

Psychologists, Architects of CIA Experimental Torture Program

Sued by American Civil Liberties Union (ACLU)

By [Kevin Gosztola](#)

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Featured image: CIA contractor James Mitchell on CSPAN2's "Book TV" (Screen shot from CSPAN2)

Two CIA psychologists, who were architects of the CIA's torture program, have resorted to defense arguments once used by accused Nazi war criminals in order to claim they should not be held liable for torture.

James Mitchell and Bruce Jessen were contracted by the CIA to develop, implement, and personally administer the agency's experimental torture program against detainees in the War on Terrorism.

The American Civil Liberties Union (ACLU) sued Mitchell and Jessen on behalf of three men, who were tortured. The case alleges Mitchell and Jessen engaged in crimes that include water torture, forcing prisoners into boxes, and chaining prisoners in painful stress positions to walls.

Ahead of oral argument in Spokane, Washington, on July 28, defense lawyers for Mitchell and Jessen invoked [[PDF](#)] the cases of Karl Rasche, a banker who "facilitated large loans to a fund at the personal disposal of Heinrich Himmler," the head of the S.S., and Joachim Drosihn, who was a gassing technician for the firm that manufactured the poison gas, Zyklon B, used to exterminate Jewish people in concentration camps.

John Kiriakou, the former CIA officer who blew the whistle on the agency's use of waterboarding in the torture program, reacted,

"This just cements their place in history—and not just in history but in infamy."

"When they have to rely on the defenses of accused Nazi war criminals to defend themselves, [they] can't go any lower," Kiriakou added. (In fact, at first, Kiriakou did not take this seriously and thought it was some kind of a joke.)

Mitchell and Jessen's defense argued, in a case involving Zyklon B, the "'owner and second-in-command of the firm were found guilty; Drosihn, the firm's first gassing technician, was acquitted.' Explaining this result, the court noted: The functions performed by Drosihn in his employment as a gassing technician were an integral part of the supply and use of the poison gas, but this alone could not render him liable for its criminal use, even if he was aware that his functions played such an important role in the transfer of gas."

“Here, it is undisputed that, as independent contractors serving on a larger interrogation team, Defendants lacked authority to “control, prevent, or modify” the CIA’s decision to use [enhanced interrogation techniques] on detainees,” their defense added.

Their defense insisted when they wanted to stop the waterboarding of Abu Zubaydah they had to obtain approval from CIA Headquarters, “which was denied.” They are not liable for the CIA’s alleged “criminal use” of torture because they had “no ‘influence’ over the application of EITs” on CIA detainees, even if they played a part in the supply and use of torture techniques.



Psychologist Bruce Jessen (right) (Source: [Wikimedia Commons](#))

But as Kiriakou countered, Mitchell and Jessen should have known torture was illegal and their training would be used to “carry out an illegal program.”

There also is no similarity because Mitchell Jessen “actually carried out the torture. So they’re not just the suppliers of the Zyklon B. They’re the deliverers of the Zyklon B.”

“They were instrumental in the creation and the implementation of that program. They were the ones arguing [for it with the CIA’s leadership]. They were not innocent bystanders,” Kiriakou added.

Dror Ladin, a staff attorney for the ACLU’s National Security Project, [wrote](#),

“A key part of Mitchell and Jessen’s argument hinges on the claim that poison gas manufacturers weren’t held responsible by a British military tribunal for providing the Nazis with the gas because the Nazi government, not contractors, had final say on whether to use it.”

“In fact, the Nuremberg tribunals that judged the Nazis and their enablers after World War II established the opposite rule: Private contractors are accountable when they choose to provide unlawful means for and profit from war crimes. In the same case that Mitchell and Jessen cite, the military tribunal [found](#) the owner of a chemical company that sold Zyklon B to the Nazis guilty — even though only the Nazis had final say on which prisoners would be gassed.”

Mitchell and Jessen were not powerless individuals lacking influence at the CIA.

From the Senate intelligence report on the CIA's rendition, detention, interrogation program, Katherine Eban [highlighted](#) for Vanity Fair how the contractors played "so many different roles simultaneously that some CIA and military staff became concerned about the apparent conflict of interest."

One such warning, sent in a draft cable to CIA headquarters, noted, "Another area of concern is the use of the psychologist as an interrogator. The role of the ops psychologist is to be a detached observer and serve as a check on the interrogator to prevent the interrogator from any unintentional excess of pressure which might cause permanent psychological harm to the subject." But as the cable continued, "We note that [the proposed plan] contains a psychological interrogation assessment by psychologist [DUNBAR] which is to be carried out by interrogator [DUNBAR]. We have a problem with him conducting both roles simultaneously."

Kiriakou called the argument that Mitchell and Jessen were in no position to challenge orders to torture detainees "absolute nonsense."

"It is illegal to follow an order that is illegal. That was determined during Nuremberg. You have to refuse to follow an illegal order. You're compelled to refuse," Kiriakou declared.

Mitchell and Jessen had a motive not to challenge requests to carry out techniques—they were awarded \$180 million in CIA contracts. (The agreement was ended in 2009, and by then, they had paid \$81 million.)

In a previously published interview, Kiriakou and former U.S. Marine Joseph Hickman discussed their book, "The Convenient Terrorist: Two Whistleblowers' Stories Of Torture, Terror, Secret Wars, and CIA Lies." It definitively explores the case of Zubaydah, which Mitchell and Jessen were involved in torturing.

"We have a federal torture act in this country passed into law in 1946 and signed by President Truman that specifically outlawed exactly the techniques that Mitchell and Jessen had used against Abu Zubaydah," Kiriakou said.

Jessen claimed in a deposition that he went through "great, soulful torment" about whether to carry out torture techniques. Hickman found this ridiculous because he knew what torture does to a person, especially if they have post-traumatic stress disorder or any other medical issue. "He knew he was harming people when he [was] doing things like anal feeding or some of the worst [techniques]."

As the Senate intelligence report documented, Zubaydah suffered some of the worst brutality. He was waterboarded 83 times. At any point, Mitchell or Jessen could have stepped in to say, "Enough!"

The "aggressive phase of interrogation," as the CIA called it, lasted for twenty days. Zubaydah spent a "total of 266 hours (11 days, 2 hours) in a large (coffin size) confinement box and 29 hours in a small confinement box, which had a width of 21 inches, a depth of 2.5

feet and a height of 2.5 feet.”

When he was first waterboarded, Zubaydah “coughed, vomited and had ‘involuntary spasms of the torso and extremities.’” Zubaydah maintained he had no information to provide on threats to the United States.

A medical officer wrote in an email,

“So it begins. The session accelerated rapidly progressing quickly to the water board after large box, walling and small box periods. [Abu Zubaydah] seems very resistant to the water board. Longest time with the cloth over his face so far has been 17 seconds. This is sure to increase shortly. No useful information so far...He did vomit a couple of times during the water board with some beans and rice. It’s been 10 hours since he ate so this is surprising and disturbing. We plan to only feed Ensure for a while now. I’m head[ing] back for another water board session.”

“The CIA interrogators told Abu Zubaydah that the only way he would leave the facility was in the coffin-shaped confinement box.”

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