

By Carol Rosenberg

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GUANTÁNAMO BAY, Cuba — Defense lawyers are delving into the early days of detainee abuse in wartime Afghanistan in pretrial hearings in the destroyer Cole case, with descriptions of a key informant being held hooded and nude, deprived of sleep, used as an ashtray, and made to clean up a fetid spill of human waste and diesel fuel with his bare hands.

“I laughed at him while he did it,” Damien M. Corsetti, a former Army private, testified last week in sorrowful tones of his role in the military intelligence campaign to prepare a Saudi prisoner, [Ahmed Muhammed Haza al-Darbi](#), for interrogation at the Bagram Air Base detention facility in the summer of 2002.

Mr. Corsetti said he also subjected Mr. Darbi to periods of painful double wrist shackling in what were called “stress positions,” sometimes on his knees, sometimes with arms raised above his head. He smashed furniture near Mr. Darbi’s hooded head and saturated the hood in a mock waterboarding. It all took place inside an old Soviet MiG hangar where, when not being interrogated or held in isolation, prisoners were forced to sit silently on rugs the size of prayer mats in one of five cages named for Qaeda attacks: Tower 1, Tower 2, the Pentagon, Pennsylvania and the Cole.

Now it is up to an Army judge, Col. Lanny J. Acosta Jr., to decide whether to allow F.B.I. agents to testify to what Mr. Darbi told them at Bagram nearly 20 years ago at the eventual death penalty trial of [Abd al-Rahim al-Nashiri](#). Mr. Nashiri, 57, is accused of plotting the bombing of the Navy destroyer Cole, which took place off Yemen in October 2000 and killed 17 U.S. sailors.

No trial date has been set as Colonel Acosta considers challenges to the evidence that prosecutors want to use. The hearings are set to continue on Monday with testimony from James E. Mitchell, a psychologist who as a C.I.A. contractor [waterboarded war on terrorism](#)

[detainees](#), including Mr. Nashiri. Defense lawyers called him as a witness to describe what was on a video that the C.I.A. [made and then destroyed](#) of Mr. Nashiri's interrogations at a black site in Thailand in 2002.

Mr. Corsetti testified remotely, appearing in a video feed from a secret annex near the Pentagon that was built for the Guantánamo courtroom. He said his unit assigned him the role of menacing Mr. Darbi — using what the [Army Field Manual](#) called “fear-up, harsh techniques” — for about six weeks in the summer of 2002 for interrogations that would take place in the same building, not just by the military but also the F.B.I. and other intelligence agencies.

To keep Mr. Darbi awake, Mr. Corsetti said, he forced him to stand shackled at the wrists with his arms lashed above his head. Mr. Corsetti said that for a time, he also had Mr. Darbi kneel in front of him while he smoked — and used the prisoner's uniform breast pocket as his ashtray. But Mr. Corsetti said the abuse that ultimately broke Mr. Darbi came when the Army private ordered him to scoop up a mixture of prisoners' feces and urine, and fuel that had spilled from the prisoners' toilet, a sliced-open 55-gallon drum.

“His hands were covered in waste by the end of it,” Mr. Corsetti said. “As a Saudi, it was very effective to make him do physical labor.”

At one point, a military prosecutor suggested that Mr. Corsetti was lying to get even with the Army, which court-martialed and then [acquitted him](#) in 2006. “I love my country, sir,” Mr. Corsetti told a defense lawyer. “I would never do that.”

Mr. Darbi, who was held at Guantánamo Bay for 15 years, will not be available to testify at the trial. He has already pleaded guilty to terrorism charges in a military commission and was returned in 2018 to his native Saudi Arabia, where he is serving a 13-year prison sentence. So the F.B.I. agents who questioned him in 2002 would be called in his place.

Mr. Corsetti described what he did as role-playing in team-planned preparation of prisoners for interrogations, and said he was following military orders. He testified last week that he and another guard were so troubled by some planning for sleep deprivation that they questioned whether it was lawful — and were advised by their commanders that U.S. military lawyers had

approved it.

The lead prosecutor, Mark A. Miller, a Justice Department lawyer assigned to the Cole case, said that what happened to Mr. Darbi was “unpleasant” and “shouldn’t have been done,” but that it did not meet a legal definition of torture.

Moreover, he said, the F.B.I. agents who questioned Mr. Darbi at the Bagram detention facility continued to do so after the period of sleep deprivation had ended, and they described their conversations with the captive as consensual and even friendly. One agent treated the prisoner to Twinkies that an agent had received in a care package from home.

Even if the judge were to decide that Mr. Darbi was tortured, Mr. Miller said, the law governing military commissions prohibits only the use of evidence that was obtained using torture or cruel, inhuman or degrading treatment of a defendant, in this case Mr. Nashiri. Testimony about what a witness said under those circumstances can be admissible at a trial, he said.

Lt. Cmdr. Alaric A. Piette, Mr. Nashiri’s lawyer and a former member of the Navy SEALs, urged the judge to reject the testimony from the F.B.I. agents as “tainted by torture.”

He said that other U.S. civilian and military courts would not allow the use of such testimony and argued that the war court should follow suit. “What the government is asking us to do as we build this justice system at Guantánamo Bay,” he said, “is to set aside what we know is abhorrent.”

