remember that period?

13 A Yes, sir. That was the period when Mr. al-Marri was
14 defecating on the trays, urinating on the walls, and also
15 I believe throwing substances at some staff members.

16 Q Typically what were the hours that the Brig allowed
17 Mr. al-Marri to go outside and recreate?

18 A We at first gave him two hours of recreation, either
19 inside or outside. Some of it was weather dependent. At
20 a later date we increased that to four hours outside.

21 Q Do you know the number of hours that are required by
22 the Geneva Convention for enemy combatants like
23 Mr. al-Marri?

24 A I believe it's two hours, ma'am.

25 Q And you mentioned during the time where there was

1 extreme disruption by Mr. al-Marri, were the privileges to
2 go outside completely suspended?

3 A No, ma'am.

4 Q How were they suspended?

5 A Well, if his behavior warranted, i.e. he was not
6 throwing stuff or defecating or urinating on the trays or
7 the floor, he was offered time outside the cell.

8 Q Was it standard operating procedure for the Brig to
9 surveil Mr. al-Marri for 24 hours a day, 7 days a week?

10 A Yes, ma'am, standard procedure.

11 Q Was that standard procedure for the Brig in general
12 or just for enemy combatants?

13 A If you were -- depending. We had some areas, some
14 cells and other areas of the facility that were 24-hour
15 monitored. All of the enemy combatants areas had 24-hour
16 monitoring in every area.

17 Q And I believe there were times when your staffed
18 checked on Mr. al-Marri at 15-minute intervals?

19 A Yes, ma'am.

20 Q Is that also standard procedure?

21 A That is standard procedure, yes, ma'am.

22 Q I believe there were also times when the lights
23 remained on 24 hours a day?

24 A Yes, ma'am.

25 Q Was there a reason for that?

1 A Yes, ma'am. We were -- in particular when he first
2 arrived at the Brig, one of our gravest concerns was that
3 Mr. al-Marri might become suicidal and attempt to harm
4 himself.

5 Q So the purpose of the lights on was so that your
6 staff could observe him?

7 A So that we could better observe him in the cell at
8 night.

9 Q Mr. Seymour, did the Brig provide medical services to
10 Mr. al-Marri throughout his entire time?

11 A Yes, ma'am.

12 THE COURT: I'm sorry. I didn't hear that
13 question.

14 Q Did the Brig employ medical services for Mr. al-Marri
15 during the entire period he was at the Brig?

16 A Yes, sir.

17 Q Typically how would medical services be dispatched to
18 see Mr. al-Marri?

19 A He would be seen a number of times a week by the
20 corpsman, medication dispense. Also, if there was a
21 corpsman present and he requested to see one, we would
22 make arrangements for the corpsman to come down and see
23 Mr. al-Marri.

24 Q So if he had a particular complaint, he could let
25 someone know?

1 A Yes, ma'am.

2 Q And did in fact he do that?

3 A Yes, ma'am.

4 Q Did he have a lot of complaints?

5 A Yes, ma'am.

6 Q Was there a mechanism by which he could put his
7 complaints in writing and send them to the leadership of
8 the Brig?

9 A Yes, ma'am. He could send two letters to the
10 commanding officer of the day.

11 Q Now did Mr. al-Marri receive additional privileges
12 that general Brig population did not receive?

13 A Yes, ma'am.

14 Q Could you describe some of those for me, please?

15 A He received a laptop.

16 THE COURT: Can we have a time frame on this?
17 I'm pretty certain he wasn't given a laptop initially.

18 Q Sure. Do you remember approximately when he was
19 provided with a laptop?

20 A Probably the last year and a half he was there.

21 Q What other privileges was he provided?

22 A He was provided a several hundred volume library in
23 Arabic text. He was provided numerous books, religious
24 books on CD, provided magazines, newspapers, additional
25 articles that prisoners in Guantanamo were receiving. He

1 had a compass that he could use to tell the direction of
2 east any time that he wanted to.

3 Q With respect to that, was that for purposes of
4 prayer?

5 A Yes, ma'am.

6 Q And did your staff, if he asked, did you staff let
7 him know when prayer time was?

8 A After a period of time, yes, ma'am.

9 Q Was that after the DIA interrogations concluded?

10 A Yes, ma'am.

11 Q And you also described the conditions of his cell
12 earlier. Was there a time when his cell door was opened
13 during days so he could be out in other parts of the SHU?

14 A Yes, ma'am.

15 Q Can you describe the other areas of the SHU he was
16 allowed to be in?

17 A He was allowed to be in the day room, have access to
18 an elliptical machine, a treadmill, chin-up bars, nice
19 padded chairs.

20 THE COURT: Is this all in the same time frame
21 I'm assuming, the last year and a half? Is that what
22 you're talking about?

23 A Approximately, yes, sir.

24 Q What about -- did he request visits by an imam during
25 the time while he was at the Brig?

1 A We provided an imam to Mr. al-Marri and he did
2 request to see him on a number of occasions.

3 Q Do you remember approximately when Mr. al-Marri first
4 requested to see an imam?

5 A It would -- I could not tell you exactly, ma'am. I
6 believe it was probably in the last two years, maybe
7 before that.

8 Q Was there a time that you yourself actually went and
9 purchased food, special food items for Mr. al-Marri?

10 A Yes, ma'am.

11 Q What type of food items were those?

12 A We purchased miswak, which is a tooth cleaning root.
13 It's pretty much an Arabic item. We purchased halal
14 cookies and cakes. On one occasion we purchased a case of
15 Ensure.

16 Q Mr. Seymour, you also testified that he did receive a
17 mattress, but not 24 hours a day?

18 A Yes, ma'am.

19 Q When the Brig provided him with a mattress, what were
20 the hours that generally he was provided with the
21 mattress?

22 A To be honest with you, I don't remember exactly. I
23 believe it was pretty much during the night hours when he
24 would be sleeping.

25 Q And then it seems there were several complaints about

1 the temperature in his cell?

2 A Yes, ma'am.

3 Q Was there a separate thermostat for his control?

4 A No, ma'am.

5 Q So was the thermostat for the entire Brig?

6 A It would have been building by building.

7 Q And was there a particular temperature that the SHU
8 had to be at for standard operating procedures?

9 A The temperature was set at that time from 70 to
10 74 degrees, I believe, which was a Navy standard.

11 Q And we also heard testimony that there were -- that
12 Mr. al-Marri believed there was noxious fumes being pumped
13 into his cell?

14 A Yes, ma'am.

15 Q Were there ever noxious fumes pumped into his cell at
16 the Brig?

17 A No, ma'am.

18 Q Are there noxious fumes around the Brig?

19 A Yes, ma'am.

20 Q Can you describe those noxious fumes?

21 A There's a large paper mill approximately 2, 2 1/2
22 miles from the facility.

23 Q And did you yourself smell that --

24 A Yes, ma'am.

25 Q -- every day at work?

1 A Yes, ma'am.

2 Q Mr. Seymour, you testified, I believe, you have been
3 in corrections for 35 years?

4 A Approximately 35, yes, ma'am.

5 Q Had you ever encountered an individual like al-Marri?

6 A No, ma'am.

7 Q Was the Brig responsible for -- the mission of the
8 Brig, did it include gathering intelligence for purposes
9 of threat assessments?

10 A No, ma'am.

11 Q Was it the Brig's responsibility to determine whether
12 Mr. al-Marri had communicated with any al-Qaeda personnel?

13 A No, ma'am.

14 Q Was it the Brig's responsibility to determine whether
15 Mr. al-Marri had communicated with Khalid Sheikh Mohammed?

16 A No, ma'am.

17 Q One other question. We heard testimony also, I
18 believe, that the Brig staff had taken toilet paper away?

19 A Yes, ma'am.

20 Q Was there a particular reason why that was done?

21 A Yes, ma'am.

22 Q Can you describe one?

23 A He was misusing toilet paper. One of the things he
24 would do would be to take the toilet paper and throw it
25 over the lens of the camera so we were not able to observe

1 him.

2 MS. BALTES: Thank you. No further questions.

3 THE COURT: Thank you. Mr. Savage, any
4 re-direct?

5 MR. SAVAGE: Yes, Your Honor. Thank you for the
6 opportunity.

7 **RE-DIRECT EXAMINATION**

8 BY MR. SAVAGE:

9 Q Good afternoon again, Mr. Seymour. It was
10 painstaking this morning to see the very well defined logs
11 that you and your staff kept, those daily general ledger
12 logs, the shower logs, the recreation logs, the passdown
13 logs, the meal logs. Who maintains those logs?

14 A I'm sorry?

15 Q Who maintains those logs?

16 A They're maintained at the Brig.

17 Q And how did Mr. al-Marri's defense team obtain
18 permission to look at those logs?

19 A If I'm not mistaken, it was through the Justice
20 Department.

21 Q The very people who just questioned you?

22 A Yes, sir.

23 Q Who have access to those logs?

24 A I believe so.

25 Q Yet in your testimony you didn't provide one date,

1 not one date associated with your testimony?

2 A No.

3 Q Now the truth is that all the questions you were
4 asked this morning regarding conditions of confinement had
5 nothing to do with Mr. al-Marri's obedience to the rules
6 and regulations of the Brig. Those conditions of
7 compliance, no glasses, no opportunity to see outside, no
8 opportunity to see inside, no mattress, no chair, no warm
9 meals, on and on and on that this Court was bored with the
10 facts and details of this morning --

11 THE COURT: I was not bored with them, counsel.
12 Don't put words in my mouth. That's not correct.

13 Q I'm sorry. That the Court listened to this morning
14 attentively had nothing to do with the Brig but had to do
15 with a directive of DIA?

16 A Yes, sir.

17 Q Now once the Brig exercised its custody and control
18 of Mr. al-Marri, things were not perfect?

19 A No, sir.

20 Q But that was in 2005, late in 2005, and 2006
21 primarily?

22 A Yes, sir.

23 Q And at that time, against your wishes, Mr. Seymour,
24 and against the Brig staff recommendation, your colleagues
25 and boss, the Four Star, denied any privileges to

1 Mr. al-Marri?

2 A For a period of time, yes, sir.

3 Q And it was in that period of time after the departure
4 of DIA when he was still in an all hardened cell without
5 mattress, without pillow, without chair, without anything
6 that his form of communication turned out to be bodily
7 fluids?

8 A By and large, sir. He did have the mattress and the
9 chair for part of that period of time.

10 Q Now the medical services made recommendations about
11 his conditions of confinement; is that correct? You've
12 seen the video.

13 A Yes, sir.

14 Q And they were denied in the time frame in which we
15 showed this morning, 2005?

16 A He did have the -- I think the reference is in fact
17 toward a Posturepedic type mattress. He had it and then
18 he lost it and he had it and he lost it.

19 Q The testimony you gave about he was provided with
20 several volumes, hundreds of volumes of religious
21 materials --

22 A Yes, sir.

23 Q The United States Government Department of Defense or
24 Department of Justice never provided him with one book;
25 isn't that correct?

1 A No, sir. We in fact did provide him with
2 approximately \$7,000 worth of books.

3 Q Through ICRC and his defense counsel?

4 A No, sir. These books were in fact purchased by the
5 facility.

6 Q One moment, please. You said that he was treated
7 differently to a general question asked by the
8 Government's representative than Mr. Padilla. In the time
9 frame that was referenced in this morning's testimony,
10 that is in 2003, 2004, those were under the directives of
11 DIA, were they not?

12 A Yes, sir.

13 Q And those distinctions were not based on behavior,
14 but based on the needs and purposes of the DIA's
15 involvement?

16 A They were based on a request of the DIA, sir.

17 Q And when you responded to the Government's
18 representative that he eventually received these books and
19 other privileges such as a television, that was done in
20 the last 18 months at most, perhaps in the last 6 months
21 that some of those privileges came to be?

22 A Some of those privileges were later. A number of
23 them were from 16 to 20 months.

24 Q But most of them were in the time frame we discussed
25 in this morning's testimony?

1 A Not the early time frames.

2 Q In 2003, 2004, 2005 and 2006. At your urging, he got
3 a newspaper in 2007?

4 A Yes, sir.

5 Q And that newspaper contained classified ads, the
6 obituary column and the sports page?

7 A Yes, sir.

8 Q No news in the newspaper, nothing. That newspaper
9 wasn't the New York Times. It was a local paper, correct?

10 A Yes, sir.

11 Q And there was no news given to him?

12 A No, sir.

13 Q When he eventually received a television, which was
14 in the last 12 to 14 months of his presence there, he was
15 restricted in what he could see?

16 A Yes, sir.

17 Q The computer that he was given was used for what
18 purpose?

19 A Religious text study and he did some other basic
20 stuff. He received some other programs that he could use
21 that he utilized in his study.

22 Q Did he use it to write correspondence to his
23 attorneys?

24 A Sir, that I don't know.

25 Q Was the intent of providing these privileges to

1 Mr. al-Marri, Brig staff's intention, to reduce the
2 boredom, the desolation, isolation that he existed in?

3 A Yes, sir.

4 Q Did any other person in the Brig, UCMJ side, ever
5 experience that deprivation of socialization?

6 A If you're speaking of being placed in the SHU area by
7 themselves, no, sir.

8 Q And you addressed to the Government's representative
9 a short while ago that there was surveillance on the UCMJ
10 side of the Brig?

11 A Yes, sir.

12 Q In fact, that is limited to the detention facility
13 within the UCMJ side?

14 A It is, sir.

15 Q And that the common, ordinary, everyday inmate on the
16 UCMJ side is not under surveillance 24/7?

17 A No, sir, they are not.

18 Q Beg the Court's indulgence one moment, please. The
19 restriction of Mr. Padilla to meet with outsiders, family
20 members, others in the community who may have been
21 interested other than ICRC and his defense team, that was
22 not punitive or was it punitive?

23 A No, sir, it was not punitive.

24 Q The phone calls that he was denied up until the one
25 phone call he received in 2008 and his second phone call

1 he got in 2009, that was not punitive based on his
2 behavior, was it?

3 A No, sir. Sir, could I correct one thing that I
4 mentioned earlier?

5 Q Certainly.

6 A In the cells proper, the only cells that are
7 monitored are in the Brig lockup area. However, all of
8 the common areas inside the housing units and many other
9 areas have common monitoring.

10 Q I think the question -- and correct me if I'm
11 wrong -- that the Government representative asked was are
12 the other inmates 24/7?

13 A Not in cell. Only in the other housing unit, the
14 disciplinary housing unit.

15 Q The type of video we saw today where every movement,
16 biological need, sleep, daily activity is just in the
17 special housing unit for detainees?

18 A There are several cells in that other housing unit
19 where we would place people that have to be detained for
20 one reason or another that do have monitoring.

21 Q One moment, please. At the time of Mr. al-Marri's
22 departure from the custody of the Brig, including the time
23 that he was under the marshal's custody there, had you
24 observed a change in his attitude, his demeanor in terms
25 of his respect for the rules and regulations of the Brig?

1 A Yes, sir.

2 Q And at the time of his departure, was he an
3 exemplary -- I guess there's no such thing as an exemplary
4 enemy combatant -- but was he acting at least in those
5 times, in the later years that you have referenced where
6 his conditions improved, let's say from 2006 forward, his
7 attitude, his compliance, his respect and what-not, had it
8 markedly changed consistent with the change of his
9 conditions of confinement?

10 A Yes, sir.

11 MR. LUSTBERG: Thank you, Mr. Seymour.

12 THE COURT: Any re-cross?

13 MS. BALTES: No, Your Honor.

14 THE COURT: Thank you very much, sir. You may
15 step down. I assume there's no possibility of recalling
16 this witness. Is that right?

17 MR. SAVAGE: Your Honor, no, there is not.

18 (Witness excused)

19 THE COURT: Call your next witness, please.

20 MR. LUSTBERG: Major John Pucciarelli.
21
22
23
24
25

JOHN PUCCIARELLI,

1
2 Having been first duly sworn, was examined and
3 testified under oath as follows:

DIRECT EXAMINATION

4
5 BY MR. LUSTBERG:

6 Q Good afternoon, Commander. For the benefit of the
7 court reporter, it probably would be a good idea for you
8 to spell your last name.

9 A P-U-C-C-I-A-R-E-L-L-I.

10 Q Sir, how are you employed?

11 A Sir, I'm employed by the United States Navy.

12 Q And at what rank and what are your current duties?

13 A My rank is Commander, pay grade 05. I'm currently a
14 military professor stationed at the Naval War College in
15 Newport, Rhode Island.

16 Q Was there a time when you were employed at the
17 Consolidated Naval Brig in Charleston, South Carolina?

18 A Yes, sir. That's correct.

19 Q And when was that?

20 A I came on board December 1, 2006 until December 4 of
21 2008.

22 Q And what was your -- what were your duties there?

23 A My initial duties were as an executive officer. I
24 served as the executive officer from around the 8th of
25 December approximately 2006 until July 3, 2007, at which

1 time I flected up to the commanding officer position and
2 filled that position until I departed in December of 2008.

3 Q Just for the benefit of the Court, if you could
4 briefly summarize your experience prior to arriving at the
5 Brig. I know it's not so easy to do it briefly. Just
6 work backwards. What had you been doing before that,
7 before you came to the Brig?

8 A Do you want to go back my entire military career?

9 Q How about we just take right before the Brig and I'll
10 cut you off when we've heard enough.

11 A Before coming to the Brig I was stationed at the
12 Naval Consolidated Brig at Miramar, which is in San Diego,
13 California, and out there I served as the Director of
14 Clinical Services for a short period of time. I was also
15 the acting executive officer of the Brig there in Miramar.

16 Q And let's go one more. Before that?

17 A Prior to that I was a student at the Naval War
18 College in the College of Naval Commanding Staff.

19 Q How long overall have you been in the Navy?

20 A 20 years and 2 months.

21 Q And were you in the Marines before that time?

22 A I was a Marine Corps option candidate when I was in
23 the Naval ROTC program.

24 Q Thank you. Do you know Mr. al-Marri?

25 A Yes, sir, I do.

1 Q Do see him here in court?

2 A Yes, sir, I do.

3 Q How did you come into contact with Mr. al-Marri?

4 A When I reported on board as the executive officer, I
5 sat in on any meetings dealing with the enemy combatant
6 mission so that gave me my initial familiarity with
7 dealing with the enemy combatant mission. Then as
8 commanding officer I had more interaction with
9 Mr. al-Marri. Primarily it was written communication. He
10 was allowed to submit chits to the commanding officer to
11 discuss different issues in written format.

12 Q We'll come back to that in moment. With respect to
13 the enemy combatant mission, at the time you arrived was
14 he the only enemy combatant there at the Brig?

15 A That's correct. We only had the one, sir.

16 Q And just back to these chits, would you describe for
17 the benefit of the Court what a chit is?

18 A A chit is an item that we use in the United States
19 Navy. Any sailor can submit a chit up the chain of
20 command for various administrative reasons. So we found
21 that as a good mechanism by which Mr. al-Marri could also
22 communicate with the chain of command and to also keep a
23 written record of those communications.

24 Q When he would submit a chit to you, how would you
25 respond to that?

1 A It would work its way up through the chain, through
2 the special housing unit chain. If there were things in
3 there that they could handle, you know, if it was
4 something that could be handled at a lower level, they
5 would do their best to take care of it. Otherwise it
6 would work its way up through the chain and ultimately
7 make it to my desk. We did our best to turn them around
8 as quickly as possible. Sometimes it took more time than
9 others. Some of them were requests to speak with counsel.
10 We could turn those around fairly quickly. Others
11 required us to go to higher authority for guidance.

12 Q And would you respond to him likewise in writing?

13 A That's correct. Yes, sir.

14 Q Now tell me if I have this right. He sent a fair
15 number of chits up the chain of command to you; is that
16 right?

17 A Yes, sir. It was approximately in my time about 332
18 chits.

19 Q Approximately?

20 A Yes.

21 Q And you would always respond to those as required,
22 right?

23 A That's correct.

24 Q Sort of became pen pals, didn't you?

25 A Some of them were more detailed. Some of them were

1 comments noted. Some of them gave more detail on what we
2 were doing to try to resolve particular situations.

3 Q We'll come back to that. Back to the special housing
4 unit, which is -- Mr. al-Marri was housed in the special
5 housing unit or the SHU; is that correct?

6 A That's correct.

7 Q And was he the only resident of the SHU at the time
8 that you were the commander of the Brig?

9 A That's correct, sir.

10 Q Did he have any communications with any other inmates
11 at the Brig whatsoever?

12 A He did not have communication with any other
13 prisoners at the Brig, no, sir.

14 Q Did he have communications with anybody outside of
15 Brig personnel, his attorneys and the ICRC, International
16 Committee for the Red Cross?

17 A Other than communications with his family at the time
18 that those were authorized.

19 Q That's later on?

20 A Later on in my term, yes, sir.

21 Q We'll talk about that. Now during your time there,
22 if you could explain to the Court, how did Mr. al-Marri's
23 conduct change in your view?

24 A How did it change? When I first took command in
25 July, we started to see some disciplinary reports,

1 primarily related to issues with food, things with
2 blocking cameras, some disrespectful communications to
3 staff, not necessarily following directions of staff right
4 away, and so there was about six chits or DRs,
5 disciplinary reports, that occurred early on in my term as
6 command officer, but those fairly quickly subsided. I
7 think there was total of about 12 or 13 disciplinary
8 reports that were issued during my time in command.

9 Q When you say they fairly quickly subsided, did he
10 cease -- explain what happened.

11 A Those initial half dozen or so were related to some
12 food issues with the preparation of meals, the halal
13 preparation of meals. And we were preparing them in that
14 fashion, but my assumption is in his mind he wasn't a
15 hundred percent certain that we were preparing those meals
16 that way, although I tried my best in writing to make it
17 known that we were preparing it to the best of our ability
18 in halal fashion.

19 Q So did something happen that caused him to become
20 satisfied that in fact you were doing the best you could
21 in that regard?

22 A My senior staff and I really racked our brains on
23 this, on how we could demonstrate to him that we were
24 preparing the meals in accordance with his religious
25 guidelines, and we came up with an idea of giving him a

1 tour of our facility, the meal preparation facility, and
2 having my food service officer give basically a briefing
3 on how the meals were prepared. So we arranged for --
4 after hours, once the facility was locked down and taps
5 had been sounded and prisoners were all in their racks, it
6 was very late at night and we transported him to the
7 enlisted dining facility and we showed him how meals were
8 prepared. Now I was not there for that. I observed it
9 all on camera from our control center. But my senior
10 staff accompanied him to that location.

11 Q And once he had had that, once he had had that tour
12 of the galley, were there any -- after that were there any
13 disciplinary problems at all with Mr. al-Marri regarding
14 food?

15 A We used that tour in conjunction with a meeting with
16 our imam to help to clarify any questions that he might
17 have and it was after we went through that that meal
18 related issues subsided and I do not recall that becoming
19 an issue again during the remainder of my time in command.

20 Q So do you remember about when, Commander, that was,
21 that tour of the galley?

22 A I believe it was immediately following Ramadan in
23 2007, so it would have been October time frame,
24 mid-October of 2007.

25 Q By the way, you mentioned Ramadan. You also had

1 earlier mentioned that there had been some disciplinary
2 problems with respect to Mr. al-Marri covering the
3 cameras, the videotaping of him in his cell. Do you
4 recall that?

5 A Yes, sir.

6 Q Was that at all related to Ramadan as best you can
7 recall it? That is was he -- I'm sorry.

8 A It was in and around the time of Ramadan as I recall.

9 Q And was it -- do you recall whether he was covering
10 cameras so he could pray in privacy at that time?

11 A I think, as he had related to my senior staff during
12 their meetings with him, it was a protest of sorts.

13 Q Protesting --

14 A Protesting that we were not providing his meals in
15 halal fashion.

16 Q I see. Thank you. In any event, were there other
17 ways during the time that you were there that you
18 attempted to make Mr. al-Marri's life a little bit better?

19 A We worked to provide him with additional items for
20 recreation. He was very much into physical fitness. We
21 had already provided him with a treadmill and elliptical
22 trainer, so he had access to that. We obtained a weight
23 machine for him to work out on. We had increased his
24 access to Islamic or religious texts and I think
25 ultimately we brought him up to over 500 volumes that he

1 had access to, a hard copy of volumes that he could do his
2 religious studies. And towards the very tail end of my
3 tenure there, we had even obtained clearance to get
4 Islamic texts on CD which provided -- I believe the figure
5 was close to 12,000 volumes of material that he could
6 read. He also had access to our Brig library which had a
7 couple thousand volumes, so he could pick and choose from
8 that. He had access to movies. He was allotted -- we
9 gave him a list, a movie list, basically the same movies
10 that we made available to our own military prisoners. He
11 could pick and choose from that list.

12 Q Were there any types of initiatives that you sought
13 to undertake with Mr. al-Marri to improve his conditions
14 in which you made recommendations that were rejected from
15 higher up in the chain of command?

16 A We had pressed hard for communication with family and
17 more communication outside. It did ultimately get
18 approved. It was -- it took some time and it took a
19 number of times going back and forth just to get status
20 updates, but we ultimately did obtain the clearance to go
21 ahead and arrange for phone calls to his family.

22 Q If you would, can you tell the Court what exactly
23 happened when ultimately Mr. al-Marri obtained permission
24 to speak to his family by telephone?

25 A There were a lot of logistics involved. It was

1 fairly easy for us at the Brig to set up and make the
2 arrangements for the phone call on our end, but there was
3 a lot of logistics involved with making contact with his
4 family overseas. So there was a lot of work that had to
5 be done by other agencies and a lot of work beyond our
6 control in order to make that communication with his
7 family. And I believe ultimately when they did make
8 communication or contact with his family to make these
9 arrangements, it was discovered that his father had passed
10 away a number of months prior.

11 Q When that happened, did you write a letter to
12 Mr. al-Marri?

13 A Yes, I did. I consulted first with our imam. I was
14 away at the time when we got word of that. I want to say
15 it was April 2008 time frame when we were looking to
16 coordinate that. I was away at my headquarters. I
17 received immediate notification from my senior staff. We
18 worked to have an imam flown out from Chicago, from Great
19 Lakes, to be there and his attorney, Andy Savage, came out
20 to pass the word to him of this discovery. And, yes, I
21 did, I wrote a formal letter to Mr. al-Marri.

22 Q Let me show you what's already been marked as Defense
23 Exhibit 80. If you could, just for the benefit of the
24 Court, just read it. Well, anyway, it's up there. What
25 was your purpose in writing this letter, Commander?

1 A Because the decision had been made that commanding
2 officers would not have direct contact with the enemy
3 combatants so that we could maintain some distance when it
4 came to making decisions. As I mentioned earlier, all the
5 communications back and forth were in writing. If there
6 was a prisoner -- often times we had prisoners on the
7 military side of the house where parents or a very close
8 relative died and our chaplain would make contact and I
9 would also make contact with them. It was more of a
10 personal -- I could do it one-on-one with one of our
11 military prisoners, so this is not unlike anything I would
12 have done with one of our military prisoners. But I
13 wanted to take an opportunity to let him know that we were
14 thinking of him, anything that he needed to help him
15 through the difficult time, hearing the difficult news.

16 Q By this time you had established sort of a
17 relationship with Mr. al-Marri, hadn't you?

18 A Of sorts, yes, sir.

19 Q Not in person because you hadn't spoken to him in
20 person by that time, had you?

21 A No, sir, I had not.

22 Q And that relationship was through the various chits
23 that he would write, they would work their way up to you
24 and your responses to him; is that correct?

25 A That's correct.

1 Q And in the course of that relationship that you had
2 with him, did you discover, for example, that he had a
3 sense of humor?

4 A On occasion some of the communications were humorous,
5 yes, sir.

6 Q Can you think of an example?

7 A There was one occasion where I guess some grass was
8 growing up a little high in his recreation area and he had
9 sent up an ad from Home Depot that had a weed whacker
10 there and he said, you know, if we purchased it for him he
11 would take care of that for us, along with a fee schedule,
12 I guess, that he would take care of any lawn maintenance
13 for us.

14 Q Was he respectful to you in the course of your
15 correspondence with him?

16 A Mostly. You know, there was some times where I saw
17 that there was some frustration in his writing, but I
18 never took it as being totally disrespectful. I could see
19 he was experiencing some frustrations.

20 Q And did he express gratitude to you in terms of the
21 various initiatives you were undertaking to make his
22 otherwise isolated life more tolerable there at the Brig?

23 A There were a couple of chits that I can recall where
24 he did send notes of thanks for when we provided him with
25 additional texts, when we provided him with access to a

1 computer that had been cleared from higher authority, but
2 he thanked us for providing that to him. There was a time
3 where I cleared some photographs of his children to be
4 passed to him, so he provided a letter of thanks for that
5 fact.

6 Q As a general matter -- and I asked you this earlier
7 as to whether he had changed and you talked about his
8 disciplinary record having improved in light of all these
9 initiatives that you had undertaken. Did you notice a
10 change in his attitude as a general matter towards
11 personnel at the Brig and towards his captivity as it
12 were?

13 A During my time in command, I always noted him to be
14 respectful. He had good interaction with staff. He never
15 directly threatened staff. One item that I found
16 particularly interesting was there was a time where he was
17 going to dump his food tray and he warned one of the
18 guards that he was going to do that and asked him to step
19 aside so he wouldn't -- so the guard wouldn't get anything
20 on his uniform.

21 Q Finally, there came a time when you -- as you
22 reported, you're no longer at the Brig, so there came a
23 time when you left your command post at the Brig, correct?

24 A That's correct.

25 Q And when was that again?

1 A That was in December of 2008.

2 Q And did you meet with Mr. al-Marri in connection with
3 your departure from the Brig?

4 A I did. I made a decision to go and meet with him
5 one-on-one, face-to-face. This was an individual I had
6 been communicating with in writing for some period of
7 time. I wanted a brief meeting with him to sit down and
8 explain that there was going to be a change of command,
9 that he could expect to be hearing from a new commanding
10 officer, one who had worked alongside me and had been
11 trained by me, but of course every commanding officer has
12 a different approach and that he could -- might expect
13 some changes in policy and things like that to come now,
14 but just if he would please be patient with those and give
15 the new commanding officer an opportunity to basically
16 ramp up and learn the new position.

17 Q What did he say?

18 A He was agreeable to that and he was pleased that I
19 took the opportunity to come down and meet with him. He
20 seemed very pleased to have an opportunity to meet with
21 me.

22 Q And did you subsequently learn whether he in fact
23 fulfilled his promise to give the new CO a chance to ramp
24 up as you say?

25 A I talked to the new CO on a number of occasions

1 following my departure and the new commanding officer
2 never gave me any indication of any difficulties after we
3 changed command.

4 Q Just two other areas and then I'll let you go. One
5 is, I think I understood what you said before, but were
6 there any examples during the time that you were CO at the
7 Brig of Mr. al-Marri acting in any sort of violent manner?

8 A No, sir, I did not note any incidents of violence
9 during his detention.

10 Q Finally, am I right that one of the things that
11 occurred during the time that you were CO is that
12 Mr. al-Marri got a television set?

13 A That's correct.

14 Q And I don't know whether you were here. There were
15 limits to what he could watch on TV, correct?

16 A That's correct.

17 Q And his television watching habits in fact were
18 monitored by the staff at the Brig; is that correct?

19 A Yes, sir.

20 Q You are aware he liked, for example, to watch NASCAR?

21 A Yes, sir.

22 Q You did become aware of that?

23 A Yes, sir.

24 Q And were you aware of an incident in which
25 Mr. al-Marri turned his television so that on Super Bowl

1 Sunday some of the guards who really wanted to watch the
2 Super Bowl could watch the Super Bowl on his TV, otherwise
3 they would miss it?

4 A I heard that after the fact. I heard about that
5 sometime after the fact, yes, sir.

6 MR. LUSTBERG: Thank you very much. I have
7 nothing further for the witness. Thank you very much.

8 THE COURT: Thank you. Any questions?

9 MS. BALTES: No questions from the Government.
10 Thank you, Your Honor.

11 THE COURT: Thank you very much. You may step
12 down.

13 (Witness excused)

14 THE COURT: Do you have any other witness to
15 present?

16 MR. LUSTBERG: We don't, Your Honor.

17 THE COURT: Do you have any witnesses?

18 MR. RISLEY: Yes, we have one, Your Honor.

19 **DEBORAH KAY SIRRATT,**

20 Having been first duly sworn, was examined and
21 testified under oath as follows:

22 **DIRECT EXAMINATION**

23 BY MR. RISLEY:

24 Q Will you state your name?

25 A Deborah Kay SIRRATT.

1 Q Can you spell your last name?

2 A S-I-R-R-A-T-T.

3 Q What is your occupation?

4 A Psychologist.

5 Q And we can tell by your uniform you're serving in the
6 military; is that correct?

7 A Yes, sir.

8 Q In the Air Force?

9 A Yes, sir.

10 Q What is your rank?

11 A Major.

12 Q Would you tell us a little bit about, in summary
13 fashion, about your professional education?

14 A I have a bachelor's degree in international studies
15 and Russian Slavic studies, I have a master's degree in
16 psychology and a Ph.D. in psychology.

17 Q Where did you obtain your Ph.D.?

18 A University of Memphis in Memphis, Tennessee.

19 Q Could you tell us a little bit about your
20 post-doctoral training, professional training,
21 particularly as it relates to terrorist psychology?

22 A I completed a residency at Wilford Hall and then I
23 received training, Behavioral Science Consultation Team
24 training, for three weeks in October of 2007 down at Fort
25 Huachuca, Arizona.

1 Q Did that relate to terrorists or terrorism?

2 A Correct. That training was actually a three-week
3 required training before I went down and served at
4 Guantanamo Bay, Cuba.

5 Q Do you have any professional certifications or
6 licenses?

7 A Yes. I'm licensed to practice psychology in Arizona.

8 Q Will you give us an idea about your professional
9 experience as a psychologist?

10 A I've served in several capacities: Clinical
11 psychologist for individual therapy, group therapy, family
12 therapy, as well as administrator, served as clinical
13 director, served as surgeon general in my jobs, and
14 currently I'm a student at Air Command and Staff College
15 in Maxwell.

16 Q Do you know the defendant in this case, Ali al-Marri?

17 A Yes, I do.

18 Q Do you see him here in the courtroom?

19 A Yes, I do.

20 Q When and how did you first become acquainted with the
21 defendant?

22 A I was stationed -- I started PCS actually to the
23 Naval Brig in Charleston in September of '05, became aware
24 of Mr. al-Marri being held at the Brig. I did not start
25 to actually interact with him until around July of 2006.

1 My predecessor in the position as clinical director was
2 PCS-ing, so someone needed to take over the role that he
3 held so I was told, "Major SIRRATT, you're going to be
4 taking on that role. Let me tell you about it." And I
5 was introduced to Mr. al-Marri and --

6 Q What is PCS-ing?

7 A I'm sorry. Let me explain PCS-ing. My predecessor,
8 the Major that was there, decided that he was going to
9 move. He got an assignment. And military basically
10 decided they were going to send him to Guam and so I took
11 over his role as clinical director, so I was in charge of
12 both medical and clinical care at the Brig in Charleston.

13 Q And that included the defendant; is that right?

14 A Correct. It included the regular prison population
15 and included Mr. al-Marri.

16 Q Now will you elaborate a little bit on your role, the
17 role you assumed with respect to the defendant in
18 particular?

19 A The role I assumed was being in charge of all his
20 medical and clinical care and that was basically making
21 sure his day-to-day medical care was taken care of. If
22 there were any clinical issues that needed to be taken
23 care of, that was my responsibility as well.

24 Q And did you do that through personal contact with the
25 defendant?

1 A My responsibility, as it was explained to me, was to
2 be available to go down and, according to the Major I
3 replaced, go down and check on Mr. al-Marri weekly and to
4 see if his medical needs were being taken care of. And so
5 I was introduced to Mr. al-Marri. In the first meeting I
6 had, Mr. al-Marri was very kind and said, "I appreciate
7 you coming down here, but I really would prefer not to
8 speak to a woman. I would prefer to speak to a male."

9 Q Did you ultimately have the opportunity to have
10 meetings with the defendant in person?

11 A Yes, I was.

12 Q Tell us what brought that about. How did things
13 change and why?

14 A The initial meeting actually came about there was
15 another Major there that was actually in charge of
16 responsibility for the SHU and --

17 Q By SHU, that means what?

18 A Special housing unit. That was the name that was
19 given to where Mr. al-Marri was located. So special
20 housing units works out to be SHU. He was responsible for
21 security for that area and he accompanied me to introduce
22 me to Mr. al-Marri and said, "This is the new Major."
23 This is the new Captain actually. I was a different rank
24 at the time. He said, "Give her a chance. She's a good
25 person. Talk with her." Again, Mr. al-Marri was very

1 kind and said, "Thank you, but I really don't want to meet
2 with a woman."

3 And my understanding, although I didn't witness
4 these interactions, was the Major continued to say, "Hey,
5 give her a chance. She's a nice person." Again, this is
6 what I was told. And I continued to go down and watch
7 interactions with Mr. al-Marri and this particular Major.

8 Eventually Mr. al-Marri requested to speak to me
9 and he requested to speak to me about medical issues, so I
10 went to speak to Mr. al-Marri. And it took a couple of
11 months before he was willing to speak to me, but I did go
12 down and speak to him for a short period of time to
13 discuss the medical issues he was concerned about.

14 Q Then after that initial successful contact, will you
15 tell us over what time period or periods you had personal
16 interaction with the defendant?

17 A I'm not sure of the exact date he actually requested
18 to see me. I want to say it was late fall perhaps of '06,
19 but maybe it was every week to two weeks I went down to
20 see him and talked to him about different issues that he
21 would address and would want me to, you know, take time to
22 talk about regarding medical issues. That was probably
23 from maybe November of '06 through September of '07 when I
24 deployed to Guantanamo Bay, Cuba. Then I followed up with
25 him when I came back from Cuba.

1 Q When did you come back? When was your next contact
2 after you left for Guantanamo Bay?

3 A Unfortunately my last contact was in September of
4 '07, I deployed, and the last contact that I had with
5 Mr. al-Marri was in, I believe, June of '08.

6 Q So there was a gap and then you had one visit, is
7 that right, in June of '08?

8 A Correct.

9 Q Now you have made reference to weekly sessions. Were
10 you successful in having weekly sessions with him during
11 the time period before you left for Guantanamo?

12 A I would not say every week, but almost every week.
13 Sometimes it was every two weeks. It was almost every
14 week.

15 Q Will you give us some idea of how long these sessions
16 were when you would sit down and talk with him?

17 A The shortest one I think we had was that initial
18 session where it was 7 minutes where he was again very
19 kind, said, "Hey, I really don't want to talk to a woman."
20 The longest one I think was up to an hour and a half, hour
21 and 40 minutes. So they kind of varied depending on what
22 Mr. al-Marri wanted to talk about. We talked about all
23 kinds of different issues, mostly focused on medical
24 concerns, but we did talk about other things, religion,
25 history, other issues.

1 Q Now what was really your purpose in engaging him in
2 discussions like that on religion, history or other sorts
3 of things?

4 A It was honestly what he wanted to talk about.
5 Basically what we talked about, we kind of started going
6 down lists and he would have a list of things that he
7 would like to talk about and so we started out with a list
8 of these are the issues I want to talk about. And from
9 the last time that we talked about, it was kind of a
10 follow-up and then the last part of the list was, okay,
11 these are the new issues I would like to talk about.

12 And sometimes in there, depending on what we
13 were talking about, something would trigger us talking
14 about history or something, you know, would trigger us
15 talking about -- you know, for instance, one time we
16 talked about Turkey or a couple of times we talked about
17 Turkey. I happened to be stationed in Turkey before.
18 There might have been something in the news, you know,
19 that came up in topic of conversation, so we happened to
20 talk about that. So sometimes even though we had had a
21 list we were going to go by and he had it written down and
22 we would go over it step by step, there might be something
23 else that would come up as a topic of conversation. So
24 that's kind of how those things came up. We generally
25 went by a list, item by item on a list that he would come

1 up with.

2 Q He would develop the list and you would go down his
3 agenda?

4 A Right.

5 Q Now is it fair to say that your role included not
6 just the physical, medical aspects of his condition, but
7 also assessing his mental health?

8 A It was an unofficial assessment. From the very
9 beginning, he was very clear to me -- he made it very
10 clear to me that he really didn't believe in -- as he
11 joked with me, he said he didn't believe in head doctors.
12 It was our little joke. More than once he would say that
13 I was the head doctor. You know, my being a psychologist,
14 you know, head doctor, and then head doctor in terms of I
15 was in charge of medical. That would be our joke. And on
16 more than one occasion we talked about the fact that I was
17 the quote/unquote head doctor. Sometimes he would write
18 notes to me and give them to the SHU staff and they would
19 give them to me and it would be "head doctor". I was the
20 head doctor.

21 So he was very clear that he kind of really
22 didn't believe in psychology. He really didn't see the
23 need for it. And very clearly he was seeing me as the
24 person in charge of medical. So when I talked to him, it
25 was in the role as the person in charge of medical, but I

1 also made sure that I assessed in terms of how was he
2 doing, how was he getting along, those activities of daily
3 living that I would do with any person that I was seeing
4 to make sure he was doing okay.

5 Q Now in the course of these meetings, were there
6 occasions in which the defendant would raise various
7 complaints that he had about Brig personnel, the way he
8 was being treated, conditions of his confinement?

9 A Absolutely. Different issues that would pop up,
10 problems. If there were issues with different noises, if
11 there was a problem with a particular staff member, if
12 there were complaints with somebody. Maybe they were
13 being louder than normal. Maybe they were shutting the
14 door too loudly, like the sliding doors, mechanized doors
15 that slid closed and open. Somebody that was maybe being
16 a little noisy when he was trying to sleep. Things like
17 that he would definitely bring up to me. Maybe being a
18 little slow to get magazines and stuff like that. Those
19 kind of issues he would definitely bring up to me.
20 Problems with medical staff on when the results were
21 coming back from different lab work, things like that. He
22 was definitely bringing those up and I would try to take
23 that information and I would go investigate.

24 Even if it didn't have to do with medical, I
25 would try and investigate and find out from the staff that

1 sat there every day what's going on, try to find out from
2 the leadership if there was some issue that I needed to
3 find out what's going on, is there a bigger issue. I
4 would talk to my medical staff. What's going on with the
5 lab work? Do we need an update? Is it updated in our
6 computer system? Do we just need to give him an update or
7 is it not actually being registered in our computer
8 system? So that's why we would go over it every week.
9 You know, this is the update for that lab work. Or, no,
10 it's not in the system. You know, we would work on that
11 and try to get the updates.

12 Q Now when you conducted this investigation into the
13 factual validity of the defendant's complaints, did they
14 always turn out to be factually valid?

15 A No.

16 Q Would you elaborate on that?

17 A Sometimes they were legitimate, like we should have
18 gotten that information to him or we could have at least
19 gotten him an update. Then there were other times where
20 it was picking on a particular staff person and kind of
21 singling him out of the crowd and there was no reason to
22 do that. He was purposely picking on a particular staff
23 member, and that happened on more than one occasion. It
24 happened repeatedly. And it was this particular staff
25 member for this particular week or this particular staff

1 member for this particular month. That happened on
2 numerous occasions.

3 Then there were other occasions where there
4 absolutely was information where we could have given him
5 an update or we could have at least said, "Hey, we don't
6 have any update on this. They're running slow or late at
7 the lab." Or "We should have been able to get you your
8 glasses, but there's some kind of glitch." But there were
9 also the same number of times where there was no apparent
10 issue going on and it just seemed like complaining to
11 complain.

12 Q Now based upon this period of interaction that you
13 had with the defendant and based also on your professional
14 training and experience, will you describe for the Court
15 your observations about pertinent personality
16 characteristics of the defendant?

17 A You know, at the very beginning it was, I think,
18 difficult to kind of really understand because at the
19 beginning it was very brief conversations and I think he
20 was kind of holding a lot back. And as time grew and I
21 got to spend more and more time with him, I think I got to
22 see a little bit more of his personality. He would smile
23 more around me, I think show a little bit more of his
24 personality, would laugh more, would tell jokes more. It
25 was more than just the head doctor joke that kept coming

1 up over and over again. I mean, there's no doubt that I
2 certainly laughed at that joke. I would make the joke
3 too. By the end it was very clear to me he was a very
4 resilient human being.

5 Q Now when you say "resilient", what do you mean?

6 A I think it was a tough place for any person to be. I
7 think it was a very difficult situation for anybody to be
8 in, anybody in this courtroom. I think it's a tough place
9 to be, to be away from your family when your family is
10 very important to you and I think -- and I don't know what
11 all he went through. I certainly know when I was there at
12 the Brig -- and I was there for only two years and I
13 didn't even interact with him for the two years. I know
14 it's a difficult situation to be in. But I think he made
15 the most of the time when I got to be around him. I think
16 he made the most of the time.

17 I mean, he read so much. He even made the
18 comment to me that in some ways it was a blessing that he
19 had a chance to read as much as he did the Quran and that
20 if he was back at home he wouldn't have had that exposure,
21 that time away from, you know, dealing with all the kids,
22 working so hard to make sure he got a chance to take care
23 of his family because he really would have had to work
24 very hard to take care of his family. I mean, that's just
25 natural. We all have to work for a living to take care of

1 our families. He said, you know, "I get to read all of
2 this. That's something I get to do for hours and hours
3 during the day, dedicated to this." I mean, you know --

4 Q Let me --

5 A He made the most.

6 Q Let me encourage you to focus on --

7 A Right.

8 Q -- those personality traits. Were there any
9 difficult aspects of his personality that you observed?

10 A Right, but what I'm trying to say is very resilient,
11 but part of that is also, I mean, very narcissistic.

12 Q What do you mean by that?

13 A Very confident. He was also very manipulative. He
14 could play staff members against each other. Very
15 confident. I think that all played together in his
16 ability to make it through this difficult situation.

17 Q To cope with it?

18 A To cope with it.

19 Q Now will you describe for the Court your observations
20 about the defendant's mental health, the state of his
21 mental health during this time period when you had contact
22 with him?

23 A He definitely had times when I would see him and he
24 would show signs of sadness, especially when he talked
25 about really wanting to have letters from his family,

1 wanting to see pictures of his family, there would be
2 sadness, wanting to know how his father was doing. There
3 would definitely be times he was more sad. There was a
4 couple of times -- and it's noted in my documentation
5 where I would mark that he was despondent, meaning kind of
6 sadness. Those were sessions where there was sadness and
7 there was a couple of points where he just didn't want to
8 talk. He kind of got to that point where we were talking
9 and it was kind of like, "I just don't want to say much
10 more." Most of the time that I talked to him we talked,
11 we laughed, we talked about different issues, we were able
12 to communicate, things were okay. There were a couple of
13 times I could tell he was having a little bit sadder day.

14 Q So there were ups and downs?

15 A Ups and downs.

16 Q What about --

17 A Pretty normal.

18 Q How would you characterize the state of his mental
19 health in general?

20 A Okay. Pretty good.

21 Q Now you said there was a break when you went for a
22 period of time on duty to Guantanamo Bay?

23 A Correct.

24 Q When was that again? What was that time period?

25 A Last time I saw him was in late September, 2007. I

1 went for training in October and I didn't see him again
2 until around early to mid-June 2008.

3 Q When you saw him again, what were the circumstances?

4 A I saw him when I got back. We spoke for about an
5 hour and 40 minutes. Essentially we had the opportunity
6 to catch up, see how he was doing. Because when I left I
7 didn't know if I would have the opportunity to see him
8 again, kind of said our farewells when I left, so it was
9 an opportunity to kind of -- "Didn't know if I was going
10 to get the chance to see you again. How are things
11 going?" He asked me if I had had a chance to see his
12 brother and I said I had. Just --

13 Q By his brother, you mean his brother Jarrallah who
14 was a prisoner at that time at Guantanamo Bay; is that
15 correct?

16 A Correct. So we just caught up.

17 Q Now comparing your observations of the defendant at
18 that time with those in your sessions before, did you
19 observe any significant change in his mental state or
20 mental health?

21 A Did not appear to be much of a change to me. He
22 seemed about the same.

23 Q During this time did you ever feel concerns that the
24 defendant might be showing some signs of psychiatric or
25 psychological pathology?

1 A Not when I saw him in June, no.

2 Q And before, at any point in time?

3 A No, not during the time that I saw him.

4 Q Over the course of your conversations with the
5 defendant, you mentioned that you talked about Turkey.

6 What was the nature of those conversations?

7 A We were talking about Turkey, talked about a lot of
8 different issues with Turkey. I happened to mention -- we
9 were talking about different issues related to history and
10 religion and we talked about Turkey and I mentioned that I
11 had been stationed there.

12 So we talked about the fact that that was a
13 Muslim country, yet they had a secular government. We
14 talked about the fact that a Muslim country really
15 shouldn't have a secular government. They really kind of
16 weren't supposed to do that.

17 Q Now were you asserting that proposition or was he
18 asserting that proposition or both?

19 A We both asserted it, but certainly he, you know, kind
20 of said it first and I was like asking him why that didn't
21 seem right and he was explaining to me why that really
22 wasn't right. And that had been asserted to me before by
23 some other Muslims that I had met previously. But he was
24 asserting it and I was saying that didn't seem right to me
25 either.

1 Q Now were there other conversations that you had with
2 the defendant where you discussed world affairs and in
3 particular any of the defendant's beliefs about things
4 that needed to change in the world?

5 A Yes. We talked about the Palestinian issue. We
6 talked about the United States and some inconsistencies in
7 the United States, talking about democracy and how the
8 United States had been saying they wanted democracy, but
9 yet the United States wouldn't back free elections in
10 Palestine. Talking about how when Hamas got voted in in
11 the elections in Palestine, the United States wouldn't
12 support those elections and how the Muslim world kind of
13 saw that as, "Wait a second. That's inconsistent. You're
14 saying you're kind of pro democracy, but yet they got
15 voted in at the election and now you're saying it's a bad
16 election."

17 Kind of how, you know, his Palestinian brethren
18 were being killed. Also talked about one of his lawyers
19 that he previously had that was Jewish and he explained
20 that relationship. It was like he was a nice guy and he
21 understood that he was a good man, but he couldn't have
22 him on his legal team because he was Jewish. It was like
23 he could kind of forgive him, but he couldn't really
24 forgive him because, you know, he was involved in killing.
25 The money that he gave to different organizations, it was

1 involved in the killing of his Palestinian brethren. Then
2 he talked about infidels. We had more than one
3 conversation talking about infidels.

4 Q Tell us about those.

5 A Infidels should be killed. Infidels, Americans --

6 Q How did he define infidels?

7 A Nonbelievers. Infidels should be killed. You know,
8 very specific saying that -- nobody at the Brig. Very
9 specific. Saying the Savages were great. You know, very
10 specific.

11 Q When you say the Savages, you mean Andy and Cheryl
12 Savage, his attorney --

13 A Absolutely.

14 Q -- and his wife?

15 A Absolutely. He never had anything bad ever to say
16 about them. Was very kind talking about the Brig staff,
17 saying that he really felt like they were very kind and
18 treated him well. He was -- again, he was talking about
19 the staff that I knew, the people I worked with. I don't
20 know if he had unkind thoughts about anybody before then,
21 but certainly he said kind things about them.

22 He talked about Americans, that they needed to
23 get out of the Middle East and talking about violence
24 against them, talking about violence against Israel,
25 talking about --

1 Q When you say he talked about violence against these
2 people, what do you mean?

3 A They needed to get out of the Middle East. They
4 needed to be destroyed. They needed to be gone.

5 Q At some point did you make any observation about
6 whether there was anyone left from the scope of these
7 groups that he believed needed to be destroyed?

8 A Uh-huh.

9 Q Tell us about that.

10 A At some point -- can you restate that question again?
11 I'm sorry.

12 Q There were various groups, you're indicating, that he
13 indicated needed to be destroyed. Did you have a
14 conversation about what was going to be left?

15 A Kind of what he talked about was kind of Americans
16 and then Jews and then I kind of asked about Sunis and
17 Shi'as. I said, "What happens when there's Sunis and
18 Shi'as left?" Because that was an issue. As I was
19 getting ready to go to Gitmo, I found out I was going to
20 Gitmo and I think it was in May and I was reading up on
21 that. I said, "What happens when Sunis and Shi'as are
22 left?" I was like, "What then? Is everything peaceful?"
23 Because some of the reading was suggesting that there was
24 a lot of animosity. And he said, "Well, then the Shi'as
25 are gone." And I didn't understand him. He said, "Then

1 the Shi'as are gone. You know, they're different. Then
2 the Shi'as are gone." I said, "Well, is there fighting?
3 He said, "Yeah," you know, smiling. I couldn't quite
4 understand that. Does that mean they're really fighting
5 or are they just pushed to the side or are they in Iran?
6 I didn't quite understand. I didn't quite exactly
7 understand that.

8 Q Now let me direct your attention to the date
9 specifically of June 25 of 2007. Do you recall a
10 conversation on that date? You have had the opportunity
11 to refer to those notes you spoke about; is that right?

12 A Yes, sir.

13 Q Now on that date was there a particular conversation
14 about infidels?

15 A Yes, sir.

16 Q And you noted that in your notes; is that correct?

17 A Yes, sir.

18 Q Will you tell the Court about that conversation?

19 A Can I look at those notes again.

20 Q Yes. Your Honor, may I approach the witness?

21 THE COURT: You may. Is there a particular
22 exhibit number?

23 MR. RISLEY: I have talked to the defense about
24 that. We have a clean copy, Government Exhibit 6, and I
25 would move for its admission into evidence.

1 THE COURT: Any objection?

2 MR. LUSTBERG: No, Your Honor.

3 THE COURT: It's admitted.

4 MR. RISLEY: Your Honor, we're talking about --
5 on the bottom of those pages there are some numbers and
6 this is 25, document 25 out of 53. There aren't actually
7 53, but that's the number at the bottom. June 25 of 2007.
8 By the way, Your Honor, this is the copy that was given to
9 us. They're not very good on some dates, including this
10 one.

11 THE COURT: Go ahead.

12 BY MR. RISLEY:

13 Q Now, Doctor, you have had an opportunity to review
14 that. Is your memory refreshed about that date and that
15 conversation?

16 A Yes, sir.

17 Q Will you tell the Court -- just describe to the Court
18 that conversation that you made note of in your report.

19 A I think I've already talked about it a little bit.
20 It just talks about the fact that Mr. al-Marri was making
21 comment about how his brother was saying that down at
22 Gitmo they were being told that they could -- that he
23 perhaps could be there forever or until the end of the war
24 it appears and that the infidels should be out of --
25 needed to get out of the Middle East, that the fighting is

1 going to continue until the infidels leave, get off of any
2 Muslim soil.

3 Q Now if I'm understanding you correctly, he's saying
4 that if his brother Jarrallah and his enemy combatants
5 were going to be detained until the end of the war, that
6 was going to be a long time because it would continue on
7 until when?

8 A If I'm reading this correctly, capturing what he
9 said, until all the infidels leave all the Muslim land,
10 all the Muslim soil.

11 Q Okay. I'll take that back. Now one of the issues
12 that of course the Judge has to deal with in making a
13 sentencing decision is assessing what potential danger the
14 defendant would pose if he were to be released. Do you
15 have -- based on your experience with the defendant over
16 this period of time and your professional training and
17 experience, do you have any views on that subject?

18 A Yes, sir.

19 Q Will you share that with the Court?

20 A Yes, sir. I actually believe, based on my
21 experiences and based on my subsequent experience, not
22 only from my time talking with Mr. al-Marri and then my
23 time at Gitmo, my experiences combined, kind of what I did
24 down at Gitmo, which I can't exactly go into, a lot of
25 experience doing this kind of thing, making judgments and

1 recommendations about individuals' future possibilities in
2 engaging in hostile acts against the United States, I do
3 feel in Mr. al-Marri's case it's likely that he might in
4 fact engage in hostile acts against the United States.

5 Does that answer your question?

6 MR. RISLEY: Yes. I have no other questions,
7 Your Honor.

8 THE COURT: All right. Thank you.
9 Mr. Lustberg?

10 **CROSS EXAMINATION**

11 BY MR. LUSTBERG:

12 Q Hi, Dr. Sirratt.

13 A Hello, sir.

14 Q I'm Larry Lustberg. I'm one of the attorneys for
15 Mr. al-Marri.

16 A Yes, sir.

17 Q Jewish by the way. Let me get to that. Did you have
18 an opportunity in preparing for this hearing to look at
19 any of the exhibits that have been filed by the defense?

20 A Some of them.

21 Q Well, did you look at an exhibit that was a letter
22 from Mark Berman? Is that one that you saw?

23 A Yes, sir.

24 Q And you're aware -- well, was Mr. Berman the
25 attorney, to your knowledge, that Mr. al-Marri was talking

1 to you about, the Jewish lawyer?

2 A I believe so.

3 Q And do you recall then that Mr. Berman talked about
4 how he and Mr. al-Marri would have back and forth
5 discussions in an open-minded fashion about their
6 different cultures and religions, correct?

7 A I believe that's what it said in the letter.

8 Q And do you have any reason to disbelieve that?

9 A I believe that's what it said in the letter.

10 Q Well, have you spoken to Mr. Berman?

11 A I have not spoken with Mr. Berman.

12 Q Did you speak to Mr. al-Marri about his conversations
13 with Mr. Berman?

14 A What I spoke with Mr. al-Marri about was the fact
15 that he said that Jews are infidels and they should die.

16 Q Let me make sure I understand this. It's your
17 testimony that Mr. al-Marri said to you that Jews are
18 infidels and they should die? Is that your testimony?

19 A I don't believe he said that in exactly those same
20 words, but --

21 Q Okay. Well, what words did he use? This is pretty
22 important.

23 A It's pretty important, but I didn't quote him.

24 Q Do you have any recollection about what his exact
25 words were when he said that?

1 A Those were his approximate words, but I didn't tape
2 record him, sir.

3 Q You said you had an opportunity to look through your
4 reports before you testified today?

5 A Not my reports. The 600s that were stapled together.

6 Q Are those the reports that you wrote as a result of
7 your meetings with Mr. al-Marri?

8 A Not reports. Those are the 600s I wrote. Most of
9 them, yes.

10 Q Pardon me?

11 A Most of them.

12 Q I'm sorry. Most of them you did have a chance to
13 look at?

14 A Most of my 600s were stapled together.

15 Q There were missing ones?

16 A Yes.

17 Q In any of those reports that you looked at, was there
18 any discussion of Mr. al-Marri saying that Jews are
19 infidels and they must die?

20 A I don't write down every word that Mr. al-Marri says.

21 Q I see.

22 A Just like I don't write down every word that anybody
23 says in my 600s.

24 Q I understand, ma'am. Do you try to write down what
25 you think is important?

1 A I write down the words that I write down.

2 Q Okay. I understand that answer, but -- and I
3 understand you write down the words you write down. I'm
4 trying to understand how you make the decision about what
5 you write down. Let me ask this question. Do you write
6 down what you think is important?

7 A My job was to make sure that Mr. al-Marri's medical
8 needs were taken care of.

9 Q Let me try my question again if you don't mind. My
10 question was: Do you write down the words that you --
11 things that somebody says to you that you think are
12 important?

13 A My job was to make sure that Mr. al-Marri's medical
14 needs were taken care of.

15 THE COURT: Just a moment. Please listen to the
16 question and try to answer that question. If you feel you
17 can't answer that question in the form he asked it, you
18 can tell him that, but otherwise I would expect that you
19 would answer the question directly. Do you wish to ask
20 the question again?

21 Q Thank you, Your Honor. My question is: Do you write
22 down in those -- I'm sorry. What did you call them?

23 A They are 600s, sir.

24 Q 600s. Do you write down in those reports, those
25 600s, what you think is important that the person you're

1 talking to has said?

2 A I write down related to their medical history or
3 their medical questions what I think is pertinent to their
4 medical information because that was why I was going down
5 to interact with Mr. al-Marri.

6 Q Okay. I understand that. If we could -- and we're
7 going to make this a little easier so everybody can see
8 it. Let's call up the June 25, 2007, which I think you
9 said was page 25 out of 53. This is the one you looked at
10 a few minutes ago, correct, ma'am?

11 A I believe so.

12 Q Doctor, was this the report that you looked at a
13 couple of minutes ago when Mr. Risley showed it to you to
14 refresh your recollection?

15 A It looks like it is.

16 Q You're not sure even though you just looked at it a
17 few minutes ago?

18 A It's hard to read, sir, but I believe it's the
19 correct one.

20 Q I'm directing your attention to paragraph 7. I know
21 this is particularly hard to read. If you could take a
22 look at it and do the best you can. This was the
23 paragraph that you were commenting on in your testimony
24 under direct examination from the Government a few minutes
25 ago. Do you recall that, Doctor?

1 A Yes, sir.

2 Q And this paragraph talks about Mr. al-Marri's court
3 case, right --

4 A Yes, sir.

5 Q -- at the beginning? You wrote that down, right?

6 A Yes, sir.

7 Q What did that have to do with his medical condition?

8 A I happened to write it down. I guess I thought it
9 was important.

10 Q That's what I was trying get at a few minutes ago.
11 You wrote that down because you thought it was important,
12 correct?

13 A Yes.

14 Q Did you write down in this report or anywhere else
15 where Mr. al-Marri said that Jews are infidels and must be
16 killed?

17 A No, I didn't write it down in this paragraph.

18 Q Let me ask something else. You're right. It's not
19 in this paragraph. Did you write it down in any other
20 paragraph in any other one of these reports that you
21 reviewed?

22 A I didn't see it anywhere.

23 Q Do you know when he said that?

24 A I don't remember what date.

25 Q Let me ask you this. Does that statement that you

1 claim he made, does that in any way contribute to your
2 opinion that he is, to use your phrase, likely to become
3 violent at some point? What did you say? He's likely to
4 be what? What was your conclusion a few moments ago?

5 A I don't remember exactly what I said.

6 Q Okay. Well, let me ask the question then. You were
7 asked a question based on your experience upon his
8 release, is Mr. al-Marri likely to commit another crime?
9 Is that what it was?

10 A I don't remember the exact question.

11 Q Okay. What's your opinion about what Mr. al-Marri is
12 going to do if and when he is released?

13 A What's my opinion?

14 Q Yes.

15 A I think based on my experience, not only
16 with Mr. al-Marri but also my experience at Gitmo where
17 that was actually one of the jobs that I partook in, that
18 I actually had to make those judgment calls, and whether
19 or not people did make statements like that or did not,
20 based on that experience my estimation is that he is
21 likely to partake.

22 Q Likely to partake. I'm asking you the question: Is
23 the statement that you say he made that Jews are infidels
24 and should be killed, is that one of the reasons why you
25 think he's likely to partake?

1 A One of the many reasons.

2 Q One of many reasons?

3 A Uh-huh.

4 Q Let me go back to your experience. You said that's
5 based not only on your contact with him, but on your other
6 experiences?

7 A Experiences at Gitmo.

8 Q Your experiences at Gitmo. And do those experiences
9 include anybody whom you have seen who did in fact partake
10 in acts against the U.S. after they left?

11 A I cannot talk about what my job was there.

12 Q I'm not asking you -- I'm asking you for the
13 experience upon which you drew that leads you to believe
14 that Mr. al-Marri is likely to partake. I'm asking you
15 whether you have been correct about that before and under
16 what circumstances?

17 A Yes.

18 Q And can you tell us what those circumstances were?

19 A No.

20 MR. LUSTBERG: Judge, we need to discuss this if
21 the Court doesn't mind.

22 THE COURT: All right. Well, let me ask the
23 witness to step outside, please. Please step outside.

24 (Witness leaves courtroom)

25 THE COURT: Go ahead.

1 MR. LUSTBERG: Thank you, Your Honor. Judge,
2 these are extremely serious allegations that appear in
3 nothing that we have ever been provided that we're now
4 hearing for the first time. The Government is calling a
5 person as an expert in essence to opine that Mr. al-Marri
6 is likely to reoffend in some way. She is now claiming
7 that that -- claimed on direct examination that that
8 conclusion is bolstered by experiences that she has had in
9 the past. However, she is unwilling to share those
10 experiences which prevents us from probing that extremely
11 important information that, frankly, as I'm going to
12 attempt to show, is at odds with other information she
13 had. But be that as it may, we need to -- there could be
14 no more critical piece of information and I think we
15 should have the right to probe that and understand what
16 the basis of it is.

17 We have been given nothing. In fact, we
18 provided these to the Government, these medical records
19 that is Government Exhibit 6. There is no other
20 information, nothing else that we have to probe that and
21 that is now becoming obviously a very critical fact. So I
22 would ask for the opportunity to either have the
23 Government provide the information upon which that is
24 based or to probe further. I understand there may be
25 sensitive materials. If that's the case, then I think

1 appropriate steps need to be taken and the Court can
2 review in camera what that information is and make an
3 appropriate determination as Your Honor has done in this
4 very matter in the past.

5 THE COURT: All right. What's the response?

6 MR. RISLEY: Your Honor, I'm not sure what the
7 lack of clarity is. She's said that this is an opinion
8 that she formed based upon her extended interaction with
9 the defendant personally and based upon her professional
10 experience, which included a stint of time with some
11 duties that called upon -- where she was called upon to
12 face these sorts of issues at Guantanamo. No, she has not
13 been specific about what those duties were, but other than
14 that I think it's pretty clear what the basis for this is.

15 THE COURT: Well, as I understand what she said,
16 her duties at Gitmo included in effect making the type of
17 assessments that she was asked to give here on the stand
18 today.

19 MR. RISLEY: She did.

20 THE COURT: And that she did that. That is part
21 of the basis for her expert opinion. Normally the
22 opposition, whatever we're talking about, is allowed to
23 challenge or test the credibility of the foundation for
24 the expert's testimony. Isn't that correct?

25 MR. RISLEY: Well, that's correct, and I'm not

1 contesting that. Your Honor, there is a little bit
2 though -- I think we need to clarify a couple of points.
3 Number one, we didn't even know about this witness until
4 we were contacted by the people at the Department of
5 Defense that Mr. Savage had interviewed her and during the
6 course of the interview she had said essentially what she
7 testified to here and the person, the representative from
8 the Department of Defense, contacted Ms. Baltes and
9 indicated to her that you might be interested in talking
10 to this person, which we did.

11 Now the reports we received from the defense, so
12 when they say they were taken by surprise I'm surprised
13 because essentially that's why we have it. We learned
14 about it because of their interview of this witness before
15 we interviewed her.

16 MR. LUSTBERG: Judge, I have the greatest
17 respect for Mr. Risley, but there's just some mistakes
18 there. First of all, I'm not saying that we were
19 surprised that she existed or as to some of the things
20 that she said Mr. al-Marri said. Let me tell you that
21 what she has testified to here today is not in these
22 reports. We have never heard that before. Most
23 particularly, this argument that she is now -- the
24 conclusion, the dramatic conclusion of her direct
25 testimony today, which is that Mr. al-Marri is likely to

1 partake in violent acts against the United States, appears
2 no where here and was not in fact said in the interview
3 that was done of her by Mr. Savage and Ms. Savage and we
4 would be prepared to call them as witnesses to say that.

5 But that is neither here nor there. This is not
6 a failure of discovery. I'm not blaming the Government
7 for not turning over information. What I'm saying is that
8 she's now saying that based on her experience she's good
9 at predicting whether people are likely to partake, to use
10 her verb. I want to probe those experiences.

11 THE COURT: I didn't actually hear her say she
12 was good at that. My understanding was that --

13 MR. LUSTBERG: You understand my -- I think you
14 understand -- I think Your Honor understands my point.
15 I'm trying to --

16 THE COURT: Exactly. Let me talk. I can
17 understand because of the circumstances that it would be
18 inappropriate for her to talk about specific cases by
19 name, but I don't understand why even in open court she
20 couldn't testify, for example, if there was some case down
21 there where she had come to a conclusion that the person
22 was not -- she didn't think would be a risk and then after
23 they were released -- I'm assuming that's what she's
24 talking about.

25 MR. RISLEY: I'm not sure, Your Honor.

1 THE COURT: Well, that's what it sounds like to
2 me anyway.

3 MR. RISLEY: It's possible.

4 THE COURT: I don't see where there is any
5 national security or classified information problem with
6 her answering that kind of a question.

7 MR. RISLEY: There may be some way that we can
8 work around it, Your Honor. It's my understanding some of
9 her duties may get us into sensitive areas. What I would
10 ask the Court to consider is we're not offering this as an
11 expert opinion as such. What this is is a professional
12 who does have a view and what we're talking about goes to
13 the weight of that.

14 THE COURT: I don't know what the distinction is
15 you're making between an expert and a professional. She's
16 obviously presented, I thought, as an expert witness.

17 MR. RISLEY: The difference is this. There's a
18 letter even from Mr. Berman in here, one of the
19 defendant's attorneys, where he opines himself on this
20 very subject. Here we have somebody who is a
21 professional. She surely is not disqualified from having
22 an opinion simply because she's qualified.

23 THE COURT: I don't believe Mr. Berman has a
24 Ph.D. in psychology.

25 MR. RISLEY: No, he doesn't.

1 THE COURT: That's why she was qualified.

2 MR. RISLEY: But it seems anomalous to say we'll
3 consider that, but not consider someone who does.

4 THE COURT: Well, I'll give -- we're going to --
5 we've been going for two hours now. We're going to take a
6 15-minute break. You should confer and talk to her and
7 talk to opposing counsel. When I come back in 15 minutes,
8 I need to know what the situation is.

9 MR. SMITH: Your Honor, could we have 20 or 25
10 minutes? I'm sorry. 15 is fine.

11 THE COURT: Fine. We're in recess for
12 15 minutes.

13 (Recess taken)

14 THE COURT: I understand your client is in
15 prayer. I was asked about this over the break. I said if
16 he wants to do that while we're discussing the legalities
17 of this, fine. We are not going to change the schedule in
18 order to accommodate that. I'm sorry, but that's the way
19 it is. So if you want to -- if he wants to be here for
20 our discussion, that's fine. That's your decision. I
21 told you that. That word was passed to you while we were
22 in break.

23 MR. LUSTBERG: I understand. I understand,
24 Judge. I think Mr. Savage is just consulting with him as
25 to what he wants to do.

1 THE COURT: That's fine. Please be seated. I
2 have made accommodations for your client over the course
3 of these hearings. As you know, I have started things
4 late or whatever. But I'm not going to stop this
5 sentencing hearing under these circumstances.

6 MR. LUSTBERG: I understand, Judge.

7 THE COURT: Where are we on this legal issue?

8 MR. RISLEY: Your Honor, right now Ms. Baltes
9 and a representative from the Department of Defense are
10 talking to the witness to determine -- to assess this
11 Guantanamo issue which she brought up. I'm not sure, and
12 they're determining this, to what extent it's even
13 relevant to her opinion.

14 THE COURT: Well, she stated it was part of the
15 basis for her opinion.

16 MR. RISLEY: It was. It was. And I will tell
17 you that while of course it's part of her experience, one
18 would expect that, sort of the question that the Court
19 posed, is her opinion really based on that or is it based
20 on the conversations. They are assessing that right now
21 as to are there potential classification issues that are
22 involved in this. Again, I want to emphasize, I
23 understand that she is a Ph.D., but even a Ph.D. can have
24 a lay opinion but they can't divorce it from their
25 professional training.

1 THE COURT: Well, even if it were a lay
2 opinion -- let's just take that for a minute. Even if it
3 were just a lay opinion, doesn't he still have the right
4 to test the credibility of her basis for that lay opinion?

5 MR. RISLEY: Absolutely, and that's what we're
6 doing right now is to find that out ourselves to what
7 extent and we haven't fully done that.

8 THE COURT: In that respect, I don't think it
9 matters at all whether she's labeled -- whether it's
10 labeled a lay opinion or an expert opinion.

11 MR. RISLEY: Well, I understand the point, but
12 there are some formalities associated with expert
13 opinions. And we don't want to overstate the reliance
14 that we're asking the Court to place upon the opinion, but
15 it's still relevant just like the opinions expressed by
16 the witnesses on behalf of the defendant. But Ms. Baltes
17 has returned to the courtroom. May I have just a moment
18 to find out, Your Honor, what we've learned?

19 THE COURT: Fine.

20 (Discussion held off record)

21 MR. RISLEY: Your Honor, it sounds like we're
22 not going to really have any issues, which were our
23 concern, about cross-examination about the basis for her
24 opinion, so anything that --

25 THE COURT: Well, before she comes back in, can

1 I assume that you're not going to ask for names, are you?

2 MR. LUSTBERG: Your Honor, here's what I want to
3 do. I want to ask her -- I'm not sure I need to and I
4 will admit that I'm thinking out loud here. But what I
5 want to ask her is whether she -- how many assessments of
6 this kind did she do, what did she do to do those
7 assessments and how did they turn out. And I don't have
8 to go into names, but I would want to know specifically
9 the evidence that she relies upon to conclude that a
10 person who she predicted or didn't predict either way was
11 going to be a danger or was going to partake in violence
12 against the United States, what they actually -- what she
13 discovered they actually did do. Now it may turn out
14 there's a particular case that we need to find out more
15 about. We can deal with that, I suppose, down the road
16 and cross that bridge if we come to it.

17 But that's the sort of question I would want to
18 ask about this, to explore the basis for her sense that
19 she's essentially an expert in doing these kind of
20 predictions or that she has done them in the past. That's
21 all.

22 THE COURT: Well, I think we've only got a
23 problem here if we get to a situation where the amount of
24 information you're asking for regarding a particular
25 incident gets down to a point of names or specific

1 circumstances. But in terms of how many of these she's
2 done, what the assessment consisted of and then in terms
3 of after the fact, how is it that she found out whether
4 there was or was not a problem, that seems appropriate. I
5 assume, based on her direct, that we're talking about her
6 doing pre-release assessments of people who were released
7 from Gitmo.

8 MR. LUSTBERG: That's what I understand.

9 THE COURT: I think that could be maybe your
10 first clarifying question.

11 MR. LUSTBERG: I'm with you there.

12 THE COURT: I don't see anything inappropriate
13 about that. All right. Where is the witness?

14 MR. RISLEY: I just motioned for her to be
15 brought in, Your Honor.

16 THE COURT: Great. Doctor, will you come back
17 and take the stand again, please? You're still under
18 oath.

19 **CONTINUED CROSS EXAMINATION**

20 BY MR. LUSTBERG:

21 Q Doctor, when you stepped off we were discussing your
22 Guantanamo experience. Just to recap, Doctor, you were in
23 Guantanamo from when to when?

24 A Late October, maybe the 26th through the 27th, 2007
25 to 31 May 2008.

1 Q So from October '07 until May '08?

2 A Yes, sir.

3 Q And do I understand that during that time that you
4 would assess Guantanamo detainees to determine what their
5 likelihood of partaking in violence against the United
6 States would be upon release?

7 A Yes, sir, towards the end of that time.

8 Q When did you start doing those sorts of assessments?

9 A I would say maybe March of '08.

10 Q So for approximately -- so you did those for about
11 two months?

12 A Yes, sir.

13 Q How many people did you assess during that two month
14 period?

15 A I would say maybe 20 to 30.

16 Q And were any of those released from Guantanamo?

17 A Some of them, yes, sir.

18 Q How many? Do you know?

19 A I apologize. I don't remember.

20 Q Have you followed what they did afterward?

21 A No, sir. Since I was sent back or my deployment
22 ended, I did not follow them.

23 Q Okay. So let me make sure I understand. So you
24 assessed, did you say, 20 to 30 people?

25 A 20 to 30.

1 Q During the time period between March '07 and May '08
2 to determine whether they were likely upon release to
3 partake in violence against the United States; is that
4 correct?

5 A Correct, sir.

6 Q And of those, you don't know -- and you don't know
7 exactly how many of those people actually were released?

8 A I would say maybe between 5 and 10, a small
9 percentage.

10 Q Do you know any of them -- and I'm not asking for
11 names. Do you know for a fact that any of them
12 specifically were released?

13 A I know there were a few, maybe 5 to 10 that were
14 released, and I don't know the outcome.

15 Q You don't know what happened to them?

16 A No, sir, because I came back to the United States.

17 Q So you don't know whether your assessments of them
18 turned out to be correct or incorrect; is that right?

19 A That is accurate, sir.

20 Q Have you done those sorts of assessments other than
21 those 20 or 30 people at Guantanamo and other than what
22 you're telling us -- well, strike that. Other than those
23 20 or 30 people at Guantanamo, have you ever done those
24 kinds of assessments in any other context?

25 A Yes.

1 Q What was that context?

2 A Assessments, regular assessments in my job as a
3 psychologist.

4 Q Tell me -- let's go to Guantanamo. How would you do
5 those assessments? Tell me how you would -- what exactly
6 would you do?

7 A Look at a number of issues, a number of items and
8 make recommendations. I was one of many individuals that
9 would make recommendations and then someone far above my
10 pay grade, far, far above my pay grade, would make the
11 financial decision.

12 Q But my question is in making those assessments, were
13 there specific types of questions that you would ask?

14 A There are specific things that I would look at and
15 there are specific things that other people would look at
16 to make the recommendation.

17 Q What specific things did you look at?

18 A I apologize, sir. I can't really speak to those
19 specific things.

20 Q Well, let me ask you this question without waiving my
21 right to pursue that further. Did you use any kind of
22 psychological testing?

23 A No, sir.

24 Q So there wasn't any battery of tests -- and I'm not
25 an expert in this -- but MMPI or any --

1 A It wouldn't be like a standard assessment, psych
2 assessment that you would use say perhaps -- that you
3 would use like at a sanity board or something in the
4 United States or something like that.

5 Q Like a what? I'm sorry.

6 A Like a sanity board or intelligence testing or
7 something like that in the United States.

8 Q Are there any testing instruments that could be used
9 to assess a likelihood of risk of future violence that
10 you're aware of?

11 A I'm sure there are some.

12 Q But you're not aware of them?

13 A Yes, sir, I am.

14 Q Well --

15 A This is just different.

16 Q Okay. What are those tests that are available?

17 A Relevant to this, sir?

18 Q With all due respect, that's up to the Judge.

19 A Sir, it's not related to this.

20 Q I'm not -- what I'm asking -- let me be clear. What
21 I'm asking is are there tests that could have been used to
22 assess somebody's risk of potential future violence that
23 were not used in this case?

24 THE COURT: Are we talking about Mr. al-Marri's
25 case?

1 Q Well, no. We're now actually talking about the
2 Guantanamo cases. Thank you, Judge, for clarifying.

3 A I'm sorry. Could you ask the question again? I'm
4 not understanding.

5 Q Sure. I'm sure that's my fault. What I'm asking is
6 this. I asked you whether there were tests that could be
7 used to assess somebody's risk of future violence and I
8 think your testimony was you're sure there are.

9 A Yes, sir.

10 Q And so I'm asking you as a Ph.D. psychologist what
11 those tests are.

12 A And are you asking me why I didn't ask for those with
13 Mr. al-Marri?

14 Q That might be my next question, but that's not the
15 question I'm asking right now. Right now I'm just asking
16 you what the tests are.

17 A I'm sorry, sir. I don't have the answer for that.
18 That might be why I didn't give them to Mr. al-Marri other
19 than the fact that I wouldn't have been giving them to
20 Mr. al-Marri. I don't know.

21 Q I was actually talking about Guantanamo. How about
22 at Guantanamo? Did you give them to anybody there?

23 A That wasn't my role.

24 Q Your role was to assess their risk of future
25 violence; is that right?

1 A That's not part of what we did.

2 Q That was not part of what you did?

3 A That's not what we did, no. We did look at several
4 factors and I can't go into what those factors were.

5 Q Well, let me ask you this before I just give up on
6 that. Were those the same factors that you utilized in
7 reaching the opinion that you testified to under oath a
8 little bit ago that Mr. al-Marri was such a danger?

9 A Say that one more time.

10 Q You said there are certain factors you didn't want to
11 disclose.

12 A There is a certain set of factors that they looked at
13 at Guantanamo and there's a certain way they looked at
14 them and they requested people who are not only
15 psychologists, they were other job duties and other
16 individuals who had nothing to do with psychology, and
17 they looked at different areas and so based on their
18 criteria they looked at a lot of different areas and so
19 each of those individuals based on that criteria made
20 recommendations and so that's why it was different at
21 Guantanamo. And, again, I can't go into that. And
22 everyone made recommendations.

23 Q So here's my question and let's see if I understand
24 that these are the things you can't go into. You can't
25 tell us what factors are examined in order to determine

1 whether somebody is likely to be a risk of future danger?

2 A What I'm trying to explain without going into the
3 details at Gitmo, there are several factors that were
4 looked into and some of the factors we looked at from
5 different aspects. Some of them were interrogators, some
6 of them were analysts, and different people looked at
7 them.

8 THE COURT: May I try something here?

9 MR. LUSTBERG: That would be great, Judge. I'm
10 looking for all the help I can get.

11 **EXAMINATION**

12 BY THE COURT:

13 Q You said there were several factors that were
14 considered down at Gitmo, correct?

15 A Yes, sir.

16 Q I gather from that that your input was only part of
17 what was considered?

18 A Yes, sir.

19 Q There were a number of other people who came at it
20 maybe from different disciplines or different points of
21 view who also contributed and then --

22 A Yes, sir.

23 Q There might be an end product as a result of all of
24 that?

25 A And they all looked at the same factors, sir, had

1 access to the same --

2 Q I don't think -- we're not asking here for all of
3 those factors that all of those different people
4 contributed.

5 A Yes, sir.

6 Q I think what he's focusing on is was there some set
7 of psychological indicators that you were using just for
8 your part of the input into this?

9 A I would say looking at an individual's
10 characteristics in terms of their behavior while they were
11 incarcerated. I would say looking at whether or not
12 someone -- how they interacted with others. Certainly as
13 you look at Mr. al-Marri -- or I looked at Mr. al-Marri.
14 I don't mean to put words in your mouth, sir. As I looked
15 at Mr. al-Marri, very manipulative, some of the commentary
16 that Mr. al-Marri made to me about infidels on several
17 occasions, all those factors I took into account.
18 Certainly I took into account those factors, discussions
19 with individuals down at Gitmo, took those factors into
20 account.

21 Q So what you did down at Gitmo was basically the
22 same -- are you telling me that you didn't use any factors
23 in your Gitmo opinions that you didn't use with him?

24 A No, sir.

25 Q Are you talking about the same set of factors?

1 A No, sir. There were additional factors I used down
2 at Gitmo as well.

3 Q There were additional factors?

4 A Yes, sir.

5 Q Were those psychological?

6 A Yes, sir. There were additional documents that I
7 also got to be able to review as well.

8 Q So you're saying you had access to information down
9 there --

10 A Additional information.

11 Q -- that you did not have in Mr. al-Marri's case?

12 A Yes, sir.

13 Q Well, then am I understanding correctly that in
14 regard to Mr. al-Marri your opinion is for the most part
15 based on your conversations with him, statements that he
16 made to you and your observations concerning how he
17 interacted with you and other people at the Brig?

18 A Yes. And the big difference with Mr. al-Marri is I
19 got to spend over a thousand hours personally with him and
20 that was completely different than what I got to spend
21 with the individuals at Guantanamo. The personal time
22 that I got to spend with Mr. al-Marri was very different.

23 Q I just have one other question and then I'll give it
24 back to you. If I understand what you're saying
25 correctly --

1 A Yes, sir.

2 Q You gave your input into these situations at Gitmo
3 involving 20 or 30 people?

4 A Yes, sir.

5 Q The combined input of all the people involved in that
6 process --

7 A Yes, sir.

8 Q -- led to the release of 5 to 10?

9 A Yes, sir.

10 Q But you don't know whether any of the 5 to 10 who
11 were released went back to the battlefield or went back to
12 terrorist activities; is that correct?

13 A Sir, I don't know about that group. I do know that
14 the same process was used with other individuals that were
15 at Guantanamo and out of that process there were
16 individuals that were released and subsequently I think of
17 that group --

18 Q Well, I think we've all read about that in the news
19 media. But in terms of the cases where your opinion was
20 used --

21 A Yes, sir.

22 Q -- as part of the input, you don't know --

23 A No, sir.

24 Q -- what the result was?

25 A No, sir.

1 MR. LUSTBERG: Thanks.

2 CONTINUED CROSS EXAMINATION

3 BY MR. LUSTBERG:

4 Q Let me follow up on one point. How many hours did
5 you say you spent with Mr. al-Marri?

6 A Over a thousand.

7 Q You spent a thousand hours with him?

8 A Over a thousand.

9 Q Hours?

10 A Yes.

11 Q That was between when and when?

12 A I don't remember.

13 Q Let me show you -- do you have Government Exhibit 6?

14 A A thousand minutes. I don't remember exactly.

15 Q Well, with all due respect, that's an important
16 difference.

17 A I apologize. I might have misspoken.

18 Q I want to go through it. I'm showing you what's been
19 marked as Government Exhibit 6. If we could just go
20 through the amount of time that you spent, okay?

21 A If I had a pen, I could tell you.

22 THE COURT: What is No. 6?

23 Q That's the packet of what I've been calling reports.
24 I think now I've learned they're called form 600s. Is
25 that right, that they're form 600s, Doctor? Hello?

1 A 600s. I think I misspoke. I think it was more like,
2 I apologize, 20, 30, 40 hours. I misspoke.

3 Q 20, 30 or 40 hours?

4 A I don't remember exactly.

5 Q But --

6 A I misspoke.

7 Q I understand. The first time you met him, was that
8 July 24, 2006, correct? That's the first form?

9 A I think I met him briefly before that when the Major
10 before me had just really briefly, just doing his last
11 sessions with him, just came by and said, "Hey, this is
12 the person that's going to follow up with you." That was
13 really just maybe a few seconds. This is the first time
14 actually I really talked to him for more than a couple of
15 seconds.

16 Q This one was 7 minutes according to the form,
17 correct?

18 A Yes.

19 Q And then the next form 600 in the packet is on
20 August 18, 2006, and this was where you did not see him,
21 correct?

22 A Looks like it.

23 Q Is that right?

24 A Looks like it.

25 Q Next one, this is page 3 of Government Exhibit 6.

1 A Uh-huh.

2 Q September 21, 2006. You did not speak to him,
3 correct?

4 A Looks like it.

5 Q So we're still at 7 minutes. On the next week,
6 September 28, 2006, you did not speak to him; is that
7 correct.

8 A Looks like it.

9 Q The next one, October 6, 2006, you did not speak to
10 him; is that correct?

11 A Looks like it.

12 Q The next one, October 23, 2006, you did not speak to
13 him; is that right?

14 A Looks like it.

15 Q The next one, November 20, 2006, you did not speak to
16 him; is that correct?

17 A Okay.

18 Q Is that a "yes"?

19 A The 20th?

20 Q Yes.

21 A Correct.

22 Q Next week, November 27, 2006, you did speak to him,
23 right?

24 A Uh-huh.

25 Q You spoke to him for 11 minutes; is that right?

1 A Correct.

2 Q And just to look down, towards the bottom of the
3 report it says "participation in session" and there's a
4 box that says "participatory" -- and maybe we can pull
5 this up. It's 8 out of 53. November 27, 2006. Make it
6 easy for everybody to follow.

7 Okay. Towards the bottom -- and you can follow
8 it on yours or on the screen -- there's this line that
9 says "participation in session", "participatory",
10 "non-participatory". You checked "participatory"?

11 A Correct.

12 Q That means that he was willing to meet with you and
13 talk with you, correct?

14 A Yes.

15 Q It does happen, does it not, sometimes at your job
16 that people are not willing to speak to you, right?

17 A Correct.

18 Q And that was not the case here? Mr. al-Marri was in
19 fact willing to speak to you, right?

20 A Correct.

21 Q And then next it says "attentive", "inattentive", and
22 he was attentive; is that right?

23 A Correct.

24 Q And the discussion here was you discussed medical
25 concerns; is that right?

1 A Correct.

2 Q So this session then was, as we said, was 11 minutes,
3 right?

4 A Yes.

5 Q Okay. Going to the next one --

6 THE COURT: Are we going to go through each and
7 every one of them?

8 MR. LUSTBERG: Uh-huh. I mean, Judge, she's
9 representing an amount of time that's not close.

10 THE COURT: I know, but maybe there's a better
11 way to do that. I've added them up in my own head.

12 A And I admit that I misjudged that completely. I said
13 hours instead of minutes. I'm sorry.

14 Q You think it's about a thousand minutes?

15 A I think it's a little over a thousand minutes.

16 Q Okay.

17 A I admitted that.

18 THE COURT: I'm not telling you you can't do it,
19 but if the whole purpose of it is to just focus --

20 MR. LUSTBERG: No, it isn't. I'm just going to
21 use this to go through some other areas. By way of
22 example, let's turn to December 28, 2006.

23 THE COURT: What page is that?

24 Q This is 9 out of 53, and if we could go to the second
25 paragraph which says: "Provider listened, watched about

1 40 minutes of Major's visit with EC." So this was not
2 your visit with Mr. al-Marri?

3 A No.

4 Q Whose visit was it?

5 A It was the Major that was in charge of the SHU.

6 Q And I take it that there was discussion in the course
7 of that about the Iraq war?

8 A I apologize. Was it the second paragraph you said?

9 Q Well, the one that starts "provider listened,
10 watched", December 28.

11 A Yes.

12 Q You testified earlier that in fact even though your
13 job was to essentially focus on medical needs, you would
14 have discussions with Mr. al-Marri about history and
15 politics and so forth, right?

16 A Correct.

17 Q And apparently this Major had similar sorts of
18 conversations with him about politics, right?

19 A Correct.

20 Q In those discussions you would have your opinion when
21 you had them with him, he would have his opinion and you
22 would discuss it, correct?

23 A Correct.

24 Q Sometimes you agreed, sometimes you disagreed I take
25 it?

1 A Correct.

2 Q For example, it sounds like you might have agreed
3 about -- or there was an expressed agreement about Turkey,
4 right?

5 A Correct.

6 Q But you maybe disagreed about some other things he
7 said. Maybe you didn't agree with him about Palestine. I
8 don't know.

9 A We just had discussions.

10 Q Those discussions, were those types of discussions
11 one of the things that you factored into your opinion that
12 you testified to here earlier today?

13 A That we had discussions?

14 Q Well, any political discussions, his statements, like
15 a statement like this, that he discussed the Iraq war and
16 how the U.S. is in a difficult situation, did that
17 statement contribute to your opinion today that he's
18 likely to partake in future violent activity?

19 A That statement?

20 Q Yes.

21 A No.

22 Q Anything in this report that does contribute to that?

23 A I don't see anything.

24 Q Is there anything in this report upon which you base
25 your conclusion that he is manipulative or narcissistic?

1 A Nothing in this note.

2 Q Let me ask you, narcissistic, what does that mean?

3 A Narcissistic?

4 Q Explain to the Court, and to me because I'm not as
5 smart as the Court, what does that mean?

6 A Because you're not as the smart as the Court? Is
7 that what you said, sir?

8 Q What does narcissistic mean, ma'am?

9 A Narcissistic, kind of -- simplistically, a little bit
10 of arrogance, kind of feeling better than, there's a
11 little bit of that manipulation, a little bit of that kind
12 of haughty behavior. He really did feel smarter -- at
13 least my perception was that he felt smarter than, more
14 intelligent than the people around him, really felt that
15 he could explain things better than, more thoroughly than
16 the people around him. He had a better understanding of
17 everything than those around him. Really smarter than --
18 very thoroughly smarter than those around him.

19 Q So when you say that he was narcissistic, what you
20 mean he is that he thought he was smarter than other
21 people around him?

22 A I didn't say he was narcissistic. He kind of had
23 some traits of narcissism. I didn't think he was
24 diagnosable.

25 Q You don't think he was diagnosable as being

1 narcissistic?

2 A No.

3 Q And do you recall -- again, I know you just reviewed
4 these records recently. Is there any place in these
5 records where you made any note of his narcissism?

6 A No. I didn't think he had narcissistic personality
7 disorder, so therefore I didn't put that. I didn't think
8 he had a personality disorder.

9 Q You said that he has narcissistic traits?

10 A Right. I did not think he had a disorder. I did not
11 think it was pertinent. If I thought he had a personality
12 disorder and I felt that strongly about it and I felt it
13 needed to be documented, I would have documented it.

14 Q Okay. I think you testified that his narcissistic
15 traits is one of the reasons why you think that he's
16 likely to partake in future violence against the United
17 States. Is that correct?

18 A My concern when I was writing these notes was not
19 about what was going to happen when he was released. My
20 concern when I was writing these notes was making sure
21 that he was taken care of medically and, if need be,
22 clinically. My concern was not about when he was released
23 in a year or two years or five years. My concern was
24 about making sure today, next week, when I was transferred
25 that the person who followed behind me could continue with

1 his medical and clinical care. That was my number one
2 concern period. End of story.

3 Q Okay. If you wouldn't mind trying my question, which
4 is did your sense that he has narcissistic traits
5 contribute in any way to your conclusion that he is likely
6 to partake in violence against the United States?

7 A That is part of it, but it's not documented in these
8 notes because these notes are about --

9 THE COURT: Excuse me. Let me interrupt. I'm
10 going to ask you to please just answer the question that
11 was asked and then stop and he'll ask another question.

12 A Yes, sir.

13 Q Do you know the question?

14 A Sir, you can repeat it and I'll answer the question.

15 Q My question is does the fact that you -- you
16 testified that Mr. al-Marri has narcissistic traits and I
17 asked you does that contribute to your conclusion that
18 he's likely to partake in future violence against the
19 United States?

20 A Yes, sir.

21 Q Okay. The answer is "yes"?

22 A Did I believe that the narcissistic traits has played
23 into my suggestion that I believe in the future -- yes.

24 Q Tell me why.

25 A Why? I believe that the traits existed even before

1 he was incarcerated. I believe spending more time
2 obviously incarcerated, having more time to I guess get
3 strong in his beliefs, al-Qaeda beliefs, as well as
4 reading, being more strong in his faith in the Quran.
5 It's not the Quran. I think it's his strengthened belief
6 with al-Qaeda as well as his manipulations, all of these
7 things, his faith, all of these things play a role. I'm
8 sorry. Did I answer --

9 Q No. My question was how does narcissism contribute
10 to the likelihood of future violence? Can you cite to me
11 a single study that's going to tell me that somebody who
12 suffers from narcissistic traits or has narcissistic
13 traits is likely to be violent in the future?

14 A I don't have a single study, sir, to give you.

15 Q Is there anybody -- is there any place I can look for
16 such a study?

17 A Sir, I don't know of a place.

18 Q Now you say that his beliefs in al-Qaeda increased
19 during the time period he was in custody. You just said
20 that, right?

21 A Yes, sir.

22 Q What do you base that opinion on?

23 A His conversations with me that he shared with me
24 about the infidels, his conversation -- his talk about
25 al-Qaeda.

1 Q What did he say about al-Qaeda?

2 A His conversations that he talked about infidels and
3 the fact that infidels and al-Qaeda -- the fact that
4 infidels needed to die, his understanding about al-Qaeda.
5 I mean --

6 Q What understanding about al Qaeda? And if you could
7 point me to where in these notes. By the way -- strike
8 that. You are aware that Mr. al-Marri was in custody
9 because of his alleged association, which is now admitted,
10 with al-Qaeda, correct?

11 A Yes.

12 Q So that was something important to you, right? That
13 was an important background fact you were aware of?

14 A It's not an important background fact.

15 Q That's not important?

16 A No, sir.

17 Q Show me where in your notes there is a discussion
18 that shows anywhere that he has an increased commitment to
19 al-Qaeda and its mission in these notes?

20 A Sir, we didn't talk about an increased commitment to
21 al-Qaeda. We talked about al-Qaeda. We talked about
22 history. We talked about the fact that he could
23 understand al-Qaeda and their mission. He could
24 understand why there was such hatred.

25 Q Where are those notations in these form -- whatever?

1 A 600s?

2 Q 600s, yes. Where is that?

3 A Sir, I didn't write everything down.

4 Q Right. But you never wrote anything down about that,
5 did you? Where does it say anything that would lead
6 anybody to believe he had an increased commitment to
7 al-Qaeda in these notes?

8 A I didn't write everything down and it wasn't an
9 increased commitment. We talked about al-Qaeda. We
10 talked about understanding al-Qaeda.

11 Q Do you know when?

12 A I would assume it was around the time that he talked
13 about the infidels. I would assume it's around the time
14 he talked about the Palestinians.

15 Q Let's take a look at those notes.

16 A I understand, sir. It's not in the notes.

17 Q It's not in the notes and that's because you didn't
18 think it was important enough to write down?

19 A Sir, I wrote the notes down. I wrote them out. My
20 goal was honestly for the most part to jot down
21 information. What was key for me was not about providing
22 information to somebody. My key was what did I talk about
23 with Mr. al-Marri. My goal was what did I talk about with
24 him so next time if he brought up certain issues, I would
25 remember them. My goal was medical and clinical.

1 Q Where does it say you spoke to him about al-Qaeda?

2 A It's not in these.

3 Q Okay. Let me back up. You testified that when you
4 first started speaking to Mr. al-Marri he was polite, but
5 he declined to speak to you because he didn't want to have
6 a woman psychologist, correct?

7 A Correct.

8 Q And you understood that as sort of culturally based,
9 correct?

10 A Correct.

11 Q And you said that he was actually quite polite about
12 it, right?

13 A Very polite.

14 Q But over time you kept working at it and you and he
15 developed a trust, right?

16 A I believe so.

17 Q And so you would discuss with him things like
18 politics and current events and that kind of thing, right?

19 A Mostly history as opposed to current events.

20 Q Fair enough. And you would also talk to him about
21 what he was going through, right?

22 A He would give me updates after phone calls with
23 attorneys or visits by Mr. or Mrs. Savage.

24 Q Let me give you an example to just focus a little bit
25 more. If we could call up April 5, 2007. Under

1 paragraph 5, which actually is entitled "optometry",
2 towards the bottom of that paragraph, do you see that?

3 A Yes, sir.

4 Q There is a discussion of -- it says: "EC and this
5 provider discussed how Muslims deal with head problems."
6 Do you see that?

7 A Yes.

8 Q "Referred this provider to a book Fortification of
9 the Muslim Through Remembrance and Supplication From the
10 Quran and the Sunnah. Do you see that? Do you recall
11 that discussion with Mr. al-Marri?

12 A Yes.

13 Q I think you testified about that this morning, right,
14 or earlier this afternoon?

15 A I don't know. I don't recall testifying about it.

16 Q "Discussed how he utilizes the book/prayers to help
17 him cope with being held captive." Do you see that?

18 A Right.

19 Q "He stated that he is a weak man, but is strong with
20 Allah's support." Do you see that?

21 A Correct.

22 Q So he was talking to you about how he copes with
23 being held captive, right?

24 A Correct.

25 Q And you were aware of the conditions under which he

1 was being held captive, right?

2 A He told me about what it was like before I met him.

3 Q But even right then and there you were aware that he
4 was completely isolated, right?

5 A Correct.

6 Q That he had no contact at all with family members?

7 A Correct.

8 Q With anybody from the outside other than his
9 attorneys and Red Cross representatives, right?

10 A Correct.

11 Q And other than that the only people he had contact
12 with were personnel of the Brig, right?

13 A Correct.

14 Q And what he was talking to you about here in a very
15 personal way was how he would manage to get through all
16 that, correct?

17 A Correct.

18 Q Did you think it was good that he was willing to talk
19 to you about that sort of thing?

20 A Absolutely.

21 Q Did you understand that for a person of his faith
22 that this is the way that -- that people's faith is one of
23 the things that gets them through it?

24 A Yes.

25 Q And did you think from your perspective that it was a

1 good thing that he was studying -- that he was having an
2 opportunity to study the Quran and study his religion?

3 A I thought it was a good thing. Absolutely.

4 Q You did? In fact, you advocated pretty hard for him
5 to have access to books and access to religious materials,
6 right?

7 A Yes.

8 Q He would ask you to help him in that regard and you
9 did help him, right?

10 A Yes.

11 Q And you also tried to help him to have contact with
12 his family members, right?

13 A Yes.

14 Q And that was because you thought that would be a good
15 thing for him, right?

16 A Yes.

17 Q And did you think it was a bad thing that he had been
18 denied that before?

19 A I thought he should get regular access to his family
20 if at all possible.

21 Q Right. But in any event, even though this paragraph
22 is under "optometry", you really were talking to him about
23 personal issues, about how he was coping with this, and
24 you understand that for somebody like him coping meant --
25 had a lot to do with his faith, right?

1 A Everything to do with that with Mr. al-Marri.

2 Q And is the fact that he relied on his faith one of
3 the reasons why you think that he's a likely future danger
4 to the United States?

5 A No, I don't think it's relying on his faith. I think
6 perhaps my perception would be it's almost a twisting of
7 that. I don't think this is -- I think this makes perfect
8 sense. In fact, he let me borrow the book and I actually
9 got a copy of it so I could understand better. I don't
10 think it's relying on faith. I think it's a twisting of
11 faith.

12 Q And there's no -- I'm not going to find where he
13 twisted that faith in these other notes, am I?

14 A No.

15 Q But I do find here under "optometry" where you talk
16 about this issue about how he was coping through his
17 religion, right?

18 A Yes.

19 Q And if we could go to the very next report on
20 April 12, 2007, paragraph 6 -- I think it's 6, the bottom
21 one. Do you see that?

22 A Yes.

23 Q This was a fairly long paragraph that you wrote that
24 has nothing at all to do with his health, right?

25 A Correct.

1 Q What it says is that "EC 2" -- that's Mr. al-Marri,
2 right?

3 A Correct.

4 Q "Wanted to thank the CO and staff for all that they
5 do." See that?

6 A Yes.

7 Q Was he grateful -- did he express that type of
8 gratitude to you and to other people at the Brig on other
9 occasions as well?

10 A Yes.

11 Q "He stated he knew the higher chain of command is
12 blocking some of the issues that EC 2 has asked about,
13 again stated he appreciated the effort of the CO and
14 staff." Do you see that?

15 A Yes.

16 Q You returned the book to him. Then it says toward
17 the bottom: "Discussed how difficult it was that he
18 almost didn't" -- I'm sorry. Let me go back a second.
19 You gave it back to him in case he needed it given he had
20 just received pictures of his kids for the first time in
21 two years. Do you see that?

22 A Yes, sir.

23 Q Were you involved in advocating for him to be able to
24 get pictures of his kids?

25 A Yes, sir.

1 Q "Discussed how difficult it was he almost didn't
2 recognize his children." Do you see that?

3 A Yes, sir.

4 Q Obviously he was sad and understandably upset about
5 this issue, right?

6 A Yes, sir.

7 Q "Discussed how important seeing his family on DVD,
8 CDs or talking to his family would be to him. Stated that
9 he hasn't talked to his wife in four years and hasn't
10 received pictures of his kids in two years." Do you see
11 that?

12 A Yes, sir.

13 Q He was talking to you in personal fashion really as a
14 psychologist, not having anything to do with medical
15 treatment, regarding personal issues, right?

16 A I don't know if he was talking to me as a
17 psychologist per se. I think he was just talking to me.
18 He was sharing that with me.

19 Q Fair enough. But my point is that you wrote that
20 down because you thought that was an important thing to
21 note, correct?

22 A Well, what would happen is Mr. al-Marri would come
23 with his list of information that he wanted to share with
24 me and I let him guide me on what he wanted to talk about
25 because that was my job was to take information that he

1 wanted to talk to me about. And if that was one of the
2 issues he wanted to talk about, that's what we talked
3 about. If he didn't want to talk about it -- and it was
4 really a list of optometry, medication, whatever, and
5 that's what we talked about.

6 Q And we see other times when he talked to you about
7 optometry?

8 A Right. If that's what he wanted to talk about,
9 that's what we talked about. That was an issue that was
10 important to him, so that's what we talked about.

11 Q When you talked about that and because it was one of
12 the issues that you talked about, you wrote it down in
13 this form, correct?

14 A I mean, it's something he had on his list.

15 Q But I'm asking about the process by which you decided
16 to put it on this report.

17 A If it was one of his issues and it was on his list of
18 things, then we talked about it.

19 Q Well, one of the things in this paragraph is that he
20 was thanking the CO and staff. That was something that
21 you noted, right?

22 A Right, because that was something important that he
23 wanted to convey to me, pass along to the CO.

24 Q And because it was one of those things, you put it
25 here on your form, right?

1 A Something he wanted me to convey.

2 Q During these meetings that you had with him, which it
3 appears they eventually become almost weekly, right?

4 A Right.

5 Q Was he ever -- did he ever act in any violent way
6 towards you?

7 A No, sir.

8 Q And was he respectful towards you?

9 A Always.

10 Q And was he -- did he express his gratitude for your
11 efforts on his behalf?

12 A Yes.

13 Q Do you think as a psychologist that the fact that he
14 was not violent towards you and the fact that he was
15 grateful towards you and the fact that he was respectful
16 towards you has any value in terms of thinking about his
17 future?

18 A I think he was respectful towards me and I think
19 non-violent towards me because I always treated him with
20 respect and I always treated him as a human being and I
21 was always -- I think as he got to know me better, he
22 always knew that I came to talk to him as an advocate and
23 to try to genuinely help him with the issues that he
24 presented. Whether it was a medical issue or it was a DVD
25 or about a book on calculus or whatever it was, I

1 genuinely tried to get him the assistance that he
2 requested or the issues that he requested assistance with
3 and that I was truthful and honest with him. And I think
4 over time he opened up more to me and he would talk with
5 me longer and I think that's why he treated me with
6 respect, because I treated him with respect.

7 Q In your experience, when somebody opens up and talks
8 longer, that's a good sign in terms of whatever --

9 A Rapport.

10 Q -- rapport you're building and you're trying to build
11 rapport to help them in some manner, correct?

12 A Correct.

13 Q I mean, one of the things you're trying to do is
14 essentially help him through what he's going through and
15 presumably rehabilitate him to a certain extent; is that
16 fair?

17 A I would say at least help him get through that
18 situation.

19 Q And to help him get through it in a way that's
20 healthy and that will make him a good person when he gets
21 out, right?

22 A If we could be lucky, yes.

23 Q And so the fact he was opening up to you and was
24 being respectful and grateful to you and not violent at
25 all, you would think those are good signs, right?

1 A I think good signs, but I don't know long term.

2 Q Well, I know you don't know long term, but I'm asking
3 whether the fact that he participated, that he was
4 attentive, that he was respectful, that he was grateful,
5 that he did all those things, are those factors that you
6 thought about in terms of his long term likelihood of
7 rehabilitation?

8 A I felt like -- personally for me, I think he was
9 respectful of me, but I don't feel like necessarily that's
10 for everybody. I felt like it was good for me. I felt
11 like he was respectful of those of us at the Brig that
12 were respectful of him. And I think he was very
13 respectful of the Savages. I don't think he would ever
14 say anything poorly about them. I think he respects them
15 very much, probably like family. I think he's very -- has
16 very fond feelings of several people at the Brig who
17 treated him very well. But I don't believe that carries
18 on to everybody.

19 Q Let me be sure I understand. So you found that he
20 was respectful of people, not only you but other people at
21 the Brig and of course the Savages because they treated
22 him well?

23 A Right. I think he was respectful to people who
24 treated him with respect.

25 Q And did you get the sense that that was something

1 that had changed over the course of his time in custody or
2 do you just not know how he had changed because you were
3 only there for such a short time?

4 A I can't really speak to what it was like prior, but
5 my understanding is that at least during the time I was
6 there -- and even after I was gone, some of the same
7 people obviously were still there. So my understanding is
8 he continued to be respectful, so that kind of same -- it
9 continued to be a respectful relationship. So I would say
10 probably at least for three or four years, mutually
11 respectful.

12 Q Did you have an opportunity to look at other records
13 regarding his custody from prior to the time that you
14 began interacting with him?

15 A I have looked at the records. Certainly my memory is
16 not as sharp on those records, but I did look at, I
17 believe, records maybe in the year or two prior.

18 Q So if you did, did you note that over time as the
19 restrictions on him eased up that he became --

20 A He was better.

21 Q That he was better, right? He was more compliant, he
22 was more obedient of the rules and he was --

23 A It was a trend.

24 Q So he was improving, right?

25 A It seemed that way.

1 Q And he was improving in part because even though he
2 was still in isolation and -- let me back up. By the way,
3 have you dealt with people before who have lived in that
4 sort of isolation that Mr. al-Marri lived in?

5 A Not until I went to Guantanamo.

6 Q As a psychologist, what did you note about the way it
7 makes people behave, being isolated like that?

8 A I think it's very tough on people.

9 Q And how do they react to that toughness?

10 A I think we're all social beings, so when we're more
11 isolated it tears people apart pretty quickly.

12 Q So what kind of symptomatology do they develop as a
13 result of that kind of isolation?

14 A I'm trying to find the right words. Usually people
15 struggle.

16 Q Anxiety?

17 A Anxiety. People tend to pay attention to noises like
18 that, you know, the smaller things, the little things.

19 Q Let me stop you. So you become sort of --

20 A Hypersensitive.

21 Q Hypersensitive, right, to things like fans? You
22 pointed to that fan, right?

23 A Right.

24 Q And in other sensory things? And were you aware that
25 during the first part of Mr. al-Marri's custody that he

1 was in a situation of really extreme sensory deprivation
2 where it was just him in a room and just a metal bed and
3 essentially nothing else?

4 A That was my understanding.

5 Q And based on your experience as a psychologist, would
6 you expect that to have any kind of effects on him?

7 A I would expect that would have an impact, yes.

8 Q What would that impact be do you think?

9 A I would expect the person to have some lingering
10 impacts, lingering effects. That's why I said
11 Mr. al-Marri is very resilient.

12 Q I'm sorry?

13 A That's why I said Mr. al-Marri is very resilient to
14 experience that and, when I saw him, to be as strong as he
15 was and to be doing as well he was. That's why I would
16 describe Mr. al-Marri as being very resilient.

17 Q All right. So in any event, partly due to your
18 efforts and the efforts of others at the Brig, his
19 treatment improved and he was also improving in terms of
20 his psychological well being? Would that be fair?

21 A Yes, I believe so.

22 Q And let me ask you this. Did you ever hear stories,
23 for example, of the way Mr. al-Marri interacted with other
24 staff at the Brig? The one I'm going to ask you about,
25 for example, is him turning his television so the guards

1 could watch the Super Bowl.

2 A I'm sorry. I didn't hear that story.

3 Q You didn't hear that story? That might have been
4 when you were in Guantanamo.

5 A I didn't hear that story.

6 Q The way he was interacting with people there, does
7 that play any role at all in your assessment today that he
8 is, to use your term, likely to partake in future violence
9 against United States?

10 A I really do believe that he liked -- I mean, he got
11 along well with several of the guards and there was a
12 mutual respect. They got along well with him. They
13 treated him well. He treated them well. It was an odd
14 arrangement of this mutual respect in a very difficult
15 situation. You know, I believed him when he said, "It's
16 not I don't dislike you people." I mean the Brig staff.
17 "I don't dislike the Savages." I believe that. I just
18 never quite understood some of that hatred and dislike
19 that he mentioned and talked about with me. And that was
20 two years ago. Maybe things have changed. Maybe things
21 have changed. That was two years ago.

22 Q So you're saying that the opinion you gave was based
23 upon a time period a couple of years ago and --

24 A I haven't talked to him this week or anything.

25 Q Never mind this week. The last time you talked to

1 him was --

2 A June of '08.

3 Q That conversation in June of '08, what did you talk
4 about?

5 A It was really catching up. It was like I hadn't seen
6 him since September of '07. He asked me if I had had a
7 chance to see his brother. I had. I didn't speak to him.
8 I just told him I had seen him and he looked healthy to
9 me.

10 Q Was there anything about that conversation -- well, I
11 think at the time you said you thought -- you didn't
12 notice any psychopathology, correct?

13 A No. It seemed like he was doing well.

14 Q It seemed like he was continuing that road towards
15 improvement?

16 A Doing well, had been reading. I think he was doing
17 okay.

18 Q And based upon what you saw, you thought he was
19 continuing to overcome the ill effects of his isolation?

20 A He seemed like he was continuing -- like everything
21 was fine. Like he continued on from September. He was
22 doing well. I mean, it was like he was continuing to
23 read. He had been working out as well.

24 Q Did you think at the time -- you only had that one
25 meeting with him?

1 A Right, because then I was transferred.

2 Q And did you think that all that continued recovery
3 boded well for his future continued recovery?

4 A I didn't know obviously what was going to happen, but
5 I figured he would be continuing to read and I didn't,
6 again, know how long he would be at the Brig, etcetera,
7 so --

8 Q So let me ask you this. Assuming that it did
9 continue through that time period and including up through
10 the time here in Pekin, does that play any role in your
11 assessment of his likelihood to partake in violence
12 against the United States?

13 A I know the last time I talked with him about those
14 issues, that leads me to believe the likelihood about
15 those issues, but in June of '08 we didn't talk about
16 those issues.

17 Q Okay. Here's the question I want to ask though.
18 What I want to understand is how that recovery that he was
19 going through, based upon the initiatives of people like
20 you and people at the Brig to make his life better and his
21 response to that, my question is does it -- is that a
22 factor at all -- I'm not asking you to do the calculus,
23 but is that a factor that a psychologist considers in
24 deciding the likelihood that somebody would commit a
25 violent act in the future? Do you even think about those

1 facts?

2 A I think you do think about those facts. I would hope
3 that would play a role.

4 Q You would hope it would?

5 A I would hope so.

6 Q So it would be important in making that assessment
7 today to know what's occurred really in all the time other
8 than -- and you haven't really spent any time with him
9 since '07? You just had the one meeting in '08, right?

10 A Correct.

11 Q A lot has happened in those two years since, right?

12 A A lot has happened in my life in two years.

13 Q I'm sure. And so here's my question. The assessment
14 that you gave earlier today is based upon a statement that
15 doesn't appear in any of these reports but that was
16 fundamentally in the course of a discussion about
17 Palestine, world politics and infidels, right?

18 A Yes, sir.

19 Q Okay. And you were having that sort of historical,
20 political, whatever you want to call it, discussion with
21 Mr. al-Marri and those are the kinds of discussions you
22 would have with him, right?

23 A Right.

24 Q And he expressed his opinion to you, right?

25 A Yes, sir.

1 Q Okay. And it's based upon that opinion more than
2 anything else that you have come to the conclusion that
3 you have expressed earlier today? Am I right about that?

4 A That and building up, you know, all the discussions
5 and my time with him.

6 MR. LUSTBERG: One moment, Your Honor. Your
7 Honor, thank you very much. Thank you very much, Doctor.
8 I appreciate it.

9 THE COURT: Re-direct?

10 MR. RISLEY: We have no other questions, Your
11 Honor.

12 THE COURT: Thank you. You may step down.
13 Thank you.

14 (Witness excused)

15 MR. RISLEY: Your Honor, we have no other
16 witnesses.

17 THE COURT: Okay. Do you have any other
18 witnesses?

19 MR. LUSTBERG: No, Judge.

20 THE COURT: Well, it seems like we've been here
21 longer today than we really have been.

22 MR. LUSTBERG: I'm thinking the same thing, Your
23 Honor.

24 THE COURT: I would like to try to -- we won't
25 go -- I don't think we'll go past 5:00 o'clock, but I

1 would like to try to address the first objection to the
2 pre-sentence report. Let me get that in front of me.

3 The first objection is a reference to page 16,
4 paragraph 56. That's the two level upward adjustment.
5 Who's going to address that?

6 MR. LUSTBERG: The Court is unfortunately still
7 stuck with me. Thank you, Your Honor. Let me first note
8 that the adjustment that appeared in the pre-sentence
9 report, while the Government supports it today, was not
10 originally part of the plea agreement or something that
11 was -- frankly, I don't think it was discussed between the
12 parties at all. In any event, it was not originally part
13 of the calculus that the parties had worked out in advance
14 of the plea. That doesn't of course dispose of the issue,
15 but I think it's worth noting.

16 2M5.3(b)(1)(E) provides for a two level upward
17 increase in the offense level if the defendant provided
18 material support with the intent, knowledge or reason to
19 believe that it would be used to commit or assist in the
20 commission of a violent act.

21 The defense's position, Your Honor, is based
22 largely upon, and the dispute with the Government is based
23 largely upon, what the three word phrase "a violent act"
24 means. Our position is that the defendant, in order to
25 qualify for this adjustment, that he has to have conspired

1 in this case with the intent, knowledge or reason to
2 believe that the support he was offering was to be used in
3 the commission of a particular violent act.

4 Why do I say that? Well, first of all, of
5 course the guideline doesn't say -- it doesn't say to
6 assist in the commission of violence or to assist in the
7 commission of terrorism, nor could it because this is
8 within the context of a terrorism guideline. And I should
9 also note that in this context we have not objected of
10 course to the huge increase in offense level and, at least
11 for now, increase in criminal history category based upon
12 the terrorism enhancement of Section 3A1.4. Those are all
13 built in. But this is an additional two points. This is
14 two points above assisting in terrorism. This is two
15 points that is applied if a person committed or assisted
16 in the commission or had reason to believe that he was
17 assisting in the commission of a violent act.

18 And it simply doesn't make sense to read that
19 sentencing guidelines provision as applying to violence in
20 general. Why do I say that? Because of course
21 Mr. al-Marri in his guilty plea admitted that he conspired
22 to further the terrorist activity and terrorism objectives
23 of al-Qaeda. I would not stand here and say to you that
24 those -- that the terrorist activity of al-Qaeda was
25 non-violent. But what we know about this case and one of

1 the things that makes the case rather unique is that
2 Mr. al-Marri's own mission was undefined. He was taking
3 directions from others and there was no particular violent
4 act that he had agreed to do or that he was being directed
5 to participate in. There's no dispute about that. The
6 Government, as they say in their papers, candidly admits
7 to it.

8 Their argument is that the words "a violent act"
9 in 2M5.3(b)(1)(E) means that it's at least one violent act
10 and that one violent act would suffice, but of course the
11 Sentencing Commission could have written "at least one
12 violent act" if that's what they meant by it.

13 What this means is that you get an additional
14 two points beyond this very high sentencing guideline
15 range, beyond the even higher terrorism enhancement, if
16 you had some direct participation or were assisting in the
17 commission of a particular violent act.

18 Now the Government points out that there are no
19 cases that support that position. I should note that
20 there are no cases that support their reading of this
21 guideline either. In fact, the one case that we cite in
22 our brief, a case called Aref, is one in which the act
23 that qualified for this enhancement was in fact a
24 particular violent act. That case was the importation of
25 a missile that was to be used to attack the Pakistani

1 embassy.

2 That of course is exactly what's missing here,
3 the contemplation at least or the direct participation in
4 a specific violent act that would arguably occur and that
5 would result in this additional two points above and
6 beyond that enormous sentencing guidelines that already
7 apply here.

8 In the probation report there are two facts
9 cited in support of maintaining this adjustment. And this
10 is at the end of the report where the various objections
11 are responded to by Ms. Kennedy and two sets of facts are
12 related there.

13 One is that Mr. al-Marri obtained cash and a
14 laptop, both things that he has admitted to, but neither
15 of which in any way go to whether there was a particular
16 violent act.

17 Second: That he researched cyanide and
18 bookmarked dams, tunnels and waterways. That requires a
19 huge leap of faith that's simply not applicable here.
20 There's no question that he did those things. There's no
21 question he researched cyanides and he bookmarked dams,
22 tunnels and waterways. But as the expert reports that
23 we've provided indicate, particularly the report of
24 Mr. Martinez, which is Exhibit 49, and the report of
25 Mr. Capps, which is Exhibit 67, Mr. al-Marri's actions in

1 that regard were very inchoate and very ill formed. He in
2 fact surfed the net is what he did and looked for those
3 various things. He never took any steps whatsoever to
4 contact any of those sites or any of the manufacturers of
5 any cyanide products. He never -- there's no e-mail or
6 other traffic regarding a recipe, formula or plan,
7 according to Mr. Martinez. There's no instructions on how
8 to mix or use according to Mr. Capps.

9 Simply put, we're just not far enough along in
10 whatever it was that Mr. al-Marri was to have done to
11 warrant this additional two point adjustment. That is not
12 in any way undermining the plea that he made to providing
13 material support for terrorism. That material support for
14 terrorism is built into the 26 points that is the base
15 offense level here and, more importantly, it's built into
16 the 12 additional points in the 3A1.4 terrorism
17 enhancement to which we stipulated.

18 But these additional two points require more.
19 They require actions taken towards a particular violent
20 act and that's not here in this case, it's concededly not
21 here, so what the parties have really is a textual
22 analysis that we would submit for the Court's resolution.
23 Thank you, Your Honor.

24 THE COURT: Thank you. What's the response?

25 MR. RISLEY: Your Honor, I won't belabor what we

1 said in our written response other than to say I agree
2 this is a textual interpretation question. It's one in
3 which the Government maintains the Court ought to
4 interpret the text in its common, everyday, obvious, at
5 least to us, meaning, which is if the offense involved the
6 provision of material support or resources with reason to
7 believe they are to be used to commit or assist in the
8 commission of a violent act.

9 The defendant does not appear to claim that he
10 didn't have reasonable cause to believe that his offer of
11 himself to al-Qaeda to further its terrorist purposes
12 would not be used to commit a violent act. His argument
13 is that it has to be a particular violent act. Well, when
14 you think about the purposes for sentencing, that's a
15 rather -- what difference would it make whether he
16 anticipates violence or he anticipates particular
17 violence?

18 THE COURT: Well, part of the argument is that
19 what this really amounts to is double counting because of
20 the upward adjustments that are made otherwise.

21 MR. RISLEY: Well --

22 THE COURT: In the offense level and the
23 16 levels, I think, that are added.

24 MR. RISLEY: They didn't assert that argument,
25 but --

1 THE COURT: I heard that in what he said.

2 MR. RISLEY: Just now? Okay.

3 MR. LUSTBERG: No. It's in our papers too.

4 MR. RISLEY: Well, anyway, Your Honor, it isn't
5 the only place where the guidelines double count some
6 things in the context of violent crime.

7 The point is, number one, that's what the
8 guidelines say and they should be applied as they state
9 them. And whether it's a particular violent act or not
10 has nothing to do with double counting because you would
11 have the same double counting even if you considered -- if
12 you could prove a particular violent act. Their argument
13 is that because the Government's evidence -- because we
14 cannot prove that the defendant anticipated a particular
15 violent act, this provision doesn't apply. If it did,
16 they would say, if it's double counting, that it still
17 wouldn't apply.

18 Well, the guidelines don't say that. In the
19 end, in the final analysis, the guidelines, where it's
20 talking about the difference, we're starting at 30 years
21 to life and then going down two levels. Well, it's still
22 away above 15 years, which is the effective guideline
23 range in this case. So we don't want to --

24 THE COURT: But that's another issue. I mean,
25 that doesn't answer --

1 MR. RISLEY: It is and that's why we said the
2 Court ought to, as a matter of principle, rule on it. But
3 the textual question, which they have just said is the
4 real question, does it mean a violent act or a particular
5 violent act. Our position it means what it says, a
6 violent act, which is some act of violence.

7 THE COURT: All right. Thank you. Do you have
8 any remarks?

9 MR. LUSTBERG: Just on the double counting issue
10 really quickly. Here's why it makes sense as an
11 adjustment. What I think the Commission was thinking
12 about -- what the Commission was thinking about is if you
13 are involved in a particular violent act, if you're
14 involved in attempting to blow up the Pakistani embassy,
15 then even with all of these other adjustments for
16 terrorism then you deserve an additional two points. But
17 terrorism is violent. So the fact that it's already built
18 into the base offense level here and that it's already
19 built into the terrorism enhancement doesn't mean that
20 adding the two points is, strictly speaking, double
21 counting. What it means is that the Commission wanted
22 something in addition. This Court should interpret what
23 the Commission wanted as an additional two points that
24 should be added if, and only if, there's a violent act
25 that actually took place or was contemplated.

1 And here what you can say is, and what I think
2 the Government's position is, is that violence was
3 contemplated, but that's not what it says. It says
4 "violent act". And there's no question that the
5 Commission could have said "violence" or could have just
6 said "terrorism". It wouldn't have made sense for it to
7 say "terrorism" because it's a terrorism guideline, but it
8 could have said "violence" and then the Government's
9 position would make sense, but it doesn't use that phrase.
10 It uses the phrase "a violent act". Uniquely in this case
11 there isn't one and that's why we take the position that
12 we do.

13 THE COURT: Well, my guess is that your
14 arguments here on this point perhaps weren't anticipated.
15 There is no case on it. It may well be, although I can't
16 really say that, that when this particular item was under
17 discussion they didn't have this discussion, even
18 informally, as to whether or not they were talking about a
19 specific or particular violent act or just generally
20 speaking a violent act.

21 Well, the objection is far from frivolous, but I
22 don't believe it has merit and I'm going to deny the
23 objection. It would be a very interesting question for
24 the Court of Appeals to consider. I do take it at its
25 normal reading. Knowledge or reason to believe they are

1 to be used to commit or assist in the commission of a
2 violent act.

3 What do we know was in the mind of the defendant
4 at the time that he entered this country on September 10?
5 Looking at the transcript of the plea on page 33,
6 question: "At the time you had this conversation with
7 him" -- I'm not sure which of the two people we were
8 talking about here, KSM or -- Khalid Sheikh Mohammed, yes.
9 Reference to the conversation he had with Khalid Sheikh
10 Mohammed and it says: "At the time you had this
11 conversation with him, were you aware that al-Qaeda had
12 been responsible for attacks, other attacks against the
13 United States?" "Yes." "Were you aware of the 1998
14 bombings of the two embassies in East Africa?" "Yes."
15 "Were you aware of the 2000 attack on the USS Cole?"
16 "Yes." "And also at that time were you aware of the 1996
17 and 1998 fatwas issued by Osama Bin Laden against the
18 United States?" "Yes." So all of that was certainly in
19 his mind when he came here.

20 Now we also know from the statement, the facts
21 from the plea agreement, that he had participated in
22 military training at one or more camps before he came
23 here.

24 I also think it's -- and I wanted to clarify
25 something on this. My understanding is that -- and I

1 would be happy to hear what counsel says from either side
2 on this. But my understanding was that the information
3 about the cyanide was not something that was created on
4 the computer until after he came here. Is that an
5 accurate statement or not?

6 MS. BALTES: Your Honor, we believe that's the
7 case. The defendant did admit that he purchased the
8 laptop computer in August just prior to entering the
9 United States. Because the defendant did admit the
10 relevant facts that serve to support the Government's
11 position with respect to the research, we have not
12 litigated full blown the computer forensics, but --

13 THE COURT: That's my understanding. But if
14 that's incorrect, I would certainly stand corrected.

15 MR. RISLEY: Your Honor, this is an area that I
16 have spent more time probably on than anybody and I can
17 say that we are unable to determine the date of the
18 research, so I think it would be incorrect to assume it
19 was afterwards.

20 THE COURT: All right. All right. I appreciate
21 your representation as an officer of the Court. Well,
22 obviously if it happened before he came, that's one thing.
23 If it happened after he came, it's another. But in either
24 event, what we have is indicated research on cyanide.

25 I've read the exhibit that talks about the

1 opinion of the forensic examiner that the defense used.
2 I'm having trouble understanding how he came to the
3 conclusion that based on what he saw there was no reason
4 to be worried about it. I've got a lot of trouble with
5 that. Anyway, that was on the computer.

6 We know also that he came here on the 10th of
7 September. There's nothing in the record to suggest that
8 he knew about 9-11, but we do know that he did a number of
9 things after 9-11 with the full knowledge of what al-Qaeda
10 had done on 9-11, and that is fly planes into the World
11 Trade Center and the Defense Department.

12 I think it's fair to say, although I don't know
13 that these words are used in the factual basis, but I
14 think it's fair to characterize what is in there as
15 suggesting that he was a sleeper agent, that he did not
16 know -- or maybe he did, but there's no evidence that he
17 knew what his specific role would be once he got here.
18 But in view of everything that was going on at that time,
19 to conclude that it was not in his mind that he was going
20 to be asked to engage in a violent act against the United
21 States, with all due respect, I don't believe is a
22 reasonable conclusion to come to.

23 You certainly have a legitimate argument
24 concerning whether or not what is intended here would
25 require a specific act that would have to be identified

1 and the Court of Appeals, when they consider this
2 question, may agree with you, but I don't believe that
3 that is what is required by this reading so I'm going to
4 deny the objection.

5 I think this would probably be a good time to
6 stop. And I know we started at 10:00 today, but I would
7 hope we could start at 9:00 tomorrow. And what we have is
8 what I have identified as the other three objections.
9 I'll certainly hear whatever arguments you have to give on
10 the role in the offense, whether or not there should --
11 the Court should effectively depart because his criminal
12 history category VI overstates his criminal history and
13 likelihood to recidivate, also whether the Court should
14 consider a downward departure or adjustment because of the
15 length and harshness of conditions of his confinement,
16 which I think we probably all agree the time that we
17 focused on today was the time at the Brig, but there's
18 also another time when he was in material witness custody,
19 so that's a big question. Anything else we should talk
20 about before we stop for today?

21 MR. LUSTBERG: Just one thing. I just want
22 to -- we're not calling any more witnesses, but I just
23 want to put the Court on notice. So the way this will
24 work tomorrow, if I understand correctly, we'll go through
25 the objections and then we'll have our argument under

1 3553.

2 THE COURT: Correct.

3 MR. RISLEY: As part of the 3553 analysis, one
4 of the issues of course is the nature and circumstances of
5 the offense and the history and characteristics of the
6 defendant. In connection with the history and
7 characteristics of the defendant, we're going to show,
8 it's not very long, but some video materials that we also
9 showed at the bond hearing that Mr. al-Marri had in
10 Charleston.

11 THE COURT: How long is that?

12 MR. LUSTBERG: It's, at most, ten minutes, five
13 minutes.

14 THE COURT: That's fine.

15 MR. LUSTBERG: It's five to ten minutes. But we
16 were just going to do it as counsel. I mean, we don't
17 think there's a witness that's needed.

18 THE COURT: That's fine. I was thinking, why
19 don't we start with that in the morning?

20 MR. LUSTBERG: Okay. Well, I mean it really
21 isn't -- we can if Your Honor wants, but --

22 THE COURT: I understand why you're offering it.

23 MR. LUSTBERG: I just want to make sure that you
24 understood that was --

25 THE COURT: No problem. Anything else?

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MR. RISLEY: Not from the Government, Your
Honor.

THE COURT: Thank you.

(Whereupon the hearing was continued
until October 29, 2009)