

Exhibit B

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.

* * *

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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 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 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. 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 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



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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

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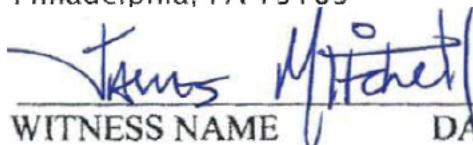
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Seven Penn Center
1635 Market Street - 8th Floor
Philadelphia, PA 19103


WITNESS NAME

6 Feb 2017

DATE