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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v

No. 13-cr-20772

RASMIEH YOUSEF ODEH,

Defendant.

EVIDENTIARY HEARING

BEFORE THE HONORABLE GERSHWIN A. DRAIN
UNITED STATES DISTRICT JUDGE
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Tuesday, October 21, 2014

APPEARANCES:

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APPEARANCES:

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For the Defendant: MR. JAMES R. FENNERTY
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Also Present: Rana Berry (Pallero), Interpreter

Reported by: Merilyn J. Jones, RPR, CSR
Official Federal Court Reporter
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25

TABLE OF CONTENTS

WITNESSES: PLAINTIFF

PAGE

None

WITNESSES: DEFENDANT

DR. MARY FABRI

Direct examination by Mr. Deutsch

7

Cross-examination by Mr. Tukel

16

EXHIBITS:

Identified

Received

Defendant's Exhibit #1

8

1 Detroit, Michigan

2 Tuesday, October 21, 2014

3 THE CLERK: All rise. The United States District
4 Court for the Eastern District of Michigan is now in session.
5 The Honorable Gershwin A. Drain presiding.

6 You may be seated.

7 The Court calls Case Number 13-cr-20772, the
8 United States of America versus Rasmieh Odeh.

9 Counsel, step forward, place your appearances on
10 the record.

11 MR. TUKEL: May it please the Court, Jonathan Tukel
12 on behalf of the United States.

13 MR. JEBSON: Good morning, your Honor. Mark Jebson
14 on behalf of the United States.

15 THE COURT: All right.

16 MR. DEUTSCH: Michael Deutsch on behalf of the
17 defendant, Rasmieh Odeh.

18 MR. FENNERTY: James Fennerty on behalf of the
19 defendant, Rasmieh Odeh.

20 THE COURT: All right. Good morning.

21 MR. GOODMAN: Good morning. William Goodman.

22 THE INTERPRETER: I'm Rana Berry. I'm the
23 interpreter.

24 THE COURT: All right. Gentlemen, I guess, let
25 me first say that we need to swear the interpreter before we

1 get started.

2 THE CLERK: Raise your right hand. Do you
3 solemnly swear that you will correctly translate the oath and
4 such questions as shall be put to this defendant from the
5 Arabic language to the English language and her answers from
6 the Arabic language to the English language to the best of your
7 ability so help you God?

8 THE INTERPRETER: Yes.

9 (Rana Berry (Pallero), interpreter sworn, 11:06 a.m.)

10 THE CLERK: Thank you.

11 (Motions held but not transcribed)

12 * * *

13 THE COURT: Okay. Let's do the evidentiary
14 hearing.

15 MR. DEUTSCH: Judge, I just want to see if I
16 understand that, your idea of the ground rules for this
17 evidence hearing.

18 THE COURT: Okay.

19 MR. DEUTSCH: I know it's a 104 type hearing, a
20 preliminary determination, and I've read your opinion. And I'm
21 wondering whether you want me to qualify the expert, to get the
22 expert's background, her history, her work, or do you want me
23 to get right to the issue of, you know, her work with the
24 defendant in this case?

25 I just -- it seemed like you were saying she, you

1 found she was an expert and PTSD was an area that someone could
2 have expertise on, but what you were concerned about was the
3 link between her testimony, her expert opinion and the defense
4 in this case.

5 But, I mean, I'm happy to put it on and just go
6 through it all or do whatever you want.

7 THE COURT: Well, I think the government asked
8 for an evidentiary hearing challenging the ability to give an
9 opinion on this.

10 So what do you have to say about that, Mr. Tukel?

11 MR. TUKEL: Your Honor, for purposes of this
12 hearing I don't think Mr. Deutsch needs to do that. I would
13 stipulate for purposes of this hearing that the witness is an
14 expert.

15 Although, I would like to be able to ask certain
16 questions about her background just because I think it might
17 become relevant to her opinion.

18 But, in terms of qualifications, I don't think we
19 need to spend time with that.

20 MR. DEUTSCH: Okay.

21 THE COURT: All right. So, I'll go along with
22 that.

23 MR. DEUTSCH: Okay.

24 THE COURT: For purposes of this hearing, she's
25 qualified to give an opinion on PTSD.

1 MR. DEUTSCH: I would call Dr. Mary Fabri to the
2 witness stand.

3 THE COURT: Okay.

4 All right, ma'am, come up to the front here and my
5 case manager will give you an oath.

6 THE CLERK: Raise your right hand. Do you solemnly
7 swear or affirm that the testimony now pending before this
8 court will be the truth, the whole truth, and nothing but the
9 truth so help you God?

10 DR. FABRI: Yes, I do.

11 D R. M A R Y F A B R I,
12 called by the Defendant at 2:19 p.m., sworn by the clerk,
13 testified as follows:

14 THE CLERK: Please state your name for the
15 record.

16 You can have a seat.

17 THE WITNESS: My name is Dr. Mary Fabri.

18 DIRECT EXAMINATION

19 BY MR. DEUTSCH:

20 Q. And could you just tell us your occupation?

21 A. I'm a clinical psychologist.

22 Q. And when did you begin your work as a clinical
23 psychologist?

24 A. Well, I was licensed in 1988 and so that's when I could
25 call myself a clinical psychologist.

1 MR. DEUTSCH: Just so the record is complete, I'm
2 going to just mark her CV and put it in evidence --

3 THE COURT: All right.

4 MR. DEUTSCH: -- as Defendant's 1.

5 (Whereupon Defendant's Proposed Exhibit 1 identified
6 for the record)

7 Q. (By Mr. Deutsch, continuing) Let me show you what's been
8 marked as Defendant's 1 for identification. Could you tell the
9 Court what that is?

10 A. This is a short version of my CV.

11 MR. DEUTSCH: Thank you.

12 Q. (By Mr. Deutsch, continuing) Now is there an area of work
13 that you specialize in as a clinical psychologist?

14 A. Yes. I've specialized in working with survivors of war
15 trauma and torture.

16 Q. And how long have you been doing that work?

17 A. More than 25 years.

18 Q. And does your CV reflect the work that you've done in that
19 area?

20 A. I believe so.

21 Q. And does it also reflect the writings you've done in that
22 area?

23 A. Yes. There's a publications list.

24 Q. Now, in the course of -- did you have occasion to
25 interview and evaluate the defendant, Ms. Odeh, in this case?

1 A. Yes. Mr. Fennerty referred her to the Kovler Center.

2 Q. And what is the Kovler Center?

3 A. The Marjorie Kovler Center is a treatment center for
4 survivors of torture.

5 Q. And how long has that center existed?

6 A. The Kovler Center started in 1987. It was the third
7 center in the U.S.

8 Q. And how long have you been affiliated with the Kovler
9 Center?

10 A. Since the beginning. I was one of the first six clinical
11 psychologists that volunteered to begin to do the work.

12 Q. And could you tell us briefly how many hours and times
13 you've, you interviewed Ms. Odeh?

14 A. Yes. I met with Ms. Odeh six times for approximately
15 three hours each time, and it was over a period of four months.

16 Q. And in addition to yourself and Ms. Odeh was anyone else
17 present during these interviews?

18 A. Yes. Five of the six sessions there was an interpreter
19 present.

20 Q. And can you tell us what the process of your sessions and
21 evaluation was with Ms. Odeh?

22 A. Sure. In the first session we meet to become familiar
23 with each other. I asked Ms. Odeh what she'd like me to know
24 about herself, and we ended up doing a timeline of her life and
25 the experiences she had.

1 The second session an interpreter wasn't
2 available. We still met, because her English is passable, and
3 we continued to talk about those life experiences and about
4 what a structured assessment would entail, and at the end it
5 was up to her to decide whether she wanted to enter that
6 process.

7 She made that decision to enter and so the next
8 four sessions involved a structured assessment process using
9 the clinical, clinician's administered PTSD survey.

10 Q. What does that consist of?

11 A. It included a structured interview asking about past
12 experiences, traumatic experiences. It involves giving a life
13 events checklist. It involves going through possible symptoms
14 and asking about her experiences and what it's related to.

15 So all the symptom that are part of PTSD and does
16 she have them, when they're active, when they're not active,
17 are they severe, are they not severe, and just going through it
18 and asking her also to relate them to different life
19 experiences.

20 It, you know, it's a very detailed -- in a
21 addition to that I gave her the Harvard Trauma Questionnaire
22 and also the Hopkins Symptom Checklist.

23 The Harvard Trauma Questionnaire has been used
24 cross-cultures in many different countries. It asks very
25 specifically about trauma events and also torture events and

1 there's a scale that helps you assess PTSD.

2 The Hopkins Symptom Checklist is related to
3 depression and anxiety symptoms.

4 Q. Now, what was the nature of the trauma that Ms. Odeh
5 discussed with you?

6 A. Well, over her lifetime there were multiple traumatic
7 events, but the focus really was around her arrest and period
8 of detention and questioning.

9 And during that 45-day period that she was
10 detained at one site, she described multiple ongoing
11 experiences of torture. That would included beatings,
12 humiliation, deprivation, sexual violence, electric shock
13 treatment, and also witnessing others being tortured.

14 Q. Now, based on your interviews and testing, do you have an
15 opinion whether Ms. Odeh was truthfully relating her
16 experiences, past traumatic experiences?

17 A. Yes, I do.

18 And part of the reason is the process that we go
19 through as, it, it -- we meet over time because we want to look
20 for consistency in report and so we're looking for credibility:
21 Are the same things being told at different meetings; is it
22 consistent, also, symptomatology, is it consistent with those
23 experiences. We ask the same questions in different ways just
24 to elicit different, see if the responses stay the same.

25 So I found her to be very credible.

1 Q. Any evidence of malingering or exaggerating?

2 A. No, not in my opinion.

3 Q. Based on your interviews and testing, do you have an
4 opinion as to whether or not Ms. Odeh suffers from post
5 traumatic stress disorder?

6 A. Yes. That was my final -- diagnosis was chronic PTSD.

7 PTSD isn't a condition where there's a cure. It
8 can be acute and people recover, but many survivors of severe
9 trauma develop what we call chronic PTSD where there's a
10 vulnerability for it to reoccur at different times when there
11 is stress or reminders of the past trauma.

12 Q. And could you explain how, if at all, PTSD effects the
13 cognitive memory functioning of the brain?

14 A. Sure.

15 Okay. So, when there's a trauma happening, it can
16 be overwhelming and the cognitive part of our brain can become
17 overwhelmed. So if we look at different brain centers, and
18 I'll keep this simple, there is the emotional center, which is
19 the hippocampus. There -- I mean, I'm sorry, the amygdala,
20 which is mediated by work of the hippocampus and the pre medial
21 frontal cortex. They mediate information.

22 So all of us process emotional information through
23 the amygdala and if the hippocampus and the pre medial, the pre
24 frontal medial cortex are functioning well, they'll sensor for
25 us so we don't say or do things that are emotionally reacted.

1 During the traumatic event or, like torture, war
2 trauma, many other things that are intense stress, those
3 mediating parts of the brain become overwhelmed, and so in an
4 experience of torture the memory is encoded in an emotional
5 way, in a very sensory way in the amygdala so that when there
6 are reminders of that past trauma and the memory is recalled,
7 it's recalled in a very emotional intense way without that
8 cognitive processing.

9 Q. Now, when you evaluated Ms. Odeh, was she exhibiting
10 symptoms of PTSD?

11 A. Yes.

12 You know, whether fortunately or unfortunately,
13 during the period I saw her this indictment was very activating
14 for her as well as it was during the Israeli, the most recent
15 Israeli/Gaza conflict.

16 So she was very activated and was having
17 difficulty sleeping, had symptom of anxiety. When we met, she
18 often would break down in tears and we would have to take a
19 break because she was under a lot of distress.

20 She also disassociated at one point where she sort
21 of -- what that means is -- disassociation is like a shutting
22 down of processing current information. And it just meant
23 that she was taking a break from sharing the information, but
24 then would recover and we would decide whether we should
25 continue or wait until the next time to continue.

1 Q. So when somebody is suffering acute symptoms of PTSD, are
2 they more or less likely to cognitively block or filter the
3 past trauma?

4 A. Well, during an acute phase of PTSD the filters, you know,
5 everybody tries to cope. We all try to find ways of coping
6 with our stresses, whether they're extreme or mild.

7 For survivors of severe trauma they work really
8 hard to develop filters that help keep the reminders out so
9 that during acute phases where someone is symptomatic, those
10 filters aren't working very well, and, again, that cognitive
11 processing part is diminished.

12 During periods where someone is not stressed or
13 distressed, those filters work pretty well, and so the filters,
14 what they help do is narrow the focus of someone's
15 consciousness or awareness.

16 So, during relatively good functioning, someone
17 would have effective filters working.

18 Q. Now, the cognitive filtering process, does it involve a
19 lack of conscious self-reflection or a lack of self-awareness?

20 A. No. It's, actually over time it becomes automatic. In
21 the beginning when trauma survivors are trying to learn coping
22 strategy, if they're in therapy, they will get suggestions from
23 their therapist, but even if you don't go into therapy, and
24 obviously, not everyone goes into therapy, you develop your own
25 coping strategies and those coping strategies help you narrow

1 your focus and keep those bad memories at bay.

2 And so, you know, that's what happens.

3 Did I answer your question?

4 Q. Yes. I just want to follow up.

5 So someone suffering from PTSD do they know at
6 some level they are, are they conscious of filtering their
7 memory?

8 A. No, because it's automatic.

9 Q. Now, someone who has the condition of PTSD, do they know
10 what they're doing but they can't control their conduct?

11 A. "Do they know what they're doing but they can't control
12 their conduct?"

13 Q. In other words, is there an irresistible impulse?

14 They know that they're blocking their memory, but
15 they can't help it?

16 A. No, it's automatic. It's not this intentional, I'm not
17 going to do that. It's an automatic. They've taught
18 themselves to narrow their focus to keep the painful memories
19 back.

20 Q. So, it's not a conscious rejection of the memory?

21 A. No.

22 Q. And it's not something that they know that they have the
23 memory but they can't control it?

24 A. No.

25 Q. Now, did Ms. Odeh tell you why she answered "no" to the

1 questions about her arrest, conviction, and imprisonment on her
2 citizenship application?

3 A. Yes. What she told me was that when she read the
4 question, she thought it meant during her time living in the
5 U.S.

6 Q. Now, in your opinion would a person with chronic PTSD
7 typically interpret a question in a way in which your brain
8 would cognitively filter recalling past trauma?

9 A. There's a strong possibility that that would be a
10 protective way that narrowed focus would have them look at the
11 question in a narrow way so that it would be interpreted,
12 during my life in the US, not to include, my life back home
13 where these terrible things happened to me.

14 Q. So, the fact that Ms. Odeh interpreted the questions on
15 her citizenship application to exclude her traumatic past, is
16 that consistent with someone suffering from PTSD?

17 A. Yes, it could be.

18 MR. DEUTSCH: I have no further questions.

19 THE COURT: Okay.

20 CROSS-EXAMINATION

21 BY MR. TUKEL:

22 Q. Ma'am, my name is Jonathan Tukel. I'm going to ask you
23 some questions if I could.

24 A. Sure.

25 Q. You said you met with the defendant a total of six times?

1 A. Correct.

2 Q. Could you tell us the dates during which you met, just the
3 time frame?

4 A. April through July.

5 Q. Of this year?

6 A. Yes.

7 Q. For your meetings, what materials were prepared?

8 What sorts of things did you put together to work
9 with?

10 You talked about a timeline?

11 A. Yes. In our first session one of the techniques to help
12 put people at ease is not to jump right into what bad things
13 happened to you, but to talk about your whole life, you know,
14 it's like a narrative.

15 Q. So what written materials were put together in order for
16 you to do this diagnosis?

17 A. Written materials? I'm sorry.

18 Q. Well, the timeline was written, wasn't it?

19 A. Yeah. It's in my personal notes.

20 Q. Okay. What other types of notes did you make?

21 A. It's -- well, it was my personal notes during our first
22 meeting and then I followed the CAPS, the clinical administered
23 PTSD scale.

24 Q. Did you ultimately write any reports or any memoranda?

25 A. Yes. There's, there's a psychological affidavit that I

1 believe is submitted.

2 Q. The one that was filed with the court?

3 A. Yes. Uh-huh.

4 Q. Other than that, did you write any other diagnostic notes
5 or anything?

6 A. Just the forms that are a part of the CAPS and then my
7 personal notes from the first session.

8 Q. But when you say personal notes, can you explain does that
9 go into a file for each patient; what gets done with those?

10 A. It's handwritten.

11 Q. And then are they -- I mean, is that a business record
12 that you make for each patient or was there -- it's not like
13 something personal. You're doing it as part of your clinical
14 practice, correct?

15 A. Right.

16 But, it was handwritten, and it wasn't part -- so,
17 then there's the intake forms and the information that are in
18 my personal notes are recorded in the intake forms.

19 Q. And then what happens with your personal notes after?

20 A. I keep them in a file that, it's personal, separate
21 because most of the information has been recorded into the
22 intake forms, which I also believe is submitted.

23 Q. So those personal notes are available if we wanted to
24 review those?

25 A. I believe so.

1 Q. Where is that file now, I mean, do you have that?

2 A. Do I have it? It's -- well, it's -- well, I have -- I
3 have the report with me but the personal files are at the
4 Kovler Center.

5 Q. What did you review prior to your testimony today?

6 A. Umm, the CAPS and the psychological evaluation.

7 Q. And those are in the same file, then, I take it?

8 A. Yes.

9 Q. Back at your office?

10 A. Uh-huh, yeah, that I believe has been submitted.

11 Q. You mentioned the intake notes?

12 A. Uh-huh.

13 Q. How are those created; who works on those?

14 Is that something the patient fills out --

15 A. No.

16 Q. -- prior to meeting with you?

17 A. No. No. No. No. No. The way the Kovler Center works,
18 first there's a screening interview to, by a case manager to
19 establish the probability that someone's a torture survivor and
20 then they're referred for an intake.

21 Q. When you say "case manager", can you tell me what that
22 person's background is?

23 A. A bachelor's level.

24 And there's four -- it's either four or five
25 questions they ask and then the person who does the intake is a

1 licensed clinician.

2 So I'm the licensed clinical psychologist and I
3 did the intake and then provided the assessment for Ms. Odeh.

4 Q. Okay.

5 MR. TUKEL: Can you show us Page 1 of the defense
6 exhibit.

7 Q. (By Mr. Tukel, continuing) I'm sorry. We had the screen
8 arranged not to be convenient for a witness today, but you can
9 either --

10 MR. TUKEL: May she step down if she needs to see
11 that, your Honor?

12 THE COURT: Sure.

13 Q. (By Mr. Tukel, continuing) If you can't see that --

14 A. That's the release of information.

15 MR. TUKEL: Can you go to the next page, please.

16 Q. (By Mr. Tukel, continuing) Is this what we're talking
17 about for intake notes?

18 A. No.

19 Q. What is this?

20 THE WITNESS: May I?

21 THE COURT: Yes.

22 THE WITNESS: Oh, okay. Okay.

23 Recently the Kovler Center went for electronic
24 records. These are questions that were asked and then get
25 summarized in a form.

1 MR. TUKEL: And then could we see Page 7.

2 THE WITNESS: Right. Those are my notes.

3 Q. (By Mr. Tukel, continuing) So who's writing is this on --

4 A. Mine.

5 Q. So this is something you filled out?

6 A. With Ms. Odeh and the interpreter.

7 Q. Okay. So, you would ask questions and then this is
8 reflecting the information she gave you?

9 A. Right.

10 Q. Is her writing on any of this or is it all your writing?

11 A. No, it's mine. We were having a conversation.

12 Q. Okay. Thank you.

13 What did you review, if anything, other than
14 information that Ms. Odeh gave you?

15 Did you review any materials as part of your work
16 in this case?

17 A. What do you mean; what kind of material?

18 Q. Well, I don't know, anything about her background,
19 anything about the case, any of the discovery that was given to
20 her attorneys?

21 A. No. Because I'm an objective evaluator, and I don't, you
22 know, I want to meet with the client and find out from her in
23 her own words.

24 Q. I wasn't criticizing. I was just --

25 A. No, I'm just explaining to you how the process goes.

1 Q. So, other than notes -- you reviewed the notes with her, I
2 take it, then, after you wrote them down?

3 A. Yes. Yes. To make sure they're accurate. Absolutely.

4 Q. So you reviewed those.

5 Did you review anything else with her that was
6 written?

7 A. The report. I went through it with her.

8 Q. That was the report that you authored, correct?

9 A. Right.

10 Q. The affidavit?

11 A. Yes. The affidavit.

12 Q. Anything else?

13 A. You know, just, you know, we filled out the forms
14 together, the CAPS, clinician -- you know, it asks for input
15 from the client. So we did this together with the interpreter.

16 Q. All right. Other than those forms, did you review
17 anything else about her background or anything about her
18 history, any other materials?

19 A. Not that I recall.

20 Q. Okay.

21 Can you tell us how many times you've testified as
22 an expert?

23 A. Well, in immigration court multiple times.

24 Q. You said "multiple" is that more than ten?

25 A. Yes.

1 Q. More than 20?

2 A. Yes.

3 Q. More than 50?

4 A. That, you know, over a long period of time --

5 Q. But definitely more than 20?

6 A. Yes.

7 Q. In all parts of the country, or in --

8 A. No. In Chicago.

9 Q. Okay. And is that to testify about PTSD specifically or
10 about other --

11 A. It depends. In immigration court I've done assessments
12 and been present and available for being questioned by the
13 attorneys. Sometimes you're sequestered and never actually
14 give testimony, but I've also been an expert witness about PTSD
15 and memory.

16 Q. That's in immigration court?

17 A. Yes.

18 Then I was also an, I evaluated and was an expert
19 witness in the State of Illinois versus Sundus Balwa, which was
20 an Iraqi woman, and I evaluated her separately from the program
21 where she was receiving services.

22 Q. And what was the evaluation to determine?

23 A. About her state during a period of time where she left a
24 disabled child alone.

25 Q. Was that to determine if she was competent to stand trial

1 or for --

2 A. It was an insane defense.

3 Q. I see. Okay.

4 Other than that, the immigration cases and that
5 case, have you testified on other occasions?

6 A. There -- I don't -- the one time I was questioned in DC,
7 Washington, DC, and I can't remember what the office was, but
8 it was related to a case I worked on.

9 Q. Was it a court or was it --

10 A. No, it was an office. It was Sister Dianna Ortiz.

11 Q. I'm not familiar that, can you tell me what that --

12 A. Okay. She's a torture, Sister Dianna Ortiz is an American
13 Nun tortured in Guatemala.

14 Q. All right.

15 When Ms. Odeh came to you, you knew she had been
16 indicted in this case, correct?

17 A. Yes.

18 Q. You had not seen her prior to that time clinically?

19 A. Oh, no.

20 Q. Had you known her, had you ever met her prior to that?

21 A. No.

22 Q. As part of your diagnosis of her, did you ask her about
23 any previous treatment or diagnoses that she had had?

24 A. It was in -- part of the intake is to get a medical
25 history. Yes.

1 Q. Then had she ever had any --

2 A. No.

3 Q. -- psychological evaluation?

4 A. Not that she reported to me, no.

5 Q. And you have no reason to doubt that, correct?

6 A. No.

7 Q. One of the things that you recommended for her after your
8 diagnosis was that she follow a course of treatment, correct?

9 A. Uh-huh. Uh-huh.

10 Q. Is that a yes?

11 A. Yes. I'm sorry. Yes, it is.

12 Q. They have to be transcribed, so...

13 A. Yes.

14 Q. What is the recommended course of treatment?

15 A. Well, because she was very acutely symptomatic, I thought
16 it would be helpful if she saw the psychiatrist. She declined.
17 She doesn't want to take medications is what she told me.

18 And I told her that it was available, not with me,
19 but with, through the Kovler Center she could see a therapist
20 if she wanted to.

21 Q. So, she saw you six times for the diagnosis for this case,
22 correct?

23 A. Yes.

24 Q. And as far as you know, she has not pursued any further
25 treatment?

1 A. Correct.

2 Q. Is that contrary to your recommendation or is it in
3 accordance with your recommendation?

4 A. Well, it was my recommendation to her and often people
5 don't follow through. I mean, that's not, that's not unique
6 to her. People often don't understand therapy.

7 Q. Your recommendation is to continue with therapy, in other
8 words?

9 A. That it wouldn't be continued, because it wouldn't be with
10 me; that counselling would be available to her, therapy would
11 be available to her, that it might be a source of support
12 during this.

13 But, actually, what Ms. Odeh told me is that her
14 community supported her and she really didn't feel the need,
15 although, I, you know, as a psychologist, I feel like there is
16 benefit.

17 Q. Okay.

18 And for whatever reason she's not following that
19 advice?

20 A. Well, it was a recommendation.

21 Q. Recommendation.

22 Is there a difference between recommendation and
23 advice?

24 A. Yeah. I think there is.

25 Q. What's the distinction?

1 A. A recommendation is an option that -- you know, either way
2 she's free to make a decision on her own. I'm not going to...

3 Q. Can you tell me a little bit more about this insanity
4 defense case that you testified about?

5 What was the charge and what was the defense?

6 A. Okay. So, it was an insanity defense. It was an Iraqi
7 woman who had also a very horrible experience, multiple
8 occurrences of exposure and also her own experience of being
9 tortured in Iraq. A lot of it during Saddam Hussein.

10 She was resettled in the U.S. as a refugee. She
11 had a disabled child. She also was in therapy with someone
12 else at a different program and was getting services, but the
13 lawyers contacted the Kovler Center to see if we would do an
14 objective evaluation.

15 I saw her. I can't tell you how many -- it was
16 extended. I saw her many times over a period of time and
17 collected her history, and she was also a very vulnerable woman
18 to these periods of disassociation and also flashbacks, which
19 are neuropsychological events that happen where someone relives
20 the trauma and are not in the here and now.

21 Q. What was she charged with?

22 A. Criminal neglect.

23 Q. Of the child?

24 A. Yes.

25 Q. And what was then -- what was your conclusion?

1 What was your diagnosis?

2 A. That she was suffering from severe PTSD that included
3 symptoms of disassociation and flashbacks and that at the time
4 she left this child alone that she did not have good judgment
5 at all. That she had very poor judgment.

6 Q. What was this person's name, the defendant?

7 A. Sundus Balwa.

8 THE COURT REPORTER: How do you spell that?

9 THE WITNESS: What?

10 Q. (By Mr. Tukel, continuing) Could you spell the last name?

11 A. Oh, sure. Sundus is S-U-N-D-U-S, and Balwa is B-A-L-W-A.

12 Q. What court was that tried in?

13 A. It was in Chicago in 2004.

14 Q. What was the verdict in that case?

15 A. She was found not guilty of criminal neglect.

16 Q. Mr. Deutsch asked you some questions about malingering.

17 Can you tell us what that is, what that means?

18 A. Malingering is when someone is falsely saying that they're
19 suffering from a condition.

20 Q. And so that's something that you try to screen for,
21 correct?

22 A. Exactly.

23 Q. Essentially trying to control for that?

24 A. Exactly.

25 Q. What's the reason that you're trying to control for that?

1 A. Well, one of the reasons is we want to have honest
2 evaluations and also provide our services to people who really
3 need them.

4 So we want to make sure that someone is a torture
5 survivor.

6 Q. All right. So sometimes people will fabricate or
7 exaggerate?

8 A. That's a possibility.

9 Q. That's what you're trying to figure out anyhow?

10 A. Right.

11 Q. You were involved in a resolution to have Chicago declared
12 a torture free zone, correct?

13 A. Yes.

14 Q. And part of that talks about that on some people there are
15 physical scars or marks --

16 A. Yes:

17 Q. -- that demonstrate they've been tortured?

18 A. Uh-huh.

19 Q. Is that something that you screen for when you meet a
20 patient?

21 A. You know, it depends. In immigration cases we often do
22 refer individuals for medical exams where physicians will
23 examine the body and look for the physical evidence, scars that
24 are consistent with the report of the acts that were committed
25 against them.

1 But psychological torture is also a huge problem
2 in that setting of being tortured.

3 Q. But they're not necessarily distinct, right, people can be
4 physically tortured and psychologically tortured?

5 A. Absolutely. And some people are only -- I mean, usually
6 physically and psychologic -- if you're physically tortured,
7 you're psychologically tortured and sometimes people are just
8 psychologically tortured.

9 Q. So, do you physically examine patients to see if they have
10 signs of the physical part?

11 A. A medical doctor does.

12 Q. And what was the result of that --

13 A. We did not refer her because the torture experience was
14 many years ago and often scars fade.

15 So usually we're seeing survivors who have more
16 acute scars, you know, they're more recent and so that they're
17 visible.

18 Q. So, you didn't think it was even worth looking?

19 A. You know, beatings done, what, 1969, it's 2014, beatings,
20 electric shock doesn't necessarily leave scars.

21 Q. You keep saying "necessarily". I'm asking you didn't look
22 to see if there was --

23 A. No, we did not refer -- we did not.

24 Q. So, your diagnosis ultimately was that Ms. Odeh is
25 suffering from chronic PTSD, correct?

1 A. Correct.

2 Q. And chronic means it doesn't get better, right?

3 A. No. Chronic means it's persistent so that it's recurrent.

4 It's -- it's -- it's a chronic condition with reoccurrences.

5 Q. And based on your diagnosis, when did that first manifest
6 itself?

7 A. In talking with Ms. Odeh, when she was -- after the
8 torture and she was moved to the longer term prison detention
9 center, she was symptomatic.

10 But with time the symptoms -- and also it sounds
11 like from her description the women also organized and so that
12 also helped her.

13 I think as a community it's not unusual to hear
14 people detained in prison for a long time develop community and
15 that community provides a support network.

16 Q. Just so I understand correctly, are you saying rather than
17 itself being a stress-inducing factor, prison can be actually
18 be therapeutic for that type of thing?

19 A. No. I would not use the word therapeutic at all. What
20 I'm saying is detainees often commune -- they form a supportive
21 network among themselves. I've heard this from many different
22 -- especially women, and men also. With long term detention
23 they turn to each other for connection. They're sharing this
24 experience.

25 Q. All right. But, one of the things you're measuring is

1 just PTSD can have many different causes, correct?

2 A. It's a traumatic event. It must be a traumatic event
3 experienced as life threatening.

4 Q. All right. But there's many different possible such
5 events, right?

6 A. Sure. I mean, it's war, torture, it can a traumatic
7 accident. It could be --

8 Q. It could be a life endangering fire. You're in a building
9 and you have trouble getting out?

10 A. Yes.

11 Q. Okay. So, I mean, there's many different causes.

12 Prison is that type of stressing event, isn't it?

13 A. It could be, but not for everybody. It depends on what
14 your experience is in the prison.

15 Q. There are some people that don't find prison to be a
16 stressing event?

17 A. No, not everybody, not every person who's in prison will
18 develop PTSD.

19 Q. I wasn't asking that. I was asking just is some --

20 A. Prison can -- prison is a stress. It's a stressful event.

21 Q. And what your tests really are measuring are the effects
22 of that stress, right?

23 You're then interpreting them to come up with what
24 you believe to be the cause, but what you are actually
25 measuring are the affects, correct?

1 A. Right. What the symptoms are and the severity of the
2 symptoms.

3 Q. And, again, those symptoms can be, have multiple different
4 causes, they can be the fire?

5 A. Right.

6 Q. They can be the life threatening accident?

7 A. Right.

8 Q. So how do you deal with the situation where there are
9 multiple factors like that that cause the stress?

10 A. Uh-huh. You know, it's, if you look at someone's timeline
11 in the CAPS, they ask you to state what is the most distressing
12 event, and one, the event that she selected was during that
13 25-day period. That was like her most distressing event.

14 So that was the event that we started with.

15 Q. Okay.

16 Your form, your intake form does not ask about
17 imprisonment as one of the causes, right, it lists other bases
18 for persecution?

19 A. Yes. Because the most distressing event was during that
20 25-day period.

21 MR. TUKEL: Could we see Page 7 please, question
22 19.

23 Q. (By Mr. Tukul, continuing) This is a form that you use
24 for all your patients, right?

25 A. Right.

1 Q. So, it says reason for persecution. It lists:

2 Religious views.

3 Political views or beliefs.

4 Political party actual or suspected belief.

5 Banned political party.

6 Ethnic minority.

7 Linguistic minority.

8 Racial minority.

9 Or other, correct?

10 A. Uh-huh.

11 Q. So, prison is not even one of the options for people to
12 check?

13 A. No, but they could state it.

14 Q. Okay. But it's not something you're listing as one of
15 the things that you're looking for, correct?

16 A. It's not that we're not looking for it, it's just these
17 are the primary reasons for persecution. The question is about
18 the reason for persecution, not the reason that you have
19 symptoms.

20 Q. That answer of "Israeli occupation of land control" that's
21 what the defendant told to you?

22 A. That's her words, yes.

23 Q. And you're writing her words?

24 A. Yes.

25 Q. Okay. Thank you.

1 All right. Could you tell us based on the
2 diagnosis that you made, do the symptoms of this PTSD change
3 over time?

4 A. Have -- have -- I'm not sure I understand what you're
5 asking.

6 Q. Well, you said that there can be occasions where the
7 effects become more severe and the person shows more --

8 A. Acute.

9 Q. More acute.

10 A. And then -- it's recurrent, so they're not always
11 experienced at the same level.

12 Q. All right. And what can make those become more or less
13 acute?

14 A. Well, I think in Ms. Odeh's case she stated this process
15 had activated her symptoms and then as you saw in this, as we
16 got into July, the situation between Gaza and Israel.

17 Q. Did she list over things that had occurred over the past
18 40 or so years, let say 35 years, start with 1979, that had
19 made it, the symptoms become more acute at times?

20 A. I would have to look. I'm sorry.

21 Q. Where would you have to look?

22 A. I'd have to look at my notes.

23 Q. Do you have those with you?

24 A. In my backpack.

25 MR. TUKEL: May she, your Honor?

1 THE COURT: Okay.

2 THE WITNESS: These are the electronic medical
3 records that I'm looking at.

4 Okay. Would you ask me the --

5 Q. (By Mr. Tukel, continuing) Yeah.

6 I was asking you if she had related to you
7 particular times or events which caused the symptoms to become
8 more acute?

9 A. Let me see if it's -- I'm remembering now she -- let's see
10 if I can find it.

11 I would feel better if I could do this without
12 sitting here.

13 Q. Well, let me ask it this way. Do you think that she
14 related that there were other such events?

15 A. Yes, I'm trying -- yes, I do.

16 Q. Okay.

17 A. But, you know, I'd need to look at this very carefully and
18 I'm feeling --

19 Q. Well, let me ask you this.

20 A. Okay.

21 Q. Do you know when she filled out her naturalization
22 application?

23 A. The exact date, no, I don't.

24 Q. Do you know the approximate time?

25 A. I've been told. I don't remember. I'm sorry. I just

1 don't.

2 Q. Well, what I really need to ask you -- I'll tell you that
3 it was in 2004.

4 A. Okay.

5 Q. And what I really need to ask you is were there events
6 related to you that were taking place in 2004 which made those
7 symptoms more acute?

8 A. No.

9 Q. No, there was not?

10 A. Not that she shared with me.

11 Q. What -- what would it be that would trigger the acute
12 symptoms?

13 A. Well, conditions back home. I think the death of her
14 brother was a possibility. That's what I was looking for.

15 Q. And can you explain to me why the death of a brother would
16 be something that would trigger it?

17 A. Loss.

18 Q. So it's just any sort of --

19 A. Deep loss.

20 Q. Deep loss?

21 A. Sure.

22 I mean, it's a possibility. It does for some
23 people but not for others. It would, you know, we're all
24 different. It's -- can't predict for each of us.

25 Q. And then you use the term "filters". Can tell us what it

1 is that the filters do?

2 A. It's like a lens. I think we, you know, we all develop
3 ways of narrowing our focus so that we can keep painful things
4 at bay.

5 And so, I like the term "filters" because it's
6 like a lens that filters out, help keeps things out.

7 Q. And so is it your testimony that at a conscious level,
8 then, that a person that is filtering doesn't remember the
9 past?

10 A. No. It's not that they don't remember the past, it's that
11 there's this automatic behavior. The automatic, it's an
12 automatic behavior. A narrowing of the focus so that it's not
13 this conscious thought process that, I don't want to think
14 about this. It's just automatically kept out, unless there's
15 a stressor in front of you that weakens that defense.

16 Q. And does the person know what those stressors are?

17 A. For the most part, yeah, they recognize it and they avoid
18 it.

19 Q. Okay. So, in Ms. Odeh's case what are the stressors?

20 A. What are her stressors?

21 Q. Yes.

22 A. You know, things about back home. Talking about what
23 happened to her is stressful.

24 Q. So does that mean that she would then use those filters to
25 avoid talking about what happened?

1 A. It would assist her in not thinking about it.

2 Q. Explain that?

3 A. Okay. So, obviously, she can talk about what happened and
4 if you ask her questions, she can respond to it. But in daily
5 life there can be reminders like uniforms. So you avoid places
6 where there are uniforms.

7 And one of the things I was looking for is Ms.
8 Odeh had related a story of where she was pulled over by a
9 police officer and the fact that this uniformed man was
10 approaching her car made her very anxious and that night she
11 had activated symptoms.

12 Q. And so if she could, if I understand your testimony
13 correctly, those filters would have her try to avoid situations
14 where she sees people with uniforms on; is that correct?

15 A. Right.

16 Q. And, so, then would she also try to avoid situations where
17 people would ask about her past?

18 A. That depends. There's a context there.

19 Sometimes survivors, I've worked with many
20 survivors who have felt an obligation to speak about what
21 happened to them at certain times when they believe that there
22 will be an impact that will help those who didn't survive or
23 who don't have that opportunity to speak out.

24 But on a day-to-day basis people don't volunteer,
25 I'm a torture survivor.

1 And, actually, there was a very interesting study
2 done in West LA by David Eisenman in a medical clinic that
3 served predominately Latinos and Latinos and, you know, one of
4 things that came out of it is a large number of the patient
5 population had traumatic history. Some of them even, because
6 they were from Central America, were torture victims or were
7 family members of torture victims and they said they never told
8 anyone because no one ever asked, their physician, their
9 provider never asked, so they didn't volunteer it.

10 So, you know, there's this context of when do you
11 share; how do you share?

12 Q. Well, in your affidavit one of the things you said on page
13 18 is that it is the intention of the survivor to keep
14 reminders at a distance?

15 A. Yes.

16 Q. Is that, that is correct?

17 A. Right.

18 Q. Okay.

19 And then you say:

20 "Avoidance and sometimes even denial of thoughts,
21 feelings, and activities associated with the trauma is
22 a symptom and is also an attempt to cope with the
23 overwhelming memories of the trauma."

24 A. Yes. You know, there's no Page 18, so I don't know what
25 page you're looking at. I'm sorry. Maybe it's Page 18 in

1 yours.

2 Q. Page 18 as filed.

3 A. Oh, I don't have a filed version.

4 Q. Oh, it's Page 16 on yours?

5 A. That's okay. Okay. So which paragraph are you --

6 Q. Five?

7 A. Page 16 has 67 through 73.

8 Are you on a different one? I'm sorry.

9 Q. Page 16, "referral question and response".

10 A. Okay. That's not --

11 Q. That's not it?

12 A. "PTSD affect". Yeah, it is. I don't know why yours is
13 numbered differently, but it is.

14 Q. Okay. So, looking at yours it would be Number 71?

15 A. Right.

16 Q. Okay.

17 "Avoidance, and sometimes even denial of thoughts,
18 feelings, and activities associated with the trauma is
19 a symptom and is also an attempt to cope with the
20 overwhelming memories of the trauma."

21 Correct?

22 A. Correct. Uh-huh.

23 Q. And it is the intention of the survivor to keep reminders
24 at a distance?

25 A. Yes.

1 MR. TUKEL: Could we see Exhibit 1, page 8,
2 please.

3 Q. (By Mr. Tukul, continuing) So, this is the naturalization
4 application. Have you ever seen this before?

5 A. Hers?

6 Q. Anyones'?

7 A. Yes.

8 Q. Okay. You've seen hers?

9 A. No.

10 Q. So, you have seen this form before, correct?

11 A. Yes.

12 Q. Form N-400.

13 Have you ever read the instructions on this
14 section?

15 A. No.

16 Q. Okay. So, let's read it together:

17 "For the purposes of this application, you must
18 answer "Yes" to the following questions, if applicable,
19 even if your records were sealed or otherwise cleared
20 or if anyone including a judge, law enforcement
21 officer, or attorney, told you that you no longer have
22 a record."

23 Question 15:

24 "Have you **EVER** -- and 'ever' is in capital letters
25 and in bold -- committed a crime or offense for which

1 you were not arrested?"

2 "Answer: 'No'."

3 Question 16:

4 "Have you EVER -- capital letters and in bold --
5 been arrested, cited, or detained by any law
6 enforcement officer... for any reason?"

7 Can you explain to me how the PTSD would cause
8 someone to read the word "ever" to mean in the United States?

9 A. Okay. So, as a trauma survivor, a torture survivor, you
10 work very hard to cope, right, to develop strategies in your
11 daily life so that you can live it without having to remember
12 and those strategies help you develop the filter that I
13 mentioned so that you don't, you narrow your focus. Okay.
14 You narrow your focus so that you're not remembering the past.

15 So you read this as a survivor and if it was a
16 period of relative calm, so 2004 was a period in your life
17 where you are functioning well, you're, you know, in Ms. Odeh's
18 case, I believe, she was employed and working and feeling
19 successful in her life here in the U.S.

20 So she would look at this with her filters, her
21 defenses, but I like the word filters better, working. That
22 she would look at this and it was narrowed focus of time frame,
23 she could potentially, I mean, I don't know what went on in her
24 mind, right, but in my understanding of PTSD and survivors and
25 how they develop strategies to cope in daily life that she

1 would look at "ever in the U.S.". It's a narrowed focus of
2 time frame.

3 Q. Did she tell you that she had received a law degree before
4 she moved to the United States?

5 A. I believe so. Uh-huh.

6 Q. Okay. And so did you consider that background in terms of
7 her analysis of legal documents?

8 A. No. I mean, I was seeing her at an assessment as a
9 torture survivor.

10 Q. Okay. Mr. Deutsch asked you some questions, and I just
11 want to make sure I understand the answers.

12 Do you say she can or cannot control this
13 filtering conduct?

14 A. Okay. It's not a matter of control. It's a matter of
15 development, and so she has developed, as many survivors do,
16 this capacity to narrow your focus. It's not, it's not this
17 conscious process of I'm going to use this now or I'm not going
18 to use it now.

19 Either it's effective and it's working and the
20 focus is narrowed, or you're activated, you're aroused, you're
21 having many symptoms and your filters are off.

22 Q. And can she exert any control over when the filters are on
23 or when the filters are off?

24 A. It's automatic.

25 Q. So the answer is, "no", she cannot?

1 A. It not, it doesn't work that way. It involves the brain
2 and how, what structures in the brain are working, which are,
3 which are activated and which are diminished and so when the
4 cognitive narrowing of the focus is effective, then that's
5 what's working. If it's the emotional part that's activated,
6 then that's what's working.

7 Q. So, I'm sorry. Can she control that or can't she?

8 A. Okay. No, it's not something that you control. It's
9 like flipping a switch on and off. It's an automatic.

10 Q. So, would you characterize that as an impulse?

11 A. No.

12 Q. Why not? And explain what the difference is.

13 A. Because it's not impulsivity. It has to do with the
14 emotional center and how the memory, the memory is being
15 remembered. Is it in an emotional way or is it in this narrow
16 focused way.

17 Q. And at the conscious level the person doesn't know that
18 this is going on?

19 A. No. It's automatic.

20 You know, one of the examples very simply would be
21 have you ever, if you drive to and from work, have you ever
22 driven home and thought, how did I get there? 'Cause you're
23 preoccupied, you're thinking about other things, but you're on
24 automatic pilot because it's familiar. Your brain got you
25 home. It knew when to stop at a stop sign. You didn't

1 consciously stop at the stop sign, but you stopped.

2 Q. And if someone asked you did you drive home, you would
3 say, "yes"?

4 A. Yes. Because you arrived home in your car.

5 Q. So it doesn't keep you from understanding at that level
6 that that's what you've done?

7 A. After the fact. But during it --

8 Q. If someone asked you, "are you driving"; you would say,
9 "no"?

10 A. That would bring you out of your -- that question doesn't
11 work like that. Because if you are driving home, you're doing
12 it in this automatic way, even though your thoughts are
13 elsewhere. It's just an example for you to try and understand
14 how some things we do are automatic. It's not like you chose
15 not to think about what you were doing, but you had the
16 capacity to be able to do it.

17 Q. In terms of trying to avoid the stressors, can you tell me
18 what sorts of avoidance behaviors you believe the defendant
19 uses?

20 A. Again, she talked about them. So, like, I know at work
21 she talked about sometimes being at work but being more
22 socially isolative in the office. So that's a way. You don't
23 want to talk about what's going on, so you stay -- go to work,
24 you function well, but you sort of stay off by yourself. That
25 would be an avoidant behavior.

1 Q. Okay.

2 You already talked about avoiding talking about
3 the past would also be one of those behaviors as well?

4 A. Yes.

5 Q. Okay. Did Ms. Odeh ever tell you that she had appeared in
6 a video --

7 A. Yeah.

8 Q. -- in which -- she did tell you that?

9 A. Yes. Yes.

10 Q. But you never reviewed that?

11 A. The video?

12 Q. Yeah.

13 A. I watched it.

14 Q. I asked you at the beginning what other materials you had
15 reviewed?

16 A. I'm sorry. I'm sorry.

17 Q. So, tell us about the video?

18 A. Well, I watched the video and, you know, saw her and other
19 women being interviewed.

20 I don't know if we're talking about the same
21 video.

22 Q. Do you know the name of the video you saw?

23 I'm asking if you know, not if Mr. Deutsch knows?

24 A. I know. I'm sorry. I don't remember.

25 Q. Women in Struggle?

1 A. I believe so, you know --

2 MR. TUKEL: Can you show Clip Two?

3 Q. (By Mr. Tukul, continuing) Let me show you this and see
4 if this refreshes your memory.

5 (Playing video)

6 A. Yes, that's the one.

7 Q. That's the video?

8 A. Yes.

9 Q. Okay..

10 She told you that she had appeared in this video?

11 A. Yes.

12 Q. Did she tell you when this video was made?

13 A. I'm sure she did. I don't remember the date, though.

14 Q. Relative to her application for naturalization, did she
15 tell you when she appeared in this video?

16 A. You know, I don't remember.

17 Q. Did you review the video to see if you saw evidence of
18 symptoms of PTSD manifesting themselves from the stress of
19 talking about her experiences?

20 A. Oh, no, and I wouldn't expect to see that. It would be
21 after that she would have them.

22 So survivors like Ms. Odeh will, I have the total
23 capacity the talk about what happened to them. She
24 demonstrated it in her session with me; she demonstrated it in
25 the video, and there are probably other times when she's spoken

1 about it.

2 But it's afterwards that people suffer.

3 You know, one of our assessment questions that I
4 use is a 24-hour clock, that you want to walk someone through a
5 typical 24 hours, because survivors will get up every morning,
6 they'll go to work, they'll function. But if something
7 reminds them of their, their trauma or if at night is more
8 vulnerable when you don't have all the activities distracting
9 you, that's when they can't fall asleep at night, have
10 nightmares, are anxious. So --

11 Q. Did she tell you that she had those experiences as a
12 result of appearing in this video?

13 A. I didn't ask her afterwards. I didn't ask her. I was
14 focusing on doing the structured assessment.

15 THE COURT: All right. Mr. Tukel, how much
16 longer are you going to be?

17 MR. TUKEL: Five minutes, your Honor.

18 THE COURT: Okay. All right. Because I was
19 going to say we need to take a break.

20 MR. TUKEL: We can take it now if that's convenient
21 or I can finish, whatever you'd like.

22 THE COURT: Let's see, Mr. Deutsch, do you have
23 anything else?

24 MR. DEUTSCH: No, I'm not going to have anything,
25 judge.

1 THE COURT: Okay, well, let's go ahead.

2 I'm going to hold you to that five minutes, Mr.
3 Tukel.

4 MR. TUKEL: I'm going to turn on my watch, your
5 Honor.

6 THE COURT: Okay.

7 Q. (By Mr. Tukel, continuing) I'm sorry. You said you didn't
8 ask her. You watched the video but you didn't ask her what her
9 reaction was afterwards, after having appeared in that?

10 A. No.

11 Q. Okay.

12 Did she -- did you watch the entire video?

13 A. I skipped around through it. I mean, I watched all of
14 hers, but some of the other women I fast forwarded through.

15 Q. Okay. So did you listen to the portion where Ayisha Odeh
16 was talking about when she had placed the bombs?

17 A. You know, I watched the video, that part, yes. But it
18 was awhile ago.

19 Q. Okay. Did you watch the part where Ayisha Odeh said:

20 "I placed the bombs, but others were more
21 involved. Rasmieh Odeh scouted the location and chose
22 the targets and went with someone else to look at it
23 before I simply placed the bombs."

24 Did you watch that?

25 A. I recall that.

1 Q. Did you discuss that with the defendant?

2 A. No. No, I wasn't evaluating that. My -- what I was
3 asked to do was evaluate her mental status and how she was
4 psychologically functioning, and that's what I do. I wasn't
5 evaluating her activity.

6 Q. Well, but doesn't her willingness to speak about the
7 event, isn't that part of the background of what you're
8 evaluating?

9 A. I'm following a structured interview. It's the way we
10 assess PTSD. I took the history from her. I look through the
11 consistencies of what she's reporting and symptoms she's
12 having.

13 I'm a clinician. So I'm looking to make a
14 diagnosis.

15 Q. Isn't one of the things she told you that the torture was
16 particularly severe because she had no information to give?

17 A. She did say that they wanted her to -- she didn't know
18 what they wanted, is what she told me.

19 Q. She told you she had no information to give, correct?

20 A. Correct.

21 Q. But the video would seem to indicate that she did have
22 information to give?

23 MR. DEUTSCH: Objection. The video, he's referring
24 to somebody else saying something, not --

25 MR. TUCEL: Well, there's statements by the

1 defendant. I'm simply asking --

2 THE COURT: Overruled.

3 Go ahead.

4 THE WITNESS: What is your question?

5 Q. (By Mr. Tukel, continuing) My question is, she had told
6 you that the torture was particularly severe because she had no
7 information to give, correct?

8 Yes?

9 A. Yes.

10 Q. And did you use the video to evaluate whether that was
11 truthful?

12 A. No.

13 Q. Wasn't one of the things you talked about at the beginning
14 you're trying to determine if the person is being truthful with
15 you?

16 A. Right.

17 But, typically, I wouldn't use a video. I saw
18 this after.

19 Q. You saw this after you made your diagnosis?

20 A. Well, after I had finished meeting with her.

21 Q. How did see this; what was the circumstances?

22 A. The attorneys suggested I look at it.

23 Q. And you had already made your conclusion?

24 A. I had already done my --

25 Q. Your diagnosis?

1 A. Yeah. And I still think she has PTSD regardless of what
2 came out in the video. But I don't know, you know, I don't
3 know because I wasn't there.

4 MR. TUCEL: Thank you.

5 THE COURT: Okay.

6 All right, Mr. Deutsch, you don't have anything?

7 MR. DEUTSCH: I don't have anything further.

8 THE COURT: All right, ma'am, you may step down.

9 THE WITNESS: Thank you.

10 THE COURT: You may be excused.

11 (At 3:23 p.m. witness excused)

12 THE COURT: All right. There's been a lot done
13 today, a lot of motions argued and I'm going to take all of
14 this under advisement and issue an opinion pretty soon.

15 Let me just ask you, Mr. Deutsch, one other thing.

16 MR. DEUTSCH: Okay.

17 THE COURT: The government has filed a motion for
18 reconsideration with regard to the specific intent issue and
19 I'm kind of looking at that and I want to invite you to respond
20 to that. Can you have something to me by Thursday or Friday at
21 the latest?

22 MR. DEUTSCH: If you so order, I will.

23 THE COURT: Okay. Well, let's make it Thursday,
24 then.

25 MR. DEUTSCH: Judge, let me just say one other

1 thing.

2 THE COURT: Okay.

3 MR. DEUTSCH: I don't know if you -- I filed what I
4 entitled an offer of proof yesterday, which was to try and, for
5 you to understand what the testimony of the defendant would be
6 so that you would see the connection between the expert and her
7 testimony. And I thought that was one of the things you were
8 concerned about.

9 And, also, I know you and your clerk will find
10 that there is quite a bit of law in the Sixth Circuit about
11 relevance and how you're supposed to maximum the relevance of
12 the proponent of the evidence.

13 "We must look at the evidence in the light most
14 favorable to its proponent, maximizing its probative
15 value and minimizing its prejudicial effect."

16 THE COURT: Are you reading from a case?

17 MR. DEUTSCH: Yeah. I'm reading from United States
18 versus Clark, which is 377 Federal Appx 451. It's a Sixth
19 Circuit 2010 case.

20 And there's similar language in United States
21 versus Smithers, which is 212 Fed 3rd 306, Sixth Circuit 2000
22 case.

23 It's just kind of a black letter law when you have
24 a proponent you try to maximize the connection and the
25 relevance and minimizing the prejudice.

1 So just in terms of evaluating whether or not the
2 testimony of the expert is relevant to the defense.

3 But I will file something by Thursday.

4 THE COURT: Okay.

5 MR. TUKEL: Your Honor, the Court had indicated
6 this morning, or asked Mr. Jebson a question about
7 retroactivity pertaining to the statute. May we submit an
8 answer to that in writing or a citation of authority? I don't
9 know what mechanism the Court would like.

10 THE COURT: Okay. Yeah, if you've got it, it
11 shouldn't take much. So, you can do that by tomorrow, could
12 you?

13 MR. JEBSON: Yes, your Honor.

14 THE COURT: Okay. Why don't you get it in by
15 tomorrow.

16 MR. TUKEL: Just procedurally, should we file that
17 in the docket?

18 I don't know what we should call that. I don't
19 know if there's something on ECF that has that. I just wanted
20 to know how to proceed properly.

21 And, I guess, we don't need an answer now. We can
22 talk to your case manager.

23 THE COURT: Yes, just file something. Serve Mr.
24 Deutsch with it. Yeah, file it on CM/ECF, too.

25 MR. TUKEL: Thank you.

1 THE COURT: Anything else, gentlemen?

2 MR. DEUTSCH: Yeah, I'm wondering if you've
3 reached any conclusion about the questionnaire issue. I know
4 it's going -- it would delay things, and, obviously, we want to
5 know if we're really set for trial on November 4th or if it's
6 going to --

7 THE COURT: I'm still thinking about that.
8 Still thinking about that.

9 MR. DEUTSCH: Good.

10 THE COURT: I'll leave it at that.

11 MR. DEUTSCH: Okay.

12 THE COURT: Then, we'll be in recess.

13 THE CLERK: All rise. Court is in recess.

14 (At 3:27 p.m. proceedings concluded)

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C E R T I F I C A T E

I, Marilyn J. Jones, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages 1-57, inclusive, comprise a full, true and correct transcript taken in the matter of the United States of America versus Rasmieh Yousef Odeh, 13-cr20772 on Tuesday, October 21, 2014.

/s/Marilyn J. Jones
Marilyn J. Jones, CSR 0935, RPR
Federal Official Reporter
231 W. Lafayette Boulevard, Suite 123
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Date: October 23, 2014

