IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL ACTION NO. 05-53 (GBL)
	)	
AHMED OMAR ABU ALI,	)	
	)	
Defendant.	)	
	)	
	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on the Defendant Ahmed Omar Abu Ali's Motion to Suppress and Motion to Dismiss.

The defendant, Mr. Ahmed Omar Abu Ali, is charged under various statutes that preclude a citizen from rendering, or conspiring to render, assistance or support to a designated foreign terrorist organization. Mr. Abu Ali is charged with joining Al-Qaeda and participating in a plan to carry out terrorist activities within the United States, including a conspiracy to assassinate the President of the United States.[1]

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[1] The defendant, Mr. Abu Ali, is charged with the following offenses: Conspiracy to Provide Material Support and Resources to a Designated Foreign Terrorist Organization (Al-Qaeda), 18 U.S.C. § 2339B (Count 1); Providing Material Support and Resources to a Designated Foreign Terrorist Organization (Al-Qaeda), 18 U.S.C. § 2339B (Count 2); Conspiracy to Provide Material Support to Terrorists, 18 U.S.C. § 2339A (Count 3); Providing Material Support to Terrorists, 18 U.S.C. § 2339A (Count 4); Contribution of Services to Al-Qaeda, 50 U.S.C. § 1705(b); 31 C.F.R. § 595.204 (Count 5); Receipt of Funds and Services from Al-Qaeda, 50 U.S.C. § 1705(b); 31 C.F.R. § 595.204 (Count 6); Conspiracy to Assassinate the President, 18 U.S.C. § 1751 (Count 7); Conspiracy to Commit Aircraft Piracy, 49 U.S.C. § 46502(a)(2) (Count 8); and Conspiracy to Destroy Aircraft, 18 U.S.C. § 32(b)(4) (Count 9).

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276

Mr. Abu Ali was arrested on June 8, 2003, in Saudi Arabia by the Saudi government in connection with an investigation of the Riyadh bombings that occurred in May, 2003. In his Motion to Suppress, Mr. Abu Ali asserts two principal arguments. First, he alleges that he was tortured while in Saudi custody and that the statements he allegedly made in detention are, therefore, involuntary and must be suppressed. Second, Mr. Abu Ali contends that the United States and the Saudi Government acted as partners or "joint venturers" in his arrest and lengthy detention in Saudi Arabia. He also argues that the Saudi government's search of his dormitory room in Medina and the search of his residence in Falls Church, Virginia, violated his Fourth Amendment rights against unreasonable searches and seizures. In his Motion to Dismiss, Mr. Abu Ali contends that because his arrest and lengthy detention were at the direction of the United States Government using the Saudi Arabia Government as a partner, joint venturer, or surrogate, the Indictment must be dismissed because the delay in his prosecution violates the Speedy Trial Act and his Sixth Amendment right to speedy trial.

The issues presented by these motions are set forth below. The defendant's motions are all denied because the Court, after having heard nearly fourteen days of testimony, is persuaded that the government has met its burden of proving that Mr. Abu Ali's statements were voluntary, and that the alleged defects in the aforementioned searches and Indictment do not violate Mr. Abu

Ali's rights under the Fourth or Sixth Amendments.

With regard to the defendant's Motion to Suppress, the issues before the Court are: (1) whether any incriminating statements allegedly made by the defendant during his time in Saudi Arabia were made "involuntarily" as a result of "gross abuse" and "inherently coercive conditions" and are therefore inadmissible under the Due Process Clause of the Fifth Amendment; (2) whether any incriminating statements allegedly made by the defendant were obtained by U.S. and Saudi officials in a manner that "shocks the conscience" of the Court and are therefore inadmissible under the Due Process Clause of the Fifth Amendment; (3) whether any incriminating statements allegedly made by the defendant during his time in Saudi Arabia were obtained through custodial interrogations either (a) by United States and Saudi officials acting together in a "joint venture" or (b) by Saudi officials acting as "agents" of the United States, and are therefore inadmissible because the defendant was not afforded his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966); (4) whether the search of the defendant's dorm room in Medina, Saudi Arabia, conducted by Saudi officials was unlawful because it lacked probable cause and therefore any evidence seized in that search should be suppressed; (5) whether the search of the defendant's home in Falls Church, Virginia, was authorized pursuant to information obtained from an unlawful interrogation of the defendant and therefore any evidence seized in that search should

be suppressed.

The Court denies the defendant's Motion to Suppress because it finds: (1) that the government has demonstrated by a "preponderance of the evidence" that any incriminating statements allegedly made by the defendant were "voluntary" and not the result of "gross abuse" or "inherently coercive conditions" and therefore that the statements are admissible evidence for trial; (2) that neither the conduct of U.S. nor Saudi law enforcement officials in the arrest, detention, or interrogation of the defendant "shocks the conscience" of the Court; (3) that (a) U.S. law enforcement officials did not act in a "joint venture" with Saudi officials in the arrest, detention, or interrogation of the defendant and (b) Saudi law enforcement officials did not act as agents of U.S. law enforcement officials, and therefore *Miranda* warnings were not required; (4) that Saudi law enforcement officials did not act in a "joint venture" with U.S. law enforcement officials when conducting their search of the defendant's dorm room in Medina, Saudi Arabia, and therefore that the Fourth Amendment is inapplicable to that search; (5) that there is no evidence that the warrant underlying the search of the defendant's home was unlawful or lacked probable cause.

With regard to the defendant's Motion to Dismiss, the issues before the Court are: (1) whether the conduct of United States and/or Saudi law enforcement officials in the detention and interrogation of the defendant "shocks the conscience" of the

Court in violation of the Due Process Clause of the Fifth Amendment and thus requires the Court to divest itself of jurisdiction and dismiss the Indictment; (2) whether the current prosecution of the defendant, following his two-year detention in Saudi Arabia, violates the Speedy Trial Act, 18 U.S.C. § 3161(b) (2000), and therefore requires dismissal of the Superseding Indictment; (3) whether the current prosecution of the defendant, following his two-year detention in Saudi Arabia, violates the defendant's Sixth Amendment right to a speedy, public trial and therefore requires dismissal of the Superseding Indictment; (4) whether the current prosecution of the defendant is a "presumptively vindictive response" to the habeas corpus petition filed by his parents on July 28, 2004, and therefore violates the defendant's due process rights under the Fifth Amendment.

The Court denies the defendant's Motion to Dismiss because it finds: (1) that neither the conduct of U.S. nor Saudi law enforcement officials in the arrest, detention, or interrogation of the defendant "shocks the conscience" of the Court; (2) that the government complied with the Speedy Trial Act because the criminal Indictment against the defendant was filed prior to his being taken into federal custody on federal charges, and therefore was filed within thirty (30) days of his arrest on federal charges as required by the statute; (3) that the Sixth Amendment right to speedy trial does not attach until the defendant has been indicted or arrested, and the defendant has

not been prejudiced by any pretrial delay since the time of his indictment on federal charges on February 3, 2005, and his subsequent arrest on February 21, 2005; (4) the current prosecution is within the prosecutorial discretion of the government and the defendant has not advanced sufficient evidence to establish prosecutorial vindictiveness on the part of the government.

For the foregoing reasons, the Court denies the defendant's Motion to Suppress and Motion to Dismiss.

I. BACKGROUND

A. Statement of the Case

On June 8, 2003, the defendant, Mr. Ahmed Omar Abu Ali, who is an American citizen from Falls Church, Virginia, was arrested in Medina, Saudi Arabia, based on information obtained by Saudi law enforcement officials that he was a suspected member of the al-Faq'asi terrorist cell located in Saudi Arabia. The defendant, who at the time was a student in Saudi Arabia, was held in Medina by the Saudi national security police, known as "the Mabahith," for several days, and his dorm room in Medina was searched by Saudi law enforcement officials. Following his detention in Medina, Mr. Abu Ali was transported to a Saudi detention facility in Riyadh, Saudi Arabia.

While at the facility in Riyadh, the defendant, upon interrogation by Saudi officials, allegedly made a number of

incriminating statements regarding his involvement with a number of terrorist plots. The Mabahith agreed to a U.S. government request to allow the Federal Bureau of Investigation ("FBI") and the U.S. Secret Service ("Secret Service") to provide questions for the defendant and to observe an interrogation of him through a two-way mirror. On June 15, 2003, FBI officials observed the defendant when he was interrogated yet again by Saudi law enforcement officials and allegedly made more incriminating statements and admissions. On July 18, 2003, the defendant allegedly made out a handwritten confession which he was videotaped reading on July 24, 2003.

In September 2003, the FBI interrogated the defendant without giving him *Miranda* warnings. Although Mr. Abu Ali allegedly made incriminating statements during the course of those interrogations, the government has indicated that it does not plan to use any statements obtained from those interrogations in its case-in-chief.

The defendant, through his Motion to Suppress and Motion to Dismiss, moves the Court to exclude all of the incriminating statements allegedly made by him because he alleges, among other things, that he was (1) tortured by Saudi officials to elicit those statements and (2) denied his constitutional rights under *Miranda*.

Among his allegations of torture, the defendant maintains that Saudi officials: (1) "whipped" him on his back; (2) slapped

him in the face and pulled on his beard, ears, and hair; (3) kicked him in the stomach; (4) subjected him to sensory deprivation by placing him in a cell that was fully and continually lit and by interrogating him an excessive number of times, typically beginning late at night and continuing into the following morning; (5) chained him to the ground so that he was forced to stay in a crouching position; and (6) chained him with his hands above his head for a long period of time.

B. Findings of Fact and Conclusions of Law in Support of the Court's Rulings

In ruling upon the Motion to Suppress and the Motion to Dismiss, the Court is called upon to review all of the evidence presented in the case, including witness testimony, and to make findings of fact and conclusions of law concerning a number of issues. In this case, the Court must make a primary determination as to whether the incriminating statements allegedly made by the defendant were made "voluntarily" and therefore whether those statements will be admissible evidence at trial.

The Court makes the following findings of fact and conclusions of law after having had an opportunity to consider the witnesses' testimony, consider their demeanor on the stand, and observe the contrasts in their demeanor and the consistencies and inconsistencies in their testimony. The Court will not

summarize in detail all of the various witnesses' testimony in this Opinion. Instead, the Court will make a general review of the facts pertinent to the Motion to Suppress and the Motion to Dismiss.

1. The Government's Evidence Surrounding the Defendant's Arrest and Detention.

Prior to the suppression hearing, the Court heard seven (7) days of live testimony from several Saudi government officials who were involved in the arrest and detention of Mr. Abu Ali. The witnesses appeared via satellite realtime video and audio transmission from Saudi Arabia to the federal courthouse in Alexandria pursuant to Federal Rule of Criminal Procedure 15 and a protective order. For security reasons, the witnesses were permitted to testify under oath via pseudonyms on a split screen television set up where they could be observed and heard by the defendant, his counsel, and prosecutors in Alexandria, Virginia. The court reporter in Alexandria made a realtime transcription of the testimony. Simultaneously, defense counsel, prosecutors, and an Arabic translator were present with the witnesses in Saudi Arabia.

First, the Saudi government officials (hereinafter "Government officials") testified that two compounds in Riyadh were bombed, killing thirty-nine (39) people, including nine (9) Americans. The Government officials investigated this terrorist

incident and developed a list of the nineteen (19) "most wanted" individuals alleged to be associated with the bombing and the terrorist group Al-Qaeda. Government officials reported that a detained suspect whom they had questioned identified "Reda" as a member of the Al-Qaeda cell who remained at large. This suspect later identified a photograph of Mr. Abu Ali from a Medina University student photo book. The suspect said that "Reda" was a student at the Islamic University and was an American or European citizen of Arabian background. He stated that "Reda" was either Syrian or Jordanian.

Government officials then received an order to arrest "Reda," and they went to the Islamic University and met with university officials to locate "Reda." The Government officials' order was to arrest "Reda" and to search him and his belongings. Later a written order was issued. The Arresting Officer testified that his orders did not include interrogating the suspect. Rather, he was only to arrest, search, detain, and send "Reda" to Riyadh for interrogation.

The Arresting Officer went to Mr. Abu Ali's classroom after being directed there by the school registrar. The Arresting Officer said he did not go inside the classroom. He asked a university official to ask Mr. Abu Ali to come outside the classroom building. Mr. Abu Ali exited the classroom building where seven government officers were present. The government officers were not wearing police uniforms nor displaying weapons. The Arresting Officer testified that he told Mr. Abu Ali that the

officers had a subject they wanted to talk to him about. The Arresting Officer put his hand on Mr. Abu Ali and escorted him to the waiting police cars. Mr. Abu Ali was handcuffed as he got into the car. Mr. Abu Ali rode in the backseat of a car between two officers. Mr. Abu Ali was taken to his dormitory room where his belongings were gathered up. Mr. Abu Ali was not mistreated in the car.

At Mr. Abu Ali's dormitory room, the Government officials searched the room and gathered his belongings. Mr. Abu Ali was present and pointed out his belongings to the Government officials. Ex. 27 at 87 (July 11, 2005 hearing). The Arresting Officer testified that it is customary in Saudi Arabia to search a suspect's residence when the suspect is taken in for questioning. Mr. Abu Ali was then transported to the Medina field office detention center. The Arresting Officer denies using or observing anyone else using physical force of any kind against Mr. Abu Ali. The Arresting Officer denied having any orders to beat Mr. Abu Ali, to whip him, or to apply any physical force to him. The Arresting Officer testified that they have orders not to use force against suspects, but to treat them with respect. He reported that Mr. Abu Ali was treated with respect and that Mr. Abu Ali did not resist and was respectful. Mr. Abu Ali's testimony on his treatment up to the time he arrived at the Medina facility is consistent with the testimony of the Arresting Officer.

The Arresting Officer was specifically questioned about

whether the United States government provided his government with information about "Reda" or Mr. Abu Ali, or if the United States government or law enforcement was involved in supplying information to arrest Mr. Abu Ali, and the Arresting Officer said "no." None of the Saudi government officials or the FBI agents who testified offered evidence that the United States was involved in the Saudi government's decision to arrest and to detain Mr. Abu Ali.

2. Mr. Abu Ali'S Detention in Medina, Saudi Arabia.

The Lieutenant Colonel-Warden ("Lieutenant Colonel," "Warden") of the Medina facility where Mr. Abu Ali was detained adamantly denied that Mr. Abu Ali was tortured, beaten, deprived of sleep, or questioned in Medina. He stated that the Government has a policy against torture and physical abuse of prisoners or suspects, and that the policy is enforced. He denied that Mr. Abu Ali was abused at the Medina detention facility.

The Warden described the detention facility as a residential type building. Each cell has a bed, mattress, blanket, pillow, prayer rug, and a Koran. The Warden testified that for the first two days or so, lights are kept on at all times and there are cameras in each room so the guards can observe the prisoners. There are no tapes of Mr. Abu Ali's stay because the tapes are routinely recorded over. Three meals are provided each day, and prisoners can select from several meal choices. Because there is no kitchen in the building, the prison has to send out for food

for the facility.

3. Saudi Officials Deny that Mr. Abu Ali was Interrogated in Medina, Saudi Arabia.

The Lieutenant Colonel testified that he was not ordered to question Mr. Abu Ali and that neither he nor anyone on his staff interrogated Mr. Abu Ali in Medina. He stated that when he first observed Mr. Abu Ali two hours after he had entered the prison, he did not see any bruises or signs that Mr. Abu Ali was in distress. The Lieutenant Colonel's testimony held up under cross-examination, and the Court finds no reason to discredit his testimony.

4. Mr. Abu Ali's Detention in Riyadh, Saudi Arabia.

Mr. Abu Ali was transported to the Riyadh prison, and the statements in controversy in the instant Motions were allegedly made by him there on June 11, 12, 15, and July 24, 2003.

The Brigadier General and the Captain of the prison testified about their contact with Mr. Abu Ali in Riyadh. The Brigadier General and the Captain were Mr. Abu Ali's principal interrogators in Riyadh. The sum and substance of the Brigadier General and the Captain's testimony coincide in several material respects.

First, the Brigadier General and the Captain were questioned extensively by both sides concerning Mr. Abu Ali's claims that he

was tortured, beaten, deprived of sleep, food, water, denied use of a bathroom or a mattress, and use of other facilities in Medina or Riyadh in order to secure statements. Each adamantly denies that they directed, participated in, or were aware of any government official torturing Mr. Abu Ali or engaging in any such behavior.

Second, the Brigadier General and the Captain deny that the United States government had any role in the arrest and detention of Mr. Abu Ali. As far as they know, the Saudi investigation and roundup of the nineteen individuals most wanted in connection with the Riyadh bombings produced information that led to Mr. Abu Ali's arrest. They admit that in June 2003, they were ordered to conduct some questioning of Mr. Abu Ali so the FBI could observe Mr. Abu Ali and to receive some questions from the FBI to ask of Mr. Abu Ali.

Third, the Brigadier General and the Captain testified that when they met with Mr. Abu Ali on the first night, he appeared to be tense and anxious about being arrested. Mr. Abu Ali told them he feared that the Saudis would turn him over to the United States government. Each officer testified that they tried to assure Mr. Abu Ali that their investigation only concerned the Riyadh bombings and the Al-Qaeda cell which was operating in Saudi Arabia.

The Brigadier General testified that upon the defendant's arrival in Riyadh, he was kept in a solitary cell to keep him away from other terror cell suspects and to prevent the cell

members from influencing each other to refuse to cooperate. Mr. Abu Ali was initially questioned in a conference room at the jail by the Captain and the Brigadier General. The interrogation occurred in the evening after evening prayers and continued into the early morning hours because it is very hot during the day, as is the custom in Saudi Arabia. The practice of questioning and working during the night was not an attempt to deprive Mr. Abu Ali of sleep. The Court notes that many of our court sessions in this case were conducted during what are the evening hours in Saudi Arabia.

In the first and second interrogation sessions with Mr. Abu Ali, he was nervous and upset, but respectful. Mr. Abu Ali sat in a chair at the table. According to the Brigadier General, Mr. Abu Ali sat straight up, and rocked back and forth, in the chair. The Brigadier General and the Captain did not detect any bruises or sense any discomfort in the defendant's physical condition. Neither the Brigadier General nor the Captain observed the defendant hold himself in a way to guard his back, as he might if his back were injured or bruised. On the contrary, the Brigadier General and the Captain reported that when the defendant relaxed, he rocked with his back firmly in the chair. The Captain also reported that, at one point, Mr. Abu Ali sat with one foot on the chair and swivelled. The Brigadier General and the Captain testified that Mr. Abu Ali was not blindfolded or handcuffed during interrogations. They stated that Mr. Abu Ali was granted breaks, access to food, water, a bathroom, and refreshments

during breaks in questioning.

The Captain testified that during the second session when Mr. Abu Ali began his lengthy and detailed confession, Mr. Abu Ali "sprung information like a springing water balloon." The session lasted nearly seven hours because Mr. Abu Ali was very forthcoming. The Captain said that once he confronted the defendant with the names "Ashroff" and "Reda" and other information, Mr. Abu Ali asked, "Do you have al-Faq'asi? Did you arrest all of them?" The Captain falsely told Mr. Abu Ali that al-Faq'asi was in the room next door to the interrogation room. Mr. Abu Ali looked nervous. The Brigadier General testified that after this exchange, Mr. Abu Ali said that in the event the Saudis were to hand him over to the United States, he would deny his confession. The Brigadier General placated Mr. Abu Ali by telling him that the United States did not know about his arrest with the cell, and that he would be tried in Saudi Arabia with members of his cell. The Brigadier General assured Mr. Abu Ali that he would be treated fairly by his Muslim brethren. On cross-examination, the Brigadier General acknowledged that Mr. Abu Ali may expect, but he did not say, that as a Muslim, Mr. Abu Ali would expect to be treated fairly.

The Brigadier General admitted that he has threatened an inmate before. As the Court's notes indicate, he once tied a person to a tree for five minutes in connection with questioning. He denies engaging in such behavior in this case. To be sure, some of the testimony of the Captain was questionable. The

Captain said he never used force on a suspect. The Captain said he has never had a suspect refuse to be questioned by him or to sign a written confession statement log. He has been an interrogator for seven years, and, according to him, each person he questions confesses or gives a statement. Additionally, the warden from the Medina prison described the detention facility in Medina as a residential type building without a kitchen where the prisoners were permitted to order their meals.

5. The July 24, 2003, Videotape of Mr. Abu Ali Reading his Confession.

During the interrogation process, on July 24, 2003, Mr. Abu Ali was taken to an interrogation room and directed to read his written statement. The videotape was played for the Court, not to consider its content, but so that the Court could observe Mr. Abu Ali's demeanor during the reading. Mr. Abu Ali acknowledged in court that he did not know he was being videotaped when he read this statement. In Mr. Abu Ali's own words, his behavior on the videotape was "nuts." The Court concurs that the behaviors exhibited during the tape show noteworthy demeanor. During the tape, it is apparent that Mr. Abu Ali is under some stress because a person outside camera range is telling him to read the statement and observing him the whole time. Mr. Abu Ali appears at times to be relaxed, smiling, and laughing. He seemed to laugh at a mention of "Al-Qaeda" and yawns at one point in the

videotape. Mr. Abu Ali acknowledged in his testimony that he ad libbed certain statements that are not in the prepared text spontaneously and without orders from his interrogators. He asked for water and received it while reading the statement. In two instances, he exhibited unusual behavior. In one place, he acknowledges receiving certain training to conceal his identity and he laughs and says something to the effect of, "Well I guess that did not work out" or "I guess we see how that worked out." Additionally, he was reading a statement when he spontaneously, without direction, simulated cocking a weapon or automatic type rifle.

6. The Live Testimony in Alexandria, Virginia.

The Suppression Hearing testimony also included live testimony from a number of witnesses in this Court beginning October 11, 2005 and ending on October 20, 2005. Again, the Court will not recount in detail all of the witnesses' testimony. Rather, the Court will generally review certain testimony that is most pertinent to the instant Motions.

Special Agent Maria Joycs:

Agent Maria Joycs is a supervisory special agent with the FBI assigned to the Counterterrorism Unit. She was deployed to Riyadh, Saudi Arabia in May 2003 to investigate the bombings that occurred on May 12, 2003, in which nine (9) American citizens

were killed. She testified that no one from the United States had anything to do with Mr. Abu Ali's arrest and detention. On June 10, 2003, Agent Joycs sent an e-mail to her supervisors, based on information received from a memorandum from the Mabahith on June 9, 2003, informing them that the Mabahith were interrogating Mr. Abu Ali.

The Mabahith memorandum to the United States stated that the Saudis had a lead that an American citizen detained in Saudi Arabia had a plan for a terrorist operation. The June 9, 2003, memorandum identified Mr. Abu Ali as the detainee and informed the FBI that his interrogation was underway. The memorandum did not describe any terrorist plan. Upon learning of his arrest, the FBI sought access to Mr. Abu Ali. Agent Jocys wrote a memorandum to the Saudi officials requesting an interview with Mr. Abu Ali on June 10, 2003. *See* Gov't Ex. 72. The Mabahith responded on June 12, 2003 that the FBI may see Mr. Abu Ali "soon," which Agent Joycs interpreted as a denial. *See* Gov't Ex. 6S. Agent Jocys said she first heard of a report that Mr. Abu Ali might have a plan involving the President of the United States on June 13, 2003. FBI headquarters directed FBI Agent and Legal Attache Eduardo Sanchez to seek to secure immediate access to Mr. Abu Ali, to investigate the allegations to determine if the plan was imminent, and to determine whether Mr. Abu Ali was associated with Al-Qaeda. Again, the Saudi government denied the FBI direct access to Mr. Abu Ali.

The June 15, 2003, Interrogation of Mr. Abu Ali and the FBI-Secret Service Role.

The Mabahith refused to allow the FBI and Secret Service to interrogate Mr. Abu Ali despite requests through various channels. However, the Saudi government agreed to allow the FBI and Secret Service to observe its interrogation of Mr. Abu Ali on June 15, 2003, and to provide questions for Mr. Abu Ali. In preparation for this interrogation, Agent Joycs, Agent Glenn Posto, and others in the Legal Attache's (hereinafter "Legat") office prepared a list of questions they wanted the Mabahith interrogators to ask Mr. Abu Ali. *See* Gov't Exs. 7S-8S. Agent Joycs did not witness the interrogation on June 15, 2003. She stated that the FBI agents who drafted the questions did not consider using the Mabahith to avoid the requirements of *Miranda*. There was no discussion of *Miranda* in their preparation of questions for Mr. Abu Ali. She viewed the interview as an intelligence gathering interview, rather than a criminal investigation, meant to determine if there were any imminent threats of terrorism that could be prevented. At that time, Agent Jocys was unaware of any plan to prosecute Mr. Abu Ali in the United States, and Mr. Abu Ali was in Saudi custody in connection with a Saudi investigation of the Riyadh bombings.

On cross examination, defense counsel challenged Agent Joycs about the extent of the FBI's cooperation with the Saudi

officials. Agent Joycs stated that the FBI worked independently, but that the Saudi officials arranged Mr. Abu Ali's interrogation. Defense counsel also challenged whether Agent Joycs knew about Mr. Abu Ali's detention on June 8, 2003, because the Legat's office received notice of his arrest from the Saudis on June 8, 2003, and Agent Joycs admitted that she got her information from the Legat's office on June 9, 2003. Her e-mail to headquarters on the morning of June 10, 2003 corroborates when she learned of Mr. Abu Ali's arrest. *See* Gov't Ex. 4S. In addition, Agent Joycs admitted that she did not observe the June 15, 2003, interrogation. Also, when pressed about whether she gave *Miranda* warnings to Mr. Abu Ali, she distinguished between an intelligence interview and a criminal investigation interview.

Agent Jocys reported that when the FBI met with the Saudi Brigadier General prior to the June 15, 2003, interrogation, the Brigadier General assured the FBI that Mr. Abu Ali would not walk free and that Mr. Abu Ali would be charged with various terrorism related offenses. Agent Jocys testified that the Brigadier General was "adamant that this is not the time to introduce American interviewers to Abu Ali. It is his belief that Abu Ali's cooperation would dry up. We stressed the need to have access to the interrogator to discuss information/questions-the Brig[adier] General will make this happen as soon as they possibly can." *See* Gov't Ex. 10S. Agent Jocys acknowledged that, in connection with an application for a search warrant for Mr. Abu Ali's home in Falls Church, Virginia, Agent Sanchez

stated in an e-mail that "the Saudis will do what we ask, but prefer not to give information that will become public." *See* Def.'s Ex. 1 (AA426).

Special Agent Glenn Posto:

Agent Posto is a special agent with the FBI assigned to the Counterterrorism Unit. He was deployed to Riyadh, Saudi Arabia, in May 2003 to investigate the bombings that occurred on May 12, 2003, in which nine (9) American citizens were killed. He stated that he learned about Mr. Abu Ali's detention on June 14, 2003, and was assigned to observe the Mabahith's interrogation of Mr. Abu Ali on June 15, 2003. To prepare for this interrogation, he prepared (along with Agent Joycs and the staff of the Legat's office) a thirteen (13) question memo (with approximately fifty-six (56) parts and subparts) for the Mabahith to ask Mr. Abu Ali during the interrogation. The Mabahith informed him, through an interpreter, that there were too many questions and they cut the thirteen (13) questions down to six (6), all of which the Mabahith asked Mr. Abu Ali during the interrogation.

Agent Posto, Agent Fritz Donner, Language Specialist Elias Machanaly, and two Mabahith officers were in one room behind a one-way mirror observing the interrogation. The language specialist could hear the interrogation over a cell phone and the language specialist translated for the group.

During the interrogation, Agent Posto observed Mr. Abu Ali's demeanor. Agent Posto observed Mr. Abu Ali enter the

interrogation room. He testified that Mr. Abu Ali walked without a noticeable limp or discomfort. Agent Posto further testified that Mr. Abu Ali did not appear to be favoring any parts of his body or have any visible injuries. Agent Posto recounted that Mr. Abu Ali seemed relaxed, smug, and laughed with the Mabahith interrogator. Mr. Abu Ali sat in the chair with his back against the chair. At times, he slid down in the chair, he leaned forward, and he sat forward in the chair. Mr. Abu Ali did not appear to be in any discomfort. Agent Posto did not observe a blindfold, handcuffs, or shackles on Mr. Abu Ali when Mr. Abu Ali entered the interrogation room. Mr. Abu Ali did not make any complaints about his confinement that Agent Posto could discern.

Agent Posto stated that the FBI agents did not have any discussions about how to circumvent Mr. Abu Ali's *Miranda* rights. He stated that this was an intelligence interview rather than a criminal interview. He also stated that it was the State Department's job to assist with consular visits, not the FBI's responsibility.

Agent Posto reported that the interrogation went on for about two hours with one ten to fifteen minute break. Mr. Abu Ali was given water. The Brigadier General left the interrogation room once to come over to consult with the FBI and Secret Service at the end of the interview. No FBI or Secret Service agent questioned Mr. Abu Ali or was presented to Mr. Abu Ali on June 15, 2003. Agent Posto denied posing any questions through the Brigadier General about the so-called "Paintball

Case" defendants, including Benkala and others.

Elias Machalany:

Mr. Elias Machalany, a language specialist for the FBI, testified about his observation of Mr. Abu Ali's interrogation on June 14 or 15, 2003. Mr. Machalany testified that on either June 14 or 15, he learned from two special agents in the Legat's office that an American, Mr. Abu Ali, had been arrested by the Saudis. Other agents prepared a list of approximately thirteen (13) questions (with approximately fifty-six (56) parts and subparts) that they wanted the Saudis to ask Mr. Abu Ali. Mr. Machalany then translated those questions into Arabic. The Saudis responded that the list of questions was too long, and asked the FBI to submit fewer questions. The FBI then cut the list of questions to six (6), which they gave to the Saudis.

On the night of June 15, 2003, Mr. Machalany was one of three (3) American FBI employees who traveled to a Riyadh prison and observed an interrogation of Mr. Abu Ali by two officers of the Saudi Mabahith. Mr. Machalany and two FBI special agents, Posto and Donner, watched the entire interrogation from behind one-way glass. The interrogation was conducted by one Saudi, who was dressed similarly to Mr. Abu Ali, and another Saudi was present in the room. Mr. Machalany testified that neither appeared to be armed. Around or after midnight, the Saudis brought Mr. Abu Ali into the interview room and began the interrogation. Mr. Machalany testified that from his vantage

point behind the glass, he could see Mr. Abu Ali when the door to the interview room opened. At that point, Mr. Abu Ali was handcuffed. He saw the Saudis remove the handcuffs, and Mr. Abu Ali then entered the room under his own power, without assistance. Mr. Abu Ali wore a thobe - a long robe-like garment, a cap, and he appeared to have a smirk on his face.

Mr. Machalany testified that Mr. Abu Ali exhibited no pain or discomfort when he entered the room, or at any point during the interrogation. At no point in the interrogation did Mr. Abu Ali complain about his treatment while in Saudi custody, either in Riyadh or Medina. The interrogator's tone of voice was normal, conversational, and the interrogator did not threaten Mr. Abu Ali. When the interrogator asked Mr. Abu Ali to stop fidgeting, he did so. Mr. Machalany did not observe any cuts or bruises on Mr. Abu Ali, although he noted in response to a question on cross-examination that he did not see Mr. Abu Ali shirtless, and he did not see Mr. Abu Ali's back. Mr. Machalany also testified that Mr. Abu Ali frequently fidgeted in his seat throughout the interrogation, sometimes sitting on his feet, until the interrogator asked him to stop. Although on direct examination Mr. Machalany had testified that Mr. Abu Ali was relaxed and comfortable throughout the interrogation, on cross examination he conceded that one possible explanation for his fidgeting was that Mr. Abu Ali was in pain. However, Mr. Machalany also testified that Mr. Abu Ali did not grimace or make any facial expression as he moved around in the chair.

Mr. Machalany testified that before the interview began, Mr. Abu Ali asked the interrogator whether the U.S. government knew he was in Saudi custody. The interrogator responded by saying something to the effect of, "Like I told you before, I will not let the Americans know you are here." Mr. Machalany testified that he interpreted this comment to mean that Mr. Abu Ali did not want the United States to know he was in custody.

Mr. Machalany testified that the Saudi Mabahith interrogator asked many questions about locations in Saudi Arabia unrelated to those provided by the FBI during the course of the interview, which lasted about an hour. The interrogator asked the six questions provided by the FBI, but Mr. Machalany testified that he did not ask any follow-up questions. Although Mr. Machalany testified that in January 2005 he told someone from the U.S. Attorney's Office that the interrogator had asked follow-up questions, he testified that he is now "100 percent certain" that he was mistaken when he said that. Mr. Machalany noted that although he did not participate in any other interviews during his 52-day stay in Saudi Arabia, he subsequently took part in "hundreds" of interviews in Iraq, and that after making that representation to the U.S. Attorney's Office, he realized that his statement about the follow up questions was incorrect.

Alex Daghestani:

Mr. Alex Daghestani, a language analyst for the FBI, testified about various documents that he helped prepare for the

government by translating them from Arabic into English. He testified that before the government uses a translated document in court, the person who first translated it discusses his or her work with an "editor." A third person then also reviews the original document and the translated document. If there is a disagreement about an aspect of the translation, Mr. Daghestani testified that the opinion of the person who will testify about the document in court will usually be followed.

Mr. Daghestani testified that he did not translate Mr. Abu Ali's videotape confession, but that he certified it. Mr. Daghestani also testified that some items that appear in brackets in the transcript are descriptions of Mr. Abu Ali's demeanor, which were made by the person who translated the video and with which Mr. Daghestani concurs. Defense counsel also asked Mr. Daghestani why the transcript did not include a voice saying, "read," in Arabic at the 1 minute and 20 second mark of the video. Mr. Daghestani testified that he did not recall whether or not he heard a voice saying "read" at that point in the video.

Charles Glatz:

Mr. Charles Glatz, a consular officer for the U.S. Department of State, testified about a series of meetings he had with Mr. Abu Ali while he was in Saudi custody. As a consular officer in Saudi Arabia, Mr. Glatz frequently met with Americans who had been arrested by Saudi authorities. On June 11, 2003, he learned from the FBI's Legat office that Mr. Abu Ali, an American

citizen, had been arrested by the Saudi Mabahith. Following his normal practice in such situations, Mr. Glatz prepared a request to Saudi officials to meet with the detained American. Mr. Glatz testified that typically it would take three to four weeks for the Saudis to allow him to visit Americans who had been detained by the Mabahith. On July 8, 2003, he was allowed the first consular access to Mr. Abu Ali.

Mr. Glatz testified that one of his priorities in a visit with detained Americans is to gauge the citizen's well-being, and determine if the citizen is being mistreated. Mr. Glatz had previously visited two (2) Americans arrested by the Mabahith (both were arrested before September 11, 2001) while they were in custody, and neither had complained of mistreatment. However, on cross-examination, Mr. Glatz testified that he was aware that Canadian and British citizens arrested at the same time as one of the Americans had later claimed they were tortured by Saudi officials while they were in custody.

Mr. Glatz testified that during their first meeting on July 8, 2003, he found no indication that Mr. Abu Ali was being mistreated. Mr. Glatz brought Mr. Abu Ali a letter from his mother that Mr. Glatz read to him, as the Mabahith official watching the meeting would not let Mr. Glatz give the letter to Mr. Abu Ali. Likewise, the Mabahith official would not allow Mr. Glatz to give Mr. Abu Ali a list of local attorneys. Mr. Glatz did not observe any signs that Mr. Abu Ali had been physically harmed. Although Mr. Abu Ali was wearing a thobe, no cuts or

bruises were visible on his hands, face, neck, or feet. He appeared physically fit and had no problem standing up, taking several steps toward Mr. Glatz, shaking hands, or sitting down. Mr. Glatz said he questioned Mr. Abu Ali about his treatment in custody. Mr. Abu Ali said that the lights were kept on 24 hours a day, but in response to a question from Mr. Glatz, Mr. Abu Ali did not say that this practice had caused him any sleep deprivation. Mr. Glatz also testified that Mr. Abu Ali told him that his treatment had been "excellent," "kind," and "humane" - words that Mr. Abu Ali himself used. Mr. Glatz testified that the meeting took place in a reception type area where there were sofas and chairs. Mr. Abu Ali was seated on a sofa, and a Saudi Government official was in the room watching and taking notes. Prior to the meeting, Saudi Mabahith officials advised Mr. Glatz not to discuss the case with Mr. Abu Ali. Mr. Glatz tried to have Mr. Abu Ali review and sign a Privacy Act waiver of information so the State Department Consul could contact Mr. Abu Ali's family and let them know of the visit, but the Mabahith officer present would not allow Mr. Abu Ali to sign it. Mr. Abu Ali was instructed prior to the Consul meeting not to discuss his treatment and not to sign anything concerning his rights. Mr Glatz wrote reports of his consular visits with Mr. Abu Ali.

Mr. Glatz testified that in his subsequent visits with Mr. Abu Ali on August 11, September 6, October 5, November 4, and February 17, he asked similar questions about the Saudis' treatment of Mr. Abu Ali. During each of those visits, he heard

no complaints of mistreatment from Mr. Abu Ali and did not observe any physical indications that Mr. Abu Ali might have been mistreated. On cross-examination, Mr. Glatz testified that he has never met an American citizen who has been tortured by the Saudis.

On cross-examination, Mr. Glatz testified that during their first visit, Mr. Abu Ali told him that he wanted to be treated as an American citizen. Mr. Glatz noted that the biggest problem was that Mr. Abu Ali was being "held incommunicado." Thus, even if he had a lawyer, under the Saudi system an attorney could not have visited him during the investigation. Mr. Glatz testified that if Mr. Abu Ali had been charged by the Saudis following their investigation, the United States Department of State would have helped him obtain a lawyer. Mr. Glatz stated that, in the September 2003 visit, Mr. Abu Ali selected a lawyer but was not allowed to contact the lawyer and had no funds to hire a lawyer. The State Department does not pay for lawyers for United States citizens detained abroad.

Despite Mr. Abu Ali's statement about wanting to be treated as an American citizen, Mr. Glatz testified that during his visit in either September or October, Mr. Abu Ali also asked the consular officer, "Why are you asking me all these questions [about the conditions of my confinement]? I don't have a problem with Saudi Arabia; I have a problem with the U.S. government." On May 10, 2004, Mr. Glatz went to the Saudi prison facility to meet with Mr. Abu Ali, but the prison director told Mr. Glatz

that Mr. Abu Ali did not want to see him. Mr. Glatz testified that he responded that he wanted to hear that from Mr. Abu Ali himself, but the prison director responded that he could not use physical force to bring Mr. Abu Ali from the cell block to see Mr. Glatz. The prison director also told Mr. Glatz that Mr. Abu Ali was considering "going to Sweden" if he was allowed to leave Saudi Arabia.

On cross-examination, Mr. Glatz testified that he had exchanged e-mails with Mr. Abu Ali's parents while he was detained in Saudi Arabia. Because the defense had not previously been told of the existence of such potential *Jencks* material, both parties attempted to locate copies of the e-mails. Several e-mails were produced that afternoon, both by Mr. Abu Ali's parents and the government. In one e-mail, the parents told Mr. Glatz that they were concerned because their son had told them that he had been abused to the point that his hands hurt so much he could not pick up a pen. In a reply e-mail, Mr. Glatz told the parents that, during his visits with Mr. Abu Ali, he had neither seen physical evidence of abuse on their son nor been told by Mr. Abu Ali of such abuse in response to questions about his treatment.

During Mr. Glatz's September 6, 2003, and October 6, 2003, consular visits, Mr. Glatz said there were a couple of five-second intervals when he and Mr. Abu Ali were alone and out of earshot of the Mabahith official observing the meetings. Mr. Abu Ali did not make any private complaint to him at these times.

Mr. Abu Ali testified he recalled at least one of these occasions of privacy. Mr. Abu Ali testified that while he considered making a complaint, he decided not to complain because he was afraid and it did not appear that the United States consul could do anything to help him. Mr. Abu Ali recalled that the consul could not secure a pen and piece of paper for him, could not arrange a phone call, or get him a lawyer, and so he saw no point in complaining to the consul about physical abuse. Mr. Glatz noted that Mr. Abu Ali reported that he was returned to general population in the prison by August 11, 2003, and that he was enjoying interacting with others.

During the October 6, 2003, consular visit, Mr. Glatz said that Mr. Abu Ali informed him that he had been questioned and threatened by the FBI and Secret Service. After the FBI and Secret Service questioning, he was held in solitary confinement. Mr. Abu Ali told Mr. Glatz that the FBI and Secret Service had presented him with three options: (1) cooperate and he would be prosecuted in Saudi Arabia and serve a life sentence; (2) cooperate and he would be prosecuted in Saudi Arabia and after that prosecution, he would be prosecuted in the United States; and (3) he could be returned to the United States and declared an "enemy combatant" and he would be held in prison indefinitely. Mr. Abu Ali asked Mr. Glatz if he could be tried in Saudi Arabia. Mr. Abu Ali also gave Mr. Glatz an oral Privacy Act waiver so that his family could receive information about the United States Consul's visits. *See* Gov't Ex. 15S.

During the November 4, 2003, consular visit, Mr. Abu Ali asked Mr. Glatz how he could go about renouncing his United States citizenship. Mr. Abu Ali wanted information about the process. Mr. Abu Ali remained in solitary confinement from September, 2003, until January, 2004. Mr. Abu Ali reported he was allowed to call his parents every fifteen days after August 2003.

Gilbert Sperling:

Gilbert Sperling, a retired foreign service officer, testified about a roughly one-hour meeting he had with Mr. Abu Ali on August 31, 2004. Although Mr. Sperling is retired, he is on a list of retired officers who are called upon by the Department of State for temporary duty when there is a staffing gap. From late May, 2004, to early September, 2004, Mr. Sperling was serving in such a capacity at the United States Embassy in Saudi Arabia. While he was there, Mr. Sperling conducted one of the routine monthly consular visits with Mr. Abu Ali during his detention.

Before his visit to the prison, Mr. Sperling read the Embassy's file on Mr. Abu Ali, which said that the Saudi Foreign Ministry had described Mr. Abu Ali as having become "somewhat belligerent towards the guards," and stated that "his living conditions were more like an apartment . . . than a cell," and that he had not signed a Privacy Act waiver. During his visit, Mr. Sperling found Mr. Abu Ali to be relaxed, and did not find

him fearful, tired, or disoriented. He did not see any indications of physical mistreatment or abuse. Mr. Sperling testified that when he asked about his treatment, Mr. Abu Ali said his only complaint was that he was not a free person. He also testified that there "seemed to be a friendliness" between Mr. Abu Ali and the prison officials.

Although Mr. Abu Ali's first question of Mr. Sperling was whether he knew of any developments in his case, he testified that before the visit began, he had been asked by a Saudi prison official not to discuss details of the case with Mr. Abu Ali. On cross-examination, Mr. Sperling said he complied with that request, and that it was easy to do so because he did not have any new information to provide, anyway. Instead, they discussed Mr. Sperling's work in Mexico and the country of Georgia. Mr. Sperling was impressed by Mr. Abu Ali's knowledge of world politics and geography. Mr. Sperling testified that other than their visit, which lasted about one hour, he has had no contact with Mr. Abu Ali.

Luke Kuligoski:

FBI Special Supervisory Agent Luke Kuligoski testified about his participation in the interrogation of Mr. Abu Ali by members of American law enforcement while he was in Saudi custody. Agent Kuligoski traveled to Saudi Arabia in September 2003 to interrogate Mr. Abu Ali. Agent Kuligoski testified that it was the first time members of American law enforcement had met with

Mr. Abu Ali.

During their meetings, Agent Kuligoski observed no noticeable marks on Mr. Abu Ali. He testified that Mr. Abu Ali looked healthy and physically fit, did not appear to favor any parts of his body, and seemed relaxed and comfortable.

Agent Kuligoski also testified that Mr. Abu Ali seemed very interested in what might happen to him and stated that he would prefer to stay in Saudi Arabia. He testified that Mr. Abu Ali said he was afraid of being tried in the United States because he did not want to be the first U.S. citizen arrested after the attacks of September 11, 2001. Mr. Abu Ali never expressed any interest in returning to the United States, Agent Kuligoski testified.

On cross-examination, Agent Kuligoski testified that Agent Barry Cole told him that at his first solo meeting with Mr. Abu Ali in Saudi Arabia, Mr. Abu Ali had said he did not want to talk without a lawyer present. Mr. Kuligoski also said that he was aware that Mr. Abu Ali had previously requested a lawyer.

Before he traveled to Saudi Arabia, Agent Kuligoski visited Mr. Abu Ali's parents and told them that he was going to Saudi Arabia to "speak with their son." He asked the parents if they wanted him to take anything to their son, and they gave him a letter and a picture of Mr. Abu Ali's younger brother.

Agent Kuligoski testified he participated in the questioning of Mr. Abu Ali. Mr. Abu Ali did not appear to be in any discomfort and there were numerous occasions when no Mabahith

officer was present in the interview. Agent Cole delivered the letter from Mr. Abu Ali's parents and the photograph. Agent Kuligoski then wrote down Mr. Abu Ali's claim that he had given the Saudis false information because he was tortured. *See* Gov't Ex. 23S. The statement in Agent Kuligoski's notes reads, "He said he wrote a lot of things that weren't true, because he said the Saudis used torture techniques." Agent Kuligoski said that Mr. Abu Ali called it "torture techniques" and that it was a Muslim matter and the agent would not understand. Agent Kuligoski also says that Mr. Abu Ali also told him that he "enjoyed" his time in the Saudi prison interacting with other inmates and playing soccer. In response to a question from the Court, Agent Kuligoski defined "torture" as any duress - including deprivation of food or sleep and beatings - that is used "to get someone finally to break down and talk." Agent Kuligoski testified that he does not recall the context of Mr. Abu Ali's assertion that the Saudis used "torture techniques" upon him, but says that when Agent Cole asked Mr. Abu Ali to expand on that claim, he did not. Mr. Abu Ali did not complain about beatings, being punched or kicked, having his hair or beard pulled, being deprived of sleep, or being hung from the ceiling in his cell with his hands above his head.

Agent Kuligoski testified that, as he was gathering his materials up to leave at the end of the FBI interview on September 18, 2003, and only he and Mr. Abu Ali were in the room, Mr. Abu Ali asked for a pen and a piece of paper to write a note

to his family. Agent Kuligoski gave Mr. Abu Ali paper a pen to write a letter to his parents, and Agent Kuligoski said he would deliver it to his father as Mr. Abu Ali requested. Mr. Abu Ali wrote a letter to his family without any prompting or orders from him or Agent Cole. *See* Gov't Ex. 22. Mr. Abu Ali acknowledged that, in the letter, he referred to Agent Kuligoski as "a great man" and that " he was not under any pressure" to write the letter to his family. It was Mr. Abu Ali's own decision to include the reference to Mr. Kuligoski and to the lack of pressure.

Agent Kuligoski was also responsible for helping to prepare the affidavit for the search warrant concerning Mr. Abu Ali's Falls Church, Virginia, home and for executing that search. Agent Kuligoski acknowledged that Mr. Abu Ali was a suspect in the so-called "Virginia Paintball Case" in Alexandria, Virginia. Agent Kuligoski testified that Mr. Abu Ali's brother was present in the apartment at the time of the search and that he pointed out items that belonged to Mr. Abu Ali. The results of the search, including the inventory and copies of documents, were sent to the Mabahith.

On cross-examination, Agent Kuligoski said that Mr. Abu Ali was questioned for four nights, on September 14, 16, 17, and 18, 2003. Mr. Abu Ali was not questioned on September 15, 2003. Agent Kuligoski did not participate in the interrogations on September 14. The interrogations were conducted in a conference room, and Mr. Abu Ali was given breaks, food, and water. Agent

Kuligoski admits that, during these interviews with Mr. Abu Ali, the agents did discuss the so-called "three options" about cooperation with Mr. Abu Ali. Specifically, they discussed the prospect of Mr. Abu Ali's being prosecuted in Saudi Arabia, being prosecuted in Saudi Arabia and the U.S., being declared an "enemy combatant," and being incarcerated indefinitely, perhaps for life without a trial, in the United States.

Barry Cole:

Special Agent Barry Cole of the FBI testified that he first saw Mr. Abu Ali on September 14, 2003, and that he spent between thirty (30) to thirty-five (35) hours with him over the course of four meetings. For about twelve (12) to sixteen (16) hours of their interviews, no members of the Mabahith were present. During their four meetings, Agent Cole testified that he was seated about three feet from Mr. Abu Ali, and that Mr. Abu Ali appeared to be relaxed and in good health. He said that Mr. Abu Ali's only complaint came on the third or fourth meeting, when he claimed that the Saudis had subjected him to mental torture. When Agent Cole asked him to explain, Mr. Abu Ali said Agent Cole would not understand because it was a "Muslim thing."

On cross-examination, Agent Cole testified that Mr. Abu Ali did ask for an attorney in their first meeting, but Agent Cole told him that he was not entitled to an attorney in Saudi Arabia. Agent Cole testified that he asked the Saudis to put Mr. Abu Ali in isolation during the time frame of the September FBI

interrogations, and that the Saudis "granted my request."

Agent Cole testified that the purpose of his interviews was to "gather intelligence." He said that he approached his interrogation of Mr. Abu Ali as though Mr. Abu Ali was a terrorist. Agent Cole denied that he left the room after Mr. Abu Ali said that the Saudis had tortured him, and said that he did not tell the Saudi Brigadier General at the prison about the allegation. He testified that, when he returned to the United States, he had a conversation with his supervisor in the Washington Field Office about Mr. Abu Ali's claim that he had been tortured. He did not follow up on the claim with the Department of State.

Dr. Richard Schwartz:

Dr. Richard Schwartz, the Chairman of Emergency Medicine at the Medical College of Georgia and a contractor for the FBI, testified about conducting a medical exam of Mr. Abu Ali when he boarded a United States government plane in Saudi Arabia for a flight to the U.S. on February 21, 2005. Dr. Schwartz testified that he performed a general medical exam on Mr. Abu Ali for three reasons: (1) to ensure that he was in adequate health for the long flight; (2) to see if he had a history of infectious diseases; and (3) to look for signs of abuse. On cross-examination, Dr. Schwartz said that, prior to the trip, he had not been informed of any allegations by Mr. Abu Ali that he had been tortured, and that he had only inquired into his medical

condition.

Dr. Schwartz testified that Mr. Abu Ali was awake, alert, well-rested, and well-nourished, but that he seemed somewhat anxious. He testified that he asked Mr. Abu Ali if he had been mistreated and Mr. Abu Ali said nothing about any type of mistreatment, and that the only aspect of his confinement that he described that could be considered psychological mistreatment was his having been placed in solitary confinement. The only physical ailment Mr. Abu Ali mentioned was some pain in his right shoulder, which Dr. Schwartz thoroughly examined and found to be "essentially normal." Mr. Abu Ali also said that he thought his vision was not as acute as it had been before he entered solitary confinement, and mentioned that he had previously had Lasik eye surgery.

During the physical exam, Dr. Schwartz looked at and touched Mr. Abu Ali's back and abdomen. Dr. Schwartz also did a full skin examination. Mr. Abu Ali had no reaction to being touched in either area. Dr. Schwartz testified that he observed three or four small circular and linear areas of increased pigmentation on his back. The marks were flat, not depressed or raised. There were no linear marks on his neck. He said that the circular marks were probably acne scarring, and that the linear marks could be from "almost any number of things," but that they "appeared inconsequential." Dr. Schwartz testified that he has treated many patients who have been beaten or whipped, and that there is no "usual" pattern of marks from such abuse, and that it

is also possible for such abuse to leave no marks at all. While there is no typical case for beating victims, it is not uncommon for marks to appear on the whole back. Dr. Schwartz's opinion was that the marks he observed were not evidence that Mr. Abu Ali had been subjected to non-accidental trauma. Dr Schwartz admitted that this opinion was not in his medical report because he did not think it was significant, and no one had alerted him that Mr. Abu Ali had claimed he was a victim of torture.

On cross-examination, Dr. Schwartz testified that he did not mention the marks on Mr. Abu Ali's back in his report because he thought they were inconsequential. He also said that he sees "these kinds of marks on people all the time." He did not ask Mr. Abu Ali about the marks and did not ask the photographer to take pictures of them. He also testified that he has not examined other people who have been tortured in Saudi Arabia.

Dr. Schwartz testified that, during the flight back, he gave Mr. Abu Ali some Tylenol when he complained of a headache and some anti-nausea medication when the plane encountered some turbulence. Dr. Schwartz also testified that Mr. Abu Ali was blindfolded when he boarded the aircraft, and that two FBI Hostage Rescue Team members were present during his exam.

Dennis Hankins:

Dennis Hankins, a consular officer for the Department of State, testified about two meetings he had with Mr. Abu Ali in Saudi Arabia: (1) a consular visit on October 23, 2004; and (2)

at the airport in February 2005, when Mr. Abu Ali was flown to the United States.

Mr. Hankins testified that his visit with Mr. Abu Ali in October was a "routine consular visit." He had previously been told that Mr. Abu Ali was not cooperative, and that there was "high level DOJ interest" in his case. During their visit, Mr. Hankins testified that he found Mr. Abu Ali to be confident and at ease. He carefully watched how Mr. Abu Ali entered the room to look for signs of abuse, but saw no sign of a limp or any other indications of mistreatment. Mr. Abu Ali made no reference to any type of mistreatment, other than complaining that the food was monotonous, Mr. Hankins testified. Mr. Abu Ali wanted to know the status of his parents' lawsuit against the U.S. government.

In February 2005, Mr. Hankins spent about ten minutes visiting Mr. Abu Ali aboard the FBI aircraft that would take him to the United States. He testified that his reasons for being there were to have a consular officer present, to again attempt to have Mr. Abu Ali sign a Privacy Act Waiver, and to ask Mr. Abu Ali why he had stopped calling his parents in November 2004.

Mr. Hankins testified that Mr. Abu Ali told him he wished he had previously been able to tell him about his treatment in the prison, but that there had always been a Saudi guard present. Mr. Abu Ali told him that he long wanted to speak to a consular officer in private. He did not say anything about being physically mistreated, but said that he had not refused a

consular visit, and that any Saudi claim that he had done so was "typical of the mind games" that they played on him. Mr. Hankins testified that if he had more time, he would have asked more questions of Mr. Abu Ali at that time.

Brian Balgaard:

Brian Balgaard, a FBI Special Agent, testified about his presence on the rendition flight that took Mr. Abu Ali from Saudi Arabia to the United States. He said that Mr. Abu Ali was handcuffed and shackled during the 17-hour flight, and that he was also blindfolded during takeoff and landing to keep him disoriented. He was allowed to pray during the flight and also fed three meals. Agent Balgaard testified that although Mr. Abu Ali seemed tense, he seemed to relax during the flight and had several conversations with the FBI personnel aboard. On cross-examination, he testified that Mr. Abu Ali asked if an attorney and consular officer were present on the plane, and was told "no" as to both questions. He also testified that Mr. Abu Ali fell asleep shortly after takeoff.

Agent Balgaard testified that the FBI requested Mr. Abu Ali's medical records from the Mabahith in July 2004, and that the Saudis provided medical documents to the Legat's office in Saudi Arabia in January 2005. In addition, the FBI requested any taped phone calls of Mr. Abu Ali in July 2004, and the Saudis produced some CD-ROMs of taped phone calls in late January 2005. However, the linguist cross-checked those calls, and they

appeared to be ones the FBI already had. Subsequently, it became clear that another tape was missing, and the FBI made a formal request for that tape in March 2005. The Saudis provided a CD of that call about one week later.

Mohamed Adra:

Mr. Mohamed Adra, a FBI language analyst, testified about the FBI's translation and certification process. Mr. Adra testified that the FBI uses a three-step process for translating any document to be used in court. One person translates it, a second reviews the original and the translation, and a third edits it. In addition, if a fourth person is to testify about the document in court, that person will also have input as to the translation.

Mr. Adra also testified about his translation of several taped phone calls between Mr. Abu Ali and his parents while he was in Saudi custody. On July 31, 2003, he testified that Mr. Abu Ali told his father, "My health is great. Everything is fine." During that call, his father asked why his son had not signed the Privacy Act waiver, and suggested that perhaps that was why he was still being detained. Mr. Abu Ali replied, "Put your minds at ease. Everything is fine." Mr. Adra testified that in a phone call on November 22, 2003, Mr. Abu Ali's mother told him that anything said "under coercion . . . would not have any value in American courts." Mr. Abu Ali asked, "Are you sure 100 percent?" His mother replied, "We are sure." Mr. Adra

testified that in a call on August 28, 2004, Mr. Abu Ali's father asked him "How is your hand?" and that Mr. Abu Ali answered, "My hand is like steel." Mr. Adra also testified that on September 25, 2004, Mr. Abu Ali's mother was asking him about the length of his hair, then asked, "Did your fingernails come back?" Mr. Abu Ali replied, "What are you talking about?"

Nurse Merry Brinkley:

Ms. Merry Brinkley, a registered nurse who works at the Alexandria Detention Center, testified about Mr. Abu Ali's medical examination when he was admitted to the facility on February 23, 2005, and his subsequent treatment. Ms. Brinkley testified that she gave Mr. Abu Ali a health care examination - a "head-to-toe exam, to insure that [inmates] don't have any physical problems or mental" - on February 23, 2005, two days after he was booked into the Alexandria Detention Center. At that time, Mr. Abu Ali told her he had no medical problems. Ms. Brinkley said that when she examined his back she found acne on his back and shoulders, but did not observe any scarring. On cross-examination, she said she can see marks on Mr. Abu Ali's back in photographs now, and that they look like they could be either striae or scars. She observed an abrasion on Mr. Abu Ali's ankle, but he told her it was no problem. He did not exhibit any rapid heart rate. On cross-examination, she testified that Mr. Abu Ali told her the abrasion on his ankle was from leg shackles.

Ms. Brinkley described Mr. Abu Ali's demeanor during the exam as "compliant" and said that his vital and heart signs were normal, and that he did not tremble or make any startled reflexes. Ms. Brinkley testified that Mr. Abu Ali told her nothing about being mistreated in Saudi Arabia, and she did not observe anything on his wrists that indicated he had been hung from a ceiling for ten hours. On cross-examination, she testified that at the time she administered the exam, no one had told her of Mr. Abu Ali's claim that he was tortured while in Saudi custody. Ms. Brinkley also testified on cross-examination that neither she nor the other health care workers who examined Mr. Abu Ali are psychologists or psychiatrists. The only request Mr. Abu Ali made of Ms. Brinkley was that he be served a vegetarian diet, and that he would like to be served more desserts.

Ms. Brinkley also testified that since he has been admitted to the Alexandria Detention Center, Mr. Abu Ali has been given a physical exam every week. She said that the only complaint Mr. Abu Ali has made about his physical condition during his entire stay at the Alexandria facility was during his first month, when he asked for chapstick because he had dry lips.

Sylvia McCarthy:

Ms. Sylvia McCarthy, a licensed practical nurse at the Alexandria Detention Center, testified about conducting a health care screening examination of Mr. Abu Ali when he was admitted to

the facility on February 21, 2005. The purpose of such an exam is to determine whether an incoming inmate has any illnesses or diseases, so the detention center staff can treat them. Other than telling Ms. McCarthy about an ankle abrasion from his leg shackles, Mr. Abu Ali had no complaints about his health. Ms. McCarthy testified that he made no requests for special care. She also testified that Mr. Abu Ali appeared calm and was smiling when she saw him, and that she answered "no" to a series of questions on a mental health intake screening and assessment form pertaining to whether the inmate exhibited feelings of helplessness and hopelessness, or appeared overly anxious, unusually embarrassed, or ashamed.

On cross-examination, Ms. McCarthy said that her exam was a quick review of Mr. Abu Ali, intended only to catch major items. She said she was not aware that Mr. Abu Ali had been brought to the Alexandria Detention Center straight from his flight into the United States, or that he was blindfolded when he entered the facility. Ms. McCarthy also stated that she has not had any training as either a psychiatrist or a psychologist.

Dr. Robert Katz:

Dr. Robert Katz graduated from George Washington University School of Medicine in 1961, had a residency in internal medicine and dermatology, and is board certified in dermatology and dermopathology. He taught residents for 30 years at Walter Reed Army Medical Center, Bethesda Naval Hospital, and Georgetown

University. He has published over twenty articles on dermatology and served as an expert witness and an expert consultant. The Court certified Dr. Katz as an expert in dermatology.

Dr. Katz defined "scars" as alterations of connective tissues in response to injury or disease. He described hypertrophic scars as areas raised above the skin and atrophic scars as depressed areas. Spread scars are thinned and atrophic. Most scars (i.e. approximately 75%) are hypertrophic. Dr. Katz described a tissue wound as going through several steps, depending upon the severity of the injury. These steps include external trauma, a break in the skin, bleeding, crusting, surrounding inflammation, redness, and tenderness. The healing process would include scabbing, having the scab fall off, and finally a resulting scar. The scar may be raised, depressed, wide, or narrow, but typically a scar has some dimension.

Dr. Katz did not examine Mr. Abu Ali. Dr. Katz reviewed color photographs of Mr. Abu Ali's back and Dr. Allan Keller's report. Dr. Katz reviewed Dr. Keller's report and offered his opinion concerning the photographs and Dr. Keller's findings. Dr. Katz noted that Dr. Keller referred to the marks on the defendant's back as "scars" but did not describe whether the scars were hypertrophic or atrophic, if there was thickening or flattening, and whether Dr. Keller actually palpated the scar. Dr. Keller only described a change in the pigmentation of the skin. Dr. Katz noted that Dr. Keller did not describe a break in Mr. Abu Ali's skin or the location of the marks. Dr. Katz

testified that it is very common to see hyper pigmentation and linear pigmentation in the skin and that such conditions could be caused by superficial breaks, scratches, or trauma. He stated that individuals with darker complexions are more prone to hypertrophic scaring and that pigmentation would be increased in a person of Mr. Abu Ali's complexion.

Dr. Katz stated that if the marks were caused by whipping or other trauma they would have a period of crusting which would go on for a minimum of one and a half to four (4) weeks, and would be very painful and uncomfortable in response to pressure. Dr. Katz stated that the marks on the defendant's back are not scars because they appear flat, and there is no depression, spreading, or thickening. Dr. Katz concluded that it is unlikely that the marks on Mr. Abu Ali's upper back are scars from torture because the marks are all on the upper back, they are linear, parallel to each other, and there is no evidence of scaring. Dr. Katz reviewed the photographs of Mr. Abu Ali and said that, in his medical opinion, the marks depicted are not scars.

Dr. Katz reported that a scar caused by whipping would bleed, then go through inflammation, redness, tenderness, crusting, scabbing, loss of the scab, and scarring. This process could occur over a period from one and a half weeks to three (3) to four (4) weeks. The scars would be uncomfortable to touch, and applied pressure would cause pain. The Court notes that this information is significant because Mr. Abu Ali claims he was whipped on June 10 or 11, 2003 in Medina. Witnesses from the FBI

who observed Mr. Abu Ali in the interrogation of June 15, 2003, did not observe Mr. Abu Ali guarding his back. Mr. Abu Ali sat in a chair. Mr. Machalany reported that Mr. Abu Ali fidgeted in the chair and did not grimace or show any signs of discomfort on his face. Agent Posto observed Mr. Abu Ali enter the interrogation room without discomfort and sit in a chair with his back against the chair without showing any signs of discomfort. The Brigadier General and the Captain reported in their interrogations of Mr. Abu Ali on June 11, 12, that Mr. Abu Ali sat comfortably, rocked, and swivelled in his chair. These reports are obviously inconsistent with how medical professionals would expect the victim of a vicious whipping on the back to be able to move his body.

On cross-examination, Dr. Katz admitted that he never specifically examines patients for torture and that he is not certified as an expert in torture. He further admitted that he only looked at photographs of Mr. Abu Ali and did not personally examine him. He admitted that he did not notice any markings on the defendant's lower back pointed out by defense counsel when reviewing the photographs, Gov't Exs. 36S, 35S, and possibly some other markings in the photographs, but these observations would not change his opinion. Dr. Katz could not say that the marks did not come from whipping, but he thinks it is unlikely that they did. Dr. Katz observed that scars incurred in a whipping like Mr. Abu Ali described would produce marks that likely criss-cross over each other, have differing patterns - some diagonal,

some linear - and he would expect marks to be on the whole back and neck as well. Dr. Katz drew upon Dr. Saathoff's report about Mr. Abu Ali's statement that he was struck twenty or more times while chained to the floor in a crouching position with his full back and neck exposed. Dr. Katz opined that, under these circumstances, he would expect to find marks on the full back, neck, mid-back, shoulders, and upper back as well. Dr. Katz said Mr. Abu Ali's back in the photographs shows just four to seven linear parallel marks on the shoulders. In any event, the marks are not thick or spreading, and there is no loss of hair pattern in the darkened skin pigmentation, or loss of skin line depicted in the photographs, as he would expect if these marks were wounds.

Dr. Allen Keller:

Dr. Allen Keller graduated from the New York University Medical School, performed his residency at Bellevue Hospital in internal medicine, served as chief resident, and is board certified in internal medicine. He is currently the Chairman of the Bellevue Commission for Victims of Torture. He has taken courses and seminars on treating victims of torture and routinely trains physicians in caring for victims of torture. After his second year in medical school, he spent a year with a non-governmental organization working at a refugee camp in Cambodia working with torture victims. He also worked for the government

with asylum seekers and with the State Department as an expert. The Court certified Dr. Keller as an expert in Internal Medicine.

Dr. Keller defined torture using the definition in the United Nations Convention Against Torture.[2] Dr. Keller testified that torture is severe physical or mental suffering inflicted by a person acting in an official capacity in order to punish or to extract information or elicit behavior from an individual. Dr. Keller also testified generally about the side effects, both physical and psychological, of torture. He then explained that he begins his assessment by conducting a detailed history both of the individual's medical background and of the particular incidents of torture. Then, Dr. Keller performs a physical examination to see if the findings are consistent with the victim's story. Dr. Keller examined Mr. Abu Ali on April 20, 2005, at the Alexandria Detention Center. He spent eight hours alone with the defendant and conducted a detailed history and physical exam. He took Mr. Abu Ali's vital signs and did a dermatological, neurological, and neuromuscular exam. He found the defendant to be in good health and that all tests were "grossly" normal. With respect to his examination of the skin, he found abnormal findings resulting from injury or traumatic

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[2] The United States of America is a signatory to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter "U.N. Convention Against Torture"). As a treaty adopted by the United States, this treaty is binding upon the federal courts and equivalent to the Supreme law of the land, the Constitution. *See* U.S. CONST. art. VI, cl.2.

events. Dr. Keller stated that he saw approximately ten linear scars of approximately the same width (0.3 cm) and varying lengths (from 1.5-5.0 cm) on Mr. Abu Ali's back. Dr. Keller palpated the scars that he observed on Mr. Abu Ali's back. *See* Gov't Exs. 35-39S. Dr. Keller defined the word "scar" to mean abnormal interruptions in the skin resulting from injury which may be intentional or non-intentional. He described these darkened areas of skin as smooth or mostly flat. Dr. Keller is of the opinion that these hyper pigmented areas are scars that are highly consistent with Mr. Abu Ali's report of torture. Dr. Keller pointed out five (5) to seven (7) scars in Government Exhibit 35, two which he described as horizontal, and some non-trauma related stretch marks in Gov't Ex. 36. Dr. Keller stated that some of the scaring on the defendant's lower back was due to stretch marks. He identified two horizontal marks on Mr. Abu Ali's lower back that were not stretch marks and attributed them to whipping.

With respect to the detailed history, Dr. Keller reported that the defendant had no physical or psychological problems and reviewed Mr. Abu Ali's medical records. Mr. Abu Ali reported that he was first tortured after the fourth or fifth interrogation in Medina during which he asked the Saudis for legal representation and the Saudi guards punched him in the stomach, blindfolded him, and handcuffed him in a squatting position. Also, Mr. Abu Ali claimed that he was struck with a foreign object with his shirt both off and on. Mr. Abu Ali was

not sure how many times he was struck, but stated that it was many times, and probably was more than ten. Mr. Abu Ali said it felt like his back was stinging, and he could see blood on his hands from the injuries on his back. During the interrogations, Mr. Abu Ali was told that if he did not cooperate, he would be treated as an enemy combatant and would lose his hand, foot, or be beheaded if he did not confess. Mr. Abu Ali claimed that he asked for a lawyer and was told the United States Embassy would not help him.

In Riyadh, Mr. Abu Ali was repeatedly interrogated for extended periods of time from approximately 8 p.m. to 4 or 6 a.m. He was not beaten in these interrogations, but was threatened with treatment as an enemy combatant. Mr. Abu Ali was kept in solitary confinement, but was fed three meals a day, and was occasionally allowed to go outside for exercise. Dr. Keller testified that he believes the "sense of isolation and intimidation" that Mr. Abu Ali experienced was part of his mistreatment.

At one point, probably in September, 2003, after Mr. Abu Ali was interviewed by the FBI, the Saudis told him that he embarrassed them, and so they shackled Mr. Abu Ali with his arms above his head and his feet touching the ground for a period of several hours. When the Saudis uncuffed Mr. Abu Ali's hands, they were "tingling," felt "almost paralyzed," and Mr. Abu Ali could barely move them. According to Dr. Keller, Mr. Abu Ali asked again if he could have a lawyer, and the Saudis took him to

a solitary cell where he was punched, kicked, slapped, and told he would not get special treatment because he was an American. Mr. Abu Ali told Dr. Keller he spent 30 days in solitary confinement and then was transferred to another solitary cell with no mattress, blanket, or pillow, and later he was moved to a third cell with a shower and better accommodations. Based on the medical history and physical exam, Dr. Keller concluded that Mr. Abu Ali suffered from depression and post traumatic stress disorder ("PTSD") as result of torture.

Dr. Keller testified that there are varying degrees of PTSD, and that Mr. Abu Ali suffers from the most severe form. He said that Mr. Abu Ali re-experiences the trauma of his confinement in Saudi Arabia in the Alexandria Detention Center through triggers in his environment, such as when a cell door opens, when he hears guards walking by his cell playing with their handcuffs, or when he hears the screams of a possibly intoxicated prisoner. Dr. Keller said that Mr. Abu Ali exhibits hyperarousal and is easily startled.

Dr. Keller testified about malingering, the practice of falsely stating events for some secondary gain. Dr. Keller said it is possible that Mr. Abu Ali is malingering, but that he doubts that is the case. He said that there are tests for malingering, but that no one test is the "gold standard," and that the study of determining malingering is "in its infancy." On cross-examination, Dr. Keller stated that he has found "very few" of the approximately 500 victims of torture he has treated

to be malingering. He also acknowledged that Mr. Abu Ali had a substantial interest in convincing him and the Court that he was tortured.

On cross-examination, Dr. Keller admitted that dermatology and psychology are different fields from internal medicine. He admitted that someone with a chance for secondary gain would have more incentive to lie about his injuries during the history and admitted that Mr. Abu Ali had a substantial amount to gain by lying. Dr. Keller admitted that he cares passionately about human rights and works as an advocate for torture victims. He is concerned about allegations that the United States government has abused detainees in the war on terrorism and opposed Attorney General Albert Gonzales's nomination. He lobbied members of Congress against Attorney General Gonzales and accused Mr. Gonzales of supporting the abuse of detainees in Guantanamo Bay, Cuba. Dr. Keller was a signatory to an amicus curiae brief to the United States Supreme Court in *Hamdi v. Rumsfeld*, 540 U.S. 1099 (2004).

Dr. Keller stated that he based his conclusion that Mr. Abu Ali was tortured on Mr. Abu Ali's statements, Dr. Keller's knowledge of the practices of Saudi Arabia, his physical exam of Mr. Abu Ali, and the fact that the defendant was forthcoming about instances where he was treated well. Dr. Keller admitted that Mr. Abu Ali did not say how many times he was struck on his back and could not say what he was struck with. Dr. Keller was not aware that prisoners in Saudi jails wear thobes, not shirts,

and stated that Mr. Abu Ali told him he was whipped with his shirt on and off. Dr. Keller stated that he palpated the scars which were mostly smooth or flat, presented as hyper pigmented areas, and that these marks on Mr. Abu Ali's back are scars and highly consistent with torture. Dr. Keller observed that Mr. Abu Ali's skin lines were not disrupted, that there are one or two marks in Mr. Abu Ali's middle back, and that there are no marks that appear to criss-cross.

In response to the Court's questioning, Dr. Keller stated that Mr. Abu Ali was interrogated approximately five times before he was abused in Medina, and that the second time he was beaten was in mid-September 2003 when he was suspended by his arms. The third incident of torture was in November 2004 when he was punched, kicked, and slapped by the Saudi prison guards.

Dr. Keller concluded that, based upon his examination, interviews with Mr. Abu Ali, and his expertise, Mr. Abu Ali suffers from PTSD and major depression as a result of being tortured. He admits that he did not conduct any external inquiry or speak with detention center nurses or deputies to question visual observations of Mr. Abu Ali's behavior. Dr. Keller says his judgment of Mr. Abu Ali's credibility is based upon his individual assessment of Mr. Abu Ali.

Dr. Lynn Gaby:

Dr. Lynn Gaby is an assistant professor of psychiatry at the George Washington University Medical Center and also works at the

Center for Multicultural Human Services, a non-profit organization, where she works with survivors of torture and severe trauma. Upon motion by the defense, and without objection by the government, the Court recognized her as an expert witness in psychiatry.

Dr. Gaby testified for the defense about her April, 2005, examinations of Mr. Abu Ali and diagnosis that he suffers from PTSD and severe depression. PTSD can result when something happens to a person that threatens life or limb, or when they witness such an event happen to another, and that event engenders feelings of "horror, helplessness, [and] fear." Dr. Gaby testified that PTSD has three symptom clusters: re-living of the event, hyperarousal, and avoidance or numbing. Victims of PTSD may experience avoidance behaviors and may not want to talk about the traumatic event. Trauma can affect a victim's ability to recount the event and his perception of time.

To evaluate whether a subject has PTSD, Dr. Gaby testified, she relies primarily on an interview with the person. Dr. Gaby based her diagnosis of Mr. Abu Ali on three two-hour interviews she conducted with him at the Alexandria Detention Center in the spring of 2005, on April 19, April 26, and May 12. Initially, she was told that she had only two hours with him. At the conclusion of that session, she requested more time with him because, although she had "a sense" of Mr. Abu Ali's mental state, she did not believe she could render an opinion at that time.

Dr. Gaby testified that during their first visit, Mr. Abu Ali was "initially anxious" and "somewhat guarded," but that over the course of their two-hour visit he gradually appeared more comfortable and willing to expand on his experiences. Dr. Gaby attributed that change in his demeanor to the fact that she was non-threatening, and that she has experience interviewing a range of patients. Mr. Abu Ali subsequently told Dr. Gaby that he had been mistreated while in Saudi custody. Specifically, he told her he had been hit in the stomach, slapped, had his hair pulled, was handcuffed to the floor and whipped, and threatened with the amputation of a hand or foot or even beheading. She testified that Mr. Abu Ali told her that the mistreatment had stopped when he told his captors he would talk, and that he made that decision because he "just had to make it stop." Mr. Abu Ali also told her that, after initially refusing to cooperate with the FBI after their first meeting in September 2003, he was handcuffed to a chain hanging from a ceiling and left standing upright for perhaps as long as ten hours.

Dr. Gaby testified that she observed a range of symptoms of PTSD in Mr. Abu Ali. She said that she observed a pronounced feeling of shame in Mr. Abu Ali. Dr. Gaby also testified that she concluded in her report that he has an "excessive startle reflex" - that she witnessed him having a stronger than normal reaction to being startled by people passing outside the room where they met - and that he told her he is awakened and sits upright in bed whenever someone opens his cell door. He also

told her, "I don't feel like I can trust anyone." Dr. Gaby testified that although these are not necessarily "classic PTSD symptoms," she was "able to draw them out" during her interviews with Mr. Abu Ali. Although Dr. Gaby said that Mr. Abu Ali does not appear to have intense flashbacks, she believes that fact supports her conclusion that he is not lying about his symptoms because, if he were, he would probably describe "classic" symptoms such as flashbacks.

By the end of the second session, Dr. Gaby concluded that she felt certain that she could diagnose Mr. Abu Ali with PTSD and that the traumatic event that triggered it was being tortured, both physically and psychologically. She testified that because of the serious nature of the charges against him, she decided to come back for a third visit and perform a Clinician Administered PTSD Test (hereinafter "CAPS test"), which Dr. Gaby testified is the "gold standard" for screening people for PTSD and helps to determine whether a person might be eligible to participate in clinical research trials. Through the CAPS test, Dr. Gaby sought to produce a quantitative measure of the severity of Mr. Abu Ali's PTSD. A score of 50 out of 136 points is the cutoff score below which a person is not selected for participation in research trials. Dr. Gaby testified that she scored Mr. Abu Ali at 98, a "quite high score" indicating that Mr. Abu Ali had severe PTSD. The Court notes that the CAPS test consists of the examiner asking the patient a series of questions about the symptoms of PTSD and other conditions and