

GTMO Observer Dispatch: 9/11 Attacker Trials and Torture

GTMO OBSERVER PROGRAM



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Disclaimer: There is some graphic content in this dispatch.

Background Information

I observed the Guantánamo Bay military commission hearings for the 9/11 attackers on January 27-February 1, 2020. These proceedings at court in Camp Justice involved pre-trial motions, testimony, and related considerations for the 9/11 defendants. The five (5) defendants are: (1) Khalid Shaikh Mohammad (KSM); (2) Walid bin 'Atash; (3) Ramzi bin al Shibh (4) Ammar al Baluchi, and (5) Mustafa Al Hawsawi.

KSM was the principle leader and organizer of the 9/11 attacks and the other four defendants played secondary roles. The death penalty is being sought for all defendants.

The presiding judge is Col. W. Shane Cohen. The previous judge resigned. Judge Cohen has issued an order that allows defendants to view the proceeding from a private room or in the court room, as well as leave during court proceedings for daily prayers or other purposes. For those familiar with U.S. state or federal civil or criminal proceedings, these proceeding appear to be quite different. Witnesses were called in the court, sworn in, cross examined by the defense attorneys, and then questioned by the government prosecutor.

The first witness was psychologist Dr. John Mitchell, who along with Bruce Jessen developed what has been termed “enhanced interrogation techniques” (torture) under contract with the CIA.

The defense attorneys previously filed a motion to suppress documents and prohibit the use of evidence derived as “fruit from the poisoned tree.” It has remained pending for some time. The judge did not indicate when he might rule on the motions. Defense counsel stated during the proceeding that they “do not expect their motion to ever see the light of day.” The judge declined to comment on the motion.

Defense counsels continue to argue that the government continues to “over classify” documents. They announced that they had obtained a large number of documents via a Freedom of Information Act (FOIA) proceeding and through litigation in the United States. They were directed by the judge to turn over to the prosecution copies of the documents they had obtained via the FOIA process and they did so.

I was told by two observers who had previously attended a hearing that recently it was alleged by the defense that the FBI had “planted” someone on the defense legal teams and that person was removed, with much angry criticism by the court. I did not otherwise verify this.

Testimony

The first witness was psychologist Dr. John Mitchell, who along with Bruce Jessen developed what has been termed “enhanced interrogation techniques” (torture) under contract with the CIA. Mitchell testified that when they sought the enhanced interrogation contract with the CIA, they formed a company (Mitchell & Jensen & Associates). Once they were awarded the contract, they hired a staff of almost 100 people to assist in the work. Over the four-year course of the contract, they received in excess of \$80 million for their work.

Mitchell and Jessen had previously worked with the military conducting survival, evasion, resistance, and escape (SERE) training for military cadets, military personnel, and CIA agents. In addition, they had worked extensively with the CIA on other matters. Different “degrees” of harshness and types of training were used to prepare U.S. personnel who were to enter dangerous foreign territories where they would be

subjected to torture if they were caught, including Asia, Russia, Africa, or the Middle East.

Some of the techniques involved kidnapping U.S. personnel and subjecting them to harsh interrogation conditions where they were led to believe they had been captured by a foreign group. The purpose of such training was to prepare personnel for the possibility of capture and torture, to train them on survival and withholding information, build their confidence in their ability to withstand torture, and to let them know that even the best trained person can be broken, but a delay in providing information to the enemy can allow the United States to change plans to protect its interest.

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All of the defendants and other prisoners were interrogated in two different processes. The first was conducted by the CIA in 10 different so-called "Black Sites." The CIA was not interested in "prosecution." Its only interest was in obtaining information. The second group of interrogations was conducted by the FBI at so-called "White Sites." The FBI was interested in obtaining information for the purpose of prosecuting the defendants.

The prosecution's position is that these were two separate interrogation processes, isolated from each other by time, locations, interrogation techniques used, purpose, and who was conducting the interrogations.

Mitchell's testimony consumed four entire days and part of the morning of the fifth. According to Mitchell, there were 10 Black Sites. When he first went to an early Black Site, the person in charge, referred to as the "New Sheriff in Town," and his assistant, "The Preacher," were conducting "harsh" interrogation methods.

In addition, Mitchell was disturbed by the Preacher's conduct, such as putting his hands on prisoners and saying he could feel evil spirits leaving their bodies during interrogations. Mitchell contacted CIA headquarters and discussed his concerns. The enhanced interrogation techniques and procedures were then implemented. Jensen described his mission as "saving American lives" and said he had been successful.

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He stated that when a terrorist was captured, he was blindfolded, restrained, and flown to an interrogation site. On arrival at the site, the defendant's clothes were cut off and his hair shaved off. Loud noise was played so they could not communicate with each other or even know if there were other prisoners in the same facility. However, sometimes prisoners were "allowed" to hear other prisoners being interrogated.

Prisoners were kept in individual cells without toilets or showers in the dark and sometimes in cold temperatures. Sometimes, calories were restricted and Mitchell testified that KSM had arrived "very fat" but was able to lose a lot of weight. Slapping the head and belly, waterboarding, "walling," and standing sleep deprivation (up to 72 hours) were also used.

Walling consisted of chaining or hand cuffing a naked prisoner to the wall, putting a rolled towel around his neck, and repeatedly hitting the person in the chest with the interrogator's hand. The "correct" procedure was to use the towel to prevent the head from hitting the wall, but at the same time to shake the liquid inside the ears to cause disorientation. Waterboarding consisted of putting a prisoner on a board, slanting it down, putting a thin cloth over the nose, and pouring water over their face to simulate drowning.

While being questioned by one of the defense counsels, Mitchell stated that KSM was with his young sons when he was captured, and was not told what had happened to them.

While interrogating KSM, Mitchell told KSM that if he did not tell Mitchell about the [non-existent] attack plans, and if the attack happened on American soil and if American lives were lost, Mitchell would personally slit the throat of his sons.

At one point, the CIA received information, which later turned out to be incorrect, that another attack in the United States was imminent. While interrogating KSM, Mitchell told KSM that if he did not tell Mitchell about the attack plans, and if the attack happened on American soil and if American lives were lost, Mitchell would personally slit the throat of his sons. (Mitchell vigorously argued that he had permission from the Assistant Attorney General to make threats if they were contingent upon something and that therefore the threat in question did not violate the Geneva Convention.)

Mitchell testified that the goal of enhanced interrogation was to obtain information. In his opinion there should be no "long lasting effect" from enhanced interrogation if the techniques were applied properly. Doctors were present during interrogations, took notes, and were authorized to stop the interrogation if the doctor or other medical professional believed the person was in danger of dying. Mitchell also testified that in his opinion the prisoners would have recovered from the effects of the enhanced interrogation by the time they were questioned by the FBI in White Sites.

During questioning by one of the defense counsels, Mitchell agreed that at least one FBI agent was present at one or more of the 10 Black Sites during interrogation and later at the White Sites where the FBI questioned the defendants. He also testified that as the prisoners were moved out of one Black Site into the next, the former Site was destroyed and all equipment was destroyed or removed. When being moved from site to site, prisoners were restrained, blindfolded, and placed in diapers while not allowed to go to the toilet during transport.

The defense attorneys questioned Mitchell about 20 different interrogation techniques, which they sometimes called torture, but Mitchell stated that some of those were not used and others may have occurred but they were not part of the enhanced interrogation procedures. This included alleged “rectal rehydration.” Mitchell repeatedly argued that his enhanced interrogation methods were not intended to create “learned helplessness.” He volunteered on the stand that while interrogating KSM, he informed Mitchell that he was the person who personally beheaded journalist Daniel Pearl.

Jessen said “unapproved” interrogation techniques had been used at some sites and some approved techniques were applied excessively. He said that he had gone to senior people to complain about the treatment of one prisoner, but that prisoner later died while at the site.

After over four days of testimony that week by Mitchell, Jessen commenced his testimony mid-morning on Friday. He testified that he had been told by people at a Black Site that the FBI had been there. He said “unapproved” interrogation techniques had been used at some sites and some approved techniques were applied excessively. He said that he had gone to senior people to complain about the treatment of one prisoner, but that prisoner later died while at the site. At one early site, there were “indigenous guards” who mistreated prisoners, and he complained to headquarters that indigenous guards should not be used.

On Friday evening, he stated that he had only agreed to testify until the conclusion of Friday and he was now “out of here” and not returning. The defense moved to have the judge issue an order while Jessen was still in court requiring him to return and complete his testimony. They argued that while the judge has no authority to require a U.S. citizen in the United States to come and testify anywhere outside of the United States, he did have the authority while a person was in court to order him to return and testify.

The judge stated that he was unsure if he had that authority and would not be rushed at the last minute to make a decision. He therefore denied the motion. The prosecution announced that an FBI agent the defendants had requested to testify had agreed to come to GTMO and testify one specific day in February and only on that one day and had explicitly refused to testify at any other time.

Challenges for the Government

In addition to the inability of the defense to compel witnesses to testify, the process has other challenges. For instance, although a number of documents previously classified as top secret have been declassified, a great many documents are still classified as top secret and therefore not available. Other documents were shown during the hearing and available for the defense attorneys on their monitors, but the five defendants are not permitted to see or know their content.

Recently, the court ordered the government to turn over a large number of documents, but it was later discovered that it had failed to turn over to the defense almost a thousand pages of documents that should have been turned in.

During the hearing, in a separate room, the CIA monitored the hearings. On some occasions, it sounded a horn and red-light alarm in the courtroom that stopped testimony when it was believed that the testimony could reveal still classified top secret information. The judge would then adjourn the proceedings until the government resolved the matter.

It is apparent the defense is not focused on arguing lack of guilt, but rather defects in the procedures, “fruit of the poisoned tree,” and violations of international law.

The defendants complained that there are substantial delays in getting the hearing transcripts. The daily transcripts are typed during the proceedings and then given to the CIA to review to determine if there is any classified information in the transcript, which would be deleted. Apparently, the delay in the defense getting transcripts can run from weeks to months. The judge requested the prosecution inquire if there was some way the review of the transcripts could be expedited.

In a separate meeting with the lead military defense counsel, Commander Wall, he discussed the very high cost of the proceedings and organizational structures and issues. It is apparent the defense is not focused on arguing lack of guilt, but rather defects in the procedures, “fruit of the poisoned tree,” and violations of international law. Commander Wall stated that even if acquitted, he did not think any of the five defendants could or would ever be released. [Click here for selected sections from his slide presentation.](#)

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