

## Faridi Declaration Ex. 3

1 UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF VIRGINIA  
3 Alexandria Division

4 SUHAIL NAJIM ABDULLAH : Civil Case  
5 AL SHIMARI, et al., : No. 1:08-CV-827  
6 :  
7 Plaintiffs :  
8 :  
9 v. :  
10 :  
11 CACI PREMIER TECHNOLOGY, :  
12 INC., : April 16, 2024  
13 : P.M. SESSION  
14 Defendant : 2:00 p.m.  
15 ..... : .....

16 TRANSCRIPT OF JURY TRIAL PROCEEDINGS  
17 DAY 2 - P.M. SESSION  
18 BEFORE THE HONORABLE LEONIE M. BRINKEMA  
19 UNITED STATES DISTRICT JUDGE  
20

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**COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES**

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C O N T E N T S

<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
ANTONIO TAGUBA				
By Mr. Faridi	4	--	--	--
By Mr. O'Connor	--	18	--	--
JENS MODVIG				
By Mr. Fisher	35	--	71	--
By Ms. Bailey	--	49	--	--

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IVAN FREDERICK	33
MEGAN AMBUHL GRANER	34
SABRINA HARMAN	35

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**P R O C E E D I N G S**

(Jury in at 2:04 p.m.)

THE COURT: Continue the direct examination of General Taguba, and, General, please speak up. Keep your voice up, especially at the end of the sentence.

THE WITNESS: Yes, Your Honor.

THE COURT: Much better.

**(ANTONIO TAGUBA, having been previously duly sworn, testified as follows:)**

**CONTINUED EXAMINATION BY COUNSEL FOR PLAINTIFFS**

BY MR. FARIDI:

Q. General Taguba, I'm going to ask you to turn, sir, to page 44 of your report. And there's a section here titled "Recommendations As to Part 3 of the Investigation."

MR. FARIDI: If you would pull that up on the screen as well.

Q. And here, sir, you make a finding and a recommendation as to Janis Karpinski, Brigadier General Janis Karpinski. Correct?

A. That's correct.

Q. Can you describe who she is and her role at Abu Ghraib, or in Iraq at that time period?

A. She was the commanding general for the 400 MP Brigade. And at the time of her interview, she was removed as the commander of the Forward Operating Base Abu Ghraib.

Q. And did you say that she was the person in command of the

1 Military Police Brigade?

2 A. Of the MP Brigade, yes. The Military Police Brigade.

3 Q. And is that the Military Police Brigade into which the  
4 company that we spoke about earlier, the specific company being  
5 the 372nd Company of the 200 -- withdrawn.

6 The brigade that she managed, did that brigade subsume  
7 the 372nd Company that was operating at Abu Ghraib?

8 A. That is correct.

9 Q. And what findings, just generally speaking, did you make  
10 with respect to Brigadier General Karpinski?

11 A. In terms of?

12 Q. Her supervision of Abu Ghraib.

13 A. She wasn't exactly what I would consider as an effective  
14 commander. She made excuses, she also made derogatory remarks  
15 about some of her soldiers.

16 Q. And did you issue -- did you recommend a reprimand for her?

17 A. Yes, I did, following my interview of her.

18 Q. And why did you recommend a reprimand for her?

19 A. She's very evasive in answering the questions, which are  
20 pretty simple. She tried to explain herself as a female soldier  
21 that's being picked on, and she was making excuses on her  
22 ability to provide senior supervision when she was in command of  
23 Abu Ghraib.

24 Q. So that's with respect to the military police. Let's turn  
25 now to the next page, page 45, and let's bring up the second

1 paragraph of this particular section. And can you tell the  
2 jury, who is Colonel Thomas Pappas?

3 A. Colonel Thomas Pappas was the commander of the  
4 205th Military Intelligence Brigade that was also present there  
5 at Abu Ghraib.

6 Q. And the military intelligence is different than the military  
7 police. Correct?

8 A. Correct.

9 Q. Okay. And what finding did you make as to him?

10 A. When we were provided information through in-person  
11 interview and also from the statement that was provided by the  
12 MPs that we had -- we wanted to make clear that there were two  
13 units that were assigned at the detention center. And I was  
14 seeking advice from my legal team whether I had the authority to  
15 at least find credible information by interviewing  
16 Colonel Pappas.

17 Q. And what information did you learn from the interviews with  
18 Colonel Pappas and other individuals related to this issue?

19 A. I wanted to find out from his perspective why there were not  
20 a harmonious relationship between the two commanders, inasmuch  
21 with General Karpinski.

22 Q. And the harmonious relationship between the two commanders,  
23 the two commanders being Brigadier General Janis Karpinski and  
24 Colonel Pappas. Correct?

25 A. That's correct.

1 Q. And did you make a recommendation as to a reprimand for  
2 Colonel Pappas?

3 A. He was also very evasive when I asked him a few questions,  
4 generic questions, on the performance of his military  
5 intelligence unit, the relationship between his soldiers, his  
6 interrogators, and also with the military police.

7 Q. I take it, sir, that you were at a higher rank relative to  
8 Brigadier General Karpinski and Colonel Pappas?

9 A. That's correct.

10 Q. And what does military policy require as to officers that  
11 are layers below a major general, as to those inferior officers  
12 in their interactions with someone at a more superior level?

13 A. According to AR, Army Regulation 15-6, an investigation must  
14 be officiated by a senior officer senior to the rank or the  
15 person that we are to investigate. In other words, I outrank  
16 General Karpinski.

17 Q. Did you draw any conclusions, sir, about how well their  
18 supervisory -- withdrawn.

19 Did you draw any conclusions about the level of  
20 supervision that they were providing to their units?

21 A. Yes.

22 Q. What conclusions did you draw?

23 A. Well, General Karpinski was very uncooperative. They did  
24 not see eye to eye. She was in command at that time, until  
25 November 2003, and then Colonel Pappas was then appointed to



1 take over the Forward Operating Base at Abu Ghraib.

2 In other words, a subordinate was picked to command the  
3 detention center.

4 Q. And you spoke earlier about the lack of command and control  
5 at Abu Ghraib. Do you recall that?

6 A. That's correct.

7 Q. How did your findings with respect to these two individuals,  
8 Brigadier General Karpinski and Colonel Pappas, how did these  
9 findings relate to the lack of command and control at  
10 Abu Ghraib?

11 A. Both commanders were reporting to two different authorities,  
12 while they were supposed to be cooperating with each other.  
13 Colonel Karpinski at that time, when she was picked to command,  
14 was in charge of the detention center but not in charge of the  
15 interrogation mission. That belonged to Colonel Pappas.

16 Q. And did this friction between these two individuals, this  
17 lack of coordination between these two individuals, how did that  
18 create an environment where abuse was more likely to occur at  
19 Abu Ghraib?

20 A. Well, friction in and of itself makes that happen, because  
21 then the soldiers were improperly led on their ability to  
22 conduct their mission with a clear delineation of their  
23 responsibility.

24 Q. And that leads me, sir, to Paragraph 11 of this particular  
25 section on page 46.

1 MR. FARIDI: Let's bring that up, please.

2 Q. Who is Steve Stefanowicz?

3 A. Mr. Stefanowicz was mentioned by his first name through the  
4 course of our interview of a few of the military police  
5 soldiers. They referred to him as Mr. Stefanowicz.

6 Q. Who did he work for?

7 A. I'm sorry?

8 Q. Who did he work for?

9 A. At that time we didn't know who he was working for.

10 Q. Did you ultimately come to find out who was his employer?

11 A. Yes, because when a few of the soldiers that we interviewed  
12 in person named him as a member of CACI. Of course we didn't  
13 know what CACI meant, so I sought legal counsel, or my legal  
14 team, to approach Mr. Stefanowicz - or find him, anyway - if he  
15 was willing to be interviewed.

16 Q. In your report, sir, in Paragraph 11, you say,

17 "Mr. Stefanowicz, contract U.S. civilian interrogator, CACI,"  
18 and then you go on to state, "205th Military Intelligence  
19 Brigade."

20 What's his relationship, as a civilian interrogator, to  
21 the 205th Military Intelligence Brigade?

22 A. At that time I didn't know that he had a relationship with  
23 the 205th Military Intelligence Brigade, until I found him at  
24 the joint detention center, which is a separate facility from  
25 the prison site.

1 Q. Did you interview him in connection with your investigation?

2 A. Yes, I did.

3 Q. Why? Why was he important for -- withdrawn.

4 Why did you interview him?

5 A. Well, on advice of my legal team, it's to establish some  
6 kind of credible information that he might have been involved  
7 with the MPs, at least initially, and to establish a requirement  
8 or a format -- a formality to have the MI Brigade be  
9 investigated as well.

10 Q. And were you personally present for the interview, or is  
11 this an interview that your staff conducted?

12 A. I personally interviewed him.

13 Q. How long was the interview?

14 A. I would say about an hour, hour and a half.

15 Q. Can you describe his demeanor to the jury?

16 A. He was very a coy type of personality. He would lean on the  
17 table staring me down, and I did the same thing to him. He did  
18 not answer the question accurately, meaning when I asked him,  
19 "Are you working for CACI," I believe he did not say that he was  
20 working as a contractor for CACI, that he was basically present  
21 at the Joint Interrogation Detention Center.

22 Q. Sir, did you say that he was staring you down in the  
23 interview?

24 A. Yes, he was. In an intimidating manner.

25 Q. Did that concern you?

1 A. Absolutely.

2 Q. Why?

3 A. Because he was trying to intimidate me by asking him all  
4 those questions, and I was just establishing some information  
5 from him regarding his role and relationship with the military  
6 police soldiers.

7 Q. Were you, in fact, intimidated, General?

8 A. Not in your life.

9 Q. General, let's take a look at what you wrote here in your  
10 report with respect to Mr. Stefanowicz. I want to focus on the  
11 second bullet point first. You wrote, "Mr. Stefanowicz allowed  
12 and/or instructed MPs who were not trained in interrogation  
13 techniques to facilitate interrogations by setting conditions  
14 which were neither authorized and not in accordance with  
15 applicable regulations/policy. He clearly knew his instructions  
16 equated to physical abuse."

17 Let's break that up. Earlier you had said that the  
18 MIs, military intelligence, after they requested the MPs, the  
19 military police, to set physical and mental conditions of  
20 favorable interrogations, do you recall that?

21 A. Yes.

22 Q. Is this what you're talking about in this second bullet  
23 point of Paragraph 11?

24 A. Based on the responses that we received from the MP soldiers  
25 that we interviewed, they literally implicated him as providing

1 instructions to them.

2 Q. And you said, sir, that the instructions were neither  
3 authorized nor were they in accordance with applicable  
4 regulations/policy. Why did you write that?

5 A. The term that they used was "setting conditions for a  
6 successful interrogation," which means instructing the MPs to  
7 set conditions for a successful interrogation, is not legal.

8 Q. What is that a euphemism for, "setting conditions for a  
9 successful interrogation"?

10 MR. O'CONNOR: Objection. Relevance, competence.

11 THE COURT: Lay a foundation. I'll sustain the  
12 objection.

13 MR. FARIDI: Sure.

14 Q. What do you mean by "setting conditions for a favorable  
15 interrogation"?

16 A. Well, we made the soldiers who made those comments to give  
17 us an example. Some of the examples that I remember was, giving  
18 them a hard time so we can conduct our interrogation when  
19 they're harassed or intimidated or assaulted, things of that  
20 nature.

21 Q. Did you make observations or findings as to whether the MPs  
22 followed the instructions by Steve Stefanowicz?

23 A. One soldier basically said that they were not getting any  
24 credible set of instructions from their own superior, so they  
25 regarded Mr. Stefanowicz as providing that set of instructions

1 on behalf of the MP command and control.

2 Q. And then you wrote here, "He clearly knew his instructions  
3 equated to physical abuse."

4 How did you know that, that he clearly knew his  
5 instructions equated to physical abuse?

6 A. We only based that on the statements from the MP soldiers.

7 Q. And at the very beginning of the paragraph, General, you  
8 wrote that an official reprimand be placed in his employment  
9 file, his employment should be terminated, and that there should  
10 be a generation of a derogatory report to revoke his security  
11 clearance. Do you see that?

12 A. Yes.

13 Q. Did CACI, to your knowledge, in fact terminate  
14 Mr. Stefanowicz?

15 A. That I don't know.

16 Q. And how would you describe Mr. Stefanowicz's involvement  
17 with detainee abuse relative to the other interrogators?

18 A. We didn't have physical evidence about him conducting that  
19 in person. All we knew was that he was always present at the  
20 interrogation site, and we also witnessed him going in and out  
21 of the headquarters at Camp Liberty. I think that's what it  
22 was, the headquarters for CJTF-7.

23 Q. I understand, sir, this is 20 years ago, but I'm going to  
24 ask you to describe the specific type of physical abuse that  
25 Mr. Stefanowicz directed. Do you recall that?

1 A. I don't recall that at all.

2 Q. Let me see if I can help refresh your recollection.

3 A. Okay.

4 Q. I'm going to ask you, sir, to take a look at your deposition  
5 testimony.

6 A. Okay.

7 Q. That is in the binder in front of you. And take a look  
8 at -- let me know when you get there.

9 A. Okay. Which PTX?

10 Q. Actually, the tab is titled "Deposition Transcript." It  
11 should be at the very end of the binder.

12 A. Okay.

13 Q. And if you can turn, General, to page 71.

14 A. Okay.

15 Q. And just read to yourself, sir, lines 5 to 10.

16 A. Which page again?

17 Q. Page 71, lines 5 to 10.

18 A. Maybe I'm looking at the wrong page.

19 THE COURT: There are four pages per sheet of paper,  
20 General. In the upper right-hand corner you'll see the page  
21 numbers.

22 MR. FARIDI: Your Honor, we can streamline this. I'll  
23 move on.

24 Q. Sir, you can set that aside.

25 A. Okay.

1 Q. You're there now. Just read to yourself, General, lines 8  
2 to 10. Just three lines.

3 A. Eight to 10. Line 8, "There was" --

4 Q. No, no, General, just read it to yourself, sir.

5 A. I'm sorry.

6 Q. I hate to be in a position to give orders to a general.

7 A. Yeah, I'll give you a set of orders.

8 THE COURT: So the question is, reading that response,  
9 does that refresh your memory today?

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: I'm sorry, it does?

12 THE WITNESS: Yes, it does.

13 THE COURT: So what is your memory today now of that  
14 issue?

15 THE WITNESS: I do remember that one of the soldiers  
16 had described about the use of dogs, and we related that to the  
17 photograph that we saw on the dogs that were either inside the  
18 detention center, the prison side, and also outside the  
19 interrogation center.

20 Q. And what was Mr. Stefanowicz's role with respect to the use  
21 of dogs?

22 A. Of course he denied it.

23 Q. What did you find?

24 A. We found it credible that perhaps from the testimony of the  
25 soldiers, which we found credible, as they're the



1 junior soldiers there to follow orders, that's what they were  
2 saying. They were following instructions from the MI, as they  
3 called him; that there might have been a use of dogs at that  
4 point in time.

5 When I asked the dog handlers, they also collaborated  
6 that they did not want to use the dogs inside the prison site  
7 because that was not their job. But they were basically given  
8 orders to use the dogs.

9 Q. Let's go to page -- just to refresh your recollection on the  
10 same issue again, to page 75. And just read, General, to  
11 yourself lines 14 through 19. Let me know when you're ready.

12 A. 14 to 19?

13 Q. Yes.

14 A. Yes.

15 Q. Can you give the jury another example of an instruction that  
16 Mr. Stefanowicz provided to the military police?

17 A. Well, I recall nudity was basically a common use, because it  
18 was also a comment that was made to me that they were paraded  
19 back to their cell without their clothes on. Essentially it's  
20 associated with what we saw in the photograph as well.

21 Q. Now, Mr. Stefanowicz was a civilian. Did you have the  
22 authority as a general in our country's military to discipline  
23 him?

24 A. No, we did not have that authority.

25 Q. Why not?

1 A. Civilian contractors were everywhere, and they were not --  
2 you might say not under the control of the military authorities  
3 unless they do something that's questionable, of a criminal  
4 nature, that matter.

5 Q. Why is it that civilian contractors are not within the  
6 control of the United States military?

7 A. I have no idea.

8 Q. And can you tell the jury, what was the policy of the  
9 United States government with respect to the infliction of abuse  
10 of detainees at that time?

11 A. Against civilians, we did not question that at all. We left  
12 that to the commanding general of CJTF to provide the policy and  
13 command and control and military policy for general contractors.

14 Q. General, can you describe -- withdrawn.

15 How would you describe what happened at Abu Ghraib in  
16 2003 relative to other events of wartime abuse in the U.S.  
17 military?

18 THE COURT: I'm going to sustain that.

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

20 MR. FARIDI: Your Honor, can I have just one moment to  
21 confer with my colleague?

22 No further questions, Your Honor.

23 THE COURT: Mr. O'Connor, cross-examination? Do you  
24 have a book?

25 MR. O'CONNOR: Oh, we do.

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**CROSS-EXAMINATION BY COUNSEL FOR DEFENDANT**

**BY MR O'CONNOR:**

Q. Good afternoon, General Taguba.

A. How are you?

Q. I'm good, how are you?

A. Long time, no see.

Q. It's been a little while, hasn't it? I again want to thank you for your service, including your service in putting together the investigation here.

So you were appointed to investigate the 800th Military Police Brigade. Correct?

A. That is correct.

Q. And the decision was made by Lieutenant General Sanchez to have a major general appointed on January 19th of 2004?

A. General Sanchez requested it, but I was ordered by my own commanding general, Lieutenant General David McKiernan.

Q. Right. So General Sanchez asked that an investigation be commissioned on the 19th, and then you were appointed on January 31 of 2004?

A. That is correct.

Q. Thank you. And you were not appointed to investigate the Military Intelligence Brigade that was serving at Abu Ghraib?

A. On my orders, that is also correct.

Q. And you were not appointed to investigate the civilian contractors that were working with the Military Intelligence

1 Brigade?

2 A. At that time, that is correct.

3 Q. The report that you prepared, that was originally drafted by  
4 your staff and then you edited it. Is that correct?

5 A. No, that was drafted by the staff judge advocate for the  
6 command.

7 Q. That was part of your investigation team?

8 A. Right.

9 Q. That's what I'm getting at, that your staff, including the  
10 staff judge advocates, they drafted the report, and then you  
11 reviewed it and edited it as requested?

12 A. No, that's not right.

13 Q. What am I getting wrong?

14 A. My staff did not draft anything that related to my order.  
15 That was drafted by the staff judge advocate.

16 Q. Oh, I'm not talking about your appointment order, I'm  
17 talking about your report.

18 A. Yes. Okay, I'm sorry.

19 Q. Your report was drafted by your investigation staff?

20 A. Correct.

21 Q. And then you reviewed it and you edited it as appropriate?

22 A. Yes.

23 Q. And with respect to allegations of detainee abuse, your  
24 report focused on the period from October to December of 2003?

25 A. That's the period of time that -- yes.

1 Q. And that's because in late December or early January,  
2 Army CID received a boatload of pictures of horrific detainee  
3 abuse. Right?

4 A. Correct.

5 Q. And then CID began an investigation?

6 A. Correct.

7 Q. And they took statements from dozens and dozens of soldiers  
8 and civilians?

9 A. Correct.

10 Q. And those were all handed over to you for you to use in your  
11 investigation?

12 A. Correct.

13 Q. And how far were you in to your investigation of the  
14 MP Brigade before you realized that the Military Intelligence  
15 Brigade had civilian contractors working with it at the prison?

16 A. It was about two weeks after my initial.

17 Q. So you were halfway or more done with your investigation at  
18 that point?

19 A. I don't think so. But I don't recall.

20 Q. Fair enough. It's been 20 years. That's fair.

21 Other than seeing pictures and videos, and I don't want  
22 to understate their horrific nature, but other than that, you  
23 didn't personally observe detainee abuse occur when you were at  
24 Abu Ghraib, did you?

25 A. No, not personally. Yes.

1 Q. During your direct examination you testified that your staff  
2 relied on a number of CID statements that had been made by  
3 soldiers and contractors. Correct?

4 A. Yes.

5 Q. And you mentioned one of those being Torin Nelson, who was a  
6 CACI interrogator?

7 A. Can you repeat that, please?

8 Q. And one of those statements you were asked about on direct  
9 was a statement by Torin Nelson, who was a CACI interrogator?

10 A. Yes, from the CID.

11 Q. Right. A statement he gave to CID?

12 A. Yes.

13 Q. Do you know if Torin Nelson made any allegations about  
14 Steve Stefanowicz?

15 A. No.

16 Q. Do you know what his opinion was of Steve Stefanowicz?

17 A. No.

18 Q. Would it surprise you to hear he thinks Steve Stefanowicz is  
19 a good guy, affable?

20 A. That's his opinion.

21 Q. Everyone has their opinions on people. Right?

22 A. (No verbal response.)

23 Q. You also mentioned that your investigation relied on some  
24 statements that CID had taken from detainees. Correct?

25 A. Yes.

1 Q. And one of those that you were asked about on direct was a  
2 statement by Mr. Hanfoosh. Correct?

3 A. I don't recall that name.

4 MR. O'CONNOR: Can we go to Exhibit 28, Paragraph 9.  
5 Defendant's Exhibit 28, page 18, Paragraph 9.

6 THE COURT: Is it in your book? It's listed as  
7 plaintiffs'.

8 MR. O'CONNOR: Oh, I'm sorry. It's Plaintiff's  
9 Exhibit 28, you're right.

10 THE COURT: Page 9, did you say?

11 MR. O'CONNOR: Paragraph 9 on page 18, Your Honor.

12 THE COURT: And this is the correct version?

13 MR. O'CONNOR: Oh, I need to go over to 137. The  
14 version they gave us is...

15 THE COURT: This is still not the right version.

16 MR. O'CONNOR: Can you pull up 137?

17 MR. FARIDI: Your Honor, if I can help him out just  
18 to...

19 THE COURT: Yeah. But for purposes of the record, this  
20 Plaintiffs' 28 is not in.

21 MR. O'CONNOR: As the Court knows, there was a  
22 redaction issue, so we have to rely on plaintiffs' exhibit.

23 THE COURT: As long as you're doing that, take a look  
24 at H. There's a mistake in H.

25 MR. FARIDI: That's not a mistake, that's the one that

1 the government has agreed to unredact.

2 THE COURT: No, no, no, there's a mistake.

3 MR. O'CONNOR: I understand what you're looking at,  
4 Your Honor.

5 BY MR. O'CONNOR:

6 Q. Could you look in the binder that you were given by  
7 plaintiffs and go to Exhibit 137.

8 A. Page 137?

9 Q. No, Plaintiff's Exhibit 137. You can actually look on the  
10 screen to your left. It's just as easy to do it there. Do you  
11 see the reference to Torin Nelson, and it says "Contractor,  
12 Titan Corp.," in H?

13 A. In H?

14 Q. In Paragraph 7.

15 A. Yeah.

16 Q. He was actually a CACI employee, wasn't he?

17 A. I don't know.

18 THE COURT: Well, for the sake of the record, it's a  
19 mistake. He's a CACI employee, not Titan. That's a mistake.  
20 But it should be accurate. I don't want the jury to get  
21 confused.

22 MR. O'CONNOR: Me either.

23 Q. Let's go to the next page, Paragraph 9. And you were asked  
24 about 9(i), Asa'ad Hamza Hanfoosh.

25 A. Yes.



1 Q. And so that was one of the detainee statements given to CID  
2 that your investigation relied on and found credible?

3 A. Yes.

4 MR. O'CONNOR: Can we put that up on the screen?

5 THE COURT: Can you clarify this as well? I don't want  
6 the jury to get misled because they have not seen this name  
7 before.

8 MR. O'CONNOR: This is Al-Zuba'e, Your Honor.

9 THE COURT: I know. I wanted the jury to understand.  
10 There is also a prisoner number 152529, and he did testify that  
11 that is his number. I don't know why the name that we know him  
12 by, which is Mr. Al-Zuba'e, is not written here, but there are  
13 many names, I think, for people from that part of the world.

14 But I just don't want the jury to misunderstand that  
15 that little letter (i) references the plaintiff who we heard  
16 from this morning on the deposition.

17 MR. O'CONNOR: Thank you, Your Honor. That's exactly  
18 right.

19 Q. And so this is a statement from Mr. Hanfoosh to CID that  
20 your investigation considered and found credible for purposes of  
21 its investigation. Is that right, General? Are you still  
22 reading?

23 A. Yes. I don't recall, as I said, 20 years ago.

24 Q. You don't recall if that's the statement or if it was a  
25 different statement by Mr. Hanfoosh?

1 A. I don't recall that.

2 Q. But you relied on and found credible Mr. Hanfoosh's  
3 statement that he gave to CID?

4 A. Yes.

5 Q. And your team didn't participate in any of the interviews  
6 that CID had done in its investigation?

7 A. Say that again, please.

8 Q. Your team didn't participate in the interviews that CID  
9 conducted?

10 A. No, we did not.

11 Q. Those were handed over to you for consideration?

12 A. Correct.

13 Q. You did use the photos that Army CID had collected of  
14 detainee abuses?

15 A. Correct.

16 Q. Was most of the detainee abuse that you reported on  
17 documented by photographs and videos taken by MPs?

18 A. On the photographs, we did not ask for identification, we  
19 just relied -- we just saw the pictures and also read their  
20 statements.

21 Q. And you saw hundreds of photographs of detainee abuse at  
22 Abu Ghraib prison. Correct?

23 A. Yes.

24 Q. And some of those photos actually show people inflicting  
25 abuse on detainees?

1 A. Absolutely.

2 Q. Did any of the photos that you reviewed in conducting your  
3 investigation show a CACI employee inflicting abuse on a  
4 detainee?

5 A. We did not see any.

6 Q. And your investigation didn't see any photos of a -- that  
7 included both a detainee and a CACI employee in it. Right?

8 A. Yes. Not -- correct.

9 Q. Isn't it true that you were only allowed to interview four  
10 people working on the military intelligence side of the house at  
11 Abu Ghraib prison?

12 A. Correct.

13 Q. And those were Colonel Pappas, the commander of the  
14 MI Brigade?

15 A. Yes.

16 Q. And Lieutenant Colonel Steve Jordan, who was the executive  
17 officer of the MI Brigade?

18 A. Right.

19 Q. And Mr. Stefanowicz, a civilian contractor from CACI?

20 A. Right. Right.

21 Q. And John Israel, who was a translator working for  
22 Titan Corporation?

23 A. Right.

24 Q. So you did not interview Captain Carolyn Wood, who was in  
25 charge of the interrogation control element?

1 A. No.

2 Q. Did you want to?

3 A. No.

4 Q. Did you review any interrogation plans from the MI Brigade  
5 in conducting your investigation?

6 A. We did not. We limited ourselves to the four that you  
7 mentioned, and made a recommendation that a separate  
8 investigation should be conducted because it was outside of the  
9 parameters of my order.

10 Q. You did ask to see interrogation plans, didn't you?

11 A. I don't recall.

12 Q. Okay. And so as you just said, your purpose with respect to  
13 the military intelligence side was to identify some things that  
14 might be credible, and then hand that off so that somebody  
15 appointed to investigate the MI Brigade could do that?

16 A. At the recommendation of my legal team, that was the  
17 authority that we should do -- should we pursue, because that's  
18 outside the parameters of my instructions on investigating the  
19 MPs.

20 Q. In your investigation, did you receive any documents from  
21 the military intelligence operation?

22 A. No. They conducted their own investigation.

23 Q. And that was General Fay, General Jones, and General Kern's  
24 investigation?

25 A. Correct.

1 Q. With respect to Mr. Stefanowicz, your investigation didn't  
2 turn up any evidence that he had given MPs instructions relating  
3 to detainees other than those who were assigned to him.

4 Correct?

5 A. We took credible information from the soldiers who  
6 implicated him.

7 Q. And that was only with respect to detainees he was assigned  
8 to interrogate. Correct?

9 A. From what I understand, yes.

10 Q. And when you reported first to alleged misconduct by  
11 Mr. Stefanowicz, it was -- what you had found credible evidence  
12 of was unauthorized use of dogs and forced nudity. Correct?

13 A. If I recall, yes.

14 Q. There were no others, were there?

15 A. We suspected, but we did not have any evidence about him  
16 personally conducting.

17 Q. And, again, the unauthorized use of dogs and forced nudity  
18 were for detainees that were assigned to Mr. Stefanowicz only?

19 A. I didn't understand your question.

20 Q. The information you developed about use of dogs and forced  
21 nudity with respect to Mr. Stefanowicz were for detainees he was  
22 assigned to interrogate?

23 A. I wouldn't say that. We just took credible evidence from  
24 the soldier, the MP soldiers that we interviewed.

25 Q. Right. That he had engaged in that conduct or encouraged

1 that conduct for people who he was appointed -- or he was  
2 assigned to interrogate. Right?

3 A. Based on the comment that he was instructing the MPs by  
4 name, so we took that as credible evidence.

5 Q. For detainees that he was assigned to interrogate?

6 A. Correct.

7 Q. Thank you.

8 Do you know who was assigned to interrogate the three  
9 plaintiffs in this case, if anyone?

10 A. No. As I mentioned --

11 MR. ELLIOTT: Your Honor --

12 THE COURT: He says he doesn't know.

13 Q. If you could just answer this yes or no for now. Do you  
14 know if any of the plaintiffs in this case were interrogated?

15 A. No.

16 Q. Let's talk about the four MI personnel that you interviewed.  
17 You made findings with respect to all four of them in your  
18 report?

19 A. Right.

20 Q. And Colonel Pappas, he was never charged with a crime  
21 relating to detainee abuse, was he?

22 A. As far as I know, not at the time. But he was given an  
23 Article 15.

24 Q. Nonjudicial punishment, but not charged with a crime?

25 A. Right.

1 Q. And Mr. Stefanowicz was never charged with a crime?

2 A. I don't know.

3 Q. You're not aware of any?

4 A. I'm not aware.

5 Q. You recommended that Mr. Stefanowicz have his security  
6 clearance revoked, right?

7 A. I did not ask him that.

8 Q. Didn't you recommend that it be revoked?

9 A. Yes.

10 Q. Do you know if the Army took any action to revoke  
11 Mr. Stefanowicz's security clearance?

12 A. That I do not know.

13 Q. John Israel, the Titan translator that you made findings  
14 about, was he ever charged with a crime?

15 A. No.

16 Q. And he was exonerated in the Fay report, wasn't he?

17 A. That I do not know.

18 Q. And in the report, didn't you list Mr. Israel as a CACI  
19 employee?

20 A. He said that he was hired by Titan as an interpreter.

21 Q. But your report erroneously said that he was a CACI  
22 employee?

23 A. I could have, but I don't know.

24 Q. And other than Mr. Stefanowicz, did you make findings in  
25 your report about any other CACI employee?

1 A. Again, we stopped interviewing MI or contractors on  
2 interrogation based on advice of my legal team that they be  
3 investigated by a separate team.

4 Q. So you passed on what you had developed so that General Fay  
5 could make the definitive investigation of that?

6 A. Correct.

7 Q. When you finished your report, an Article 15-6 report,  
8 that's what you conducted. Right?

9 A. Right.

10 Q. And that then gets forwarded up the chain of command for  
11 review and approval?

12 A. Correct.

13 Q. And at some point during that process, the report was  
14 illegally leaked to the media. Right?

15 A. Unfortunately, yes.

16 Q. And did you take any steps to investigate how that came to  
17 happen?

18 A. No.

19 MR. FARIDI: Objection.

20 MR. O'CONNOR: I'm all done, Your Honor.

21 THE COURT: Well, I'm going to sustain the objection.

22 MR. O'CONNOR: No further questions.

23 THE COURT: Is there any redirect?

24 MR. FARIDI: None, Your Honor.

25 THE COURT: Then, General, thank you.



1 Is anyone going to call the general again?

2 MR. FARIDI: No, Your Honor.

3 MR. O'CONNOR: No, Your Honor.

4 THE COURT: General, thank you for your testimony.

5 You're now released as a witness. You can stay in court and  
6 watch the proceedings or you may leave, but do not discuss your  
7 testimony or anything you see or hear in court with any witness  
8 who has not testified. Thank you.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: All right. Your next witness?

11 MR. FARIDI: Your Honor, plaintiffs call Ivan Frederick  
12 via deposition. The run time of this video is an hour and 15  
13 minutes for plaintiffs' examination and 24 minutes for  
14 defendant's cross-examination.

15 And, Your Honor, we will also be moving into evidence  
16 PTX 5, 11, 16, 17, 19, 76; and pictures Z1 to Z6, D1, D2, and  
17 D38 to PTX 161; and pages 2, 10, 13, and 14 of PTX 206. These  
18 were all admitted at the deposition, Your Honor.

19 MR. O'CONNOR: We agree that these have all been  
20 admitted during the previous deposition, Your Honor.

21 THE COURT: That's fine.

22 MR. FARIDI: And, Your Honor, as I mentioned, the run  
23 time is approximately 1 hour and 15 minutes for plaintiffs'  
24 direct.

25 THE COURT: Let's get it started. We're not going to

1 break for a long time. All right.

2 (PLAINTIFF Exhibits 5, 11, 16, 17, 19, 76; pictures Z1  
3 to Z6, D1, D2, and D38 to PTX 161; pages 2, 10, 13, and 14 of  
4 PTX 206 were admitted into evidence.)

5 (Excerpt of video deposition of IVAN FREDERICK played  
6 in open court.)

7 (End of excerpt.)

8 THE COURT: I think this would be a logical time to  
9 take the afternoon break so the jury stays alert, and then we  
10 will have, as I understand, the equivalent of a  
11 cross-examination. Correct?

12 MR. O'CONNOR: That's right, Your Honor.

13 THE COURT: All right. We'll be on recess until 20  
14 after.

15 (Recess taken at 4:05 p.m.)

16 THE COURT: Bring the jury in.

17 MR. O'CONNOR: Your Honor, we request an instruction on  
18 questions of lawyers are not evidence. This would be a good  
19 time to remind the jury.

20 THE COURT: No, they've heard it before. They'll get  
21 it at the end.

22 (Jury in at 4:23 p.m.)

23 THE COURT: So, ladies and gentlemen, we're now going  
24 to have the cross-examination of the witness, Frederick, and  
25 that will be done by counsel for CACI.

1 (Excerpt cross-examination in videotaped deposition of  
2 IVAN FREDERICK played in open court.)

3 (End of excerpt.)

4 THE COURT: Call your next witness.

5 MR. FARIDI: At this time plaintiffs call by video  
6 designation Megan Ambuhl Graner. The run time of this video is  
7 4 minutes and 11 seconds, and I have a copy of the transcripts,  
8 Your Honor.

9 Your Honor, this witness was shown PTX 159, which was  
10 already admitted into evidence.

11 THE COURT: That's fine. So it's in this record as  
12 well.

13 (Excerpt of the videotaped deposition of MEGAN AMBUHL  
14 GRANER played in open court.)

15 (End of excerpt.)

16 THE COURT: Was there any cross on this one?

17 MR. O'CONNOR: Our cross was included in  
18 counter-designations that were played within the playing,  
19 Your Honor.

20 THE COURT: All right. That's fine.

21 Your next witness?

22 MR. FARIDI: Your Honor, at this time plaintiffs call  
23 by video deposition Sabrina Harman, and the run time of this  
24 video is 6 minutes and 15 seconds. And I have the transcripts,  
25 Your Honor.

1 (Excerpt of videotaped deposition of SABRINA HARMAN  
2 played in open court.)

3 (End of excerpt.)

4 MR. FARIDI: At this time, Your Honor, plaintiffs call  
5 Jens Modvig.

6 (Oath administered by courtroom deputy clerk.)

7 MR. FISHER: Your Honor, for the record, my name is  
8 Michael Fisher, Patterson, Belknap, Webb & Tyler, for the  
9 plaintiffs.

10 THE COURT: Do you have exhibit books?

11 MR. FISHER: No exhibits, Your Honor.

12 THE COURT: No exhibits? All right.

13 MR. FISHER: May I proceed?

14 THE COURT: Yes.

15 **(JENS MODVIG, having been duly sworn, testified as follows:)**

16 **EXAMINATION BY COUNSEL FOR PLAINTIFFS**

17 **BY MR. FISHER:**

18 Q. Can you please introduce yourself to the jury?

19 A. My name is Jens Modvig. I'm a medical doctor.

20 Q. Where do you currently work?

21 A. I work in DIGNITY, Danish Institute Against Torture.

22 Q. And how long have you held this position?

23 A. I've been there since 2008.

24 Q. And can you please describe to the jury what your  
25 responsibilities are as chief physician at DIGNITY?

1 A. My responsibilities are to develop and implement expert  
2 knowledge on torture, its documentation and prevention.

3 Q. Now, did you prepare a PowerPoint presentation for your  
4 testimony today?

5 A. Yes, I did.

6 Q. Can you briefly describe your educational background for the  
7 jury?

8 A. I was originally trained as a social worker. And after that  
9 I graduated as medical doctor in 1988, and three years later, as  
10 Ph.D. from University of Copenhagen.

11 Q. And where did you receive your medical doctor degree?

12 A. At the University of Copenhagen.

13 Q. In the interest of time, we're only going to focus on your  
14 professional background for the past couple of decades. Can you  
15 please describe what you've done professionally?

16 A. Well, from 2000 to 2004, I was secretary general of an  
17 international organization called International Rehabilitation  
18 Council For Victims of Torture.

19 THE COURT: I'm sorry, you need to keep your voice up.  
20 If you could get a little closer to the microphone.

21 THE WITNESS: Okay. Good.

22 A. IRTC, I was secretary general. Then I was deputy head of  
23 the OSCE mission in Kosovo for three years, and director of the  
24 United Nations office in Belgrade, Serbia for one year, and then  
25 I continued in DIGNITY.

1 Q. Do you have any other relevant experience?

2 A. I have. Because I have been elected to the United Nations  
3 Committee Against Torture in 2014, and I was serving as its  
4 chairperson from 2016 until '21.

5 Q. Can you please describe for the jury what your  
6 responsibilities were as the chairperson of the United Nations  
7 Committee Against Torture?

8 A. As chairperson, you lead the committee which comprises  
9 10 individual experts elected by the state parties. And the  
10 mandate of the committee is to examine states' compliance with  
11 the obligations in the convention.

12 Q. Now, you mentioned that on the committee there are elected  
13 experts. What field of expertise are these people in?

14 A. They are mostly lawyers, but they are also political  
15 scientists.

16 Q. And can you please describe, when you say that you enforce  
17 the mandate of the United Nations Committee Against Torture, can  
18 you go into a little bit of detail on that?

19 A. Any state party to the convention - that's 174 states - have  
20 an obligation every four years to report to the committee what  
21 they have done in order to implement the obligations of the  
22 convention. And then the committee examines this report, and  
23 there's a two-day question-and-answer session with a delegation  
24 from the country in Geneva. And then the committee concludes  
25 after this dialogue and presents recommendations on how to

1 improve the implementation.

2 Q. Have you published any books, articles, or other  
3 publications related to the field of torture and/or other cruel,  
4 inhuman, and degrading treatment?

5 A. I have published quite a number of research papers and a  
6 book, research handbook, on torture. And I'm also on the  
7 advisory board on *Torture Journal*, a scientific journal on  
8 torture issues.

9 Further, I may mention that I have been part of the  
10 editorial committee for the Istanbul Protocol, which were  
11 originally published in 1999, but where we revised it and it was  
12 published by the United Nations in 2022.

13 Q. Can you brief describe to the jury what the  
14 Istanbul Protocol is?

15 A. Yes, it's an international standard, United-Nations-endorsed  
16 protocol that guides the evaluation of psychological and  
17 physical evidence on torture in the investigation of alleged  
18 cases of torture.

19 Q. Now, you mentioned that you're on the editorial committee.  
20 What were your roles on the editorial committee?

21 A. It was to guide the review and revision of the protocol,  
22 which actually entailed more than 150 different drafters and  
23 editors of each chapter. And we were a group of editorial  
24 committee that oversaw the overall revision of the protocol.

25 Q. Were you retained by counsel for plaintiffs in this case?

1 A. I was.

2 Q. And what were you retained to do?

3 A. I was retained to analyze the conduct that constitutes  
4 torture and other cruel, inhuman, or degrading treatment  
5 according to international standards.

6 Q. Were you compensated in connection with your assignment?

7 A. Yes, I was.

8 Q. And was your compensation tied in any way to the conclusions  
9 you reached or the outcome of this trial?

10 A. No, it wasn't.

11 MR. FISHER: Your Honor, at this time plaintiffs move  
12 to qualify Dr. Modvig as an expert in the field of international  
13 norms and rules governing torture and other cruel, inhuman, or  
14 degrading treatment.

15 MS. BAILEY: No objection.

16 THE COURT: All right. He's so qualified.

17 Ladies and gentlemen, what that means is, normally we  
18 don't let witnesses testify as to their opinion about facts in  
19 the case. However, if somebody either through experience or  
20 education and training has developed expertise in an area that  
21 the average juror might not completely know, we allow that  
22 person to testify as to his or her opinions about certain  
23 issues.

24 You ultimately, though, are the fact finders, and you  
25 have the right to reject the testimony of an expert witness, or



1 to accept only a portion of it, or all of it at all. It will be  
2 your option to do that. But we will be allowing this witness to  
3 give you his opinion. Thank you.

4 MR. FISHER: Thank you, Your Honor.

5 Q. I want to focus now on your opinions in this case. What  
6 does international law say about torture and other cruel,  
7 inhuman, or degrading treatment?

8 A. It says that torture and other cruel, inhuman, or degrading  
9 treatment are prohibited and violates international law, and  
10 that there is no justification for their use.

11 Q. When you say that they are never justified, can you  
12 elaborate on that a little bit more for the jury?

13 A. Well, it means that no circumstances such as state of  
14 emergency or suspicion of terrorism or whatever might justify  
15 the use of torture.

16 Q. Based on your knowledge of international norms, can you  
17 please provide for the jury the definition of torture as  
18 understood in the international community?

19 A. Certainly. It's rather lengthy, but it's stated in the  
20 United Nations Convention Against Torture and Other Cruel,  
21 Inhuman, Or Degrading Treatment, in Article 1. And it  
22 essentially entails any act by which severe pain or suffering,  
23 physical or mental, is intentionally inflicted for a specific  
24 purpose such as obtaining a confession, information, punishment,  
25 coercion, or discrimination of any kind, inflicted by or at the

1 instigation of or with the consent or acquiescence of a public  
2 official or a person acting in an official capacity.

3 So essentially for issues, severe pain or suffering  
4 intentionally inflicted for a specific purpose by a public  
5 official.

6 Q. I want to focus first on that first element, severe pain or  
7 suffering. Is that limited to physical pain?

8 A. No, it's not. It's clearly stated that also mental  
9 suffering and psychological pain is included.

10 Q. Is the pain limited to the pain suffered at the moment of  
11 torture?

12 A. No, it may extend after and actually develop into chronic  
13 pain.

14 Q. Is there a certain threshold for when pain may become  
15 severe?

16 A. No, because pain is essentially a subjective concept that  
17 depends on the individual in terms of gender, age, health,  
18 et cetera. So the perception of pain is subjective.

19 Q. Have there been any proposals to set defined thresholds for  
20 what may constitute severe pain or suffering?

21 A. There have been attempts to define a level of extreme pain  
22 equal to what might be imagined as organ failure, pain, or even  
23 death. But this has been rejected by the international  
24 community, being not consistent with the perception of severe  
25 pain or suffering.

1 Q. I want to now focus on severe mental pain and suffering,  
2 which you had just briefly discussed. Does severe mental harm  
3 have to result from physical acts of torture or the threatened  
4 use of physical acts of torture?

5 A. It doesn't. Because you can inflict severe pain or  
6 suffering even without touching the victim, by use of  
7 psychological methods such as threats or humiliations or  
8 isolation that deprives you of any impressions.

9 Q. So are there any common elements between physical and  
10 psychological methods of torture?

11 A. There is. The creation of powerlessness, where the  
12 individual is completely under the control of the perpetrator,  
13 and where the individual does not retain any integrity, perhaps  
14 not even dignity or identity. And that feeling is created  
15 independently of whether the methods are physical or  
16 psychological.

17 Q. I want to shift gears for a moment to other cruel, inhuman,  
18 or degrading treatment. What is the definition of other cruel,  
19 inhuman, or degrading treatment?

20 A. Cruel or inhuman treatment are considered as severe pain or  
21 suffering, but the requirement of a purpose and intent is not  
22 necessarily present.

23 Degrading treatment is slightly different because this  
24 attacks the dignity, the human dignity of the person, and it's  
25 humiliating, diminishing treatment that is incompatible with

1 respect for human beings.

2 Q. Is other cruel, inhuman, or degrading treatment different  
3 from torture in the level of severity of the pain or suffering  
4 inflicted?

5 A. Not necessarily. The main difference seems to be the  
6 purpose that is absent.

7 Q. And how is severe pain and suffering analyzed in this  
8 context, in the context of other cruel, inhuman, or degrading  
9 treatment?

10 A. It's analyzed the same way as torture; that is, the method  
11 applied is not in and by itself torture or treatment, it depends  
12 on the circumstances. And they can be summarized to the  
13 purpose, if any; the duration and the intensity of the  
14 treatment; the condition of the victim; and any combinations of  
15 methods that might apply.

16 Q. Must an action be all of cruel, inhuman, and degrading in  
17 order to violate international law?

18 A. No, they can be separate, one by one.

19 Q. So if an action is either cruel, inhuman, or degrading, it  
20 violates international law?

21 A. Exactly.

22 Q. I want to focus a little bit on degrading treatment. Is  
23 there a certain standard for what may be considered degrading  
24 treatment?

25 A. No. Basically this depends on the individual and this

1 person's ethnic origin, religious beliefs, and other  
2 preconditions for the treatment. For instance, violation of  
3 taboos, including sexual taboos, may be intensely degrading to  
4 some people.

5 Q. Now, are there examples of what have been considered torture  
6 and other cruel, inhuman, or degrading treatment?

7 A. That could be threats, threats of killing, threats of  
8 injury, isolation, humiliation, deprivation of food, drink,  
9 light, darkness, rest, sleep. There are many, many examples.

10 Q. And are these examples listed on this slide?

11 A. Many of these are here on this slide. And the foregoing  
12 feature is that they are physical, they are psychological, they  
13 are even sexual methods, but all may constitute torture or ill  
14 treatment that is other cruel, inhuman, or degrading treatment,  
15 depending on the circumstances I just mentioned.

16 Q. Can you elaborate a little bit more on the circumstances  
17 that you just mentioned?

18 A. Well, as I mentioned, the difference between torture and ill  
19 treatment - that is, other cruel, inhuman, or degrading  
20 treatment - is typically the absence of a purpose, when we talk  
21 about ill treatment. But the circumstances might also entail  
22 differences in duration and intensity.

23 An obvious example is beatings, where slight beatings  
24 may be not even ill treatment, but systematic, brute,  
25 unrestrained beatings systematically in one place of the body

1 may constitute torture.

2 Q. I want to focus on a few examples on this page. I want to  
3 first talk about isolation or solitary confinement, which you  
4 had briefly mentioned. How may solitary confinement violate the  
5 prohibition against torture and/or other cruel, inhuman, or  
6 degrading treatment?

7 A. Well, looking at the criteria I just mentioned, one would  
8 look at whether there's a purpose for isolating the person. Is  
9 this to put a pressure on the person in order to obtain  
10 information or a confession?

11 Then you would look at the duration, how long time is  
12 it. Some have argued that isolation for more than 15 days may  
13 constitute torture. The intensity of the isolation would  
14 involve, for instance, whether there's access to any meaningful  
15 activities during the isolation, whether there's access to any  
16 meaningful social contacts, or whether you are completely on  
17 your own.

18 In terms of the condition of the victim, one might  
19 consider if there are any mental health conditions, could be  
20 phobias, could be hyperactivity, could be a minor, that would  
21 all be more vulnerable to the isolation.

22 And in terms of combination of methods, you might  
23 consider the cell. Is it a small, dark cell with no windows,  
24 where you are not able to tell the time of the day? Do you have  
25 access to a toilet or are there even unsanitary conditions

1 associated with it? All of those assessments would clarify if  
2 the isolation or solitary confinement would amount to ill  
3 treatment or torture.

4 Q. Let's now focus on threats, which, again, you had briefly  
5 mentioned earlier. Can you provide some examples of threats and  
6 how they may amount to violations of international law?

7 A. A classical threat is so-called mock execution, where you  
8 think you are being executed but it turned out that you weren't.  
9 This threat is typically considered torture.

10 Here we see a dog. And normally you would say that the  
11 use of dogs by -- trained dogs, of course, by law enforcement is  
12 a perfectly legitimate means in terms of, for instance, crowd  
13 control or pursuing a suspect that escapes. But when the victim  
14 is in custody, it's a different issue. And the threat here with  
15 the dog would of course be threat to be bitten by the dog. And  
16 I think everybody would be afraid if there's a growling dog, big  
17 dog in front of you threatening to bite you.

18 But the individual, the conditions of the victim, might  
19 make this even a stronger threat if you, for instance, are not  
20 used to having dogs as pets, if dogs are typically stray dogs  
21 that you have to be afraid of. And the combinations here might  
22 be that you are restrained, you are unable to move, you may be  
23 naked. And these conditions would all, again, clarify if the  
24 threat of a dog would amount to ill treatment or even torture.

25 Q. Now, all these threats that you had mentioned are directed

1 towards the detainee in your examples. Does a threat have to be  
2 directed towards that specific detainee?

3 A. No, the threat could be directed towards relatives. For  
4 instance: We have your family in the room next door and we're  
5 going to rape them or kill them unless you comply.

6 Q. I want to now focus on suspension and stress positions. How  
7 may those amount to torture and/or other cruel, inhuman, or  
8 degrading treatment?

9 A. Here we have suspension or stress positions which are  
10 sometimes lumped and sometimes distinguished as two. But  
11 suspension in arms or feet is typically torture. And the  
12 suspension that we see here may be the so-called strappado,  
13 where you're suspended in your hands but the hands are tied  
14 behind the back. And this is a particularly painful form of  
15 torture because your shoulders dislocate and it's so painful  
16 that you typically faint.

17 Another extreme is the standing, which is, of course, a  
18 daily activity.

19 Q. I'm doing that right now.

20 A. Yes. But forced standing, of course, might serve a purpose,  
21 that you are ordered to stand. And again, here, the duration is  
22 decisive. Are you standing here for minutes or hours or maybe  
23 many hours? And what about the intensity of the forced  
24 standing? Are you allowed to move a little bit just to help the  
25 circulation back, or are you ordered to stand completely still?



1           And the conditions of the victim here would, for  
2 instance, involve whether you are in good health, whether you  
3 are dehydrated, whether you are exhausted in advance. And the  
4 combinations might be, are you forced to stand naked? Are you  
5 threatened, for instance, with injury? If you cannot stand  
6 anymore or if you move, are you threatened with electrocution or  
7 to be shot?

8           So that would be a combination that all in all would  
9 decide whether the forced standing might be ill treatment or  
10 torture.

11 Q. Are the methods that you list on this slide, are they  
12 exhaustive of what violates international law?

13 A. No, they are not. There are no limits to what perpetrators  
14 might think of. But there's a common denominator among all  
15 those methods, be they physical, psychological, or even sexual.  
16 And the common denominator is the creation of a mental impact  
17 where powerlessness and lack of dignity, lack of identity, and  
18 sometimes even lack of sense of reality, what is true, what is  
19 wrong, is created.

20           And in torture, this mental health condition is created  
21 and taken advantage of when pursuing a purpose like obtaining a  
22 confession or information.

23 Q. Thank you, Dr. Modvig.

24           MR. FISHER: Your Honor, I have no more questions. I  
25 do have copies of the slide deck if Your Honor would like them.

1 THE COURT: Well, they would not go to the jury --

2 MR. FISHER: Right. But in case --

3 THE COURT: -- but for part of the record, we'll  
4 include that as just the record.

5 All right. Cross-examination?

6 MS. BAILEY: Yes, Your Honor. We have exhibit binders.

7 May I proceed, Your Honor?

8 THE COURT: You may.

9 CROSS-EXAMINATION BY COUNSEL FOR DEFENDANT

10 BY MS. BAILEY:

11 Q. Good afternoon, Dr. Modvig. My name is Linda Bailey and I  
12 represent CACI.

13 I have some clarifying questions. You never visited  
14 Abu Ghraib in 2003 or 2004, right?

15 A. No, I didn't.

16 Q. And you don't have any firsthand knowledge of anything that  
17 happened there?

18 A. No.

19 Q. Okay. You don't have any firsthand knowledge if anyone ever  
20 mistreated these plaintiffs?

21 A. No.

22 Q. And you don't have any firsthand knowledge if anyone ever --  
23 who was employed by CACI did anything wrong?

24 A. No.

25 Q. Okay.

1 MS. BAILEY: Could we bring up the definition? Thank  
2 you.

3 Q. All right. You're testifying as an expert on international  
4 law today.

5 A. (No verbal response.)

6 Q. And you mentioned a lot of your qualifications. Are you  
7 also on the faculty of American University Washington School of  
8 Law?

9 A. I'm not on the faculty, but I have been guest lecturer there  
10 for a period of time.

11 Q. Okay. And you specialize in human rights law?

12 A. No, on the aspects of torture. So what I have taught in  
13 there is the use of the Istanbul Protocol in the investigation  
14 of alleged cases of torture.

15 Q. Would you say the Istanbul Protocol is important?

16 A. Yes, definitely.

17 Q. Why?

18 A. It's used as a tool to guide complete and thorough  
19 evaluation of potential or alleged cases of torture for court  
20 cases or for other purposes of accountability.

21 Q. Would you have concerns about an assessment that didn't  
22 follow the Istanbul Protocol, an assessment into torture  
23 allegations?

24 A. Well, there's a difference between the first and the second  
25 version of the Istanbul Protocol. Because the first one

1 actually follows very much a forensic medical paradigm, whereas  
2 the revised version is a little bit broader and also includes  
3 the role that other health professionals may play. And this, in  
4 fact, understands that in health care settings, the conditions  
5 for doing a thorough examination, including an evaluation of  
6 consistency between the findings and the allegations, might not  
7 be there. And that means you would here potentially find  
8 examples of reports that do not fully comply with all the  
9 requirements of the Istanbul Protocol, but, nevertheless, are  
10 useful steps towards it.

11 For instance, the preservation of evidence in terms of  
12 photographic evidence, in terms of medical descriptions, might  
13 be valuable even for a forensic doctor at a later stage, even if  
14 they are not at the time they are preserved, are fully  
15 consistent with the protocol.

16 Q. Earlier we discussed -- or you discussed on direct  
17 international norms regarding torture and CIDT. Is that  
18 correct?

19 A. Yes.

20 Q. And these are universal norms?

21 A. Yes.

22 Q. Meaning they apply to everybody. Right?

23 A. Yes.

24 Q. I think in your report -- you drafted a report for this  
25 case. Is that correct?

1 A. Yes.

2 Q. And in that report you reflected your opinions?

3 A. Yes.

4 Q. Okay. And I think in your report you referred to it as a  
5 global consensus, so something everybody agrees on?

6 A. Yes.

7 Q. And that would include the United States?

8 A. Yes.

9 Q. All right. There are some differences, though, in how  
10 different organizations define torture, aren't there?

11 A. Different organizations? What do you mean? Different  
12 countries, states?

13 Q. Amnesty International versus the UN --

14 A. Oh, yes, that's true.

15 Q. -- versus the courts?

16 A. Yes, the one medical association has a definition of torture  
17 that is broader than the one in the UN Convention. And that, of  
18 course, has its reasons, because the United Nations is an  
19 intergovernmental organization that aims at state responsibility  
20 and state obligations, whereas other definitions that may be  
21 broader, may include torture perpetrated by private actors.

22 Q. Okay. You chose to use the definition of torture from the  
23 Convention Against Torture. Is that correct?

24 A. Yes.

25 Q. Okay. And that's also the definition that you used in your

1 report?

2 A. Yes.

3 Q. But you shaved the last sentence off, didn't you?

4 A. Yes.

5 Q. Okay. And the last sentence is an important exception to  
6 the definition, isn't it?

7 A. No.

8 Q. No? Okay. Let's look at your -- in your exhibit binder,  
9 and let's look at Defense Exhibit 66 at page 5.

10 MS. BAILEY: And this is just for the witness.

11 A. 66, page 5.

12 Q. Yeah, it's towards the back.

13 A. Yes.

14 Q. And I have the original here. This is a book that you wrote  
15 on -- or excuse me. This is a book where you wrote a chapter  
16 that dealt with torture. Is that correct?

17 A. Yes.

18 Q. And I've got a segment of that chapter in your binder.

19 A. Yes.

20 Q. And it discusses the exception that we just mentioned that  
21 you excluded from your definition?

22 A. Uh-huh.

23 THE COURT: I'm sorry, we have to have "yes" or "no."  
24 It doesn't show up in the transcript.

25 THE WITNESS: Yes. I'm sorry.

1 THE COURT: Is there any objection to 66? Are you  
2 moving it into evidence?

3 MS. BAILEY: I'm not, Your Honor. I'm just questioning  
4 him.

5 THE COURT: All right. That's fine.

6 Q. And if you look, do you or do you not say in the second  
7 paragraph: "In the UN Convention Against Torture and other  
8 cruel and inhuman or degrading treatment or punishment, an  
9 important exception is given; that is, pain and suffering  
10 inherent to lawful sanctions."

11 You say that. Right?

12 A. Yes.

13 Q. And that exception for lawful punishment, according to you,  
14 that can include things like amputation, flogging, and stoning.  
15 Correct?

16 A. Yes.

17 Q. So under your understanding of the definition of torture,  
18 the definition that you chose, the things you -- you know, in  
19 your report you describe that handcuffing can be torture, but  
20 stoning a woman to death for adultery, that's perfectly legal?

21 A. This chapter was written in 2004.

22 Q. Sir, do you know when the events of this case took place?

23 A. Yes, 2004.

24 Q. 2003.

25 A. Okay. Yes.

1 Q. So at that time, that would have been your standard, that  
2 handcuffing -- you're saying today, handcuffing a detainee could  
3 be torture, but it's perfectly legal to stone a woman to death  
4 for adultery?

5 A. After my time in the Committee Against Torture, I have  
6 become much wiser in terms of what constitutes torture. And  
7 what I have learned is that already in 2002, a prominent  
8 scholar, Sir Nigel Rodley, that was UN special rapporteur on  
9 torture, appointed by the Human Rights Council, has clearly  
10 stated that lawful sanctions should be interpreted under  
11 international law standards. And flogging, stoning, et cetera  
12 would never be considered legal under international law. They  
13 would fall under the *jus cogens*.

14 And for that reason, I would withdraw my statement  
15 here. And I have since then learned that this exception is not  
16 so important. That is why I answered no, I don't think it's  
17 very important.

18 In the Committee Against Torture, we have reviewed  
19 countries where Sharia law applies, and it has never been an  
20 obstacle or a limitation of the recommendations of the Committee  
21 Against Torture that there were local Sharia laws that allowed  
22 those kinds of activities, and that I wasn't completely aware of  
23 when I wrote this chapter, but I am today.

24 Q. So you changed your mind from 2004 to now. Is that fair?

25 A. Yes. Yes.



1 Q. But in 2004, which is after the events of this case, that  
2 was your opinion?

3 A. It was.

4 Q. And your opinion was also that hooding -- you know, hooding  
5 a detainee could be torture, but chopping a person's hand off  
6 for theft was fine?

7 A. That was not my opinion, that it was fine. I think that's  
8 putting mouth -- putting words in my mouth.

9 Q. I'm sorry, you're correct, sir. But it was legal --

10 MR. FISHER: Can she let the witness answer.

11 THE COURT: Yes, I think you need to do that.

12 A. I have never said that any of these were okay. I have made  
13 the point that they may fall under the exception that lawful  
14 sanctions, which is mentioned in the definition.

15 But I have changed my opinion now, and I am in  
16 consistency with international law now that clearly says this is  
17 not consistent with international standards, and, hence, the  
18 exception in the definition, as you mentioned, is not of great  
19 practical significance.

20 Q. And that's the case now?

21 A. Yes.

22 Q. Okay. Understood.

23 You went through a lot of different conduct that could  
24 constitute torture, CIDT, and you had a conversation on direct  
25 about degrading treatment. Is that fair?

1 A. Yes.

2 Q. In your report, when looking at things like degrading  
3 treatment, you relied in part on decisions from the European  
4 Court of Human Rights. Is that accurate?

5 A. Yes.

6 Q. Okay. In your report you say, "The European Court of Human  
7 Rights operates with a minimum level of severity when assessing  
8 torture or CIDT."

9 What did you mean by that?

10 A. A minimum level of severity, is, as I have stated  
11 previously, a holistic approach that involves both an assessment  
12 of the individual conditions and the duration and intensity.

13 Q. Okay. The European Court of Human Rights arose out of the  
14 European Convention on Human Rights. Is that right?

15 A. Yes.

16 Q. The United States never signed that convention, did it?

17 A. True.

18 Q. Okay. And in fact, sometimes the United States government  
19 disagrees with the European Court of Human Rights about what  
20 conduct violates CIDT, doesn't it?

21 A. Likely so. I believe you.

22 Q. Okay. In fact, when the United States ratified the  
23 Convention on Torture, the U.S. Senate Foreign Relations  
24 Committee said that the European Court of Human Rights  
25 interprets CIDT to, quote, "include treatment that would

1 probably not be prohibited by the U.S. Constitution and may not  
2 even be illegal in the United States."

3 Is that accurate?

4 A. It's accurate that it was said. But I would like to add  
5 that when the Committee Against Torture reviewed the  
6 United States in 2014, where I had the honor of being one of two  
7 rapporteurs, the difference of the definitions of torture, in  
8 the reservation that the United States has made when ratifying  
9 the convention, did not have any practical significance. In the  
10 debate between the committee and the delegation headed by Tom  
11 Malinowski, there were no issues related to whether these fall  
12 under the U.S. understanding of torture or the United Nations.

13 So my opinion is that it's true what you say, there is  
14 formally this difference, and there's a reservation to the  
15 definition by the United States, but in practical terms it  
16 doesn't have any great significance.

17 Q. Okay. And just to put a finer point on it, the actual  
18 reservation itself is that the United States, in joining the  
19 Convention Against Torture, only considers CIDT to be within the  
20 scope of things that would be cruel and unusual punishment under  
21 the U.S. Constitution. Right?

22 A. I agree, yes.

23 Q. Okay. Are you familiar with the U.S. War Crimes Act?

24 A. No.

25 Q. Okay. I would like to ask you a few questions about it

1 related to your report. But I have it for you. Specifically  
2 we're going to look at whether this current U.S. law conflicts  
3 with some of your testimony today.

4 So let's take a look at Defense Exhibit 41 in your  
5 binder. And if you could please turn to page 34,  
6 subparagraph B.

7 MR. FISHER: Objection, Your Honor. He only testified  
8 as to torture and other cruel, inhuman, and degrading treatment,  
9 and not war crimes. And it seems like this is going into war  
10 crimes.

11 THE COURT: You-all approach the bench.

12 (BENCH CONFERENCE ON THE RECORD.)

13 THE COURT: From what I've heard so far is, are you  
14 arguing there were any war crimes committed at this point?

15 MR. FISHER: We are, Your Honor. But he's only  
16 testifying to torture and CIDT.

17 THE COURT: I haven't heard anything yet regarding any  
18 evidence of war crimes here, it seems to me.

19 MR. FISHER: Okay.

20 THE COURT: Are you going to move ahead?

21 MR. FISHER: Yes, Your Honor.

22 (END BENCH CONFERENCE.)

23 Q. Okay, sir. Were you able to turn to page 34,  
24 subparagraph B? Just let me know when you're there. Do you see  
25 language that says, "Revision to the war crimes offense under

1 federal criminal code"?

2 A. The amendment, you mean?

3 Q. I'm sorry?

4 A. "Revision to war crimes offense under federal criminal  
5 code."

6 Q. Yes, sir. Do you see that?

7 A. Yes.

8 Q. Let's skip down to new Subsection D. Do you see that that  
9 discusses common Article 3 violations and prohibited conduct?

10 A. Yes.

11 Q. Let's focus in on the definition of cruel, inhuman, or  
12 degrading treatment. Could you please read that definition to  
13 the jury?

14 MR. FISHER: Objection, Your Honor. It just says cruel  
15 and inhuman treatment. As he described on direct, degrading --

16 THE COURT: You can do that on cross-examination.  
17 Overruled.

18 Q. Could you please read the definition of cruel or inhuman  
19 treatment?

20 A. "The act of a person who commits or conspires or attempts to  
21 commit an act intended to inflict severe or serious physical or  
22 mental pain or suffering other than pain or suffering incidental  
23 to lawful sanctions, including serious physical abuse upon  
24 another within his custody or control."

25 Q. Thank you. Now let's turn to page 35 and go to

1 Subsection 2(D). It's towards the bottom.

2 A. "The term serious physical pain and suffering," that's it?

3 Q. Yes, sir. I was going to ask you to tell us what the  
4 definition of serious pain or suffering is.

5 A. There's no fixed definition because it depends on the  
6 perception by the individual.

7 Q. Under this U.S. law, sir, could you please read for us what  
8 the definition of serious physical pain or suffering is?

9 A. Okay. Certainly. "The term serious physical pain or  
10 suffering shall be applied for purposes of Paragraph 1(B) as  
11 meaning bodily injury that involves a substantial risk of death,  
12 extreme physical pain, a burn or physical disfigurement of a  
13 serious nature other than cuts, abrasions, or bruises, or  
14 significant loss or impairment of a bodily member or organ or  
15 mental faculty."

16 Q. Sir, didn't you just testify that under international norms,  
17 that that is not a valid description, and that torture does not  
18 have to involve pain at the level you would experience with  
19 organ failure and impairment of bodily function or death? Did  
20 you say that?

21 A. Yes. According to international standards.

22 Q. Yes. And international law, as you described it, is a  
23 global consensus. Right?

24 A. I'm not sure I understand the question.

25 Q. We talked earlier, you said it's a global consensus. It's

1 something everyone agrees on?

2 A. Yes.

3 Q. This is what the U.S. thinks. So do you still think that  
4 your opinion on that issue is a global consensus?

5 A. Yes. I have seen nowhere signs in my career from the  
6 Committee Against Torture that there's not consensus about the  
7 *jus cogens* prohibition of torture and mistreatment.

8 Q. Do you see that international law as you describe it  
9 conflicts with current U.S. law on this issue?

10 A. I think this discussion is taken out of a context, where I  
11 have had no opportunity to analyze what you are actually  
12 presenting to me, the war crimes law that I told you I was not  
13 familiar with. So I do not feel able to answer your question  
14 right now.

15 Q. So you're an expert on CIDT in the world, but not in the  
16 United States?

17 A. Apparently not in this paragraph you mentioned to me.  
18 That's true.

19 Q. Okay. Fair enough.

20 Let's talk about the Convention Against Torture. Let's  
21 talk about Article 16. You've opined on CIDT as it's described  
22 under Article 16. Is that correct?

23 A. Yes.

24 Q. And as you and I just discussed, the United States ratified  
25 the Convention Against Torture with its reservation, saying that

1 the CIDT is only to the extent of the U.S. Constitution.

2 Correct?

3 A. Uh-huh.

4 Q. Okay. And the War Crimes Act actually says the same thing,  
5 but --

6 THE COURT: Counsel, don't testify.

7 MS. BAILEY: Yeah, withdrawn.

8 Q. So something is not cruel and unusual treatment -- or if  
9 something is not cruel and unusual treatment under the  
10 U.S. Constitution, then it's not CIDT. Correct?

11 MR. FISHER: Objection, Your Honor.

12 THE COURT: Sustained.

13 Q. When the United States ratified the Convention Against  
14 Torture, it also made clear that Article 16 is not  
15 self-executing, didn't it?

16 A. I'm not aware of that.

17 MR. FISHER: Objection, Your Honor.

18 THE COURT: Again, this witness is not a lawyer, and  
19 you're asking him at this point, in my feeling, to get into  
20 nuances of international law that are beyond the scope of the  
21 expertise for which he has been called.

22 So I'm going to sustain this line of questioning. Move  
23 on.

24 MS. BAILEY: Understood, Your Honor.

25 Q. You mentioned special, is it rapporteur?



1 A. Uh-huh.

2 Q. They're individual experts that are appointed by the  
3 UN Human Rights Council?

4 A. Correct.

5 Q. They monitor and raise awareness on human rights issues?

6 A. Yeah.

7 Q. They're independent from the UN?

8 A. Yes.

9 Q. They're independent from any other organization?

10 A. Yes.

11 Q. They're independent from any government?

12 A. Yes.

13 Q. They're the opinions of one person?

14 A. No.

15 Q. Is there more than one special rapporteur that signs their  
16 name to it?

17 A. The thing is, the special rapporteurs elected by the  
18 United Nations Human Rights Council are prominent experts, often  
19 scholars, that, through a competitive process, are appointed for  
20 a period to gather the developments and state of affairs on  
21 torture-related issues. And they do so not by opining on their  
22 own and providing, putting forward individual views; rather,  
23 they develop reports after having consulted widely among agents,  
24 experts, players, civil society organizations, and taking stock  
25 of the developments.

1           For instance, I quoted quite a lot the report by  
2           Professor Manfred Nowak in 2010, where he issued a report on the  
3           concepts of torture and ill treatment and the practical  
4           examples. This was a very, very useful report that was rather a  
5           landmark report, not done before, where he took stock of the  
6           developments in international law, the jurisprudence of  
7           different agents and judicial bodies. And this report is not  
8           just the opinion of a single person, it rather represents the  
9           state of affairs of the international law development.

10          Q. And it was very useful because it reflected the developments  
11          of international law?

12          A. The state of affairs.

13          Q. And how things had changed in international law regarding  
14          torture and CIDT?

15          A. Developed.

16          Q. Developed?

17          A. Yes.

18          Q. Is that different than changed?

19          A. Well, development is more incremental, I would say. Because  
20          it's not a success. It's like a protection within the field of  
21          human rights is not going backwards, it is in fact going forward  
22          slowly by the different decisions made by judicial bodies.

23                 That's what we call the jurisprudence. That is  
24          developing slowly, and that means that stock-taking on regular  
25          intervals - for instance, every decade or something like that -

1 might be a relevant issue to see where are we.

2 And he was taking stock of perhaps the last 10,  
3 20 years of exactly this field. So this was a useful state of  
4 affairs report.

5 Q. And so as you just described, the protections under human  
6 rights against torture and CIDT, they're expanding, which is  
7 positive for everyone. Correct?

8 A. Expanding slowly, yes.

9 Q. Expanding slowly. And so this year, the rights are better  
10 off than they were 10 years ago?

11 A. Hopefully in some areas, yes.

12 Q. Okay. And more so, hopefully, than 20 years ago?

13 A. Hopefully.

14 Q. Okay. Great. You listed -- you relied on the Committee  
15 Against Torture to consider what acts might constitute CIDT.  
16 Correct?

17 A. At least there were contributions from the jurisprudence of  
18 the committee, yes.

19 Q. Yes. Understood. And as counsel pointed out, you listed  
20 some examples of things the committee says are CIDT in your  
21 report. But that's not an exhaustive list. There are other  
22 things?

23 A. Yes.

24 Q. And there are other things that the committee itself has  
25 determined is CIDT. Correct?

1 A. Yes. With the proviso that I just testified that the  
2 circumstances are decisive. It's not a method is torture. A  
3 method is ill treatment. The method is applied and the  
4 circumstances, duration, intensity, et cetera, decides whether  
5 this amounts to ill treatment or torture.

6 Q. Okay. And one of the things that the committee has said is  
7 CIDT is corporal punishment for discipline in the home.

8 Correct?

9 A. Yes.

10 Q. That's spanking?

11 A. Spanking, yes.

12 Q. Okay. So any parent in here who has spanked their child has  
13 committed CIDT, under the committee's standards?

14 A. No. What makes the committee in some occasions to deal with  
15 corporate punishment of children is that even if the corporal  
16 punishment is exercised by parents, the state has the  
17 responsibility to protect their children. And if they know that  
18 severe pain or suffering are inflicted, it's essentially the  
19 same as if women are being raped. They're not being raped by  
20 the state, but the state has a responsibility to protect its  
21 citizens.

22 And if it knows that children are being not spanked but  
23 severely corporal punished, and if they know that women are  
24 being raped, then the state has the protective responsibility,  
25 and that makes it, by the end of the day, responsible if they

1 knew or should have known that these acts were going on and they  
2 did nothing to protect it.

3 Q. So if I understand you correctly, you can't just look at  
4 something that the committee has said is conduct that would be  
5 CIDT. It's really individual to every circumstance. So  
6 corporal punishment in one circumstance may or may not be CIDT,  
7 just like some of the things that were on your slide. Is that  
8 correct?

9 A. Corporal punishment is many things, and I testified that if  
10 we look at beatings with maybe related to corporal punishment,  
11 beatings might amount to ill treatment, but it depends on the  
12 duration and the intensity. A slap on the face is not ill  
13 treatment, but if you prolong the duration and if you beat all  
14 over and all over again, it may amount to ill treatment.

15 So, yes, of course there are situations where a certain  
16 treatment may amount to ill treatment or torture, and others  
17 where it will not. I mentioned the example of the dogs. The  
18 dog threat may be perfectly legal in some circumstances, but,  
19 depending on the purpose, depending on the duration, intensity,  
20 the condition of the victim, and any combinations, it may  
21 develop into the level of ill treatment or even torture.

22 Q. Okay. You mentioned that when you were the chair of the  
23 Committee Against Torture, that you had an opportunity to work  
24 with the United States in that process where ultimately they  
25 concluded obligations. Is that correct?

1 A. Yes.

2 Q. And when you did that, did you consider the Army field  
3 manual on intelligence interrogations?

4 A. Yes, I did.

5 Q. Yes, you did. Okay.

6 A. I have to say, it's 10 years ago, but I did.

7 Q. I will help you remember.

8 A. Thank you.

9 Q. So in their concluding obligations, is it true that the  
10 committee thought that an interrogation technique called  
11 separation was problematic?

12 A. Yes.

13 Q. Okay. And specifically it found the field expedient  
14 separation technique permits forms of sensory deprivation?

15 A. Uh-huh.

16 Q. That's where sometimes you can use goggles or a blindfold  
17 and earmuffs to block out noise and sound and vision?

18 A. That's one way of undertaking sensory deprivation, yes.

19 Q. Okay. And that's what we're talking about when we talk  
20 about field expedient separation?

21 A. I believe there were others, if I remember correctly. But  
22 if your questioning is in terms of goggles and ear, then fine  
23 with me.

24 Q. Okay. At bottom, it's really just something that blocks  
25 sound and sight. Is that fair?

1 A. Yes.

2 Q. Okay. And that, under the field manual, is normally limited  
3 to 12 hours, but that time limit doesn't include when the  
4 military is doing it for security purposes. Right?

5 A. Right.

6 Q. Okay. And those 12 hours can be expanded, by approval.  
7 Correct?

8 A. Yes.

9 Q. Okay. And the committee thought that this was contrary to  
10 the committee's view of international detainee treatment  
11 requirements. Right?

12 A. If I remember the example that you bring up now correctly, I  
13 remember that the treatment that was justified in the field  
14 manual was being held in a room where there was no possibility  
15 of having sounds or light sensations. And that was what we  
16 talked about at that point.

17 Q. Okay. The way that you defined it, and that's how you  
18 understand the field expedient?

19 A. Yes.

20 Q. But the United States disagreed with you, didn't they?

21 A. I believe they did.

22 Q. In fact, it says right in the manual that that conduct does  
23 not constitute CIDT?

24 MR. FISHER: Objection.

25 A. Yes.

1 THE COURT: Look, it's getting late in the day. The  
2 jury has been at it all day. How much longer do you have for  
3 cross?

4 MS. BAILEY: About three minutes.

5 THE COURT: Let's wrap it up.

6 Q. And the United States has not changed that part of the  
7 manual, have they?

8 A. I am not aware of that. But I believe you're right.

9 Q. Okay. Thank you.

10 MS. BAILEY: No further questions.

11 THE COURT: Two minutes of redirect?

12 MR. FISHER: Yes, Your Honor, very short.

13 **REDIRECT EXAMINATION BY COUNSEL FOR PLAINTIFFS**

14 **BY MR. FISHER:**

15 Q. Dr. Modvig, you were shown the War Crimes Act. How does  
16 this affect the international standard on torture, war crimes,  
17 and other cruel, inhuman, or degrading treatment?

18 A. I'm sorry, I didn't understand the question. Could you  
19 repeat, please?

20 Q. Yes. You were shown -- defendant's counsel showed you the  
21 War Crimes Act.

22 A. Yes.

23 Q. How does that definition affect, if at all, the  
24 international standard on war crimes?

25 A. In my opinion, it does not.



1 Q. Okay.

2 A. But I'm not an expert in international humanitarian law.

3 Q. So defendant's counsel also talked a little bit about a  
4 chapter in a book about lawful sanctions. Just to be clear, is  
5 inflicting pain during interrogations equivalent to lawful  
6 sanctions?

7 A. No, it's not.

8 Q. And were the types of treatment you talked about on your  
9 direct considered torture and/or other cruel, inhuman, or  
10 degrading treatment in 2003?

11 A. I'm sorry, I didn't understand the question.

12 Q. Sure. The types of treatment that you discussed on your  
13 direct examination with me.

14 A. Yes.

15 Q. Were those considered torture and/or other cruel, inhuman,  
16 or degrading treatment in 2003?

17 A. Yes.

18 Q. So that includes, for example, forced nakedness?

19 A. Yes.

20 Q. Stress positions?

21 A. Yes.

22 Q. The use of dogs?

23 A. As well, yes.

24 Q. And in evaluating torture and cruel, inhuman, or degrading  
25 treatment, is it relevant to evaluate and assess if the

1 techniques are used in combination with each other?

2 A. Indeed so.

3 MS. BAILEY: Objection. We're going beyond the scope.

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

5 MR. FISHER: Your Honor, I have nothing further.

6 THE COURT: I assume there's no further recross?

7 Ladies and gentlemen, your involvement is done for  
8 today. Please remember my cautions about avoiding any kind of  
9 coverage of this case over any means. Do not discuss anything  
10 you've seen or heard today with anybody.

11 Again, get a good night's sleep. Hopefully traffic  
12 will be a bit more forgiving tomorrow morning so we can get  
13 started right away at 9:30. Remember, we have some other trials  
14 going on in the courthouse, so sometimes there's a bit of lineup  
15 coming through security. So you've got to give yourselves a  
16 little extra time.

17 We're going to stay in session with counsel for a few  
18 minutes, but the jury is free to go this evening. We'll see you  
19 in the morning.

20 (Jury out at 6:00 p.m.)

21 THE COURT: Now, the first thing I want to do today, to  
22 start to make sure we don't have a long, drawn-out session later  
23 in the week, is to get a list of all the exhibits which we  
24 believe have been actually entered into evidence at this point  
25 through the now nine witnesses who have testified so far.

1           So counsel, especially because it's a little confusing  
2           at times because in some of these recorded depositions there are  
3           references to exhibits, so I want both sides to be on top of  
4           this and let us know if we've missed something. All right?

5           I'll let my courtroom deputy start reading, so please  
6           listen carefully.

7           COURTROOM DEPUTY CLERK: PTX 13. Also, I'm going in  
8           order from yesterday of how they came in. I don't know if that  
9           helps.

10          THE COURT: That's how we'll do it, yeah.

11          COURTROOM DEPUTY CLERK: PTX 13, PTX 01, PTX 193,  
12          PTX 224, DX 2, PTX 221, PTX 159, PTX 168, PTX 206C, PTX 206B,  
13          PTX 161D, PTX 161C, PTX 206E, PTX 36, PTX 199, DX 30, PTX 20,  
14          PTX 19, PTX 23, PTX 137, PTX 5, PTX 11, PTX 16, PTX 17, PTX 76,  
15          PTX 161, PTX 206.

16          THE COURT: First of all, from the plaintiff, do you  
17          think any other exhibits were entered so far?

18          MR. FARIDI: Your Honor, I think there may be one  
19          slight issue with PTX 161. I think we have offered 161 --  
20          subparts of 161, but the entirety of the exhibit may not be in  
21          evidence.

22          THE COURT: She said 161D and 161C, if I heard  
23          correctly.

24          MR. FARIDI: And 161 was also mentioned, the second to  
25          last one that was mentioned. And my notes indicate, Your Honor,

1 that we have received into evidence 161A, B, C, and D.

2 COURTROOM DEPUTY CLERK: D1, D2, D38, and then D1  
3 through 36. Is that what you had said? During the deposition?

4 MR. FARIDI: Yes, that is correct.

5 That's it, Your Honor.

6 THE COURT: That's it from the plaintiff.

7 All right. Now, Mr. O'Connor?

8 MR. O'CONNOR: No, Your Honor, our assumption is, for  
9 instance, there were some exhibits admitted during the  
10 General Fay de bene esse, but that hasn't been played yet.

11 THE COURT: I'm just talking about what's come in so  
12 far. So this would be General Taguba, Frederick -- the  
13 deposition of Frederick had some. Are those in? Do you feel  
14 those are reflected in our notes? If not, you-all have to clean  
15 that up. Because it's a little complicated the way it's been  
16 done.

17 But the record for the trial itself has to have, in my  
18 view, a clear indication that a specific exhibit has been  
19 entered. Okay?

20 MR. O'CONNOR: Understood.

21 THE COURT: I'll give you overnight, then, to look at  
22 it, or send us an email tomorrow. If the plaintiff agrees with  
23 that, then we'll just make that part of the record.

24 Yes?

25 MR. ELLIOTT: Your Honor, there's one of the Taguba

1 report --

2 THE COURT: Well, we corrected that problem. Correct?

3 MR. ELLIOTT: Well, there's two versions of the report  
4 that are exhibits, plaintiffs' exhibits. We believe the version  
5 of Exhibit 28 should be used, whereas I believe the parties  
6 believe Exhibit 137, which has been entered already, is the  
7 version that should be in use.

8 Exhibit 28 is the publicly available authorized version  
9 of the report, whereas 137 is the unauthorized, unredacted  
10 version.

11 MS. ROBINSON: Your Honor, first, there are actually  
12 three versions on the exhibit list.

13 THE COURT: You-all choose one all three of you can  
14 agree with. There shouldn't be a dispute.

15 MS. ROBINSON: So one -- the version that was used  
16 today, 137, that one unredacts Big Steve's name. That was the  
17 primary reason for using it. We had received from the  
18 government their proposed redactions to a number of exhibits;  
19 they had not included that exhibit among the ones they wanted  
20 redacted. We've been using consistently the redacted versions  
21 that the government provided. We were unaware that the  
22 government needed additional redactions to that because we  
23 didn't receive them.

24 I don't think the government has a problem with the  
25 unredacted version.

1 THE COURT: I don't want to spend time on this. The  
2 three parties look at the exhibit, decide which one you want to  
3 come in, we'll make sure that's the one that should come in.  
4 You-all will have to work it out tonight.

5 Is there anything else that we need to address?

6 MR. O'CONNOR: There's a couple, Your Honor. We and  
7 the United States don't agree -- they wanted to redact a couple  
8 of our exhibits, and we don't agree to the extent of their  
9 redactions. They called it PII, but it's redacting names, and a  
10 lot of names that are in the public record and completely  
11 divorce the exhibits from any evidentiary value. They take  
12 everybody's name out.

13 They're taking out the names of people who swore oaths  
14 to sworn statements in Springfield, Virginia, which doesn't  
15 really seem like a profile in courage here --

16 THE COURT: My ruling previously has been that if a  
17 name is in the public record, we're not taking it out of this  
18 case. And I'm not getting any pushback from the government.

19 MR. ELLIOTT: No. If there's been an error --

20 THE COURT: Tonight you-all work it out. If there's  
21 still a problem, we can address it tomorrow.

22 MR. O'CONNOR: We have one excerpt from the Stefanowicz  
23 de bene esse deposition. Your Honor might recall, during the  
24 deposition, plaintiffs started reading from Ivan Frederick's  
25 2004 statement, and we objected. And the Court said, is he

1 going to testify? And they said yes. And the Court said,  
2 finish your questions; we might have to take that out later.  
3 And he testified, but that statement that they were reading from  
4 didn't come in.

5 So our view is that should come out because the  
6 statement was hearsay that was never admitted, and the Court had  
7 said at the time we're going to revisit this once we see what  
8 happens with Frederick.

9 THE COURT: I have at this point no idea what you're  
10 talking about.

11 MR. O'CONNOR: I have excerpts. I can hand up the  
12 excerpts.

13 MR. HADDAD: Your Honor, I can respond while -- I have  
14 a very quick response.

15 THE COURT: Is there no problem?

16 MR. HADDAD: There is a problem.

17 THE COURT: Let me take a look at it so I have some  
18 understanding what we're talking about.

19 All right. So this is part of Stefanowicz's deposition  
20 that we did. Correct?

21 MR. O'CONNOR: That's right, Your Honor.

22 THE COURT: And so your argument is that when  
23 Frederick's deposition was played today, so he testified today,  
24 that this line of questioning was not included.

25 MR. O'CONNOR: Right. They read from his statement

1 that was never admitted in his deposition. So it's not  
2 evidence, so it's completely hearsay.

3 THE COURT: All right. Now I'll hear the opposition.

4 MR. HADDAD: Sure. Good afternoon, Your Honor.

5 Andrew Haddad for the plaintiffs.

6 First of all, I think CACI is late on this issue. Last  
7 week we brought up on a meet and confer that we planned to play  
8 this portion of Big Steve's deposition at trial. They didn't  
9 raise it in their brief to the Court last Wednesday, which the  
10 Court indicated they should raise all trial issues. They didn't  
11 raise it, and therefore we believe have waived their opportunity  
12 to address this. Your Honor said de bene esse depositions  
13 should be played as-is, that's it.

14 THE COURT: No, I don't agree. No, there was a clear  
15 objection made at the time, and I don't think that's proper  
16 evidence. So I'll sustain the objection.

17 MR. O'CONNOR: We'll take it out, Your Honor.

18 THE COURT: That's fine. In terms of the schedule that  
19 I believe we have, Fay and Monahan are the only two names left  
20 on today's list. I assume the last plaintiff is going to  
21 testify tomorrow first. Is that the plan?

22 MR. FARIDI: Yes, Muhammad Faridi for the plaintiffs,  
23 Your Honor. The last plaintiff will testify first thing in the  
24 morning. That's Mr. Al-Shimari. And based on how we have been  
25 proceeding, I think we'll be able to rest late tomorrow



1 afternoon, probably late in the afternoon. We were hoping to  
2 rest a little bit earlier, but I think late in the afternoon,  
3 depending how the crosses go, late in the evening is what we're  
4 planning on.

5 THE COURT: Excellent.

6 MR. FARIDI: At some point, Your Honor, it would be  
7 helpful to get a good sense of when you plan to have a charge  
8 conference.

9 THE COURT: My plan would be to start putting jury  
10 instructions together. I'll give you my proposed charge and  
11 we'll see where we go from there.

12 I still don't see how war crimes is in this case.  
13 Torture and CIDT you got. I don't see where there's any  
14 evidence of war crimes, and your proposed verdict have that  
15 included category. I'm strongly recommending you think about  
16 simplifying the case so the jury can be focused on what's much  
17 clearer for them. All right? So that's something I'm throwing  
18 out to both sides.

19 But so far, there has been, in my view, absolutely zero  
20 testimony on that issue.

21 MR. FARIDI: Your Honor, we can also deal with this at  
22 the charge conference. One nuance there is that under  
23 international standards, torture and CIDT constitute war crimes.  
24 So that would be our connection to war crimes.

25 THE COURT: Do you really need it? You don't.

1 MR. FARIDI: We will think about that issue and so  
2 advise Your Honor tomorrow morning, so you won't have to think  
3 about it in terms of jury instructions.

4 MS. GINSBERG: Your Honor, I think we still need a  
5 ruling on the exclusion of the plaintiffs' exhibit that we --

6 THE COURT: I'm going to wait to see you start putting  
7 them in. There are several of them that I think should not come  
8 in. I started looking at them this morning. All right? It's  
9 better to have the full context, all right, and the case is  
10 moving fast enough. It puts both sides at risk of having the  
11 jury see objections being made and sustained or overruled. All  
12 right?

13 MS. GINSBERG: Understood, Your Honor.

14 MR. O'CONNOR: Your Honor, I'm not going to leave  
15 Ms. Ginsberg to last. Plaintiffs' case is shrinking and our  
16 case is a little over two days, we believe. It's actually  
17 fairly predictable because a lot of it is already in the can. I  
18 have at least one witness who cannot be here until Monday, and  
19 if they go through the day tomorrow, then that's not a problem  
20 because the stuff I have is going to go through Thursday and  
21 Friday.

22 THE COURT: Who is the witness?

23 MR. O'CONNOR: Daniel Porvaznik. He's not subject to  
24 the subpoena power of the Court. And we've moved him up to  
25 Monday, but I would -- it's possible we could run out of

1 witnesses at 3 o'clock or 4 o'clock on Friday, and I just want  
2 to raise that.

3 THE COURT: How long do you anticipate his testimony  
4 taking?

5 MR. O'CONNOR: I suspect his direct would be an hour,  
6 hour and a half. Probably hour.

7 THE COURT: I have told the jury that we would not be  
8 in session on Tuesday.

9 MR. O'CONNOR: Correct.

10 THE COURT: I don't like the idea of charging the jury  
11 on Monday and having them sit for a whole day not working on the  
12 case. What I may do is check with them tomorrow and see if they  
13 have made such plans that they could not be here on Tuesday.

14 And, Ms. Ginsberg, you don't have to be here on  
15 Tuesday.

16 MS. GINSBERG: Your Honor, Tuesday is not a problem for  
17 me at all.

18 THE COURT: I have a scheduling problem, so what I  
19 might do is, if we get the case to the jury Monday night, I  
20 might have another judge babysit the jury for a couple of hours  
21 when I can't be here. A conflict came up in my schedule.

22 I'm going to think about that, and whether I would like  
23 to keep your case open that long. But the problem is, I don't  
24 know whether the plaintiff is planning any kind of a rebuttal  
25 case at this point.

1 MR. FARIDI: At this point, Your Honor, we're not  
2 planning on it. I think if there are scope objections made by  
3 the defendant and Your Honor sustains those objections, we may  
4 need to put on a short rebuttal case. But I don't think it will  
5 be longer than a few hours, I think.

6 MR. O'CONNOR: A scope objection would be exceedingly  
7 unlikely from us, Your Honor. I'm not going to waste anybody's  
8 time.

9 THE COURT: Do you have a deposition from the witness?

10 MR. O'CONNOR: From Mr. Porvaznik? It's from 20 years  
11 ago, Your Honor. It's not covering everything we would have him  
12 testify to.

13 THE COURT: You know, it is the rocket docket and I  
14 warned everybody. I am concerned. I mean, I want to get this  
15 case to the jury as quickly as we can, and I don't want to hold  
16 it up artificially for Monday. If the case is over by  
17 3:00 o'clock Friday afternoon, it would be my plan to have  
18 you-all at least close the case and give them the jury  
19 instructions first thing Monday morning.

20 So I am concerned about the fact that a witness would  
21 be holding up the schedule.

22 MR. FARIDI: Your Honor, if I may, we worked long and  
23 hard, our team stayed up nights, some of the days, to streamline  
24 our case because we took your admonition seriously on this  
25 issue. And I think if they don't have Mr. Porvaznik showing up

1 here on Friday --

2 THE COURT: Can he appear by video, a live video? I  
3 mean, he's got to be -- I assume he's in the United States.

4 MR. O'CONNOR: He's in the United States, Your Honor.  
5 Possibly.

6 THE COURT: We can do him that way. Technology is  
7 wonderful. All right?

8 MR. O'CONNOR: We will evaluate all of the options,  
9 Your Honor, yes.

10 THE COURT: Have him available if we need to do it that  
11 way. All right? Maybe we can do it that way.

12 MS. GINSBERG: Judge, I'm afraid I am going to be the  
13 last one.

14 MR. FARIDI: One thing I will just flag is, you know,  
15 I'm sure Your Honor is aware of this, if we see  
16 cross-examinations that are protracted and that are designed to  
17 getting this case to Monday, I'm sure Your Honor would be on --

18 THE COURT: I'm not shy about cutting the case.

19 Frankly, right now I don't want to see another picture  
20 of the tiers. The jury has seen it two or three times. This is  
21 a good jury, they've all stayed awake. There's a lot of  
22 cumulative evidence in this case already. All right? They  
23 don't need to see more pictures of naked piles of bodies and  
24 that sort of stuff, or piles of naked bodies.

25 Yes, it applies to the defense as well. All right?

1 Ms. Ginsberg?

2 MS. GINSBERG: Yes. Judge, if the Court admits two of  
3 these exhibits, I believe they're Exhibit 97 and 98, they are  
4 the HR files for Daniel Johnson and Steve Stefanowicz, they are  
5 replete with PII that has not been redacted. And I think if the  
6 plaintiff wants to offer those exhibits, I think it's their  
7 obligation to redact the PII. There are Social Security  
8 numbers, telephone numbers --

9 THE COURT: Of course. There can't even be an issue on  
10 this. Have you talked to counsel?

11 MS. GINSBERG: I have. And they've told me because we  
12 originally produced the document, it's our responsibility to  
13 delete the PII. And we are not offering those exhibits, we are  
14 opposing them, and it's...

15 THE COURT: All right. I don't even want to hear an  
16 answer. It will be taken care of. No PII or the exhibit  
17 doesn't come in. All right?

18 We'll recess court for the evening.

19 (Off the record at 6:21 p.m.)

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**CERTIFICATE OF OFFICIAL COURT REPORTER**

I, Rebecca Stonestreet, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

\_\_\_\_//Rebecca Stonestreet\_\_\_\_\_

\_\_4/23/24\_\_

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**DATE**

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