

Exhibit C

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

- - -
SULEIMAN ABDULLAH :
SALIM, MOHOMED AHMED : DOCKET NO.
BEN SOUD, OBAID ULLAH :
(as personal : 2:15-CV-286-JLQ
representative of GUL :
RAHMAN), :

Plaintiffs, :

v. :

JAMES ELMER MITCHELL :
and JOHN "BRUCE" :
JESSEN, :

Defendants. :

- - -
Monday, January 16, 2017
- - -

Videotaped deposition of JAMES E. MITCHELL taken pursuant to notice, was held at the law offices of Blank Rome, 130 N. 18th Street, Philadelphia, Pennsylvania 19103, beginning at 10:13 AM, on the above date, before Constance S. Kent, a Registered Professional Reporter and Notary Public in and for the Commonwealth of Pennsylvania.

* * *

MAGNA LEGAL SERVICES
(866) 624-6221
www.MagnaLS.com

1 readiness test. I think that's what it
2 was called. I did some interrogations
3 for the wing commander in those settings.

4 I did, throughout my Air
5 Force career and continued to do it at
6 survival -- at the survival school,
7 friend of the court evaluations,
8 investigations into whether or not a
9 person who had committed a crime who
10 was -- who was attempting to withhold
11 information, actually met the McNaghton
12 rules or not, and in the course of doing
13 that, I questioned rapists, kidnappers,
14 child molesters, you know, petty thieves,
15 people who had stolen \$100,000 worth of
16 gear, that sort of stuff.

17 The list goes on. It's
18 22 years. I'm not sure that I can recall
19 them all now.

20 Q. Fair enough.

21 A. But if you have a document
22 you'd like me to look at, I'd be happy to
23 look at something.

24 Q. Sure. We'll have plenty of

1 documents.

2 Let me just go back to a
3 couple of things that you said.

4 Did you say that you did
5 interrogations including foreign enemies?

6 A. No. Did I say that?

7 Q. I just want to make sure
8 because it looks like you said that. I
9 just --

10 A. No. I said my job was to
11 get familiar with how foreign enemies
12 interrogated people.

13 Q. Okay.

14 A. That's a very different
15 thing than what you just said.

16 Q. So you didn't actually do
17 interrogations of --

18 A. Of foreign enemies, no.

19 Q. Okay. I want to just go
20 back to a couple other things that you
21 said you did. One thing you talked about
22 was, when you talked about your two
23 primary responsibilities at the SERE
24 school, one of them was to avoid abusive

1 drift, and the other was to get the
2 students, I take it, through the program;
3 is that right?

4 A. Right. Though students are
5 not -- the high risk of capture war
6 practice.

7 Q. Right. When you say you
8 would -- you would help to get them
9 through, what do you mean by that?

10 A. Sometimes people who have
11 experienced trauma in the past, like, for
12 example, a person who had been raped or
13 robbed or beaten, in the course of what
14 they would call hard rounds at the
15 school, would re-experience some of the,
16 you know, emotional distress, and my job
17 was to help them get through the training
18 so that that did not ruin their career,
19 because for many people, in spite of the
20 fact that it's voluntary, meaning that
21 you can withdraw, it's a career ender,
22 it's over, you go do something else.

23 So the Air Force is, you
24 know -- and the other organizations I

1 MR. SMITH: Objection.

2 BY MR. LUSTBERG:

3 Q. Is that correct?

4 MR. SMITH: In fairness,
5 there is no second list, right?

6 MR. LUSTBERG: Well, yes,
7 there is. It says -- well, let me
8 ask it. Thank you, let me lay a
9 foundation.

10 BY MR. LUSTBERG:

11 Q. "Subsequently, the two
12 psychologists developed a list of new and
13 more aggressive EITs that they
14 recommended for use in interrogations."

15 Did -- did you and
16 Dr. Jessen develop a list of new and more
17 aggressive EITs that they recommended for
18 use in interrogations later?

19 A. The answer to the question
20 as asked is no. But we did provide them
21 with a list of interrogation techniques
22 that we did not develop.

23 Q. You did not develop it,
24 somebody else developed it.

1 A. They were at the SERE
2 school. They had been at the SERE school
3 for 50 years.

4 Q. So then this sentence that
5 says that the two psychologists developed
6 the list is -- is incorrect?

7 A. Correct.

8 Q. Because of the use of the
9 word "developed"?

10 A. We provided them with a
11 list, we didn't develop a bunch of new
12 EITs.

13 Q. Okay. So what you did was
14 you took existing EITs that were being
15 used at the SERE school and you made a
16 list of them?

17 A. Yeah, we made a list of --
18 of the sorts of things that were done in
19 the SERE school.

20 Q. Uh-huh. Of the sorts of
21 things that were done at the SERE school.
22 All of them or some of them?

23 A. I don't -- I don't have a
24 comment on that. I don't think -- I

1 don't think there was anything on that
2 list that hadn't been done at the SERE
3 school.

4 Q. Okay. Was there -- were
5 there things done at the SERE school that
6 were not on that list, though?

7 A. An infinite number of
8 things.

9 Q. So the bottom -- so the
10 thing I'm focused on is was that list --
11 so you've said that the word developed,
12 you have trouble with. What about that
13 it's more aggressive than what was --
14 than what was recommended in the paper?

15 A. I don't know what he means
16 by aggressive. They were certainly more
17 coercive.

18 Q. Okay. So if the word was
19 changed from aggressive to coercive you
20 would agree with it?

21 A. Yes.

22 Q. So for this sentence to be
23 accurate it, from your perspective, would
24 have to say, Subsequently the two

1 psychologists listed more coercive
2 EITs than they recommended for use in
3 interrogations --

4 A. Well, they weren't called
5 EITs at the time.

6 Q. Okay.

7 A. All right? So this sentence
8 would have to be completely rewritten to
9 be accurate.

10 Q. Okay. How would you rewrite
11 it, sir?

12 A. I would say, Subsequently
13 the two psychologists provided a list of
14 interrogation techniques that have been
15 used at the SERE -- a more coercive list
16 of interrogation techniques that had been
17 used at the SERE school that eventually
18 became EITs, and we recommended that they
19 consider using them in interrogations.

20 Because my recollection of
21 that particular thing that you're talking
22 about is we said, Here's a list of the
23 sorts of things they do at the SERE
24 school, and if you guys are going to be

1 physically coercive with him, I suggest
2 that what you do is use these techniques
3 that have been shown over the last
4 50 years to not produce the kinds of
5 things you would like to avoid, like
6 severe pain and suffering and
7 long-term --

8 Q. So -- so your testimony is
9 that you were saying if they decided to
10 use more coercive techniques, these are
11 the ones that should be used?

12 A. No, what I said -- that's
13 not what I said.

14 Q. Okay. Tell me what you
15 said.

16 A. What I said was you should
17 consider using these. They -- my
18 expectation was that the choice to use
19 them or not was theirs, they should think
20 about it, they should decide if they
21 wanted to do it, they should do due
22 diligence on it, all right?

23 Q. Uh-huh.

24 A. And if they chose to do it,

1 they should do it.

2 Q. Uh-huh. And was that what
3 you said to them, that they should do due
4 diligence on it?

5 A. I told them that they would
6 need to -- that they should check with
7 the SERE schools to make sure -- I don't
8 know if I used the word due diligence,
9 but I told them that they needed to check
10 with.

11 Q. I'm sorry.

12 A. No, I'm done.

13 Q. So --

14 MR. SMITH: While there's no
15 question pending, may I just
16 confer with my client for a
17 minute, please?

18 MR. LUSTBERG: Of course.

19 (Discussion held off the
20 record.)

21 THE WITNESS: I need to make
22 a point of clarification.

23 BY MR. LUSTBERG:

24 Q. Okay. Go ahead, sir.

1 MR. SMITH: Hold that
2 thought.

3 BY MR. LUSTBERG:

4 Q. Let's wait until your lawyer
5 is ready.

6 Do you need more water?

7 A. I'm good. I need to make a
8 point of clarification.

9 Q. Sure. Go ahead. You've
10 been --

11 MR. SCHUELKE: I'm sorry --

12 MR. SMITH: We're on the
13 record.

14 MR. LUSTBERG: Thank you.

15 THE WITNESS: You probably
16 noticed in my sentence when I was
17 talking to you that I said,
18 recommended this list for
19 potential use with him.
20 Specifically I'm referring to Abu
21 Zubaydah.

22 In these early conversations
23 about the more coercive
24 SERE-related techniques were

1 that's inconsistent with what I said.

2 Q. I'm just asking whether you
3 and the CIA assessed Zubaydah as
4 uncooperative.

5 A. Yes.

6 Q. Okay. So in -- at that
7 time, did you -- were you involved in
8 several meetings at CIA headquarters to
9 discuss the Zubaydah interrogation?

10 MR. SMITH: Objection. At
11 what time?

12 BY MR. LUSTBERG:

13 Q. July 2002.

14 A. I think the -- yes.

15 Q. And what was the nature of
16 those meetings?

17 A. The entire interrogation
18 team minus the OTS psychologist that
19 stayed back there to monitor Abu Zubaydah
20 attended several meetings at CIA
21 headquarters where they talked about --
22 including the FBI, attended several
23 meetings where they talked about where he
24 was, what information they had gotten,

1 whether or not it addressed the concerns
2 about the potential attacks that could
3 occur, and you know, sort of next steps
4 of what they were willing to do. That's
5 my recollection.

6 Q. Okay. In your book you say
7 that you were asked by Jose Rodriguez,
8 which is who?

9 A. At the time he was the
10 director of CTC. He became the director
11 of Clandestine Services.

12 Q. You had -- "asked by him to
13 accompany other senior members of the
14 interrogation team back to the US to
15 attend a meeting at Langley," correct?

16 A. Yes, sir.

17 Q. "The agenda was to discuss
18 Abu Zubaydah's interrogation thus far and
19 what would be done to get him not only
20 talking again, but providing more full
21 and complete answers than he had provided
22 before." Is that --

23 A. Yes.

24 Q. Jose asked you to discuss

1 some of the resistance to interrogation
2 ploys that you had seen Abu Zubaydah use;
3 is that right?

4 A. Yes.

5 Q. What were those ploys?

6 A. Oh, he would go on for hours
7 about dead people without revealing that
8 they were dead. He would talk about --
9 endlessly about old Soviet plots -- plots
10 against the Soviet Union when they were
11 doing the Jihad.

12 He would, as I said before,
13 play one interrogator off of the other.
14 He would -- he would -- he would answer
15 in vague and misleading ways so that --
16 he talked for a great deal of time, but
17 he provided no real information, and he
18 would -- I don't remember the whole list.
19 I mean, there was a variety of things I
20 mentioned. I tried to be accurate in the
21 book and...

22 Q. Since -- at that point, did
23 you recommend that more coercive measures
24 be used against Abu Zubaydah?

1 A. I don't know that I
2 recommended it. I certainly know it was
3 part of the discussion, and I probably
4 weighed in on it.

5 Q. And when you weighed in,
6 what was your -- what was your
7 recommendation?

8 A. I think that was at the time
9 when I had already come to my own mind to
10 believe that they were going to use
11 coercive techniques, and if they were
12 going to use coercive techniques, they
13 should use the ones that had been used in
14 the SERE school.

15 Q. And so your view was that
16 because the SERE school techniques
17 hadn't -- did not cause any damage from
18 what you had seen, then those techniques
19 should apply to -- could be applied to
20 Abu Zubaydah as well without causing
21 harm; is that right?

22 MR. SMITH: Objection.

23 THE WITNESS: No.

24 BY MR. LUSTBERG:

1 Q. Okay. Tell me what's wrong
2 about that.

3 A. I never said they caused no
4 damage at all.

5 Q. Okay.

6 A. I said some of them did, and
7 you know, others could sometimes result
8 if they were misapplied. And I don't
9 remember the rest of this question.

10 Q. My question was tell me
11 what's wrong about that.

12 But what I asked -- so let's
13 break it down. You -- understanding that
14 the CIA apparently intended to use
15 coercion --

16 A. Uh-huh.

17 Q. -- you proposed that
18 techniques from the SERE school be used,
19 correct?

20 A. I recommended that they
21 consider using them.

22 Q. That they consider using
23 them. And that -- and by this time you
24 said you weighed in and you believed that

1 some coercive techniques should be used
2 by them?

3 A. I felt like he wasn't going
4 to provide the information that they were
5 looking for using rapport-based
6 approaches.

7 Q. Okay.

8 A. At least not in the time
9 period that we were talking about.

10 Q. Okay.

11 A. Because it's important to
12 remember that at this particular time,
13 although we didn't know it --
14 particularly who it was, there was a
15 great deal of information about this
16 upcoming threat that was going to occur.
17 You know, there was the suggestion in the
18 immediate aftermath of 9/11 that there
19 was a potential for a nuclear device, and
20 the CIA had reported in other places that
21 they already knew that UBL had met with
22 the Pakistanis who were passing out
23 nuclear technology to rogue states, and
24 the Pakistani scientist had said to UBL,

1 the hard part is getting the fissional
2 material, and UBL had said, What if we've
3 already got it.

4 And so there was this press
5 to do whatever was legal, whatever was
6 within the bounds to take it, as the
7 attorneys at the time said, that gloves
8 were off and we need to walk right up to
9 the line of what's legal.

10 Q. That was what the attorneys
11 at the time said to you?

12 A. Uh-huh.

13 Q. And -- but just back to what
14 you said before, that -- so I asked you
15 whether you recommended that in the event
16 they were going that way, that they
17 should consider -- they should consider
18 the SERE school techniques.

19 A. I did recommend that.

20 Q. And I asked you, and that
21 was because they weren't harmful and you
22 said, well, they could be harmful?

23 A. Yes.

24 Q. Okay. Now --

1 access to their system.

2 Q. Okay.

3 A. So I couldn't write a
4 classified document on their system. I
5 could write a classified document on a
6 stand-alone system. Someone else had to
7 take that document and cut and paste it
8 into one of their documents, which is
9 what this -- all these headers are.

10 Q. On the first page?

11 A. The original people who sent
12 this out.

13 Q. Okay. I'm just --

14 A. So I provided this
15 classified document that was on a
16 stand-alone computer, right, as a file to
17 a person, and that person cut and pasted
18 it into this.

19 Q. Looking at pages 2 -- the
20 second and third page.

21 A. Yes, sir.

22 Q. And if you need to, read the
23 whole thing from top to bottom on the
24 second and third page. Was -- are those

1 your words or have those been cut and
2 pasted in some way other than attaching
3 them to the first page?

4 A. No, these are my words.

5 Q. So the answer is that these
6 one, two -- these 12 techniques, which
7 we'll come back in a second what they
8 are, those -- these 12 techniques are
9 described in your words?

10 A. I wrote these words, yes.

11 Q. Right. And they were the,
12 according to the first paragraph -- by
13 the way, the first paragraph also at the
14 top of page 2 is your words?

15 A. Yes.

16 Q. So these are the
17 descriptions of potential physical and
18 psychological pressures that were
19 discussed in the July 8th, 2002 meeting;
20 is that right?

21 A. Yes.

22 Q. Okay. At the July 8, 2002
23 meeting, Mr. Rodriguez asked you to,
24 quote, unquote, craft the program, right?

1 A. No.

2 Q. Okay. Let's -- if you
3 could, let's just take a quick look at
4 your book. And pages 54 and 55, if you
5 have it. I believe that was Exhibit 4.

6 MR. SMITH: For the record,
7 I think you referred to this as
8 "his book," and I don't think the
9 witness --

10 MR. LUSTBERG: It's the
11 manuscript, you're right.

12 THE WITNESS: Yes. Well, in
13 fact, it's a work draft.

14 MR. SMITH: A draft.

15 THE WITNESS: You said 55
16 and 56?

17 BY MR. LUSTBERG:

18 Q. 54 and 55.

19 A. Okay.

20 Q. And on page -- actually top
21 of page 55.

22 A. Okay.

23 Q. The page before talks about
24 a meeting and then it says:

1 question was which ones did they not
2 adopt. It would be a shorter list than
3 the ones that they did.

4 A. I didn't think they did --
5 they didn't do mock burial. I think
6 that's the only one -- I think mock
7 burial was the only one. No, I don't
8 recall insects either. I think they did
9 approve insects but -- I think it was
10 just mock burial. But if there's another
11 list, I'll be happy to refresh my memory,
12 I just --

13 Q. One -- one other question on
14 this page of your manuscript.

15 A. Sure.

16 Q. And if this doesn't appear
17 in the book or it's just part of the
18 manuscript, you'll tell me, but it says:

19 "I was surprised and
20 reluctant. I knew that if I agreed, my
21 life as I knew it would be over. I would
22 never again be able to work as a
23 psychologist."

24 Why is that?

1 A. Well, I think it was because
2 at the time I thought I just couldn't see
3 myself going back to, you know, treating
4 mental health patients after being an
5 interrogator. It just didn't seem like
6 something that I was going to do.

7 I also knew that there were
8 people -- psychologists in general are
9 quite liberal and they tend to be
10 primarily focused on who they perceive as
11 the patient rather than necessarily the
12 client. And I knew that the bulk of
13 psychologists would probably object, you
14 know. So what I thought was, it's highly
15 probable that I'm not going to go back
16 to, you know, doing mental health work.

17 Q. It wasn't because you
18 understood that the APA or any other
19 organization --

20 A. To be honest with you -- no.
21 I know it's -- it's easy and glib to say
22 that if someone who is the expert on
23 Al-Qaeda just told you they're getting
24 ready to set off a nuclear bomb, that you

1 can say, No, no, hands-off, I don't want
2 to participate. But that wasn't the way
3 it was for me. The way it was for me
4 was, Jennifer Matthews and the rest of
5 those folks, briefed me that there was
6 already intelligence suggesting there
7 were people inside of New York who were
8 smuggling explosives in and they were
9 going to smuggle in a nuclear bomb, and I
10 was willing to help. So if -- if what
11 happened as a result of that was that I
12 couldn't go back to doing marital
13 therapy, I was okay with that.

14 Q. On the next page, you're
15 talking about -- you were talking about
16 whether you had the qualifications to put
17 together a psychologically-based
18 interrogation program. What did you mean
19 by psychologically-based interrogation
20 program?

21 A. Well, I don't -- I don't
22 think that EITs themselves are what's
23 necessarily going to yield the
24 information. I think there's a lot of

1 misinformation about EITs. But -- what
2 came to be known as EITs, but the whole
3 point of those EITs was to move him into
4 a position where he would cooperate so
5 that you could then use social influence
6 stuff to get the greater details and the
7 more information.

8 So I think it's -- I think
9 that primarily, even if you're using
10 coercive measures, the point is to
11 produce a psychological effect.

12 Q. A sentence or two -- just a
13 little bit later, and I'm on the bottom
14 of page 56 of your manuscript?

15 A. Sure.

16 Q. You said that you knew that
17 it would need to be based on what is
18 called Pavlovian classical conditioning?

19 A. Right.

20 Q. In what regard was it --
21 were these techniques based on Pavlovian
22 classical conditioning?

23 A. Well, the techniques
24 themselves weren't, but the use of them

1 were, you know, particularly -- what you
2 wanted to do was to condition him so that
3 when he began to resist, he experienced
4 an adverse of consequence, right? And
5 when he started to cooperate, that
6 adverse of consequence went away, which
7 is straight Pavlovian conditioning.

8 Q. At the top of your -- on
9 page 2 of the -- of Exhibit 17, you talk
10 about:

11 "The aim of using these
12 techniques is to dislocate the subjects
13 expectations concerning how he's apt to
14 be treated instill fear and despair."

15 A. Right, that's the adverse
16 consequence.

17 Q. "The intent is to elicit
18 compliance by motivating him to provide
19 the required information while avoiding
20 permanent physical harm or profound and
21 pervasive personality change."

22 A. Yes.

23 Q. And the -- so what you're
24 trying to avoid is permanent physical

1 harm; is that right?

2 A. Well, what I'm trying to
3 do -- that's what I said here obviously,
4 but you don't want to have permanent or
5 profound, you know, mental harm, mental
6 or physical harm.

7 Q. Okay. What did you mean by
8 profound and pervasive personality
9 change?

10 A. One of the things that
11 happens if you use these techniques too
12 much, and going -- this is -- this is the
13 warning that I provided them about
14 Seligman's things. If you apply one of
15 these techniques -- the object -- it's
16 just the same -- it's the same template
17 that's used in the Army field manual
18 today for the use of helplessness. Same
19 template, different techniques, right?
20 You put the person in a situation that
21 they perceive to be helpless and then you
22 gave them a way out of that situation by
23 answering questions.

24 If you don't give them that

1 make sure I understand.

2 Was there a discussion in
3 that meeting of the fact that these were
4 SERE program techniques?

5 A. I believe so. I mean, I
6 don't know that I said it, but it was the
7 sort of thing that Jose or somebody else
8 would have said if I didn't.

9 Q. Was there any discussion in
10 the meeting about whether the use of
11 these SERE techniques -- strike that.

12 Was there any discussion
13 about whether they could be used safely,
14 whether the idea of this -- in other
15 words, what was the relevance of the fact
16 that they were SERE techniques, why was
17 that important?

18 A. Okay. That's two questions.

19 Q. Okay. Either one. Take
20 either one. What was the significance of
21 the fact that they were SERE techniques?
22 Why is that -- again, why is that an
23 important fact?

24 A. I think it's important

1 because they had been used for years
2 without, you know, producing significant
3 problems.

4 Q. Was there any discussion
5 about whether the application of SERE
6 techniques, which had been able to be
7 used for many years without producing
8 problems, might nonetheless produce
9 problems in a different setting where the
10 subject is not there voluntarily?

11 A. I don't recall that
12 discussion.

13 Q. Did you -- did you mention
14 that?

15 A. I don't recall mentioning
16 that.

17 Q. How about -- just going back
18 to the SERE techniques for a moment.

19 A. Are we still talking about
20 the meeting with Director Tenent?

21 Q. If you want to it be.

22 A. No, I'm just asking you,
23 when you say go back to the SERE
24 techniques.

1 Q. No, I'm asking -- I'm asking
2 whether -- I mean, I asked you whether at
3 that meeting it was discussed that
4 somebody who was -- let's be clear,
5 right? I mean, when these are used on
6 someone in the SERE program, that person
7 is there voluntarily, right?

8 A. In the sense that they can
9 pull the volunteer statement and leave.

10 Q. And they -- there's a safe
11 word, right?

12 A. There is a safe word, yes.

13 Q. And for Abu Zubaydah, he was
14 not there voluntarily, correct?

15 A. He was not there
16 voluntarily.

17 Q. And he did not have -- what
18 was the -- I think you said what the safe
19 word was, wasn't it?

20 A. Flight surgeon is the usual
21 one they use.

22 Q. Flight surgeon. Okay.
23 Right. He didn't have that available to
24 him?

1 A. He had the ability to say,
2 I'll answer that question, which would
3 have had the same effect as flight
4 surgeon.

5 Q. Okay. So the only -- now,
6 going to what occurred with respect to
7 Abu Zubaydah, you went back and you
8 applied these -- these techniques, right?

9 A. Yes.

10 Q. You did, right?

11 A. Yes.

12 Q. Uh-huh. Was it successful?

13 A. Yes.

14 Q. Okay. When was it
15 successful?

16 A. It was successful when he
17 began to provide information that the --
18 that the CIA analyst and targeters and
19 subject matter experts judged as
20 valuable.

21 Q. When was that?

22 A. It was as we were
23 tapering -- as we would be, as we were
24 taping it off, I think -- I think what

1 happened was he began to provide bits and
2 pieces of information, and as he did, we
3 dialed that stuff back.

4 Q. Uh-huh. Okay. This
5 phase -- by the way, let's talk about the
6 phases of -- I'm sorry.

7 There was -- with Abu
8 Zubaydah, at the beginning there's these
9 different phases that he goes through,
10 and this is the final phase, right, where
11 he's -- where he's -- where you're
12 applying these techniques. Before that
13 there was the isolation phase, before
14 that there was the phase where he was
15 being questioned with lesser techniques
16 as you described them, or lesser adverse
17 conditions, right?

18 A. You know, this whole concept
19 of phase, I've never seen that in the
20 cable traffic, but I don't remember at
21 that particular point calling them phases
22 like that. I mean, it wasn't -- that
23 wasn't something that -- I mean, I know
24 they called it the aggressive phase,

1 A. Well, it's more of a prank
2 than anything else. It's not that I
3 enjoyed it, it's that -- it's that they
4 asked me to do it, and it seems like a --
5 you know, it seemed --

6 Q. Yeah. I saw in your book
7 where you said, you know, "Waterboarding
8 two attorneys in one day is a good
9 start."

10 A. I did say that.

11 Q. In your book you say that
12 waterboarding is, quote, Scary and
13 uncomfortable but not painful.

14 Do you agree with that?

15 A. I don't think -- I didn't --
16 I experienced it myself. I didn't find
17 it painful in the sense of pain.

18 Q. In the -- in the cables, Abu
19 Zubaydah cries and whimpers and
20 eventually completely capitulates to
21 waterboarding. If it's just scary and
22 uncomfortable but not painful, why is he
23 crying?

24 MR. SMITH: Objection.

1 THE WITNESS: He -- I know
2 that he taught resistance training
3 because he told me, and I know
4 some of the resistance training
5 and strategies that he told me,
6 and I know what I would do if I
7 were in his situation and I would
8 be whining and crying and moping.
9 Some of them I think were real,
10 some of them were fake.

11 But you know what I hear
12 when someone is making a noise
13 like that? I hear a clear airway,
14 which is what we're supposed to
15 really monitor, because what,
16 mattered is whether or not he can
17 breathe in the -- in the moment.
18 Do you know what I mean?

19 Long-term there were some
20 things that matter. But we've got
21 a psychologist and a physician and
22 other people out there monitoring
23 these things to be sure that they
24 don't go too far.

1 And so it's clear to me that
2 I really wanted those folks to --
3 I wanted them to hear what was
4 going on in the room.

5 BY MR. LUSTBERG:

6 Q. I mean, my question had to
7 do with whether -- so your testimony is
8 that when he's whimpering and crying that
9 way, that that's a resistance technique,
10 at least some of the time?

11 A. Some of the time, yes; some
12 of the time not.

13 Q. Uh-huh. Okay. And how
14 about when he would vomit after
15 waterboarding, was that also feigned?

16 A. He only vomited one time.

17 Q. Was it feigned?

18 A. Oh, no. The physicians had
19 said that you had to give him 12 hours
20 between the time that he ate his beans
21 and rice and when you waterboarded him,
22 this was early in the process, and the
23 COB waited 12 hours and then we
24 waterboarded him and he threw up the

1 break it down: First, did you, based
2 upon your experience, recommend that the
3 program be changed?

4 A. Not changed.

5 Q. Okay. So -- so you never --
6 you never recommended that the program be
7 changed, all you did was when it had
8 already been decided that it be changed,
9 you made your recommendations as to how
10 it should be changed; is that what you're
11 saying?

12 A. That's my recollection. If
13 you've got a document that would refresh
14 my memory, I'd appreciate seeing it.

15 Q. Did you ever do any kind of
16 review of what other interrogators were
17 doing?

18 A. No.

19 Q. Did you ever gather
20 information about what was happening in
21 other interrogations?

22 A. No.

23 Q. Okay. Just a couple other
24 things.

1 In -- in his -- let me show
2 you -- I just want to show you a couple
3 other documents.

4 (Exhibit No. 22, Document,
5 Bates USA 1629 through 1630, was
6 marked for identification.)

7 BY MR. LUSTBERG:

8 Q. Let me show you what's been
9 marked as Exhibit 22, and directing your
10 attention to the third paragraph on the
11 first page.

12 So first of all, this
13 appears to be a cable. I don't see a
14 date on it. Have you ever seen this
15 before?

16 A. When they produced it for
17 us, but I don't think this is a cable.

18 Q. Okay. What is it?

19 A. It's looks like a memo.

20 Q. Okay. It says:

21 "Ph.D. psychologists Drs.
22 Mitchell and Jessen played a significant
23 and formative role in the development of
24 CTS's detention and interrogation program

1 and continue to lead in the development
2 of additional psychologically-based
3 strategies to collect threat and
4 actionable intelligence from HVDs in a
5 manner that does not violate any federal
6 law, the US Constitution or any US treaty
7 obligation."

8 Do you see that?

9 A. Yes.

10 Q. Okay. Do you agree that you
11 played -- you and Dr. Jessen played a
12 significant and formative role in the
13 development of CDC's detention and
14 interrogation program?

15 A. Yes.

16 Q. And did you agree -- do you
17 agree that you continued to -- whenever
18 this was, I mean, I don't know when it
19 was, to lead in the development of
20 additional psychologically-based
21 strategies to collect threat and
22 actionable intelligence and so on?

23 A. I, in fact, wrote an entire
24 interrogation manual that uses no

1 coercion at all, which they collected
2 from my house, which I wanted to produce
3 to you guys.

4 Q. Uh-huh. We'll come back to
5 what was collected from your house.

6 So -- so you're saying that
7 you did continue to lead in the
8 development of additional
9 psychologically-based strategies?

10 A. Yes.

11 MR. SMITH: So we're clear,
12 in the manner contemplated.

13 MR. LUSTBERG: Yeah, I
14 didn't finish the sentence.

15 THE WITNESS: Right. Within
16 the whole context of the sentence,
17 blah, blah, blah. Yeah.

18 BY MR. LUSTBERG:

19 Q. But again, you're
20 comfortable with the idea that you played
21 a significant and formative role in the
22 development of CTC's detention and
23 interrogation program?

24 A. I played a role in it, and I

1 in the training program?

2 A. Not -- when they ran their
3 training program in November, I think was
4 at Cobalt.

5 Q. You were at Cobalt?

6 A. I think so.

7 Q. And so the answer to that
8 is, no, you did not -- you were not a
9 trainer?

10 A. To the best of my -- oh, no.

11 Q. And did you have any input
12 into the curriculum for the training
13 program?

14 A. I don't recall seeing any of
15 the curriculum for the training program.

16 Q. Mr. Rizzo, whom I think
17 we've discussed, describes you and
18 Dr. Jessen in his book as the original
19 architects of the program. What's your
20 reaction to that?

21 A. You'd have to ask Mr. Rizzo
22 what he meant by that.

23 Q. Oh, no. Okay. I'm asking
24 do you disagree with that?

1 A. I disagree with the -- the
2 suggestion that we were architects
3 because we weren't breaking new ground,
4 you know, in the sense that architects
5 do.

6 What we did, regardless of
7 what phrase somebody else decides to use
8 to describe it, is we provided them with
9 a list of techniques that they should
10 consider in our view using if they were
11 going to use coercive techniques.

12 And then I'll just run
13 through the whole thing, they eventually
14 asked us if we would do them, we did
15 them, and then they wanted to replicate
16 that program.

17 So if that's what Mr. Rizzo
18 thinks is the original architect, he'll
19 have to explain why he thinks that label
20 applies, not me.

21 Q. When you -- if you just go a
22 little bit further down in that paragraph
23 we were just looking at.

24 A. Which one is that?

1 Q. This is the third
2 paragraph --

3 A. Is this Exhibit 22 still?

4 Q. Yes, sir.

5 A. Okay.

6 Q. So the -- we read through
7 where it talks about in the manner that
8 does not violate and so forth. The next
9 sentence says:

10 "They have been instrumental
11 in training and mentoring other CIA
12 interrogators and debriefers, and many of
13 the current successes in obtaining
14 information from detainees who are
15 actively trying to withhold or distort
16 it, but due to the interrogations
17 conducted by Drs. Mitchell and Jessen."

18 Do you see that?

19 A. Yes.

20 Q. So let's take the first part
21 of that sentence where it says:

22 "They have been instrumental
23 in training and mentoring other CIA
24 interrogators and debriefers; is that

1 conditioning, you need a technique that
2 starts and stops and that you can control
3 the start and stop, right? So if you're
4 walling a person, you can take your hands
5 completely off the person any time they
6 make any kind of movement toward
7 cooperating. So it's easier to condition
8 the offering side of this thing where you
9 want to reward them for talking to you,
10 right? It's easier to condition that.
11 Whereas if you're trying to use something
12 like waterboarding, you know, you can
13 stop waterboarding the person, but the
14 person is still on the waterboard. So
15 it's much more difficult to logistically
16 orchestrate that and to adjust the
17 timing. Because it's always a timing
18 issue.

19 Q. Okay. I believe I've seen
20 where you have talked about the fact that
21 the way these techniques were supposed to
22 work, though, was that you were not
23 supposed to be trying to get answers
24 right then and there while you're going

1 through the process, the idea is to -- to
2 employ whatever the techniques were,
3 provide a bridge question and then try to
4 come back later before you applied
5 additional techniques to see if you
6 could -- if they were going to give you
7 the question to the bridge question.

8 Did I get that right more or
9 less?

10 A. I think you got that part of
11 the discussion almost correct.

12 Q. Okay. So go ahead and
13 correct me. I want to get it perfect.

14 A. Okay. So we had of all
15 these subject matter experts who gave us
16 intelligence reports, and we actually
17 asked them the questions they asked, and
18 if they provided information, then we
19 would stop using the EITs, and they would
20 take them any time, right, but my
21 thinking on the subject was that, much
22 like with a dental phobia, the time that
23 they're going to be most motivated to get
24 out of it is before the next time, and

1 that's when they're going to be most
2 clear headed as well.

3 And so what we would do is
4 to alert them to be particularly
5 cognizant during that period because we
6 think that's where the person is going to
7 be most likely looking for a way to
8 provide enough of an answer that we don't
9 go onto the EITs.

10 Q. And again, why is -- why was
11 walling considered one of the two that
12 you thought was the most optimal when
13 you -- in terms of reducing the EITs?

14 A. Because then what you could
15 do is you could have that in a much --
16 you could compress the time scale so that
17 you could ask them a question, and if
18 they started to lie to you or started to
19 answer in some vague way, you could ask
20 them, Is this thing that you're telling
21 me going to answer this question, in
22 which they would say no, right? And then
23 you could wall them and start over. You
24 bounce them off the wall two, maybe three

1 A. We didn't sit down at the
2 machine together and do it, no.

3 Q. So you -- so you first
4 selected what was responsive and sent it
5 over to them for their review?

6 A. Of the stuff that's within
7 the last year or two, the stuff that's
8 within the time period that you're
9 talking about primarily, he had the
10 information from -- I can't remember his
11 name, the special prosecutor.

12 Q. Durham?

13 A. Durham. He had the
14 information that Durham had requested off
15 of my hard drive, and when that was
16 over -- I mean, I gave my computer to a
17 third party, they did whatever they do to
18 that, gave him the documents, he had
19 those documents, I didn't keep them. I
20 put a new hard drive into that machine,
21 and then when it came back to me, I
22 reformatted that hard drive and used it
23 to put audio books on.

24 Q. Speaking of Durham, one of

1 the things that he investigated was the
2 destruction of the -- of the videotapes
3 of the Abu Zubaydah interrogation; is
4 that right?

5 A. Yes.

6 Q. And did you have anything to
7 do with the -- with the destruction of
8 those videotapes?

9 A. No.

10 Q. Did you have any
11 conversations with anybody at any time
12 about the destruction of those videotapes
13 other than your lawyers?

14 A. Yes.

15 Q. Okay. And what were those
16 conversations?

17 A. I told, I forget what he's
18 called, I think the Chief of Clandestine
19 Service, that I thought those videotapes
20 should be destroyed.

21 Q. Uh-huh. Before they were
22 destroyed?

23 A. Yes.

24 Q. Uh-huh. Why did you want

1 them destroyed?

2 A. Because I -- I thought they
3 were ugly and they would, you know,
4 potentially endanger our lives by putting
5 our pictures out so that the bad guys
6 could see us.

7 Q. Uh-huh. And what was your
8 response to your statement that they
9 should be destroyed?

10 A. That that was a CIA decision
11 and that they were going to hold on to
12 them because they were still potentially
13 discoverable or something like that.

14 Q. Uh-huh. And do you know
15 how -- how it was under those
16 circumstances that they did get
17 destroyed?

18 A. I know what I read. I mean,
19 I know what I read and I know what the
20 CIA told me.

21 Q. What did the CIA tell you?

22 A. The CIA told me that Jose
23 Rodriguez had asked the lawyers if he had
24 the authority to destroy them. The

1 lawyers said yes. Jose then, I don't
2 know if he called or emailed the Chief of
3 Station where they were held and asked
4 that person to send him a cable
5 requesting permission to destroy them,
6 and then they sent that cable and they
7 were destroyed.

8 Q. Uh-huh. Did Jose discuss
9 this with you at any point?

10 A. He might -- he didn't
11 discuss it beforehand, but after he may
12 have.

13 Q. When you say "he may have,"
14 do you have a recollection of a
15 conversation?

16 A. I have a vague recollection
17 of me being in his office one time and
18 him telling me that he thought destroying
19 the tapes was the right thing to do and
20 that he did it. I don't recall that we
21 had a -- you and I have spent more time
22 talking about it than he and I spent.

23 Q. We can go longer, too, if
24 you want.

1 A. It's up to you.

2 Q. The -- so you -- so you
3 advised -- I'm sorry. You just said and
4 I don't recall. You advised somebody
5 that you thought that the tapes should be
6 destroyed; is that right?

7 A. I didn't advise them, I told
8 them.

9 Q. You told them. Okay. You
10 told them that you thought --

11 A. Yes.

12 Q. And -- and did you provide a
13 rationale for why you thought they should
14 be destroyed? You just told us that, you
15 know, that they were ugly.

16 A. I told them -- I told them
17 that they were ugly, that -- that if they
18 got out, and they would get out, that the
19 identities of the people on those tapes
20 would be revealed and that those tapes
21 would be taken out of context and played
22 over and over and over on the TVs.

23 Q. Uh-huh. Anything else that
24 you said?

1 A. I don't recall specifics of
2 it but...

3 Q. Uh-huh. Did you see any
4 other downsides to the potential --
5 potentially not destroying those tapes
6 other than that they might get out and be
7 played on TV over and over and over?

8 A. Well, just that the tapes
9 were -- they were ugly and that people
10 who weren't familiar -- I don't recall
11 saying this to him, all right, but in my
12 mind I recall thinking that looking at
13 those tapes without knowing specifically
14 that the Justice Department had
15 determined, not once, but several times,
16 that the things that had happened were
17 legal, right, then they could be taken
18 out of context.

19 Q. That's not -- that's what
20 I'm not understanding. If the Justice
21 Department had determined that they were
22 legal, why did the tapes have to be
23 destroyed?

24 A. Why don't we have tapes of

1 abortions? We don't have tapes of
2 abortion because they're not pleasant to
3 look at even though that they're legal.
4 And individual doctors wouldn't probably
5 want videotapes of them aborting babies
6 on You Tube even though it's legal.

7 Q. Okay. So that was the
8 reason, that they would make a bad
9 appearance even though it was lawful?

10 MR. SMITH: Objection.

11 BY MR. LUSTBERG:

12 Q. Is that what you're saying?

13 MR. SMITH: That's not what
14 he said.

15 MR. LUSTBERG: Okay. Then
16 he can say no.

17 MR. SMITH: Yeah, but he's
18 already answered the question
19 three times.

20 MR. LUSTBERG: Okay.

21 BY MR. LUSTBERG:

22 Q. So this will be the last
23 time.

24 A. Now I've lost the question.

1 Q. So that -- so that the
2 concern was that they would make a bad
3 appearance even though they were lawful?

4 MR. SMITH: Objection.

5 BY MR. LUSTBERG:

6 Q. That was the problem?

7 A. That was -- it's sort of a
8 shorthand version of one minuscule part
9 of what the issue was, yeah.

10 Q. I don't want -- I don't want
11 it to be a shorthand version and I don't
12 want to have to repeat, but -- so what am
13 I missing in that summary?

14 A. I didn't like the fact that
15 the tapes were out there. I had a
16 visceral reaction to the tapes. I
17 thought they were ugly.

18 Q. Had you seen them?

19 A. Of course I saw them.

20 Q. Uh-huh. You saw the tapes
21 of yourself?

22 A. Yeah.

23 Q. Uh-huh. When did you see
24 them?

1 A. When we were putting
2 together the videotape that we played to
3 Jose Rodriguez and the other people at --
4 at the CTC when we were asking them to
5 discontinue waterboarding. I saw -- I
6 think we showed them a videotape, a
7 standard videotape of one of his
8 waterboarding sessions, and then the law
9 enforcement expert that was with us had
10 pieced together into a single tape a
11 bunch of -- of the longer pours and we
12 showed them that because we wanted them
13 to get a sense of what was actually
14 happening.

15 Q. Just one more document.

16 MR. SMITH: Never believe
17 that from a lawyer.

18 THE WITNESS: Yeah, I don't.
19 That's what -- that's what we used
20 to do. We used to say the
21 interrogation is over and then
22 come and ask him --

23 BY MR. LUSTBERG:

24 Q. No, no. This is -- I'm

1 at this, Exhibit 5. That big Exhibit 5.
2 This is what I said that there might be
3 one other one --

4 A. Okay.

5 Q. -- that we go back to.
6 This -- on page 33. So, Dr. Mitchell,
7 just read the first full paragraph on
8 page 33.

9 MR. LUSTBERG: 33 of 499.

10 THE WITNESS: In May --

11 BY MR. LUSTBERG:

12 Q. No, it starts, "After the
13 July 2002." So -- yeah, I think the
14 other one is a run-over paragraph.

15 A. Okay. "After the July 2002
16 meeting" --

17 MR. SCHUELKE: Do you want
18 him to read this aloud?

19 MR. LUSTBERG: No, he
20 doesn't --

21 BY MR. LUSTBERG:

22 Q. You can read it yourself or
23 if you want to read it aloud, whichever.

24 MR. SMITH: Read it to

1 yourself.

2 THE WITNESS: I see it.

3 BY MR. LUSTBERG:

4 Q. So the last sentence says
5 this letter was circulated internally at
6 the CIA, including to you?

7 A. I see that.

8 Q. Uh-huh. Is that not true?

9 A. I don't recall that.

10 Q. Uh-huh. Do you think if
11 there was a letter requesting a
12 declination of prosecution, you would
13 remember it?

14 A. Not necessarily. The
15 lawyers were figuring out the lawyer part
16 of this thing, you know. I was -- I was
17 deployed to the site in July of 2002, so
18 I have no recollection of seeing a letter
19 that was circulated internally.

20 MR. LUSTBERG: One second.

21 BY MR. LUSTBERG:

22 Q. Is when did you -- when did
23 you first meet Dr. Jessen?

24 A. 1988.

1 Q. And when did you start
2 working with him?

3 A. 1989.

4 Q. What were you doing together
5 at that time?

6 A. He was -- he was the chief
7 of psychology for JPRA, and I was the
8 chief of SERE psychology at the survival
9 school.

10 Q. Uh-huh. And you know,
11 talk -- take us through how your
12 relationship with him developed.

13 A. He was the chief of
14 psychology at the survival school and I
15 was sent there, and you know, he briefed
16 me on what his duties were.

17 Q. And you became friends,
18 right?

19 A. Yes, we became friends.

20 Q. Right. And you hunt
21 together?

22 A. We don't hunt.

23 Q. Oh, you don't hunt together?

24 A. No.

1 Q. Okay. You hike together,
2 you do stuff --

3 A. We were mountain -- we were
4 alpine climbers and ice climbers and rock
5 climbers.

6 Q. Okay. And how did -- how
7 did it come about that you decided to go
8 into business with him in Mitchell -- at
9 Mitchell Jessen and Associates?

10 A. In 2005?

11 Q. Uh-huh. Whenever you did
12 it.

13 A. I think initially what we
14 were intending to do was to offer
15 continuing education credit to folks who
16 were in a position like we had been in
17 the military where it was hard to get
18 continuing education credit that actually
19 focused on your job -- your job stuff.
20 And so the company was initially put
21 together, and I think we used -- I had by
22 then retired and dissolved Knowledge
23 Works, and we decided to use that
24 company's name. I think it was organized

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

CERTIFICATE

I HEREBY CERTIFY that the witness was duly sworn by me and that the deposition is a true record of the testimony given by the witness.

It was requested before completion of the deposition that the witness, JAMES E. MITCHELL, have the opportunity to read and sign the deposition transcript.

Constance S. Kent



Constance S. Kent, CCR, RPR, CRR
Certified Court Reporter
Registered Professional Reporter
Certified LiveNote Reporter
and Notary Public in and for the
Commonwealth of Pennsylvania
Dated: January 18, 2017

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)



1 ACKNOWLEDGMENT OF DEPONENT

2

James Mitchell, do

3 hereby certify that I have read the
4 foregoing pages, 1 - PGS, and that the
5 same is a correct transcription of the
6 answers given by me to the questions
7 therein propounded, except for the
8 corrections or changes in form or
9 substance, if any, noted in the attached
10 Errata Sheet.

7

James Mitchell 6 Feb 24 17

8

WITNESS NAME DATE

9

10

Subscribed and sworn

11

to before me this 6 day of Feb, 2017.

12

My commission expires: 4-27-2017

13

14

Connie M. Stewart
Notary Public



15

16

17

18

19

20

21

22



1 -----
ERRATA
2 -----

3

4 PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
5 51	22	brokem	broken	misspelled "broken"
6 143	17	six months	three months	date is incorrect
7 164	24	2009	2001	date is incorrect
8 171	11	water	order	wrong word written
9 239	17	discard	discharge	wrong word written
10 283	24	taping	tapering	wrong word written
11 363	1	data	date	wrong word written

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

20 _____

21 _____

22 _____

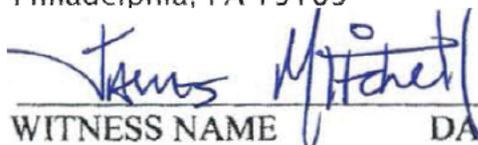
23 _____

24 _____

www.MagnaLS.com

866-624-6221

Seven Penn Center
1635 Market Street - 8th Floor
Philadelphia, PA 19103


WITNESS NAME

6 Feb 24 17
DATE