

Exhibit B

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

- - - - - +
SULEIMAN ABDULLAH SALIM, |
et al, |
 |
Plaintiffs, | Case Number:
 |
vs. | 2:15-cv-286-JLQ
 |
JAMES E. MITCHELL and |
JOHN JESSEN, |
 |
Defendants. |
- - - - - +

Videotaped Deposition of Jose Rodriguez
Washington, D.C.
Tuesday, March 7, 2017
10:00 a.m.

Job No. 302803
Reported by: Laurie Bangart, RPR, CRR

1 tracked down the contractor and asked if he would
2 accompany a team of CTC officers to the black site
3 where we hoped Abu Zubaydah would be
4 interrogated."

5 Do you see that?

6 A Yes.

7 Q First of all, the reference to "AZ" is
8 Abu Zubaydah, correct?

9 A Correct.

10 Q And the reference to "the contractor" is
11 Dr. Mitchell; is that correct?

12 A Correct.

13 Q Okay. So how did you reach him within
14 two days of AZ's capture?

15 A Well, I assume that he was at
16 headquarters. Somebody, you know, somebody
17 reached him. I did not reach him myself.
18 Somebody in the Counter-Terrorism Center reached
19 him.

20 Q Did you know him at that time?

21 A I did not know him.

22 Q So that was the first time that you had
23 met Dr. Mitchell?

24 A I met him, yes, for the first time.

25 Q Mm-hmm. Ultimately, though, you were

1 the one who made the decision to hire him at CTC?

2 A Yes.

3 Q Why did you think he was qualified?

4 A Because of his experience with SERE and
5 because we needed to do something different than
6 what had been done before, and he looked like the
7 right person to do it.

8 Q Why did he look like the right person to
9 do it?

10 A Because he had a tremendous expertise,
11 and he had a good vision for what needed to be
12 done.

13 Q What did he have "tremendous expertise"
14 in?

15 A In SERE.

16 Q What was his SERE experience, to your
17 knowledge, at that time?

18 A He had spent many years with the Air
19 Force working on SERE.

20 Q Did he have -- was there any other
21 source of his tremendous expertise?

22 A The expertise I was interested in was
23 SERE.

24 Q When you said "he had a good vision for
25 what needed to be done," what was that good

1 vision?

2 A That good vision was the use of enhanced
3 interrogations to get Abu Zubaydah to cooperate
4 with us.

5 Q Was that his idea?

6 A It was a recommendation. I don't
7 remember exactly who the recommendation came from,
8 but I assume he was part of that recommendation.

9 Q I'm sorry. He was -- you're saying that
10 he was recommended to you?

11 A That was a recommendation from him
12 regarding the use of the enhanced interrogation
13 techniques.

14 Q I see, okay, and that's -- so his -- the
15 recommendation from him to use enhanced
16 interrogation techniques was what you mean when
17 you said he had "a good vision"?

18 A Yes.

19 Q Okay.

20 A He had a good vision for how to get this
21 person to tell us about the pending attacks on the
22 US.

23 Q Other than Dr. Mitchell's experience at
24 SERE, did he have any other qualifications that
25 you were aware of at that time?

1 A Well, he came with a Ph.D., highly
2 regarded, and then the SERE experience is the one
3 that I was interested in.

4 Q How did you know he was highly regarded?

5 A I was told.

6 Q The Senate Select Committee On
7 Intelligence report, which I know you have some
8 concerns about, says that "neither Dr. Mitchell
9 nor Dr. Jessen," quote, "had any experience as an
10 interrogator, nor did either have specialized
11 knowledge of Al-Qaeda, a background in
12 counter-terrorism, or any relevant cultural or
13 linguistic experience."

14 You've read that before, right?

15 A I've read that before.

16 Q And what's your response to that?

17 A My response to that is that at some
18 time -- sometimes it is important to do something
19 different, because what's traditionally been done
20 hasn't worked, and this was something different,
21 and it worked very well.

22 Q So Dr. Mitchell was proposing --
23 "recommending" was your word -- something
24 different, right?

25 A Yes.

1 training program that trains our people how to
2 withstand interrogation tactics. They had
3 knowledge and background on Islamic extremism."

4 What knowledge and background on Islamic
5 extremism do you believe that Drs. Mitchell and
6 Jessen had?

7 A Well, first of all, their knowledge of
8 psychology, human behavior was one that, as he
9 points in his paper here, translates into all
10 cultures. I saw him, how he dealt with the Arab
11 culture, and I thought, you know, this is a person
12 who understands it and can deal with it.

13 Q So your belief that they had knowledge
14 and background on Islamic extremism came about as
15 a result of your observations of them during the
16 course of interrogations; is that correct?

17 A Correct.

18 Q Do you have any other knowledge with
19 regard to their knowledge and background on
20 Islamic extremism?

21 A No.

22 Q Okay. Does it -- how do you feel about
23 the fact that Dr. Mitchell and Dr. Jessen in
24 their, what I just read to you, say that they
25 didn't have knowledge about -- and background on

1 Islamic extremism?

2 A I have no feeling about it.

3 Q I want to ask you for your response to a
4 couple other statements that have been made about
5 Dr. Mitchell and Dr. Jessen's background.

6 In her book, *The Dark Side*, Jane Mayer
7 says that "according to one colleague who is an
8 interrogator, Mitchell had not even observed an
9 interrogation," referring to prior to, to this,
10 this assignment.

11 Do you know whether that's true or not?

12 A I do not.

13 Q And Ali Soufan from the FBI says the
14 same thing.

15 To your knowledge, is it true that
16 Dr. Mitchell had never even observed an
17 interrogation prior to his assignment?

18 A I do not know.

19 Q Okay. I want to ask you to turn to
20 paragraph 42 of your declaration, and that's on
21 page 7, Mr. Rodriguez.

22 A Okay.

23 Q In paragraph 42(a) you say, "Before
24 September 11, 2001, the CTC had no resident
25 expertise in interrogation"; is that correct?

1 A True.

2 Q When I say "is that correct," it's not
3 just that you said it; that was a true fact?

4 A True.

5 Q Okay, and it says in (b), "To be used
6 effectively, interrogation skills must be
7 developed over years" and that "interrogation was
8 not a part of the CTC's core counter-terrorism
9 mission."

10 Is that true?

11 A True.

12 Q So were you -- did you have expertise in
13 interrogation?

14 A No.

15 Q That is not something that you had done
16 in your prior assignments with the CIA?

17 A No.

18 Q And were you in a position to evaluate
19 then whether somebody was doing a good job at
20 interrogation or not?

21 A Only in terms of results.

22 Q But it's not an area that you had any
23 training or experience in?

24 A At the CIA, many times we take on new
25 jobs, and we don't have any training or

1 experience. Like myself, I came to CTC. I had
2 never done any CTC work. You come and you learn
3 it, and you very quickly become pretty
4 knowledgeable about it.

5 Q Okay. I really want to focus here on
6 paragraph 42(c), the next, the next subparagraph
7 down.

8 Do you see that?

9 A Yes.

10 Q And that says, "Having been referred to
11 the CTC by the OTS, Drs. Mitchell and Jessen were
12 eminently qualified to assist the CTC in
13 developing and applying EITs."

14 Do you see that?

15 A Yes.

16 Q The fact that Drs. Mitchell and
17 Jessen -- well, first of all, it says -- strike
18 that. Let me start over, try to ask a decent
19 question.

20 As you point out, that they were
21 referred -- Drs. Mitchell and Jessen were referred
22 to the CTC by the OTS; is that correct?

23 A Yes.

24 Q Is it true that Dr. Jessen was referred
25 to the CTC by the OTS?

1 A Jessen was -- Mitchell was referred.
2 Mitchell was referred. Jessen was referred by
3 Mitchell.

4 Q So is the fact that they were referred
5 to the CTC by the OTS one of the reasons why you
6 believe they were, quote, "eminently qualified to
7 assist the CTC in developing and applying EITs"?

8 A Yes.

9 Q What about the reference from the OTS
10 led you to conclude that they were eminently
11 qualified?

12 A I just took it for granted that they
13 knew what they were doing.

14 Q And you took it for granted based upon
15 the referral from the OTS; is that right?

16 A Yes.

17 Q You mentioned a few minutes ago that,
18 that Dr. Jessen was referred to you by
19 Dr. Mitchell; is that right?

20 A Yes.

21 Q What -- did you make the decision to
22 hire Dr. Jessen?

23 A Yes.

24 Q What did you do to vet him? Anything?

25 A Nothing.

1 Do you see that?

2 A Yes.

3 Q So is it correct that you asked
4 Dr. Mitchell if he would take charge of creating
5 and implementing a program?

6 A Yes.

7 Q And that program was the program of
8 enhanced interrogation techniques; is that right?

9 A Correct.

10 Q And you were under instructions at that
11 time from Director Tenet to develop a, an
12 interrogation program; is that right?

13 A Correct.

14 Q So I just want to make sure I understand
15 what happened then, and I direct your attention
16 for purposes of that to paragraph 46 of your
17 declaration, which is Exhibit 36, on page 8 of the
18 declaration.

19 A Yes.

20 Q Do you see that?

21 So this refers to a meeting on July 8,
22 2002, at headquarters with Drs. Mitchell and
23 Jessen, if you look at paragraph 44.

24 Do you see that?

25 A Yes.

1 Q In paragraph 46 it says, "At the
2 conclusion of this meeting, I requested that
3 Drs. Mitchell and Jessen provide me with a written
4 list identifying the potential EITs, describing
5 how they would be implemented and identifying
6 their intended effects upon Zubaydah."

7 Do you see that?

8 A Yes.

9 Q And they, in fact, did that, correct?

10 A Correct.

11 Q If you look at Exhibit J to your, to
12 your declaration, is that the list of EITs that,
13 that they provided as a result of your request?

14 A Yes.

15 Q And that -- let me just withdraw it.

16 If you go to the next page, paragraph 49
17 of your declaration, page 9, paragraph 49. Sorry.
18 Thanks.

19 I want to ask you about paragraph 49.
20 It says, "During July 2002, with Drs. Mitchell and
21 Jessen's input only as requested, the CTC began
22 devising an interrogation plan for Zubaydah
23 utilizing some or all of the EITs (hereinafter,
24 the 'EIT Program')."

25 So was the EIT program based upon the

1 list that Dr. Mitchell had provided to you?

2 A Yes.

3 Q And you discussed in many places the
4 fact that, however, you wouldn't implement that
5 until you got approval --

6 A Correct. I'm sorry.

7 Q No, no, that's okay, but you sought
8 permission for all of those techniques, correct?

9 A Correct.

10 Q Okay, and just so that the record is
11 clear, the techniques for which you sought
12 approval were -- and we can follow along, if you
13 want to, on Exhibit J -- were the attention grasp,
14 walling, facial hold, facial slap, cramped
15 confinement, wall standing, stress positions,
16 sleep deprivation, waterboard, use of diapers,
17 insects, and mock burial.

18 Now, I'm not asking what got approved.
19 I'm asking whether those were the techniques for
20 which you requested approval.

21 A Yes.

22 Q And again those are the techniques that
23 are set forth in the list that was provided by
24 Dr. Mitchell and Dr. Jessen, correct?

25 A Yes.

1 Q Did you request approval for techniques
2 other than those that were set forth on the list
3 provided by Drs. Mitchell and Jessen?

4 A I don't recall that.

5 Q Okay, and this became, this became the
6 formal interrogation -- ultimately when there was
7 approval granted for at least some of them, this
8 became the formal interrogation plan of CTC; is
9 that correct?

10 A Yes.

11 MR. JAMES SMITH: Objection.

12 THE REPORTER: Did you object?

13 MR. JAMES SMITH: Yes.

14 BY MR. LUSTBERG:

15 Q Okay, and in particular, if you look at,
16 in your declaration --

17 MR. BENNETT: Don't worry about it.

18 MR. LUSTBERG: Yeah, don't worry
19 about that.

20 THE WITNESS: I'm just asking.

21 MR. LUSTBERG: Oh, about the
22 objection?

23 THE WITNESS: The objection, yeah.

24 MR. BENNETT: I have no idea.

25 MR. LUSTBERG: To be honest,

1 neither do I, but he knows. That's good.

2 BY MR. LUSTBERG:

3 Q If you look at paragraph 58 on page 10
4 of your declaration.

5 A Mm-hmm.

6 Q This talks about the Zubaydah formal
7 interrogation plan, and there's a cable, which is
8 Exhibit M, if you could pull out Exhibit M. "M"
9 as in Mary.

10 In your declaration you state that the
11 cable constituted Zubaydah's formal interrogation
12 plan, and just referring to that exhibit, if you
13 look at the second page, paragraph 4, do you see
14 where it says "Background"?

15 A Yes.

16 Q Do you see the list of enhanced
17 interrogation techniques that are listed there?

18 A Correct.

19 Q It's a fact, isn't it, that those are
20 the same interrogation techniques -- let me try
21 that again. They're the same enhanced
22 interrogation techniques as are set forth in
23 Dr. Mitchell and Dr. Jessen's memo to you, other
24 than the mock burial, right?

25 A I believe that's right.

1 Q Okay. It's important, it's an important
2 fact, so if you could take a look and see if
3 that's --

4 A I mean mock burial was definitely out,
5 and I think that's the only one.

6 Q So is it fair to say, Mr. Rodriguez,
7 that Drs. Mitchell and Jessen's proposal became
8 the enhanced interrogation techniques program for
9 the CIA?

10 A Yes.

11 Q And if you look at Exhibit I to your
12 declaration, what is that? What is Exhibit I?

13 A Are you asking me?

14 Q Yes.

15 A A cable? A cable, do you mean?

16 Q Mm-hmm.

17 A I have to read it.

18 Q Take your time.

19 (Witness peruses document.)

20 BY MR. LUSTBERG:

21 Q I'm going to eventually direct your
22 attention to paragraph 5, which is on the second
23 page of the cable, which has a list of pressure
24 techniques.

25 (Witness peruses document.)

1 THE WITNESS: No date?

2 BY MR. LUSTBERG:

3 Q Well, it says "date" -- 7 with no date,
4 2002, so July 2002?

5 A I don't know if it's July.

6 Q Right.

7 A The date matters, but . . .

8 Q Okay. Well, let me ask you this: Where
9 it says here --

10 A Let me finish here.

11 Q I'm sorry. I apologize. Take as much
12 time as you need.

13 (Witness peruses document.)

14 BY MR. LUSTBERG:

15 Q Take your time. Let me know when you're
16 ready.

17 A Yeah, what's your question?

18 Q My question is: Under 5 it says, "The
19 below techniques are the menu of the preapproved
20 interrogation techniques."

21 When it says "preapproved," who
22 preapproved them?

23 MR. JOHNSON: Objection.

24 MR. LUSTBERG: Okay, let me -- I'll
25 withdraw the question.

1 the techniques that have been proposed by
2 Drs. Mitchell and Jessen, right?

3 A Yes.

4 Q I want to show you Exhibit 38.
5 (Exhibit 38 was marked for
6 identification.)

7 BY MR. LUSTBERG:

8 Q Mr. Rodriguez, let me know when you've
9 had a chance to take a look at this.

10 A Read the whole thing?

11 Q Well, just -- I'll ask you -- I'll
12 direct you to certain places.

13 A Okay.

14 Q So let's start here. It says -- it's
15 dated January 31, 2003, right?

16 A Correct.

17 Q Do you recognize this, by the way?

18 A No.

19 Q It says "DCI Guidelines for the Conduct
20 of Interrogations."

21 What does "DCI" stand for?

22 A Director of Central Intelligence.

23 Q Okay. Given -- and you can take a look
24 at the content of it. The Director of Central
25 Intelligence at that time was Mr. Tenet; is that

1 right?

2 A Yes.

3 Q Okay. Would he have issued this
4 directly, or would you have been involved in that?

5 A He would have issued it based on our
6 input.

7 Q And if you look at the third, at the
8 second and third pages, do you see where it --
9 bless you -- where it says "Permissible
10 Interrogation Techniques"?

11 A Yes.

12 Q And it has a paragraph there about
13 "standard techniques."

14 Do you see that?

15 A Yes.

16 Q And then if you go to the next page,
17 which for the record is Bates 1172, it has a list
18 of "enhanced techniques"?

19 A Yes.

20 Q And if you look at that list of enhanced
21 techniques, which are described as "techniques
22 that do incorporate physical or psychological
23 pressure beyond standard techniques," it has, down
24 below, the same list, right?

25 So again -- I'm sorry. I don't mean to

1 be mysterious. These techniques are attention
2 grasp, walling, facial hold, facial slap,
3 abdominal slap, cramped confinement, wall
4 standing, stress positions, sleep deprivation
5 beyond 72 hours, use of diapers for prolonged
6 periods, use of harmless insects, the waterboard,
7 and this says "and such other techniques as may be
8 specifically approved."

9 Do you see that?

10 A Yes, I see that.

11 Q That's the same list as was developed --

12 A Yes.

13 Q Let me --

14 A I'm sorry. Yes.

15 Q Let me make it clear. Those are the
16 same techniques as were developed by Drs. Mitchell
17 and Jessen, right?

18 A Yes.

19 Q And if you go to the first page, you can
20 see that this was sent around to other, to other
21 black sites, right?

22 A Only one.

23 Q To Cobalt?

24 A Yes.

25 Q Okay. Cobalt was a -- so these

1 techniques were applied at Cobalt; is that right?

2 A I assume so.

3 Q And when you say you "assume so," if
4 this went to Cobalt and these were the approved
5 techniques for Cobalt, then they would have been
6 the ones that would have been allowed to be used
7 there, correct?

8 A I just don't know if they were used in
9 that precise location.

10 Q Okay. You don't know if they were used,
11 but you know that they were approved for use
12 there?

13 A They were approved for use, yes.

14 Q Okay. So just to make it clear, the
15 techniques that Dr. Mitchell and Dr. Jessen had
16 proposed were formalized in certain documents,
17 correct?

18 A Yes.

19 Q And this is one of those documents that
20 formalized the use of those techniques, right?

21 A Yes.

22 Q And, and then they were approved for use
23 at Cobalt, correct?

24 A And beyond.

25 Q Okay, but for purposes of -- you can

1 tell that, from this, that they were used for,
2 they were approved for Cobalt, correct?

3 A Correct.

4 Q And you say they were also approved for
5 other sites?

6 A Once the enhanced interrogation
7 techniques were approved, we used them at
8 different sites.

9 Q Okay. That's because that was -- that
10 became the enhanced interrogation program for the
11 CIA, right?

12 A True.

13 Q You don't know -- you are aware that two
14 of the plaintiffs here are Salim and Soud. Do you
15 know those names?

16 A Yes.

17 Q You know that just from, by virtue of
18 this case?

19 A By virtue of this case, yes.

20 Q Do you know whether these techniques
21 were used on Salim -- any of these techniques were
22 used on Salim and Soud?

23 A They were not.

24 Q They were -- you know that they were
25 not?

1 correct?

2 A No.

3 Q You weren't there?

4 A Correct.

5 Q And, and you have no idea what actually
6 occurred with regard to them?

7 A Correct.

8 Q Okay.

9 A My question, if I can -- or my statement
10 is: It doesn't look like this is part of this
11 document. Something added to it from somewhere.

12 Q Okay, thank you.

13 For the record, it's a redacted
14 spreadsheet, but we can deal with that later.

15 Okay. I'm going to move on. Paragraph
16 38 -- I just want to explore some confusion I have
17 with regard to one issue. In paragraph 38 of your
18 declaration, you're describing a meeting that took
19 place at headquarters the first week of July 2002?

20 A Mm-hmm.

21 Q Correct?

22 A Yes.

23 Q And Dr. Mitchell attended that meeting.
24 Do you see that?

25 A Yes.

1 Q And in paragraph 38 you write,
2 "Dr. Mitchell explained that the particular goal
3 of EITs would be to dislocate the subject's
4 expectations and overcome his resistance and
5 thereby motivate him to provide the information
6 the CIA was seeking. Dr. Mitchell further
7 explained that in working to achieve this goal,
8 the interrogation could produce a range of mental
9 states in the subject, including, but not limited
10 to, fear, learned helplessness, compliancy, or
11 false hope."

12 My question to you is: What did you
13 mean by the term "learned helplessness" there?

14 A I do not know. All I heard was
15 Dr. Mitchell explaining these psychological terms.
16 Frankly, my interest was in getting results, not
17 in, you know, the psychological state of people.

18 Q So, so when you, when you signed this
19 declaration that it's all true, what you were
20 saying is that Dr. Mitchell used that phrase
21 "learned helplessness"; is that right?

22 A Yes.

23 Q Okay, and I guess my question is -- in
24 paragraph 45, which is two pages later, you say,
25 "I do not recall a specific discussion about

1 'learned helplessness' during this period, and it
2 was not something I focused on," which is what you
3 just said, "though I may have heard the term." So
4 I'm trying to understand how those two paragraphs
5 fit together.

6 Did Dr. Mitchell, in fact, use the
7 phrase "learned helplessness"?

8 A I assumed that he did.

9 MR. BENNETT: Don't assume.

10 THE WITNESS: He did, he used it,
11 and I didn't pay much attention to it.

12 BY MR. LUSTBERG:

13 Q Okay, so what you're saying is he used
14 it, but there was not -- there was no real
15 discussion of it?

16 A There may have been a discussion. I did
17 not focus on it.

18 Q Okay. Do you understand what the, what
19 "learned helplessness" is?

20 A No.

21 Q You've never heard of a psychologist
22 named Martin Seligman?

23 A No.

24 Q And you have no knowledge of experiments
25 in the --

1 A No.

2 Q -- area of learned helplessness?

3 A No.

4 Q Thank you.

5 Okay. I want to -- I want to move on to
6 the issue of, that you've discussed a few times,
7 about how these techniques got authorized.

8 A Okay.

9 Q You have written on a number of
10 occasions and said that you wanted to make sure,
11 before any of this happened, that it was legal,
12 right?

13 A Correct.

14 Q And let me ask you -- yeah, that's a
15 memo. The -- why were you so concerned about
16 that?

17 A Because I had worked in other programs
18 where we came back -- they came back to haunt us
19 regarding the legality and the authorities, and I
20 wanted to make sure that that did not happen
21 again.

22 Q Did you have particular doubts as to
23 whether this program was legal?

24 A No, no.

25 Q So when you were -- and as you write

1 A No, it didn't give me any concern at
2 all. It was just bureaucracy working slowly
3 through the process.

4 Q Same, same with regard to the tapes?

5 A Yes.

6 Q So from your perspective, the reason
7 that it took so long to make a decision with
8 regard to both EITs and then the tapes was because
9 in each case, there was just -- it was the slow
10 pace of bureaucracy?

11 A Correct.

12 Q Can I ask with regard to the tapes -- we
13 might as well do it this way.

14 What was the reason why you felt that it
15 was important to have the tapes destroyed?

16 A I felt it was important to have the
17 tapes destroyed, because I needed to protect the
18 people who were there on the black sites, and they
19 were not just my people, but they were also people
20 from other directorates that were involved with
21 our team conducting the enhanced interrogation
22 program.

23 Q And when you say "protect" them, you
24 wanted to make sure that their identities did not
25 get released, because that could endanger them; is

1 that right?

2 A Correct.

3 Q Was there any consideration given to the
4 fact that, you know, there's technology that can
5 pixelate the, you know, the photographs or
6 otherwise obscure who the identities of the people
7 on the tapes are?

8 A I was not about to take that chance.

9 Q So you thought that it would be too
10 risky to try some other technology, that the only
11 safe way to do it was to actually destroy the
12 tapes?

13 A True.

14 Q Was there any other reason at all that
15 you wanted the tapes destroyed?

16 A Well, that was the primary reason.

17 Q Was there a secondary reason?

18 A Well, a secondary reason, as I have said
19 publicly, was that the public, the media would not
20 make a distinction, once the tapes were released,
21 between a legally approved program, that this was,
22 and the Abu Ghraib scandal that involved illegal
23 activity.

24 Q So let me make sure I understand that.

25 You were concerned that the media would, would use

1 the tapes in a way that would make the CIA look
2 bad?

3 A It would make the CIA look bad, and it
4 would actually, in my view, you know, almost
5 destroy the clandestine service because of it.

6 Q Do you recall whether Dr. Mitchell
7 recommended to you that the tapes be destroyed?

8 A All of us were concerned about the
9 tapes. I'm sure that Mitchell and Jessen were
10 concerned, as I was and everybody else who worked
11 around me, we were very concerned about it, and
12 had been trying to get them destroyed for years.

13 Q Okay. So let me just unpack that a
14 little.

15 So first of all, with regard to
16 Drs. Mitchell and Jessen, do you have a
17 recollection as to whether they discussed the
18 destruction of the tapes with you?

19 A I don't have a recollection of them
20 discussing it with me.

21 Q You said that they were concerned about
22 it?

23 A Yes.

24 Q How do you know that?

25 A They talked to other people that I know.

1 Q Okay, but, but they did not talk to you
2 about it?

3 A I don't recall.

4 Q Okay. They may have?

5 A By that time I was on the seventh floor,
6 and I was out of the chain of command.

7 Q Okay. I mean do you recall Dr. Mitchell
8 recommending to you that the tapes be destroyed
9 because of how, how ugly they were?

10 A No.

11 Q When you say you don't, is that because
12 you don't recall or because that's --

13 A I don't recall him ever talking to me
14 about that.

15 Q If he had talked to you about that, do
16 you think you would recall it?

17 A Maybe not.

18 Q So it's possible that you had that
19 conversation and you just don't remember it?

20 MR. BENNETT: Object. I think he's
21 answered your question.

22 MR. JAMES SMITH: Objection.

23 BY MR. LUSTBERG:

24 Q Just back to the question of the
25 legality of the enhanced interrogation techniques,

1 Q Mm-hmm. Let's -- in your -- if you go
2 to your declaration and turn, if you would, to
3 Exhibit L.

4 MR. BENNETT: Can we take a minute?

5 MR. LUSTBERG: Absolutely, yes.

6 THE VIDEOGRAPHER: The time is
7 12:24 p.m. Off the record.

8 (Whereupon, the lunch recess was
9 taken.)

10 THE VIDEOGRAPHER: The time is
11 1:03 p.m. We're back on the record.

12 MR. LUSTBERG: Thank you.

13 BY MR. LUSTBERG:

14 Q Mr. Rodriguez, before the lunch break,
15 we were discussing the process whereby you sought
16 and obtained legal authorization for the, for the
17 enhanced interrogation technique program.

18 Do you remember that?

19 A Yes.

20 Q And when you sought that, that approval,
21 it was based upon what you had learned from
22 Drs. Mitchell and Jessen with regard to the SERE
23 program, correct?

24 A Correct.

25 Q Okay, and what exactly were you told

1 about the applicability of the SERE program to
2 these, to these techniques?

3 MR. JAMES SMITH: Objection.

4 BY MR. LUSTBERG:

5 Q Let me be clear -- the question is
6 withdrawn. It's a good objection.

7 What were you told by Drs. Mitchell and
8 Jessen about the applicability of the SERE program
9 to these techniques?

10 A That there was a good chance it could
11 work.

12 Q Were you told -- was there any
13 discussion of whether the differences between the
14 SERE program which is applied to students, what
15 the differences would be between that program and
16 applying these to detainees in captivity?

17 A Well, I don't remember a particular
18 discussion about that, but I'm sure that it was
19 considered --

20 MR. BENNETT: You answered the
21 question.

22 BY MR. LUSTBERG:

23 Q You don't remember a discussion of that?

24 A I don't remember a discussion about
25 that.

1 Q Okay. So --

2 MR. BENNETT: Don't speculate.

3 Don't assume. He's entitled to full answers
4 but not speculation or guesswork.

5 MR. LUSTBERG: I'm happy with
6 speculation or guesswork.

7 MR. BENNETT: I know you are.

8 BY MR. LUSTBERG:

9 Q Let me know when you've had a chance to
10 look at that (Exhibit 18).

11 A Okay.

12 (Witness peruses document.)

13 BY MR. LUSTBERG:

14 Q I'm actually just going to ask you about
15 a sentence on the first and into the second page,
16 but feel free to read the whole document if you
17 want.

18 A Okay.

19 Q Just let me know when you're ready.

20 A Okay.

21 (Witness peruses document.)

22 THE WITNESS: Okay.

23 BY MR. LUSTBERG:

24 Q Just directing your attention to the
25 bottom of the first page -- well, first of all,

1 problematic?

2 A No, because we also -- the agency played
3 a role in assessing their effectiveness.

4 Q The agency also assessed their
5 effectiveness?

6 A Yes.

7 Q Were you involved in that?

8 A Not formally, but in, in measuring their
9 accomplishments I was.

10 Q Later on -- let me see if I have the
11 right numbers here. On page 48, same series, if
12 you look at conclusion 17 on the top of page 48,
13 it says, "The CIA improperly used two private
14 contractors with no relevant experience to
15 develop, operate and assess the CIA detention
16 interrogation program. In 2005 the contractors
17 formed a company specifically for the purpose of
18 expanding their detention and interrogation work
19 with the CIA. Shortly thereafter, virtually all
20 aspects of the CIA detention interrogation program
21 were outsourced to the company. By 2006 the value
22 of the base contract with the company, with all
23 options exercised, was in excess of \$180 million.
24 In 2007 the CIA signed a multi-year
25 indemnification agreement protecting the company

1 and its employees from legal liability."

2 That's the language from the SSCI
3 report, right?

4 A This is from the CIA response.

5 Q So they're, they're responding to that?

6 A Right.

7 Q And on the next page it says, "We
8 acknowledge that the agency erred in permitting
9 the contractors to assess the effectiveness of
10 enhanced techniques."

11 Do you see that?

12 A The next --

13 Q Next page.

14 A Page 49?

15 Q 49, yes, at the very top.

16 "They should not have been considered
17 for such a role, given their financial interest in
18 continued contracts with the CIA."

19 Do you agree with that?

20 A Yes.

21 Q During the time period that the enhanced
22 interrogation techniques were being used, were
23 they being evaluated?

24 A The techniques or --

25 Q Yeah, the effectiveness of them.

1 A Yes, they were.

2 Q And was -- were Drs. Mitchell and Jessen
3 involved in that evaluation?

4 A The evaluation was based on results.

5 Q And the results were -- and you felt
6 that the results were positive and so that
7 therefore the techniques were good?

8 A The results was incredible, very
9 valuable intelligence that came to us that we
10 didn't have before.

11 Q And in assessing the results, was there
12 any consideration at all given to the physical or
13 psychological harm that was being inflicted upon
14 the detainees?

15 A We didn't think that any was, was being
16 inflicted.

17 Q My question is: So that was, so that
18 was evaluated as part of the program?

19 A No.

20 Q It was not?

21 A No.

22 Q I was reading through the cables from
23 Abu Zubaydah's interrogation, and time after time
24 they talk about how the result is "no new threat
25 information." I can show those to you if you

1 A Upon capture -- I don't know. I don't
2 know if there was a label that was put on that
3 says, okay, this is it, you know, but we, we knew
4 who they were, and they immediately were sent to a
5 black site.

6 Q As between medium-value and low-value
7 detainees, you said those were in two other
8 categories. Who made the decision as to whether
9 somebody was a medium-value versus a low-value
10 detainee?

11 MR. JOHNSON: Just note, we're not
12 waiving the question itself, but no names or
13 identifying information.

14 MR. LUSTBERG: Right.

15 BY MR. LUSTBERG:

16 Q Just so it's clear, did you make the
17 decision as to who was a medium-value versus
18 low-value detainee?

19 A No.

20 Q Somebody else at the CIA did?

21 A I think the definition was if they had
22 information that was threatening to the US
23 government or persons, that that was the standard.

24 Q But somebody would have to assess that,
25 and so I'm asking whether that person was you.

1 A The CTC is a huge vast place with a lot
2 of people making decisions like this, made
3 somewhere else.

4 Q Dr. Mitchell and Dr. Jessen did not
5 select which detainees were high-value --

6 A No.

7 Q -- detainees, did they?

8 A No.

9 Q So they designed a program for the CIA
10 to get prisoners to talk, but the CIA would decide
11 which prisoners to apply it to; is that right?

12 A That is correct.

13 Q And Dr. Mitchell and Dr. Jessen
14 consulted continuously for the CIA the entire time
15 that enhanced interrogation techniques were used
16 by the CIA, right?

17 A Correct.

18 Q And they continued to consult on the
19 EITs for years after Abu Zubaydah, right?

20 A Yes. There were a couple times when
21 they were stopped altogether because of legal
22 action or because of whatever, so there were a
23 number of times when there was a hiatus in the use
24 of any techniques.

25 Q Okay. Hiatus in the use of any enhanced

1 interrogation --

2 A Yes. For example, the 2004 Office of
3 Inspector General report came out. Because of the
4 allegations in that report, I think a decision was
5 made to stand down until we were able to get
6 clarification from Justice Department, and then
7 when the '05 -- there was the Hamden case, and
8 there was something else in 2005 in December where
9 again we had to suspend it, because we felt that
10 the legal, the legal ground that we had was being
11 eroded, and we were concerned that our officers
12 were not being protected.

13 Q Okay. So there were times when the
14 program was suspended because there was concern
15 with its legality later on?

16 A Because of the OIG report and because of
17 the, the watering down of the legal authorities
18 that we had received back in 2002.

19 Q When you say "watering down," what do
20 you mean?

21 A The solid legal ground that we had in
22 2002, that memo that we received from Justice
23 Department in August of 2002, telling us that the
24 ten techniques were legal, they began to erode
25 legally.