

By John Ryan

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Guantanamo Naval Base, Cuba – Dr. Bruce Jessen, who helped develop the CIA's post 9/11 interrogation strategies, testified in pretrial hearings in the USS Cole case this week, telling a defense lawyer on Friday morning that he was disappointed with how their exchange was going because she was not being as forthcoming as possible.

“We’re going to give you some time to think about this,” Jessen said from the witness stand to Annie Morgan, a civilian lawyer for Abd al Rahim al Nashiri.

“Get into the box,” Jessen ordered calmly.

Morgan played the role of a detainee and complied, sitting on the floor in front of a rectangular plywood structure about 30 inches tall, then scooted backward into the box. She pressed her knees against her chest and held her arms over her shins, while another defense lawyer closed the box's small door. Several silent seconds passed as Morgan sat crammed in the re-creation of the box in which her client spent up to two hours at a time.

The brief, eerie reenactment of al Nashiri's abusive treatment by the CIA at an overseas black site came on the third and final day of Jessen's testimony. Twenty-one years earlier, in November 2002, Jessen and another former contract psychologist for the CIA, Dr. James Mitchell, subjected al Nashiri to a series of harsh interrogations that included boxed confinement, walling, waterboarding and other techniques at a black site referred to in court as Location 3. (While the locations of the black sites remain classified by the government, Location 3 is known to have been in Thailand.)

Prior to compressing herself into the small box, Morgan spent a similar amount of time in a re-creation of a larger box, about 8-feet tall, used at Location 3. Under her resumed questioning, Jessen testified that he did not recall that the time limit for the bigger box was eight hours – or that al Nashiri had once spent 16 consecutive hours in it with only a can for his waste.

"Not on my watch," Jessen said.

Al Nashiri did not attend court on Friday. During the previous two days of Jessen's testimony, he watched proceedings from a holding cell outside the courtroom that receives an audio and video feed. After her time in the box, Morgan requested a comfort break that was granted by the judge, Army Col. Lanny Acosta.

Defense lawyers claim that al Nashiri's torture by the CIA prior to statements he later gave renders his subsequent confessions involuntary. They called Jessen in support of efforts to convince Acosta to suppress the incriminating statements that al Nashiri made to the FBI in 2007 after he arrived on Guantanamo Bay from the black sites. Prosecutors contend the sessions on Guantanamo Bay were voluntary. Al Nashiri faces a potential death sentence for his alleged role in the attack on the USS Cole in October 2000 that killed 17 sailors and wounded dozens of others. A trial date is not yet set.

Morgan's dramatic presentation one-upped that given by the leader of al Nashiri's team, Anthony Natale, [who questioned Mitchell at the pretrial hearing in April 2022](#) with the small confinement box off to his side for parts of the examination. Morgan told Jessen that she was about the same height and weight – 5'5 and 137 pounds – as al Nashiri was at the time of his early CIA captivity.

Jessen and Mitchell were both examined in the military commissions' Remote Hearing Room in Northern Virginia. The action from the remote facility is played on an 80-inch screen on the wall above the witness box in the Guantanamo Bay courtroom.

Over three days, Jessen and Morgan struck a cordial conversational tone that contrasted sharply with Natale's examination of Mitchell, who was often irritated during that questioning. Mitchell told Natale last April that al Nashiri actually liked getting into a confinement box. Jessen said the same during his testimony, recalling that the detainee seemed to view it as "a safe place."

Earlier in the week, Morgan asked Jessen to step down from the stand to demonstrate on her what were considered the "least intrusive" techniques, such as attention grabs, that he and Mitchell would have used on al Nashiri prior to starting the harsher measures. Jessen approached Morgan reluctantly late Wednesday afternoon near the remote facility's podium.

"I feel like I'm beating up my daughter," Jessen said.

Nonetheless, Jessen wrapped a towel around Morgan's neck and pulled her face to within inches of his. He ended the demonstration with a slow motion slap to Morgan's left cheek. The witness explained that even the less intrusive techniques can cause serious physical injury if done improperly. Morgan told the judge that the presentations were important for the court record because the CIA destroyed videotapes made at Location 3.

Ed Ryan, one of the prosecutors working from the remote facility, conducted his cross-examination of Jessen in just 28 minutes on Friday afternoon. Jessen told Ryan that al Nashiri was not overly stressed or under duress prior to the implementation of what the Bush administration termed "enhanced interrogation techniques," or EITs, which Jessen and Mitchell used on al Nashiri for about three weeks.

"You thought he was capable of withstanding EITs?" Ryan asked.

"I did," Jessen testified.

He said that al Nashiri appeared to have the same mental and emotional condition following the enhanced interrogations, though he was "more cooperative."

For much of his first two days on the stand, Jessen testified about his professional background and the events that led to his involvement with the CIA's "Rendition, Detention and Interrogation" program. Like Mitchell, Jessen had worked as an instructor at the Air Force's Survival, Evasion, Resistance, and Escape, or SERE, program, which puts trainees through harsh treatment to prepare them for possible capture. He was working at the Department of Defense's Joint Personnel Recovery Agency (JPRA), which oversees all SERE programs, in June 2002, when his boss informed him that he would be detailed to the CIA.

Jessen testified that his only role at that time was to help develop an interrogation plan for Abu Zubaydah, who had been captured in late March and was being held at Location 3. (Al Nashiri had not yet been captured.) He and Mitchell proposed a series of interrogation measures – including facial slaps, walling, stress positions, sleep deprivation, cramped confinement and waterboarding – and traveled to the site. Jessen said that they waited for three to four weeks for the Justice Department to approve the enhanced techniques.

"Until the approvals were there, nothing was going to happen," Jessen testified on Wednesday

On Thursday, Jessen testified that the techniques he and Mitchell used on Zubaydah that summer became an "initial template" that could be used on other detainees. The first opportunity came with al Nashiri, who was renditioned to Location 3 in November 2002 following his capture the prior month. During his testimony, Jessen only recalled one waterboarding session with al Nashiri because the detainee was too small to reliably and safely stay within the gurney's straps during the pouring of water.

Jessen said that the interrogation team stopped using all enhanced techniques once al Nashiri became more cooperative. The intent behind the interrogation plan was to transition detainees into full "debriefing mode" in which they provided helpful information without the need for aggressive tactics, Jessen testified. At various points of his testimony, Jessen described this as a "contract" between the detainee and the CIA in which a detainee's cooperation ended EITs. He acknowledged that an underlying threat was always present that detainees could be returned to harsher measures.

On Friday, Jessen testified that the contract with al Nashiri was broken once he and Zubaydah were renditioned to Location 4 in late 2002, a site known to have been in Poland. At that location, a lead interrogator identified in court as NX2 decided to put al Nashiri back into enhanced sessions over the objection of Mitchell, who travelled to the site with the detainees. Jessen did not travel to Location 4 at the time but learned of the events later.

Morgan led Jessen through a list of NX2's abusive tactics, including several that had not been approved by the Justice Department. These included dangerous and prolonged stress positions, threats made with a pistol and a cordless drill, and the use of a brush on al Nashiri's testicles before placing it in his mouth, among others. One interrogator at the site threatened to rape al Nashiri's mother in front of him in his cell, Morgan recounted.

"That was also an unauthorized technique?" Morgan asked.

"Of course," Jessen said.

Jessen said he found NX2's treatment of al Nashiri "disturbing." He said he later travelled to Location 4 to meet with al Nashiri and rebuild the relationship as best as possible. Al Nashiri eventually began providing information to debriefers, Jessen said.

During cross-examination, Jessen testified that al Nashiri's unfortunate return to EITs did not seem to render him mentally or emotionally compromised, or incapable of exhibiting free will.

Throughout the week, Jessen's testimony on NX2 echoed that of Mitchell's last year as a

witness for al Nashiri, as well as extensive testimony given by Mitchell in January 2020 in the separate military commission against the five detainees accused of planning the 9/11 attacks. Jessen said that he and Mitchell attended a training session in the fall of 2002 in which they saw NX2 teach CIA personnel unauthorized techniques. He said that he later learned that NX2 was running an interrogation program separate from the one he and Mitchell consulted on. Mitchell's testimony in the 9/11 case established that the CIA eventually removed NX2 from his position in 2003, and he died later that year.

During Morgan's questioning, Jessen also acknowledged that he learned that al Nashiri was subjected to rectal feeding. Dr. Sondra Crosby, a consultant on al Nashiri's defense team, [testified at the last pretrial session in February](#) that al Nashiri viewed this event in 2004 and at least one other rectal abuse as violent sexual assaults.

Jessen testified on Friday that he visited al Nashiri in several other black sites prior to his transfer to Guantanamo Bay in September 2006. One such location was on Guantanamo Bay itself when the CIA used a portion of the detention facility as a black site between 2003 and 2004. Under questioning by Morgan, Jessen testified that he did not know that the FBI later interrogated al Nashiri in the former black site location in January 2007 to obtain the statements the prosecution intends to use at trial. Al Nashiri's lawyers have long claimed this fact strengthens their contention that the January 2007 statements are tainted and should be inadmissible.

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.