
Lawyers in torture case seek materials the CIA calls secret

By The Associated Press

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Lawyers for two psychologists who developed harsh interrogation methods in the government's war on terror asked a judge Friday to allow them to interview two CIA officials and have access to documents the government claims are secret.

But government lawyers told the federal judge in Spokane, Washington, that the officials and documents are protected under the state secrets privilege and making them public would threaten [national security](#).

The [ACLU](#), which sued psychologists James Mitchell and Bruce Jessen on the behalf of three men who contend they were tortured using techniques the psychologists designed, told the judge the material and CIA officials aren't needed to decide the case.

ACLU lawyer Dror Ladin said the case is about the design of the torture program, not about the people who administered it.

U.S. District Court Judge Justin Quackenbush said the agents' testimony is "somewhat collateral" to the case and may not be needed. The judge ruled Friday that one of the documents could continue to be redacted under the state secrets privilege, and he planned to review the other 46 documents before deciding what could be included in the case.

The lawyers met over the lunch break and narrowed the list of documents to be reviewed down to seven, some of which are challenged on attorney-client privilege and other grounds.

Mitchell and Jessen ran a Spokane-based company that received \$81 million from the CIA to develop methods to extract information that included waterboarding and sleep deprivation. President Barack Obama terminated their contract in 2009. A U.S. Senate investigation in 2014 found that Mitchell and Jessen's techniques produced no useful intelligence in the war on terror.

The American Civil Liberties Union sued the psychologists in 2015 on behalf of Suleiman Abdullah Salim, Mohamed Ahmed Ben Soud and the estate of Gul Rahman, who died in custody. The U.S. Department of Justice became involved in the case to represent the government's interests in keeping classified information secret.

On Friday, attorney Brian Paszamant, representing the psychiatrists, said the state secret privilege doesn't apply to CIA officials James Cotsana and Gina Haspel because the fact that they worked in the CIA interrogation program has already been made public.

"We know she was involved," Paszamant said of Haspel, and deposing her would allow the defense to learn exactly what Mitchell and Jessen did in the program. The psychiatrists are not allowed to say what they did because they're bound by CIA non-disclosure agreements, he said.

Paszamant said the psychiatrists were only involved in the "high-value detainee" program and did not know that the CIA planned to use the methods they developed on lower-level suspects.

"There was no 'one-big' program," Paszamant said. "Haspel and Cotsana can speak to the granular in ways the others can't."

The sealed and redacted documents also create a problem because the defense is forced to guess at what they contain based on the classified summary, Paszamant said.

"You have an obligation to look at the documents with a skeptical eye to see if the privilege is evoked too broadly," he told the judge, adding that he should consider if the material has already been made public through Congressional hearings or media reports.

Andrew Warden, a lawyer for the [Justice Department](#), said the redactions are designed to protect CIA personnel, the locations of the interrogation sites and any foreign officials who may have been involved.

Warden said he could not confirm or deny whether Haspel or Cotsana were involved in the CIA interrogation program.

The trial for the civil case is set for Sept. 5.

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SPOKANE

Judge clears path for torture trial against Spokane psychologists involved in CIA waterboarding

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James Mitchell, the former Spokane psychologist who designed and participated in the CIA's water boarding torture of terrorism suspects, was interviewed Wednesday, Jan. 25, on FOX News. He supported President Donald Trump's statement that torture works. (FOX News)

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A visibly shaken Dror Ladin labored in court as he tried on July 28 to convince U.S. District Court Judge Justin Quackenbush why the ACLU's lawsuit on behalf of three tortured men should go forward.

The legal quandary was this: An exhaustive investigation by the 2014 Senate Select Report on Intelligence found ample evidence that Spokane psychologists Bruce Jessen and James Mitchell provided the CIA the methods for torture, including waterboarding, that were used on dozens of detainees in the early years on the war on terror.

But Ladin could not cite any direct evidence that Mitchell and Jessen directly supervised or carried out the torture on his clients, Sulieman Abdullah Salim and Mohamed Ahmed Ben Soud. However, ample evidence showed that Jessen took part in the torture of Gul Rahman, who was short-chained to a floor and died of hypothermia in his cell.

While Quackenbush openly questioned the merits of the case in court, he later wrote a 43-page opinion released on Monday allowing the case to proceed towards a scheduled Sept. 5 trial in Spokane.

“The factual record would support a finding defendants had a role in the design of the program, trained interrogators for the program, and exercised some discretion in the application of the program,” Quackenbush wrote. Mitchell and

Jessen “have not established they merely acted at the direction of the government, within the scope of their authority, and that such authority was legally and validly conferred.”

Even Ladin seemed somewhat surprised at the ruling, given the grilling he took in court.

“The judge did express reservations,” Ladin said. “But he certainly agreed that their claims can go to trial.”

The ruling denied legal efforts by the attorneys representing Mitchell and Jessen to limit the scope of the case or to dismiss it outright.

In the last hearing, defense attorney Brian Paszamant argued that his clients only provided the CIA with a list of potential interrogation techniques.

“The problem is my clients were involved in drafting the guidelines (for the CIA) and didn’t know they were going to be applied at” CIA black-site prisons, Paszamant said. “There is a huge disconnect.”

Quackenbush asked Paszamant about the treatment of Rahman, who was placed in a diaper before he died on a cold floor. Evidence suggested that Jessen helped interrogate Rahman but it only included one slap to his face.

“I’m not sure a single slap to the face would constitute torture under international law,” Paszamant said last month.

Quackenbush replied: “He was tortured.”

Paszamant pointed out that Rahman died of exposure ... “none of which my clients had anything to do with. I’m not at a position to acknowledge (Rahman) was subjected to torture.”

The judge then added: “That’s why we have juries.”

In his written findings, Quackenbush noted that the defense attorneys made “several unconvincing arguments” that there was no connection between developing the interrogation techniques and those applied to Sulieman and Ben Soud.

“That is factually incorrect,” Quackenbush wrote. “Some techniques are identical and others appear to be variations, such as water dousing,” he wrote.

Ladin said he’s glad the judge ruled to move the case forward.

“This is a historic day for our clients and all who seek accountability for torture,” Ladin said. “The court’s ruling means that for the first time, individuals responsible for the brutal and unlawful CIA torture program will face meaningful legal accountability for what they did.”

UPDATED: AUG. 7, 2017, 6:05 P.M.

Tags: ACLU, Bruce Mitchell, Dror Ladin, Gul Rahman, James Mitchell, Mohamed Ahmed Ben Soud, Spokane, Sulieman Abdullah Salim, torture, U.S. District Court Justin Quackenbush

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