



**TEXAS STATE BOARD
OF EXAMINERS
OF PSYCHOLOGISTS**
333 Guadalupe · Suite 2-450
Austin, Texas 78701
Investigations: (512) 305-7709

Date	Rec'd:
Case	Number:
ID	Number:
License	Number:

COMPLAINT FORM

Please fill out this form completely. Use black ink; print or type clearly.

Please note that the Board only has the authority to investigate its licensees or unlicensed persons claiming to provide psychological services.

The Board licenses: Psychologists, Provisionally Licensed Psychologists, Psychological Associates, and Licensed Specialists in School Psychology.

Date: June 16, 2010

Your Full Name (Print or Type) Jim L. H. Cox, PhD.	Your Address (Street) 14466 Marin Hollow Dr.
Home Telephone #: (210) 387-9667	Your (City, State, Zip) Helotes, TX 78023
Work Telephone #: (210)695-9906	
Licensee Involved: 23564	
Name: Dr. James Elmer Mitchell	
Address: Mitchell Jessen & Associates, LLC 108 N Washington St # 205	City, State, Zip Spokane, WA 99201-5001
Office Telephone #: (509) 789-3252	
Conduct being reported: Ethical violations, Provision of services beyond expertise. (See attached), Violation of multiple standards.	

**TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS
COMPLAINT: DR. JAMES ELMER MITCHELL (LICENSE NO. 23564)**

BACKGROUND

In August 2002, at a secret prison in Thailand, a psychologist stood over a prisoner. The psychologist was James Elmer Mitchell; the prisoner was Abu Zubaydah. Zubaydah had been in custody since his arrest in Pakistan March 28, 2002. Dr. Mitchell took over his interrogation shortly thereafter. He had ordered that Zubaydah be chained to a chair for weeks on end; that he be whipped by the neck into concrete walls; that he be stuffed into a small, black box and left for hours; that he be hung naked from the ceiling; that he be kept awake for 11 consecutive days, and sprayed with cold water if he dozed.¹ But the torture designed by Dr. Mitchell was about to pass to another level. It was time to implement the final stage of Dr. Mitchell's program.²

Abu Zubaydah lay strapped to a gurney specially designed to maximize his suffering. His feet were above his head, just as Dr. Mitchell had ordered. His hands, arms, legs, chest, and head were restrained by heavy leather straps.³ As Zubaydah lay helpless, Mitchell and his subordinates placed a black cloth over his face and began to pour water onto the cloth. Rivers of water ran up Zubaydah's nose and down his throat. He could not breathe. Panic gripped him as he began to drown.⁴ And when Mitchell sensed that Zubaydah dangled on the precipice between

¹ INTERNATIONAL COMMITTEE OF THE RED CROSS, "ICRC REPORT ON THE TREATMENT OF FOURTEEN "HIGH VALUE DETAINEES IN CIA CUSTODY, Feb. 2007, 28-31 [hereinafter ICRC Report]; CENTRAL INTELLIGENCE AGENCY INSPECTOR, SPECIAL REVIEW: COUNTERTERRORISM AND INTERROGATION ACTIVITIES (SEPTEMBER 2001-OCTOBER 2003) 15 (2004) [hereinafter CIA IG Report]; Jason Leopold, *Zubaydah's Torture, Detention Subject of Senate Inquiry*, TRUTHOUT.ORG, <http://www.truthout.org/zubaydahs-torture-detention-subject-senate-intelligence-inquiry58666>, (Apr. 17, 2010).

² Leopold, *supra* note 1.

³ CIA IG Report, *supra* note 1, at 15.

⁴ ICRC Report, *supra* note 1, at 28-31.

life and death, he ordered that the board be raised. Zubaydah expelled the water in a violent, racking spasm of coughing, gurgling and gasping. But before Zubaydah could catch his breath, Dr. Mitchell repeated the experiment. Then he did it again. And again. According to the United States Government, Abu Zubaydah was water-boarded 83 times in August 2002 alone.⁵ Dr. James Elmer Mitchell is currently a psychologist licensed in the state of Texas.

* * * *

The road to torture in a Thai prison began six months earlier. After 9/11, Dr. Mitchell had approached the U.S. Government with a proposition.⁶ Though he had never conducted an interrogation and had no training as an interrogator, and though he had no expertise in al Qaeda and no familiarity with the organization, and though he did not speak Arabic and had no training in radical Islam, Mitchell nonetheless said he could design and implement an interrogation plan for alleged al Qaeda suspects.⁷ Mitchell had taught U.S. soldiers how to *resist* unlawful interrogations, and now offered to reverse-engineer those principles and transform them into a set of “enhanced interrogation techniques.” The C.I.A. took Mitchell at his word, and paid him as much as \$2,000 per day, plus expenses, tax free.⁸

The U.S. Government has now concluded that Dr. Mitchell misrepresented his qualifications, violated his professional duty to persons in his care, and acted without a legitimate

⁵ *Id.*; Leopold, *supra* note 1 (In the words of one former U.S. national security official, Abu Zubaydah was to Dr. Mitchell “an experiment. A guinea pig.”)

⁶ Scott Shane, *Interrogation Inc.: 2 U.S. Architects of Harsh Tactics in 9/11's Wake*, N.Y. TIMES, Aug. 11, 2009, available at <http://www.nytimes.com/2009/08/12/us/12psychs.html>.

⁷ *Id.*

⁸ Matthew Cole, *Psychologists Told CIA Waterboarding Was Safe*, ABCNEWS.COM, <http://abcnews.go.com/Blotter/story?id=7474412&page=1>, May 1, 2009. See also Katherine Eban, *Rorschach and Awe*, VANITY FAIR, July 17, 2007, available at <http://www.vanityfair.com/politics/features/2007/07/torture200707> (“According to people familiar with their compensation, they get paid more than \$1,000 per day plus expenses, tax free, for their overseas work.”); Shane, *supra* note 6.

scientific basis. The C.I.A Office of Medical Services (the “OMS”), with which Dr. Mitchell did not consult during either the design or implementation of the program, concluded that Dr. Mitchell misrepresented his qualifications and that “there was no *a priori* reason to believe [Dr. Mitchell’s program] was either efficacious or medically safe.”⁹ The OMS has also concluded there was no scientific basis to believe that the interrogation plan would produce reliable intelligence.¹⁰ Colonel Steve Kleinman, an interrogator with years of experience, testified to the U.S. Senate that Mitchell was “stepping out of [his] area of expertise.”¹¹ The U.S. Armed Services Senate Committee, which investigated the issue, found that Dr. Mitchell, and his colleague Dr. Bruce Jessen, were “neither trained interrogators nor are they qualified to be.”¹² Michael Rolince, former section chief of the FBI’s International Terrorism Operations, described the methods employed by Drs. Mitchell and Jessen as “voodoo science.”¹³ The CIA terminated its contract with Dr. Mitchell in the spring of 2009.¹⁴

The psychological community has roundly condemned Dr. Mitchell. The Ethics Committee of the American Psychological Association (APA), for instance, issued a statement on June 19, 2009, stating that “[p]sychologists are absolutely prohibited from knowingly planning, designing, participating in or assisting in the use of [mock executions, water-boarding

⁹ CIA Inspector General Report, *supra* note 1, at 21–22, 22 n. 26.

¹⁰ *Id.*

¹¹ Cole, *supra* note 8.

¹² U.S. SENATE ARMED SERVICES COMMITTEE, SENATE ARMED SERVICES COMMITTEE INQUIRY INTO THE TREATMENT OF DETAINEES IN U.S. CUSTODY xiii (2008) [hereinafter Senate Armed Services Committee Report].

¹³ Amanda Witherell, *Project Censored*, MISSOULA INDEP., Vol. 19; Issue 41 (Oct. 9, 2008).

¹⁴ Leon E. Panetta, *Message from the Director: Interrogation Policy and Contracts*, Central Intelligence Agency, Apr. 9, 2009, <https://www.cia.gov/news-information/press-releases-statements/directors-statement-interrogation-policy-contracts.html>.

or any other form of simulated drowning, physical assault including slapping or shaking, exposure to extreme heat or cold, threats of harm or death] at any time and may not enlist others to employ these techniques in order to circumvent this resolution's prohibition.”¹⁵ All of these techniques, of course, were designed and employed by Dr. Mitchell, who has never acknowledged the impropriety of his role or disavowed any of his actions. Dr. Mitchell remains licensed as a psychologist in the state of Texas.

Dr. Mitchell has sullied his profession by violating the standards demanded by the Psychologists’ Licensing Act¹⁶ and the Board’s Rules of Practice.¹⁷ His transgressions fall into three categories:

- First, to achieve his ultimate plan of implementing a brutal interrogation and torture regime, Dr. Mitchell misrepresented his professional qualifications and experience to the Central Intelligence Agency.¹⁸ He also placed his own career and financial aspirations above the safety of others.¹⁹
- Second, Dr. Mitchell designed this torture regime only by ignoring the complete lack of a scientific basis²⁰ for the regime’s safety and—assuming its safety—its effectiveness. In doing so, he failed to take reasonable steps to ensure the safety of

¹⁵ Resolution by American Psychology Association, Reaffirmation of the American Psychological Association Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and Its Application to Individuals Defined in the United States Code as “Enemy Combatants,” Aug. 19, 2007, <http://www.apa.org/about/governance/council/policy/torture.aspx>.

¹⁶ 3 TEX. OCC. CODE ANN. § 501 (2009).

¹⁷ 22 TEX. ADMIN. CODE § 465 (2009).

¹⁸ Dr. Mitchell’s misrepresentation of his qualifications and experience violated 22 TEX. OCC. CODE ANN. § 504.401(4) (2009) (“The board shall revoke or suspend a holder’s license, place on probation a person whose license has been suspended, or reprimand a license holder who . . . engages in fraud or deceit in connection with services provided as a psychologist.”).

¹⁹ Dr. Mitchell’s lack of objectivity violated 22 TEX. ADMIN. CODE § 465.13(a)(1) (2009) (“Licensees refrain from providing services when they know or should know that their . . . lack of objectivity have the potential to impair their competency or harm a patient, client, colleague, student, supervisee, research participant, or other person with whom they have a professional relationship.”).

²⁰ Dr. Mitchell’s ignorance of scientific principles violated 22 TEX. ADMIN. CODE § 465.10 (“Licensees rely on scientifically and professionally derived knowledge when making professional judgments.”).

others.²¹

- Third, and most ominously, Dr. Mitchell himself tortured prisoners held in U.S. custody²² and directly supervised others who engaged in torture at his direction.²³

The Board’s mission is to “protect the public by ensuring that psychological services . . . are provided by qualified and competent practitioners who adhere to established professional standards.”²⁴ Dr. Mitchell’s behavior appears to fail to meet this standard.

Dr. Mitchell’s education and experience provided him no reasonable basis to believe he could design and implement an interrogation program. After joining the U.S. Air Force in 1974,²⁵ Dr. Mitchell earned a Master’s of Science in Counseling from the University of Alaska in 1981.²⁶ He wrote his thesis on “The Effects of Induced Elation and Depression on

²¹ See 22 TEX. ADMIN. CODE § 465.9(e) (2009) (“In emerging areas in which generally recognized standards for preparatory training do not exist, licensees take reasonable steps to ensure the competence of their work and to protect patients, clients, research participants, and other affected individuals from the potential for harm.”).

²² Such torture violated the requirement for psychologists to make professional judgments in 22 TEX. ADMIN. CODE § 465.10 (2009) (“Licensees rely on scientifically and professionally derived knowledge when making professional judgments.”).

²³ This supervision violated the requirements of professional supervision in 22 TEX. ADMIN. CODE § 465(2)(a) – (2)(g) (2009), which states:

(a) A licensee is responsible for the professional supervision of all individuals that the licensee employs or utilizes to provide psychological services of any kind. (b) Licensees ensure that their supervisees have legal authority to provide psychological services in adherence to Board rules. (c) Licensees provide an adequate level of supervision to all individuals under their supervision according to accepted professional standards given the experience, skill and training of the supervisee and the type of psychological services. (d) Licensees must be competent to perform any psychological services being provided under their supervision. (e) Licensees shall document their supervision activities in writing. (f) Licensees delegate only those responsibilities that supervisees may legally and competently perform. (g) Licensees utilize methods of supervision that enable the licensee to monitor all delegated services for legal, competent, and ethical performance.

²⁴ TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS, MISSION STATEMENT, Nov. 10, 2009, *available at* <http://www.tsbep.state.tx.us/what.html>.

²⁵ Shane, *supra* note 6.

²⁶ *Id.*

Interpersonal Problem Solving Efficiency.”²⁷ In 1986, he received a Ph.D. from the University of South Florida, where he wrote a dissertation on “The Effectiveness of a High Potassium/Moderate Sodium Restriction Diet and Aerobic Exercise as Interventions for Borderline Hypertension.”²⁸ None of Mitchell’s academic research involved interrogations, let alone the mechanisms for designing and implementing a safe and effective interrogation program.

Following his formal education, Dr. Mitchell began his career as a psychologist at Fairchild Air Force Base in Spokane, Washington, in 1986.²⁹ By 1988, he had become a SERE Psychologist.³⁰ SERE is an acronym for “Survival, Evasion, Resistance, and Escape.”³¹ The SERE training program is part of the Department of Defense Joint Personnel Recovery Agency (“JPRA”).³² “SERE students are taught how to survive in various terrain, evade and endure captivity, resist interrogations, and conduct themselves to prevent harm to themselves and fellow prisoners of war.”³³ The program is designed to train soldiers at risk of capture and interrogation to defend and resist against torture.³⁴ The U.S. Army, Navy, and Air Force have each developed their own version of the SERE program.³⁵

²⁷ On file at the University of Alaska, Anchorage.

²⁸ On file at the University of South Florida, call number LD 1801.F6p 1986 M57.

²⁹ Shane, *supra* note 6.

³⁰ *Id.*

³¹ CIA Inspector General Report, *supra* note 1, at 13 n.13.

³² *Id.*

³³ *Id.* (emphasis added).

³⁴ Senate Armed Services Committee Report, *supra* note 12, at xiii.

³⁵ CIA Inspector General Report, *supra* note 1, at 13 n. 13.

SERE attempts to train American soldiers how to resist psychological pressure from an enemy who engages in unlawful interrogations.³⁶ The SERE curriculum is classified, but SERE graduates and instructors have disclosed some of its methods.³⁷ “Prisoners” are held in a mock prison camp, where “guards” deprive them of food and sleep and subject them to repeated coercive interrogations.³⁸ By May 2001, Dr. Mitchell had retired from the Air Force’s SERE program.³⁹ Later, he opened a private consulting company called KnowledgeWorks, L.L.C.⁴⁰

But after the September 11 attacks, Dr. Mitchell saw an opportunity to sell his independent consulting services to the CIA.⁴¹ The CIA hired him to review a document known as the “Manchester Manual,” which described resistance training given to some members of al Qaeda.⁴² Dr. Mitchell contacted his former colleague, Dr. John (Bruce) Jessen, for assistance.⁴³ Though they had no expertise or familiarity with al-Qaeda, Mitchell and Jessen wrote a paper titled “Recognizing and Developing Countermeasures to Al-Qa’ida Resistance to Interrogation Techniques: A Resistance Training Perspective.”⁴⁴ But Mitchell did not content himself with

³⁶ *Id.* at 2-7. See also Jane Mayer, *The Experiment*, *New Yorker*, July 11 & 18, 2005, at 63-71; M. Gregg Bloche and Jonathan H. Marks, *Doing Unto Others as They Did Unto Us*, *N.Y. TIMES*, Nov. 14, 2005, A21.

³⁷ See generally Mayer, *supra* note 36, at 63-71; Senate Armed Services Committee Report, *supra* note 12, at xiii.

³⁸ Senate Armed Services Committee Report, *supra* note 12 **Error! Bookmark not defined.**, at xiii-xiv.

³⁹ *Id.* at 17.

⁴⁰ Eban, *supra* note 8.

⁴¹ Dr. Mitchell’s CIA contract ultimately yielded payments of \$1,000 to \$2,000 a day plus expenses, tax free. Cole, *supra* note 8. See also Eban, *supra* note 8 (“According to people familiar with their compensation, they get paid more than \$1,000 per day plus expenses, tax free, for their overseas work.”); Shane, *supra* note 6.

⁴² Shane, *supra* note 6. A translated copy of the “Manchester Manual” is available on U.S. Department of Justice website at http://www.justice.gov/ag/manualpart1_1.pdf.

⁴³ Senate Armed Services Report, *supra* note 12, at 7.

⁴⁴ *Id.*; CIA IG Memo, *supra* note 1, at 13.

claiming a false expertise in al-Qaeda's resistance training. Though he had no qualifications as an interrogator, Mitchell (with Jessen) also marketed himself to the CIA as an expert in conducting counter-terrorism interrogations of alleged Islamic fundamentalists.⁴⁵ On their own initiative, they "developed a list of new and more aggressive EITs [enhanced interrogation techniques] that they recommended for use in interrogations."⁴⁶ They "reverse-engineered" SERE by recommending that techniques previously applied only in mock, controlled settings now be used in real-world interrogations. Among others, the EITS included the facial hold, facial slap, cramped confinement, confinement with insects, wall standing, stress positions, sleep deprivation, waterboarding,⁴⁷ and sexual humiliation.⁴⁸

Air Force Colonel Steve Kleinman, a former colleague at SERE who was also a career military interrogator with training in intelligence, stated that when Dr. Mitchell and Dr. Jessen became involved in CIA interrogations, "that was their first step into the world of intelligence. . . . Everything else was role-play."⁴⁹ "What [Dr. Mitchell and Dr. Jessen] failed to understand was *they were stepping out of their area of expertise*," yet they nonetheless promoted themselves as offensive interrogation experts despite the "disconnect between the SERE model, a resistance model, and an actual interrogation for intelligence purposes."⁵⁰

By actively misrepresenting his professional qualifications, Mitchell violated the

⁴⁵ Shane, *supra* note 6.

⁴⁶ CIA IG Memo, *supra* note 1, at 13.

⁴⁷ CIA IG Memo, *supra* note 1, at 13.

⁴⁸ MAYER, *supra* note 36, at 168.

⁴⁹ Cole, *supra* note 8.

⁵⁰ *Id.* (emphasis added).

Psychologists' Licensing Act, which prohibits a Texas-licensed psychologist from "engag[ing] in fraud or deceit in connection with services provided as a psychologist."⁵¹ Moreover, the Texas State Board of Examiners of Psychologists' Rules of Practice state: "Licensees provide only services for which they have the education, skills, and training to perform competently."⁵² Dr. Mitchell violated the Board's Rules of Practice governing competency when he went beyond his limited background to develop and implement interrogation techniques. Moreover, in extending his independent contract with the CIA, Dr. Mitchell lacked professional objectivity by placing his own career and financial aspirations above the safety of others.⁵³

In recommending a new and untested interrogation program of his own design to the CIA, Dr. Mitchell also violated the Board's Rule of Practice requiring licensees to rely on scientifically and professionally derived knowledge when making professional judgments.⁵⁴ Moreover, he failed to take reasonable steps to ensure the safety of others involved in this emerging field of psychology and interrogation.⁵⁵ To understand the extent to which Dr. Mitchell violated these Rules, it is essential to understand the stark differences between SERE resistance training and the real-world interrogation regime that Dr. Mitchell developed and

⁵¹ 3 TEX. OCC. CODE ANN. § 501.401(4) (2009) ("The board shall revoke or suspend a holder's license, place on probation a person whose license has been suspended, or reprimand a license holder who . . . engages in fraud or deceit in connection with services provided as a psychologist.").

⁵² 22 TEX. ADMIN. CODE § 465.9(a) (2009).

⁵³ Dr. Mitchell's lack of objectivity violated 22 TEX. ADMIN. CODE § 465.13(a)(1) (2009) ("Licensees refrain from providing services when they know or should know that their . . . lack of objectivity have the potential to impair their competency or harm a patient, client, colleague, student, supervisee, research participant, or other person with whom they have a professional relationship.").

⁵⁴ 22 TEX. ADMIN. CODE § 465.10 (2009).

⁵⁵ See 22 TEX. ADMIN. CODE § 465.9(e) (2009) ("In emerging areas in which generally recognized standards for preparatory training do not exist, licensees take reasonable steps to ensure the competence of their work and to protect patients, clients, research participants, and other affected individuals from the potential for harm.").

implemented as a CIA contractor.

In testifying before the Senate Committee on Armed Services, Colonel Steve Kleinman summarized several of the key differences between SERE mock interrogation techniques and real-world interrogations:

To the non-intelligence officer, the transfer of SERE methods from the training environment to real-world operations seemed a logical option. Several critical factors, however, were overlooked. First, many of the methods used in SERE training are based on what was once known as the Communist Interrogation Model, a system designed to physically and psychologically debilitate a detainee as a means of gaining compliance. Second, that model's primary objective was to compel a prisoner to generate propaganda not intelligence. Third, it was expressly designed to mirror a program that employed methods of interrogation considered by the West to be violations of the Geneva Conventions.

The problems with employing SERE techniques in the interrogation of detainees do not stop there. I want to emphasize that survival instructors are some of the most dedicated professionals in Armed Forces. Their tireless work supports a noble mission: to prepare others to return with honor. I would be remiss, though, if I did not make one point abundantly clear: survival instructors are *not* interrogators. While interrogation and teaching resistance to interrogation have much in common, they are nonetheless profoundly different activities.

- Survival instructors operate in a domestic training environment and share both a language and culture with the students they teach. In contrast, interrogators are involved in worldwide operations and interact with foreign nationals across an often substantial cultural and linguistic divide.
- If questions arise about the student's veracity during role-play, a survival instructor need only call the student's unit of assignment to verify the information. Clearly, this is not an option for an interrogator for whom detecting deception is a critical skill.
- While interrogation role-play is limited in duration, frequency, and scope, interrogations of custodial detainees may last hours and continue over a span of months.
- The survival instructor's focus is not on information but the performance of the student while the interrogator must doggedly pursue—and record—every detail of intelligence information a detainee possesses.⁵⁶

⁵⁶ Testimony of Colonel Steven M. Kleinman, Hearings before the Committee on Armed on Armed Services, United States Senate, *The Treatment of Detainees in U.S. Custody*, Sept. 17, 2008 (hereinafter Kleinman Testimony).

There are other differences between SERE and real-world interrogations. As the Senate Armed Services Committee observed, “SERE instructors are not selected for their roles based on language skills, intelligence training, or expertise in eliciting information.”⁵⁷ The Committee’s Report continues:

Typically, those who play the part of interrogators in SERE school neither are trained interrogators nor are they qualified to be. These role players are not trained to obtain reliable intelligence information from detainees. Their job is to train our personnel to resist providing reliable information to our enemies. As the Deputy Commander for the Joint Forces Command (JFCOM), JPRA’s higher headquarters, put it: “the expertise of JPRA lies in training personnel how to respond and resist interrogations — not in how to conduct interrogations.”⁵⁸

Furthermore, SERE school instructors receive extensive psychological testing prior to being hired, and they must undergo a year-long training process, annual psychological screening, and extensive monitoring and oversight during practical exercises in order to “prevent instructor behavioral drift, which if left unmonitored, could lead to abuse of students.”⁵⁹ At SERE schools,

[i]nstructors are constantly monitored by other JPRA personnel, command staff, and SERE psychologists to minimize the potential for students to be injured. These oversight mechanisms are designed to ensure that SERE instructors are complying with operating instructions and to check for signs that instructors do not suffer from moral disengagement (e.g., by becoming too absorbed in their roles as interrogators and starting to view U.S. military SERE students as prisoners or detainees). These oversight mechanisms are also designed to watch students for “indications that they are not coping well with training tasks, provide corrective interventions with them before they become overwhelmed, and if need be, re-motivate students who have become overwhelmed to enable them to

⁵⁷ Senate Armed Services Committee Report, *surpa* note 12 at 5, 5 n.26 (explaining that a “trained interrogator is expected to be familiar with the social, political and economic institutions and have an understanding of the geography, history and language of ‘target’ countries” and that “the more proficient an interrogator is with languages the ‘better he will be able to develop rapport with his source’ and ‘follow up on source leads to additional information’”) (citing Army Field Manual (FM) 34-52, 1-14.5).

⁵⁸ Senate Armed Services Committee Report, *surpa* note 12 at xiii.

⁵⁹ *Id.* at 5.

succeed.”⁶⁰

In contrast to the year-long training that SERE school instructors receive, the CIA initiated a two-week “Interrogator Training Course” in November 2002 designed to “train, qualify, and certify individuals as Agency interrogators.”⁶¹ This program included one week of classroom instruction and one week of “hands on” training.⁶²

Another crucial difference between SERE and real-world interrogation is the level of controls employed to reduce the risk of physical and psychological harm to students during training, but absent from real-world interrogation settings. The Senate Armed Services Report states,

SERE school techniques are designed to simulate abusive tactics used by our enemies. There are fundamental differences between a SERE school exercise and a real world interrogation. At SERE school, students are subject to an extensive medical and psychological pre-screening prior to being subjected to physical and psychological pressures. The schools impose strict limits on the frequency, duration, and/or intensity of certain techniques. Psychologists are present throughout SERE training to intervene should the need arise and to help students cope with associated stress. And SERE school is voluntary; students are even given a special phrase they can use to immediately stop the techniques from being used against them.⁶³

The SERE schools, including the Air Force SERE school where Dr. Mitchell worked, employ strict controls to reduce the risk of physical and psychological harm to students during training.⁶⁴

These controls are absent from real world interrogations.

⁶⁰ *Id.* at 5 n.24 (citing Responses of Jerald Ogrisseg to Questions for the Record (July 28, 2008); Committee staff interview of Jerald Ogrisseg (June 26, 2007)).

⁶¹ CIA Inspector General Report, *supra* note 1, at 31.

⁶² *Id.*

⁶³ Senate Armed Services Committee Report, *supra* note 12 at xix.

⁶⁴ *Id.* at xiii.

Moreover, the use of physical pressures differs between SERE school training and real world interrogations regarding the use of physical pressures:

Because of the danger involved, very few SERE instructors are allowed to actually use physical pressures. It is extremely easy for U.S. Army instructors, training U. S. Army soldiers, to get out of hand, and to injure students. The training, from the point of the student, appears to be chaotic and out of control. In reality, everything that is occurring [in SERE school] is very carefully monitored and paced; no one is acting on their own during training. Even with all these safeguards, injuries and accidents do happen. The risk with real detainees is increased exponentially.⁶⁵

As Dr. Mitchell himself acknowledged, “the Agency’s use of the technique differed from that used in SERE training” because “the Agency’s technique . . . is ‘for real’ and is more poignant and convincing.”⁶⁶ For example, the Inspector General’s report explains that the waterboarding method used in CIA black sites was more brutal than the method used in SERE schools and described in the Office of Legal Counsel memorandum because the black site method used greater volumes of water and more obstructed breathing.⁶⁷ “At the SERE school and in the DoJ opinion, the subject’s airflow is disrupted by the firm application of a damp cloth over the air passage. By contrast, the Agency’s interrogator . . . continuously applied large volumes of water to a cloth that covered the detainee’s mouth and nose.”⁶⁸ Moreover, whereas at the SERE school “trainees usually have only a single exposure to this [waterboard] technique, and never more than two,”⁶⁹ individuals interrogated in the real world post 9/11 were waterboarded dozens, and

⁶⁵ *Id.* at 5–6, 6 n.27 (citing Email from LTC Morgan Banks to MAJ Paul Burney and [redacted] (October 2, 2002)).

⁶⁶ CIA Inspector General Report, *supra* note 1, at 37.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*, Appendix F at 8.

sometimes hundreds, of times.⁷⁰ Dr. Mitchell intentionally ignored these critical differences of both environment and methodology in promoting his reverse-engineered SERE program to the CIA, as well as when personally applying the harsher waterboard techniques to detainees.⁷¹ Even with the differences between the programs ignored, the U.S. Air Force and U.S. Army abandoned the waterboarding program at its SERE school because of its dramatic and dangerous effect on the students to whom it was applied.⁷² In sum, the SERE training environment simply cannot be analogized to the real-world interrogation setting.⁷³

Dr. Mitchell neither consulted nor involved the CIA's Office of Medical Services (the "OMS") prior to selling the program to the CIA.⁷⁴ The OMS, in a subsequent review of the CIA's adoption of Dr. Mitchell's interrogation program, concluded that Dr. Mitchell did not have the expertise to develop an interrogation plan and that he misrepresented the medical safety of the program to the CIA and the Department of Justice.⁷⁵ Further, OMS concluded that there was no proof, nor was there any reason to believe, that the EITs proposed by Dr. Mitchell would

⁷⁰ *Id.* at 29.

⁷¹ CIA Inspector General Report, *supra* note 1, at 22 n.26.

⁷² *Id.* at 13.

⁷³ In 2008, Dr. Jerald Ogrisseg, JPRA's SERE Research Psychologist and a former Air Force SERE school psychologist, identified a total of eight significant differences between students enrolled in a SERE course undergoing a mock interrogation and a real-world interrogation setting. *Treatment of Detainees in U.S. Custody: Hearing Before the Comm. on Armed Svcs.*, 110th Cong. 70 (2008) (statement of Jerald F. Ogrisseg, Former Chief, Psychology Services, 336th Training Group, U.S.A.F. Survival School). In his professional opinion, the eight differences prevented mapping conclusions based on SERE student participation onto detainees. *Id.* The eight differences are: 1. Previous level of functioning and demographic factors; 2. Purpose of the experience; 3. Risk management oversight functions; 4. Propensity for moral disengagement; 5. Psychological and operational debriefings; 6. "Voluntary" nature of training; 7. Limited duration of the experience; 8. Adjustment to the experience and follow-on support. *Id.*

⁷⁴ CIA Inspector General Report, *supra* note 1, at 21–22, 22 n. 26.

⁷⁵ *Id.*

produce any sort of valuable intelligence from detainees as a form of interrogation.⁷⁶ There simply was no scientific support for Dr. Mitchell’s recommendations. At no time prior to implementing these programs did Dr. Mitchell conduct experiments, publish research about offensive interrogation techniques, or subject his theories to peer-review in a publicly-available forum. At no time did Mitchell establish that his techniques were safe and—if safe—whether they were effective in eliciting truth. One investigative report explained, “In truth, many did not consider Mitchell and Jessen to be scientists. They possessed no data about the impact of [SERE] training on the human psyche, say former associates. Nor were they ‘operational psychologists,’ like the profilers who work for law enforcement. . . . But they *wanted* to be, according to several former colleagues.”⁷⁷ Dr. Mitchell’s failure to verify his interrogation regime using scientifically sound, empirical methods therefore constitutes direct violations of the Board’s Rule of Practice requiring licensees to rely on scientifically and professionally derived knowledge when making professional judgments⁷⁸ and the Rule requiring licensees to take reasonable steps to ensure the safety of others involved in emerging fields of study.⁷⁹

Dr. Mitchell tortured prisoners in U.S. custody. The first was Abu Zubaydah, whose torture is worth recounting in detail. Abu Zubaydah, a Palestinian national, was the first detainee captured after 9/11 who was believed to be a high-ranking member of Al Qaeda.⁸⁰ Abu

⁷⁶ *Id.*

⁷⁷ Eban, *supra* note 8.

⁷⁸ 22 TEX. ADMIN. CODE § 465.10 (2009).

⁷⁹ See 22 TEX. ADMIN. CODE § 465.9(e) (2009) (“In emerging areas in which generally recognized standards for preparatory training do not exist, licensees take reasonable steps to ensure the competence of their work and to protect patients, clients, research participants, and other affected individuals from the potential for harm.”).

⁸⁰ CIA Inspector General Report at 2-3.

Zubaydah was also the first person to be subjected to the new regime of abusive interrogation that Mitchell (with Jessen) designed and implemented. The CIA Inspector General Report states that Abu Zubaydah's capture "accelerated the CIA's development of an interrogation program."⁸¹ According to former CIA Director George Tenet, once Abu Zubaydah was in custody, the CIA "got into holding and interrogating high-value detainees . . . in a serious way."⁸² The CIA's lack of experience in interrogation may have made the agency susceptible to Dr. Mitchell's claims about the efficacy of the methods.⁸³ Whatever the explanation, Abu Zubaydah's interrogation was used as an opportunity to test a set of experimental techniques, devised by Dr. Mitchell, that the United States had never before approved for use on its captives.

On March 28, 2002, Abu Zubaydah was captured at a home in Pakistan by combined Pakistani and CIA forces.⁸⁴ He was subsequently detained in secret CIA black sites located around the world, reportedly including facilities in Thailand, Afghanistan, Poland, and elsewhere.⁸⁵ In September 2006, Zubaydah was transferred to the Guantánamo Bay prison, where he remains in U.S. custody. 13. Abu Zubaydah was once described as Al Qaeda's "chief of operations" and a "trusted associate" of Osama bin Laden. The United States, however, now accepts that these accusations are untrue. The United States Government no longer alleges that

⁸¹ CIA Inspector General Report at 12.

⁸² Senate Armed Services Committee Report at 16.

⁸³ This interpretation is suggested by the congressional testimony of Ali Soufan, an FBI interrogator who initially questioned Abu Zubaydah: "[T]he CIA specializes in collecting, analyzing, and interpreting intelligence. The FBI, on the other hand, has a trained investigative branch. Until that point, we were complementing each other's expertise, until the imposition of the 'enhanced methods.' As a result people ended up doing what they were not trained to do." Statement of Ali Soufan, Committee on the Judiciary, United States Senate, May 13, 2009, available at http://judiciary.senate.gov/hearings/testimony.cfm?id=3842&wit_id=7906.

⁸⁴ Senate Armed Services Committee Report at 16.

⁸⁵ Red Cross Report at 5; Council of Europe, "Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report" (June 11, 2007).

Abu Zubaydah was a member of al Qaeda. The United States no longer alleges that Abu Zubaydah was an associate of bin Laden or a deputy in his organization. The United States no longer alleges that Zubaydah had any involvement in the attacks of 9/11, or that he had any advance knowledge that the attacks would take place. The United States no longer alleges that Zubaydah had any involvement in any al Qaeda attacks on the United States or its interests, at home or abroad, and no longer alleges that Zubaydah knew about any other attacks that may have been planned by al Qaeda at the time of his arrest March 28, 2002. Indeed, according to published reports, “within weeks of his capture, U.S. officials had gained evidence that made clear they had misjudged Abu Zubaida.”⁸⁶ Despite the Government’s former claims about Abu Zubaydah, he has never been charged with a crime, either in a military commission or a civilian court.⁸⁷

⁸⁶ See, e.g., Jason Leopold, “US Recants Claims on ‘High-Value’ Detainee Abu Zubaydah,” March 30, 2010, available at [http://www.truth-out.org/government-quietly-recants-bush-era-claims-about-%22high-value%22-detainee-zubaydah58151?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%253A+TRUTHOUT+\(t+r+u+t+h+o+u+t+%257C+News+Politics\)](http://www.truth-out.org/government-quietly-recants-bush-era-claims-about-%22high-value%22-detainee-zubaydah58151?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%253A+TRUTHOUT+(t+r+u+t+h+o+u+t+%257C+News+Politics)) (“The Justice Department has quietly recanted nearly every major claim the Bush administration made about Abu Zubaydah...”). According to a *Washington Post* report, “within weeks of his capture, U.S. officials had gained evidence that made clear they had misjudged Abu Zubaida.” Although he had been described as “al-Qaeda’s chief of operations” and a “trusted associate” of Osama bin Laden, “[n]one of that was accurate, the new evidence showed.” Rather, “Abu Zubaida was not even an official member of al-Qaeda, according to a portrait of the man that emerges from court documents and interviews with current and former intelligence, law enforcement and military sources.” Peter Finn & Joby Warrick, *Detainee’s Harsh Treatment Foiled No Plots*, WASHINGTON POST, March 29, 2009. Officials have stated that Abu Zubaydah was not linked to the planning of the September 11, 2001 attacks. Christopher Dickey, *SECURING THE CITY* (Simon & Schuster 2009) (citing a profile of Abu Zubaydah created by the Director of National Intelligence). The camp with which Abu Zubaydah was allegedly affiliated, Khalden, was initially painted as an Al Qaeda training facility, but the United States has withdrawn this characterization. See, e.g., 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States. July 22, 2006 <http://www.gpoaccess.gov/911/pdf/fullreport.pdf>; Khalid Sulaymanjaydh Al Hubayshi Unclassified Verbatim Combatant Status Review Tribunal Transcript, Pgs. 65-73 Department of Defense http://www.dod.mil/pubs/foi/detainees/csrt_arb/Set_1_0001-0097.pdf. Other officials have come out to say that the government’s depiction of Abu Zubaydah was overly inflated and that “[t]o make him the mastermind of anything is ridiculous.” Peter Finn & Joby Warrick, *Detainee’s Harsh Treatment Foiled No Plots*. One former intelligence official said of efforts to follow up on the many purported leads from Abu Zubaydah, “We spent millions of dollars chasing false alarms.” *Id.*

⁸⁷ Peter Finn & Joby Warrick, *Detainee’s Harsh Treatment Foiled No Plots*. Meanwhile, the government has removed his name completely from the charge sheets of multiple detainees with whom he was formerly implicated,

During the raid that led to his capture, Abu Zubaydah was shot in the groin, thigh, and stomach and suffered “severe wounds.”⁸⁸ A medical team determined that he would die if not treated in a hospital.⁸⁹ Abu Zubaydah was taken to a hospital, first in Pakistan and then at a black site in Thailand, where he spent several weeks being treated and where his initial questioning began.⁹⁰ Zubaydah was initially interrogated using “non-aggressive, non-physical” techniques.⁹¹ FBI agents questioned him and reportedly used traditional methods based on the Army Field Manual. According to one of the FBI interrogators who conducted these sessions, Zubaydah was cooperative.⁹²

Soon, however, a CIA Counterterrorism Team arrived at the black site and assumed control over the interrogation.⁹³ The CIA team included an outside contractor “who was instructing them on how they should conduct the interrogations.”⁹⁴ This contractor was Dr.

and he has seen countless people who were supposedly close associates of his be released from Guantanamo Bay. *Id.*

⁸⁸ See, e.g., CIA Inspector General Report at 17; Bybee memorandum at 2 (“You have informed us that Zubaydah suffered a wound during his capture, which is being treated.”); Dan Eggen & Walter Pincus, FBI, *CIA Debate Significance of Terror Suspect*, WASH. POST (Dec. 18, 2007) (“Abu Zubaida was shot three times” during arrest), available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/12/17/AR2007121702151.html>; Brian Ross, *CIA- Abu Zubaydah: Interview with John Kiriakou: Transcript*, ABC NEWS, Dec. 10, 2007, http://abcnews.go.com/images/Blotter/brianross_kiriakou_transcript1_blotter071210.pdf; J.J. Green, *Former CIA Officer: Waterboarding is Wrong, but it Worked*, WTOPnews.com, Mar. 20, 2008, available at <http://www.wtop.com/?sid=1368866&nid=251>; see also A Review of the FBI’s Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan and Iraq, Department of Justice Inspector General’s Report, May 2008, at 67 (hereinafter “DoJ Inspector General Report”) (“There was a gunfight during the arrest operation and Zubaydah was severely wounded.”).

⁸⁹ Soufan Testimony.

⁹⁰ DoJ Inspector General Report at 68; Red Cross Report at 14, 28; Soufan Testimony.

⁹¹ CIA Inspector General Report at 12.

⁹² DoJ Inspector General Report at 68; Soufan testimony.

⁹³ DoJ Inspector General Report at 68.

⁹⁴ Testimony of Ali Soufan before the United States Senate Committee on the Judiciary (hereafter Soufan testimony), May 13, 2009, available at http://judiciary.senate.gov/hearings/testimony.cfm?id=3842&wit_id=7906.

Mitchell.⁹⁵ Deeming the FBI methods to be insufficient, Dr. Mitchell said they “needed to diminish [Abu Zubaydah’s] capacity to resist.”⁹⁶ “Immediately, on the instructions of the contractor, harsh techniques were introduced, starting with nudity.”⁹⁷ As time progressed, Mitchell moved “further along the force continuum, introducing loud noise and then temperature manipulation.”⁹⁸

Abu Zubaydah was subsequently kept naked for between one and a half to two months and his clothes were provided or removed according to how cooperative his interrogators perceived him to be.⁹⁹ He was also systematically deprived of sleep for a period of two to three weeks by the combined use of painful shackling, loud music, cold temperatures, and being doused with water. The cell was kept very cold by the use of air-conditioning and very loud “shouting” music was constantly playing on an approximately fifteen minute repeat loop twenty-four hours a day. Sometimes the music stopped and was replaced by a loud hissing or crackling noise.¹⁰⁰ As part of the regime of total control designed to strip detainees of their autonomy, Abu Zubaydah was denied solid foods. He was fed only high-calorie liquids which provided him with minimal sustenance and left him constantly hungry.¹⁰¹

⁹⁵ Senate Armed Services Committee Report at 17; Eban, *Rorschach and Awe*; Mayer, *The Experiment*.

⁹⁶ DoJ Inspector General Report at 67.

⁹⁷ Soufan testimony.

⁹⁸ *Id.* Another FBI agent who also took part in Abu Zubaydah’s early interrogation reported that during this period, “the CIA shaved Zubaydah’s head, sometimes deprived Zubaydah of clothing, and kept the temperature in his cell cold.” DoJ Inspector General Report at 68.

⁹⁹ Red Cross Report at 14.

¹⁰⁰ Red Cross Report at 15.

¹⁰¹ *Id.*, at 18.

According to one of the FBI agents who observed the CIA's harsh methods with dismay, Mitchell "insisted on stepping up the notches of his experiment," and devised the idea of placing Abu Zubaydah in confinement boxes.¹⁰² One box was too narrow to allow him to sit down; the other was so short that instead of standing he reportedly "had to double up his limbs in a fetal position."¹⁰³ The coffin-like boxes were black, both inside and out, and covered with towels, possibly in an effort to constrict the flow of air inside.¹⁰⁴ While the CIA was inflicting escalating levels of abuse on Abu Zubaydah, he was still recovering from his gunshot wounds.¹⁰⁵ In fact, the interrogators were so worried that Abu Zubaydah might die that they videotaped his interrogations in an attempt to protect themselves from potential liability.¹⁰⁶ The CIA later destroyed these videotapes.¹⁰⁷

As part of his mistreatment, Zubaydah was slammed directly into hard concrete walls (only later covered by a plywood sheet), with a thick collar placed around his neck that was presumably intended to protect him from additional life-threatening injury.¹⁰⁸ He was also

¹⁰² Soufan Testimony; Red Cross Report, at 14; *see also* Jane Mayer, *The Black Sites: A rare look inside C.I.A.'s secret interrogation program*, THE NEW YORKER, Aug. 13, 2007, at http://www.newyorker.com/reporting/2007/08/13/070813fa_fact_mayer.

¹⁰³ Jane Mayer, *THE DARK SIDE*, at 165 (Doubleday 2008).

¹⁰⁴ *Id.* The CIA's use of this method on Abu Zubaydah is confirmed by the Agency's Inspector General Report and by a Justice Department memorandum, which describes the technique this way: "Cramped confinement involves the placement of the individual in a confined space, the dimensions of which restrict the individual's movement. The confined space is usually dark." CIA Inspector General Report at 13.

¹⁰⁵ At the time the CIA requested authorization to use abusive techniques on Abu Zubaydah, his wounds were still being treated. *See* Bybee memorandum at 2, 3.

¹⁰⁶ CIA Inspector General Report at 36.

¹⁰⁷ *Id.*, at 36-37.

¹⁰⁸ Red Cross report at 12; *see also* Scott Shane, *Book Cites Secret Red Cross Report of C.I.A. Torture of Qaeda Captives*, N.Y. TIMES, July 11, 2008. <http://www.nytimes.com/2008/07/11/washington/11detain.html>; *see also* Scott Horton, *Six Questions for Jane Mayer, Author of The Dark Side*, HARPER'S MAGAZINE, Jul. 14, 2008, available at <http://harpers.org/archive/2008/07/hbc-90003234> (noting, "This account – which [Abu Zubaydah] gave to the International Committee of the Red Cross (ICRC) – was confirmed to me independently by a former CIA officer

forced to stand with his wrists shackled to a bar or hook in the ceiling above his head, and with his feet shackled to an eye bolt in the floor, for more than 40 hours.¹⁰⁹ This is widely regarded as one of the most painful physical torture techniques.¹¹⁰ As described by the Red Cross, prisoners subjected to this method are made to stand naked, held with the arms extended and chained above the head . . . for periods from two or three days continuously, and for up to two or three months intermittently, during which period toilet access was sometimes denied resulting in allegations from four detainees that they had to defecate and urinate over themselves.¹¹¹

The infliction of this stress position contributed to the death of one detainee in the internment facility at Bagram Air Base.¹¹² For Abu Zubaydah, this stress-position technique was often combined with the “cold cell” technique, so that he was left to stand naked and repeatedly doused with cold water in a cell kept near 50 degrees Fahrenheit.¹¹³

familiar with his interrogation.”); Jane Mayer, *THE DARK SIDE*, at 169 (Doubleday 2008) (“Zubayda described being thrust headfirst against a bare concrete wall. In the beginning, he said, he was propelled by just a towel that was wrapped around his neck . . . Later, however, the interrogators apparently became more technically proficient. Zubayda reported that they used something akin to a dog collar, a thick plastic strip that encircled the prisoners’ necks.”).

¹⁰⁹ Red Cross Report at 8, 11; *As New Evidence Emerges that ‘War on Terror’ Prisoners were Held on Diego Garcia, Reprieve Demands Immediate Action from the British Government*, Reprieve, July 31, 2008. http://www.reprieve.org.uk/documents/2008_08_01DiegoGarciascandal-ReprievedemandsimmediateactionfromUKgovernment.pdf. ; Red Cross Report at 15.

¹¹⁰ Jane Mayer, *THE DARK SIDE*, at 168 (Doubleday 2008).

¹¹¹ Red Cross Report at 8.

¹¹² See description of Dilawar’s death in Senate Armed Services Committee Report at 151-52, citing U.S. Army Criminal Investigation Command Bagram Branch Office Memorandum, *CID Report of Investigation - FINAL - 0134-02-CID36923533* (October 8, 2004).

¹¹³ *As New Evidence Emerges that ‘War on Terror’ Prisoners were Held on Diego Garcia, Reprieve Demands Immediate Action from the British Government*, Reprieve, July 31, 2008. http://www.reprieve.org.uk/documents/2008_08_01DiegoGarciascandal-ReprievedemandsimmediateactionfromUKgovernment.pdf. See also David Johnston, *At a Secret Interrogation, Dispute Flared Over Tactics*, *THE NEW YORK TIMES*, Sept. 10, 2006. <http://www.nytimes.com/2006/09/10/washington/10detain.html?pagewanted=1>.

Mitchell and Jessen also worked to identify Abu Zubaydah's phobias. After discovering an especially vehement phobia that Abu Zubaydah suffered from, the psychologists devised a scheme to terrorize Abu Zubaydah with this fear: "You would like to place Zubaydah in a cramped confinement box with an insect. You have informed us that he appears to have a fear of insects. In particular, you would like to tell Zubaydah that you intend to place a stinging insect into the box with him."¹¹⁴ As many reporters have noted, this technique is reminiscent of an incident in George Orwell's novel *Nineteen Eighty-Four*, in which the fictional government terrorizes the protagonist by exploiting his intense fear of rats.¹¹⁵

Finally, Zubaydah was waterboarded at least 83 times in August 2002, usually twice per session and sometimes three times in a single session.¹¹⁶ The Red Cross report contains Abu Zubaydah's own description of his waterboarding. His account describes how waterboarding was used, to devastating effect, in combination with the other abusive techniques described above:

During these torture sessions many guards were present, plus two interrogators who did the actual beating, still asking questions, while the main interrogator left to return after the beating was over. After the beating I was then placed in the small box. They placed a cloth or cover over the box to cut out all light and restrict my air supply. As it was not high enough even to sit upright, I had to crouch down. It was very difficult because of my wounds. The stress on my legs held in this position meant my wounds both in the leg and stomach became very

¹¹⁴ Bybee memorandum at 3.

¹¹⁵ "'The worst thing in the world', said O'Brien, 'varies from individual to individual. It may be burial alive, or death by fire, or by drowning, or by impalement, or fifty other deaths. There are cases where it is some quite trivial thing, not even fatal.' ...

'By itself', he said, 'pain is not always enough. There are occasions when a human being will stand out against pain, even to the point of death. But for everyone there is something unendurable – something that cannot be contemplated. Courage and cowardice are not involved. If you are falling from a height it is not cowardly to clutch at a rope. If you have come up from deep water it is not cowardly to fill your lungs with air. It is merely an instinct which cannot be destroyed. It is the same with the rats. For you, they are unendurable. They are a form of pressure that you cannot withstand, even if you wished to. You will do what is required of you.'" GEORGE ORWELL, *NINETEEN EIGHTY-FOUR* 283-84 (1949).

¹¹⁶ CIA Inspector General Report at 36; Red Cross Report at 10.

painful. I think this occurred about 3 months after my last operation. It was always cold in the room, but when the cover was placed over the box it made it hot and sweaty inside. The wound on my leg began to open and started to bleed. I don't know how long I remained in the small box, I think I may have slept or maybe fainted.

I was then dragged from the small box, unable to walk properly and put on what looked like a hospital bed, and strapped down very tightly with belts. A black cloth was then placed over my face and the interrogators used a mineral water bottle to pour water on the cloth so that I could not breathe. After a few minutes the cloth was removed and the bed was rotated into an upright position. The pressure of the straps on my wounds was very painful. I vomited. The bed was then again lowered to a horizontal position and the same torture carried out again with the black cloth over my face and water poured on from a bottle. On this occasion my head was in a more backward, downwards position and the water was poured on for a longer time. I struggled against the straps, trying to breathe, but it was hopeless. I thought I was going to die. . . .

I was then placed again in the tall box. While I was inside the box loud music was played again and somebody kept banging repeatedly on the box from the outside. I tried to sit down on the floor, but because of the small space the bucket with urine tipped over and spilt over me. I remained in the box for several hours, maybe overnight. I was then taken out and again a towel was wrapped around my neck and I was smashed into the wall with the plywood covering and repeatedly slapped in the face by the same two interrogators as before.

...

This went on for approximately one week. During this time the whole procedure was repeated five times. On each occasion, apart from one, I was suffocated once or twice and was put in the vertical position on the bed in between. On one occasion the suffocation was repeated three times. I vomited each time I was put in the vertical position between the suffocation.

During that week I was not given any solid food . . . My head and beard were shaved everyday.

I collapsed and lost consciousness on several occasions. Eventually the torture was stopped by the intervention of the doctor.

I was told during this period that I was one of the first to receive these interrogation techniques, so no rules applied. It felt like they were experimenting and trying out techniques to be used later on other people.¹¹⁷

Not surprisingly, the effects of the interrogation program are deep and long-lasting. Abu Zubaydah reports, "Since then I still lose control of my urine when under stress."¹¹⁸

¹¹⁷ Red Cross Report at 30.

The Red Cross has concluded that many of the techniques inflicted upon Abu Zubaydah – whether used singly or in combination – constitute torture. Others constitute cruel, inhuman, or degrading treatment.¹¹⁹ The Red Cross has also stated: “The alleged participation of health personnel in the interrogation process and, either directly or indirectly, in the infliction of ill-treatment constituted a gross breach of medical ethics and, in some cases, amounted to participation in torture and/or cruel, inhuman or degrading treatment.”¹²⁰

Regardless of what legal categories these techniques fall within, one conclusion is clear: a psychologist who helps inflict such cruel and shocking abuse on a defenseless human being would appear to have violated basic standards of conduct of the profession. Dr. Mitchell not only enabled and participated in Abu Zubaydah’s torment, he also personally designed the abusive and degrading techniques to which Zubaydah was subjected.

In 2008, the American Psychological Association dropped its certification of Dr. Mitchell’s company, KnowledgeWorks.¹²¹ The Ethics Committee of the American Psychological Association (APA) on February 22, 2008 issued an Amendment to their Resolution “Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and Its Application to Individuals Defined in the United States Code as “Enemy Combatants.”¹²² In this statement, the APA stated that “[p]sychologists are absolutely prohibited from knowingly planning, designing, participating in or assisting in the use of all condemned techniques at any time and may not enlist others to employ these techniques in order to circumvent this resolution’s

¹¹⁸ *Id.*

¹¹⁹ Red Cross Report at 24, 26.

¹²⁰ *Id.*, at 27.

¹²¹ Eban, *supra* note 8.

¹²² Resolution by American Psychology Association, *supra* note 15.

prohibition”¹²³ and set forth the following description of specific actions that constitute torture:

[M]ock executions; water-boarding or any other form of simulated drowning or suffocation; sexual humiliation; rape; cultural or religious humiliation; exploitation of fears, phobias or psychopathology; induced hypothermia; the use of psychotropic drugs or mind-altering substances; hooding; forced nakedness; stress positions; the use of dogs to threaten or intimidate; physical assault including slapping or shaking; exposure to extreme heat or cold; threats of harm or death; isolation; sensory deprivation and over-stimulation; sleep deprivation; or the threatened use of any of the above techniques to an individual or to members of an individual's family.¹²⁴

Dr. Mitchell is not an APA member.¹²⁵

Discussing Dr. Mitchell and Dr. Jessen, Colonel Kleinman, an Air Force Reserve Colonel and expert in human-intelligence operations, found it astonishing that the CIA “chose two clinical psychologists who had no intelligence background whatsoever, who had never conducted an interrogation, . . . to do something that had never been proven in the real world.”¹²⁶ Michael Rolince, former section chief of the FBI’s International Terrorism Operations, described the methods employed by Dr. Mitchell and Dr. Jessen as “voodoo science.”¹²⁷ Speaking of Dr. Mitchell and Dr. Jessen, Steve Kleinman has stated, “I think they have caused more harm to American national security than they’ll ever understand.”¹²⁸

Dr. Mitchell repeatedly failed to abide by the standards of the Psychologists Licensing

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Witherell, *supra* note 13.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

Act (“the Act”)¹²⁹ and the Rules promulgated by the Board under the Act (the “Board Rules”).¹³⁰ He violated the Board Rules governing competency (§465.9), professional objectivity (§465.13(a)(1)), basis for scientific and professional judgments (§465.10), duties concerning emerging areas of psychology (§465.9(e)), professional supervision (§465(2)(a-g)), improper sexual conduct (§465.33) and exploitation of authority (§465.13(a)(3)), research without informed consent (§465.20(a)(1)), evaluation, assessment, and testing of a human subject without informed consent (§465.16(a)), as well as the Act’s prohibition against fraud and deceit in connection with psychological services (Act Section § 501(4)), and the Act’s prohibition against violations of Chapter 81 of the Civil Practice and Remedies Code (Act Section § 501(6)) for sexual exploitation by a mental health provider.

REQUEST FOR BOARD ACTION

I convey these observations and opinions to the Board not only as a citizen, but in my role as its licensee, mindful that I “must report conduct by a licensee that appears to involve harm or the potential for harm to any individual, or a violation of Board rule, a state law or federal law.”¹³¹ I request Board review of this matter and appropriate action.

Jim L. H. Cox, PhD.

Date

¹²⁹ 3 TEX. OCC. CODE ANN. § 501.401 (2009).

¹³⁰ 22 TEX. ADMIN. CODE § 455 (2009).

¹³¹ 22 TEX. ADMIN. CODE § 465.35(b) (2009).

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