

By John Ryan

From [LawDragon](#) | Original Article



Sketch by Janet Hamlin. The judge, Air Force Col. Shane Cohen (left), watched defense lawyer James Connell question witness James Mitchell on Monday.

Guantanamo Naval Base, Cuba – Onetime CIA contractor James Mitchell choked up on the witness stand late Monday as he testified in front of men subjected to his black-site interrogations about his decision in summer 2002 to play a lead role in the CIA program that has become the central pretrial issue of the Sept. 11 case.

“I just tear up when I think about this,” Mitchell testified.

The controversial psychologist made clear he has no regrets, testifying that he had “a moral obligation to protect American lives” while the U.S. government feared another al Qaeda attack that would inflict massive casualties.

“I’d get up today and do it again,” Mitchell said.

James Connell, the lead attorney for defendant Ammar al Baluchi, called Mitchell to testify in support of his team’s motion to suppress incriminating statements al Baluchi made at Guantanamo Bay in 2007 – about four months after he arrived from the abusive black sites.

The five defense teams claim that past torture at the CIA-run sites taints any statements their clients later made to FBI interrogators at Guantanamo Bay, and thus must be excluded from the trial. All the teams plan to examine Mitchell and his contracting partner, fellow psychologist John “Bruce” Jessen, who also travelled to the U.S. Naval Base for the two-week hearing.

The testimony of the black-site program architects is among the most highly anticipated events of the Sept. 11 military commission, which dates to the May 2012 arraignment. So critical are the witnesses to the past treatment of the five defendants that most defense lawyers expressed doubt the questioning of both Mitchell and Jessen could be completed in the allotted two weeks.

Connell, meanwhile, has taken pains to emphasize – both in court and to reporters in media briefings – that Mitchell and Jessen are merely parts of a massive U.S. law-enforcement bureaucracy that supported an illegal regime of detaining terrorism suspects incommunicado and abusing them over multiple years.

In pretrial hearings in the late summer and fall, Connell [called multiple FBI witnesses](#) who testified about their roles in sending questions to the CIA black sites for use in interrogations and receiving intelligence reports in response. Those FBI agents later conducted interrogations of the defendants at Guantanamo Bay in January 2007 – causing what defense attorneys view as an epic, indelible taint of the government’s most critical evidence.

At those hearings, prosecutors elicited information from FBI witnesses to support their position that the Guantanamo interrogations were in fact voluntary because the detainees could choose not to participate and were promised they would not be returned to CIA custody.

Monday, Connell returned to the topic of FBI-CIA coordination when he questioned Mitchell about his interactions with FBI agents during the 2002 interrogations of Abu Zubaydah, who was captured in March of that year and believed to be a high-level operative with information on future attacks. (Zubaydah is a detainee at Guantanamo but has not been charged in the military commissions.) Mitchell testified on Monday that he worked as a consultant during these early interrogations and was later asked by the CIA to play a lead role in designing and implementing a new coercive program for Zubaydah. Mitchell, a retired Air Force lieutenant colonel, had previously worked at the military school that teaches Survival, Evasion, Resistance, and Escape techniques known as "SERE."

During questioning by Connell, Mitchell testified that the idea to use abusive tactics did not originate with him. However, once the government decided on that course, Mitchell said he reasoned that he could help design a more disciplined approach than used in the earlier Zubaydah interrogations.

"My concern is that they were going to make it up on the fly," Mitchell said.

At several instances in Monday's testimony, Mitchell reflected the defiant tone displayed on the pages of his 2016 book "Enhanced Interrogation: Inside the Minds and Motives of the Islamic Terrorists Trying To Destroy America."

Connell asked Mitchell why he did not meet with him in advance of his testimony to go over his proposed areas of examination.

"You folks have been saying untrue and malicious things about me for years," Mitchell responded. "For years."

As the day progressed, Mitchell's tone softened, eventually easing into less combative

exchanges with Connell – all the while managing to land the occasional sarcastic remark.

“Oddly enough, the CIA frowns upon you keeping a diary,” Mitchell said when failing to recall certain details sought by Connell.

Testimony supporting defense motions to suppress the January 2007 FBI statements are expected to take up much of the 2020 calendar year in the Sept. 11 case. The suppression proceedings have been complicated by the government's invocation of the national security privilege over significant parts of the since-disbanded interrogation program, including the locations of the black sites and the names of most of the CIA personnel involved. The privilege prevents defense lawyers from asking about these details – even in closed sessions in which classified information is discussed.

Defense teams claim that these restrictions on investigating and litigating the case are unconstitutional. The government insists its production of discovery on the CIA program and access to witnesses adequately balances the due-process rights of the defendants with protecting national security. The judge, Air Force Col. Shane Cohen, has said he will later decide if the process is unfair and worthy of some type of sanction against the government.

The prosecution team has issued several classification guidances that outline what the defense attorneys can discuss and elicit from witnesses in court, with a new guidance arriving shortly before the hearing. The defense team for Khalid Shaikh Mohammad, who is accused of planning the Sept. 11 attacks, sought to abate the witness testimony so that the new guidance could be argued first in court.

Cohen declined to postpone the start of witness testimony. Marine Lt. Col. Derek Poteet, a military defense lawyer for Mohammad, said before the hearing that his team would move forward with questioning Mitchell even if Cohen declined to hear arguments on the guidance.

Mitchell participated directly in the waterboarding of Mohammad.

About the author: John Ryan (john@lawdragon.com) is a co-founder and the Editor-in-Chief of Lawdragon Inc., where he oversees all web and magazine content and provides [regular coverage of the military commissions at Guantanamo Bay](#)

. When he's not at GTMO, John is based in Brooklyn. He has covered complex legal issues for 20 years and has won multiple awards for his journalism, including a New York Press Club Award in Journalism for his coverage of the Sept. 11 case.