

1 sentence because he's been already punished based on the
2 seriousness of his offense. There is no doubt that the
3 conditions of confinement that the defendant endured
4 during his time in the Brig were different than most other
5 inmates in the United States. The Government does not
6 dispute any of the facts that were put forth yesterday in
7 the testimony of Mr. Seymour or Mr. Pucciarelli. The DIA
8 interrogations of the defendant that lasted until
9 approximately October of 2004 certainly provided harsher
10 conditions for Mr. al-Marri than someone that would have
11 been in a state custody or Bureau of Prisons custody. He
12 wasn't provided with a mattress. He was in a cell by
13 himself. He was in solitary confinement. He was
14 interrogated.

15 And at this point I would like to draw the
16 Court's attention to one of the defense exhibits,
17 Exhibit 2, that the Government provided which is a summary
18 of the interrogations. "Al-Marri was interrogated" --

19 THE COURT: I'm sorry. Is it your exhibit?

20 MS. BALTES: It's Defendant's Exhibit 2.

21 THE COURT: All right. I've got it.

22 MS. BALTES: "Al-Marri was interrogated on
23 37 days from September 2003 through July 2004. With the
24 exception of two conversations which occurred in his cell,
25 all the interrogations were video recorded in an

1 interrogation room. Some of the sessions were
2 extraordinarily brief, lasting just minutes, and other
3 sessions lasted for hours. Retained recordings have
4 session lengths varying from 38 minutes to just under
5 9 hours. During the almost 9-hour session there was a
6 2 1/2 hour break and another short break. During the long
7 sessions al-Marri was offered and took meals and prayer
8 breaks. There was a session at least one a month
9 typically with sessions on consecutive days, but there was
10 never more than five consecutive days of interrogation.
11 There was a 10-day period where there were nine
12 interrogation sessions. With the exception of the use of
13 the duct tape described in a separate memorandum, the
14 interrogators followed interrogation procedures consistent
15 with the Army Field Manual. No enhanced or extraordinary
16 interrogation techniques were employed. There was no use
17 of sleep deprivation or stress positions. Interrogation
18 sessions were conducted in a humane fashion."

19 In addition, Exhibit 4, Defendant's Exhibit 4,
20 discusses information that was contained in a 2008 DIA
21 Joint General Counsel-Inspector General Report regarding
22 destruction of tapes that the defense has alluded to.
23 Obviously the defense argument is that because there was
24 destruction of tapes, there must be some bad faith purpose
25 and there must have been other abusive techniques that

1 were concealed because things were destroyed, but that
2 simply is not the case.

3 Evidence in the case showed that: "After the
4 interrogation of al-Marri concluded, the interrogation
5 team destroyed what they believed to be all the recordings
6 of the interrogation sessions. The interrogation team and
7 manager for the interrogation regarded the recordings as
8 working materials similar to handwritten notes,
9 destruction of which they believed was required when no
10 longer needed for intelligence purposes. This belief was
11 consistent with then DIA and DoD issuances concerning
12 information security. During the course of the
13 interrogations the interrogation team chief asked about
14 disposition instructions for the al-Marri recordings and a
15 DIA attorney advised that there was no specific
16 instructions regarding retention or disposition of the
17 al-Marri recordings. When the recordings were destroyed,
18 there was no court order or executive agency preservation
19 order requiring their retention."

20 While the defense might have a different
21 interpretation of why, the Government certainly thinks
22 it's important that the Court consider that this was an
23 Inspector General Report that was issued that clearly
24 discussed why the recordings were destroyed and that there
25 was no bad faith and there was no purpose. If there was

1 some bad faith or intent on the Government to destroy,
2 certainly everything would have been destroyed and the
3 videotape which the Government provided a summary of to
4 the defense in which the defendant's face was duct taped
5 certainly would have been among the tapes that would have
6 been destroyed and that's not the case.

7 On Defense Exhibit 8, information contained in
8 the document on October 21, 2003, the Government provided
9 information regarding one of the interrogation sessions.
10 Essentially this is -- I think this is important for the
11 Court to consider as well because there was a lot of
12 testimony yesterday about the different treatment between
13 the different enemy combatants that were at the Brig and
14 the treatment that the defendant endured when he was
15 undergoing DIA interrogation and when he was under Brig
16 control.

17 But the report on the 21st of September 2003
18 certainly indicates that he was provided socks. He
19 demanded socks, clock, dental floss and Q-tips. He had
20 received socks due to feeling chilly and to minimize the
21 bruising caused from the ankle shackles.

22 THE COURT: Well, my understanding from my
23 reading of all those documents is that there were times
24 that he was given things, say, for example, socks or a
25 clock or the Quran, and then other times that those were