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ADC-ICT Guantánamo Bay Observer
Programme



Trip Report regarding Khalid Sheikh Mohammed *et al* Hearings at the
Military Commissions in Guantánamo Bay

20 – 24 February 2024

Observer:

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**Report on the 49th Pre-Trial Hearings in the military commission prosecution of the 9/11 case-
Guantanamo Bay Cuba**

Introduction

Recently I had the opportunity to be a part of an NGO observer team that witnessed an historic event- the 49th Pre-trial hearings in the military commission prosecution of the 9/11 defendants in Guantanamo Bay, Cuba. On trial are the five defendants facing various charges of plotting, training, conspiring and aiding the hijackers that killed closely to 3000 people in the September 11, 2001, terrorist attacks on the United States of America. (New York, Pennsylvania and the Pentagon).

The Defendants

The defendants are: 1) Khalid Shaikh Mohammad. 2) Walid bin Attash. 3) Ramzi bin al-Shibh. 4) Ammar al-Baluchi, and 5) Mustafa al Hawsawi.

Khalid Shaikh Mohammad aka (KSM) is a Pakistani citizen of Baluchi descent. He is accused of being the mastermind behind the attacks, formulating the ‘Planes Operation’. The so- called *emir*, he is alleged to have suggested his intentions to Osama bin Laden in 1996, including the training of some of the hijackers in Afghanistan and Pakistan. He was captured in March 2003, in Rawalpindi, Pakistan, and was held by the Central Intelligence Agency (CIA) in various Black Sites prior to his detention at Guantanamo Bay.

Walid bin Attash aka Khallad and ‘The Trainer’ is also accused of plotting the 9/11 attacks. He is a citizen of Saudi Arabia who left to join the jihad in Afghanistan at the age of 14. He is also accused of researching flights and timetables, training two of the hijackers in hand-to-hand fighting in 1999, and testing the ability of a passenger in hiding a razor knife on several flights to Malaysia, Thailand and China. He is the only defendant with a missing limb, his lower right leg- he lost in fighting. He was captured on April 29, 2003 in Karachi, Pakistan.

Ramzi bin al-Shibh is of Yemini nationality, is accused of organising a hijacker cell in Hamburg, Germany of the 9/11 hijackers. He is alleged to have wired money to several hijackers including Mohammed Atta, acting as a go-between for the cell and Mr Mohammed in Afghanistan, communicating with Al Qaeda leaders regarding the date set for the terrorists attacks. Like his co-accused Walid bin Attash, he is also accused of researching flight schools. He was refused United States Visa on several occasions, it is also claimed that he

was chosen to directly participate in the in the hijackings on September 11, 2001.

In a raid by security services in Karachi, Pakistan, al-Shibh was captured and transferred to U.S custody in September 2002, making him the first of the five defendants to be held. For a while he was held at Guantanamo Bay, held in solitary confinement and transported by extraordinary rendition by the secret services to several black sites during a four year crusade. In August 2023, he was declared as unfit to stand trial, he was found to be psychologically damaged by a military medical board. He was diagnosed as suffering from Post-Traumatic Stress Disorder (PTSD) with secondary psychosis associated with the torture and solitary confinement levied on him during his stay at various black sites where he endured Enhanced Interrogation Techniques (EIT) consisting of, amongst other techniques; beatings, waterboarding, electric shocks, sleep deprivation - allegedly caused by being attacked with invisible rays by guards , rectal feeding and forced nakedness.

In September 2023, the judge removed him from joint prosecution, however, he is, and will remain in custody. In the event of him eventually being found fit to stand trial in the future, he will stand trial as a single defendant case as charges still remain.

Ammar al-Baluchi was born in Kuwait to the sister of Khalid Shaikh Mohammad (KSM), making him his nephew. He has Pakistani citizenship. Al-Baluchi at the time of the 9/11 attacks, was living and working in the United Arab Emirates (UAE) between 1999 and 2001 where he worked at a computer technology business. He is accused of transferring money on behalf of his uncle to several of the hijackers within the United States of America.

At the time of the attacks, he left Dubai and travelled to Pakistan where he was eventually jointly captured in the capital Karachi, alongside fellow accused Walid bin Attash on April 29, 2003. According to his defence team, the character ‘Ammar’ in the Hollywood film “Zero dark Thirty” who was maltreated is actually based on al-Baluchi’s real-life experience/abuse whilst in CIA custody- being hung by the wrist, water dousing, walling and sleep deprivation.

Mustafa al Hawsawi is a Saudi Arabia citizen who is accused of helping to plot the 9/11attacks by aiding the hijackers, he is accused of helping the hijackers with finances and travel arrangements. Whilst in CIA custody, he suffered severe rectal injuries from anal fissures, haemorrhoids and symptomatic rectal prolapse

- his lawyers listed it as rape. Due to his severe injuries, he finds it very difficult to sit for extended periods of time, even on a special donut shaped pillow his defence team takes for him to court.

Due to his condition, he frequently waives his right to be in court, he is also described as a High Valued Detainee (HVD). Amongst the accused, Mr Hawsawi has the least charges against him, therefore he sits the furthest from the judge, at the back of the courtroom. Learned counsel for Mr al Hawsawi, commander in the Navy Reserves, Walter B. Ruiz argued if, KSM the self- proclaimed *emir* KSM is sentenced to life imprisonment, their client Mr al Hawsawi should receive a more lenient one, that is far less, like that of Majid Khan. Requests have been denied by the court for Mr al Hawsawi case to be severed from the other three defendants.

Tuesday February 20, 2024

Non- appearance of Defendants

Court started promptly at 09:00hr with military Judge Col. Matthew N. McCall presiding. None of the defendants was present at the hearing, they all stated they won't appear before the commission due treatment they alleged to receive from guards. During direct examination, the guard stated that even though he presented the Statement of Understanding, Right to be Present at Commission Proceedings form to all four of the detainee in English (their choice as an Arabic translator was present), and advised them of their rights, they waived them and refused to appear.

Mr. Mohammad stated through his attorney that there was confusion at his meeting, that he was moved to E2 on Sunday 18th at 09:20, he informed the guards, who denied his request for his attorneys, and was told his legal team was a 'No show'. Guards told him legal bin needed searching, he was returned to the van and headed back to camp. Mr. Mohammad was said to refuse legal meeting, when indeed it was denied, he wanted a legal meeting, and not as was earlier reported by the guards.

Cross-examined by KSM LDC Mr. Gary D. Sowards, guard explained that KSM spoke directly to another guard 'Bandit', it was explained that KSM had reported of some difficulty he had with his legal appointment the previous Sunday where he was moved to Echo II and arrived around 08:55. He asked the guards to call the litigation support services to inform them that he was there, his request to make contact with his legal

team was denied. Not only was his legal team not made aware of his transfer, but the call was never made, he was told by the guards to pack up his legal materials and return to camp as his legal team had not shown up. Judge McCall stated regarding KSM, there is ample space to have his documents stored.

Al-Baluchi is represented by Learned Counsel (LC) Mr James G. Connell III et al. Due to him being moved between different facilities, he also left behind materials in different facilities including his documents. Regarding search protocol, different materials in different facilities, problems arise to sidetrack the proceedings. Judge McCall cited mis-communication between parties and that there must be liaison between parties.

Judge McCall conveys that his attorneys let him down, that in the ninth running (of the court) there has never been a degree of disastrous landscape they can't rely upon.

Prosecution Witness Dr James Mitchell

Dr James Mitchell Ph.D has an enviable US military profile stretching several decades, from being in a Tier I unit, working in bomb the disposal unit, serving seven years as a member of the US Air Force SERE (Survival, Evasion, Resistance and Escape) School, a trained hostage negotiator, to gaining four college degrees before gaining a Ph.D. in Clinical Psychology. Dr Mitchell has also written several CIA White Papers in which he outlined interrogation techniques used to get detainees to open up/confess. Many of the techniques used against the detainees mirrored those used whilst he served as a SERE instructor included in those White Papers.

Dr James Mitchell testified via video link from the RHR in the NCR, Virginia. This off-site location was used during the Covid-19 pandemic to facilitate both the defence and prosecution teams from travelling thus preventing travel complications.

White Papers

Dr Mitchell's White Paper detailed documented evidence of first-hand experiences of 9/11 detainees suffered whilst in the US detention facilities in Iraq, Afghanistan and Guantanamo Bay. Some of these detainees were never charged with any crimes, however, they underwent enhanced tortuous conditions in the name of interrogation by the CIA according to him. These authorised tortuous, degrading and inhuman treatments from an international law perspective do constitute international crimes and interrogators are at the risk for the commission of these prosecutorial offenses.

During court sessions, I had the pleasure of transcribing some of what that could be deemed as High Value

Evidence, some of which will be highlighted below as directly narrated by both Judge McCall, Dr. James Mitchell, Prosecution and the Defense teams.

Monographs- White Paper written by Dr J. Mitchell- Using Coercive Pressure of 18 Interrogation of High Value Targets June 2004

When questioned by LC Connell, his whole demeanour changed to one that can only be described as uneasy, his answers were blunt, sarcastic to the point he became red-faced. Quite abrupt and extremely defensive in his approach, spoke about his scholastic achievements. Conduct, choice of words. Dr Mitchell explained that the White Paper, Page 2C@1046 bottom paragraph of White Paper. Titled, **Five Things Interrogators and Debriefers Must Know About Human Memory** was written by him and collaborated by Dr. Jessen few months post 9/11.

Paper was written because of that personal “efficacy”. Dr Mitchell explained memory doesn’t work like we think it does, it doesn’t work like a videotape that hears, sees and records things then recall it as something about the ‘original’ experience; that it is actually a composite, further explaining that there’s varied consolidation periods, for some people it can be very quick, for others longer, in the region of about within 1-3 hours if not disturbed. If disturbed during that period, recollection, later, can be – like a head injury, difficult to do it has to be something momentous like being eaten by a lion etc, not everything is processed as some things will be more salient than others, therefore certain things will be missed, that one might have a distorted view of what actually happened depending on one’s perspective. Memory he reiterated, doesn’t process everything which is why eye- witness testimonies are ALWAYS different. Re-consolidating the memory, “technical jargon can get lost e.g., page 906-7- “slammed into the wall than bump into the wall”. Page 908- PFI’s -need to be given a list of the PFI’s he stated that he’s an idiot. He further went on to explain ‘Recall’ and how it works.

Recall

Dr. Mitchell described how recall works. He explained it is influenced by memory of similar affect is stored together or more easily accessible referring to his wife who he’s been with for over 58 years, noting being together for such a long period thing would be readily available to her for review. That memory of affect is similar affect is stored together (this reference sounded a bit mind boggling, however, I wasn’t there to judge or query his definition); depending on the situation one’s in he continued, and what the salient clues are, is that one can reconstruct those memories, not play it like a videotape, it is reconstructed and can be influenced

by social influence techniques.

Furthermore he continued, memory has to be reconsolidated after an event is recalled for it to return into long-term memory, and whatever the affective tone is of that situation where it is recalled in the first place, it may be stored in a different place with a different affect. Nothing is 100% the way the mind works. Frequent retelling of information. Confidence of the speaker reflective in the moment of Recall.

Open testimony- new matters produced. This aspect of the testimony had me yawning to be frank, therefore nothing more on recall was recalled.

Interrogator Dr J. Mitchell

Acknowledged he designed the CIA Torture Programme in a manner that doesn't break US laws.

US Justice department told them it was legal to do what he did- broomstick and drill techniques etc. action was carried out by another agent.

Coercive pressures used by the Department of Justice, they wouldn't approve such treatments he stated, but would approve other methods.

Para 2C @1047 ...the techniques would be used as a means...

Application of physical pressure to gather intelligence from detainees. "as in all cases the interrogator ...exploitable mental state"- not have a negative connotation.

"coercive physical pressure" answer- exploitable mental state takes place over time .

Reward and Punishment...depends on what your goal is

ii External psycho- social events - hard-wired to pay attention to danger, food and sex.

Classical Conditioning

Classical conditioning as explained by Dr. Mitchell, is a special kind of learning that we can adapt to what's happening at that moment, that our neurological system can adapt to it. Classical condition is possible to do so that some event in the environment takes on both a positive (as in providing that something good will happen) and a negative connotation. He noted as humans, we have unlearned natural responses and gave examples of being bitten by dog, it hurts naturally, but regarding the unlearned, one doesn't need to learn that. However, the presence of that specific breed of dog-the Pitbull, can thus signify negativity, that something bad is going to happen, from that, one would pay special attention to a Pitbull. Things that signal danger, similar to those that signal food and the opportunity for sex, become cues, are naturally learnt, an

example is that we are born afraid. These conditions as he explained, are fear conditioning and classical conditioning.

In explaining the concept of unconditioned response/stimulus, and conditioned stimulus, Dr. Mitchell gave three rather interesting examples. He gave an example of something fuzzy being shown to a child, within a split second that child would make a loud noise, perhaps cry, then soon after that child wouldn't need to make that noise anymore. The loud noise he explained is the unconditioned stimulus, the crying is the unconditioned response and the fuzzy item therefore becomes the conditioned stimulus.

Pairing – must occur together.

Conditioned Stimulus

Conditioned stimulus was explained as when some signal in the experience of the person that is distinctively associated with the onset of the offensive thing that replaces the unconditioned stimulus (at least that's how I interpreted it to mean). This particular aspect of the trial, made very made very interesting listening (intently)and note taking.

He furthered by giving us an insight with respect to its application within EITs. EITs he explained, they didn't want to use (interrogators) all the time, they would instead use a rolled-up towel as a collar when they walled the detainees to prevent whiplash. The towel was used as a protective device, however, it also gave them the opportunity to make the conditioned stimulus, so by the mere production/ appearance of the towel/collar, was a signal that they could experience an unconditioned stimulus, which replaces rendering the actual EITs. However, the discomfort (conditioned response) associated with seeing the collar, is never as intense as the actual one, as it wouldn't produce similar discomfort as walling the individual, however it has very similar psychological effect he retorted.

Slides

Some signal of the person - uniquely associated with the person.

iii- Principles of Influence (undated document)- Applications for Interrogation Exploitation & Interrogation- Executive Summary. Became an interrogation manual.

Vice President Cheney- "if there's 1% chance that they could nuke the cities, we'll do whatever it takes".

Sense of urgency. Iraq

EIT's with detainees they had. Transitioning all of his thinking - good evidence. Bin Laden meeting with

Pakistan to make nuclear weapons. Sense of urgency, blood of Americans are on your hands'

KSM- Did not involve Nukes

PRG 83 para...key to influence...dominant in emerging confidence. Summarised statement- (occurs only in police interrogation)

EIT's- discomfort experienced provides information to people- wearing a collar that wouldn't hurt them, but by the production of the collar- discomfort is associated with the collar- psychological effects.

Classical Conditioning & Operative Conditioning. (He applied Both)

Fast thinking system- URGE. Works automatic – central nervous system. BIAS

Adversarial system back and forth. Says he provides only the schematics of things, makes some facts salient more than others, he describes 'Framing', conditioned fear and flare up if not dealt with.

Page 7541 top para- April 2003

Asking for new details from detainees. Best interest is to answer fully (Classical Conditioning)

iv **Cables**

Detailed several types – KSM

Spring 2003 – had input, can't remember which specifics. 11th May, 2003. "Carefully sanitize" document- Bin Laden Group

Immediate /urgent- take care of this.

Ammar al-Baluchi: Money Transfer to Hijackers

Abused in CIA custody

- 1) Water dousing
- 2) Walling
- 3) Sleep deprivation
- 4) Hung by his wrists

'Zero Dark Thirty' is based on his experience.

Tear line – sets apart a piece of the cable. Consumer who got intelligence- not to disclose intelligence.

Extinguish fear, corrected his behaviour- if threat is effective, how does this get extinguished? Wants to use social influence and not fear to get him to comply- reward and punishment rather than conditioned fear which

can get in the way.

Classical Conditioning - vague threat was effective as he corrected his behaviour.

Conditioned fear

Adverse Conditioning produces relief and not fear 'valid threat' example taking away his mattress.

Black Sites

- A) Interrogation of KSM- April 2003 para 5. Conditioning – operate conditioning
- B) KSM reaction to the capture of Ammar al-Bashini and al-Shibh.
- C) HL4 document -senior CIA officer who had some s(w)ay in how they think about things.

Abu Yasir Al Jaza'iri

Harsh treatment process and uncoupling process to let the fear go away. Broomstick and stress positioning (torture). HVD-High Value Detainees Debriefing Course.

2G 1493

*** Photos were shown of detainees (rendered) and half-naked. (tape around eyes to hold blindfold in place). Refuse to let detainees get a hold of the doctors. If rendered, they would be in diaper and being soiled himself -shackled on a flight in sweat suit materials, defecate without using the bathroom.

Interrogation & Debriefing [Slide]- A psychological familiarization And Practical Approach

When asked about this paper, Mitchell explained that MA2 was the interrogator and not him and that he was a chief of training prior to 2005. He further went on to say that MA2 does not have a psychologist background in how people act in confinement, and that he (Mitchell) would not have chosen MA2 for the assignment.

Capture, Rendition and Interrogation

- Capture Shock
- Dislocation of Expectations- control for predictability
- Learned Helplessness , psychological Dependence and Short-Term thinking.
- Disrupting the social contract- whatever prediction of what's going to happen next must be disturbed.
- Predictability

He and MA2 had several screaming matches regarding his choices, there were no mention of him (MA2) not

doing it and fixing it when asked by the learned counsel. He was not equipped enough to do it according to what he explained on the slide.

Concept of Learned Helpfulness

To be placed (or put) in an unescapable situation.

Chief trainer and chief interrogator – shared similar background but could not reveal until permitted by counsel.

Stockholm Syndrome (he claimed title is completely wrong)

Experience fear of the police.

Page 1466 (same slide deck)

- **Dislocation of Expectations**

The process of shattering all pre-conceived notions about how they will be treated if captured.

- **Capture Shock – The Arousal, Fear**

Psychological Dependence

Not a regressive child-like state.

Four Situational Factors Involved in Stockholm Syndrome

- Perceived threat to one's physical or psychological survival
- The belief that captor will carry out the threat
- Perceived small kindness from captor to captive, isolation from the perspective of others
- Perceived inability to escape

Torture as a Form of Punishment

Under cross-examination from Mr al-Baluchi's LC Connell, witness was asked if he agreed with certain passages from chapter 9: **The Role of Uncontrollable and Unpredictable Stress in Post-Traumatic Stress Responses**, of the book **Torture and its Consequences** written by Dr Metin Basoglu and Susan Mineka, to which he responded "I don't recall specifically, but I take your word for it". With that, he was referred to page 1084 regarding various types of torture. Prosecution (Mr Groharing) immediately objected to which Judge McCall overruled after LC Connell reminded the court that in discovery, it was found that the government produced White Papers with citation to the actual chapter in question, which were now appropriate to elaborate on for open session.

Torture and various types of torture eg isolation- stressful...loss control of the victim. Stress and bluff during the process- blindfolding in torture, it affects the detainee/ individual (he agreed with the statement). Stripping and nakedness. "Bruce and I". Dr. Mitchell agreed that some of the psychological symptoms of torture include inter alia- nervousness, insomnia, nightmares, withdrawal, fainting, sweating, and diarrhea. That also behavioral and physiological consequences may continue for hours or days, meanwhile some may continue for weeks, months, or even years after the aftermath of torture.

The experiences and expectations of torture survivors was next up for cross-examination, it was stated that survivors usually, whilst isolated in their cells, experience chronic states of fear over the timing of their next torture session. LDC Sowards then pressed Dr. Mitchell about his perception on the learned helplessness experience, stating that research proves that victims experience varied emotional changes including increased anxiety, hostility and depression depending on the methods used, frequency and duration. Without mentioning, several methods of torture were detailed during this session, to which witness answered in the affirmative.

Blindfolding, a cruel act during torture, as another form of psychological manipulation and a form of torture which serves to help the torturer remain unidentified and to increase the impact of the procedure was asserted by LDC Sowards to the witness, to which he vehemently disagreed. Dr. Mitchell countered that blindfolding is not a method of torture unless a person is blindfolded forever. He furthered that their programme was specifically designed to circumvent such practices, however, in his opinion, if one is blindfolded and "moved from room to room", it is not torture.

Ammar al-Baluchi

Standing sleep deprivation- considered non-enhanced if applied for less than 72 hrs.

Chief interrogator NX2 was in charge of what happened during interrogation, officers would be present, and how officers would participate (X7Q) interrogations team planned for interrogation prior to administer such procedure (task).

Was receptive to his input (NX2) "hurt them till they tell you, hurt them again till they tell you what you want to hear, if they don't hurt them again".

Psychosomatic attacks occurred, when asked for their identity, it was revealed it was a female interrogator that goes by code name QW9.

Dr Mitchell stated he left, getting the lawyers instead, it would be a train-wreck. The guy had an attitude', he described him "he's a fucking terrorist; fuelled by patriotism".

NX2- Water dousing – pouring on the person usually on the chest – the use of cold water as it intensifies the effect.

Page 435- Cold water bath (NX2) witness witnessed this procedure being rendered to a detainee.

De-Leary- used toothbrush to brush teeth, on his 'balls' and anus then re-used on detainees teeth again.

Withholding food- he mentioned that there were no guidelines against withholding food at least for four days, the interrogators provided him with two cans of Ensure nutritional drink.

Page 440- COS came out to watch and provide oversight ."the whole host of things we were trained on were used with the exception of waterboarding".

QY7 XL3 used as a training prop..."new guy trained on him". Witness Mitchell had to intervene the second course. SG1 attended one of the courses, he did not know which course he attended.

Ammar al-Baluchi

EIT and walling of Ammar, took turns because fatigue set in for the interrogator during the walling. No set time existed for walling sessions. One session did not last for more than 2 hours at any one time. he was practiced on by "students' of the interrogation course.

NX2

Mid 2003 one of three (3) certified to carry out (X3L) waterboarding. He was disciplined for using 'banned' proceedings- water was iced or refrigerated meaning placing frozen water bottles in the buckets.

2C 489

He was aware at least after the fact –"outside the bounds of what we were to be doing"

Page 488 OIG Report – Brooming

Violation of Agency Guidelines: As well as iced water on Ammar, placing a stick behind Ammar knee joints whilst he was in a kneeling stress position.

2C 447

Sleep deprivation application 72 hours standard , beyond that physicians need to be present.

Bar to Raise Detainees Hands-

Bar used for sleep deprivation purposes, described by witness as a dungeon. Ceilings were very high as they needed a place for suspension of the bars. (held hands up above shoulders and 8 ins apart). Input from the construction he replied.

Standing sleep deprivation described as 'being hung'. Not consistent or inconsistent by his understanding. (Dr Mitchell).

Learned Helplessness- says statement is senseless (according to Dr Mitchell)

X3L- When interrogators stopped the measure on Ammar they did not know he was fabricating information. Got Ammar to admit after 6-10 days of work that he was lying about his story. Ammar then confessed to him that he was fabricating because he wanted the procedure to stop. "Hurt them until they tell you what you need to hear".

2C 438

'Classified information was not shown to us in the gallery'.

Floor – Cells are isolated from the structure, no access to natural light, clean, sterile, had a feel to it.

Role of the interrogators alongside Debriefers

MEA 2C 1057 para 79

Wear black clothes to symbolise a "menacing black presence". Walling wall (location 7) he wasn't sure. Several times had to be refresh his recollection by being shown documents. Location 8 had a tan room (classified, therefore cannot be revealed). Several locations 6, 7, 8, 9. No interrogation at location 9 - only debriefing, making it a de-briefing room.

De-briefing in location 6, but not for everyone- not for every detainee. Detainees never left their cells except two rare circumstances. Never a policy that was routinely used.

Ammar al-Baluchi

Chronic worrier- sleep problem due to treatment at the facility. He was fearful they would mistreat him, had night sweats, stomach retention.

Delayed onset PTSD anxiety disorder and depression. He was worried of what might happen to him as he was one of the perpetrators due to his action that caused the death of three thousand (3000) innocent people.-
-- follow where the evidence leads you.

RDI Programme Khalid Shaikh Mohammad

Dr Mitchell maintained that he didn't develop the RDI (Rendition, Detention and Interrogation) programme, he stated it was developed sometime in 2002 'perhaps in November.' Programme consists of Detention, interrogation and perhaps debriefing. CTC was responsible for the RDI, working at the CIA prior to the RDI months prior to the launch of the RDI programme. RDI Programme was developed for the benefit of intelligence production/ gathering, it is the sole reason for its development as explained by him. He also denied developing the Fear Extinction programme.

Fear Extinction- Debriefing

When questioned about the concept of fear extinction, Dr Mitchell vehemently denied being the developer of such a programme, explaining "it's just part of classical conditioning, fear conditioning, and then fear extinction, maintaining it is a process that is "well established and very robust".

Unconditioned stimulus no longer paired with the conditioned stimulus – in most human beings it's decipitates Dr Mitchell explained. He got a bit irritated by all the questions posed to him).

Is it synonymous in the debriefing stage? Not the same of the debriefing stage. The fear extinction occurs. When asked about EIT's, Dr Mitchell's demeanour changed erratically after being examined by LDC Sowards. He was quite defensive in his response comparing to the prosecutor counsel Mr. Groharing. EIT does not happen in debriefing stage he stated/ explained.

LDC maintained he (Dr Mitchell) formed the RDI programme.

Fear Extinction needed to be thoroughly explained by the witness.

Conditioned Fear, Fear Extinction, Conditioned Stimulus was rather angrily/ erratically explained, witness was visibly red-faced.

Detainee was anally raped, waterboarding argument triggered a rather tumultuous response, (twitching fingers was observed). When asked about the EIT's, he remarked "Washington won't like this", threatening detainees of 'going back to hard times' again, whilst maintaining the red-face, this time visibly angry. LDC then asked about empirical data/ research produced in his study, sui generis- "would be a war crime to study it".

'Anal rape' can be classified as a 'war crime', this statement caused Dr Mitchell to react rather uncouthly

and highly defensive. He then mentioned about female 'A Force'. When asked about the detainee being sodomised by a foreign object, his response was, "it depends how he feels about it" to much dismay. He went on further to say that he "wouldn't be surprised if he was hurt by it, but not everyone would see it as wrong". He went on to explain rectal rehydration after being asked; he said as the detainee was not drinking water, this is something that would rehydrate him. When asked if such action wouldn't be traumatising, Dr Mitchell replied; "it may or may not be traumatising".

EIT - Enhance Interrogation Technique- Mr. Mohammad

Testified about it years ago. Actually, it was the CIA who came up with it he said. Physical Coercion LDC mentioned, witness said he would call it Approved Physical Coercion. He never saw the interrogation plan, he was surprised he went to that site (site 2) before coming to him first, only approved EIT's were at (done) site 4 where he was based.

Three interrogators all participated in his interrogation, he was then moved to site 7. He maintained he was never at site 7, he would have seen Mr Mohammad if he was there.

Y47 was Dr Mitchell's boss, he was leader of the crew but not an interrogator witness explained

SECURE SESSION PLEASE STAND BY

*** During this examination, classified information was leaked, red flashing light went off however, due to the 40 seconds delay rule, us in the gallery were not privy to such information.***

By now, his complexion returned, whilst learned counsel kept his stoic composure all along. They were unnecessarily told by the CIA to focus on preventing future attacks, they wanted to stop Mohammad from talking about 9/11 as they had intelligence about impending nuclear attacks, they wanted to prevent any such attacks. "Soon you will know" it was alleged Mr Mohammad's response was, as well as 'I have nothing for ya', after being quizzed by intelligence officers including witness.

Custodial Interview Mr. Mohammad Muqtar

Ammar al-Baluchi

Provided with a list of targets by OBL (Osama Bin Laden) within the USA, list for future targets would have stopped him talking. He was in the custody of the CIA, was contracted by the CIA to interrogate Mr Mohammed. Mitchell wanted to hear about any future plots considering by the defendants.

Early March 2003, Mr Mohammad was punished if he spoke about 9/11, they would then use EIT's. Social

influence was used to prevent him from talking, what they wanted was information about any future terrorists attacks. Agreed EIT was used to redirect his attention to the matter at hand (future attacks). Drs Jessen and Mitchell were present on March 10th was when he was waterboarded.

Witness' conduct again, seemed a bit hostile, telling the learned counsel he was "talking rubbish", it could be that he was tired from being on the stand for 9 hours, pummelled with questions which could be forgiven.

White Papers Mr Mohammad * Sterile room*

Purpose to write these papers.

Classical condition- use of a towel.

When questioned, veiled insults were thrown at the lead counsel, overly gesticulating, even though questions were asked in measured tone.

Seismic shift- situation completely different – described the process of the first month of EITs.

Method – given a towel . black site 7, or perhaps Black Site 4, things like mattress/ other stuff were given to detainees.

EIT's was phased out, up the amenities (which he couldn't recall), not at Site 4 which was an empty room with a drain in the floor- when asked about its description. Witness went on to explain that people would rather to keep their stuff than to get new ones, meaning, they would take their personal items, like the Koran away from them. They were not exposed to any natural light, as neither himself "in those settings" he fired back, appearing visibly angry. His imagination- not Witness' actions, when defendant heard 'Washington would not be pleased'.

Nuclear Attack on Canary Wharf

Intel claimed they (terrorists) wanted to attack Canary Wharf (London) as well. Interrogators wanted to stop the nuclear attack that was perceived imminent, and according to Dr Mitchell, "were going to do everything that was legal" to prevent such disaster, everything, and were prepared to "walk with their toes right up to the line of what was legal and do what it took , because they were not going to let them set off a nuclear bomb in the middle of Los Angeles or New York or someplace like that; they weren't going to do it."

He further testified that they thought it was a real existential threat, which provoked fear amongst them, especially since they were reprimanded by the senate and told that they had the blood of 3000 Americans on their hands because they weren't being aggressive enough.

Provocation of Fear

Threat would provoke most fear. Social influence as a technique was better. 1/60th of the time they spent in there. he also spoke of operative and classical conditioning.

Self-inflicting wounds on Mr Mohammad according to Mr Mitchell.

“Nobody walled him since March 2003” meaning he was definitely walled.

Dr Mitchell went on to testified that the majority of the intel from detainees, were from those in the RDI programme, namely KSM and Abu Zubaydah. With what he described as a tri-square analysis experience, both men provided thousands of ‘sole-source’ intel reports during debriefing sessions, considerably more intel through the EITs than detainees who weren’t treated to such experience. KSM even provided intelligence after EITs and during debriefing period.

Conditioned Fear Explained by Dr Mitchell

With that explanation, LDC Sowers brought up the notion of fear, wanting to know if his detainees are furnishing information without fear (of EID), were they so ‘out of the improvement in their situation’, to which Dr Mitchell responded they still could do it out of fear, it’s not like they don’t ever experience fear again, but not conditioned fear as it declines over time. Fear he explained can be experienced just by being apprehensive about what is about to happen to them, where they’ll eventually end up, and what it’ll be like in the next location. He went on to explain detainees reactions to such experiences as he moved them in the ‘middle of the night- they wanted to hold his hand, because it was a scary place and it was very difficult, they experienced a fear like human beings... they were held in the hands of their enemies’.

This he described inter alia, as a conditioned fear response, citing that the more one encounters the threat without experiencing the unconditioned stimulus, the quicker the fear dissipates. The notion of shackles was explained. Dr Mitchell explained that if shackles are worn continuously and each time one moves shackled, even when the detainee goes to shower or whatever else, the predictability of the shackles whether or not one’s going to encounter EITs disappears, because they’re always there, there’s no new information, it is a state of confinement. Conditioned fear intensifies when the towel is brought into play he further testified. The towel only appears during EITs, it goes around the neck, when that happens the conditioned fear would really spike high, because it is the conditioned stimulus.

Wednesday 21th February, 2024

Proceedings began promptly at about 09:05 hr. Today, again, defendants were absent from the proceedings. When asked why during direct examination by Trial Counsel Dykstra, guard codenamed ‘Bandit’ stated he

advised the accused of their rights to be present at the hearing using the form **Statement of Understanding, Right to be present at Commission Proceedings** between 06:30-07:10 hr however, they signed and acknowledged the forms (English version) but still refused to attend court.

Under further examination, 'Bandit' noted that only Mr Hawsawi signed both the Arabic and English versions of the forms, explaining he signed the Arabic version first, and upon them (the guards) leaving, he beckoned to them he'd signed the Arabic version with the wrong date, therefore had to sign the English version 'to clean it up', making sure it was correct.

Under Cross-examination by counsel for Ammar al-Baluchi LC James G. Connell III 'Bandit' admitted he had conversation with Mr al-Baluchi that morning. Mr al-Baluchi, he stated, just wanted information to be passed along especially to the JTF (Joint Task Force) commanders that he was having concerns about accessing his materials that were in a tier at a location which was under construction. Bandit assured by Bandit him that he'd do a follow up with the guard to make sure he gets access to his possessions. However, in his estimation, it didn't appear they were any access issues.

Still under cross-examination, Bandit explained Mr al-Baluchi expressed his concerns about the changing state of SOPs (Standard Operating Procedures) that the detainees he's acquainted with were having confusion in regards to what the rules and their enforcement are by them, he was having difficulty focussing due to the construction and being displaced and also that he suffers from a serious health issues namely TBI- (Traumatic Brain Injury). Judge McCall found that all four defendants had knowingly and voluntarily renounced their rights to be present in court.

Counsels for the defence voiced their concerns regarding treatment of their respective clients. LDC Sowards especially, voiced his disapproval of having a certain agent/ expert consultant Dr Michael Welner being present at the trial, claiming very limited entry to this trial and asked for him to be absent during the trial. Judge McCall however, struck out LDC's request, elucidating it is standard in military practice, to have an expert witness sitting in the gallery and listen to the testimony that may have an impact on whatever expert opinion they might be called upon to give, citing that Dr Welner, potentially might be called upon to testify to give an expert opinion on how the RDI programme works. Mr Sowards request was denied, allowing for the expert to sit through the trial though remotely.

Defence Direct Examination

Dr Mitchell appeared via video-link at 09:40 hr for another day of testimony, he was reminded that he was still under oath, he proceeded with argument from the previous day. According to the LDC, Mr Mohammad had sustained injuries at the 'Black Site' to include inter alia, bruised wrists from handcuff/ shackles caused by trying to bear excess weight whilst in neutral- standing, sleep- deprivation position, bruised with infected wounds to the back of the skull. This was documented in the October 6th government medical record.

Bilateral hand and feet scarring- linkage scars and bruising in September, 2006. He arrived at Guantanamo Bay with a bleeding head wound, however, Dr Mitchell vehemently disputed such claims, stating he that Mr Mohammad's wounds did not occur at 'Black Site'. Prosecution objected to the claim, stating witness had no knowledge of defendant's condition when he was transferred to Guantanamo Bay. LDC Sowards claimed that bleeding head injury occurred when he was getting EIT, at the 'Black Site' to which witness stressed that defendant's head injury could not have occurred at the Black Site as the last one he was at did not have a waterboard. Witness was adamant that wound was an abrasion and not a bleeding one. Mr Mohammad lied a few times after getting familiarised to the punishment. Witness had reason to believe what was said by defendant, they would put antibiotics on his abrasions, later, after treatment, wounds stopped weeping.(Make of this what you will).

"Enhanced Measures: None"- Mr Mohammad maintained that he was holding nothing back and is telling them everything he knew to which witness disputes, testifying they knew Mr Mohammad was lying, and had reason to believe so. He gave information they could use to form intelligence, as he became less fearful, they asked him specifics- about fissionable material stuff and threats inside the United States to which he denied knowing anything about.

Debriefing Phase April 2003 with Dr Mitchell

He (Mr Mohammad) never returned to EIT, it was authorised but not used. EIT phase lasted for 10 days. No debriefers questioning him during stand/sleep deprivation, no debriefers questioning him during waterboarding, debriefers questioning him during Walling- (he was given a towel and naked), meanwhile reminding him that he doesn't want to go back to 'hard times', no debriefers. Information received, EIT session would terminate.

Throwaway Information

At this point in the session, it felt as though we were privy to ringside seat to watch a duel between the three

aspects of personalities, namely: Ego, superego and the id, with Dr Mitchell in the red corner, and LDC Sowards in the blue corner. Asked by LDC Sowards of the sex of the agent who dealt with Mr Mohammad, witness replied sarcastically, “Male- or claimed to be at the time” to his own chuckle. He further claimed the statement about [h]e would rather have his leg broken than to be waterboarded was a ‘throwaway’ comment made to a journalist and that was based on his experience with the waterboard. Navy POWs returning from Desert Storm according to Dr Mitchell, told him of their experiences of being waterboarded they remarked: “If I saw a waterboard, I would tell them whatever they wanted to know”.

Mohammad’s Sons

Witness vehemently denied claims he threatened to kill Mr. Mohammad’s sons. He refuted the claim that he made disturbing conditional threats in response to (the 2020) David Nevin’s questioning about cutting the throats of Mr Mohammad’s sons, as he did not know Mr. Mohammed had any sons (Mr Mohammed is the only defendant with children, he has 8 in total) until much later. When shown photographs of two of Mr Mohammad’s sons that were captured by foreign agencies, witness claimed he meant the son that was born after his capture, he was then reminded that the child born after detainee’s capture was a girl.

Regarding fear extinction, ‘what parent wouldn’t fear hearing that their child’s throat would be cut? That would not elicit any information due to fear’. As mentioned by Dr Mitchell, it was done with the notion of preventing any further attacks within the United States. Whilst standing naked according to the witness, again, the notion was: you’ve killed children at the World trade Center (WTO), how would you feel if your child is killed. He killed/caused the deaths to thousands of Americans, he would feel the same degree- to imagine- wanted him to picture in his mind.

Witness was then asked if he had shown photographs of defendant’s sons to him during EIT, to which witness chimed “no recollection”. He however remembered when Mr Mohammad was told that his sons were detained again and it affected him emotionally as his only weakness was his sons – ‘leave him to fester’.

TC Groharing immediately objected to the characterisation of his sons as being captured citing there’s no evidence of such on record. The duel pursued.

The use of the term ‘captured’ by LDC seemed to be the tipping point between both counsels. Before LDC Sowards could continue, Judge McCall interjected, objection sustained: and in a very stern and firm tone was having none of what appears to be frivolity, echoed clearly that in no way will he get into the semantics between both trial and defense counsels. LDC Sowards, allowed to use the term ‘captured’ continued with

trying to explain what he was referring to in the record, Judge McCall understanding why the question needs justification as well as TC Groharing's concern, repeated same sentiment that he doesn't want to get drawn into semantics on the issue. Both team continue to quibble over the term 'quibble' with both saying that they were not quibbling about the sex of Mr Mohammad's last child to which defence counsel reminded him that the child born then was a daughter and not a son.

The legal gymnastics continued over a period of time with no letting up of the ego feud between counsels concerning the specific phrase Dr Mitchell used during KSMs interrogation. Judge McCall, the referee he is, had to again separate their egos telling them both to refrain from such behaviours and to move on and stop speaking over each other, as he believed both teams were covering the same ground therefore ...'at this point, asked and answered. Again, he had to repeat it to LDC Sowards...Move on. Until recess, the duel continued though less aggressive.

Resumption of this session, Dr Mitchell was back on the witness stand, this time under direct examination by Defense Counsel for Mr. Walid bin'Attash (the trainer) Anisha Gupta, also from a remote location. Most of this direct examination was about what occurred in 2002, about other detainees not attached to this case. Dr. Mitchell described his memory regarding those issues, cables, locations, as well as his time at SERE school as fallible.

Direct examination continued after lunch about the health issue of Mr bin'Attash and the plausibility of it causing health outcomes; witness thought it was possible. This was the precursor to the claim of dietary manipulation of the detainee, which is the restriction of his diet to Ensure nutritional drink or just liquids. Dr Mitchell throughout examination, confirmed that to administer such under medical supervision and guidelines, the intake of the detainee might be reduced to below 2000 calories, in fact, restricted to 1750 calories per day.

Further to this direct examination, DC Gupta line of questioning didn't gather any momentum that Judge McCall expressed his concern he couldn't see where the line of questioning was going as the witness consistently throughout stated that he was not familiar with majority of the questions asked of him. In my opinion, this resembles a bait and switch argument anticipated by DC Gupta, leading to yawning and uncomfortable[ness] if there is ever such a word; as even the detainee would not have remembered the direct date his abscessed tooth stitch was removed or when he passed out a roundworm in 2003.

DC Gupta appeared to have gathered some pace directing the witness to July—2003, where Mr bin Attash was hooded and had dental stitch removed by guards, unhooded and asked to speak to the first interrogator to which witness argued that such a practice would have been highly unlikely, this would be done by any random guard...they would be trained medically. They were --- policemen.

Background of Certain People in RDI Programme-

People questioned witness' position 'The new Sheriff in town', he was not best pleased with that title. 'they find the job description, we find the people', meaning moving government employees to contractors. Witness claimed that they were vetted by the relevant authorities (background checks done).

Again, aspects of adverse conditioning emerged during the examination.

- i. Removal of whatever it is would definitely cause detainee to feel disgruntled
- ii. Manipulation of the awards available part of the operative conditioning and not the classical operative
- iii. Sustained: won't risk gaining more- but hold onto what they have
- iv. Taking away what they have is more detrimental to detainees- they would more likely to comply to orders. They take the lesser of the two evils.
- v. Risk losing some opportunities they have. Removal of one or two amenities was usually effective or not.

Dr Mitchell said he wasn't taking part in such actions.

Exploitation of High Value Detainees (HVD) - Interrogation, Transition and Debriefing

- Intended to be stable intelligence collection environment
- Detainee participation is expected to be predictable
- Interrogator never go away
- Behavioural issue may develop over time
- Scepticism due diligence

"Interrogators proved a valid threat to him?" Asked DC Gupta, witness replied "of course they did". RDI programme- impact the program had on people connected to it, incidents working at the Black site took a toll on some, witness said it didn't take a toll on him (witnessing how these techniques were applied – were reduced to tears). Participation in this techniques was very hard on people involved according to Dr Mitchell, especially if they were deployed several times to Black sites; they were emotionally affected. DC Gupta asked witness if it would surprise him if someone was diagnosed with PTSD who participated in such

programmes, to which he responded he'd have to see the diagnostic criteria, he's never had nightmare about the programme or heard of. Call for recess.

Commission is called to order at 15:07, witness Dr. James Mitchell again taking the stand being directly examined by learned counsel Walter B. Ruiz, for Mr Hawsawi. The proverbial baton was handed over by DC Gupta, LC Ruiz wasted no time in levying some crucial tactical questions about events regarding his client which occurred in 2003, but not before he confirmed my thoughts about the prior protracted direct examination.

Location 2 was the highlight of this section of the proceeding, with witness stating that it reminded him of a dungeon. He spent the night there but did not see any other prisoner than the one he was with, he saw the condition of the building as well as some of the cells. The building, and the condition per se "a crappy place to hold people" he described, then went on further to agree that the condition of location 2 is used to overcome the detainees resistance depending on how they're used, but not for breaking down the detainee. He further stated... "but I do never wanna go back".

Direct examination continued with mentioned the Federal Bureau of Investigation (FBI) and the CIA which won't be noted here, however, there were questions about what witness claimed as 'coercive measures', which was quickly corrected by LC Ruiz as being torture. Dr Mitchell was steadfast in his response, stating there was no surprise other agencies were interested in obtaining intel from the defendant as it was the agencies aim to protect the American public and they wouldn't act surreptitiously between other organisations with intel that could protect the American public.

Being pummelled by the defence, Dr Mitchell insisted he did not interrogate the defendant, however, he's certain the FBI did not furnish any requirements for the interrogation of his client as they did not have direct access to the black sites, the CIA would have. Judge McCall intervened after what seemed like another bout of 'clash of the titans' with objection by TC Mr. Groharing sustained, with witness being asked to step out of the RHR.

Returning to the RHR, witness was again examined by LDC Ruiz, who raised his last question which was about witness' awareness of intel agencies collaboration in requesting assistance in the interrogation of the defendant, to which Dr Mitchell replied he was never aware of such. Witness however stated that he

participated in the interrogation of Abu Zubaydah and KSM shortly after their capture, in March 2003.

Dr Mitchell testified defendant Hawsawi could have gotten PTSD anywhere along the way (if he actually had it), however, it was difficult to speak on what was extinguished and what wasn't in his case. He did went on to again explain conditioned fear, that it goes down with repeated pairing/unpairing of the condition stimulus with the unconditioned stimulus. Again, he reiterated that he never interrogated/interviewed the defendant.

During the final part of direct examination, witness explained one of the components of PTSD involves fear as well as other required diagnostic conditions. He described it as a heightened state of fear reaction to noise as one of the symptoms of many, and that it can be brought on by 'a sudden onset' of such the like, therefore it certainly involves fear, anxiety as well as other required features. The witness was excused from the RHR.

KSM's Social Acquaintance with Dr Mitchell

Dr Mitchell resumed the witness stand to be cross-examined by TC Groharing where he divulged that he'd been seriously studying the challenge of extracting information from al Qaeda since 2001, during 2002 he was deployed to black sites for 265 days, years following he continued until the captives were transferred to Guantanamo Bay. That, based on his study and research, he produced white papers for the CIA, as well as making recommendations on how to go about interrogating al Qaeda terrorists and HVD, to elicit intelligence.

Special considerations within those recommendations, included that they were Muslim, jihadists, who were compelled to follow certain religious practices and beliefs, that would justify their behaviours including their ability to collaborate with the interrogators. He further stated that he read hundreds of books and articles as well as reviewed scientific literature with regards to influencing detainees.

During his time getting to know the detainees, witness pointed out that he'd spent more time with KSM than any other of the accused whom he developed a 'social acquaintance' with. He described KSM as charismatic; "a likeable guy when he turns on the charm" in spite of the things he had done. This 'social acquaintance' was to such a degree that they had nicknames for each other, with KSM calling Dr Mitchell Abu Captain, and asked to be called Mukhtar, who sometimes was called "Mukh" for short.

The 'social acquaintance' between both men seemed to work out well for the witness as he testified the

accused confessed to him that he was the emir of the 9/11 attacks within five minutes of meeting him, and that he was very proud of his deeds, and within the first ten minutes he had with him, he was threatening America, but was very unwilling to disclose anything that would have caused any interference with a possible second wave of attack.

Much of the further cross-examination was sensitive information therefore we were not privy to such. LC Ruiz appeared to be unwell, court adjourned.

Thursday 22nd February

Arrived at the Commission, realised something was amiss. At about 09:30am we were dismissed for the day, later on during the day we were informed that there will be no hearing for us tomorrow as it's regarding sensitive details we were not privy to.

Trip to Guantanamo Bay

It started with arriving at John F Kennedy (JFK) airport in New York, on Friday February 16th, then catching a connecting flight to Ronald Reagan Washington National Airport (DCA) Virginia, where I got a taxi to the Quality Inn Hotel opposite Joint base Andrews. It's not the most pristine, breakfast is self-made/ served however, I had a very good sleep and that's all that mattered. Some metres away, there's a Dollar General as well as many food outlets.

Prior to our arrival at Guantanamo Bay, our flight from Joint Base Andrews Washington was cancelled twice, on Saturday 17th and on Sunday 18th. Our team of 7 NGO observers were relieved when we finally flew out on what was President's Day, Monday, February 19th much to our delight, though about 3 hrs late. The team consisted of a retired judge/academic, lawyers, a family member of one of the victims and law students.

We hit the ground running, a ferry was specifically hired for us as the scheduled one had to leave due to our late arrival. We were ushered to have our security passes made almost immediately, told the Do's and Don'ts, and transported to our tents by our assigned escorts Jackie and Daryll, where our luggage was offloaded, reality now sets in.

Inside the tent was somewhat cold as the AC is constantly on due to the heat and mosquitoes, in no time I acclimatised and was good to go. Waking up and being the first to shower at 06:00hr got me a head start as to not be in the way of the other members of the team, and to be ready to have breakfast when Jackie or Daryll came to pick us to take to the Galley for breakfast.

Lunch and dinner were delicious with a very wide variety of dishes to choose from, there are other eateries to choose from if not interested in the Galley's food. Night life is buzzing as well if one chooses, myself was a bit jetlagged and tired at nights due to the time difference, so opted for bed earlier than the rest of the team who were not affected.

There are also merchandise stores to purchase whatever one likes, beach, karaoke, radio station- which we visited on Thursday as court was adjourned that day early due to one of the counsels contracting Covid. We got to tour for the day but were restricted from taking photographs of sensitive sites/ objects, all in all it was fantastic plus the chance to soak up the sun.

Friday 23rd, due to sensitive disclosures, we were not present in court, so again had the day off, we checked in our luggage for departure the next day, took group photographs and did a bit of souvenir shopping.

Saturday 24th, we departed Guantanamo Bay for Washington, where we went our separate ways. All in all, it was a great experience.

