By Andy Worthington

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Great news from Washington State, as Judge Justin Quackenbush, a federal court judge, has ruled that a "civil lawsuit brought by three victims of the CIA's torture program against the two psychologists who created it will go to court on 5 September" after finding that "more than a year of discovery had yielded sufficient evidence to support the plaintiffs' claims," as Larry Siems, the editor of Mohamedou Ould Shahi's acclaimed prison memoir, *Guantánamo Diary*, explained in an article for the *Guardian*.

The decision was expected, as Judge Quackenbush had allowed the case to proceed last April, a highly important decision that I wrote about at the time in an article entitled, In Historic Ruling, US Court Allows Lawsuit Against James Mitchell and Bruce Jessen, Architects of CIA Torture Program, to Proceed. I also wrote a follow-up article in June this year, In Ongoing Court Case, Spotlight On James Mitchell and Bruce Jessen, Architects of the Brutal, Pointless CIA Torture Program, after the *New York Times* obtained videos of the depositions made by Mitchell and Jessen, in which the two men attempted to defend their positions (the *Times* also obtained the depositions of two former CIA officials and of the plaintiffs, as well as newly declassified CIA documents).

As Larry Siems explained following this week's ruling, "It will now be up to a jury in Spokane, Washington, to decide if the psychologists, who reportedly were paid $75m-$81m under their contract with the CIA to create the so-called enhanced interrogation program, are financially liable for the physical and psychological effects of their torture."

If you haven't yet heard it, do check out my band The Four Fathers playing ' 81 Million Dollars , ' the song I wrote about my disgust at the news that Mitchell and Jessen were paid $81m for developing and implementing the post-9/11 torture program — which also includes a roll-call of those who should face prosecution, from George W. Bush downwards.

Of the three plaintiffs, only two are alive — Suleiman Abdullah Salim, a Tanzanian, and Mohamed Ahmed Ben Soud, a Libyan, who both "survived their ordeal in a secret CIA prison in Afghanistan in 2003," as Siems describes it. Both "are now free and living in their home countries." The third man, Gul Rahman, an Afghan, is represented by his family, because he died as a result of torture in the prison where he was held.

All three men, it should be noted, seem very clearly to have been victims of mistaken identity, like so many others subjected to the torture program, and yet Rahman — who lived with his wife and four daughters in a refugee camp in Peshawar, and scraped a living selling wood to the other refugees — was killed as though his life meant nothing, and Suleiman Abdullah Salim and Mohamed Ahmed Ben Soud were horribly tortured in the "dark prison" (codenamed COBALT) in Afghanistan.

Ben Soud, initially seized in April 2003 in Pakistan, where he lived with his wife and baby, and where he had moved to in 1991 after fleeing his homeland because of his opposition to Col. Gaddafi, was held for 16 months in the "dark prison" and another CIA facility, the Salt Pit, and then flown back to Libya, where he was held until February 2011, when the revolt against Col. Gaddafi began. Horribly tortured in the "dark prison," he said that, on arrival at the prison, "an American woman told him he was a prisoner of the CIA, that human rights ended on September 11 [2001], and that no laws applied in the prison."

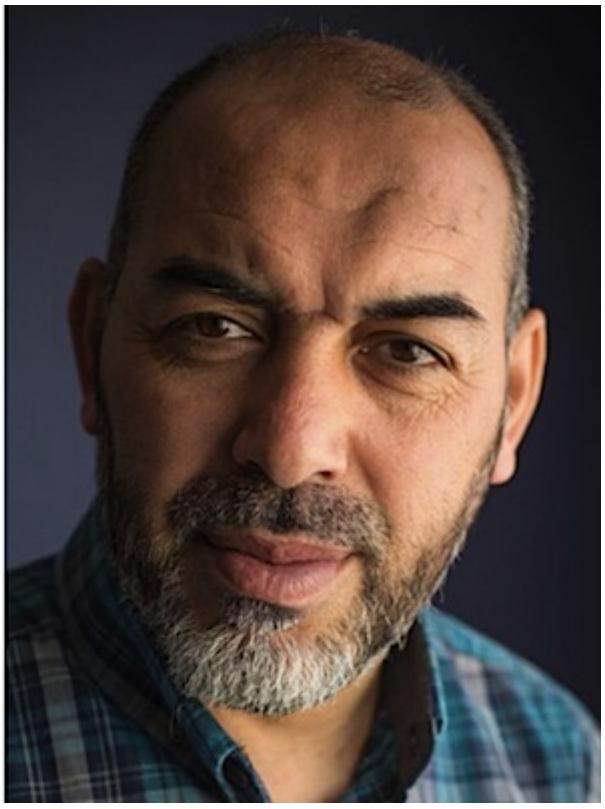
Salim, a fisherman, had just got married before his capture, although he was never to see his wife again. Seized in Kenya in March 2003, he was then rendered to Afghanistan via Somalia and Djibouti, held in the "dark prison" and the Salt Pit, and then warehoused in Bagram for another four years before finally being flown back home in August 2008, although "[p]rolonged isolation left him unaccustomed to human interaction," as the ACLU described it, adding that the "reggae-loving fisherman who had once been known as 'Travolta' for his prowess on the dance floor, had become a shell of himself."

Dror Ladin, one of the ACLU attorneys who filed the lawsuit on behalf of the three men in October 2015, responded to Judge Quackenbush's ruling by stating, "This is a historic day for our clients and all who seek accountability for torture. The court's ruling means that for the first time, individuals responsible for the brutal and unlawful CIA torture program will face meaningful legal accountability for what they did. Our clients have waited a long time for justice."

As Larry Siems proceeded to explain, "This is the first lawsuit brought by victims of torture in the CIA's secret prisons even to reach the pretrial discovery phase. In previous cases, the Bush and then Obama administrations intervened to persuade courts to dismiss the suits, arguing state secrets were at risk if proceedings continued," as in the Jeppesen case, against a Boeing subsidiary who flew torture flights for the CIA, which was shamefully shut down on the basis of the state secrets doctrine in 2010
, under President Obama.

However, the publication in December 2014 of the executive summary of the Senate Intelligence Committee's four-year report about the CIA torture program " revealed many details the government had long suppressed
, including the names of the 39 men who endured Mitchell and Jessen's 'enhanced interrogation techniques' in a prison code-named Cobalt and other secret CIA facilities," and

details of their torture.

As the report confirmed, Suleiman Abdullah Salim and Mohamed Ahmed Ben Soud "were among those who had been subjected to torments including shackling in painful stress positions, walling, water dousing and confinement in closed, claustrophic boxes," while Rahman "had been stripped, doused with water, and shackled to a concrete floor on a freezing night and died of hypothermia." The details of the men's torture had been publicized before the Senate report was issued (see my report on murders in Afghanistan here , and also see the ACLU's detailed feature about the case,
Out of the Darkness
), but its publication made it all but impossible for critics of disclosure to dismiss the facts.

As Larry Siems put it, "With so much information officially confirmed, the Obama administration signalled early that it would not claim state secrets to scuttle the suit" — a long overdue change of position — and in a series of rulings over the past year Judge Quackenbush "has repeatedly rejected moves by Mitchell and Jessen's attorneys to dismiss the suit, and has ordered an unprecedented level of discovery, including the depositions not only of Mitchell and Jessen but also of Jose Rodriguez, the former director of the CIA's counterterrorism center, and John Rizzo, the deputy counsel of the agency when the black sites were in operation."

Siems also explained how, at a final pre-trial hearing on 28 July, Judge Quackenbush "indicated he was satisfied that the claim brought by Rahman's family should go before a jury, but said he wanted to review 'the sufficiency of the evidence as it applies to plaintiffs Salim and Ben Soud.'" His ruling this week has made it clear that they too have "submitted strong evidence supporting their claim that Mitchell and Jessen bear responsibility for their torture."

In a final twist that shows the United States' ongoing contempt for the victims of its torture program — notwithstanding Barack Obama's belated recognition that the state secrets doctrine had run its course as an obstacle to accountability — attorneys for Mohamed Ahmed Ben Soud heard the news about the ruling in the Caribbean island of Dominica, where they had gathered (with the government's lawyers) to take his testimony to present to the jury in September. As Siems explained, "Both Ben Soud and Salim were denied visas to travel to the US earlier this year for depositions, and neither is likely to be allowed to appear in person at the trial proceedings."

US embassy officials in Kabul did, however, "grant a visa to Obaidullah, the nephew of Rahman, who is representing his family in the lawsuit," and in his deposition, which he made in New York in January, he "described his family's anguish at the disappearance of his uncle, and the gradual discovery that he had been kidnapped and tortured to death in a secret CIA prison." As Siems added, summing up the US government's continuing indifference to Gul Rahman's death, "The family still has not received confirmation of his death or been able to recover Rahman's body."

As Obaidullah stated in his testimony, explaining what his family is hoping for through the lawsuit, "If they killed him, I wish they would let us know, 'Here is your dead body.' Hold it up. At least present the dead body to us."

Criticism of Mitchell and Jessen's attempts to defend themselves

Prior to Monday's ruling, Mitchell and Jessen had caused outrage by "resort[ing] to defense arguments once used by accused Nazi war criminals in order to claim they should not be held liable for torture," as Kevin Gosztola described it for Shadowproof on July 28:

Ahead of oral argument in Spokane, Washington, on July 28, defense lawyers for Mitchell and Jessen invoked [PDF] the cases of Karl Rasche, a banker who "facilitated large loans to a fund at the personal disposal of Heinrich Himmler," the head of the S.S., and Joachim Drosihn, who was a gassing technician for the firm that manufactured the poison gas, Zyklon B, used to exterminate Jewish people in concentration camps.

John Kiriakou, the former CIA officer who blew the whistle on the agency's use of waterboarding in the torture program, reacted, "This just cements their place in history — and not just in history but in infamy."

"When they have to rely on the defenses of accused Nazi war criminals to defend themselves, [they] can't go any lower," Kiriakou added. (In fact, at first, Kiriakou did not take this seriously and thought it was some kind of a joke.)

Reporting on Judge Quackenbush's ruling this week , Gosztola noted that the judge stated that, "although the CIA may have maintained ultimate control of the program, defendants, being on site, exercised significant control during individual interrogations," adding, "Defendants have not established they merely acted at the direction of the government, within the scope of their authority, and that such authority was legally and validly conferred."

Gosztola also noted that Judge Quackenbush "called attention to 'several unconvincing arguments' made by Mitchell and Jessen," stating, "Defendants argue there were other 'parallel' interrogation programs, which is contradicted by [former CIA legal counsel] John Rizzo's testimony that there was only one legally authorized program."

Judge Quackenbush also stated, "The argument defendants designed the program only for use on HVDs [high value detainees] is unconvincing. Jessen testified the terms 'evolved over time' and the term HVD 'didn't exist when we started.' The designation of an individual could change, and [was] thus arbitrary. Plaintiff Salim was designated as 'low level,' 'high level' and 'no longer enemy combatant,'" at various times.

Responding to what Kevin Gosztola described as "the argument that 'there is no connection' between the torture techniques proposed by Mitchell and Jessen and those applied to plaintiffs," Judge Quackenbush described this as "factually incorrect," stating, "Some

techniques are identical and others appear to be variations — such as water dousing."

Gosztola also noted that "[Judge] Quackenbush contended the former detainees are not required to prove Mitchell or Jessen had the motive to harm them. They could possibly be found liable for actions that led to the abusive treatment of Salim and Soud at COBALT [a "black site" in Afghanistan], where they were known to have worked in November 2002 before Salim and Soud arrived." As the judge put it, "Defendants' briefing in arguing against 'substantial assistance' attempts to minimize their participation, and at times goes to incredible lengths: 'Defendants' involvement was limited to suggesting potential [techniques] for Zubaydah, and then providing a detailed list of techniques that had been used at SERE for fifty years.'"

As Judge Quackenbush explained, "This statement is factually inaccurate and misleading. It is not credible to argue defendants were paid $80 million dollars for suggesting some techniques the Air Force SERE program already knew about. It is also undisputed that Defendants did not merely suggest [techniques]. They actually applied [techniques] to Zubaydah, interrogated Rahman, and participated in the program for several years."

Judge Quackenbush also poured scorn on Mitchell and Jessen's attempts to "have the Senate Select Committee on Intelligence's study of the CIA's rendition, detention, and interrogation program excluded from trial as 'hearsay,'" dismissing their contention that the committee "was not qualified to investigate the program" and had "produced an untrustworthy, partisan, and unreliable report."

In conclusion, then, I can only say: bring on the trial! It promises to be very interesting indeed.