

By Sheri Fink

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James Mitchell, a psychologist and former contractor for the C.I.A., is one of two defendants in the case. Credit Angel Valentin for The New York Times

A federal court judge refused on Friday to drop a lawsuit against two psychologists who helped devise the [C.I.A.](#)'s interrogation program after the Sept. 11 terrorist attacks, clearing the way for the case to proceed to a trial in September.

The suit is one of the few attempts to hold people accountable for harm caused by the [Central Intelligence Agency's program](#) in the years after the 2001 attacks.

The three plaintiffs had argued that they were detained and tortured in secret C.I.A. prisons using techniques designed by the two former military psychologists, who served as C.I.A. contractors. Most of the techniques used against the detainees have since been banned by the United States government.

At a hearing in United States District Court in Spokane, Wash., Judge Justin L. Quackenbush said he would deny motions by both sides to rule summarily in their favor in advance of a trial. However, he said he would issue a written ruling as to whether the case could go forward on behalf of two of the plaintiffs, who never came into contact with the defendants.

The judge admonished the lawyers to try to resolve the case before a trial, noting that the psychologists are being indemnified by the United States government.

Two men who proposed interrogation techniques widely viewed as torture are part of a lawsuit filed on behalf of former C.I.A. detainees. Deposition videos, obtained exclusively by The New York Times, reveal new insights into the enhanced interrogation program and the C.I.A. contractors behind it.

By SHERI FINK, MALACHY BROWNE and NATALIE RENEAU on
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“I will not allow it to become a political trial on ‘Did the then-Bush administration do wrong in its reaction to interrogation of detainees following 9/11 of ’01?’ That’s not what this trial is about,” Judge Quackenbush said at the hearing.

Instead, he said, the trial would focus on whether the plaintiffs “were subjected to torture, and if so, did the defendants aid and abet — legally aid and abet and factually aid and abet — that torture?”

Lawyers for the former detainees accused the two defendants, the former military psychologists James Mitchell and John Bruce Jessen, “aided and abetted the torture and other cruel, inhuman and degrading treatment” suffered by their clients.

Two of the three plaintiffs had no direct contact with the defendants. But they argued that the psychologists’ role in drafting the list of so-called enhanced interrogation techniques that the C.I.A. adopted — using them on detainees and promoting them within the government — had a substantial effect on the treatment the detainees endured. The psychologists also profited, receiving up to \$1,800 a day as consultants and later forming a company that took in \$81 million to carry out and expand the C.I.A.’s interrogation program over several years.

Lawyers for Dr. Mitchell and Dr. Jessen offered evidence that they said refuted the allegations against their clients. They said the psychologists deserved the same legal immunity enjoyed by government officials because it was the C.I.A. — not the defendants — that decided which detainees would be interrogated using the techniques the defendants had proposed.

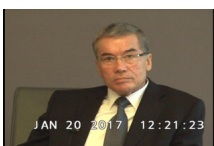
Those techniques included stuffing detainees into small boxes, slamming them against walls and waterboarding them. The government provided assurances that the techniques were legal for use on the person they were originally proposed for — Abu Zubaydah, a captured terrorism suspect — and later other high-value detainees.

The proposed techniques were not intended to cause severe physical or mental pain or suffering, the lawyers added, and thus did not violate the prohibition against torture.

In urging the judge to rule in their favor, both sides referred in court filings to trials for crimes committed in the Holocaust. In one example that the defense lawyers offered, at the Nuremberg trials, a banker was found not guilty of a crime for facilitating large loans to a fund available to the S.S. leader Heinrich Himmler at the Nuremberg trials because that was analogous to a builder providing supplies or raw materials for a house that he knew would be used for an unlawful purpose. By suggesting a list of interrogation techniques to the C.I.A., the current “defendants, at most, provided the ‘raw materials’” and therefore should not be held liable, their lawyers wrote.

They also referred to the case of a technician at a company whose poison gas was used at Auschwitz who was acquitted of responsibility by a British [military tribunal](#) because he was not in a position to prevent the gas from going to the concentration camp. In the same way, the current defendants “had no ‘influence’ over the application of EITs on such unknown detainees selected by the CIA,” the psychologists’ lawyers wrote, using an abbreviation for enhanced interrogation techniques.

Lawyers for the plaintiffs responded that in that case, the owner of the Zyklon-B gas company was found guilty. “Thus, even though it was solely the Nazis who controlled whether gas would be used on prisoners, and solely the Nazis who decided upon the victims, Bruno Tesch, the owner, was hanged,” they argued. “Like Mr. Tesch, defendants had control over assistance to the C.I.A. program, both personally and as the owners of Mitchell, Jessen & Associates. As a matter of law, that is more than sufficient.”



John Bruce Jessen, a psychologist and former C.I.A. contractor, is also a defendant in the case.

The defendants had also moved to exclude as hearsay any evidence from the executive summary of the 6,700-page [Senate Intelligence Committee Report on Torture](#). They argued that the summary —

[published in December 2014](#)

and based on a five-year review of over six million pages of documents, most of them from the C.I.A. itself — was partisan and not trustworthy or reliable. Judge Quackenbush denied their motion, but reserved the right to change his opinion for purposes of the trial.

To get a favorable summary judgment, the lawyers would have needed to prove that the relevant facts were beyond dispute. In recent weeks, each side submitted lengthy filings taking issue with the purported facts offered by the other. They also moved to exclude testimony of medical experts hired by opposing counsel who examined the former detainees for post-traumatic stress disorder.

The [American Civil Liberties Union](#) and the Gibbons law firm of Newark brought the lawsuit under the Alien Tort Statute, which allows foreign citizens to seek justice in United States courts for violations of their rights under international law or United States treaties.

The three former detainees included Mohamed Ben Soud, a Libyan who was detained by the C.I.A. in Afghanistan and was locked in small boxes, slammed against a wall and doused with buckets of ice water while naked and shackled; [Suleiman Salim](#), a Tanzanian captured in 2003 and also held by the C.I.A. in Afghanistan, who was beaten, isolated in a dark cell for months, doused with water and deprived of sleep; and Gul Rahman, who died in C.I.A. custody in Afghanistan in 2002, probably of hypothermia, according to a C.I.A. investigation into his death.

While Dr. Jessen has kept a low profile, Dr. Mitchell has offered himself as a public speaker about his association with the C.I.A. program and his insights on “the minds of those trying to destroy America.” His fee is listed as \$15,000 to \$25,000 on the site of [Worldwide Speakers Group](#), which states: “Dr. Mitchell led the development of the C.I.A.’s enhanced interrogation program after 9/11 and was a primary interrogator from its inception.”

Addressing the Mensa Annual Gathering in Hollywood, Fla., this month, Dr. Mitchell claimed to have spent more time with terrorists than just about anyone else. “We care more about playing

fair than they do,” he said, “and as a result they view it as our weakness and use it against us.”

The morning after Dr. Mitchell spoke, the last living Nuremberg trials prosecutor, [Ben Ferencz](#), 97, took the stage for his own speech at the conference, making an impassioned appeal for upholding the rule of law.