

Physicians for
Human Rights

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Doing Harm: Health Professionals' Central Role in the CIA Torture Program

Medical and Psychological Analysis of the
2014 U.S. Senate Select Committee on
Intelligence Report's Executive Summary

PHR

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About Physicians for Human Rights

Since 1986, Physicians for Human Rights (PHR) has been using medicine and science to document and call attention to mass atrocities and severe human rights violations.

PHR was founded on the idea that health professionals, with their specialized skills, ethical duties, and credible voices, are uniquely positioned to stop human rights violations. PHR's investigations and expertise are used to advocate for persecuted health workers, prevent torture, document mass atrocities, and hold those who violate human rights accountable.

PHR has worked in more than 60 countries and territories, including Afghanistan, Bahrain, Burma, Democratic Republic of the Congo, El Salvador, Guatemala, Iran, Iraq, Israel, Kenya, Libya, Mexico, Palestine, Sudan, Syria, Turkey, and the United States.

Cover: Detainees stand during an early morning Islamic prayer at the U.S. military prison for 'enemy combatants' at Guantánamo Bay, Cuba. John Moore/Getty Images

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Abbreviations

CIA	Central Intelligence Agency
DoD	Department of Defense
DoJ	Department of Justice
EITs	Enhanced interrogation techniques
KSM	Khalid Sheikh Mohammed
OLC	Department of Justice's Office of Legal Counsel
OIG	CIA Office of the Inspector General
OMS	CIA Office of Medical Services
SERE	Survival, Evasion, Resistance, and Escape
SSCI	U.S. Senate Select Committee on Intelligence

I. Introduction

Health professionals, given their ethical and legal obligations to protect the health and welfare of all individuals, have historically represented one essential barrier to the inhumane treatment of detainees and prisoners. The complicity of health professionals themselves in such abuse indicates that egregious violations of public trust, ethics, and law have taken place.

The U.S. Senate Select Committee on Intelligence (SSCI) publicly released the 500-page executive summary (“summary”) of its 6,700-page *Committee Report of the Central Intelligence Agency’s Detention and Interrogation Program* (“report”) on December 9, 2014.¹ The summary confirms that the United States systematically tortured Central Intelligence Agency (CIA) detainees after September 11, 2001, and that the practices were far more brutal than previously acknowledged.

Even more disturbingly, the summary reveals the extent to which U.S. health professionals² were involved in developing, implementing, and attempting to justify the CIA’s illegal torture program – in violation of U.S. and international law and fundamental principles of medical ethics.

Physicians for Human Rights (PHR) has analyzed the summary, building on a decade of the organization’s investigation and documentation of the systematic torture and ill-treatment of national security detainees by the United States. PHR has also documented the physical and mental health consequences of these practices and the role of U.S. health professionals in torture.³

Based on its analysis of the summary,⁴ PHR finds that health professionals played not only a central, but an essential role in the CIA torture program – to an extent not previously understood. Psychologists designed, supervised, and implemented an extensive system of torture and ill-treatment, and were paid enormous sums for their efforts. Psychologists and physicians monitored those being tortured and used their expertise to certify detainees’ fitness for torture and worked to enable and enhance the pain inflicted.

PHR finds that without the participation of health professionals, this illegal program might have been prevented.

PHR also concludes that the violations committed by health professionals represent not only a gross breach of medical and professional ethics, but also violations of domestic and international law. (See section III. “Health Professionals May Have Committed War Crimes, Crimes Against Humanity.”) Given the seriousness of this crime, torture is subject to universal jurisdiction and obligates

the state to prosecute those responsible. Some of the crimes detailed in the summary may reach the level of war crimes and crimes against humanity, which are also subject to universal jurisdiction. PHR calls on the current U.S. administration to hold those responsible for torture – including physicians, psychologists, and other health professionals – legally and ethically accountable for their actions.

II. CIA Torture Program Relied on Health Professionals to a Degree Previously Unknown

The SSCI summary confirms that U.S. health professionals developed, implemented, and monitored the systematic torture and ill-treatment of detainees in CIA custody. Their participation in the program was used in an attempt to legally justify the crime of torture.

The summary provides critical new information about the CIA’s Office of Medical Services (OMS) and how its health professionals participated in and otherwise facilitated CIA torture. The summary also expands on the role of CIA contract psychologists, James Mitchell and Bruce Jessen, long recognized as the torture program’s architects.

The summary documents at least eight categories of acts and omissions by various CIA health professionals⁵ that violate their ethical and legal obligations. (See section V. “SSCI Summary Details at Least Eight Categories of Abuse by Health Professionals.”)

Based on a detailed review conducted by PHR, the health professionals who participated in the CIA torture program violated core ethical principles common to the healing professions, including the following obligations:

- To do no harm;
- To protect the lives and health of patients under their care from harm and brutality;
- To prevent and report torture;
- To uphold standards of professionalism, be honest in professional interactions, and report incompetence, fraud, and deception;
- To never engage in unethical research on human subjects;
- To receive the informed consent of the patient before providing medical treatment;
- To only perform roles consistent with their ethics and professional competencies; and
- To find an ethical resolution when health professionals’ obligations to persons under their care and to society conflict with the agenda of state institutions.

PHR concludes that the CIA relied upon health professionals at every step to commit and conceal the brutal and systematic torture of national security detainees. While the SSCI summary suggests that participation began with psychologists, it names three health professions acting in several roles throughout each stage of the multi-year CIA torture program: psychologists, physicians (including psychiatrists), and physician assistants.

III. Health Professionals May Have Committed War Crimes, Crimes against Humanity

The SSCI summary details a range of activities by health professionals that violate numerous international treaties, laws, and ethical codes, including:

- International human rights and humanitarian treaties, including the International Covenant on Civil and Political Rights,⁶ the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment,⁷ and the Geneva Conventions;⁸
- U.S. state and federal law, including the War Crimes Act of 1996, Federal Policy for the Protection of Human Subjects, the federal anti-torture statute, and the U.S. Constitution;⁹
- Ethical codes of the American Medical Association, American Psychological Association, and American Psychiatric Association;¹⁰ and
- International research and medical ethics codes, including the Nuremberg Code¹¹ and the World Medical Association's Declarations of Helsinki, Tokyo, and Malta.¹²

While most of the acts detailed in the summary violate international human rights and domestic laws prohibiting torture, several of these alleged violations can also constitute war crimes under domestic and international law.¹³ Furthermore, in certain instances, such as in the crime of unethical research on human subjects, these alleged crimes may rise to the level of crimes against humanity under international law.

IV. Federal Commission Must Investigate Role of Health Professionals in CIA Torture Program

PHR is calling for a federal commission to investigate, document, and hold accountable all health professionals who participated in the CIA torture program. The purpose of this commission is to understand what happened and how it happened. Ultimately, the commission should determine how the United States can prevent future torture, including health professionals' participation and complicity.

Given the extensive information on health professionals' breaches of established medical ethics, domestic law, and international treaties, a more comprehensive and focused investigation into their participation in the CIA's torture program beyond the SSCI investigation is necessary. Based on the available evidence, as well as the extreme seriousness of the alleged crimes and ethical violations committed by CIA health professionals, PHR encourages U.S. President Barack Obama, in cooperation with the incoming U.S. Congress, to authorize a federal commission of inquiry specifically into the role of health professionals in designing, directing, monitoring, and attempting to provide legal justifications for the CIA torture program.

Such a commission must have subpoena powers and the authority to refer individuals for criminal investigation and prosecution to the U.S. Department of Justice (DoJ), as warranted by the evidence. Past examples of similar blue ribbon federal commissions include the Tower Commission into the Iran-Contra Scandal, the Kean-Hamilton Commission into the 9/11 Attacks, and the Warren Commission into the Assassination of President John F. Kennedy. (For more, see section VII. "Recommendations.")

V. SSCI Summary Details at Least Eight Categories of Abuse by Health Professionals

The SSCI summary indicates that CIA health professionals – psychologists, physicians (including psychiatrists), and physician assistants – directly participated in the CIA’s torture program and were central to its development and implementation, as well as attempts to justify the use of torture. The SSCI summary documents unethical and illegal acts perpetrated by CIA health professionals, including:

- 1) **Designing, directing, and profiting from the torture program:** Psychologists conceptualized and designed the CIA torture techniques, then helped implement the program, receiving a sole-source, multi-million dollar CIA contract for these services.
- 2) **Intentionally inflicting harm on detainees:** Health professionals intentionally inflicted and/or threatened to inflict severe harm and suffering on detainees in CIA custody.
- 3) **Enabling DOJ lawyers to create a fiction of “safe, legal, and effective” interrogation practices:** Health professionals participated in the DOJ’s Office of Legal Counsel’s spurious legal rationale that the techniques would not be considered torture so long as health professionals certified they were not.
- 4) **Engaging in potential human subjects research to provide legal cover for torture:** Health professionals collected and analyzed data from application of techniques in an effort to legitimize torture. OMS officials expressed concern that these documentation practices could constitute illegal human subjects research. Senior CIA officials who were asked to evaluate the efficacy of the tactics expressed similar concerns.
- 5) **Monitoring detainee torture and calibrating levels of pain:** Health professionals monitored, documented, and calibrated the intentional infliction of harm on detainees.
- 6) **Evaluating and treating detainees for purposes of torture:** Health professionals evaluated and treated detainees before, during, and after torture in order to enable the torture to occur.

- 7) **Conditioning medical care on cooperation with interrogators:** Health professionals provided medical care that was contingent upon whether or not detainees were deemed to have cooperated with interrogators.
- 8) **Failing to document physical and/or psychological evidence of torture:** Health professionals did not document the torture inflicted on detainees, which served to conceal the tactics’ harmful effects.

1. Designing, Directing, and Profiting from the Torture Program

The central role that CIA contract psychologists James Mitchell and Bruce Jessen played in conceptualizing and designing strategies for the direct infliction of a combination of physical and psychological harm on detainees was well-documented before the summary’s release.¹⁴ These psychologists – who were given the pseudonyms “Grayson Swigert” (Mitchell) and “Hammond Dunbar” (Jessen) in the summary – designed the so-called “enhanced interrogation techniques” (EITs) in 2002. The regime of physical and psychological abuse the psychologists designed is based, in large part, on Martin Seligman’s psychological theory of “learned helplessness.”¹⁵ (19, 21, 26, 32, 71, 463–464)

Mitchell and Jessen, formerly with the U.S. government’s Survival, Evasion, Resistance, and Escape (SERE) program, reverse-engineered the techniques used to train U.S. military personnel to withstand torture and abuse if captured, according to these reports. The SERE training techniques were originally modeled on Chinese and North Korean torture techniques applied to U.S. service members captured during the Korean War.¹⁶ The SERE-based techniques that Mitchell and Jessen proposed for the CIA to use on detainees include waterboarding, stress positions, slapping, isolation, sleep deprivation, dietary manipulation, sensory deprivation and overload, and sexual humiliation, among others.

The summary provides the fullest description to date of the scope of Mitchell’s and Jessen’s involvement in the CIA torture program. According to the SSCI summary, the contractors conceptualized and designed techniques, personally applied them to detainees, conducted psychological evaluations of detainees whom they would torture, trained other interrogators in the use of torture, and recommended what techniques should be employed on which detainees.

The two contractors, who did not report to OMS, were operational psychologists (i.e. psychologists involved directly in interrogations).¹⁷ Various CIA staff voiced concerns about professional conflicts of interest arising from their activities, including the fact that they were serving interrogation and psychological roles; evaluating the effectiveness of interrogation activities they had conducted themselves; and recommending interrogation activities from which they would financially benefit.

The summary documents that Jessen traveled in January 2003 to a CIA black site in Poland,¹⁸ where he evaluated Abd al-Rahim al-Nashiri and recommended the use of waterboarding, to be administered by himself with the assistance of Mitchell. (71) In June 2003, both Mitchell and Jessen went to Poland to interrogate Khalid Sheikh Mohammed, whom they subjected to waterboarding and other techniques. Subsequently, the two conducted a psychological assessment of Mohammed to determine if he could withstand additional torture techniques that they would then administer. (65)

Mitchell and Jessen did not report to OMS, which therefore had no authority over them. OMS staff, among others, expressed concerns about their role. For example, in a 2003 memorandum for the CIA Inspector General, one OMS staff member stated:

OMS concerns about conflict of interest ... were nowhere more graphic than in the setting in which the same individuals applied an EIT which only they were approved to employ, judged both its effectiveness and detainee resilience, and implicitly proposed continued use of the technique - at a daily compensation reported to be \$1800/day, or four times that of interrogators who could not use the technique. (66)

Those CIA staff who expressed concerns in 2003 about Mitchell's and Jessen's role in detainee interrogations, including potential conflicts of interest arising from their involvement, were apparently disregarded. (65-66, 72) In 2005, the two psychologists formed Mitchell, Jessen & Associates (referred to as Company Y in the summary), which "was granted a sole source contract to provide operational psychologists, debriefers, and security personnel at CIA detention sites." (168) This statement strongly suggests that there were additional operational psychologists working for the company other than just Mitchell and Jessen. By March 2006, approximately 73 percent of the staff working for the CIA's Renditions and Detention Group were contractors, with a majority from Mitchell and Jessen's company. (168-169) Mitchell's and Jessen's significance to the CIA program can be inferred from the fact that the CIA sent them to brief then National Security Adviser Condoleezza Rice on the program in July 2007. (163)

As the summary also indicates, Mitchell and Jessen were well compensated for their work in the CIA torture program. The CIA awarded Mitchell, Jessen & Associates \$81 million, while Mitchell and Jessen each received

over \$1 million from the CIA. The CIA also provided them and their company with legal counsel and an indemnity agreement for non-prosecution of potential criminal activity. (Findings and Conclusions, 11)

2. Intentionally Inflicting Harm on Detainees

The SSCI summary documents numerous instances in which CIA health professionals intentionally inflicted harm on detainees, including making adjustments to their physical state to permit continued or increased harm (for example, adjusting conditions of shackling and confinement) and carrying out clinical procedures for non-medical reasons. (126, 141) One of the most egregious examples of direct medical participation in torture is the use of rectal rehydration or rectal feeding on at least five detainees: Abu Zubaydah, Abd al-Rahim al-Nashiri, Khalid Sheikh Mohammad, Majid Khan, and Marwan al-Jabbur. Three others were threatened with the procedure: Ramzi bin al-Shibh, Khallad bin Attash, and Adnan al-Libi. (100, 114)

An OMS medical officer described the rectal rehydration procedure in a February 27, 2004 email: "[r]egarding the rectal tube, if you place it and open up the IV tubing, the flow will self regulate, sloshing up the large intestines.... [w]hat I infer is that you get a tube up as far as you can, then open the IV wide. No need to squeeze the bag - let gravity do the work." (100) While the CIA has defended its use of rectal rehydration as a "well acknowledged medical technique," it nevertheless failed to establish or document medical necessity. (115)

According to PHR experts:¹⁹

Rectal hydration is almost never practiced in medicine because there are more effective means, such as oral and intravenous fluid administration. It is never considered as a first-line form of therapy for rehydration or nutritional support. The large colon has the capacity to absorb fluids, but has a very limited capacity to absorb nutrients with the exception of glucose and electrolytes. Pureed food and nutritional supplements, such as Ensure, should never be administered rectally.

Historically, rectal hydration was used in field conditions, particularly during World War II, when severe injuries resulted in marked blood loss and oral and intravenous administration of fluids were not possible. Also, in rare medical circumstances, such as terminally ill patients who are unable to take oral fluids and in whom intravenous access is not possible, rectal hydration has been used.

The use of rectal hydration and feeding, according to the SSCI summary, was conducted "without medical necessity," meaning oral and/or IV access was possible in these individuals. Moreover, the summary indicates that rectal hydration was used to control and/or punish the detainees.... Insertion of any object into the rectum of an individual without his consent constitutes a form of sexual assault.²⁰

As the summary states, “CIA medical officers discussed rectal rehydration as a means of behavior control” and carried it out at the order of interrogators. (82–83, 100, 483, 488)

For example, during his detention at the Salt Pit in Afghanistan, CIA detainee Mohammed was subjected to rectal rehydration at least twice in March 2003.²¹ The summary states: “KSM [Khalid Sheikh Mohammed] was subjected to rectal rehydration without a determination of medical need, a procedure that KSM interrogator and chief of interrogations would later characterize as illustrative of the interrogator’s ‘total control over the detainee.’” (488) A medical officer reflected that subjecting Mohammed to rectal rehydration helped “clear a person’s head” and was “effective in getting KSM to talk,” indicating that medical personnel identified with the goals of interrogation over patient care. Subsequent medical officers perfected their techniques based on these notes. (83, 100, 483)

Medical officers also engaged in the rectal force-feeding of three hunger strikers: al-Nashiri, Zubaydah, and Khan. The summary states that al-Nashiri was rectally “infused” with Ensure,²² while Zubaydah received “rectal fluid resuscitation” for “partially refusing liquids.” In an email dated February 2004, a medical officer wrote: “[w]hile IV infusion is safe and effective, we were impressed with the ancillary effectiveness of rectal infusion on ending the water refusal in a similar case.” (100) This statement reveals that the medical officers knew that IV infusion was safer and more effective, but instead used rectal feeding for its “ancillary effectiveness” as an interrogation method.

The case of Khan, who engaged in hunger strikes between March 2004 and his transfer to Guantánamo Bay in September 2006, illustrates the arbitrary and punitive nature of the procedure. Khan accepted nasogastric and IV feeding and was allowed to infuse fluids and nutrients himself. Nevertheless, after three weeks, the CIA opted to rectally force-feed him with Ensure and his own pureed lunch to eliminate “unnecessary conversation.” (115) The summary noted that according to CIA records, Khan was “very hostile” to rectal feeding. (488)

In addition to being contraindicated, such procedures can have harmful side effects. They can cause rectal trauma and can have additional harmful health consequences both physically and emotionally. The same is true of rectal exams, which were done routinely and conducted with “excessive force” in the case of at least two detainees, according to the summary. One of the detainees, Mustafa al-Hawsawi, was later diagnosed with “chronic hemorrhoids, an anal fissure, and symptomatic rectal prolapse.” (100) Rather than reject such brutal practices, medical officers appear to have modified them to increase pain: “we used the largest Ewal [sic] tube we had,” stated one officer in a February 2004 email. (100)

3. Enabling DOJ Lawyers to Create a Fiction of “Safe, Legal, and Effective” Interrogation Practices

The SSCI summary confirms what previous analysis of the DOJ’s Office of Legal Counsel (OLC) memos revealed: health professionals’ monitoring of the CIA torture program was a core component of the George W. Bush administration’s argument that these tactics did not constitute torture.²³ The August 1, 2002 OLC memo to the CIA (also known as the “Yoo/Bybee Memorandum”) stated that a “good faith” argument could be made that health professionals’ monitoring of the application of the techniques would ensure that they did not cause “severe and long lasting” mental and physical pain and suffering to a degree that would violate U.S. laws prohibiting torture.²⁴

In what have become known as the “torture memos,” former OLC deputy assistant attorney general, John Yoo, and former OLC assistant attorney general, Jay Bybee, attempted to redefine torture in a manner that precluded recognition and/or liability for the crime. They raised the legal thresholds for levels of physical and mental pain and created a condition of “specific intent” that essentially rendered the definition meaningless.²⁵

The Convention against Torture, which the United States has ratified, defines torture as:

*...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*²⁶

According to Yoo and Bybee, torture had to result in a level of physical pain consistent with a “serious physical injury, such as organ failure, impairment of bodily function or even death.”²⁷ Severe mental pain had to be “prolonged” (months and even years) and in response to “threats of imminent death; threats of infliction of the kind of pain that would amount to physical torture; infliction of such physical pain as a means of psychological torture; use of drugs or other procedures to deeply disrupt the senses, or fundamentally alter and individual’s personality....”²⁸

Even if the pain thresholds for torture established by Yoo and Bybee were met, the infliction of severe physical and mental pain had to be the interrogator’s “precise objective” to constitute torture. In order to recognize torture, physicians and psychologists would need to confirm that the interrogator (in some cases, the physicians and psychologists themselves) specifically intended to cause physical and mental pain as defined by Yoo and Bybee.

Certain unauthorized interrogation methods, such as rectal hydration, mock burials, and threats to family members, were not authorized and may be easily recognized as torture given their capacity to shock the conscience, but the same is true for the authorized EITs practiced by the CIA. The EITs included sleep deprivation, isolation, and sensory deprivation, and are known to cause devastating and lasting effects and therefore also must be understood as constituting torture. Prior to 2001, the United States recognized each of these techniques as torture.²⁹ Moreover, legal determinations of torture typically require medical evaluations of physical and psychological evidence in accordance with international standards,³⁰ but there is no indication in the summary that such evaluations ever took place. (See section V, subsection 8. “Failing to Document Physical and/or Psychological Evidence of Torture.”) PHR has examined former national security detainees alleging torture and provided extensive documentation of severe and lasting physical and psychological effects of EITs.³¹

The summary provides additional critical evidence that EITs cause severe physical pain and severe and prolonged mental pain. It is apparent throughout the summary that the intent of the interrogators was to break the detainees’ will and create a condition of debility, dependency, and dread given the goal and outcome of the interrogations. In a cable from Mitchell and Jessen addressing the “aggressive phase” of Zubaydah’s interrogation, it is stated:

Our goal was to reach the stage where we have broken any will or ability of subject to resist or deny providing us information (intelligence) to which he had access. We additionally sought to bring subject to the point that we confidently assess that he does not/not possess [sic] undisclosed threat information, or intelligence that could prevent a terrorist event. (46)

Prolonged deprivation of food, sound, light, and sleep (for up to 180 hours); exposure in freezing temperatures (resulting in death in one case); diapering; being forced to soil one’s self; repeated beatings; and multiple near drowning experiences by waterboarding to the point of unconsciousness are intentional acts that cannot be conducted without inflicting severe physical and mental pain.

In fact, according to CIA records, when briefed in April 2006, then President Bush expressed discomfort with the “image of a detainee, chained to the ceiling, clothed in a diaper, and forced to go to the bathroom on himself.” (25, 40) Yet, physicians and psychologists participated in the ongoing monitoring of these practices, and – through their silence and inaction – aided the CIA and OLC lawyers in creating a fiction of “safe, legal, and effective” interrogation practices.

Moreover, it appears that this legal farce was and continues to be instrumental in attempts to justify a policy of systematic torture.

4. Engaging in Potential Human Subjects Experimentation to Provide Legal Cover for Torture

The SSCI summary provides new information suggesting that OMS collection and analysis of data on interrogation practices may constitute human subjects experimentation.

One of the key prohibitions regarding medical ethics that came out of World War II was the prohibition against unethical human subjects experimentation; this was based on the recognition of atrocities committed by the Nazis. Unethical human subjects research also arose in the United States with the now infamous Tuskegee experiment, whereby black men were monitored as they died of diagnosed, but untreated, syphilis. The experiment ended in 1972. To safeguard against such abuses, any subject of a study must give informed consent.

The summary provides information documenting the degree to which the role of OMS personnel in the program changed over time. While initially assuming a more passive monitoring role in the early phases of the program, OMS personnel would eventually become active participants in determining, along with DoJ lawyers, what techniques would be considered authorized for the CIA to employ. (87)

The initial OMS monitoring role included the collection of data from detainees as they were being subjected to the torture techniques. The 2004 OMS Draft Guidelines describe one example of data collection from detainees being tortured:

NOTE: In order to best inform future medical judgments and recommendations, it is important that every application of the waterboard be thoroughly documented: how long each application (and the entire procedure) lasted, how much water was used in the process (realizing that much splashes off), how exactly the water was applied, if a seal was achieved, if the naso- or oropharynx was filled, what sort of volume was expelled, how long was the break between applications, and how the subject looked between each treatment.³²

To determine what tactics could be approved, the OMS personnel appear to have analyzed data previously collected from the detainees during torture to make generalizable conclusions about the techniques. The OMS personnel, including physicians, provided this data and analysis to OLC attorneys to support the reauthorization of activities constituting torture. (415–416, 419–421)

Data collection from detainees by OMS is consistent with definitions of human subjects research under U.S. federal codes. The National Institutes of Health defines this type of human subjects research based on obtaining these types of data as follows:

Obtaining means receiving or accessing identifiable private information or identifiable specimens for research purposes. OHRP [Office of Human Research Protections] interprets obtaining to include an investigator's use, study, or analysis for research purposes of identifiable private information or identifiable specimens already in the possession of the investigator...

Under the definition of human subject at 45 CFR 46.102(f), obtaining identifiable private information or identifiable specimens for research purposes constitutes human subjects research.³³

If further investigation establishes that human subjects research without consent was performed systematically on detainees then such activities are violations of the Nuremberg Code³⁴ and could constitute a crime against humanity.³⁵

In 2004 and 2005, the illegal and unethical OMS data collection and research was used to help the DoJ to determine what techniques and applications (individually, in combination, etc.) would be legitimate under OLC's interpretation of U.S. laws. (415–416, 419–421) The summary reveals at least two instances in which CIA personnel expressed concerns that "studying the results of CIA interrogations would amount to human experimentation." (125)

In response to OMS concerns, on January 28, 2005, CIA Inspector General John Helgerson replied about his suggestion that OMS draw conclusions based on past practice, saying:

I fear there was a misunderstanding. OIG did not have in mind doing additional, guinea pig research on human beings. What we are recommending is that the Agency undertake a careful review of its experience to date in using the various techniques and that it draw conclusions about their safety, effectiveness, etc., that can guide CIA officers as we move ahead.... (126)

Several months later, on April 11, 2005, OMS personnel again expressed concerns about OMS assuming this new role:

[s]imply put, OMS is not in the business of saying what is acceptable in causing discomfort to other human beings, and will not take on that burden.... OMS did not review or vet these techniques prior to their introduction, but rather came into this program with the understanding of your office and DOJ that they were already determined as legal, permitted and safe. We see this current iteration [of the OLC memorandum] as a reversal of that sequence, and a relocation of those decisions to OMS. If this is the case, that OMS has now the responsibility for determining a procedure's legality through its determination of safety, then we will need to review all procedures in that light given this new responsibility.... (420)

Despite these concerns, evidence shows that OMS personnel did, nonetheless, perform this role for the CIA. As primary representative of the CIA to the DoJ, OMS professionals offered opinions on what harm the techniques may cause and the pain associated with their application, including the past data OMS had collected. (420–421) The 2005 OLC memos (known as the Bradbury memos) reveal that these final determinations relied heavily on OMS data and analysis.³⁶

Additionally, two senior officers not affiliated with the CIA's Counterterrorism Center were asked to provide an independent review of the program. They responded that they could not evaluate the efficacy of the program because they determined:

... that it would not be possible to assess the effectiveness of the CIA's enhanced interrogation techniques without violating "Federal Policy for the Protection of Human Subjects" regarding human experimentation. (13)

Despite these concerns about violating federal policy on human subjects research, it appears – based on the declassified OLC memos and the SSCI summary – that data collection and analysis occurred as a core component of the program. Though performed for the purposes of indemnifying officials from legal liability for torture, this monitoring potentially exposes CIA health professionals and other personnel to the other, equally grave crime of conducting illegal subjects research in violation of the Nuremberg Code.

5. Monitoring Detainee Torture and Calibrating the Level of Pain

Health professionals played a central role in monitoring the torture techniques and calibrating the level of pain, to ensure they did not reach “unacceptable” levels. In May 2005, the CIA told then Acting Assistant Attorney General Steven G. Bradbury that “all pain is subjective, not objective”:

Medical officers can monitor for evidence of condition or injury that most people would consider painful, and can observe the individual for outward displays and expressions associated with the experience of pain. Medical officer [sic] can and do ask the subject, after the interrogation session has concluded, if he is in pain, and have and do provide analgesics, such as Tylenol and Aleve, to detainees who report headache and other discomforts during their interrogations. We reiterate, that an interrogation session would be stopped if, in the judgment of the interrogators or medical personnel, medical attention was required. (emphasis added) (419–420)

In addition, medical officers often documented torture techniques that they monitored in meticulous detail, demonstrating the medical staff’s profound disconnect from core principles of medical ethics prohibiting the participation of health professionals in torture. (41–42, 44, 86, 493–494)

The case of Zubaydah, the first detainee subjected to the CIA’s new, “enhanced” techniques, is illustrative of this and how monitoring served to facilitate torture. (21) He was captured in Pakistan and rendered to Thailand in March 2002.³⁷ Over the next few months, he was subjected to a range of coercive techniques, despite having suffered from a gunshot wound, including forced nudity, shackling, sleep deprivation, and isolation. (29)

These new torture techniques were discussed in July 2002 and approved for use on Zubaydah on August 3, 2002. During this period, on-site CIA officers discussed the required preparations should he die during the torture. (32–40) On August 4, Zubaydah was waterboarded for the first time, in the presence of medical officers. (41)

The summary states, “Over a two-and-a-half-hour period, Abu Zubaydah coughed, vomited, and had ‘involuntary spasms of the torso and extremities’ during waterboarding.” That day, a medical officer described Zubaydah’s waterboarding session in an email to OMS leadership entitled, “So it begins”:

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. (emphasis added) (41–42)

The latter statement about Zubaydah’s diet being changed from solids to liquids suggests that medical personnel manipulated his diet to facilitate further waterboarding. In 2007, then CIA Director Michael Hayden informed the SSCI that Zubaydah’s diet was changed because he was recovering from abdominal surgery. Yet, if this were the case, it raises the question of why an individual recovering from abdominal surgery would be subjected to waterboarding, to the point of vomiting and losing consciousness. (42, 44, 493)

Zubaydah went on to be waterboarded at least 83 times in August 2002 alone.³⁸ The summary states, “Physical reactions to waterboarding did not necessarily end when the application of water was discontinued, as both Abu Zubaydah and KSM vomited after being subjected to the waterboard.” (423)

An OMS e-mail dated March 6, 2003 notes that Zubaydah “became completely unresponsive, with bubbles rising through his open, full mouth” during one waterboarding session. (44) The summary states, “According to CIA records, Abu Zubaydah remained unresponsive until his interrogators gave him a ‘xyphoid thrust,’ at which point he regained consciousness and expelled ‘copious amounts of liquid.’” (44) During this time, OMS emails reveal that “our medical folks” were “edging toward the room,” presumably to deliver aggressive medical intervention should Zubaydah fail to resume breathing, as OMS guidelines required. (44)

The summary also describes examples of OMS personnel questioning the effectiveness and safety of some techniques, including objections to abuses outside their own guidelines. For example, on March 13, 2003, a medical officer objected when interrogators planned Mohammed's fourth waterboarding sessions in a 24-hour period. On-site personnel eventually received an approval email from a CIA National Counterterrorism Center lawyer but no formal authorization. While awaiting authorization, the chief of base instructed the medical officer not to directly contact CIA headquarters through the "CIA's classified internal email system, to avoid establishing 'grounds for further legal action,'" but to instead clear information through him first. (87) The summary notes:

At the end of the day, the medical officer wrote [redacted] OMS that "[t]hings are slowly evolving form [sic] OMS being viewed as the institutional conscience and the limiting factor to the ones who are dedicated to maximizing the benefit in a safe manner and keeping everyone's butt out of trouble. (87)

The failure of health professionals at the highest level of the OMS to recognize and address this issue requires further investigation.

6. Evaluating and Treating Detainees for Purposes of Torture

Torture and ill-treatment are universally and uniformly prohibited. No health professionals should ever be involved in evaluating the health or resilience of detainees, nor sign off on or approve their being tortured. Yet the summary confirms that OMS medical officers provided clearance for CIA detainees to be subjected to torture. Detainees al-Shibh and Mohammed underwent psychological and medical assessments upon arrival at their respective detention sites, clearing them for the proposed plan of interrogations. (77, 84)

In another case, CIA detainees Abu Hazim and Abd al-Karim each suffered from a broken foot while trying to escape in April 2003. In May, a "CIA regional medical officer" recommended that Hazim avoid weight-bearing activities due to his injury, and a CIA physician assistant recommended he avoid standing for a "couple of weeks." (112) Shortly after, another physician assistant determined that Hazim's and al-Karim's ankles were "sufficiently healed to allow being placed in the standing sleep deprivation process." The physician assistant consulted with an OMS medical officer who concurred. Subsequently, CIA headquarters expeditiously approved sleep deprivation for the two detainees, which began soon thereafter. This case appears to illustrate that some health professionals acted to limit the infliction of pain in some circumstances, (113) but the very presence of the health professionals and their failure to take remedial action effectively facilitated it.

The summary details other cases where health professionals cleared and approved detainees with serious medical conditions for additional torture.

The following excerpt from CIA records is included in the summary:

Abu Ja'far al-Iraqi was subjected to nudity, dietary manipulation, insult slaps, abdominal slaps, attention grasps, facial holds, walling, stress positions, and water dousing with 44 degree Fahrenheit water for 18 minutes. He was shackled in the standing position for 54 hours as part of sleep deprivation, and experienced swelling in his lower legs requiring blood thinner and spiral ace bandages. He was moved to a sitting position, and his sleep deprivation was extended to 78 hours. After the swelling subsided, he was provided with more blood thinner and was returned to the standing position. The sleep deprivation was extended to 102 hours. After four hours of sleep, Abu Ja'far al-Iraqi was subjected to an additional 52 hours of sleep deprivation, after which CIA Headquarters informed interrogators that eight hours was the minimum rest period between sleep deprivation sessions exceeding 48 hours. In addition to the swelling, Abu Ja'far al-Iraqi also experienced an edema on his head due to walling, abrasions on his neck, and blisters on his ankles from shackles. (149)

In this case, CIA medical providers used medical treatments such as blood thinner medication and ace bandages not for therapeutic reasons, but rather as means for enabling torture to continue. Similarly, health professionals cleared and approved detainees for torture, even those with serious medical conditions.

When asked about the possibility that detainees subjected to standing sleep deprivation could suffer from edema, OMS doctors informed the Department of Justice attorneys that it was not a problem as the CIA would "adjust shackles or [the] method of applying the technique as necessary to prevent edema, as well as any chafing or over-tightness from the shackles." (415)

Similarly, on March 12, 2003, a medical officer monitoring Mohammed's waterboarding sessions requested that saline be used, instead of water, for future sessions:

During these sessions, KSM ingested a significant amount of water. CIA records state that KSM's "abdomen was somewhat distended and he expressed water when the abdomen was pressed." KSM's gastric contents were so diluted by water that the medical officer present was "not concerned about regurgitated gastric acid damaging KSM's esophagus." The officer was, however, concerned about water intoxication and dilution of electrolytes and requested that the interrogators use saline in future waterboarding sessions. (86)

This is evidence of the engagement of health professionals to facilitate the continuation of the torture rather than provide care to the detainee. Water intoxication and depletion of electrolytes can lead to death. The officer later wrote to OMS that Mohammed was “ingesting and aspiration [sic] a LOT of water,” and that “[i]n the new technique we are basically doing a series of near drownings.” (423)

7. Conditioning Medical Care on Cooperation with Interrogators

Both medical ethics and human rights and humanitarian law require that medical treatment be provided to those in need regardless of whether they have committed a crime and without any other form of discrimination, such as race, ethnicity, etc. Conditioning medical care on cooperation or denying medical care based on political opinion is unethical and unlawful.

Medical care appears to have been conditioned on detainee cooperation with interrogators in certain cases, despite the CIA’s denial. (35, 111, 113, 491) For example, before August 2002, when the FBI oversaw Zubaydah’s custody, he routinely received necessary medical care, including for the gunshot wound he sustained during his capture. (315) Once the CIA assumed control, however, medical care was withheld, despite the risk of wound infection.

CIA headquarters told Zubaydah’s interrogation team, “The interrogation process takes precedence over preventive medical procedures.” (35) Medical intervention, or more specifically, withholding medical intervention, itself became a tool of coercion:

... delaying a medical session for 72 hours after the start of the new phase of interrogation would convey to Abu Zubaydah that his level of medical care was contingent upon his cooperation.” (491)

The medical officer at the site acknowledged that Zubaydah’s medical condition was likely to decline to an “unacceptable level.” Five days later, an email to OMS stated:

We are currently providing absolute minimum wound care (as evidenced by the steady deterioration of the wound), [Zubaydah] has no opportunity to practice any form of hygienic self care (he’s filthy), the physical nature of this phase dictates multiple physical stresses (his reaction to today’s activity is I believe the culprit for the superior edge separation),³⁹ and nutrition is bare bones (six cans of ensure daily). (111)

The summary further states that:

Later, after one of Abu Zubaydah’s eyes began to deteriorate, CIA officers requested a test of Abu Zubaydah’s other eye, stating that the request was “driven by our intelligence needs vice [sic] humanitarian concern for AZ.” The cable relayed, “[w]e have a lot riding upon his ability to see, read and write.” (111-112)

CIA detainee Muhammad Umar Abd al-Rahman, also known as Asadallah, was one of four detainees tortured in 2003 who had foot or leg injuries. The summary states: “CIA interrogators shackled each of these detainees in the standing position for sleep deprivation for extended periods of time until medical personnel assessed that they could not maintain the position.” (101) Asadallah was placed in standing and kneeling stress despite having a sprained ankle. When he complained of discomfort, his CIA captors told him that he could not sit unless he answered questions truthfully. (101, 113)

8. Failing to Document Physical and/or Psychological Evidence of Torture

Health professionals who treat or engage with individual patients have an obligation to document any evidence of injury or illness to facilitate their treatment. Failure to note evidence of any harm, illness, injury, or suffering is a violation of medical ethics.

There is no indication that OMS health professionals or CIA psychologists conducted any meaningful assessments of the potential physical and/or psychological harms of EITs. This is particularly disturbing given the following statement in the summary:

Throughout the program, multiple CIA detainees who were subjected to the CIA’s enhanced interrogation techniques and extended isolation exhibited psychological and behavioral issues, including hallucinations, paranoia, insomnia, and attempts at self-harm and self-mutilation. Multiple psychologists identified the lack of human contact experienced by detainees as a cause of psychiatric problems. (4)

It is not possible to claim that EITs, formerly recognized by the U.S. government as torture, were “safe, legal, and effective” without assessments of the physical and/or psychological harms.⁴⁰

In addition, CIA medical staff disregarded and/or failed to document detainee medical complaints. For example, the summary states:

CIA medical records consistently report that CIA detainee Ramzi bin al-Shibh had no medical complaints. However, CIA interrogation records indicate that when bin al-Shibh had previously complained of ailments to CIA personnel, he was subjected to the CIA's enhanced interrogation techniques and told by CIA interrogators that his medical condition was not of concern to the CIA. (113)

As such, CIA health professionals were likely complicit in CIA Director Hayden's lying to Congress when in April 2007 he testified that:

The medical section of the ICRC report concludes that the association of CIA medical officers with the interrogation program is "contrary to international standards of medical ethics." That is just wrong. The role of CIA medical officers in the detainee program is and always has been and always will be to ensure the safety and the well-being of the detainee. (113)

Despite numerous examples to the contrary, including indications that health professionals failed to document harm, as presented in the summary, Director Hayden further testified that:

The placement of medical officers during the interrogation techniques represents an extra measure of caution. Our medical officers do not recommend the employment or continuation of any procedures or techniques. The allegation in the report that a CIA medical officer threatened a detainee, stating that medical care was conditional on cooperation is blatantly false. Healthcare has always been administered based upon detainee needs. It's neither policy nor practice to link medical care to any other aspect of the detainee program. (113)

The summary described this testimony as "incongruent with CIA records." (113)

VI. Conclusion

Under the auspices of the Bush administration, the CIA systematically tortured suspected terrorist detainees, in at least one instance to the point of death. This torture program heavily relied on the participation and active engagement of health professionals to commit, conceal, and attempt to justify these crimes.

The severity of the pain inflicted, which profoundly relied on operational support from health professionals, can be reasonably expected to have had lasting consequences on the physical and mental health of detainees subjected to the same or similar torture techniques. Medical assessments by PHR experts of detainees subjected to these same torture tactics by the Department of Defense (DoD) showed severe and often long-lasting mental and physical pain and suffering.⁴¹

The SSCI summary – just a fraction of the entire, still-classified report – describes in detail the acts and omissions of CIA health professionals who violated their professional ethics, undermined the critical bond of trust between patients and physicians, and – crucially – broke the law. Torture is not just immoral and unethical, it is also illegal. The torture program instituted by the CIA betrayed U.S. values that are founded on the rule of law.

The U.S. government has failed to investigate and prosecute those who are responsible for these crimes of torture. Having ratified the UN Convention against Torture, the U.S. government is obligated to prosecute those who authorize, commit, or otherwise enable acts of torture and ill-treatment under the color of law.

There is no exception to the prohibition on torture under international law, or to the obligation on all governments to prosecute it. Governments will always claim there are exceptional circumstances that justify the use of torture, and – as the SSCI summary reveals – these claims will be built on lies. The only way to counteract this dangerous fallacy is to ensure that torture never goes unpunished. To do otherwise is to tacitly allow the "exceptional circumstances" argument, and – in so doing – threaten the very safety and security it purports to serve.

Those in the healing professions, the psychologists and physicians who became part of the CIA's torture machine, must face the detainees they hurt and recognize that it is never acceptable to use the skills for healing to destroy bodies and minds.

VII. Recommendations

All individuals employed or contracted by the CIA, DoD, or any other U.S. government agency who have engaged in and/or authorized torture and ill-treatment of detainees should be held legally responsible for their roles. The White House and the SSCI should work together to publicly release of the full report so there can be a comprehensive accounting of the CIA torture program.

The following recommendations from Physicians for Human Rights focus on two key outcomes: 1) Ensuring the full disclosure of the role health professionals played in the CIA or other U.S. government agency torture programs, with full legal accountability for those that violated U.S. and international law; and 2) changing U.S. laws, policies, and practices in order to prevent the abuse of detainees and any direct involvement of health professionals in future interrogations.

To President Barack Obama and the U.S. Congress:

- I. Create and fully fund a federal commission to investigate and document the role that health professionals played in CIA, DoD, or other U.S. government agency interrogation and detention programs; and
- II. Ensure that the commission has subpoena powers and appropriate security clearance to do a thorough investigation, and – based on its findings – has the power to refer cases to the DOJ for prosecutions.

To the U.S. Congress:

The U.S. Congress must enact legislation to ensure that torture practices (including those previously authorized as EITs) are eradicated from U.S. law and practice. Specifically, legislation related to detainees must include all the protections contained in Common Article 3 of the Geneva Conventions. This includes closing all loopholes that allowed the CIA to design and oversee a torture program in collusion with other government officials and health professionals. Such actions should include:

- Directing the DoD to rescind measures in Appendix M of the Army Field Manual that create operational ambiguity and could allow the introduction of torture and ill-treatment, such as prolonged isolation, sensory deprivation, and sleep manipulation;
- Adopting a resolution that explicitly prohibits health professionals from direct involvement in interrogations with all Executive Branch agencies;
- Amending the 2005 Detainee Treatment Act to make explicit that CIA personnel and any contractors or any other persons acting under the color of law must act in a manner that is in compliance with domestic and international law;

- Codifying the Presidential Executive Order 13491 (“Ensuring Lawful Interrogations”) into law; and
- Strengthening reporting mechanisms of torture and ill-treatment by CIA and DoD health professionals and government contractors, including direct reporting to the U.S. Congress.

To President Obama:

- Publicly and unambiguously state that the U.S. government will comply with all its obligations under international treaties and domestic law to investigate and prosecute those who were responsible for engaging in torture and cruel, inhuman, and degrading treatment of detainees regardless of where the crime occurred;
- Direct the DOJ to initiate these investigations;
- Act to eradicate all forms of torture practices still allowed under U.S. law by rescinding those provisions of Appendix M in the Army Field Manual that create operational ambiguity and could allow the introduction of torture and ill-treatment, such as prolonged isolation, sensory deprivation, and sleep manipulation; and
- Authorize the release of the SSCI’s full investigative report.

To National Associations of Health Professionals:

- The American Psychological Association and other health professional organizations should join the American Medical Association and American Psychiatric Association in prohibiting members from using their skills and expertise to directly participate in the interrogation of individuals by ensuring that their codes of ethics are rigorous and comprehensive;
- Reaffirm – through public statements and continuing education – the ethical obligation of health professionals to do no harm and the prohibition against using their skills and expertise to participate in torture, ill-treatment, or unethical human subjects research; and
- Advocate for the enactment of state legislation that would bar all licensed health professionals from participating, directly or indirectly, in torture or other abuses regardless of their location and provide for sanctions against those that do.

Endnotes

¹ The full report, which is more than 6,700 pages and remains classified, documents the torture and ill-treatment of detainees in CIA custody by CIA personnel and contractors between the inception of the CIA's Detention and Interrogation Program in 2001 and its termination in 2009; the report also reviews each of the CIA program's 119 detainees. (Foreword, 1, 3)

² The SSCI summary makes extensive reference to "medical personnel" and "medical officers" of the CIA's Office of Medical Services (OMS), both those at the CIA black sites and those at OMS headquarters. This might refer to any of the following OMS health professionals: physicians (including psychiatrists), psychologists, physician assistants, nurses, and nurse practitioners. However, the SSCI summary specifies only three categories of OMS personnel by their profession: psychologists, physicians (including psychiatrists), and physician assistants. It also references two contract psychologists, James Mitchell and Bruce Jessen, who worked for the CIA but were not within OMS. For the purposes of this analysis, PHR refers to the specific profession where available, according to the term used by SSCI. Where the term is not specified, PHR uses the generic term "health professionals" to encompass professionals clearly specified and any others not specified.

³ See Gretchen Borchelt and Jonathan Fine, *Break Them Down: Systematic Use of Psychological Torture by US Forces*, Physicians for Human Rights, May 2005, <http://phr.org/library/reports/us-torture-break-them-down-2005.html>; Scott Allen, Devon Chaffee, and Farnoosh Hashemian, *Leave No Marks: Enhanced Interrogation Techniques and the Risk of Criminality*, Aug. 2007, Physicians for Human Rights and Human Rights First, <http://phr.org/library/reports/leave-no-marks-report-2007.html>; Farnoosh Hashemian, Sondra Crosby, Vincent Iacopino, Allen Keller, et al, *Broken Laws, Broken Lives: Medical Evidence of Torture by US Personnel and Its Impact*, Jun. 2008, Physicians for Human Rights, <http://phr.org/library/reports/broken-laws-torture-report-2008.html>; Allen Keller, Scott Allen, Steven Reisner, Vincent Iacopino, *Aiding Torture: Health Professionals' Ethics and Human Rights Violations Demonstrated in the May 2004 CIA Inspector General's Report*, Aug. 2009, Physicians for Human Rights, <http://phr.org/library/reports/aiding-torture-2009.html#sthash.QVC8Vqra.dpuf>; Nathaniel Raymond, Scott Allen, Vincent Iacopino, Allen Keller, et al, *Experiments in Torture: Evidence of Human Subject Research and Experimentation in the "Enhanced" Interrogation Program*, Jun. 2010, <http://physiciansforhumanrights.org/library/reports/experiments-in-torture-2010.html>; Mike Corradini, Kristine Huskey, and Christy Fujio, *Buried Alive: Solitary Confinement in the US Detention System*, Apr. 2003, Physicians for Human Rights, <http://phr.org/library/reports/buried-alive-solitary-confinement-in-the-us-detention-system.html>.

⁴ A detailed review and analysis of the summary was conducted by a PHR team with specific expertise in diagnosing and treating torture survivors; professional standards of medical and psychological ethics; the provision of medical care to detainees; medical care in national security settings; and human subjects research ethics and law.

⁵ The health professionals referenced in this analysis were CIA employees or contractors. While most were employed by OMS, James Mitchell and Bruce Jessen did not report to OMS, but the CIA directly.

⁶ International Covenant on Civil and Political Rights (ICCPR), Art. 26, G.A. Res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States on Jun. 8, 1992, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

⁷ Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention against Torture), UN General Assembly, Res. 39/46, U.N. GAOR 39th Sess. Supp. No. 51, U.N. Doc. A/Res/39/46, entered into force Jun. 26, 1987, ratified by the United States on Oct. 21, 1994, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>.

⁸ The Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, incl. Annex 1, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S.

⁹ War Crimes Act of 1996, Pub. L. 104-192, § 2(a), 110 Stat. 2104, Aug. 21, 1996 (codified as amended at 18 U.S.C. § 2441) (2007); Federal Policy for the Protection of Human Subjects, 45 C.F.R. Part 46 (2009); Torture Convention Implementation Act of 1994, 18 U.S.C.A. § 2340 (2004); and U.S. Constitution, amendment XIII.

¹⁰ American Medical Association, *American Medical Association Code of Medical Ethics* (2001), <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/principles-medical-ethics.page>; American Psychological Association, *Ethical Principles of Psychologists and Code of Conduct: Including 2010 Amendments* (2010), <http://www.apa.org/ethics/code/>; and American Psychiatric Association, *The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry* (2013), <http://www.psychiatry.org/practice/ethics/resources-standards>.

¹¹ The Nuremberg Code [from Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10. Nuremberg, October 1946–April 1949. Washington, D.C.: U.S. G.P.O., 1949–1953.]

¹² World Medical Association, "Declaration of Helsinki: Ethical Principles for Medical Research Involving Human Subjects," Doc. 17.C, 1964 (amended in 1975, 1983, 1989, 1996, and 2000), available at <http://www.wma.net/en/30publications/10policies/b3/>; World Medical Association, "Declaration of Tokyo: Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment," 1975 (amended in 2005 and 2006), available at <http://www.wma.net/en/30publications/10policies/c18/ind-ex.html>; World Medical Association, "Declaration of Malta on Hunger Strikers," 1991 (amended in 1992 and 2006), available at <http://www.wma.net/en/30publications/10policies/h31/ind-ex.html>.

¹³ Allen, Chaffee, and Hashemian, *Leave No Marks*; Raymond, Allen, Iacopino, Keller, et al, *Experiments in Torture*.

¹⁴ Katherine Eban, "Rorschach and Awe," *Vanity Fair*, Jul. 17, 2007, <http://www.vanityfair.com/politics/features/2007/07/torture200707>; Mark Benjamin, "The CIA's Torture Teachers," *Salon*, Jun. 21, 2007, http://www.salon.com/2007/06/21/cia_sere/.

¹⁵ Martin E. P. Seligman, *Helplessness: On Depression, Development, and Death*, (San Francisco: W.H. Freeman & Company, 1975).

¹⁶ Senate Armed Services Committee (110th Cong.), "Inquiry into the Treatment of Detainees in U.S. Custody," [Levin Report] Nov. 20, 2008, 20, http://www.armed-services.senate.gov/imo/media/doc/Detainee-Report-Final_April-22-2009.pdf.

¹⁷ Operational psychologists are those whose role involves furthering the operational mission of the CIA (or military) in opposition to traditional health provider roles involving preventing and treating emotional problems. Jean Maria Arrigo, Roy J. Eidelson, and Ray Bennett, "Psychology Under Fire: Adversarial Operational Psychology and Psychological

Ethics," *Peace and Conflict: Journal of Peace Psychology* 18, no. 4 (2012): 384.

¹⁸ Adam Goldman and Julie Tate, "Decoding the Secret Black Sites on the Senate's Report on the CIA Interrogation Program," *Washington Post*, Dec. 9, 2014, <http://www.washingtonpost.com/blogs/worldviews/wp/2014/12/09/decoding-the-secret-black-sites-on-the-senates-report-on-the-cia-interrogation-program>.

¹⁹ Physicians for Human Rights, "Medical Professionals Denounce 'Rectal Feeding' as 'Sexual Assault Masquerading as Medical Treatment,'" Dec. 2014, <http://physiciansforhumanrights.org/library/other/fact-sheet-rectal-hydration-and-rectal-feeding.html>.

²⁰ The International Criminal Court defines "rape" as: "The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body. The invasion was committed by force, or by the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment or the invasion was committed against a person incapable of giving genuine consent." Assembly of States Parties to the Rome Statute of the International Criminal Court, 1st Session, U.N. Doc. ICC-ASP/1/3, art. 7(1)(g), Sept. 3–10, 2002, http://legal.un.org/icc/asp/1stsession/report/english/part_ii_b_e.pdf.

²¹ Scott Shane, "Report Portrays a Broken C.I.A. Devoted to a Failed Approach," *New York Times*, Dec. 9, 2014, <http://www.nytimes.com/2014/12/10/world/senate-torture-report-shows-cia-infighting-over-interrogation-program.html>.

²² On April 24, 2014, Dr. Sondra Crosby, a PHR medical advisor, testified that her examination of al-Nashiri revealed evidence consistent with sexual assault: "He suffers from chronic pain. He suffers from anal-rectal complaints, and all of these are documented in the unclassified records...." "Other red flags in Mr. al Nashiri are his persistent and chronic anal-rectal complaints, difficulty defecating bleeding, hemorrhoids, pain with sitting for prolonged periods of time. This is very common in survivors of sexual assault." Transcript of the *United States v. Al Nashiri* Motions Hearing Dated Apr. 24, 2014, [http://www.mc.mil/Portals/0/pdfs/alNashiri2/AI%20Nashiri%20II%20\(TRANS24April2014-AM1\).pdf](http://www.mc.mil/Portals/0/pdfs/alNashiri2/AI%20Nashiri%20II%20(TRANS24April2014-AM1).pdf) and <http://www.mc.mil/Portals/0/pdfs/alNashiri2/AI%20Nashiri%20II%20%28TRANS24April2014-PM1%29.pdf>.

²³ Raymond, Allen, Iacopino, Keller, et al, *Experiments in Torture*.

²⁴ Jay S. Bybee, "Memorandum for A. Gonzales: Counsel to the President," Office of Legal Counsel, Department of Justice, Aug. 1, 2002, <http://www.justice.gov/sites/default/files/olc/legacy/2010/08/05/memo-gonzales-aug2002.pdf>.

²⁵ Ibid.

²⁶ Convention against Torture, UN General Assembly.

²⁷ Note, in many circumstances, organ failure, impairment of bodily function, and death may be painless, illustrating the arbitrary nature of the Yoo/Bybee definition of torture. For example, kidney and liver failure, septic shock, cardiac arrhythmias, and overdoses with sedatives can all cause death with little or no pain.

²⁸ Bybee, "Memorandum for A. Gonzales: Counsel to the President."

²⁹ Human Rights Watch, "Appendix: U.S. Criticisms of Mistreatment and Torture Practices" in *Enduring Freedom: Abuses by U.S. Forces in Afghanistan* 16, no. 3(C), (March 2004), <http://www.hrw.org/reports/2004/afghanistan0304/afghanistan0304.pdf>.

³⁰ International standards for the medical documentation of torture have been recognized by the United Nations since 2001. See: Vincent Iacopino, Önder Ozkalipci, Caroline Schlar, Kathleen Allden, et al, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol), UN Office of the High Commissioner for Human Rights, 2004, HR/P/PT/8/Rev.1, <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.

³¹ Hashemian, Crosby, Iacopino, Keller, et al, *Broken Laws, Broken Lives*.

³² CIA Inspector General, "Special Review: Counterterrorism Detention and Interrogation Activities," Central Intelligence Agency, May 7, 2004, at F10, <http://graphics8.nytimes.com/packages/pdf/politics/20090825-DETAIN/2004CIAIG.pdf>.

³³ National Institutes of Health Office of Extramural Research, "Frequently Asked Questions From Applicants: Human Subjects Research- Definitions," last modified Feb. 11, 2010, http://grants.nih.gov/grants/policy/hs/faqs_aps_definitions.htm.

³⁴ The Nuremberg Code [from Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10. Nuremberg, October 1946–April 1949. Washington, D.C.: U.S. G.P.O., 1949–1953.]

³⁵ From *Crimes of War 2.0*: "At the Nuremberg Tribunals following World War II, medical experiments were declared a crime against humanity. The Geneva Conventions of 1949 defined medical experiments on POWs and protected persons—that is, civilians under the control of an occupying force—as a grave breach, and the 1998 Rome Statute of the International Criminal Court stated that medical experiments are war crimes, whether they occur in an international armed conflict or an internal one. It defined the crime as: 'Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons.'" UN General Assembly, Rome Statute of the International Criminal Court, Jul. 17, 1998, (last amended 2010), available at: http://www.icc-cpi.int/nr/rdonlyres/ea9aef77-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf.

³⁶ Steven G. Bradbury, Principal Deputy Assistant Attorney General, OLC, "Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency, Re: Application of 18 U.S.C. §§ 2340–2340A to Certain Techniques That May Be Used in the Interrogation of a High Value al Qaeda Detainee," ("Bradbury Combined Techniques Memo"), May 10, 2005, <http://www.fas.org/irp/agency/doj/olc/techniques.pdf>.

³⁷ Adam Goldman and Julie Tate, "Decoding the Secret Black Sites on the Senate's Report on the CIA Interrogation Program," *Washington Post*, Dec. 9, 2014, <http://www.washingtonpost.com/blogs/worldviews/wp/2014/12/09/decoding-the-secret-black-sites-on-the-senates-report-on-the-cia-interrogation-program>.

³⁸ Open Society Institute, *The Report of The Constitution Project's Task Force on Detainee Treatment*, Apr. 2013, 181 & 213, <http://detaineeataskforce.org/pdf/Full-Report.pdf>.

³⁹ "Superior edge separation" refers to the splitting open of Abu Zubaydah's wound edges.

⁴⁰ Iacopino, Ozkalipci, Schlar, Allden, et al, The Istanbul Protocol.

⁴¹ Hashemian, Crosby, Iacopino, Keller, et al, *Broken Laws, Broken Lives*.



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