

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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SUHAIL NAJIM ABDULLAH AL : Civil Action No.:
SHIMARI, et al., : 1:08-cv-827
Plaintiffs, :
versus : Wednesday, November 6, 2024
: Alexandria, Virginia
CACI PREMIER TECHNOLOGY, : Day 5
INC., : Pages 1-112
Defendant. :
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The above-entitled jury trial was heard before the
Honorable Leonie M. Brinkema, United States District Judge.
This proceeding commenced at 9:39 a.m.

A P P E A R A N C E S:

FOR THE PLAINTIFFS: CHARLES MOLSTER, ESQUIRE
THE LAW OFFICES OF CHARLES B. MOLSTER,
III, PLLC
2141 Wisconsin Avenue, NW
Suite M
Washington, D.C. 20007
(703) 346-1505

BAHER AZMY, ESQUIRE
THE CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway
7th Floor
New York, New York 10012
(212) 614-6464

MUHAMMAD FARIDI, ESQUIRE
MICHAEL BUCHANAN, ESQUIRE
BONITA ROBINSON, ESQUIRE
ANDREW HADDAD, ESQUIRE
SCOTT KIM, ESQUIRE
ALEXANDRA MAHLER-HAUG, ESQUIRE
PATTERSON BELKNAP WEBB & TYLER LLP
1133 Avenue of the Americas
New York, New York 10036
(212) 336-2000

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A P P E A R A N C E S:

FOR THE DEFENDANT: JOHN O'CONNOR, JR., ESQUIRE
 LINDA BAILEY, ESQUIRE
 JOSEPH MCCLURE, ESQUIRE
 STEPTOE LLP
 1330 Connecticut Avenue, NW
 7th Floor
 Washington, D.C. 20036
 (202) 429-3000

 NINA GINSBERG, ESQUIRE
 DIMUROGINSBERG PC
 1101 King Street
 Suite 610
 Alexandria, Virginia 22314
 (703) 684-4333

FOR THE UNITED STATES: STEPHEN ELLIOTT, ESQUIRE
 UNITED STATES DEPARTMENT OF JUSTICE
 CIVIL DIVISION FEDERAL PROGRAMS BRANCH
 1100 L Street, NW
 Washington, D.C. 20044
 (202) 598-0905

COURT REPORTER: STEPHANIE M. AUSTIN, RPR, CRR
 Official Court Reporter
 United States District Court
 401 Courthouse Square
 Alexandria, Virginia 22314
 (571) 298-1649
 S.AustinReporting@gmail.com

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P R O C E E D I N G S

THE DEPUTY CLERK: Civil Action Number
1:08-cv-827, Al Shimari, et al versus CACI Premier
Technology, Inc.

Would counsel please note their appearance for the
record, first for the plaintiffs.

MR. FARIDI: Good morning, Your Honor.
Muhammad Faridi on behalf of the plaintiffs. I'm joined by
my colleagues Michael Buchanan, Andrew Haddad and Chip
Molster, and our paralegal -- Charles Molster. I'm sorry.

THE COURT: That's all right. That's how he's
known throughout the district.

MR. FARIDI: And our paralegal Sean O'Shea and
Kaihan Rahimi.

THE COURT: Good morning.

MR. O'CONNOR: Good morning, Your Honor.
John O'Connor for CACI. I'm joined by my co-counsel
Linda Bailey, Nina Ginsberg and Joseph McClure.

THE COURT: Good morning.

All right. Before we get started, I just want
everyone to know that if you've got problems with the
exhibits, that needs to be put on the record. There's
apparently a paralegal who's going back and forth with my
courtroom deputy. We're not going to have that. So if
there are issues, we'll bring them up in court on the

1 record. And there are issues. And any exhibit matters
2 where the exhibits you believe have already been entered
3 into evidence, you first need to discuss with the other side
4 to make sure that there isn't some dispute going on. All
5 right.

6 Let's bring the jury in.

7 THE COURT SECURITY OFFICER: Yes, Judge.

8 Rise for the jury.

9 (Jury present at 9:41 a.m.)

10 THE COURT: Good morning, ladies and gentlemen.
11 Thank you for being back here promptly. We're going to
12 continue with the defendant, CACI's case. The case is
13 moving very well. Counsel have, again, worked on tailoring
14 some of the evidence so that we're going to try to keep this
15 case on schedule. All right.

16 All right. Mr. O'Connor.

17 MR. O'CONNOR: Your Honor, CACI moves into
18 evidence Defendant's Exhibit 37, which the Court has
19 previously ruled would be admissible in this case.

20 THE COURT: 37 is what?

21 MR. O'CONNOR: It's the Rumsfeld memorandum, Your
22 Honor.

23 THE COURT: Yes. I've already ruled that that is
24 appropriate, so that is in evidence.

25 (Defense Exhibit Number 37 admitted into evidence.)

1 MR. O'CONNOR: And we would like to publish it at
2 this time, Your Honor.

3 THE COURT: Go ahead.

4 MR. O'CONNOR: Put it up for everyone, please.

5 This is a September 15, 2004, a memorandum from
6 the Secretary of Defense. It's a memorandum from the
7 Secretary of the Army. Subject: Processing of claims by
8 Iraqi detainees based on allegations of personal
9 injury/abuse and mistreatment.

10 And the text says: The U.S. Army has claimed
11 responsibility in Iraq. Because of the sensitivity of
12 allegations of personal injury/abuse and mistreatment by
13 Iraqi detainees, particularly at Abu Ghraib prison, I ask
14 that the Secretary of the Army review all claims based on
15 such allegations and act on them in his discretion. Prior
16 to his review, such claims will be investigated by a foreign
17 claims commission under the Foreign Claims Act, 10 U.S.C.
18 2734, or investigated under other applicable claims
19 statutes.

20 The report of investigation will include a
21 thorough analysis of whether the claim is cognizable under
22 the Foreign Claims Act or other claims statutes, whether the
23 claimant is a proper claimant under the Foreign Claims Act
24 or other claims statutes, and a recommendation regarding an
25 appropriate amount of compensation, if any.

1 The report of the foreign claims commission, or
2 investigation under other applicable claims statutes, should
3 be forwarded to the Secretary of the Army. If it is
4 concluded that the claim is not payable under the Foreign
5 Claims Act or other claimed statutes, the Secretary of the
6 Army will identify alternative authorities under which
7 compensation could be provided and either take such action
8 in appropriate cases or forward the claim to the deputy
9 Secretary of Defense via the general counsel of the
10 Department of Defense with a recommendation of whether such
11 payment is appropriate. Signed by Donald Rumsfeld,
12 Secretary of Defense.

13 Your Honor, we're about to play three pseudonymous
14 tape-recorded depositions of interrogators who were
15 associated with Plaintiff Al Shimari. In advance of that,
16 I'm going to publish some excerpts from the United States
17 interrogatory response to Defense Exhibit 2.

18 THE COURT: All right. And, ladies and gentlemen,
19 "pseudonymous" means we are not going to know the name of
20 the person whose testimony you're going to hear. All right.

21 And I believe there's going to be a demonstrative
22 shown?

23 MR. O'CONNOR: There will be a demonstrative
24 shown, Your Honor.

25 THE COURT: All right. And a demonstrative is

1 simply -- it's not going to go in as evidence, but there's
2 going to be a picture of the individual. Not of the person
3 who is speaking, but of the plaintiff for whom this
4 testimony is directed; correct?

5 MR. O'CONNOR: That's correct, Your Honor.

6 THE COURT: And for relevance. Okay. Thank you.

7 MR. O'CONNOR: If we can put up Defense Exhibit 2.
8 And I ask -- these are the United States's responses to
9 Interrogatories Number 1 and Number 2 of Defendant CACI
10 Premier Technology.

11 THE COURT: Any objection to Defense Exhibit 2?

12 MR. FARIDI: No objection, Your Honor.

13 THE COURT: All right. It's already in, Your
14 Honor, apparently.

15 MR. O'CONNOR: I believe it is, Your Honor.

16 And if we could turn to page 3, please.

17 CACI's Interrogatory Number 1 to the United States
18 asks: Identify any interrogator who interrogated any
19 plaintiff at Abu Ghraib prison.

20 Please turn to page 4.

21 The United States's response was as follows:
22 Subject to and without waiving its objections, the United
23 States identifies the following information. On
24 December 15, 2003, Plaintiff Suhail Najam Abdullah Al
25 Shimari, Plaintiff Al Shimari, was interrogated by a CACI

1 interrogator assigned Field Reporter Number, FRN. And
2 that's redacted. But this person is identified as CACI
3 Interrogator A. And an Army interrogator assigned FRN. And
4 redacted. Identified as Army Interrogator B.

5 Let's go to page 6. Interrogatory Number 2. For
6 each interrogator identified in response to Interrogatory
7 Number 1, describe the facts relating to such interrogator's
8 interactions with plaintiffs, including the specific conduct
9 to which such interrogators subjected any plaintiff and the
10 source of any direction under which the acts took place.

11 And let's move to page 7. And the United States
12 responded with respect to Plaintiff Al Shimari. On
13 December 15, 2003, CACI Interrogator A served as the lead
14 interrogator, and Army Interrogator B served as the
15 assistant interrogator/analyst in the intelligence
16 interrogation of Plaintiff Al Shimari. According to the
17 interrogator's report and notes, the interrogation lasted
18 2 hours and 55 minutes.

19 And then there's some redactions by the United
20 States.

21 And the next paragraph continues: The
22 interrogators reported using the -- it's redacted --
23 approaches in this interrogation. More redactions by the
24 United States.

25 Page 8. In connection with the December 15, 2003

1 interrogation, CACI Interrogator A and Army Interrogator B
2 were subject to the direction of the military chain of
3 command, beginning with their military section leader, an
4 Army non-commissioned officer, who was to be briefed both
5 prior to and following the interrogation to ensure that the
6 interrogators were focused on answering CJTF-7's priority
7 intelligence requirements, human intelligence requirements,
8 and source-directed requirements.

9 Their military section leader was also responsible
10 for strictly enforcing the Interrogation Rules of
11 Engagement, IROE. From their military section leader, the
12 interrogator's chain of command flowed through the military
13 non-commissioned officer in charge, NCOIC, and officer in
14 charge, OIC, of the interrogation and control element, ICE,
15 to the military chain of command at the Joint Interrogation
16 and Detention Center, JIDC.

17 Next paragraph. No CACI personnel were in this
18 chain of command. While the CACI site manager at Abu
19 Ghraib, Daniel Porvaznik, managed CACI personnel issues, and
20 the ICE OIC relied on him as one source of information
21 regarding the abilities and qualifications of CACI
22 interrogators, the military chain of command controlled the
23 interrogation facility, set the structure for interrogation
24 operations, and was responsible for how interrogations were
25 to occur during both the planning and execution phases.

1 Next paragraph.

2 The reported approaches used in this interrogation
3 were authorized by the IROE. There's a citation to a
4 document. The CJTF-7 interrogation and counter-resistance
5 policy memorandum dated October 12, 2003, and Army Field
6 Manual 34-52, September 28, 1992. A summarized description
7 of the approaches used in this interrogation follows.

8 Next page. It's entirely redacted.

9 On the following page. And the interrogatory
10 response ends: Oversight and the use of those approaches is
11 provided by the interrogators, military section, and ICE
12 leaders.

13 Your Honor, with that, we call by pseudonymous
14 recorded deposition, CACI Interrogator A.

15 THE COURT: All right.

16 (Audio recording played - Interrogator A)

17 MR. O'CONNOR: Your Honor, at this time we present
18 the pseudonymous deposition of Army Interrogator B. The run
19 time is about 14 minutes.

20 I neglected to provide the Court with clips from
21 A, but I will send those with the clips from B, and the same
22 to opposing counsel.

23 THE COURT: All right.

24 (Audio recording played - Interrogator B)

25 MR. O'CONNOR: Your Honor, at this time, CACI

1 presents Interpreter K by pseudonymous deposition. This run
2 time is just a minute and 16 seconds.

3 THE COURT: All right.

4 MR. O'CONNOR: We have quick notes for the Court.

5 (Audio recording played - Interpreter K)

6 MR. O'CONNOR: Your Honor, at this time CACI calls
7 Dr. Payne-James to the stand.

8 THE COURT: All right.

9 THE COURT SECURITY OFFICER: Good morning. Come
10 forward. Raise your right hand.

11 Thereupon,

12 JASON PAYNE-JAMES,
13 having been called as a witness on behalf of the defendant
14 and having been first duly sworn by the Deputy Clerk, was
15 examined and testified as follows:

16 (Time noted: 10:40 a.m.)

17 THE DEPUTY CLERK: Thank you.

18 THE COURT SECURITY OFFICER: You may be seated.

19 MS. BAILEY: May I proceed?

20 THE COURT: Yes, ma'am.

21 DIRECT EXAMINATION

22 BY MS. BAILEY:

23 Q Good morning, sir. Would you please introduce yourself
24 to the jury.

25 A Good morning. My name is Jason Payne-James.

1 Q Where are you from?

2 A I'm from the United Kingdom.

3 Q How did you come to be involved in this case?

4 A I was instructed by the law firm Steptoe on behalf of
5 CACI.

6 Q Okay. Is there a demonstrative exhibit that would be
7 useful to the jury in helping to understand your testimony
8 today?

9 A Yes, I think so.

10 MS. BAILEY: Okay. If you would please -- if you
11 could take that down. Just for the witness.

12 BY MS. BAILEY:

13 Q If you would look at your screen.

14 Is this the demonstrative exhibit?

15 THE COURT: What exhibit number is it in the book?

16 MS. BAILEY: There's no exhibit number. It's just
17 a demonstrative, Your Honor.

18 BY MS. BAILEY:

19 Q Is this a demonstrative, Doctor?

20 A Yes. This is the demonstrative.

21 MS. BAILEY: Thank you. I would like to publish
22 to the jury, Your Honor.

23 THE COURT: Any objection?

24 MR. BUCHANAN: No. No objection.

25 THE COURT: All right. You may do so.

1 MS. BAILEY: Okay.

2 BY MS. BAILEY:

3 Q Professor Payne-James, are you trained in any
4 professions? I see a variable alphabet under your name.

5 A Yes. I'm a medical doctor primarily. That was my
6 initial training. I practice as a doctor.

7 Q Okay. Are you trained in any particular specialties as
8 a doctor?

9 A In the course of my career, I've trained as a surgeon
10 and as a gastroenterologist. I've worked in acute medicine.
11 But for the last 30 years, my main work has been what's
12 broadly called forensic and legal medicine.

13 And just for the Court's benefit, I am not a
14 forensic pathologist. I don't undertake autopsies. I'm a
15 forensic doctor who works predominately with the living.

16 Q What education have you completed?

17 A After senior school in the UK, we undertake, if we are
18 wishing to become doctors, a five-year training to become a
19 bachelor of medicine and bachelor of surgery. That gives
20 you the primary ability to act as a doctor. And then
21 subsequent to that, there may be many years of further
22 training in particular specialties.

23 Q Okay. And what particular specialties have you had
24 training in?

25 A By virtue of my qualifications, I'm a trained surgeon,

1 a trained gastroenterologist, and I'm trained in forensic
2 and legal medicine.

3 Q Okay.

4 A Those are represented by the qualifications listed
5 after my name.

6 Q Can you give the jury a brief understanding of your
7 professional background?

8 A Yes. For the first ten years of my career, I worked in
9 public hospitals in the National Health Service in the
10 United Kingdom. And after about ten years, I moved into the
11 area of forensic and legal medicine, using some of the
12 skills and competencies I had learned in my previous ten
13 years.

14 So for the last 30 years or more, I've worked in
15 the forensic and legal medicine field, which predominantly
16 relates to, for example, criminal courts, coroners courts,
17 which are the England and Wales means of medical/legal
18 investigation of death. But other court settings where
19 medical evidence is needed to be interpreted for the legal
20 system.

21 Q Have you authored or edited any publications related to
22 forensic medicine?

23 A Yes. I published a number of books. I've authored and
24 co-edited a number of books, some of which are seen on the
25 screen.

1 Q Have any of your publications ever been cited by U.S.
2 courts?

3 A Yes.

4 Q What experience do you have evaluating detainees?

5 A Probably the last 30 years or so of my career has
6 predominately been involved in assessing people, perhaps in
7 custodial settings, whether in short-term custody, such as
8 police; sometimes in longer-term custodies such as prison
9 settings; and sometimes in security settings. And that kind
10 of work will involve simple medical care for people who've
11 got the conditions that many of us might have here like
12 diabetes or asthma. But then also specifically in relation
13 to the legal system, and, for example, documenting injury in
14 both complainants of and people who have been arrested in
15 connection as possible suspects in a crime.

16 Q All right. Have you done any work related to
17 assessments of patients who claim torture, cruel, inhuman or
18 degrading treatment?

19 A Yes, I have.

20 Q How many?

21 A Probably into the thousand or so.

22 The nature of my work within the criminal justice
23 system is that many of the patients that I see within that
24 setting may have, for example, refugee or asylum backgrounds
25 where they may have been subject to some forms of abuse.

1 But then there's a specific group where we may be
2 specifically asked to assess accounts of torture or cruel,
3 inhuman and degrading treatment.

4 Q Would you please refer to Exhibit -- Defense
5 Exhibit 101 in your binder, and tell me if you recognize
6 that document.

7 THE COURT: Is there any objection to Defense 101?

8 MR. BUCHANAN: Yes, Your Honor. Relevance.

9 THE COURT: Well, it's the curriculum vitae. We
10 always, for expert witnesses, allow that to come in.

11 Overruled. It's in.

12 (Defense Exhibit Number 101 admitted into evidence.)

13 MS. BAILEY: Thank you, Your Honor.

14 BY MS. BAILEY:

15 Q Have you ever testified in court?

16 A Yes.

17 Q Okay. How many times?

18 A Thousands of times.

19 Q Have you ever testified in a U.S. court?

20 A No.

21 Q Okay. Has any court ever rejected or excluded your
22 evidence?

23 A Not that I'm aware of.

24 MS. BAILEY: Your Honor, at this time I would like
25 to offer Professor Payne-James as an expert in forensic

1 medicine and injury causation.

2 MR. BUCHANAN: No objection, Your Honor.

3 THE COURT: All right. He is so qualified.

4 BY MS. BAILEY:

5 Q Sir, what instructions did you receive for your work in
6 this case?

7 A I was requested by Steptoe to undertake three elements
8 of an assessment. To examine Mr. Al-Zuba'e and Mr. Al
9 Shimari, and to the extent possible -- and I'm reading this,
10 as you can see -- to determine whether there are allegations
11 of mistreatment that can either be verified or rebutted.

12 Q So let me pause you there.

13 With respect to that first instruction, were you
14 able to examine Mr. Al-Zuba'e and Mr. Al Shimari?

15 A Yes, I was.

16 Q When?

17 A I examined them on the 13th and the 14th of February of
18 this year.

19 Q Where?

20 A In Kuala Lumpur in Malaysia.

21 Q Were you able to develop any opinions related to their
22 allegations of abuse?

23 A Yes, I was.

24 Q Were you able to make any determinations -- or I guess
25 did you make any determinations with respect to the

1 credibility of their allegations?

2 A No. That's the function of the Court. I provide
3 evidence that the Court and the jury can interpret.

4 Q What was your second instruction?

5 A My second instruction was to determine both
6 Mr. Al-Zuba'e and Mr. Al Shimari's current condition and
7 their prognosis.

8 Q Were you able to make that determination?

9 A To a degree, yes.

10 Q Regarding your last instruction, what was your last
11 instruction?

12 A My last instruction was to evaluate the examinations
13 and reports of Dr. Steven Xenakis.

14 Q So because Dr. Xenakis has not testified in this case,
15 we'll only discuss his examination and report to the extent
16 you relied on them in rendering your opinions; do you
17 understand that limitation?

18 A I understand.

19 Q Are you being compensated for your participation in
20 this case?

21 A Yes, I am.

22 Q What is the compensation for?

23 A The compensation is for the worked involved on a daily
24 rate and an hourly rate.

25 Q Was there a different rate for going to Kuala Lumpur to

1 do the examinations?

2 A Yes. I can't be precise about the rates, but, for
3 example, about two and a half thousand pounds sterling per
4 day would be my daily rate.

5 Q Does the fact that you've been paid to render your
6 opinion in this case affect your opinions in any way?

7 A No.

8 Q Why not?

9 A The duties of an expert, certainly in the United
10 Kingdom, are very well laid out, and those are that your
11 duty is solely to the Court -- to the Court to whom you're
12 presenting the evidence. So irrespective of who has
13 instructed you or who has paid you, your findings should be
14 independent of that. And so whether it's a compensated case
15 or a pro bono case, the evidence I give by whom --
16 irrespective of whom has instructed me will be the same.

17 Q What would it mean for your work if you were to allow
18 bias to affect your opinions?

19 A Well, that aspect of my expert work would dry up very
20 quickly.

21 Q Okay. Did you use any particular process to evaluate
22 Plaintiffs Al-Zuba'e and Shimari in this case?

23 A Yes. And on the screen, you can see an image of what's
24 called the Manual on the Effective Investigation and
25 Documentation of Torture and Cruel, Inhuman and Degrading

1 Treatment. The short form name for that is the Istanbul
2 Protocol, which is where the initial edition of this in 1999
3 was developed.

4 In the last couple of years in 2022, a second
5 edition has been published and updated over the years. And
6 the Istanbul Protocol is a means by which torture, cruel,
7 inhuman and degrading treatment can be evaluated to present
8 evidence to a Court that can then make a determination of
9 findings.

10 Q Did you contribute at all to the current version of the
11 protocol?

12 A Yes, I did.

13 Q How?

14 A My area of expertise in particular relates to injury,
15 causation and documentation of injury. Chapter 5 of the
16 Istanbul Protocol addresses those issues, and I was one of
17 the editors and co-authors of that chapter.

18 Q Did you do anything with respect to Annex 3?

19 A Annex 3 is the anatomical drawings. These are body
20 diagrams that people may use when trying to annotate or
21 identify, note down findings. I then created those images
22 for the -- those body diagrams for this version of the
23 Istanbul Protocol.

24 Q Did you conduct a full assessment under the protocol in
25 this case?

1 A Under the protocol, I conducted I would say a partial
2 assessment in that I undertook a physical assessment of
3 Mr. Al Shimari and Mr. Al-Zuba'e.

4 Q Okay. What would it be if it were a full assessment?

5 A The full Istanbul assessment generally used a
6 psychological or psychiatric assessment as well.

7 Q Okay. Is it common or uncommon for you to complete
8 just the physical examination?

9 A It's very common for me just to complete a physical
10 examination, because I'm not a trained psychologist or
11 psychiatrist.

12 Q Let's talk through the procedure for an examination
13 under the Istanbul Protocol and how you used it here.

14 What's the first step?

15 A One of the first steps is often if the person that
16 you're examining's first language isn't English is to make
17 sure that you've got an appropriate interpreter who you can
18 rely on to provide unfiltered and appropriate translation of
19 your questions and the responses of that individual back to
20 you.

21 Q Was there an interpreter in this case?

22 A Yes. There was an interpreter in this case who
23 provided those functions.

24 Q Did you give the interpreter any instructions?

25 A Yes. The interpreter was -- having introduced himself

1 to me was asked very clearly to say that when you're
2 translating on my behalf, if I am asking questions, or, for
3 example, Mr. Al Shimari is responding to my questions, to
4 give a direct and unedited, as it were, translation so that
5 I know exactly -- Mr. Al Shimari, for example, will know
6 exactly what I am asking, and that the response to whatever
7 I have asked is an accurate response back from
8 Mr. Al Shimari.

9 Q What's involved in getting consent?

10 A Consent is a general principle used in all medical
11 care. But, in essence, it's allowing the person to consent
12 to whatever you want to do.

13 In this case, it's important that in terms of the
14 information provided and consent, that both Mr. Al Shimari
15 and Mr. Al-Zuba'e understand what the purpose of my
16 examination is, who I am doing it on behalf of, and what the
17 outcome of that examination will be.

18 So they will be asked -- they will be told who I
19 am, what I am doing the examination for. And I will then
20 also say that I will produce a report that may include
21 photographs of marks or scars on your body. That will be
22 created into the report that may be reviewed by non-medical
23 professionals, by legal professionals, by judges, by juries
24 and others as part of the court case.

25 Q Was there anything noteworthy of plaintiffs' consent in

1 this case?

2 A Generally I asked for written consent so that I have a
3 signature. And at the time that I was asking for consent,
4 it was raised by Mr. Al Shimari and Mr. Al-Zuba'e, they
5 didn't wish to give written consent, but they would give
6 verbal consent. And they discussed this with their legal
7 team who were present, not within the examination, but
8 nearby.

9 Q Do you do anything to make patients comfortable when
10 you're doing an examination of this sort?

11 A Yeah. When undertaking an examination, people are
12 often embarrassed or ashamed or upset about the nature of
13 the examination and the reason for why it's being done. So
14 it's absolutely essential to ensure that the individual is
15 as comfortable as possible. And that means if you have the
16 ability to be in a room that's comfortable, with comfortable
17 seats, there's no distractions, and that they're fully aware
18 that if part of the examination or taking the history that's
19 asking the questions, if they become uncomfortable, it's
20 entirely up to them to say I don't wish to go on, or I don't
21 wish to answer that question, or I don't wish to proceed.
22 So it's made very clear that the individuals being examined,
23 that they have control of what is happening to them.

24 In terms of the physical examination, the essence
25 of undertaking any examination of somebody -- somebody's

1 perhaps intimate regions, or perhaps their arms, legs, is to
2 maintain dignity to avoid embarrassment. And, again, all
3 the time maintain consent. So if somebody is being
4 examined, they will have blankets or clothes that are
5 removed part of the time, and not, for example, lying there
6 naked while an examination is being done. It's crucial to
7 ensure the person being examined, the patient being
8 examined, is comfortable and unembarrassed.

9 Q Did you have any sense whether the plaintiffs in this
10 case were comfortable during your examinations?

11 A Yes.

12 Q How did you get that sense?

13 A The -- throughout the examination, they were extremely
14 cooperative and raised no concerns, and had they done so, I
15 think there was a couple of restroom breaks, but apart from
16 that, there were no concerns raised by them, the
17 interpreter, or anyone else.

18 Q After the introductions are over, what do you do next?

19 A The next thing that we do, having gotten consent and
20 agreed to move on, is to take the history to find out what's
21 happened to them. And, by that, we take a bit of background
22 about their general information, their circumstances, their
23 religion and first language. We ask about family setting,
24 about previous work, about any medical health problems.
25 We'll go through past medical events. And we then go

1 through a systemic history, asking, for example, about
2 whether there are any heart conditions or respiratory
3 conditions or skin conditions. This is all done in a
4 structured manner.

5 Q When you are doing this sort of interview, what is your
6 practice for recording what the person says?

7 A It would depend where the assessment is being
8 undertaken. If it's in a -- for example, in a room where
9 there's electricity and you can use a laptop, then I take an
10 account directly onto my laptop. Sometimes we're not able
11 to do that, we may be examining somebody in a cell, in a
12 prison where there are prison guards who won't allow you to
13 bring in, for example, cameras. So you adapt to the local
14 circumstances.

15 In Mr. Al Shimari and Mr. Al-Zuba'e's case, we
16 were able to have full facilities where I was able to use my
17 laptop. So I document everything directly onto a laptop.

18 Q Was there anything of note in either man's background
19 that might explain any of the marks on their bodies or the
20 symptoms that they mentioned to you?

21 A Well, when we're taking a history, there are a number
22 of things, because we're anticipating -- because we haven't
23 examined the individuals at this point -- what might account
24 for anything that we do find in terms of physical injury
25 marks or scars. So it's important to know people's

1 employment background. And I think in both Mr. Al-Zuba'e
2 and Mr. Al Shimari's case, both had periods of time when
3 they were either farmers or looked after livestock or were
4 working in agricultural settings. Sports. If people are
5 active sports people working particularly in -- or playing
6 in contact sports, people may often have injuries as a
7 result of those.

8 So we're looking for things within their
9 background that may have caused injuries or visible marks so
10 that we can explain what those are and separate them from
11 other marks or scars or lesions that we find.

12 Q You pointed out the background work in livestock --
13 working with livestock.

14 Why is that significant?

15 A Well, I mean, animal -- it would depend, I suppose,
16 who's from a rural background or not. But I think if you're
17 working or living in a rural setting with animals or with
18 plants, then people get scratches, they get bitten, they
19 get -- a number of things that may happen. But these may
20 account for some findings.

21 Q Okay. Was there anything in particular about Mr. Al
22 Shimari's background that could account for physical
23 markings on his body?

24 A Mr. Al Shimari didn't have any preexisting illnesses,
25 but he had previously been, I think for 12 years, a

1 reservist in the military, and he had been -- he had
2 actually been hit by shrapnel when a bomb went off in 1987
3 it was. And that resulted in him being hospitalized in a
4 military and then a civilian hospital. So that, again,
5 shrapnel will create marks and injuries.

6 Q For the background, did the time period that you
7 inquired about cover just the time period prior to Abu
8 Ghraib, or did it also cover the time period after release
9 until your examination?

10 A It's up to the date of your examination. Because what
11 you're trying to do is to identify things that may be
12 relevant to detention and separate those from the things
13 that happen in every day life, like accidents or falls or in
14 a sports-related injury.

15 Q What did Mr. Al Shimari tell you about his work after
16 his release from Abu Ghraib?

17 A Mr. Al Shimari became a teacher after he was released
18 from detention. He became a mathematics teacher. His basic
19 degree was mathematics.

20 Q And then did he ever get promoted?

21 A I think two years before I saw him. So this year he
22 had become a school manager.

23 Q And so if he was released in 2008, are you saying he
24 became the school manager in 2022?

25 A Around about then, I would guess.

1 Q Why is a complete medical history important?

2 A A complete medical history again is similar to the
3 employment in sports history. What you're trying to do is
4 find out whether somebody has conditions that may have
5 resulted in marks or scars that are separate from the
6 detention or the alleged abuse issues. So the kind of
7 things that may produce marks or scars include skin
8 diseases. For example, psoriasis, dermatitis, these may
9 cause marks and scars that people have on their body.

10 Q What did Mr. Al-Zuba'e report in terms of seeking
11 medical treatment since his time at Abu Ghraib?

12 A I don't think Mr. Al-Zuba'e had any medical treatment.
13 I think apart from being assessed by Dr. Xenakis, I don't
14 think he had any other medical treatment.

15 Q What did Mr. Al Shimari report in terms of seeking
16 medical treatment since his time at Abu Ghraib?

17 A Mr. Al Shimari had a diagnosis of diabetes, and so he
18 made reference to seeing his diabetic specialist from time
19 to time.

20 Q And then does there come a point where you inquire
21 about the specific allegations?

22 A Yes. You then ask for a sequential as far as that
23 person can do. And it's very important to say to people
24 that the precise dates and times are not what I'm looking
25 for. What I'm looking for is to understand what happened to

1 you in your own words from the time of your detention
2 onwards. And you allow people to tell you their story.
3 Occasionally you might prompt them to move on a bit if they
4 retrace their steps. But throughout the course of taking
5 the history, you're allowing them to give you their account
6 of what happened to them.

7 Q And did Mr. Al-Zuba'e and Mr. Al Shimari both give you
8 their accounts?

9 A Yes.

10 Q I'd like to ask you a few questions about what
11 Mr. Al-Zuba'e told you.

12 Did Mr. Al-Zuba'e tell you about anything that
13 occurred inside a computer building?

14 A The computer building was where he was first taken, and
15 he specifically said to me he wasn't hurt or injured there.

16 Q Okay. Did Mr. Al-Zuba'e describe anything happening
17 when he arrived at the cellblock generally?

18 A Mr. Al-Zuba'e was hooded I think from the point of the
19 cellblock, and then he was threatened, and he was aware of
20 dogs, and things were being thrown into his cell and all
21 that. He was hooded; he couldn't tell what they were.

22 Q Did you get a sense of the time frame for how long
23 Mr. Al-Zuba'e was hooded from when he was first taken to the
24 cellblock?

25 A Yes. I think it was overnight. And then at sometime

1 the following day, his hood was removed, and then later in
2 the afternoon, he was taken I think for questioning.

3 Q I'd like to ask you a few questions now about what
4 Mr. Al Shimari told you about his allegations.

5 Did Mr. Al Shimari describe anything about his
6 detention by coalition forces prior to arriving at Abu
7 Ghraib?

8 A He was put into the back of a truck with a number of
9 other people that were laying on top of each other, and he
10 considered he had had some damage to his left side.

11 Q What, if anything, did Mr. Al Shimari tell you about
12 being hooded at Abu Ghraib?

13 A Mr. Al Shimari said that he was hooded but that stuff
14 was put in -- or he was covered with a sack, and stuff was
15 put into the dirt, and debris was put into that hood when it
16 was placed over his head.

17 Q What was the time frame that he said that he
18 experienced this hooding?

19 A This was intermittently for the -- I think throughout
20 the year at Abu Ghraib, but predominately in the first four
21 months he said to me.

22 Q So he said he was hooded for the first -- periodically
23 for the first four months?

24 A Yes.

25 Q All right. Did Mr. Al Shimari ever describe being

1 handcuffed in his cell to you?

2 A Yes. He was handcuffed to the top of his bunk.

3 Q Okay. I'd like to show what's been already admitted
4 into evidence as Plaintiffs' Exhibit 195.

5 Does this exhibit match what Mr. Al Shimari told
6 you about the position in which he was restrained?

7 A Yes.

8 MS. BAILEY: Let's take that down.

9 BY MS. BAILEY:

10 Q When conducting an interview of a patient either
11 alleging torture or CIDT, would you ever just show them a
12 picture and say: Is this what happened to you?

13 A I wouldn't, no.

14 Q Why not?

15 A Well, it could affect their account. It may alter
16 their accounts. It may forget concerns of them, and it may
17 not represent what happened to them.

18 Q And when you say alter their account, is that a concern
19 for accuracy?

20 A Yes. I mean, the reliance needs to be on what that
21 person records rather than what you suggest to them, and
22 that's what I'm -- we're taking a history and very weary of
23 you don't suggest to people what might have happened to
24 them, how this might have happened. You rely on what they
25 tell you.

1 Q And then prior to your physical examination, do you
2 have patients describe to you where their injuries are?

3 A Yes. Once you've established the, as it were, the
4 narrative or the chronology of the detentions and what
5 happened, you ask specifically are there any chronic or
6 enduring in somebody who -- where these things have happened
7 some time ago, are there any symptoms that you have that you
8 relate to your time in detention or any marks or scars, and
9 you ask them to detail those.

10 Q Did Mr. Al-Zuba'e complain to you that because of his
11 treatment at Abu Ghraib, he had difficulty raising his arm?

12 A No.

13 Q We'll get a little bit more into the physical
14 examinations in a minute.

15 But just on this issue, did you assess the
16 mobility of his arm?

17 A Yeah. It's -- part of the routine assessment of anyone
18 physically is to look at their musculoskeletal system,
19 which, in essence, means the power and the movement of their
20 arms and legs.

21 Q Okay. Did you find any abnormalities, or did
22 Mr. Al-Zuba'e show any difficulties in raising his arm?

23 A No.

24 MS. BAILEY: All right. I'd like to show what's
25 been previously admitted as Plaintiffs' Exhibit 161C.

1 BY MS. BAILEY:

2 Q Did Mr. Al-Zuba'e ever tell you that he was handcuffed
3 in this position?

4 A No.

5 MS. BAILEY: You can take that down.

6 BY MS. BAILEY:

7 Q Once the interview is complete, what happens next?

8 A The physical assessment -- sometimes we just say would
9 you like a break, do you want a coffee or a tea, and then
10 we'll go on to take -- do the -- undertake the physical
11 examination, because that is done in stages.

12 And you undertake basic medical findings like
13 pulse, blood pressure. You look at the skin to see whether
14 there's any anemia or jaundice. These are the kind of
15 examinations that you would do in any setting. And then you
16 specifically look at areas such as the skin, the face and
17 the head, the eyes, the nose, the throat. You look at the
18 mouth, look at the teeth, and then you look at the chest and
19 the abdomen.

20 By looking, I mean, you're looking first to see if
21 you can see any abnormality. And you palpate, you use your
22 hands to feel if there's any abnormality. And then you move
23 onto the musculoskeletal aspect of an examination.

24 I'm shortening my account, but that involves
25 checking the movement, identifying any abnormalities that

1 may be drawn to your attention by, in this case,
2 Mr. Al Shimari or Mr. Al-Zuba'e.

3 We look at the -- we do a genital examination,
4 with consent, particularly if there's been any allegation of
5 genital damage. And we then after that, we'll undertake
6 photography of those areas that have been identified as
7 being abnormal or sharing marks that need to be recorded.

8 Q When you take photographs, is there anything in
9 particular that you use with the photographs?

10 A Yeah. Undertaking photography or marks or scars on an
11 individual is really important. There are three elements to
12 it. For each mark or scar that you see, it is appropriate
13 to take a distance image so that you know what you're
14 looking at. Sometimes it may be small so you don't take a
15 close-up. You take a distance image so you know, one, where
16 the particular abnormality is.

17 Secondly, you take a more close-up image of the
18 mark that you're looking at.

19 And thirdly, and most importantly, you take an
20 image of that mark, but with a ruler and a color scale so
21 that when the images are being reviewed, for example, in
22 court or by other healthcare colleagues, there is a good
23 understanding of whether or not this is an accurate
24 reproduction and identification of what you're seeing.

25 Each mark or scar, there's a written description

1 of what that is. That may be supplemented -- not always,
2 but sometimes -- by body diagrams. But if you have access
3 to photography, the photography supplements and corroborates
4 the written description.

5 THE COURT: All right. I think at this point
6 we're ready for the mid-morning break. We'll be on recess
7 until 11:35.

8 (Jury not present at 11:14 a.m.)

9 THE COURT: All right. We'll bring the jury in.

10 THE COURT SECURITY OFFICER: Yes, Judge.

11 Rise for the jury.

12 (Jury present at 11:37 a.m.)

13 THE COURT: Folks, how is it in the jury room? Is
14 it too cold, too warm?

15 THE JUROR: It's good.

16 THE COURT: You're smiling. We'll try to get it
17 adjusted.

18 THE JUROR: The window blinds with the sun coming
19 in. It's cooler in here than it is in there.

20 THE COURT: All right. We're going to try to get
21 it a little bit more comfortable in here. All right. It
22 takes a while.

23 Go ahead.

24 MS. BAILEY: Thank you, Your Honor.

25 Can we please bring back where we were on the

1 slide show. Thank you.

2 BY MS. BAILEY:

3 Q I think we just concluded, Dr. Payne-James, talking
4 about the physical examination.

5 Now I'd like to ask, are there any other sorts of
6 materials that you would consider in this kind of
7 examination?

8 A The kind of materials that you might consider in any
9 particularly non-recent assessment is if there are previous
10 medical records, previous dental records, and then sometimes
11 other information, other evidence which might include family
12 photographs prior to when somebody's been injured. There's
13 a range of materials and documents that you may be able to
14 have access to.

15 Q What would be the purpose of having an old photo?

16 A The purpose of an old photo may be -- you may be able
17 to corroborate when somebody didn't have an injury, and then
18 subsequent to that, that they had it. But those are the
19 kind of things. It's corroboration often of things that
20 might have happened previously or sharing that something
21 wasn't there at a particular time.

22 Q Were there any medical records for either plaintiff
23 that you considered in this case?

24 A Mr. Al Shimari, within his detainee record, had a
25 limited amount of medical records which related or just

1 indicated that he had had a dental assessment, that he'd
2 also been subject to the shrapnel injury, and he just noted
3 that, and that he'd had what's called an umbilical hernia,
4 an abdominal hernia.

5 Q Did you consider any other expert assessments in your
6 evaluation?

7 A I had access to Dr. Steven Xenakis's reports from
8 January 2013.

9 Q Did you take them into account or rely upon them at all
10 when you formed your opinions?

11 A I didn't rely upon them. The recording of the physical
12 aspects of the abuse, which is my main area, was, in my
13 view, not detailed enough. It didn't clarify exactly what
14 he was describing and showing.

15 Q Okay. Did you have any concerns, you know, just based
16 on your knowledge of psychiatric or psychological evaluation
17 about what you saw in that part of the evaluation?

18 A Well, to emphasize, I'm not a psychologist or
19 psychiatrist, but I often see psychology and psychiatric
20 reports. Dr. Xenakis did note himself in, I think both
21 Mr. Al-Zuba'e and Mr. Al Shimari's report, that he hadn't
22 undergone or he had deferred psychological instruments,
23 which are often part of a full psychological assessment,
24 which quantified, to some extent, the degree of problems
25 that somebody may have. But he noted in both reports that

1 he had deferred that.

2 Also, in 2013, was the time when what's called the
3 Diagnostic and Statistical Manual of Mental Diseases change
4 from what is briefly known as DSM-IV to a new version, and
5 that happened that year.

6 So his documentation of the findings that he had
7 made were based on the DSM-IV, the previous iteration, and
8 so it wouldn't be a current assessment because we now use
9 the DSM-5.

10 Q Did you conclude you were not able to rely on his
11 assessment?

12 A Yes. I can sometimes use additional assessments,
13 particularly if there are areas where something is
14 documented very clearly. But I wasn't confident that they
15 assisted me.

16 Q Okay. In this case, were you provided other materials
17 that you did not take into account when you formed your
18 opinions?

19 A I was provided with depositions and interrogatories,
20 other accounts from both Mr. Al Shimari and Mr. Al-Zuba'e.
21 But for the purposes of my assessment, I'm really reliant
22 upon my own structured interview, my structured assessment,
23 which, again, uses the principles of the Istanbul Protocol,
24 which work well and then can be interpreted by others.

25 Q Did you note any inconsistencies between what

1 Mr. Al-Zuba'e and Mr. Al Shimari told you and what they said
2 in other settings?

3 A Yes. There were different accounts. I didn't do a
4 specific analysis of all the differences.

5 Q Okay. But does that affect your evaluation?

6 A No. For me, it's important for me to make sure that
7 the history that I'm getting, that I've done it in what I
8 believe is the appropriate way. That I put Mr. Al Shimari
9 and Mr. Al-Zuba'e in a position that they feel confident
10 that they can relate exactly what happened and raise the
11 relevant issues.

12 Q Let's talk a little bit about the opinions and
13 conclusions that come out of your examination.

14 Medically, what do you do with respect to a
15 patient you've encountered?

16 A Medically, you try and relate what somebody has said
17 has happened to them, to marks that they may say have
18 happened as a result of that particular action or actions.
19 And you relate to what you find with your physical findings.
20 So you're relating the history to the physical findings and
21 determining whether or not that was caused in that way or
22 not. And, for many injuries, many marks and many scars,
23 they're what we call non-specific. You can't say that was
24 definitely caused in that way, or what was definitely caused
25 in another way. There's a range of possibilities.

1 Q What about if you note some sort of condition that
2 needs to be addressed in that particular plaintiff or
3 patient?

4 A If there's a medical condition that -- whenever we're
5 seeing patients -- and I use the term "patient," because I
6 think medically that's really important for us just to
7 consider that however we're examining somebody, whatever
8 setting, you consider people are patients, and you're
9 endeavoring to make sure that you can establish a
10 relationship and get a rapport.

11 But it's important that if people do raise things
12 which are unrelated to the particular instructions, for
13 example, that I've been given to assess physical injury,
14 that I identify that and make recommendations.

15 Q Did you make any recommendations with respect to
16 Mr. Al-Zuba'e in this case?

17 A Mr. Al-Zuba'e I noted had a consistently elevated blood
18 pressure during the course of the examination. Now, raised
19 blood pressure is not unusual in settings of stress or
20 anxiety. I mean, my blood pressure is probably raised now.
21 But in terms of somebody who you are examining over a period
22 of time, when things have calmed down and settled down, his
23 was persistently higher to a level that would give me
24 concern that it would put him, if prolonged, at increased
25 risk of, say, stroke or heart attack. So within my report,

1 I recommended that he should be urgently reviewed with
2 regard to his blood pressure. I was, of course, seeing him
3 in a setting where I don't have access to be able to refer
4 to specific individuals.

5 Q Did you relate his high blood pressure in any way to
6 his treatment at Abu Ghraib?

7 A No. Blood pressure is very, very common. He's a
8 51-year-old male, moderately obese. Blood pressure -- high
9 blood pressure is not unusual. Stress and anxiety acutely
10 can raise blood pressure, but I felt that this was --
11 throughout the course of my examination I repeated it. It
12 was constantly elevated.

13 He had other symptoms to do with his eyes and
14 feeling dizzy, which, again, might have related to that. So
15 I take that all into account.

16 Q So you said the dizziness and the eyes you related to
17 the blood pressure --

18 A I --

19 Q -- potentially?

20 A I can't exclude that it wasn't part of the blood
21 pressure or Mr. Al-Zuba'e related it to his time in
22 detention.

23 Q Did you assess any symptoms for which you made
24 recommendations with respect to Mr. Al Shimari?

25 A Mr. Al Shimari had a number of issues. The two most

1 significant ones I think for him were very much that he had
2 lost most of his teeth. He had two remaining teeth. Now,
3 he attributed that to his time within Abu Ghraib, within his
4 time of detention. But I note that when Dr. Xenakis saw him
5 in 2013, most of those teeth were present. So his concern
6 was that -- and the point that he made to me was that his
7 teeth and the fact that he had ill-fitting dentures meant
8 that he couldn't enjoy meat, which was a sadness for him
9 which he commented upon.

10 The other thing that he made reference to, and he
11 was very aware that this would be discussed and reflected
12 upon, was that a loss of libido and erectile dysfunction,
13 which he attributed to his time in detention.

14 And I also recommended -- because he had, more
15 recently, developed urinary symptoms, and I recommended that
16 he needed, with regard to his urinary and erectile
17 dysfunction issues, to see a urologist, somebody who
18 specializes in that field. And for his teeth, I felt that
19 it would be appropriate for him to see a dentist or
20 odontologist.

21 Q Did you relate either of those concerns to his
22 treatment at Abu Ghraib?

23 A He related them to his treatment at Abu Ghraib. For
24 me, erectile dysfunction, urinary symptoms in men of his
25 age, my age, is not uncommon at all. And there are many

1 factors for that, which is why it requires a specialist
2 assessment. Psychological issues can cause erectile
3 dysfunction, but tend not to cause urinary dysfunction.

4 Q Okay. Does the Istanbul Protocol provide a system for
5 evaluating the physical findings that you made?

6 A Yes. And the reason the Istanbul Protocol, or the
7 approach that the Istanbul Protocol uses has largely been
8 adopted widely in criminal courts, is that it gives, as I
9 think I alluded to just now, a degree -- how you can assign
10 not a likelihood, but a consistency of how consistent
11 something is with the account that you've been given. And
12 there are five levels of consistency listed within the
13 Istanbul Protocol. And, for example, I used those commonly
14 in my day-to-day work in the criminal setting.

15 Q Okay. Let's walk through those consistency levels a
16 bit.

17 What does it mean if something is not consistent?

18 A If it's not consistent, it simply means that it
19 couldn't have been caused in the way that the person says.

20 Q Okay. What is diagnostic of?

21 A Diagnostic means that that is the only way it could
22 have been caused, and there's no ambiguity about its cause.
23 If the person says such-and-such was caused in this way, the
24 examination confirms that that's the only way it can be
25 caused.

1 Q Could you give an example?

2 A I suppose the best or simplest example if somebody's
3 been slashed across the face with a knife -- with a razor
4 blade, there is a linear mark, a clean linear mark, and you
5 have the blade -- the blade with the DNA on it. You have a
6 healed or a fresh incise wounds. Those are pretty
7 diagnostic, those kind of injuries.

8 Q Okay. So those are the two bookends of the consistency
9 level.

10 Let's talk about what consistent with means.

11 That's Level 2.

12 A Yes. Consistent with means that the physical
13 findings -- in terms of the physical findings, what I see
14 the mark or the lesion I see, could have been caused in the
15 way that, in Mr. Al Shimari or Mr. Al-Zuba'e's case, say
16 that it was caused. But there are many other causes. There
17 are many other ways in which that could have been caused.
18 And that's often when the injury, when you look at it, is
19 non-specific. So you can't say there's a particular shape
20 or a pattern that has caused this.

21 Q Okay. Is it fair to say that that's the lowest level
22 of correlation possible between a physical finding and an
23 allegation?

24 A It's the fourth level on the five levels, yes.

25 Q And when you say something is consistent with an

1 allegation, does that mean you're saying it happened that
2 way?

3 A No.

4 Q Okay.

5 A I'm saying that it's consistent with it, so it could
6 have happened in that way.

7 Q Did you complete this evaluation for each of the
8 physical markings that either you or Mr. Al-Zuba'e
9 identified that possibly related to his treatment at Abu
10 Ghraib?

11 A Yes.

12 Q Okay. What were your conclusions with respect to those
13 physical findings individually?

14 A Individually, the findings that I found following
15 taking the history from both Mr. Al Shimari and
16 Mr. Al-Zuba'e, were that they were consistent with the
17 accounts that they gave.

18 Q And so they could have been caused by -- if I
19 understand right, that means they could have been caused the
20 way that he said, but there are also many other
21 explanations?

22 A Yes.

23 Q Okay. Could considering multiple physical findings
24 that are consistent with allegations all together raise the
25 consistency level for your overall evaluation?

1 A Potentially they could, yes.

2 Q Okay. Did it in this case with Mr. Al-Zuba'e?

3 A No.

4 Q Why not?

5 A Because there was a relatively few number, and they
6 want a large number. And they were most likely different in
7 the way in which the accounts were given of how they were
8 produced.

9 Q Did you do the same sort of evaluation for each of the
10 physical markings that either you or Mr. Al Shimari
11 identified as potentially related to his time at Abu Ghraib?

12 A Yes. In both cases.

13 Q Okay. And what were your conclusions with respect to
14 the physical findings individually for Mr. Al Shimari?

15 A For Mr. Al Shimari, again, I felt that the findings
16 individually were consistent with the account he gave, but
17 there were other possible causes.

18 Q How many other possible causes?

19 A Well, the term in the Istanbul Protocol uses the term
20 "many," and I think we use that in the term of however each
21 of us in the court would use the term "many."

22 Q So sort of your normal understanding?

23 A I think a normal understanding is not assigned a
24 particular number.

25 Q Okay. When you put all of Mr. Al Shimari's physical

1 findings together, did that raise the consistency level at
2 all?

3 A No.

4 Q Okay. Why not?

5 A Because, again, it didn't -- there weren't any
6 significant enough findings that I was able to say that I
7 felt that this was highly consistent. And perhaps it's
8 important to say that the next level is highly consistent,
9 meaning there are few other explanations.

10 When you have non-specific findings, it's often --
11 there is so many different possibilities of how injuries
12 were caused and how they might leave persistent or residual
13 marks or scars, that the possibilities are endless.

14 Q For either plaintiff, did you have any additional
15 information that was available to you that, in your
16 judgment, raised the consistency level?

17 A No.

18 Q Why not?

19 A Why not?

20 Q What sorts of additional information could have done
21 that?

22 A Well, a psychological assessment could have done,
23 medical records could have done, visual evidence, such as
24 video of abuses happening. Those kind of things are all
25 things that may influence the outcome of what you see.

1 But then again, the determination become --
2 reverts back to that of the Court.

3 Q To be clear, does the fact that neither plaintiff's
4 markings could be -- excuse me.

5 To be clear, does the fact that neither
6 plaintiff's markings got a consistency rating higher than
7 consistent with mean that you are concluding their
8 allegations are false?

9 A No.

10 Q Okay. Why doesn't it mean that?

11 A It's not for me to conclude what the allegations are;
12 that is the function of the Court. I put the evidence to
13 the best of my ability for the Court, and the Court uses
14 that with other evidence that's been presented to make that
15 determination.

16 Q Okay. And even if they had no markings whatsoever,
17 would that, under the protocol, disprove what they say?

18 A No. Many abuses, in the same as any injuries anyway if
19 I -- I sometimes use the example if I come up and punch each
20 member of the jury with different force --

21 Q Please don't.

22 A -- some people may have a fractured cheekbone, but
23 others may have no visible marks. So there's a range of
24 particular injuries, so people can be abused and assaulted
25 and leave no visible marks.

1 Q Okay. If you saw the markings you saw on Mr. Al-Zuba'e
2 and Al Shimari outside the context of a forensic
3 examination, just in a clinical setting, would you be
4 concerned that patient had been the victim of abuse?

5 MR. BUCHANAN: Objection.

6 THE COURT: I'm going to sustain that objection.

7 BY MS. BAILEY:

8 Q Okay. Given the consistency level, I don't know that
9 we need to go through every physical finding, but I'd like
10 to take a look at a few to give the jury an idea of your
11 process.

12 Would you please look at your binder at Defense
13 Exhibits 106 to 109.

14 THE COURT: Are you going to move all those in?

15 MS. BAILEY: Yes, Your Honor.

16 THE COURT: Any objection?

17 MR. BUCHANAN: No objection.

18 THE COURT: All right. They're all in.

19 (Defense Exhibit Numbers 106 through 109 admitted into
20 evidence.)

21 THE WITNESS: Sorry. Which exhibit is this?

22 MS. BAILEY: 106, 107, 108 and 109.

23 THE WITNESS: Have I got -- have I got these in
24 this bundle?

25 THE COURT: They should be at the very back of the

1 very large volume.

2 THE WITNESS: Thank you.

3 THE COURT: We could also have you put them on
4 the --

5 THE WITNESS: Thank you, Your Honor. I think the
6 tabs were hidden.

7 THE COURT: Also, it should be on the screen.

8 MS. BAILEY: Yes, I will put it on the screen.

9 THE WITNESS: Thank you, Your Honor. It is also
10 on the screen as well. I'm drowning in data.

11 Yes.

12 BY MS. BAILEY:

13 Q So on the screen, do you recognize those pictures?

14 A Yes.

15 Q Thank you.

16 So could you explain to the jury what the picture
17 on the left shows? And I believe that's Mr. Al-Zuba'e.

18 A Yes. So that's Mr. Al-Zuba'e's right wrist, this side
19 of the wrist. And I'm pointing at where it is on my hand.

20 And lighting is very important when taking
21 photographs. And specifically with this image, I've lit it
22 so that you can see that there is a lump, and there is a
23 mass just -- that's about 3 by 2 centimeters in diameter.

24 And it's associated with where -- with the wrist. And
25 Mr. Al-Zuba'e said that he had been handcuffed or tied

1 around the wrist on a number of occasions.

2 Could that be caused by trauma to the wrist? The
3 answer is yes. Because that lump, when the arm was
4 elevated, would drain, which means it would go flat, it
5 would mean that it was a vascular, and, in particular, a
6 venous problem. It's a collection of blood caused by damage
7 to the veins around the wrist. And that's almost certainly
8 been caused by damage to the valves in the veins, which is
9 why when the arm is lifted it drains when it goes above the
10 level of the heart.

11 That is a finding that I've not seen before in
12 handcuffs, but it could be caused by trauma to that region,
13 including by handcuffs, because the valves of the vein
14 underlying that lump have been damaged in some way, probably
15 by trauma. That's the only ...

16 But that trauma could be an impact of a fall,
17 falling onto an outstretched hand. There are many ways --
18 an impact from something else. No account was given such as
19 that. But in terms of how a lump like that appears, that is
20 consistent with Mr. Al-Zuba'e's account, but there are many
21 other causes.

22 And in terms of handcuffing and restraint or zip
23 tying, which I have seen thousands, I've not seen an injury
24 like this before.

25 Q Okay. Could you please explain to the jury what the

1 picture on the right shows?

2 A Yes. The picture on the right is Mr. Al Shimari's
3 outer right ankle just over the lumpy bit of his ankle
4 joint. And that's a round -- it's about a centimeter in
5 diameter, but it's a thickened area of the skin that breaks
6 down from time to time and bleeds and -- maybe if he's
7 wearing shoes or boots that rub against his -- the bone of
8 his ankle.

9 The nature -- the appearance of that is that it's
10 what we call a granuloma. It's something that has become
11 chronically inflamed, and it fibroses and then heals up and
12 the breaks down again if there is trauma to it.

13 He -- so that first appeared after he had been
14 shackled around his ankles, which is the account that he
15 gave to me and that it had remained there ever since, and
16 certainly that is a possibility.

17 But any injury to the ankle, a kick from somebody
18 else, a fall could result in that kind of granulomatis
19 repeat and recurrent breakdown and then healing up for a
20 bit, appearance. So again, there is a consistency there,
21 but there are many other possible causes.

22 Q Let's look at this next slide.

23 What does this slide generally reflect?

24 A Okay. Well, the slides here reflect things that
25 haven't been caused by the accounts given by either

1 Mr. Al Shimari or Mr. Al-Zuba'e. And there are other
2 explanations from them that they are very clearly evident
3 marks or scars.

4 What we're looking at on the left-hand image, if
5 you look at the Numbers 6 and 8 -- and these, by the way,
6 are centimeters, not inches. If you go up, you'll see a
7 slightly pale scar about 2 centimeters across. And that's
8 the entry wound to one of the shrapnel injuries that
9 Mr. Al Shimari sustained in 1987 when he was working with
10 the military when a bomb exploded. So that is the scar of
11 an entry wound from that shrapnel.

12 If we look at the right-hand image, that is, in
13 fact, Mr. Al-Zuba'e's left arm. It's slightly cut off. And
14 having said, you should always have an image that shows the
15 whole part of the -- of where the injury is. And this is
16 where we're looking in this region here. And you'll see a
17 bluish mark and then a fainted cross on the back of the hand
18 here and here. And these are tattoo marks which
19 Mr. Al-Zuba'e reported to me were done when he was a younger
20 man. They were just playing, they're just tattoos. He also
21 had two others on his right hand. But these are not caused
22 by any of the abuses that he alleged.

23 Q Okay. And for the scar on the left, could a mark like
24 that ever be caused by an electrical shock?

25 A This would not be caused by an electrical shock because

1 you can see that it is -- well, I can see that it is a
2 linear healed scar. It is not a diffuse area of scarring.

3 Q Okay. And perhaps a silly question, but could the
4 tattoo on the right side be caused by shackling?

5 A No.

6 Q Okay. With respect to the symptoms that Mr. Al Shimari
7 and Mr. Al-Zuba'e reported to you, was there anything about
8 them that was different in a significant way from what you
9 would expect from a patient of their background?

10 A In terms of their broad symptomatology?

11 Q Correct.

12 A Mr. Al-Zuba'e's a 51-year-old male, and I think
13 Mr. Al Shimari is now 65. The general symptoms are of those
14 that often present to clinics, to hospitals. Even in the
15 absence of torture or previous torture or allegations of
16 torture. So they're not uncommon symptoms.

17 MS. BAILEY: Thank you.

18 No further questions, Your Honor.

19 THE COURT: All right. Cross-examination.

20 CROSS-EXAMINATION

21 BY MR. BUCHANAN:

22 Q Good afternoon, Dr. Payne-James.

23 A Good afternoon.

24 Q My name is Michael Buchanan, and I'll be asking you
25 some questions today.

1 A I understand. Thank you.

2 Q You conducted your examinations in February of 2024; is
3 that right?

4 A Yes, that's correct.

5 Q So that would be roughly 20 years after the abuses
6 alleged by Mr. Al-Zuba'e and Mr. Al Shimari took place;
7 right?

8 A Correct.

9 Q The purpose of your examination was determined to what
10 extent the history of their accounts matched the visible
11 physical symptoms that they identified; right?

12 A Correct.

13 Q You note that the absence of physical findings does not
14 exclude the possibility that torture or cruel, inhuman or
15 degrading treatment was actually inflicted on them?

16 A That is correct.

17 Q Okay. And you're not offering any opinions as to
18 whether either of these gentlemen were subject to torture or
19 ill treatment; is that right?

20 A No. I believe that's the function of the Court.

21 Q And just at the outset, your reports are limited to
22 Mr. Al-Zuba'e and Mr. Al Shimari; is that right?

23 A Yes.

24 Q You did not conduct an examination of Mr. Al-Ejaili; is
25 that right?

1 A I did not.

2 Q And there's no report of your findings with regard to
3 Mr. Al-Ejaili; is that right?

4 A That's correct.

5 Q In your direct testimony, you referenced the Istanbul
6 Protocol.

7 Is it fair to say that's the gold standard for how
8 examinations should be undertaken when there are complaints
9 of torture or ill treatment?

10 A Yes, I think that would be fair.

11 Q And you, yourself, were a contributor to the Istanbul
12 Protocol, the 2022 version; is that right?

13 A I was.

14 Q Okay. And this is a tool that's commonly used when
15 assessing victims of torture; is that right?

16 A It is.

17 Q And I believe you testified that you've used it
18 hundreds or perhaps thousands of times in making those
19 assessments; right?

20 A I believe I testified and said that I've used the
21 principles in terms of both torture assessments, and also in
22 the criminal setting, these are the principles that are
23 applied.

24 Q And that would be thousands of times in your
25 experience?

1 A Yes.

2 Q All right. You testified on direct about the consent
3 that you received for Mr. Al-Zuba'e and Mr. Al Shimari; do
4 you remember that testimony?

5 A I do.

6 Q Are you aware that Mr. Al-Zuba'e does not read or
7 write?

8 A Yes. And I believe that was why there was no written
9 consent.

10 Q And during the course of your assessment of both of
11 those individuals, at no point in time did they refuse to
12 answer any question; right?

13 A I don't believe so, no.

14 Q And they did not refuse to cooperate in any way with
15 your physical examination of them; did they?

16 A No, they were cooperative.

17 Q And you're aware that they flew voluntarily from Iraq
18 to Malaysia to participate in your assessment?

19 MS. BAILEY: Objection.

20 THE COURT: Sustained.

21 BY MR. BUCHANAN:

22 Q And with regard to the last slide that we looked at
23 with the shrapnel wound in Mr. Al Shimari's back, at no
24 point did he ever suggest that that wound or that scar was
25 the result of abuse at Abu Ghraib prison; did he?

1 A No. And I hoped I had made that clear, but I apologize
2 if I didn't.

3 Q And the same is true with the tattoo on the left hand
4 of Mr. Al-Zuba'e; right?

5 A Mr. Al-Zuba'e didn't say that, yes.

6 Q He volunteered to you that that was the result of
7 tattooing he did when he was a teenager; right?

8 A That's correct.

9 Q Now, the Istanbul Protocol has multiple components to
10 it; is that fair to say?

11 A It does.

12 Q And one is the physical assessment; right?

13 A That's correct.

14 Q And another is a psychological assessment?

15 A That's correct.

16 Q Okay. And you were hired by CACI to do only the
17 physical assessment of Mr. Al Shimari and Mr. Al-Zuba'e;
18 right?

19 A Yes.

20 Q And undertaking your physical assessment, after you
21 take the oral account from these gentlemen about the abuses
22 they suffered at Abu Ghraib, you asked each of them to
23 identify the visible physical injuries they suffered as a
24 result of that abuse; right?

25 A Yes, if they are aware of them.

1 Q Okay. Can you describe what a visible physical injury
2 would be?

3 A It can be any marks. So if you -- if anybody looks at
4 their own skin or what, it's different marks that may have
5 been attributed to an injury that you may recall; sometimes
6 you may not recall. But marks that are not part of the
7 normal skin. They may appear different in very general
8 terms.

9 Q And you took pictures of those physical injuries that
10 they identified and others that you found; right?

11 A Yes.

12 Q And then you provided the assessment using the Istanbul
13 Protocol; is that right?

14 A Yes.

15 Q But to be clear, your assessment is limited to visible
16 physical injuries; is that right?

17 A That's correct.

18 Q Okay. And you're aware that torture methods can
19 include abuse -- physical abuse that leaves no physical
20 lesions; is that right?

21 A That's correct.

22 Q Okay. And so physical scars and visible physical
23 injuries tell only the part of the story of a torture
24 victim; is that right?

25 A That's true.

1 Q And you agree that documentation of torture frequently
2 takes place when the physical lesions already have
3 disappeared; is that right?

4 A If there were visible lesions that leave scarring, then
5 the scarring may endure. But if they are shorter-term
6 injuries, so, for example, bruising as an acute -- they may
7 disappear, but sometimes they may leave enduring marks.

8 Q And the physical injuries, such as bruising, you would
9 fully expect they would have dissipated 20 years after the
10 fact; right?

11 A Not necessarily. Generally bruises disappear. So
12 bruises, just for the jury's benefit, are caused by blood
13 leaking out of damaged blood vessels following some form of
14 impact. But in some people, marks from bruising may endure.
15 We call it post-inflammatory hyperpigmentation. And it's
16 not unusual sometimes to see that in people in any setting.

17 Q But it would be unusual to see bruises 20 years after?

18 A Yes. It won't be a bruise; it will be what's termed
19 post-inflammatory hyperpigmentation.

20 Q And you didn't ask either gentleman whether they
21 suffered from frequent headaches; did you?

22 A They were asked whether they had any -- within the
23 neurological history and systemic history, have you got any
24 symptoms such as headaches, visual disturbance, ear
25 disturbance, sensory disturbance, and I don't recall any

1 responses saying headaches.

2 Q So you specifically asked them whether they suffered
3 from frequent headaches?

4 A I wouldn't have said frequent headaches, but do you
5 have any symptoms such as headaches.

6 Q Did you ask them if they had difficulty sleeping?

7 A No, I don't believe I did.

8 Q Did you ask them whether they had recurring nightmares?

9 A I did, and the response was for -- I think it was
10 Mr. Al Shimari, yes, but I can't be sure.

11 Q You did not undertake to evaluate whether either
12 gentleman suffered from post-traumatic stress disorder;
13 right?

14 A No.

15 Q Or whether they suffered from depression?

16 A No.

17 Q Anxiety?

18 A No.

19 Q Or post-concussive syndrome?

20 A No.

21 Q Those were not outside the scope of your assessments;
22 is that right?

23 MS. BAILEY: Objection. You said not outside the
24 scope of --

25 MR. BUCHANAN: No. Outside the scope of your

1 assessment.

2 MS. BAILEY: Thank you.

3 THE WITNESS: No. Those are determinations that I
4 would request a psychologist or psychiatrist to make.

5 BY MR. BUCHANAN:

6 Q Okay. And you understand that to assess the full
7 impact of torture or ill treatment on an individual, it
8 would be important to consider the psychological impact in
9 addition to the physical assessment of that person?

10 A Yes.

11 Q Okay. And that's because torture or ill treatment are
12 not limited to physical abuse; right?

13 A That's correct.

14 Q It includes psychological torture; right?

15 A Yes.

16 Q Torture that does not include physical contact; right?

17 A Yes.

18 Q Such as threats of violence or death?

19 A Yes.

20 Q Threats of rape or sexual assault to the victim or a
21 loved one?

22 A Yes.

23 Q Prolonged forced nudity?

24 A Yes.

25 Q Forced shaving?

1 A Yes.

2 Q Humiliating and degrading treatment?

3 A Yes.

4 Q And psychological torture will not cause physical
5 injury or leave a visible physical scar; right?

6 A Correct.

7 Q And you're aware that physical trauma can have lasting
8 psychological trauma; right? So in addition to physical
9 injuries, a victim of torture will suffer lasting
10 psychological trauma; is that right?

11 A Can do.

12 Q And you're aware that clinical experience shows that
13 the psychological aftereffects of torture are often more
14 persistent and protracted than the physical ones?

15 A They may be.

16 Q Indeed, the emotional impact or the psychological
17 impact of torture can be profound; is that right?

18 A It can be.

19 Q And resulting in psychological symptoms that are
20 prevalent, actually, among torture survivors; right?

21 A They can be.

22 Q And you're aware that Dr. Xenakis conducted his
23 physical examinations and psychological examinations in
24 2013?

25 A I am aware.

1 Q And you would agree that psychological evaluations can
2 provide critical evidence of abuse among torture victims?

3 A Yes.

4 Q We've spoken about the Istanbul Protocol.

5 MR. BUCHANAN: I'd like to actually move it into
6 evidence and mark it as Plaintiffs' Exhibit 236.

7 MS. BAILEY: Objection, Your Honor. This is
8 hundreds of pages of document. It's well beyond what the
9 jury needs.

10 THE COURT: If there are specific aspects of it,
11 I'll allow it. But I agree with counsel, we're not going to
12 burden the jury with the whole document.

13 What pages do you want moved in?

14 MR. BUCHANAN: We're going to be looking at
15 page 124 of it. And that's the page numbering of the
16 document itself; not the .pdf pages.

17 THE COURT: All right.

18 MS. BAILEY: Your Honor, I will object to the
19 extent it goes to a psychological evaluation, and that is
20 not what Mr. Payne-James is here to testify about.

21 THE COURT: I think you've covered the issue
22 sufficiently.

23 MR. BUCHANAN: There are a few other passages that
24 we would like to review with him as well. For example,
25 page 69, paragraph 268.

1 MS. BAILEY: I'm sorry. Could you repeat?

2 MR. BUCHANAN: Sure. Paragraph 69, paragraph 268.

3 THE COURT: Well, 268 starts on page 68.

4 MR. BUCHANAN: It's subparagraph E, specifically.

5 THE COURT: I'm sorry?

6 MR. BUCHANAN: Subparagraph E.

7 MS. BAILEY: No objection to subparagraph E.

8 THE COURT: All right. So just so we're clear,
9 Plaintiffs' Exhibit 236 is in only as to subsection E of
10 paragraph 268, which is on page 69. So page 69 needs to be
11 redacted so just that part of it's in; all right?

12 (Plaintiffs' Exhibit Number 236, page 69, paragraph 268,
13 subsection E admitted into evidence.)

14 MR. BUCHANAN: And then I have a few more
15 sections, Your Honor, if you want to do that now or when
16 they come up later.

17 THE COURT: Do it when it comes up.

18 MR. BUCHANAN: Okay.

19 THE COURT: Can you read that small print, Doctor?

20 THE WITNESS: I've got my glasses, Your Honor.

21 Thank you for asking. But I'm just about in a position that
22 I can read it.

23 MR. BUCHANAN: If you put that up on the screen,
24 it might be easier to read.

25 THE COURT: All right. What is your question?

1 MR. BUCHANAN: Okay.

2 MS. BAILEY: Objection, Your Honor. That's not --
3 oh, I see it's not for the jury.

4 BY MR. BUCHANAN:

5 Q In February of 2024, you traveled from England to
6 Malaysia to conduct a physical assessment of the plaintiffs?

7 A Yes, that's correct.

8 Q And you traveled there with a psychologist named
9 Dr. Dee Anand?

10 MS. BAILEY: Objection.

11 THE COURT: Wait. Let him finish the question,
12 and you can object.

13 MS. BAILEY: This relates to a consulting expert;
14 it's inappropriate to bring it up in the first place.

15 THE COURT: No. I'm going to permit it.
16 Overruled.

17 BY MR. BUCHANAN:

18 Q You traveled to Malaysia with a psychologist named
19 Dr. Dee Anand?

20 A Yes, that's right.

21 Q And he was hired by CACI to conduct a psychological
22 examination of Mr. Al-Zuba'e and Mr. Al Shimari for this
23 case?

24 A Well, I'm not aware of his instructions, but he
25 accompanied me, yes.

1 Q And he actually met with both men in Malaysia?

2 A I understand he did.

3 Q And Dr. Anand did not issue a report; did he?

4 A I'm not aware.

5 Q You did review the reports that Dr. Xenakis prepared in
6 connection with your preparation of a report in your
7 testimony?

8 A I did.

9 Q Just a few more things, basic points, and then we'll
10 get into the reports themselves.

11 As a -- conducting your physical assessment, you
12 were not there to determine which account or other from the
13 victim is the one that's appropriate; right?

14 A That's correct.

15 Q You accept what they tell you, and you perform your
16 assessment based on that account; right?

17 A Yes.

18 Q Okay. Conducting a physical assessment under the
19 Istanbul Protocol is not a complex process; is it?

20 A I think I would slightly disagree with you. It's a
21 very structured and very precise process, but your opinion
22 is your opinion.

23 Q Well, the process itself is precise and structured, but
24 the substance of it is not particularly complex; is it?

25 A I think it is quite complex.

1 THE COURT: Well, Doctor, to give us some context,
2 how long do you estimate it took for you to conduct each
3 individual examination?

4 THE WITNESS: Three to four hours, I would say,
5 Your Honor.

6 THE COURT: Per plaintiff?

7 THE WITNESS: Yeah. That's the examination. Or
8 the assessment. The history and the examination.

9 THE COURT: Right. The whole -- from the initial
10 interview or introduction to the final end of the physical
11 examination, that was three to four hours?

12 THE WITNESS: I would say so, yes.

13 THE COURT: All right.

14 MR. BUCHANAN: Thank you, Your Honor.

15 BY MR. BUCHANAN:

16 Q And part of that is to actually conduct an interview of
17 the victim; is that right?

18 A Yes.

19 Q And in these cases, that was done through an
20 interpreter; right?

21 A That's correct.

22 Q After the interview is conducted, the first part of the
23 interview is to give the account of the abuse; right?

24 A That's correct.

25 Q And then there's a process whereby you ask the victim

1 to identify the visible physical injuries that he suffered;
2 right?

3 A That's correct.

4 Q And then you undertake a physical examination overall
5 of the person?

6 A That's correct.

7 Q And you then specifically focus on the visible physical
8 injuries that you saw?

9 A That's correct.

10 Q And then you document those injuries by taking pictures
11 and taking notes; right?

12 A That's correct.

13 Q And ultimately you assess whether those physical
14 injuries are consistent with the allegations of abuse;
15 right?

16 A That's correct.

17 Q Okay. Now, visible scars can be patterned or
18 non-specific; right?

19 A Yes.

20 Q Can you describe for the jury what a patterned physical
21 injury would be?

22 A Yeah. So -- I'm sorry, I'm looking around the
23 courtroom for an example.

24 If we took the gavel there and I came and struck
25 somebody on the head with it, the circular part of that

1 gavel may create an imprint on the head which is the same
2 size as that. That would be an example of a patterned
3 injury.

4 Another one might be, for example, the microphone
5 here, which has got a mesh. If that's impacted on the skin,
6 that may provide a patterned imprint, a pattern reflected on
7 the skin.

8 If you're looking at scars, for example, if
9 somebody has been beaten or whipped, then there may be an
10 enduring imprint of that scar or that mark.

11 Q So the physical injury has a pattern that is consistent
12 with the instrument that was used to inflict it?

13 A It may be matched directly, yes.

14 Q But torture that's imposed, for example, by kicking, by
15 punching, that will not leave a patterned mark; will it?

16 A That's correct.

17 And apologies to interrupt, but you talked about
18 kicking, but you may get, for example, with a kick, a stamp
19 or an imprint of a shoe sole. So not inevitably will it be
20 a non-specific injury.

21 Q And in that example, you could match up the pattern of
22 the shoe with the pattern of the physical injury that you
23 have?

24 A Yes.

25 Q Okay. The other types of visible physical injury would

1 be called non-specific; right?

2 A Yes.

3 Q And that means that you're not able to specifically
4 link that kind of physical injury with how the treatment or
5 torture had been carried out?

6 A Yes. I think it's best to consider it if you look at
7 it, whether it's in an abuse setting or an assault setting
8 or any other accidental setting, by looking at the pattern
9 of either the injury or the scar or the mark. You can't
10 look at it and say, oh, that was caused by that.

11 Q Can you define or explain what blunt force trauma is?

12 A Blunt force trauma is -- that is trauma that's injury
13 caused by anything really that doesn't have a sharp edge to
14 it. So you would have -- the big area of injury generally
15 is divided into blunt force. So, for example, being struck
16 by a fist or a foot or a gavel or a microphone, whereas
17 sharp force injury -- and the reason I introduced sharp
18 force injury is to show the differential. But sharp will be
19 anything such as a knife or a broken piece of glass. But
20 blunt force injury is that injury that is caused by
21 something that doesn't have generally a cutting edge.

22 Q And you would agree that the majority of blunt force
23 trauma results in non-specific injuries, scars and bruises?

24 A Yes, I think that's fair.

25 Q Okay. Meaning you can't look at those scars and

1 bruises and say, based on their shape, what caused them?

2 A That's fair.

3 Q Okay. In concluding that injuries are non-specific --
4 visible injuries are non-specific, 20 years after the fact
5 is not unusual; fair to say?

6 A That's correct.

7 Q Now, at the end of the day, you concluded that both
8 Mr. Al Shimari and Mr. Al-Zuba'e had physical -- visible
9 physical injuries that were consistent with the allegations
10 that they reported to you; is that right?

11 A That's correct.

12 Q Now let's talk specifically about Mr. Al-Zuba'e.

13 Mr. Al-Zuba'e told you that while in Abu Ghraib,
14 he had been subject to allegations of choking, beating on
15 his body and beating on his genitals; is that right?

16 A That's correct.

17 Q And because of the passage of time, 20 years, you would
18 not expect to see any visible physical injuries from that
19 kind of treatment?

20 A You would not necessarily expect, but you can.

21 Q And the absence of any visible physical findings, does
22 not mean that Mr. Al-Zuba'e was not the victim of that kind
23 of treatment at Abu Ghraib?

24 A That's correct.

25 Q Okay. And even in your report, you concluded that

1 Mr. Al-Zuba'e's allegations of being choked, for example,
2 you would not expect to see signs of that kind of treatment
3 at this stage; right?

4 A That's correct.

5 Q And at this stage, you meant 20 years later?

6 A That's correct.

7 Q Okay. And with regard to the physical findings that
8 you -- that you looked at and you did assess, let's go
9 through them one by one.

10 Mr. Al-Zuba'e told you that while he was at Abu
11 Ghraib prison, he was forced to crawl on a walkway on his
12 hands and knees; right?

13 A Yes.

14 Q And as a result of crawling, he was bleeding on his
15 chest and his hands; right?

16 A I'm not sure that Mr. Al-Zuba'e said that he was
17 bleeding to me. Could you take me to that?

18 Q Okay. But he suffered injuries on his hands and his
19 chest as a result of crawling?

20 A He suffered injuries, but I would need to just review
21 what he told me to confirm what he said.

22 Q Okay. You can look at paragraph 123 of your report.

23 A I don't have that. You'll have to bring it up on the
24 screen. Can it be on the screen?

25 Q It's in your binder.

1 A It's a different bundle.

2 MR. BUCHANAN: There are multiple binders. Okay.
3 Tab 1.

4 THE WITNESS: Yes, I've got that.

5 BY MR. BUCHANAN:

6 Q And he indicated to you that he had visible physical
7 injuries on his chest as a result of that incident; right?

8 A I think paragraph 3 that you referred me to says they
9 made him crawl on the walkway on his hands and chest.

10 Q Okay. If we turn to paragraph 217 of your report.

11 A Yes.

12 Q And it says: The next three images show two areas of
13 non-specific irregular pigmented mature scars on the lateral
14 aspects of the right knee. These represent two separate
15 areas of damage, skin surface, and would be consistent
16 either with crawling along a floor or contact with a dog paw
17 or claws or impact with a blunt object; right?

18 A Yes.

19 Q Okay. So, in other words, you found visible physical
20 injuries that were consistent with Mr. Al-Zuba'e being
21 forced to crawl on his hands and knees?

22 A Indeed.

23 Q And Mr. Al-Zuba'e told you that his wrists were
24 handcuffed on the top bunk bed so that he could not stand
25 for a period of time; right?

1 A That's correct.

2 Q All right. And you -- and he identified a particular
3 area on his body where he had a visible physical injury as a
4 result of that incident; right?

5 A Yes.

6 Q Okay. And you examined his right wrist?

7 A Yes.

8 Q With the area that he indicated?

9 A Yes.

10 Q And you found that the injuries he suffered there, the
11 physical, physical injury was consistent with being
12 handcuffed and suspended from like --

13 A That's correct.

14 Q Okay. You would agree that under the Istanbul
15 Protocol, an examiner should review and access all relevant
16 clinical evidence?

17 A Yes.

18 Q And you testified on direct that it would be
19 inappropriate to show pictures to the victim; right?

20 A Yes.

21 Q Right. But there would be nothing inappropriate about
22 you reviewing pictures; right?

23 A I don't -- review what pictures? Apologies.

24 Q So there were pictures, I think you mentioned in your
25 direct testimony, there were videos of the abuse happening.

1 That would be something that would be appropriate for you to
2 review?

3 A Yes.

4 Q And you did not review any photographs of incidents of
5 abuse taking place at Abu Ghraib as part of your physical
6 assessment of either Mr. Al-Zuba'e or Mr. Al Shimari?

7 MS. BAILEY: Objection. There are no pictures of
8 Mr. Al-Zuba'e or Mr. Al Shimari.

9 THE COURT: The answer -- again, I've told the
10 jury many times that the lawyer's question is not any
11 evidence whatsoever; it's only a witness's answer. So if
12 the witness says I never saw them, that's it.

13 MR. BUCHANAN: I can rephrase the question.

14 BY MR. BUCHANAN:

15 Q You did not review any pictures of men being abused at
16 Abu Ghraib prison; did you?

17 A No.

18 Q And you're aware that those images could depict the
19 kinds of abuse and torture that were actually happening at
20 the prison; right?

21 A Sorry, which pictures?

22 MR. BUCHANAN: Okay. Let's bring up PTX 34 in
23 evidence.

24 BY MR. BUCHANAN:

25 Q Are you aware that this photograph was taken at Abu

1 Ghraib prison?

2 A If you are confirming that to me, yes.

3 Q And that would depict abuse taking place at Abu Ghraib
4 prison where men are shackled to beds with metal handcuffs;
5 right?

6 A I understand.

7 Q And as part of an analysis under the Istanbul Protocol,
8 it would be appropriate to look at the kinds of abuse that
9 were taking place at this place where the victim claims it
10 was taking place?

11 A I have to take into account that the account I was
12 given was somebody who was handcuffed to a bed. So I've
13 already accepted that that would be consistent with that.
14 So I'm not quite sure where that takes me.

15 Q Okay. In any event, you did not review any of these
16 photographs?

17 A I've not reviewed any additional pictures of either
18 Mr. Al-Zuba'e, Mr. Al Shimari or anyone else.

19 MR. BUCHANAN: You can take that down.

20 BY MR. BUCHANAN:

21 Q Now, Mr. Al-Zuba'e told you that he was bitten by a
22 dog; right?

23 A Yes.

24 Q And he indicated a spot on his right arm and both legs
25 where he told you he had been bitten?

1 A Yes.

2 Q And he told you that the dog bites did not fully break
3 or penetrate the skin?

4 A That's correct.

5 Q But he did say the dog bites damaged his skin in some
6 places?

7 A Yes.

8 Q And he showed you those places on his body?

9 A Yes.

10 Q And you, in fact, found observable scars in those
11 places that he indicated; right?

12 A Yes.

13 Q And your conclusion was that those visible scars that
14 he identified was consistent with him being bitten by a dog;
15 is that right?

16 A Yes.

17 Q Now, Mr. Al-Zuba'e told you during the interview that
18 while he was being held at Abu Ghraib prison, he would be
19 made to face the wall and have his head banged on the wall;
20 right?

21 A Yes.

22 Q And during your physical examination, you actually
23 found a scar, a visible injury, on Mr. Al-Zuba'e's head; is
24 that right?

25 A I found a depression of a scar in the middle of his

1 forehead, yes.

2 Q But Mr. Al-Zuba'e told you that the impression you
3 found was not as a result of any treatment or abuse that he
4 suffered at Abu Ghraib prison?

5 A That's correct. He said it happened when he was a
6 child.

7 Q In other words, he didn't try to claim that the mark
8 you found on his head was as a result of abuse at Abu Ghraib
9 prison; did he?

10 A No, that's correct.

11 Q He told you that it was as a result of an injury from
12 when he fell as a child; right?

13 A Yes.

14 Q And that wasn't the only visible physical injury on
15 Mr. Al-Zuba'e that he told you was not the result of abuse
16 at Abu Ghraib prison; right?

17 A Yes.

18 Q Mr. Al-Zuba'e did tell you that he had physical pains
19 elsewhere on his body, that he feels stiff and he's achy;
20 right?

21 A Yes.

22 MR. BUCHANAN: Your Honor, I would like to take a
23 look at PTX 236, page 120, paragraph 507.

24 MR. O'CONNOR: That should not be up.

25 MS. BAILEY: Your Honor, objection. This goes

1 again to the psychological evaluation that Professor
2 Payne-James did not conduct.

3 MR. BUCHANAN: No, Your Honor. It goes to
4 physical complaints.

5 MS. BAILEY: Under the psychological evaluation,
6 Chapter 4.

7 THE COURT: I'm going to permit it in. Overruled.
8 So it's just paragraph 507; correct?

9 MR. BUCHANAN: Correct, Your Honor.

10 THE COURT: All right. That's also in as part of
11 that exhibit.

12 (Plaintiffs' Exhibit Number 236, page 120, paragraph 507
13 admitted into evidence.)

14 BY MR. BUCHANAN:

15 Q Now, Mr. Payne-James, looking at paragraph 507 -- and
16 you can look at the screen if that's easier for you.

17 A It's easier to actually read it. Thank you.

18 Q Okay. And it reads there: Pain, headache or other
19 physical complaints with or without objective physical
20 findings or common problems among torture survivors; do you
21 see that?

22 A Yes.

23 Q And you agree with that statement?

24 A Yes.

25 Q Somatic symptoms can be directly due to the physical

1 consequences of torture or psychological in origin. For
2 example, pain of all kinds may be a direct physical
3 consequence of torture or of psychological origin; do you
4 see that?

5 A Yes.

6 Q And you agree with that?

7 A Yes.

8 Q Typical somatic complaints include back pain,
9 musculoskeletal pain and headaches; do you see that?

10 A Yes.

11 Q And you agree with that?

12 A Yes.

13 Q Headaches are very common among torture survivors and
14 may be due to torture-inflicted injury; is that right?

15 A They may be indeed.

16 Q And you agree with that?

17 A Yes.

18 Q Okay. And so Mr. Al-Zuba'e's complaints of back pain
19 and musculoskeletal pain and headaches is consistent with
20 his allegations of torture; is that right?

21 A Yes.

22 Q Let's speak about Mr. Al Shimari.

23 Mr. Al Shimari -- I'm sorry, do you --

24 A You're preempting me having ...

25 Q Okay. And Mr. Al Shimari also told you that he was

1 threatened by dogs at Abu Ghraib prison; right?

2 A He did.

3 Q And he specifically told you that he did not sustain
4 any marks as a result of being threatened by dogs?

5 A He said that he didn't think he had sustained any
6 marks.

7 Q And he mentioned to you that while at Abu Ghraib
8 prison, people grabbed his penis and squeezed hard without
9 his consent; right?

10 A They did.

11 Q That someone placed fingers in his rectum; right?

12 A In his anus, I think he said.

13 Q You would agree that that kind of treatment would
14 amount to sexual assault?

15 A Yes.

16 Q And such treatment, you would not expect to have an
17 enduring visible physical injury or scarring; is that right?

18 A Not necessarily.

19 Q And you wouldn't expect to find any visible physical
20 injury 20 years after the fact from that kind of abuse;
21 would you?

22 A No.

23 Q Sexual assault does have a psychological impact; right?

24 A It does.

25 Q And you would agree that victims of sexual assault

1 often experience mental and emotional problems; is that
2 right?

3 A Yes.

4 Q And that would include difficulty trusting people or
5 difficulty in other relationships?

6 A Yes.

7 Q And you would agree that sexual dysfunction is common
8 among survivors of torture or ill treatment; wouldn't you?

9 A Yes.

10 Q And particularly among those who have experienced
11 sexual torture or rape; is that right?

12 A Yes.

13 Q And that would include things like a reduced libido?

14 A It could.

15 Q And erectile dysfunction?

16 A It would.

17 Q And you would agree that torture can profoundly damage
18 intimate relationships with spouses and family?

19 A It could.

20 Q And you would agree that Mr. Al Shimari's complaints
21 about sexual dysfunction would be consistent with his
22 allegations of torture?

23 A Yes.

24 Q And Mr. Al Shimari told you that he was subject to
25 electrical shocks while he was detained at Abu Ghraib

1 prison?

2 A He did.

3 Q And he said that when the shock was applied, it burned
4 his skin; right?

5 A Yes. Yeah. I think he -- I think he referred to
6 redness and blisters.

7 Q And he identified marks -- visible marks on his body
8 where he told you the electrical shocks occurred?

9 A He did.

10 Q Okay. And you examined those scars?

11 A Yes.

12 Q And you concluded that those scars were consistent with
13 a healed local burn; didn't you?

14 A They were.

15 Q And Mr. Al Shimari told you that while at Abu Ghraib
16 prison, he was handcuffed to the top bunk of a bed; right?

17 A He did.

18 Q And he told you that he was not able to lay down or sit
19 down; right?

20 A Yes. For up to an hour at a time.

21 Q And you examined places where he identified visible
22 physical injuries as a result of that treatment?

23 A Yes.

24 Q And you found that the -- you found a fine linear scar
25 on his skin; right?

1 A Yes. On his wrist.

2 Q And you determined that that scar was consistent with
3 damage caused by the application of some form of wrist
4 restraint; is that right?

5 A It could be, yes.

6 Q Now, you mentioned that there was some discrepancies in
7 the versions of what was told to you and to Dr. Xenakis; is
8 that right?

9 A Yes. Reading Dr. Xenakis's report, there were
10 differences, but I didn't make a direct comparison.

11 Q And victims of torture sometimes have difficulty
12 locating precisely -- precise times and dates in recalling
13 their abuse; right?

14 A Yes.

15 Q And you know from your experience that there can be a
16 discrepancy in a victim's account over an extensive period
17 of time since the mistreatment; right?

18 A Yes. And that's the purpose of the way in which the
19 interview was undertaken is to try and minimize those risks
20 of discrepancy.

21 Q So one possible -- one -- you would agree that the
22 telling of a -- recounting of abuse over time, particularly
23 over a long period of time, it's not uncommon for minor
24 details to change; would you agree with that?

25 A I'm sorry. Can you repeat your question?

1 Q Sure.

2 You would agree that with the passage of time, for
3 example, 20 years, you would expect that there would be
4 variations in how that abuse is recounted?

5 A You wouldn't expect it, but it's certainly possible.

6 Q Okay. And you would agree that discrepancies in a
7 victim's account have to take into consideration the skills
8 of the person who's actually taking that account; right?

9 A It may be consistent. It may be dependent on that,
10 yes.

11 Q And when the account is being relayed through a
12 translator, it could be as a result of using different
13 translators?

14 A It's possible.

15 Q Now, the Istanbul Protocol talks about how torture
16 survivors may have difficulty recounting specific details.

17 A Yes.

18 Q Okay.

19 MR. BUCHANAN: Your Honor, I would like to look at
20 paragraph 342 on page 81 of Exhibit 236.

21 THE WITNESS: Sorry. Can you repeat that?

22 MR. BUCHANAN: Sure. We're just waiting on the
23 Judge.

24 THE WITNESS: Sure. Apologies.

25 THE COURT: Any objection to page 81, paragraph

1 342? Any objection?

2 MS. BAILEY: No, Your Honor.

3 THE COURT: All right. That's in as well.

4 (Plaintiffs' Exhibit Number 236, page 81, paragraph 342
5 admitted into evidence.)

6 MR. BUCHANAN: Thank you, Your Honor. We'll bring
7 that up on the screen, and you have the option of either
8 using the screen or the book.

9 BY MR. BUCHANAN:

10 Q Okay. This is a section about difficulty recalling and
11 recounting; is that right?

12 A Yes.

13 Q And it says: Torture survivors may have difficulty
14 recounting the specific details of the torture or ill
15 treatment for several important reasons; do you see that?

16 A Yes.

17 Q And if we look at number -- letter C, a lack of trust
18 in the examining clinician or interpreter; right?

19 A Yes.

20 Q That could be one reason why they may have some
21 difficulty recounting that?

22 A Yes.

23 Q And if we look at D right below that, the psychological
24 impact of torture and trauma in and of itself can create
25 difficulties in recounting that trauma; right?

1 A Yes, it can.

2 Q And that would include related mental illnesses such as
3 depression or PTSD; is that right?

4 A Indeed.

5 Q And if we look down at letter F, there may be
6 protective coping mechanisms such as denial, avoidance or
7 dissociation; right?

8 A Yes.

9 Q And those are all reasons why victims of torture
10 sometimes have difficulty recounting specific details of
11 torture?

12 A And they may do, yes.

13 Q Now, you've reviewed Dr. Xenakis's reports, and you've
14 provided some commentary about his conclusions; is that
15 right?

16 A Yes. Yes.

17 Q And you're aware that Dr. Xenakis diagnosed both men --

18 MS. BAILEY: Objection. Your Honor, plaintiffs
19 chose not to call this doctor, and he did not rely on the
20 reports, so there is no basis to get over the hearsay
21 objection here.

22 MR. BUCHANAN: Judge, he specifically commented
23 and testified about Dr. Xenakis's use of the DSM to examine
24 and assess these people.

25 THE COURT: I'm going to sustain the objection.

1 MR. BUCHANAN: One moment, Your Honor.

2 Nothing further, Your Honor. Thank you.

3 THE COURT: All right. Any redirect?

4 MS. BAILEY: Briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. BAILEY:

7 Q I just want to clarify a few things with you, Professor
8 Payne-James; is that all right?

9 A Yes.

10 Q All right. Initially in the cross-examination,
11 Mr. Buchanan asked you about whether you just focused on
12 visible findings in your physical examination.

13 I just wanted to clarify. You mentioned in your
14 direct you palpate, look at mobility and symptoms.

15 Are there things you consider beyond just what you
16 see with your eyes?

17 A You take into account the symptoms that people describe
18 and try to relate those, say, for example, back pain to any
19 physical abnormality in terms of movement which may not be
20 visible -- necessarily visible until movement is elicited.

21 Q Okay. And so it's fair so say there's more to it than
22 just taking pictures of an interviewee?

23 A I'd like to think so.

24 Q Okay. I'd like you to look at paragraph 217 of
25 Mr. Al-Zuba'e's report. I believe this referred to markings

1 on Mr. Al-Zuba'e's knee, one of the findings that
2 Mr. Buchanan took you through.

3 A It was -- I'm sorry, which paragraph was it?

4 Q 217.

5 A Okay. Got it here. Yep.

6 Q Okay. Are you there?

7 A Yes.

8 Q All right. What was your finding with respect to that?

9 A If I may read it.

10 Q Absolutely.

11 A The next three images show two areas of non-specific
12 irregular pigmented material scars on the lateral aspect of
13 the right knee. These represent two separate areas of
14 damaged skin surfaces and would be consistent either with
15 crawling along the floor or contact with a dog paw or claws
16 or impact from a blunt object, such as a shod foot.

17 Mr. Al-Zuba'e could not be sure which of these was the cause
18 but said they occurred in detention.

19 Q Okay. So you determined consistent with was your
20 analysis?

21 A Yes.

22 Q Okay. What other things could be consistent with that
23 kind of a marking?

24 A Tripping and falling, running into something. Many --
25 I mean, many different things.

1 Q Okay. Mr. Buchanan brought up the possibility of
2 looking at pictures of other detainees who were abused at
3 Abu Ghraib prison.

4 A Yes.

5 Q Were you trying to judge Mr. Al-Zuba'e's credibility?

6 A No. That's the purpose for -- that's the role of the
7 Court.

8 Q Okay. What purpose would it serve for you to look at
9 pictures of other detainees in the same location?

10 A I'm not sure that it serves any purpose.

11 Q Mr. Buchanan referred you to page 81 of the Istanbul
12 Protocol, and it was a portion talking about why torture
13 survivors might have difficulty recounting details; do you
14 recall that?

15 A Yes.

16 Q Okay. And he pointed out under C that lack of trust in
17 the examining clinician or interpreter could be one of the
18 reasons?

19 A Yes.

20 Q Did you have any reason to believe that either
21 Mr. Al-Zuba'e or Mr. Al Shimari were uncomfortable or
22 untrusting of you during the examination?

23 A Well, I can't speak for Mr. Al-Zuba'e or
24 Mr. Al Shimari, but no indications were given to me that
25 they were uncomfortable or dissatisfied or reluctant to

1 proceed, and appeared very happy to give their accounts to
2 the best of their ability.

3 Q Okay. Mr. Buchanan also referred you to paragraph 507
4 of the Istanbul Protocol about somatic pains; do you recall
5 that?

6 A Yes.

7 Q And one of those somatic pains was headaches?

8 A Yes.

9 Q Did either man tell you that they suffered from
10 headaches?

11 A No.

12 Q Okay. Mr. Buchanan also asked you about electrical
13 shocks alleged by Mr. Al Shimari?

14 A Yes.

15 Q Okay. And you did identify some healed local burns on
16 his body?

17 A Yes.

18 Q What else could that have been caused by?

19 A Well, they were scars that could be caused by local
20 burns. But they could be grazes, could be marks, insect
21 bites, infected insect bites. There are lots of different
22 causes.

23 Q So it's fair to say there are a whole lot of other
24 things that could have caused those marks?

25 A Yes. They're non-specific.

1 Q Were either the presentation or the number of marks on
2 either Mr. Al-Zuba'e or Mr. Al Shimari sufficient to allow
3 you to conclude that there was a higher level of consistency
4 between their allegations and their physical findings?

5 A No.

6 Q Were either their symptoms or their visible markings
7 anything that you would not expect to see in men of their
8 age from their region?

9 A And that's often part of the difficulty and the need to
10 undertake a detailed physical examination. Unfortunately,
11 as we all get older, we develop symptoms, aches, pains,
12 stiffness, urinary symptoms, loss of libido, erectile
13 dysfunction. It's a part of life, certainly for males, and
14 that's why I recommended further assessments for the two
15 men.

16 MS. BAILEY: No further questions.

17 THE COURT: Any recross?

18 MR. BUCHANAN: Nothing, Your Honor.

19 THE COURT: I assume at this point no one's going
20 to call the doctor again?

21 MS. BAILEY: No, Your Honor.

22 THE COURT: Thank you, sir, for your testimony.
23 You may now stay in court and watch the proceedings, or you
24 may leave, but you're not to discuss your testimony with any
25 witness who has not yet testified.

1 THE WITNESS: Thank you, Your Honor.

2 (Witness excused at 12:52 p.m.)

3 THE COURT: All right. Your next witness.

4 MR. O'CONNOR: Your Honor, we're going to begin
5 presenting pseudonymous depositions relating to
6 Mr. Al-Zuba'e. I would like to publish from the parties a
7 stipulation of uncontested facts paragraphs 13 to 18. And
8 then we're going to be doing Interrogator C, Army
9 Interrogator C.

10 Can you put up PTX 226 and go to page 2.

11 The parties have stipulated as follows starting at
12 paragraph 13: Plaintiff Asa'ad Hamza Hanfoosh Al-Zuba'e was
13 taken into custody by U.S. military in early November 2003.
14 Mr. Al-Zuba'e was detained at Abu Ghraib prison until mid
15 2004. Mr. Al-Zuba'e was assigned ISN 152529.

16 According to the United States, on November 7,
17 2003, Mr. Al-Zuba'e was interrogated by two soldiers, Army
18 Interrogator C, and Army interrogator F.

19 According to the United States, on November 18,
20 2003, Mr. Al-Zuba'e was interrogated by two soldiers, Army
21 Interrogator D and Army Interrogator E.

22 Paragraph 18 on the next page: According to the
23 United States, Mr. Al-Zuba'e was interrogated by a CACI
24 employee, CACI Interrogator G, and Army Interrogator B on
25 December 23rd, 2003.

1 And, Your Honor, we'll present Interrogator C.
2 The run time is 9 minutes and 40 seconds, and I have clips.

3 THE COURT: This is the clip of Army Interrogator
4 C?

5 MR. O'CONNOR: Yes, Your Honor. Army Interrogator
6 C.

7 (Audio clip played of Army Interrogator C.)

8 THE COURT: This is a good time for our lunch.
9 Folks, again, we'll have a one-hour lunch break. Please be
10 back here by 2:00, and we'll see you all back then. All
11 right.

12 (Jury not present at 1:01 p.m.)

13 (Court recessed for lunch at 1:01 p.m.)

14 AFTERNOON SESSION 2:00 p.m.

15 THE COURT: All right. We'll bring the jury in.

16 THE COURT SECURITY OFFICER: Yes, Judge.

17 Rise for the jury.

18 (Jury present at 2:01 p.m.)

19 THE COURT: All right. So we'll go back on the
20 tape.

21 MR. O'CONNOR: Yes, Your Honor. We'll be playing
22 the remainder of Army Interrogator C's pseudonymous
23 deposition.

24 (Audio clip played of Army Interrogator C.)

25 MR. O'CONNOR: Your Honor, CACI calls Army

1 Interrogator E via pseudonymous recorded deposition.

2 THE COURT: All right.

3 MR. O'CONNOR: I have reports for the Court and
4 for counsel.

5 (Audio clip played of Army Interrogator E.)

6 MR. O'CONNOR: Your Honor, CACI calls via
7 pseudonymous recorded deposition Army Interrogator F. And I
8 have clip reports. The run time is 14 minutes and
9 53 seconds.

10 THE COURT: All right.

11 (Audio clip played of Army Interrogator F.)

12 MR. O'CONNOR: Your Honor, CACI calls CACI
13 Interrogator G via pseudonymous tape-recorded deposition. I
14 have clips for the Court and opposing counsel. The run time
15 is 39 minutes, 7 seconds.

16 (Audio clip played of Army Interrogator G.)

17 THE COURT: And, ladies and gentlemen, I do want
18 you to appreciate that these interrogatories were taken
19 when? Or these depositions were taken when? Mr. O'Connor,
20 when were these depositions taken?

21 MR. O'CONNOR: These depositions were taken in
22 2018, Your Honor. 2017.

23 THE COURT: Over the course of some passage of
24 time, some of those objections have changed. That's why,
25 you know, the name Dan Porvaznik now is well known as being

1 the CACI site person at Abu Ghraib. When these depositions
2 were taken, that was apparently still an issue the
3 government wanted to keep secret. All right.

4 MR. O'CONNOR: Your Honor, at this time, CACI
5 calls Steven Stefanowicz by video deposition.

6 THE COURT: All right.

7 MR. O'CONNOR: I have binders.

8 (Video deposition played of Steven Stefanowicz.)

9 THE COURT: This is now in evidence as well;
10 correct?

11 MR. O'CONNOR: It is, Your Honor.

12 (Video deposition resumed of Steven Stefanowicz.)

13 THE COURT: Actually, this is a good time to take
14 the afternoon break. It's 4:15. We'll reconvene at 4:35.

15 (Jury not present at 4:13 p.m.)

16 (A recess was taken.)

17 THE COURT: All right. Mr. O'Connor, how much
18 more time do you estimate your case taking today?

19 MR. O'CONNOR: We're going to end up going through
20 the day, Your Honor. We have about a half hour-ish. It's
21 all recorded, so it's just a matter of ...

22 THE COURT: All right. And if there is a rebuttal
23 case, my understanding is approximately an hour; is that
24 right?

25 MR. FARIDI: Yes, Your Honor. I think we have

1 some videos and some depositions which will probably take
2 about an hour.

3 THE COURT: Do we have any read-ins tomorrow
4 morning?

5 MR. FARIDI: Yes. I think one.

6 THE COURT: All right. We'll just plan for that.

7 MR. FARIDI: And, Your Honor, we may have one live
8 witness which we previously disclosed to Mr. O'Connor.

9 THE COURT: Well, we'll get to that when we get to
10 that.

11 MR. O'CONNOR: Yes. Thank you.

12 THE COURT: Let's get the jury.

13 THE COURT SECURITY OFFICER: Yes, Judge.

14 Rise for the jury.

15 (Jury present at 4:35 p.m.)

16 THE COURT: Folks, we'll continue.

17 MR. O'CONNOR: Yes, Your Honor. We will continue
18 with the direct of Mr. Stefanowicz, which has 12 minutes
19 left, but then there's a 51-minute cross and a 2-minute
20 redirect.

21 (Video deposition resumed of Steven Stefanowicz.)

22 THE COURT: It's in. It's in.

23 Ladies and gentlemen, something did come up during
24 this testimony I just want you to make sure you understand.
25 The initial question during the cross-examination addressed

1 issues about Mr. Stefanowicz being prepared for his
2 deposition.

3 It's perfectly appropriate -- in fact, if a lawyer
4 does not speak with a witness ahead of time and find out
5 what the witness is going to say and show them exhibits,
6 then it completely destroys the trial process because it
7 becomes uncontrollable.

8 So as long as a lawyer is not telling a witness
9 what to say, it is a lawyer's job to prepare that witness
10 before that witness is deposed or testifies in trial. So
11 you should draw no inferences from that whatsoever.

12 All right. Do we have time to start something
13 else?

14 MR. HADDAD: Your Honor, I just want to move in
15 exhibits that were offered.

16 THE COURT: Every one of them I've got in. Don't
17 worry about that.

18 MR. O'CONNOR: We can start Colonel Pappas, Your
19 Honor. It's about 40 minutes. We can do the first 15
20 minutes.

21 THE COURT: Let's get it started. I don't want to
22 waste any time.

23 MR. O'CONNOR: We have binders, Your Honor.

24 (Video deposition played of Colonel Pappas.)

25 THE COURT: All right. I think this is a good

1 time to stop for the evening since we always have mop-up
2 work to do.

3 Folks, we are getting very close to the end of the
4 defendant's case. Although I've been told there will be a
5 brief rebuttal. But I anticipate you will be getting the
6 closing arguments of counsel and the instructions of the
7 Court tomorrow. Whether that will leave much time tomorrow
8 to start deliberations, I don't know yet.

9 Please remember to continue following my
10 instructions to not conduct any investigation, not discuss
11 this case with anybody. You've not reported any problems to
12 me, so I'm assuming everyone's been behaving by the rules.
13 And we'll see you back here tomorrow morning promptly at
14 9:30. Thank you.

15 Have a good evening and drive safely.

16 (Jury not present at 5:57 p.m.)

17 THE COURT: All right. And so we'll begin by
18 reading in the exhibits that were entered into evidence
19 today.

20 THE DEPUTY CLERK: DX 37. DX 101. DX 106.
21 DX 107. DX 108. DX 109. PTX 236, page 69, paragraph 268E.
22 Page 120, paragraph 507. And page 81, paragraph 342.
23 DX 32. DX 33. DX 34. DX 35. PTX 98A. PTX 98B.
24 PTX 107A. PTX 107C. PTX 107D. PTX 107E. PTX 14. PTX 72.
25 PTX 156.

1 (Defense Exhibit Numbers 32, 33, 34, 35 admitted into
2 evidence.)

3 (Plaintiffs' Exhibit Numbers 98A, 98B, 107A, 107C, 107D,
4 107E, 14, 72 admitted into evidence.)

5 THE COURT: I think 107C was also entered;
6 correct?

7 THE DEPUTY CLERK: Yes.

8 MR. HADDAD: Yes, Your Honor. 107C is also
9 entered. PTX 156 was not entered into evidence.

10 THE DEPUTY CLERK: Well then it got confused
11 because when you asked about admitting exhibits and then she
12 said they're already in.

13 THE COURT: Taguba is already in.

14 THE DEPUTY CLERK: 156 is the transcript.

15 THE COURT: Yeah, no.

16 MR. HADDAD: 156 is the transcript of
17 Mr. Stefanowicz's interview with General Taguba.

18 THE COURT: Right. And that is not in evidence.
19 That is not in evidence, no.

20 MR. HADDAD: So 107C should be added to the list.

21 THE DEPUTY CLERK: Yeah, I have that.

22 MR. O'CONNOR: We agree with that, Your Honor.

23 THE COURT: All right. So just the 107C. All
24 right. That's fine.

25 Again, I don't have anything in court tomorrow, so

1 you can leave everything here. All right.

2 And so you anticipate again, Mr. O'Connor, how
3 much more on your case?

4 MR. O'CONNOR: About an -- a little less than an
5 hour, Your Honor. We have the rest of Pappas, and Major
6 Holmes is 20 minutes.

7 THE COURT: All right. And then we'll be taking
8 care of the plaintiffs' case.

9 To not waste time tomorrow, what is the issue
10 about the live witness?

11 MR. O'CONNOR: Thank you, Your Honor.

12 This is -- they want to call Charles Graner. Your
13 Honor might remember that Charles Graner testified in their
14 case in chief by video because he was an unavailable
15 witness. He was never disclosed as a live witness. He was
16 not on their 2018 Rule 26 disclosures, he was listed as a
17 video presentation only. Same thing with the April trial.
18 Same thing in the revised witness list as we came up to this
19 trial. So his testimony came in as a video.

20 And, you know, Mr. Faridi said today he's been
21 disclosed to Mr. O'Connor. As Your Honor's aware, that was
22 at the end of the day yesterday at the same time Your Honor
23 found out about him.

24 I need to add that Mr. Graner was deposed in this
25 case in 2013. He repeatedly invoked his Fifth Amendment

1 right to avoid providing any testimony. He took the Fifth
2 on whether he had knowledge of detainees standing on boxes
3 to keep them awake, whether he was aware of physical
4 training of detainees, the process for signing out detainees
5 by interrogators, the treatment of the Al Jazeera guy, the
6 manner in which MI and OGA interrogators gave instructions
7 to MPs regarding treatment of detainees, treatment of a
8 detainee named Taxi Driver, who is not one of these
9 plaintiffs, whether civilian interrogators ever asked him to
10 soften up detainees, whether civilian interrogators ever
11 asked him to --

12 THE COURT: All right. You've made your point.

13 MR. O'CONNOR: Fourth Circuit law is quite clear
14 that what you can't do is it take the Fifth to thwart
15 discovery and then walk in and say, you know, I think
16 actually I'd like to testify.

17 THE COURT: All right.

18 MR. O'CONNOR: Can I say one more thing, Your
19 Honor?

20 THE COURT: Sure.

21 MR. O'CONNOR: There's a particularly nasty
22 element to that, I regret to say, from today.

23 Plaintiffs' counsel apparently got a 20-page,
24 single-spaced document from Charles Graner. And what they
25 did with it is, at 1:30 today, they disclosed it to us. And

1 Your Honor should know how. They emailed it to us.

2 I've been sitting 10 feet from Mr. Faridi all day
3 today. He can send me notes by hand saying are you calling
4 this -- are you calling your interpreters or are you not
5 calling? Can you kindly let me know. And what they decided
6 to do was with that document, knowing that we were likely to
7 talk about Mr. Graner tonight, they say, you know, at 1:30,
8 let's email it to those guys so they'll see it tonight when
9 it's a little late to deal with it today.

10 I mean, trying to call a completely undisclosed
11 witness, who was already presented as an unavailable witness
12 under these circumstances where he's completely invoked, is
13 brutally unfair to my client, Your Honor.

14 THE COURT: All right.

15 MR. FARIDI: Your Honor, I'll begin with the last
16 first.

17 We got the document from Mr. Graner late last
18 night, and we had difficult -- it's 37 megabytes. That's
19 the file size. We had a lot of difficulty downloading it,
20 and we had to have folks in New York in the IT department
21 try to download the document. And we sent it to
22 Mr. O'Connor as soon as we were able to access the document.
23 So there's no surprise.

24 I wasn't able -- we went out for lunch for a half
25 hour from the courthouse. I should have printed a copy and

1 brought it to him. I emailed it to him. And he saw it in
2 the afternoon. So there's no surprise about the document.
3 We received the document from Mr. Graner last night.

4 I want to address the other issues.

5 Mr. Graner was on the witness list. He is
6 unavailable. I don't think he's within the subpoena power
7 of the Court. But he reached out to us after our case went
8 in, and he said that he's got information that he wants to
9 bring to the light publicly.

10 And I'll tell Your Honor what we expect him to
11 testify. You heard from Mr. Stefanowicz today that he never
12 gave any instructions to any of the MPs on how to -- whether
13 to abuse the detainees. We expect Mr. Graner to come in and
14 say that he did receive instructions from Mr. Stefanowicz to
15 carry out abuses against the detainees.

16 The second thing is, you heard Mr. Stefanowicz say
17 that he was very careful to log every time he entered the
18 hard site and Tier 1A, that there's a log for everything.
19 Mr. Graner's going to testify, if Your Honor will allow him,
20 and he'll say that Mr. Stefanowicz refused to sign into the
21 logbooks, and he then began to maintain his own separate
22 logbook to log every time Mr. Stefanowicz entered the hard
23 site. And ultimately he refused to carry out the abuses
24 that Mr. Stefanowicz was directing him to carry out, and as
25 a result of that, he was either demoted, or he was -- or he

1 was -- I think ultimately -- at one point he -- they refused
2 to not let him go, but ultimately he was demoted from his
3 position.

4 THE COURT: All right. But wait. Graner was, at
5 some point, deposed, or discovery was obtained from him at
6 one point?

7 MR. FARIDI: Yes. In 2013.

8 THE COURT: That's when it should have come out.

9 I'm going to grant the motion of the defense to
10 prohibit him from testifying. That's absolutely unfair to
11 do it this way.

12 MR. FARIDI: Can I add one -- I heard Your Honor's
13 ruling.

14 THE COURT: All right.

15 MR. FARIDI: We have no control over the witness.
16 We have no control over whether or not he pleads the Fifth
17 or not. He is not within our control, Your Honor, so we
18 should not be -- and I heard Your Honor's ruling. I just
19 want to make sure I make Your Honor aware of this.

20 We are as equally prejudiced by that as them. I
21 wish that it came out in 2013, and, if it did, we would have
22 played that before the jury. But that's not within our
23 control, Your Honor. He is not our witness; he is a
24 co-conspirator of CACI.

25 THE COURT: Well, I understand that, but I'm still

1 not letting it go forward. All right.

2 Is that the only other sort of what I'll call
3 housekeeping matter we have to resolve so we can get the
4 evidence in tomorrow? Are there any other issues that might
5 be coming up?

6 MR. O'CONNOR: Your Honor, a number of -- the rest
7 of plaintiffs' rebuttal case are deposition designations.
8 Many of those are not rebutting anything that came out in
9 our case; it's a second case in chief.

10 Your Honor might remember, plaintiffs didn't make
11 counter-designations to the depositions, and so what they've
12 done for a lot of them is just put them at the back end and
13 say, well, they're now rebuttal evidence. They involve,
14 like, relatively minor transgressions by CACI personnel,
15 things we've never denied. So they're not rebutting
16 anything.

17 For CACI Interrogator A, this is a different
18 category, they want to tell the jury that I know who CACI
19 Interrogator A is. And Your Honor might remember how that
20 happened. The government subpoenaed that person, that
21 person knew I represented CACI, called me. I can't -- so I
22 know who CACI Interrogator A is, but I can't do anything
23 with it. I haven't told any of my co-counsel. I can't tell
24 my client. It's a complete distraction to tell the jury,
25 oh, Mr. O'Connor knows this person's identity when I can't

1 even use it. I can't tell anybody it.

2 So that was another piece of -- but there's --
3 there are issues with the -- and those weren't disclosed to
4 us until 1:30 this morning, we got emailed some clips. So
5 we've looked at them as fast as we can being that we're
6 here. But many -- many of the things in there are things
7 that are not rebutting anything that came in our case.

8 We can submit tonight a -- you know, a short
9 filing that attaches them all and lists where we object to
10 things that are just not rebutting what we did. We
11 shortened and narrowed our case. One of the benefits of
12 that is there's less things to rebut, and it would be unfair
13 to us to just let them put in a mini case in chief on the
14 back end.

15 Thank you.

16 THE COURT: All right.

17 MR. HADDAD: Your Honor, I can address that.

18 The reason why we disclosed it last night is
19 because last night was the first time that we heard that
20 CACI might be resting their case today. They told us that
21 at I think 7:30 p.m. last night. So, you know, we quickly
22 put together this rebuttal case and sent it to them as fast
23 as we could. We put together the video clips last night, we
24 stayed up very late just to make sure we disclosed it to
25 CACI in time. That's why they're --

1 THE COURT: Wait a minute. Stop.

2 I mean, again, we had a very short deposition from
3 Amy Monahan, didn't we already in this case? Yeah.

4 MR. O'CONNOR: They read her in, Your Honor.

5 THE COURT: And the proper procedure is -- when
6 we're doing depositions is the side that wants to use the
7 testimony puts in the portion of the deposition they want;
8 the other side gets to put in the cross that they want; and
9 if there's rebuttal or redirect, it goes in.

10 In other words, it all goes in at one time. We
11 don't normally -- even if the witnesses are live, I don't
12 normally let lawyers re-call the same witnesses. I mean,
13 usually if I'm told we might want this witness in rebuttal,
14 we'll often make you do it all at one time. It's
15 inconvenient to the witness, and it's confusing for the
16 jury, and it does create this kind of problem. You know,
17 both the jury and the Court heard this testimony a couple of
18 days ago, and the ability to really evaluate whether it's
19 truly appropriate cross or rebuttal, you lose that. And so
20 I -- at this point, I mean, I don't know why you didn't
21 designate or cross-designate these additional portions of
22 these depositions.

23 MR. HADDAD: Your Honor, we did cross-designate it
24 before --

25 THE COURT: Then why didn't you ask my law clerk

1 to read them in?

2 MR. HADDAD: We did before the April trial, and
3 Your Honor struck some of these counter-designations.

4 THE COURT: Well if I struck them then, why would
5 I not strike them now?

6 MR. HADDAD: I'm sorry, Your Honor.

7 THE COURT: Go ahead.

8 MR. HADDAD: Every single designation we
9 identified rebuts a point that they made in their case. I
10 mean, I can go through one by one and explain now. I mean,
11 they just put on all these pseudonymous interrogators and
12 had them say I never saw these, I never heard anything.
13 Well, we have designations where they say I did hear about
14 abuse, I did see abuse, I did report abuse to Dan Porvaznik.

15 THE COURT: But it would have made much more sense
16 to do that at that time.

17 I'm telling you right now, this jury -- and I've
18 heard this case now twice, they're not going to be able to
19 connect it. I will guarantee you that. Because I would
20 have trouble connecting it at this point. All right.
21 There's been so much testimony. I mean, Monahan, I've got
22 my notes and I can review them, but the jury isn't going to
23 have the same ability.

24 So I think you need to think very carefully about
25 how much rebuttal -- and it needs to be true rebuttal. But

1 to the extent that you're trying to do what should have been
2 done, as I said, because of the way this case has gone in
3 with the depositions as so much of the testimony, it should
4 all have been done in the context of that witness
5 testifying. So that's how I'll leave it for tonight.

6 All right. We'll see you back here at 9:30
7 tomorrow morning.

8 (Proceedings adjourned at 6:10 p.m.)

9 -----

10 I certify that the foregoing is a true and accurate
11 transcription of my stenographic notes.

12
13 Stephanie Austin

14 Stephanie M. Austin, RPR, CRR

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